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4/24/14

LEASE AGREEMENT

ROEDING PARK PLAYLAND AND FRESNO STORYLAND

THIS LEASE AGREEMENT (hereinafter referred to as "Agreement") made and entered into effective April 24, 2014, (the "Effective Date"), by and between the CITY OF FRESNO, CALIFORNIA, a municipal corporation (hereinafter referred to as "City") and ROEDING PARK PLAYLAND, a California nonprofit corporation, and FRESNO STORYLAND, a California nonprofit corporation (collectively referred to as "Tenant").

WITNESSTH

WHEREAS, City owns the property commonly known as Roeding Park, a 157 acres park located at 890 W. Belmont Ave; and

WHEREAS, Tenant incorporated for the purpose of, and under an agreement entered into with City dated November 20, 1954, has constructed and is operating an amusement playland, boat concession and concession stands within Roeding Park. Tenant entered into a lease agreement August 29, 1974, and eight modifications thereto ("Playland Lease"), which terminated November 1, 2013, and Tenant wishes to continue leasing and operating the property; and

WHEREAS, Fresno Storyland incorporated for the purpose of, and under an agreement entered into with City dated January 19, 1971 ("Storyland Lease"), has constructed and is operating a storybook land within Roeding Park, and wishes to continue leasing and operating the property; and

WHEREAS, pursuant to the Eighth Modification to Lease Agreement executed July 26, 1994, the Storyland area was added to the Playland Lease and the Storyland Lease was terminated; and

WHEREAS, Roeding Park Playland and Fresno Storyland maintain separate 501(c)(3) tax-exempt not-for-profit status, and one Board of Trustees and a single Executive Director govern both organizations; and

WHEREAS, the City deems it advantageous to the public to rent the premises occupied by the playland and storybook land to Tenant for the educational opportunities, and the pleasure of children and families in the Fresno area.

NOW, THEREFORE IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

SECTION 1: DESCRIPTION OF LEASED PREMISES

City leases to Tenant "as is", the areas within Roeding Park generally described on the attached map, marked "Exhibit A" (the "Leased Premises"). The Leased Premises consist of the Storyland premises of approximately 3.35 acres, the Playland premises of approximately 3.65 acres, and the expansion area of approximately 2 acres. From the Commencement Date, Tenant shall have exclusive use of the Leased Premises. Upon ninety (90) days written notice to the City, Tenant shall have the right to expand the Storyland and/or Playland premises and take exclusive possession of some or all of the expansion area.

SECTION 2: TERM OF LEASE

The term of this lease shall be from the Commencement Date and ending at 11:59 p.m. in the date which is thirty (30) years thereafter (the "Lease Terminations Date") unless sooner terminated as set forth in this agreement.

SECTION 3: TERMINATION OF LEASE; DEFAULT

Notwithstanding any other termination provisions herein, in the event that Tenant fails to maintain and operate the Leased Premises for the principal purposes for which the same are hereby demised, or fails to maintain reasonable and adequate supervision and maintenance of the Leased Premises to the satisfaction of City, or Tenant fails to perform any provision of this Lease, or to comply with any requirement imposed on Tenant or the Leased Premises by any duly authorized governmental agency or political subdivision relating to the Tenant's use or occupancy of the Leased Premises, and further fails to remedy any such faults or defects within sixty (60) days after written notice to do so from the City, then City may elect to terminate and cancel this Lease as to some or all of the Leased Premises, in the City's discretion. Notwithstanding the foregoing, City may terminate all or part of this Lease, or require that Tenant be closed to the public until City approves re-opening, if City determines that Tenant's default creates an imminent threat to public health and/or safety.

SECTION 4: RENT

As rent for the use of the Leased Premises, Tenant agrees to pay the City the sum of One Dollar (\$1.00) per year. Upon execution of this Agreement, Tenant shall pay City the sum of One Dollar (\$1.00) representing rent for the year ending June 30, 2014. Thereafter rent shall be due and payable on or before June 30 of each year.

SECTION 5: CASH RESERVES

Tenant shall continue to maintain the cash revenue fund established pursuant to the Playland Lease. All net profits (as defined below) shall be set aside by Tenant in a separate cash reserve fund. For purposes of this Agreement, the term "net profits" means all proceeds from all activities carried on by Tenant on the Leased Premises plus all interest thereon after deducting all expenses incurred in the operation of all activities on the Leased Premises.

