

REVOCABLE LICENSE AGREEMENT

BETWEEN CITY OF CLEARWATER AND
SUNSETS AT PIER 60 SOCIETY, INC.

This License Agreement is made and entered into between the City of Clearwater, whose address is: Attn: -Parks and Recreation Director, Post Office Box 4748, Clearwater, FL 33758-4748, hereinafter referred to as the *City*, and Sunsets at Pier 60 Society, Inc., d/b/a Sunsets at Pier 60 Day Festival, whose address is: P.O. Box 3595, Clearwater, FL 33767, hereinafter referred to as the *Agency*.

WHEREAS, ~~it has been determined that for the past 13 years since 1995~~ the Agency has provided a valuable service to the City by promoting tourism on Clearwater Beach through its nightly festival (“Festival”) known as “Sunsets at Pier 60”; ~~and~~ as well as other events such as the Sugar Sand Festival and films in the park; and

WHEREAS, the City desires to continue this partnership of providing a revocable license for ~~a portion~~ portions of Pier 60 ~~and~~, Pier 60 Park ~~for the Festival and Beachwalk~~; and

WHEREAS, the City and Agency originally entered into an agreement on March 2, 1995, providing the Festival on an ongoing basis, ~~which can be terminated in writing by either party;~~ and

WHEREAS, the City and Agency ~~agree that the original~~ entered into a second agreement ~~is now outdated~~ on July 1, 2009, providing the Festival on an ongoing basis; and

WHEREAS, ~~the Festival has experienced great success, and therefore the Parties mutually desire to enter into a new more formal Agreement should be entered into to protect the interest of the City as well as the Agency agreement;~~ and

NOW, THEREFORE, the ~~parties~~ Parties agree as follows:

ARTICLE -I. TERM, LICENSE AREA, EXCLUSIVITY

1. **Term:** ~~The agreement dated March 2, 1995 shall be revoked and replaced upon adoption of this agreement (“License Agreement” or “Agreement”) as of the date of full execution by the parties. The term of this Agreement shall be for a period of 5 years commencing on the 1st day of July, 2009~~ September 2019 and continuing through the ~~30th~~ 31st day of ~~June, 2014~~ August 2024 (“Termination Date”) unless earlier terminated under the terms of this Agreement.

2. **Options to Renew:** This Agreement may be extended by mutual written agreement of the parties for one (1) additional period of five (5) years, on the same terms and conditions as are set forth herein.

3. **License Area:** Agency shall have exclusive use of the “License Area” as more particularly described in Exhibit “A” (attached hereto and incorporated herein) only for the purposes of

conducting the Festival and only to the extent provided for in this Agreement. The Agency's exclusivity of the License Area is subject to the occupation by parties with which the City has entered into agreements to provide services and activities other than the Festival.

ARTICLE II. RESPONSIBILITIES OF THE AGENCY

1. **Services to be Provided:** Weather permitting, the Agency shall provide a Festival at Pier 60 Park to promote tourism to Clearwater and Clearwater Beach.
 - a) **Programs:** The Agency shall provide a nightly Festival at Pier 60 Park by providing activities such as:
 - i) Arts and Crafts Vendors
 - ii) Entertainment (music, concerts, dance, etc.)
 - iii) Entertainers
 - iv) Special event shows/activities
 - b) **Assistance to the Community:** The Agency will maintain communication and interaction with the surrounding community in regard to the type of entertainment provided, noise, special activities to promote the neighborhood, etc.
 - c) **Assistance to the City:** Provide Agency personnel and volunteers to coordinate and operate all functions of the Festival at Pier 60.
 - d) **Hours and Days of Operation:** Weather permitting, the Agency will provide "Sunsets at Pier 60" 7 days a week for approximately 2 hours before until 2 hours after sunset (four hours per day).
 - e) Sunsets at Pier 60, Inc. is an independent non-profit organization and for purposes of this License is an independent contractor. This agreement shall not be construed to create a partnership, joint venture or other legal relationship between the City and Sunsets. All parties/vendors/participants of the Festival, and all actions taken by the Sunsets Board of Trustees or Sunset's management related to such parties, shall be at Sunset's sole discretion in accordance with the law and the terms of this Agreement.
2. **Use of Pier 60 ~~and~~, Pier 60 Park and Beachwalk:**
 - a) **No Illegal Use:** The Agency promises and agrees that it will abide by law and will make or allow no unlawful, improper or offensive use of the premises. Further, the Agency understands and agrees that this provision specifically prohibits, among other acts, the sale, consumption or use of alcoholic beverages or controlled substances anywhere in, on or around Pier 60 ~~and~~, Pier 60 Park and Beachwalk and those adjacent areas used by the Agency.

