Board of Supervisors Memorandum

January 21, 2014

Addendum Item 8, Continued Addendum Item 3
from the January 14, 2014 Meeting

Introduction

The January 14, 2014 Addendum included Item 3, which is restated below.

> *Appointment of David Gerovac to replace/fill the unexpired term of Marvin Selke. Term expiration: 6/30/14. (District 1)*

This item was, on its face, intended to replace a member of the Pima County Fair Commission, specifically Chairperson Martin Selke with Mr. David Gerovac.

The County Attorney's Office has reviewed this matter, and I have discussed it with them. At the January 14, 2014 Board meeting, I was also asked to review the various documents and issues surrounding the Pima County Fair Commission and the Southwest Fair Commission, as well as the Bylaws and Amended Bylaws of the Southwest Fair Commission; and finally the management agreement between the Southwest Fair Commission and Pima County.

A question arose regarding the difference between the Pima County Fair Commission and the Southwest Fair Commission. This difference arises from Arizona Revised Statute § 11-258, *County Fair Fund; district fairs; operation of fair by corporation; county and state appropriations*. Paragraph B clearly indicates that funds used to create, operate or maintain a County fair fund or any monies expended in aid of a fair must be through a nonprofit corporation. The relevant portion of Paragraph B is restated below:

> *"...unless the stockholders of the corporation shall, by resolution entered upon its minutes, provide that no dividends shall ever be paid upon its stock, and that in the event of the dissolution of the corporation all money appropriated and expended by any county in aid of the fair shall be repaid before any assets of the corporation shall be distributed to its stockholders."*

The Board of Supervisors created the Pima Fair Commission in 1974 by passing and adopting Resolution No. 1974-124. Paragraph 2 of this resolution is restated below.

> *"There shall be a Pima County Fair Commission consisting* ***of five members appointed by a majority of the members of the Board of Supervisors.****"*
> [emphasis added]

Further, Paragraph 4 addresses vacancies or commissioner removal. It states,

> *"Appointments to fill a vacancy resulting other than from expiration of term shall be for the unexpired term. A Commissioner* ***may be removed by a majority of the members of the Board of Supervisors for cause****."* [emphasis added]

The Articles of Incorporation of the Southwest Fair Commission, filed with the Arizona Corporation Commission on January 27, 1975, clearly state, under the section entitled Purpose, *"conduct a fair in the County of Pima, State of Arizona."* With regard to the Board of Directors of the Corporation, the articles state, *"Membership in this corporation shall be confined to those persons* ***appointed*** *to the Pima County Fair Commission by the Board of Supervisors of Pima County, Arizona."* [emphasis added]

The Bylaws of the Southwest Fair Commission state *"Membership in this Corporation shall be confined to those persons appointed to the Pima County Fair Commission by the Board of Supervisors of Pima County, Arizona."*

The management agreement between Pima County and the Southwest Fair Commission, effective February 6, 2007, runs through and ends on June 30, 2031. This agreement defines in detail the obligations of the Southwest Fair Commission in operating the Pima County Fairgrounds and the property owned by Pima County for the purpose of the fair and other public recreational uses.

The question for the Board, as stated in Addendum Item 8, is whether to replace the current Chairman with the individual nominated by District 1. Based on Resolution 1974-124, removal of an individual before the end of the unexpired term, which in the case of Chairman Selke is June 30, 2014, would have to be for cause. Based on my knowledge of the actions of the Southwest Fair Commission and its Chairman, there is no cause that would rise to the level of meeting the *"for cause"* replacement of the Chairman.

The second issue relates to who appoints the members of the Pima County Fair Commission. Paragraph 2 of Resolution 1974-124 controls and clearly indicates that members of the Pima County Fair Commission are *"appointed by a majority of the members of the Board of Supervisors."* These are not individual supervisorial appointments. By past convention, there have been individual nominations by District; but any appointment has only been by a majority vote of all members of the Board of Supervisors. Perhaps the nomination by District process, which has no basis in ordinance or resolution, should be revisited by the Board.

Obviously, if the Board would like to change this process, the Board can, upon appropriate notice, amend Resolution No. 1974-124. I would caution against such, as the resolution and operation of the County Fair by the Southwest Fair Commission through the Pima County Fair Commission has been very successful in the past; and I have complete faith in the Board of Directors of the Southwest Fair Commission, who happen also to be the members of the Pima County Fair Commission.

Recommendation

I recommend that Addendum Item 8 be withdrawn from the Board of Supervisors Agenda or that the Board reject the proposal as contrary to the requirements of Resolution No. 1974-124.

Respectfully submitted,

C.H. Huckelberry
County Administrator

CHH/mjk – January 17, 2014

Attachments

c: Chairman and Members, Pima County Fair Commission
Jon Baker, Executive Director, Southwestern Fair Commission, Inc.
Hank Atha, Deputy County Administrator for Community and Economic Development
Tom Moulton, Director, Economic Development and Tourism

11-258. County fair fund; district fairs; operation of fair by corporation; county and state appropriations

A. The board may appropriate each year from the general fund a sum, which shall be known as a county fair fund, as follows:

1. In counties having a census of two hundred thousand or more as determined by the latest preceding federal decennial census, not more than one hundred thousand dollars.

2. In counties having a census of more than twenty-five thousand but less than two hundred thousand as determined by the latest preceding federal decennial census, not more than twenty-five thousand dollars.

3. In counties having a census of less than twenty-five thousand as determined by the latest preceding federal decennial census, not more than fifteen thousand dollars.

The board may expend the money in aid of a county or district fair, or to make an exhibit of the county's resources at the state fair. A district fair is one at which the boards of two or more counties shall, by resolution entered upon their minutes, invite the people of their respective counties to exhibit the resources of the county.

B. The money shall not be expended in aid of a fair conducted under the auspices of any corporation, unless the stockholders of the corporation shall, by resolution entered upon its minutes, provide that no dividends shall ever be paid upon its stock, and that in the event of the dissolution of the corporation all money appropriated and expended by any county in aid of the fair shall be repaid before any assets of the corporation shall be distributed to its stockholders.

C. To encourage county and district fairs, there shall be paid from the general fund of the state and from the appropriation for the state fair, a sum of not exceeding one thousand dollars in any one year for any one county having a county or district fair in such year. A county desiring to claim the benefits of this section shall certify to the Arizona exposition and state fair board the fact that a county or district fair is being held in the county during the year together with a statement of the amount appropriated by the county for the current year for such fair, and upon order therefor by the Arizona exposition and state fair board, the director of the department of administration shall draw his warrant in favor of the county in the amount appropriated by the county, not exceeding one thousand dollars.

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privacy statment

RESOLUTION NO. 1974- 124

A RESOLUTION OF THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA, CREATING A PIMA COUNTY FAIR COMMISSION.

WHEREAS, by virtue of A.R.S. § 11-251(23), the Board of Supervisors of Pima County may acquire and hold property for the use of county fairs; and

WHEREAS, by virtue of A.R.S. § 11-251(23), the Board of Supervisors of Pima County may conduct, take care of and manage county fairs; and

WHEREAS, by virtue of A.R.S. § 11-258(A), the Board of Supervisors of Pima County may appropriate each year the sum of one hundred thousand dollars in aid of a county fair; and

WHEREAS the Board of Supervisors of Pima County desires to create an advisory and supervisory commission to assist it in providing a county fair for the benefit of the citizens of Pima County;

NOW, THEREFORE, BE IT ENACTED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA:

1. The existing Pima County Fair Commission is hereby dissolved and all duties and powers given to it are hereby withdrawn.

2. There shall be a Pima County Fair Commission consisting of five members appointed by a majority of the members of the Board of Supervisors.

3. Each Commissioner shall serve for a term of two years, except that of the Commissioners first appointed, three shall serve for a term ending March 31, 1975, and two shall serve for a term ending March 31, 1976.

4. Appointments to fill a vacancy resulting other than from expiration of term shall be for the unexpired term. A Commissioner may be removed by a majority of the members of the Board of Supervisors for cause.

5. The Commission shall hold regular monthly meetings and special meetings as designated by the chairman. In April of each year at its regular monthly meeting the Commission shall elect a chairman and vice-chairman. The minutes of all regular and special meetings shall be transmitted to the Board of Supervisors.

6. Commissioners shall not receive compensation for their services, except for reasonable travel expenses incurred in performing their duties including attendance at Commission meetings.

7. No Commissioner shall have any direct or indirect financial interest in a contract relating to the operation of the Pima County Fair.

8. The Commission shall:

a. advise the Board of Supervisors as to the conduct and management of the county fair;

b. negotiate with and supervise the participation of exhibitors, shows, entertainment, carnivals and other events at the fair;

c. assist and advise the Pima County Parks and Recreation Department in developing and maintaining a site and facilities for the fair;

d. encourage and negotiate the participation of civic clubs and organizations in the fair;

e. perform other duties in furtherance of the fair as shall be directed by a majority of the members of the Board of Supervisors.

PASSED AND ADOPTED by the Board of Supervisors of Pima County, Arizona, this 16th day of September, 1974.

PIMA COUNTY BOARD OF SUPERVISORS

By E.S. B. Walker
Chairman

ATTEST:

Eugenia S. Steele
Deputy Clerk, Pima County Board of Supervisors

APPROVED AS TO FORM:

Albin Krietz
Deputy County Attorney

364

RESOLUTION 1986 - 179

A RESOLUTION AMENDING RESOLUTION NO. 1974-124 WHICH CREATED THE PIMA COUNTY FAIR COMMISSION, AS TO MEMBERSHIP, TERMS OF OFFICE AND VACANCIES.

BE IT RESOLVED by the Board of Supervisors of Pima County, Arizona, as Follows:

Resolution 1974-124 is hereby amended. Change numbered paragraphs 2 and 3 to read as follows:

2. There shall be a Pima County Fair Commission consisting of five at-large Commissioners appointed by a majority of the Board of Supervisors. In addition, Mr. Gene Reid shall serve on the Commission as Commissioner Emeritus.

3. The Board of Supervisors appoints the following Commissioners for the terms indicated.

APPOINTMENT	EXPRIATION OF TERM
R. E. Miller	September 1, 1987
Ray Bernal	September 1, 1987
James Cowan	September 1, 1987
Marvin Selke	June 30, 1990
Richard Collins	June 30, 1990
Gene Reid	No expiration of term

When the above terms expire, appointments will be for a term of four years.

PASSED AND ADOPTED ON September 16, 1986.

Chairman

ATTEST:

Jane Williams
Clerk to the Board of Supervisors

APPROVED AS TO FORM:

Deputy Civil County Attorney

RESOLUTION NO. 1991 - 90

RESOLUTION AMENDING RESOLUTION NO. 1986-179, AS TO MEMBERSHIP, TERMS OF OFFICE AND VACANCIES, TO ALLOW FOR STAGGERED TERMS OF OFFICE OF FROM ONE TO FOUR YEARS

BE IT RESOLVED by the Board of Supervisors of Pima County, Arizona, as follows:

Resolution 1986-179 is hereby amended. Change numbered paragraph 3 to read as follows:

3. The Board of Supervisors appoints the following Commissioners for the terms indicated.

APPOINTMENT	SUPERVISOR REPRESENTED	EXPIRATION OF TERM
Ralph Wong	District 5	September 30, 1992
R.E. Miller	District 4	September 30, 1993
Richard Collins	District 3	June 30, 1994
Marvin Selke	District 1	June 30, 1994
Ray Bernal	District 2	September 30, 1995
Gene Reid		No expiration of term

As the above terms expire, appointments will be for a term of four years.

PASSED AND ADOPTED on April 23, 1991.

Reg Morrison
Chairman APR 23 1991

ATTEST:

Jane S. Williams
Clerk of the Board

APPROVED AS TO FORM:

Dawn Sigerd
Deputy Civil County Attorney

STATE OF ARIZONA

Corporation Commission

SEAL OF THE ARIZONA CORPORATION COMMISSION 1912

To all to Whom these Presents shall Come, Greeting:

BE IT KNOWN THAT SOUTHWESTERN FAIR COMMISSION, INC.

