

#25

FEB 13 2014



**Chandler • Arizona**  
*Where Values Make The Difference*

**MEMORANDUM**

**Community Services Department CS14-076**

**DATE:** FEBRUARY 4, 2014

**TO:** MAYOR AND COUNCIL

**THRU:** RICH DLUGAS, CITY MANAGER *RD*  
MARSHA REED, ASSISTANT CITY MANAGER *MR*

**FROM:** MARK M. EYNATTEN, COMMUNITY SERVICES DIRECTOR *MME*

**RE:** LICENSE AGREEMENT WITH CHANDLER CHAMBER OF COMMERCE FOR  
USE OF TUMBLEWEED PARK IN CONJUNCTION WITH THE OSTRICH  
FESTIVAL – 2014 AND 2015

**SUBJECT:** Approve a License Agreement with Chandler Chamber of Commerce for Use of Tumbleweed Park in conjunction with the Ostrich Festival from March 7, 2014, to March 9, 2014, and from March 13, 2015, to March 15, 2015.

**BACKGROUND:** The Chandler Chamber of Commerce (CCC) organizes, sponsors, and conducts the Ostrich Festival using Tumbleweed Park as its event venue. Past license agreements have been for a one year term. This agreement is for the 2014 and 2015 event years. Both the CCC and city staff believes that a two year license agreement will streamline planning and improve event implementation.

The 2014 event is proposed to take place from March 7, 2014, to March 9, 2014 with set up commencing on March 2<sup>nd</sup> and cleanup to be completed by March 11, 2014. The 2015 event is proposed to take place from March 13, 2015, to March 15, 2015 with set up commencing on March 8<sup>th</sup> and cleanup to be completed by March 17, 2015. As the event has grown in size, scope, duration and attendance it becomes prudent to enter into a license agreement that clearly delineates the role of each entity and the City's expectations regarding planning, layout, operations, and clean up.

To that end, the attached license agreement was prepared with input from Police, Fire, Community Services, Risk Management, and the CCC. Key elements in the agreement include:

1. Designation of specific deadlines for the submittal of site plans, emergency plans, vendor requirements, and necessary permits.
2. Identification of allowable activities and events.
3. Identification of contact personnel representing each entity involved in oversight of the event.
4. Clarification of the authority of City personnel, specifically Public Safety staff, in event oversight.
5. Identification of event set up and clean up responsibilities.

6. Specification of insurance requirements, limits, and naming of the City as an additional insured.
7. Specification of timelines for identifying and notifying the CCC of damage to the site as a result of the festival and establishment of a remediation plan.

**RECOMMENDED MOTION:** Staff recommends approval of a license agreement with the Chandler Chamber of Commerce for the use of Tumbleweed Park in conjunction with the Ostrich Festival from March 7, 2014, to March 9, 2014, and from March 13, 2015, to March 15, 2015.

## **LICENSE AGREEMENT FOR CHANDLER OSTRICH FESTIVAL**

This License Agreement (the "Agreement") is entered into on \_\_\_\_\_2014, between and among the City of Chandler, a municipal corporation of the State of Arizona ("City"), the Chandler Chamber of Commerce ("Chamber") and Universal Fairs ("UF") (collectively the "Parties"). The City hereby grants this License to the Chamber and UF for use of the Tumbleweed Park (the "Park"), in an Event Area ("Event Area"), as described and shown herein in Exhibit A for the 2014 Ostrich Festival and Exhibit A-1 for the 2015 Ostrich Festival, subject to the following terms conditions, and restrictions:

Whereas, historically, the City has agreed to allow the Chamber and a vendor (in 2012 the vendor was Universal Fairs) to hold the Ostrich Festival on City property;

Whereas, in 2014 and 2015, the Chamber and UF are interested in holding the Ostrich Festival at the City's Park and the City is willing to allow the Ostrich Festival to be held at the Park under certain conditions,

Therefore, the City in consideration of the covenants, restrictions and conditions contained in this Agreement, grants a license to the Chamber and UF for the right to use the Park and Event Area for the purpose of conducting the 2014 and 2015 Ostrich Festivals.

### **SECTION 1: GRANT OF LICENSE; FEES**

1.1 Grant of License, Fees. The City grants the Chamber and UF the right to use the Park and Event Area for the dates and times specified in this License. The term "License" shall include and incorporate any exhibits to this License. The Parties agree that for such use of the Event Area the License fee is \$1.00 payable upon execution of this License. The Chamber and UF acknowledge and agree that there may be additional

fees associated with the use of the Park and Event Area. The Chamber and UF agree to pay such additional fees upon receipt of an invoice for such fees as set forth below.

- 1.2 Additional Fees. The City reserves the right to require additional fees associated with the use of the Park and Event Area. Such additional fees or charges shall be paid on or before the earlier of (i) the first date of the Chambers' and UF's use of the Event Area or (ii) no later than 30 calendar days after the Chamber's and UF's receipt of an invoice requesting such fees or charges.

- 1.3 License Time Period and Duties and Liability of UF and Chamber Upon Termination.

The rights to use the Event Area shall be for the following times:

- a. Set up shall be allowed: 1) beginning no earlier than 6 a.m. on Sunday, March 2, 2014 for the 2014 Ostrich Festival, and 2) beginning no earlier than 6 a.m. on Sunday, March 8, 2015 for the 2015 Ostrich Festival, or after completion of the pre-event facilities walk through as described in Section 1.4 of the License.
- b. Festival shall be allowed to operate from: 1) from March 7, 2014 through March 9, 2014 for the 2014 Ostrich Festival and 2) from March 13, 2015 through March 15, 2015 for 2015 Ostrich Festival.
- c. All vendor activity shall be finished, all booths, vehicles, materials and all structures associated with the Festival shall be removed: 1) for the March 2014 Ostrich Festival no later than 5 p.m. on Tuesday, March 11, 2014 for the 2014 Ostrich Festival and 2) for 2015 Ostrich Festival no later than 5 p.m. on Tuesday March 17, 2015.
- d. UF and the Chamber shall clean-up the Park and Event Area no later than 5 p.m. on Tuesday, March 11, 2014 for 2014 Ostrich Festival and Tuesday, March 17,

2015 for the 2015 Ostrich Festival to the City of Chandler Community Services Department's satisfaction. If UF and the Chamber fail to clean up the Park and Event Area to the City's satisfaction, the City shall perform any remaining clean-up and invoice the Chamber and UF the cost for the clean-up.

- e. UF and the Chamber shall be responsible for the cost of repairs for any damage arising out of or related to the Festival.

1.4 The Park and Event Area Use. The Chamber and UF may use the Event Area for the Ostrich Festival activities specified herein and for uses normally incident to such use but for no other purpose unless previously authorized by the City in writing. The Chamber and UF agree to take the Park and Event Area in "as in" condition and the Chamber and UF agree to put the Park and Event Area in the same condition upon termination of the license.

The Parties agree that a representative from the City, the Chamber, and UF will attend a pre-event facilities walk-through where the status of the facilities and the Park will be documented. Any existing damage will be noted and will be signed off by the Parties. On the Tuesday following the event at 12:00 noon, Tuesday March 11, 2014 for the 2014 Ostrich Festival and Tuesday March 17, 2015 for the 2015 Ostrich Festival, or after the facilities have been completely vacated, whichever occurs first, a representative from the City, the Chamber, and UF will attend a post-event facilities walk-through where the status of the facilities will be documented identifying any damage that occurred during the event. A remediation plan will be developed and agreed upon at that time. Should a UF representative not attend the pre-event and/or post-event walk-through, a Chamber representative will act on behalf of UF and UF agrees to be

bound by the terms of the remediation plan under these circumstances. The City shall notify the Chamber and UF within 30 days of the walk-through of the estimated repair costs from the identified damage. The Chamber and UF shall notify the City within 45 days of receiving the estimated costs as to their intent on repairing the damage or to be invoiced for the repair costs. Any invoiced costs shall be paid in accordance with Section 1.2.ii.

1.5 Nature of License. The Chamber and UF acknowledge and agree that the rights, granted by this License to enter upon and use the Park and Event Area is nothing more than a license granted solely for the purpose of exercising its rights and performing its duties under this License. The execution of this Agreement by UF and the Chamber is for the sole purpose of creating an independent contractor relationship for the purposes described herein and nothing contained herein shall create or be deemed to create a partnership, joint venture or any other co-ownership relationship between UF, the Chamber and the City of Chandler. Nothing set forth in this License creates a tenancy between the City and the Chamber, creates a tenancy between the City and UF, or grants the Chamber or UF possession of any City property. Upon termination of this License, the City shall have the right to remove and exclude from the Park and Event Area or any other City property, the Chamber and UF and any of the Chamber's and UF's employees, contractors, or invitees, without being deemed to have committed any unlawful entry, trespass or injury of any sort whatsoever.

