



PINAL COUNTY

WIDE OPEN OPPORTUNITY

AGENDA ITEM
September 28, 2022
ADMINISTRATION BUILDING A
FLORENCE, ARIZONA

REQUESTED BY: Kent Taylor/Himanshu Patel

Funds #: 10

Dept. #: 3010310

Dept. Name: Open Space and Trails

Director: Kent Taylor

BRIEF DESCRIPTION OF AGENDA ITEM AND REQUESTED BOARD ACTION:

Discussion/approval/disapproval of a Sublease Agreement between the Central Arizona Fair Association (CAFA) and Brad Whitfield DBA 5 Star Awards and Events LLC for the Central Arizona Raceway located at the Pinal County Fairgrounds.

This agreement is conditioned upon approval of the Pinal County Board of Supervisors, in accordance with the Facility Lease Agreement between CAFA and Pinal County. Supervisor District #3 (Kent Taylor/Himanshu Patel)

BRIEF DESCRIPTION OF THE FISCAL CONSIDERATIONS AND/OR EXPECTED FISCAL IMPACT OF THIS AGENDA ITEM:

The sublease agreement does not result in any fiscal impact for the County.

BRIEF DESCRIPTION OF THE EXPECTED PERFORMANCE IMPACT OF THIS AGENDA ITEM:

N/A

MOTION:

Approve as presented.

History

Time

Who

County Attorney

Approval

ATTACHMENTS:

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OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
Dana Lewis

DATE/TIME: 09/30/2022 1054
FEE: \$0.00
PAGES: 34
FEE NUMBER: 2022-103522

When recorded mail to:

**Clerk of the Board
PO Box 827
Florence, AZ 85232**

(The above space reserved for recording information)

**CENTRAL ARIZONA FAIR ASSOCIATION
SUBLEASE AGREEMENT AS TO THE CENTRAL ARIZONA RACEWAY**

**DO NOT DISCARD THIS PAGE. THIS COVER PAGE IS RECORDED AS PART
OF YOUR DOCUMENT. THE CERTIFICATE OF RECORDATION WITH THE
FEE NUMBER IN THE UPPER RIGHT CORNER IS THE PERMANENT
REFERENCE NUMBER OF THIS DOCUMENT IN THE PINAL COUNTY
RECORDER'S OFFICE.**

CENTRAL ARIZONA FAIR ASSOCIATION
SUBLEASE AGREEMENT AS TO THE CENTRAL ARIZONA RACEWAY

This Sublease Agreement as to the Central Arizona Raceway (hereinafter, CAR), is entered into this 14th day of September, 2022, by and between the CENTRAL ARIZONA FAIR ASSOCIATION (hereinafter, "CAFA" and or "Sublessor"), and BRAD WHITFIELD DBA 5 STAR AWARDS & EVENTS LLC (hereinafter, individually and collectively, "Sublessee"). This Agreement is entered into as provided pursuant to both the Facility Lease Agreement and the Concessionaire Agreement between CAFA and Pinal County dated September 7, 2011, attached hereto as Exhibits A and B respectively and incorporated herein by this reference. Further, CAFA hereby provides notice to Sublessee and Sublessee acknowledges such notification that, by entering into the Sublease Agreement, Sublessee accepts ALL terms and conditions imposed upon CAFA under the Lease and Concessionaire Agreements between CAFA and Pinal County as to the Premises which are the subject of the Agreement. Further, Sublessee hereby acknowledges, agrees and avows that he/she/they have read and reviewed the Lease and Concessionaire's Agreements and agree to and accept ALL obligations these Agreements impose upon CAFA (as the Lessee), as Sublessee's own obligations without exclusion as to the Premises which are the subject of this Sublease. Requirements set forth in the Lease Agreement (Exhibit A) for any Sublease include, but are not limited to, the following provisions (Sublessee is substituted for Lessee and CAFA is added for insurance, indemnification and notification purposes). This Agreement is conditioned upon approval of the Pinal County Board of Supervisors, in accordance with the Facility Lease Agreement.

CAFA and the Sublessee agree to the following terms and conditions:

1. SUBLEASE PURPOSE

This Sublease is entered into for the term specified for the sole purpose of operating CAR and related facilities specified herein for dirt track racing events as specifically approved by CAFA, and in accordance with all Federal, State, and County laws, rules and regulations. Any non-dirt track racing event must be specifically approved in writing by CAFA under such terms as deemed appropriate and necessary for the event, including events held in conjunction with racing events. Sublessee shall adhere to all applicable race association(s) guidelines as may be customary and appropriate for the purposes intended or in which Sublessee may be affiliated, or which CAFA may require such affiliation as CAFA, in its sole discretion may deem appropriate. This Sublease is subject to the terms of the Facility Lease Agreement and Concessionaire Agreement between CAFA and Pinal County and Sublessee shall have no greater rights than CAFA under those Agreements.

2. SUBLEASE PREMISES

CAR is located within the Pinal County Fairgrounds, at 512 S. Eleven Mile Corner Road, Casa Grande, Arizona 85194. CAR is approximately a 3/8 mile dirt racetrack with tower, grandstands, bleachers, pit parking, restrooms and concession stand located in the Southwest corner of the Pinal County Fairgrounds' property (as specifically identified in the map of the premises attached hereto as Exhibit "C" and incorporated herein by this reference) (the "Premises"). The Raceway is gated with exterior public parking and is fenced separating the Raceway from the rest of the Pinal County Fairgrounds. Access to

and usage of CAR and related facilities is subject to, and may be substantially affected by, the installation and use of high-power lines and towers by Salt River Project and/or, Arizona Public Service. CAFA shall inform Sublessee as to any and all activity on the Premises by any Utility companies which may affect access and use of CAR on an ongoing basis and as soon as reasonably possible upon obtaining such information from the Utility company or Pinal County.

3. SUBLEASE TERM

The Sublease Term shall be five (5) years from the date of approval by the Pinal County Board of Supervisors and shall end on December 31 of that calendar year. IN THE EVENT OF TERMINATION OF THIS SUBLEASE, WHETHER AT EXPIRATION OF THE SUBLEASE TERM OR AS THE RESULT OF DEFAULT AS SET FORTH HEREIN, SUBLESSEE UNDERSTANDS AND AGREES THAT SUBLESSEE IS **NOT** ENTITLED TO RECOVERY OF LOST INCOME. IN THE EVENT SUBLESSEE BELIEVES THAT THE TERMINATION WAS NOT THE RESULT OF DEFAULT AS PROVIDED FOR HEREIN, SUBLESSEE MAY ONLY SEEK TO REINSTATE THIS AGREEMENT UNDER ITS ORIGINAL TERMS.

4. SUBLEASE RENTAL FEES

A. The Sublessee shall pay rent as follows:

- (i) 2022 Sublessee shall pay \$2,000.00 per month;
- (ii) 2023 Sublessee shall pay \$2,000.00 per month;
- (iii) 2024 Sublessee shall pay \$2,500.00 per month;
- (iv) 2025 Sublessee shall pay \$2,500 per month;
- (v) 2026 Sublessee shall pay \$3,000 per month; and
- (vi) 2027 Sublessee shall pay \$3,000 per month.

In addition to monthly rental fees, Sublessee agrees to pay Sublessor \$0.25 per 100 gallons of water used from Sublessor's well as determined by current meter on racetrack fill pipe located at 512 S. Eleven Mile Corner Rd, Casa Grande, AZ 85194, Pinal Fairgrounds & Event Center property and as specifically identified in the map of the fill pipe meter attached hereto as Exhibit "D". The meter will be read on the 25th of every month and the water fee shall be paid with the rental in accordance with Section 4.B.

- B. Rent is due and payable at CAFA's office the first (1st) business day of each month. Rent is considered late after the third (3rd) business day of the month, whereupon late fees in the amount of one hundred dollars (\$100.00) shall be assessed and due. An additional \$100.00 in late fees shall be assessed each week payment is delinquent until rent and late charges are paid in full. Under no circumstance shall Sublessee be permitted to hold racing events prior to payment of monthly rent and late fees. It is a material breach of the Agreement if Sublessee becomes sixty (60) days delinquent in payment of rent.

