

FOODSERVICE MANAGEMENT AGREEMENT

This Food Service Management Agreement ("Agreement") is made effective January 31, 2006, between the 32nd District Agricultural Association, a state institution ("District"), and Ovations Fanfare, LP ("Concessionaire").

A. DEFINITIONS

1. "Accounting Period" shall refer to the Concessionaire's four or five week fiscal periods of which there must be twelve within each calendar year.
2. Subject to the provisions of Paragraph Q(1), "Agreement" shall refer to this Food Service Management Agreement.
3. "Agreement Year" shall mean each calendar year commencing January 1, 2006 and December 31, 2006, and continuing each calendar year thereafter until the termination of this Agreement.
4. "Alcoholic Beverages" shall refer to all alcoholic drinks, spirits, beers and wines, regardless of where they are provided, in what packaging or format, or to whom they are provided.
5. "Branded Products" shall refer to those Foodservice items which are advertised, marketed and sold as part of a franchise or license agreement and with respect to which Concessionaire is required to pay royalty fees and/or shared advertising costs to the franchiser in consideration of the right to sell such items in the Facilities.
6. "Cash Shortages" shall be defined as the difference between cash register readings and actual cash and credit collected.
7. "Catering Sales" shall refer to any pre-arranged food and beverage function of multiple customers, such as receptions and banquets, where payment for the entire function rests with one individual or company.
8. "Commissions" shall refer to the percentage of Gross Sales earned by the District each Accounting Period.
9. "Concession Sales" shall refer to all sales of food and beverages sold from permanent or portable concession stands or roving vendors to individual customers.
10. "Concessionaire" shall refer to that party or parties selected by the District to provide the services set forth herein.
11. "DGS" refers to the Department of General Services, State of California, located at:

707 Third Street, 7th Floor
Sacramento, CA 95605
Attn: Office of Legal Services

12. "Direct Operating Costs" are the actual out-of-pocket costs of the Foodservice operation incurred at the Facilities and paid for by the Concessionaire. These costs include the actual expense of the product including corporate rebates, on-site payroll, payroll taxes, customer credit card bank fees, fringe benefits and other operating expenses, such as repairs and maintenance, cleaning and office supplies.
13. "District" shall refer to the California 32nd District Agricultural Association, commonly referred to as the Orange County Fair and Exposition Center, or its designated representative.
14. "District's Facilities" shall refer to the 150 acres of land and buildings located in Costa Mesa California commonly called the Orange County Fairgrounds. The swap meet/Orange County Market Place and the Equestrian Center are specifically excluded from the Foodservice exclusive rights.
15. "Equipment" shall refer to all Foodservice furniture and machinery, (excepting Smallwares and Leasehold Improvements), used for the receiving, storing, transportation, preparation, merchandising, selling and accounting of product. Equipment shall not be affixed to the building except by electrical or gas connections. Examples of "Equipment" shall include but not limited to portable items such as grills, carts, trailers, steamers, warmers, cash registers, audio/visual equipment, signage, menu boards, tables, chairs, umbrellas, condiment equipment, refrigerators, freezers, ovens, racks, furniture, computers, etc.
16. F & E: Refers to the Division of Fairs & Expositions, Department of Food and Agriculture, which is a division of the agency of the State of California overseeing the activities of District Agricultural Associations and County and Citrus Fruit Fairs. F & E is located at:

1010 Hurley Way, Ste. 200
Sacramento, CA 95825
17. "Fair" shall refer to the Orange County Fair, held each summer at the District facilities.
18. "Foodservice" shall refer to all food and beverage sales and operations at the District, whether Alcoholic Beverages, Branded Products, Catering, Concessions, or Restaurant sales.
19. "Gross Receipts" shall refer to the total amount of money, gratuities, service and rental charges received or charged by the Concessionaire, any agent, any employee or any sub contractor of the Concessionaire for all sales, cash or credit (whether collected or not), made as a result of the service rights granted under the Agreement, excluding only applicable sales taxes.

20. "Gross Sales" shall mean the total gross selling price of all products and services sold by the Concessionaire at or from the premises or facilities, or from any other source related directly or indirectly to this Agreement. Gross Sales shall not include sales and use taxes collected from customers, nor shall it include certain gratuities or service charges received, collected, or provided by the Concessionaire for the benefit of its employees. Cash shortages may not be deducted from Gross Sales.
21. "Late Fee" is the charge assessed to any payments due the District from the Concessionaire after the specified date in the Agreement. Late Fees shall be pro-rated daily based on an annual rate of eighteen percent (18%).
22. "Leasehold Improvements" shall refer to all equipment, fixtures, furnishings, finishes and construction affixed to the building, by more than an electrical or gas connection. Examples of "Leasehold Improvements" shall not be limited to include kitchen hoods, counters, walls, floors, doors, light fixtures, cabinets, beverage system lines, audio/visual system lines, utility lines, facades, walk-in cold storage, etc.
23. "Merchandise" shall refer to souvenirs, novelties and all non consumable items sold at the Facilities
24. "DVBE shall refer to disabled veteran business enterprises certified by the State of California.
25. "Pre-opening Expense" shall refer to the Direct Operating Costs incurred by the Concessionaire between execution of the Agreement and the first Accounting Period with Gross Sales.
26. "RFP" refers to Request for Proposal Number FB-0805.
27. "Renter" shall refer to any person or entity that may from time to time enter into any agreement for the use of the District facilities for a particular purpose.
28. "Restaurant Sales" shall refer to all food and beverage sales, except Catering Sales, originating in the restaurants at the District, including but not limited to the Baja Blues Restaurant.
29. "Smallwares" shall refer to the serviceware, utensils, crockery, glassware, dishware and cutlery used in the Foodservice operation.
30. "Term" refers to the period of time beginning on the Contract Commencement Date and ending on the date provided for in the Agreement or as terminated pursuant to the terms and conditions set forth in the Agreement.
31. "Vending Machine Sales" shall refer to all food and beverage sales derived from coin operated automatic merchandisers, which the District reserves the right to provide.
32. "Year-Round Events" shall refer to all events held at the District Facilities, except for the Fair.

B. SCOPE OF AGREEMENT

This Agreement is for exclusive Foodservice rights at all year-round or non-Fair events in the Grandstand Arena, Exhibit Buildings, Memorial Gardens Building, Baja Blues Restaurant, Pacific Amphitheatre and other venues located on the District's Facilities. In addition, during the annual Orange County Fair, this Agreement is for exclusive Foodservice rights at the following venues, only: the Baja Blues Restaurant, Memorial Gardens Building, Grandstand Arena, Pacific Amphitheatre, Building 10 (one location inside and one location outside known as the California Grill) and portable beer locations as determined by the District in its sole and exclusive discretion. Specifically excluded from this Agreement are the weekly swap meet/Orange County Marketplace, weekly certified farmers' market, the Equestrian center, and, except as otherwise provided in this paragraph, all District-produced events, such as the annual Orange County Fair and the annual Youth Expo.

C. TERM OF AGREEMENT

1. This agreement commences on January 31, 2006, and expires on December 31, 2008.
2. The District, in its sole and exclusive discretion, may elect to extend the term of this Agreement for (1) three years upon the expiration of the initial term of this Agreement, and (2) for three years upon the expiration of the first three-year extension ("extended term"). These options may be exercised by giving the Concessionaire written notice of extension on or before the 180th day prior to expiration of the original term or any extended term. Any and all extended terms of this Agreement are subject to all of the provisions of this Agreement; provided, however, that the District has the sole and exclusive discretion to require renegotiation of all or part of this Agreement if the District elects to exercise one or more of the options to extend. The District's failure to provide written notice to renew, or the parties' failure to mutually agree upon the terms and conditions of a renegotiated contract will result in automatic termination of this agreement on December 31, 2008, or at the expiration of any extended term.

D. FACILITIES DESCRIPTION

1. The District's property consists of 150 acres located in Costa Mesa, Orange County, California and includes the following buildings, improvements, and other facilities (collectively "Facilities"):
 - 8,500 seat Pacific Amphitheatre with four permanent concessions stands
 - Centennial Farm/Silo Building and Millennium Barn
 - Memorial Gardens Building and outdoor area with small catering kitchen and preparation area.

- Building Number 8, a fast-fabric structure (approximately 12,285 square feet)
 - Building Number 10, including one concession stand with indoor and outdoor service (approximately 36,000 square feet)
 - Breezeway Building / Parade of Products (approximately 16,000 square feet)
 - Building Number 12, including two concession stands with outdoor service. (approximately 22,000 square feet) During the District's annual fair, only, Building Number 12 is excluded from this Agreement.
 - Building Number 14 (approximately 18,000 square feet)
 - Building Number 16, (approximately 15,000 square feet)
 - Building Number 17 (approximately 12,000 square feet)
 - Baja Blues Restaurant (approximately 12,000 square feet)
 - 6,000 seat Grandstand Arena with three permanent concession stands
 - Equestrian Center
 - Livestock Show area
 - On-site parking lot (approximate 8,000 car capacity)
2. The location of all Foodservice areas to be used by Concessionaire in the performance of its obligations under this Agreement, whether temporary, portable or permanent shall be designated by the District in its sole discretion. The Concessionaire shall acquire no right to any location once assigned and the District reserves the exclusive right to require the Concessionaire to move its operations and equipment to facilitate the needs of events scheduled on the District's fairgrounds and premises, so long as this requirement is not unreasonable.
 3. The District has adopted a 10-year master plan for the fairgrounds property and its Facilities, which will be implemented, in whole or in part, during the term of this Agreement and any extended term[s]. Implementation of the Master Plan may require Concessionaire to relocate all or part of its business, equipment, fixtures, improvements, smallwares, and/or operations to a comparable space on the fairgrounds. The selection of any site on the District's premises for relocation, if required, is in the sole and exclusive discretion of the District. All costs arising out of, or in any way related to any relocation required under this subparagraph will be at the sole expense of the Concessionaire
 4. During the term of this Agreement, new and/or expanded structures, buildings, and/or venues may be constructed on the District's property. These new and/or expanded structures, buildings, and/or venues will become subject to the jurisdiction

of this Agreement only upon the election of the District, which will be exercised in the District's sole and exclusive discretion.

E. PERSONNEL

1. Concessionaire will employ all necessary personnel to fulfill its obligations under this Agreement.
2. All Foodservice employees are employees of the Concessionaire and not the District. No agent, servant, or employee of the Concessionaire will under any circumstances be deemed an agent, servant, or employee of the District.
3. The District may require Concessionaire's employees to have in their possession badges, identification cards, or credentials while Concessionaire's employees are on the District's premises. Concessionaire will keep accurate records of the names, addresses and other legal identification of its employees who are issued badges, identification cards, or credentials. All of Concessionaire's employees must pass background checks under "Megan's Law", and any other reasonable background checks that may be required by the District as a result of policies adopted by the District's Board of Directors. Concessionaire will be solely responsible for all costs and expenses incurred under this subparagraph E(3).
4. Concessionaire's full time management staff will consist of an on-site General Manager, Assistant General Manager, Executive Chef, Controller/Office Manager, and a Commissary/Maintenance Manager. (Collectively, on-site Management".) Concessionaire will maintain a full-time office at the District's Facilities.
5. Concessionaire's on-site Management is subject to approval of the District during the entire Term of this Agreement and any extensions of the Term of this Agreement under Paragraph C(2). Concessionaire's on-site Management will have no responsibilities at other venues without the District's prior written consent. The District has the right, in accordance with applicable law, to require replacement of on-site Management or any member of on-site Management. If the District requests a replacement for the on-site Management or any of the staff, Concessionaire will have five (5) days to provide a temporary replacement, subject to District approval, and fifteen (15) days to provide the District with at least three (3) resumes of candidates proposed by Concessionaire for a permanent replacement.
6. Concessionaire's proposed Regional and Area Management throughout the term of the Agreement, and any extensions of the term under Paragraph C(2), is subject to District approval. The District has the right, in accordance with applicable law, to require replacement of Regional and/or Area Management. If the District requests a replacement for Regional or Area Management, Concessionaire will have five (5) days to provide a temporary replacement, subject to District approval, and fifteen (15) days to provide the District with at least three (3) resumes of candidates proposed by Concessionaire for a permanent replacement.

7. Concessionaire will conduct regular training sessions on a year round basis for all employees and personnel. All training sessions are subject to District approval. Concessionaire's training will include classes on customer service, diversity and harassment training, cash handling and inventory control, and alcohol awareness. Concessionaire will also provide all required skills training to each employee necessary for the position to be filled by each employee including food preparation, quality control, restaurant and VIP service training, sanitation, banquet service, buffet set-up, food merchandising and wine service.
8. Concessionaire's training will incorporate District's customer service, quality control programs, systems and management policies.
9. Concessionaire's employees shall be at all times neatly and cleanly uniformed in District-approved uniforms and must meet reasonable prescribed grooming guidelines and appearance standards.
10. Concessionaire's use of personnel provided by non-profit or club organizations for staffing under the terms of this Agreement is subject to the District's prior written approval. In the event non-profit or club group personnel are utilized as staff, Concessionaire will have at least one experienced regular employee on Concessionaire's payroll in a supervisory position for quality control purposes, including customer service and product.
11. The District will provide free parking for Concessionaire's employees in a location to be designated by the District in its sole discretion.
12. If at any time the District determines that any employee, agent or officer of Concessionaire is in violation of District policies regarding harassment, discrimination or offensive behavior, fails to meet the District's safety and customer service standards, or is not legally authorized to work in the United States, the District will notify Concessionaire in writing. Concessionaire will promptly correct the behavior, performance, or condition giving rise to the notification under this Paragraph (E)12 to the satisfaction of the District. If Concessionaire fails to correct the behavior, performance, or condition giving rise to the notification under this Paragraph (E)12, District may demand that Concessionaire cease using said employee at the District's facilities and Concessionaire will promptly comply with such request.

F. EQUAL OPPORTUNITY

1. On or before the commencement of the term of this Agreement, Concessionaire will submit to the District a written policy statement, executed by Concessionaire's chief executive officer, informing all of Concessionaire's employees, job applicants, service recipients, and applicants for services of the Concessionaire's commitment to ensuring equal employment opportunity, including Concessionaire's Corporate Equal Opportunity / Affirmative Action and Non-discrimination Policy Statements.

2. During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

G. QUALITY OF SERVICES AND PRODUCTS

1. Concessionaire will conduct all of its operations in a first-class, professional, businesslike and efficient manner consistent with a premier, professional, Fair and/or amphitheater.
2. All suppliers, portions and brands used by Concessionaire in fulfillment of its obligations under this Agreement are subject to the District's prior approval. Concessionaire is prohibited from entering into any "exclusive" agreement with any supplier without the prior written approval of the District, which shall not be unreasonably withheld.
3. On October 15 of each year, Concessionaire will submit to the District for the District's review and approval proposed concessions and catering menus for the twelve-month period beginning the next January 1. Each menu submitted under this subparagraph G(3) must identify and highlight all proposed changes in the pricing, portion size, and/or brand of each item. Concurrently with the submission of the proposed menus, Concessionaire will give the District a survey of prices, portion sizes and brands offered at other comparable venues in Southern California.
4. Following District approval of its menus, Concessionaire must provide to the District printed Catering and Restaurant menus utilizing the District's logos, in sufficient quantities for use by District's and the Concessionaire's marketing staffs. The Concessionaire is not granted any right, title, or interest in and to any of the District's logos, and is granted a limited non-exclusive revocable license to use the logo solely in the manner provided for in Paragraphs G(4) and G(5) and for no other purpose. The District may revoke the license to use the logo from time to time and at any time in its sole and exclusive discretion. However, if Concessionaire has menus in its possession utilizing the District's logos, the Concessionaire may continue to use those existing menus in the performance of its obligations under this Agreement until those existing menus are consumed or until the termination of this Agreement, which

is earlier. Upon termination of this agreement, Concessionaire will immediately cease any further use of the logo and return all items and materials bearing or using the logo to the District's representatives at Concessionaire's sole cost and expense.

5. Concessionaire will use the District's logo on District-approved logo cups, napkins and other printed material required by the District, subject to 60 days' written notice requiring the use of the logo by the District. The District will approve the artwork of the District's logo and how it is used on the printed material. The quantity of logo cups, napkins and other printed material will be approved by the District prior to the Concessionaire placing any orders for logo supplies. The Concessionaire is not granted any right, title, or interest in and to any of the District's logos, and is granted a limited non-exclusive revocable license to use the logo solely in the manner provided for in Paragraphs G(4) and G(5) and for no other purpose. The District may revoke the license to use the logo from time to time and at any time in its sole and exclusive discretion. However, if Concessionaire has logos, cups, napkins or other printed material in its possession utilizing the District's logos, the Concessionaire may continue to use those existing items in the performance of its obligations under this Agreement until those existing logos, cups, napkins, or other printed material are consumed or until the termination of this Agreement, which is earlier. Upon termination of this agreement, Concessionaire will immediately cease any further use of the District's logo and sell all items and materials bearing or using the District's logo to the District's representatives at Concessionaire's actual cost.
6. Concessionaire will set rooms with sufficient tables and chairs for all catered events and functions. Concessionaire will provide and set linen, skirting and place settings on a timely basis, and remove those items immediately following each catered event or function.
7. Concessionaire will set up equipment and smallwares for all food service events. Concessionaire will be responsible for setting up and tearing down all portable equipment and décor including any work tables, if any, supplied by the District.
8. Concessionaire will submit a written operations plan in a format mutually agreed to between Concessionaire and the District for each event requiring foodservice during this agreement. Each written operations plan must be submitted to the District for its review at least 30 days prior to the start of the event. The District will notify Concessionaire no less than 60 days prior to the start of any event subject to this Paragraph G(8); provided, however, that if less than 60 days' notice is given by the District to Concessionaire of an event subject to this Paragraph G(8), Concessionaire will submit its written operations plan within a reasonable time.
9. Large and/or complex events, to be determined by the District in its sole and exclusive discretion, will require the submission of the written plan described in Paragraph G(8) to the District 120 days prior to the start of the event. The District will notify Concessionaire no less than 180 days prior to the start of any event when an event is subject to this Paragraph G(9).

10. The District will decide any and all questions which may arise as to the acceptability of services rendered, number of service areas required, levels of staffing by area, prices, portions, products, manner of performance, questions which arise as to the interpretation of the terms and conditions of this Agreement, and all questions as to the acceptable fulfillment of the Agreement.
11. All foods, beverages, confectionery, refreshments, sold or kept for sale, must be of first quality, wholesome, and pure and conforming in all respects to all applicable federal, state, and municipal food and other laws, ordinances, and regulations. No imitation, adulterated, or misbranded article may be sold or kept for sale. All food and beverage products will be stored, handled, served, and discarded in a sanitary manner. All items intended for consumption shall be discarded immediately upon any expiration date and may not be served and/or sold under any condition.
12. All products kept for sale are subject to inspection and approval by the District. All products deemed by the District, in its sole discretion, to be unfit for sale and/or consumption will be immediately removed from the District's Facilities and may not be returned for sale.
13. Concessionaire will employ the use of branded products when requested by the District, so long as these products meet with Concessionaire's pricing and quality standards.
14. All catering sales, including catered alcoholic beverages, must use permanent, non-disposable smallwares, dishes, silverware, glassware and place settings in the absence of a request for use of disposable items by the customer.
15. The Concessionaire will continuously staff and maintain the section of the receiving area where food and beverages are delivered. Concessionaire will be responsible for the return of all pallets, storage containers, grease barrels, beer kegs, linens and other equipment provided by suppliers and used, directly or indirectly, in the conduct of operating the food service.
16. All disposable products, including, but not limited to, drinking glasses and cups, containers, plates, utensils, napkins, bags, and wrapping must be recyclable to the extent possible.
17. Concessionaire will maintain sufficient levels of District-approved equipment, leasehold improvements, employee uniforms and smallwares, including place setting service for at least 250 persons.

H. ALCOHOLIC BEVERAGES

1. Alcoholic Beverages are to be offered for sale by the Concessionaire only when permitted by applicable state and local laws, and subject to regulations established by California Alcoholic Beverage Control Board and the District. The final decision, as to whether or not alcoholic beverages may be sold at an event, or in any designated area of the District's Facilities, is in the sole discretion of the District.

The decision to serve or refuse service of alcoholic beverages to any individual shall be the sole responsibility of the Concessionaire.

2. All licenses and permits required for the sale of alcoholic beverages at the District's Facilities will be obtained by and held in the name of the Concessionaire. Concessionaire will maintain these permits in full force and effect and neither party shall take any action that might impair the permits. The Concessionaire shall prepare, file, and process all applications for renewals of the permits.
3. At the termination of the Agreement, Concessionaire will surrender all alcoholic beverage licenses for the District's Facilities and transfer all alcoholic beverage licenses to the succeeding Concessionaire, if allowed by law.
4. Concessionaire is required to maintain a beer and wine license during the term of this Agreement, and all extended terms of this Agreement. Concessionaire is currently applying for a full beer, wine, and spirits license. If a full beer, wine, and spirits license is issued to Concessionaire, Concessionaire will be required to maintain a full beer, wine, and spirits license during the term of this Agreement, and all extended terms of this Agreement.
5. Concessionaire is solely responsible for implementation of the District approved Alcohol management guidelines and policies. This shall include all costs and fees including but not limited to security, I.D. check personnel and equipment and wristbands.

I. COMMISSIONS AND CONCESSIONS INVESTMENT

Concessionaire will pay the District the Commissions on Gross Sales described below.

Commission Category	Percentage of Gross Sales
Food and Non-Alcoholic Beverages	34%
Catering	10%
Beer, Wine and Spirits	40%
District Approved Subcontractor Commissions	50% of amount received by Concessionaire

1. The District will provide Concessionaire with a written form ("Weekly Sales Summary") to be used for reporting sales on a weekly basis. No later than noon every Friday, Concessionaire will provide a completed Weekly Sales Summary to the District, covering a seven-day period ending at midnight on the immediately preceding Wednesday. The Weekly Sales Summary will include all sales by Concessionaire and its subcontractors. The Weekly Sales Summary will include required information pertaining to customer pricing, guarantees, sales by location,

total of each item sold, total inventory sales, total register sales, and cash overages and shortages. Concessionaire will attach the corresponding copy of the validated bank deposit ticket, cash register summaries and credit card settlement reports to each Weekly Sales Summary.