1.6 City Staff. The City shall provide the Chamber and UF with reasonable access to a venue liaison and/or technical coordinator and "normal and customary" city support as specified herein. Any additional staff or equipment required by the Chamber and UF

other than agreed to herein will be paid for by the Chamber. Based on available resources, "normal and customary" shall be defined as the following for the 2014 and 2015

Ostrich Festivals:

Community Services:

- Sufficient staff to prepare the park prior to the start of event set up, including:
  - Overseeding of grass within the festival area
  - Blue staking of the festival grounds
  - Creating decomposed granite driveways on the promenade
  - Trimming and watering all bushes and trees
  - Barricading all utility boxes
  - Tilling and grading the area designated for the ostrich track
  - Leveling entrances to dirt fields to be used for parking
  - Providing and setting up the Showmobile stage
  - Providing and placing ten 100-seat bleachers and two portable 250-seat bleachers
- Providing a Special Events Coordinator staff person for the duration of the festival
- Providing two (2) park maintenance staff members from one hour prior to the start of the Ostrich races to one hour past the conclusion of those races.
- Provide two (2) park banner holders at the park for Chamber provided signs

Traffic:

- Development and provision of an event traffic plan
- Provision of all traffic control equipment necessary to meet the event traffic plan

Fire:

- One (1) on-duty company consisting of four (4) individuals, two of which will be paramedics
- Two (2) person bike team of which one will be a paramedic
- One (1) command officer

Police:

- Twelve (12) Traffic Officers per day, two (2) of which will be traffic sergeants
- Seven (7) Bike Officers per day, one (1) of which will be a sergeant
- Five (5) Gang Enforcement Officers
- One (1) Support Officer
- One (1) Dispatcher
- One (1) Command Officer

- Police Explorers – To be deployed at the discretion of the Police Department.
- Staffing may be adjusted at the discretion of the Police Department

Downtown Redevelopment:

- Downtown Redevelopment Manager or assigned representative will provide the Chamber the opportunity to hang street light banners along the Arizona Avenue/Downtown corridor.
- The Chamber will work with Downtown Redevelopment Manager or assigned representative to schedule the installation and removal of the street light banners.
- The Chamber will incur all costs for the installation, removal and printing of the banners.

1.7 City's Policies and Procedures. The Chamber and UF agree to observe and abide by the terms and conditions of (i) this License and each Exhibit hereto and (ii) all City laws and regulations, policies and procedures, including without limitation those approved by the City Council, City Management, and City Fire, City Police, City Community Services and all provisions of the City Charter and City code, which are incorporated herein with this reference.

**SECTION 2: REQUIRED CONDITIONS BEFORE THE FESTIVAL**

2.1 For the 2014 Ostrich Festival, no later than 5:00 p.m. February 14, 2014 and for the March 2015 Ostrich Festival no later than 5:00 p.m. February 20, 2015, UF shall submit the information required in Exhibits B and C, attached hereto and incorporated herein, to the City and the Chamber. The City reserves the right in the interests of the protection of the public's health, safety, and welfare to prohibit or shut down activities not set forth in this License and in compliance with the submitted information.

The City will sign off and date, in writing, all submitted UF plans and details. Once that

sign-off has occurred, UF and Chamber will be prohibited from altering the plans and details submitted and approved by the City unless the City approves any change in writing. Any changes without these written approvals shall be unauthorized.

- 2.2 No later than February 14, 2014 for 2014 Ostrich Festival and no later than February 20, 2015 for the 2015 Ostrich Festival, UF shall have submitted a copy of the Contingency Plan required by the Production Services Agreement between the Chandler Chamber of Commerce, Inc. and Universal Fairs, LLC, attached hereto as Exhibit D (hereinafter "Production Services Agreement"), Section 4(r)(vii).

### **SECTION 3: INSURANCE AND INDEMNIFICATION**

#### **3.1 Insurance.**

- A. No later than February 14, 2014 for the March 2014 Ostrich Festival and no later than February 20, 2015 for the 2015 Ostrich Festival, UF shall furnish the City of Chandler a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona.
- B. UF and any of its subcontractors, subconsultants or sublicensees shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.
- C. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
- D. The City in no way warrants that the minimum insurance limits contained in this

Agreement are sufficient to protect UF from liabilities that might arise out of the performance of the Agreement services under this Agreement by UF, its agents, representatives, employees, subcontractors, sublicensees or subconsultants and UF is free to purchase any additional insurance as may be determined necessary.

- E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve UF from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.
- F. Use of SubContractors: If any work is subcontracted in any way, UF shall execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of UF in this Agreement. UF is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

3.2 Minimum Scope And Limits Of Insurance. UF shall provide coverage with limits of liability not less than those stated below.

- A. *Commercial General Liability-Occurrence Form.* UF must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than Three Million Dollars (\$3,000,000) for each occurrence for the 2014 Ostrich Festival and Five Million Dollars (\$5,000,000) for each occurrence for the 2015 Ostrich Festival, Six Million Dollars (\$6,000,000) Annual Aggregate for the 2014 Ostrich Festival and Eight Million Dollars (\$8,000,000) Annual Aggregate for the 2015 Ostrich Festival, with coverage for death, personal injury, property damage, operations, independent

contractors, products completed operations, and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

1. **Liquor Liability Coverage.** In addition, UF must maintain liquor liability coverage either through a separate policy or a special endorsement upon the commercial general liability policy described above. Such coverage shall be in a minimum amount of Two Million Dollars (\$2,000,000) per occurrence for the 2014 contract year and Five Million Dollars (\$5,000,000) per occurrence for the 2015 contract year.

*B. Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles Vehicle Liability:* UF must maintain Business/Automobile Liability insurance with a limit of One Million Dollars (\$1,000,000) each accident on UF owned, hired, and non-owned vehicles assigned to or used in the performance of UF's work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

*C. Workers Compensation and Employers Liability Insurance:* UF must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of UF employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability insurance of not less than One Hundred Thousand Dollars

(\$100,000) for each accident, One Hundred Thousand (\$100,000) disease for each employee and Five Hundred Thousand (\$500,000) disease policy limit.

3.3 Additional Policy Provisions Required.

A. *Self-Insured Retentions Or Deductibles.* Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.

B. *City as Additional Insured.* The policies described above are to contain, or be endorsed to contain, the following provisions:

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of UF including the City's general supervision of UF, Products and Completed operations of UF, and automobiles owned, leased, hired, or borrowed by UF.
2. UF's insurance must contain broad form contractual liability coverage and must not exclude liability arising out of explosion, collapse, or underground property damage hazards ("XCU") coverage.
3. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by UF even if those limits of liability are in excess of those required by this Agreement.

4. UF's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by UF and must not contribute to it.
5. UF's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
6. Coverage provided by UF must not be limited to the liability assumed under the indemnification provisions of this Agreement.
7. The policies must contain a waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by UF for the City.
8. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the required policies expire during the life of this Agreement, UF must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the necessary insurance provisions.
9. All Certificates must cite a 30-day advance notice of cancellation provision. If the ACORD Certificate of Insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail

such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" must be deleted. Certificate forms other than the ACORD form must have similar restrictive language deleted.

- a. UF shall provide evidence of such certificates of insurance and coverage by submitting such evidence to the City no later than January 6, 2014 for the 2014 Ostrich Festival and no later than January 5, 2015 for the 2015 Ostrich Festival in a form acceptable to the City.
- b. UF shall further provide copies of the certificates of insurance required between Chamber and UF in the amounts set forth in the Production Services Agreement, Section 7. This Agreement is attached hereto as Exhibit D.
- c. UF agrees to obtain and keep in full force and effect the insurance coverage required herein from March 2, 2014 at least and until March 11, 2014 for the March 2014 Ostrich Festival and from March 8, 2015 through March 17, 2015 for the 2015 Ostrich Festival.

3.4 Indemnification. UF and the Chamber separately and jointly agree to and shall indemnify and hold harmless the City of Chandler, its Mayor and City Council, appointed boards, support organizations, and commissions, officials, officers, employees, and volunteers individually and collectively, from and against all fines, suits, claims, demands, actions and liability, loss, theft, damage, costs and/or expenses (including

reasonable attorneys' fees and costs of claim processing, investigation, and litigation (hereinafter referred to as "claims") for bodily injury or personal injury (including death) or loss or damage to tangible or intangible property arising out of or related to UF and/or the Chamber's use of the Park and Event Area. It is agreed that UF and the Chamber will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. The obligations of the Chamber and UF under this Paragraph shall not in any way be affected by the refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Park and Event Area. If any claim, action or proceeding is made or brought against the Chamber or UF by reason of any event which is the subject of the Chamber's or the UF's foregoing indemnity, then, upon demand by the City, the Chamber or UF, or both the Chamber and UF, at each of their sole cost and expense, shall resist or defend such claim, action or proceeding in City's name. Notwithstanding the foregoing, the City may engage its own attorneys to defend it or to assist in its defense and the Chamber and UF shall pay the reasonable attorney's fees, costs and disbursements. In consideration for the use and occupancy of the Park and Event Area, UF and the Chamber agree to waive all rights of subrogation against the City its Mayor and City Council, appointed boards, support organizations, and commissions, officials, officers, employees, and volunteers individually and collectively, for losses arising from the use, occupancy or condition of the Park and Event Area pursuant to this Agreement.

