

**REPORT TO MAYOR AND COUNCIL****TO THE HONORABLE MAYOR AND COUNCIL:**

DATE: May 5, 2015

SUBJECT: CONTRACT AND LEASE AGREEMENT WITH PIXIELAND AMUSEMENT PARK, INC., THE AMUSEMENT RIDE CONCESSIONNAIRE LOCATED AT 2740 E. OLIVERA ROAD (A PORTION OF APN 111-010-015)

Report in Brief

On August 1, 2004 the City entered into a contract and lease agreement for operation of the Pixieland Park facilities with Cynthia Brumley and Debby Hull, doing business as Pixieland Amusement Park, Inc.; the young-child themed amusement park is located in Willow Pass Park. That agreement expired on July 31, 2014, but allowed for up to two, five-year renewal options, contingent upon City approval, and on the renewed agreement containing the same terms as the current agreement. On May 1, 2014, Ms. Brumley notified the City of her desire to exercise the first renewal option, through July 31, 2019. However, having concerns with the terms of the 2004 agreement, Ms. Brumley and Ms. Hull requested a renegotiation of certain contract terms. Since there have been ongoing differences between the City and the operators regarding interpretation of the contract language, staff concurs that drafting a new agreement is in the best interests of all parties.

All parties have agreed upon terms for a new Contract and Lease Agreement and staff believes that these new terms are beneficial to both the City and Pixieland Amusement Park, Inc. Staff recommends that the City Council approve the revised contract and lease agreement and authorize the City Manager to execute the agreement.

Background

The amusement ride concession in Willow Pass Community Park now known as Pixieland has been a City tradition for nearly 40 years. At one point, City personnel operated the concession. In 1990, the City entered into a lease agreement with the Midway of Fun, Inc., to operate the amusement park. The leased property included the amusement park with buildings and picnic area, adjacent park restrooms, and two City-owned amusement rides. In 1994, the Midway of Fun formed a subsidiary corporation, Pixieland, Inc., to operate the concession. In March 2000, Pixieland, Inc. changed ownership when Jeff Warrenberg purchased the business from Sam Johnson. The original lease was modified to facilitate transfer of the operation to Mr. Warrenberg. In July 2004, at the request of Mr. Warrenberg, the City Council approved the sale of Pixieland's assets and entered into a new 10 year

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Contract and Lease Agreement (Attachment 1) with Cynthia Brumley and Debby Hull under the corporate name, Pixieland Amusement Park, Inc. Ms. Brumley and Ms. Hull have successfully operated Pixieland since that time.

Discussion

In 2014, Ms. Brumley and Ms. Hull notified the City that they wished to renegotiate the 2004 Contract and Lease Agreement terms to address various concerns and contract provisions. The main areas of concern for Ms. Brumley and Ms. Hull are their desire for dedicated parking for Pixieland patrons, clarification of maintenance responsibilities for both the concessionaire and the City, and financial terms. Parks and Recreation and Public Works staff and the City Attorney negotiated with Ms. Brumley, Ms. Hull and their attorney, Xavier Gutierrez for a lengthy period, and have now agreed upon terms that address areas of current ambiguity and conflict between the operators and the City.

The proposed new Contract and Lease Agreement is for an initial term of just over five (5) years, effective April 1, 2015 and terminating on June 30, 2020 and provides Pixieland the right to exercise up to three five-year options to renew the Agreement on the existing terms and conditions, subject to approval by the City.

The new agreement allows Pixieland up to 50 designated parking spaces for exclusive use by Pixieland patrons during Pixieland's season and hours of operation. Pursuant to the agreement, the City will continue to maintain and repair the parking area. Pixieland will be solely responsible for all signage and enforcement of these designated parking spaces.

Pixieland, in the previous agreement, was responsible for maintenance and repair of structures, facilities, fixtures, and surfaces within the subject premises. Over the course of the last 10 years various levels of support have generously been provided to Pixieland by the City to assist them with a variety of maintenance and repair issues. However, with the reduction in staff and resources over the last several years, the City can no longer provide this added support. Therefore, staff desires to more clearly define and enforce Pixieland's contractual areas of responsibility and discontinue the City's support on items not specifically covered under the contract. The proposed agreement clearly defines the services to be provided by both the City and Pixieland.

Under the terms of the proposed agreement, Pixieland is expressly responsible for all structures, facilities, fixtures, and surfaces within the outer perimeter fencing of the premises. They are also responsible for maintenance and repair of all amusement rides, including the carousel and all aspects of the miniature train and tracks that circle around the pond outside the perimeter fencing. Pixieland will also be responsible for all mechanical systems such as heating, cooling and ventilation, and all plumbing and electrical components that are downstream of the supply valves and electrical meters. Under the terms of the proposed agreement, the City, in turn, shall maintain and repair restroom fixtures, the plumbing service up to the supply valves, the electrical service up to the meter

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and is only responsible for structural components such as the foundation, structural walls and the roof and membrane.

At the request of Pixieland's owners, the City included in the agreement the equivalent of a *force majeure* clause as respects government mandated repairs. Specifically, if Pixieland is required by virtue of a single government order to make repairs within a 365 day period and the cost of those repairs exceed \$50,000, they will be permitted to exit the agreement upon 6 months' notice to the City. It should be noted that this *force majeure* clause does not apply to multiple government orders by the same agency or by different agencies, even if the combined cost to comply with those orders exceeds \$50,000 within a 365 day period. Similarly, this clause does not apply to mandatory repairs of any of the rides, irrespective of the cost.

Staff recognizes Pixieland will incur additional expenses as a result of rigid enforcement of the contractual maintenance and repair responsibilities that previously were performed in part by the City. Therefore, under the terms of the proposed agreement the annual rent will revert from \$41, 616 back to the original amount of \$40,000 annually. In addition, rent will increase by a flat 3% on April 1 of every other year, regardless of any corresponding change in Pixieland's annual gross sales.

Currently work is needed to repair a section of retaining wall and asphalt and concrete repair. In addition, work on the snack bar ventilation system and the addition of a fire suppression system are needed to meet current fire code requirements to enable Pixieland to sell various popular food items such as corn dogs and funnel cakes. Costs for these repairs and improvements total approximately \$29,000 and the work will be performed by contractors retained by Pixieland. In recognition of these needed repairs, the City is offering a one-time rent credit in the amount of twenty-four thousand dollars (\$24,000) and will forego the April 1, 2015 payment of \$5,000. Pixieland will apply these credits toward the completion of these projects during 2015. The City will also provide concrete grinding services within the perimeter of the park on a one-time basis to address any potential tripping hazards.

Fiscal Impact

The City is providing a one-time total of \$24,000 in rent credits during 2015 (along with forgoing the April 1, 2015 rent payment), to be applied toward agreed upon maintenance and repair projects. Additionally, the rent received from Pixieland under this Agreement is \$1,616 less than under the previous Agreement. The repairs to which the rent credit is allocated will improve the park (particularly the food offerings), thus enhancing the experience for Pixieland's youth-oriented patrons. Additionally, staff estimates that the reduction in rent will be offset by the decrease in economic outlays previously expended by the City's Public Works Department in performing maintenance work that is now Pixieland's exclusive responsibility. This agreement also secures a positive revenue source even in periods of economic downturn.

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Public Contact

Posting of the City Council Agenda. Copies of the agenda and staff report have been sent to Cynthia Brumley, Debby Hull and Xavier Gutierrez.

Alternative Courses of Action

1. Approve the new Contract and Lease Agreement and authorize the City Manager to execute the agreement.
2. Reject the new Contract and Lease Agreement and direct staff to initiate alternative amendments.
3. Direct staff to terminate the current agreement with Pixieland Amusement Park, Inc. and secure another operator for the amusement park facility.

Recommendation for Action

Staff recommends that the City Council approve alternative number 1, to enter into the proposed new Contract and Lease Agreement and authorize the City Manager to execute the agreement



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Attachment 1 – Contract and Lease Agreement dated August 1, 2004

Attachment 2 – Proposed new Contract and Lease Agreement

ORIGINAL

**Contract and Lease Agreement
between
City of Concord and Pixieland Amusement Park, Inc.**

August 1, 2004

**CONTRACT AND LEASE
FOR THE AMUSEMENT RIDES CONCESSION
IN THE
WILLOW PASS PARK IN THE CITY OF CONCORD**

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**CONTRACT AND LEASE
FOR THE AMUSEMENT RIDES CONCESSION
IN THE
WILLOW PASS PARK IN THE CITY OF CONCORD**

RECITALS

WHEREAS, The City of Concord and Pixieland, Inc. entered into a Contract and Lease dated February 1, 1994.

WHEREAS, Cynthia L. Brumley and Debby L. Hull are the new owners and operators of Pixieland Amusement Park, Inc., the new corporate title for Pixieland, Inc., and

WHEREAS, the City of Concord consented to said assignment, and

NOW THEREFORE, in consideration of the terms, conditions, and covenants as set forth herein, the parties agree as follows:

Section 1. Grant of Lease:

A. There is hereby granted by the CITY OF CONCORD (hereinafter referred to as "CITY") a California Municipal Corporation, to PIXIELAND AMUSEMENT PARK, INC., a California Corporation, (hereinafter referred to as "LESSEE"), a Lease to operate an Amusement Rides Concession (the "CONCESSION") in the Willow Pass Park facilities provided by CITY. A description of said facilities and their location are set forth in **Exhibit "A"** attached hereto. This Lease shall be subject to all the terms, conditions, and limitations specified hereinafter.

Section 2. Use of Demised Premises:

A. For the purpose of the operation of the above described facility, CITY hereby leases to LESSEE the demised premises as shown on **Exhibit "A"** attached

hereto and made a part hereof during the term of this Lease.

B. LESSEE will install all tenant improvements and any additional improvements to equipment as necessary so as to provide quality and safe amusement ride service to park patrons.

