

**LEASE AGREEMENT
BETWEEN
KIWANIS CLUB OF FOUNTAIN HILLS,
SUNSET, INC.
AND
THE TOWN OF FOUNTAIN HILLS**

THIS LEASE AGREEMENT (this "Agreement") is entered into as of April 7, 2019, 2019, by and between the Town of Fountain Hills (the "Town") and the Kiwanis Club of Fountain Hills, Sunset, Inc. ("Sunset Kiwanis").

RECITALS

WHEREAS, on April 7, 1994 the Town and Sunset Kiwanis entered into a Lease Management Agreement, as amended on April 16, 1998; and

WHEREAS, the parties thereto wish to enter into this Lease Agreement ("Agreement"), which shall supersede the Lease Management Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged

1. Lease. Town hereby leases to Sunset Kiwanis the Premises, and Sunset Kiwanis hereby accepts the lease from the Town. "Premises," as used herein, shall include both the real property described in Exhibit "A," including any improvements thereto, and all buildings and fixtures located upon the real property, as described in Exhibit "B."
2. Term. This Agreement shall be effective as of April 7, 2019, and the term shall be 10 years. One year prior to the expiration of the 10 years, the parties shall meet and, during the 12 months immediately preceding the termination of this Agreement, negotiate and, if mutually desirable, enter into a renewal for an additional term; provided, that at the time of the renewal, neither party is in default of any of the terms and conditions of this Agreement as it exists now or as it may be modified in the future.
3. Rent. The annual rent payable under this Agreement to the Town by the Sunset Kiwanis shall be one dollar (\$1.00), for a total of ten dollars (\$10.00) payable.
4. Use.
 - a. The Premises shall be used in connection with the Sunset Kiwanis activities, including but not limited to organizational activities, public cultural exhibitions, and community events. The Sunset Kiwanis shall not conduct or permit to be conducted any unlawful or hazardous activity upon the Premises. The use of the Premises by

Sunset Kiwanis is and will continue to be subject to all applicable laws and regulations of the State and the Town. The Premises shall be available to the Town or to a Town-approved, non-profit organization from 8:00 a.m. until 5:00 p.m. each day from Monday through Friday for the operation of Town-approved programs. The use by the Town or Town-approved non-profit organizations shall be without cost or obligation to the Town. Any conflicting scheduling of the facility between the Town and Sunset Kiwanis shall be resolved through cooperation between the Town Manager and the President of the Sunset Kiwanis.

- b. Sunset Kiwanis shall be responsible for scheduling, at times other than those set forth in Paragraph 4(a) above, public and private uses of the facilities and arranging for access to the Premises. Sunset Kiwanis may adopt reasonable rules and regulations with respect to such use, including reasonable fees for such use. Sunset Kiwanis, in adopting such fees, may exempt itself and other Kiwanis organizations from such fees. Sunset Kiwanis understands and agrees that the leasing of the Premises is an event for which tax may be applicable, and Sunset Kiwanis is responsible for the collection and payment of said tax.
- c. Sunset Kiwanis shall not use nor permit uses upon the Premises, which could constitute waste on the Premises, a public or private nuisance, or unlawful conduct.

5. Maintenance and Utilities.

- a. Sunset Kiwanis shall be responsible for all maintenance related to the interior of all buildings on the Premises. This includes, but is not limited to, electrical, lighting, plumbing, walls, ceilings, and window maintenance.
- b. The Town shall be responsible for the structural maintenance and repairs to the exterior of the main building, the roof, the parking lot, and the HVAC system. Sunset Kiwanis shall be responsible for all other maintenance related to the exterior of the buildings, including, but not limited to, landscape maintenance, maintenance of the Park (including all structures and equipment located therein), and maintenance of all exterior lighting.
- c. The Town shall be responsible for all maintenance related to the HVAC system. No fees for repairs, materials, or work shall be agreed to by Sunset Kiwanis without receiving the prior written consent of the Town.
- d. Sunset Kiwanis agrees that it will not make structural alterations, additions, or expansions without first having obtained written permission from the Town and that any such work shall be performed in accordance with all applicable laws, codes, and building regulations.
- e. Except for the sanitary sewer utility, which cost shall be borne by the Town, Sunset Kiwanis shall be responsible for the payment of all utilities, including water, gas, electric, cable television, and telephone.

6. Insurance.

- a. Sunset Kiwanis shall, during the term of this Agreement, maintain a general liability insurance policy in an amount of not less than one million dollars (\$1,000,000) with the Town listed as an additional insured. The policy shall contain a provision that it will not be cancelled for any reason without 30 days' written notice to the Town.

