City of FRESNO **REPORT TO THE CITY COUNCIL**

AGENDA ITEM NO.	1 C
COUNCIL MEETING	3/03/09
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

March 3, 2009

FROM: RANDALL L. COOPER, Director
Parks, After School, Recreation and Community Services Department

BY: PAUL A. MELIKIAN, Administrative Manager
Parks, After School, Recreation and Community Services Department

SUBJECT: APPROVE A LEASE AGREEMENT BETWEEN THE CITY OF FRESNO AND MATT HOBE FOR CITY OWNED PROPERTY LOCATED AT 665 FULTON STREET TO BE USED FOR A HAUNTED HOUSE.

RECOMMENDATIONS

It is recommended that the Council approve the attached one-year lease agreement with Matt Hobe (Tenant) for the use of the former Densmore property located at 665 Fulton Street (corner of Mono & Fulton streets) for a haunted house.

EXECUTIVE SUMMARY

On December 9, 2008, City Council approved the purchase of the former Denmore property located at the corner of Mono and Fulton streets for $650,000 from Tavie Development using Park Impact fees. The site will eventually be developed into a park when additional residential development occurs in the Downtown area. Prior to the City's purchase, the tenant was under a month-to-month lease basis with the previous owner, who operates the property as a haunted house. The tenant wishes to remain on the property until it is eventually developed into a park site and the Department currently has no use for the building. Per the previous lease, the tenant paid $1,000 per month for the months of January through July, and December (8 months); with rent increases to $4,000 per month from August to November when they are operating the haunted House, for a total annual gross rent of $24,000.

Staff is requesting approval of a new lease agreement with identical payment terms; which in summary includes the rent schedule detailed above, the tenant will provide a $4,000 security deposit, and the City will pay all utilities. The utilities will cost an estimated $4,100 annually, resulting in $19,900 in net revenue to the City. This revenue will be deposited into the Mall Maintenance fund that the Parks Division currently uses to make minor repairs to park system infrastructure in the Downtown area.

KEY OBJECTIVE BALANCE

The leasing of this property until the site is developed into a park results in additional revenue to the Parks Division for infrastructure repairs, such as the ongoing need to repair concrete on the Fulton Mall. The occupancy of the building will also reduce damage from vandalism usually seen in vacant structures.

BACKGROUND

In December 2008, PARCS purchased the property located at 665 Fulton Avenue for future park development. The property is situated on .60 acres with approximately 18,900 total square feet. It is a metal and block construction with evaporative coolers throughout. The structure is fenced with paved parking, a yard area, and outside lighting.

FISCAL IMPACT

After payment of utilities, the lease will generate an estimated $19,900 in net income to the City, to be used for capital improvements to the park system infrastructure in the Downtown area.

Attachment: Lease Agreement
Council Report Dated December 9, 2008

City of FRESNO REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.
Council Meeting December 9, 2008

APPROVED BY

DEPARTMENT DIRECTOR

December 9, 2008

FROM: PATRICK N. WIEMILLER, Director
Public Works Department

RANDALL COOPER, Director
Parks, After School, Recreation & Community Services Department

BY: SCOTT L. MOZIER, PE, City Engineer/Assistant Director
Public Works Department, Engineering Division

SUBJECT: APPROVE THE ACQUISITION OF THE FORMER DENSMORE PROPERTY AT 665 FULTON STREET FROM PROPERTY OWNER: TAVIE DEVELOPMENT (COUNCIL DISTRICT 3)

KEY RESULT AREA

Customer Satisfaction

RECOMMENDATION

1. Consider and adopt a Mitigated Negative Declaration for the acquisition of the subject property.

2. Approve the acquisition of an 18,900 square foot building on 0.60 acres of property locatedat the corner of Mono and Fulton Streets for $650,000 from Tavie Development.

3. Authorize the Assistant City Manager or designee to sign all documents necessary to complete the transaction.

EXECUTIVE SUMMARY

The Densmore building at 665 Fulton Street is owned by Tavie Development. The owners moved out of the facility after 40 years at that location and last year, the property was listed with a commercial real estate firm for either lease or purchase. An appraisal was conducted by Jim Palmer, MAI at the request of the Redevelopment Agency and a fair market value of $653,000 was established. After several months of discussions with the owners, Real Estate Services, Economic Development, Redevelopment Agency, the PARCS Department and the City Manager's Office, the parties agreed to a purchase price of $650,000 with the seller picking up all the closing costs associated with the sale and any real estate commissions. The purchase of this property utilizes a portion of the cash balance of Citywide Park Impact Fees in anticipation of green space needs of planned Downtown residential development. The park will be built using

future Park Impact Fees received from downtown residential building activity. In the interim, the City will inherit a month to month tenant which is currently paying $24,000 per year. PARCS has also stated that if the facility becomes vacant, it can utilize the building for storage until such time as a neighborhood park is developed.

Staff recommends the Council approve the acquisition.

KEY OBJECTIVE BALANCE

Customer Satisfaction will be achieved by purchasing this property now that it is available. Further the City as stated earlier has several prospective uses to make use of the building in the interim. The property owner can now explore many options to reinvest the proceeds in another local community venture.

BACKGROUND

A Phase 1 environmental site assessment was completed on May 18, 2007, by Moore Twining Associates, Inc. of Fresno. The report, commissioned by the City of Fresno Water Division, included all properties bounded by Mono Street, Fulton Street, Ventura Street and Broadway in which the subject property is located at 665 Fulton Street. The environmental study gave the property a clean bill of health and concluded its report by saying, "there are no violations on file with this facility." Since the building is less than 50 years old, it is not listed as an historical structure.

Further, the City employed Urban Planning Consultant Rebecca Fraser to conduct a Mitigated Negative Declaration for the acquisition of the subject property. The environmental assessment number is listed under EA-PW 2008-08. The report stated, "The proposed project will not result in any adverse effects, which fall within the Mandatory Findings of Significance contained in Section 15065 of the State CEQA Guidelines. The finding is therefore made that, with such revisions, there is no substantial evidence in the record that the proposed project may have a significant adverse effect on the environment."

With no public input received during the open comment period, which expired on Friday, November 28, 2008, this Mitigated Negative Declaration is now deemed final and completed in the manner specified by Section 12-505 of the Fresno Municipal Code. With 18,900 square feet of secured building and office space, the City can put the building to good use until such time as when the park is constructed. As mentioned earlier, the $650,000.00 is already in the adopted budget for the Downtown Park (PC00091). With City Council approval, payment will be made to Fidelity National Title which is the escrow holder and then a grant deed will be recorded in favor of the City of Fresno. Staff recommends the Council approve the acquisitions.