C. RENTAL FEES DO NOT INCLUDE WATER, ELECTRICITY, TRASH OR ANY OTHER UTILITIES. Sublessee must make arrangements with the utility provider for installation of water and electric meters (if not already installed) and pay deposits for any and all utilities as required by the provider. SUBLESSEE SHALL NOT BE ENTITLED TO REIMBURSEMENT FOR SUCH METER INSTALLATION OR ANY OTHER IMPROVEMENTS AT THE TIME OF TERMINATION OF THIS AGREEMENT. FURTHER, SUCH METERS AND OTHER IMPROVEMENTS ARE HEREBY DEEMED FIXTURES WHICH ARE TO REMAIN ON THE PREMISES UPON TERMINATION OF THIS SUBLEASE.

D. Sublessee agrees to make all payments relating to this Agreement by certified check. All such payments are non-refundable.

5. POSSESSION AND INSPECTIONS

A. Possession of the Premises shall begin upon execution of this Agreement.

B. Sublessee may not occupy the Premises for any purposes other than the preparation and maintenance of the Premises for racing events. All preparation and maintenance must be performed during business hours (8:00 a.m. to 5:00 p.m.) Monday through Sunday unless such access is specifically approved by CAFA. Approval shall not be unreasonably withheld. It is NOT unreasonable for CAFA to deny access in the event that noise, dust or light complaints from neighbors should occur.

C. Sublessee must take any and all necessary action to replace or repair the facilities at the Premises to ensure that it is safe for participants and the public prior to ANY racing events.

D. Although CAFA has no duty to inspect the Premises, CAFA, its employees or designated agent may access the Premises in response to specific needs. Sublessee shall not prevent any sanctioning body, the State of Arizona, Pinal County, or any other regulating agency or entity from access to the leased Premises in the event such access is deemed necessary and appropriate due to safety concerns or law enforcement issues.

E. CAFA may, at its discretion, utilize the Premises for functions when racing events are not scheduled or at such times in which racing is NOT permitted due to Fairgrounds events as provided for herein. CAFA shall pay Sublessee \$500 for the use of the Premises which are the subject of the Agreement per event held by CAFA for events held in conjunction with the Pinal County Fair or other CAFA events. CAFA will pay Sublessee 20% of the gate revenue for events not related to other CAFA events. The Parties shall inspect the Premises prior to CAFA's use and make a written account of the condition of

the Premises which may include photographs in order to compare to the condition of the Premises upon inspection by the Parties after each use by CAFA to ensure that the Premises is returned to its pre-event condition and to ensure that Sublessee is made aware of any damages or hazardous conditions prior to presenting racing events. CAFA shall, at its own costs, restore the Premises to its pre-event condition.

6. CANCELLATION BY SUBLESSEE

Should Sublessee cancel a racing event after such event has been approved by CAFA, Sublessee shall pay CAFA a \$100 "Restocking Fee" for purchases made in preparation for the cancelled event. In the event that six (6) or more race events are cancelled during any one year during the contract term, CAFA may, in its own discretion terminate this Sublease Agreement. In the event of the termination of this Sublease Agreement, Sublessee has no right to a claim for lost revenue. In the event that CAFA does not seek to terminate this Sublease Agreement after the cancellation of six (6) or more events by Sublessee, CAFA does NOT forfeit its right to terminate this Agreement in the event of future or ongoing cancellations pursuant to this provision. Any cancellations of racing events due to weather conditions or by agreement between CAFA and Sublessee for such reasons as CAFA deems appropriate shall NOT be counted for purposes of cancellation of the Sublease although, the \$100 "Restocking Fee" may be charged at CAFA's discretion.

7. FORCE MAJEURE

The Parties agree that any delay or default in the performance of any obligation of the Parties under this Agreement due to causes beyond the Parties reasonable control and without fault or negligence, including, but not restricted to, an act of God, weather, accident, fire, explosion, riot, war, rebellion, terrorist activity, sabotage, flood, epidemic, pandemic, act of government authority in either its sovereign or contractual capacity; and in compliance with Federal, State and local environmental, archeological and historic preservation requirements that may arise or any other causes beyond the reasonable control of the Parties shall suspend the obligations of the Parties as long as performance is delayed or prevented thereby.

8. LIEN

- A. CAFA shall have the first lien against ticket office receipts and all property of the Sublessee upon the Premises for all unpaid rent or resulting damages, reimbursable expenses, payments due under paragraph 4. CAFA is empowered to withhold from the ticket office receipts all such items, and, if such funds are not available or otherwise insufficient to cover the amounts due, to impound Sublessee's property. Should the amounts due CAFA remain unpaid ten (10) days after written notice of the delinquent amount owed is provided to Sublessee, CAFA shall have the power to sell such property at public auction and to apply the cash proceeds from such auction to the unpaid amounts due to CAFA.
- B. Sublessee agrees that neither the Sublessee nor anyone claiming by, through or under the Sublessee shall have the right to file or place any mechanic's lien, or other lien of any kind or character whatsoever upon said Premises, upon any building or

improvements thereon, or upon the leasehold interest of the Sublessee herein, and notice is hereby given that no contractor, subcontractor or anyone else who may furnish any material, service, or labor for any building, improvement, alteration, repair or any part thereof shall at any time be or become entitled to a lien thereon and that for the further security of the Lessor, the Lessee covenants and agrees to supply actual notice of this provision in advance to any and all contractors and subcontractors who may furnish or agree to furnish any such material, services or labor.

9. ACCEPTANCE OF THE SUBLEASED PREMISES; LIMITATION OF LIABILITY AND DAMAGES

- A. Sublessee shall take the Premises as it finds such Premises. CAFA refuses to warrant the fitness of the Premises for the purpose for which this Sublease is granted. The obligation to make all necessary repairs, improvements or modifications to the Premises, and to maintain the Premises in such condition as is necessary as to the fitness of the Premises for the intended purpose is exclusively upon the Sublessee. Sublessee shall provide CAFA documentation it has caused to be prepared by a qualified and reputable agency, entity or individual that the Premises are in such condition as is necessary and safe for participants and the public prior to obtaining approval by CAFA to hold such racing events.
- B. Sublessee acknowledges and agrees that CAFA shall NOT be held liable hereunder for damages, regardless of the form of action by Sublessee, its owners, agents, employees, invitees, or assigns. Sublessee's exclusive remedy for any breach of this Agreement, any failure to perform any of the obligations arising hereunder, any negligence or other act on the part of CAFA, its Board, agents, representatives or employees is a refund of rent for the month in which such act or failure occurred. CAFA is not responsible for loss incurred by Sublessee resulting from any third party which may include burglary, vandalism, theft, etc.
- C. Sublessee further acknowledges and agrees that in no event shall CAFA be liable to Sublessee, its employees, committees, exhibitors, members, agents, participants, patrons, spectators or any other parties for special, incidental, out-of-pocket expenses (except as provided in the immediately preceding subparagraph), lost profits or revenue or other economic losses of any kind or nature (even if CAFA had been advised of the possibility of such damages) arising out of or in any way relating to any breach of this Agreement, any failure to perform any of the obligations arising hereunder, any negligence or any other act on the part of CAFA; nor shall CAFA be liable for any claim or demand against Sublessee by any other party as a result of their status, agreement or relationship with Sublessee.
- D. Sublessee further waives any right or claim against CAFA for any actual or alleged violation of the Occupational Safety and Health Act, or any other federal, state statute, state or local rule and/or regulation.