- 3.5 Limitation of Liability. In no event shall the City be liable for any indirect, consequential, incidental damages or lost profits arising out of this License or the Production Services Agreement, Exhibit D to this Agreement, unless such loss arises

from the gross negligence, willful misconduct, or reckless disregard by the City or its agents.

#### **SECTION 4. COMPLIANCE WITH LAWS, POLICIES AND PROCEDURES**

- 4.1 Compliance with Laws. The Chamber and UF shall comply with all laws, policies and procedures, regulations, safety and fiscal procedures, laws, ordinances, and statutes, applicable to the use of the Park and Event Area. These shall include without limitation (a) obtaining all applicable permits and licenses, (b) paying all applicable taxes, (c) complying with all the terms set forth herein of Exhibits B and C of this Agreement and (d) all other reasonable requirements of the City.
- 4.2 Dangerous Use. If the City reasonably determines in its sole discretion that the use to which the Park and Event Area shall be put by the Chamber and UF will or is likely to create a dangerous or unsafe condition, or will or is likely to create a condition improper, incendiary or dangerous to the public health, safety or morals, or will or is likely to endanger or deteriorate the Park and the Event Area or any part thereof by fire, water or other means of any nature, or if the Chamber or UF violates any of the provisions hereof, then and in that event the Chamber and UF agree that this Agreement may be summarily cancelled by the City without any advance notice whatsoever to the Chamber or UF. In the event of cancellation of this Agreement, the Chamber and UF understand and agree that no liability whatsoever shall attach to the City by reason of such cancellation.
- 4.3 Non Allowed Activities and Vendors. Absolutely no motorized sports events shall be allowed at either the 2014 or the 2015 Ostrich Festivals other than those rides or events

specifically agreed to in writing in the submissions required in Exhibits B and C. Once the City has received Exhibits B and C and agreed to the events in writing, no events or rides or performances or anything of the like, shall be allowed thereafter unless agreed to in writing by the Parties and incorporated herein. Any effort to provide such entertainment shall not be allowed and the City will invoke its authority to shut down the entertainment or activity.

- 4.4 Non-Discrimination. The Chamber and UF, in their use of the Park and Event Area shall not discriminate against any person, entity, or group because of age, race, sex, creed, color, religion, or national origin, nor otherwise commit an unfair employment practice. The Chamber and UF shall comply with the Americans with Disabilities Act.
- 4.5 Drug-Free Work Program. The Chamber and UF are hereby advised the City has adopted a policy establishing a drug-free work place for itself and as a requirement for sellers-contractors doing business with the City to ensure the safety and health of employees working on City license agreements, contracts, and/or projects. Failure of the Chamber to require a drug-free work place in accordance with the City's policy may result in termination of this License.

## **SECTION 5. GENERAL CONDITIONS**

- 5.1 Force Majeure. Failure to perform by the City due to a Force Majeure Event shall not be deemed a violation or breach hereof. A Force Majeure Event may include without limitation, fire, flood, earthquake, strikes or work stoppages, any interruption of utility services, suspension or interference with performances caused by acts of God or acts of public enemy, riots or similar occurrences, order of court or administrative agencies,

including orders of the City Police Department or the City Fire Department. In the event of an occurrence as described herein, the License Period shall terminate and the UF and the Chamber shall only be required to pay any and all fees charged for the use of the Park and Event Area up to the time of such termination. The City shall have no liability for any costs, expenses, or other liability included by the Chamber or UF as a result of such Force Majeure Event.

- 5.2 Entire Agreement, Amendments. This License, any exhibits to this License, and the City's charter, code, policies, procedures and regulations constitute the entire agreement of the parties with respect to the subject matter hereof and except as otherwise specified in this License, all prior and contemporaneous agreements, representations, negotiations and understandings of the parties are superseded by and merged into this License. Any modifications, additions, or other amendments to this License must be in writing and signed by the parties.
- 5.3 Assignment. The Chamber and UF shall not assign or otherwise transfer this License or any of its rights or duties under this License without first obtaining the written consent of the City, which may be granted or denied in the City's sole discretion. Any assignment, transfer, pledge, or mortgage of this License, by the Chamber or by UF or by operation of law in violation of this Section 5.3 shall be void.
- 5.4 Attorneys' Fees. In the event any action at law or equity shall be instituted between the parties in connection with this License, the party prevailing in such action shall be paid from the other party all of its costs including reasonable attorneys' fees and court costs.
- 5.5 Authorization. The parties to this License represent and warrant that the persons executing this License on their behalf have full authority to bind the respective parties.

- 5.6 Captions. The captions used in this License are for convenience only and are not a part of this License and do not limit or amplify the terms and provisions hereof.
- 5.7 Construction of License. This License has been arrived at by negotiation between the City and the Chamber and the UF. As such, any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this License. Further, the language in all parts of this License shall in all cases be construed as a whole and in accordance with its fair meaning.
- 5.8 Governing Law. This License shall be governed by and construed under the laws of the State of Arizona, including the applicability of A.R.S. § 38-511. If any action is brought to construe, interpret, or enforce any provision of this License, the Parties irrevocably consent to exclusive jurisdiction and venue in Maricopa County, Arizona.
- 5.9 No Third Party Beneficiaries. The City, UF and the Chamber acknowledge and agree that the terms, provisions, and conditions hereof are for the sole benefit of, and may be enforceable solely by, the City and the Chamber. No third party beneficiaries are intended to be created under this License.
- 5.10 Severability. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this License shall become illegal, null or void or against public policy, the remaining portions of this License shall not be affected thereby and shall remain in full force and effect.
- 5.11 Successors and Assigns. Except as provided in Section 3 above, all of the terms and conditions of this License shall inure to the benefit of and shall be binding upon the successors in interest of each of the parties hereto.

5.12 Surviving Provisions. Any provision of this Agreement which reasonably should survive the expiration, cancellation, or other termination of this Agreement, shall survive.

5.13 Notices. All notices and other communications shall be in writing and shall be delivered personally, or by facsimile or electronic mail to the following party at the following address:

UNIVERSAL FAIRS  
Mark Lovell  
PO Box 1327, Cordova, TN 38088  
Office (901) 867-7007  
Cell (901) 647-3047  
Email Address - [mark@exposouth.com](mailto:mark@exposouth.com)

THE CHAMBER OF COMMERCE  
Terri Kimble  
25 South Arizona Place, Suite 201  
Chandler, AZ 85225  
Office (480) 963-4571  
Email Address [terri@chandlerchamber.com](mailto:terri@chandlerchamber.com)

CITY OF CHANDLER - COMMUNITY SERVICES  
Hermelinda Llamas  
P.O. Box 4008, MS 500, Chandler, AZ 85244  
Office (480) 782-2665  
Cell (480) 276-0285  
Email Address – [Hermelinda.Llamas@chandleraz.gov](mailto:Hermelinda.Llamas@chandleraz.gov)

IN WITNESS WHEREOF, the parties have hereto have executed this Contract on this 30 day of January, 2014.

**CITY OF CHANDLER**

By: \_\_\_\_\_  
Mayor Date

**CHANDLER CHAMBER OF COMMERCE**, a Non-profit Corporation

By: Ferri Kimble  
Signature  
Print Name: Ferri Kimble  
Title: President/CEO

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney by [Signature]