Section 3. Term:

A. This Lease shall be for a term of ten (10) years commencing on August 1, 2004, and terminating on July 31, 2014, subject to prior termination by CITY in the event of breach of any of the terms or conditions of the Lease. It is understood and agreed that any re-negotiation of fees and equipment use may include, but is not limited to, continued leasing by LESSEE, of all or part of the equipment owned by the City of Concord and will provide the CITY with the option to purchase, for cash and at fair market value, all or part of the rides installed and owned by the LESSEE. If the LESSEE shall for any reason hold over beyond such term with the consent, express or implied, of CITY, such holding over shall be month-to-month only, subject to the terms and conditions of this Lease but shall not be a renewal hereof; and the consideration to be paid shall be at 100% of the rates then prevailing under the terms of this Lease.

B. Provided LESSEE is not in default under the Agreement, LESSEE shall have the right to exercise two five-year options to renew this Agreement on the existing terms and conditions for the period August 1, 2014 through July 31, 2019, and August 1, 2019 through July 31, 2024. LESSEE must exercise the option not less than 90 days and not more than 180 days prior to July 31, 2014 and July 31, 2019 respectively, and options must be exercised by LESSEE in writing to the

attention of the City of Concord Director of Parks and Recreation. The Director's consent shall be required for renewal, however, if LESSEE is not in default under the Agreement, the Director's consent will not be unreasonably withheld or delayed.

Section 4. Lease Rent:

A. LESSEE shall pay to the City of Concord, by means of direct deposit to an institution specified by the CITY, as a Lease rent, the following amount:

The total annual guaranteed rent is \$40,000 due and payable in eight equal payments of \$5,000 during the months of April through November. LESSEE shall make the payment thereof to the CITY on or before the tenth (10th) day of each month described.

B. A late charge of five percent (5%) of the amount due shall be added to any amount, which is not received by the CITY on or before the date due.

C. The annual rent shall be adjusted by a minimum of two percent (2%) and maximum of five percent (5%) at the end of each two (2) year period and any extended term thereof on the anniversary date of this Agreement. This increase shall be mutually agreed upon, based on the LESSEE's increase in gross receipts for the previous two (2) years, and determined as described in **Exhibit B** attached hereto and by incorporation is made a part hereof. If the parties are unable to agree upon a mutually acceptable adjustment, the default rent increase will be fixed at three percent (3%).

Section 5. Waiver:

The waiver by CITY of any breach of any term, covenant or condition of this Lease shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of any sum due hereunder by CITY shall not be deemed to be a waiver of any prior breach by the LESSEE of any term, covenant or condition of the Lease other than the failure of LESSEE to pay the particular sum so accepted regardless of CITY's knowledge of such prior existing breach at the time of acceptance of such sum.

Section 6. Taxes and Assessments:

LESSEE shall pay before delinquency all lawful taxes, assessments, fee or charges which at any time may be levied by an agency of the Federal Government, State of California, County of Contra Costa, City or tax or assessment levying body upon any interest in this Lease or any possessory right which LESSEE may have in or to the premises covered hereby or improvements thereon by reason of its use or occupancy thereof or otherwise as well as all taxes, assessments, fees, licenses, and charges on goods, merchandise, fixtures, appliances and equipment owned or used by LESSEE in or about said premises. The possessory interest created under this Lease is subject to property taxation and LESSEE shall be subject to payment of property taxes levied on the possessory interest by the County of Contra Costa.

Section 7. Indemnity and Hold Harmless:

LESSEE shall assume the defense of and indemnify and save harmless CITY, its officers, employees and agents and each and every one of them from and against all

actions, damages, costs, liability, claims, losses, and expenses of every type and description to which any or all of them may be subjected by reason of or resulting from, directly or indirectly, during the term of this Lease by LESSEE whether within or without the scope of this Lease, except for damages caused as a result of City's sole negligence or sole willful misconduct. The foregoing shall include, but not be limited to, any attorney fees reasonably incurred by CITY.

Section 8. Insurance:

During the term of this Lease, LESSEE shall maintain in full force and effect at its own cost and expense the following insurance coverage:

A. Workers' Compensation

Full Workers' Compensation Insurance and Employer's Liability policy or provide evidence of ability to undertake self-insurance. Workers' Compensation in compliance with California statutes and Employer's Liability coverage of at least \$1,000,000 per occurrence. In the event the LESSEE is self-insured, it shall furnish a Certificate of Permission to Self-Insured by the Department of Industrial Relations Administration of Self-Insurance, Sacramento and evidence of at least one million dollars (\$1,000,000) per occurrence excess Workers' Compensation limit combined with Self-Insurance Retention.

B. General Liability Insurance

The LESSEE must provide sufficient broad coverage to include:

- 1) Comprehensive Auto and General Liability Insurance
- 2) Broad Form Property Damage Liability
- 3) Personal Injury Liability

- 4) **Products and Completed Operation Liability**
- 5) **Contractual Liability**

The amount of the policy shall not be less than one million dollars (\$1,000,000) single limit per occurrence, issued by an admitted insurer of insurers as defined by the California Insurance Code and having a BEST's rating of A-7 or better, providing that the City of Concord, its officers, employees, and agents are to be named as "additional insured" under the policy, and the policy shall stipulate that this insurance will operate as primary insurance and that no other insurance effected by CITY or other named insured will be called on to contribute to a loss covered thereunder.

C. Certificate of Insurance

In lieu of actual delivery of Insurance Policies, LESSEE may provide a standard Certificate of Insurance completed and filed with CITY's City Attorney, 1950 Parkside Drive, Concord, CA 94519 within fifteen (15) days of the execution of this Lease and prior to engaging in any operation or activity set forth in this Lease. Said policies shall provide that no cancellation, change in coverage, or expiration by the insurance company or the insured shall occur during the term of this Lease without thirty (30) days written notice to CITY prior to the effective date of such cancellation or change in coverage.

It is understood and agreed that approval of said policies shall in no way affect the terms and conditions of the indemnity and hold harmless clause in this Lease which shall remain in full force and effect.

Section 9. Performance Bonds:

LESSEE shall obtain, upon the effective date of this Contract and Lease, and continue in full force and effect during the term thereof a Letter of Credit or Certificate of Deposit issued by a corporation or corporations authorized to transact business in the State of California and in a form satisfactory to CITY's City Attorney in an amount of not less than \$10,000 or shall deposit with CITY, in a non-interest bearing cash deposit in the amount of \$10,000 receipt of which is hereby acknowledged, which Letter of Credit, Certificate of Deposit, or cash deposit shall guarantee and be conditioned upon the faithful performance of this Lease by LESSEE and its agents, contractors, and employees and shall guarantee full and complete reimbursement to CITY in the event of criminal or tortuous appropriation by LESSEE or any of its agents, contractors, or employees of monies or property belonging to CITY and collected by or under the control of LESSEE or monies or property for which LESSEE is accountable to CITY. The LESSEE shall provide CITY's City Attorney with a copy of said Letter of Credit or Certificate of Deposit within ten (10) days of the execution of this Amendment and prior to engaging in any concession set forth in this Lease.

Section 10. Performance:

A. LESSEE shall abide by and remain in compliance with all applicable standards associated with working with children including the requirements of the State of California. LESSEE shall train and supervise such personnel as may be necessary to insure all are qualified and competent to work with children.

B. LESSEE's entire staff shall endeavor to meet all requirements for services in a good and workmanlike manner including dress and appearance, and shall maintain themselves in such matters as to sobriety and moral character that they shall, at all times, be able to deal effectively and properly with the public.

C. LESSEE shall specifically name a Manager on Duty and provide CITY with names of those qualified for this position. One of the so named persons shall be capable of handling the effective management of the facilities and on duty at all times of operation.

D. The CITY expects the services provided by the LESSEE to achieve an overall customer satisfaction rating of 90% good or excellent as determined by an annual random sample of approximately 150 amusement park customers, including food patrons surveyed by a mutually agreed upon consultant retained by CITY.

Section 11. Maintenance:

A. LESSEE shall at all times during the term of this Lease keep true, accurate, and complete weekly maintenance and inspection logs for each and every ride or piece of equipment. These logs shall be made available to CITY or its representative upon request and shall identify any unsafe condition or inoperative equipment and actions taken to correct those condition(s). City shall be notified of any unsafe condition immediately and any ride that is out of use, in part or in whole, for more than three (3) days.

It is further understood that at no time shall any ride or piece of equipment be allowed to operate if any unsafe condition exists and that the City reserves the right to have any or all ride equipment inspected by an Inspector from the California

Department of Industrial Safety and Health, Elevator Unit and Amusement Rides and Trams.

Should any ride or piece of equipment be deemed by the CITY unsafe for performance or to be operating at less than full capacity, LESSEE shall cause said ride or piece of equipment to be repaired immediately, (or at Lessee's option replace said ride with a comparable ride) and shall not be allowed to operate again until re-inspected by the CITY. Additionally, should any multiple rides or pieces of equipment be deemed to have safety infractions, the City reserves the right to consider same as a material breach of this Lease and may elect to cancel this agreement effective immediately.

B. LESSEE shall have all amusement rides and equipment inspected annually in accordance with Federal, State, and local regulations. A report, prepared by the authorized inspectors, will be provided after each inspection and will be maintained by the LESSEE for the term of the Lease. In addition to State inspections, LESSEE shall have, at the LESSEE's expense, all equipment inspected for material condition and safe operation by a private firm immediately before each operating season. The LESSEE will provide a copy of each inspection report to the CITY promptly upon receipt.

Section 12. Financial Record Inspection:

A. LESSEE shall at all times during the term of this Agreement and for a period of four years thereafter, keep true, accurate and complete financial records and accounts of its operations under this Agreement and such other financial or business records as may be required by authorized CITY representatives. LESSEE shall

keep records in accordance with fiscal procedures established by CITY consistent with Generally Accepted Accounting Principles. Authorized CITY representatives shall have the right at all times to examine and audit said records and accounts upon thirty (30) days' notice. Said audit shall be performed at City's expense. LESSEE agrees to pay the CITY expense for the audit if the audit reveals discrepancies of more than five percent (5%) of concession fees payable for any one calendar year period. Failure of LESSEE to keep and maintain such records consistent with Generally Accepted Accounting Principles is cause for CITY to terminate this Agreement pursuant to Section 22 of this Agreement.