The beneficiaries of this transaction will be the City of Fresno and its ability to continue leasing, store or use up to 18,900 square feet of office and building space. Existing and future residents, visitors and businesses in the area will also be able to enjoy the property when it is eventually converted to a neighborhood downtown park.

FISCAL IMPACT

Funds for this purchase are derived from Citywide Park Impact Fees, with the appropriations included in the FY 2009 Adopted Budget (Parks Capital Improvement Plan).

PNW/RC/SLM/CH/eam
Apprv Ac of Former Densmore Prop 12-9-08

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter "Lease"), made and entered into effective _____, 2009, by and between the CITY OF FRESNO, a municipal corporation, (hereinafter called "Lessor"), and CENTRAL CALIFORNIA EVENTS, INC., a California corporation, hereinafter referred to as "Lessee."

WITNESSETH:

1. PREMISES. The premises leased to Lessee, are hereinafter referred to as the "demised premises" or the "premises" and are situated in the City of Fresno, County of Fresno, State of California, and are the premises commonly known and designated as 665 Fulton Street, Fresno California. Lessee acknowledges that he has thoroughly examined said premises and that no statements, warranties or representations as to the past, present or future condition of repair thereof or of any building of which the same are a part, not herein expressed, have been made by or on behalf of Lessor. Lessee agrees to accept said premises on the condition in which the same may be upon the commencement of the term hereof, hereby waiving any claim or right on account thereof, and agrees that Lessor, except as herein otherwise provided, shall not be called upon or required at any time to make any improvements, alternations, changes, additions, repairs or replacements of any nature whatsoever in or to said premises or any building of which the same are a part. Lessee hereby acknowledges that it has fully inspected the property, and the taking possession of the said premises by the Lessee indicates that the said premises are accepted in their present condition. Lessee specifically and irrevocably waives any right or claim of right that the Lessor inspect the premises either at the commencement of this Lease, at the time of renewal, if any, or at any other time, together with any liability of the Lessor in connection therewith. If this Lease is a renewal, Lessee acknowledges that it has superior knowledge concerning the condition of the premises over that of the Lessor as Lessee has been in possession of the premises, regardless of any right reserved herein by the Lessor to make inspection thereof.

2. USE. The Lessor hereby leases to Lessee and Lessee hereby hires from Lessor, for the purpose of entertainment and recreational uses and other uses consistent with current zoning of the Leased Premises. No furniture refinishing shall take place on the premises.

3. TERM. The term of this Lease shall be month-to-month, and shall automatically renew until terminated. It may be terminated by either party by giving thirty (30) days prior written notice to the other party. The term of this Lease and Lessee's obligation to pay rent, shall commence on January 1st, 2009. If Lessor, for any reason whatsoever, cannot deliver possession of the said premises to the Lessee at the commencement of the said term, as herein before specified, this Lease shall not be void or voidable, nor shall the Lessor be liable to the Lessee for any loss or damage resulting therefrom; but in that event there shall be proportionate deduction of rent covering the period between the commencement of the said term and the time when the Lessor can deliver possession, provided, however, that, at the option of Lessee this Lease may be

4. RENTAL. Lessee shall pay to Lessor as minimum guaranteed monthly rental for the demised premises the sum of $4,000 per month for the period of August 1, 2009 through November 30, 2009, and $1,000 per month for the period of January 1 through July 31, 2009 and the month of December (Eight (8) months), with a security deposit of $4,000. The $4,000 security deposit has been paid and placed in City of Fresno Trust Account for the Parks, After-school, Recreation and Community Services Department. The total $1,000 monthly payment of rent is due upon execution of this Lease. The Guaranteed Minimum Monthly Rental shall be paid in advance on the first day of each calendar month. Any rental payment not received by Lessor by the seventh day of each respective month will be subject to a late charge of 10% thereof, which late charges may be collected as additional rent hereunder. The minimum guaranteed monthly rental shall be subject to adjustment each calendar year, the first date for such adjustment being the date that is twelve months from the effective date of this Lease.

5. POSSESSORY INTEREST.

Lessee shall pay all taxes of every description which during the term of this Lease may be levied upon or assessed against the Leased Premises, any interest therein and other property thereon belonging to City or Tenant, or possessory interest pertaining thereto. **Lessee acknowledges that any possessory property interest arising by entering into this Lease may be subject to property taxation and that Lessee shall pay any and all property taxes levied on such interest.** Lessee agrees to protect and hold harmess City and the Leased Premises and all interests therein and improvements thereof from any and all such taxes and assessments, including any interest, penalties, and other expenses which may be thereby imposed, and from any lien therefore or sale or other proceeding to enforce payment thereof. The preceding sentence shall survive expiration or termination of this Lease.

6. PARKING AND COMMON FACILITIES. The common and parking areas shall be at all times available for the non-exclusive use of Lessee during the full term of this Lease or any extension of the term hereof, provided that the condemnation or other taking by any public authority, or sale in lieu of condemnation, of any or all of such common and parking areas shall not constitute a violation of this provision. Lessor reserves the right to change the entrances, exits, traffic lanes and the boundaries and locations of such parking area or areas.

A. Lessee, for the use and benefit of the Lessee, its agents, employees, customers, licensees and sub-tenants, shall have the non-exclusive right in common with Lessor, and other present and future owners, tenants, and their agents, employees, customers, licensees and sub-tenants, to use said common and parking areas during the entire term of this Lease, or any extension hereof, for ingress and egress, roadway, sidewalk and automobile parking.

B. The Lessee, in use of said common and parking areas, agrees to comply with such reasonable rules and regulations as the Lessor may adopt from time to

time for the orderly and proper operation of said common and parking areas. Lessor hereby reserves the right to do any of the following, and such rules may include but not be limited to any of the following:

(1) To restrict employee parking to a limited, designated area or areas;

(2) To regulate the removal, storage and disposal of Lessee's refuse and other rubbish at the sole cost and expense of Lessee;

(3) To make changes to the Building interior and exterior and common areas, including, without limitation, changes in the location, size, shape, number and appearance thereof, including but not limited to the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking areas, loading and unloading areas, ingress, egress, direction of traffic, decorative walls, landscaped areas and walkways;

(4) To close temporarily any of the common areas for maintenance purposes so long as reasonable access to the Premises remains available;

(5) To add additional buildings and improvements to the common areas;

(6) To use the common areas while engaged in making additional improvements, repairs or alterations to the building(s) or project of which the Premises may be a part;

(7) To do and perform such other acts and make such other changes in, to or with respect to the common areas and the building(s) of which the Premises may be a part, as the Lessor may, in the exercise of sound business judgment deem appropriate.