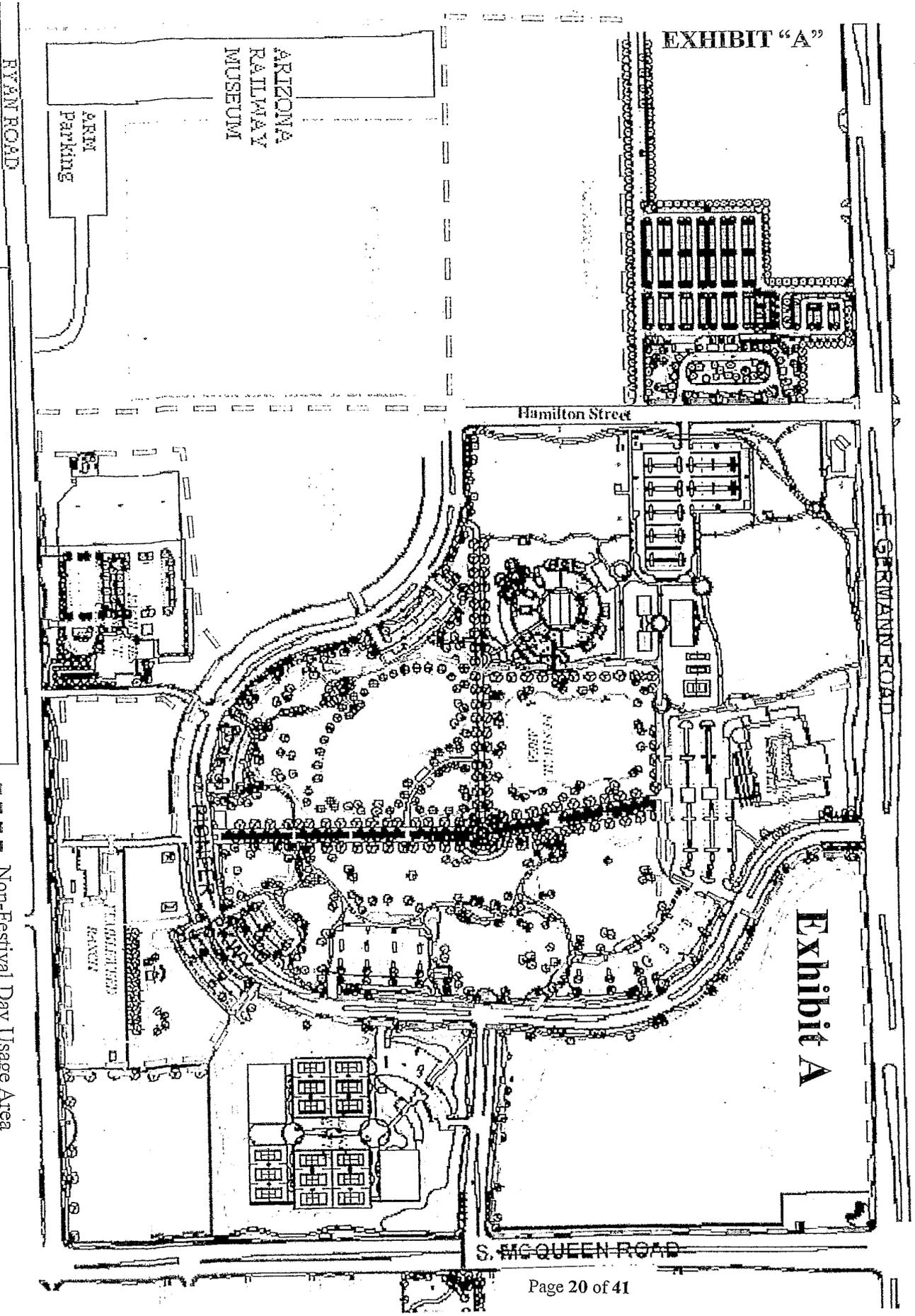
**UNIVERSAL FAIRS**

By: Mark Lovell  
Signature  
Print Name: MARK Lovell  
Title: managing partner

ATTEST:

\_\_\_\_\_  
City Clerk

SEAL



2014 Ostrich Festival  
 At Tumbleweed Park - March 2-6 and March 10-11

--- Non-Festival Day Usage Area  
 - - - - - Festival Grounds (Booths, rides, etc.)

**2015 Ostrich Festival**  
 At Turnbleweed Park - March 13-15

- Festival Days Usage Area
- Festival Grounds (Booths, rides, etc.)
- Closed Areas to Festival Guests During Festival

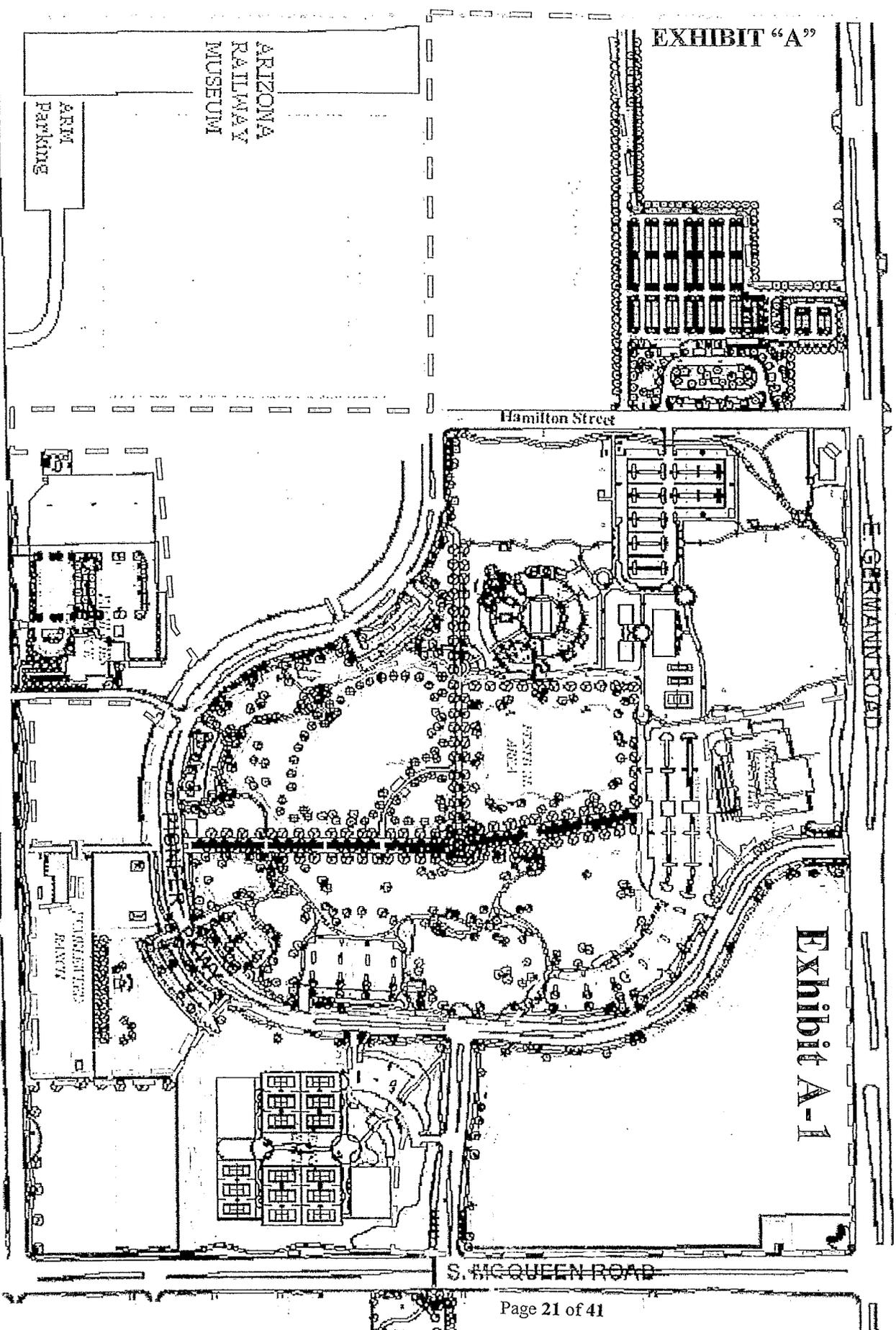


EXHIBIT B

OSTRICH FESTIVAL 2014 and 2015 LICENSE AGREEMENT

No later than February 14, 2014 for 2014 and February 20, 2015 for 2015 at 5:00 p.m., UF shall provide to the City and the Chamber the following:

Initial \_\_\_\_

a) A detailed and diagrammed map and site plan with specifications about all the planned events, entertainment and all activities at the Festival. This plan shall include the agenda events, including show times and location;

Initial \_\_\_\_

b) A detailed security and fire plan to the satisfaction and written approval of the City's Police and Fire Departments (the City PD and FD will reserve the right to make changes before or during the Festival as necessary to protect safety and welfare) and an identification of the lighting company on standby during the Festival;

Initial \_\_\_\_

c) A detailed parking plan to the satisfaction of the City's Community Services and Police Department;

Initial \_\_\_\_

d) A detailed plan showing the exact fencing, including types and location, and lighting plans (including the lighting company on standby);

Initial \_\_\_\_

e) An exact location for the command post for the Festival and showing emergency exits; and

Initial \_\_\_\_

f) A detailed plan showing the location of all barricades in and around the Festival.

Additionally, the City will not allow open flames for cooking or entertainment unless the activity meets International Fire Code of 2009 Edition requirements. Any entertainer using open flames must perform on a non-combustible surface, with spotters equipped with fire extinguishers and a fenced separation of not less than 20 feet. All vendors must comply with the IFC and City requirements. If re-inspection is needed, the City will be charging re-inspection fees.