HAVING SUBMITTED TO THE ARIZONA CORPORATION COMMISSION EVIDENCE OF COMPLIANCE WITH THE LAWS OF THE STATE OF ARIZONA GOVERNING THE INCORPORATION OF COMPANIES, IS, BY VIRTUE OF THE POWER VESTED IN THE COMMISSION UNDER THE CONSTITUTION AND THE LAWS OF THE STATE OF ARIZONA, HEREBY GRANTED THIS

CERTIFICATE OF INCORPORATION

AUTHORIZING SAID COMPANY TO EXERCISE THE FUNCTIONS OF A CORPORATION, UNDER THE LAWS NOW IN EFFECT IN THE STATE OF ARIZONA, AND SUBJECT TO SUCH LAWS AS MAY HEREAFTER BE ENACTED, FOR A PERIOD OF TWENTY-FIVE YEARS FROM THE DATE HEREOF, UNLESS SOONER REVOKED BY AUTHORITY OF LAW,

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

In Witness Whereof, I AL FARON, THE CHAIRMAN, HAVE HEREUNTO SET MY HAND AND CAUSED THE OFFICIAL SEAL OF THE ARIZONA CORPORATION COMMISSION TO BE AFFIXED AT THE CAPITOL, IN THE CITY OF PHOENIX, THIS 27th DAY OF January A. D. 1975

Al Faron
CHAIRMAN.

ATTEST George W. Dempsey
SECRETARY.

BY

ASSISTANT SECRETARY.

NO. 99470

STATE OF ARIZONA

Corporation Commission

To all to Whom these Presents shall Come, Greeting:

I, GEORGE M. DEMPSEY, SECRETARY OF THE ARIZONA CORPORATION COMMISSION, DO HEREBY CERTIFY THAT the annexed is a true and complete copy of the ARTICLES OF INCORPORATION

of

SOUTHWESTERN FAIR COMISSION, INC.

which were filed in the office of the Arizona Corporation Commission on the 17th day of January, 1975, as provided by law.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED THE OFFICIAL SEAL OF THE ARIZONA CORPORATION COMMISSION, AT THE CAPITOL, IN THE CITY OF PHOENIX, THIS 17th DAY OF January, A.D. 1975.

George M. Dempsey
BY SECRETARY

ASSISTANT SECRETARY

ARTICLES OF INCORPORATION

OF

SOUTHWESTERN FAIR COMMISSION, INC.

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned having associated ourselves together for the purpose of forming a non-profit corporation under and by virtue of Article 16, Chapter 1, Title 10, Arizona Revised Statutes, hereby adopt the following Articles of Incorporation:

ARTICLE I

The name of this corporation shall be SOUTHWESTERN FAIR COMMISSION, INC.

ARTICLE II

The primary place of business of the corporation within the State shall be at Tucson, Pima County, Arizona, but meetings of the said directors and officers of said corporation may be held and business transacted by them and on behalf of the corporation at other places than the City of Tucson, State of Arizona.

ARTICLE III

The objects, purposes and general nature of business in which this corporation shall engage are as follows:

(a) To organize and conduct a fair in the County of Pima, State of Arizona, said fair to be conducted at such times as the board of directors shall designate, with the general purpose in mind to advance the agricultural interests of the residence of the County of Pima and vacinity and for the competitive exhibition of farm products, livestock and trials of speed; and to promote the general interest of the residents

of the County of Pima and vacinity; the hiring, leasing, managing and conducting of all kinds of indoor and outdoor sports, amusements, entertainments, races, and attractions of whatsoever nature or kind, and the hiring of individuals and companies for such entertainment, or shows, and all other business that may be incidental thereto; the engaging in, leasing, conducting of restaurants, refreshment booths and stands of various kinds, and the leasing, owning, and the proper operation of such business; to acquire, hold, and operate and dispose of any and all privileges, rights, franchises and concessions; to conduct, manage, operate and handle fairs, and expositions, and all incidentals connected therewith or in anyway related thereto; to hold, own or operate such municipal state or governmental licenses as may be necessary for the proper conduct of any of the business in which the corporation may engage.

(b) To accept, acquire, receive, take and hold by bequest, device, grant, gift, purchase, exchange, lease, transfer, judicial order or decree or otherwise, for any of its objects and purposes, any property, both real and personal, of whatever kind and nature or description and wherever situated.

(c) To purchase or otherwise acquire, hold, own, sell lease, mortgage, pledge or otherwise dispose of, and deal in real property and personal property of every class and description and wherever situated with all rights incidental thereto to the same extent as a natural person might or could do. To borrow money

and to contract to pay the same, to issue bonds, notes, debentures, and for any lawful purpose, to mortgage, pledge or otherwise change all or any part of the property of the corporation to secure the payment thereof.

(d) To acquire by purchase or otherwise, the good will, business, property rights, franchises and assets of every kind, with or without undertaking either wholly or in part the liabilities of any person, firm, association or corporations; and to acquire any business as a going concern or otherwise; to hold, maintain, and operate or in any manner dispose of the whole or any part of the good will, business, rights and property so acquired and to conduct in any lawful manner the whole or any part of any business so acquired; and to exercise all the powers necessary or convenient in and about the management of said business.

(e) To enter into, make, perform and carry out contracts of every kind for any lawful purpose without limits as to amount except those prescribed by law, with any person, firm, association or corporation municipality, county, parish, state, territory, government or otherwise municipal or governmental subdivision.

(f) From time to time to apply for, purchase, acquire by assignment, transfer or otherwise, exercise, carry out or enjoy any benefit, right, privilege, prerogative or power conferred by, acquired under or granted

by any statute, ordinance, order, license, power, authority, franchise, commission, right or privilege which any government or authority or governmental agency or corporation or other public body may be empowered to enact, make or grant; to pay for, aid in and contribute toward carrying the same into effect and to appropriate any of this corporation's assets to defray the cost, charges and expenses thereof.

(g) To carry on business as auctioneers, to carry on the general livestock and agricultural products commission business, that is, to buy and sell livestock and agricultural products and to act as broker in the purchase and sale of livestock and agricultural products, and to receive for sale, and sell on commission, livestock, cotton, wool, hides, agricultural products and any produce consigned for sale, and to make advancements on such consignments and to charge for such sales and advancements; and to buy, to own and to sell livestock, agricultural products and other products on commission or otherwise, for its purposes of conducting fairs.

(h) To do all and everything necessary, suitable or proper for the accomplishment of any of the purposes, or the attainment or any of the objects or the furtherance of any of the powers herein before set forth, and do every other act or acts thing or things, incidental to, or growing out of, or connected with the aforesaid activities, or

otherwise or any part or parts thereof.

(i) Notwithstanding any other provision of this Article III or these Articles of Incorporation, the corporation shall not conduct any activities not permitted to be conducted by an organization exempt from taxation under § 501(a) and described in § 501(c) (6) of the Internal Revenue Code of 1954 and regulations applicable thereto, as they now exist or as they may hereafter be amended.

ARTICLE IV

This corporation is organized pursuant to the provisions of Article 16, Title 10, Arizona Revised Statutes, as a non-profit corporation, without capital stock or shares and no part of the net income of this corporation shall inure to the benefit of any member, and no member, officer, director or employee of the corporation shall receive any pecuniary profit of any kind therefrom, except reasonable compensation for services in effecting one or more of its purposes, and no dividend or pecuniary profit shall ever be declared or paid to any of the members of this corporation. No member, director or officer of the corporation or any private individual shall be entitled to share in the distribution of any of the corporation's assets on the dissolution of the corporation. In the event of a dissolution of the corporation all money appropriated and expended by any county in aid of this corporation shall be repaid before any assets of the corporation shall be distributed in accordance with the law governing the distribution of assets by a non-profit corporation.

ARTICLE V

This corporation shall be organized without capital stock and the membership thereof, including number and qualifications shall be selected as provided for in the bylaws of

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this corporation. Neither the said membership nor any evidence thereof shall be subject to assignment and/or transfer in any manner, whether by operation of law or otherwise and no assignee or transferee of said membership and/or evidence thereof shall be entitled to membership any property right or interest to any degree in this corporation. The object of the organization of this corporation does not contemplate pecuniary gain or profit to the members thereof or any of them.

ARTICLE VI

The time for the commencement of this corporation shall be the date of the filing of the Articles of Incorporation as required by law and the term of its corporate existence shall be twenty-five (25) years thereafter, with the privilege of renewal as provided by law.

ARTICLE VII

The affairs of this corporation shall be conducted by a Board of Directors consisting of five (5) persons who shall be elected by the membership.

Membership in this corporation shall be confined to those persons appointed to the Pima County Fair Commission by the Board of Supervisors of Pima County, Arizona, and shall initially consist of those persons appointed September 16, 1974, by the said Board of Supervisors of Pima County, Arizona. They are as follows:

Name	Expiration of Term	Address
Donald Butler	March 31, 1976	4400 East Broadway Suite 205 Tucson, Arizona 85711
Dale Barrus	March 31, 1976	P.O. Box 3019 Tucson, Arizona 85702
Gene C. Reid	March 31, 1976	900 South Randolph Way Tucson, Arizona

Albert A. Mallis	March 31, 1975	57 West Alameda Tucson, Arizona 85701
W. N. Damron	March 31, 1975	Route 8, Box 336-K Tucson, Arizona 85710

Upon the expiration of each member's term of appointment, his membership in this corporation shall lapse and the successor member appointed to the Fair Commission shall automatically be a member of this corporation.

The foregoing persons shall serve as Directors of this corporation until their successors shall have been appointed and shall have qualified.

ARTICLE VIII

The officers of this corporation shall be a president, a vice-president, secretary and treasurer, and such other officers as may hereafter be provided in the bylaws. After the year 1974, an annual meeting of the members shall be held in each year on the 4th Tuesday in February. The following persons shall hold the offices set opposite their names, respectively, until the annual meeting of the directors immediately following the annual meeting of the members in 1975.

Donald Butler	President
Dale Barrus	Executive Vice-President and Assistant Treasurer
W. N. Damron	Vice-President
Gene C. Reid	Vice-President
Albert A. Mallis	Secretary and Treasurer

In addition to the officers set forth, the board of directors shall elect such officers and appoint such committees as such bylaws shall provide for. The board of directors shall have the power to designate any committees, either from said directors or others, which, on their discretion they may deem proper for the exercise of such powers as may by the board of directors be conferred upon them. The board of directors shall have the power to authorize the execution by such officer or agents as they may designate,

of contracts, negotiable instruments and such other paper, all to be issued and executed in conformity with the purpose of the corporation.

ARTICLE IX

These Articles of Incorporation may be amended by the affirmative vote of a majority of the members present at a meeting called for that purpose; provided, however, that in no event shall Articles V and IX hereof be altered in any manner whatsoever. All other matters not governed by these articles shall be governed by the bylaws which may be adopted or amended by the membership or the board of directors in accordance with their terms.

ARTICLE X

The private property of the members, directors and officers of this corporation shall be forever exempt from the debts of this corporation.

ARTICLE XI

The highest amount of indebtedness or liability direct or contingent to which this corporation is at any time to subject itself shall be the highest amount allowed by the laws of the State of Arizona.

ARTICLE XII

Jim L. Johnston of the law firm of Thikoll, Johnston & Rosen, whose address is Suite 200, 111 South Church, Tucson, Arizona, 85701, who has been a bona fide resident of the State of Arizona for more than three (3) years last past, is hereby appointed and designated Statutory Agent of the corporation for the State of Arizona upon whom service of process may be had.

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ARTICLE XIII

The names and addresses of the incorporators are as follows:

Donald Butler	4400 East Broadway Suite 205 Tucson, Arizona 85711
Dale Barrus	P.O. Box 3019 Tucson, Arizona 85702
Gene C. Reid	900 South Randolph Way Tucson, Arizona
Albert A. Mallis	57 West Alameda Tucson, Arizona 85701
W. N. Damron	Route 8, Box 336-K Tucson, Arizona 85710

IN WITNESS WHEREOF the undersigned have set their hands this 5th day of December, 1974.

Donald Butler
DONALD BUTLER

Dale Barrus
DALE BARRUS

Gene C. Reid
GENE C. REID

Albert A. Mallis
ALBERT A. MALLIS

W. N. Damron
W. N. DAMRON

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

On this the 5th day of December, 1974, before me the undersigned officer, personally appeared DONALD BUTLER, DALE BARRUS, GENE REID, ALBERT A. MALLIS, and W. N. DAMRON, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledge that they executed

DOCK 4041 PAGE 645

the same, each for himself and not one for the other, for the purposes therein contained.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

Notary Public

My Commission Expires:
3-17-77

1646

99470

ARIZONA CORPORATION COMMISSION
INCORPORATING DIVISION

FILED

JAN 17 1975

At 10:00 A. M. at request of
Thekall, Johnston & Rosen
Address 111 S. Church Ave., Suite 200
Tucson, AZ. 85701
By Julie Baker
George M. Dempsey, SECRETARY

6028

Fee 5.50

INDEXED	COPIES	BLOTTED

State of Arizona
County of Pima } ss

I hereby certify that the within instrument was filed for record as recorded
Of Thekall, Johnston & Rosen
Date JAN 24 1975 3:50 PM
Book 4941 Page 636-647
Witness my hand and Official Seal
day and year above written
IDA M. SMITH County Recorder
By Martha Stephens
Deputy

R. 1-24-75

BOOK 4941 PAGE 647

File

BY-LAWS

OF

SOUTHWESTERN FAIR COMMISSION, INC.