10. INDEMNIFICATION

- A. The parties to this contract agree that CAFA (and Pinal County pursuant to the provisions of Exhibits A and B, which bind Sublessee by this Agreement), its employees, departments, agencies, boards and commissions shall be indemnified and held harmless by Sublessee for any vicarious liability of CAFA and/or Pinal County, as a result of entering into this Agreement to the fullest extent permitted by law.
- B. Whether Sublessee is a corporation, partnership, other entity or individual, having or claiming an immunity or exemption (statutory or otherwise), from and against liability for damage or injury to property or person, Sublessee hereby waives its right to plead defensively such immunity or exemption as against CAFA, or Pinal County, its employees, departments, agencies, boards or commissions.
- C. Sublessee hereby agrees to hold harmless and hereby releases from any claim of liability, CAFA, Pinal County, its employees, departments, agencies, boards or commissions if these entities or individuals are required to surrender or hold funds in accordance with a formal levy issued by any taxing or other governmental authority.
- D. The following Indemnification provision is required by Pinal County pursuant to the Facility Lease Agreement. "Sublessee" is added in place of Lessee "and CAFA" is added to the provisions required by Pinal County for purposes of this Agreement.

"Indemnity to Pinal (and CAFA). (Sublessee) shall indemnify, defend, save and hold harmless Pinal (and CAFA), (its) officials, agents and employees, from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including any attorneys' fees, litigation expenses and/or arbitration expenses, which may be brought or made against or incurred by Pinal (or CAFA) on account of loss of or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, by reason of any omission, professional error, fault, mistake or negligent act, whether active or passive, of (Sublessee), its employees, agents or representatives or subcontractors, their employees, agents or representatives in connection with or incident to the performance of this Agreement, or arising out of workers' compensation claims, unemployment compensation claims of (Sublessee's) employees and/or its subcontractors' employees, or claims under similar such laws or obligations. Such indemnity shall not be limited by reason of remuneration of any insurance coverage herein provided. Every provision of this indemnification paragraph shall survive the termination of this Agreement."

11. CONCESSIONS

Sublessee is granted concession rights as to food and **non-alcoholic** beverages during its racing events held on the leased Premises. Sublessee is also granted a non-exclusive right to sell food and beverages at CAFA events held on the Premises which is the subject of this Agreement. CAFA may sell alcoholic beverages only during Sublessee's racing

events. No alcoholic beverages shall be knowingly sold to drivers or their pit crew by CAFA before the completion of the final race of the evening. CAFA may sell alcoholic and non-alcoholic beverages at any and all CAFA events held on the Premises. CAFA may also obtain outside food and non-alcoholic beverage vendors for CAFA events held on the Premises. **The Parties to this Agreement will NOT share proceeds from food or beverage sales.** CAFA does not currently have an existing contract with specific beverage vendors. In the event CAFA enters into such a contract with a vendor, Sublessee must comply with said contract in the purchase of products which are the subject of the contract unless and/or until, the contract with the vendor expires. CAFA must provide Sublessee sixty (60) days written notice of this requirement. Sublessee may not enter into any food or beverage sponsorship agreement without CAFA's written approval. Sublessee shall NOT enter into any agreement which would prevent compliance with this provision. Valid permits and/or licensing must be obtained by Sublessee. **SUBLESSEE SHALL NOT PERMIT ANY ALCOHOLIC BEVERAGES ON THE PREMISES WHICH ARE NOT PURCHASED FROM CAFA IN ACCORDANCE WITH THE LIQUOR LAWS AND LICENSING REQUIREMENTS.**

12. INSURANCE

- A. Without limiting any liabilities or any other obligations of Sublessee, Sublessee shall provide and maintain the minimum insurance coverage listed below. Coverage will be provided with forms and insurers acceptable to CAFA, during the term of this Sublease Agreement..
 - i. Worker's Compensation insurance with statutory limits, with Employers' Liability coverage in an amount not less than \$1,000,000 per injury, illness or disease and \$1,000,000 policy limit.
 - ii. Commercial General Liability, with minimum limits of \$3,000,000) per occurrence, and \$5,000,000 General Aggregate minimum limits. Coverage shall be at least as broad as the Insurance Service Office, Inc. Form CG00010196, issued on an Occurrence basis. The policy shall include coverage for: Bodily Injury, Broad Form Property Damage (including completed operations), Personal Injury, Fire Legal Liability, Blanket Contractual Liability,
 - iii. Commercial Automobile Liability, with minimum limits of \$1,000,000 combined single limit per occurrence, with respect to claims arising from the ownership, maintenance or use of any owned, hired, or non-owned vehicle auto assigned to or used in use or occupancy of the Premises.
 - iv. Comprehensive general liability insurance with minimum combined single limit of \$3,000,000 for each occurrence. The policy shall include coverage for bodily injury and death, broad form property damage (including completed operations), personal injury (including coverage for contractual and employees' acts), blanket contractual, contractors' protective, and completed operations.
 - v. The policies required by Section 12 shall be endorsed to include as additional insured CAFA, Pinal County, individual members of its Boards, agents, servants, directors, and employees.

- vi. The policies required by Section 12 shall be endorsed to be primary and non-contributory to insurance or self –insurance carried by CAFA, Pinal County, its Board members, agents, officials or employees
- vii. A certificate of insurance acceptable to the CAFA shall be issued to CAFA by Sublessee prior to commencement of the Agreement as evidence that policies providing the required coverages, conditions and limits are in full force and effect. Such certificate shall identify this Agreement and contain provisions that coverage afforded under the policies will not be cancelled, terminated or materially altered until at least thirty (30) days prior written notice has given to CAFA. Certificates of insurance shall be addressed as follows:

**Central Arizona Fair Association
512 S. Eleven Mile Corner Rd
Casa Grande, AZ 85194**

- viii. Failure on the part of Sublessee to procure or maintain required insurance shall constitute material breach of contract upon which CAFA may immediately terminate this Agreement.
 - ix. Certified copies of any or all of the above policies and endorsements must be provided to CAFA prior to any racing events.
 - x. Sublessee and its insurers providing the required coverages shall waive all rights of recovery against Pinal County, CAFA, its Board, agents, representatives, officials and employees.
- B. Sublessee shall not do or permit to be done anything in or upon any portions of the Premises or bring or keep anything there which would in any way conflict with the condition of any insurance policy upon the Premises or in any way increase the rate of insurance upon the Premises or on property kept therein.
- i. (Sublessee) shall not knowingly make nor permit any use to be made or acts done in or upon the Premises which will be in violation of any applicable law, statute, ordinance or regulation of any governmental agency, or cause a cancellation of any insurance policy covering the Premises or any part thereof, including but not limited to the creation, storage or dumping of hazardous or toxic waste or materials as defined by local, state, or federal laws or regulations.
 - ii. Sublessee agrees that no one shall be permitted to enter the pit area without receiving a pit pass and without signing the insurance “sign up” sheet. Minors must also provide Sublessee with a valid waiver of liability, executed by the appropriate parents or guardians, for the benefit of the Sublessor, nothing in this provision shall in any way alter, modify or restrict the Sublessee’s obligation to hold harmless the Sublessor, its members, employees, agents, officials and Pinal County for any kind of liability for injuries received by persons in the pit area or spectator area, by participants in the events, or by employees and agents of Sublessee.

- iii. All injuries or claims are to be reported in writing to the Sublessor within a seventy-two (72) hour period.

13. DAMAGE OR DEFAACEMENT OF LICENSED SPACE

Sublessee shall pay for any and all damage to the buildings, furnishings, fixtures or equipment of which is currently located on the Premises caused by Sublessee, its employees, committees, exhibitors, members, agents, patrons, participants or spectators. Sublessee further agrees to make this payment before expiration of this Agreement and such payment is a pre-requisite to renewal of this Sublease Agreement. Sublessee agrees that no decorative or other materials shall be nailed, tacked, screwed or otherwise physically attached to any part of the building or to any part of the Premises or the facilities located thereon or to any of the furnishings or fixtures currently located on the Premises without the prior written approval of CAFA.