7. USES PROHIBITED.

A. Lessee shall not use, or permit said premises, or any part thereof, to be used for any purpose or purposes other than the purpose or purposes for which said premises are hereby leased; and no use shall be made or permitted to be made of said premises, nor acts done, which will increase the existing rate of insurance upon the building of which said premises may be located (once said rate is established, if new), or cause a cancellation of any insurance policy covering said building or any part thereof, nor shall Lessee sell or permit to be kept, used or sold in or about said premises any article which may be prohibited by standard form of fire insurance policies. Lessee shall, at his sole cost, comply with any and all requirements, pertaining to the use of said premises, of any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance, covering said building and appurtenances. In the event Lessee's use of the premises, recited in Article 2 hereof, results in a rate increase for the building of which the demised premises are a part, Lessee shall pay annually on the

anniversary date of this Lease, as additional rent, a sum equal to that of the additional premium occasioned by said rent increase.

B. Lessee shall not release, or threaten to release, or engage in any activity that may potentially release upon, within, under or from the Premises any substance deemed to be a toxic, hazardous or dangerous substance (or by-product) by any governmental agency or entity having or claiming to have jurisdiction over the subject matter thereof ("hazardous substances"). Lessee hereby agrees that it shall not generate, use, dispose, store or in any manner maintain hazardous substances, or their by-products, anywhere upon, within, under or allow same to be released from the premises. In the event that Lessee intends to generate, use, dispose of or release any such substances from the Premises in the future, Lessee shall provide not less than ninety (90) days written notice of such intent to Lessor, and Lessee shall first obtain Lessor's prior written approval which may be withheld for any reason. Should there presently exist hazardous substance(s) upon the Premises, Lessee hereby covenants that it will not add to or exacerbate such condition in any manner, and that Lessee shall, at its sole cost and expense, and in full compliance with all laws, rules, ordinances and regulations of all governmental entities having or claiming jurisdiction there over, clean and neutralize such condition in the event of any violation of this section. Lessee further covenants tht it shall provide to Lessor full, prompt and complete disclosure related to any generation, use, maintenance, disposing or releasing of any hazardous substance from the Premises. Lessee shall further comply with all laws, rules, regulations and ordinances of all governmental entities by maintaining all documentary disclosure information requested or required, and that the same shall be routinely provided to Lessor by Lessee, along with any emergency response plan and/or any other information that may be required to be posted or provided. Lessee hereby covenants to use proper due diligence to independently determine that all persons and entities in any manner dealing with hazardous substances are fully and properly licensed and that any and all hazardous substances are disposed of in strict accordance with the law. Lessee hereby agrees to insure, defend and forever to hold Lessor harmless from any damages, or lawsuits that result from any violation of this section, including without limitation, costs and actual attorneys fees. Lessor has never received any notification from any governmental authority or agency with respect to the release of any hazardous materials at the Premises, and it has no knowledge or reason to believe that any such substance has been released at the Premises.

C. Lessee acknowledges that it is familiar with the California Health and Safety Code Section 25359.7 that provides that any lessee of real property who knows, or has reasonable cause to believe, that any release of hazardous substances has come to be located on or beneath the Premises shall, upon discovery by the lessee of the presence or suspected presence of a hazardous substances release, give notice of that condition to the owner of the real property. Failure of the lessee to provide written notice as required to the owner shall make the lease voidable at the discretion of the owner. The Health and Safety Code provides further that if the lessee has actual knowledge of the presence of any hazardous substance release and knowingly or willfully fails to provide written notice as required to the owner, the lessee is liable for a civil penalty not to exceed $5,000 for each violation.

8. ALTERATIONS. Lessee shall not make, or suffer to be made, any alterations of the demised premises, or any part thereof, without the prior written consent of Lessor, and any additions to, or alterations of, said premises, except movable furniture and trade fixtures shall become at once a part of the realty and belong to Lessor.

9. MAINTENANCE AND REPAIR.

A. Lessee shall, subject to Lessor's obligation as set forth in Article 17, at all times during the term hereof, and at Lessee's sole cost and expense, maintain order, keep the demised premises and each and every part thereof in good condition and repair at all times during the term hereof and to make promptly any and all repairs, renewals and replacements which may at any time be necessary or proper to put and keep the premises in as good condition as when received by Lessee, or as thereafter improved, reasonable wear and tear and damage by fire or other casualty excepted (and except as hereinafter provided with respect to Lessor's obligations) including without limitation, the maintenance and repair of any store front, doors, windows, window casements, plate glass, glazing, heating and air-conditioning system (if any), plumbing, pipes, electrical wiring and conduits. Lessee hereby waives all right to make repairs at the expense of Lessor as provided in Section 1942 of the Civil Code of the State of California and Lessee hereby waives all right provided for by Section 1941 of said Civil Code. By entering into the demised premises Lessee shall be deemed to have accepted the demised premises with appurtenances, in the same condition as when received, reasonable use and wear thereof and damage by fire, act of God or by the elements excepted. Lessee shall periodically sweep and clean the sidewalks adjacent to the demised premises, as and when needed.

B. Lessor shall, at his sole cost and expense, keep and maintain in good repair the exterior walls, roof and sidewalks, provided, however, that anything to the contrary notwithstanding contained in this Lease, the Lessor shall not be required to make any repairs to the exterior walls, roof and sidewalks unless and until Lessee has notified Lessor in writing of the need for such repairs and Lessor shall have had a reasonable period of time thereafter within which to commence and complete said repairs. Lessor agrees to use due diligence in the making of said repairs upon receipt of Lessee's notice with regards thereto.