B. LESSEE shall also furnish to CITY an annual statement of the gross receipts of the total operation. The statement must detail the gross amount realized from each and every activity under the Lease. The annual statement of gross receipts shall be submitted on or before the twentieth (20th) of June for the previous calendar year. All statements must be approved by a Certified Public Accountant of the State of California.

C. LESSEE further agrees to furnish to CITY's Finance Department, on or before the twentieth (20th) of June, an annual financial statement for the previous calendar year. This statement must consist of a balance sheet and income statement covering the calendar year of the LESSEE, which shall be the Lease anniversary date. The statement must be prepared by a Certified Public Accountant or a Public Accountant on his/her/its stationary for the LESSEE.

Section 13. CITY Provided Facilities and Services:

A. CITY shall provide the premises indicated on **Exhibit A**, which exhibit is attached hereto and by incorporation is made a part hereof.

B. CITY will furnish water and sewer services.

C. CITY shall provide the rides and equipment as shown on **Exhibit C** attached hereto and by incorporation is made a part hereof.

The CITY makes no warranty, express or implied, as to the condition of the equipment and that is the LESSEE's responsibility to make sure the equipment operates satisfactory. LESSEE takes said equipment in an "as is" condition and is responsible for making all equipment and rides safe for use by the public.

Section 14. LESSEE Provided Facilities and Services:

A. LESSEE shall maintain the amusement rides concession staffed and opened for business to the general public in accordance with the schedule set forth in **Exhibit D** attached hereto and by incorporation is made a part hereof, weather permitting. CITY recognizes LESSEE's need for flexibility to adjust hours of operation based on prudent business decisions. The amusement park operating hours, with the agreement of LESSEE and CITY, may change from time to time.

B. LESSEE shall, in addition to City provided rides listed in 12. C above, provides each and every amusement ride set forth in **Exhibit C**. CITY must approve any changes in the number or type of amusement rides and/or prices, in advance in writing.

C. LESSEE prices for rides, souvenir and food concessions shall be consistent with market pricing for amusement parks with similar attractions. LESSEE shall

submit a list and market comparison of prices annually prior to opening for the season.

D. All ride and support structures must comply with all applicable Codes and any and all non-compliance must be corrected in accordance with any governmental directive(s).

E. LESSEE shall, at its expense, assure that the premises and the areas immediately adjacent there to be kept safe, clean, wholesome and sanitary condition and shall operate the facility in such way as to prevent the escape of debris from these activities.

F. LESSEE shall assume the responsibility and expense for all telephone service, electrical service, and disposal of garbage, refuse and rubbish in connection with the activities incident to the LESSEE operations and deposited on the demised premise.

G. LESSEE shall furnish at his own expense all supplies, equipment and fixtures necessary for the operation of the CONCESSION.

H. LESSEE shall promptly comply with written reasonable orders that may be issued from time to time by CITY as to matters concerning the operation of the CONCESSION including, but not limited to, water conservation, recycling and the cleanliness of the area.

I. LESSEE shall pay or cause to be paid the total cost and expense of all maintenance and works of improvement. No such payment shall be construed as rent.

J. LESSEE will not, in the operation of said CONCESSION, interfere in any way with the general or specific use or enjoyment of said facility by the public.

K. It is understood and agreed that LESSEE is an independent contractor and neither it nor any of its agents or employees shall be considered for any purpose whatever to be employees of CITY. LESSEE shall not engage in any other business or activity at the said premises not authorized under the Lease.

L. LESSEE, or its designated representative(s) shall, to the extent of its authority, maintain law and order around the demised premises at all times.

M. LESSEE shall, within the scope of the law, require future employees to submit a completed employment application, which shall be verified by LESSEE, and interview all applicants including a background check before employment is granted.

N. LESSEE shall provide to the CITY one thousand (1,000) free ride tickets at the beginning of each year and any extended term of this Agreement to distribute to CITY sponsored programs. These tickets shall be free of cost to the CITY, transferable from one year to the next, and shall not expire.

Section 15. Optional Services:

LESSEE may provide limited refreshment services to amusement rides CONCESSION patrons. Provision of said services, including, but not limited to, the design of the Birthday Party Area and the type of refreshments which may be sold shall be subject to the prior written approval of CITY, shall be provided in sufficient quantities to meet the customer's demands therefore. Any changes to the

amusement stands or type of refreshments shall not occur until receipt of explicit written approval from CITY.

Section 16. Alterations and Repair:

A. LESSEE acknowledges that is has fully inspected the premises and accepts the improvements and equipment thereon in their existing or planned condition and agrees that no demands for any alterations, additions, or repairs are to be made upon City.

B. LESSEE shall not make, or suffer to be made, any alterations of the facilities or any part thereof, except movable furniture and trade fixtures, without first obtaining the written consent of CITY. Any additions to or alterations of said facilities shall be at LESSEE's expense and shall become at once a part of the realty and belong to CITY. LESSEE shall keep all improvements of any kind and the demised premises in which they are situated free from any liens arising out of any work performed, material furnished, or obligations incurred.

C. LESSEE acknowledges that the area discussed within the context of this Lease is often referred to as "Pixieland Park" but is in fact located within "Willow Pass Park" and under a Master Plan development.

Section 17. Planned Improvements:

Not later than five (5) years from the date of this Agreement, LESSEE shall submit to the CITY a list of conceptual long-range improvement plans. In the event that any future construction and/or renovation projects that enhance the park are contemplated or planned, the parties agree to negotiate reasonable adjustments to the financial terms of this Agreement. If the parties are unable to agree upon

mutually acceptable adjustments, LESSEE may terminate this Agreement upon ninety (90) days written notice to CITY.

Section 18. Security Devices:

LESSEE may provide at its own expense any legal devices, installations, or equipment designed for the purpose of protecting the demised premises from theft, burglary, or vandalism provided, however, that written approval for any such installation be first obtained from CITY.

Section 19. Compliance:

A. Any violation of any rules, regulations, or instructions of CITY, or its authorized representative, which has not been corrected by LESSEE within thirty (30) days or such lesser time as may be reasonable, after the mailing by CITY of a written notice of such violation shall be sufficient cause for the cancellation of this Lease and termination thereof without compensation or the payment of damages to LESSEE.

B. LESSEE and its agents or employees shall at all times comply with and abide by all pertinent or applicable regulations and ordinances of the CITY, the County of Contra Costa, and the laws of the State of California and the United States insofar as the same or any of them are applicable and to obtain and keep in effect all necessary permits and licenses required for any and all operations permitted herein.

C. In the event LESSEE fails, refuses, or neglects to perform any of the duties required to be performed by it by virtue of the provisions of this Lease, CITY may enter upon the subject premises and perform such services; but this right shall not

be construed to be a duty on the part of CITY to provide said services. LESSEE shall reimburse CITY for all costs for such services on the first day of the month next succeeding the month in which the service was performed.

Section 20. Right of Entry:

LESSEE's demised premises shall at all times be open to the inspection of authorized CITY representatives and other proper governmental authorities.

Section 21. Assignment and Subleasing:

LESSEE shall not, without the written consent of CITY, assign, hypothecate, mortgage, or grant control of this Lease or of the business conducted pursuant thereto or sublease any portion of the demised premises. Any such attempted assignment, hypothecation, mortgaging, or granting of control, or subletting of the premise without the prior written consent of CITY shall, at the election of CITY, and without notice, render this Lease null and void and of no further force and effect.

Section 22. Damage and Destruction of Premises:

In the event of the total destruction or damage of the demised premises by fire, earthquake, storm, or other casualty beyond the control of LESSEE, this Lease and any and all rights of the parties thereunder shall terminate in the event CITY so elects. If CITY elects to rebuild the structures on the premises, this Lease shall continue in full force and effect; provided, however, that the rent to be paid by LESSEE herein shall be abated during the time of reconstruction and shall be reinstated commencing upon the date that any or all of the premises again become tenantable. The applicable rent when the premises are partially reconstructed and useable shall be calculated in the same manner as provided herein for partial

destruction. In the event of partial destruction, this Lease shall continue in force and effect; provided, however, that the annual rent to be paid by LESSEE herein shall be during the time of such reconstruction in the proportionate amount that the damaged area bears to the total structure and said annual rent shall be reinstated in full upon the completion of said reconstruction.

Section 23. Default and Termination:

A. The following events are hereinafter called "Events of Default":

- 1) The failure of LESSEE to punctually pay the rentals or make any other payments required hereunder when due within fifteen (15) days after written notice from CITY.
- 2) The failure of LESSEE to maintain the quality and number of services as required in this Lease where such failure continues for more than ten (10) days after written notice from CITY to correct the condition therein specified.
- 3) The failure of LESSEE to keep, perform, and observe any and all of its promises, covenants, conditions, and agreements set forth in this Lease within thirty (30) days or such lesser time as may be reasonable after written notice of default thereunder from CITY. However, where the fulfillment of LESSEE's obligation requires performance over a period of time and LESSEE commenced whatever work may be required to cure the particular fault within ten (10) days after the aforementioned notice and continues such performance diligently, said time limit may be waived in the manner and to the extent allowed by CITY.

- 4) The filing of a voluntary petition in bankruptcy by LESSEE; the adjudication of LESSEE's assets; the making of a general assignment for the benefit of creditors; a petition or answer seeking an arrangement for the reorganization of LESSEE under the Federal Reorganization Act; the occurrence of any act which operates to deprive LESSEE permanently of the rights, powers, and privileges necessary for the proper conduct and operation of the CONCESSION granted herein; the levy of any attachment or execution which substantially interferes with LESSEE's operations under this Lease and which attachment or execution is not vacated, dismissed, stayed, or set aside within a period of sixty (60) days.
- 5) The abandonment, vacation, or discontinuance of LESSEE's operations on the demised premises without the written consent of CITY.
- 6) The dissolution of LESSEE.

