

REVOCABLE LICENSE AGREEMENT

THIS **REVOCABLE LICENSE AGREEMENT** is entered into as of this ____ day of June, 2021, between the City of Clearwater, a municipal corporation of the State of Florida, whose mailing address is P.O. Box 4748, Clearwater, Florida 33758-4748 ("**Licensor**") and All Around Amusements, LLC, a Texas Corporation, whose mailing address is 4001 Willow Hills Court, Plano, TX 75024 ("**Licensee**").

WHEREAS, Licensor is the owner of certain real property located in Pinellas County, Florida hereinafter referred to ("**Premises**"); and,

WHEREAS, Licensor is willing to grant Licensee a license for occupancy and utilization of the Premises, subject to the terms and conditions stipulated herein (the "License");

NOW, THEREFORE, it is mutually agreed as follows:

1. **License Premises and Term:** Licensor hereby grants to Licensee a revocable, non-exclusive License to occupy and use Licensor's property as more particularly described in Exhibit "A", attached hereto and made a part hereof, (the "License Premises"), subject to the terms and conditions herein set forth, commencing on May 17, 2021 and expiring on May 16, 2022 ("License Term"), unless sooner terminated as herein provided. The License Premises shall be used for the sole purpose of installing and operating at least two (2) various inflatable amusement rides and fun activities, i.e. waterslide, jump house, fun center, etc ("Concessions"). Samples of Concessions are depicted and described in attached Exhibit "B", attached hereto and made a part hereof. Licensee's Concessions shall be located within the License area in conjunction with other Licensees as determined by Licensor in its sole discretion. Licensor reserves the right to request immediate relocation of the License Premises, and as such, Concessions, at its discretion. The Concessions may be substituted upon written approval by the Director of Parks and Recreation.
2. **No Interest in Land:** This License is not coupled with an interest in the land. It is expressly understood that this License Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee, or other real property interest in the Property to the Licensee. This License Agreement is not exclusive, and City specifically reserves the right to grant other rights of entry to the Property if the same do not interfere with the rights granted to Licensee herein.
3. **Options to Renew:** The Licensor, in its sole discretion, may extend this License for up to four (4) - one (1) year periods, on the same terms and conditions as are set forth herein without obtaining additional approval by the Clearwater City Council.
4. **License fee:** That for and in consideration of the foregoing rights and privileges, Licensee shall pay a flat fee to Licensor, as provided for in the payment schedule below, which amounts to a guaranteed minimum payment to Licensor of no less than \$102,500 per year, plus applicable sales tax on guaranteed minimum payment, during the Term ("License Fee"), subject to, and pro-

rated, in the event of operation interruption due to a Force Majeure. For these purposes, defined as any delays or failure to perform any obligation under this Agreement due to acts of God, strikes, or other disturbances, including, without limitation, terrorist acts, war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, and any other cause beyond the control of such party. Failure by the Licensee to pay the monthly License fee as provided for below, or to pay the Licensor the total minimum of Fifty-two Thousand Five-hundred Dollars (\$102,500), plus applicable sales tax, by the end of each year of the License Term, shall be deemed a material default of this License and the Licensor may, at its discretion, terminate the License immediately. The License Fee shall be paid on the 18th day of each month, with the first payment due on May 18, 2021. Subject to any applicable usury law, a late payment fee of five percent (5%) will become due and payable if Licensee fails to pay the monthly License Fee within five (5) business days of the due date (due date inclusive). Upon termination by the Licensor, Licensee shall vacate the Premises immediately, but in no event later than 48 hours from receipt of notification of termination.

