

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**FORT BEND COUNTY FAIR ASSOCIATION
LEASE AGREEMENT**

This Lease Agreement (“Lease Agreement”) is entered into by and between Fort Bend County, Texas, a body corporate and body politic under the laws of the State of Texas acting herein by and through its Commissioners’ Court (hereinafter referred to as “Landlord”), and the Fort Bend County Fair Association, a non-profit Texas corporation (hereinafter referred to as “Tenant”), (individually a “Party” and collectively, the “Parties.

WHEREAS, Section 319.001 of the TEXAS LOCAL GOVERNMENT CODE authorizes a county to provide for annual exhibits of horticultural, agricultural, livestock, mineral, and other products of interest to the community; and

WHEREAS, Landlord desires to lease certain buildings/areas at the Fort Bend County Fairgrounds to Tenant, for the purpose of conducting the Fort Bend County Fair and Rodeo and Rodeo Festival Events (“County Fair”) on an annual basis during the County Fair Period.

NOW THEREFORE, it is mutually agreed by the parties hereto as follows:

**ARTICLE I
GENERAL LEASE TERMS; CONFLICTS, DELETIONS &
REPRESENTATIVES OF THE PARTIES**

1.01 **Definitions:** Unless the context otherwise requires, capitalized terms used in this Lease Agreement have the meanings set forth in Appendix A, attached hereto or otherwise assigned to them in this Lease Agreement.

1.02 **Master Agreement:** The Master Agreement executed between Fort Bend County and the Fort Bend County Fair Association on April 16, 2010, and any amendments/extensions, have expired or are hereby terminated and replaced with this Lease Agreement.

1.03 **Reserved.**

1.04 **Historical Relationship:** The Parties recognize that Tenant and Landlord have had a historical course of dealings for many years with respect to Tenant’s use and occupancy of certain areas/buildings at the Fort Bend County Fairgrounds, and the Parties intend to preserve this relationship and to reasonably cooperate with each other to continue to promote the spirit of youth education and other community benefits related to the County Fair.

1.05 **Landlord Representative:** On the Effective Date of this Lease Agreement, Landlord designates the Fairgrounds Facility Coordinator as Landlord Representative (“the Landlord Representative”). Landlord shall have the right, from time to time, to change the Landlord

6/14/13 2 originals returned to Mary at County Attorney

Representative by giving Tenant written notice thereof. With respect to any action, decision or determination which is to be taken or made by Landlord, the Landlord Representative may take such action or make such decision or determination or shall notify Tenant in writing for a response or action. Actions, decisions or determinations by the Landlord Representative on behalf of Landlord shall be done in his or her reasonable business judgment unless express standards or parameters are included in this Lease Agreement, in which case, actions taken by the Landlord Representative shall be binding on Landlord, *provided, however*, the Landlord Representative shall not have any right to modify, amend or terminate this Lease Agreement. The current County Fair Leased Premises Representative is Mary Staff.

1.06 **Tenant Representative:** On the effective date of this Lease Agreement, Tenant designates the current Fort Bend County Fair Association President (or its designee) as Tenant Representative (“the Tenant Representative.”) Tenant shall have the right, from time to time, to change the Tenant Representative by giving Landlord written notice thereof. With respect to any action, decision or determination which is to be taken or made by Tenant, the Tenant Representative may take such action or make such decision or determination or shall notify Landlord in writing for a response or action. Actions, decisions or determinations by the Tenant Representative on behalf of Tenant shall be done in his or her reasonable business judgment unless express standards or parameters are included in this Lease Agreement, in which case, actions taken by the Tenant Representative shall be binding on Tenant, *provided, however*, the Tenant Representative shall not have any right to modify, amend or terminate this Lease Agreement. Upon replacement of the Tenant Representative, Tenant shall provide written notice to Landlord Representative of the name and contact information of the Tenant Representative on or before November 30 of each year of this Lease Agreement.

ARTICLE 2 GRANT OF LEASEHOLD ESTATE

2.01 **Grant of Lease Agreement:** In consideration of and subject to the covenants, agreements and conditions set forth herein, Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, the following property as provided below:

- (a) Fairgrounds, including all buildings and parking areas, excluding the County Fairgrounds Office, County Maintenance Facilities, Arena Maintenance Barn, and a portion of Building W shown on Appendix “B”, (“Landlord’s Facilities”);
- (b) The Landlord’s FF&E;
- (c) Uninterrupted access to and egress from the Fairgrounds.

2.02 In connection with the rights granted to Tenant in Section 2.01, Landlord recognizes that Tenant has contributed certain capital costs to the construction of improvements at Fairgrounds, as follows:

- (a) Panels,

- (b) Reveal 4-n-1 Drag,
- (c) Fans,
- (d) Marquee,
- (e) Public Address System in the Rodeo Arena, George Barn and Barn "H",
- (f) Bleachers.

In consideration of such contributions by Tenant and other good and valuable consideration contributed by Tenant regarding the Fairgrounds, Landlord hereby agrees to apply such contributions against all amounts owing from Tenant to Landlord pursuant to that certain Funding Agreement For Improvements at the Fort Bend County Fairgrounds by and between the Landlord and Tenant recorded on September 5, 2008 in the Commissioners Court Minutes of August 26, 2008 ("Pavilion Loan"). Tenant shall have no further obligations whatsoever pursuant to the Pavilion Loan, and Landlord will, within thirty (30) days following the date hereof, provide additional, written confirmation of the full and complete satisfaction of the Pavilion Loan.

2.03 Tenant shall have exclusive, uninterrupted access (including ingress and egress) of Tenant's office space, Tenant's portion of Building W, and Tenant's storage building at the Fairgrounds as identified on Appendix B, collectively identified as the "Tenant's Office", on a year-round basis during the Lease Term, as shall be reasonably necessary to use and enjoy under the terms of this Lease Agreement. Tenant shall be solely responsible for all Utilities for Tenant's Office and Building W. All personal property in Tenant's Office and Tenant's portion of Building W shall remain property of Tenant.

A. As part of the consideration for this Lease Agreement, and anything herein or in any other document to the contrary notwithstanding, it is agreed that during the Restricted Period, Tenant shall have the sole and exclusive right and privilege of exhibiting and conducting Professional Rodeo Cowboy Association sanctioned rodeo events, carnival events or concerts at the Fairgrounds unless such event has been consented to by Tenant (each a "Restricted Event").

B. In addition, Landlord agrees that it will not enter into a lease or other contractual arrangement with any other Person for, or that allows, the exhibition or conducting of Restricted Events at the County Fair Leased Premises at any time during the Restricted Period. In addition to any rights and remedies Tenant may have based on a violation by Landlord to a provision of this Lease Agreement, in the event of any violation of this Section 2.03 by Landlord, Tenant shall have the right to obtain an injunction prohibiting any such violation. In connection with any injunction proceedings, Tenant shall also have the right to require Landlord to join in any such injunction proceeding. In connection with the rights granted to Tenant in this Section 2.03, each of Landlord:

(1) recognizes that Tenant has (x) contributed significant capital costs to the construction of improvements and related infrastructure of the Fairgrounds; and

(2) acknowledges and agrees that monetary damages could not be calculated to compensate Tenant for any violation by the Landlord of the covenants, duties and obligations contained in this Section 2.03.

Accordingly, Landlord agrees that (i) Tenant may restrain or enjoin, as provided above in this Section 2.03, any violation or threatened violation of any covenant, duty or obligation contained in this Section 2.03 without, first, attempting to mediated the dispute pursuant to the requirements of Article 14 hereof or the necessity of posting a bond or other security and without any further showing of irreparable harm, balance of harms, consideration of the public interest or the inadequacy of monetary damages as a remedy, (ii) the administration of an order for injunctive relief would not be impracticable and, in the event of any violation of any covenant, duty or obligation contained in this Section 2.03 the balance of hardships would weigh in favor of entry of injunctive relief, (iii) Tenant may enforce any such covenant, duty or obligation contained in this Section 2.03 through specific and (iv) Landlord agrees that Tenant may seek injunctive or other form of relief from a court of competent jurisdiction in order to maintain the status quo and enforce the terms of this Section 2.03 on an interim basis pending the outcome of any other judicial proceeding. Landlord further agrees and irrevocably stipulates that the rights of Tenant to injunctive relief pursuant to this Section 2.03 shall not constitute a "claim" pursuant to Section 101(5) of the United States Bankruptcy Code and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding involving the Landlord.

2.04 **No Warranty of Title:** Subject to Section 2.05 below and without limiting or reducing any of Landlord's covenants contained in this Lease Agreement, Tenant agrees that Landlord is leasing to Tenant all of Landlord's right, title and interest in and to the Fairgrounds without warranty of title.

2.05 **Delivery of Possession and Acceptance:** Landlord covenants and warrants that it is the only fee simple owner of the Fairgrounds. Landlord further covenants and warrants that on the Effective Date, Landlord will deliver to Tenant exclusive possession and occupancy of the Fairgrounds, subject to the terms provided herein. As and when so delivered, the Fairgrounds shall be in good condition and clean condition taking into consideration the condition of the Fairgrounds on the Effective Date, and in compliance with all Governmental Rules (collectively, "Required Condition"). The Parties agree and understand that Landlord is in the process of making numerous improvements and capital expenditures at the Fairgrounds, for the purposes of improving the appearance and utilization of the Fairgrounds and for safety considerations. As such, Landlord warrants to Tenant that the Fairgrounds will be in good condition as required pursuant to this Lease Agreement suitable for Tenant's use for the annual County Fair, and that the overall condition of the Fairgrounds will only improve through the duration of the Lease Term. Every year during the term of this Lease Agreement, Tenant shall provide a written request to Landlord at least forty-five (45) days prior to the first day of the County Fair for the applicable year detailing certain items/labor/set-up necessary to conduct the County Fair; and at a time mutually agreeable to both parties, Landlord and Tenant shall meet to discuss the best method and timeline to accommodate Tenant's request.

2.06 **Covenant of Quiet Enjoyment:** Landlord covenants for the Lease Term that Tenant, upon paying the Payments and upon keeping, observing and performing the terms, covenants and conditions of this Lease Agreement, shall and may quietly and peaceably hold, occupy, use and enjoy Tenant's Office, Tenant's parking spaces, and the other areas described in Section 2.03

above at all times, and the remainder of the Fairgrounds at such times as permitted under this Agreement without ejection or interference by or from Landlord.

2.07 **Use During Certain Periods:**

A. **County Fair:** Subject to the provisions of Section 2.07(E) below, during the County Fair Period, Tenant shall have exclusive, uninterrupted access (including ingress and egress) of the Fairgrounds, to conduct the County Fair, in accordance with the terms of this Lease Agreement. Tenant shall have the sole, continuous and exclusive right to use, occupy, possess, enjoy and control the Fairgrounds on each entire day during this time period, subject to Landlord's access to Landlord's Facilities. Tenant may (i) stage activities attendant to the County Fair anywhere on the Fairgrounds (including the parking facilities), excluding Landlord's Facilities, (ii) cook and otherwise prepare and consume food and beverages at the Fairgrounds (including the parking areas) in accordance with all Governmental Rules, and (iii) set up tents, booths and temporary facilities of any kind or nature at the Fairgrounds. Any portable structures used for tickets/safety shall be the property of Tenant and shall be stored by Tenant when not in use following the County Fair Period.

B. **Tenant Events:** For no additional consideration Tenant shall have the right to use and occupy any portion of the Fairgrounds, for events and meetings for all of the following criteria (the following collectively referred to as "Tenant Events"): any event related to the County Fair, including promotion or operations of Tenant, such as membership, committee, board and staff meetings, functions and banquets, open houses, fundraising events and other marketing events. Tenant shall be required to reserve the area necessary for Tenant Events by requesting of Landlord in writing such Tenant Event within ninety (90) days prior to the date thereof or such shorter period if such portion of the Fairgrounds is available.

C. **Costs and Revenues:** Tenant shall (i) have the right to occupy the reserved portion of the Fairgrounds necessary for Tenant Events without charge other than reimbursement of Landlord's actual and reasonable expenses (including Utilities, as provided in Article 2.03, 2.07(D), Article 4.03 and Article 6.08 and 6.18) directly caused by such use and occupancy and (ii) be permitted to sell admission tickets to attendees of any Tenant Events, and receive all revenues therefrom so long as such tickets are not for a commercial profit. Further, Tenant may sell or provide Concessions to attendees of all Tenant Events and receive one hundred percent (100%) of any revenues derived by Tenant from the sale or provision of such.

D. **Utilities:** Tenant shall be responsible for reimbursing Landlord for the actual cost of Utilities for the portion of the Fairgrounds being used by Tenant during a Tenant Event and that are incurred as a direct result of the holding of such Tenant Event.