AS AMENDED FEBRUARY 25, 1992

ARTICLE I

MEMBERS

SECTION ONE:

The annual meeting of the members of the Corporation, for the election of Directors and for the transaction of such other business as may properly come before the meeting, shall be held at the office of the Corporation in the City of Tucson, County of Pima, State of Arizona, or such other place, within or without the State of Arizona as may be designated by the Board of Directors by written notice to the members, the fourth Tuesday in March of each year, if said day is not a legal holiday, and if a legal holiday, then on the day following.

Membership in this Corporation shall be confined to those persons appointed to the Pima County Fair Commission by the Board of Supervisors of Pima County, Arizona.

SECTION TWO:

Notice of the time and place of holding each such annual meeting of members shall be served either personally or by mail upon each member of record of this Corporation

entitled to vote at such meeting not less than five nor more than thirty days before the day fixed for such meeting; if mailed, it shall be directed, except as otherwise provided by law, to each member at his post office address as it appears on the records of this Corporation.

SECTION THREE:

Special meetings of the members, unless otherwise provided by law, may be called at any time by the Board of Directors. The Secretary shall call a special meeting of members whenever he is requested in writing so to do by not less than one-third of the members of the Corporation, or by the President or by not less than one-third of the Directors then in office.

SECTION FOUR:

Notice of each such special meeting, unless otherwise provided by law, may be given as herein provided for giving notice of an annual meeting, but shall also include notification to the members of the purpose or purposes for which said meeting has been called.

SECTION FIVE:

At all meetings of members, annual or special, other than meetings a quorum at which is fixed by law, in order to constitute a quorum there shall be present, in

person or by written proxy, members who together hold not less than one-half of the votes entitled to be cast.

SECTION SIX:

At any meeting of members, annual or special, if less than a quorum be present, the members present, in person or by proxy, may, by majority vote, adjourn the meeting to a future time until a quorum shall be present, and notice of such adjourned meeting shall be mailed, postage prepaid, or personally delivered to each member of record at least three days before such adjourned meeting; if a quorum is present, the members may adjourn from time to time as they see fit and no notice of such adjournment need be given.

SECTION SEVEN:

Except as otherwise provided by law or by the Articles of Incorporation or other certificate filed pursuant to law, each member of record shall be entitled at every meeting of members to one vote on each matter presented to the members.

SECTION EIGHT:

In the election of Directors and in voting on any question on which a vote by ballot is required by law or is

demanded by any member, the voting shall be by written ballot. On all other questions, the voting may be oral.

SECTION NINE:

Members may vote at all meetings either in person or by written proxy.

SECTION TEN:

Notice of any meeting may be waived by any member, whether such waiver is made before or after the time stated in such notice. Attendance of any member at a meeting shall constitute a waiver of notice of the meeting unless such member attends such meeting for the expressed purpose of objecting to the transaction of business because the meeting has not been lawfully called or convened.

SECTION ELEVEN:

The members shall, except as otherwise provided by law, have the power to act in the following manner:

> A resolution in writing, signed by all members entitled to vote at the time of said resolution, shall be deemed to be action of the members to the effect therein expressed, with the same force and effect as if said resolution had been duly passed by the same vote at a duly convened meeting, and it shall be the duty of the Secretary of the Corporation to record such resolution in the minute book of the Corporation under proper date.

ARTICLE II

DIRECTORS

SECTION ONE:

The affairs of the Corporation shall be managed and conducted by the Board of Directors. The Board of Directors shall be comprised of not less than three nor more than seven members or such other persons as the members shall elect. The present number of Directors is fixed at five. The number of Directors may be altered from time to time by the alteration of these by-laws. In case of any increase of the number of Directors, the additional Directors shall be elected to serve until the next annual meeting. Each Director shall serve for the term for which he shall have been elected and until his successor shall have been duly elected and qualified. The Directors may be divided into classes and the terms of office for the several classes need not be uniform or coterminous.

SECTION TWO:

In case of any vacancy in the office of the directorship through death, resignation, disqualification or other cause, the remaining Directors, by an affirmative vote of the majority thereof, may elect a successor to hold office for the unexpired portion of the term of the Director whose office shall be vacant and until his successor is elected and qualified.

SECTION THREE:

The Directors shall hold their meetings, have an office and keep the books of the Corporation in the City of Tucson, State of Arizona, or at such other place or places, within or without the State of Arizona, as the Board may from time to time determine.

SECTION FOUR:

Regular meetings of the Board of Directors shall be held not less often than annually immediately following the annual meeting of the members or at such other time and place as is determined by the Board of Directors. No notice shall be required for any such regular meeting of the Board. Meetings of the Board of Directors may be held by means of conference telephone or similar communications equipment by means of which all persons participating may hear each other. Participation in a meeting pursuant to this Section shall constitute such participant's presence at such meeting.

SECTION FIVE:

Special meetings of the Board of Directors shall be held whenever called by the President or by not less than one-third of the Directors for the time being in office. Notice of special meeting shall be given by mailing the same at least two days before the meeting, or be telegraphing or

personally delivering the same at least one day before the meeting to each Director; but such notice may be waived by any Director. At any meeting at which every Director shall be present, even though without notice, any business may be transacted. The presence of any Director at any meeting shall constitute a waiver of notice except when a Director attends a meeting for the expressed purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

SECTION SIX:

A majority of the Directors then in office shall constitute a quorum for the transaction of business. If at any meeting of the Board of Directors there be less than a quorum present, a majority of those present may adjourn the meeting from time to time; notice of any such adjourned meeting shall be given in the manner and for the time prescribed for special meetings. If a quorum is present, the Directors may adjourn from time to time as they see fit and no notice of such adjournment need be given.

All business may be transacted and all resolutions may be adopted by a simple majority vote of those present at a meeting constituting a quorum, except as otherwise expressly provided in these by-laws.

SECTION SEVEN:

At meetings of the Board of Directors, business shall be transacted in such order as, from time to time, the Board of Directors may determine by resolution.

At all meetings of the Board of Directors, the President, or in his absence, the Vice-President shall preside.

SECTION EIGHT:

At the first regular meeting of the Board of Directors in each year held next after the annual meeting, or at such other time as the Directors shall determine, the Board of Directors shall proceed to the election of the executive officers of the Corporation to be elected by the Board of Directors under the provisions of Article III and Article IV of these by-laws.

SECTION NINE:

The Board of Directors shall, except as otherwise provided by law, have the power to act in the following manner:

> A resolution in writing, signed by all the members of the Board of Directors, shall be deemed to be action of such Board to the effect therein expressed, with the same force and effect as if said resolution had been duly passed by the same vote at a duly covened meeting and it shall be the duty of the Secretary of

the Corporation to record such resolution in the minute book of the Corporation under proper date.

ARTICLE III

OFFICERS, AGENTS AND EMPLOYEES

SECTION ONE:

The executive officers of the Corporation shall be a President, a Vice-President, a Treasurer and a Secretary, all of whom shall be elected by the Board of Directors from their own number.

The Board of Directors may elect such other officers as they shall deem necessary, who shall have such authority and shall perform such duties as from time to time may be prescribed by the Board of Directors, provided that all officers must be Directors.

SECTION TWO:

The President shall be the principal executive officer of the Corporation, and, subject to the control of the Board of Directors, shall, in general, supervise and control all of the business and affairs of the Corporation. He shall, when present, preside at all meetings of the members and of the Board of Directors. He may sign, with the Secretary or any other proper officer of the Corporation thereunto authorized by the Board of Directors, instruments which the Board of Directors has authorized to be executed,

except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these by-laws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed; and, in general, shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

SECTION THREE:

The Vice-President shall perform the duties of the President in the event of his absence, disability or refusal to act. By virtue of his office, he shall be Vice-Chairman of the Board of Directors. The Board of Directors may appoint more than one Vice-President, or senior Vice-Presidents, delegating various responsibilities of the Corporation to such officers. In the event more than one Vice-President or senior Vice-President is named, there shall be designated in order of priority, to corporate senior Vice-President, who shall perform the duties of the President in the event of his absence, disability or refusal to act.

SECTION FOUR:

The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all

meetings of the members, and also the minutes of all committees, in books provided for that purpose; he shall give notice of meetings when notice shall be required; he shall have charge of any other books and papers as the Board of Directors may direct, all of which shall, at any reasonable times, be opened to the examination of any Director, upon application at the office of the Corporation during business hours; and he shall, in general, perform all the duties incident to the office of Secretary, subject to the control of the Board of Directors.

SECTION FIVE:

The Treasurer shall have custody of all funds and securities of the Corporation; when necessary or proper he shall endorse on behalf of the Corporation for collection, checks, notes, and other obligations and shall deposit the same to the credit of the Corporation in such bank or banks or depository as the Board of Directors may designate; he shall, at all reasonable times, exhibit his books and accounts to any Director of the Corporation upon application at the office of the Corporation during business hours; and he shall perform all acts incident to the position of Treasurer, subject to the control of the Board of Directors.

The Board of Directors shall have the power to designate an employee or employees, subject to the control and supervision of the Treasurer, to sign receipts and

vouchers for payment to the Corporation, endorse and cash or deposit checks, vouchers and drafts of the Corporation.

SECTION SIX:

Unless otherwise ordered by the Board of Directors, the President shall have full power and authority on behalf of the Corporation to attend and to act and to vote at any meeting of members of any Corporation in which the Corporation may hold stock, and at any such meeting shall possess and may exercise any and all rights and powers incident to the ownership of such stock, and which, as the owner thereof, the Corporation might have possessed and exercised if present. The Board of Directors by resolution, from time to time, may confer like powers upon any other person or persons.

ARTICLE IV

CAPITAL STOCK

SECTION ONE:

This Corporation is organized pursuant to the provisions of Arizona Revised Statutes Section 10-001 et seq., as a non-profit corporation, without capital stock or shares and no part of the net income of this Corporation shall inure to the benefit of any member, and no member, officer, director or employee of the Corporation shall receive any pecuniary profit of any kind therefrom, except

reasonable compensation for services in effecting one or more of its purposes, and no dividend or pecuniary profit shall ever be declared or paid to any of the members of this Corporation. No member, director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the Corporation's assets on the dissolution of the Corporation. In the event of a dissolution of the Corporation all money appropriated and expended by any county in aid of this Corporation shall be repaid before any assets of the Corporation shall be distributed in accordance with the law governing the distribution of assets by a non-profit corporation.

ARTICLE V

SEAL

SECTION ONE:

The common corporate seal of the Corporation shall have inscribed on it Southwestern Fair Commission, Inc., incorporated under the laws of Arizona. The seal of the Corporation shall be impressed as follows:

ARTICLE VI

AMENDMENT OF BY-LAWS

SECTION ONE:

The by-laws of the Corporation may be altered, amended or repealed by a two-thirds majority vote of the

Directors at any regular or special meeting of the Board of Directors, provided that notice of such proposed alteration, amendment, or repeal shall have been given in writing not less than five nor more that thirty days before such meeting or without any such notice by unanimous vote at any meeting of the Directors when all of the Directors are present.

ARTICLE VII

INDEMNITY

SECTION ONE:

In the event that any actual or imputed payments of salaries, bonuses, commissions, interest, rents, travel, entertainment, and other expenses made to an officer, director or employee of the Corporation are disallowed in whole or in part as deductible expenses under the Internal Revenue Code of 1986 as it now exists or as it is hereafter amended, then such disallowed expenses shall be reimbursed in full by officer, director or employee of the Corporation.

The Board of Directors shall have the duty of enforcing reimbursement of each such amount disallowed, and in lieu of lump sum reimbursements, such repayments by the officer, director or employee may be accomplished through

proportionate withholding of amounts from future compensation payments made to such persons.

Ray Bernal

Marvin R. Selke

Richard Collins

Ralph Wong

Gene C. Reid

7418r

AMENDED AND RESTATED
BYLAWS
OF
SOUTHWESTERN FAIR COMMISSION, INC.
an Arizona Non-Profit Corporation

As Amended October 12, 1994

These Amended and Restated Bylaws supersede and replace in their entirety any prior Bylaws of the Southwestern Fair Commission, Inc.

ARTICLE I.
OFFICES AND CORPORATE SEAL

SECTION 1. Name of Corporation. The name of the Corporation shall be the Southwestern Fair Commission, Inc. (the "Corporation").