14. SIGNS, POSTERS AND ADVERTISING

- A. Sublessee is granted the exclusive right to place signage at the Racetrack entrance, the fencing facing west or as otherwise set forth in the "Signage Location Map" attached hereto as Exhibit "E". All material is subject to prior written approval of CAFA. CAFA retains the right to sell and receive advertising monies and sponsorships as it deems appropriate in its sole discretion. CAFA shall not sell or receive advertising monies or sponsorships during the initial two (2) years of this Sublease Agreement.
- B. Sublessee shall use the name **Central Arizona Raceway** on all advertising and literature describing the location of the event and shall submit all proposed advertising material with CAFA for approval.

15. ALTERATION OF THE PREMISES

- A. Sublessee agrees to take the Premises as it finds such area and in the event, Sublessee finds it necessary to make changes to the Premises such changes shall be made at the expense of Sublessee. However, Sublessee shall make no changes or alterations without prior written approval of CAFA.
- B. Contracts for installation of electricity, gas and plumbing shall be made by the Licensee with contractors approved by CAFA. Any exception must be approved in writing by CAFA. All such connections and related work will be at the expense of Sublessee including any related costs incurred by CAFA which shall be reimbursable expenses.

16. SAFETY

- A. Sublessee shall not bring onto the Premises any material, substances, equipment or object which is likely to endanger the life of or to cause bodily harm to any person on the Premises or which is likely to constitute a hazard to property without the prior written approval of CAFA. CAFA shall have the right to refuse to allow any such material, substance, equipment or object to be brought onto the Premises and the further right to require its immediate removal.

- B. Sublessee shall not allow any portions of the sidewalk, entries, passageways, doors, elevators, vestibules, windows, ventilators, lighting fixtures or ways of access to the public utilities of the Premises to be obstructed or caused to be obstructed or caused to be used for any purpose other than for which ordinarily intended without prior written approval of CAFA.
- C. Sublessee agrees that all persons, articles, exhibits, fixtures, displays and other equipment shall be brought into and out of the building only at designated entrances, exits and times as approved by CAFA. Vehicular traffic or parking in areas on the Premises not designated for that purpose shall require prior written approval of CAFA.
- D. Sublessee shall not permit entry of more than the maximum number of persons to any event held. The maximum number of persons to be permitted shall be determined in advance of any event and approved in writing by CAFA.
- E. CAFA is entitled to make such announcements as CAFA may deem necessary at any time in the interest of public safety. Sublessee agrees that it will cooperate and cause its agents, employees, participants and performers to cooperate with the delivery of such announcements for public safety including, but not limited to, announcements to require patrons to return to their seats or exit the Premises.
- F. CAFA has the right to cause the interruption of any event in the interest of public safety and to likewise cause the termination of such event when, in the sole judgment of CAFA, termination is necessary in the interest of public safety, and Sublessee shall have no right or claim for any damages against CAFA, its officers, agents and employees for the exercise of this right.
- G. Sublessee agrees to provide a full demonstration of any proposed pyrotechnics or special effects to be used in conjunction with the purpose for which this Sublease is granted. The full pyrotechnic demonstration will be attended by representatives of CAFA and State Fire marshal's office and a State of Arizona bonded and licensed pyrotechnician. Sublessee agrees to abide by and follow the instructions of said representatives as to the use, modification or ban of the proposed pyrotechnical display. Sublessee agrees to bear the full cost and expense for the proposed pyrotechnic display and for the cost of state representatives to monitor and review the proposed pyrotechnic display. CAFA will consider approval of a pyrotechnic display without such demonstration ONLY upon written approval of such activity being performed without such demonstration by the State Fire Marshall and the Fire Protection Agency which must be onsite for such event at the expense of Sublessee.
- H. During the sublease term, Sublessee's use of the Premises will not include the use of any hazardous substance without Sublessee first obtaining the written consent of Sublessor, except for gas, oil and other materials normally associated with the conduct of racing. Sublessee understands and agrees that Sublessor's consent is at Sublessor's sole option and complete discretion and that such consent may be withheld or may be granted with any conditions or requirements that Sublessor deems appropriate.
- I. During the Sublease term, Sublessee shall be fully liable for all costs and expenses related to the usage, storage, removal and disposal of hazardous substances used or kept on the property by Sublessee, and Sublessee shall give immediate notice to CAFA and Pinal County of any violation or any potential

violation of any environmental regulation, rule, statute, or ordinance relating to the use storage, or disposal of any hazardous substance.

- J. Sublessee at its sole costs and expense, agrees to remediate, correct or remove from the Premises and contamination of the property cause by any hazardous substances which has been used or permitted by Sublessee on the Premises during any term of this Sublease. Remediation, correction or removal shall be in a safe and reasonable manner, and in conformance with all applicable laws, rules and regulations. Sublessee reserves all rights allowed by law to seek indemnity or contribution from any person, other than CAFA or Pinal County, its officers or employees, who is or may be liable for any such cost and expense.
- K. Sublessee agrees to indemnify, defend and hold Pinal County, CAFA and its officers and employees harmless from and against all claims, causes, of action, damages, loss, costs, expense, penalties, fines, lawsuits, liabilities, attorney's fees, engineering and consulting fees, arising out of or in any manner connected with hazardous substances, which are caused or created by Sublessee on or after the date of this Sublease and during any term of this Sublease, including but not limited to, injury or death to persons or damage to property, and including any diminution of the value of any leased Premises which may result from the foregoing. This indemnity shall survive the cessation, termination, abandonment or expiration of this Sublease.
- L. **SUBLESSEE SHALL, AT ITS EXPENSE, RETAIN LICENSED AND/OR CERTIFIED SECURITY FOR ANY AND ALL EVENTS.**
Sublessee must obtain prior written approval from CAFA as to the qualifications and amount of security personnel required for each event.
- M. **SUBLESSEE SHALL, AT ITS EXPENSE, PROVIDE ANY AND ALL NECESSARY AND APPROPRIATE EMERGENCY EQUIPMENT AND CERTIFIED PERSONNEL FOR EACH EVENT IN ACCORDANCE WITH ALL APPLICABLE RACING STANDARDS.**
This shall include, fire suppression team specifically trained to deal with the fuels and other hazardous and/or flammable materials involved in racing AND/OR ambulance with trained and certified and fully insured paramedics. In the event that Sublessee contracts for such services, the provider shall obtain insurance naming CAFA and Pinal County as additional insured for each event. Although CAFA has no obligation to oversee the safety of such events, CAFA may terminate any event should Sublessee fail to adequately provide for the safety of participants or those in attendance at any event.
- N. Sublessee shall provide a current and updated Safety and Emergency Response Plan to CAFA for consideration and written approval within thirty (30) days prior to the commencement of any racing event.

17. CAFA DETERMINATION THAT USE PREMISES WOULD ENDANGER PUBLIC HEALTH OR SAFETY OR OTHER EVENTS MAKING USE DANGEROUS, IMPOSSIBLE OR IMPRACTICABLE

If CAFA, in good faith, determines that because of any change or perceived change in the condition of the Premises, use of such Premises would constitute a danger to the health or safety of any person or if, after signing of the Agreement, an event occurs which CAFA in good faith believes renders the use of the Premises dangerous, impossible or impracticable,

CAFA may terminate or suspend the Sublease, and the Sublessee shall have no right or claim for any damages against CAFA or its officers, agents and employees.

18. COMPLIANCE WITH LAWS AND REGULATIONS

Sublessee shall comply with all the statutes, regulations, ordinances, permits and orders adopted or established by federal, state or local governmental agencies or bodies and with all CAFA rules and regulations including, but not limited to Pinal County Health and Safety regulations and permitting and/or licensing requirement for the sale of food and beverages. **ALL EVENTS MUST COMPLY WITH PINAL COUNTY ZONING, DUST AND NOISE ORDINANCES, RULES AND REQUIREMENTS.**

19. OBJECTIONABLE PERSON

CAFA reserves the right to eject or cause to be ejected from the Premises any objectionable person or persons and CAFA shall not be liable to Sublessee for any damages that may be sustained by Sublessee through the exercise by CAFA of such right.