E. **Booking Notice Changes:** Tenant shall be allowed to revise the County Fair schedule by delivering written notice to Landlord of its election to do same. Notwithstanding the foregoing, Tenant shall only be allowed to revise the County Fair schedule insofar as the revised dates do not create a conflict with any Landlord Event that has been previously reserved.

F. **Cooperation with Landlord:** In connection with Tenant's administration of the County Fair, Tenant agrees that it will reasonably cooperate with Landlord so as to maximize the availability of the Fairgrounds for Booking events other than the County Fair or Tenant Event ("Landlord Events"). Further, during the County Fair, Tenant shall allow reasonable move-in access and move-out egress of Landlord Events held at the Fairgrounds, provided the same does not interfere with Tenant uses occurring at such time nor reduce or interfere with parking, ingress/egress, operations or other activities permitted for the County Fair for booking Landlord Events.

G. **Marquee and Signs:**

(1) Landlord and Tenant shall have mutual rights to access and use of the existing marquee at the Fairgrounds. Tenant shall have exclusive rights to the existing marquee during the County Fair. Tenant shall operate such Marquee in a manner consistent with past practices. Landlord hereby acknowledges that the Marquee is subject to an existing sponsorship and advertising agreement until September 30, 2017 and hereby consents to the content and aesthetics currently being displayed thereon. All revenue related to the Marquee sponsorship shall be the sole property of Tenant. Tenant shall have no authority to enter any agreement(s) that require any item to be affixed permanently to real property or improvements at the Fairgrounds, including but not limited to any marquee or signage.

(2) Tenant and Landlord shall have access to the control box and all technology related to the operation of the Marquee and electronic Signage during the County Fair and Tenant Events.

(3) Landlord hereby agrees that during the County Fair, it will not grant Signage, advertising or any other rights with respect to the Marquee, Signage or other displays located at the Fairgrounds to any other tenant, licensee, event, exhibitor, user, or occupant of the Fairgrounds ("Other County Fair Ground Users") except during the limited period of such party's event, and Landlord shall require that such sign be removed within five (5) calendar days following such event. Additionally, throughout the Lease Term, Landlord hereby agrees not to enter into any advertising arrangements with any alcohol-related sponsor (including, without limitation, beer and wine companies).

(4) During the County Fair Period and during any Tenant Event, Tenant shall be permitted to display informational and advertising signage and use all existing Signage at the Fairgrounds, provided Tenant shall not obstruct any permanent directional and safety signs installed by Landlord and located at the Fairgrounds.

(5) Tenant shall retain all revenues derived from any Tenant advertisement permitted in this Lease Agreement.

(6) Tenant shall not be required to obtain any approvals related to its use of Signage and advertising during the County Fair Period. Regarding Tenant's use of Signage during any Tenant Event, Tenant shall provide a description of the size, location

and number, but not advertising content, of all signage to be installed related to the Tenant Event for Landlord's reasonable approval. If Landlord fails to respond to Tenant's approval request within five (5) days of Tenant's submission of the same, such request shall be deemed to be approved by Landlord.

H. **Advertising:**

(1) **Temporary Advertising and Signage:** Tenant shall (i) have the exclusive right to sell all Temporary Advertising and Temporary Signage for the County Fair and Tenant Events in accordance with Governmental Rules.

I. **Catering/Self-Service:** Tenant shall have the exclusive right to privately cater or self-serve all Consumable Concessions during the County Fair Period and Tenant Events and notwithstanding Article 5.06 below, and shall not be required to use any concessionaire licensed by Landlord after the Effective Date. Tenant shall have the right to receive for its sole benefit 100% of all revenues derived by Tenant from the sale or provisions of such Consumable Concessions.

J. **Additional Remedies:** The additional rights and remedies of Tenant contained in Section 2.03 shall be equally applicable to this Section 2.07.

K. **Emergency Usage:** Tenant expressly understands that there may be times when an official declaration of emergency by Landlord shall require usage of all or a portion of the Fairgrounds for emergency operations during the County Fair and/or Tenant Event. Landlord shall endeavor to inform Tenant as far in advance as possible of any event that would cause Landlord occupy all or a portion of the Fairgrounds that may disrupt County Fair or Tenant Events and shall provide Tenant with a copy of the Landlord's (County Judge's) order as soon as possible. Landlord shall assist Tenant to make accommodations if Landlord invokes this Section of the Lease Agreement.

ARTICLE 3
LEASE TERM

The term of this Lease Agreement (the "Lease Term") shall commence on the date executed by Landlord (the "Effective Date") and, unless sooner terminated as provided herein, end at 11:59 p.m. on December 31, 2023.

ARTICLE 4
PAYMENTS

4.01 **Payments:** For use of Tenant during the Lease Term, Tenant covenants and agrees to pay to Landlord an annual payment and certain other payments (collectively, the "Payments") as follows:

(a) An amount equal to \$10 for each such Lease Year of the Lease Term, the receipt and sufficiency of which for the entire Lease Term is hereby acknowledged by Landlord; and

(b) Additional costs, expenses, liabilities, obligations and other payments specifically described herein and any other payments, including charges for labor, services or materials, which Tenant has agreed in writing or in this Lease Agreement to pay Landlord, not including Rent Payments.

4.02 In accordance with Section 6.03, Tenant shall reimburse Landlord for all expenses actually incurred by Landlord (without mark-up) for event staffing and any additional staffing for which Tenant is responsible to pay pursuant to this Lease Agreement.

4.03 **Utilities:** In accordance with the provisions of Article 6.18, Tenant shall pay or cause to be paid the costs of Utilities used or consumed by Tenant during the County Fair and for Tenant Events. Landlord at its sole cost and expense shall pay the cost of all other Utilities used or consumed as identified herein.

4.04 **Guaranteed Payments:** For each Lease Year in the Lease Term, Tenant covenants and agrees to pay to Landlord an annual payment (the "Annual Payment") as follows and without offset or deduction other than as expressly provided in this Lease Agreement:

- (a) \$10,000 shall be due and payable on December 1, 2014;
- (b) \$10,000 shall be due and payable on December 1, 2015;
- (c) \$15,000 shall be due and payable on December 1, 2016;
- (d) \$15,000 shall be due and payable on December 1, 2017;
- (e) \$25,000 shall be due and payment on December 1, 2018 and on each December 1 for the remainder of the Lease Term.

4.05 **Promptness of Billing:** Landlord acknowledges and agrees that the prompt performance of repairs for which Tenant is responsible hereunder and submission of invoices to Tenant promptly following the completion the County Fair and Tenant Events is essential to the operations of Tenant. As such, Landlord and Tenant agree that Tenant will not be responsible for any amounts to be paid for by Tenant unless (i) an invoice for any amounts relating to the Tenant Event is received within sixty (60) days of the last day of the County Fair or other Tenant Event and (ii) with respect to any repairs resulting from the County Fair and for which Tenant is obligated to reimburse Landlord pursuant to the terms of this Lease Agreement, a punch-list of such repairs shall be mutually established between the Landlord Representative and the Tenant Representative within seven (7) calendar days from the last day of the County Fair Period and, again within seven (7) days following the date the carnival vendor for the County Fair vacates the Fairgrounds (collectively, "Punch List Period"). In the event Landlord does not notify Tenant, in writing, specifically identifying any damage to the Fairgrounds for which it seeks indemnity or reimbursement pursuant to the terms of this Lease Agreement within the applicable Punch List Period, notwithstanding anything stated herein to the contrary, Tenant shall be released from any and all liability related to such damage.

4.06 **Place and Method of Payment:** All Payments shall be paid to Landlord within forty-five (45) days of the date Tenant receives an invoice, and shall be delivered or mailed to the Fort Bend County Auditor at 301 Jackson, Richmond, Texas 77469, with a copy to the Fairgrounds Facility Coordinator. The person to receive such payments and the address for payment may be

changed from time to time by notice to Tenant from Landlord or such payee as Landlord shall so designate by written notice to Tenant.

4.07 **Audit Rights:** Without limitation to any other provision of this Lease Agreement, Landlord and Tenant shall maintain all records concerning the Fairgrounds that will facilitate an effective audit to determine compliance with the terms of this Lease Agreement. Records shall be kept for five (5) years from the Lease Expiration Date. Tenant shall provide Landlord a copy of Tenant's annual audit, prepared by an outside auditor/certified public accountant on or before August 30 of each year of this Lease Agreement.

ARTICLE 5 USE AND OCCUPANCY

5.01 **Permitted Uses:** During the Lease Term, Tenant shall have the right to use and occupy the Fairgrounds to the extent provided in Article 2, for the following purposes (collectively, the "Permitted Uses"):

- (a) Tenant's Office for business and operations (for meetings, fund-raisers, social events, entertainment events and marketing events that relate to the County Fair);
- (b) The exhibition, production, presentation and broadcasting (or other transmission or electronic distribution) of the County Fair and Tenant Events, and activities related thereto, including meetings, fund-raisers, barbeques, social events, community and public relations, the exhibition of advertising, marketing of the County Fair and Tenant Events ticket sales, sale of food and beverages and any and all other activities which, from time to time, are customarily conducted by operators of county fairs or are related to the business and operations of Tenant, the County Fair or Tenant Events;
- (c) Sale of Consumable Concessions and Non-Consumable Concessions, including food and alcoholic and non-alcoholic beverages, souvenirs and other items customarily sold and marketed at the County Fair;
- (d) Parking in the designated parking areas of the Fairgrounds;
- (e) Retail uses, in kiosks, carts and similar movable or temporary retail facilities;
- (f) Entertainment;
- (g) Staging, production and storage operations by Tenant, licensees and concessionaires;
- (h) The sole and exclusive right to broadcast, disseminate, reproduce and/or transmit by telephone, movies, radio, television, tape, disk, cassette, cable, satellite, dish, direct beam, pay television broadcasts, internet distribution or any other method of reproduction and/or otherwise, any part of all of the County Fair and Tenant Events, and activities related thereto, including pre-show, intermission or mid-show and post-show features and/or events and any and all visual or oral communications relating thereto, and Tenant shall retain for its own use and benefit all revenues, proceeds and receipts there from;
- (i) Storage of equipment, performance equipment and supplies used in connection with the operation in Tenant Office, Tenant's portion of Building W and Tenant's storage building as identified on Appendix B, and all other Permitted Uses;

- (j) The use and enjoyment of the rights and licenses granted to Tenant; and
- (k) Other uses reasonably related or incidental to any of the foregoing.

5.02 **Prohibited Uses:** Tenant shall not use, or permit the use of, the Fairgrounds for any other or additional purposes that are not a Permitted Use without first obtaining the consent of Landlord, which consent shall not be unreasonably withheld. Notwithstanding the Permitted Uses hereunder, Tenant agrees that it shall not use, or permit the use of, the Fairgrounds for the following purposes (collectively, the “Prohibited Uses”):

- (a) Any public or private nuisance in, on or about the Fairgrounds;
- (b) Any purpose which is violative of any government rule or law;
- (c) As a sexually-oriented business of any kind;
- (d) An industrial site,
- (e) A waste disposal site.

5.03 **Enforceability:** The provisions of Section 5.02 shall inure to the benefit of, and be enforceable by Landlord.

5.04 **Landlord Parking Spaces:** Tenant agrees that its use of certain portions of the Fairgrounds shall be limited as provided herein: parking spaces allocated to Landlord, as designated by Landlord in Appendix B. **[Please show on Appendix B]**

5.05 **County Fair Parking Area:** During the County Fair, Tenant shall have the right to use the parking lot located in the Fairgrounds for the following purposes: (i) the general public attending the County Fair, (ii) passenger vehicles holding County Fair issued parking pass or permits, and (iii) exhibitors or performers for the County Fair; provided Tenant shall be entitled to designate a reasonable portion of the Fairgrounds as reserved parking. Additionally, Tenant shall have the right during the County Fair Period to use such portion of the Fairgrounds as Tenant determines is reasonably necessary for any events, performances and operations incidental to the conducting of the County Fair, including Concessions, *provided, however*, Tenant’s use of the Fairgrounds for Concession shall not be permitted to reduce parking by more than ten percent (10%). The provisions of this Section 5.05 shall inure to the benefit of, and be enforceable by, Landlord.

5.06 **Compliance with Governmental Rules:**

- (a) **Tenant:** Tenant shall, throughout the Lease Term, within the time periods permitted by applicable Governmental Rules, comply or cause compliance with all Governmental Rules applicable to Tenant and, except as provided to the contrary in Section 5.06(b) below. Tenant shall have the right to contest the validity or application of any such Governmental Rule, and if Tenant promptly so contests while preventing the imposition of any Liens on the Fairgrounds, then Tenant may postpone compliance with such Governmental Rule during such contest, *provided* that such contest is prosecuted with diligence, except that Tenant shall not so postpone compliance therewith in such a manner as to, or if doing so would, impair the structural integrity of the Fairgrounds, materially limit any right of Landlord to ground lease, operate, maintain, repair, use or occupy the

Fairgrounds, or subject Landlord to any liability or prosecution for a criminal act or cause the Fairgrounds to be condemned or vacated. Landlord shall not, nor shall Landlord allow any other tenant or any third party within Landlord's control to, prevent Tenant from complying with any such Governmental Rules.