10. COMPLIANCE WITH LAWS.

A. Lessee shall, at his sole cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force or which may hereafter be in force pertaining to the use of said premises, having or claiming to have jurisdiction thereover, and shall faithfully observe such ordinances and statutes now in force or which shall hereinafter be in force. The foregoing sentence shall apply without limitation to any and all government-mandated capital improvements of whatsoever type or nature. The judgment of any court of competent jurisdiction, or the admission of Lessee in any action, or proceeding against Lessee, whether Lessor be a party thereto or not, that Lessee has violated any such order or statute in said use, shall be conclusive of that fact as between the Lessor and Lessee. Lessee shall have no claim against Lessor for any damages, nor shall Lessee be released from any of his obligations hereunder, should his

possession of said premises be disturbed or interfered with or affected in any manner whatsoever by reason of the passage or adoption of any law, ordinance, resolution, regulations or statute by any such governmental entity, or by reason of any act of any legal or governmental authority or of any municipal or other public officer, or in the event that at any time during the term of this Lease, under any order of abatement, or any other judgment preventing the use of the demised premises shall be made upon the ground that the demised premises or any part thereof constitutes a nuisance or are used or have been used in violation of law.

B. Lessee shall not commit, or suffer to be committed, any waste upon the demised premises, or any nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant in the building in which the demised premises may be located.

11. INDEMNIFICATION AND INSURANCE. To the furthest extent allowed by law, Lessee shall indemnify, hold harmless and defend Lessor and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by Lessor, Lessee or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of: (a) the occupancy and use of the Premises and/or; (b) the performance of this Agreement. Lessee's obligations under the preceding sentence shall apply to any negligence of Lessor or any of its officers, officials, employees, agents or volunteers, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or by the willful misconduct, of Lessor or any or its officers, officials, employees agents or authorized volunteers.

Should Lessee contract any work on the Premises or subcontract any of its obligations under this Lease, Lessee shall require each consultant, contractor and subcontractor to indemnify, hold harmless and defend Lessor and each of its officers, officials, employees, agents and authorized volunteers in accordance with the terms of the preceding paragraph.

This requirement shall survive termination or expiration of this Lease.

Lessee's Insurance: Throughout the life of this Lease, Lessee shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by Lessor. The following policies of insurance are required:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Offices (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily

injury," "property damage" and "personal and advertising injury" with coverage for premises and operation, products and completed operations, and contractual liability with limits of liability of not less than $2,000,000 per occurrence for bodily injury and property damage; $1,000,000 per occurrence for personal and advertising injury; and $2,000,000 aggregate for products and completed operations.

(ii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

Lessee shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Lessee shall also be responsible for payment of any self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of Lessor of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a 10 calendar day written notice of such cancellation of coverage. **In the event any policies are due to expire during the term of this Lease, Lessee shall provide a new certificate evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy(ies).** Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, Lessee shall file with Lessor a new certificate and all applicable endorsements for such policy(ies).

The General Liability insurance policy shall be written on an occurrence form and shall name Lessor and its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Lessee's insurance shall be primary and no contribution shall be required of Lessor. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to Lessor and its officers, officials, agents, employees and volunteers. Lessee **shall have furnished Lessor with the certificate(s) and applicable endorsements for ALL required insurance prior to Lessor's execution of the Lease.**

Upon request of Lessor, Lessee shall immediately furnish Lessor with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

The fact that insurance is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify Lessor and its officials, officers, employees, agents and authorized volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Lessee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Lessee.

Any failure to maintain the required insurance shall be sufficient cause for Lessor to terminate this Lease.

If Lessee should contract any work on the Leased Premises or subcontract any of its obligations under this Lease, Lessee shall require each consultant, contractor or subcontractor to provide insurance protection in favor of Lessor and its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the consultants', contractors' and subcontractors' certificates and endorsements shall be on file with Lessee and Lessor prior to the commencement of any work by the consultant, contractor or subcontractor.

Waiver of Subrogation: Lessee and its insurers hereby waive all rights of recovery against Lessor and its officers, officials, employees, agents and authorized volunteers, on account of injury, loss by or damage to the Lessee or its officers, employees, agents, consultants, contractors, subcontractors, invitees and volunteers, or its property or the property of others under its care, custody and control. Lessee shall give notice to its insurers that this waiver of subrogation is contained in this Lease.

This requirement shall survive termination or expiration of this Lease.

12. FREE FROM LIENS. Lessee shall keep the demised premises and the property in which the demised premises are suited free from any liens arising out of any work performed, material furnished, or obligation incurred by Lessee.

13. ABANDONMENT. Lessee shall not vacate or abandon the demised premises at any time during the term of this Lease; and if Lessee shall abandon, vacate or surrender the demised premises or be dispossessed by process of law, or otherwise, any personal property belonging to Lessee and left on the demised premises shall be deemed to be abandoned, at the option of Lessor, except such property as may be mortgaged to Lessor.

14. SIGNS. The Lessee may affix and maintain upon the glass panes and supports of the windows and upon the exterior walls of the building only such signs, advertising placards, names, insignia, trademarks and descriptive material as shall have first received the written approval of the Lessor as to size, type, color, location, copy, nature and display qualities. Anything contrary in this Lease notwithstanding, Lessee shall not affix any sign to the roof of the building. The Lessee may not display or sell merchandise or allow grocery carts or other similar devices within the control of Lessee to be stored or to remain outside the defined exterior walls and permanent doorways of the premises. Lessee further agrees not to install any exterior lighting, amplifiers or similar devices or use in or about the premises any advertising medium which may be heard or seen outside the premises, including, but not limited to flashing lights, searchlights, loudspeakers, phonographs or radio broadcasts.

15. UTILITIES. Lessor shall pay before delinquency all charges for water, gas, heat, electricity, power, telephone service and all other services of utilities used in, upon or about the demised premises by Lessee or any of its sub-tenants, licensees, or concessionaires during the term and any extension or renewal of the term of this Lease.

16. ENTRY AND INSPECTION.

A. Lessee shall permit Lessor and his agents to enter into and upon the demised premises at all reasonable times for the purpose of inspecting the same or for the purpose of maintaining the building in which said premises are situated, or for the purpose of making repairs, alterations or additions to any other portion of said building, including the erection and maintenance of such scaffolding, canopy, fences and props as may be required, or for the purpose of posting notices of non-liability for alterations, additions or repairs, or for the purpose of placing upon the property in which the premises are located any usual or ordinary "For Sale" and/or "For Lease" signs. Lessor shall be permitted to do any of the above without any rebate of rent and without any liability to Lessee for any loss of occupation or quiet enjoyment of the premises thereby occasioned. Lessee shall permit Lessor, at any time within sixty (60) days prior to the expiration of the Lease, to place upon said Premises any usual or ordinary "For Lease" signs and during such sixty (60) day period Lessor or his agents may, during normal business hours, enter upon said premises and exhibit same to prospective tenants.