20. PERFORMANCE APPROVAL

CAFA retains the right to approve all racing events to be presented pursuant to the Sublease Agreement. Sublessee shall submit a proposed racing schedule for consideration and approval by CAFA not less than sixty (60) days prior to an event. CAFA, in its own discretion may approve a specific racing event within sixty (60) days. However, such approval shall not prevent CAFA from denying approval of any other racing event for which Sublessee has not been submitted to CAFA within sixty (60) days prior to such event. Sublessee agrees that no racing event shall be held if CAFA provides Sublessee written notice objecting to such event on the grounds the activity violates Arizona criminal statutes, fails to uphold event advertising claims or violates content restrictions imposed by the Board in good faith.

21. RECORDING

- A. Sublessee agrees that no recording either visual or audio of any kind will be made of any non-racing event without prior written approval from CAFA. CAFA has the right to require payment for such privilege.
- B. ANY video or audio taped events must be provided to CAFA and/or authorized law enforcement agencies in the event of criminal conduct related to such event.

22. COPYRIGHTS

Sublessee assumes all costs of all patented, trademarked, franchised or copyrighted music, materials, devices, processes or dramatic rights used on or incorporated in the event. Sublessee agrees to indemnify, defend and hold harmless CAFA from any claims or costs including legal fees which may arise from question of use of any such material described above.

23. BROADCAST RIGHTS

CAFA reserves all rights and privileges for outgoing television or radio broadcasts origination from Subleased space during the Sublease term. Should CAFA grant Sublessee such privilege, CAFA has the right to require advance payment of any estimated related costs to CAFA and may also require payment for said privilege. Such permission must be obtained in writing in advance of the broadcast date.

24. LOST ARTICLES

CAFA shall have the sole right to collect and have the custody of articles left on the Premises by persons attending any racing event held on the Premises, and Sublessee shall not collect or interfere with the collection of such articles except to deliver such articles to CAFA. Such articles may not be removed from the Premises by Sublessee, its agents, contractors or employees.

25. ASSIGNMENT

Sublessee shall **NOT** assign the Sublease Agreement or permit any use of the Premises or sublet the Premises or any portion thereof.

26. CHOICE OF LAW

The parties hereby agree that this Agreement was negotiated, made and entered into in Arizona and under the laws of Arizona. The Parties agree that the Agreement shall be governed by and construed with the laws of Arizona and any litigation forthwith shall be resolved in the courts of Pinal County, State of Arizona.

27. COMPLETE AGREEMENT

This Agreement and Exhibits contain all the agreements and conditions between the Parties. All terms and conditions of this written contract shall be binding upon the Parties, its heirs and representatives and assigns and cannot be waived by any oral representation or promise of any Party or agent or other representative of the Parties hereto unless the same be in writing and signed by the Parties or its duly authorized agent or agents who executed this contract. Such written document must be incorporated by specific reference herein as a part of this contract.

28. CIVIL RIGHTS

Sublessee shall comply with Executive Order 99-4, which mandates that all persons, regardless of race, color, religion, sex, age, national origin, or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules and regulations, including the Americans with Disabilities Act. Sublessee shall take affirmative action to ensure that applicant for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability. Sublessee shall also comply with Executive Order 2005-30 concerning the immigration status of its employees and compliance with Federal immigration laws.

29. RETENTION CAFA PRIVILEGES AND RIGHTS

The waiver or failure of CAFA to insist upon strict and prompt performance of all or any of the covenants and agreements and the acceptance of such performance shall not constitute or be construed as a waiver or relinquishment of CAFA's right to enforce the same strictly according to its terms in the event of a continuous or subsequent default on the part of Sublessee.

30. ARBITRATION

The parties agree to use arbitration to resolve disputes, but only to the extent required by ARS § 12-1518.

31. OPERATIVE DATE OF CONTRACT

It is agreed that this Agreement will not be in force until it has been signed by both Parties and approved by the Pinal County Board of Supervisors.

32. SEVERABILITY

In the event any paragraph, clause or provision of this agreement should be found unlawful or unenforceable, such paragraph, clause or provision shall be deemed severable from the other provisions of this Agreement and the other provisions may be strictly enforced.

33. COLLECTION FEES/ATTORNEY'S FEES

If Sublessee is in default under its payment obligation, it agrees to pay interest on the unpaid balance at the rate of twelve (12) percent per annum. If collection costs, attorney's fees or court costs are incurred by CAFA for collection, it agrees to pay the collection costs and attorney's fees in addition to any court costs and any other reasonable attorney's fees.

34. CONTRACT VOIDABILITY

This signed Agreement, plus insurance, deposit and bonds, must be returned within fourteen (14) days after the above-noted Agreement date; otherwise said Agreement may be determined null and void at the sole discretion of CAFA.

35. RETENTION OF RECORDS

Sublessee shall retain and require all of its sub-contractors to retain for inspection and audit by CAFA, all books, accounts, reports, files and other records relating to the performance of this contract for a period of five (5) years after its completion. Upon request by CAFA, a copy or the original, of all such records shall be produced by Sublessee.

36. SUDAN/IRAN

As required by A.R.S. §§ 35-391.06(A) and 35-393.06(B), Sublessee attests it does not have scrutinized business operations (as defined by A.R.S. §§ 35-391 and 35-393 respectively) in Sudan or Iran.

37. WAIVER

The failure of one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Contract constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

38. EARLY TERMINATION

In the event that either party believes that the other materially has breached any obligations under this Agreement, or CAFA believes that Sublessee has exceeded the scope of this Agreement, such party shall so notify the breaching party in writing. The breaching party shall have thirty (30) days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been affected. If the breach is not cured within the thirty (30) days, the non-breaching party shall have the right to terminate the Agreement without further notice.

39. NOTICES

Any notice given pursuant to this Agreement shall be in writing and shall be considered to have been given when actually received by the following addressee or its agents or employees:

If to CAFA:

**Central Arizona Fair Association
512 S. Eleven Mile Corner Rd
Casa Grande, AZ 85194**

If to Sublessee:

**Brad Whitfield, 5 Star Awards & Events, LLC
1520 W. Las Lomas
Yuma, AZ 85364**

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

**CENTRAL ARIZONA FAIR
ASSOCIATION**

By: [Signature]
Board Representative Central
Arizona Fair Association

Date: 9/15/2022

Pinal County Board of Supervisor's Representative

Date: 09/28/2022

Pinal County Attorney

[Signature]

Pinal County Clerk

[Signature]



Sublessee

By: [Signature]

Date: 9/14/2022

[Signature]
Date: 9-30-2022

Date: 9-15-22

Date: 09/28/2022

**EXHIBIT A
TO
CENTRAL ARIZONA FAIR ASSOCIATION
SUBLEASE AGREEMENT AS TO THE CENTRAL ARIZONA RACEWAY**

Pinal County Fairgrounds Facilities Lease Agreement
Official Records of Pinal County Recorder Fee Number: 2011-081764



**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLE**

When Recorded Return to
Clerk of the Pinal County
Board of Supervisors
P.O. Box 827
Florence, Arizona 85132

DATE/TIME: 10/07/2011 1032
FEE: \$0.00
PAGES: 7
FEE NUMBER: 2011-081764



**PINAL COUNTY FAIRGROUNDS FACILITIES
LEASE AGREEMENT**

THIS AGREEMENT is made effective this 7th day of September, 2011, between Pinal County, a political subdivision of the State of Arizona (hereinafter referred to as "Pinal") and the Central Arizona Fair Association, an Arizona Nonprofit Corporation formed by the Pinal County Fair Commission (hereinafter referred to as "Lessee").