- (b) **Landlord:** Landlord shall, throughout the Lease Term, within the time periods permitted by applicable Governmental Rules, comply or cause compliance with all Governmental Rules applicable to the lease, operation, maintenance, repair, use and occupancy of the Fairgrounds to the extent not caused by Tenant's use or occupancy of the Fairgrounds. Landlord shall, however, have the right to contest the validity or application of any Governmental Rule, and if Landlord promptly so contests while preventing the imposition of any Liens on the Fairgrounds, then Landlord may postpone compliance with such Governmental Rule during such contest, *provided* that such contest is prosecuted with diligence, except that Landlord shall not so postpone compliance therewith in such a manner as to, or if doing so would, impair the structural integrity of the Fairgrounds defer any Maintenance or Capital Repairs required to keep the Fairgrounds in a reasonable and safe operating condition, limit any right of Tenant or subject Tenant to any liability or prosecution for a criminal act or cause the Fairgrounds to be condemned or vacated. Tenant shall not, nor shall Tenant allow any third party within Tenant's control to, prevent Landlord from complying with any such Governmental Rules.

5.07 **Rights of Tenant to Revenues:** Notwithstanding anything stated herein to the contrary, Tenant shall be entitled to, and is hereby granted the exclusive right to contract for (subject to the limitations in Article 5.02 above), collect, receive and retain all gross income and revenues and other consideration of whatever kind or nature realized by, from or in connection with Tenant's use or occupancy of the Fairgrounds, including, all gross revenues, royalties, license fees, concession fees and income and receipts of any nature arising from the rights of Tenant's operations of the County Fair and Tenant Events.

ARTICLE 6 OPERATION, MAINTENANCE AND REPAIR

6.01 **Reserved.**

6.02 **Reserved Rights:** Tenant reserves the sole and exclusive right, power and authority to operate the County Fair and Tenant Events. Tenant shall also have such discretion in the use, operation and control of (i) the Fairgrounds during the County Fair Period, (ii) Tenant's Office, storage facilities and other areas described in Section 2.03 above at all times during the Lease Term, as may be needed to fully recognize the benefits and perform efficiently its responsibilities.

6.03 **Staffing:** Tenant shall provide, at Tenant's sole expense, all staffing necessary to safely operate the County Fair and all Tenant Events. Tenant's staffing may include Tenant's own

members, staff, employees, volunteers or hired staff. However, each of Tenant's staff members must meet the qualifications that would have been imposed on such staff member had they been hired or obtained by Landlord to perform the particular duty that they will be performing. Additionally, Landlord, at Tenant's reasonable expense, shall staff the Fairgrounds with two (2) Landlord staff members during the County Fair Period. Tenant's reimbursement costs for Landlord's staffing shall be limited to an amount equal to such Landlord's staff member's wage for the period of time such person works in excess of their normal working hours. Landlord shall be responsible to pay such Landlord's staff, without reimbursement, for such person's normal work schedule. Any predetermined event staffing to which Landlord and Tenant agree may be increased, decreased or modified from time to time only with the prior approval of Landlord and Tenant, which approval shall not be unreasonably withheld, *provided, however*, if Landlord and Tenant cannot agree on event staffing or any modification thereto, then event staffing will be at the level that, in Landlord's reasonable discretion, is necessary to provide a safe environment for the attendees of the County Fair or Tenant Events, as applicable.

6.04 Security: Tenant shall be solely responsible for providing adequate security at the County Fair and at all Tenant Events, and Landlord will cooperate in good faith with Tenant to implement a traffic management plan to facilitate the ingress and egress of traffic to and from the Fairgrounds for the County Fair Period. Notwithstanding anything herein to the contrary (i) all event staffing shall be necessitated by the use and occupancy by Tenant during the County Fair and Tenant Events and (ii) any staff who are a part of Landlord's regular staff shall not be part of event staffing and shall instead continue to be a portion of Landlord staffing.

6.05 Additional Staffing: Staffing in addition to event staffing may be provided by Landlord, at Tenant's expense, *provided* that to the extent, and only the extent, such additional staffing is (i) requested by Tenant or (ii) necessary in Landlord's reasonable discretion in order to provide a safe environment for the attendees of the County Fair or Tenant Events, due to events proximately caused by the holding of the County Fair or Tenant Events (and not as a result of a Force Majeure, Emergency or failure of Landlord to fulfill its Maintenance and Capital Repair obligations), and Landlord has provided Tenant with prior written notice of the necessity of providing such additional staffing, the cost of such additional staffing shall be reimbursed by Tenant. Landlord shall not be obligated to provide additional staffing requested by Tenant, unless Tenant and Landlord subsequently agree as to which Party will be responsible for the expense thereof.

6.06 Staffing Expenses: The Parties agree that (i) Landlord will charge Tenant only Landlord's actual cost for any staff for which Tenant is obligated to reimburse Landlord, without mark-up, and Landlord shall not pass-through to Tenant its corporate or other overhead, (ii) all compensation and benefits to staff will be at market rates (adjusted for each personnel position no more often than on an annual basis) and (iii) no overtime will be charged except as is necessary to an Emergency, as reasonably determined solely by Landlord. It is the intent of the Parties that Landlord should not make any profit through staffing, but seek to recover from Tenant only Landlord's actual costs for such staff that Tenant is obligated to reimburse Landlord pursuant to Section 6.03. To the extent event staffing or additional staffing, the cost of which Tenant ordinarily would be liable to reimburse Landlord, is not only used for the County Fair or Tenant Events, but also for any other event, expenses for such event staffing and such additional

staffing will be fairly and equitably allocated among Tenant and Landlord, to the extent such expenses were incurred in regard to their respective events.

6.07 **Reserved.**

6.08 **Restocking:** Prior to the County Fair, Tenant shall stock the Fairgrounds restrooms, including hand soap, hand towels and toilet paper, and shall maintain a supply and restock as necessary for the duration of the County Fair. Tenant shall have the right to remove any remaining hand soap, hand towels and toilet paper at the Fairgrounds at the end of the County Fair, otherwise, any remaining supplies shall become property of Landlord. For Tenant Events, Landlord shall stock the Fairgrounds restrooms.

6.09 **Cleaning:** Notwithstanding anything herein to the contrary, (i) Landlord shall deliver the Fairgrounds to Tenant in a clean condition, the level of such cleanliness to be mutually agreed upon by Landlord and Tenant but in all events to be no less than the state of cleanliness of similar circumstances for Comparable Facilities, at Landlord's sole cost and expense, (ii) Tenant shall clean the Fairgrounds during the County Fair, the level of such cleaning to be mutually agreed upon by Landlord and Tenant on an annual basis but in all events to be no less than the level of cleaning in similar circumstances for Comparable Facilities, at Tenant's sole cost and expense and as part of event staffing (other than any area of the Fairgrounds operated by Landlord, which shall be cleaned at Landlord's sole cost and expense) and (iii) after the last day of the County Fair.

6.10 **Maintenance and Repairs:**

(a) **Landlord's Obligation:** Landlord shall, throughout the Lease Term, do the following at Landlord's sole cost and expense:

- (1) Keep and maintain the Fairgrounds and Landlord FF&E, taken as a whole, and each component thereof, respectively taken as a whole, in a reasonable and safe condition and perform all Maintenance and all Capital Repairs, or cause the performance of all Maintenance and all Capital Repairs, necessary to accomplish the foregoing;
- (2) Maintain and keep, or cause to be maintained and kept, the Fairgrounds in accordance with Section 6.09 above given the nature and use of the Fairgrounds on the Effective Date.
- (3) Landlord shall provide any Maintenance to the Coolers, but shall not be required to replace the Coolers.

(b) Section 6.10 shall not apply, and Landlord shall have no obligation with respect to, Tenant's Office, and Tenant, at its own cost and expense, shall provide maintenance to Tenant's Office as may be necessary or appropriate to keep Tenant's Office space clean and in good condition, ordinary wear and tear excepted, for the purposes for which Tenant has been granted the right to use and occupy the same.

(c) **Tenant's Obligation**: Tenant shall pay any utility charges necessary to operate the Fairgrounds during the County Fair Period and Tenant Events. Tenant shall have the option to remove Coolers (or relocate a Cooler to Building W) at any time prior to the 2013 County Fair, at Tenant's expense. Tenant shall coordinate the removal of Coolers with Landlord so as to minimize damage to facilities. Additionally, during the County Fair, Tenant shall be obligated to provide cleaning in accordance with Section 6.09 above, maintain the Tenant's Office. All Maintenance and Capital Repair Work shall be the sole responsibility of Landlord. Tenant shall be obligated to reimburse Landlord for any damage to the Fairgrounds resulting directly from the County Fair during the County Fair or any Tenant Event.

6.11 **Readiness of the Performance Areas**: During the County Fair Period, Landlord shall authorize Tenant's use of Landlord's Reveal 4-n-1 Drag (which shall be deemed to be included in Landlord's FF&E) to be pulled by Tenant's tractor to prepare the "Rodeo Dirt" to the quality and thickness suitable for professional rodeo competition.

6.12 **Reserved**.

6.13 Subject to the limitations and requirements contained in this Section 6.13, Tenant shall have the right at any time and from time to time to (i) request Landlord to make changes or alterations to the Fairgrounds so that the Fairgrounds taken as a whole, contains and exhibits those improvements, equipment and standards which are likely to engender interest and increase use among prospective guests, invitees, concessionaires, sponsors and advertisers; provided, however, Tenant acknowledges that improvement "upgrades" to the Fairgrounds to be performed by Landlord will take place over a reasonable period of time and under the sole discretion of Landlord.

6.14 **Work Performed - General Requirements**: All work at the Fairgrounds (i) shall be prosecuted with due diligence in a good and workmanlike manner in accordance with standard construction practices for construction, repair, renewal, renovation, demolition, rebuilding, addition or alteration, as the case may be, using qualified workers and subcontractors, and in compliance with the laws governing political subdivisions of the State of Texas, and (ii) shall be completed with all reasonable dispatch, free any liens and encumbrances.

6.15 **Work Permits**: Neither Tenant nor Landlord shall do or permit others to do any work at the Fairgrounds, unless such performing party shall have first procured and paid for all permits and authorizations then required by all applicable Governmental Authorities for the work being performed. Tenant shall not make any modifications of any kind to the Fairgrounds without obtaining prior written approval from Landlord.

6.16 **Tenant's Remedial Work**: Tenant shall be responsible for paying the cost of performing any and all corrective or remedial actions required by applicable Governmental Rules to be performed with respect to (i) any Environmental Event caused by Tenant, or any of its agents, contractors or subcontractors, guests or invitees at any time and (ii) any Hazardous Materials that are introduced to the Fairgrounds on or after the Effective Date by Tenant, or any of its agents, guests or invitees, agents, contractors or subcontractors. Tenant shall promptly

inform Landlord and all applicable governmental authorities of any Environmental Event or Hazardous Materials discovered by Tenant in, on or under the Fairgrounds and promptly shall furnish to Landlord any and all reports and other information available to Tenant concerning the matter. Landlord and Tenant shall promptly thereafter meet to discuss the steps to be taken to investigate and, if necessary, remedy such matter, including mutual selection of an independent consultant to evaluate the condition of the Fairgrounds and materials thereon and therein. If it is determined pursuant to an evaluation conducted by the mutually selected independent environmental consultant that remediation of the same is required by this section, then Tenant shall pay the costs of such evaluation and Landlord shall perform Tenant's Remedial Work at Tenant's cost and expense and with due diligence. Alternatively, if it is determined pursuant to an evaluation conducted by the mutually selected independent environmental consultant that remediation of the same is required by Landlord, then Landlord shall pay the costs of such evaluation and shall perform Landlord's Remedial Work at its own cost and expense and with due diligence.