SECTION 2. Principal Office. The principal office of the Corporation shall be located in the County of Pima, State of Arizona, but other offices may be established and maintained within or without the State of Arizona at such places as the Board of Directors may designate.

SECTION 3. Corporate Seal. A corporate seal shall not be requisite to the validity of any instrument executed by or on behalf of the corporation, but nevertheless if in any instance a corporate seal be used, the same shall be a circle having on the circumference thereof the name of the corporation and in the center the words "corporate seal", the year incorporated, and the state where incorporated.

ARTICLE II.
MEMBERSHIP

SECTION 1. Members. The members (the "Members") of the Corporation shall be appointed and serve as provided for in the Articles of Incorporation of the Corporation (the "Articles of Incorporation") until the earlier of their resignation, replacement, or death.

SECTION 2. Function. The chief function of the Members shall be to elect the Directors of the Corporation when there are more than seven (7) Members (when there are less than seven (7) Members, all the Members shall automatically be Directors, without any need for election by the Members) and to otherwise take any action required or permitted of the Members by law.

SECTION 3. Voting Rights. Each Member shall be entitled to one vote.

ARTICLE III.
BOARD OF DIRECTORS

SECTION 1. Composition. The Board of Directors (the "Directors" or "Board of Directors") of the Corporation shall be the Members appointed in accordance with the Articles of Incorporation, unless more than seven (7) Members are appointed, in which case the Directors shall be comprised of seven (7) Members, each of which shall be elected by a majority vote of the Members.

SECTION 2. Function. The chief function of the Directors is to manage the affairs of the Corporation. Subject to the limitations contained in these Bylaws, the Articles of Incorporation, and applicable law, all corporate powers shall be exercised by or under authority of, and the business and affairs of the Corporation shall be controlled by, the Board of Directors.

SECTION 3. Number. There shall be a minimum of five (5), but no more than seven (7), Directors on the Board of Directors. The exact number of Directors shall be equal to the number of Members, unless there are more than seven (7) Members, in which case there shall be seven (7) Directors.

SECTION 4. Term. Each Director shall hold office for so long as he is a Member. Upon the expiration of such Director's Membership in the Corporation, he shall be replaced by the successor Member appointed to replace him by the Pima County Board of Supervisors, or if there are more than seven (7) Members, the replacement on the Board of Directors shall be elected by the Members.

SECTION 5. Voting Rights. Each Director shall be entitled to one vote.

SECTION 6. Qualifications. Membership on the Corporation's Board of Directors shall be confined to Members. Upon termination of a person's status as a Member, for any reason, such person shall also cease to be a Director.

ARTICLE IV
RESIGNATION, REMOVAL AND VACANCIES

SECTION 1. Resignation. Any Member may resign at any time by giving written notice to the President of the Corporation and to the Board of Supervisors of Pima County, Arizona. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 2. Removal. Any Member may be removed with or without cause. by a vote of a majority of the Board of Supervisors of Pima County, Arizona.

SECTION 3. Vacancies. A vacancy or vacancies within the Membership shall be filled by the Board of Supervisors of Pima County, Arizona.

ARTICLE V.
MEETING OF THE MEMBERS

SECTION 1. Place of Meeting. Meetings of the Members shall be held at the principal office of the Corporation or at any place within or without the State of Arizona designated from time to time by resolution of the Board of Directors or by written consent of all Members.

SECTION 2. Annual Meeting, Regular Meetings and Special Meetings. The Annual Meeting of Members of the Corporation shall be held on the fourth Tuesday in March of each year, if not a legal holiday, and if a legal holiday, then on the succeeding business day. Other regular meetings of the Members may be held at such times and places as the Board shall from time to time designate. Special meetings of the Members may be called at any time by any three or more Members.

Meetings of the Members may be held by means of telephone conference or similar communications equipment which allows all persons participating to hear each other. Participation in a meeting pursuant to this paragraph shall constitute such participant's presence at such meeting.

SECTION 3. Notices of Meetings-Waiver. Notices of the annual meetings of Members shall be given at least five, but no more than thirty days, prior to the date thereof and notices of regular meetings or special meetings shall be given at least two days prior to the date thereof. Each notice shall specify the place, the day, and the hour of the meeting and the general nature of the business to be transacted. Notices shall be given as provided in **Article VIII, Section 1** of these Bylaws and may be waived either before or after the meeting as provided in **Article VIII, Section 2** of these Bylaws. Notices of adjourned meetings need not be given except when the adjournment is thirty days or more. Notices shall be given by the Secretary, or if he or she is absent, or is unable or refuses to act, by any other Officer or Member of the Corporation.

SECTION 4. Quorum-Voting-Adjournment. The presence of a majority of the Members shall constitute a quorum for the transaction of business. Any business may be conducted by vote of a majority of the quorum then present, unless some greater number of votes is required under the Corporation's Articles of Incorporation, these Bylaws, or applicable law. In the absence of a quorum, any meeting may be adjourned from time to time by the vote of a majority of the Members present thereat, but no other business may be transacted.

SECTION 5. Meeting Format. At every meeting of the Members, the Chairman of the Board of Directors or, in his absence, the Secretary of the Board of Directors, shall act as Chairman. The Secretary of the Board of Directors shall act as secretary at all meetings. In the absence at any such meeting of the Secretary, the Chairman of the meeting may appoint another person to act as secretary of the meeting.

SECTION 6. Committees. There may be such committees as the Members may from time to time determine. Membership of such committees shall be by appointment by the Chairman of the

Board of Directors, with the consent of a majority of the quorum of Members present at the meeting when such committee is appointed.

SECTION 7. Action by Unanimous Written Consent. The Members shall, except as otherwise provided by law, have the power to act in the following manner:

> A resolution in writing, signed by all the Members, shall be deemed to be action of the Members to the effect therein expressed, with the same force and effect as if said resolution had been duly passed by the same vote at a duly convened meeting and it shall be the duty of the Secretary of the Corporation to record such resolution in the minute book of the Corporation.

SECTION 8. Compliance with Laws. In holding their meetings, the Members shall comply with all applicable laws, including any applicable open meeting laws and notice requirements.

SECTION 9. Concurrent Meetings. At any time when all the Members are also Directors of the Corporation, any meeting of the Members or Directors shall be deemed to be joint/concurrent meetings of the Members and Directors, and all actions taken at such meetings required to be taken by the Members shall be deemed taken by the Members in that capacity and all meetings required to be taken by the Directors shall be deemed taken by the Members in their capacities as Directors. When there are Members who are not also Directors (i.e. when there are more than seven (7) Members), then the Members and Directors may elect to hold separate or joint meetings. However, the annual meetings of the Members and Directors shall always be held jointly, regardless of the number of Members.

ARTICLE VI.
MEETINGS OF THE BOARD OF DIRECTORS

SECTION 1. Place of Meeting. Meetings of the Directors shall be held at the principal office of the Corporation or at any place within or without the State of Arizona designated from time to time by resolution of the Board of Directors or by written consent of all Directors.

SECTION 2. Annual Meeting, Regular Meetings and Special Meetings. The Annual Meeting of the Directors of the Corporation shall be held on the fourth Tuesday in March of each year. if not a legal holiday, and if a legal holiday, then on the succeeding business day. Other regular meetings of the Board of Directors shall be held at such times and places as the Board shall from time to time designate. Special meetings of the Board of Directors may be called at any time by the Chairman of the Board of Directors. Special meetings may also be called with the consent of any three Directors. Meetings of the Board of Directors may be held by means of telephone conference or similar communications equipment which allows all persons participating to hear each other.

Participation in a meeting pursuant to this paragraph shall constitute such participant's presence at such meeting.

SECTION 3. Notices of Meetings-Waiver. Notices of the annual meetings of Directors shall be given at least five, but no more than thirty days, prior to the date thereof and notices of regular meetings or special meetings shall be given at least two days prior to the date thereof. Each notice shall specify the place, the day, and the hour of the meeting and the general nature of the business to be transacted. Notices shall be given as provided in **Article VIII, Section 1** of these Bylaws and may be waived either before or after the meeting as provided in **Article VIII, Section 2** of these Bylaws. Notices of adjourned meetings need not be given except when the adjournment is thirty days or more. Notices shall be given by the Secretary, or if he or she is absent, or is unable or refuses to act, by any other Officer or Director of the Corporation.

SECTION 4. Quorum-Voting-Adjournment. The presence of a majority of Directors shall constitute a quorum for the transaction of business. Any business may be conducted by vote of a majority of the quorum then present, unless some greater number of votes is required under the Corporation's Articles of Incorporation, these Bylaws, or applicable law. In the absence of a quorum, any meeting may be adjourned from time to time by the vote of a majority of the Directors present thereat, but no other business may be transacted.

SECTION 5. Meeting Format. At every meeting of the Board of Directors, the Chairman of the Board of Directors or, in his absence, the Secretary of the Board of Directors, shall act as Chairman. The Secretary of the Board of Directors shall act as Secretary at all meetings. In the absence at any such meeting of the Secretary, the Chairman of the meeting may appoint another person to act as secretary of the meeting.

SECTION 6. Committees. There may be such committees as the Board of Directors may from time to time determine. Membership of such committees shall be by appointment by the Chairman of the Board of Directors, with the consent of a majority of the quorum present at the meeting when such committee is appointed.

SECTION 7. Action by Unanimous Written Consent. The Board of Directors shall, except as otherwise provided by law, have the power to act in the following manner:

> A resolution in writing, signed by all the members of the Board of Directors, shall be deemed to be action of such Board to the effect therein expressed, with the same force and effect as if said resolution had been duly passed by the same vote at a duly convened meeting and it shall be the duty of the Secretary of the Corporation to record such resolution in the minute book of the Corporation.

SECTION 8. Compliance with Laws. In holding their meetings, the Board of Directors shall comply with all applicable laws, including any applicable open meeting laws and notice requirements.

SECTION 9. Concurrent Meetings. The Board of Directors shall hold concurrent/joint meetings with the Members as provided in **Article V, Section 9**.

ARTICLE VII.
OFFICERS, AGENTS AND EMPLOYEES

SECTION 1. Officers. The Officers of the Corporation shall be a President (who shall also be the Chairman of the Board of Directors), a Treasurer and a Secretary (who shall also be the Secretary of the Board of Directors), all of whom shall be elected by the Board of Directors from their own number. No person may occupy, at the same time, two or more offices. The Board of Directors may elect such other officers as they deem necessary, who shall have such authority and shall perform such duties as from time to time may be prescribed by the Board of Directors, provided that all officers must be Members.

SECTION 2. President and Chairman of the Board of Directors. The President shall be the principal executive officer of the Corporation, and, subject to the control of the Board of Directors, shall, in general, supervise and control all of the business and affairs of the Corporation. He or she shall be Chairman of the Board of Directors, and, when present, preside at all meetings of the Board of Directors. He or she may sign, with the Secretary or any other proper officer of the Corporation thereunto authorized by the Board of Directors, instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed; and, in general, shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time. Unless otherwise ordered by the Board of Directors, the President shall have full power and authority on behalf of the Corporation to attend and to act and to vote at any meeting of the shareholders of any corporation in which the Corporation may hold stock, and at any such meeting shall possess and may exercise any and all rights and powers incident to the ownership of such stock, and which, as the owner thereof, the Corporation might have possessed and exercised if present. The Board of Directors by resolution, from time to time, may confer like power upon any other person or persons.

SECTION 3. Secretary. The Secretary of the Corporation shall perform the duties of the President in the event of his or her absence or inability to act. He or she shall also be Secretary of the Board of Directors, and preside at all meetings of the Board of Directors when the Chairman of the Board of Directors is absent. The Secretary shall keep the minutes of all meetings of the Board of Directors and also the minutes of all committees, in books provided for that purpose; he or she shall give notice of meetings when notice shall be required; he or she shall have charge of any other books and papers, as the Board of Directors may direct, all of which shall, at any reasonable times, be opened to the examination of any Member or Director, upon application at the office of the

Corporation during business hours; and he or she shall, in general, perform all the duties incident to the office of Secretary, subject to the control of the Board of Directors.

SECTION 4. Treasurer. The Treasurer shall have custody of all funds and securities of the Corporation; when necessary or proper he or she shall endorse on behalf of the Corporation for collection, checks, notes and other obligations and shall deposit the same to the credit of the Corporation in such bank or banks or depository as the Board of Directors may designate; he or she shall, at all reasonable times, exhibit his books and accounts to any Member or Director of the Corporation upon application at the office of the Corporation during business hours; and he or she shall perform all acts incident to the position of Treasurer, subject to the control of the Board of Directors. The Board of Directors shall have the power to designate an employee or employees, subject to the control and supervision of the Treasurer, to sign receipts and vouchers for payment to the Corporation, endorse and cash or deposit checks, vouchers and drafts of the Corporation.