2. During the District's annual Fair, in addition to submission of the Weekly Sales Summary, Concessionaire will submit the previous day's sales reports, cash register receipts, credit card receipts and cash overages and shortages for sales made by (1) the Concessionaire and (2) all approved subcontractors used by the Concessionaire. Submission of each day's sales reports, cash register receipts, credit card receipts, and cash overages and shortages for Concessionaire and its approved subcontractors as required by this Paragraph 1(2) must be made no later than 2:00 P.M. of the following day.
3. The District will provide Concessionaire with a written form ("Monthly Sales Summary") to be used for reporting sales on a monthly basis. On or before the tenth day of every month. Concessionaire will provide a completed Monthly Sales Summary to the District, covering the immediately preceding month. The Monthly Sales Summary will include all required information, including sales at each location, total items sold, total inventory sales, total register sales, and cash and overages for the month. The Monthly Sales Summary will require Concessionaire to provide information for comparison to the same month for the previous year.
4. District sponsored events catered by Concessionaire are billed to the District at Concessionaire's actual product cost, direct labor cost, and any other direct cost associated with these events, plus a 10% administrative fee.
5. Concessionaire will pay all District invoices in full for the preceding month by the tenth day of each month. Late fees will be assessed on any and all payments due to the District unless made on the date specified in this agreement, or on any invoice issued to the Concessionaire from District, whichever is later. Late fees will be assessed daily based on an eighteen percent (18%) annual percentage rate.
6. All of Concessionaire's payments to the District will be based upon the amount of gross sales, and Concessionaire will be solely and exclusively responsible for any overages or shortages on the sales receipts.
7. Concessionaire is solely and exclusively responsible for providing all working capital and inventory necessary to operate the Food Service operation and fulfill all of Concessionaire's contractual obligations to the District.
8. When the Concessionaire caters any event occurring on the District's property and/or facilities, the District will be solely responsible for invoicing and billing the event operator. ("Renter.") The District will pay all amounts due and owing to the Concessionaire by the tenth day of the month for the preceding month.
9. Concessionaire is obligated to make capital improvements to the food service facilities in the amount of two hundred and fifty thousand dollars (\$250,000.00) during the 2006 calendar year. The District's prior written approval is required for all

capital improvements made under this Paragraph I(9), including, but not limited to, the purchase of smallwares or equipment, or the installation of capital improvements.

10. Concessionaire is obligated to make capital improvements in the food service facilities in the amount of one and one-half percent (1.5%) of Concessionaire's annual total gross sales of the foodservice operation per year into the foodservice facilities each year for calendar years 2007 and 2008 and each calendar year in any extended term. The District's prior written approval is required for all capital improvements made under this Paragraph I(10) including, but not limited to, the purchase of smallwares or equipment, or the installation of capital improvements.
11. Subject to the provisions of Paragraph P(6), at the termination of this Agreement for any reason, all leasehold improvements, equipment and smallwares on the Premises will, without compensation to the Concessionaire, become the District's property free and clear of all claims to or against them by Concessionaire or any third person. Concessionaire shall defend and indemnify the District against all liability and loss arising from any claims against the leasehold improvements, equipment, and/or smallwares
12. Subject to the provisions of Paragraph P(6), at the expiration or sooner termination of the term, the District may, at the District's sole discretion, demand the removal from the Premises of all or part of the fixtures and improvements at Concessionaire's sole cost and expense; provided, however that the District may not require Concessionaire to remove any fixtures or improvements that are permanently affixed to any real property, structure, or work of improvement. Removal of fixtures and improvements requires that Concessionaire restore the Premises to their original condition, ordinary wear and tear excepted.
13. District is responsible for the selection and cost of entertainment and necessary lodging of the entertainment performing in the Baja Blues Restaurant during the annual Fair.
14. Any physical modifications to any part of the District's premises, facilities, or property and its structures for any reason must have prior written approval by the District.

J. OPERATING REQUIREMENTS

1. The Concessionaire will perform its contractual obligations under this Agreement in compliance with the most current District Board of Director-approved Year-Round Policies and Procedures and the OC Fair Concessionaire Policies & Procedures. Upon approval by the District's Board of Directors, revised versions of the Year-Round Policies and Procedures and the OC Fair Concessionaire Policies & Procedures, if any, will be immediately provided to Concessionaire.
2. The District is exclusively responsible for resolution of any and all questions that may arise regarding the acceptability of services rendered by Concessionaire, Concessionaire's staffing levels, performance by Concessionaire and its employees,

agents, contractors and subcontractors, and fulfillment of Concessionaire's contractual obligations under this Agreement. The District's decision shall be final, conclusive, and binding on all parties.

3. No off-site or subcontracted sales are permitted on the District's Facilities without the prior written approval of District.
4. On an annual basis, by October 15 of each year, the Concessionaire shall provide the District with a written Catering, Concessions and Restaurant sales program applicable to the following calendar year, with specific financial, marketing and operational goals and specific methods for attaining each goal. The sales program must include, but will not be limited to, menus, training, staffing, equipment maintenance, and capital improvements.
5. The Concessionaire will not interfere with District-authorized free distribution of food or drinks or any other items of any nature whatsoever. Concessionaire will not incur any expense as a result of this activity.
6. The Concessionaire will be required to provide or modify operations at the District-approved request of any event operator or Renter. The District agrees that none of Concessionaire's equipment will be used for events that are not catered by Concessionaire.
7. In the event that the District hosts a major exhibition or other similar national or international event, including, but not limited to, big top events (e.g., Cirque Du Soleil), large festivals (e.g., Barrett Jackson Car Auction) Concessionaire will modify its operations under this Agreement to the extent those modifications are required for the District to effectively obtain or operate any such event. In the event the District and the Concessionaire cannot mutually agree on terms to satisfy the event, the District has the exclusive and sole discretion to exclude the event from this Agreement and will have no obligations to Concessionaire for that specific event.
8. In the event that the District hosts or promotes cultural events including, but not limited to, events promoting ethnic food specialty items, symphonies which include a picnic environment, or food festivals entailing a wide selection of outside food vendors, the Concessionaire will modify its operations under this Agreement to the extent those modifications are required for the District to effectively obtain or operate any such event. In the event the District and the Concessionaire cannot mutually agree on terms to satisfy the event, the District has the exclusive and sole discretion to exclude the event from this Agreement and will have no obligations to Concessionaire for that specific event.
9. Concessionaire will use approved computerized cash or point-of-sale registers at all sales locations at the California Grill and Baja Blues Restaurant locations. Concessionaire will use an approved computerized system, to be installed in calendar year 2006, in these foodservice areas to quickly and efficiently communicate foodservice orders to the kitchen staff

10. Nothing herein contained shall be held to limit or qualify the right of the District to a free and unobstructed use, occupation and control of the District's Facilities and ingress and egress for itself, its Renters and the public.
11. Representatives of the District shall have the right to enter upon and have access to all spaces occupied by the Concessionaire during the time events are in operation and all times when Concessionaire employees are present, so long as the District does not interfere with Concessionaire's ability to perform its obligations under this Agreement.
12. Concessionaire will comply with District's approved customer evaluation procedures, including, but not limited to, comment cards, secret shoppers and focus groups.
13. Concessionaire and its employees and subcontractors are barred from soliciting tips or placing "tip jars" on the District's premises and/or facilities.
14. An annual performance evaluation will be performed by the District.

K. COMPLIANCE WITH LAWS

1. The Concessionaire will obtain and maintain during the entire period of the contract all federal, state and local permits and licenses required to fulfill Concessionaire's obligations under this Agreement, including, but not limited to, Alcoholic Beverage Licenses and health permits.
2. Concessionaire will comply, and will require its contractors and subcontractors to comply, with all federal, state and local statutes, laws, ordinances and regulations governing Concessionaire's business, including, but not limited to recycling laws and requirements, environmental laws, ordinances, and regulations, South Coast Air Quality Management District regulations, Regional Water Quality Control Board - */regulations. Concessionaire shall at all times conduct its business in compliance with the Clean Air Act, the Clean Water Act, the Porter-Cologne Water Quality Act, the California Environmental Quality Act, the National, Environmental Protection Act, and all comparable, related, and successor statutes, laws, ordinances, and regulations, applicable to Concessionaire.
3. Concessionaire will comply, and will require its contractors and subcontractors to comply, with all applicable federal, state, and local laws, ordinances, rules, and regulations including, but not limited to, the Americans with Disabilities Act ("ADA") and all related regulations.
4. Concessionaire will collect and promptly disburse all sales and other taxes required by federal, state and local authorities. Concessionaire will promptly pay any applicable taxes relating to Foodservice sales, operations, Equipment, or inventory, which are the sole and exclusive responsibility of Concessionaire.
5. Concessionaire will abide by all reasonable rules, regulations and directives prescribed by the District.

6. Concessionaire shall be responsible for obtaining, maintaining and paying for all operating permits, including but not limited to alcoholic beverage licenses and permanent and temporary health permits.
7. Concessionaire shall be responsible for any taxes, including but not limited to sales tax and Possessory Interest Tax, assessed on its operation by any governmental body.
8. Concessionaire shall maintain and pay all tax accounts, licenses and operating permits necessary for the Foodservice.
9. Concessionaire will provide District with a copy of all health department inspection reports within 24 hours of Concessionaire's receipt of any health department inspection report.

L. RECORD KEEPING AND ACCOUNTABILITY

1. Concessionaire will maintain all accounting records for the District in a format approved by the District at Concessionaire's on-site office located on District premises. The accounting records shall be available for audit by the District at any time during the initial term, and all extended term[s] of this Agreement at the on-site Concessionaire office. The records required by this Paragraph L(1) must be maintained at Concessionaire's main office for at least three years following the expiration of the initial term or any extended term[s] of this Agreement, or any earlier termination of this Agreement.
2. For on-site functions, Concessionaire will use hardware and software compatible and integrated with District's computer systems.
3. Concessionaire will submit to the District a sales and commission budget for Concessionaire's operation three months prior to the beginning of each Agreement Year, for every year during the initial term or any extended term[s] of the Agreement. The budget is subject to the District's approval, which may not be unreasonably withheld, and must be submitted in a District-approved format.
4. Concessionaire will maintain a separate, segregated commercial bank account at a bank approved by the District for deposit of all gross receipts directly or indirectly derived by Concessionaire from this Agreement. No funds from any business activities of Concessionaire, or from any other source, not connected with the District and this Agreement may be co-mingled in this account.
5. Concessionaire and subcontractors retained by Concessionaire will use cash registers approved and registered by the District for all food and beverage point of sale (permanent and portable) in all inside and outside locations. Any replaced or new cash registers used during the term of the agreement must be pre-approved and registered by the District prior to use. The District will have access to all sales, management, and other reports from the cash registers.

6. All point of sale registers at the California Grill and Baja Blues Restaurant locations are required to accept customer credit cards, including, but not limited to, Visa, Master Card & American Express
7. All costs and expenses directly or indirectly arising out of the acceptance of customer credit cards by the Concessionaire will be paid for by Concessionaire or Concessionaire's subcontractor, as a direct operating cost.
8. Concessionaire will be responsible for handling in a timely manner all patron inquiries regarding credit card sale charge backs or discrepancies.
9. Automatic Teller Machines (ATM) may be placed by the District throughout the District's premises at the discretion of the District. The District has the sole and exclusive right to any incomes, fees, and/or rentals from ATM machines on the District's premises. Concessionaire may not install, operate, or maintain ATM machines on the District's premises.
10. The District will conduct an annual audit of the books and records required to be made and preserved, including all sales, commissions, and other obligations specified in this Agreement. The auditors will be selected by the District and the cost of the annual audit will be shared (50/50) between the District and the Concessionaire. Any audit showing a deficiency in payments by the Concessionaire for the twelve-month period subject to audit, in excess of one percent (1%) of the amount thereof, the amount owed and the Late Fees from the date the error took place and the cost of the audit, shall be paid by Concessionaire to the District within 5 calendar days of Concessionaire's receipt of the bill for the audit from the District.
11. Concessionaire and the District will inventory all equipment, leasehold improvements, uniforms and smallwares on an annual basis to determine what replacements, improvements and repairs are required, and to adjust the inventory accordingly.
12. Concessionaire will submit to the District an updated inventory of equipment, leasehold improvements, uniforms and smallwares within 30 days of any known material change to the inventory.

M. SANITATION AND EQUIPMENT MAINTENANCE

1. Concessionaire will maintain all assigned areas of the District's Facilities, including the space within a 25 foot radius of each area, including, but not limited to, restaurants, catering areas, kitchens, cafeterias, concession stands, bars, buffets, pantries, condiment stands, storage and prep areas in a clean, sanitary, and orderly fashion and in compliance with all applicable laws, ordinances, rules, and regulations. Concessionaire's obligations under this Paragraph include, but are not limited to, constant clearing of tables, emptying of trash, cleaning and refilling self-service beverage and condiment stations, and sweeping and/or vacuuming floors in the dining areas. All costs and expenses for Concessionaire's obligations under this Paragraph M(1) will be borne exclusively by Concessionaire

2. The Concessionaire will be responsible for removal of all trash and garbage from all Foodservice areas to the foodservice dumpster and/or recycling bin, in a centralized location to be designated by the District, either during an event or immediately following an event. The removal of the foodservice dumpster and/or recycling bin from the District's Facilities will be by a District-approved vendor at Concessionaire's sole and exclusive cost and expense.
3. Independent sanitation and food and beverage safety audits will be conducted by an independent company approved by the District. The audit will be conducted once every four months on a pre-determined schedule. In addition, non-scheduled audits will be conducted up to eight times per year on a non-scheduled basis, on dates and times determined at the sole discretion of the District. All costs of these audits shall be borne by the Concessionaire.
4. Concessionaire is responsible for providing pest control in each assigned area by retention of a pest control service licensed by the State of California and approved by the District.
5. Concessionaire will maintain, as a direct operating cost all equipment, leasehold improvements, uniforms and smallwares used in performance of its duties, including rolling stock, in a good state of repair, including all maintenance and repairs. On or before November 1 of every year during the initial and all extended terms of this Agreement the Concessionaire will submit a maintenance plan for District approval.
6. Concessionaire will provide weekly cleaning of all floors, walls, doors, counters, tables, chairs, wood deck and windows in the Baja Blues Restaurant, including polishing floors. The Concessionaire shall submit a detailed cleaning plan with a timetable to the District for approval.
7. Replacement of equipment or supplies required by ordinary wear and tear, to be mutually determined by the District and Concessionaire, will be paid by the party that purchased the equipment or supplies, and subject to Paragraphs I(9) and I(10) of this Agreement. Replacement required as a result of theft, vandalism, or unusual wear, or by neglect or negligence of Concessionaire, will be paid for by Concessionaire.
8. The District may, in its sole and exclusive discretion, require the use of District's in-house maintenance staff for repairs and maintenance.
9. Concessionaire will keep all equipment and supplies properly stored and organized in the storage areas designated by the District. Concessionaire will not use any area that has not been designated as a storage area by the District for temporary or permanent storage.
10. Food service locations that are not in use will be maintained by Concessionaire in a clean condition and will be kept from use by customers.
11. No equipment or product shall be removed from the District's facility for any purpose without the prior written approval of the District.

12. All refuse and waste material created by the Concessionaire's operations in all areas of the Premises and fairgrounds, including surrounding fence lines and streets, shall be promptly collected and disposed of after each event day. Concessionaire shall be responsible for employing the necessary personnel, including supervisors, before, during and after hours of each operating day to comply with these provisions; providing sufficient waste receptacles and equipment at each location and making certain they are kept clean and properly serviced during and after each operating day, to the satisfaction of the District.
13. Wet refuse must be stored in water-tight containers pending removal from the Premises. Grease and waste foods shall be kept in closed metal containers until removed from the Premises. All equipment utilized by the Concessionaire for refuse and waste removal may be staged only in storage area(s) designated by District.

N. UTILITIES

1. The District shall pay for the usage of HVAC, electricity, gas, and water service for the Concessionaire's operation.
2. Concessionaire will utilize prudent energy management.
3. Telephone service will be provided to Concessionaire by a District-approved vendor at Concessionaire's sole and exclusive cost and expense.
4. All costs and expenses for the repair or replacement of any utility service or lines directly or indirectly arising out of Concessionaire's active or passive negligence or willful misconduct will be borne by Concessionaire. Concessionaire's sewer lines shall be maintained by the Concessionaire to the satisfaction of the District. Concessionaire is prohibited from discharging any grease into any of the sewers.
5. The District shall not be liable or responsible for any failure to furnish services, such as electricity, gas, water, or drainage service, which failure is caused or brought about in any manner by strike, act of God or other work stoppage, federal, state, or local government action, the breakdown or failure of apparatus, equipment, or machinery employed in its supply of said services, any temporary stoppage for the repair, improvement, or enlargement thereof, or any act or condition beyond its reasonable control. Further, the District shall not be liable or responsible for any consequential economic or property loss or damage caused or brought about by any such occurrence.
6. District will not be responsible for loss of or damage to any of Concessionaire's equipment, supplies, product, smallwares, leasehold improvements, or goods stored on the District's premises. District will not be responsible for loss of or damage to any of Concessionaire's equipment, supplies, product, smallwares, leasehold improvements, or goods resulting from a power failure, flood, fire, explosion and/or other causes.

O. BONDS, INSURANCE, AND INDEMNIFICATION

1. Concessionaire will provide certified copies of all performance bonds, and all insurance policies, including additional insured endorsements, on or before January 1, 2006. All documents required by Section O must be approved by the District. Failure to timely provide any document required by Section O will be considered a breach of this Agreement.
2. During the initial and all extended term[s] of this Agreement, Concessionaire shall maintain a performance bond in the amount of five hundred thousand dollars (\$500,000) payable to the District, in the event of default by the Concessionaire. The provisions of this paragraph O(2) will survive the expiration or the initial or any extended term, or the earlier termination, of this Agreement.
3. During the initial and all extended term[s] of this Agreement, Concessionaire will maintain the following insurance coverage in full force and effect. The policy limits specified in this Paragraph O(3) may be increased in the District's sole and exclusive discretion to meet the then current needs of the District, and at the sole cost and expense of the Concessionaire.
 - a) Concessionaire will secure and maintain at its own expense during the initial and any extended term[s] of this Agreement a minimum of five million dollars (\$5,000,000) combined single-limit commercial general liability insurance (including contractual, products and liquor liability) with minimum limits of \$5,000,000 per occurrence, and \$10,000,000 in the aggregate. The policy required by this Paragraph O(3)(a) must cover Concessionaire, its employees, agents, subsidiaries and contractors, for claims for personal injury, (including bodily injury and death), property damage, and liquor liability which may arise from or in connection with the performance of Concessionaire's services hereunder or from or out of any negligent act or omission of Concessionaire, its officers, directors, agents, subcontractors, or employees. Limit requirements may be met by combining primary and excess/umbrella policies if necessary. Coverage shall include blanket contractual insurance and such coverage shall make express reference to Concessionaire's indemnity / hold harmless provision O(9) below. The liability insurance shall include coverage for products, including liquor liability.
 - b) Concessionaire will secure and maintain at its own expense during the initial and all extended term[s] of this Agreement Commercial Automobile Liability coverage, on a per accident basis, at least as broad as the current ISO policy form # CA 0001, Symbol #1 (any auto) with limits of not less than \$1,000,000 combined single limit per accident for contracts involving the use of Concessionaire's autos, trucks, or other licensed vehicles) on the District's premises or any portion of the fairgrounds.
 - c) Blanket Employee Dishonesty with minimum limits of \$100,000 per occurrence. This coverage shall be extended to provide coverage to funds and/or property held by the Concessionaire on behalf of the District.

- d) Workers' Compensation Insurance required by applicable law.
 - e) Employer's Liability Insurance with minimum limits of \$5,000,000 per occurrence.
 - f) Personal Property Insurance providing All Risk Coverage on a replacement basis for the appropriate limit to cover all Concessionaire's personal property to include furniture, fixtures, equipment, inventory and any other personal property of the Concessionaire.
 - g) Umbrella or Excess Liability: Additional \$10,000,000. Coverage is to apply to excess of Comprehensive General, Employer's, Alcoholic Beverage and Automobile Liability policies.
4. All insurance required by this Section O shall be with companies and on forms acceptable to the District and shall provide that the coverage thereunder may not be reduced or canceled unless thirty (30) days unrestricted prior written notice thereof is furnished to the District. All insurance shall be primary and not contributory. All insurance shall be written by companies with a BEST Guide of rating of B+ VII or better. Certificates of insurance and certified copies of insurance policies, including certified copies of all additional insured endorsements must be furnished to the District, naming the State of California, the 32nd District Agricultural Association, the Orange County Fair and Exposition Center, and their respective agents, directors, officers, servants and employees as additional insured and contain a waiver of subrogation. The additional insured requirement does not apply to Workers' Compensation or Blanket Employee Dishonesty. The following statement regarding additional insured must be included on all insurance certificates: "That the State of California, the 32nd District Agricultural Association, the Orange County Fair and Exposition Center, and their respective agents, directors, officers, servants, and employees are made additional insured but only insofar as the operations under this contract are concerned." Each certificate of insurance must include a statement by the insurance company that it will not cancel or reduce the limits or coverages of said policy or policies without giving 30 days prior written notice to the names certificate holder.
5. In addition to the foregoing, Concessionaire shall provide a certified copy of an additional insured endorsement to the District, Forms ISO CG 2005, 2012, 2024, showing the State of California, the 32nd District Agricultural Association, The Orange County Fair and Exposition Center, Orange County, and their agents, directors, officers, servants, and employees are made additional insured's on the Concessionaire's general liability insurance policy and automobile liability policy.
6. Not later than thirty (30) days prior to the date on which coverage is to be provided hereunder, the Concessionaire shall furnish to the District the certificate[s] and additional insured endorsement[s] described in Paragraph O(5) above, evidencing the required coverage.
7. Mutual Waiver of Subrogation: Neither the District nor the Concessionaire shall be liable to the other party hereto or to any insurance company (by way of subrogation

or otherwise) insuring the other party hereto for any loss or damage to any building, structure, or other tangible property, or any resulting loss of income, or losses under workers' compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees; provided, however, that this limitation of liability shall only be applicable to the extent of insurance proceeds paid where such loss or damage is covered by insurance benefiting the party suffering such loss or damage.