RECITALS

WHEREAS, Pinal owns and operates the County Fairgrounds (hereinafter "Fairgrounds"), located within Section 25, T6S, R7E, at a locale generally known as 11-Mile Corner;

WHEREAS, the Fairgrounds property includes a motor sports race track, office building, various exhibit buildings, stalls, corrals and outbuildings, grandstands, public seating, staging areas, restrooms, ticket booth, lights and related electrical features, and adjacent parking areas (collectively hereinafter "Premises"); and

WHEREAS, Lessee intends to promote and stage a number of fair and related public activities and events; and

WHEREAS, Pinal regards the use of the Premises for fair and related public activities and events as a public use, wherein the event may be enjoyed by the public and participants alike; and

WHEREAS, the Board of Supervisors of Pinal County hereby finds that entering into this lease with Lessee to permit the operation of the fairgrounds for fair and related activities and events at the Premises is within Pinal's authority under A.R.S. § 11-251(9); and

WHEREAS, the Board of Supervisors of Pinal County hereby finds that the scope and term of this Agreement constitutes a lease within the purview of A.R.S. § 11-251(9) and that this contract shall therefore be awarded in accord with that statutory provision.

NOW, THEREFORE, the parties to this Agreement, in consideration of the mutual covenants set forth herein, agree as follows:

I. Term & Lease Fee

A. Normal term. This Agreement shall be for a twenty-five (25) year term commencing on the 7th day of September, 2011, and ending on the 31st day of August, 2036.

B. Early termination. In addition to any other provision of the Agreement allowing for an early termination, this Agreement shall be subject to termination by Pinal for cause. Within the meaning of this subsection, "cause" shall expressly include failure by Lessee to fulfill its obligations under this Agreement, or any combination of facts and events that may give Pinal a sound basis to believe that the Lessee will be unable to fulfill its obligations under this Agreement.

II. Pinal's Obligations

A. The Premises. The premises include Pinal County Assessor Tax Parcels 401-14-5, 401-14-7B and 401-14-9A, located within Sec.25, T6S, R7E, Records of Pinal County, Arizona, commonly known as the Pinal County Fairgrounds at 11 Mile Corner.

B. Occupancy of the Premises and Lease Rate. Lessee shall be entitled to occupancy of the Premises for the amount of Ten Dollars and No Cents (\$10.00) per year. The first annual payment shall be due on or before October 1, 2011, and each succeeding payment shall be due on each August 1st during the term of the lease.

C. Condition of Premises. At the beginning of the lease term, Pinal will furnish the Premises in the "as is" condition in which the Premises existed on the date on which this Agreement is signed by the Parties.

D. Insurance. Pinal County shall maintain property damage insurance coverage, in the same manner as it provides property damage insurance coverage on other County property, for all permanent structures and buildings currently located on the Premises. Pinal County shall not be responsible for providing any other insurance coverage for the Premises.

III. Lessee's Obligations

A. Independent Contractor. Lessee acknowledges that it is an independent contractor; that it alone retains control of the manner of conducting its activities in furtherance of this Agreement; and that none of the persons or agents Lessee may employ, nor any volunteers operating on behalf of Lessee, nor any sponsor, nor any other individual appearing during any event at the behest of or as a guest of Lessee, are by virtue of this Agreement to be deemed employees of Pinal.

B. Event Security. Lessee agrees that it will be provide security adequate to meet the requirements of this Agreement.

C. Premises. Lessee agrees that as part of the conduct during any event, it will be responsible for Premises management, in accord with the following:

- i. **Utilities.** Lessee shall pay for all electrical, natural gas, waste disposal and water utilities for the Premises. Pinal shall not be liable for an interruption or failure in the supply of any utilities to the Premises.
- ii. **Premises Abuse.** Lessee agrees to keep and maintain the Premises in good condition, normal wear and tear excepted, and further agrees to pay the cost of any repairs as a result of a breach of this obligation.
- iii. **Maintenance.** Lessee is required to maintain the Premises, in a safe, clean condition as is appropriate for the facility.

D. Insurance. Lessee shall maintain liability insurance which will cover that party's participation under this Agreement. Lessee agrees to provide, pay for and maintain during the term of this Agreement and any extensions thereof, at its sole cost and expense, a policy or policies of insurance of the following types:

- i. Comprehensive general liability insurance with minimum combined single limit of \$3,000,000.00 for each occurrence. The policy shall include coverage for bodily injury and death, broad form property damage (including completed operations), personal injury (including coverage for contractual and employees' acts), blanket contractual, contractors' protective, and completed operations.
- ii. Lessee shall not knowingly make nor permit any use to be made or acts done in or upon the Premises which will be in violation of any applicable law, statute, ordinance or regulation of any governmental agency, or cause a cancellation of any insurance policy covering the Premises or any part thereof, including but not limited to the creation, storage or dumping of hazardous or toxic waste or materials as defined by local, state, or federal laws or regulations.
- iii. The certificates evidencing coverage shall name Pinal County, its agents, officials, and employees as additional insured and shall specify that that insurance afforded hereunder shall be primary insurance and any insurance or self-insurance of Pinal, its agents, officials, and employees shall be excess, not contributory insurance to that required hereunder. The policy and policies providing coverage hereunder shall contain a severability of interest provision. Pinal reserves the right to continue payments of premiums for which Pinal will be entitled to reimbursement from Lessee.

- iv. The certificates evidencing coverage shall provide for a minimum of 30-days notice to Pinal prior to the cancellation of any policy, and such certificates shall be delivered to Pinal no later than 15 days prior to an event.

E. Indemnity to Pinal. Lessee shall indemnify, defend, save and hold harmless Pinal, its officials, agents and employees, from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including any attorneys' fees, litigation expenses and/or arbitration expenses, which may be brought or made against or incurred by Pinal on account of loss of or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, by reason of any omission, professional error, fault, mistake or negligent act, whether active or passive, of Lessee, its employees, agents or representatives or subcontractors, their employees, agents or representatives in connection with or incident to the performance of this Agreement, or arising out of workers' compensation claims, unemployment compensation claims of Lessee's employees and/or its subcontractors' employees, or claims under similar such laws or obligations. Such indemnity shall not be limited by reason of remuneration of any insurance coverage herein provided. Every provision of this indemnification paragraph shall survive the termination of this Agreement.

F. Subcontractors. Lessee to insert in all subcontracts the paragraphs herein entitled "Insurance," and "Indemnity to Pinal."

G. General Compliance with Laws. Lessee shall abide by all federal, state and local laws.

H. Use of Pinal's Liquor License. Lessee agrees to abide by the separate Concession Agreement between Pinal and Lessee, and that a termination of this Agreement automatically terminates the Concession Agreement.

I. Improvements.

- i. **Lessee's Responsibilities.** Lessee will be responsible for the maintenance and repair of all facilities, including, but not limited to:

Facility Electrical Lighting	Sewage Disposal and Restrooms
Fencing	Ticket Booths
Seating Areas	Parking Lots
Grandstands	Exhibit Buildings
Office Building	Water Supply

All improvements are the property of Pinal. Lessee must receive approval from Pinal for any additional improvements to the Premises.

IV. Notice. All notices and other communication authorized or required hereunder shall be in writing and shall be deemed to have been given when delivered personally or deposited in the

United States mail in a postage pre-paid envelope addressed to the other party to the address provided herein:

Lessee

Central Arizona Fair Association
558 E 10th Street
Casa Grande, AZ 85122

Pinal

Pinal County Manager
P.O. Box 827
Florence, Arizona 85132

V. Assignability. Lessee agrees that it shall not assign, sublet, subcontract or transfer its interest hereunder without the written consent of the Pinal County Board of Supervisors.

VI. Amendments and Modifications. No modification or waiver of any provision of this Agreement shall be valid unless it is in writing and signed by the party against whom it is sought to be enforced. No waiver at any time of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement at that time or waiver of that or any other provision at any other time.

VII. Conflict of Interest. This Agreement is subject to cancellation under the conflict of interest provisions of A.R.S. § 35-511.

VIII. Conflict Disputes. Lessee agrees to submit to informal arbitration of any disputes and cooperate with Pinal in resolution of disputes. In the event of litigation, jurisdiction and venue shall be in Pinal County Superior Court.