6.17 Landlord's Remedial Work: Landlord shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions required by applicable Governmental Rules to be performed with respect to (i) any Environmental Event caused by Landlord or any of its agents, contractors or subcontractors, guests or invitees, other tenants or licensees or their agents, contractors or subcontractors, guests or invitees, (ii) any Hazardous Materials at the Fairgrounds as of the Effective Date and (iii) any Hazardous Materials that are introduced to the Fairgrounds on or after the Effective Date, except Hazardous Materials introduced by Tenant, or any of its agents, contractors or subcontractors, guests or invitees. Landlord shall promptly inform Tenant and all applicable governmental authorities of any such Environmental Event or any Hazardous Materials discovered by Landlord (or any agent, contractor, subcontractor, other tenant or licensee of Landlord) in, on or under the Fairgrounds and promptly shall furnish to Tenant any and all reports and other information available to Landlord concerning the matter. Landlord and Tenant shall promptly thereafter meet to discuss the steps to be taken to investigate and, if necessary, remedy such matter, including mutual selection of an independent environmental consultant to evaluate the condition of the Fairgrounds and any materials thereon and therein. If it is determined pursuant to an evaluation conducted by the mutually selected independent environmental consultant that remediation of the same is required by this section, then Landlord shall pay the costs of such evaluation and shall perform the remedial work at its own cost and expense and with due diligence. Alternatively, if it is determined pursuant to an evaluation conducted by a mutually selected independent environmental consultant that remediation of the same is required Tenant pursuant to Section 6.16 above, then Tenant shall pay the costs of such evaluation and shall perform Tenant's Remedial Work at its own cost and expense and with due diligence.

6.18 Utilities: Landlord shall, at its sole cost and expense, cause the Utilities to be supplied as may be necessary or appropriate for the operation of the Fairgrounds and Tenant's use and occupancy thereof in accordance with the terms of this Lease Agreement on a seven (7) day per week, twenty-four (24) hours per day basis. With respect to electrical utilities, Landlord shall ensure that electricity is provided sufficient to operate at the locations and within the capacity limits of the electrical components of the Fairgrounds, as they exist as of the Effective Date. Tenant shall pay the cost of any tap fees, special equipment, line extension or other hookup

charges of any kind relating to any of the Utilities. Notwithstanding the foregoing in this section to the contrary, (i) Tenant shall be solely responsible for obtaining service at the point of consumption of, and for the payment of all charges (including deposits), programming fees and service charges, for Tenant's use of telephone service and cable television service in Tenant's Office, provided that no hookup charges shall be imposed by Landlord for such purpose and (ii) subject to Section 2.07(D), Tenant shall be responsible for reimbursing Landlord for the actual cost of Utilities used during the County Fair, and as used by Tenant during a Tenant Event that are incurred as a direct result of the holding of such Tenant Events.

6.19 **Landlord's Liability for Interruption of Utilities:** Landlord shall incur no liability to Tenant on account of any interruption or stoppage of any Utilities if such interruption or stoppage is beyond the reasonable control of Landlord, provided Landlord immediately commences reasonable efforts, in good faith to (a) mitigate the effects of such interruption or stoppage and (b) restore full service any of such Utilities. For purposes of the preceding sentence (without limiting the meaning of the phrase "beyond the reasonable control of Landlord"), it shall not be deemed that any such interruption or stoppage was beyond the "reasonable control of Landlord" if (i) the principal reason for such interruption or stoppage was the failure or refusal of Landlord to pay a monetary sum (unless this Lease Agreement requires Tenant to pay such sum and Tenant has failed to pay such sum) or (ii) such interruption of or stoppage was caused by (a) faulty design or any power plant serving the Fairgrounds, or (b) the act or omission of Landlord, or any of their contractors, subcontractors, laborers or materialmen or (d) the failure of Landlord to enter into a contract agreement for providing such Utility with a provider with adequate capacity to provide any such Utilities, unless the provider of such Utilities is selected by Tenant, and Landlord has not approved the identity of such provider, such approval not to be unreasonably withheld by Landlord and a requirement in such contract or agreement that such Utilities be provided on a firm and uninterruptable basis, unless the provider of such Utilities is selected by Tenant and such provider refuses contract to provide such Utilities on a firm and uninterruptable basis. Landlord shall be solely responsible for selection a power supplier for the Fairgrounds, including any portion occupied by Tenant.

6.20 **Tenant's Office/Meeting Space:** The Utilities to be provided to Tenant's Office in accordance with this Section shall be made available to Tenant seven (7) days a week, twenty-four (24) hours a day and in a manner consistent with Tenant's historical use of Tenant's Office space, and subject to Section 2.03 above.

ARTICLE 7 IMPOSITIONS

7.01 **Taxes and Assessments:**

A. Impositions: Landlord and Tenant agree that the Fairgrounds and Landlord's FF&E are governmentally owned and should not be subject to any Impositions. The Parties agree to reasonably cooperate with each other in order to keep the Fairgrounds and Landlord's FF&E free from Impositions. Nevertheless, throughout the Lease Term, in the event that Impositions are levied on, or payable with respect to, the Fairgrounds and Landlord's FF&E or the Leasehold

Estate, Tenant shall not be responsible for such, and Landlord shall be solely responsible for all such amounts.

B. **Impositions on Tenant Owned Personalty:** Throughout the Lease Term, Tenant shall pay, or cause to be paid, all Impositions, if any, levied on, or payable with respect to, Tenant's FF&E that is owned by Tenant or that is used by Tenant and is not part of the Fairgrounds. Tenant shall pay all such Impositions directly to the taxing authority or other payee thereof.

ARTICLE 8 INSURANCE AND INDEMNIFICATION

8.01 A. **Policies Required from Tenant:** Commencing on the Effective Date, and at all times during the Lease Term and continuing thereafter until Tenant has fulfilled all of its obligations under Article 12 (unless otherwise provided below), Tenant shall, at its sole cost and expense, obtain, keep and maintain or cause to be obtained, kept, and maintained, the following insurance policies:

1. Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
2. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
3. Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$100,000 each accident and \$300,000 in the annual aggregate. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.
4. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

B. **Landlord's Insurance:** Throughout the Lease Term, Landlord shall be required to obtain and maintain, or cause to be obtained and maintained, (i) special form (formerly known as "all-risk") property insurance including the perils of earthquake and terrorism, vandalism, malicious mischief, wind, water damage and sprinkler leakage coverage, on the Fairgrounds in forms consistent with policies typically carried by owners of Comparable Facilities.

C. **Waiver of Claims and Subrogation:** NOTWITHSTANDING ANYTHING IN THIS LEASE AGREEMENT TO THE CONTRARY, LANDLORD AND TENANT EACH, ON BEHALF OF THEMSELVES AND THEIR RESPECTIVE SUCCESSORS, ASSIGNS AND INSURERS, HEREBY (A) WAIVES AND RELEASES ANY AND ALL RIGHTS OF

RECOVERY, CLAIMS, ACTIONS OR CAUSES OF ACTION AGAINST THE OTHER AND ITS RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, SHAREHOLDERS, AGENTS, SERVANTS, EMPLOYEES, GUESTS, LICENSEES OR INVITEES FOR ANY LOSS OR DAMAGE THAT MAY OCCUR TO THE FAIRGROUNDS, OR ANY IMPROVEMENTS THERETO, OR ANY PERSONAL PROPERTY LOCATED THEREIN BY REASON OF FIRE, THE ELEMENTS, OR ANY OTHER CAUSE WHICH ARE OR COULD BE INSURED AGAINST UNDER THE TERMS OF THE INSURANCE POLICIES REFERRED TO IN THIS SECTION 8.01, AND EVEN IF LANDLORD ELECTS TO SELF-INSURE, REGARDLESS OF CAUSE OR ORIGIN, INCLUDING NEGLIGENCE OF THE OTHER PARTY HERETO OR ITS RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, SHAREHOLDERS, AGENTS, SERVANTS, EMPLOYEES, GUESTS, LICENSEES OR INVITEES, AND (B) COVENANTS THAT NO INSURER SHALL HOLD ANY RIGHT OF SUBROGATION AGAINST SUCH OTHER PARTY. IF THE RESPECTIVE INSURER OF LANDLORD AND TENANT DOES NOT PERMIT SUCH A WAIVER WITHOUT AN APPROPRIATE ENDORSEMENT TO SUCH PARTY'S INSURANCE POLICY, THEN LANDLORD AND TENANT EACH SHALL NOTIFY ITS INSURER OF THE WAIVER SET FORTH HEREIN AND SECURE FROM SUCH INSURER AN APPROPRIATE ENDORSEMENT TO ITS RESPECTIVE INSURANCE POLICY WITH RESPECT TO SUCH WAIVER. The amount of any deductible or self-insured retention applicable to any loss or damage described in this paragraph shall be deemed included in such waiver (such that the waiving party shall be responsible for such deductible or such self-insured retention).

8.02 **Failure to Maintain:** If at any time and for any reason Tenant fails to provide, maintain, keep in force and effect, or deliver to Landlord proof of any of the insurance required under this Lease Agreement and such failure continues for ten (10) days after notice thereof from the other Landlord to Tenant, Landlord may, but shall have no obligation to, procure single interest insurance for such risks covering Tenant, and Tenant shall, within ten (10) days following Landlord's demand and notice, pay and reimburse Landlord.

8.03 **Additional Policy Requirements:**

A. Insurers; Certificate and Other Requirements. All insurance policies required to be procured under this Lease Agreement shall be effected under valid policies issued by insurers which have an Alfred M. Best Company Inc. rating of "A-" or better.

B. Each and every policy required to be carried hereunder shall provide for blanket waivers of subrogation by endorsement or other means if required by contract which waivers of subrogation shall be effective as to any Party.

C. Each and every insurance policy required to be carried hereunder by on behalf of Tenant shall provide (and any certificate evidencing the existence of each such insurance policy shall certify) that such insurance policy shall not be canceled, nonrenewed or coverage there under materially reduced unless Landlord shall have received written notice of cancellation, non-renewal or material reduction in coverage, in each such case (except for notice of cancellation due to non-payment of premiums) such written notice may be sent to the other Party not less than ninety (90) days (or the maximum period of

days permitted under Governmental Rule, if less than ninety (90) days) prior to the effective date such cancellation, non-renewal or material reduction in coverage [**Verify with Insurance that this is possible**], as applicable. In the event any insurance policy is to be canceled due to non-payment of premiums, the requirements of the preceding sentence shall apply except that the written notice shall be sent to the other Party on the earliest possible date but in no event less than ten (10) days prior to the effective date of such cancellation.

8.04 **Delivery of Evidence of Insurance:** With respect to each and every one of the insurance policies required to be obtained, kept or maintained under the terms of this Lease Agreement, on or before the date on which each such policy is required to be first obtained and prior to the expiration of any policy required hereunder previously obtained, Tenant shall deliver to Landlord evidence showing that such insurance is in full force and effect. Such evidence shall include certificates of insurance issued by a responsible officer of the issuer of such policies, or in the alternative, a responsible officer of an agent authorized to bind the named issuer, setting forth the name of the issuing company, the coverage, limits, deductibles, endorsements, term and termination provisions thereon. By no later than (i) thirty (30) days after the effective date of any insurance policy required, Tenant shall provide Landlord with reasonable evidence that premiums have either been paid or are payable in installments and (ii) one hundred twenty (120) days after the effective date of any insurance policy required, Tenant shall provide Landlord a certificate of such insurance policy.

8.05 **Indemnification:**

A. Tenant's Agreement to Indemnify: TENANT SHALL, EXCEPT AS PROVIDED IN ARTICLE 8.05(B), DEFEND, PROTECT, INDEMNIFY AND HOLD LANDLORD, THE COUNTY, AND THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, SUITS, CLAIMS AND JUDGMENTS OF ANY NATURE (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES), ARISING FROM OR IN CONNECTION WITH ANY INJURY TO OR DEATH OF A THIRD PERSON OR ANY DAMAGE TO PROPERTY OF A THIRD PERSON (INCLUDING LOSS OF USE) RESULTING FROM, ARISING OUT OF IN CONNECTION WITH TENANT'S USE OR OCCUPANCY OF THE FAIRGROUNDS DURING THE COUNTY FAIR PERIOD AND IN CONNECTION WITH A TENANT EVENT OR THE NEGLIGENCE OR WILLFUL MISCONDUCT OF TENANT, TENANT'S CONTRACTORS, EMPLOYEES, MEMBERS, OFFICERS, DIRECTORS, AGENTS, ANY INDIVIDUAL APPOINTED BY TENANT WHILE ACTING IN SUCH CAPACITY.

B. Tenant's Exclusions: Notwithstanding the provisions of Article 8.05(A) above, Tenant shall not be liable for any liabilities, damages, suits, claims and judgments of any nature (including reasonable attorneys' fees and expenses) arising from or in connection with: (1) any injury to or death of a person or any damage to property (including loss of use) to the extent of the negligence or willful misconduct of Landlord, any of Landlord's

other tenants, or their respective employees, officers, directors, contractors, agents, invitees, or the negligence or willful misconduct of any person other than those referenced in Article 8.05(A), (2) Landlord's violation of any provisions of this Lease Agreement or any applicable Governmental Rules , or deed restriction or insurance policy, now or hereafter in effect and applicable to Landlord; (3) the existence of any Hazardous Materials in, on or under the Fairgrounds prior to the Effective Date, but the foregoing shall not apply to any Hazardous Materials that are introduced to the Fairgrounds by Tenant, or any of its employees, members, officers, directors, contractors, agents, invitees; or (4) any Environmental Event caused by Landlord, any of Landlord's other tenants, or any of their respective employees, officers, directors, contractors, agents, invitees, or caused by the negligence of any other person other than those referenced in clause (ii) of Article 8.05(A).