Except as otherwise provided herein, Tenant shall use such cash reserve fund to maintain or expand its operation. The cash reserve fund shall not be restricted to the Roeding Park location and may be used for other purposes of Tenant so long as said fund is used by Tenant for planning, construction, installation or operation of park, recreational or cultural facilities in the City upon prior approval of the City Council.

Upon expiration of this Agreement, and if a new lease of the Leased Premises is not entered into between the City and Tenant, then the balance in the cash reserve fund shall be retained by Tenant and used solely for community projects within the City. Such uses shall be subject to prior approval by the City Council. This provision shall survive termination of this Agreement until such time as all monies are expended.

SECTION 6: USE OF THE LEASED PREMISES

Tenant shall not use or permit the Leased Premises or any part thereof, to be used other than a playland and storybook land, and such additional uses as may be approved in advance by City in writing, provided that such use is consistent with operating and maintaining Playland and Storyland for the benefit of the general public. Except as expressly provided elsewhere in this Lease, programming and all operating costs shall be solely the responsibility of Tenant. Tenant shall have exclusive responsibility and control of programming, hiring of staff, arranging tours, establishing hours of operation, and establishing fees. Tenant shall be permitted to rent the premises for other appropriate functions as a means of raising funds to support the mission of the Tenant. Tenant shall have the right to post such signs as are necessary and usual in the conduct of its activities in and upon the Leased Premises, so long as such signs conform to the regulations of the Fresno Municipal Code.

SECTION 7: RECORDS

Tenant shall maintain adequate records of all activities carried on by it on the Leased Premises. All such records shall be available for inspection by authorized employees of the City at any reasonable time, and Tenant shall furnish to City upon request such information concerning any operation or operations conducted by it on the Leased Premises, including but not limited to gross ticket sales.

SECTION 8: CITY PROVIDED SERVICES AND MAINTENANCE

City shall pay all operating and capital costs, including insurance, all supplies, equipment, labor, fixtures, and material necessary for the maintenance, operation and capital improvements of the expansion area until tenant takes possession of such area upon notice as provided in Section 1 above.

City agrees to:

- i. furnish shade trees or replace present trees, subject to the approval of City as to the type of trees and location thereof;
- ii. trim and fertilize trees present in leased premises as of the Commencement Date;
- iii. trim and fertilize trees furnished or replaced in leased premises by the City or its agent;
- iv. remove dead, diseased or damaged trees or limbs of trees, as deemed necessary by agreement of tenant and City staff.

SECTION 9: TENANT PROVIDED SERVICES AND MAINTENANCE

Tenant shall pay all operating and capital costs, including insurance, all supplies, equipment, labor, fixtures, and material necessary for the maintenance, operation and capital improvements of the facilities on the Leased Premises, but not including the expansion area until tenant takes possession of such area upon notice as provided in Section 1 above.

SECTION 10: LICENSES AND PERMITS

Tenant shall procure, at its own cost and expense, all necessary licenses and permits from City or any other governmental agency that may be necessary for the purpose of carrying out the provisions of this Agreement.

Tenant shall maintain good corporate standing with the State of California over the life of the Agreement, and shall maintain its IRS section 501(c)(3) status over the life of this Agreement, and provide proof thereof to the City upon request.

The consumption of alcoholic beverages may be authorized by the City on the leased premises during an event conducted by Tenant, when such an event is for the benefit of Tenant and/or the City.

For purposes of this Agreement, alcoholic beverages includes alcohol, spirits, liquor, wine, beer, and any liquor or solid containing alcohol by volume and which is fit for

beverage purposes either alone or when diluted, mixed or combined with other substances.

Tenant shall comply with all Cal/OSHA rules and regulations, including but not limited to The Amusement Rides Safety Law and Permanent Amusement Ride Safety Inspection Program (Labor Code sections 7900 et seq. and 7920 et seq.) over the life of this Agreement and provide proof thereof to the City upon request.