B. Upon the occurrence of any one or more of the "Events of Default", CITY shall have the right to terminate this Lease. Upon such termination, LESSEE's right to possession of the demised premises shall terminate and LESSEE shall surrender possession thereof immediately. In such event, LESSEE hereby authorizes CITY to enter upon the demised premises, or any part thereof, immediately and to take possession of said premises and all improvements, equipment, and inventory belonging to CITY. The election by CITY to terminate this Lease shall not prejudice any rights or claims CITY may have for sums remaining due to it, for damages for

pursuing such other remedies as may be available to CITY by law or equity, and all remedies of CITY shall be cumulative and not in the alternative.

Section 24. Surrender and Disposition of Furniture, Furnishings, Equipment and Trade Fixtures:

Upon the expiration of the term thereof, or sooner termination of the Lease as provided for, LESSEE shall peaceably vacate the demised premises and any and all improvements located thereon and deliver up the same to CITY in a reasonably good condition, ordinary wear and tear excepted.

Within thirty (30) days of any cancellation or other termination, LESSEE, or LESSEE's representatives, shall remove at its own expense, its own furniture, furnishings, equipment, inventory, and trade fixtures. Said removal shall be conducted in an expeditious and orderly manner and shall be accomplished in such a way as to minimize the nature and the extent of any disruption of service to the public contracted for herein and the premises shall be restored to their original condition, ordinary wear and tear excepted. It is agreed that CITY, or CITY's assignee, during said thirty day period, shall have the first right to purchase the furniture, furnishings, equipment, and trade fixtures of LESSEE for the same price that LESSEE would be willing to sell said goods to any other person. Should LESSEE fail to remove said items within said thirty day period, CITY shall have the right to commence standard abandonment proceedings provided by law. In the event of such sale, removal, or demolition, LESSEE shall reimburse CITY for any cost in excess of any consideration received by CITY as a result of said sale, removal, or demolition.

Section 25. Mechanics' Liens:

LESSEE shall pay all costs for construction and/or maintenance done by it or caused to be done by it on the premises as permitted by this lease. LESSEE shall keep premises, all buildings, other improvements, and land of which the premises are a part free and clear of all mechanics' liens resulting from construction and/or maintenance done by or for Lessee.

LESSEE shall have the right to contest the correctness or the validity of any such lien, immediately on demand by City, LESSEE procures and records a lien release bond issued by a corporation authorized to issue any surety bonds in California in an amount equal to one and one-half times the amount of the claim of the lien. The bond shall meet the requirements of Civil Code 3134 and shall provide for the payment of any sum that the claimant may recover on the claim (together with the costs of suit, if it recovers in the action).

Section 26. CITY's Remedies on Default:

A. It is agreed that if LESSEE shall refuse to surrender or deliver up possession of the demised premises after CITY shall have become entitled to the possession thereof, then in that event, CITY in the exercise of its police power or any other power contractual or otherwise that it may possess, may repossess said premises and expel, remove, and put out of possession LESSEE using such force in so doing as may be needful or proper without being liable for prosecution for damages therefore and without prejudice to any other remedy allowed by law available in such cases. In addition CITY shall have any and all rights and remedies provided by law.

B. In the event of breach of this Lease by LESSEE, or LESSEE filing for bankruptcy or insolvency, or any abandonment of the premises, or the Lease is terminated at LESSEE's request or by CITY, then the buyout provisions contained herein are void and CITY is not bound by them.

Section 27. Notices:

All notices and orders that may be given under this Lease may be served by first class mail or in person to CITY at the Parks and Recreation Department, Facilities Maintenance, 1455 Gasoline Alley, Concord, California 94520, and to LESSEE at 1512 Davis Avenue, Concord, California 94519, or such address as either may provide to the other in writing. Service shall be deemed complete upon deposit in the mail or upon delivery.

Section 28. Attorney's Fees:

In the event either party hereto shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any term, covenant or condition of this agreement by it to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover, in addition to the relief as may be granted in such litigation and its court costs, a reasonable attorney's fee to be fixed by the court, and such recovery shall include court costs and attorney's fees on appeal.

Section 29. Entire Lease; Amendment in Writing:

This Lease contains the entire agreement between the parties. This Lease supersedes in its entirety the Contract/Lease entered into by the parties dated May

2, 1990. Any agreements or representations not contained herein are null and void.

This Lease may be amended only by a writing signed by both parties.

Section 30. Time of Essence:

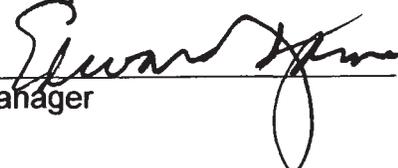
Time is expressly declared to be of the essence in the performance of this Lease.

Section 31. Guaranty and Performance of Lease:

Cynthia Brumley (Guarantor) agrees in her individual capacity to act as guarantor for satisfactory performance of all terms of this Lease. It is expressly agreed by the parties hereto that guarantor is the operator of Pixieland. Operations of Pixieland shall be performed solely by LESSEE.

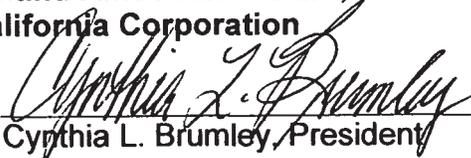
**City of Concord
A Municipal Corporation**

BY:

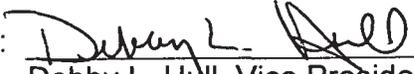

City Manager

**Pixieland Amusement Park, Inc.
A California Corporation**

BY:


Cynthia L. Brumley, President

BY:


Debby L. Hull, Vice President

APPROVED AS TO FORM

BY:


Assistant City Attorney

BY:


Cynthia L. Brumley, Guarantor

ATTEST:

BY:


City Clerk

Exhibit B
Rent Adjustment Schedule

Percent Increase in Gross Receipts	2%-3%	3%-4%	4%-5%	5%+
Percent Increase in Annual Rent	2%	3%	4%	5%

Exhibit C

Rides and Equipment

CITY PROVIDED RIDES

1. Miniature Train
(Allen Hershell G16)
2. Carousel
(Arrow)

LESSEE PROVIDED RIDES

1. Dragon Wagon
(Wisdom)
2. Spinning Teacups
(Kid Power)
3. Frog Hopper
4. Red Barron Airplane
(Midway)
5. Antique Car Ride

Exhibit D

Schedule of Days Open

January	Closed	
February	Open Saturday and Sunday	10a.m. to 4 p.m.
	Closed Monday through Friday	
March	Open Saturday and Sunday	10a.m. to 4 p.m.
	Closed Monday through Friday	
April	3 rd to 18 th Open Daily	10 a.m. to 4 p.m.
	19 th to 30 th Open Saturday and Sunday	10 a.m. to 4 p.m.
May	Closed Monday and Tuesday	
	Open Wednesday through Friday	10 a.m. to 4 p.m.
	Open Saturday and Sunday	10 a.m. to 5 p.m.
June	Closed Monday and Tuesday	
	Open Wednesday through Friday	10 a.m. to 4 p.m.
	Open Saturday and Sunday	10 a.m. to 6 p.m.
July	Open Daily	10 a.m. to 6 p.m.
August	Open Daily	10 a.m. to 6 p.m.
September	Closed Monday through Thursday	
	Open Friday through Sunday	10 a.m. to 5 p.m.
	Open Labor Day	10 a.m. to 5 p.m.
October	1 st through 12 th Open Friday through Sunday	10 a.m. to 4 p.m.
	13 th through 31 st Open Saturday and Sunday	10 a.m. to 4 p.m.
November	Open Saturday and Sunday	10 a.m. to 4p.m.
	Closed Monday through Friday	
December	1 st through 5 th Open Saturday and Sunday	10 a.m. to 4 p.m.
	6 th through 31 st Closed	

**Contract and Lease Agreement
between
City of Concord and Pixieland Amusement Park, Inc.,
a California Corporation**

April 1, 2015

**CONTRACT AND LEASE
FOR THE AMUSEMENT RIDES CONCESSION AND PREMISES
IN THE
WILLOW PASS PARK IN THE CITY OF CONCORD**

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This Contract and Lease Agreement is entered into effective as of April 1, 2015 between the City of Concord, a municipal corporation (“CITY”), and Pixieland Amusement Park, Inc., a California corporation (“PIXIELAND”), upon the terms and conditions stated below.

RECITALS

WHEREAS, the City of Concord and Pixieland, Inc. entered into a Contract and Lease dated February 1, 1994, relative to the premises known as Pixieland, located at Willow Pass Park, 2740 East Olivera Road, Concord, California, 94519; and

WHEREAS, Pixieland, Inc. subsequently sold its assets to Pixieland Amusement Park, Inc.; and

WHEREAS, on or around August 1, 2004, PIXIELAND and CITY entered into a Contract and Lease Agreement (“August 2004 Agreement”), which was scheduled to terminate on July 31, 2014, subject to PIXIELAND’s option to extend the August 2004 Agreement through July 31, 2019 and again through July 31, 2024; and

WHEREAS, on or around May 1, 2014, PIXIELAND exercised its option to extend the August 2004 Agreement, through July 31, 2019; and

WHEREAS, PIXIELAND and CITY wish to enter into a new Contract and Lease Agreement, which shall be known as the 2015 Contract and Lease Agreement (this “2015 Agreement”). The parties hereby mutually rescind and terminate all other agreements between the parties relating to the Subject Premises, including those described above. Those agreements shall no longer have any legal force or effect; and

WHEREAS, PIXIELAND and CITY each hereby forever waive any actual or potential claims or suits against the other and their respective officers, owners, councilmembers, employees and/or agents, seeking monetary, equitable or legal relief, for any alleged contractual liability, breach of warranty/warranties or wrongdoing of any nature, or under any other legal theory of relief or cause of action, relating to any prior agreement(s) between PIXIELAND and CITY.