EXHIBIT C

OSTRICH FESTIVAL 2014 AND 2015

The Chandler City Fire and Police Departments shall require the following:

1. A current annual inspection sticker and/or inspection report for each carnival ride must be on file with UF. Further, a copy must be available on-site for the Fire Department to review when the rides are set up or upon the initial inspection at the festival.
  2. All carnival rides must have a fire extinguisher mounted on the ride. Each extinguisher must have affixed, a current annual service tag provided by a certified company.
  3. Access roadway leading to recreational vehicles parked on site to be continuously kept clear of all obstructions.
  4. All food service units shall have a 2a-10bc UL minimum rated fire extinguisher mounted in the unit. Each extinguisher must have affixed a current annual service tag provided by a certified company. All units with overhead fire extinguishing systems shall have a tag on the system indicating that the system was inspected and serviced by a certified company within the preceding six (6) months. An open flame permit for cooking of food(s) is required by the Fire Code at a cost \$85.00. UF will purchase one permit to cover all food vendors in attendance at the Ostrich Festival. UF will assume all responsibilities that each food vendor abides by all regulations set forth by the International Fire Code of 2009
  5. Initial fire inspections will be conducted from noon on Wednesday March 5, 2014 and Wednesday March 11, 2015 and continue during business hours until noon of the Friday March 7, 2014 and Friday March 13, 2015. Any re-inspection necessitated by a violation pertaining to issues specifically addressed in this document will result in a re-inspection fee of \$40.
- Initial \_\_\_\_\_
6. No later than February 14, 2014 and February 20, 2015 UF must supply to the Fire Department a map detailing the following:
    - a. Site numbers and respective names for each vendor space.
    - b. Fencing locations (with emergency evacuation points)
    - c. Portable lighting locations
    - d. Controlled access points
    - e. Portable restroom locations
    - f. Entertainment locations
    - g. First aid tent
  7. Propane gas tank(s) used for cooking in the food area shall be secured to prevent the tank(s) from being knocked over.

8. Tents and canopies shall be a minimum of 20 feet apart and have the current flame retardant certification available for review during the inspection period. Tent inspection and permit fee is required for any tent of 400 square feet or more. The fees are \$170.00 for the first tent or canopy and \$40.00 for each additional tent or canopy. Tents in size of 100 square feet (10 x 10 or commonly referred to as "pop-ups") may be placed in a row as long as a minimum of five feet separate each tent. If 4 or more tents (10 x 10) are placed together and **are attached to each other, they must follow the requirements set forth monitoring a canopy of 400 square feet.** All tents and canopies must be secured via weights; ground stakes are prohibited, on asphalt and concrete; but stakes are allowed on grass and/or dirt areas.
9. Artistic performances during the festival involving open flames may be permitted provided that they are first reviewed and approved by the Fire Department. These performances must be stationary such as on a stage and must meet the requirements of the International Fire Code, 2009 edition, section 308.3.2, The National Fire Protection Association 160 and any applicable city ordinances and amendments. Some of these requirements included but are not limited to fire extinguishers positioned on stage, extinguishers manned by non-performers, the audience kept twenty feet from the performance, etc. Roving theatrical performances involving open flames throughout the crowds are not permitted due to the possible impact on public safety. There are no exceptions to this.
10. Spectators, under the age of 12, shall not be allowed to "ride" any of the carnival animals without the direct supervision of a parent or guardian.

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11. UF shall provide to the Fire, Police and Risk Management Divisions an emergency phone contact list (cell phone number) for every vendor at the festival by February 14, 2014 and February 20, 2015.

Daily verification sheet attached

12. Fire and Police assets are in place and ready to conduct operations at least 15 minutes prior to the scheduled opening times each day. The public opening shall only be held up if Fire and/or Police deem on issue the event grounds as unsafe to the public. Fire and/or Police liaisons on duty in the command post will notify UF and Chamber of the issue to keep the event opening delayed. Gates will be held until the issue is resolved or deemed safe for the public to enter. UF and Chamber shall provide a high quality professional grade radio with at least one spare battery per radio for each operational area of the Festival, including all parking and event staff on duty and the command post for the duration of the Festival.

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13. All events planned at the festival shall be reviewed and approved by the City of Chandler Fire, Police and Community Services Department no later than February 14, 2014 and February 20, 2015. Any events submitted after that date shall not be allowed to operate at the Festival. The final decision concerning events submitted after this period will be at the sole discretion of the City of Chandler.

14. UF, the Chamber and the City agree that if the City believes that a vendor or event may seriously impact public safety, the City Fire or Police Department has the authority to immediately cause that activity to stop. If necessary the vendor/ entertainer will be directed to leave the venue. In these rare cases, the City Fire or Police Department will immediately notify UF and responsible chamber of commerce member of the name of the vendor / event and the reason for the cease and desist action.
15. The City of Chandler though the Fire and Police Departments reserves the right to suspend festival activities should environmental conditions become a threat to public safety. These conditions include but are not limited to:
- a. Thunder audible at the venue
  - b. Lightning suspected or estimated to be within 15 miles of the venue
  - c. Wind speeds exceeding minimum safe tolerance for rides, including inflatable attractions as indicated by ASTM standards or the specific rides safety information.
  - d. Civil unrest

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16. No later than February 14, 2014 and February 20, 2015, UF and the Chamber shall submit a complete and accurate description of the parking areas, plans for routing pedestrian traffic, exact parking attendant staffing counts, specific details about fencing for pedestrian control and plans for portable lighting and fencing for parking, including, but not limited to, Germann Road.

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17. No later than February 14, 2014 and February 20, 2015, UF and the Chamber shall submit a detailed private security plan for the Festival, including, but not limited to, staffing levels, credentials and planned staffing locations.

EXHIBIT D

2011-2015

COPY

PRODUCTION SERVICES AGREEMENT

THIS PRODUCTION SERVICES AGREEMENT (the "Agreement") is entered into effective this 1st day of December, 2010 (the "Effective Date"), by and between CHANDLER CHAMBER OF COMMERCE, INC., an Arizona non-profit corporation ("CCC"), and UNIVERSAL FAIRS, LLC, a Tennessee corporation ("UNIVERSAL").

RECITALS:

WHEREAS, CCC owns the festival commonly referred to as the "Chandler Ostrich Festival" (the "Ostrich Festival") and, in the past, promoted and produced the Ostrich Festival. The Ostrich Festival occurs in the second weekend of March each year in the City of Chandler, Arizona; and

WHEREAS, the Ostrich Festival includes a series of events and entertainment including but not limited to carnival rides and games, musical and other entertainment, and sales of food, drink and merchandise occurring over a minimum three (3) day period. For purposes of this contract, the Ostrich Festival does not include the "Ostrich Festival Parade" (the "Parade") or the "Ostrich Festival Fun Run" (the "Fun Run").

WHEREAS, Universal has represented that it has extensive experience in organizing, promoting and producing events of the same or a similar nature as the Ostrich Festival; and

WHEREAS, CCC desires to retain the services of Universal as the exclusive producer of the Ostrich Festival, for a designated period, on the terms and conditions contained herein; and

WHEREAS, Universal has agreed to become the exclusive producer of the Festival on the following terms and conditions.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

AGREEMENT:

1. Recitals. The parties acknowledge and agree that the foregoing recitals are true, accurate and correct and are incorporated herein by this reference.

2. Appointment. CCC hereby appoints Universal as the producer of the Festival, and Universal hereby accepts such appointment, all upon the terms and conditions set forth herein. During the term of this Agreement, Universal covenants that it will organize, promote and produce the Ostrich Festival in accord with the provisions of this Agreement and in compliance with all requirements of the City of Chandler and in conformance with all federal, state and local laws, rules and regulations.

3. **Term.** Unless terminated in accordance with paragraph 12 below, the term of this Agreement shall be for a period of 5 years commencing on the Effective Date and terminating at the conclusion of Universal's services for the 2015 Ostrich Festival which includes all work necessary to reasonably complete its obligations related to the 2015 Ostrich Festival.

4. **Duties and Services of UNIVERSAL FAIRS, LLC.** Universal shall provide the following services and undertake the following duties in performance of its obligations hereunder:

(a) Event Planning, Vendors, Exhibitors and Agreements. Universal shall develop a budget for the Ostrich Festival and shall be responsible for post-event reconciliation of revenues generated and costs and expenses incurred. Universal shall solicit contractors, coordinate and negotiate all rental, vendor, exhibitor, service, event and other contracts and agreements relating to the Ostrich Festival. Universal shall have the right to locate all vendors, exhibitors and non-profit booths for the Ostrich Festival and, except as expressly provided in this Agreement, all rental, vendor, service, exhibitor and event contracts and agreements arising from or related to the Ostrich Festival shall be entered into solely in the name of Universal and Universal shall be solely responsible for all obligations thereunder.

(b) Event Site and Plan and Admissions. Universal shall develop a diagrammed site plan for the Ostrich Festival and shall be responsible for planning the events, entertainment and all other activities related to the Ostrich Festival. Universal shall coordinate and supervise the layout, set up, strike and clean up of the Ostrich Festival and Ostrich Festival site and coordinate with all private landowner's adjacent to the Ostrich Festival grounds for use of their property by the Ostrich Festival, if needed. In addition to the foregoing, Universal shall provide a volunteer check-in tent. In addition, Universal shall designate a minimum of three (3) admission gates. If requested, CCC shall provide Universal with a list of interested local non-profit organizations to assist in staffing the admission gates.

The Festival site plan shall also include the following:

(i) *Main Stage* – The main stage shall be situated in a location mutually agreed upon by Universal and CCC and will feature a professional stage with metal scaffolding and lighting with a backline and sound booth. Headline acts on Friday, Saturday and Sunday shall perform at this main stage and the main stage shall be constructed and assembled with this in mind. Size and features of main stage shall be mutually agreed upon by Universal and CCC.