- b) **Rules for Use:** Rules and regulations governing the Festival activities, may be established by the Agency, providing they are not in conflict or inconsistent with the ordinances, policies or operating rules of the City, other applicable law or of this Agreement. Such rules and regulations developed by this Agency may provide for and allow reasonable vendor fees to be retained by the Agency.
- c) **Inspection by City:** The Agency understands and agrees that the Festival premises may be entered and inspected at any time by the City's officers, agents and employees.
- d) **General Adherence to City Ordinances:** Notwithstanding any limitations implied by the provisions above, the Agency promises to observe all City ordinances.
- e) **Signage:** The Agency may place an identification sign advertising the Festival in Pier 60 Park according to City codes with prior written approval from the City at the Agency's expense.
- f) **Structure:** No permanent alterations or improvements to the Pier or Park may be made without the written consent of the City. Any permanent structural additions approved by the City will become City property.

3. **Maintenance of the Premises by the Agency.**

- a) **Custodial Maintenance:** During the times of the event and when the event is being held, the Agency shall maintain the area used by the Festival in a clean and orderly condition.
- b) **Repair of Damage:** The Agency understands and agrees that it is responsible for and will cause to be repaired at the Agency's expense damage to the premises as a result of its occupancy other than normal wear and tear or vandalism.

4. **Payment for all Operating Expenses:**

- a) The Agency is responsible to pay all operating expenses associated with the Festival including salaries, utilities, custodial supplies, operating supplies, entertainment contracts, advertising, refuse collection, security, etc.
- b) The City will provide maintenance through its Parks and Recreation and Building and Maintenance Departments for all major capital components of the Pier, Park and ParkBeachwalk including painting, plumbing, electrical, concrete repairs, piling and deck repair, etc. The City shall have sole discretion in determining the scheduling and extent of capital maintenance projects.

5. **Payment of Fees and Taxes:** The Agency shall obtain all required licenses at its own expense and shall pay all required taxes required by law, necessary to the Agency's

operation at Pier 60 ~~and~~, Pier 60 Park and Beachwalk, including but not limited to any ad valorem real property taxes, sales taxes and personal property that may be assessed against the premises during the term of this Agreement.

6. **Scheduled Reports of Agency Activities:**

The Agency shall furnish the City Parks and Recreation Department, with an annual report of activities conducted under the provisions of this Agreement within sixty (60) days of the end of the Agency's fiscal year. Each report is to identify as an example the type of vendors displaying goods, the type of activities, programs offered, etc.

7. **Creation, Use, and Maintenance of Financial Records:**

- a) **Creation of Records:** Agency shall create and maintain financial and accounting records, books, documents, policies, practices, procedures and any information necessary to reflect fully the financial activities of the Agency. Such records shall be available and accessible at all times for inspection, review, or audit by authorized City representatives and shall produce such records as required by law.
- b) **Use of Records:** Agency shall produce such reports and analyses that may be required by the City to document the proper and prudent stewardship and use of the facilities and any cash funds donated to this cause.
- c) **Maintenance of Records:** All records created hereby are to be retained and maintained for a period not less than five (5) years, or as required by law.