8. The mutual waiver of subrogation described in Paragraph O(7) above shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in any other related agreement with respect to any claim of the District or the Concessionaire. Inasmuch as the said limitation of liability will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), the District and the Concessionaire agree to give to each insurance company which has issued to it, policies of liability insurance, written notice of the terms of said mutual limitation of liability, and to have such insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said limitation of liability.
9. Indemnification / Hold Harmless. To the fullest extent permitted by law, Concessionaire shall defend, indemnify, and hold harmless the District and its agents, directors, and employees from and against all claims, damages, losses, and expenses, of every kind, nature and description (including, but not limited to, attorneys fees, expert fees, and costs of suit), directly, or indirectly, arising from, or in any way related to the performance or nonperformance of this Agreement, regardless of responsibility of negligence; by reason of death, injury, property damage, or any claim arising from the alleged violation of any state or federal accessibility law, statute or regulation, (including but not limited to, the Americans With Disabilities Act) however caused or alleged to have been caused, and even though claimed to be due to the negligence of the District. Provided, however, that in no event shall Concessionaire be obligated to defend or indemnify the District with respect to the sole negligence or willful misconduct of the District, its employees, or agents (excluding the Concessionaire herein, or any of its employees or agents.) In addition, the defense of the District, to the extent required by this paragraph, shall be by and through the Attorney General of the State of California, as required by law, at the sole cost and expense of the Concessionaire.

P. DEFAULT

1. In the event that the Concessionaire fails to fully and faithfully perform any of the material terms, covenants and conditions of this Agreement, including, but not limited to, quality of products sold or services provided to customers based on customer surveys or other mutual agreed rating services, or failure to work cooperatively with the District, the District's renters, or any subcontractors, the District will give the Concessionaire written notice of such default. In the event the default is not remedied to the satisfaction and approval of the District within thirty (30) days of receipt of the default notice by the Concessionaire, the Concessionaire may be declared in default, and the District may be immediately terminated by the District. In the event of

termination under this Paragraph, at the direction of the District, the Concessionaire will immediately vacate the District's premises and facilities.

2. In the event that the Concessionaire shall fail to correct any actual or potentially hazardous condition, the District shall give written notice of such default. Concessionaire will be required to repair the condition to the satisfaction of the District within twenty-four hours of Concessionaire's receipt of notice. If Concessionaire is unable to repair the condition within twenty-four hours, Concessionaire shall give written notice to the District, and Concessionaire will be required to repair or remedy the condition to the satisfaction of the District within 3 business days; provided, however, that Concessionaire will be required, within twenty-four hours of its receipt of the District's first notice to take all steps necessary to insure that the identified condition will not pose any actual or potential hazard to persons or property. In the event such default is not remedied to the satisfaction and approval of the District within 3 business days of receipt of such notice by the Concessionaire, the Concessionaire may be declared in default, and all of its rights under the Agreement shall terminate; provided, however, if the condition is of such a nature that it cannot reasonably be cured within such 3 day period despite Concessionaire's diligent and good faith efforts to cure, then such longer period of time shall be afforded, up to a maximum of an additional 90 days, so long as the Concessionaire continues to diligently and in good faith pursue a cure, and the District would not suffer irreparable harm by the extension of the initial 3 day period.
3. In the event a decree or order by a court having jurisdiction shall be issued (a) adjudging the Concessionaire bankrupt or insolvent; or (b) approving as properly filed a petition seeking reorganization of the Concessionaire under any section of the national Bankruptcy Act, as amended, or (c) ordering or approving the winding up or liquidation of the Concessionaire's affairs; or (d) appointing a receiver or a liquidator or a trustee in bankruptcy or insolvency proceedings against it, or shall file a petition or seek reorganization under any state insolvency law, or shall admit in writing its inability to pay its debts generally as they become due, or take any action in furtherance of any of the aforesaid purposes, or shall abandon this Lease Agreement, then the District may terminate this Agreement and assume all foodservice operations. For the purpose of this Paragraph P(3), in the event a petition in involuntary bankruptcy is filed against Concessionaire, Concessionaire will have 60 days to have the involuntary bankruptcy proceeding dismissed before District may exercise its right to terminate this Agreement. In the event of termination under this Paragraph P(3), Concessionaire will be liable, without limitation, for all payments required to be made to the District up to and including said date of termination.
4. If the Concessionaire fails to obtain or maintain the necessary licenses and permits, including the Alcoholic Beverage Licenses or Health Permits, the District may declare the Concessionaire in default.
5. The filing or recordation of a mechanic's or any other type of lien to affecting the District's premises or facilities any work contracted, performed, initiated, approved, or administered by the Concessionaire will constitute a breach of this Agreement and District may declare the Concessionaire in default.

6. The total amount of capital investment expended by Concessionaire under Section I(9) (contemplated to be \$250,000) will be amortized over a three year period on a straight-line basis, beginning on January 1, 2006. In the event this Agreement is terminated for any reason provided in this Section P ("DEFAULT") prior to the end of the initial three-year term of this Agreement, the District shall, in exchange for clear and unencumbered title in the capital improvements and/or equipment purchased with the investment, immediately pay to Concessionaire the unamortized amount, if any, of the capital investment made pursuant to Paragraph I(9).

Q. GENERAL PROVISIONS

1. Contract Documents. The Request for Bid Proposals (RFP) and the entire proposal submitted by Concessionaire in response to RFP Number FB-0805 are incorporated into this Agreement as contract documents. However, any conflict or discrepancy between the contract documents shall be resolved in accordance with the following order of precedence: (1) this Foodservice Management Agreement; (2) Concessionaire's proposal submitted in response to the RFP; and (3) the RFP.
2. Amendment or Modification of Agreement. No agreement to modify, or modification of, this Agreement shall be binding on the parties unless the same is reduced to writing, approved by the Board of Directors of the District, executed by the parties, and approved by the appropriate State agencies as required by law.
3. Prohibition of Liens. Concessionaire shall not suffer or permit to be placed against the Premises, or any part thereof, any mechanic's, materialmen's, contractor's or subcontractor's liens arising from any claim for damages growing out of the work of construction, repair, restoration, replacement or improvement on the Premises or any other claim or demand arising out of, or in any way related, directly or indirectly, to work performed by or on behalf of Concessionaire, but Concessionaire shall pay, cause to be paid, or bond against, all of said liens, claims or demands before any action is brought to enforce the same against the Premises; and Concessionaire shall indemnify and hold District and said Premises free and harmless from all liability for any and all liens, claims, and demands, together with all attorneys fees, costs, and expenses in connection therewith.
4. Notices. Any and all notices given under this Agreement or otherwise may be served by enclosing the notice in a sealed envelope addressed to the other party as required by this Paragraph Q(4), and sent by certified or registered mail with postage prepaid; or, by personal delivery. Notice shall be deemed given on the day of personal delivery, or five days after mailing. Notice shall be given as follows:

To the District:

32nd District Agricultural Association
88 Fair Drive
Costa Mesa, CA 92626
Attn: Chief Executive Officer

With a copy to:

Deborah M. Fletcher
Office of the Attorney General
110 West A Street, 11th Floor
San Diego, CA 92101

To the Concessionaire:

Ovations Food Services
244 Crystal Grove Boulevard
Lutz, FL 33548
Attention: Todd Wickerner

With a copy to:

Comcast-Spectacor
3601 South Broad Street
Philadelphia, PA 19148
Attention: Legal Department

Ovations Fanfare
4501 Pleasanton Ave.
Pleasanton, CA 94566
Attention: Charles Neary

5. Successors. Each and all of the terms and conditions in this Agreement shall be binding upon and shall inure to the benefit of the successors in the interest of the District and, subject to the provisions of Paragraph Q(6) prohibiting assignment without the prior written consent of the District, any successors in interest of the Concessionaire.
6. Prohibition Against Assignment. The rights and privileges granted by this Agreement may not be assigned or transferred in any manner whatsoever by Concessionaire without the prior written approval of the District, which the District will not unreasonably withhold. For the purpose of this paragraph Q(6), an assignment or transfer includes the sale of all, or a majority of all the legal and/or equitable interest in Concessionaire. In the event of a sale or transfer of ownership that is approved by the District, the District reserves the right to negotiate all terms and conditions relevant to the Agreement, including termination of the Agreement.
7. Time is of the Essence. Time is of the essence in the performance of this Agreement.
8. Independent Contractor. Concessionaire is not an employee or agent of the District by reason of this Lease Agreement or otherwise. Concessionaire is an independent contractor, and as between the District and the Concessionaire, the Concessionaire

shall be solely responsible for its acts or omissions arising from, or relating to this Agreement.

9. Applicable Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California and shall be deemed to have been made, and shall be performed, in the State of California.
10. Entire Agreement. Except as provided in Paragraph Q(1) above, this Agreement, together with all Exhibits attached hereto, constitutes the entire Agreement between the parties. No promise, representation, warranty, or covenant not included in this lease has been or is relied on by either party.
11. Headings. Any headings in this Agreement are inserted only as a matter of convenience and reference and do not define or limit the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provision hereof or the interpretation or construction thereof.
12. Severability. If any covenant, term, condition or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Lease Agreement shall be valid and enforceable to the fullest extent permitted by law
13. Attorneys Fees. If either party brings any action or proceeding arising out of, or in any way related to this Lease Agreement, or any right or remedy under this Lease Agreement, the prevailing party shall be entitled to recover reasonable attorneys fees.

Dated: 32ND DISTRICT AGRICULTURAL ASSOCIATION

By: _____
Becky Bailey-Findley
Chief Executive Officer

Dated: OVATIONS FANFARE, L.P.

By: _____
Ken Young
President

MEMORANDUM OF UNDERSTANDING RE CARNIVAL AGREEMENT

This Memorandum of Understanding ("MOU") is entered into effective July 1, 2009 by and between the 32nd District Agricultural Association / OC Fair & Event Center ("OCFEC") and Ray Cammack Shows, Inc. ("RCS").

RECITALS

- A. On or about February 7, 2006, OCFEC and RCS entered into a Carnival Agreement, Agreement No. RA-085-06 ("Agreement 085-06").
- B. On or about August 3, 2008, the term of Agreement 085-06 expired.
- C. On April 23, 2009, OCFEC's Board of Directors approved, in principle, the material financial terms and conditions of a new Carnival Agreement to be executed between OCFEC and RCS.
- D. OCFEC and RCS have been engaged in good faith negotiations for the execution of a new, written Carnival Agreement.
- E. Because OCFEC's 2009 Annual Fair commences July 10, 2009, the parties desire to extend Agreement 085-06 through OCFEC's 2009 Annual Fair; provided, however, that Agreement 085-06 will be subject to the material financial terms and conditions approved by OCFEC's Board of Directors on April 23, 2009.

Therefore, in consideration of the above recitals and the promises in this MOU, the parties agree as follows:

AGREEMENT

1. Subject to the terms and conditions of this MOU, Agreement 085-06 shall be extended for the run of OCFEC's 2009 Annual Fair, July 10, 2009 through August 9, 2009.
2. In the event a new Carnival Agreement is not executed on or before August 9, 2009, subject to the provisions of Paragraphs 3 and 10 of this MOU, the term of this MOU shall be for 5 years, commencing July 1, 2009 through and including the later of (a) the conclusion of OCFEC's 2013 Annual Fair, or (b) August 31, 2013.
3. This MOU may be extended for an additional 5-year period; subject to the requirement that RCS makes a major capital contribution (in addition to the capital contribution required by Paragraph 4 of this MOU) consisting of a work of improvement approved by OCFEC and permanently installed on OCFEC property. In the event the major capital contribution contemplated by this Paragraph 3 is not made, this MOU can not be extended. Notice of a party's intent to exercise the option to renew under this

Paragraph 3 must be given not later than 270 days before expiration of the initial term of this MOU.

4. RCS will be required to contribute, on an annual basis, the following sums for capital projects to be approved by OCFEC:

- a. \$200,000.00 per year. Payments shall be made on an annual basis, and must be made not later than five (5) days following the last day of each Annual Fair. RCS will be required to make this \$200,000 annual contribution for capital projects in addition to and regardless of any capital contributions made under Paragraph 3 or Paragraph 4(b) of this MOU.
- b. 3.2% of the amount in excess of \$6,100,000.00 of gross revenues for carnival rides per year. Payments shall be made on an annual basis, and must be made not later than five (5) days following the last day of each Annual Fair. RCS' annual contribution under this Paragraph 4(b) is subject to the requirement, that OCFEC contribute a sum equal to the amount determined by this Paragraph 4(b). In the event OCFEC elects not to match this 3.2% annual capital contribution, RCS will be excused from its obligations under this Paragraph 4(b).

5. RCS shall pay rent in the following amounts, and according to the schedule established by Agreement 085-06:

Carnival Rides/Attractions –

35% of the gross ride/attraction sales up to \$1,000,000,
30% of the gross ride/attraction sales from \$1,000,001 to \$2,000,000,
25% of the gross ride/attraction sales over \$2,000,001

Games –

\$106 per linear foot plus an annual increase of 6.5%

Food & Beverage –

Pay District's prevailing rate for all food and beverage concessions,
as determined by OCFEC.

Pre-sale/On-sale sales –

35% of the gross ride/attraction sales up to \$1,000,000,
30% of the gross ride/attraction sales from \$1,000,001 to \$2,000,000,
25% of the gross ride/attraction sales over \$2,000,001

Super Spectacular Rides –

20% rent: La Grande Wheel and Sky Ride for the term of the agreement
20% rent: Spinning Coaster 2009, 2010, 2011
Other Super Spectacular Rides are subject to prior written approval by
OCFEC.

6. In addition to the rent established by Paragraph 5 of this MOU, sponsorship revenue shall be split equally between OCFEC and RCS, after deduction of sales commission and fulfillment expenses.

7. OCFEC will be responsible for all costs and expenses of ticket sellers, ticket stock, wristbands and independent ride safety inspectors.

8. RCS will be responsible for all costs and expenses of off-site storage costs and a fully automated bar-coding system

9. In the event of a conflict between the written terms and conditions of Agreement 085-06 and the written terms and conditions of this MOU, the terms and conditions of this MOU shall prevail.

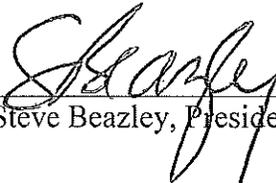
10. Upon execution of a new Carnival Agreement between the parties to this MOU, the new Carnival Agreement will supersede (a) Agreement 085-06 and (b) this MOU, and, further, Agreement 085-06 and this MOU will be of no further force or effect.

11. Except as otherwise provided in this MOU, Agreement 085-06 is republished and remains in full force and effect.

Dated effective July 1, 2009

32nd District Agricultural Association
OC Fair & Event Center

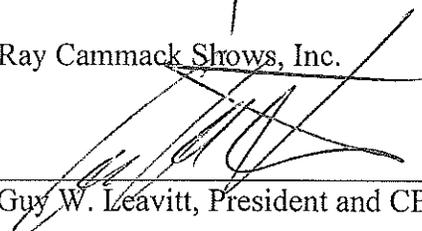
By:

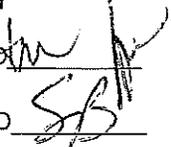

Steve Beazley, President and CEO

Dated effective July 1, 2009

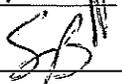
Ray Cammack Shows, Inc.

By:


Guy W. Leavitt, President and CEO

REVIEWED 

DATE February 07, 2006

APPROVED 

RENTAL AGREEMENT

FAIRTIME xx

INTERIM

THIS AGREEMENT by and between the 32nd District Agricultural Association (Orange County Fair & Exposition Center) hereinafter called the Association, and **RAY CAMMACK SHOWS, INC** hereinafter, called the Rentor

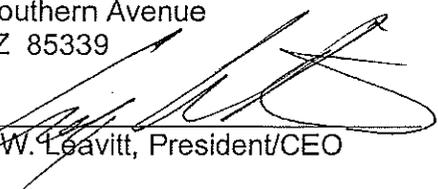
WITNESSETH:

1. **THAT WHEREAS**, The Rentor desires to secure from the Association certain rights and privileges and to obtain permission from the Association to use Association premises: **This is the final option renewal of a three year agreement covering July 7-30, 2006 and corresponding dates for the 2007 and 2008 Orange County Fair.**
2. NOW, THEREFORE, Association hereby grants to the Rentor the right to occupy the space(s) described below for the purpose hereinafter set forth, subject to the terms and conditions of this Agreement: **Carnival Lot, Kiddy Carnival as specified in the "RFP" dated 10/18/1999, which is on file in the office of the 32nd DAA and the Division of Fairs and Expositions, and is incorporated herein by reference and made a part of this Agreement.**
3. The purpose of occupancy shall be limited to, and shall be for no other purpose or purposes whatsoever: **Operation of carnival rides, shows, games and food concessions as described in the "Exhibit "A" and set forth in this Agreement.**
4. Rentor agrees to pay to Association for the rights and privileges hereby granted, the amounts and in the manner set forth below: **As outlined in the "Exhibit "A", which is set forth and becomes a part of this Agreement.**
5. Association shall have the right to audit and monitor any and all sales as well as access to the premises.
6. Rentor further agrees to indemnify and save harmless Association and the State of California, their officers, agents, servants and employees from any and all claims, causes of action and suits accruing or resulting from any damages, injury or loss to any person or persons, including all persons to whom the Rentor may be liable under any Worker's Compensation law and Rentor himself and from any loss, damage, cause of action, claims or suits for damages including but not limited to loss of property, goods, wares or merchandise, caused by, arising out of or in any way connected with the exercise by Rentor of the privileges herein granted.
7. Rentor further agrees that he will not sell, exchange or barter, or permit his employees to sell, exchange or barter, any permits issued to Rentor or his employees hereunder.
8. It is mutually understood and agreed that this contract or the privileges granted herein, or any part thereof, cannot be assigned or otherwise disposed of without the written consent of Association.
9. It is mutually understood and agreed that no alteration or variation of the terms of this contract shall be valid, unless made in writing and signed by the parties hereto, and that no oral understanding or agreements not incorporated herein and no alterations or variations of the terms hereof, unless made in writing and signed by the parties hereto, shall be binding upon any of the parties hereto.
10. The Rules and Regulations printed on the reserve side hereof are made a part of this agreement as though fully incorporated herein, and Rentor agrees that he has read this agreement and the said Rules and Regulations and understands that they shall apply, unless amended by mutual consent in writing of the parties hereto.
11. In the event Rentor fails to comply in any respect with the terms of this agreement and the Rules and Regulations referred to herein, all payments for this rental space shall be deemed earned and non-refundable by Association and Association shall have the right to occupy the space in any manner deemed for the best interest of Association.
12. **Special Provisions: See Exhibits "A", "B" & "C" attached, which form part of this Agreement. The contractor's proposal is on file in the above mentioned offices and is incorporated herein by reference and made part of this Agreement.**
13. This agreement is not binding upon Association until it has been duly accepted and signed by its authorized representative, and approved (if required) by the Department of Food and Agriculture and Department of General Services.

IN WITNESS WHEREOF, This agreement has been executed in quadruplicate, by and on behalf of the parties hereto, the day and year first above written.

Ray Cammack Shows, Inc.
4950 W. Southern Avenue
Laveen, AZ 85339

32nd District Agricultural Association
88 Fair Drive
Costa Mesa, CA. 92626

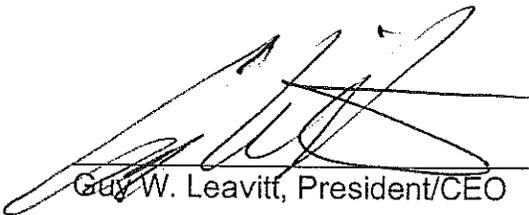
By 
Title: Guy W. Leavitt, President/CEO

By: 
Title: Becky Bailey Findley, CEO

EXHIBIT "A"

Rentor agrees to pay to Association for the rights and privileges hereby granted, the amounts and in the manner set forth below:

- 35% of gross ride sales up to \$1,000,000.00
- 30% for \$1,000,001.00 to \$2,000,000.00; and 25% over \$2,000,001.00 per year
- 40% of gross on all pre-sale carnival tickets
- \$200,000.00 annual capital improvements contribution
- **Food & Beverage Concession Fee** – RCS food & beverage concessions shall pay the prevailing OC Fair Concession rate throughout the renewal term. RCS food & beverage concession stands will be offered the same utility services provided to the independent concession stands and RCS will be subject to District's electrical reimbursement policy.
- **Carnival Capital Improvement Fund** – RCS to provide a comprehensive project list to the District no later than October 1st each year of the Agreement. This coincides with the District's annual budgeting process and allows the carnival capital improvements to be incorporated into the approved capital program.
- **Games Rent** – Games rent for front footage will be as follows: 2006 - \$75.00; 2007 - \$80.00 and 2008 - \$85.00.
- **Midway Entertainment Rides** – Percentage rent for the La Grande Wheel, SkyRide and Spinning Coaster will be 20% for the renewal term.
- **SkyRide Emergency Generator** – RCS shall provide a fully operational generator dedicated to the SkyRide to be used in the event of a power outage or other emergency. This is a back-up to the District's existing power system and is not required to operate the ride under normal operating conditions.
- **Megan's Law** – Annually, RCS will conduct a Megan's Law review of all employees and this Agreement is subject to amendment pending approval of the District's Megan Law Policy.
- **Other:** All other items referenced in the STATEMENT OF WORK TO BE PERFORMED, CONTRACT TERMS AND CONDITIONS identified in "CARNIVAL OPERATIONS" RFP NUMBER C-01-2000 and Exhibit A 2003 will remain in effect for the renewal term.