SECTION 5. Delegation. The Board of Directors may delegate to the Officers or employees of the Corporation such duties and responsibilities as the Board of Directors deems appropriate. Any such delegation shall be at the pleasure of the Board of Directors and may be rescinded, altered or amended by the Board of Directors as it deems appropriate.

SECTION 6. Term. The Officers shall be elected for one year terms at each annual meeting of the Board of Directors. Any vacancy in any office shall be filled by the Board of Directors at the next regular meeting of the Board or at a special meetings called for that purpose.

ARTICLE VIII.
NOTICE

SECTION 1. Notices. Whenever any notice is required to be given to any Member or Director by statute or by these Bylaws whether of a meeting or for some other purpose, it may be given personally or sent to such Member or Director by mail, telegram, facsimile transmission or other form of written communication, charges prepaid, addressed to him or her at his or her address as it is shown on the records of the Corporation or if it is not so shown on such records or is not readily ascertainable, at the principal office of the Corporation. In case such a notice is mailed or telegraphed, it shall be deemed given at the time when the same shall be deposited in the United States mail or delivered to the telegraph company. If such notice is sent by facsimile transmission, it shall be deemed given at the time transmitted. Such mailing, telegraphing, faxing, or delivering as herein provided shall be due, legal and personal notice to such Member or Director. If given personally, the person effecting such notice shall sign a statement to that effect stating where and when such notice was effected. All such statements shall be filed with the records of the Corporation.

SECTION 2. Waiver of Notice. Whenever any notice is required to be given to any Member or Director by statute or by these Bylaws, whether of a meeting or for some other purpose, a Member

or Director may waive such notice; and a waiver or waivers in writing, signed by the person or persons entitled to said notice, shall be deemed equivalent to such notice. All such waivers shall be filed with the records of the Corporation.

ARTICLE IX.
AMENDMENT OF BYLAWS

SECTION 1. Procedure. The Bylaws of the Corporation may be altered, amended or repealed by a majority vote of the Directors at any regular or special meeting of the Board of Directors, provided that notice of such proposed alteration, amendment, or repeal shall have been given in writing not less than two days before such meeting or without any such notice by unanimous vote at any meeting of the Directors when all the Directors are present.

ARTICLE X.
INDEMNIFICATION OF DIRECTORS AND OFFICERS

SECTION 1. Indemnification. Any person (and the heirs, executors, and administrator of such person) made or threatened to be made a party to any action, suit, or proceeding by reason of the fact that he or she is or was a Member, Director or Officer hereof, shall be indemnified by the Corporation against any and all liability and the reasonable expenses, including attorney's fees and costs, incurred by him or her in connection with the defense or settlement of such action, suit or proceeding, or in connection with any appearance therein, to the fullest extent permitted by law. Such right of indemnification shall not be deemed exclusive of any other right to which such Member, Director or Officer (or such Member, Director or Officer's heirs, executor, or administrator) may be entitled apart from this Article.

SECTION 2. Insurance and Other Indemnification. The Board shall have the power, without limiting the other powers of the Board, to take the following actions:

a. purchase and maintain, at the Corporation's expense, insurance on behalf of the Corporation and on behalf of others to the fullest extent permitted by law.

b. give other indemnification to the fullest extent permitted by law.

ARTICLE XI.
DISSOLUTION

SECTION 1. Dissolution. The Members may elect to dissolve the Corporation in accordance with the Articles of Incorporation, the Bylaws, and Arizona law. In the event of a dissolution of the Corporation, all money appropriated and expended by any county in aid of this

Corporation shall be repaid before any assets of the Corporation shall be distributed in accordance with the law governing the distribution of assets by a non-profit corporation.

ARTICLE X2.
VALIDITY OF BYLAWS

The invalidation of any section of these Bylaws, for whatever reason, shall have no effect on the balance of these Bylaws.

The undersigned hereby certifies that the foregoing Bylaws were duly adopted by the Corporation's Board of Directors on Dec 13, 1994.

Richard C Collins

Secretary

Attest:

Ralph Wong, Chairman of the Board

AMENDMENT TO THE BYLAWS
OF
SOUTHWESTERN FAIR COMMISSION, INC.
An Arizona Non-Profit Corporation

We the undersigned, being a majority of the Directors of Southwestern Fair Commission, Inc., an Arizona non-profit corporation (the "Corporation"), do hereby adopt the following resolution as authorized by Arizona Revised Statutes and the Bylaws of the Corporation:

WHEREAS, the Board of Directors of the Corporation (the "Board") wishes to amend Article V, Section 2 and Article VI, Section 2 of its Bylaws, wherein provision is made for the annual meetings of the Members and the Board to be held on the fourth Tuesday in March of each year; and

WHEREAS, the Board has followed the procedure for Amendment of Bylaws set forth in Article IX of the Bylaws, and carefully considered the proposed Amendment;

RESOLVED, that Article V, Section 2 of the Bylaws of the Corporation be, and hereby is, amended to read in its entirety as follows:

> SECTION 2. Annual Meeting, Regular Meetings and Special Meetings. The Annual Meeting of Members of the Corporation shall be held any time during the month of January on a date to be determined and designated by the Board of Directors at the last meeting of the previous year. Other regular meetings of the Members shall be held at such times and places as the Board shall from time to time designate. Special meetings of the Members may be called at any time with the consent of any three Members. Meetings of the Members may be held by means of telephone conference or similar communications equipment which allows all persons participating to hear each other. Participation in a meeting pursuant to this paragraph shall constitute such participant's presence at such meeting.

RESOLVED, that Article VI, Section 2 of the Bylaws of the Corporation be, and hereby is, amended to read in its entirety as follows:

> SECTION 2. Annual Meeting, Regular Meetings and Special Meetings. The Annual Meeting of the Directors of the Corporation shall be held any time during the month of January

on a date to be determined and designated by the Board of Directors at the last meeting of the previous year. Other regular meetings of the Board of Directors shall be held at such times and places as the Board shall from time to time designate. Special meetings of the Board of Directors may be called at any time by the Chairman of the Board of Directors. Special meetings may also be called with the consent of any three Directors. Meetings of the Board of Directors may be held by means of telephone conference or similar communications equipment which allows all persons participating to hear each other. Participation in a meeting pursuant to this paragraph shall constitute such participant's presence at such meeting.

This Resolution shall be filed with the Minutes of the proceedings of the Board of Directors of this Corporation.

Executed effective this 3rd day of November, 1998.

Directors:

Director	Director
Director	Director
Director	Director

CONTRACT
NO. 11-11-S-139178-0206
AMENDMENT NO. _____
This number must appear on all invoices, correspondence and documents pertaining to this contract.

Management Agreement
For The Pima County Fairgrounds

This Management Agreement (the "Agreement") is made effective as of February 6, 2007, by and between Pima County, a political subdivision of the State of Arizona (the "County"), and Southwestern Fair Commission, Inc., an Arizona nonprofit corporation ("Manager").

RECITALS

A. The County is the owner of that real property know as the Pima County Fairgrounds (the "Fairgrounds"), all of Section 14, Township 16 South, Range 15 East, G. S. R. B. & M., Pima County, Arizona, together with the buildings and structures located thereon.

B. The County Board of Supervisors, by resolution adopted September 16, 1974, formed the Pima County Fair Commission consisting of five members appointed by the County Board of Supervisors to assist and advise the Board and the staff of the County with respect to the conduct and management of the annual County fair. The members of the Pima County Fair Commission, in December of 1974, filed Articles of Incorporation forming Manager. The members of the Manager's board of directors are the members of the Pima County Fair Commission, appointed by the Board of Supervisors.

C. Manager is an Arizona nonprofit corporation organized for the purpose of participating and joining with other similar organizations, individuals, political subdivisions, and private for-profit business entities, in the conduct of public shows, fairs, exhibitions and similar events.

D. Manager has been operating the Fairgrounds since 1986 pursuant to that certain Lease and Management Agreement dated October 21, 1986, as amended by those certain amendments dated April 12, 1988, February 28, 1989 (an amendment and complete restatement of the agreement), February 23, 1989, and February 4, 1997 (collectively, "1986 Lease"). The 1986 Lease will expire on February 28, 2009.

E. Manager and County wish to enter into a new Management Agreement, with a longer term, so that they will have the ability to pursue long-term funding and improvement opportunities for the Fairgrounds.

F. County desires that Manager continue to manage and maintain the Fairgrounds and conduct the annual Pima County Fair, and other events for the use and benefit of the public.

G. The County is authorized, pursuant to A.R.S. § 11-932, to enter into agreements for the management and operation of County public parks.

AGREEMENT

NOW THEREFORE, County and Manager, in consideration of the mutual covenants set forth herein, agree and covenant as follows:

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1. Management and Occupation of Fairgrounds

This Agreement is a complete amendment and restatement of the 1986 Lease.

Manager agrees that it shall operate, manage, maintain and improve the Fairgrounds, and manage, maintain, repair and replace all improvements located thereon under the terms and conditions set forth herein. Manager shall provide all personal property and all equipment necessary to operate the Fairgrounds. County agrees that Manager shall have the exclusive right to use and occupy the Fairgrounds and all improvements located thereon for the term of this Agreement.

2. Term and Renewal

The term of this Agreement shall begin on the effective date, stated in the first paragraph above, and shall end on June 30, 2031, unless sooner terminated or extended as provided herein. Provided Manager is not then in default of any provision of this Agreement, the term of this Agreement may be renewed and extended, upon written agreement of the parties, for an additional twenty-five-year period. If Manager wishes to renew the Agreement, Manager shall so notify the County in writing not more than two (2) years nor less than one (1) year prior to the end of the initial term. In such event, the parties agree to negotiate with one another in good faith regarding the terms of the agreement for this renewal term.

3. Fees

3.1 **Operations Fees.** In further consideration of the use and occupancy of the Fairgrounds as described in this Agreement, Manager shall pay to the County an annual operations fee ("Operations Fee") of Ten Dollars ($10.00) payable on July 1 of each year. Manager may prepay all or any portion of the Operations Fee.

3.2 **Governor's Fund.** In further consideration of the management and other benefits to be provided by Manager, County shall pay to Manager all funds received by County from the State of Arizona pursuant to A.R.S. § 11-258 during the term of this Agreement.

4. Permitted and Required Activities

4.1 **Operation of Fairgrounds.** Manager shall use the Fairgrounds to conduct an annual fair (the "Fair") and may also use the Fairgrounds to conduct, or allow others to conduct, equestrian events, livestock events, concerts, motor sports events, RV & camping, trade shows, exhibitions, and other shows and events ("Special Events"), as well as activities reasonably related thereto, under the terms set forth herein, all for the benefit of the public. From time to time the County may request to use some portion of the Fairgrounds for a County purpose. Manager shall not unreasonably deny such a request, provided that the facility is available, but Manager may condition its approval on charging County a fee for use of the facility that is no greater than the fee charged by Manager for the use of the facility by others, and Manager may require proof that the County is adequately self-insured.

4.2 **Conduct of Fair.** Each Fair shall be for a period not less than five (5) days, on dates to be determined by Manager. Manager shall determine the type and extent of exhibitions and displays

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to be shown at the Fair. Such selections shall reflect the products of the State of Arizona, and more particularly Pima County. Manager shall provide premiums for competitive excellence in, but not limited to, agricultural, livestock, horticultural and viticultural products displayed at the Fair. Manager shall conduct its activities, and shall ensure that its employees and contractors, and all permissible users of the Fairgrounds conduct their activities in a professional manner and in compliance with all applicable laws.

4.3 **Right of Public to Access Fairgrounds.** The Fairgrounds shall be open to the general public during the Fair, and during other public events, but may be closed to members of the general public during Special Events that are scheduled as private events. All utilization of the Fairgrounds by third parties shall be scheduled and directed by and through the Manager. When the Fairgrounds are open to the public, Manager shall provide suitable staffing for the specific event.

4.4 **Fees.** Manager may charge fees for the Fair, Special Events and use of the Fairgrounds, in amounts approved by the County. All fees will be retained by Manager for its use in connection with use, operation and improvement of the Fairgrounds, as provided in Section 6 below.

4.5 **Alcohol.** Manager may serve and sell alcoholic beverages for consumption on the Fairgrounds provided Manager complies with applicable liquor laws and provides County with the required insurance set forth herein.

