

9-23-08
NB(d)14

**SUMTER COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY**

SUBJECT: Lease Modification #2 to the Lease Dated October 24, 1980 between Sumter County and Sumter Fair Association, Inc.

Work Session (Report Only) **DATE OF MEETING:** 9/23/08
 Regular Meeting
 Special Meeting

BUDGET IMPACT: \$116,000 per year for 5 years and System Capital Cost > \$10,000
 Annual **FUNDING SOURCE:** General Fund
 Capital **EXPENDITURE ACCOUNT:** _____
 N/A

REQUESTED ACTION: Approval of Lease Modification #2

HISTORY/FACTS/ISSUES:

The lease modification provides the opportunity for the Sumter Fair Association, Inc. to fully operate and maintain the County "Ag Center". The lease modification demonstrates the continued support to the use of the Ag Center by provided a cap of \$116,000 per year for 5 years and system capital costs > \$10,000 (building envelope, major AC equipment failure, and similar major impacts).

It is the direction of this lease modification that the Sumter Fair Association, Inc. is in the best position to market the facility and surround grounds and buildings. By doing so the economic impact should be greater than present and the secondary benefit is the growth in the tourist development tax and other government revenue sources.

In the marketing of the facility and grounds there is a provision for the sale of alcohol to be incorporated with an event but subject to the approval of the Board of County Commissioners (BOCC).

The lease provides for the continued space occupation by the USDA and Extension Office.

Finally, the lease modification places a significant responsibility on the Sumter Fair Association, Inc. to comply with all codes while operating and maintain^{ing} all of the County buildings and property including the Ag Center for the protection of the public and the County property.

DEPARTMENT RECOMMENDATION:

DEPARTMENT HEAD SIGNATURE _____

DIVISION RECOMMENDATION:

DIVISION DIRECTOR SIGNATURE: _____

COUNTY ADMINISTRATOR RECOMMENDED ACTION: APPROVE THE LEASE

APPROVED

SEP 23 2008

MODIFICATION #2


LEASE MODIFICATION #2

This LEASE MODIFICATION #2 ("Modification #2") to the Lease ("Original Lease") dated October 14, 1980 between SUMTER COUNTY, FLORIDA f/k/a in the Original Lease as the Board of County Commissioners of Sumter County, Florida and SUMTER FAIR ASSOCIATION, INC., a Florida non-profit corporation a/k/a Sumter County Fair Association, Inc. in the Lease Modification dated December 13, 2005 ("Modification #1"), and modified by the Modification #1 between SUMTER COUNTY, FLORIDA and the SUMTER FAIR ASSOCIATION, is made and executed this ~~23rd~~ day of ~~SEPTEMBER~~, 2008. SUMTER COUNTY, FLORIDA's ("Lessor") address for purposes of this Lease is: 910 N. Main Street, Bushnell, Florida 33513, and SUMTER FAIR ASSOCIATION, INC's ("Lessee") address is P.O. Box 647, Webster, Florida 33597. The Original Lease, Modification #1 and this Modification #2 shall collectively be referred to as the "Lease."

WHEREAS, the parties entered into the Original Lease to lease certain premises known as the Sumter County Fairgrounds ("Leased Premises"), and

WHEREAS, Lessor obtained funding for the construction of an agricultural center ("Center Building"), to be located on part of the Leased Premises (the "Center Premises"), and in Modification #1 Lessee consented and agreed to release a part of the Leased Premises, including common areas, for the Center Building, and

WHEREAS, Lessor completed the construction of the Center Building in accordance with all permits and governmental regulations, including life safety regulations, and

WHEREAS, Lessee desires the opportunity to manage and operate the Center Building, the Center Premises and the common areas, all of which shall collectively be referred to as the "Center," to and for the benefit of Lessor,

NOW THEREFORE, the parties agree as follows:

1. Lessor shall remain the title owner of the Center, and Lessee shall manage and operate the Center as described in the Modification #1 and this Modification #2.
2. The term of the Lease shall be modified ("Modified Term") to one period of five (5) years, commencing on the date of this Modification #2, with three (3) additional renewal terms of five (5) years each. Each renewal term shall renew automatically unless Lessor provides written notice to Lessee not less than thirty (30) days prior to the termination of the then-current lease term that the term will not be renewed and will terminate on the then-current term's termination date.
3. Lessor shall provide an annual appropriation of \$116,000 per year for the initial five (5) year Modified Term, only, which appropriation shall be used to defray the costs of Lessor's occupancy and use of that portion of the Center currently occupied by the United States Department of Agriculture ("USDA") and the Sumter County Extension Office; together with any other operational

providing coverage to notify Lessor at least thirty (30) days prior to any cancellation or change to such coverage.

- b. Except as provided herein, Lessee shall be responsible for the payment of all costs associated with the Center, including but not limited to utilities, maintenance, and repairs. Lessee shall perform all repairs necessary to keep the Center in good order, repair (which repair shall mean replacement if necessary) and condition, and in a clean, sanitary and safe condition in accordance with law and in accordance with all directions, rules and regulations of governmental agencies having jurisdiction, including, without limitation, the exterior and interior portions of all doors, door checks, windows, glass, utility facilities, existing telecommunication system, existing security system, plumbing and sewage facilities, fixtures, heating, air conditioning, including exterior mechanical equipment, exterior utility facilities and exterior electrical equipment serving the Center and interior walls, floors, ceilings, and furnishings including compliance with applicable building codes and life safety regulations. As a part of its maintenance obligation Lessee shall change air conditioning filters. If Lessee refuses or neglects to commence or complete any of the obligations above set forth promptly and adequately, Lessor may, but shall not be required to do so, make or complete said maintenance or repairs and Lessee shall pay the cost thereof to Lessor upon demand. Lessee shall indemnify, defend and hold harmless Lessor for any and all damages, costs, expenses (including but not limited to attorney fees) and other liabilities incurred by the Indemnified Party in connection with claims arising from the use or misuse of the Center including but not limited to the negligence or willful misconduct of the Lessee.
- c. Within 30 days of the date of this Modification #2, Lessee shall resolve all life safety codes listed for the property subject to the Lease as listed in the Fire Marshal's memorandum dated September 27, 2007 attached hereto and incorporated herein and shall ensure all life safety codes are maintained, including those from any subsequent annual or special inspections, at Lessee's sole cost and expense.
- d. Lessee shall not request nor be entitled to receive any appropriations from the general fund of SUMTER COUNTY except as provided herein.
- e. Lessee shall have the right to charge fees of use of the Center and its common areas to offset any operational costs, except that Lessee may not charge the USDA or Sumter County Extension Office. Lessee may request to review the annual appropriation from Lessor following year five (5) of this Modification #2.
- f. Lessee, in its reasonable discretion, will establish rates for the best use of the Center but in no way shall discriminate in its use as a public facility.

and/or capital expenses related to the Center, unless otherwise specified herein.

4. Lessor's rights and obligations:
 - a. Lessor shall be responsible for capital replacement costs, which shall be defined as an expenditure, the cost of which exceeds ten thousand dollars (\$10,000) or greater for any individual unit.
 - b. Lessor shall have the right to occupy that portion of the Center currently occupied by the United States Department of Agriculture ("USDA") and the Sumter County Extension Office together with the non-exclusive use of current Board room or other Board rooms constructed in the future. Should USDA or the Sumter County Extension Office vacate their respective office spaces, then such office spaces shall be available for the use and/or rental by the Lessee. Upon Lessee's written request, Lessor agrees to install after September 30, 2008, at Lessor's sole cost and expense, motion detector light switches in the spaces occupied at the time of installation by the USDA and Sumter County Extension Office. The Lessee shall not be responsible for the janitorial services within the USDA and Sumter County Extension Office spaces.
 - c. Lessor shall provide to Lessee the surplus items from the kitchen project of the Center Building as described in the October 17, 2007 memorandum (attached).
 - d. Lessor shall have the right to enter upon the Center for inspection or for making repairs, replacement, alterations, improvements and additions to the Center. If Lessor deems any repairs required to be made by the Lessee necessary, it may demand that the Lessee make the same forthwith. If the Lessee refuses or neglects to commence such repairs and complete the same with reasonable haste after written notice by Lessor, the Lessor may make or cause such repairs to be made and shall not be responsible to the Lessee for any loss or damage that may accrue to Lessee's stock or business by reason thereof. If the Lessor makes or causes such repairs to be made, Lessee agrees that it will forthwith, on demand, pay to the Lessor the cost thereof.
 - e. Lessor shall have the right to install antennae either on or in the Center Building or common areas including but not limited to a GPS system on the roof of the Center Building

