

REVOCABLE LICENSE AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF SUNRISE

This Revocable License Agreement ("Agreement") between Broward County ("County"), a political subdivision of the State of Florida, and the City of Sunrise ("City"), a municipal corporation (collectively, the "Parties"), is entered into and effective as of the date this Agreement is fully executed by the Parties (the "Effective Date").

RECITALS

A. The County owns and controls the property and improvements, as set forth in **Exhibit A**, located at 10500 W Oakland Park Boulevard, Sunrise, Florida 33351 ("Revocable License Area");

B. City seeks a license from County to access and use the Revocable License Area to construct and install certain improvements on portions of the Revocable License Area, as more particularly described in **Exhibit B**, attached hereto and made a part hereof (the "Improvements") and to maintain the Revocable License Area;

C. County is willing to grant City a license to access and use the Revocable License Area pursuant to the terms and conditions stated in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. DEFINITIONS

- 1.1. **Board** means the Board of County Commissioners of Broward County, Florida.
- 1.2. **Contract Administrator** means the Director of Real Estate Development, or designee.
- 1.3. **County Administrator** means the administrative head of County as appointed by the Board.

SECTION 2. GRANT OF REVOCABLE LICENSE

2.1. County hereby grants to City a revocable license for nonexclusive access and use of the Revocable License Area solely for the purposes of installing the Improvements and performing the maintenance obligations as set forth in this Agreement and taking other actions as may be required by this Agreement. Prior to City's construction and installation of the Improvements, City shall provide written notice to County indicating the design and including construction documents describing and depicting the locations, material specifications, dimensions, and the criteria for installation of the Improvements.

2.2. Other than for the purposes identified in this Agreement, City may not use the Revocable License Area for any other purpose whatsoever without written amendment of this Agreement executed with the same formalities as this Agreement. City may not permit the Revocable License Area to be used in any manner that will violate the terms of this Agreement or any laws, administrative rules, or regulations of any applicable governmental entity or agency.

- 2.3. County shall have full and unrestricted access to the Revocable License Area at all times.
- 2.4. This Agreement is merely a right to access and use and grants no estate in the Revocable License Area to City or any other party.

SECTION 3. CITY'S OBLIGATIONS.

3.1. City shall install the Improvements at its own expense and in accordance with the Contract Administrator's satisfaction, which installation must be completed by the City within two (2) years after the Effective Date. City shall not be entitled to any compensation from County for installing the Improvements. In the event the City does not complete the installation of the Improvements on the Revocable License Area pursuant to the terms of this Agreement or abandons the Improvements, County may terminate this Agreement pursuant to Section 5.2 of this Agreement and City shall, at its sole cost and expense, restore the Revocable License Area to its condition before the Improvements were installed or to such condition as approved in writing by the Contract Administrator. If City fails to make such restorations within thirty (30) days of County's notice to the City of either City's failure to complete the installation of the Improvements pursuant to this Agreement or City's abandonment of the Improvements, County may make them and then invoice City for the costs thereof. City shall pay such invoice within thirty (30) calendar days after receipt.

3.2. Following City's installation of the Improvements and County's approval of same, City shall provide County with signed and sealed certified as-built drawings and warranties for all work performed.

3.3. City shall maintain the Revocable License Area at its own expense. As part of City's maintenance obligations under this Agreement, City shall keep the Improvements and the Revocable License Area clean, sanitary, and in good condition consistent with industry-standard maintenance standards and techniques. City shall ensure that the landscaping on the Revocable License Area is properly maintained which maintenance shall include the removal of trash and debris and all cutting, watering, fertilizing, pruning, and required replacements. The City's maintenance obligations shall also include all repair and replacement of materials due to any cause, including but not limited to normal wear and tear, acts of God, vandalism, and accidents. The City shall promptly replace all defective or unsightly materials, as well as any materials that the Contract Administrator determines, in his/her reasonable discretion, should be replaced for safety reasons or because such materials would interfere with any County property or County operations. All replacements must be approved in writing by the Contract Administrator.

3.4. If City takes any action or makes any omission that causes or results in alterations or damage to County property, including the Revocable License Area, City shall, at its own expense, restore such property to its condition before the alterations or damages. If City fails to make such restoration within thirty (30) calendar days after County's request, County may make the restoration, and then invoice the City for the costs thereof. City shall pay such invoice within thirty (30) calendar days after receipt.

3.5. City shall provide the Contract Administrator with immediate verbal notice, followed by

written notice (in the manner set forth in Section 6 of this Agreement), of any condition on the Revocable License Area that might present a risk of damage to the Revocable License Area or adjacent property, or might pose a risk of injury to any person.