B. If at any time during the term hereof Lessee fails, refuses or neglects to do any of the things to be done by Lessee as herein provided, then Lessor shall have the right but not the duty to do the same, but at the cost and on the account of Lessee and, in that event, the amount of money expended or obligations incurred by Lessor together with interest thereon at the rate of 15% per annum, or the highest rate allowed by law, whichever rate is the higher rate legally allowable, shall be repaid to Lessor forthwith upon demand therefore, and in the absence of such demand the same shall be added to the next rental payment coming due hereunder and shall be payable as rent.

17. DAMAGE AND DESTRUCTION OF PREMISES.

A. In the event of (a) partial destruction of said premises or the building containing same during said term which requires repairs to either said premises or said building, or (b) said premises or said building being declared unsafe or unfit for occupancy by any authorized public authority for any reason other than Lessee's act, use or occupation, which declaration requires repairs to either said premises or said building, Lessor shall forthwith make said repairs provided Lessee gives to Lessor thirty (30) days written notice of the necessity therefore. No such partial destruction (including any destruction necessary in order to make repairs required by any declaration made by any public authority) shall in any way void this Lease except that Lessee shall be entitled to a proportionate reduction of minimum guaranteed rental while such repairs are being made, such proportionate reduction to be based upon the extent to which the making of such repairs shall interfere with the business carried on by Lessee in said premises. However, if during the last two (2) years of the term of this Lease the building is damaged as a result of fire or any other insured casualty to an extent in excess of twenty five (25%) percent of its then replacement cost, (excluding foundation(s)), Lessor may within thirty (30) days following the date such damage occurs terminate this Lease by written notice to Lessee. If Lessor, however, elects to make said repairs, and provided Lessor uses due diligence in making said repairs, this Lease shall continue in full force and effect and the minimum guaranteed rental shall be proportionately reduced as herein above provided. If Lessor

elects to terminate this Lease all rentals shall be prorated between Lessor and Lessee as of the date of such destruction.

B. The foregoing to the contrary notwithstanding, if the building is damaged or destroyed at any time during the term hereof to an extent of more than twenty five (25%) percent of its then replacement cost (excluding foundations) as a result of a casualty not insured against, Lessor may within thirty (30) days following the date of such destruction terminate this Lease upon written notice to Lessee. If Lessor does not elect to so terminate because of said uninsured casualty, Lessor shall promptly rebuild and repair said premises and Lessee's rental obligation shall be proportionately reduced as herein above provided.

C. In respect to any partial destruction (including any destruction necessary in order to make repairs required by any such declaration of any authorized public authority) which Lessor is obligated to repair or may elect to repair under the terms of this Article 17, the provisions of Section 1932, Subdivision (2) and Section 1933, Subdivision (4) of the Civil Code of the State of California are waived by Lessee.

18. ASSIGNMENT AND SUBLETTING.

A. Lessee expressly covenants and agrees that he will not sublet said premises or any part thereof, and that he will not transfer, assign, hypothecate or encumber this Lease or any part thereof, or any right or interest therein, without first obtaining the written consent of Lessor. It is agreed that a material part of the consideration moving Lessor to execute this Lease is the personal confidence reposed by Lessor in Lessee herein named, and no corporation or person other than said Lessee shall have the right to occupy said premises or any part thereof by virtue of any transfer or assignment, or by virtue of any bankruptcy or insolvency or reorganization proceedings or by virtue of any receivership or by virtue of any other legal process, either under attachment, execution or otherwise or in any manner whatsoever growing out of any proceeding or suit in law or in equity. In the event of any such proceedings by or against Lessee and/or his assigns or any of them, or against any interest of Lessee or any of his assigns or successors in interest in this Lease or in the demised premises or in the content thereof, or in the event of any proceedings by or against Lessee and/or his assigns or any of them, under or pursuant to any provision of bankruptcy laws of the United States of America, as presently constituted, or as may be amended or otherwise existing in the future, and unless such proceedings are dismissed or such levies released within 30 days from the commencement thereof, Lessor shall have the right at his option to terminate this Lease immediately.

19. DEFAULT.

A. The occurrence of ay of the following shall constitute a material default and breach of this Lease:

(1) The vacation or abandonment of the demised premises by the Lessee;

(2) A failure by Lessee to pay the rent, or to make any other payment due and required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of three (3) days after such payment was due from Lessee to Lessor. In the event that Lessor serves Lessee with a Notice to Pay Rent or Quit (or similar notice for such analogous purpose) pursuant to applicable Unlawful Detainer statutes such Notice shall also constitute the notice required by this subparagraph. The terms "Rent" and "rent" as used in this Lease shall mean the Minimum Rent, the Percentage Rent and the Lessee's share of common area expenses payable as additional rent, and all other sums to be paid by Tenant pursuant to this Lease;

(3) A failure by Lessee to observe and perform any other provision of this Lease to be observed and performed by Lessee, where such failure shall continue for a period of thirty (30) days after written notice thereof from Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within said thirty (30) days and thereafter diligently prosecutes such cure to completion;

(4) The making by Lessee of any general assignment for the benefit of creditors; the filing by or against Lessee of a petition to have Lessee adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee, the same is dismissed within thirty (30) days; the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the leased premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the leased premises or of Lessee's interest in this Lease; where such seizure is not discharged within thirty (30) days.

(5) The discovery by Lessor that any representation or financial statement given to Lessor by Lessee, any assignee of Lessee, any subtenant of Lessee, any successor in interest of Lessee or any guarantor of Lessee's obligations hereunder, and/or any of them, was materially false.

B. Remedies.

(1) Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Lessor by the terms of any mortgage or trust deed covering the Premises. Accordingly, any rental installment not received by Lessor by the seventh day of each respective month will be subject to a late charge of 10% thereof, which late charge may be collected as additional rental hereunder. The parties agree that this charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by Lessee. Acceptance of such late charge or rent by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount of any

preceding breach, other than the failure to pay the particular charges or rent so accepted, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder or provided by law. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of rent, then rent shall automatically become due and payable quarterly, in advance, rather than monthly, notwithstanding this Article or any other provision of this Lease to the contrary.

(2) If an Event of Default by Lessee occurs, as provided in this Article, Lessor shall have the right (unless otherwise specified in the termination notice), in addition to any rights of the Lessor at law or in equity and after written notice to Lessee, to terminate this Lease and enter and take possession of the Premises and expel, oust and remove any and all parties who may occupy any portion of the Premises and any and all goods and chattels belonging to Lessee, which do not have a lien on them and which may be found in or upon the Premises, all in accordance with all applicable laws and procedures. In case of any termination, re-entry, and/or dispossession by the Lessor in accordance with lawful proceedings:

(a) the Rent shall become due thereupon and be paid up to the time of such reentry, dispossession and/or expiration, and/or

(b) Lessor may re-lease the Premises or any part or parts thereof, either in the name of Lessor or otherwise, for a term or terms which may at Lessor's option be less than or exceed the period which would otherwise have constituted the balance of the term of the Lease.