NOW THEREFORE, in consideration of the terms, conditions, and covenants as set forth herein, the parties agree as follows:

Section 1. Grant of Lease.

There is hereby granted by the CITY of CONCORD (hereinafter referred to as “CITY”) a California Municipal Corporation, to PIXIELAND AMUSEMENT PARK,

INC. a California Corporation, (hereinafter referred to as "PIXIELAND"), a Lease to exclusively operate an Amusement Rides Concession (the "CONCESSION") in the Subject Premises, which consist of an area approximately one-half acre in size known as "Pixieland Amusement Park," as well as the area beneath the train tracks that extend around the pond in Willow Pass Park, and shared use of restrooms and the parking servicing that park, as described more fully below. A description of said facilities and their location are set forth in Exhibit "A" ("Subject Premises") attached hereto, which is incorporated herein by reference. This 2015 Agreement shall be subject to all the terms, conditions, and limitations specified hereinafter. PIXIELAND acknowledges that the Subject Premises are often referred to as "Pixieland Park," but are in fact located within "Willow Pass Park" and under a Master Plan development

Section 2. Use of Subject Premises.

A. PIXIELAND shall use and occupy the Subject Premises solely for the operation of a family-oriented amusement park, and ancillary services such as, but not limited to, food and beverage sales. PIXIELAND shall not be permitted to sell, serve, or in any manner provide alcoholic beverages as part of its use and/or operation of the Subject Premises. PIXIELAND also shall not permit alcoholic beverages, marijuana, or tobacco (including tobacco inhaled through the use of "electronic cigarettes" or analogous tobacco delivering devices) to be consumed, smoked or inhaled on the Subject Premises

B. PIXIELAND shall be permitted to operate during daylight hours on any days elected by PIXIELAND. PIXIELAND must provide CITY with its intended annual operating schedule by January 15th of every calendar year during the term of this 2015 Agreement, including any extensions thereof. PIXIELAND shall notify CITY within a reasonable time of any proposed changes in its daylight operating hours occurring after the issuance of its annual operating schedule. PIXIELAND shall also post its operating schedule on its website, and make a good-faith effort to ensure that such schedule is accurate. To the extent that PIXIELAND intends to operate the Subject Premises after daylight, PIXIELAND shall provide CITY with 30 days' advance notice and must obtain advance approval from CITY, which approval shall not be unreasonably withheld.

C. Subject to the terms of this 2015 Agreement, PIXIELAND shall be responsible for installing all improvements to equipment necessary to provide safe amusement ride and concessionaire service to park patrons.

Section 3. Term.

A. This 2015 Agreement shall be for a term of approximately five and one-quarter (5 ¼) years, commencing on April 1, 2015, and terminating on June 30, 2020, subject to prior termination by CITY in the event of breach of any of the terms or conditions of this 2015 Agreement (after applicable notice and cure periods), or by PIXIELAND pursuant to the terms of this 2015 Agreement.

B. Provided PIXIELAND is not in default under this 2015 Agreement (after applicable notice and cure periods), PIXIELAND shall have the right to exercise three five-year options to renew this Agreement on the existing terms and conditions for the period July 1, 2020 through June 30, 2025, July 1, 2025 through June 30, 2030, and July 1, 2030 through June 30, 2035. PIXIELAND must exercise the option not less than ninety (90) days and not more than one hundred-eighty (180) days prior to July 1, 2020, July 1, 2025, and July 1, 2030 respectively. Said options must be exercised by PIXIELAND in writing to the attention of the City of Concord Director of Parks and Recreation. The Director's consent shall be required for each option to renew, commencing July 1, 2025. Director's consent shall not be withheld unless CITY is dissatisfied with the operations of the Subject Premises by PIXIELAND and CITY'S objections are based on objective and significant shortcomings in PIXIELAND'S performance of this 2015 Agreement.

Section 4. Lease Rent.

A. Upon commencement of this 2015 Agreement, annual rent for the Subject Premises shall be \$40,000, payable in eight equal payments of \$5,000.00 during the months of April through November; provided, however, that PIXIELAND shall not be required to pay rent for the month of April 2015. Each rent payment shall be made on or before the tenth (10th) business day of the month. Payments shall be made payable to "City of Concord," either by means of direct deposit to an institution specified by the CITY, or delivered or mailed to City of Concord Parks and Recreation Director, 1950 Parkside Drive, Concord, California 94519. If any payment is not received within 10 days after the due date, a late charge of five percent (5%)

shall be added to the amount due. If any payment is not received within fifteen (15) days after issuance of notice by City, PIXIELAND shall be considered in default pursuant to Section 25 of this 2015 Agreement, and CITY shall be entitled to the remedies set forth in said Section 25.

B. Annual rent shall be increased by 3% on April 1st of every other calendar year for the entire term of the 2015 Agreement and all extensions thereof, with the first increase due on April 1, 2016, the second increase due on April 1, 2018 and so on. Payments will continue to be due in eight equal installments, April through November during the term of this 2015 Agreement and any extension thereof, with payments made under the terms and conditions described in the preceding paragraph.

C. CITY hereby waives and forgives unpaid rent currently owed by PIXIELAND to CITY.

Section 5. Waiver.

The waiver by CITY or PIXIELAND of any breach of any term, covenant or condition of this 2015 Agreement shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of any sum due hereunder by CITY shall not be deemed to be a waiver of any prior breach by PIXIELAND of any term, covenant or condition of the Lease other than the failure of PIXIELAND to pay the particular sum so accepted, regardless of CITY's knowledge of such prior existing breach at the time of acceptance of such sum.

Section 6. Taxes and Assessments.

In accordance with Revenue and Taxation Code Section 107.6(a), CITY states that by entering into this 2015 Agreement, a possessory interest subject to property taxes may be created. If so, PIXIELAND shall pay before delinquency any such taxes, as well as all lawful taxes, assessments, fees or charges which at any time may be levied by an agency of the Federal Government, State of California, County of Contra Costa, CITY or any other tax or assessment levying body upon any interest in this 2015 Agreement or any possessory right which PIXIELAND may have in or to the Subject Premises covered hereby or improvements thereon by reason of its use or occupancy thereof or otherwise, as well as all taxes, assessments, fees,

licenses, and charges on goods, merchandise, fixtures, appliances and equipment owned or used by PIXIELAND in or about said Subject Premises. Nothing contained in this paragraph is intended to cause PIXIELAND to pay any real property taxes or other taxes for which it is otherwise exempt.

Section 7. Indemnity and Hold Harmless.

PIXIELAND shall assume the defense of, indemnify and hold harmless CITY, its officers, employees and agents and each and every one of them from and against all actions, damages, costs, liability, claims, losses, and expenses alleging negligence, unlawful or tortious conduct, or wrongdoing of any nature arising out of or relating to PIXIELAND'S obligations or actions undertaken pursuant to this 2015 Agreement, irrespective of whether such action(s) or claim(s) also allege(s) wrongdoing on the part of CITY, with the exception of actions or claims alleging sole negligence or willful misconduct on the part of CITY, and with the exception of actions or claims occurring outside the Subject Premises. This exception to PIXIELAND'S indemnification and hold harmless obligations shall not apply to actions or claims arising out of PIXIELAND'S enforcement of its designated parking spaces, as set forth in Section 19 of this 2015 Agreement. This obligation shall remain in force irrespective of whether this 2015 Agreement terminates for any reason, and is independent of PIXIELAND'S insuring obligations set forth in Section 8 of this 2015 Agreement. The foregoing shall include, but not be limited to, any attorney fees reasonably incurred by CITY.

Section 8. Insurance.

During the term of this 2015 Agreement and any extension thereof, PIXIELAND shall maintain in full force and effect at its own cost and expense the following insurance coverage:

A. Workers' Compensation

Full Workers' Compensation Insurance which shall comply with California Labor Code Section 3700 *et seq*, providing coverage of at least One Million Dollars (\$1,000,000) per occurrence. In the event PIXIELAND is self-insured, it shall furnish a Certificate of Permission to Self-Insure by the Department of Industrial Relations Administration of Self-Insurance, Sacramento and evidence of at least One Million

Dollars (\$1,000,000) per occurrence excess Workers' Compensation limit combined with Self-Insurance Retention.

B. Automobile Insurance

Automobile insurance covering PIXIELAND's officers, employers, agents while performing any obligations arising under the terms of this 2015 Agreement, providing at least One Million Dollars (\$1,000,000) combined single limit per occurrence.

C. General Liability Insurance

Commercial General Liability Insurance providing:

- 1) Broad Form Property Damage Liability coverage
- 2) Personal Injury Liability coverage
- 3) Products and Completed Operation Liability coverage
- 4) Contractual Liability coverage.

The insurance coverage required in Section 8(C) shall have policy limits of no lower than One Million Dollars (\$1,000,000) single limit per occurrence/ Two Million Dollars aggregate.

D. Requirements for All Insurance Policies

Each of the insurance policies required pursuant to Section 8 of this 2015 Agreement shall be issued by an admitted insurer or insurers as defined by the California Insurance Code and having a BEST's rating of A-7 or better. The City of Concord, its officers, employees, and agents are to be named as an "additional insured" under each policy, and each such policy shall stipulate that this insurance will operate as primary insurance and that no other insurance effected by CITY or other named insured will be called on to contribute to a loss covered thereunder. Said policy/policies shall provide that no cancellation, change in coverage, or expiration by the insurance company issuing the policy/policies or the insured (in the event that PIXIELAND elects to self-insure) shall occur during the term of this 2015 Agreement (including any extension thereof) without thirty (30) days' written notice to CITY prior to the effective date of such cancellation or change in coverage.