C. Landlord's Agreement to Indemnify: LANDLORD SHALL, EXCEPT AS PROVIDED IN ARTICLE 8.05(D), (BUT ONLY TO THE EXTENT IN FORCE AND APPLICABLE AND AUTHORIZED BY LAW), DEFEND, PROTECT, INDEMNIFY AND HOLD TENANT AND ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS HARMLESS FROM AND AGAINST ANY AND ALL (A) LIABILITIES, DAMAGES, SUITS, CLAIMS AND JUDGMENTS OF ANY NATURE (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES), ARISING FROM IN CONNECTION WITH ANY INJURY TO OR DEATH OF A PERSON OR ANY DAMAGE TO PROPERTY OF A PERSON (INCLUDING LOSS OF USE) RESULTING FROM, ARISING OUT OF OR IN CONNECTION WITH (i) THE LEASE, OPERATION, USE, OCCUPANCY, MAINTENANCE OR REPAIR OF THE FAIRGROUNDS BY LANDLORD, ANY OF LANDLORD'S OTHER TENANTS, THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, CONTRACTORS, AGENTS, INVITEES, OR (ii) THE NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD, OR THEIR RESPECTIVE LICENSEES, TENANTS (OTHER THAN TENANT), CONTRACTORS, EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, INVITEES OR SPACE TENANTS (OTHER THAN SPACE TENANTS *THAT* ARE LICENSED DIRECTLY AND SOLELY BY TENANT) OR (B) LIABILITIES ANY NATURE RESULTING FROM, ARISING OUT OF OR IN CONNECTION WITH ANY FINANCIAL RESPONSIBILITY OF TENANT PURSUANT TO ARTICLE 7.01(B).

D. Landlord's Exclusions: Notwithstanding the provisions of Article 8.05(C), Landlord shall not be liable for any liabilities, damages, suits, claims and judgments of any nature (including reasonable attorneys' fees and expenses) arising from or in connection with: (1) Any injury to or death of a person or any damage to property (including loss of use) to the extent of the negligence or willful misconduct of Tenant, its employees, members, officers, directors, contractors, agents, invitees; (2) Tenant's violation of any provisions of this Lease Agreement or any applicable Governmental Rules or deed restriction or insurance policy, now or hereafter in effect and applicable to Tenant; (3) any Hazardous Materials in violation of Governmental Laws that are introduced to the Fairgrounds by Tenant, or any of its employees, officers, members, directors, contractors, agents,

invitees; (4) any Environmental Event caused by Tenant, or any of its employees, officers, directors, contractors, agents, invitees.

8.06 **No Third Party Beneficiary**: The provisions of this Article 8 are solely for the benefit of Landlord and Tenant and are not intended to create or grant any rights, contractual or otherwise, to any other person.

8.07 **Conduct of Claims**: The Party entitled to indemnification under this Article (the "Indemnified Party") shall reasonably promptly after the receipt of notice of any legal action or claim against such Indemnified Party in respect of which indemnification may be sought pursuant to this Article, notify the other Party (the "Indemnifying Party") of such action claim. The Indemnifying Party shall not be obligated to indemnify the Indemnified Party with respect to any such action or claim if the Indemnified Party knowingly fails to notify the Indemnifying Party thereof in accordance with the provisions of this Article in sufficient time to permit the Indemnifying Party to defend against such matter and to make a timely response thereto, including any responsive motion or answer to a complaint, petition, notice or other legal, equitable or administrative process relating to the action or claim, but only in so far as such knowing failure to notify the Indemnifying Party has actually resulted in prejudice or damage to the Indemnifying Party. In case any such action or claim shall be made or brought against the Indemnified Party, the Indemnifying Party may, or if so requested by the Indemnified Party shall, assume the defense thereof with counsel of its selection reasonably acceptable to the Indemnified Party and which shall be reasonably competent and experienced to defend the Indemnified Party. In such circumstances, the Indemnified Party shall (i) at no cost or expense to the Indemnified Party, cooperate with the Indemnifying Party and provide the Indemnifying Party with such information and assistance as the Indemnifying Party shall reasonably request in connection with such action or claim and (ii) at its own expense, have the right to participate and be represented by counsel of its own choice in any such action or with respect to any such claim. If the Indemnifying Party assumes the defense of the relevant claim or action, (a) the Indemnifying Party shall not be liable for any settlement thereof which is made without its consent and (b) the Indemnifying Party shall control the settlement of such claim or action; *provided, however*, that the Indemnifying Party shall not conclude any settlement which requires any action or forbearance from action or payment or admission by the Indemnified Party or any of its Affiliates without the prior approval of the Indemnified Party. The obligations of an Indemnifying Party shall not extend to any loss, damage and expense of whatever kind and nature (including all related costs and expenses) to the extent the same results from the taking by the Indemnified Party of any action (unless required by law or applicable legal process) after the assertion of any claim which gave rise to the obligation to indemnify which prejudices the successful defense of the action or claim, without, in any such case, the prior written consent of the Indemnifying Party (such consent not to be required in a case where the Indemnifying Party has not assumed the defense of the action or claim). The Indemnified Party agrees to afford the Indemnifying Party and its counsel the opportunity to be present at, and to participate in, conferences with all Persons, including Governmental Authorities, asserting any claim or action against the Indemnified Party covered by the indemnity contained in this Article or conferences with representatives of or counsel for such person.

ARTICLE 9
OWNERSHIP OF FAIRGROUNDS/ACCESS

9.01 **Title to the Fairgrounds:**

A. Ownership: Fee title to the Fairgrounds shall be and remain in the Landlord. All Tenant's FF&E and other personal property installed on, affixed to or placed or used in the operation of the Fairgrounds, by or on behalf of Tenant throughout the Lease Term shall be and remain the property of Tenant at all times and shall not be considered part of the Fairgrounds, except for Landlord's FF&E installed, affixed, attached or supplied by Landlord or any Landlord's FF&E paid for out of any insurance fund, and all repairs to, replacements of, and substitutions therefor.

B. Sale or Disposal of Equipment or Other Personal Property: Landlord shall have the right at any time and from time to time, to sell or dispose of any Physically Obsolete or Functionally Obsolete equipment, fixtures, machinery, furniture, furnishings and other personal property that constitutes a part of the Fairgrounds (specifically excluding only Tenant FF&E) (collectively, "Personalty") and use the proceeds thereof for Capital Repair or Maintenance Work pursuant to the terms of this Lease Agreement; *provided, however*, that if such Personalty is necessary for operation of the Fairgrounds in accordance with the requirements of Section 6.01, Landlord shall then or prior thereto or as reasonably necessary thereafter substitute, at its sole cost and expense, for the same other Personalty, not necessarily of the same character but capable of performing the same function as that performed by the Personalty so disposed of, and of good quality and suitable for its intended purpose and title to such substitute Personalty shall vest in Landlord; *provided* that Landlord will not replace Functionally Obsolete personalty with Physically Obsolete personalty.

9.02 **Tenant's Office:** During the Lease Term, Landlord and its reasonably necessary authorized representatives, shall only have access to Tenant's Office provided Landlord uses reasonable efforts given the totality of the circumstances to deliver to Tenant notice twenty-four (24) hours in advance of such contemplated access and provided such access is for the purpose of (a) inspection, (b) the performance of (i) maintenance and repair to be performed by Landlord, as determined solely by Landlord, (ii) any Landlord remedial work, or (iii) other work in Tenant's Office made necessary by reason of Tenant's default, (c) Landlord's operation of Tenant's Office pursuant to the terms hereof, as applicable, or (d) reasonable exhibition of the Tenant's Office to others during the last twelve (12) months of the Lease Term; *provided, however*, if reasonably possible the foregoing items (a), (b) and (d) shall be performed by Landlord on days other than during the County Fair; *and further provided that* if the foregoing items (a), (b) and (d) must be performed during the County Fair, such entry shall be conducted in such a manner as to minimize interference with the activities being conducted in Tenant's Office. During normal business hours and upon written notice to Landlord, Tenant shall have the right to review any records maintained by Landlord, or otherwise available to Landlord, regarding access by any persons to and from Tenant's Office.

9.03 **Emergency Situations:** Notwithstanding Article 9.02, Landlord will have access to the Fairgrounds and Tenant's Office in any circumstance in which Landlord in good faith believes that an Emergency exists. In such circumstances, Landlord's activities shall be limited to taking reasonable action in order to safeguard lives, property or the environment (including any repair or maintenance necessary under such Emergency circumstances). Landlord may contact to provide notice in the event of an Emergency to the Tenant Representative, provided Landlord shall only be required to make reasonable attempts to contact representatives of Tenant.

ARTICLE 10 CASUALTY DAMAGE

10.01 **Damage or Destruction:** If, at any time during the Lease Term, there is any damage, destruction, or other property casualty resulting from any fire, or any force majeure or other sudden, unexpected or unusual cause ("Casualty"), to the Fairgrounds or any part thereof, Landlord shall (subject to a reasonable time allowance for the purpose of adjusting the insurance loss) at its sole cost and expense use all reasonable efforts to promptly secure the area of damage or destruction to safeguard against injury to persons or property and remediate any hazard, and promptly thereafter, notify Tenant in writing of the estimated time to remedy such Casualty and restore the Fairgrounds to a safe condition whether by repair or by demolition, removal of debris and screening from public view. Landlord shall, to the extent allowed by law, promptly commence and thereafter proceed with reasonable diligence to repair, restore, replace or rebuild the Fairgrounds as nearly as practicable to a condition which is at least substantially equivalent to that existing immediately prior to such damage or destruction, subject to the terms of Article 10.02 below. Such repair, restoration, replacement or rebuilding, including temporary repairs for the protection of other property pending the completion of any such work, remediation of hazards and restoration of the Fairgrounds to a safe condition or any demolition and debris removal required are sometimes referred to in this Lease Agreement as the "Casualty Repair Work." To the extent any Casualty Repair Work is not performed by Landlord's employees, such Casualty Repair Work must be performed on an arms length, bona fide basis by persons who are not affiliates of Landlord and on commercially reasonable terms given the totality of the then existing circumstances.

10.02 **Option to Terminate:**

A. **Damage or Destruction of Substantially All of the Improvements:** In the event that substantially all of the Improvements are damage or destroyed by a Casualty that is not the result of the willful misconduct of Tenant or any of its agents, employees, members, or contractors, Tenant may, at its option (exercised with reasonable promptness in the circumstances, but in all events within ninety (90) days after the date Tenant receives the written notification of the estimated time to remedy such Casualty), terminate this Lease Agreement by (i) serving upon Landlord notice within such period setting forth Tenant's election to terminate this Lease Agreement as a result of such Casualty as of the end of the calendar month in which such notice is delivered to Landlord and (ii) paying to Landlord, concurrently with the service of such notice, prorated portion of Annual Rental through the date of said termination. Upon the service of

such notice and the making of such Payments within the foregoing time period, this Lease Agreement shall cease and terminate on the date specified in such notice with the same force and effect as if such date were the date originally fixed as the Lease Expiration Date. Failure to terminate this Lease Agreement within the foregoing time period shall constitute an election by Tenant to keep this Lease Agreement in force. If Tenant elects to so keep this Lease Agreement in full force and effect, Landlord shall commence to perform the Casualty Repair Work and prosecute such Casualty Repair Work to completion as provided in this Article 10, unless the Casualty occurs at any time during the last four (4) years of the Lease Term in which event Landlord may elect to terminate this Lease Agreement by written notice to Tenant within one hundred twenty (120) days after such Casualty, with such termination to be deemed a termination by Tenant under the terms of this Article 10.

B. Definition of Substantially All of the Improvements: For the purposes of this Article, "Substantially All of the Improvements" shall be deemed to be damaged or destroyed if such Casualty causes an Untenantable Condition to exist, or be reasonably expected to exist, for more than two (2) years from the date of the Casualty. The determination of whether the Fairgrounds can be rebuilt, repaired and/or reconfigured in order to remedy such Untenantable Condition within such two (2) year period shall be made within sixty (60) days of the date of Casualty by an independent architect mutually selected by Landlord and Tenant.

ARTICLE 11 ASSIGNMENT/SUBLETTING

11.01 **Assignments of Tenant's Interest; Subleasing:** Excepting vendors during the County Fair, sublease, licenses, and other occupancy rights which are hereby permitted by Landlord, Tenant may not (and Tenant agrees that it will not), voluntarily, involuntarily, by operation of law or otherwise (including by way of merger or consolidation), sell, assign, transfer, sublease, pledge, mortgage or encumber this Lease Agreement without first obtaining the consent Landlord pursuant to this Article 11, which consent shall not be unreasonably withheld.