SECTION 11: COMPLIANCE WITH LAWS

Tenant shall comply with City policies and all applicable state and federal laws, regulations and rules related to the use of the Leased Premises and the operation of the program, including but not limited to, laws, regulations and rules applicable to health, safety and equal opportunity employment.

SECTION 12: HAZARDOUS MATERIALS

City represents that it has no actual knowledge that any Hazardous Materials (as defined below) have been deposited, released, disposed of or placed upon, about or under the Leased Premises. Tenant agrees to indemnify, defend, and hold City harmless from and against any and all liabilities, including but not limited to, losses, claims, actions, damages, penalties, fines, attorney's fees, expert fees, court costs, remediation costs, investigation costs or other expenses, whether administrative or judicial, arising from or in any way related to Hazardous Materials contamination caused by Tenant or that of its employees, suppliers, customers, invitees, or any third party, from actions or negligence at the Leased Premises during Tenant's occupation of the site, during the term of this Agreement.

"Hazardous Materials" shall mean any substance or material which is capable of posing a risk of injury to health, safety or property, including all of those materials and substances designated as hazardous or toxic by any federal, state or local law, ordinance, rule, regulation or policy. Without limiting the generality of the foregoing, the term **"Hazardous Materials"** includes any dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed, identified in or regulated by and under federal, state, or local laws, ordinances, rules, regulations, or policies, and shall include asbestos, urea formaldehyde, polychlorinated biphenyls, petroleum, petroleum products, fuel oil, waste oil, explosives, radioactive materials, nuclear fuel or material, medical waste, pollutants, ignitable materials, corrosive materials, and any other element, compound, mixture, solution or substance that may pose a present or potential hazard to human health or the environment or that are contained on any list that is adopted by the United States Environmental Protection Agency, the State of California, or any political subdivision thereof.

SECTION 13: INDEMNIFICATION

To the furthest extent allowed by law, Tenant shall indemnify, hold harmless and defend City and 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 City, Tenant 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 Tenant's: (i) occupancy, maintenance and/or use of the Leased Premises or Roeding Park; or (ii) performance of, or failure to perform, this Agreement. Tenant's obligations under the preceding sentence shall apply to any negligence of City, 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 City or its officers, officials, employees, agents and volunteers.

Tenant acknowledges that 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) arising out of or in any way connected with releases or discharges of a Hazardous Substance, or the exacerbation of a Potential Environmental Hazard, occurring as a result of or in connection with: (i) Tenant's occupancy, maintenance and/or use of the Leased Premises or Roeding Park; (ii) Tenant's activities or the activities of any of Tenant's representatives (including, without limitation, any of Tenant's officers, officials, employees, agents, volunteers, invitees, subtenants, consultants, subconsultants, contractors or subcontractors), and all costs, expenses and liabilities for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remediation and other response costs, including reasonable attorneys' fees and disbursements and any fines and penalties imposed for the violation of any Legal Requirements relating to the environment or human health, are expressly within the scope of the indemnity set forth above.

Tenant's occupancy, maintenance and use of the Leased Premises, and use of all or any part of Roeding Park, shall be at Tenant's sole risk and expense. Tenant accepts all risk relating to Tenant's: (i) occupancy, maintenance and/or use of the Premises; or (ii) performance of, or failure to perform, this Agreement. City shall not be liable to Tenant and its insurer(s) for, and Tenant and its insurer(s) hereby waive and release City from, any and all loss, liability, fines, penalties, forfeitures, costs or damages resulting from or attributable to an occurrence on or about the Leased Premises, or all or any part of Roeding Park, in any way related to the Tenant's operations and activities.

insurer, broker, or agent of a notice of cancellation, nonrenewal, or reduction in coverage or in limits, Tenant shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Tenant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

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

If at any time during the life of the Lease or any extension, Tenant fails to maintain any required insurance in full force and effect, all Tenant's activities under this lease shall be discontinued immediately, until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this lease. No action taken by City pursuant to this section shall in any way relieve Tenant of its responsibilities under this Lease.

The fact that insurance is obtained by Tenant shall not be deemed to release or diminish the liability of Tenant, including, without limitation, liability under the indemnity provisions of this Lease. The duty to indemnify City and its officers, officials, employees, agents and 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 Tenant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Tenant, or any of its board, officers, employees, agents, volunteers, invitees, suppliers, vendors, consultants, contractors or subcontractors. Upon request of City, Tenant shall immediately furnish City with a complete copy of any Insurance policy required under this Lease, 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 Lease.