\$102,500.00	
May	\$5,000.00
June	\$8,000.00
July	\$10,500.00
August	\$10,500.00
September	\$5,500.00
October	\$4,000.00
November	\$4,000.00
December	\$4,000.00
January	\$5,500.00
February	\$5,500.00
March	\$20,000.00
April	\$20,000.00

5. **Costs of Operations:** Licensee shall pay all costs of its License operations, including, but not limited to, utilities, and any costs resulting from facility/amenity upgrades, which must be authorized by the City in writing (i.e. High Speed Internet Wi-Fi, Security Cameras).
6. **Independent Contractor**. This License does not create a partnership, joint venture, or any affiliation other than Licensor and Licensee. The Licensee agrees that persons employed by Licensee for purposes related to the installation, operation or other purposes under this License are not employees of the Licensor for any purpose whatsoever, including unemployment tax, social security contributions, income tax withholding or workers compensation, whether state or federal. Licensee agrees to pay and be solely responsible for all applicable taxes, both state and federal, in connection with its operations and the License Fee paid by Licensee to Licensor.

7. **Licensee duties and responsibilities:**

- (a) Licensee shall provide various amusements that comply with and meet all industry acceptable safety standards.
- (b) Licensee shall setup the site, including securely anchoring the concessions, fencing off the area, and setting up an area for ticket sales.
- (c) Licensee shall operate in or on the License Premises, as designated by Licensor. Hours of operation shall be daily (seven days a week) no earlier than 9:00 a.m. until no later than 10:30 p.m., except during inclement weather and Turtle Nesting Season (as defined by the Florida Department of Environmental Protection). During Turtle Nesting Season (May 1 – October 31) additional restrictions may be applied by Licensor on lighting and hours of operations in accordance with City policy or the law. The City reserves the right to shut down the operation of the concessions if, in its sole discretion, it is in the best interest of the City, or to protect the safety and welfare of the public.
- (d) Licensor will allow Licensee to utilize a second location near the Barefoot Beach House for operation during the months of March and April due to increased activity and impacts by Spring Break and the Pier 60 Sugar Sand Festival.
- (e) Licensor will issue to Licensee (1) Parking Spot to be located at the closest available City owned and controlled lot near the Premises.
- (f) Licensee will ensure that the concessions are a structure that can be broken down in 48 hours if needed.
- (g) Licensee will ensure that the concessions are run and operated by properly trained employees and that Licensee has provided any necessary and appropriate technical, safety and operational training for its employees to carry out operations in a safe manner. It is highly encouraged that employees obtain CPR & First Aid Certifications or at a minimum that at least one employee on duty has this training. By entering into this License Agreement, Licensee represents that each employee has specific technical, safety, and operational training.
- (h) Licensee acknowledges that Licensee, including its employees, volunteers, and representatives are allowed by law to work with children, the elderly, or the disabled. Therefore, if not otherwise required to conduct background checks by law, Licensee 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. Licensee 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. Licensee voluntarily agrees to require such screenings in accordance with the processes and procedures set forth by the FDLE and the FBI to secure criminal history information on its employees, volunteers, and representatives. The Licensee acknowledges that the VECHS program is not available to entities currently mandated to obtain background checks by statute or other law. Licensee 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 C". Licensee 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. Licensor shall not be required to make such a determination under any circumstance. Licensee shall submit the Affidavit of Criminal Background Screening to Licensor 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.

- (i) All replacement or new amusements must be approved by the Parks and Recreation Director or his designee.

8. **Insurance**

The Vendor shall, at its own cost and expense, acquire and maintain (and cause contractors and subcontractors to acquire and maintain) during the term with the City, 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. Specifically, the Vendor 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:

- (a) **Commercial General Liability Insurance** including but not limited to, premises operations, products/completed operations, products liability, contractual liability, independent contractors, personal injury, and advertising injury and \$1,000,000 per occurrence and \$2,000,000 general aggregate and \$2,000,000 products/completed operation aggregate.
- (b) **Commercial Automobile Liability Insurance** for any owned, non-owned, hired or borrowed automobile is required in the minimum amount of \$1,000,000 combined single limit.

- (c) Statutory **Workers' Compensation Insurance** in accordance with the laws of the State of Florida, and **Employer's Liability Insurance** in the minimum amount of \$100,000 each employee each accident, \$100,000 each employee by disease and \$500,000 aggregate by disease with benefits afforded under the laws of the State of Florida. Coverage should include Voluntary Compensation and U.S. Longshoremen's and Harbor Worker's Act coverage where applicable. Coverage must be applicable to employees, contractors, and subcontractors, if any.
- (d) If the Vendor is using its own property or the property of City 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.