E. Certificate of Insurance

In lieu of actual delivery of copies of the Insurance Policies required under this 2015 Agreement, PIXIELAND may provide a standard Certificate of Insurance completed and filed with CITY's City Attorney, 1950 Parkside Drive, Concord, CA 94519 within

fifteen (15) days of the execution of this 2015 Agreement. It is understood and agreed that approval of said policies shall in no way affect the terms and conditions of the indemnity and hold harmless clause in this 2015 Agreement, which shall remain in full force and effect.

Section 9. Performance Bond.

PIXIELAND shall obtain, upon the effective date of this 2015 Agreement, and continue in full force and effect during the term and any extension thereof a Performance Bond, Letter of Credit or Certificate of Deposit issued by a corporation or corporations authorized to transact business in the State of California and in a form satisfactory to CITY's City Attorney in an amount of not less than Fifteen Thousand Dollars (\$15,000) or shall deposit with CITY, in a non-interest bearing account, a cash deposit in the amount of Fifteen Thousand Dollars (\$15,000), which shall guarantee the faithful performance of this 2015 Agreement by PIXIELAND and its agents, contractors, and employees and shall guarantee full and complete reimbursement to CITY in the event of criminal or tortuous appropriation by PIXIELAND or any of its agents, contractors, or employees of monies or property belonging to CITY and collected by or under the control of PIXIELAND or monies or property for which PIXIELAND is accountable to CITY. PIXIELAND shall provide CITY's City Attorney with a copy of said Performance Bond, Letter of Credit or Certificate of Deposit within ten (10) days of the execution of this 2015 Agreement and prior to engaging in any concession set forth in this 2015 Agreement.

Section 10. Staff Conduct/ Required Background Checks.

A. Cognizant that the Subject Premises are utilized as an amusement park providing family-oriented entertainment, PIXIELAND's entire staff shall meet all requirements for services in a good and workmanlike manner, including dress and appearance, and shall conduct themselves in such matters as to sobriety and moral character that they shall, at all times, be able to deal effectively and properly with the public, at all times exhibiting a wholesome, virtuous, and welcoming demeanor.

B. At the inception of this 2015 Agreement and continuing throughout its term, and any extension thereof, PIXIELAND shall conduct a criminal background check on each of its employees, officers and volunteers (should PIXIELAND elect to utilize volunteers) who have contact with or access to minors, utilizing the database

of the California Department of Justice, and an FBI criminal database or equivalent national database. PIXIELAND shall conduct the same background check on all officers, employees and volunteers who have contact with or access to minors who are newly hired during the term of this 2015 Agreement, and any extension thereof. PIXIELAND shall not, at any time, allow its officers, employees or volunteers to be in any position that allows for contact with or access to minors, if they have been convicted of any offense identified in the California Public Resources Code Section 5164, subject to the exceptions stated in California Public Resources Code Section 5164. CITY and PIXIELAND understand that the results of background checks on minors may be confidential under state law.

C. PIXIELAND shall specifically name a Manager on Duty and provide CITY with name(s) of those qualified for this position. The Manager on Duty shall be capable of handling the effective management of the facilities, and at least one Manager on Duty shall be present at the Subject Premises at all times when Pixieland is open to the public.

Section 11. Ride Maintenance, Inspections, and Records Thereof.

A. PIXIELAND shall at all times during the term of this 2015 Agreement and any extension thereof compile and maintain true, accurate, and complete weekly maintenance and inspection logs for each and every ride and its associated equipment. These logs shall be made available to CITY or its representative(s) upon reasonable request and shall identify any unsafe condition or inoperative equipment and any/all actions taken to expeditiously correct those condition(s). CITY shall be notified of any unsafe condition immediately and of any ride that is out of use, in part or in whole, for more than thirty (30) days. To the extent that any injury occurs on the Subject Premises requiring PIXIELAND to report that injury to any State agency or governmental entity, PIXIELAND shall provide CITY with a copy of all documents comprising such notification.

At no time shall any ride or its associated equipment be allowed to operate if any unsafe condition affecting such ride/equipment exists, and CITY reserves the right (at no cost to PIXIELAND), upon reasonable notice to PIXIELAND, to have any or all ride/equipment inspected by an Inspector from the Amusement Ride Unit of the

California Department of Industrial Relations, Division of Occupational Safety and Health (“CA DOSH”).

PIXIELAND shall also comply with applicable provisions of the Permanent Amusement Ride Safety Inspection Program, Labor Code Section 7920 et seq. and all applicable regulations promulgated thereunder.

Should any ride or its associated equipment be deemed by CA DOSH as unsafe for performance or operating at less than full mechanical capacity, PIXIELAND shall cause said ride or piece of equipment to be repaired or removed within a reasonable amount of time (or at PIXIELAND’s option replace said ride with a comparable ride) and shall not be allowed to operate said ride or associated equipment again until re-inspected and cleared by the CA DOSH inspector. To the extent that any ride is inoperable for thirty (30) days, PIXIELAND shall notify CITY. Additionally, should any multiple rides or equipment simultaneously be deemed to have safety infractions or violations, the CITY reserves the right to consider same as a material breach of this Agreement, subject to the cure periods in Section 25 of this 2015 Agreement.

B. PIXIELAND shall have all amusement rides and associated equipment inspected as required by CA DOSH. A report shall be prepared by the authorized CA DOSH inspector after each inspection and will be maintained by PIXIELAND for the term of the 2015 Agreement and any extension thereof. PIXIELAND shall Provide CITY with copies of annual State Certifications for all rides, within thirty (30) days of receipt thereof by PIXIELAND.

Section 12. No Financial Records Inspection/Audit.

PIXIELAND shall have no obligation to provide its financial records to CITY.

Section 13. One-Time Rent Credit.

CITY will provide PIXIELAND a one-time rent credit in the amount of TWENTY-FOUR THOUSAND DOLLARS (\$24,000), to be utilized by PIXIELAND to make facility repairs to the concrete and retaining wall in the birthday party area, to slurry seal asphalt pavement within the area inside the perimeter fencing, to move the fryer ventilation hood and provide electrical service to the ventilation hood system, and to install the required Ansul fire suppression system. The rent credit described in this Section 13 shall be utilized by PIXIELAND and the above-described repairs and equipment installation shall be performed during the first year (365 days) in which

this 2015 Agreement is in effect. To the extent that funds from the above-described rent credit remain after completion of the repairs described above in this Section 13, PIXIELAND may utilize said funds on other repairs within the Premises.

Section 14. CITY-Provided Facilities, Services and Repair Costs.

A. During the term of this 2015 Agreement and any extension thereof, CITY shall provide to Pixieland the premises highlighted and indicated on Exhibit A

B. CITY shall maintain and repair: (a) the Parking Area; (b) the plumbing service up to the supply valves, and electrical service up to the meter; (c) the structural components (including the foundation, structural walls, and the roof and membrane) of any permanent structures existing within the Subject Premises on the date this 2015 Agreement is executed; (d) the shared restroom facility (except exterior painting and janitorial cleaning); and (e) the train tunnel and the pond and park surrounding the train tracks (but not the train tracks themselves). City will make good faith effort to control weeds, rodents, erosion and flooding around Subject Premises.

C. CITY will furnish water and sewer services to the Subject Premises, as well as the shared restroom facility, and shall supply paper products as needed for the shared restroom facility.

D. CITY shall provide the rides and associated equipment listed on Exhibit B (“Rides and Equipment”), which is attached hereto and incorporated by reference as part of this 2015 Agreement.

The CITY makes no warranty, express or implied, as to the condition of the CITY-provided rides and associated equipment, and it is PIXIELAND’s responsibility to make sure the rides and equipment operate in a satisfactory and safe condition. PIXIELAND takes said rides and equipment in an “as is” condition and, during the term of this 2015 Agreement (and any extension thereof), is responsible for maintaining all equipment and rides in an operating condition that is safe for use by the public.

The forgoing CITY-provided facilities, services and repair costs shall be provided at no cost or charge to PIXIELAND.

Section 15. PIXIELAND-Provided Facilities and Services.

A. With the exception of the facilities, services and repair costs noted in Section 14 above, PIXIELAND shall maintain and repair all structures, facilities, fixtures, mechanical and utility components of any nature, and surfaces within the outer perimeter fencing on of the Subject Premises, including the fencing itself. If the fence forming the perimeter of the Subject Premises has reached the end of its useful life, notwithstanding reasonable maintenance by PIXIELAND, or due to events beyond the control of PIXIELAND, CITY will replace fence, or if reasonable, portions thereof. PIXIELAND shall also provide exterior painting and regular janitorial services to the shared restroom facility.

B. PIXIELAND shall maintain the amusement rides concession staffed and opened for business to the general public in accordance with the Annual Operating Schedule provided by PIXIELAND pursuant to Section 2 of this 2015 Agreement, weather permitting and subject to closures due to events beyond the reasonable control of PIXIELAND. The amusement park operating hours, with the agreement of PIXIELAND and CITY, may change from time to time.

C. PIXIELAND shall maintain and repair the miniature train tracks, railroad ties and rock ballast.

D. PIXIELAND shall, in addition to the CITY-provided rides referenced in Exhibit B to this Agreement, maintain and repair each and every amusement ride set forth in said Exhibit B, consistent with CA DOSH regulations. Any changes in the number or type of amusement rides must be approved by CITY in advance and in writing.

E. Notwithstanding anything to the contrary in the 2015 Agreement, PIXIELAND shall have the discretion not to repair rides, improvements or other personal property owned by PIXIELAND, but to instead raze the improvements or remove the rides and other personal property. For example, if a ride is in need of repair, PIXIELAND shall have the right not to repair or replace such ride, but may simply close and/or remove such ride. If removal of a ride or improvement is undertaken, PIXIELAND shall have sole responsibility for returning the vacated space back to its original condition (i.e., asphalt or landscaped area). Notwithstanding anything to the contrary in this 2015 Agreement, (1) as respects

CITY-provided rides, PIXIELAND must repair and maintain said rides unless the cost to do so exceeds the fair market value of the ride, in which case CITY and PIXIELAND shall in good faith meet and confer to determine whether the ride shall be replaced or removed, (and the area where that ride was located returned to its original condition), in each case at City's cost; and (2) as respects other CITY-owned structures, improvements and CITY-owned property at the Subject Premises, any obligation of PIXIELAND hereunder to maintain the same shall be limited to maintenance, and PIXIELAND will not be responsible for replacing any such items if repair thereof is not feasible or commercially reasonable.