Tenant and its insurers hereby waives all rights of recovery against City and its officers, officials, employees, agents and volunteers, on account of injury, loss by or damage to

the Tenant or any of its board, officers, employees, agents, volunteers, invitees, suppliers, vendors, consultants, contractors or subcontractors, or its property or the property of others under its care, custody and control. Tenant 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.

If Tenant should contract any work on the Leased Premises, sublet or rent the Leased Premises or subcontract any of its obligations under this Agreement, Tenant shall require each consultant, subconsultant, contractor, subcontractor, subtenant or renter to provide insurance protection in favor of City and its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the consultants', subconsultants', contractors', subcontractors', subtenants' or renters' certificates and endorsements shall be on file with Tenant and City prior to the commencement of any work or occupancy of the Leased Premises by the consultant, subconsultant, contractor, subcontractor, subtenant or renter.

SECTION 15: IMPROVEMENTS

If Tenant desires to construct or install any other improvements or to add any rides to the existing amusement playland (other than replacement of existing rides, whether similar or not), Tenant shall first obtain the written consent of the City's Director of Parks, After School, Recreation and Community Services and the City's Risk Manager.

Notwithstanding the City's consent to any improvements, or additional rides pursuant to this section, as to the City, Tenant shall be solely responsible for proper construction and installation of all such improvements and additional rides, including supervision and timely payment of all architects, engineers, contractors, subcontractors, suppliers, laborers and employees. Tenant shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers from any and all claims and actions by architects, engineers, contractors, suppliers, laborers or employees arising out of construction or installation of such improvements or additional rides.

SECTION 16: RIGHT OF ENTRY

City reserves the right of entrance at all times to the Leased Premises.

SECTION 17: CONCESSION STANDS

Tenant shall have the exclusive right of operating concession stands within the Leased Premises.

SECTION 18: DISPOSITION OF IMPROVEMENTS

Tenant agrees not to construct or install improvements or additional rides, or expand the current operation on the Leased Premises without first receiving written consent of the City's Director of Parks, After School, Recreation and Community Services, and City's Risk Manager. Such approval shall not be unreasonably withheld or delayed. Tenant may repair or make alterations to existing improvements without prior approval of the City, so long as such alterations are consistent with applicable State law. Upon expiration of the term of this Agreement, or any renewal thereof, or upon the earlier termination thereof, all improvements placed upon the leased premises by Tenant at the option of the City shall become property of City. For purposes of this lease, "improvements" shall include all rides, boats, amenities, storybook units or improvements of any kind on the Leased Premises, whether existing at the date this Lease Agreement is executed or added subsequent thereto.

SECTION 19: SERVICES AND UTILITIES

Tenant Obligations: Tenant shall provide for, maintain, repair, and furnish any utilities or utility installations to the Leased Premises, (collectively "Utilities"). Tenant shall pay expenses of all water, gas, electricity, sewer, solid waste disposal, lighting, pest control, telephone or other service metered, chargeable or provided to the Leased Premises.

Limitation of City's Liability: City shall not be liable for any losses, whether direct or consequential, arising from any interruption in any utility or service, including, without limitation, any business interruption or data loss, resulting from an interruption in electrical service.

SECTION 20: NOTICES

Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to the City by Tenant or Tenant by the City shall be in writing and shall be deemed duly served and given either personally or sent by prepaid certified first class mail, overnight delivery service, fax, e-mail or courier addressed as follows:

CITY:
City of Fresno PARCS
848 M Street, Third Floor
Fresno CA 93721

TENANT:
Roeding Park Playland
890 W. Belmont
Fresno CA 93728

SECTION 21: ASSIGNMENT

This Agreement shall not be assigned by Tenant, either in whole or in part, or the rights or any portion thereof sublet, without prior written approval of City. This Agreement

shall not be assigned involuntarily or by any process of law, and in the event Tenant is adjudged bankrupt or insolvent, or if a receiver is appointed concerning its affairs, or if Tenant makes a general assignment for the benefit of its creditors, or fails to release any levy of attachment or execution upon its property within ten (10) days after such levy is made, then it shall be optional with City to consider any of the same a breach of this Agreement and to cancel and terminate this Agreement. Nothing herein contained shall be construed to compel City to do so.