Guy W. Leavitt, President/CEO


Becky Bailey-Findley, CEO

INSURANCE REQUIREMENTS

I. Evidence of Coverage

The contractor/renter shall provide a signed original evidence of coverage for the term of the agreement protecting the legal liability of the State of California, District Agricultural Associations, County Fairs, Citrus Fairs, or California Exposition and State Fair, their officers, agents, servants, and employees, from occurrences related to operations under the contract. This may be provided by:

- A. Insurance Certificate - The contractor/renter provides the fair with a signed original certificate of insurance (the ACORD form is acceptable), lawfully transacted, which sets forth the following:

1. List as the Additional Insured: "That the State of California, the District Agricultural Association, County Fair, the County in which the County Fair is located, Citrus Fair, or California Exposition and State Fair, their agents, directors, officers, servants, and employees are made additional insureds, but only insofar as the operations under this contract are concerned."

2. Dates: The dates of inception and expiration of the insurance. For individual events, the specific event dates must be listed, along with all set-up and tear down dates.

3. Coverages:

a. General Liability - Commercial General Liability coverage, on an occurrence basis, at least as broad as the current Insurance Service Office (ISO) policy form #CG 0001. Limits shall be not less than \$5,000,000 combined single limits per occurrence for Fairtime Carnival Rides; \$3,000,000 combined single limits per occurrence for Motorized Events All Types; \$3,000,000 combined single limits per occurrence for Rodeo Events All Types with a paid gate and any Rough Stock events; \$2,000,000 combined single limits per occurrence for Rodeo Events All Types without a paid gate and with any Rough Stock events; \$1,000,000 combined single limits per occurrence for Rodeo Events All Types without any Rough Stock Events; 2,000,000 combined single limits per occurrence for Interim Carnival Rides, Concerts and Raves with over 5,000 attendees; Mechanical Bulls, Extreme Attractions All Types, Orbitrons, and Simulators; \$1,000,000 for all other contracts for which liability insurance (and liquor liability, if applicable) is required.

b. Automobile Liability - Commercial Automobile Liability coverage, on a per accident basis, at least as broad as the current ISO policy form # CA 0001, Symbol #1 (Any Auto) with limits of not less than \$1,000,000 combined single limits per accident for contracts involving extensive use of contractor vehicles (autos, trucks or other licensed vehicles) on fairgrounds.

c. Workers' Compensation - Workers' Compensation coverage shall be maintained whenever contractor/renter has employees, as required by law.

d. Medical Malpractice - Medical Malpractice coverage with limits of not less than \$1,000,000 per occurrence shall be maintained for contracts involving medical services.

e. Liquor Liability - Liquor Liability coverage with limits of not less than \$1,000,000 per occurrence should be maintained for contracts involving the sale of alcoholic beverages.

4. Cancellation Notice: A statement by the insurance company that it will not cancel said policy or policies without giving 30 days prior written notice to the named certificate holder.

5. Certificate Holder:

For Individual Events Only -

Orange County Fair & Exposition Center
Attn: Event Services
88 Fair Drive
Costa Mesa, CA 92626
is listed as the certificate holder.

For Master Insurance Certificates Only - California Fair Services Authority
Attn: Risk Management
1776 Tribute Road, Suite 100
Sacramento, CA 95815
is listed as the certificate holder.

6. Insurance Company: The company providing insurance coverage must be acceptable to the California Department of Insurance.

OR

- B. CFSA Special Events Program - The contractor/renter obtains liability protection through the California Fair Services Authority (CFSA) Special Events Program, when applicable.

OR

- C. Master Certificates - A current master certificate of insurance for the contractor/renter has been approved by and is on file with California Fair Services Authority (CFSA).

OR

- D. Self-Insurance - The contractor/renter is self-insured and acceptable evidence of self-insurance has been approved by California Fair Services Authority (CFSA).

II. General Provisions

- A. Maintenance of Coverage - The contractor/renter agrees that the commercial general liability (and automobile liability, workers' compensation, medical malpractice and/or liquor liability, if applicable) insurance coverage herein provided for shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times prior to or during the term of this contract, contractor/renter agrees to provide the fair, prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the contract, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of California Fair Services Authority, and contractor/renter agrees that no work or services shall be performed prior to the giving of such approval. In the event the contractor/renter fails to keep in effect at all times insurance coverage as herein provided, the fair may, in addition to any other remedies it may have, terminate this contract upon the occurrence of such event.
- B. Primary Coverage - The contractor/renter's insurance coverage shall be primary and any separate coverage or protection available to the fair or any other additional insured shall be secondary.
- C. Contractor's Responsibility - Nothing herein shall be construed as limiting in any way the extent to which contractor/renter may be held responsible for damages resulting from contractor/renter's operations, acts, omissions or negligence. Insurance coverage obtained in the minimum amounts specified above shall not relieve contractor/renter of liability in excess of such minimum coverage, nor shall it preclude the fair from taking other actions available to it under contract documents or by law, including, but not limited to, actions pursuant to contractor/renter's indemnity obligations.
- D. Certified Copies of Policies - Upon request by fair, contractor/renter shall immediately furnish a complete copy of any policy required hereunder, with said copy certified by the underwriter to be a true and correct copy of the original policy.

III. Participant Waivers

For hazardous participant events, the contractor/renter agrees to obtain a properly executed Release and Waiver of Liability Agreement (CFSA Form "Release, Lib") from each participant prior to his/her participation in the events sponsored by contractor/renter. Hazardous participant events include but are not limited to any event within the following broad categories: Athletic Team Events; Equestrian-related Events; Motorized Events; Rodeo Events; and Wheeled Events, including bicycle, skates, skateboard, or scooter. Contact California Fair Services Authority at (916) 921-2213 for further information.

STANDARD CONTRACT TERMS AND CONDITIONS (F-31, RENTAL AGREEMENT)

1. National Labor Relations Board (PCC Section 10296)

Contractor, by signing this contract, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal Court has been issued against contractor within the immediately preceding two-year period because of the contractor's failure to comply with an order of a Federal Court which orders the contractor to comply with an order of National Labor Relations Board (Public Contract Code Section 10296).

2. Resolution of Contract Disputes (PCC 10240.5, 10381)

If, during the performance of this agreement, a dispute arises between contractor and Fair Management, which cannot be settled by discussion, the contractor shall submit a written statement regarding the dispute to Fair Management. A decision by Fair Management shall be made to the Contractor in writing, and shall be final and conclusive. Contractor shall continue to perform contract requirements without interruption during the dispute period.

3. Non-Discrimination Clause/Statement of Compliance (GC 12990/CCR 8103-8120)

During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Contractors and subcontractors shall comply with the provision of the Fair Employment and Housing Act (Gov. Code Section 12900, et seq.) and the applicable regulations promulgated thereunder (CA Code of Regulations, Title 2, Section 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code Section 12990 (a-f), set forth in Ch. 5 of Div. 4 of Title 2 of the CA Code of Regulations are incorporated into this contract by reference and made part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this contract.

Contractor, by signing this contract hereby certifies, unless specifically exempted, compliance with Gov. Code Section 12990 (a-f) and CA Code of Regulations, Title 2, Div. 4, Ch. 5 in matters relating to reporting requirements and the development, implementation and maintenance of a Nondiscrimination Program. Prospective contractor agrees not to unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.

4. Amendment (GC 11010.5)

Contract modification, when allowable, may be made by formal amendment only.

5. Assignment

This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

6. Termination

The fair reserves the right to terminate any contract, at any time, upon order of the Board of Directors by giving the contractor notice in writing at least 30 days prior to the date when such termination shall become effective. Such termination shall relieve the fair of any further payments, obligations, and/or performances required in the terms of the contract.

7. Governing Law

This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

8. Conflict of Interest (PCC 10410, 10411, 10420)

Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (PCC 10410):

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (PCC 10411):

- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC 10420).

9. Contractor Name Change

An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

10. Air or Water Pollution Violation (WC 13301)

Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

EQUESTRIAN CENTER RESTATED RENTAL AGREEMENT TERMS AND CONDITIONS

This Restated Rental Agreement ("Rental Agreement" or "Restated Rental Agreement") is entered into this 1 day of March, 2009 ("Rental Commencement Date") between the 32nd District Agricultural Association / OC Fair and Event Center ("District") and Equestrian Services II, Inc., a California Corporation ("Contractor").

1. Term

The Term is one (1) year, commencing on the Rental Commencement Date.

The District, in its sole and exclusive discretion, shall have the option to extend the Term for an additional four (4), one (1) year periods by giving the Contractor written notice of extension on or before the 90th day prior to expiration of the original Term. If Contractor wishes to extend the Term for an additional one (1) year period, subject to the sole and exclusive discretion of the District, Contractor shall give District written notice of its request to extend the Term on or before the 180th day prior to expiration of the previous Term. The District shall have the discretion to re-negotiate any and all terms in this Rental Agreement, and any written notice of extension shall also give notice of any terms subject to re-negotiation.

2. Uses

The property subject to this Rental Agreement ("the Premises") consists of approximately 7.5 acres, and is described in Exhibit "B" attached to this Rental Agreement, and incorporated by this reference. The Premises shall be used for the boarding of horses and approved related equestrian activities, and for no other purpose, unless agreed to in writing by the parties, pursuant to Section 27 (b) of this Rental Agreement. Approved related equestrian activities are as follows: lessons, training, tack storage, storage of horse trailers, equestrian clinics, horse shows and the sale of equestrian products/services.

The Equestrian Center facilities that are subject to this Rental Agreement ("facilities") are described in Exhibit "C" attached to this Rental Agreement and incorporated by this reference.

3. Compliance With All Laws

Contractor shall comply with all applicable laws, rules, and regulations and orders existing during the term of this Rental Agreement, including obtaining and maintaining all necessary permits and licenses. Contractor acknowledges and warrants that it is, or will make itself, knowledgeable of all pertinent laws, rules, ordinances, regulations, or other requirements having the force of law affecting the operation of the equestrian center, the facilities, and the Premises, including but not limited to, health and safety, hazardous materials, pest control activities, accessibility, historical preservation, environmental impacts, and building codes and regulations.

a. Hazardous Materials

Contractor shall not keep, store or sell on the Premises any goods, merchandise, or materials which are in any way explosive or hazardous.

b. Accessibility

Without limiting the obligations of Contractor for compliance with all laws, and the terms of this agreement, Contractor shall be solely responsible for complying with the requirements of the Americans With Disabilities Act of 1990, (Titles I, II and III ("ADA") (Title 42 United States Code sections 12101, *et seq.*), the Rehabilitation Act of 1973, Government Code sections 4450, *et seq.*, Government Code section 7250, *et seq.*, Civil Code sections 51, *et seq.*, and any and all successor statutes, and all related regulations, guidelines and amendments. Compliance shall be at Contractor's sole cost and expense. Contractor shall obtain the written approval of the District before commencing any work on the Premises pursuant to this subparagraph.

c. District Rules and Regulations

Contractor shall comply with all rules and regulations that are adopted by the District for the safety, care and cleanliness of the equestrian center and the preservation of good order on the Premises. The rules and regulations are listed in Exhibit A attached hereto and incorporated by this reference. District reserves the sole right to add, change, amend and/or modify any rules and regulations pertaining to the operations of the equestrian center, at any time, and from time to time, which are in the best interest of the District.

d. Use and Occupancy

Contractor agrees to use reasonable care in its use and occupancy of the Premises and, at all times during the Term, to keep and maintain the Premises in good, clean and safe condition and to prevent waste upon, or damage to, the Premises. Contractor will maintain all of its equipment, inventories and other tangible property in a well maintained, neat, orderly and careful manner at all times. All storage will be in an area set aside and defined by the District. Storage is restricted to those items used in general operation of the equestrian center. Storage of personal items at any time is prohibited. Contractor will not conduct or permit to be conducted on the Premises any business or any act, which is or may be contrary to, or in violation of, any Federal, State or Local law or regulation.

4. Limitations on Use

The Contractor acknowledges that the Premises are located in close proximity to civic and governmental buildings, educational institutions, and residential areas. Contractor agrees that it will not create, engage in, or permit any condition upon the Premises that the District, in its sole

and exclusive discretion, determines is inappropriate to the neighborhood in which the Premises are located.

5. Condition of the Equestrian Center

Contractor accepts the Premises and the facilities as being in good order, condition and repair, unless otherwise specified in writing, and agrees that on the last day of the Term, or sooner termination of this Rental Agreement, to surrender up to District the Premises and the facilities, together with any appurtenances or improvements, in the same or better condition as when received.

6. Improvements, Maintenance and Repairs

a. Maintenance

Contractor agrees to maintain the equestrian center in good and safe condition at all times at its sole cost and expense. Contractor shall, to the satisfaction of the District, and at Contractor's sole cost and expense, keep and maintain the equestrian center, the Premises, and the facilities, including but not limited to, the fire alarm system, plumbing, electrical and lighting installations, carpentry, masonry, painting, cleaning, and housekeeping, all landscaping, and improvements of any kind that may be erected, installed, or made thereon in good condition and in repair, making such repairs and replacements as appropriate or necessary.

The term "maintenance", for the purpose of this Rental Agreement, includes, but is not limited to: (1) all repairs to real property improvements necessary to maintain the Premises and the facilities in good condition and repair; (2) to preserve the Premises and the facilities for their intended purpose for an optimum useful life; and, (3) full compliance with all federal, state, and local statutes, laws, rules, codes, regulations and ordinances.

b. Repairs

Contractor shall perform at Contractor's sole cost and expense any and all repairs to existing facilities, whether structural or otherwise, if damaged as a result of use. Additionally, Contractor shall perform at Contractor's sole cost and expense any and all repairs to the equestrian center whether structural or otherwise, and construct and install new facilities, which are necessary to accommodate the full use and occupancy of the facilities for the purpose of operating the equestrian center.

c. Improvements; District Authorization; Title

No structures, improvements or facilities shall be constructed, erected, altered, modified, demolished, or repairs made within the occupied premises by

Contractor without prior written consent of the District, which shall be given in its sole and exclusive discretion. All improvements constructed by Contractor within the occupied premises shall be constructed and maintained in strict compliance with District standards and all applicable statutes, laws, codes, ordinances and regulations.

Approval by District of such plans and specifications, or any other approvals, shall be for scope and quality of work and shall not relieve Contractor of the obligation to construct and maintain facilities, or carry out any other obligations, in accordance with any and all applicable statutes, laws, codes, ordinances, governmental requirements, or regulations, or any other standards ordinarily applied to such work or activity.

Title to all improvements made to the Premises during the Term of this Rental Agreement shall vest in the District and Contractor shall deliver said improvements, together with all buildings, structures, and other improvements constituting the premises to District at termination of this Rental Agreement in good condition and repair at least to the level as the facilities exist at inception of this Rental Agreement, free and clear of all claims or liens to or against them by Contractor, or other parties.

d. Monthly Report

At the request of the District, Contractor shall provide to the District a monthly maintenance schedule and list of repairs completed during the preceding month.

e. Equipment Expenses

Contractor shall bear all costs and expenses for the purchase, lease, rental, or other provision of all equipment required to perform the work under this Rental Agreement, including, but not limited to, water trucks, tractors, utility vehicles, power tools and hand tools.

7. Equestrian Center Operations

Contractor shall operate and manage the equestrian center in a competent and efficient manner in accordance with equestrian industry standards and consistent with District's rules and regulations.

The following tasks must be performed by the Contractor on a daily basis:

1. Daily cleaning of all stalls, including, but not limited to removal of horse manure and management of horse urine in each stall.
2. Daily removal of horse manure from all areas of the Premises, including, but not limited to, riding arenas, turnouts, and barn aisles.
3. Daily inspection, filling, and cleaning of stall horse waterers.

4. Twice-daily feeding of horses boarded at the facility.
5. Riding arenas shall be dragged and watered at least once each day. Contractor shall drag and water the riding arenas on a more frequent basis when required for weather conditions and riding activity, or as may be reasonably required by the District.
6. Daily removal of trash from trash receptacles and placed in approved trash bin.
7. Daily cleaning and maintenance of facility restrooms. Contractor is responsible to provide restroom supplies.
8. Seal riding arenas during periods of inclement weather.

Contractor shall provide bedding for all stalls, which shall be replaced when required in accordance with equestrian industry standards.

No later than June 1, 2009, Contractor is to submit to District for review the waste removal plan for the equestrian center. Contractor shall pay all costs and expenses for removal of horse manure, bedding material and trash from the Premises. All waste removal shall be performed in strict compliance with all federal, state, and local statutes, laws, codes, ordinances, and regulations.

Contractor shall at all times provide and maintain a quality riding arena footing consistent with equestrian industry standards.

Contractor's hours of operations shall not commence earlier than 6:00 A.M. or conclude later than 10:00 P.M., absent prior written approval from the District.

Contractor shall operate the Premises at all times in a dignified, neat and careful manner, so that the business conducted by Contractor on the Premises equals or exceeds those standards of quality, neatness and freedom from noise, pollution, smoke and other unsightly or unsanitary conditions as is typical of the neighborhood in which the Premises are located.

8. Entry and Inspection

a. Right of Entry

District reserves the right to enter the Premises at reasonable times to carry out any facility management or business purpose in or about the Premises, to inspect the Premises to determine if the Contractor is in compliance with this Rental Agreement, and any other matters deemed appropriate by the District. Any entry by the District shall not result in any abatement of rent.

b. Entry for Disasters and Emergencies

In the event of an earthquake, flood, fire or any other natural disaster or emergency situation, the District reserves the right to enter onto the Premises at any time during the Contractor's use thereof to undertake emergency actions or to

make emergency repairs. Contractor shall take adequate precautions and plans for contingencies to meet these operating requirements.

c. **Entry for Repairs**

Contractor shall permit designated agents of the District to enter the Premises for the purpose of accomplishing repairs or replacements where the Contractor is obligated to make such repairs or replacements and has failed to do so after a notice given by the District in compliance with this Paragraph. No entry by, or on behalf of, the District on the Premises shall cause or constitute a termination of the Rental Agreement or be deemed to constitute an interference with the possession of the Premises by Contractor.

Should Contractor fail, neglect, or refuse to undertake and complete any required maintenance, the District shall have the right to perform such maintenance or repairs for the Contractor after giving the Contractor 10 days written notice of its intent to perform such maintenance or repairs. In this event, the Contractor shall reimburse the District for all costs incurred by the District within five days after an invoice is given to the Contractor by the District. The District shall not be obligated to make any repairs to maintain any improvements on the Premises. The Contractor hereby expressly waives the right to make repairs at the expense of the District, and the benefit of the provisions of Sections 1941 and 1942 of the Civil Code.

9. Signs

No signs, logos, names, placards, or advertising matter shall be inscribed, painted, or affixed upon the Premises, circulated, or published, without the prior written consent of the District, and only consistent with the purposes of this Rental Agreement.

Provided, however, that Contractor will be responsible to provide visible and ample information signage detailing all equestrian center rules and regulations.

10. Destruction/Condemnation

If the Premises are damaged to an extent that cannot be lawfully repaired within sixty (60) days after the date of damage as determined by the District in its sole and exclusive discretion, this Contract may be terminated by written notice of either party.

If all or any portion of the Premises is condemned by any governmental agency or authority, any party to this Rental Agreement may, upon written notice given within sixty (60) days after the taking, transfer or relocation, terminate this Rental Agreement. Any termination notice given pursuant to this Paragraph 10 shall be effective thirty (30) days after delivery in accordance with Paragraph 27(g) below.

11. Utilities

Contractor shall reimburse District for the cost of water and electricity used based upon the cost of water and electricity for those portions of the Premises or facilities that are not individually metered by a utility service provider. The District will provide the Contractor with a copy of the electricity, water, or other utility bill[s], the District's energy and water use audit used to establishing the District's calculation of electricity and water consumption by the Equestrian Center and the Premises, and a calculation of the amount due and owing from the Contractor to the District. Contractor shall pay the full amount within five (5) days of its receipt of each bill or invoice for electricity or water, or for any other utility bill. The basis and calculation for all estimates can be reviewed by Contractor and are subject to approval by the District. Contractor is responsible for the cost of any and all phone service to the Premises.

12. Licenses, Permits and Taxes

Contractor shall obtain, maintain and pay for all licenses and permits required for its business throughout the entire Term.

Contractor acknowledges that this Rental Agreement, the operation of Contractor's business, or Contractor's use of the Premises, may be subject to local (County and City) business licenses, law enforcement and fire protection fees, other public service fees, and other governmental charges and fees. Operations of the business under the Rental Agreement may also create a possessory interest tax liability. Contractor shall promptly pay all taxes, fees, assessments, and other charges. Contractor shall hold harmless and indemnify the District against and from any and all such charges, assessments and taxes.

13. Pest Control

Subject to, and in accordance with the provisions of Paragraph 3 of this Rental Agreement, Contractor shall, at its sole cost and expense, conduct all equestrian operations to minimize nuisance and health hazards from mosquitoes, rodents, flies, insects and pests. Pest control activities shall include, the following:

Contractor will provide daily fly spray abatement through the existing spray system at the equestrian center. Contractor shall establish and maintain a pest and rodent abatement program approved by the District and pay for all costs attributed to this program. All feed shall be stored in a manner that will not attract, and will minimize any impact from, rodents or pests. Contractor will not permit any standing water to accumulate on the Premises.

All pest control activities, chemical and non-chemical, shall be approved by the appropriate State agency prior to the conduct of any pest control activities by the Contractor, or the Contractor's employees or agents. Such approval shall be solely for compliance with policies of the State of California, and shall in no way relieve Contractor, or its contractors, employees, agents or representatives from compliance with all laws and regulations and/or orders concerning such activities and from carrying out its obligations in a workmanlike manner.

14. Employees/Training

Contractor shall at all times the Equestrian Center is in operation, retain qualified, competent and experienced personnel in sufficient numbers as necessary to conveniently serve the equestrian center users and public at all times, and to provide basic public information services.

Contractor shall require its employees to be properly dressed, clean, courteous, efficient and neat in appearance at all times.

Contractor shall maintain close supervision over its employees to ensure the maintenance of a high standard of service to the equestrian center and public. Any employee whose conduct is detrimental to the best interests of the equestrian center, public or District shall be replaced by the Contractor.

Contractor and its employees will participate in any and all District-sponsored employee training programs when requested by the District, including, but not limited to, CPR, first aid training, customer service training, sexual harassment training.

Contractor covenants that it will at all times be in full and complete compliance with District's "Drug Free Workplace" program. (Form GC8355, attached as Exhibit "E".)