F. PIXIELAND prices for rides, souvenir and food concessions shall be consistent with market pricing for amusement parks in the Bay Area with similar attractions.

G. PIXIELAND shall maintain and inspect all rides pursuant to Section 11 of this 2015 Agreement.

H. PIXIELAND shall, at its expense, assure that the Subject Premises and the shared restroom facilities, are at all times maintained in a clean, wholesome and sanitary condition, and shall operate the facility in such way as to reasonably prevent the escape of debris from the Subject Premises.

I. PIXIELAND shall assume the responsibility and expense for all telephone service, electrical service, and disposal of garbage, refuse and rubbish in connection with the activities incident to the PIXIELAND's operations on the Subject Premises.

J. PIXIELAND shall furnish, repair and maintain at its own expense all supplies, equipment and fixtures necessary for the operation of any Concession, elected by PIXIELAND to offer to the public from time to time, including any fixtures and equipment utilized to prepare and serve food and beverages, including but not limited to the following examples: fryers, freezers, air conditioning/coolers, water heaters, exhaust fans, sinks and faucets, etc..

K. PIXIELAND shall promptly comply with written reasonable orders that may be issued from time to time by CITY and any other governmental agencies as to matters concerning the operation of the Concession including but not limited to water conservation, recycling and the cleanliness of the area.

L. PIXIELAND shall pay or cause to be paid the total cost and expense of all maintenance and works of improvement on the Subject Premises required of PIXIELAND under the terms of this 2015 Agreement. No maintenance and/or improvements required of PIXIELAND under this 2015 Agreement shall be construed as rent.

M. It is understood and agreed that PIXIELAND is an independent contractor and neither it nor any of its agents or employees shall be considered for any purpose whatever to be employees of CITY. All personnel employed by PIXIELAND shall comply with all State and Federal laws pertaining to employment and compensation of their employees or agents, including the provision of Workers' Compensation.

N. PIXIELAND, or its designated representative(s) shall, to the extent of its/their authority, maintain law and order in the Subject Premises at all times.

O. PIXIELAND shall facilitate conducted group events including but not limited to birthday parties and special events of a similar nature. Such events must be conducted within the Subject Premises as set forth in Exhibit "A", except that PIXIELAND may conduct its annual Easter event around the pond (inside the train track perimeter). To the extent that PIXIELAND wishes to conduct any other special events outside the Subject Premises, it must first obtain written approval from CITY, with such approval not to be unreasonably withheld, conditioned or delayed.

P. PIXIELAND shall not engage in any business or activity on or at the Subject Premises not authorized under this 2015 Agreement.

Section 16. Right to Terminate for Government-Mandated Repairs Exceeding Fifty-Thousand Dollars

If, during the term of this 2015 Agreement and any extension thereof, PIXIELAND is required by law or any single order issued by any government agency mandating PIXIELAND to repair or replace any equipment or portion of the Subject Premises to be maintained by PIXIELAND, and the repair/replacement cost of complying with such single order or law requires PIXIELAND to expend more than FIFTY-THOUSAND DOLLARS (\$50,000.00) within a 365 day period, PIXIELAND may, instead of performing the repairs/replacement, elect to either (i) cease operations to the extent required so that the law or order does not apply to PIXIELAND, or (ii) cease operation of the Pixieland Park altogether and terminate this 2015 Agreement,

after providing the City with 120 days' notice of its intent to terminate. During the 120 day period, PIXIELAND shall continue to pay all rent owed to the CITY. This provision shall only apply to a single, government agency-issued mandatory law or repair/replacement order, and shall not apply to multiple repair/replacement orders by the same government agency or multiple government agencies, even if the cost of complying with such orders in totality exceed FIFTY-THOUSAND DOLLARS (\$50,000.00). **This Section 16 shall not apply to any government agency-mandated maintenance, repair(s), alteration(s), improvement(s) or replacement of any current or future amusement rides and/or any component thereof located at the Subject Premises; nor shall this provision apply to any such maintenance, repair(s), alteration(s), improvement(s) or replacement undertaken by PIXIELAND in the absence of a government agency-issued order.**

Section 17. Optional Services.

With the exception of alcoholic beverages, PIXIELAND may provide refreshment services to amusement rides CONCESSION patrons. Any changes to the amusement stands (including but not limited to the design of the Birthday Party Area) shall not occur without receipt of explicit written approval from CITY.

Section 18. Acceptance of Improvements and Equipment.

A. PIXIELAND acknowledges that it has fully inspected the Subject Premises and accepts the improvements, fixtures and equipment thereon in their existing condition, and agrees that, except as set forth in Section 14 above, no demands for any alterations, additions, or repairs shall be made upon CITY during the term of the 2015 Agreement, or any extension thereof.

B. PIXIELAND shall not make, or suffer to be made, any alterations of the facilities or any part thereof, except movable furniture and trade fixtures, without first obtaining the written consent of CITY. Any additions to or alterations of said facilities desired by PIXIELAND shall be at PIXIELAND's expense and, subject to Section 26 below, shall become a part of the realty and belong to CITY upon the expiration or sooner termination of this 2015 Agreement. PIXIELAND shall keep all improvements of any kind and the Subject Premises in which they are situated free

from any liens arising out of any work performed, material furnished, or obligations incurred by Pixieland.

Section 19. Parking.

A. PIXIELAND and its employees and patrons shall have the right to use the parking spaces in the parking lot adjacent to the Subject Premises (the “Parking Area”), as well as any other parking spaces within Willow Pass Park. Such parking rights shall be non-exclusive, and shared with members of the general public. However, PIXIELAND shall be permitted to designate (either with signs, marking with painted lettering, or both as elected by PIXIELAND) fifty (50) parking spaces (location highlighted and indicated in “Exhibit A”) within the “Parking Area” for the exclusive use of PIXIELAND and its employees and patrons during PIXIELAND’S operating hours.

B. PIXIELAND must provide CITY a specific, detailed parking enforcement plan, and obtain written approval of such plan prior to installation of any signs or pavement marking. Such markings and signage will be paid for and maintained exclusively by PIXIELAND. PIXIELAND shall obtain written approval by CITY of all signs and/or markings prior to installation. Such signs may state “Pixieland Parking Only During Pixieland Park’s Hours of Operation –Violators’ Automobiles Will be Towed” or similar verbiage. PIXIELAND may also add verbiage on its parking lot signs noting that consumption of alcohol and/or smoking are prohibited in the entire parking lot. PIXIELAND shall also have the right to install signs as may be required by towing companies, and to work with towing companies to tow cars wrongfully using the designated parking spaces during PIXIELAND’S operating hours.

C. CITY shall use good faith efforts to keep PIXIELAND appraised of anticipated high volume use of the “Parking Area” and, in any event, shall encourage softball tournament organizers and team managers to use other lots (other than the “Parking Area”) in the Willow Pass Park during PIXIELAND’S operating season/hours of operation. City will not place any signage inside the Parking Area indicating that Willow Pass Park Field 4 users should park there.

D. PIXIELAND will be solely responsible for enforcement of PIXIELAND designated parking spaces. PIXIELAND's enforcement of designated parking area use may not in any way interfere with the safe and orderly flow of traffic within said "Parking Area", into or out of said "Parking Area," or with the traffic flow on Olivera Road.

Section 20. Security Devices.

PIXIELAND may provide at its own expense any legal devices, installations, or equipment designed for the purpose of protecting the Subject Premises from theft, burglary, or vandalism; provided; however, written approval for any such installation is first obtained from CITY.

Section 21. Compliance.

A. Any violation of any rules, regulations, or instructions of CITY, or its authorized representative, which is not corrected by PIXIELAND within thirty (30) days or such additional time as may be reasonable, after the mailing by CITY of a written notice of such violation shall be sufficient cause for the cancellation of this 2015 Agreement and termination thereof without compensation or the payment of damages to PIXIELAND.

B. PIXIELAND and its agents, officers and employees shall at all times comply with and abide by all pertinent or applicable regulations and ordinances of the CITY, the County of Contra Costa, and the laws of the State of California and the United States insofar as the same or any of them are applicable to the operations of PIXIELAND. PIXIELAND shall also obtain and maintain in current status all necessary permits and licenses required for any and all operations permitted herein.

C. In the event PIXIELAND fails, refuses, or neglects to perform any of the duties required to be performed by it by virtue of the provisions of this 2015 Agreement (in each case, after applicable notice and cure periods) , CITY may enter upon the Subject Premises and perform such services; but this right shall not be construed to be a duty on the part of CITY to provide said services. PIXIELAND shall reimburse CITY for all reasonable costs for such services actually incurred on the first day of the next succeeding month in which the service was performed.

Section 22. Right of Entry.

The Subject Premises shall at all reasonable times be open to inspection by authorized CITY representatives and other appropriate government authorities/representatives.

Section 23. Assignment and Subleasing.

PIXIELAND shall not, without the written consent of CITY, assign, hypothecate, mortgage, or grant control of any of the benefits or obligations comprising this 2015 Agreement or of the business conducted pursuant thereto or sublease any portion of the Subject Premises. Any such attempted assignment, hypothecation, mortgaging, or granting of control, or subletting of the premise without the prior written consent of CITY shall, at the election of CITY, render this 2015 Agreement null and void and of no further force and effect.

Section 24. Damage and Destruction of Subject Premises.