The above insurance limits may be achieved by a combination of primary and umbrella/excess liability policies. The City does not represent that these types or amounts of insurance to be sufficient or adequate to protect the Vendor's interests or liabilities, but are merely minimums.

Other Insurance Provisions:

- (1) The City is to be specifically included as an "Additional Insured" on the Commercial Liability Insurance, and Commercial Auto Liability Insurance policies listed above and named as a "Loss Payee" on Vendor's Property Insurance policy.
- (2) Prior to the execution of this Agreement, and then annually upon the anniversary date(s) of the insurance policy's renewal date(s), the Vendor will furnish the City with a Certificate of Insurance evidencing the coverage's set forth above and naming the City as an "Additional Insured" on the Vendor's Commercial General Liability Insurance and Commercial Auto Liability Insurance policies listed above and as a "Loss Payee" on the Vendor's Property Insurance policy. In addition, when requested in writing from the City, Vendor will provide the City with certified copies of all applicable policies. The address where such certificates and certified policies shall be sent or delivered is as follows:

**City of Clearwater
Attn: Administrative Support Manager
Parks and Recreation Department
P.O. Box 4748
Clearwater, FL 33758-4748**

- (3) Vendor shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage.
- (4) Vendor's insurance as outlined above shall be primary and non-contributory coverage for Vendor's negligence.

- (5) Vendor shall defend, indemnify, save and hold the City harmless from any and all claims, suits, judgments and liability for death, personal injury, bodily injury, or property damage, arising directly or indirectly from the performance by the Vendor, its employees, contractors, subcontractors, or assigns, including legal fees, court costs, or other legal expenses.

The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to the City, and failure to request evidence of this insurance shall not be construed as a waiver of Vendor's obligation to provide the insurance coverage specified.

9. **Liability/Indemnification.** Licensors will not accept and explicitly renounces any liability of any nature for use of the License Premises by the Licensee, its employees, agents, contractors, and invitees. Licensee shall save and hold harmless the Licensors, its successors and/or assigns, from any and all liability arising from injury to person or property during the term hereof. Nothing contained herein shall be construed to waive or modify the provisions of Florida Statute 768.28 or the doctrine of sovereign immunity. In addition, nothing contained herein shall be construed as creating third party beneficiaries or as consent by the Licensors to be sued by third parties in any manner arising from this grant of License.
10. **Maintenance and Operations.** Licensee shall at its sole cost and expense (a) maintain the Premises in a safe, clean and proper manner; (b) secure any and all licenses or permits required by any governmental agency or authority with respect to Licensee's operation of the concessions, occupancy and use of the Premises, including any and all rights or licenses required under applicable copyright or trademark law; (c) secure and be responsible for the security of the concessions at close of business each day and during hours of operation; (d) not make or permit to be made any alterations, additions or improvements in the Premises without the prior written consent of Licensors; (e) not permit any mechanic's lien to be filed against the Premises by reason of any work, labor, service or materials performed at or furnished to the Premises; and (h) abide by all rules and regulations established by Licensors, from time to time, with respect to the use and occupancy of the Premises. All signs used at the Premises shall be subject to Licensors' prior approval and applicable law.
11. All notices to either party must be sent by either U.S. Mail or e-mail to the addresses below:

As Licensors

City of Clearwater
P.O. Box 4748
Clearwater, FL 33758-4748
Kris.Koch@myclearwater.com
Lelia.Peterson@myclearwater.com

As to Licensee

All Around Amusements, LLC
4001 Willow Hills Court
Plano, TX 75024
Terri@allaroundamusements.com
Randall@allaroundamusements.com

Miscellaneous Provisions

12. The provisions of this License shall be binding upon and inure to the benefit of the heirs, personal representatives, and successors of the parties, as permitted herein. Any provision hereof which

imposes upon Licensor or Licensee, any obligations after termination or expiration of this License Agreement, shall survive termination or expiration hereof and be binding upon Licensor or Licensee.