SECTION 22: ABANDONMENT.

If at any time during the term of this Agreement, Tenant abandons the Leased Premises or any part thereof, City may, at its option, enter the Leased Premises by any means without being liable for any prosecution therefore and without becoming liable to Tenant for damages or for any payment of any kind whatever, and may, at its discretion, relet the Leased Premises, or any part thereof, for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such reletting. If City's right of re-entry is exercised following abandonment of the Leased Premises by Tenant, then City may consider any personal property belonging to Tenant and left on the Leased Premises to also have been abandoned, in which case City may dispose of all such personal property in any manner City shall deem proper and is hereby relieved of all liability for doing so.

SECTION 23: DESTRUCTION OF LEASED PREMISES.

If, during the term of this Agreement, the Leased Property or a substantial portion thereof, shall be destroyed by fire or the elements or any other cause, then this Agreement shall terminate at the option of either party and become null and void from the date of notice of termination. In the event the exercise of this option by either party, Tenant shall immediately surrender the premises to City and this Agreement shall thereupon terminate.

SECTION 24: CONDEMNATION

If the Leased Premises or any portion thereof are taken under the power of eminent domain, or sold under the threat or exercise of said power (all of which are herein called "condemnation"), this Agreement 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 25% of the land area of the Leased Premises is taken by condemnation, Tenant may, at Tenant's option, to be exercised in writing only within ten (10) days after City shall have given Tenant 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 Agreement as of the date the condemning authority takes such possession. If Tenant does not terminate this Agreement in accordance with the foregoing, this Agreement

shall remain in full force and effect as to the portion of the Leased Premises remaining. Any award for the taking of all of any part of the Leased Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of City, 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 Tenant shall be entitled to any award for loss or damage to Tenant's trade fixtures and removable personal property. In the event that this Agreement is not terminated by reason of such condemnation, City shall to the extent of severance damages received by City in connection with such condemnation, repair any damage to the Leased Premises caused by such condemnation except to the extent that Tenant has been reimbursed therefor by the condemning authority. Tenant shall pay any amount in excess of such severance damages required to complete such repair.

SECTION 25: MISCELLANEOUS PROVISIONS.

The parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of California. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be in Fresno County.

The headings of the sections and subsections of this Agreement are inserted for convenience only. They do not constitute a part of this Agreement and shall not be used in its construction.

Any and all exhibits which are referred to in this Agreement are incorporated herein by reference and are deemed a part of this Agreement.

No waiver by the City or the Tenant of any breach of any provision of this Agreement shall be deemed for any purpose to be a waiver of any breach of any other provision hereof or of a continuing or subsequent breach of the same provision.

This Agreement may only be amended by formal written agreement executed by both parties.

If a court of competent jurisdiction adjudges any provision of this Agreement as void or unenforceable, the remaining provisions shall not be affected hereby and shall remain in full force and effect.

// // IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year above written.

CITY OF FRESNO,
a municipal corporation

ROEDING PARK PLAYLAND,
a California non-profit corporation

By 
Bruce Rudd
City Manager/ PARCS Director

By Nancy Flores
Name Nancy Flores
Title Chair

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By 

By Cindy Buer 5/5/14

Name ROBERT D. SIMPSON
Title VICE CHAIR

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

FRESNO STORYLAND,
a California non-profit corporation

By  5/5/14

By Nancy Flores
Name Nancy Flores
Title Chair

Addresses:
CITY:
City of Fresno PARCS
848 M Street, Third Floor

By 

TENANT:
Roeding Park Playland
890 W. Belmont
Fresno CA 93728

Name ROBERT D. SIMPSON
Title VICE CHAIR

Fresno Storyland
890 W. Belmont
Fresno CA 93728

EXHIBIT A



Sources: Roeding Park Facility Master Plan, June 2009, City of Fresno (GIS), and Paoli & Odell, Inc. 2009.



1" = 500 Feet

Figure 2-4
Aerial Photograph
Project Site and Surrounding Area