11.02 Any transfer authorized by Landlord shall have the Transferee assume responsibility for performance of the obligations of Tenant under this Lease Agreement (but only to the extent in force and applicable) arising on and after the date of the Transfer pursuant to an instrument of assignment and assumption substantially in the form of an Assignment and Assumption Agreement, approved by Landlord, which approval shall not be unreasonably withheld, delayed or conditioned and shall be limited to the question of whether such instrument, when duly executed, will accomplish its intended purposes under this Lease Agreement.

ARTICLE 12
DEFAULT AND REMEDIES

12.01 **Events of Default:**

A. Tenant Default: The occurrence of any of the following shall be an “Event of Default” by Tenant or a “Tenant Default”:

(1) The failure of Tenant to pay any Payment due and payable under Article 4 of this Lease Agreement if such failure continues for more than ten (10) days after Landlord gives written notice to Tenant that such amount was not paid when due;

(2) The failure of Tenant to perform each and every covenant and agreement of Tenant with respect to insurance policies and coverages to be maintained by Tenant pursuant to and in accordance with Article 8.01 of this Lease Agreement if such failure is not remedied within five (5) days after Landlord gives written notice to Tenant of such failure;

(3) Any material representation or warranty confirmed or made in this Lease Agreement by Tenant shall be found to have been incorrect in any material respect when made or deemed to have been made if such failure is not remedied within thirty (30) days after Landlord gives notice to Tenant of such failure;

(4) The failure of Tenant to keep, observe or perform any of the terms, covenants or agreements contained in this Lease Agreement on Tenant’s part to be kept, performed or observed (other than those referred to in clauses (1), (2), (3) or above) if (i) such failure is not remedied by Tenant within thirty (30) days after notice from Landlord of such default or (ii) in the case of any such default which cannot with due diligence and good faith be cured within thirty (30) days, Tenant fails to commence to cure such default within thirty (30) days after notice from Landlord of such default or Tenant fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith; it being intended that, in connection with any such default which is not susceptible of being cured with due diligence and in good faith within thirty (30) days, the time within which Tenant is required to cure such default shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith, *provided, however,* that if such default is not cured within ninety (90) days after notice from Landlord of such default (notwithstanding Tenant’s diligent prosecution of curative efforts), then such failure shall constitute an Event of Default under this Lease Agreement; or

(5) The (1) filing by Tenant of a voluntary petition in bankruptcy; (2) adjudication of Tenant as a bankrupt; or (3) the filing of any petition or other pleading in any action seeking reorganization, rearrangement, adjustment, or composition of, or in respect of Tenant under the United States Bankruptcy Code or any other similar state or federal law dealing with creditors’ rights generally, unless within sixty (60) days after such filing such proceeding is discharged; or (4) appointment of a receiver, trustee or other similar official of Tenant or its Property.

B. Landlord Default: The occurrence of any of the following shall be an “Event of Default” by Landlord or a “Landlord Default”: (i) Any material representation or

warranty confirmed or made in this Lease Agreement by Landlord shall be found to have been incorrect in any material respect when made or deemed to have been made, or (ii) the failure of Landlord to keep, observe or perform any of the terms, covenants or agreements contained in this Lease Agreement of Landlord's part to be kept, performed or observed, if such failure is not remedied within thirty (30) days after Tenant gives notice to Landlord of such failure.

12.02 **Landlord's Remedies**: Upon the occurrence of any Tenant Default, Landlord may, in its sole discretion, pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice expressly provided herein: (a) Landlord may terminate this Lease Agreement and upon such termination Landlord may forthwith re-enter and repossess the Leased Premises by entry, forcible entry, detainer suit or otherwise, without demand or notice of any kind and be entitled to recover, as damages under this Lease Agreement, a sum of money equal to the total of the following (i) the reasonable and necessary cost of recovering the Fairgrounds, (ii) the reasonable and necessary cost of removing and storing Tenant's property, (iii) the unpaid Payments pursuant to Article 4 of this Lease Agreement, if any, and any other sums accrued hereunder at the date of termination, (iv) any increase insurance premiums caused by the vacancy of the Fairgrounds and (v) any other sum money or damages owed by Tenant to Landlord. In the event Landlord shall elect to terminate this Lease Agreement, Landlord shall at once have all the rights of reentry upon the Fairgrounds, without becoming liable for damages or guilty of trespass. (b) Landlord may terminate Tenant's right of occupancy of all or any part of the Fairgrounds and reenter and repossess the Fairgrounds by entry, forcible entry, detainer suit or otherwise, without demand or notice of any kind to Tenant and without terminating this Lease Agreement, without acceptance of surrender of possession of the Fairgrounds, and without becoming liable for damages or guilty of trespass. Landlord shall be obligated to attempt to relet the Fairgrounds for the account of Tenant for a period equal to or greater than the remainder of the Lease Term on terms and conditions similar to the terms and conditions of this Lease Agreement whether Landlord. Tenant shall be liable for and shall pay to Landlord an amount equal to (i) the reasonable and necessary costs of recovering possession of the Fairgrounds, (ii) the reasonable and necessary cost removing and storing any of Tenant's property left on the Fairgrounds after reentry, (iii) the reasonable and necessary cost of any increase in insurance premiums caused by the termination of possession of the Fairgrounds and (iv) any other sum of money damages owed by Tenant to Landlord at law, in equity or hereunder, all reduced by any sums received by Landlord through any reletting of the Fairgrounds; *provided, however*, that in no event shall Tenant be entitled to any excess of any sums obtained by reletting. Landlord may file suit to recover any sums falling due under the terms of this Article. (c) Landlord may enter upon the Fairgrounds and do whatever Tenant obligated to do under the terms of this Lease Agreement; and Tenant agrees to reimburse Landlord on demand for any reasonable expenses which Landlord may incur in effecting compliance with Tenant's obligations under this Lease Agreement, and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action. No action taken by Landlord under this Article shall relieve Tenant from any of its obligations under this Lease Agreement or from any consequences or liabilities arising from the failure to perform such obligations. (d) Landlord may exercise any and all other remedies available to Landlord at law or in equity.

12.03 **Tenant's Remedies for Landlord Default:** Upon the occurrence of any Landlord Default, Tenant may, at its sole discretion, have the option to pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice expressly provided in this Lease Agreement: (a) Tenant may terminate this Lease Agreement; and (b) Tenant may exercise any and all other remedies available to Tenant at law or in equity, but subject to any limitations thereon set forth in this Lease Agreement.

12.04 **Reserved.**

12.05 **Indirect Damages:** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER ANY PROVISION OF THIS LEASE AGREEMENT FOR LOST OR PROSPECTIVE PROFITS, OR FOR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, IN CONTRACT, TORT OR OTHERWISE, WHETHER OR NOT CAUSED BY OR RESULTING FROM SUCH PARTY'S OWN, SOLE OR CONCURRENT NEGLIGENCE OR THE NEGLIGENCE OF ITS AFFILIATES OR RELATED PARTIES, INCLUDING CLAIMS OF THE OTHER PARTY ARISING OUT OF THIRD PARTY CLAIMS; *PROVIDED, HOWEVER,* THAT THE FOREGOING IN THIS ARTICLE SHALL NOT BE CONSTRUED TO LIMIT LANDLORD'S LIABILITY FOR (A) ACTUAL DAMAGES, (B) LOST NET REVENUES AND (C) ALL OFFSETS AND ABATEMENTS TO WHICH TENANT IS ENTITLED UNDER THE EXISTING RODEO LEASE.

12.06 **Declaratory or Injunctive Relief:** In addition to the remedies set forth in this Article 12, the Parties shall be entitled, in any circumstances they may deem appropriate, without the necessity of proving irreparable harm, balance of claims, consideration of the public interest, establishing that monetary damages are inadequate or the posting of a bond, to seek (i) injunctive relief, whether prohibiting or mandating, action by the other Party for any Event Default of the other Party or as otherwise expressly provided herein or (ii) declaratory relief with respect to any matter under this Lease Agreement. Each of the Parties hereby agrees and irrevocably stipulates that the rights of each Party to injunctive relief pursuant to this Lease Agreement, including this Article 12.06, shall not constitute a "claim" pursuant to Section 101 (5) of the United States Bankruptcy Code and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding involving the Party to which any such injunctive relief applies.

12.07 **No Waivers:**

A. General. No failure or delay of any Party, in any one or more instances, (i) in exercising any power, right or remedy under this Lease Agreement or (ii) in insisting the strict performance by the other Party of such other Party's covenants, obligations or agreements under this Lease Agreement, shall operate as a waiver, discharge or invalidation, thereof, nor shall any single or partial exercise of any such right, power or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power or remedy. The covenants, obligations, and agreements of a defaulting Party and the rights and remedies of the other Party upon a default shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

B. No Waiver of Termination Notice. Without limiting the effect of this Article, the receipt by Landlord of any Payment paid by Tenant after the termination in any manner of the Lease Term, or after the giving by Landlord of any notice hereunder to effect such termination, shall not, except as otherwise expressly set forth in this Lease Agreement, reinstate, continue or extend the Lease Term, or destroy, or in any manner impair the efficacy of, any such notice of termination as may have been given hereunder by Landlord to Tenant prior to the receipt of any such Payments or other consideration, unless so agreed to in writing and executed by Landlord. Neither acceptance of the keys nor any other act or thing done by Landlord or by its agents or employees during the Lease Term shall be deemed to be an acceptance of a surrender of the Fairgrounds, excepting only an agreement in writing executed by Landlord accepting or agreeing to accept such a surrender.

12.08 **Effect of Termination**: If Landlord or Tenant elects to terminate this Lease Agreement pursuant to the terms provided herein, the effective date of such termination, terminate with respect to all future rights and obligations of performance hereunder by the parties (except for the rights and obligations herein that expressly are to survive such termination hereof). Termination of this Lease Agreement shall not alter the then existing claims, if any, of either party for breaches of this Lease Agreement occurring prior to such termination and the obligations of the parties hereto with respect thereto shall survive termination.

12.09 **Court Proceedings**: Any suit, action or proceeding against any party arising out of or relating to this Lease Agreement or any transaction contemplated hereby or any judgment entered by any court in respect thereof may be brought in any federal or state court located in the Fort Bend County, Texas, and each party hereby submits to the nonexclusive jurisdiction of such courts for the purpose of any such suit, action or proceeding. To the extent that service of process by mail is permitted by Governmental Rule, each party irrevocably consents to the service of process in any such suit, action or proceeding in such courts by the mailing of such process by registered or certified mail, postage prepaid, at its address for notice provided for herein. Each party irrevocably agrees not to assert any objection that it may ever have to the laying of venue of any such suit, action or proceeding in any federal or state court located in Fort Bend County, Texas, and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

ARTICLE 13 SURRENDER OF POSSESSION; HOLDING OVER

13.01 **Surrender of Possession**: In the event an extension/amendment to this Lease Agreement cannot be negotiated by the parties, Tenant shall, no more than sixty (60) days after the Lease Expiration Date, peaceably and quietly leave, surrender and yield up to Landlord (i) the Fairgrounds, free of subtenancies and, as to Tenant's Office, in a reasonably clean condition and free of debris, wear and tear excepted, and damages not caused by Tenant, (ii) the Landlord's FF&E in Tenant's possession installed, affixed, attached or supplied by Landlord or any Landlord's FF&E in Tenant's possession paid for by Landlord and all replacements of and substitutions therefor and (iii) all keys for the Fairgrounds in Tenant's possession, including

Tenant's Office and Building W and any other buildings/facilities at the Fairgrounds for which Tenant has keys.

13.02 **Removal of Personalty:**

A. Tenant's Obligation to Remove: All of Tenant's FF&E be removed by Tenant within sixty (60) days after the Lease Expiration Date, provided that Tenant shall promptly repair any damage to the Fairgrounds caused by such removal.

B. Landlord's Right to Remove: Any of Tenant's FF&E which remains in the Fairgrounds sixty (60) days after the Lease Expiration Date may, at the option of Landlord, be deemed to have been abandoned by Tenant and may either be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may determine necessary, desirable or appropriate, and Tenant, upon demand, shall pay the cost of such disposal.

ARTICLE 14
DISPUTE RESOLUTION

14.01 **Settlement By Mutual Agreement:** In the event any dispute, controversy or claim between the Parties arises under this Lease Agreement or any right, duty or obligation arising here from or the relationship of the Parties hereunder (a "Dispute or Controversy"), including, but not limited to, a Dispute or Controversy relating to the effectiveness, validity, interpretation, implementation, termination, cancellation or enforcement of this Lease Agreement, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement in accordance with the terms of this Article. In the event a Dispute or Controversy arises, either Party shall have the right to notify the other that it has elected to implement the procedures set forth in this Article. Within fifteen (15) days after delivery of any such notice by one Party to the other regarding a Dispute or Controversy, the Landlord Representative and Tenant Representative shall meet at a mutually agreed time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should a mutual resolution and settlement not be obtained at the meeting of the Landlord Representative and Tenant Representative for such purpose or should no such meeting take place within such fifteen (15) day period, then either Party may by notice the other Party submit the Dispute or Controversy to mediation in accordance with the provisions of this Article.