15. Equestrian Related Community Outreach and Shared Vision with OCFEC

Contractor acknowledges that the District is actively supporting, through community outreach, the development of community-based educational programming highlighting agricultural education. Contractor also acknowledges the District's mission statement and will support the District's mission statement within its operation of the Equestrian Center.

16. Emergency Disaster Plan and Management

On the Rental Commencement Date, and on or before the first day of March of each subsequent year, Contractor shall be required to create an emergency disaster plan for the equestrian center operation for review and approval by the District. The emergency disaster plan will comply with the District's emergency disaster plan, and must address identified emergencies including, but not limited to, fire, flood, earthquake, and civil disorder.

During identified emergencies, Contractor will be responsible for horse safety, horse evacuation and communication to equestrian center users. Contractor will be required to provide on-site liaison to District during identified emergencies. District will retain command of all incidents and identified emergencies occurring on District property, including the Equestrian Center.

Contractor acknowledges that the fairgrounds is an evacuation site for disasters originating outside of the fairgrounds and serves as a resource to assist the community in the event of identified emergencies. The District retains the sole and exclusive authority, during identified emergencies, to temporarily suspend business operations of the Equestrian Center and/or on the Premises.

Contractor shall provide the District with all necessary means permitting authorized personnel of the District to access the Premises, the Equestrian Center, and/or the facilities in case of an emergency or disaster.

17. Security and Safety

It is the responsibility of the Contractor to maintain a safe and secure equestrian center at all times. Contractor acknowledges that law enforcement jurisdiction is with the Orange County Sheriff Department.

Contractor will immediately report any and all emergencies, safety and safety-related incidents to District's Department of Public Safety, which will then complete and maintain a written incident report. In the case of emergencies creating threats to health or life, or posing a threat of physical injury, Contractor shall telephone 911 and report the emergency, and thereafter immediately notify the District's Department of Public Safety for additional assistance.

18. Impact of Annual Fair Operations and Year Round Events Program

Contractor acknowledges the existence of District's annual Fair operations and year round events program. In addition, Contractor recognizes the District rents fairgrounds facilities and property outside of the equestrian center for the operation of other public and private events. Contractor acknowledges these events and activities may present operational impacts to the equestrian center. Contractor agrees that during pre-fair, fair time and post fair time (approximately forty five days (45) days), approximately two (2) acres east of and including gate 9 in the north east corner of the Premises as shown on exhibit B-2, will be utilized for fair related operations. District will make every effort to minimize operational impacts in order to ensure uninterrupted operations of the equestrian center.

19. Parking

Vehicles using the Equestrian Center are to park in a designated area immediately south of the Equestrian Center office in lot G. A minimum of forty (40) parking stalls are designated for employees, agents, and customers of the Premises. Parking is on a first-come, first-served basis and must be accessed through the Equestrian Center.. Contractor, its employees, agents and customers are prohibited from using any other area or lot of the District's grounds for parking, absent prior written approval from the District.

20. Assignment and Subletting

The rights and privileges granted hereunder may not be sublet, assigned or transferred in any manner whatsoever by the Contractor without the prior written approval of the District, which shall be given in the District's sole and exclusive discretion. Any sale or transfer of the beneficial or legal ownership of Equestrian Services II, Inc. (the Contractor herein) shall be considered an assignment and/or subletting of the rights and privileges granted by this Rental Agreement. Any sale or transfer of the legal or beneficial ownership of the Contractor requires

the prior written approval of the District, which shall be given in the District's sole and exclusive discretion. In the event any sale or transfer of ownership is approved by the District, the District reserves the right to renegotiate all terms and conditions relevant to the Rental Agreement, including termination of the Rental Agreement. Any assignee or sublessee shall be required to comply with all terms and conditions of this Rental Agreement, including, but not limited to, all Rent obligations.

Contractor may house staff on the premises with written consent of the District provided the staff are full time employees working at the equestrian center on behalf of the contractor. Staff will only be housed in the existing living quarters in the shop building immediately north of the Equestrian Center Office. All living quarter conditions and improvements must conform to the California Unified Building Code, will be constructed at contractors expense, and will be considered improvements as set forth in Paragraphs 6 (c) and 24 (g) of this Agreement.

21. Rent

a. Percentage Rent

The Percentage Rent payable under this Rental Agreement shall be the Percentage Rent of all Gross Revenue per applicable Rental Month accepted in the proposal. "Gross Revenue", as used in this Rental Agreement, includes all monies paid to the Contractor in connection with its operation of the Equestrian Center and/or its occupation and use of the Premises and facilities, including, but not limited to, receipts for horse shows, horse boarding stall rent, storage rental fees, facility rent, miscellaneous rent or income, sponsorship or advertising fees collected by the Contractor, pay phone commissions, vending machine and ATM revenues, lessons, training, tack storage, storage of horse trailers, equestrian clinics, and the sale of equestrian products/services. Gross revenue will exclude revenues from de-worming program, sales tax collected and late fees.

b. Minimum Guaranteed Rent

Contractor agrees the yearly rent shall be the **greater** of:

(1) Minimum monthly installments of \$3,000.00 with the exception that when equestrian center facilities are used for fair related operations, the minimum monthly installment shall be reduced by 75%, to \$750.00, for the months of July and August.

(2) Ten percent (10%) of Contractor's monthly gross revenue each month, with the exception that when equestrian center facilities are used for fair related operations, the percentage rent shall be reduced by 75% to two and one half percent (2.5%) for the months of July and August.

(3) Payment terms will conform to subparts (c) and (d) of this Paragraph 21.

c. Payment

Percentage Rent of Gross Revenue will be calculated on all money received by Contractor from any business carried on or upon said Premises, or any portion thereof, or from any other approved use of said Premises or any portion thereof without any

deduction or deductions. The term "Gross Revenue" shall not include any sales taxes imposed by any governmental entity and collected by Contractor. Rent shall be paid on or before the tenth day of each month. "Gross Revenue", shall also include contractor's accounts receivables for stall rental if services are rendered regardless if of whether the contractor collects the receivable.

d. Late Charges and Fees

If rent, or any other money due, is not paid in full on or before the due date, Contractor shall pay a late charge of \$300 per month. A past due amount balance of more than \$900 in late charges may result in the District's issuance of a notice of default.

Contractor shall pay all bank charges incurred by District, plus fifty dollars (\$50) handling fee, for a bank dishonored check.

e. Recordkeeping

Contractor shall keep true, accurate, full, and complete business and financial records of its operations in a form and substance satisfactory to the District. The business and financial records shall accurately reflect all of Contractor's business transactions arising out of, or in any way connected with, the operation of the Equestrian Center, Contractor's use and occupation of the Premises, and/or Contractor's rental obligations to the District. The books and records shall conform to District standards and practices for businesses of the type conducted on the Premises, and will be in accordance with generally accepted accounting principles.

Contractor shall submit to the District a monthly Gross Revenue report. Contractor shall provide financial records to the District upon demand listing all revenue listed by source including a breakdown of all individual stall rentals, storage rentals, facility use fees, product sales and any other financial information requested by the District. District has the right to audit the Financial Records at the discretion of the District at any time and from time to time.

Contractor shall maintain all business and financial records required under this Rental Agreement for at least five (5) years after the final payment of Rent under this Rental Agreement or longer as directed by the District, and shall make Financial Records available for inspection or audit within two (2) weeks as requested by the District.

District shall have the right from time to time, and at any time, upon reasonable notice, to conduct audits as it deems necessary and to examine and copy Contractor's books and records including all tax records. Contractor shall make all such records, books and tax returns available to District upon District's request. Contractor acknowledges that any information obtained by the District pursuant to any inspection or audit shall be considered a public document, unless otherwise exempt, and subject to disclosure according to the Public Records Act.

f. Security Deposit

Upon execution of this Rental Agreement, Contractor shall pay District a security deposit of five thousand dollars (\$5,000).

Upon the default by Contractor, District may, but will not be required to, apply the security deposit to satisfy Contractor's obligations under this Rental Agreement, provided that this application shall not cure the default. Within five (5) days of any application of the security deposit to satisfy Contractor's obligations, the Contractor shall reimburse the District for all amounts applied in satisfaction of the Contractor's obligations. Failure to reimburse the District within the five (5) day period shall be deemed a separate and distinct default by Contractor.

At the conclusion of the Term of the Rental Agreement, including, but not limited to any extensions of the Term, the security deposit may be applied by the District for the repair of any damages or alterations made to the property by the Contractor, reasonable wear and tear excepted. District will not unreasonably withhold the security deposit upon termination of the Rental Agreement, but will apply all or portion of the deposit to outstanding payments or fees owed to the District or for damages or alterations made to the property by Contractor. District agrees that at the end of the Term, District will refund any portion not applied as provided by this Paragraph 21.

22. Insurance

a. Worker's Compensation

The Contractor shall secure and maintain, at its own expense, during the Term all Worker's Compensation insurance required by California law for all employees and shall require the same coverage for any subcontractors, subsidiaries, agents, and employees.

b. Automobile Insurance

The Contractor shall secure and maintain, at its own expense, during the Term Commercial Automobile Liability coverage, on a per accident basis, at least as broad as the current ISO policy form # CA 0001, Symbol #1 (any auto) with limits of not less than \$1,000,000 combined single limit per accident for contracts involving the use of Contractor vehicles (autos, trucks, or other licensed vehicles) on the Premises or any portion of the fairgrounds.

c. Individual Boarding Agreements and Special Event Insurance

All individuals boarding horses on the Premises, and any person, firm, or entity staging any special event using the Premises must provide the Contractor evidence of insurance coverage in the amount of a minimum one million dollars (\$1,000,000.00) combined single-limit commercial general liability insurance covering the Contractor and District, and naming the State of California, the District Agricultural Association, County Fair, the County in which the County Fair is located, Citrus Fair, or California Exposition and

State Fair, and their agents, directors, officers, servants, and employees as additional insureds. Contractor agrees to obtain copies of these additional insured endorsements from each individual boarding horse[s] on the Premises, and from each person, firm, or entity staging any special event using the Premises. Contractor acknowledges and agrees that special events may require general liability insurance limits in an amount higher than one million dollars (\$1,000,000.00), as determined by the State of California and/or the California Fair Services Authority. Contractor agrees to comply with any additional general liability insurance limits for special events that may be imposed by the State of California and/or the California Fair Services Authority.

d. Commercial General Liability Insurance

The Contractor shall secure and maintain, at its own expense, during the Term a minimum of three million dollars (\$3,000,000) combined single-limit commercial general liability insurance covering the Contractor, its employees, agents and subsidiaries, for claims for damages for bodily injury, property damage and personal injury.

Coverage shall include blanket contractual insurance and such coverage shall make express reference to the Contractor's additional insured provision described in this Paragraph 22.

The Contractor agrees that the general liability insurance, workers compensation, and the automobile insurance herein provided for shall be in effect at all times during the Term. In the event said insurance coverage expires at any time or times prior to or during the Term, Contractor agrees to provide the District at least consistent with the provisions of this Paragraph 22, prior to said expiration date, a new certificate of insurance, and additional insured endorsement, evidencing insurance coverage as provided for herein for not less than the remainder of the Term, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the State of California, California Fair Services Authority, and Contractor agrees that no work or services shall be performed prior the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, the District may, in addition to any other remedies it may have, terminate this Rental Agreement.

The following statement regarding additional insured must be included on all insurance certificates: **"That the State of California, the District Agricultural Association, County Fair, the County in which the County Fair is located, Citrus Fair, or California Exposition and State Fair, and their agents, directors, officers, servants, and employees are made additional insured but only insofar as the operations under this contract are concerned."** Each certificate of insurance must include a statement by the insurance company that it will not cancel or reduce the limits or coverages of said policy or policies without giving 30 days prior written notice to the names certificate holder.

In addition to the foregoing, Contractor shall provide a certified copy of an additional insured endorsement to the District, Forms ISO CG 2005, 2012, 2024, showing the State of California, the District Agricultural Association, County Fair, the County in which the

County Fair is located, Citrus Fair, or California Exposition and State Fair, and their agents, directors, officers, servants, and employees are made additional insured's on the Contractor's general liability insurance policy and automobile liability policy.

The insurance coverage provided by the Contractor shall be primary and any separate coverage or protection available to the District or any other additional insured shall be secondary.

Nothing in this Paragraph 22 shall be construed as limiting in any way the extent to which the Contractor may be held responsible for damages resulting from Contractor's operations, acts, omissions, and/or negligence. Insurance coverage obtained in compliance with this Paragraph 22 shall not relieve the Contractor of liability in excess of such minimum coverage, nor shall it preclude the District from taking other actions available to it under contract documents or by law, including, but not limited to, actions pursuant to Contractor's indemnity obligations.

Upon request by the District, the Contractor shall immediately furnish a complete copy of any policy required hereunder, certified by the insurance company issuing the policy to be a true and correct copy of the original policy.

The Contractor agrees to obtain a properly executed Release and Waiver of Liability Agreement (CFSA Form "Release Lib", Exhibit "F") from each individual using the rental facilities prior to any agreement between such individual and the Contractor. Contact California Fair Services Authority at (916) 921-2213 for further information.

23. Indemnity

To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the District and its agents, directors, and employees from and against all claims, damages, losses, and expenses, of every kind, nature and description (including, but not limited to, attorneys fees, expert fees, and costs of suit), directly, or indirectly, arising from, or in any way related to the performance or nonperformance of this Rental Agreement, regardless of responsibility of negligence; by reason of death, injury, property damage, or any claim arising from the alleged violation of any state or federal accessibility law, statute or regulation, (including but not limited to, the Americans With Disabilities Act) however caused or alleged to have been caused, and even though claimed to be due to the negligence of the District. Provided, however, that in no event shall the Contractor be obligated to defend or indemnify the District with respect to the sole negligence of willful misconduct of the District, its employees, or agents (excluding the Contractor herein, or any of its employees or agents.)

24. Notice

Contractor shall, within three (3) calendar days, report in writing to the District any incident that might reasonably be expected to result in any claim under any indemnity or insurance provision of this Agreement. The Contractor also agrees to provide the District with information as to the

resolution, settlement, or other disposition of any claim(s) covered by this Paragraph within thirty (30) days following any resolution, settlement, or other disposition.

25. Surrender of Premises and Holding Over

a. Surrender of Premises

District shall not be required to give notice to quit possession at the expiration of the Term. Contractor covenants and agrees that on expiration of the Term, or on an earlier termination as hereinafter provided, it will peacefully surrender possession of the Premises in good condition, pursuant to Paragraph 6 of this Rental Agreement, and District shall have the unconditional right to possession of the Premises.

b. Holding Over

In the event that the Contractor should hold over and remain in possession of the Premises after the expiration of the Term, or sooner termination, such holding over shall be deemed not to operate as a renewal or extension of the Term and such holdover may be terminated by the District. If Contractor, with District's consent, which may be given or denied by the District in its sole discretion without limitation, remains in possession after expiration of the Term, such holding over shall be deemed to be a month-to-month tenancy on the terms and conditions set forth in this Rental Agreement; provided, however, that such month-to-month tenancy may be terminated at any time on thirty (30) days prior written notice to the other party.

26. Default and Termination of Agreement

a. Notification of Default

In the event Contractor shall default in the performance of the terms or conditions of this Rental Agreement, the District may notify the Contractor of such default in writing. Written notice referred to in this Section shall be as set forth in Section 27(g) below. Failure on the part of the District to notify Contractor of default in accordance with this Section shall not be deemed a waiver by the District of District's rights on default of the Contractor or such default at a subsequent time and such notice will have the same effect as if promptly made.

b. Correction of Default

Within five (5) days of receipt of written notice of default from the District, Contractor shall correct such default if the default is with respect to any payment required to be made by the Contractor or within ten (10) days of receipt of the written notice of default if it is of any other nature. In the event Contractor fails to correct the default to the satisfaction of the District within the time specified, or such greater period as the District may consent to by prior writing, the District shall have all rights accorded by law, including the right to terminate this Rental Agreement. The Contractor shall pay all costs and attorney's fees incurred by the District in the enforcement of any provisions herein or within this Rental Agreement.

c. Labor Dispute

In the event the Contractor cannot perform its obligations under this Rental Agreement because of a labor dispute, such nonperformance will not be considered a default; provided, however, that the District may provide for the continuation of an equestrian center, similar in operation to the equestrian center, until the labor dispute is settled. In the event the Contractor cannot perform said obligations for more than sixty (60) calendar days because of a labor dispute, the District shall have the option to terminate this Rental Agreement upon thirty (30) days notice.

d. Insolvency of Contractor

In the event a decree or order by a court having jurisdiction shall be issued (a) adjudging the Contractor bankrupt or insolvent; or (b) approving as properly filed a petition seeking reorganization of the Contractor under any section of the national Bankruptcy Act, as amended, or (c) ordering or approving the winding up or liquidation of the Contractor's affairs; or (d) appointing a receiver or a liquidator or a trustee in bankruptcy or insolvency proceedings against it, or shall file a petition or seek reorganization under any state insolvency law, or shall admit in writing its inability to pay its debts generally as they become due, or take any action in furtherance of any of the aforesaid purposes, or shall abandon this Rental Agreement, then the District may terminate this Rental Agreement. In the event of such termination, the Contractor shall be liable, without limitation, for all payments required to be made to the District up to and including said date of termination.

e. Acceptance of Rental

The acceptance of Rental shall not constitute a waiver or estoppels of the District's right to exercise its remedies for the breach of any of the terms or conditions of this Rental Agreement.

f. Termination Upon Notice

Notwithstanding any other portion of this Rental Agreement, District reserves the right to terminate this Rental Agreement for any reason whatsoever upon one hundred eighty (180) days written notice.

g. Right to Improvements

Upon termination of this Rental Agreement for any reason, the District shall have at its sole discretion the option to require the Contractor to remove all improvements made during the Term of the Rental Agreement and restore Premises to its condition at the time of execution of the Rental Agreement or to take title to the improvements according to any agreement entered into between the parties regarding the construction and title to improvements.

27. General Conditions

a. Contract Documents

The March 1, 2004 Rental Agreement between the Parties, the Request for Bid Proposals (RFP) and the entire proposal submitted by the Contractor in response to the RFP are

accepted by the District and incorporated into this Restated Rental Agreement as contract documents. However, any conflict or discrepancy between the contract documents shall be resolved in accordance with the following order of precedence: (1) the Rental Agreement; (2) the RFP; and (3) the Contractor's submitted proposal.

b. Amendment or Modification of Agreement

No agreement to modify, or modification of, this Rental Agreement shall be binding on the District unless the same is reduced to writing, approved by the Board of Directors of the District, and executed by the District and approved by the appropriate State agencies.

c. Advertising, On-site Signage, Sponsorship

Contractor shall not advertise in any manner or form on or about the Premises except by means of such signage approved by the District, in accordance with Paragraph 9 of this Rental Agreement.

Contractor is prohibited from entering into any sponsorship agreement on behalf of or in any way related to the equestrian center operations, without the District's prior written agreement, which will be given in its sole and exclusive discretion.

d. Equestrian Center Improvements by District

The District shall give the Contractor at least thirty (30) days notice prior to making any improvements to the Premises. The District will make reasonable attempts to implement any construction, repairs or improvements without substantial negative impact to the equestrian center and its operations. Emergency repairs are excluded from this notice requirement.

e. Security and Law Enforcement

All security and law enforcement costs and expenses incurred or in connection with the operation of the equestrian center shall be the sole responsibility of the Contractor.

f. Prohibition of Liens

Contractor shall not suffer or permit to be placed against the Premises, or any part thereof, any mechanic's, material men's, contractor's or subcontractor's liens arising from any claim for damages growing out of the work of construction, repair, restoration, replacement or improvement on the Premises or any other claim or demand howsoever the same may arise, but Contractor shall pay, cause to be paid, or bond against, all of said liens, claims or demands before any action is brought to enforce the same against the Premises; and Contractor shall indemnify and hold District and said Premises free and harmless from all liability for any and all such liens, claims, and demands, together with all costs and expenses in connection therewith.

g. Notices

Any and all notices given under this Rental Agreement or otherwise may be served by enclosing the same in a sealed envelope addressed to the party intended to receive the same at its address, and sent by certified or registered mail with postage prepaid or personal delivery. When so given, such notices shall be effective five days after the date of the mailing of the same. For the purposes thereof, unless otherwise provided in writing to the parties thereto, the address of the District and the proper party to receive such notices in its behalf is:

32nd District Agricultural Association
88 Fair Drive
Costa Mesa, CA 92626

Attn: Chief Executive Officer and President

And the address of the Contractor is:

Equestrian Services II, Inc.
26282 Oso Road
San Juan Capistrano, CA 92675

Attn: Ronald B. Hanson, President

h. Successors

Each and all of the terms and conditions herein contained shall be binding upon and shall inure to the benefit of the successors in the interest of the District and, subject to the provisions as to assignment, any successors in interest of the Contractor.

i. Time is of the Essence

Time is of the essence in the performance of this Rental Agreement.

j. Independent Contractor

Contractor is not an employee or agent of the District by reason of this Rental Agreement or otherwise. Contractor is an independent contractor, and as between the District and the Contractor, the Contractor shall be solely responsible for its acts or omissions arising from, or relating to this Rental Agreement.

k. Applicable Law

This Rental Agreement shall be interpreted and enforced in accordance with the laws of the State of California and shall be deemed to have been made, and shall be performed, in the State of California.

l. Entire Agreement

This Rental Agreement, together with all Exhibits attached hereto, constitutes the entire Rental Agreement between the parties hereto. All other representations or statements heretofore made, verbal or written are merged herein.

m. Headings

The headings of this Rental Agreement are inserted only as a matter of convenience and reference and do not define or limit the scope or intent of any provisions of this Rental Agreement and shall not be construed to affect in any manner the terms and provision hereof or the interpretation or construction thereof.

n. Acceptance of Rental Agreement Terms and Conditions

Contractor accepts and agrees to the Rental Agreement Terms and Conditions set forth in Part VIII, Forms Section, C, which are incorporated herein.

o. Severability

If any covenant, term, condition or provision of this Rental Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Rental Agreement shall be valid and enforceable to the fullest extent permitted by law unless that covenant, term, condition or provision declared to be invalid is so material that its invalidity deprives either party of the basic benefit of their bargain or renders the remainder of this Rental Agreement meaningless.

p. Conflict of Interest

Contractor warrants and covenants that no official, employee in the state civil service, or other appointed state official, or any person associated with same by blood, adoption, marriage, cohabitation, and/or business relationship: (a) has been employed or retained to solicit or aid in the procuring of this Rental Agreement (b) will be employed in the performance of this Rental Agreement without the immediate disclosure of such a fact to the District.

q. Recordation

This Rental Agreement shall not be recorded.