13. This License is personal to Licensee. It is not assignable, and any attempt to assign this License shall immediately terminate the License privileges granted to Licensee hereunder. In addition, Licensee shall not sell, mortgage, pledge or in any manner transfer this License Agreement or any interest therein, not sublet all or any part of the Premises or license considerations therein. Licensee shall notify Licensor of any name change made in accordance with applicable law.
14. Licensor may terminate this License Agreement immediately, at will, in Licensor's sole discretion, with or without cause. This License Agreement may also be terminated at any time upon the mutual written agreement of Licensor and Licensee.
15. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto it being understood that nothing contained herein, or any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Licensor and Licensee.
16. Licensee agrees to comply with all local, state, and federal statutes and ordinances, and is responsible for obtaining all necessary state and local permits prior to setting up and operating the concessions.
17. All advertising or related communications pertaining to Licensor must be pre-approved in writing by the Licensor.
18. Licensor shall have the right to enter upon the Premises at all times. Licensor shall not unduly interfere with Licensee's business.
19. If this License, or its operation, shall create any ad valorem or other tax obligations, it shall be incumbent solely upon Licensee to timely discharge same.
20. This License contains all of the terms, conditions and covenants binding the parties hereto. There are no other terms, conditions, covenants or understandings, either written or oral, binding upon the parties unless expressed herein in writing or subsequently added hereto by mutual agreement of the parties.
21. Public records disclosure. In addition to all other contract requirements as provided by law, the contractor executing this agreement agrees to comply with public records law specifically to:
 - (a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service being provided by the contractor hereunder.

- (b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided for in Chapter 119, Florida Statutes, as may be amended from time to time, or as otherwise provided by law.
- (c) Ensure that the public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.
- (e) The contractor hereby acknowledges and agrees that if the contractor does not comply with a public records request, the public agency shall enforce the contract provisions in accordance with the contract.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: 727-562-4092, Rosemarie.Call@myclearwater.com, 600 Cleveland Street, Suite 600, Clearwater, FL 33755.

- 22. Governing Law. This Agreement shall be administered and interpreted under the laws of the State of Florida. The exclusive venue for any proceeding or suit in law or equity arising from or incident to this Agreement will be in Pinellas County Florida.
- 23. E-Verify. Licensee and its Subcontractors shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. Licensee will not enter into a contract with any Subcontractor unless each party to the contract registers with and uses the E-Verify system. Subcontractor must provide Licensee with an affidavit stating that Subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Licensee shall maintain a copy of such affidavit.

The City may terminate this Agreement on the good faith belief that Licensee or its Subcontractors knowingly violated Florida Statutes 448.09(1) or 448.095(2)(c). If this Agreement is terminated pursuant to Florida Statute 448.095(2)(c), Licensee may not be awarded a public contract for at least 1 year after the date of which this Agreement was terminated. Licensee is liable for any additional costs incurred by the City as a result of the termination of this Agreement.

See Section 448.095, Florida Statutes (2020).

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LICENSEE:

ALL AROUND AMUSEMENTS, LLC

Signed in the Presence of:

Dated:

By: _____

Terri Young
Owner

Countersigned:

LICENSOR:

CITY OF CLEARWATER, FLORIDA

Frank Hibbard
Mayor

By: _____

William B. Horne II
City Manager

Approved as to form:

Attest:

Owen Kohler
Assistant City Attorney

Rosemarie Call
City Clerk

Exhibit A

City of Clearwater
SPECIAL EVENTS BEACH VENUE #2: North Of Pier 60
(Approximately 200' x 250' = 50,000 sf or 1.1 acre)