(3) In the event of any default by Lessee, Lessor shall have the right to maintain Lessee's right to possession in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In such event, Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Lease including the right to recover the rent as it becomes due hereunder.

(4) In the event of any default by Lessee, Lessor shall have the right to pursue any other remedy or remedies now or hereafter available to Lessee at law or in equity.

(5) Tenant waives any and all equity of redemption in the event of being evicted or dispossessed for any cause or in the event Lessor obtains possession of the Premises by reason of the violation by Lessee of any of the covenants, terms or provisions of this Lease or otherwise.

(6) All amounts (other than basic or minimum rent as provided herein) payable to Lessor by Lessee under this Lease shall be deemed additional rent and Lessor shall have the same rights and remedies by reason of nonpayment of such additional rent as if Lessee had failed to pay an installment of basic or minimum rental as the same may be reserved herein. Lessee shall pay all such rental and additional rental reserved herein without any set-off or counterclaim whatsoever.

20. DEFAULT BY LESSOR; LIABILITY OF LESSOR. Lessor shall not be in default under this Lease unless Lessor fails to perform an obligation required of Lessor within a reasonable time, but in no event later than thirty (30) business days after written notice by Lessee to Lessor and to each mortgagee who is secured by the Premises, specifying the nature of the alleged default; provided, however, that if the nature of the obligation is such that more than thirty (30) business days are required for performance, then Lessor shall not be in default if Lessor commences performance within such thirty day period and thereafter diligently prosecutes the same to completion. In no event shall Lessee have the right to terminate this Lease as a result of Lessor's default, and Lessee's remedies shall be limited to damages and/or injunction, and as otherwise provided herein. Lessee agrees that it shall look solely to Lessor's estate in the Premises for satisfaction of any remedy of Lessee for the collection of a judgment (or other judicial process) requiring the payment of money by Lessor in the event of any default by Lessor hereunder, and no other property or assets of Lessor shall be subject to levy, execution, or other enforcement procedure for the satisfaction of Lessee's remedies under or with respect to this Lease, the relationship of Lessee and Lessor hereunder, or Lessee's use or occupancy of the Premises.

21. NATURE OF LESSOR'S SERVICE OBLIGATIONS.

A. Lessor's obligation to perform any service obligation under this Lease, including, without limitation, making any repairs or alterations to the Premises, shall be contingent upon the appropriation of funds by Lsesor's governing body sufficient to provide such services during the Lessor's respective fiscal year (July 1 through June 30). The performance of service obligations shall be funded only from current funds, budgeted and appropriated, on deposit in a reserve fund, or otherwise legally available for funding such services or other Property costs. This Lease shall not create an immediate debt for funding all service obligations throughout the Term of the Lease, and is not a pledge of Lessor's full faith and credit.

B. Appropriations covenant. During its annual budgeting process, Lessor shall consider, and will use best efforts to appropriate funding to meet its maintenance, and other estimated costs under this Lease for the fiscal year under consideration.

22. INSOLVENCY OF LESSEE. Lessee agrees that in the event all or substantially all of its assets be placed in the hands of a receiver or trustee, and in the event such receivership or trusteeship continue for a period of thirty (30) days, or should Lessee make an assignment for the benefit of creditors, or be adjudicated bankrupt, or seeks to be discharged of its debts, or should any involuntary proceeding be filed against such Lessee under such bankruptcy laws and Lessee consents thereto or acquiesces therein by pleading or default, then this Lease or any interest in and to the demised premises shall not become an asset in any such proceedings and in any of such events, and in addition to any and all rights or remedies of Lessor hereunder or as provided by law, it shall be lawful for Lessor at his option to declare the term hereof ended and to regarding-enter the demised premises and take possession thereof and remove all persons therefrom and Lessee shall have no further claim therein or thereunder.

23. SURRENDER OF LEASE. The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing sub-leases or sub-tenancies, or may, at the option of Lessor, operate as an assignment to him of any or all of such sub-leases or sub-tenancies. Lessee expressly covenants and agrees that upon the termination of this Lease, whether by the expiration of time or otherwise, he will immediately surrender and deliver up the demised premises to Lessor, his agents or attorneys, in as good condition as when received by Lessee from Lessor, reasonable wear and tear and damage by fire or other casualty excepted; and if Lessee or any other person claiming for, through or under him shall hold the premises for any time after the same should have been surrendered under the provisions of this Lease he or they shall be deemed guilty of unlawful detainer of said demised premises under the statutes of the State of California and shall be subject to eviction and removal with or without process of law, at the option of Lessor, as aforesaid.

24. SALE OF PREMISES BY LESSOR. In the event of any sale of the demised premises by Lessor, Lessor shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such sale; and the purchaser, at such sale or any subsequent sale of the demised premises shall be deemed, without any further agreement between the parties or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of the Lessor under this Lease.

25. ATTORNEY'S AND PROFESSIONAL'S FEES. In the event that either party hereto shall commence any legal action or proceeding against the other by reason of the alleged failure of the other to perform any term, covenant, or condition of this Lease by it to be performed or kept, the prevailing party in said action or proceeding shall be entitled to recover reasonable attorney's fees, including any in-house or staff counsel fees, to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal, if any. As used herein, "the prevailing party" means the party in whose favor final judgment is rendered, and "legal action or proceeding" includes arbitration.

26. SECURITY DEPOSIT.

A. Contemporaneously with the execution of this Lease, or at the time that Lessee takes possession of the demised premises, whichever shall occur first, Lessee shall deposit with Lessor the sum equal to one month's rent which sum shall be held by Lessor as security for the faithful performance by Lessee of all terms, covenants and conditions of this Lease by Lessee to be kept and performed during the term hereof or any extension thereof. Should Lessee comply with all of said terms, covenants and conditions, the sum shall be returned in full within ten (10) days after the expiration of the term of this Lease, or any extensions or renewals thereof, or upon the earlier termination of this Lease under the provisions herein contained. In the event that this Lease provides for an increase in rent, the dollar sum referred to above shall be automatically deemed increased to a sum equal to the increased rental sum simultaneously with such increased rent, and the

difference shall be worth with paid to Lessor without further demand and such additional sum shall be treated in accordance with the terms of this paragraph.