4.6 **Signs** Manager may affix and maintain upon the Fairgrounds such signs relating to the events held on the Fairgrounds as Manager deems appropriate; provided, however, that all signs utilized by Manager on or about the Fairgrounds, whether visible outside the Fairgrounds or not, shall at all times comply with applicable provisions of the Pima County Sign Code and shall be installed and maintained at Manager's sole cost. Any and all advertising signs placed by Manager on the Fairgrounds shall be immediately removed by Manager upon termination of this Agreement for any reason, and any damage resulting from such removal shall be repaired immediately by Manager at its sole cost. Manager shall not remove any operational or safety signage from the Fairgrounds. Manager shall pay for all costs of construction, erection, installation, maintenance and repair of any sign either currently in existence or to be erected or installed or otherwise placed on the Fairgrounds. Manager shall, through coordination with the County, identify the Fairgrounds, in signs and in any of its written materials, as belonging to Pima County. Notwithstanding anything herein to the contrary, any signs requested by County shall be constructed and installed at County's expense.

5. Assignment, Concessions, and Subcontractors

Except as permitted in this Agreement, Manager shall not, either voluntarily or by operation of law, assign or transfer this Agreement or any interest therein, or allow any other person (the employees, agents, servants and invitees of Manager excepted) to occupy or use the Fairgrounds, or any portion thereof, without first obtaining the written consent of County, which consent shall not be unreasonably withheld. It is expressly acknowledged by the parties that Manager shall be permitted to enter into agreements with third parties related to the operation of the Fair and Special Events, and for the management or use of portions of, or facilities located on, the Fairgrounds. Such agreements may include, without limitation, third party uses and operations for food and beverage operations, and other

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activities related to the Fair or defined at Section 4.1 as a Special Event; provided, however, no such agreement may be for a period in excess of three years (including any extensions or renewals) without advance written consent from County. Manager also may hire third parties to perform services such as maintenance, construction and landscaping on the Fairgrounds. Manager shall not, however, delegate its overall responsibility for all operations on the Fairgrounds, without County's written consent, which may be withheld at the reasonable discretion of County, and no delegation of duties or hiring of contractors shall in any way relieve Manager of its responsibilities and obligations hereunder. Manager shall, upon request, provide County with copies of any of its agreements with third parties that relate to the Fairgrounds or Manager's operations thereon. All such agreements shall be subordinate and subject to the terms of this Agreement.

Manager has occupied the Fairgrounds pursuant to the 1986 Lease and has entered into certain subleases, licenses and concession agreements which are in effect as of the commencement date identified in Section 2 and as listed on Exhibit A. Manager represents to County that currently there are no agreements related to use of, or operation of facilities on, the Fairgrounds (including any that are termed "leases" or "subleases") other than those listed on Exhibit A. The parties acknowledge that Exhibit A does not include any sponsorship or marketing agreements, all of which shall remain in full force and effect in accordance with their terms. County acknowledges that all agreements listed on Exhibit A shall be deemed permissible uses and agreements under this Agreement. Manager shall provide to County copies of all Agreements identified on Exhibit A.

All agreements entered into by Manager with respect to use of the Fairgrounds (for other than strictly passive uses such as sponsorships; and small, strictly passive, group meetings and events) shall require the user to carry liability insurance, with coverage at least as broad as ISO form CG 20 10, naming the County as an additional insured, with limits of no less than One Million Dollars. Any agreements entered into after the date of this agreement, and any renewal of the agreements listed on Exhibit A, shall be subject to this insurance requirement.

6. Fairgrounds Revenues

Manager shall collect all fees generated by the operation of the Fairgrounds, including but not limited to, fees paid by Fairgrounds users and the amounts collected from concessionaires, licensees and subcontractors ("Gross Revenues"). Manager shall use all these Gross Revenues to maintain and operate the Fairgrounds (including the funding of general business operations and overhead related to the Fairgrounds). Manager agrees to use all Net Revenues (the amount by which Manager's gross revenues exceeds Manager's reasonable and necessary expenses of operating and maintaining the Fairgrounds) for continued operation of the Fairgrounds and for capital improvements on the Fairgrounds as deemed necessary by the Manager. "Net Revenues" shall be determined on an annual basis in accordance with generally accepted government accounting principles. Upon expiration or earlier termination of this Agreement, all Net Revenues not already utilized by Manager shall be turned over to County, to be used for the Fairgrounds.

Manager acknowledges that the Fairgrounds is a publicly-owned facility, and that this agreement is being entered into by the County to ensure operation of the Fairgrounds for the benefit of the public and not for the pecuniary benefit of Manager.

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Manager and its officers, employees, and representatives, shall not enter into any agreement with any entity or person with respect to the Fairgrounds or Manager's operations at the Fairgrounds that will result in a direct or indirect pecuniary benefit to any person who is, or within the five years preceding the transaction was, an officer, director, employee or representative of Manager or a member of such person's immediate family (meaning parents, siblings, and descendents). Notwithstanding anything in the foregoing sentence to the contrary, a transaction shall not be impermissible if the potentially interested or benefited individual discloses the possible conflict or benefit together with all related material facts and the majority of the disinterested members of Manager's board of directors determines the transaction is in Manager's best interest and is fair and reasonable, provided that Manager files with the Clerk of the Board of Supervisors of the County a notice regarding the existence of such conflict.

Manager shall not compensate any member of Manager's management staff in a manner that, in the County's reasonable judgment, is substantially in excess of the range of compensation normally available for an employee of a nonprofit organization of a type similar to Manager.

7. **Alterations**

7.1 **Approval Required.** Manager may not make any improvements, alterations, additions, or changes to the Fairgrounds (the "Alterations") involving an expenditure of more than $25,000 ("Maximum Expenditure Amount"), without first obtaining the written consent of the County Administrator or his designee (if the cost of the Alterations is between $25,001 and $100,000) or the written consent of the County's Board of Supervisors (if the cost of the Alterations is more than $100,000). The Maximum Expenditure Amount and other amounts described in the preceding sentence, and the amount in the following paragraph ($10,000), shall be increased each year by the percentage equal to the increase in the Consumer Price Index for the Tucson Metropolitan Area ("Index") over the base period Index. The base period Index shall be the Index for the first calendar month of the term of this Agreement. The base period Index shall be compared with the Index for the first calendar month for each subsequent year. For example, if there is a three percent (3%) increase between the base period Index and the Index for the calendar month one year after commencement of this Agreement, Manager may make expenditures in the Maximum Expenditure Amount of up to $25,750, the County Administrator would approve expenditures between $25,751 and $103,000, and the Board of Supervisors would approve expenditures above $103,000. Manager shall provide the County with as-built drawings for any Alterations for which the County's approval is required under this paragraph.

Manager shall, regardless of whether Manager is required to obtain County's approval hereunder, notify County prior to beginning any Alteration on the Fairgrounds that will cost in excess of $10,000, and shall provide the County with copies of plans and specifications for the Alterations.

7.2 **Process for Approval.** For any Alteration that costs more than the applicable Maximum Expenditure Amount, Manager shall provide County with written notice of the proposed Alterations, and plans and specifications for the Alterations, not less than forty-five (45) days before such Alterations are commenced. County shall have the right to object to the plans and specifications within thirty (30) days of receipt. Failure to object in writing within the thirty (30) day period shall be deemed approval.

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7.3 **Reasons for Disapproval.** County shall not unreasonably withhold consent to proposed Alterations; provided, however, it shall be reasonable for County to withhold consent if, among other reasons,

7.3.1 the Alterations adversely affect the integrity of any structural, mechanical, or electrical system of any portion of the Fairgrounds or affect the integrity of the Fairgrounds or the Fairgrounds features or its infrastructure;

7.3.2 result in County being required to perform any work that County could otherwise avoid or defer;

7.3.3 result in an increase in the premiums for any hazard or liability insurance carried by County or result in an increased risk of liability or pose a safety hazard;

7.3.4 result in an increase in the demand for utilities or services (including wastewater treatment) that County provides to the Fairgrounds.

7.4 **Purpose of Review of Plans and Specifications.** County's review of the plans and specifications shall be solely for County purposes and shall not imply County's review for quality, design, legal compliance or other like matters. Accordingly, notwithstanding that any construction drawings are reviewed by County or its architects, engineers, or consultants, County shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in any construction drawings, and Manager's indemnity set forth in Section 17 of this Agreement shall specifically apply to the construction drawings. County's review shall be to determine that the proposed improvements are consistent with the purposes of this Agreement of providing recreational opportunities for the benefit of the people of Pima County.

7.5 **Construction Standards; Permits.** All work relating to any improvements or buildings shall be done in a good and workmanlike manner, in conformance with industry standards, using new materials, and shall be diligently prosecuted to completion. Manager shall comply with applicable building codes, fire codes, zoning codes, and other laws, regulations and orders for any construction, whether of a permanent Alteration or a temporary structure, and shall obtain all applicable permits from regulatory agencies, including but not limited to the Pima County Development Services Department, the Pima County Flood Control District, and the State Fire Marshall.

7.6 **Ownership of Alterations.** Manager agrees that, upon construction or installation, any building, structure, or system on the Fairgrounds, regardless of whether constructed or installed by Manager, shall be the property of County. County agrees, however, that, during the term of this Agreement, Manager shall have all rights to use improvements of any type located on the Fairgrounds unless otherwise noted or identified.

8. **Long Range Plan**

County and Manager shall cooperate to create and develop a long-range master plan ("Plan"). The Plan may include planned use and operation for other property owned by County in the area of the

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Fairgrounds. County and Manager anticipate that the Plan may provide the parties with opportunities for shared costs and benefits.

9. **Repairs and Maintenance.**

Subject to County's obligations in Section 10, Manager shall, at Manager's sole cost and expense, keep the Fairgrounds, including all buildings, improvements, and landscaping located thereon, and all exterior, interior, structural and mechanical components thereof, in good, clean, safe condition and repair except that Manager shall not be obligated to perform repairs or maintenance to the extent that such repairs or maintenance are required as a result of the negligence or intentional misconduct of the County, its agents, employees, or contractors, which repairs and maintenance County shall conduct at County's sole expense. Subject to County's obligations under Section 10 below, Manager shall, at Manager's expense, make all repairs to the Fairgrounds made necessary by reason of the negligence or intentional misconduct of Manager, its employees, licensees, invitees, subcontractors, Managers, servants or agents. Manager shall be responsible for proper disposal of all waste generated at the Fairgrounds. Repairs to mechanical systems, such as HVAC, shall be performed promptly in order to minimize any waste of utilities or water. Notwithstanding anything herein to the contrary, County and Manager may mutually agree to share costs associated with construction, maintenance and repair of the Fairgrounds, or facilities located on the Fairgrounds, in a manner different than that described in this Agreement if it is mutually determined that such will be beneficial both to the Fairgrounds and to the general public.

10. **Obligation to Reconstruct**

10.1 **Insurable Casualty.** During the term of this Agreement, County shall maintain fire and casualty insurance on all improvements located on the Fairgrounds; Manager shall insure its personal property. In the event the Fairgrounds or any portion thereof are damaged by fire or other perils which would be covered by extended coverage insurance (whether or not County has such insurance), County shall forthwith repair the damage, restoring the Fairgrounds to the condition which existed prior to the casualty and this Agreement shall remain in full force and effect; provided, however, if County and Manager agree that repair of the damage is not prudent in light of the existing use of the Fairgrounds, the County shall use any insurance funds received by the County for another purpose related to the Fairgrounds as agreed to by the parties. County's obligation shall be only to restore the Fairgrounds to the condition which existed prior to the casualty or to a comparable facility subject to compliance with all applicable building codes. In the event of any such casualty which damages Manager's furniture, fixtures and/or equipment at the Fairgrounds, Manager shall proceed with reasonable diligence to restore, repair or replace all of its personal property to the same condition which existed prior to the casualty. Manager shall continue the operation of the Fairgrounds to the extent practicable during any period of reconstruction or restoration.

10.2 **Uninsurable Casualty.** In the event the Fairgrounds or any portion thereof are damaged as a result of any casualty other than the perils covered by fire and extended coverage insurance, County shall have the option to: (1) repair, reconstruct or restore the Fairgrounds, in which event this Agreement shall continue in full force and effect or (2) give notice to Manager at any time within ninety (90) days after such damage that it will not repair, reconstruct or restore the

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Fairgrounds, terminating this Agreement, as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice.

If County elects to not repair, reconstruct or restore the Fairgrounds as described at Subsection (2) above, then Manager shall have thirty (30) days after receipt of notice from the County to either terminate this Agreement as of the date specified in such notice, or to continue this Agreement in accordance with the terms hereof. In the event Manager opts to continue the Agreement, Manager shall have the right, but not the obligation, to repair, reconstruct and/or restore the Fairgrounds by providing written notice of the same to County, in which case all work performed shall comply with applicable building codes. In the event Manager chooses not to perform the repair or restoration work, Manager shall ensure that any damaged improvements are razed or otherwise managed such that Manager's use of the Fairgrounds continues to comply with applicable law.