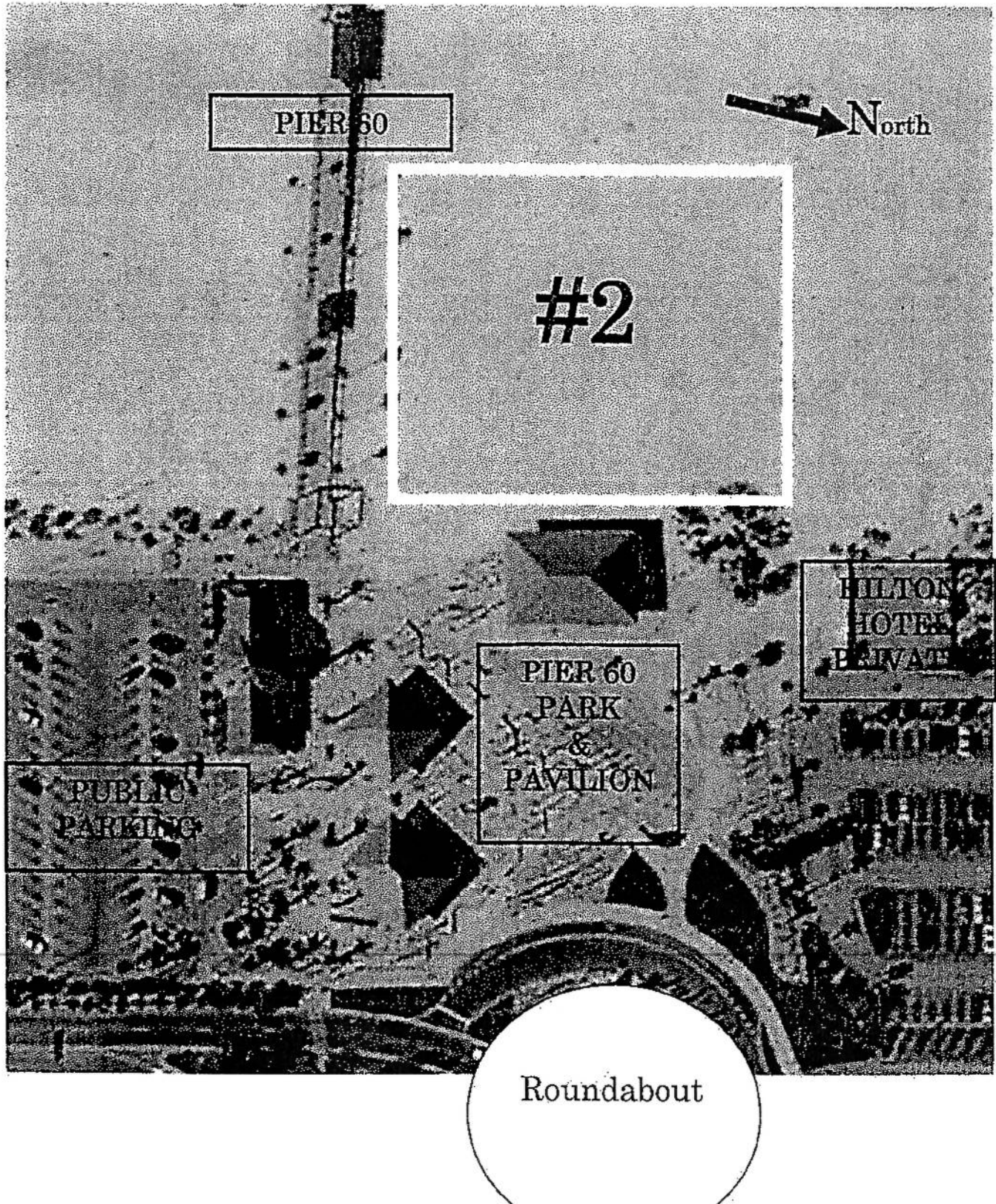
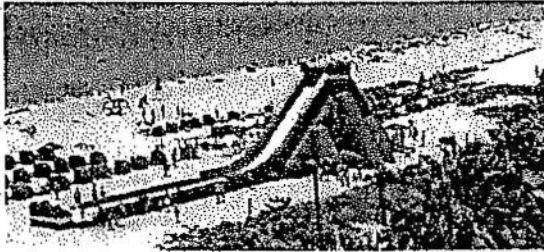
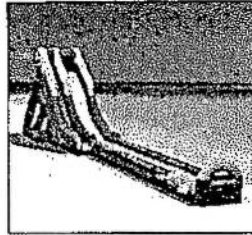