In the event of the total destruction or damage of the Subject Premises by fire, earthquake, storm, force *majeure* or other casualty beyond the control of PIXIELAND, this 2015 Agreement and any and all rights of the parties thereunder shall terminate in the event CITY or PIXIELAND so elects. If neither party terminates this 2015 Agreement, City shall rebuild the structures on the Subject Premises, and this 2015 Agreement shall continue in full force and effect; provided, however, that the rent to be paid by PIXIELAND herein shall be abated on a day-for day basis for each day until the date that the Subject Premises again become usable. In the event of partial destruction, or partial reconstruction following total destruction of the Subject Premises, this 2015 Agreement shall continue in force and effect; provided, however, the Lease Rent to be paid by PIXIELAND pursuant to Section 4 of this 2015 Agreement shall be abated during the time of such reconstruction in the proportionate amount that the damaged area bears to the Subject Premises viewed as a whole. The full Lease Rent shall be reinstated in full upon the completion of said reconstruction.

Section 25. Default and Termination.

A. The following events shall constitute "Events of Default":

- 1) The failure of PIXIELAND to punctually pay rent to CITY pursuant to Section 4 of this 2015 Agreement, or make any other payments required hereunder when due, within fifteen (15) days after written notice from CITY.
- 2) The failure of PIXIELAND to maintain the quality and number of services required in this 2015 Agreement where such failure continues for more than ten (10) days (or such additional time as may be reasonably required to effectuate a cure) after written notice from CITY to correct the condition therein specified.
- 3) The failure of PIXIELAND to keep, perform, and observe any and all of its promises, covenants, conditions, and agreements set forth in this 2015 Agreement within thirty (30) days after written notice of default thereunder from CITY. However, where the fulfillment of PIXIELAND's obligation requires performance over a period of time and PIXIELAND commences whatever work may be required to cure the particular fault within ten (10) days after the aforementioned notice and continues such performance diligently, said time limit shall be extended to the extent reasonable under the circumstances.
- 4) The filing of a voluntary petition in bankruptcy by PIXIELAND; the adjudication of PIXIELAND's assets; the making of a general assignment for the benefit of creditors; a petition or answer seeking an arrangement for the reorganization of PIXIELAND under the Federal Reorganization Act; the occurrence of any act which operates to deprive PIXIELAND permanently or for more than thirty (30) days of the rights, powers, and privileges necessary for the proper conduct and operation of the CONCESSION granted herein; the levy of any attachment or execution which materially interferes with PIXIELAND's operations under this 2015 Agreement, and in each such case, which assignment, petition, attachment, execution or other bankruptcy event is not vacated, dismissed, stayed, or set aside within a period of sixty (60) days.

- 5) The abandonment, vacation, or simultaneous discontinuance of the majority of PIXIELAND's operations on the Subject Premises in violation of this 2015 Agreement without the written consent of CITY.
- 6) The dissolution of Pixieland Amusement Park, Inc.
- 7) The attempted assignment, hypothecation, mortgaging, or granting of control, or subletting of the premise by PIXIELAND without the prior written consent of CITY.

B. Upon the occurrence and during the continuance of any one or more Events of Default, CITY shall have the right to terminate this 2015 Agreement. Upon such termination, PIXIELAND's right to possession of the Subject Premises shall terminate and PIXIELAND shall surrender possession thereof to CITY immediately. In such event, PIXIELAND hereby authorizes CITY to enter upon the Subject Premises, or any part thereof, immediately and to take possession of said premises. The election by CITY to terminate this 2015 Agreement shall not prejudice any rights or claims CITY may have for sums remaining due to it, or pursuing such other remedies as may be available to CITY by law or equity, and all remedies of CITY shall be cumulative and not in the alternative.

Section 26. Surrender and Disposition of Furniture, Furnishings, Equipment and Trade Fixtures.

Upon the expiration of the term of this 2015 Agreement or any extension thereof, or sooner termination of the Agreement as provided for, PIXIELAND shall peaceably vacate the Subject Premises and any and all improvements located thereon and deliver up the same to CITY in a reasonably good condition, ordinary wear and tear excepted.

Within sixty (60) days of any cancellation or other termination of this 2015 Agreement and any extension thereof, PIXIELAND, or PIXIELAND's representatives, shall remove at its own expense, its own furniture, furnishings, equipment, inventory, and trade fixtures. Said removal shall be conducted in an expeditious and orderly manner and shall be accomplished in such a way as to minimize the nature and the extent of any disruption of service to the public contracted for herein and the Subject Premises shall be restored to their original condition, ordinary wear and tear excepted. It is agreed that if PIXIELAND desires

to sell its furniture, furnishings, equipment, and trade fixtures to a third party (as opposed to moving said items for its own use at a different site), then CITY, or CITY's assignee, during said sixty (60) day period, shall have the first right to purchase the furniture, furnishings, equipment, and trade fixtures of PIXIELAND for the same price that PIXIELAND can document that another purchaser would be willing to pay for such item(s). Should PIXIELAND fail to remove its own furniture, furnishings, equipment, inventory, and trade fixtures within said sixty (60) day period, it shall lose all right, title, and interest in and to said items, and CITY may elect to keep the same upon the Subject Premises or to sell, remove, or demolish them. In the event of such sale, removal, or demolition, PIXIELAND shall reimburse CITY for any cost in excess of any consideration received by CITY as a result of said sale, removal, or demolition.

Section 27. Mechanics' Liens.

PIXIELAND shall pay all costs for construction and/or maintenance performed or caused to be performed by it on the Subject Premises as permitted by this Agreement. PIXIELAND shall keep the Subject Premises, all buildings, other improvements, and land of which the Subject Premises are a part free and clear of all mechanics' liens resulting from construction and/or maintenance performed by or for PIXIELAND.

PIXIELAND shall have the right to contest the correctness or the validity of any such lien; provided that promptly on demand by CITY, PIXIELAND shall procure and record a lien release bond issued by a corporation authorized to issue any surety bonds in California or other reasonable security in an amount equal to the claim of the lien. The bond shall meet the requirements of Civil Code 3134 and shall provide for the payment of any sum that the claimant may recover on the claim (together with the costs of suit, if it recovers in the action).

Section 28. Equal Opportunity Assurance.

During the performance of this 2015 Agreement, PIXIELAND agrees as follows:

A. PIXIELAND will not discriminate against any employee or applicant for employment and will take affirmative action to ensure that employees and employment applicants are treated equally without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical

condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoffs and terminations, rates of pay or other forms of compensation; and selection for training, including apprenticeship. PIXIELAND agrees to post, in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. In the event of PIXIELAND'S noncompliance with the Subpart A of this Section 28, this Agreement may be canceled, terminated, or suspended in whole or in part.

Section 29. CITY'S Possession Remedies

It is agreed that if PIXIELAND shall refuse to surrender or deliver up possession of the Subject Premises after CITY shall have become entitled to the possession thereof, CITY in the exercise of its police power or any other power, contractual or otherwise, that it may possess, may repossess said Subject Premises and expel, remove, and put out of possession PIXIELAND using such force in so doing as may be needful or proper without being liable for prosecution for damages therefore and without prejudice to any other remedy allowed by law available in such cases. In addition CITY shall have any and all rights and remedies provided by law.

Section 30. Notices.

All notices and orders that may be given under this 2015 Agreement shall be served by overnight delivery, first class mail or personal service to CITY at the Parks and Recreation Department, Parks and Recreation Director, 1950 Parkside Drive, MS/10, Concord, California 94519, and to PIXIELAND at 2740 E. Olivera Road, Concord, California 94519, or such address as either may provide to the other in writing. Service shall be deemed complete upon deposit in the mail or upon delivery.

Section 31. Entire Lease; Amendment in Writing.

This 2015 Agreement contains the entire agreement between the parties hereto. No promise, representation, warranty, or covenant not included in this 2015 Agreement has been or is relied upon by any party hereto. This 2015 Agreement

supersedes all prior agreements between CITY and PIXIELAND relating in any way to the Subject Premises. This 2015 Agreement may be amended only in writing, approved by both parties.

Section 32. Time of Essence.

Time is expressly declared to be of the essence in the performance of this 2015 Agreement.

Section 33. Choice of Law.

The law of California shall govern, construe and enforce all of the rights and duties of the parties arising from or relating in any way to the subject matter of this 2015 Agreement.

Section 34. Venue.

Any lawsuit between CITY and PIXIELAND arising out of or relating to this 2015 agreement shall be filed in the Contra Costa County Superior Court or the United States District Court for the Northern District of California.

Section 35. Approvals and Consents.

Notwithstanding anything to the contrary in this 2015 agreement, except when a different approval or consent standard is expressly provided herein, any approval or consent provided to be given by CITY hereunder will not be unreasonably withheld, conditioned or delayed. Without limiting the foregoing, CITY, when acting in its capacity as the applicable governmental agency (such as, but not limited to, passing new laws and/or imposing new taxes) shall not discriminate against PIXIELAND unless such CITY actions are reasonably based upon PIXIELAND's unique attributes, including, but not limited to, its status as a for profit amusement park catering to young children (and their parents) and located on CITY-owned property surrounded by CITY-owned parks/recreational facilities.

Section 36. Disability Access Inspection

As of the date on which this 2015 Agreement was executed, the Subject Premises have not been inspected by a Certified Access Specialist and have not been determined to meet all applicable constructed-related accessibility standards under California Civil Code Section 55.3.

Section 37. Signature in Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

//

**City of Concord
A Municipal Corporation**

**Pixieland Amusement Park, Inc.
A California Corporation**

BY: _____
City Manager

BY: _____
Cynthia Brumley, President

APPROVED AS TO FORM

BY: _____
City Attorney

ATTEST:

BY: _____
City Clerk

Exhibit A Subject Premises



Exhibit B Rides and Equipment

CITY Provided Rides

1. Miniature Train
(Allen Hershell G16)
2. Carousel
(Arrow)

PIXIELAND Provided Rides

1. Dragon Wagon
(Wisdom)
2. Spinning Teacups
(Kid Power)
3. Frog Hopper
4. Red Barron Airplane
(Midway)
5. Antique Car Ride