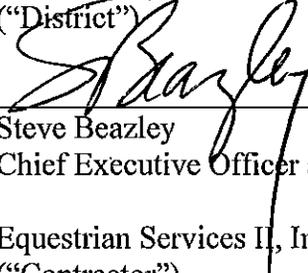
r. Authority

Contractor warrants and covenants that each individual executing this Rental Agreement on its behalf is duly authorized. Contractor agrees to provide upon the execution of this Rental Agreement a corporate resolution authorizing its execution of this Rental Agreement.

Dated:

32nd District Agricultural Association/
OC Fair & Event Center
("District")

By:



Steve Beazley
Chief Executive Officer and President

Dated:

Equestrian Services II, Inc.
("Contractor")

By:



Ronald B. Hanson
President

Exhibit A

Equestrian Center Rules and Regulations

The following rules and regulations are approved by the District and shall be adopted as practice by the contractor for any person using the equestrian center. District reserves the right to add, delete, change, amend and/or modify any rules and regulations in the best interest of the equestrian center and District.

- Equestrian Center Hours – open daily (including holidays) from 6:00 A.M. until 10:00P.M.
- Use of the equestrian center different from the posted hours requires prior District approval.
- The possession and consumption of alcohol is not permitted in the equestrian center
- Smoking is permitted in smoking areas only.
- Dogs must be on a leash and under immediate control of a person at all times. Contractor and/or District reserve the right to prohibit dogs from the equestrian center at any time.
- When not in use, tack and equipment shall be kept in tack rooms or under proper storage.
- Horses may only be tied to crossties.
- Minors shall have adult supervision at all times.
- Riders under the age of eighteen (18) must wear an equestrian helmet that meets or exceeds industry standards for use when riding horses.
- Parking is permitted in designated areas only.
- Abuse, neglect or inhumane activity of horse or person is not permitted at any time. Actions of this nature are grounds for removal from the equestrian center.

Exhibit B

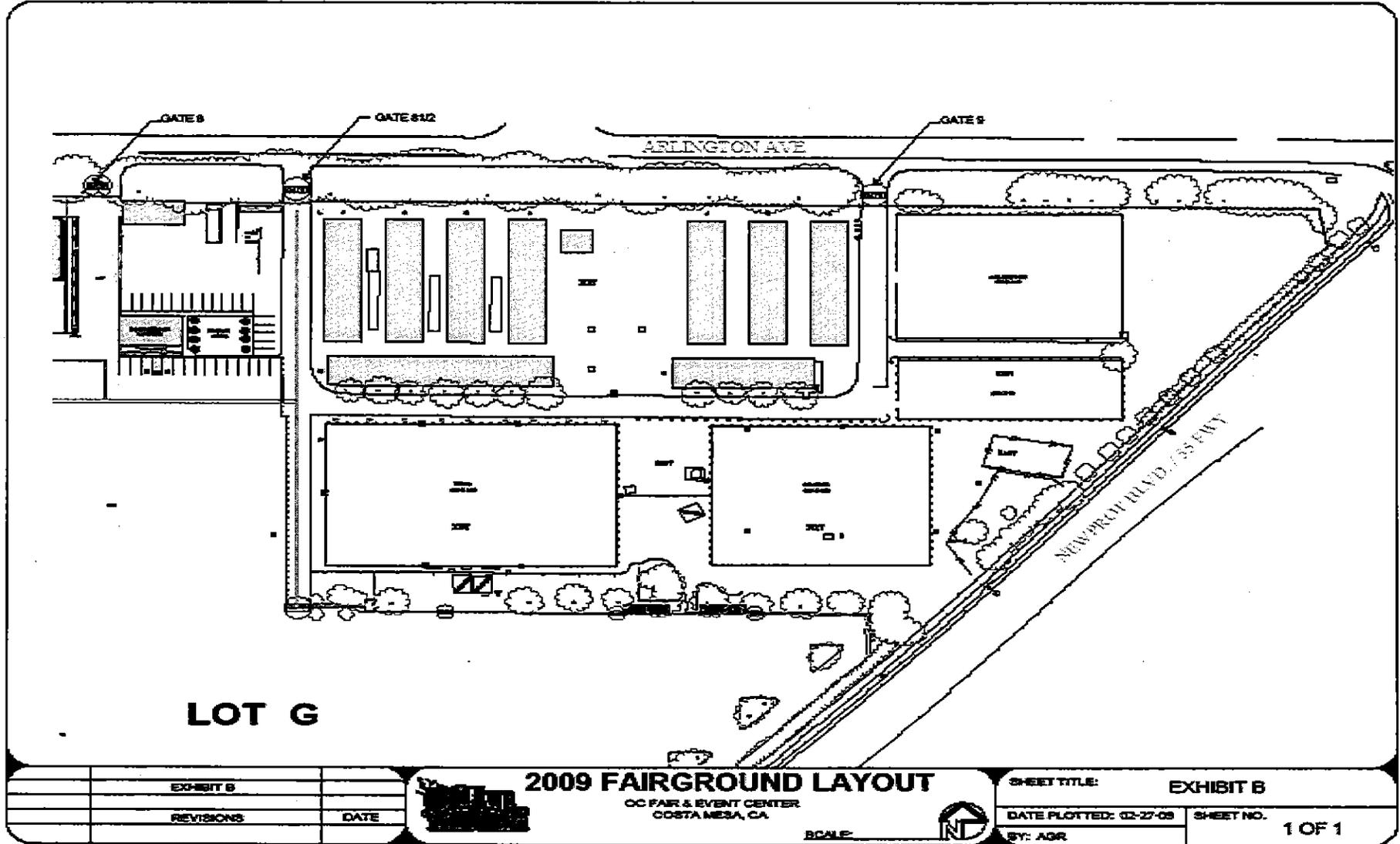


Exhibit B-2

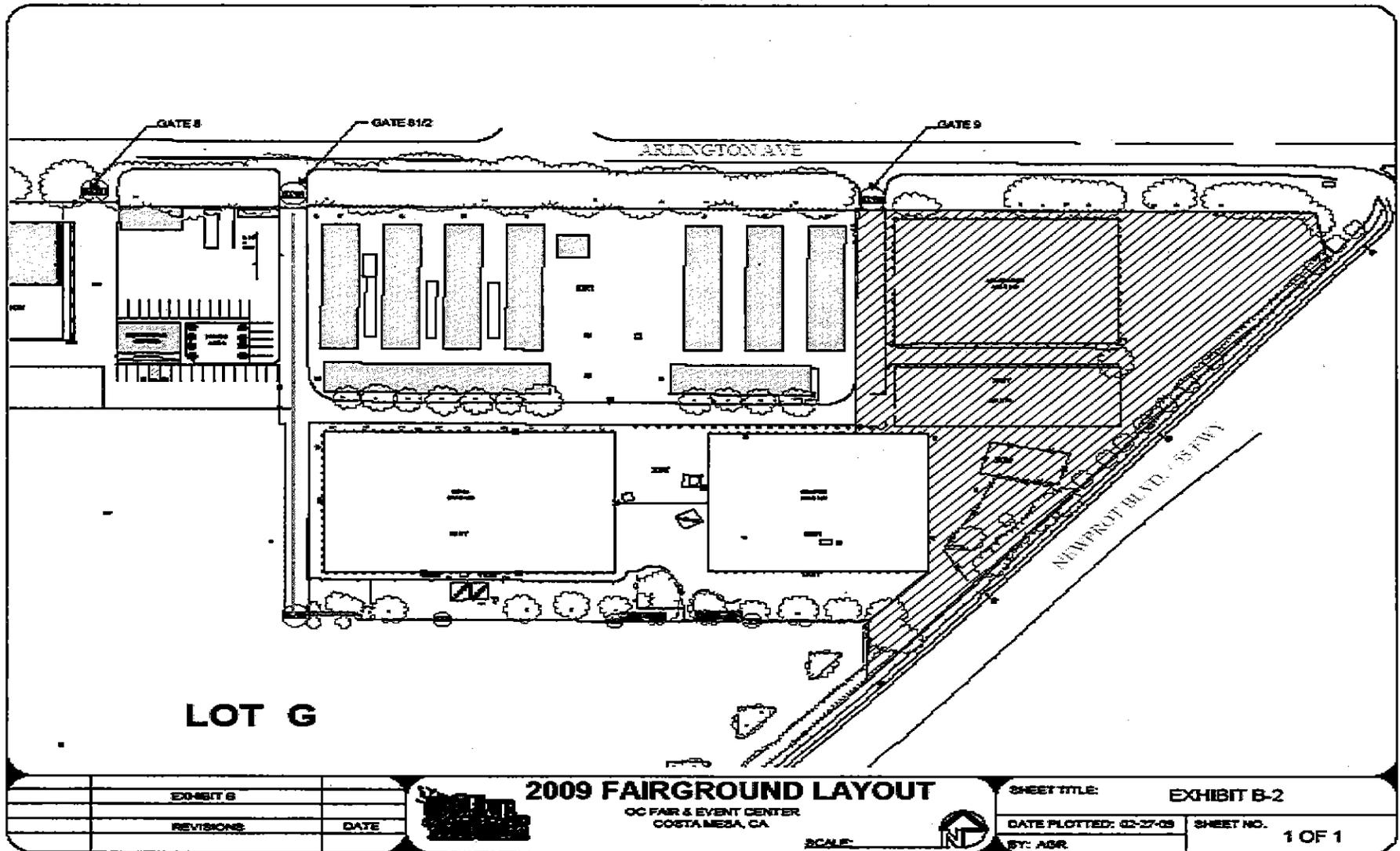


Exhibit C

Equestrian Center List of Facilities

(9) Barns:

Each barn has (2) tack room/offices

Barns represent 188 (12'X12') box stalls

Current configuration has 14 stalls used as additional tack rooms

Equestrian Center Office with restrooms/showers

Maintenance/Operations Shop and staff quarters

Covered Feed Area

Covered Storage Area

Shavings/Manure Pit

Equipment Storage Area

(4) Riding Arenas:

Mesa 255 x 160 (lighted)

Orange 200 x 160 (lighted)

Arlington 200 x 140

Small Arena 200 x 70

(1) Round Pen

(3) Hot Walkers

(2) Turnouts

(1) Wash rack (10 horse capacity)

(1) Covered Ferris Area

(1) Storage Unit (14 individual units)

(1) Picnic Area

OUTDOOR MARKETPLACE LEASE

This lease is made on August 1, 2005, between the 32nd District Agricultural Association, a state institution ("District"), and Tel Phil Enterprises, Inc., a California Corporation. ("Lessee"). The District leases to Lessee, and Lessee hires from the District, the premises described in this Lease Agreement.

A. Premises

The premises to be utilized in this Outdoor Marketplace Lease ("Lease Agreement") consist of an approximate 22.3 acre space known as the Main Parking Lot A of the Orange County Fairgrounds ("fairgrounds"), and identified on Exhibit "A" attached to this Lease Agreement ("Premises").

The parties acknowledge that the District has adopted a 10-year master plan for the fairgrounds property and that within the term of this lease, elements of the master plan will be implemented. This may cause a need to relocate part of the outdoor marketplace to a space on the fairgrounds of similar size. Lessee acknowledges that relocation may occur and that the site for relocation is at the sole and exclusive discretion of the District. Any and all costs resulting from any relocation will be at the sole expense of Lessee.

B. Term

The term of this lease is five (5) full business years, beginning August 1, 2005 (the "Rental Commencement Date"), unless sooner terminated as provided for in this lease.

The District, in its sole and exclusive discretion, may opt to extend the Term for an additional five (5) year period. This option may be exercised by giving the Lessee a written notice of extension on or before the 180th day prior to expiration of the original term. Any extension of this lease shall be subject to all the provisions of this Lease Agreement; provided, however, that the District's exercise of the option to extend the Lease Agreement may include or require renegotiation of all or part of the Lease Agreement, in the District's sole and exclusive discretion.

C. Uses

The premises shall be used for the purpose of conducting an outdoor marketplace business and for no other purpose without prior written consent of the District. "Outdoor marketplace business" is defined as the sale of goods and/or services on the Premises. Goods and services sold shall not include more than 10% used items, excluding antiques and collectibles and are to be of a nature that is appropriate for a family atmosphere in a public place.

Any other use must be requested through the District's Event Services Office in written form 90 days prior to the desired use or event. The use will be approved by the District Board and

documented on a separate rental agreement. The terms and conditions of the rental agreement shall follow the approved policies and procedures of the District's events program.

D. Dates and Hours of Operation

Lessee shall keep the Premises open for business and in full operation on every Saturday and Sunday of each month from 7:00 a.m. to 4:00 p.m. with the following exceptions:

1. Four weekends for the annual Orange County Fair, with the dates to be determined in the District's sole and exclusive discretion
2. Inclement weather
3. Other dates mutually determined and agreed upon between the Lessor and Lessee, including, but not limited to, Easter Sunday.

Lessee may also conduct an outdoor marketplace on the Friday after Thanksgiving and for 5 weekdays in the seven-day period immediately preceding Christmas. Lessee agrees to notify the District by July 1, 2005, and thereafter, on or before January 1 of each calendar year of the proposed dates of operation for that calendar year, including Thanksgiving and Christmas holiday swap meets.

Lessee shall not use or occupy the Premises at any other times without the prior written consent of the District, which consent may be given or denied by the District at its sole discretion without limitation.

The District reserves the right to designate one additional weekend per year in which the outdoor marketplace will be either canceled, or reconfigured, to accommodate other activities on the fairgrounds. The District and Lessee will negotiate in good faith to arrive at a mutually acceptable weekend date for the reconfiguration or cancellation of the outdoor marketplace.

Marketplace hours may commence no earlier than 12:00 a.m. on the Saturday of an outdoor marketplace day and must end at 5:30 p.m. on the Sunday of an outdoor marketplace day. Marketplace hours, if any, on the Friday following Thanksgiving, and during the 5 weekdays in the week prior to Christmas shall be 12:00 a.m. on the first day of the holiday marketplace and end at 5:30 p.m. on the final day of the holiday marketplace.

Set up for the outdoor marketplace may not commence earlier than one (1) day prior to an operational day. Tear down must be completed by one (1) day following an operational day. Lessee acknowledges and agrees that the time permitted for set up and tear down may be restricted or limited because of other events taking place on the fairgrounds. Set up and tear down must be limited to the Premises.

Lessee shall ensure that all seller equipment is removed from the Premises at the conclusion of each operating weekend.

The foregoing dates and times of operation and other restrictions may be changed, modified, altered, or canceled only with the prior written consent of the District.

E. Security Deposit

1. Deposit. Lessee has deposited with Lessor the sum of \$25,000.00, receipt of which is hereby acknowledged by Lessor, as security for the full and faithful performance by Lessee of the terms, conditions, and covenants of this lease.
2. Deduction for Rent. If at any time during the term of this lease Lessee defaults in the payment of rent, or any portion of rent, under this lease, Lessor shall [or may] appropriate and apply any portion of the security deposit reasonably necessary to remedy any such default in the payment of rent.
3. Deduction for Repairs. If at any time during the term of this lease Lessee, Lessee's subcontractors, independent contractor's, vendors, agents, or employees damage the premises through want of ordinary care or any greater degree of culpability, then Lessor shall appropriate and apply any portion of the security deposit reasonably necessary to fund the necessary repair.
4. Deduction at Termination of Lease. If on termination of this tenancy Lessee fails to leave the premises in a condition comparable to the condition of the premises at the time Lessor delivered possession to Lessee at the commencement of this lease, ordinary wear and tear excepted, then Lessor shall be entitled to appropriate and apply all or any portion of the security deposit reasonably necessary to put the premises in the condition comparable to the condition of the premises at the time of delivery.
5. Replenishment and Increase of Deposit. If all or any portion of Lessee's security deposit is properly applied by the Lessor during the term of this Outdoor Marketplace Lease Agreement for any purpose authorized by this Outdoor Marketplace Lease Agreement, Lessor will provide Lessee with written notification, and this written notification shall include an itemized statement describing the disposition of the security. Upon receipt of written notification, Lessee shall have ten business days to replenish this amount. Lessee's failure to replenish the security deposit within ten business days from receipt of written notification shall constitute a material breach of this Outdoor Marketplace Lease Agreement.
6. Return of Deposit at Termination of Lease. Lessor shall return to Lessee the portion of the security deposit remaining after any deductions authorized by this Outdoor Marketplace Lease Agreement or otherwise authorized by law, if any, in the following manner. If a deduction has been made only for the nonpayment of rent, the remaining portion, if any, shall be returned not later than two weeks after the date Lessor receives possession of the premises. If a deduction has been made for any other reason authorized by this Outdoor Marketplace Lease Agreement or otherwise authorized by law, the remaining portion, if any, shall be returned not later than 30 days from the date Lessor receives possession of the premises. Lessee shall not be entitled to any interest on any portion of the security deposit.

F. Rent

1. Percentage Rent. The Percentage Rent payable under this Lease Agreement shall be 35% per cent of all Gross Revenues per applicable Lease Year. (The percentage rent specified and accepted in Lessee's bid proposal submitted in response to RFP No. SM-06-04.) "Gross Revenues" is defined as any and all revenue generated by the outdoor marketplace operation to include but not limited to all admission fees, space rental charges, food and beverage sales, miscellaneous income and sales, sponsorship and/or advertising fees collected by the Lessee.
2. Minimum Guaranteed Rent. The Minimum Guaranteed Rent for each Lease Year is \$3,500,000, payable in equal installments on the first day of each and every month. If the Percentage Rent provided for in paragraph (E) 1 above in any Lease year is less than the Minimum Guaranteed Rent, Lessee shall pay the difference between the Minimum Guaranteed Rent and the Percentage Rent.
3. Force Majeure. If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, judicial orders, enemy or hostile government action, civil commotion, fire or other casualty or other causes (except financial) beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused, except for Lessee's payment of the Minimum Guaranteed Rent, as follows: If 50% or more of the Premises are unavailable for Lessee's use for a reason set forth in this paragraph, then Lessee shall be required to pay 50% of the Minimum Guaranteed Rent for a period equal to the period of such cause for failure to perform. If less than 50% of the Premises are unavailable for Lessee's use for a reason set forth in this paragraph, then Lessee shall be required to pay that percentage of the minimum Guaranteed Rent that is equal to the percentage of the Premises available for Lessee's use for a period equal to the period of such cause for failure to perform. However, in all events, if Lessee is unable to perform for any cause beyond its reasonable control (except financial) for a period in excess of forty-five days, then either party may terminate this Outdoor Marketplace Lease upon thirty days' written notice to the other party without further liability.
4. Payment. Percentage Rent of Gross Revenues shall be calculated on a daily basis for each weekend of outdoor marketplace operation. Lessee shall submit written statements, called "Operating Reports," to the District, detailing Gross Revenues for each day of operation. The Operating Report shall be submitted to the District on the Friday following the weekend of outdoor marketplace operation. Lessee shall pay to the District the percentage rent due from the weekend prior on the Friday following the weekend of outdoor marketplace operation. The Operating Report shall agree with the Financial Records. District reserves the right have an agent or employee of the District present each day of operation of the outdoor marketplace to audit daily Gross Revenues. All efforts will be made to not interfere with Lessee's operation.
5. Record Keeping. Lessee shall keep full and complete business and financial records of its operations in a form and substance satisfactory to the District. Lessee shall submit to

the District, in a form substantially similar to Exhibit "D", daily and monthly gross receipts reports including a listing all daily attendance figures (paid, discount, complimentary), all revenue listed by source including a breakdown of all individual seller fees for seller space; fees for all seller space acquired by bid; food and beverage sales reports; sponsorship and advertising revenue; admission revenue and any other financial information reasonably requested by the District.

6. Audits. An annual audit of Financial Records shall be conducted by an independent audit firm selected by the District. The District and the Lessee shall each pay for one-half of the cost of this annual audit. The Lessee shall make all Financial Records available for inspection or audit within fourteen days following notification by the District that the annual audit will be conducted. If the annual audit determines that Gross Sales are 2% or more in excess of the Gross Sales reported by the Lessee for the period in question, the Lessee shall promptly pay to the District all costs of the audit paid or incurred by the District for that audit.

District has the right to conduct additional audits of Lessee's Financial Records at any other time at the sole discretion of the District ("additional audit".) If District conducts an additional audit, Lessee shall make all Financial Records available for inspection or audit within fourteen days following any request by District that the Financial Records be made available for an additional audit. The District shall pay the costs of all additional audits; provided, however, that if the additional audit determines that an amount in excess of \$5,000.00 is due and owing from Lessee to the District, Lessee shall pay all costs associated with the additional audit within fourteen days after written demand by the District.

Lessee shall pay all amounts determined to be due and owing within five business days after notification by District of the amount due and owing. If any audit finds an amount in excess of \$5,000.00 is due and owing from Lessee to the District, Lessee shall pay the full amount, plus a penalty of 10% of the balance due and owing, no less than five business days after notification of the amount due and owing. If Lessee fails to pay any amount required to be paid by this paragraph, then District shall have the irrevocable right to take payment from the Security Deposit described in Paragraph Number E(6) above, and Lessee shall replenish that amount within five business days of notification that the Security Deposit requires replenishment.

Lessee shall maintain all Financial Records for at least five (5) years after the final payment of Rental under this Lease Agreement and extension of this Lease Agreement, or longer as directed by the District.

Any information obtained by the District pursuant to any inspection or audit shall be considered a public document, unless otherwise exempt, and subject to disclosure according to the Public Records Act.

7. Best Efforts. Lessee is required to, and will, use its best efforts in the operation of the outdoor marketplace to maximize Lessee's Gross Revenues.