(ii) *Community Stage* – This is a secondary, smaller stage featuring canopied tents and a dance floor, professional lighting and sound system, along with plastic covered tables and chairs to seat a minimum of 200. This stage shall also

Page 2 of 15

be used as a community stage. The community stage features live bands that perform before and after the main stage entertainment. Universal shall provide tented dressing rooms for female and male performers behind this stage.

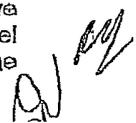
(iii) *Carnival* – The Festival shall feature a large carnival with state-fair style rides including a kiddie carnival and games. Universal shall be responsible for all equipment, staffing, set-up and break-down of such rides. Universal will retain all revenue from and liability arising out of the carnival.

(iv) *Family Entertainment* – The Festival shall feature various family entertainment throughout each day at no additional charge to the patrons of the Festival. This may include, consistent with past years, the Purina Incredible Dog Challenge, Jest in Time Circus of Fools, Rhinestone Roper Family Fun Stage, an exotic petting zoo, pig races, pony and camel rides. Universal and CCC shall mutually agree on the mix of family entertainment to be arranged by Universal.

(v) *Ostrich Experience* – Since its inception, the Festival has featured ostrich races at the event. Universal shall work directly with the City of Chandler to identify the specific area of Tumbleweed Park appropriate for the ostrich races. Universal, with the assistance of the City of Chandler, shall provide seating at the races. These races shall take place, unless specifically agreed to otherwise by CCC, as follows: (2) two races on Friday; (3) three races on Saturday; and (3) three races on Sunday. Universal shall provide a professional sound system to announce the races. Universal shall include an additional live ostrich display at the front of the festival, ostrich-themed décor at the festival gates and throughout the festival. All live ostriches must have a barrier that creates a separation between the ostriches and the public.

(c) Event Staffing. Universal shall be fully responsible for the proper and efficient staffing of the Festival. Universal shall arrange for and coordinate the use of local volunteers and non-profit groups as appropriate.

(d) Festival Security and Public Safety. Universal shall have the exclusive responsibility to contract with and supervise all private security companies and personnel as required for the Festival. Universal shall provide adequate security to ensure the



safety and well being of all persons attending the Festival and all participants, workers, volunteers and others associated with the Festival while on Festival grounds and shall retain all liability related thereto. Universal shall also have the exclusive responsibility to coordinate with the City of Chandler Police, Fire, Special Events Task Force and EMT's and the Maricopa County Sheriff's Posse for services to and at the Festival. Universal agrees to work with the City of Chandler's Office of Risk Management regarding the City's concerns and issues relating to liability and public safety during the event.

(e) Utilities Planning. Universal shall work with the City of Chandler regarding usage of existing power and water supplies for the Festival. Universal shall be solely responsible for payment for all power equipment required and shall, at its sole cost and expense, supply an electrician during the Festival. Universal is responsible for water for the Festival, including the water deposit with the City of Chandler and the water fees associated with the Festival.

(f) Trash and Sanitation. Universal shall be responsible for contracting with a vendor for the placement of trash containers and for the continuous emptying of trash receptacles and daily removal of all trash and litter from the Festival grounds. Universal shall also contract for sufficient Port-A Potties, but no less than 120 Port-A Potties, no less than 1 hand-sanitizer station for every 10 Port-A Potties, no less than 10 family/Handicap sized Port-A Potties and to have them professionally emptied as follows: Friday: before opening; Saturday before opening, and a second time prior to 5 p.m. ; Sunday before opening, and a second time if needed prior to 5 p.m. Universal shall also be solely responsible for maintaining all supplies in Port-A Potties and wash stations by sufficient staff to continuously restock toilet paper, hand washing water, sanitizer and cleaning interior surfaces of units. All Port-A Pottie areas must be properly lighted. Universal shall be solely responsible for payment for all such equipment, supplies and services related to the above.

(g) City Liaison/Oversight Committee. Universal shall work directly with the City of Chandler in obtaining needed city services. Universal shall attend and participate in all core committee meetings related to the Festival, either by phone or in person, and shall incorporate committee suggestions and ideas into production of the Festival to the extent required by the City of Chandler and/or to the extent Universal believes those suggestions and ideas would be beneficial to the production of the Ostrich Festival. Revisions to this contract made as a result of these suggestions will be made as a signed addendum to this contract. Notwithstanding any other provision of this Agreement, Universal hereby covenants and agrees to comply with all city, county and state regulations with respect to producing the Ostrich Festival and hereby represents and warrants that it is familiar with (or prior to the Festival shall familiarize itself with) all applicable city, county and state regulations applicable to organizing and facilitating a festival of this size including all permits, applications and requirements.

(h) Collateral Materials. Universal agrees to provide CCC all posters, flyers, merchandise, banners and signs relating to the Ostrich Festival for CCC's review and approval prior to the production of any such materials. CCC approval and consent to any such posters, flyers, merchandise, banners and signs will not be unreasonably withheld.

Should CCC not respond within two business days, approval and consent will be assumed. Universal shall be responsible for all costs related to the presale of tickets, including but not limited to, the cost of printing posters for outlets where tickets will be presold.

(j) Media Relations and PR. Universal will be the primary agency for the development of the Festival marketing plan. Universal further agrees that all publicity, articles, advertising and other public dissemination of information regarding the Ostrich Festival shall conspicuously note that the Ostrich Festival is owned by CCC and produced by Universal as makes sense given the space/time constraints of the given advertising medium.

(i) Banking, Accounting and Record Keeping. Universal shall collect and retain all fees and revenues collected from on site rentals and admission gates at the Festival. All such fees and payments shall be solely the property of Universal. Universal shall be responsible for all appropriate accounting costs, taxes, fees and other costs and expenses relating to the Ostrich Festival and shall ensure all tax returns and reporting requirements to any governmental authority relating to the Ostrich Festival are properly completed and filed. Universal shall be responsible for all on site cash banks, change and distribution and collection of all cash banks for the Ostrich Festival. As soon as reasonably practical following each event, but no more than thirty (30) days thereafter, Universal shall provide an accounting of all revenues generated as a result of the Ostrich Festival and shall, upon request, make its books and records available for inspection by CCC.

(k) Sponsorships. Universal agrees to use commercially reasonable efforts to solicit and obtain Ostrich Festival sponsorships. Proceeds raised from Ostrich Festival sponsors shall be divided as follows:

(1) Universal shall retain 100% of any proceeds raised from sponsors up to a \$33,000 cap.

(2) Universal shall retain 100% of any proceeds raised from sponsors it solicits and secures over the \$33,000 cap; and

(3) Universal and CCC shall share equally (50% each) all proceeds, above the \$33,000 CAP, raised and secured by the CCC from sponsors who are CCC Members. Any cost savings related to in-kind sponsors arranged by CCC may result in additional revenue for CCC but will be negotiated with Universal on a case-by-case basis.

Universal shall review and provide approval of sponsorship agreements insofar as the sponsor agreement may include onsite signage requirements or opportunities. Universal will be responsible for determining the placement of all Sponsor signs and display booths, with CCC to have reasonable input into such placement, as appropriate to secure that sponsorship. Actual costs incurred by Universal related to meeting

sponsorship agreements may be passed on to CCC as negotiated on a case by case basis.

(l) Entertainment. Universal shall obtain entertainment contracts and secure appropriate entertainment for the Festival provided that all entertainment for the Festival shall be mutually satisfactory to both CCC and Universal and consistent with the family friendly environment desired by CCC. Universal shall procure all local, regional and national talent in the best interests of the Ostrich Festival, and shall be solely responsible for all costs of entertainment, talent, production and payment of entertainment contractors.

(m) Representatives of CCC. Universal agrees to, for purposes of this Agreement, to coordinate all efforts between Universal and CCC, through the designated representative of CCC or with the then acting Chairperson of the Ostrich Festival. Universal acknowledges and agrees that no information, request for approval or other matter arising from or related to the Festival shall be deemed to have been provided to CCC without such information being provided to CCC's designated representative and/or the then acting Chairperson of the Ostrich Festival.

(n) Alcohol Service. Universal shall be responsible for all items related to alcohol service, with the exception of application for liquor license. CCC will apply for the liquor license. CCC will assist Universal to secure volunteers to serve alcohol by reaching out to volunteer pool, non-profits and other member companies. Universal agrees to develop incentives necessary to incentivize that effort. Universal shall be responsible for backfilling any serving requirements not filled by volunteers. CCC will also provide volunteers to do money pickups as necessary.

(o) Pre-Sale Tickets. Universal and CCC shall work jointly to secure a pre-sale ticket outlet(s) for discount tickets. The price of discount tickets will be determined by Universal after seeking and receiving input from CCC and the sponsor ticket outlet. Universal shall retain all monies from the sale of pre-sale tickets.