14.02 Upon the receipt of notice of referral to mediation hereunder, the receiving Party shall be compelled to mediate the Dispute or Controversy in accordance with the terms of this Article without regard to the justiciable character or executor nature of such Dispute or Controversy.

14.03 **Mediation:** Each Party hereby agrees that any Dispute or Controversy which is not resolved pursuant to the provisions of Article 14.01 shall be submitted to mediation. Each party shall pay one-half (1/2) the cost of any mediator. In the event mediation is unsuccessful, either Tenant or Landlord may avail itself of all rights and remedies at law or in equity.

14.04 **Emergency Relief**: Notwithstanding any provision of this Lease Agreement to the contrary, any Party may seek injunctive relief or other form of ancillary relief at any time from any court of competent jurisdiction in Fort Bend County, Texas. In the event that a Dispute or Controversy requires emergency relief before the matter maybe resolved under the Mediation Procedures, notwithstanding the fact that any court of competent jurisdiction may enter an order providing for injunctive or other form of ancillary relief, the Parties expressly agree that the Mediation Procedures will still govern the ultimate resolution of that portion of the Dispute or Controversy not resolved pursuant to said court order.

ARTICLE 15 TIME, DELAY, APPROVALS AND CONSENTS

15.01 **Time**: Times set forth in this Lease Agreement for the performance of obligations shall be strictly construed, time being of the essence in such instrument. All provisions in this Lease Agreement which specify or provide a method to compute a number of days for the performance, delivery, completion or observance by a Party hereto of any action, covenant, agreement, obligation or notice hereunder shall mean and refer to calendar days, unless otherwise expressly provided. However, in the event the date specified or computed under this Lease Agreement for the performance, delivery, completion or observance of a covenant, agreement, obligation or notice by either Party hereto, or for the occurrence of any event provided for herein, shall be a Saturday, Sunday or Legal Holiday, then the date for such performance, delivery, completion, observance or occurrence shall automatically be extended to the next calendar day that is a Business Day.

15.02 **Force Majeure**: Neither Landlord nor Tenant shall be liable or responsible to one another for any loss occasioned by Force Majeure Events (defined below). Other than for a party's obligations under this Lease Agreement that can be performed by the payment of money (e.g., payment of rent), whenever a period of time is herein prescribed for action to be taken by either party hereto, such party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations, or legal requirements, or any other causes of any kind whatsoever which are beyond the control of such party or its employees (collectively, "Force Majeure Events").

15.03 **Approvals and Consents; Standards for Review**: The provisions of this Article shall be applicable with respect to all instances in which it is provided under this Lease Agreement that Landlord or Tenant exercises Review and Approval or Consent Rights. As used herein, the term "Review and Approval or Consent Rights" shall include all instances in which one Party (the "Submitting Party") is permitted or required to submit to the other Party or to the representative of that other Party any document, notice or determination of the Submitting Party and with respect to which the other Party or its representative (the "Reviewing Party" has a right or duty hereunder to review, comment, consent, approve, disapprove, dispute or challenge the submission or determination of the Submitting Party. Unless this Lease Agreement specifically provides that the Review and Approval or Consent Rights may be exercised in the sole and absolute discretion (or a similar standard) of the Reviewing Party, in connection with exercising

its Review and Approval or Consent Rights under any provision of this Lease Agreement and whether or not specifically provided in any such provision, the Reviewing Party covenants and agrees to act in good faith, with due diligence, and in a commercially reasonable manner with regard to each and all of such Review and Approval or Consent Rights and, unless otherwise provided for elsewhere herein, to not unreasonably withhold, condition or delay its approval of or consent to any submission.

ARTICLE 16
MISCELLANEOUS PROVISIONS

16.01 **No Broker's Fees or Commissions**: Each Party hereby represents to the other Party that such Party has not created any liability for any broker's fee, broker's or agent's commission, finder's fee or other fee or commission in connection with this Amendment.

16.02 **Covenants Running with the Estates in Land**: The Parties covenant and agree that all of the conditions, covenants, restrictions, exclusives, agreements, rights, privileges, obligations, duties, specifications and recitals contained herein, except as otherwise expressly stated herein, shall be construed as covenants running with title to the Fairgrounds and the Leasehold Estate hereunder, respectively, which shall extend to, inure to the benefit of and bind, Landlord and Tenant, and their permitted successors and assigns, to the same extent as if such successors and assigns were named herein, such that this Lease Agreement shall always bind the owner and holder of any fee or leasehold interest in or to the Fairgrounds, or any portion thereof, and shall bind predecessors thereof except as otherwise expressly provided herein.

16.03 **Relationship of the Parties**: The relationship of Tenant and Landlord under this Lease Agreement is that of independent parties, each acting in its own best interests and notwithstanding anything in this Lease Agreement to the contrary, no partnership, joint venture or other business relationship is established or intended hereby between Tenant and Landlord.

16.04 **Representations of Landlord and Tenant**:

A. **Power and Authority**: Each individual executing and delivering this Lease Agreement on behalf of a Party hereby represents to the other Party that such individual has all requisite power and authority to execute and deliver the same and to bind such Party hereunder.

B. **Tenant's Representations**: As an inducement to Landlord to enter into this Lease Agreement, Tenant hereby represents and warrants to Landlord, as of the Effective Date, as follows:

(a) Tenant is a Texas not-for-profit corporation, duly organized and validly existing under the laws of the State of Texas, with all necessary power and authority to enter into this Lease Agreement and to consummate the transactions herein contemplated. Tenant is qualified to do business in Texas. (b) Neither the execution and delivery of this Lease Agreement by Tenant nor the performance by Tenant of its obligations hereunder will (i) violate any statute, regulation, rule, judgment, order, decree, stipulation, injunction,

charge, or other restriction of any Governmental Authority, or court to which Tenant is subject or any provision of the articles of incorporation or by-laws of Tenant or (ii) conflict with, result in a breach of, constitute default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel or require any notice under any contract, lease, sublease, license, sublicense, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, security interest, or other agreement to which Tenant is a party or by which Tenant or its assets are bound. (c) All proceedings required to be taken by or on behalf of Tenant authorize Tenant to execute and deliver this Lease Agreement and to perform the covenants, obligations and agreements of Tenant hereunder have been duly taken. No consent to the execution and delivery of this Lease Agreement by Tenant or the performance by Tenant of its covenants, obligations and agreements hereunder is required from any partner, board of directors, shareholder, creditor, investor, judicial, legislative or administrative body, Governmental Authority or other person, other than any such consent which already has been given. (d) This Lease Agreement constitutes the valid and legally binding obligation Tenant, enforceable in accordance with its terms and conditions, except as such enforcement maybe limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws presently or hereafter in effect, affecting the enforcement of creditors' rights generally and by general principles of equity whether applied in a proceeding at law or in equity. (e) To Tenant's actual knowledge, there is no action, suit, claim, proceeding or investigation pending or currently threatened against Tenant that questions the validity of this Lease Agreement, the transactions contemplated herein or that could either individually or in the aggregate have a material adverse effect on the assets, conditions, affairs or prospects of Tenant, financially or otherwise.

C. Landlord's Representations: As an inducement to Tenant to enter into this Lease Agreement, Landlord represents and warrants to Tenant, as of the Effective Date, as follows: (a) Landlord is a local government corporation duly formed and validly under the Constitution of the State of Texas, with all necessary power and authority to enter into this Lease Agreement and to consummate the transactions herein contemplated. (b) Neither the execution and delivery of this Lease Agreement by Landlord nor the performance by Landlord of its obligations hereunder will (i) violate any statute, regulation, rule, judgment, order, decree, stipulation, injunction, charge or other restriction of any Governmental Authority or court to which Landlord is subject, or any provision of the articles of incorporation or by laws of Landlord or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any contract, lease, sublease, license, sublicense, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, security interest or other agreement to which Landlord is a party or by which Landlord or its assets are bound. (c) All proceedings required to be taken by or on behalf of Landlord authorize Landlord to execute and deliver this Lease Agreement to perform the covenants, obligations and agreements of Landlord hereunder have been duly taken. No consent to the execution and delivery of this Lease Agreement or the performance by Landlord of its covenants, obligations and agreements hereunder is required from any partner, board of directors, shareholder, creditor, investor, judicial, legislative or administrative body, Governmental Authority or other person, other than any such consent which already has been given. (d) This Lease Agreement constitutes the valid and legally binding obligation Landlord,

enforceable in accordance with its terms and conditions, except as such enforcement maybe limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws presently or hereafter in effect, affecting the enforcement of creditors' rights generally and by general principles of equity whether applied in a proceeding at law or in equity. (e) To Landlord's actual knowledge, there is no action, suit, claim, proceeding or investigation pending or currently threatened against Landlord that questions the validity of this Lease Agreement, the transactions contemplated herein or that could either individually or in the aggregate have a material adverse effect on the assets, conditions, affairs, or prospects of Landlord financially or otherwise.

16.05 Waiver of Immunity: Each of the Parties unconditionally and irrevocably: (a) Agrees that should any actions or proceedings be brought against it its assets in relation to this Lease Agreement or any transaction contemplated hereunder, no immunity (sovereign or otherwise) from such Actions or Proceedings (which shall deemed to include suit, attachment prior to judgment, other attachment, the obtaining of judgment, execution or other enforcement) shall be claimed by or on behalf of itself or with respect to its assets; (b) Waives any such right of immunity (sovereign or otherwise) which or its assets now has or may acquire in the future; and (c) Consents to the enforcement of any arbitral award or judgment against it in any such proceedings and to the giving of any relief or the issue of any process in connection with any such proceedings.

16.06 Non-Merger of Estates: The interests of Landlord and Tenant in the Fairgrounds shall at all times be separate and apart, and shall in no event be merged, notwithstanding the fact that this Lease Agreement or the Leasehold Estate created thereby, or any interest therein, may be held directly or indirectly by or for the account of the same Person who shall own the fee title to the Fairgrounds or any portion thereof; and no such merger of estates shall occur by operation of law, or otherwise, unless and until all Persons at the time having any interest in the Fairgrounds, shall join in the execution of a written instrument effecting such merger of estates.

16.07 Notices: All notices, consents, directions, approvals, instructions, requests and other communications given to a Party under this Lease Agreement shall be given in writing to such Party at the address set forth below and may be sent by registered or certified U.S. Mail, return receipt requested, or delivered personally (including delivery by private courier services). Such notices shall be deemed to duly given or made (i) three (3) Business Days after if mailed as provided, (ii) when delivered hand unless such day is not a Business Day, in which case such delivery shall be deemed to be made as of the next succeeding Business Day or (iii) in the case of telecopy (with confirmation of such notice), when sent, so long as it was received during normal Business Hours of the receiving Party on a Business Day and otherwise such delivery shall be deemed to be made as of the next succeeding Business Day. Each Party hereto shall have the right at any time and from time to time to specify additional parties ("Additional Addressees") to whom notice hereunder must be given, delivering to the other Party five (5) days notice thereof setting forth a single address for each such Additional Addressee; *provided, however,* that no Party hereto shall have the right to designate more than two (2) such Additional Addressees:

Fort Bend County
Attn: County Judge
301 Jackson, 7th Floor
Richmond, Texas 77469

With copy to :

Fort Bend County Parks Department
Fairgrounds Facility Coordinator
4310 Hwy 36
Rosenberg, Texas 77471

Notices to Tenant shall be delivered to:

Fort Bend County Fair Association
Attn: President
P. O. Box 428
Rosenberg, Texas 77471

With copy to:

Fort Bend County Fair Association
Attn: Manager
4310 Highway 36 South
Rosenberg, Texas 77471

16.08 **Severability**: If any term or provision of this Lease Agreement, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable in any jurisdiction, as to such jurisdiction, the remainder of this Lease Agreement or the application of such term or provision to the persons or circumstances other than those as to which such term or provision is held invalid or unenforceable in such jurisdiction, shall not be affected thereby, and each term and provision of this Lease Agreement shall be valid and enforceable to the fullest extent permitted by Governmental Rule and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Governmental Rule, the Parties to this Lease Agreement hereby waive any provision of law that renders any provision thereof prohibited or unenforceable in any respect.

16.09 **Entire Agreement, Amendment and Waiver**: This Lease Agreement, together with all exhibit and attachments, if any, constitutes the entire agreement of the Parties hereto and thereto with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter. This Lease Agreement may not be amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the amendment, supplement, waiver or modification shall be sought.