B. If at any time during the term of this Lease, Lessee should fail to keep and perform all of the terms, covenants and conditions in this Lease to be kept and performed by Lessee, Lessor, at its option, may utilize said deposit, or any part thereof, for any damages or rents which may accrue or which may be payable to it by the Lessee (but Lessor shall not be required to do so) or Lessor may retain said deposit, or any part thereof, until this Lease is terminated, and at such time appropriate and apply said sum or so much thereof as may be necessary to compensate Lessor for all loss or damage sustained or suffered by Lessor or for any unpaid rent due to any default on the part of Lessee. In the event Lessor elects to utilize all or any part of the security deposit as aforesaid, Lessee shall, upon written notice from Lessor, forthwith deposit with the Lessor such sum as is necessary to replenish the security deposit to its original amount, it being the express intent of Lessee and Lessor that Lessor shall hold a security deposit in the aforesaid amount at all times during the entire term of this Lease and any extension or renewal thereof. Lessee's failure to so restore the full amount of said security deposit within five (5) days after written notice from Lessor shall constitute a material breach of this Lease. The parties agree that the provisions of this Article 26 shall not operate as a limitation upon the amount of damages to which Lessor may be entitled by virtue of any defaults by Lessee.

27. NONDISCRIMINATION. Lessee herein covenants by and for himself, his heirs, executors, administrators, successors and assigns, and all persons claiming under or through him and this Lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the Lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased.

28. HOLDING OVER. Any holding over after the expiration of the term of this Lease, with the consent of landlord, shall be construed to be a tenancy from month to month, cancelable upon thirty (30) days written notice by either party to the other, upon the same terms and conditions, and at a rental twice as existed during the last year of the term hereof.

29. NOTICES. Wherever in this Lease it shall be required or permitted that notice and demand be given or served by either party to this Lease to or on the other, such notice or demand shall be given or served and shall not be deemed to have been duly given or served unless in writing and forwarded by registered or certified mail, return receipt requested, addressed as follows:

To Lessor: City of Fresno
Parks, After School, Recreation and
Community Services Department
Administration Division
2326 Fresno Street, Room 101
Fresno, CA 93721

To Lessee: Central California Events, Inc.
Matt Hobe, President
4740 N. Arcade Avenue
Fresno, CA 93704
(559) 431-7733
(599) 431-8690

Either party may change such address by written notice to the other.

30. SUCCESSORS IN INTEREST. The covenants herein contained, subject to the provisions as to assignment herein, shall apply to and bind the heirs, successors, executors, administrators and assigns of all parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

31. LESSEE'S PERFORMANCE. In the event Lessee shall fail any time limits which may be provided herein to complete any work or perform any other requirement provided to be performed by Lessee prior to the commencement hereof, or in the event Lessee shall cause a delay in the completion of any work, Lessor shall send Lessee written notice of said default and if said default is not corrected within ten (10) days thereafter, Lessor shall have the option of terminating this Lease by a written notice of termination and upon forwarding of said notice this Lease shall cease and terminate. Lessor shall be entitled to retain as liquidated damages all deposits made hereunder and such improvements as Lessee may have annexed to the realty that can not be removed without damage thereto.

32. FORCE MAJEURE. If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of the party obliged (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing in this Article 32 contained shall excuse Lessee from the prompt payment of any rental or other charge required of Lessee hereunder except as may be expressly provided elsewhere in this Lease.

33. PARTIAL INVALIDITY. If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable,

the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereof.

34. CAPTIONS – INTERPRETATION. The various headings and numbers herein and the grouping of the provisions of this Lease into separate Articles and paragraphs are for the purpose of convenience only and shall not be considered a part hereof. The language in all parts of the Lease shall be in all cases construed simply according to its fair meaning, as though mutually prepared by all parties hereto, and not strictly for or against Lessor or Lessee.

35. TIME. Time is of the essence of this Lease.

36. SUBORDINATION, ATTORNMENT. Lessee enters into and accepts this Lease and the Leasehold interest and estate of Lessee hereunder subject and subordinate to all mortgages and/or trust deeds which may now and/or hereafter exist or be executed upon or with respect to the real property or premises hereby demised and/or the real property on which said building is situated and/or the improvements at any time thereon and/or the reversionary estate hereunder, and as well any advances, renewals or extensions of any such mortgages and/or trust deeds; and Lessee covenants and agrees, upon demand therefore, to do any and all things and to execute, acknowledge and deliver any and all instruments that may be necessary, proper or convenient to subordinate this Lease and the Leasehold interest and estate of Lessee hereunder to any such mortgage and/or trust deed and to the lien and provisions thereof. In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by the Lessor covering the demised premises, the Lessee shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Lessor under this Lease. Upon demand therefore by Lessor, or in the event that upon any sale, assignment or hypothecation of the demised premises or of the land thereunder by the Lessor, an offset statement shall be required from the Lessee, Lessee agrees that within forty-eight (48) hours after receiving demand for the same it will execute, acknowledge and deliver in recordable form a certificate addressed to any such or proposed mortgagee or purchaser or to the Lessor certifying that this Lease is in full force and effect (if such be the case) and that there are no differences or offsets thereto, or stating claims by Lessee to the contrary. In the event that Lessee for any reason fails or refuses to so provide such a statement, Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to execute, acknowledge and deliver such statement on behalf of Lessee in its place and stead.

37. SECURITY MEASURES. Lessee hereby acknowledges that the rental payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of Lessee, its agents and invitees and its property from acts of third parties.

38. EASEMENTS. Lessor reserves to itself the right, from time to time, to grant such easements, rights and dedications that Lessor deems necessary or desirable, and

to cause the recordation of Parcel Maps and restrictions, so long as such easements, rights, dedications, Maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee shall sign any of the aforementioned documents upon request of Lessor and failure to do so shall constitute a material breach of this Lease. The obstruction of Lessee's view, air, or light by any structure erected in, on or about the building of which the Premises are a part, whether by Lessor or third parties, shall in no way affect this Lease or impose any liability upon Lessor.