3.6. City shall also provide the Contract Administrator with immediate verbal notice, followed by prompt written notice (in the manner set forth in Section 6 of this Agreement), of any damage to the Revocable License Area or any injury to any person on the Revocable License Area resulting from the Improvements or City's maintenance of the Improvements and Revocable License Area.

3.7. City may retain a third party to install the Improvements and/or perform its maintenance obligations. If City retains a third party for such purpose(s), City shall enter into a written contract with the third party under which the third party agrees to install the Improvements and/or perform City's maintenance obligations in accordance with the requirements of this Agreement, including compliance with the insurance requirements as set forth in Section 8 of this Agreement. City shall provide the Contract Administrator with a copy of any such contract(s). Notwithstanding City's use of any third party, City shall remain obligated to install the Improvements and perform its maintenance obligations under this Agreement if the third party does not. City may not relieve itself of any of its obligations under this Agreement by contracting with a third party.

SECTION 4. RISK OF LOSS

All risk of loss for the Improvements (whether permanently affixed or not) shall be City's risk alone. However, City may not remove, replace or alter any of the Improvements without the Contract Administrator's written consent and any required permitting.

SECTION 5. TERM AND TERMINATION

5.1. The term of this Agreement shall be effective for ten (10) years commencing on the Effective Date ("Initial Term"), unless otherwise terminated as provided for in this Agreement. The Parties may renew this Agreement for up to four (4) successive period(s) of five (5) year terms (each 5-year extension shall be referred to as an "Extension Term"). For an Extension Term to be effective, either party shall provide notice of its desire to extend the Agreement to the other party at least thirty (30) days prior to the expiration of the current term, and both Parties must mutually agree to the Extension Term. Each Extension Term shall be on the same terms and conditions as provided in this Agreement for the Initial Term. The Initial Term, and each Extension Term, are collectively referred to in this Agreement as the "Term." The Contract Administrator is authorized to agree to an Extension Term on behalf of the County.

5.2. This Agreement may be terminated for cause by County if City breaches any of its obligations under this Agreement and has not corrected the breach within thirty (30) calendar days after receipt of written notice identifying the breach. County may, at the option of the Contract Administrator, cause such breach to be corrected and invoice City for the costs of the correction or may terminate this Agreement. If County opts to correct the breach and invoice City for the costs of correction, City shall pay such invoice within thirty (30) calendar days after receipt. If County erroneously, improperly, or unjustifiably terminates for cause, such

termination shall, at County's sole election, be deemed a termination for convenience, which shall be effective thirty (30) calendar days after such notice of termination for cause is provided.

5.3. This Agreement may be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in the written notice provided by County to City, which termination date shall not be less than thirty (30) calendar days after the date of such written notice.

5.4. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate if the County Administrator determines that termination is necessary to protect the public health or safety. Termination under this section shall be effective on the date County provides notice to the City of such termination.

5.5. Upon termination of this Agreement, City shall peaceably surrender its use of the Revocable License Area.

5.6. Upon termination of this Agreement, City shall remove all Improvements, materials, and equipment installed or placed in the Revocable License Area by City, unless the Contract Administrator, in writing, authorizes City to leave any such Improvements, materials, or equipment in the Revocable License Area. In addition, City shall be obligated to repair any damage to the Revocable License Area resulting from the removal of any Improvements, materials and equipment. If City fails to comply with these removal and/or repair obligations within thirty (30) days after termination, County may perform them, and then invoice City for the cost thereof. City shall pay the invoice within thirty (30) calendar days after receipt.

5.7. Upon termination of this Agreement, City shall restore the Revocable License Area to its condition before the Improvements were installed or to such condition as approved in writing by the Contract Administrator. If City fails to make such restorations within thirty (30) days of termination, County may make them and then invoice City for the costs thereof. City shall pay such invoice within thirty (30) calendar days after receipt.

5.8. County shall have no obligation to compensate City for any loss resulting from or arising out of the termination of this Agreement.

5.9. Notice of termination shall be provided in accordance with the Section 6 of this Agreement, except that notice of termination by the County Administrator, pursuant to Section 5.4 of this Agreement may be verbal notice that shall be promptly confirmed in writing in accordance with Section 6 of this Agreement.

SECTION 6. NOTICES

Whenever either party desires or is required to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, together with a contemporaneous email, addressed to the party for whom it is intended at the place last specified in this Section.