16.10 **Incorporation Exhibits**: All Exhibits attached to this Lease Agreement are incorporated herein by this reference in their entirety and made a part hereof for all purposes.

16.11 **Parties in Interest/Limitation on Rights of Others**: The terms of this Lease Agreement shall be binding upon, and inure to the benefit of, the Parties and their permitted successors and assigns. Nothing in this Lease Agreement, whether express or implied, shall be construed to give any Person (other than the Parties and their permitted successors and assigns and as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of this Lease Agreement or any covenants, conditions or provisions contained herein or any standing or authority to enforce the terms and provisions herein.

16.12 **Counterparts**: This Lease Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same Lease Agreement. All signatures need not be on the same counterpart.

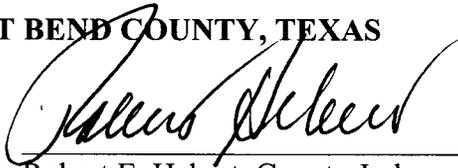
16.13 **Governing Law**: This Lease Agreement and the actions of the Parties thereunder shall in all respects be governed by, and construed in accordance with the laws of the State of Texas.

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ARTICLE 17
EXECUTION

IN WITNESS WHEREOF, the parties have herewith set their hands as of the dates written below.

FORT BEND COUNTY, TEXAS

By: 
Robert E. Hebert, County Judge

Date: 6-11-2013

ATTEST:

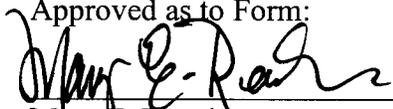

Dianne Wilson, County Clerk



Approved:


Michel Davis, Director
County Parks Department

Approved as to Form:


Mary E. Reveles,
First Assistant County Attorney

FORT BEND COUNTY FAIR ASSOCIATION

By: 
President

Date: 6-11-13

ATTEST:

Secretary of Association

MER:fair assoc. Lease Agreement:1108-2013

APPENDIX A DEFINITIONS

“Book” and other forms of that term when used in reference to a Landlord Event or Tenant Event means the condition when a Landlord Event or a Tenant Event has been scheduled on a particular date at the Fairgrounds in accordance with the applicable terms of this Lease Agreement, and to the extent that they do not conflict with Landlord’s booking policies, applied uniformly and non-discriminately to all Landlord Events and Tenant Event on a first-reserved basis.

“Capital Repair” means any work (including all labor, supplies, materials and equipment) reasonably necessary to repair, restore, refurbish or replace any equipment, facility, structure or other component of the Fairgrounds and Landlord FF&E, if such work is necessitated by:

- (1) Any defects (whether latent or patent) in design, construction or installation of the Fairgrounds by or on behalf of Landlord;
- (2) Physical Obsolescence and Functional Obsolescence (including replacement necessitated by repeated breakdown of a component of the Fairgrounds despite efforts to repair or restore it short of such replacement);
- (3) Modifications required by applicable Governmental Rule; or
- (4) Repairs necessary to keep the Landlord FF&E in working condition.

The term “Capital Repair” shall not include (i) Maintenance and (ii) Casualty Repair Work.

“Comparable Facilities” means one or more exhibition/performance facilities in which events such as county fairs, exhibitions, family shows, and other public events are held that in a county with a population of 500,000 to 1,000,000.

“Concessions” means, collectively, any and all Consumable Concessions and Non-Consumable.

“Consumable Concessions” means, collectively, the sale and service of food and nonalcoholic beverages, the sale and service of alcoholic beverages (subject to procurement of all necessary licenses and permits required by any Governmental Authority) and catering and banquet sales and services (including, but not limited to, catering service).

“Coolers” means the three (3) walk-in refrigerators located currently in Buildings B and C at the Refreshment Center.

“County Fair” has the definition assigned to it in the introductory provision of this Lease Agreement.

“County Fair Period” means the period of calendar days each year of this Lease Agreement beginning at 12:01 a.m. on the day after Labor Day and terminating at 11:59 p.m. on the fourth (4th) calendar day following the last day of the County Fair year for conducting the County Fair.

“Effective Date” is defined in Article 3.

“Emergency” means any circumstance in which Tenant or Landlord in good faith believes that immediate action is required in order to safeguard lives, property or the environment.

“Environmental Event” means (i) the spill, discharge, leakage, pumpage, drainage, pourage, interment, emission, emptying, injecting, escaping, dumping, disposing, migration or other release or any kind of Hazardous Materials which causes a threat or actual injury to human health, the environment, plant or animal life, (ii) the occurrence of any Actions or Proceedings pursuant any environmental laws arising out of any of the foregoing and (iii) any claims, demands, actions, causes of actions, remedial and/or abatement response, remedial investigations, feasibility studies, environmental studies, damages, judgments or settlements arising out of any of the foregoing.

“Fairgrounds” means the entire Fort Bend County Fairgrounds being all of the property inside of the red outline as depicted on Appendix B-2, including all improvements and other property located thereon (excluding Landlord Exclusive Facilities).

“Functional Obsolescence” and “Functionally Obsolete” means any equipment, future, furnishing, facility, surface, structure or any other component of the Fairgrounds that is not dysfunctional (and thus not Physically Obsolete), but is no longer reasonably optimal for its intended purposes, by reason of (i) material innovations, inventions or improvements in the design, manufacture, operation or production of comparable equipment, systems or facilities which render more efficient, more satisfactory or more technologically advanced service or (ii) business patterns or practices that require the modification or addition of new equipment or facilities.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and having jurisdiction over the County Fair Leased Premises.

“Governmental Rule” means any statute, law, treaty, rule, code, ordinance, regulation, permit, interpretation, certificate or order, whether now or hereafter existing, of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority, whether now or hereafter existing.

“Hazardous Materials” means (i) any substance, emission or material including, but not limited to, asbestos, now or hereafter defined as, listed as or specified in a Governmental Rule or Law as “regulated substance,” “hazardous substance,” “toxic substance,” “pesticide,” “hazardous waste,” “hazardous material” or any similar or like classification or categorization under any environmental law including by reason of ignitability, corrosivity, reactivity, carcinogenicity or reproductive or other toxicity of any kind, (ii) any products or substances containing petroleum, asbestos polychlorinated biphenyls or (iii) any substance, emission or material determined to be hazardous or harmful.

“Impositions” means all real estate taxes, all personal property taxes and all possessory interest taxes, all use and occupancy taxes, all excises, assessments and levies, general and special, ordinary and extraordinary, foreseen and unforeseen (including assessments for public improvements and betterment, and any mass transit, park, child care and art contributions, assessments or fees), that are, with respect to the Fairgrounds, or any portion thereof, assessed, levied, charged, confirmed or imposed upon or with respect to or becoming payable out of or becoming a lien on the Leasehold Estate and the Fairgrounds, or the appurtenances thereto, or for any use or occupation of the Fairgrounds, or such franchises, licenses and permits as may be appurtenant or related to the use of the Fairgrounds, this transaction or any documents to which Landlord is a party; *provided, however*, “Impositions” shall not include taxes on personal property not leased from Landlord.

“Landlord’s Facilities” is defined in Section 2.01(a).

“Landlord’s FF&E” means items (a) through (f) in Section 2.02, all furniture, fixtures, unattached movable equipment, furnishings, machinery and all other components and personal property owned by, or leased to, Landlord that is from time to time located at the Fairgrounds, together with all additions, alterations and replacements thereof (whether replaced by either Party), including all furniture, fixtures, equipment, furnishings, machinery, displays, Signage, scoreboards, panels and other personal property installed, affixed, attached or supplied to the Fairgrounds by Landlord or Tenant and any additions, changes or alterations thereto or replacements or substitutions therefor. Landlord’s FF&E does not include Tenant’s FF&E or any personal property owned or leased by any Tenant, licensees or invitees that may from time to time be brought onto the Fairgrounds.

“Landlord’s Parking Spaces” means, collectively, ten (10) parking spaces at the Fairgrounds to be used by Landlord during the County Fair Period and all Tenant Events.

“Lease Expiration Date” means 11:59 p.m. on the last day of the Lease Term as determined in accordance with Article 3.

“Lease Term” is defined in Article 3.

“Maintain” and “Maintenance” means all work (including all labor, supplies, materials and equipment) which is of a routine, regular and predictable nature and reasonably necessary for the cleaning and routine upkeep of any property, structures, surfaces, facilities, fixtures (including media plug-ins and cable and all wiring attendant thereto), Landlord FF&E equipment, furnishings, and improvements that form any part of the Fairgrounds (including machinery, pipes, plumbing, wiring, gas and electric fittings, toilets and restroom facilities, first aid facilities, spectator and other seating, or any other component of the Fairgrounds) in order to preserve such items in a reasonably operable and safe condition. Maintenance shall include the following: (i) preventative or routine maintenance that is stipulated in the operating manuals for the components as regular, periodic maintenance procedures; (ii) periodic testing of building systems, such as mechanical card-key security, fire alarm, lighting and sound systems; (iii) ongoing trash removal, (iv) regular maintenance procedures for heating, ventilating and air-conditioning, plumbing, electrical, roof and structural systems, such as periodic cleaning of the

Fairgrounds, lubrication and changing air filters and lights; (v) painting of a routine, regular and predictable nature; (vi) cleaning, including restocking as described in Section 6.08 prior to, during and following, and necessary as a direct result of, all events (vii) changing of light bulbs, ballasts, fuses and circuit breakers, as they burn out; (viii) all renewals and replacements of equipment parts and components, that are not Capital Repairs, as may be necessary to maintain the Fairgrounds; (ix) the labor required to perform Capital Repairs if performed by Landlord's employees on a "non-overtime" basis; (x) any other work of a routine, regular and generally predictable nature that is necessary to keep the Fairgrounds in a reasonably operation and safe condition, and (xi) any work reasonably necessary to repair, restore, refurbish or replace any equipment, facility, structure or other component of the Fairgrounds that has become dysfunctional. Maintenance shall not include cleanup and janitorial services for Tenant's Facilities.

"Non-Consumable Concessions" means the sale of souvenirs, apparel and merchandise and other non-edible items, goods, services, equipment and wares.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, unincorporated organization, Governmental Authority or any other form of entity.

"Physical Obsolescence" and "Physically Obsolete" means any equipment, fixture, furnishing, facility, surface, structure or any other component of the Fairgrounds which does not comply with applicable Governmental Rules or has become dysfunctional due to defects in design, materials or workmanship or ordinary wear and tear other than as a result of Landlord's failure to perform its Maintenance obligations or Landlord's negligence or other breach of its obligations. For purposes of determining Physical Obsolescence or Physically Obsolete, any equipment, fixture, furnishing, facility, surface, structure or any other components shall be deemed dysfunctional if such equipment, fixture, furnishing, facility, surface, structure or any other component has deteriorated to a degree that cannot be remedied through Maintenance, unless due to Landlord's negligence or other breach of its obligations.

"Restricted Period" means the period of time commencing thirty (30) days prior to County Fair Period and ending thirty (30) days following the expiration of the County Fair Period.

"Rodeo Festival Events" means, collectively, such livestock show, equestrian show, rodeo, concert, carnival, parade, barbeque, educational, competition, exhibition, performance, concert and other entertainment events, and, individually, each such event, from time to time.

"Signage" shall mean all signage and any and all other media (whether now existing or developed in the future) used for advertising or marketing purposes in, on or upon the Fairgrounds, advertising signs, banners or displays, time clocks, message boards, billboards, public address announcements and any other media (whether now existing or developed in the future) located in, on or upon the Fairgrounds.

"Tenant's FF&E" means the furniture, fixtures, unattached movable equipment, furnishings, machinery, Coolers, and all other components and personal property owned by, or leased to

Tenant, together with all additions, alterations and replacements thereof (whether replaced by either Party), but excluding Landlord's FF&E and any furniture, fixtures, equipment, furnishings, machinery and other components and personal property owned or leased by any Tenant, licensees or invitees that may from time to time be brought onto the Fairgrounds.

"Tenant's Office" means the area designated as the Tenant's Office on Appendix B.

"Untenantable Condition" means the existence of any one of the following conditions but only to the extent the same is not the direct proximate result of the negligence or the willful misconduct of Tenant or its agents or contractors or the failure of Tenant to perform its obligations: (i) the condition of the Fairgrounds is such that the holding of the County Fair is not permitted under the rules of any organization sanctioning such or any of their successor organizations; (ii) the use or occupancy of the Fairgrounds for the County Fair is not permitted under applicable Governmental Rule is restricted in any material respect under applicable Governmental Rule or as a result of a condemnation action, including, but not limited to, denial of access of the Fairgrounds.

"Utilities" means water and sewer, electricity, gas, chilled water, telephone, trash, cable, data lines and other utility services customarily supplied to or used from time to time in Comparable Facilities.



FORT BEND COUNTY FAIRGROUNDS
APPENDIX B