G. Operation and Management of Marketplace

Operation, management and maintenance of the outdoor marketplace will be at Lessee's sole expense, including, but not limited to:

1. Coordinating reservations and renting spaces for sellers;
2. Establishment and collection of admission fees and all other revenue;
3. Advertising, marketing, and promotion, which shall be in compliance with all applicable statutes, regulations and ordinances, and subject to the prior written approval of the District, which will not be unreasonably withheld;
4. Staffing with all necessary personnel including supervisory personnel;
5. Providing management, administrative and security personnel and controls at any time outdoor marketplace vendors are on the premises
6. Providing food and beverage service and operate from food service facilities that are clean and sanitary in accordance and consistent with all applicable rules, demands and requirements of law, pertinent health and sanitary codes and requirements of duly authorized health authority of the County of Orange and any other health department having jurisdiction.
7. Compliance with all requirements of the Department of Alcoholic Beverage Control.
8. Engaging and supervising exterminators at Lessee's expense to control vermin and pests as is necessary, but in no event less than once each month. Lessee agrees extermination services must be provided in all areas where food is stored, prepared, served, sold, or dispensed.
9. Keeping and providing all financial records required by the District.
10. Filing and implementing an annual operating plan for an outdoor marketplace business which addresses seller space configuration, subject to approval by the District.
11. Complying with all District policies including those outlined in the Event Services Handbook, which are filed in the District offices
12. Maintaining the Premises in a good, clean, and safe condition. Lessee shall prepare and submit to the District for the District's approval a plan for maintenance of the Premises, facility cleanup, waste removal, waste recycling, and trash.
13. Develop and submit to the District for the District's approval a parking plan for outdoor marketplace visitors, sellers and employees.
14. Provide appropriate levels of security and crowd control measures for the operation
15. Provide a system for emergency medical response during hours of operation
16. Compliance with SB198 health and safety requirements
17. Compliance with all federal, state and local statutes, laws, ordinances and regulations relating to environmental issues; including, but not limited to South Coast Air Quality Management District regulations, Regional Water Quality Control Board regulations. Lessee shall at all times conduct its business in compliance with the Clean Air Act, the Clean Water Act, the Porter-Cologne Water Quality Act, the California Environmental Quality Act, the National, Environmental Protection Act, and all comparable, related, and successor statutes, laws, ordinances, and regulations.
18. Develop and submit to the District for the District's a program to maintain a drug-free workplace at the outdoor marketplace.

19. Effective January 1, 2008, Lessee covenants that it will fully comply with Public Contract Code section 10295.3 with regard to benefits for domestic partners. For any contracts executed or amended, bid packages advertised or made available, or sealed bids received on or after July 1, 2004 and prior to January 1, 2004, a contractor may require an employee to pay the costs of providing additional benefits that are offered to comply with Public Contract Code section 10295.3
20. Compliance with all federal, state, and local statutes, laws, ordinances and regulations relating to equal employment, disability access, and non-discrimination, including, but not limited to, the Unruh Act, Americans with Disabilities Act, Occupational Safety and Health Act, California Civil Code sections 51 through 54.6, inclusive, and all comparable, related, and successor statutes, laws, ordinances, and regulations.

Lessee further agrees to use reasonable care in its use and occupancy of the Premises and, at all times during the Term, to keep and maintain the Premises in good, clean and safe condition and to prevent waste upon, or damage to, the Premises. Lessee will maintain all of its equipment, inventories and other tangible property in a well maintained, neat, orderly and careful manner at all times. All storage will be in an area designated by the District. Storage is restricted to those items used in general operation of the outdoor marketplace. Storage of personal items is prohibited.

Maintenance, including equipment and facilities repairs, must be confined to the Premises, and may not occur on any other part of the fairgrounds. Lessee acknowledges and agrees that maintenance may be limited due to other events occurring on the fairgrounds.

H. Limitations on Use

Lessee will not conduct, or permit to be conducted on the Premises any business or act, which is or may be contrary to, or in violation of, any federal, state, or local statute, law, regulation, or ordinance. Lessee shall not engage in or knowingly or negligently permit any condition upon the Premises inappropriate to the neighborhood in which the fairgrounds is located, which includes governmental buildings, educational institutions and residential neighborhoods.

I. Right to Enter

The District reserves the right to enter onto the Premises at any time for any purpose, including emergencies. Lessee shall permit designated agents of the District to make periodic inspections of the Premises to determine whether of the Lessee has complied with, and is complying with, the terms and conditions of the Lease Agreement. Lessee shall also permit designated agents of the District to enter the Premises for the purpose of accomplishing repairs or replacements where the Lessee is obligated to make such repairs or replacements and has failed to do so after a reasonable notice period determined by the District. The notice period shall depend upon the nature and extent of repair or replacement required and the impact of the defect on the safety and profitability of the outdoor marketplace. No such entry by, or on behalf of, the District on the Premises shall cause or constitute a termination of the Lease Agreement or be deemed to constitute an interference with the possession of the Premises by Lessee.

Lessee shall be responsible for any costs for repairs made to Premises or facilities by District staff or any other contracted service. Lessee shall be responsible for rental of any equipment needed to make repairs, including District equipment.

J. Licenses, Permits and Taxes

Lessee shall obtain, maintain and pay for all licenses and permits required for its business throughout the entire term of the Lease Agreement, and any extensions, including, but not limited to, holdover periods, if any.

Lessee is aware and agrees that the Lease Agreement, or Lessee's use of the Premises, may be subject to federal, state or local charges, taxes or fees. All personal property taxes, income taxes, possessory interest taxes, general and special assessments, and other charges of every description levied on or assessed against the operation of the outdoor marketplace, shall be paid promptly by Lessee direct to the charging authority before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for nonpayment. Lessee shall hold the District harmless and indemnify the District against and from any and all charges, fees, assessments and taxes imposed under this Paragraph.

K. Consent to Improvement or Modification of the Premises

During the term of this Lease and all extensions, Lessee shall make no improvement or modification of the Premises for any reason without the prior written consent of the District. The District may grant or withhold its consent for any improvement or modification of the Premises in its sole and exclusive discretion. No improvement or modification made by Lessee during the term of this Lease may be subsequently modified, altered, or removed without the prior written consent of the District. Any improvement, alteration, or modification of the Premises made by Lessee shall be at the sole cost and expense of the Lessee. All improvements, alterations, or modifications made by the Lessee shall be in strict compliance with any and all conditions specified by the District, and with all codes, statutes, ordinances and regulations by any governmental agency having jurisdiction. Lessee shall defend and indemnify the District against all liability and loss of any type, including but not limited to, all expenses, liens, mechanics liens, claims, charges or damages to property or any other person, arising out of work performed on the premises by lessee, together with reasonable attorneys fees and all costs and expenses which might arise by reason of the making of repairs, improvements or modifications; excepting only the sole negligence or willful misconduct of the District.

L. Title to Improvements

During the term of this Lease and all extensions and as long as Lessee is operating on the Fairgrounds, Lessee shall be entitled to use and occupy the works of improvement constructed by Lessee on the Premises on or before November 8, 2004, which are the property of Lessee. At the conclusion of the term of this Lease, and all extensions and when Lessee is no longer operating on the Fairgrounds, Lessee may, at its sole cost and expense, remove from the Premises all works of improvement constructed by Lessee on the Premises on or before

November 8, 2004. In the event Lessee elects to remove these works of improvement from the Premises, Lessee shall, at its sole cost and expense, return the Premises to their pre-construction condition, ordinary wear and tear excepted. If Lessee does not elect to remove these works of improvement from the Premises at the conclusion of the term of this Lease, and all extensions and is no longer operating on the Fairgrounds, title to these works of improvement shall transfer to the District, and the District shall not have to pay Lessee for these works of improvement. In the event title to these works of improvement transfers to the District, the Lessee will execute any and all documents that may be required to transfer title.

At the sole and exclusive discretion and option of the District:

1. All improvements constructed by Lessee on the Premises during the term of this Lease and all extensions shall, at the expiration of the term or sooner termination of this lease shall, without compensation to the Lessee, then become the District's property free and clear of all claims to or against them by Lessee or any third person, and Lessee shall defend and indemnify the District against all liability and loss arising from such claims or from District's exercise of the rights conferred by this Paragraph (K)(1); or
2. At the expiration or sooner termination of the term, the District may, at the District's election, demand the removal from the Premises of all fixtures and improvements or of certain fixtures or improvements or both, at Lessee's sole cost and expense. Removal of fixtures and improvements requires that Lessee restore the Premises to their condition at the initiation of the Lease term, ordinary wear and tear excepted.

M. Food and Beverage Service

Lessee will provide food and beverage service within the operation of the outdoor marketplace. Food and beverage are to be prepared and served from concession stands that are approved by the County of Orange Health Department. Lessee shall provide a food and beverage plan within the annual operating plan, indicating the number of concession stands, menus, pricing and location. Permanent food service facilities, if desired by the Lessee, must be submitted to the District Board of Directors for approval and subsequent agreement.

The Lessee must secure and comply with all requirements from the Department of Alcoholic Beverage Control. The Lessee shall prepare and submit to the District for the District's approval a comprehensive Alcohol Awareness Server Program, detailing plans, signs, policies and actions.

Lessee shall maintain all food service facilities in a clean and sanitary condition in accordance and consistent with all applicable rules, demands and requirements of law, pertinent health and sanitary codes and requirements of duly authorized health authority of the County of Orange and any other health department having jurisdiction.

N. Assignment and Subletting

The rights and privileges granted hereunder shall not be assigned or transferred in any manner whatsoever by the Lessee without the prior written approval of the District. For the purpose of

this paragraph, an assignment or transfer includes the sale of all, or a majority of all the legal and/or equitable interest in Lessee. In the event of a sale or transfer of ownership that is approved by the District, the District reserves the right to negotiate all terms and conditions relevant to the Agreement, including termination of the Agreement.

The Lessee shall not sublet any rights or privileges granted hereunder without the prior written approval of the District. In the event of a sublet that is approved by the District, the District shall receive the percentage rent designated in the Lease of Gross Revenues based upon the gross revenue from the operation of the sublease.

O. Insurance

1. **Worker's Compensation.** The Lessee shall secure and maintain, at its own expense, during the Term all Worker's Compensation insurance required by California law for all of Lessee's employees and shall require the same coverage for any subsidiaries, agents, if any, and its employees, and shall carry a minimum of five million dollars (\$5,000,000) employers insurance coverage as part of the Worker's compensation insurance.
2. **Automobile Insurance.** Lessee shall secure and maintain at its own expense during the Term Commercial Automobile Liability coverage, on a per accident basis, at least as broad as the current ISO policy form # CA 0001, Symbol #1 (any auto) with limits of not less than \$1,000,000 combined single limit per accident for contracts involving the use of Lessee's vehicles (autos, trucks, or other licensed vehicles) on the Premises or any portion of the fairgrounds.
3. **Commercial General Liability Insurance.** The Lessee shall secure and maintain at its own expense during the Term a minimum of five million dollars (\$5,000,000) combined single-limit commercial general liability insurance covering the Lessee, its employees, agents and subsidiaries, for claims for damages for bodily injury, property damage, personal injury, liquor liability, automobile and maintenance vehicle liability insurance.

Coverage shall include blanket contractual insurance and such coverage shall make express reference to the Lessee's hold-harmless provision in Section M below. The liability insurance shall include coverage for products, including liquor liability.

The Lessee agrees that the general liability insurance herein provided for shall be in effect at all times during the Term. In the event said insurance coverage expires at any time or times prior to or during the Term, Lessee agrees to provide the District at least consistent with the provision of Paragraphs (N)(1) and (N)(2) of this Lease Agreement, prior to any expiration date, a new certificate of insurance evidencing insurance coverage as provided for in this Lease Agreement for a term not less than the remainder of the Term, or for a period of not less than one (1) year. New certificates of insurance and additional insured endorsements are subject to the approval of the District, the State of California, and California Fair Services Authority, and Lessee agrees that no work or services shall be performed, and no outdoor marketplace shall be conducted, prior to the giving of such approval. In the event the Lessee fails to keep in effect at all times

insurance coverage as herein provided, the District may, in addition to any other remedies it may have, terminate this Lease Agreement.

The following statement regarding additional insured must be included on all insurance certificates: "That the State of California, the District Agricultural Association, County Fair, the County in which the County Fair is located, Citrus Fair, or California Exposition and State Fair, their agents, directors, officers, servants, and employees are made additional insured but only insofar as the operations under this contract are concerned."

In addition to the foregoing, Contractor shall provide a certified copy of an additional insured endorsement to the District, Forms ISO CG 2005, 2010, 2012, 2024, showing the State of California, the 32nd District Agricultural Association, the Orange County Fair and Exposition Center, and their agents, directors, officers, servants, and employees are made additional insureds on Lessee's general liability insurance policy and automobile liability policy.

4. Provisions relating to all insurance required by Paragraph N. The insurance coverage provided by Lessee shall be primary and any separate coverage or protection available to the District or any other additional insured shall be secondary.

Nothing in this Paragraph N shall be construed as limiting in any way the extent to which the Lessee may be held responsible for damages resulting from Lessee's operations, acts, omissions, and/or negligence. Insurance coverage obtained in compliance with this Paragraph N shall not relieve the Lessee of liability in excess of such minimum coverage, nor shall it preclude the District from taking other actions available to it under contract documents or by law, including, but not limited to, actions pursuant to Lessee's indemnity obligations.

Upon request by the District, the Lessee shall immediately furnish a complete copy of any policy required by this Paragraph, including all endorsements, certified by the insurance company issuing the policy to be a true and correct copy of the original policy.

P. Indemnity

To the fullest extent permitted by law, Lessee shall defend, indemnify, and hold harmless the District and its agents, directors, and employees from and against all claims, damages, losses, and expenses, of every kind, nature and description (including, but not limited to, attorneys fees, expert fees, and costs of suit), directly, or indirectly, arising from, or in any way related to the performance or nonperformance of this Rental Agreement, regardless of responsibility of negligence; by reason of death, injury, property damage, or any claim arising from the alleged violation of any state or federal accessibility law, statute or regulation, (including but not limited to, the Americans With Disabilities Act, and/or any state, local, successor, or comparable provision of law) however caused or alleged to have been caused, and even though claimed to be due to the negligence of the District. Provided, however, that in no event shall Lessee be obligated to defend or indemnify the District with respect to the sole negligence or willful

misconduct of the District, its employees, or agents (excluding the Lessee herein, or any of its employees or agents.)

Q. Notice

Lessee shall, within three (3) business days, report in writing to the District any incident that might reasonably be expected to result in any claim under any of the indemnity or insurance provision of this Agreement. The Lessee also agrees to provide the District with information as to the disposition of any claims within thirty (30) days following said disposition.

R. Surrender of Premises and Holding Over

1. Surrender of Premises during the Annual Fair. Lessee agrees that following the final outdoor marketplace operation day prior to the Annual Fair to surrender possession of the Premises in good condition, reasonable wear and tear excepted, and District shall have the unconditional right to possession of the Premises. Lessee agrees to remove all equipment and temporary facilities from the Premises at the Lessee's sole expense. Storage of the equipment and temporary facilities shall not be on the fairgrounds but at an undetermined off-site location secured at the Lessee's sole expense.
2. Surrender of Premises. District shall not be required to give notice to quit possession at the expiration of the Term. Lessee covenants and agrees that on expiration of the Term, or on an earlier termination as hereinafter provided, it will peacefully surrender possession of the Premises in good condition, reasonable wear and tear excepted, and District shall have the unconditional right to possession of the Premises.
3. Holding Over. In the event that the Lessee should hold over and remain in possession of the Premises after the expiration of the Term, or sooner termination, such holding over shall be deemed not to operate as a renewal or extension of the Term and such hold over may be terminated by the District. If Lessee, with District's consent, which may be given or denied by the District in its sole and exclusive discretion without limitation, remains in possession after expiration of the term, such holding over shall be deemed to be a month-to-month tenancy on the terms and conditions set forth in this Lease Agreement; provided, however, that such month-to-month tenancy may be terminated at any time on thirty (30) days prior written notice to the other party.

S. Default and Termination of Agreement

1. Notification of Default. In the event Lessee shall default in the performance of the terms or conditions of this Lease Agreement, the District may notify the Lessee of such default in writing. Written notice referred to in this Section shall be as set forth in Paragraph T (14) below. Failure on the part of the District to notify Lessee of default in accordance with this Section shall not be deemed a waiver by the District of District's rights on default of the Lessee or such default at a subsequent time and such notice will have the same effect as if promptly made.

2. Correction of Default. Within five (5) days of receipt of written notice of default from the District, Lessee shall correct such default if the default is with respect to any payment required to be made by the Lessee or within ten (10) days of receipt of the written notice of default if it is of any other nature. In the event Lessee fails to correct the default to the satisfaction of the District within the time specified, or such greater period as the District may consent to by prior writing, the District shall have all rights accorded by law, including the rights granted under Section E of this Agreement, or to terminate this Agreement. The Lessee shall pay all costs and attorney's fees incurred by the District in the enforcement of any of the provisions in this Paragraph or in this Lease Agreement.
3. Labor Dispute. In the event the Lessee cannot perform its obligations under this Agreement because of a labor dispute, such nonperformance will not be considered a default; provided, however, that in the event Lessee cannot perform said obligations because of a labor dispute, the District may provide for the continuation of an outdoor marketplace, similar in operation to the outdoor marketplace, until the labor dispute is settled. In the event the Lessee cannot perform said obligations for more than sixty (60) business days because of a labor dispute, the District shall have the option to terminate this Agreement upon thirty (30) days notice.
4. Insolvency of Lessee. In the event a decree or order by a court having jurisdiction shall be issued (a) adjudging the Lessee bankrupt or insolvent; or (b) approving as properly filed a petition seeking reorganization of the Lessee under any section of the national Bankruptcy Act, as amended, or (c) ordering or approving the winding up or liquidation of the Lessee's affairs; or (d) appointing a receiver or a liquidator or a trustee in bankruptcy or insolvency proceedings against it, or shall file a petition or seek reorganization under any state insolvency law, or shall admit in writing its inability to pay its debts generally as they become due, or take any action in furtherance of any of the aforesaid purposes, or shall abandon this Lease Agreement, then the District may terminate this Lease Agreement. In the event of such termination, the Lessee shall be liable, without limitation, for all payments required to be made to the District up to and including said date of termination.
5. Acceptance of Rental. The acceptance of rental shall not constitute a waiver or estoppels of the District's right to exercise its remedies for the breach of any of the terms or conditions of this Lease Agreement.
6. Termination Upon Notice. Notwithstanding Paragraph A, herein, District reserves the right to terminate this Lease Agreement for any reason whatsoever upon three hundred sixty-five (365) days written notice.

T. Destruction of Premises / Condemnation

1. Destruction. If all or any portion of the leased premises, is damaged or destroyed by any cause whatsoever [or by any cause for which Lessee is required under this lease to carry insurance], Lessee shall at its own cost and expense promptly repair the damage and restore the leased premises to at least the same condition that existed before that damage

or destruction, regardless of whether any insurance proceeds paid for the damage or destruction are sufficient to cover the entire cost of repair or restoration. During repair and restoration this lease shall remain in full force and effect and the rent payable under this lease shall not be abated in any way or to any extent. The proceeds of any insurance purchased by Lessee covering the damage or destruction shall be made available to Lessee for the repair or restoration required under this section.

2. Condemnation. If all or any part of Premises is sold by the State of California, or is taken by any public or quasi-public agency or entity under the power of eminent domain during the term of this lease (1) Either District or Lessee may terminate this lease by giving the other ninety days' written notice of termination; provided, however, that Lessee cannot terminate this lease unless the portion of Premises sold by the State of California or taken by eminent domain is so extensive as to render the remainder of the Premises useless for the uses permitted by this lease, and District is unable or unwilling to provide a substantially equivalent amount of space in lieu to the Premises sold or taken. Any and all damages and compensation awarded or paid because of a taking of the Premises shall belong to District, and Lessee shall have no claim against District or the entity exercising eminent domain power for the value of the unexpired term of this lease or any other right arising from this lease; provided, however, that Lessee shall be entitled to that portion of any and all damages and compensation specifically awarded or paid for the loss of goodwill of operating the outdoor marketplace on the premises.

U. General Conditions

1. Contract Documents. The Request for Bid Proposals (RFP) and the entire proposal submitted by the Lessee in response to RFP Number SM-06-04 are accepted by the District and incorporated into this Lease Agreement as contract documents. However, any conflict or discrepancy between the contract documents shall be resolved in accordance with the following order of precedence: (1) this Outdoor Marketplace Lease Agreement; (2) the RFP; and (3) the Lessee's submitted proposal.
2. Amendment or Modification of Agreement. No agreement to modify, or modification of, this Agreement shall be binding on the District unless the same is reduced to writing, approved by the Board of Directors of the District, and executed by the District and approved by the appropriate State agencies.
3. Advertising, On-site Signage & Sponsorship. All advertising shall be subject to the prior approval of District Staff, which approval will not be unreasonably withheld. Lessee shall not advertise in any manner or form on or about the Premises except by means of such signage or forms of mass media advertising approved by the District. Such approval must be in writing prior to display or mass media circulation. Advertising signage as well as operational signs are to be temporary in nature, placed only in the defined outdoor marketplace premises and must be removed and stored at the end of the outdoor marketplace operating weekend.

Lessee shall obtain the prior written approval of District Staff prior to entering into any sponsorship agreement. The District will not unreasonably withhold its approval.

4. Storage. At its sole discretion, the District shall provide the Lessee with a maximum of 3,000 square feet of indoor space and 6,000 square feet of outdoor space to be used exclusively for storing equipment pertaining only to the operation of the outdoor marketplace and no other purposes. Any additional space needed by the Lessee shall require written approval from the District. At its sole discretion, the District has the option to utilize the space allocated to the Lessee during its annual fair for operational purposes. The Lessee is solely responsible for any costs related to relocation of its storage to an off-site location.
5. Emergency/ Disaster Plan. Lessee shall be required to create an emergency disaster plan for the outdoor marketplace operation to be submitted for review and approval annually by the District. The emergency disaster plan requires the prior written approval of the District, and must be prepared in compliance with the District's emergency disaster plan, and in cooperation with District staff.