The manner in which and persons to whom notice shall be provided will remain the same unless and until changed in writing in accordance with this Section. The Parties respectively designate the following persons for receipt and issuance of notice:

FOR COUNTY:

Broward County Real Property Section
Director of Real Estate Development
115 South Andrews Avenue, Room 501
Fort Lauderdale, Florida 33301
Email: lmahoney@broward.org

FOR CITY:

Mark Lubelski
City Administrator
City of Sunrise
10770 West Oakland Park, Blvd.
Sunrise, Florida 33351
Email: [REDACTED]
Telephone: (954) 746-3430

SECTION 7. INDEMNIFICATION

City shall indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of City, its officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, Contractor shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

SECTION 8. INSURANCE

8.1. Nothing herein is intended to serve as a waiver of sovereign immunity by County or City. City is a governmental entity and is fully responsible for the negligent or wrongful acts and omissions of its agents or employees, subject to any applicable limitations of Section 768.28, Florida Statutes.

8.2. Within five (5) calendar days after request by County, City must provide County with written verification of liability protection that meets or exceeds any requirements of Florida law. If City holds any excess liability coverage, City must ensure that Broward County is named as an additional insured and certificate holder under such excess liability policy and provide evidence of same to County.

8.3. If City maintains broader coverage or higher limits than the minimum coverage required under Florida law, County shall be entitled to such broader coverage and higher limits on a primary and non-contributory basis.

8.4. The foregoing requirements shall apply to City's self-insurance, if any.

8.5. County reserves the right to periodically review any and all insurance policies required by this Agreement and to reasonably adjust the limits and/or types of coverage required herein, from time to time throughout the Term of this Agreement.

SECTION 9. MISCELLANEOUS

9.1. Independent Contractor. City is an independent contractor under this Agreement. In performing under this Agreement, neither City nor its agents shall act as officers, employees, or agents of County. City has no power or right to bind County to any obligation not expressly undertaken by County under this Agreement.

9.2. Third Party Beneficiaries. Neither City nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

9.3. Assignment and Performance. Neither this Agreement nor any right or interest herein may be assigned, transferred, or encumbered by City without the prior written consent of County, which consent may be withheld in County's sole discretion. City represents that each person and entity that will perform activities pursuant to this Agreement is duly qualified to perform such activities by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will perform services. City agrees that all activities under this Agreement will be performed in a skillful and respectful manner, and that the quality of all such activities will equal or exceed prevailing industry standards for the provision of such activities.

9.4. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof. County's failure to enforce any provision of this Agreement will not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement will not be deemed a waiver of any subsequent breach and will not be construed to be a modification of the terms of

this Agreement.

9.5. Compliance with Laws. City shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

9.6. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to its subject matter. It may not be modified or terminated except as provided in this Agreement. If any provision is deemed invalid by a court of competent jurisdiction, it shall be considered severed from this Agreement, and such severance shall not invalidate the remaining provisions.

9.7. Joint Preparation. This Agreement has been jointly prepared by the Parties and will not be construed more strictly against either party.

9.8. Interpretation. The headings contained in this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement include the other gender, and the singular includes the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section of this Agreement, such reference is to the section as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection.

9.9. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any Exhibit attached hereto or referenced or incorporated herein and any provision in this Agreement, the provisions contained in this Agreement shall prevail and be given effect.

9.10. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement will be interpreted and construed in accordance with and governed by the laws of the state of Florida. The Parties agree that the exclusive venue for litigation arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the Parties agree that the exclusive venue for such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, CITY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

9.11. Amendments. No modification, amendment, or alteration in the terms or conditions contained herein will be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Parties.

9.12. Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

9.13. Representation of Authority. Each individual executing this Agreement on behalf of a party represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

9.14. Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same Agreement.

9.15. Nondiscrimination. No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 20__, and CONTRACTOR, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST: _____ Broward County Administrator, as ex officio Clerk of the Broward County Board of County Commissioners	BROWARD COUNTY, by and through its Board of County Commissioners By _____ Mayor ____ day of _____, 20__
	Approved as to form by Andrew J. Meyers Broward County Attorney 115 South Andrews Avenue, Suite 423 Fort Lauderdale, Florida 33301 Telephone: (954) 357-7600 By _____ Christina A. Blythe (Date) Assistant County Attorney By _____ Annika E. Ashton (Date) Deputy County Attorney

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CITY

ATTEST: _____ CITY CLERK	CITY OF _____ By: _____ CITY MAYOR _____ Print Name _____ day of _____, 20____ I HEREBY CERTIFY that I have approved this Agreement as to form and legal sufficiency subject to execution by the parties: _____ City Attorney
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EXHIBIT A

REVOCABLE LICENSE AREA

[INCLUDE LEGAL DESCRIPTION AND SKETCH OF REVOCABLE LICENSE AREA]

EXHIBIT B

IMPROVEMENTS

[INCLUDE DESCRIPTION OF IMPROVEMENTS BEING INSTALLED]