8. **Non-discrimination:** Notwithstanding any other provisions of this Agreement during the term of this Agreement, the Agency for itself, agents and representatives, as part of the consideration for this Agreement, does covenant and agree that:

- a) **Nondiscrimination:** Agency understands and agrees that ~~no person shall; it will not discriminate~~ on the grounds basis of race, color, religion, sex, handicap, national origin, ~~religion, marital status or political belief, be excluded from participation any other protected class in, denied the benefit(s) of, accordance with state or be otherwise discriminated against as an employee, volunteer, or client of the provider. federal law.~~ Agency agrees to maintain reasonable accommodation and access for ~~handicapped~~ persons with disabilities, as required by law.
- b) **Inclusion in Subcontracts:** The Agency agrees to include and the requirement to adhere to ~~Title VI and Title VII of~~ the Civil Rights Act of 1964 in all approved sub-contracts.
- c) **Breach of Nondiscrimination Covenants:** In the event ~~of conclusive evidence~~ of a breach of any of the above non-discrimination covenants, the City shall have the right to terminate this Agreement immediately.

9. **Publicizing of City Support:** Agency agrees to utilize every reasonable opportunity to publicize the support received from the City. Agency further agrees to supply the City up

to three (3) copies of any publication developed in connection with implementation of programs addressed by this Agreement. Such publications will state that the program is supported by the City.

10. **Liability and Indemnification:** The Agency shall act as an independent contractor and agrees to assume all risks of providing the program activities and services herein agreed and all liability therefore, and shall defend, indemnify, and hold harmless the City, its officers, agents, and employees from and against any and all claims of loss, liability, and damages of whatever nature, to persons and property, including, without limiting the generality of the foregoing, death of any person and loss of the use of any property. This includes, but is not limited to matters arising out of or claimed to have been caused by or in any manner related to the Agency's activities or those of any approved or unapproved invitee, contractor, subcontractor, or other person approved, authorized, or permitted by the Agency in or about its premises whether or not based on negligence. Nothing herein shall be construed as consent by the City to be sued by third parties, or as a waiver or modification of the provisions of Section 768.28, Florida Statutes or the Doctrine of Sovereign Immunity.
11. **Insurance:** The Agency shall procure at its expense and maintain during the term of this Agreement insurance as shown below:
 - a) A Comprehensive General Liability policy covering claims for injuries to persons or damage to property which may arise from or in connection with use of ~~Pier 60 or Pier 60 Park premises~~ the License Area by the Agency including all activities occurring thereon.
 - b) An Automobile Liability Policy covering claims for injuries to persons or damage to property that arise from or in connection with use of a motor vehicle owned by the Agency.
 - c) Insurance procured in accordance with Sections 11 (a) and (b) shall have minimum coverage limits of \$1,000,000.
 - d) Each insurance policy issued as a requirement of this Agreement shall name the City of Clearwater as an additional named insured. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents or volunteers.
 - e) Worker's Compensation. Coverage shall apply for all employees in an amount at least equal to the statutory limits of coverage according to applicable State and Federal laws. In addition, the policy shall include employer's liability coverage with a limit of \$500,000 per occurrence.
 - f) The Agency shall furnish the City with Certificate(s) of Insurance with all endorsements affecting coverage required by this section. These forms shall be received and approved by the Parks and Recreation Director before execution of this Agreement by authorized City officials. The Agency shall provide a copy of

any or all insurance policies upon request by the City. All policies of insurance must be endorsed to provide the City with thirty (30) days' notice of cancellation or restriction.