- b. Should fire or casualty destroy or impair the use of the Premises or its contents, Sunset Kiwanis agrees that all proceeds of its insurance policy shall be used to rebuild or replace the structure, fixtures, or contents destroyed or affected. If the proceeds are insufficient to correct all damage, the parties shall work together to find additional funds. Final decision as to the disposition of the proceeds of any insurance claim shall rest with the Town Council.
 - c. In the event of a casualty that destroys or substantially impairs the use of the Premises, the parties shall meet and determine the suitability of replacing the Premises at its existing location or, in the alternative, providing Sunset Kiwanis with an alternative site for its Kiwanis activities.
 - d. Any organization or entity using the facility shall be responsible for maintaining insurance on their own personal property, and neither the Town nor Sunset Kiwanis shall assume any responsibility for personal property destroyed or damaged at the Premises.
7. Liquor on the Premises. Sunset Kiwanis shall establish a policy for the use of spirituous liquors upon the Premises. Sunset Kiwanis shall follow all applicable state and local procedures to obtain a liquor license. Use of the Premises by organizations or individuals who have obtained a State of Arizona Special Events Liquor License shall also require adequate proof of liquor liability insurance, naming the Town and Sunset Kiwanis as additional insureds.
8. Compliance. Nothing contained in this Agreement shall exempt Sunset Kiwanis or any user of the Premises from obtaining any and all required state, county, or Town permits or approvals.
9. Use of Fees. Sunset Kiwanis shall use the fees it receives for use of the Premises for its maintenance expenditures and for utility payments.
10. No Employment Relationship. Sunset Kiwanis understands and agrees that none of the terms and conditions of this Agreement are intended to create an employer/employee relationship and that all employees, agents, contractors, subcontractors, and volunteers of Sunset Kiwanis are not employees of the Town.
11. Indemnification. The Town and Sunset Kiwanis shall indemnify, defend, and hold harmless the other from any claims, liabilities, and expenses arising out of injury or death or damage to property that results in any way from the any breach of this Agreement or the acts or omissions of the indemnifying party. This indemnification provision is in addition to the insurance requirements set forth herein.
15. Default. Should either party be in default in the performance of any of the obligations set forth herein, then the non-defaulting party may send notice to the defaulting party, in writing, setting forth the condition of default and demanding that the default be cured within 30 days. Should the default not be cured within the 90-day period, then the non-defaulting party may seek any remedy available in equity or law, including but not limited to, termination of this Agreement. This default provision shall apply to the entire

21. Cancellation. Pursuant to the provisions of A.R.S. § 38-511, this Agreement may be cancelled, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on behalf of the parties is, at any time, while the Agreement or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect the subject matter of the contract.
22. Entire Agreement and Modification. This Agreement constitutes the entire agreement of the parties and can only be modified if in a writing signed by both parties and approved in the same manner as this Agreement was approved.

[SIGNATURES ON FOLLOWING PAGES]

"Town"

TOWN OF FOUNTAIN HILLS,
an Arizona municipal corporation

By: Grady E. Miller
Grady E. Miller, Town Manager

ATTEST:

Elizabeth Burke
Elizabeth Burke, Town Clerk

APPROVED AS TO FORM:

Aaron D. Arnson
Aaron D. Arnson, Town Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On September 4, 2019, before me personally appeared Grady E. Miller, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the Town of Fountain Hills.



(Affix notary seal here)

Jamie Salentine
Notary Public

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

"Sunset Kiwanis"

FOUNTAIN HILLS KIWANIS CLUB, SUNSET, INC.

By: STANLEY ZIEFERT *Stanley Ziefert*

Its: President of Sunset Kiwanis of Fountain Hills

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On August 27, 2019, before me personally appeared Stanley Ziefert, the President of the Fountain Hills Kiwanis Club, Sunset, Inc., an Arizona corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the corporation.



(Affix notary seal here)

Jamie Salentine
Notary Public

EXHIBIT A

Sunset Kiwanis Park Legal Description

That part of Section 14, Township 3 North, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the southwest corner of said Section 14;

Thence north 69 degrees 07 minutes 17 seconds east, a distance of 1,391.16 feet to the southwest corner of that certain excepted Parcel "B" (Sub-Station Site) as described in instrument recorded in Instrument No. 85-376470, records of Maricopa County, Arizona, said point being the TRUE POINT OF BEGINNING of the herein described parcel;

Thence south 60 degrees 30 minutes 00 seconds west, a distance of 232.85 feet;

Thence south 89 degrees 34 minutes 46 seconds west, a distance of 260.76 feet to a point on the southeasterly right-of-way of Kiwanis Drive, originally recorded street name known as Coyote Drive, as set forth in instrument recorded in Instrument No. 86-574431, records of Maricopa County, Arizona, said point being on a non-tangent curve being concave to the Northwest and having a radius of 330.00 feet, a radial line of said non-tangent curve at said point bears south 12 degrees 48 minutes 10 seconds east;

Thence northeasterly along said non-tangent curve and along said right-of-way through a central angle of 38 degrees 11 minutes 50 seconds and an arc distance of 220.00 feet;

Thence tangent from said curve and along said right-of-way, north 39 degrees 00 minutes 00 seconds east, a distance of 178.17 feet to the northwest corner of said Parcel "B";

Thence south 51 degrees 00 minutes 00 seconds east, a distance of 216.12 feet to the TRUE POINT OF BEGINNING;

Said parcel contains 47,134.67 square feet or 1.08 acres, more or less.

EXHIBIT B

SUNSET KIWANIS PARK

16957 E KIWANIS DR

- ACTIVITY SITE
- ① STORAGE AREA
 - ② PARKING
 - ③ CONCRETE OPEN PATIO

ALL RAMADAS HAVE:

- LIGHTS
- ELECTRICAL OUTLETS
- HANDICAP TABLES