(p) Parking Service. Universal shall secure, coordinate, contract for and be responsible for all on site and off-site parking for the Ostrich Festival to the extent allowed by the City of Chandler and Maricopa County. Universal shall be responsible for obtaining and retaining the dust control permit required by Maricopa County. Universal shall be responsible for and retain all parking revenue. Universal's responsibilities and obligations under this section shall include all staffing and infrastructure including but not limited to water trucks and lighting related to Festival parking. Universal shall provide a minimum of 15 parking spaces for CCC staff and VIPs, separate from the general public parking areas. Universal shall provide parking passes, to be determined, for volunteers and sponsors.

(q) Website Service. Universal shall be provided commercially reasonable access to CCC's festival website to assist in developing the Ostrich Festival webpage, provided that Universal agrees that CCC retains ownership of all intellectual property and other rights to CCC's festival website(s) and domain(s) and any webpage developed by Universal or CCC related to the Ostrich Festival. Universal also agrees to maintain the

confidentiality of CCC's festival website and webpage information and not use any information they obtain in connection with this paragraph 4 (q) for any purpose other than to fulfill its obligations under this Agreement. The purpose of the Ostrich Festival's webpage, to be developed by Universal, shall be, among other things, to market and sell tickets for the Ostrich Festival. Universal shall be solely responsible and liable for internet security of such webpage related to third party payments and information obtained in connection therewith.

(r) Other Logistics. In addition to all other duties explicitly or implicitly set forth in this Agreement, Universal hereby assumes the following responsibilities:

(i) Coordination of Vendors. The Ostrich Festival typically draws 130-160 vendors including arts & crafts, novelty items and food items. Universal will be responsible for coordinating layout, vendor check-in, and vendor set-ups needs. All vendors will be required to purchase a City of Chandler sales tax license for the event unless exempt from collecting City of Chandler sales taxes. Universal will retain all revenue derived from vendor sales, consistent with this Agreement.

(ii) Tents and Tables. Universal shall provide a tent for the VIP area (40' x 60') with siding on 3 sides and extend lattice fencing out an additional 20' off the open side; approximately 20 round tables with plastic cover and 100 chairs; 5 additional 8' tables with plastic covers; 4 tents (10 X10) for the Information Booths, siding on 1 side; 2 tables and 4 chairs in each tent.

(iii) Fencing. Universal shall provide fencing of Tumbleweed Park as appropriate to effectively conduct the Festival, which shall include the perimeter of the park, command center area, backstage and fencing around playtopia & park fountain (consistent with guidance from the City of Chandler).

(iv) Power. Universal shall be responsible for all power needs associated with the Ostrich Festival including generators and on-site electricians, as needed. Universal shall provide adequate night time lighting for safety of guests, volunteers, and any employees working with the Ostrich Festival.

(v) Site Map. Universal shall produce and print a site map in accordance with city regulations.

(vi) Site Setup and Remediation. Universal shall be solely responsible for organizing and setting up the park for the Ostrich Festival, clean up during the Ostrich Festival, and all clean up and repair of the festival location as required by the City of Chandler following the conclusion of the Ostrich Festival. Universal agrees to

restore Tumbleweed Park and any surrounding areas utilized for the Ostrich Festival to pre-Festival conditions, as approved by the City of Chandler. Universal is responsible for all costs associated with repairing facilities used for the Festival that are damaged as a result of the Festival itself. Universal will have a representative attend a pre-event facilities walk-through with a CCC and City representative where the status of the facilities will be documented. Any existing damage will be noted and will be signed off by the Universal, CCC and City representatives. On the Tuesday after the event at 12:00 noon, after the facilities have been completely vacated, a representative from Universal, CCC, and the City will attend a post-event facilities walk-through where the status of the facilities will be documented identifying any damage that occurred during the festival. A remediation plan will be developed and signed off by the representatives at that time. Should a Universal representative not attend the pre-event and/or post-event walk-through, a CCC representative will act on behalf of Universal and Universal agrees to be bound by the terms of the remediation plan under these circumstances.

(vii) *Contingency Plan.* Universal shall provide an emergency contingency plan acceptable to CCC and the City of Chandler no later than two (2) months prior to the first day of the Festival.

5. **Duties of CCC.** CCC shall provide the following under this Agreement:

(a) **Agent Status Contracting.** CCC shall serve as the non-profit contracting agent for all permits required by the City of Chandler for the production of the Festival and shall also serve as advisor to Universal and the City of Chandler during the term of this Agreement. CCC shall apply for and secure the special event liquor license for use during the Ostrich Festival. CCC shall also enter into a license agreement with the City of Chandler for use of the City of Chandler's Tumbleweed Park for the Festival.

(b) **Communications.** CCC shall provide staff and volunteers for the Ostrich Festival information booth. Details necessary for the effective operation of the information booth and coordination by CCC event staff and volunteers will be provided in a timely manner by Universal.

6. **Ostrich Festival Parade and Fun Run.** It is agreed that the Parade (as defined in the recitals) and the Ostrich Festival Fun Run are events associated with the Festival which are not governed by this Agreement.

7. **Insurance and Bonding.** Universal shall, at its sole cost and expense, obtain and provide:

- (a) general liability insurance for the Ostrich Festival with liability limits as required by CCC and the City of Chandler;
- (b) liquor liability of not less than Two Million Dollars (\$2,000,000.00) per person or occurrence, or more if required by the City of Chandler;
- (c) property damage liability for the Ostrich Festival of not less than One Million Dollars (\$1,000,000.00), or more if required by the City of Chandler;
- (d) statutory worker's compensation coverage; and
- (e) rain and other hazard insurance as determined by Universal

Universal shall provide certificates' evidencing the above insurance is in force no later than February 1<sup>st</sup> of each year. Such certificates shall identify CCC and the City of Chandler as additional insured's in all such policies.

8. **Payment to CCC.** In consideration of its agreement to allow Universal to act as the producer of the Festival, Universal shall pay to CCC a guaranteed payment as follows:

2011 Ostrich Festival:	\$110,000.00
2012 Ostrich Festival:	\$120,000.00
2013 Ostrich Festival:	\$130,000.00
2014 Ostrich Festival:	\$140,000.00
2015 Ostrich Festival:	\$150,000.00

The Guaranteed Payment is not contingent on any profit or revenue for the Ostrich Festival (or any other condition) in any given year and is solely consideration provided to CCC for granting Universal the right to act as the producer of the Festival. Universal shall pay \$65,000.00 of the Guaranteed Payment, minus sponsorship monies banked by CCC, to CCC on February 1<sup>st</sup> of each year, with the remaining portion of the Guaranteed Payment to be paid within five (5) business days of the last day of the Festival in a given year.

9. **License of Festival Name and Logo.** CCC hereby grants to Universal, during the term of this Agreement, a license to use the name "Ostrich Festival" and the Festival logo for any and all promotional uses and requirements related to the Ostrich Festival. Any trade name, trademark, logo or other Intellectual property created by Universal, its agents, representatives, employees, officers or directors shall be deemed a "Work for Hire" under all Intellectual property laws and shall be owned by and belong solely to CCC. The license of Universal to use any such items, whether created by Universal or CCC, shall terminate immediately upon termination of this Agreement for any reason whatsoever, and Universal agrees to immediately cease using any such names, logos or other Intellectual property upon such termination. Universal shall, at no cost to CCC, upon termination of this Agreement, return any and all promotional and

*[Handwritten signature]*  
A 1

other materials using or incorporating said names, logos or other intellectual property to CCC.

**10. Universal Warranties and Representations.** Universal covenants, represents and warrants that:

(a) It has the necessary experience, knowledge, staff and expertise to fully and competently act as executive producer of the Festival and to fulfill its obligations hereunder;

(b) It has the authority to enter into and execute this Agreement, and when executed it shall be the duly authorized and binding agreement upon Universal;

(c) It shall fulfill each and every obligation hereunder in accord with all Federal, state and local statutes, laws, rules and regulations applicable to it and the Ostrich Festival; and

(d) It has sufficient liquidity and capital resources to satisfy its obligations under this Agreement and to conduct the Ostrich Festival as contemplated by this Agreement.

Each of the foregoing representations and warranties shall survive termination of this Agreement.

**11. Independent Contractor.** In performing its services hereunder, Universal shall be an independent contractor and not a partner, trustee, joint venture or agent of CCC or the City of Chandler. The execution of this Agreement by Universal and CCC is for the sole purpose of creating an independent contractor relationship for the purposes described herein and nothing contained herein shall create or be deemed to create a partnership, joint venture or any other co-ownership relationship between Universal and CCC.