ARTICLE III. RESPONSIBILITIES OF THE CITY

1. **Grant of Funds:** The City, for ~~the 2008/2009 budget~~fiscal year, ~~has provided 2019/2020, will provide~~ a grant of ~~\$23,870~~18,000 to the Agency to assist in funding Agency activities and expenses as identified in this Agreement. Grants for future years of this Agreement are subject to annual budget approval by the City Council, with the goal of reducing this cash subsidy by \$6,000 per year until it is reduced to zero for fiscal year 2022/2023.
2. **Grant of In-Kind Services:**
 - a) The City agrees to provide beach, lawn and landscape maintenance services for all areas on Pier 60 and surrounding park property at the City's discretion and as annual budgets allow.
 - b) The City will provide maintenance through its Building and Maintenance and Parks and Recreation Departments for all major capital components of ~~the Pier and 60,~~ Pier 60 Park, and Beachwalk. The City shall have sole discretion in determining the scheduling and extent of capital maintenance projects.
 - c) The City will not provide any other additional in-kind services, supplies, labor or equipment whether on loan or for consumption to the Agency.
 - d) The City will allow the Agency to use an agreed upon inventory of existing furnishings remaining on site i.e. chairs, tables, etc. Agency will be responsible for maintenance and replacement of items if needed.
3. **City Liaison:** The Recreation Special Events Division of the City of Clearwater will serve as the City Liaison for the Agency.

ARTICLE IV. DISCLAIMER OF WARRANTIES

This Agreement constitutes the entire Agreement between the parties on the subject hereof and may not be changed, modified, or discharged except by written Amendment duly executed by both parties. No representations or warranties by either party shall be binding unless expressed herein or in a duly executed Amendment hereof.

ARTICLE V. TERMINATION/ASSIGNMENT

1. **With or Without Cause:** Either party may terminate this Agreement by providing fifteen (15) days written notice to the other party.
2. **For Municipal Purpose:** The City may terminate this Agreement in the event it determines that the premises are required for any other municipal purposes by giving

fifteen (15) days written notice of such intended use, following which this Agreement shall terminate in every respect, and both parties shall be relieved of any further obligations hereunder, except that Agency shall be responsible for full payment of all costs and expenses resulting from the operation hereof, together with any other monies due in accordance with this Agreement.

- 3. **This Agreement is not assignable.** Any attempt to assign this Agreement shall render this Agreement immediately null and void in its entirety.

ARTICLE VI. NOTICE

Any notice required or permitted to be given by the provisions of this Agreement shall be conclusively deemed to have been received by a party hereto on the date it is hand-delivered to such party at the address indicated below (or at such other address as such party shall specify to the other party in writing), or if sent by registered or certified mail (postage prepaid), on the fifth (5th) business day after the day on which such notice is mailed and properly addressed.

- 1. If to City, addressed to Parks and Recreation Director, P.O Box 4748, Clearwater, FL 33758. With copy to: City Attorney, P.O. Box 4748, Clearwater, FL 33758.
- 2. If to Agency, addressed to Sunsets at Pier 60 Society, Inc., President (title);
(address); P.O. Box
3595, Clearwater, FL 33767.

ARTICLE VII. EFFECTIVE DATE

The effective date of this Agreement shall be as of the ____ day of _____
2009 _____ 2019.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this
____ day of _____, 2009 _____, 2019.

SUNSETS AT PIER 60 SOCIETY, INC.

By: _____
Printed Name: _____
Chief Executive Officer

Countersigned:

CITY OF CLEARWATER, FLORIDA

By: _____

~~Frank V. Hibbard~~George N. Cretekos
Horne, II
Mayor

William B.

City Manager

Approved as to form:

Attest:

Laura Mahony
Owen Kohler
Assistant City Attorney

Cynthia E. Goudeau
Rosemarie Call
City Clerk

Exhibit A



Legend

- CCCL
- Existing Lease Area
- Proposed Lease Area



Prepared by:
 Engineering Department
 Geographic Technology Division
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Sunsets at Pier 60



Map Gen By: DGD	Reviewed By: TM	Date: 08/16/2011	Grid #: 310A	S-T-R: 20-29s-16e
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Scale: N.T.S.

Map Document: (V:\GIS\Engineering\Location Maps\Arbor Shoreline LOC Map.mxd)

~~SUNSETS AT PIER 60 SOCIETY, INC.~~

By: _____
Printed Name: _____
Chief Executive Officer