39. CONDEMNATION. If the Premises or any portion thereof are taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the building on the Premises, or more than 25% of the land area of the Premises which is not occupied by any building, is taken by condemnation, Lessee may, at Lessee's option, to be exercised in writing only within ten (10) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the proportion that the floor area of the Premises taken bears to the total floor area of the Premises prior to the taking. No reduction of rent shall occur if the only area taken is that which does not have a building located thereon. Any award for the taking or all of any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Lessee shall be entitled to any award for loss of damage to Lessee's trade fixtures and removable personal property. In the event that this Lease is not terminated by reason of such condemnation, Lessor shall to the extent of severance damages received by Lessor in connection with such condemnation, repair any damage to the premises caused by such condemnation except to the extent that Lessee has been reimbursed therefor by the condemning authority. Lessee shall pay any amount in excess of such severance damages required to complete such repair.

40. INTEREST ON PAST-DUE OBLIGATIONS. Except as expressly herein provided, any amount due to Lessor not paid when due shall bear interest at the maximum rate then allowable by law from the date due. Payment of such interest shall not excuse or cure any default by Lessee under this Lease; provided, however, that interest shall not be payable on late charges incurred by Lessee.

41. AUTHORITY. If Lessee is a corporation, trust, or general or limited partnership, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said entity. If Lessee is a corporation, trust or partnership, Lessee shall, within thirty (30) days

after execution of this Lease, deliver to Lessor evidence of such authority satisfactory to Lessor.

42. CONDITION PRECEDENT. It is further expressly understood and agreed that each and all of the provisions of this Lease are conditions precedent to be faithfully and fully performed and observed by Lessee to entitle Lessee to continue in possession of the demised premises hereunder; that said conditions are also covenants on the part of Lessee; that time of performance of each is of the essence of this Agreement.

43. RULES AND REGULATIONS. Lessee hereby promises and agrees to keep and perform each and all of the rules and regulations of the building of which the premises may be a part as hereinafter set forth, or promulgated in the future. Lessor shall have the right to amend said rules and to make other and different reasonable rules and regulations limiting, restricting and regulating the privileges of tenants in said building, and all such rules and regulations so made by Lessor, after notice thereof to Lessee, shall be binding upon Lessee and become conditions of Lessee's tenancy and covenants on the part of and to be performed by Lessee.

44. INDEPENDENT CONTRACTORS. Nothing herein contained shall be construed to place the parties in a relationship of partners, joint venturers or agents of the other, and the parties shall be recognized as independent contractors and free agents.

45. NON-WAIVER. The failure of the Lessor to act upon or exercise his rights under this Lease or a breach of any of the terms hereof shall not be construed as a waiver of such breach or prevent Lessor from enforcing strict compliance with any and all terms hereof, or any further or other breach of the terms hereof.

46. ENTIRE AGREEMENT/AMENDMENTS. This Lease embodies the entire agreement and understanding between the parties relating to the subject matter hereof and may not be amended, waived or discharged except by an instrument in writing executed by the parties against which enforcement of such an amendment, waiver or discharge is sought. This Agreement supersedes all prior amendments and memoranda. No legal right shall accrue to either party named herein unless and until this Lease shall have been executed and delivered by both parties hereto. The invalidity of any one of the covenants, agreements, conditions, or provisions of this Lease or any portion thereof shall not effect the remaining portions thereof or any part hereof and this Lease shall be construed as if such covenant, agreement, condition or provision had not been inserted herein.

47. GOVERNING LAW. This Lease shall be interpreted in accordance with the laws of the State of California. Venue shall be in Fresno, California.

48. FURTHER INSTRUMENTS. Each party agrees to execute such further and other documents as shall be necessary or reasonably required to accomplish the purposes contemplated herein.

49. NO NOVATION/ACCORD AND SATISFACTION. No payment by Lessee or receipt of funds by Lessor of an amount lesser than the rent stipulated herein shall be deemed to be other than on account for rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction or novation, and Lessor is specifically instructed in accordance with this paragraph to accept such check or payment without prejudice to Lessor's right to recover the balance of such rent, without waiver of any type or nature, and Lessor may pursue any other remedy provided in this Lease or otherwise available to Lessor.

50. COUNTERPARTS. This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one in the same instrument.

51. GENDER. The masculine, feminine, or neuter gender and the singular or plural number shall be deemed to include the others whenever the context so indicates.

52. BUSINESS DAYS. If any of the dates mentioned herein falls on a Saturday, Sunday or legal holiday, then the dates shall mean the first regular business day following such date.

53. NO OFFER. Preparation of this Lease by Lessor or Lessor's agent and submission of same to Lessee shall not be deemed an offer to Lessee to lease. This Lease shall become binding upon Lessor and Lessee only when fully executed by both parties.

54. MULTIPLE PARTIES. If more than one person or entity is named as Lessee herein, except as may be otherwise specifically provided herein, the obligations of Lessee herein shall be the joint and several responsibility of all persons or entities named herein as such Lessee.

SIGNATURES APPEAR ON NEXT PAGE

IN WITNESS WHEREOF, the parties have duly executed this Lease together with the herein referred to exhibits which are attached hereto, if any, on the day and year first above written at Fresno, California.

LESSOR:

CITY OF FRESNO

By:_____
Randall L. Cooper, Director
Parks, Afterschool, Recreation and
Community Services.

LESSEE:

CENTRAL CALIFORNIA EVENTS, INC.

By: Matt Hobe
Matt Hobe, President and Treasurer

APPROVED AS TO FORM
City Attorney's Office

By:_____
Katherine E. Bradley
Deputy City Attorney

ATTEST
REBECCA E. KLISCH
Ex Officio Clerk for the Agency

By:_____
Deputy

Exhibit A: Legal Description
Exhibit B: Photos of premise

Exhibit A

Lots 1,2,3,4,5,6 and 7 in Block 76 of the Town (now City) of Fresno, according to the Map thereof recorded June 8, 1876 in Book 1 of Plats at Page 2, Official Records of Fresno County.

Commonly known as 665 Fulton Street, Fresno California, APN 468 291 13
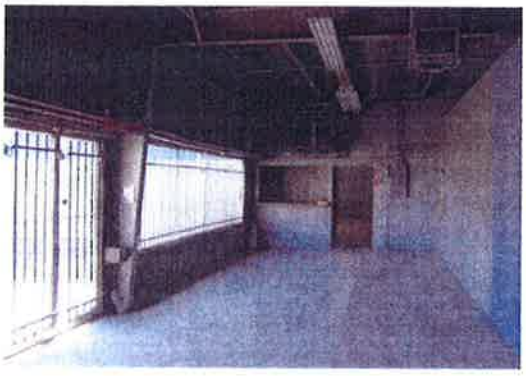
Exhibit B