Lessee rights and obligations:

- a. Lessee shall carry general liability coverage on the Center in the amount of one million dollars (\$1,000,000.00) for the term of this Modification #2 and any amendments or extensions thereto and shall name Lessor as additional insured. Lessee shall provide evidence of such insurance upon execution of this Modification #2 and at any other time as requested by Lessor. Lessee shall request any insurer

- g. Lessee shall provide all repair and maintenance work of the Center in accordance with all applicable permits and codes at Lessee's sole cost and expense.
- h. Lessee shall provide for annual pest control and termite protection for the Center, at Lessee's sole cost and expense.
- i. Lessee shall provide to Lessor, not more than ninety (90) days after the end of Lessee's fiscal year, an annual financial audit of Lessee's operations at Lessee's sole cost and expense.
- j. Lessee shall permit the Center for use as a Disaster Recovery Center ("DRC"), as a Host Shelter for the American Red Cross, and as a Point of Distribution ("POD") when designated by the Sumter County Emergency Manager as such without further compensation or claims for loss of revenue for its operations except for proven damages, as determined by Lessor in its sole and absolute discretion, inflicted during its use under the conditions cited herein.
- k. Lessee shall permit the City of Webster's installation of an elevated water storage tank the Center in a location designated by Lessee with the following provisions: the installation is presented to and approved by Sumter County Board of County Commissioners; the installation will not utilize more than 1.5 acres; and a logo is placed and maintained in perpetuity by the City of Webster at its sole cost and expense on the north and south facing of said tank that represents the Sumter County Fairgrounds to the satisfaction of Lessee.
- l. Lessee shall not permit the sale or consumption of alcohol or beer on the property subject to the Lease without the express written consent of Lessor, said consent to be granted or withheld in Lessor's sole and absolute discretion.
- m. All terms and conditions of the Original Lease and the Modification #1 not amended or modified herein shall remain in full force and effect.
- n. No party shall act or have the authority to act as an agent for the other party for any purpose whatsoever. Nothing in the Lease shall be deemed to constitute or create a joint venture, partnership, joint arrangement or other formal business entity between the parties.
- o. The Lease, as modified, shall not be released, discharged or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.
- p. Nothing in this Lease shall be intended or construed or interpreted to give any person or entity other than the parties any legal or equitable right, remedy or claim under or in respect to the Lease. The Lease shall be construed and interpreted in accordance with and governed by the laws of the State of Florida, excluding any choice of law principle that may require the application of the law of another jurisdiction. Venue shall only be in Sumter County, Florida.
- q. Except as provided herein, no party may assign or transfer its rights or delegate its obligations under this Lease without the prior written consent of all parties.

- r. If any provision of the Lease or any modification thereof shall be held or determined invalid, then the remainder of the Lease shall remain valid, in full force and effect, and enforced to the fullest extent permitted by law.
- s. Time is of the essence in the performance of the Lease.
- t. This Modification #2 may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be a single instrument.
- u. The titles and captions of or in this Modification #2 are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Modification #2 or the intent of any provision of this Modification #2.

ATTEST:

SUMTER COUNTY, FLORIDA



[Signature]
By: Deputy Clerk

[Signature]
By: Richard Hoffman, Chairman

SUMTER FAIR ASSOCIATION, INC.

[Signature]
Witness

[Signature]
By: Jackey Jackson, President