11. **Liens and Encumbrances**

Manager shall keep the Fairgrounds free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Manager. Notwithstanding the prohibition on liens on the Fairgrounds itself, Manager may encumber Manager's interest in this Agreement for the construction of improvements on the Fairgrounds and, to the extent required, County shall execute any documents required by a Lender in order to provide the Lender with a security interest in any improvements located on the Fairgrounds. County also shall execute consent, estoppel, non-disturbance and similar instruments reasonably requested by Manager's lenders; provided, however, County shall not be required to amend this Agreement or consent to additional notice or cure provisions as part of any such consent, estoppel, non-disturbance and similar instruments.

12. **County's Option to Perform Maintenance and Repairs at Manager's Cost**

If Manager is in default hereunder (after the expiration of the cure period set forth in Section 22.1.6 below) because it fails to perform its maintenance or repair obligations hereunder, in addition to the remedies set forth in Section 22, County, without notice, may, but shall not be obligated to, perform Manager's obligations. All reasonable costs and expenses reasonably suffered or incurred by County in performing these obligations, which shall accrue interest at a per annum rate of eight percent (8%), shall be paid by Manager to County within thirty (30) days of notice thereof. Any such default by Manager shall not be considered cured until Manager has fully reimbursed County for the costs incurred in performing Manager's obligation hereunder plus interest.

13. **Prohibited Activities**

13.1 **Activities Outside the Permitted Activities.** Manager shall not do or permit anything to be done on or about the Fairgrounds nor bring or keep anything therein which is not within the permitted use of the Fairgrounds as set forth in Section 4 above.

13.2 **Activities not Insured or that Affect Insurance.** Manager shall not conduct any activity or permit any activity to be conducted on the Fairgrounds which is not covered by the insurance policies provided pursuant to Section 18 herein without first obtaining the written consent of County and without providing additional insurance covering the activity or event and with

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coverage limits and carriers acceptable to County. Manager shall not do or permit anything to be done in or about the Fairgrounds nor bring or keep anything therein which will in any way increase the existing rate of or affect any fire or other insurance upon the Fairgrounds or any of its contents or cause a cancellation of any insurance policy covering the Fairgrounds or any part thereof or any of its contents.

13.3 **Storage.** Manager shall not store within the Fairgrounds equipment, livestock, supplies, or scrap items, other than that to be used in the Fairgrounds, or used in connection with activities described at Section 4 or the operation of Manager's business at the Fairgrounds.

13.4 **Unlawful Activities.** Manager shall not use the Fairgrounds, or permit anything to be done in, on, or about the Fairgrounds, which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated (herein referred to as a "Law" or collectively as "Laws").

14. **Books, Records, and Reports**

14.1 Manager shall keep and maintain proper and complete books, records and accounts of all its operations conducted pursuant to this Agreement, in a manner approved by the Pima County Finance Director, which shall be open for inspection and audit by County or its auditors, and the Arizona Auditor General, at all reasonable times.

14.2 Minutes of the meetings of the Board of Directors of Manager, shall be provided to County within ten days after each meeting.

14.3 Manager shall provide County during each year of the term of this Agreement:

14.3.1 A quarterly report on the operation and activities of the Commission.

14.3.2 An annual written status report of Commission activities for the previous year, by September 30.

14.3.3 A certified audit and annual financial report of the Commission, inclusive of activity related to the Pima County Fair, for the preceding fiscal year, by September 30.

14.3.4 Assistance in the County's preparation of a written inventory of all buildings, equipment and items of value on the Pima County Fairgrounds belonging to or insured by the County, by June 30.

14.3.5 A proposed budget for the following year, by September 30.

15. **Security and Safety**

Manager shall be responsible for all security and safety relating to the Fairgrounds and shall provide such security personnel and security and safety features sufficient to adequately protect the Fairgrounds and persons on the Fairgrounds from property damage or bodily injury.

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16. **Compliance with Laws**

Manager shall, at its sole cost and expense, promptly comply with all Laws in connection with Manager's use of the Fairgrounds. Any changes in the governing laws, rules and regulations during the terms of this Agreement shall apply without the necessity of an amendment. The judgment of any court of competent jurisdiction or the admission of Manager in any action against Manager, whether County be a party thereto or not, that Manager has violated any Law, shall be conclusive of that fact as between County and Manager.

17. **Indemnification.**

To the fullest extent permitted by law, Manager shall indemnify, defend, and hold harmless County, its officers, employees and agents from and against any and all losses, costs, or expenses (including reasonable attorney fees) incurred or suffered by County as a result of any damages to property or injuries to persons (including death), or any suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of or directly related to any act, omission, fault or negligence by the Manager, its agents, employees, invitees or anyone under its direction or control or acting on its behalf, or anyone permitted by Manager to conduct any activity on the Fairgrounds, or in connection with any use or occupancy of the Fairgrounds under the terms of this Agreement. Manager's obligations under this Section 17 shall survive the expiration or earlier termination of this Agreement and vacation of the Fairgrounds.

To the fullest extent permitted by law, County shall indemnify, defend, and hold harmless Manager, its officers, employees and agents from and against any and all losses, costs, or expenses (including reasonable attorney fees) incurred or suffered by Manager as a result of any damages to property or injuries to persons (including death), or any suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, but only to the extent that such losses, costs or expenses result in vicarious/derivative liability to Manager arising out of any act, omission, negligence, misconduct, or other fault of the County, its officers, officials, agents, or employees. County's obligations under this Section 17 shall survive the expiration or earlier termination of this Agreement.

18. **Insurance**

18.1 **Insurance Required.** Manager shall, at Manager's sole cost and expense, obtain and maintain, during the term of this Agreement and any renewals thereof, the following insurance policies:

18.1.1 Commercial General Liability insurance with coverage at least as broad as ISO form CG 00 01 in an amount not less than $5,000,000, covering the Fairgrounds furnished to the Manager for exclusive use, endorsed to include Pima County as an additional insured with coverage at least as broad as ISO form CG 20 10, and covering all activities carried out on the Fairgrounds. Manager may require that this insurance be carried by those users of the Fairgrounds who actually carry out the activities being insured, but this shall not relieve Manager of any responsibility for ensuring that the proper coverage is in place, and Manager shall be liable to the County for any failure by such third party to furnish the required insurance. Subject to the breadth and limitations of coverage described above, this insurance policy shall cover activities conducted on the Fairgrounds to the extent that they are not covered by insurance policies of users of the Fairgrounds.

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18.1.2 Commercial Automobile Liability insurance with coverage at least as broad as ISO form CA 00 01 in an amount not less than $1,000,000 for vehicles actually used in the operations at the Fairgrounds (as compared to used for simple commuting).

18.1.3 Workers' Compensation insurance with statutory limits, with Employers' Liability coverage in an amount not less than $1,000,000 per injury, illness, or disease.

18.1.4 Commercial Property, Boiler and Machinery insurance with coverage at least as broad as ISO forms CP 00 01 and BM 00 20, covering selected items of Manager's personal property located at the Fairgrounds.

18.1.5 Liquor Liability insurance in an amount not less than $5,000,000 per occurrence if alcohol is sold or provided on the Fairgrounds, endorsed to include Pima County as an additional insured.

18.1.6 Special Events insurance in an amount acceptable to the Pima County Risk Manager for any event held at the Fairgrounds not covered by other insurance provided as required above. County reserves the right to increase the limits on coverage for unique or high risk Special Events.

18.2 **Insurance Certificates and Copies of Policies.** Manager shall provide County with current certificates of insurance which shall show County as an additional insured where required. All certificates of insurance must provide for guaranteed thirty (30) days written notice of cancellation, non-renewal or material change. Manager shall cause certified copies of its insurance policies and the policies of third parties using the Fairgrounds, to be delivered to the Pima County Risk Manager upon written request.

18.3 **Waiver of Subrogation.** Each party waives its claims and subrogation rights against the other for losses typically covered by property insurance coverage.

18.4 **Changes to Insurance Requirements.** County retains the right to reasonably increase the limits or types of coverage from time to time as determined in the best interests of County by the Pima County Risk Manager.

18.5 **Injury Reports.** Manager shall provide notice to Pima County Risk Management, on a form approved by Pima County Risk Management, of any significant injury, defined as any injury likely to result in head or spinal injury, loss of a limb or organ, or serious burns or scarring, within one business day of Manager becoming aware of such injury. Pima County's Risk Manager may reasonably redefine the reporting requirement by written notification to Manager. Manager shall retain records related to significant injuries for not less than seven (7) years and shall fully cooperate in any investigation of injuries or damage by Pima County Risk Management or its insurers, agents or contractors. Nothing in this section shall be construed as a request by the County, or a requirement, that Manager provide any information in contravention of the Health Insurance Portability and Accountability Act.

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19. Environmental Compliance

19.1 **Hazardous Materials Prohibited; Clean Air Act.** Manager shall not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept, or used in or about the Fairgrounds by Manager, its agents, employees, contractors or invitees, without the prior written consent of County other than such Hazardous Materials which are necessary or useful to Manager's business and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Materials. Manager's operations on the Fairgrounds shall comply with applicable provisions of the Clean Air Act, 42 U.S.C. 7401 et seq. and Arizona Revised Statutes, Title 49, Chapter 3.

19.2 **Indemnity.** If (i) Manager breaches the obligations stated in Section 19.1, (ii) the presence (whether consented to by County or otherwise) of Hazardous Material on the Fairgrounds or on or in the soil or ground water under or adjacent to the Fairgrounds is caused or permitted by Manager, its agents, employees, contractors or invitees results in contamination of the Fairgrounds or such soil or ground water, (iii) contamination of the Fairgrounds or such soil or ground water by Hazardous Material otherwise occurs for which Manager is legally liable to County for damage resulting therefrom, or (iv) contamination occurs elsewhere in connection with the transportation by Manager of Hazardous Material to or from the Fairgrounds, then Manager shall indemnify, protect, defend and hold County harmless from any and all claims, judgments, damages, penalties, fines, costs, expenses, liabilities or losses (including, without limitation, diminution in value of the Fairgrounds or any part thereof, damages for the loss or restriction on use of usable space or of any amenity of the Fairgrounds or any part thereof, damages arising from any adverse impact on marketing of space with respect to the Fairgrounds or any part thereof, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arose or arises during or after the term of this Agreement as a result of such contamination. The foregoing obligation of Manager to indemnify, protect, defend and hold County harmless includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, restoration or other response work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present, as a result of any action or inaction on the part of Manager, its agents, employees, contractors or invitees, in the Fairgrounds or the soil or ground water on, under or adjacent to the Fairgrounds, or elsewhere in connection with the transportation by Manager of Hazardous Material to or from the Fairgrounds.

19.3 **Clean-Up.** Without limiting the foregoing, if the presence of any Hazardous Material on or in the Fairgrounds, or the soil or ground water under or adjacent to the Fairgrounds caused or permitted by Manager, or its agents, employees, contractors or invitees results in any suspected contamination of the Fairgrounds, the soil or ground water under or adjacent to the Fairgrounds, Manager shall promptly notify County in writing and take all actions, at Manager's sole cost and expense, as are necessary to return the Fairgrounds, or such soil or ground water to the condition existing prior to the introduction of any such Hazardous Material to the Fairgrounds, or to such soil or ground water; provided that County's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Fairgrounds.

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19.4 **Pre-existing Contamination.** County agrees that any Hazardous Materials contaminating the Fairgrounds prior to possession of the Fairgrounds by Manager shall not result in liability for Manager under this Section 19 except to the extent such contamination is aggravated by the action or inaction of Manager.

19.5 **Notices Regarding Environmental Conditions.** Manager shall, within ten (10) business days following receipt thereof, provide County with a copy of (i) any notice from any local, state or federal governmental authority of any violation or administrative or judicial order or complaint having been filed or about to be filed against Manager or the Fairgrounds alleging any violation of any local, state or federal environmental law or regulation or requiring Manager to take any action with respect to any release on or in the Fairgrounds or the soil or ground water under or adjacent to the Fairgrounds of Hazardous Material, or (ii) any notices from a federal, state or local governmental agency or private party alleging that Manager may be liable or responsible for cleanup, remedial, removal, restoration or other response costs in connection with Hazardous Material on or in the Fairgrounds or the soil or ground water under or adjacent to the Fairgrounds or any damages caused by such release.

19.6 **Hazardous Material.** As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Arizona or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) defined as a "hazardous waste" under NRS 459.400 et. seq., (ii) petroleum, (iii) asbestos, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601) or (vii) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. 6991 et. seq.