Exhibit B

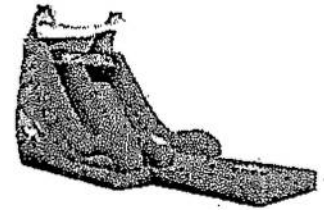
Inflatable Wet Slide Options



Hippo Water Slide
40' H x 170' L x 50' W



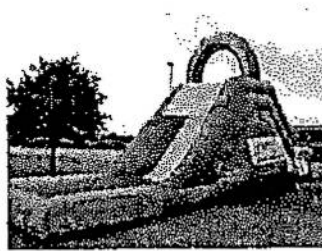
Water Slide Hipster
25' H x 90' L



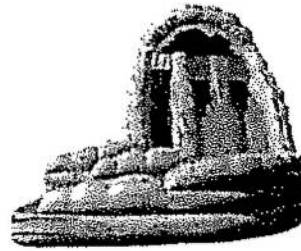
Water Slide Dolphin
18' H x 28' L x 12' W



Water Slide Rain Forest
22' H x 68' L x 14' W



Water Slide Rainbow



Water Slide Rapids



Water Slide Blue Crush

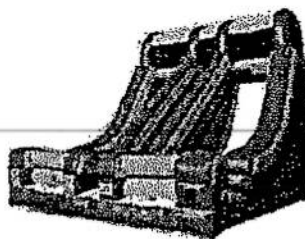


Water Slide Tropical

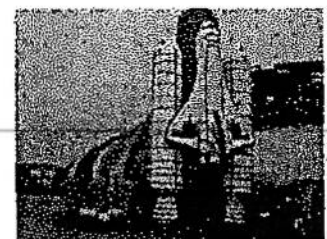
Inflatable Dry Slide Options



Dry Slide Kraken
28' H x 57' L x 19' W



Dry Slide



Dry Slide Space Shuttle

Exhibit B Continued

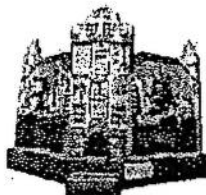
Inflatable Bounce House Options



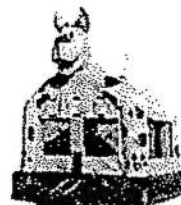
Blue Dog
15 x 15



Jurassic Park
15 x 15



Spiderman
15 x 15



Brown Dog
15 x 15



Royal Castle
15 x 15

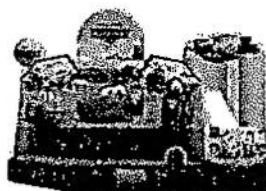


Indoor/Outdoor
15 x 15

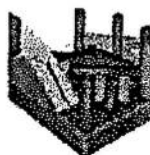
Miscellaneous Options



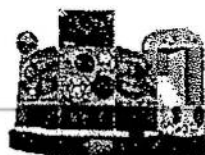
Obstacle Course ABC
72' L x 15' W



Combo Bounce/Slide Cars
15' H x 18' L x 19' W



Combo Ocean Adventure
15' H x 24' L x 25' W



Combo Sports



Combo slide/ Dragon



Slip n Slide Rainbow



Slip n Slide Run + Slide

EXHIBIT "C"

AFFIDAVIT OF CRIMINAL BACKGROUND SCREENING

LICENSEE NAME: _____

DATE: _____

By signing this form, I am swearing or affirming that all individuals employed by _____ (Licensee) or providing services to City under this Revocable License Agreement on behalf of Licensee on City property have been background screened in accordance with the background screening requirements set forth in the Revocable License Agreement and been deemed eligible by Licensee to provide services as described in the Revocable License 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 7 (h) of the Revocable License Agreement.

All individuals providing services under the Revocable License 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