**12. Events and Procedure for Termination.** This Agreement shall be subject to termination upon the occurrence of the following events:

(a) Either party may give the other party written notice of any default of any material covenant, agreement, term or provision of this Agreement to be kept, performed or observed by such party, and the right to cure the same within thirty (30) days thereafter. If the default is not cured within the thirty (30) day period, or a cure is not commenced if not capable of being remedied within such thirty (30) day period which shall be diligently pursued, then the non-defaulting party may terminate this Agreement thirty (30) days thereafter;

(b) If Universal shall apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of all or a substantial part of its assets; commence a voluntary case for relief as a debtor under the United States Bankruptcy Code, or admit in writing its inability to pay its debts as they come due; make a general assignment for the

benefit of creditors; file a petition or an answer seeking reorganization or arrangement with creditors or take advantage of any insolvency law; or file an answer admitting the material allegations of a petition against Universal in any bankruptcy or insolvency proceedings, including but not limited to reorganization proceedings brought under any insolvency law; or if an order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating Universal a bankrupt or insolvent, or approving a petition seeking reorganization of a manager or appointing a receiver, trustee, custodian or liquidator of Universal or of all or a substantial part of its assets, or, if an involuntary case under the United States Bankruptcy Code shall be commenced against Universal granting or seeking other relief under such Code, or any other present or future insolvency act or other applicable law relating to bankruptcy, insolvency, reorganization or relief of debtors, and such order, judgment, decree, case or petition shall continue undismissed, unstayed and in effect for any period of sixty (60) consecutive days, and in case of any such event and upon the expiration of the period of grace applicable thereto, this Agreement shall cease and terminate at the option of CCC on giving five (5) days' notice in writing to Universal.

(d) This Agreement shall terminate immediately upon the cancellation or termination of any agreement between CCC and the City of Chandler related to the operation of the Festival.

13. **Renewal.** Universal and CCC may agree, at the conclusion of the term provided for in paragraph 3, review and negotiate the terms and conditions for Universal's continued production of the Ostrich Festival following the March, 2015 event. Universal and CCC agree that such renewal or extension of this Agreement, if any, will be finalized no later than May 1, 2015.

14. **Indemnification.** Universal shall indemnify, defend and hold CCC and the City of Chandler, and their respective officers, agents, employees and representatives harmless from and against, all suits, actions, loss, damage expense, cost or claims, including attorneys' fees and costs of court, of any nature or character whatsoever, arising out of or related to: (i) any act, failure to act, or work in connection with the Ostrich Festival; (ii) the falsity or breach by Universal of any of its representations and warranties hereunder; or (iii) the breach by Universal of any covenant, agreement or obligation contained herein. It is the intent of the parties that CCC and the City of Chandler be indemnified hereunder against all type of loss or damage in all instances relating to the Ostrich Festival, including, but not limited to, on account of death or injury of persons or damage or destruction of property. Universal's obligations under this paragraph 14 shall survive termination of this Agreement for any reason whatsoever.

15. **Notices.** Notice required or permitted to be given or made hereunder may be given or made by prepaid registered mail deposited in a post office addressed to the party for whom it is intended as follows:

A) 

To CCC: Chandler Chamber of Commerce  
Attn: Dave Warkentin  
25 S. Arizona Place, Suite 201  
Chandler, Arizona 85225

To: Universal Universal Fairs, LLC, a Tennessee corporation  
Mark Lovell  
P.O. Box 1327  
Cordova, TN 38088

Any notice so deposited shall be deemed to have been given, received or made, as the case may be, on the third business day following the date of such deposit. Any party hereto may at any time and from time to time change its address for the purpose of this paragraph 15 by notice in writing thereof to the other party.

16. **Confidentiality.** Universal covenants and agrees that neither it, its directors, officers, agents, representatives or employees, shall not knowingly divulge or disclose for any purposes whatsoever any information regarding this Agreement or the contents thereof or communications with CCC regarding the Ostrich Festival to any other person or entity other than as necessary to fulfill Universal's obligations under this Agreement and Universal agrees, except as otherwise expressly forth herein, to keep all such information strictly confidential. In the event Universal is requested or becomes legally compelled to make any disclosure which is prohibited or otherwise constrained by this paragraph, Universal agrees it will provide CCC with reasonable notice of such request so that CCC may seek an appropriate protective order or other appropriate remedy and/or waive Universal's compliance with the provisions of this paragraph.

17. **Competition.** As a material inducement to CCC to enter into this Agreement with Universal, Universal, on its own behalf and on behalf of its principals, officers, directors, agents, employees and representatives, agrees that, during the term of this Agreement and for a period of two years after termination of this Agreement for any reason whatsoever, Universal shall not, without the prior written consent of CCC, participate in, produce or otherwise be involved in any way with an ostrich themed festival in the state of Arizona and/or in any way similar to the Ostrich Festival. Universal understands and agrees that the time period and scope of the restrictions set forth in this paragraph are reasonable and necessary to protect the interests of CCC as owner of the Ostrich Festival. Universal and CCC also agree that, shall any of the provisions of this paragraph be held invalid or unenforceable; it is each party's intent that the restrictions set forth in this paragraph are to be enforced by the court to the fullest extent possible.

18. **Financial Statements and Audit Rights.** Universal shall provide CCC with certified financial statements within thirty (30) days following conclusion of the Ostrich Festival showing a general recap of related income, expenses and profit of the Festival. Such certified financial statements shall be prepared in accordance with generally accepted accounting principles and by an accountant designated by Universal and approved by CCC. Such financial statements shall be accompanied by a written report summarizing the results of the Ostrich Festival and any material information or

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incidents that CCC would reasonably want to be informed of in connection with the conduct of the Festival. CCC shall be entitled to, within five (5) business days of a written request, review and audit the underlying materials, receipts, notes and work product that Universal and its auditors used in preparing the financial statements and written report.

19. **Heirs and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, provided, however, this Agreement may not be assigned by Universal without the prior written consent of CCC.

20. **Headings.** The headings of all paragraphs hereof are inserted for convenience or reference only and shall not affect the construction or interpretation of this Agreement.

21. **Applicable Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Arizona.

22. **Words.** As used herein, words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include the feminine gender and neuter and vice versa.

23. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and such counterparts shall form one and the same instrument.

24. **Severability.** In the event that any of the foregoing provisions of this Agreement are found to be void or illegal, the remainder of this Agreement shall remain unaffected and in full force.

25. **Amendment.** This Agreement may only be amended by a written agreement executed by CCC and Universal.

26. **Additional Acts and Documents.** Each party hereto agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purposes of this Agreement.

27. **Arbitration.** In the event of any controversy or dispute arising out of or relating to this Agreement, or the breach thereof, each party hereto shall name an arbitrator within fifteen (15) days after either party notifies the other in writing that there is such a dispute or controversy existing, and the two arbitrators shall name a third arbitrator. If either party fails to select an arbitrator within 15 days as required herein, or if the two arbitrators fail to select a third arbitrator within ten (10) days after their appointment, then the presiding civil judge of the Superior Court of Maricopa County, Arizona, shall appoint such other arbitrator or arbitrators. The arbitrators shall render a decision within thirty (30) days after their appointment and shall conduct all proceedings pursuant to A.R.S. §§ 12-1501 through 12-1517, and the rules of the American Arbitration

Association governing commercial transactions then existing, to the extent such rules are not inconsistent with said statutes. Judgment upon the award rendered under arbitration may be entered in any court having jurisdiction. The costs of the arbitration proceedings shall be borne by the losing party or, if the decision is not clearly in favor of one party or the other, then the costs shall be borne as determined by such arbitration proceeding. Any arbitration proceeding instituted hereunder shall be binding upon the parties thereto.

28. **Attorneys' Fees.** If suit is brought or an attorney is retained by any party to this Agreement to enforce the terms of this Agreement, or to collect any monies due hereunder, or to collect money damages for breach hereof, or in connection with any arbitration or action arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, arbitration costs, costs of investigation and other related expense incurred in connection therewith.

29. **Time.** Time is of the essence of this Agreement and each and every provision hereof. Any extension of time granted for the performance of any duty under this Agreement shall not be considered an extension of time for the performance of any other duty under this Agreement.

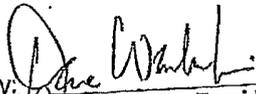
30. **Waiver.** Failure of any party to exercise any right or option arising out of a breach of this Agreement shall not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach.

31. **Integration and Understanding.** This Agreement is complete and integrated, and constitutes the entire understanding between the Parties with respect to the subject matter contained herein and supersedes all previous and contemporaneous agreements, understandings, promises, warranties, representations, inducements or conditions, oral or written, except as contained herein. The express terms hereof control and supersede any course of performance inconsistent with any terms hereof. Any revisions, amendments or modifications to this Agreement must be in writing and signed by all Parties. Any implied and/or oral revisions, amendments or modifications will not be binding on any of the Parties. In entering into this Agreement, the Parties represent that they have had the opportunity to seek the advice of their attorneys concerning the legal consequences of this Agreement, and that the terms of this Agreement are fully understood and voluntarily accepted by each Party. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their legal representatives, predecessors, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date herein first above written.

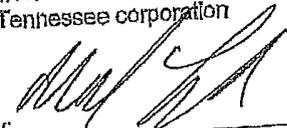
"CCC"

Chandler Chamber of Commerce, Inc.  
an Arizona non-profit corporation

By:   
Dave Warkentin, President & CEO

"UNIVERSAL FAIRS, LLC"

Universal Fairs, LLC,  
a Tennessee corporation

By:   
Mark Lovell, President

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