19.7 **Survival.** Manager's and County's obligations under this Section 19 shall survive the expiration or earlier termination of this Agreement and vacation of the Fairgrounds.

20. Utilities, Services and Taxes

20.1 **Manager Responsible for Utilities.** Manager shall be responsible to pay for all gas, heat, light, power, water, sewer charges, telephone service, garbage removal, pest and termite service, security services and all other services and utilities supplied to the Fairgrounds and any buildings located within the Fairgrounds, together with any taxes thereon.

20.2 **Interruption of Services.** County shall not be liable to Manager if any utilities or services, whether or not furnished by County hereunder, are interrupted or terminated because of necessary repairs, installation or improvements, or any other cause beyond County's reasonable control, nor shall any such termination relieve Manager of any of its obligations under this Agreement. County shall have no liability to Manager if any utility service is interrupted by the utility provider or otherwise.

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20.3 **Wastewater Treatment.** The County currently provides wastewater treatment services to the Fairgrounds, using a ponding system. Manager shall cooperate with County in establishing the location of all connections to the treatment system on the Fairgrounds, and in installing new flow meters to monitor system use, which meters shall be installed by the County at the County's expense. Manager acknowledges that County is under no obligation to build a new treatment system to increase treatment capacity.

Manager shall continue to reimburse County for all reasonable expenses incurred by County in maintaining, repairing, and operating the current treatment system, including the cost of staff time, and including any pumping, transport, and treatment-related or other costs incurred by County if, as a result of flowage in excess of the permitted capacity, County pumps and transports waste to another treatment facility and treats it there. The parties shall cooperate to develop reasonable standard operating procedures related to management of the waste treatment system, including pumping and transportation during planned periods of excess usage. Manager shall cooperate with County to maintain peak flows within the permitted levels for the ponding system, and shall pay any liability or expenses (including fines or penalties) suffered or incurred by County as a result of any negligence by Manager in carrying out its responsibilities with respect to management of the treatment system under the agreed-upon operating procedures.

In the event that County constructs a wastewater treatment facility that is reasonably available to the Fairgrounds, Manager may connect the Fairgrounds to the facility and may be required to pay applicable connection and user fees.

20.4 **Taxes.** Manager shall be responsible for payment of all taxes, whether personal property taxes, income taxes, or any other taxes, if any, that are or may be assessed relating to the Fairgrounds or any use of the Fairgrounds by Manager; provided, however, Manager shall not be responsible for any real property taxes that may be assessed against the Fairgrounds or other taxes that may be assessed against improvements located on the Fairgrounds.

21. Entry by County

County may enter the Fairgrounds upon reasonable advance notice to Manager to inspect the same. County shall use reasonable efforts to not interrupt Manager's business at the Fairgrounds. County at any and all times shall have the right to use any and all means which County may deem proper to open gates or doors in an emergency in order to obtain entry to the Fairgrounds, without liability to Manager, except for any failure to exercise due care for Manager's property or personnel.

22. Default and Remedies

22.1 **Default.** The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by Manager:

22.1.1 **Operation of Fairgrounds.** The vacating or abandonment of the Fairgrounds, or any portion thereof, by Manager, where such failure shall continue for a period of ten (10) calendar days after notice of such default is sent by County to Manager.

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22.1.2 **Financial.** The failure by Manager to appropriately account for revenues and expenditures, or any failure to use Net Income as required at Section 6 above, where such failure shall continue for a period of ten (10) calendar days after notice of such default is sent by County to Manager.

22.1.3 **Insurance.** The failure by Manager to maintain insurance policies as set forth above for any time; in which event Manager must immediately cease all operations at the Fairgrounds until such insurance is obtained. In the event of such a default, County may, in County's sole discretion, obtain necessary insurance coverage in which event Manager shall, within ten (10) days of demand, reimburse and pay to County the full amount of any costs and premiums expended by County to obtain such coverage, including any deductibles or losses within a self-insurance retention.

22.1.4 **Operation Fees.** The failure by Manager to timely pay the Operation Fee, where such failure shall continue for a period of ten (10) calendar days after notice of such default is sent by County to Manager.

22.1.5 **Gross Negligence.** Manager or any employee or agent of Manager acts in a grossly negligent or intentionally wrongful manner and such results in significant injury to any person, as described at Section 18.5 above, or substantial damage to any improvements on the Fairgrounds which County is required to repair under the terms of this Agreement.

22.1.6 **Other Covenants.** The failure by Manager to observe or perform any other of the covenants, conditions or provisions of this Agreement to be observed or performed by Manager, where such failure shall continue for a period of thirty (30) days after written notice thereof by County to Manager; provided, however, that if the nature of Manager's default is such that more than thirty (30) days are reasonably required for its cure, then Manager shall not be deemed to be in default if Manager commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion provided such cure is completed within one hundred and twenty (120) days of the notice by County.

22.1.7 **Pima County Fair Commission.** Manager's Articles of Incorporation or Bylaws are altered in such a manner that the members of Manager's Board of Directors are no longer appointed and removable by the Pima County Board of Supervisors.

22.1.8 **Repeated Defaults.** More than three (3) material defaults by Manager, as set forth in Subsections 22.1.1 to 22.1.6 above, in any calendar year, even if Manager cures the defaults within the applicable grace periods set forth above.

22.2 **Remedies.** Either party may pursue any remedies provided by law and in equity for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Agreement, including without limitation, the right to recover all future Operation Fees, subject to the duty to mitigate.

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23. General Provisions.

23.1 **Conflict of Interest.** This Agreement is subject to cancellation pursuant to Arizona Revised Statutes § 38-511 which is incorporated herein by reference.

23.2 **Waiver.** The waiver by County or Manager of any term, covenant or condition herein shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein. The subsequent acceptance of Operation Fees hereunder by County shall not be deemed to be a waiver of any preceding default by Manager of any term, covenant or condition of this Agreement, other than the failure of Manager to pay the particular Operation Fees so accepted regardless of County's knowledge of such preceding default at the time of the acceptance of such Operation Fees. Failure of County or Manager to insist upon strict performance of any provision or to exercise any remedy hereunder shall not be deemed to be a waiver by such party of any breach relating to such provision or giving rise to such remedy. No provision of this Agreement shall be deemed to have been waived unless such waiver shall be in writing signed by the party against whom such waiver is sought to be enforced. Nothing herein shall require or obligate County to accept any partial payment of the then current and owed Operation Fees due or partial performance of obligations under this Agreement. County may, in its sole discretion, accept partial payments of amounts due or partial performance of obligations hereunder, such acceptance of partial payments of Operation Fees due or partial performance of obligations hereunder shall in no way be considered or constitute a waiver by County of any failure on the part of Manager to timely pay Operation Fees due or perform the obligations hereunder nor shall such acceptance be considered an accordance satisfaction of the Operation Fees then due under this Agreement.

23.3 **Marginal Headings.** The marginal headings and Section titles to the Sections of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part hereof.

23.4 **Time.** Time is of the essence for this Agreement and each and all of its provisions in which performance is a factor.

23.5 **Successors and Assigns.** The covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the successors and assigns of the parties hereto.

23.6 **Recordation.** A short form memorandum of this Agreement may be recorded by either party; such party shall give the other party a copy of the memorandum.

23.7 **Prior Agreements, Amendments, and Modifications**. This Agreement constitutes the entire agreement between the parties and contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Agreement, and no prior or contemporaneous agreements or understanding pertaining to any such matters, shall be effective for any purpose, including, without limitation, the 1986 Lease, except that any provisions in the 1986 Lease that state that they survive the Leases' expiration or termination shall remain in effect. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

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This Agreement shall not be effective or binding on any party until fully executed by both parties hereto.

23.8 **Partial Invalidity.** Any provision of this Agreement which shall prove to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provision shall remain in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid, void, or illegal provision.

23.9 **Choice of Law and Venue.** This Agreement shall be governed by the laws of the State of Arizona and the venue for any action in regard hereto shall be the Pima County Superior Court.

23.10 **Attorneys' Fees.** In the event of any action or proceeding brought by either party against the other under this Agreement the prevailing party shall be entitled to recover its expenses and costs, including its attorneys' fees and expert witness fees, in such action or proceeding, including costs of appeal, if any, in such amount as the court may adjudge reasonable.

23.11 **Approvals.** Unless otherwise provided herein, whenever the approval of a party is required by this Agreement, such approval shall be given within thirty (30) days, in writing. If such written approval is not given with such time period, the request shall be deemed disapproved and denied. Unless otherwise noted herein, when the approval or consent of the County is required hereunder, it shall mean the written consent of the County Administrator or his designee. The approval of the Board of Supervisors of the County shall be required for any extension or amendment of this Agreement.

23.12 **Notices.** Wherever this Agreement requires or permits notice or demand to be given by either party to the other, such notice or demand shall be in writing and given or served either personally or by either regular mail, certified mail (return receipt requested), or by commercial delivery service such as Federal Express or United Parcel Service, addressed to the parties at the addresses specified below and to the following individuals. Notice shall be deemed effective upon personal delivery, three (3) days after deposit, postage prepaid, in the U.S. mail, or one (1) day after overnight delivery *via* commercial delivery service. Either party may change such address by written notice to the other as herein provided.

If notice is to County:

Pima County Administrator
130 W. Congress, 10th Floor
Tucson, Arizona 85701

With copy to:

Director
Economic Development and Tourism
120 N. Stone Ave., Ste., 200
Tucson, AZ 85701

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If notice is to Manager:

Southwestern Fair Commission, Inc.
Attention: Executive Director
11300 S. Houghton Road
Tucson, Arizona 85747

23.13 **Authority of Manager.** Each individual executing this Agreement on behalf of Manager represents and warrants that he or she has full authority to do so and that this Agreement binds the corporation. If any court or administrative agency determines that County does not have authority to enter into this Agreement, County shall not be liable to Manager or any third party by reason of such determination or by reason of this Agreement.

23.14 **Books and Records.** Manager shall retain, and shall include in any written agreements with subcontractors or other parties performing services at the Fairgrounds, a provision requiring that all such parties retain, for inspection and audit by the County and the Arizona Auditor General, all books, accounts, reports, files and other records relating to performance of the Agreement for a period of five years after its completion or if later, until any related proceedings initiated during the five (5) year period are completed. Upon request by the County or the Auditor General, a legible copy or the original of all such records shall be produced by the Manager at the administrative office of the County or the office of the Auditor General.

23.15 **Compliance with ADA.** Manager shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36, at any time Manager remodels, renovates, or has new construction. Pima County reserves the right but not the obligation to enter the Fairgrounds, after providing reasonable advance notice to Manager, to make improvements, at Pima County's cost, to provide reasonable ADA accommodations.

23.16 **Non-Discrimination in Employment.** Manager shall not unlawfully discriminate against any employee or applicant for employment because of that person's age, race, color, religion, sex, disability or national origin in the course of carrying out Manager's duties pursuant to this Agreement. Manager shall comply with the provisions of Arizona Executive Orders 75-5, as amended by Executive Order 99-4, which are incorporated into this Agreement by reference as if set forth in full herein.

23.17 **Non-Appropriation**. Notwithstanding any other provision in this Agreement, if there are not sufficient appropriated and available monies for the purpose of maintaining County's obligations under this Agreement, County shall have no further obligation to Manager; provided, however, Manager may continue to occupy the Fairgrounds if Manager performs all of Manager's obligations under this Agreement.

23.18 **Independent Contractor.** The status of the Manager shall be that of an independent contractor. Neither Manager, nor Manager's officers, agents or employees shall be considered an employee of Pima County or be entitled to receive any employment-related compensation and fringe benefits under the Pima County Merit System. Manager shall be responsible for payment of all federal, state and local taxes associated with Manager's activities and shall indemnify and hold

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County harmless from any and all liability which County may incur because of Manager's failure to pay such taxes. Manager shall be solely responsible for program development and operation.

IN WITNESS WHEREOF, the parties hereto duly authorized have executed this Agreement.

Pima County

Chairman, Board of Supervisors

Date: FEB 06 2007

Southwestern Fair Commission, Inc.

Name: Jon BAKER
Title: Executive Director
Date: 1/23/07

Attest:

Clerk of the Board of Supervisors

Approved as to content:

Director
Economic Development and Tourism

Approved as to form:

Deputy Civil County Attorney

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EXHIBIT A

Existing Agreements

1. Sublease Agreement for Tucson Raceway Park with Innovative Racing LLC.;
2. Sublease Agreement to Conduct Junior Livestock Sales During Pima County Fair;
3. Sublease Agreement for Tucson Kart Club, Inc.; and
4. Sublease Agreement for Southern Arizona Modelers Club.

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