IX. Governing Law. This Agreement is executed in the State of Arizona and this Agreement and every matter or thing arising therefrom shall be construed in accordance with the laws of the State of Arizona.

X. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties.

XI. Severability. In case one or more provision of this Agreement is held invalid or voidable, the validity of the remaining provisions shall not be affected thereby.

XII. No Other Agreements. This Agreement, the Management Agreement dated September 7, 2011, and the Liquor License Concession Agreement dated September 7, 2011 shall constitute the only agreements between the parties with respect to the subject matter hereof and no representations, promises, understandings, or agreements, oral or otherwise, not herein contained and relating to said subject matter shall be of any force or effect.

XIII. Claims/Limitations of Action. No action shall be maintained by Lessee, its successors or assigns, against Pinal on any claim based upon or arising out of this Agreement or out of anything done in connection with this Agreement unless such action shall be commenced within one year of the termination of this Agreement.

XIV. Breach by Lessee and Remedies Therefore. Each of the obligations agreed to herein by Lessee shall be deemed a continuing condition precedent to Pinal's obligation to perform or cooperate further with respect to the undertaking herein. The breach by Lessee of any such condition shall further give rise to a bar against any claim of damage against Pinal on behalf of Lessee, shall create an obligation on behalf of Lessee to indemnify Pinal against any third-party claim or claims arising from the invocation of any remedy allowed under this Agreement, and shall entitle Pinal to individually or cumulatively:

A. Summarily suspend or cancel any scheduled event at any time prior to the completion thereof, including causing the Premises to be cleared of spectators and participants, locking the gates and prohibiting admission to anyone for the purposes of this Agreement;

B. Summarily cancel this Agreement; and/or

C. Proceed with any other available remedy in equity or law.

XV. Waiver. Waiver of any of the terms of this Agreement shall not be valid unless it is in writing and signed by all parties. The failure of claimant to enforce the provisions of this Agreement or require performance by opponent of any of the provisions, shall not be construed as a waiver of such provisions or affect the right of claimant to thereafter enforce the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of the Agreement.

XVI. Headings. The headings for each paragraph of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraphs or of this Agreement nor in any way affect this Agreement.

IN WITNESS WHEREOF, the parties executed this AGREEMENT, as follows.

Central Arizona Fair Association, an Arizona
Nonprofit Corporation

Pinal County, a political subdivision of the
State of Arizona

By: [Signature]
Corporate Officer

By: [Signature]
Chairman of the Board of Supervisors

Date: 9-28-11

Date: 9/7/11

Attest: [Signature]
Corporate Officer

Attest: [Signature]
Clerk of the Board of Supervisors

Approved as to form:

Joe A. Albo, Acting Chief Civil Deputy County
Attorney

S:\KRIS\JOE\Fairgrounds\PC Fairgrounds Facilities Lease Agreement.docx

**EXHIBIT B
TO
CENTRAL ARIZONA FAIR ASSOCIATION
SUBLEASE AGREEMENT AS TO THE CENTRAL ARIZONA RACEWAY**

Concession Agreement between Pinal County and Central Arizona Fair
Association

Official Records of Pinal County Recorder Fee Number: 2011-081766

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**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLE**

When recorded mail to:

Clerk of the Board Office
P.O. Box 827
Florence, Arizona 85232

DATE/TIME: 10/07/2011 1032
FEE: \$0.00
PAGES: 7
FEE NUMBER: 2011-081766



(The above space reserved for recording information)

CAPTION HEADING

Concession Agreement
between Pinal County and Central Arizona Fair Association

DO NOT DISCARD THIS PAGE. THIS COVER PAGE IS RECORDED AS PART OF YOUR DOCUMENT. THE CERTIFICATE OF RECORDATION WITH THE FEE NUMBER IN THE UPPER RIGHT HAND CORNER IS THE PERMANENT REFERENCE NUMBER OF THIS DOCUMENT IN THE PINAL COUNTY RECORDER'S OFFICE.

CONCESSION AGREEMENT

This Concession Agreement (the "Agreement") is entered into this 7th day of September, 2011 between Pinal County ("County"), and the Central Arizona Fair Association, an Arizona non-profit corporation.

RECITALS

Whereas the County has entered into a Lease Agreement with the Central Arizona Fair Association ("CAFA") dated September 7, 2011, relating to the operation of the Pinal County Fair Grounds and certain County owned property described therein (the "Premises"), and

Whereas the CAFA entered into a Management Agreement with Michael Searle and Karen Searle DBA: Fair Executives (collectively referred to as "Fair Executives" or "CAFA") granting them the exclusive right to operate the Pinal County Fairgrounds and the exclusive right to operate the catering and vending on the Premises; and

Whereas the County owns the real property known as the Pinal County Fairgrounds together with the buildings and structures located thereon (the "Premises") and as the owner, may obtain a liquor license for the sale of alcoholic beverages on the Premises pursuant to A.R.S. § 4-205.03, and

Whereas the County is willing to obtain the liquor license and allow CAFA to operate under the license provided that CAFA and/or its designee pursuant to A.R.S. § 4-205.03(B), indemnifies the County, provides liability insurance, including liquor liability coverage, all as more particularly described herein.

AGREEMENT

Therefore, in consideration of their mutual acknowledgment of the foregoing, and the promises, covenants, terms and conditions set forth herein, the parties agree as follows:

1. As soon as reasonably possible after execution of this Agreement, the County shall make application for a government license pursuant to A.R.S. § 4-205.03. CAFA shall cooperate with and assist the County in processing the application with the Arizona Department of Liquor Licenses and Control. All filing fees shall be paid for by CAFA or reimbursed to the County if directly paid for by the County.

2. The County therefore grants to CAFA the right to manage the operation of the liquor services under the County license. CAFA assume total fiscal responsibility for such operation. CAFA shall comply with all liquor laws and regulations of the State of Arizona applicable to the sale of alcoholic beverages on the Premises.

3. CAFA shall indemnify and hold the County harmless from (a) any claim related to or arising out of the general operations, catering, or restaurant operations conducted by CAFA under the its Agreement with the Central Arizona Fair Association,

including but not limited to any employee or personnel matters, wage, benefit, withholding, labor relations, or FLSA claim or claims and any commercial, trade, business, credit, or business operations claim; and (b) any claim arising out of CAFA's failure to observe any applicable Federal, State, or local laws, ordinances, or regulations; and (c) CAFA shall indemnify and hold the County harmless from any claims for personal injury, product liability, or property damage arising from CAFA's activities in connection with this Agreement, specifically including but not limited to any liability or claim which may arise or be alleged to arise out of the sale, distribution, or furnishing by CAFA to anyone, of alcoholic beverages of any kind on the Premises. CAFA does further agree to waive and be forever barred from raising, as to the County only, any claim or defense (including but not limited to claim that the County is a party or non-party at fault) in any litigation, where such claim or defense is based upon or is raised in conjunction with an assertion that CAFA has the benefit of any limitation of its liability arising out of A.R.S. § 4-301 as the same now exists or hereafter may in substantially the same form, be amended. The County shall notify CAFA of any such claim asserted against the County in writing as soon as practicable, and shall cooperate with CAFA in CAFA's investigation, defense, and/or settlement of any such claim or any suit arising by reason thereof, with the understanding that the provisions of this cooperation clause shall not be construed to impose any liability, responsibility, or agreement upon the County to contribute any funds or money to any investigation, defense, or settlement performed or agreed to by CAFA and/or its insurance carrier(s). In no event shall CAFA be liable for negligent acts or omissions of the County or its employees.