Lessee shall provide emergency medical response services during each operating day of the outdoor marketplace.

Lessee shall provide the District an "emergency key" in order to access all of Lessee's facilities in case of an emergency or disaster.

6. Fencing. Lessee agrees to install temporary fencing of the outdoor marketplace selling area for each day the outdoor marketplace is in operation, at its sole cost and expense. Prior to installation of any fencing, written plans for fencing must be provided to the District for its written approval. Temporary fencing shall be removed at the conclusion of an outdoor marketplace day and stored.
7. Parking. Lessee will manage all outdoor marketplace parking operations pursuant to a plan to be approved annually by the District, in writing. All parking operations must be maintained in strict compliance with the Americans with Disabilities Act, and/or any state, local, successor, or comparable provision of law.

Lessee acknowledges that the District is bound by a 1996 Settlement Agreement with the City of Costa Mesa outlining maximum fairgrounds parking and usage. Lessee acknowledges receipt of a copy of the 1996 Settlement Agreement, agrees to abide with the 1996 Settlement Agreement, without exception.

District reserves its exclusive right to implement a preferred parking area in the area designated as the Carnival Lot and Lot F and to charge parking fees. District has the rights to any and all revenue collected from this preferred parking operation.

8. Refuse and Waste Removal. All refuse and waste material created by the Lessee's operations in all areas of the Premises and fairgrounds, including surrounding fence lines

and streets, shall be promptly collected and disposed of after each outdoor marketplace day. Lessee shall be responsible for employing the necessary personnel, including supervisors, before, during and after hours of each operating day to comply with these provisions; providing sufficient waste receptacles and equipment at each location and making certain they are kept clean and properly serviced during and after each operating day, to the satisfaction of the District.

The District shall be responsible for the sweeping and cleaning of the outdoor marketplace debris in and around the outdoor marketplace sellers' area by 10:00 p.m. on each day of operation. All sweeping and cleaning expenses shall be the sole responsibility of the Lessee.

Wet refuse must be stored in water-tight containers pending removal from the Premises. Grease and waste foods shall be kept in closed metal containers until removed from the Premises.

All equipment utilized by the Lessee for refuse and waste removal shall only be staged in the outdoor marketplace premises or in a designated storage area. Equipment is to be staged only one day prior to the outdoor marketplace selling day and one day following the outdoor marketplace selling day.

9. Parking Lot Improvements. The District shall give the Lessee at least thirty (30) days notice prior to making any improvements to the Parking Lots such as paving, striping, electrical, sewer repair or installation. The District will make reasonable attempts to implement any construction, repairs or improvements without substantial negative impact to the outdoor marketplace operation.
10. Other Events. Lessee acknowledges that the District rents fairgrounds facilities and property outside of the Premises for the operation of other public and private events. Lessee agrees to cooperate with District staff and to make necessary adjustments in the operation of the outdoor marketplace to accommodate periods of increased or large event use on the fairgrounds.
11. Security and Law Enforcement. Lessee will develop and submit to the District, for its written approval, a security plan for the outdoor marketplace operation. All expenses for implementation and operation of the security plan shall be the sole responsibility of the Lessee. Any and all law enforcement costs incurred or in connection with the operation of the outdoor marketplace shall be the sole responsibility of the Lessee.
12. Prohibition of Liens. Lessee shall not suffer or permit to be placed against the Premises, or any part thereof, any mechanic's, materialmen's, contractor's or subcontractor's liens arising from any claim for damages growing out of the work of construction, repair, restoration, replacement or improvement on the Premises or any other claim or demand howsoever the same may arise, but Lessee shall pay, cause to be paid, or bond against, all of said liens, claims or demands before any action is brought to enforce the same against the Premises; and Lessee shall indemnify and hold District and said Premises free and

harmless from all liability for any and all such liens, claims, and demands, together with all attorneys fees, costs, and expenses in connection therewith.

13. ATM Service. The District has the exclusive right to provide ATM services on the Premises and fairgrounds. The District will coordinate with the Lessee to determine the need for and placement of ATM's within the Premises. The District shall have exclusive right to any and all revenues earned for ATM service.
14. Notices. Any and all notices given under this Lease Agreement or otherwise may be served by enclosing the notice in a sealed envelope addressed to the other party as required by this Paragraph T (14), and sent by certified or registered mail with postage prepaid; or, by personal delivery. Notice shall be deemed given on the day of personal delivery, or five days after mailing. Notice shall be given as follows:

To the District:

32nd District Agricultural Association
88 Fair Drive
Costa Mesa, CA 92626
Attn: Chief Executive Officer

With a copy to:

Deborah M. Fletcher
Office of the Attorney General
110 West A Street, 11th Floor
San Diego, CA 92101

To the Lessee:

Tel Phil Enterprises, Inc.
504 South Bay Front
Newport Beach, CA 92662
Attention: Jeffrey Teller

With a copy to:

Stewart R. Suchman
Law Offices of Stewart R. Suchman
5160 Campus Drive
Newport Beach, CA 92660-2101

15. Successors. Each and all of the terms and conditions herein contained shall be binding upon and shall inure to the benefit of the successors in the interest of the District and, subject to the provisions as to assignment, any successors in interest of the Lessee.

16. Time is of the Essence. Time is of the essence in the performance of this Lease Agreement.
17. Independent Contractor. Lessee is not an employee or agent of the District by reason of this Lease Agreement or otherwise. Lessee is an independent contractor, and as between the District and the Lessee, the Lessee shall be solely responsible for its acts or omissions arising from, or relating to this Lease Agreement.
18. Applicable Law. This Lease Agreement shall be interpreted and enforced in accordance with the laws of the State of California and shall be deemed to have been made, and shall be performed, in the State of California.
19. Prohibition Against Similar Operation. During the Term, Lessee shall not own or operate any similar scale outdoor marketplace in a 25-mile radius from the District grounds.
20. Entire Agreement. Except as provided in Section T(1) above, this Lease Agreement, together with all Exhibits attached hereto, constitutes the entire Agreement between the parties. No promise, representation, warranty, or covenant not included in this lease has been or is relied on by either party.
21. Headings. The headings of this Lease Agreement are inserted only as a matter of convenience and reference and do not define or limit the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provision hereof or the interpretation or construction thereof.
22. Acceptance of Standard Agreement Terms and Conditions. Lessee accepts and agrees to the Standard Agreement Terms and Conditions set forth in Exhibit B, which are incorporated by this reference.
23. Severability. If any covenant, term, condition or provision of this Lease Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Lease Agreement shall be valid and enforceable to the fullest extent permitted by law.
24. Successors. Subject to the provisions of this lease regarding assignment and subletting, each and all of the covenants and conditions of this lease shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns, and personal representatives of the respective parties.
25. Attorneys Fees. If either party brings any action or proceeding arising out of, or in any way related to this Lease Agreement, or any right or remedy under this Lease Agreement, the prevailing party shall be entitled to recover reasonable attorneys fees.

Dated: *June 30, 2005*

32nd District Agricultural Association

By:

Becky Bailey Findley
Becky Bailey-Findley
Chief Executive Officer

Dated:

June 30, 2005

Tel Phil Enterprises, Inc.

By:

Jeffrey Teller
Jeffrey Teller
Chief Executive Officer

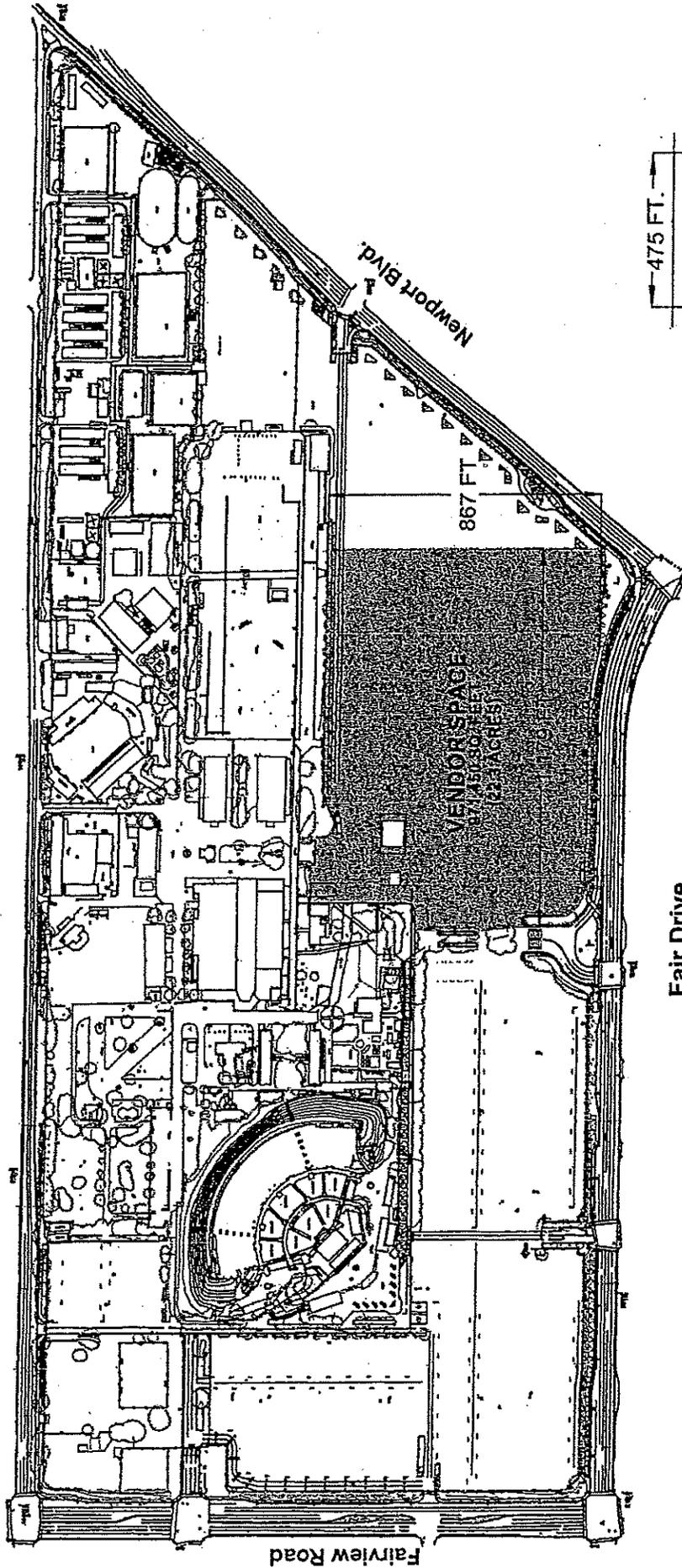
APPROVED

Sue Fick

Department of Food and Agriculture
Division of Fairs & Expositions *sf*

Exhibit A

Arlington Drive



Fair Drive

ORANGE COUNTY FAIR & EXPOSITION CENTER

88 Fair Drive, Costa Mesa, CA 92626 - 714-708-FAIR - www.ocfair.com

STANDARD CONTRACT TERMS AND CONDITIONS (F-31, RENTAL AGREEMENT)

1. National Labor Relations Board (PCC Section 10296)

Lessee, by signing this contract, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal Court has been issued against Lessee within the immediately preceding two-year period because of the Lessee's failure to comply with an order of a Federal Court which orders the Lessee to comply with an order of National Labor Relations Board (Public Contract Code Section 10296).

2. Non-Discrimination Clause/Statement of Compliance (GC 12990/CCR 8103-8120)

During the performance of this contract, Lessee and its subLessees shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Lessees and subLessees shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Lessees and subLessees shall comply with the provision of the Fair Employment and Housing Act (Gov. Code Section 12900, et seq.) and the applicable regulations promulgated thereunder (CA Code of Regulations, Title 2, Section 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code Section 12990 (a-f), set forth in Ch. 5 of Div. 4 of Title 2 of the CA Code of Regulations are incorporated into this contract by reference and made part hereof as if set forth in full. Lessee and its subLessees shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The Lessee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this contract.

Lessee, by signing this contract hereby certifies, unless specifically exempted, compliance with Gov. Code Section 12990 (a-f) and CA Code of Regulations, Title 2, Div. 4, Ch. 5 in matters relating to reporting requirements and the development, implementation and maintenance of a Nondiscrimination Program. Prospective Lessee agrees not to unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.

3. Amendment (GC 11010.5)

Contract modification, when allowable, may be made by formal amendment only.

4. Assignment

This Agreement is not assignable by the Lessee, either in whole or in part, without the consent of the State in the form of a formal written amendment.

5. Governing Law

This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

6. Conflict of Interest (PCC 10410, 10411, 10420)

Lessee needs to be aware of the following provisions regarding current or former state employees. If Lessee has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (PCC 10410):

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent Lessee with any state agency to provide goods or services.

Former State Employees (PCC 10411):

- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Lessee violates any provisions of above paragraphs, such action by Lessee shall render this Agreement void. (PCC 10420).

7. Air or Water Pollution Violation (WC 13301)

Under the State laws, the Lessee shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

EXHIBIT "C" INTENTIONALLY OMITTED

Weekly Report for <dates>

Item	Price	Saturday Number	Saturday Amount	Sunday Number	Sunday Amount
Seller Summary:					
{itemized by type of spaces and prices}					
Total					
Buyer Summary:					
{itemized by type of tickets and prices}					
Complimentary Admissions					
Total					
Parking Summary:					
{itemized by type of tickets and prices}					
Total					
Food and Beverage Summary:					
Food Sales					
Beverage Sales					
Beer/Wine Sales					
Other					
Total					
Attractions Summary:					
{itemized by type of tickets and prices}					
Total					
Miscellaneous Summary:					
{itemize all miscellaneous revenue sources or adjustments, including:					
Sponsorship Revenue					
Pay Phone Commissions					
ATM Machine Commissions}					
Total					
Daily Totals					



AMENDMENT TO OUTDOOR MARKETPLACE LEASE

This Amendment to the August 1, 2005 Outdoor Marketplace Lease is made and entered into effective February 1, 2009, between the 32nd District Agricultural Association, a state institution (“District”), and Tel Phil Enterprises, Inc., a California Corporation (“Lessee”).

District and Lessee agree as follows:

Section I.

Pursuant to the provisions of Paragraph U(2) of the August 1, 2005 Outdoor Marketplace Lease the District and Lessee agree to modify the terms and conditions relating to rental payments, and agree to amend Paragraph F(2) of the August 1, 2005 Outdoor Marketplace Lease to read in full as follows:

F(2). Minimum Guaranteed Rent. The Minimum Guaranteed Rent for each Lease Year is \$3,500,000, payable on a weekly basis as follows:

(a). The Percentage Rent (as that term is defined in Paragraph F(1)) due the District for each operating weekend shall be paid to and received by the District on or before 5:00 p.m. each and every Friday following each weekend the Premises are open for business as provided in Paragraph D. If the Percentage Rent provided for in paragraph F(1) above in any Lease Year is less than the Minimum Guaranteed Rent, Lessee shall pay the difference between the Minimum Guaranteed Rent and the rent paid in the Lease Year in full on or before July 31 of each Lease Year.

Section II.

Except as expressly amended above, the August 1, 2005 Outdoor Marketplace Lease remains in full force and effect.



Dated:

Feb 6, 2009

32nd District Agricultural Association

By:

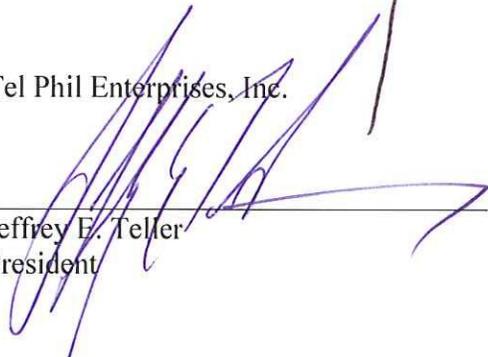


Steven Beazley
Chief Executive Officer

Dated: *FEBRUARY 3, 2009*

Tel Phil Enterprises, Inc.

By:



Jeffrey E. Teller
President

**S E C O N D A M E N D M E N T
T O
O U T D O O R M A R K E T P L A C E L E A S E**

This Second Amendment to the August 1, 2005 Outdoor Marketplace Lease, as amended on February 1, 2009, ("Lease") is made and entered into effective April 1, 2009, between the 32nd District Agricultural Association, a state institution ("District"), and Tel Phil Enterprises, Inc., a California Corporation., doing business as the Orange County Market Place ("Lessee").

RECITALS

A. Current economic conditions have resulted in a decline in revenues generated by the Orange County Market Place.

B. The District desires to be able to use the Premises (as the term "Premises" is defined in the Lease) for an additional four weekends each year for the conduct of other events at the Orange County Fair & Event Center.

C. The parties to this Second Amendment intend this Second Amendment to establish conditions permitting Lessee to conduct the business of the Orange County Market Place in a manner permitting Lessee to adjust to the current economic conditions and to provide the District with the opportunity to utilize the Premises for additional event opportunities.

THEREFORE, in consideration of the above recitals, the agreements in this Second Amendment, and for other good and valuable consideration, the District and Lessee agree as follows:

AGREEMENT

1. **Term.** Pursuant to the provisions of Section **B.** of the Lease, the District hereby elects to exercise its option to extend the term of the Lease for a period of five (5) years, through and including July 31, 2015. Lessee agrees that this Second Amendment constitutes written notice of the District's exercise of its option to extend the term of the Lease in full compliance with the provisions of Section **B** of the Lease.

2. **Dates and Hours of Operation.** Section **D.** of the Lease is amended to add the following:

"The District will have the option to designate up to four (4) additional operating weekends per calendar year (in addition to the five weekend run of the OC Fair) for the District's exclusive use of the full property, including the Premises, for District events. The District will provide written notice to Lessee within 30 days of contracting an outside-promoted event, or approval of a self-produced event; and in all events the District will provide to Lessee at least six months' written notice in advance of the weekend[s] designated by the District for its exclusive use of the full property, including the Premises. The District and Lessee agree that the exercise of this option will not exceed the following limitations, unless mutually agreed to by the parties:

(1) A maximum of two additional weekends may be designated by the District in the six-month period commencing January 1 through and including June 30 of each calendar year; provided, however, no more than one weekend per month may be designated in the months of May and June.

(2) A maximum of two additional weekends may be designated by the District in the six-month period commencing July 1 through and including December 31 of each calendar year; provided, however, no more than one weekend may be designated in the month of December."

3. **Rent.**

Section F(1). "Percentage Rent" of the Lease is amended to read as follows:

"Effective April 1, 2009, the Percentage Rent payable under this Lease shall be 25% on the first \$12 million in Gross Revenues per applicable Lease Year and 35% on Gross Revenues exceeding \$12 million in a Lease Year. "Gross Revenues" is defined as any and all revenue generated by the outdoor marketplace operation to include but not limited to all admission fees, space rental charges, food and beverage sales, miscellaneous income and sales, sponsorship and/or advertising fees collected by the Lessee."

Section F(2). "Minimum Guaranteed Rent" of the Lease is deleted.

Section F(2.5). "Minimum Performance" is added to the Lease:

"Minimum Performance If rent revenues to the District in any Lease Year are less than \$2,000,000, the District and Lessee will each have the option to terminate the Lease by giving the other party not less than nine (9) months advance written notice. During the nine (9) month notice period, Lessee will pay rent at the greater of (a) the new percentage rent established by this Second Amendment; or, (b) at the rate of \$2,000,000.00 per year, or \$166,666.67 per month."

4. **Default and Termination of Agreement.** Section S(6). "Termination Upon Notice" is amended to read as follows:

"Notwithstanding any other provisions of the Lease, or any amendments to the Lease, including this Second Amendment, District reserves the right to terminate this Lease Agreement for any reason whatsoever upon 18 months written notice."

5. **General Conditions.** Section U(3). "Advertising, On-site Signage & Sponsorship" is amended to read in full as follows:

Advertising, On-site Signage & Sponsorship. All advertising shall be subject to the prior approval of District Staff, which approval will not be unreasonably withheld. Lessee shall not advertise in any manner or form on or about the Premises except by means of such signage or forms of mass media advertising approved by the District. Such approval must be in writing prior to display or mass media circulation. Advertising signage as well as operational signs are to be temporary in nature, placed only in the defined outdoor marketplace premises and must be removed and stored at the end of the outdoor marketplace operating weekend. The District and Lessee will collaborate and engage in joint marketing to develop property-wide sponsorship agreements. Both parties will have the right of approval over sponsorship agreements proposed by either party, when such agreements share common elements and involve or affect both District and Lessee. Such approval will not be unreasonably withheld."

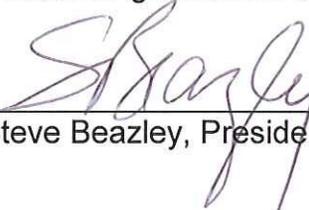
Section U(3.5). "Carnival Lot" is added to the Lease as follows:

Carnival Lot. The District's Carnival Lot is designated as an area that can be used by Lessee, if available and subject to approval by the District, which approval may be granted or withheld by the District in its sole and exclusive discretion, for special programs sponsored by Lessee to attract more people to the Orange County Market Place. The parties will work in good faith to coordinate the calendar of these special events. Lessee will make its requests for such events at least 120 days in advance of the events, and the District will respond to the requests at least 90 days in advance of the events in order to allow adequate time for marketing the events."

6. **Republication.** Except as expressly amended above, the August 1, 2005 Outdoor Marketplace Lease, as amended on February 1, 2009, remains in full force and effect.

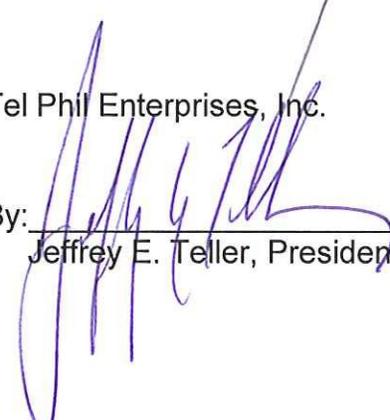
32nd District Agricultural Association

Effective April 1, 2009

By: 
Steve Beazley, President and CEO

Tel Phil Enterprises, Inc.

Effective April 1, 2009

By: 
Jeffrey E. Teller, President