4. (a) During the Term, CAFA, at its costs, agrees to procure and maintain a policy of commercial general liability and property damage insurance with an insurance company or companies with a Best's Rating of at least A-. The conditions, terms, and limits of such policies are set forth below.
- (b) The County in no way warrants that the minimum limits contained herein are sufficient to protect CAFA from liabilities that might arise out of its operations and CAFA is free to purchase such additional insurance as it may determine to be necessary.
- (c) CAFA shall provide coverage at least as broad and with limits of liability no less than:

1. Commercial General Liability – Occurrence Form (Form CG 0001, ed 10/93 or equivalent) or CG Occurrence form CG 00 01

07/98

General Aggregate	\$2,000,000.00
Liquor Liability	\$2,000,000.00
Products–Completed Operations Aggregate	\$1,000,000.00
Personal and Advertising Injury	\$1,000,000.00
Each Occurrence	\$1,000,000.00

Fire Damage (any one fire)	\$1,000,000.00
Medical Expenses (any one person)	optional

2. Workers' Compensation and Employers' Liability

Workers' Compensation statutory

Employers' Liability

Each Accident \$100,000.00

Disease (each employee) \$100,000.00

- (d) The Commercial General Liability and Dram Shop Liability policies are each to provide for the following:
- Pinal County, its departments, officers, officials, agents, employees, and volunteers are to be named as additional insured to the extent provided by the indemnity provisions of this Agreement
 - The additional insured coverage specifically excludes coverage for liability attributable to the sole negligence of the County
 - Except as provided in the Agreement, the coverage shall not contain special limitations on the scope of protection afforded to the County, its departments, officers, officials, employees, and volunteers.
 - Except for the County's property insurance, CAFA insurance coverage shall be primary insurance with respect to the County, its departments, officers, officials, agents, employees, and volunteers; and any insurance or self insurance maintained by the County, its departments, officers, officials, employees, or volunteers shall be excess of CAFA' insurance and shall not contribute to it.
 - Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City, its departments, officers, officials, agents, employees, contractors, and volunteers.
 - CAFA' insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - Coverage provided by CAFA shall not limit the liability assumed under the indemnification provisions of this Contract.
- (e) Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the County. Such notice shall be by certified mail, return receipt requested. Insurance is to be placed with insurers with a Best rating of no less than "A-."
- (f) CAFA shall furnish the County Manager with certificates of insurance verifying coverage required by this Agreement. The

certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsement that restrict or limit coverage as required in Section 4(c) of this Agreement shall be clearly noted on the Certificate of Insurance. The County reserves the right to require complete, certified copies of all insurance policies required by this Agreement, at any time.

- (g) Any modification or variation from the insurance requirements in this contract shall be made by the Pinal County Law Department, whose decisions shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.
- (h) The limits shall be increased by a reasonable amount at the written request of the County no more frequently than every third year. Such policy shall be written as primary policy and not contributory with or in excess of any policy which the County may carry.

5. Pursuant to A.R.S. § 4-205.03(B), the County is required to designate a natural person as manager (the "Manager"), who is responsible for administering the license. The County shall name CAFA as the employee who has the overall management responsibility for CAFA's operations on the Premises. If that individual changes for any reason, CAFA shall notify the County and the County shall designate the new Manager with the Arizona Department of Liquor Licenses and Control. The County will not change the Manager without CAFA's consent unless (a) The Agreement with CAFA is terminated, or (b) this Agreement is terminated either through CAFA's default or otherwise.

6. The term of this Agreement shall be the same as the term of the CAFA Agreement with the Central Arizona Fair Association, including any renewals or extensions thereof, except that any termination of the Operating Agreement shall be deemed to effect an immediate termination of this Agreement.

7. Either party may terminate this Agreement for any material default under this Agreement, effective thirty (3) days after giving written notice to the defaulting party specifying the reason(s) for the termination, if the default is not cured within the thirty (30) day period. In the event a default cannot be reasonably cured within thirty (30) days, the defaulting party shall be entitled to more time to cure, not to exceed an additional sixty (60) days, provided that the defaulting party commences action to cure within the thirty (30) days and diligently continues thereafter to cure the default within the additional sixty (60) days.

8. Any written notice required or provided for under the terms of this Agreement shall be given and deemed to have been duly served by either personally delivering to or by depositing same, certified mail, return receipt requested, postage

prepaid, in the United States mail addressed as follows or to such other person or address as a party may hereinafter designate in accordance with this Section:

CAFA
P.O. Box 3689
Arizona City, AZ 85123

Pinal County
P.O. Box 827
Florence, AZ 85132

9. This Agreement shall not be assigned by either party without the express written consent of the other, except that either party may assign this Agreement with out the other's consent to a parent company, a subsidiary, or any subsidiary of its parent company, if such assignee assumes in writing the obligations of the assignor.

10. This Agreement and any document(s) referred to herein, embody the entire Agreement between the parties hereto and supersede any prior agreements, representations and understandings whether written or oral, relating to the subject hereof. No modification of this Agreement shall be binding upon the parties hereto, or either of them, unless such modification shall be in writing and executed with same formalities as this Agreement. If suit is filed by either party to enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to recover its costs of such suit from the other party, including reasonable attorney's fees.

11. For all purposes under this Agreement, CAFA shall be and act as an independent contractor, and under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, or employment between CAFA and the County. CAFA shall be solely responsible for the conduct of its employees and agents in connection with their performance of CAFA's obligations hereunder.

12. The parties acknowledge that this Agreement is subject to cancellation by the County pursuant to the provisions of A.R.S. § 38-511.


13. CAFA understands and acknowledges the applicability of it to the Immigration Reform and Control Act of 1986. CAFA agrees to comply with the IRCA in performing under this Agreement.

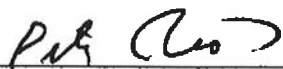
14. This Agreement may be executed in multiple counterparts, all of which shall constitute one Agreement, and each of which shall be deemed an original.

In Witness Whereof, the parties hereto have executed this Agreement this 7th day of September 2011.

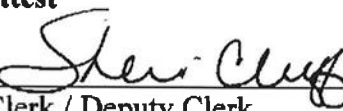
CAFA

Pinal County

By: 
Print Name: _____
Dated: _____

By: 
Print Name: Peter Rios
Dated: 9/7/11

Attest

By: 
Clerk / Deputy Clerk
9/7/11

**EXHIBITS
C AND D
TO
CENTRAL ARIZONA FAIR ASSOCIATION
SUBLEASE AGREEMENT AS TO THE CENTRAL ARIZONA RACEWAY**

Exhibit C; Map, Raceway leased area defined by black line. Parking area defined by green line.

Exhibit D; Fill Pipe Map, Red Star-Location of fill pipe water meter.

Exhibits C and D are on file in the following Departments:

- Pinal County Open Space and Trails Department
- Pinal County Clerk of the Board Department

EXHIBIT C

Raceway leased area defined by black line. Parking are defined by green line.



Exhibit D-Fill Pipe Map

Red Star-location of fill pipe water meter.



Exhibit E-Signage

Display of signage must meet any and all ordinances including building and sign ordinance and further must be approved by CAFA.

Area to be used by lessee for display for signage includes:

The main entrance to the track

The fence facing the track parking area

The west side of the catch fence

The area within the area designated as leased area by the overhead image defined in paragraph #2 and attached hereto.

The lessee will use the center 1/3 of the east side of the catch fence to display the name of the race facility and website. One fourth of this area may be used to promote upcoming events. No track sponsors may be included on the EAST side of the catch fence except in the case that the sublessee enters into a presenting sponsor agreement for the track or an event. In such case the name or logo of the sponsor may be included but shall be no larger than 1/3 the size of the name or logo of the track or the name or logo of the upcoming event.

CAFA will be allowed to use 30 feet of the West side of the catch fence to promote the Pinal Fairgrounds and Event Center and/or upcoming events and will abide by the same sponsor recognition rules. CAFA retains the right to install signage as allowed by any other portion of the agreement or signs that are installed for safety or security reasons.

CAFA retains the rights to display signage throughout the area during special events promoted by CAFA so long as such signage is not permanent and does not damage any permanent signage unless repaired or restored by CAFA. CAFA will make a reasonable effort not to block the visibility of permanent sponsor signs unless such signs conflict with event sponsors.