

LEASE AGREEMENT

BETWEEN: **CITY OF SAN JOSE**, a municipal corporation, whose address is 200 East Santa Clara Street, San Jose, CA 95113, USA.

(hereinafter referred to as the "**Lessor**")

AND: **CIRQUE DU SOLEIL AMERICA, INC.** a Delaware corporation, whose address is 980 Kelly Johnson Drive, Las Vegas, Nevada, 89119, USA.

(hereinafter referred to as "**Cirque**")

WHEREAS Cirque is engaged in the business of producing and presenting live entertainment performances for the public based on a theatrical approach to the circus;

WHEREAS the Lessor is the owner of real property in the city of San Jose, California;

WHEREAS Cirque desires to lease from the Lessor part of such property to present to the public its touring show entitled *OVO* (the "**Show**") and the Lessor desires to lease part of such property to Cirque, all on terms and conditions as set forth herein (the "**Agreement**");

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

1. AGREEMENT OF THE SITE

- 1.1 The Lessor does hereby lease unto Cirque, and Cirque does hereby lease from the Lessor upon the terms and conditions hereinafter set forth, the real property depicted by the hatching on the map of said real property attached hereto as **Schedule 1.1** and referred to as the site on such map (the "**Site**"). The Lessor does hereby represent and warrant to Cirque (i) that the Lessor is not party to any agreement which prohibits the Lessor from entering into this agreement with Cirque; (ii) upon compliance with the Conditional Use Permit to be obtained as described below, the contemplated Permitted Use (as defined in Section 3 hereof) of the Site by Cirque will be in compliance with and does not violate any law, by-law, ordinance, rule, regulation or requirement (including, without restriction, any zoning-by-law) enacted by the City of San Jose; (iii) Lessor shall obtain at its own cost and expense, an amended conditional use permit from the City of San Jose that will permit the Site to be used for the Permitted Use (the "**Conditional Use Permit**"), and that Lessor shall obtain said Conditional Use Permit no later than December 1, 2009; and (iv) the Site shall be in the same condition as it was on the date of Cirque's inspection mentioned in Section 1.2 below, except in respect to Preliminary Site Work described below. In connection with obtaining the Conditional Use Permit, Cirque shall cooperate with Lessor as needed to obtain the permit and shall have a representative attend any public hearing required prior

to approval of the permit to answer any questions concerning Cirque's use of the Site.

- 1.2 Cirque acknowledges that it has inspected the Site on July 24, 2009 and represents that it is satisfied with the physical condition of the Site. However, Cirque has not tested nor investigated the Site with respect to the suitability of the soil or subsoil of the Site and is relying entirely on the Lessor's representation that such soil or subsoil does not contain any hazardous substances, toxic substances, pollutants, contaminants or hazardous waste materials which would prevent Cirque directly or indirectly from using and occupying the Site in accordance with the Permitted Use (as defined in Section 3 hereof).

Notwithstanding anything to the contrary provided herein, Cirque shall not bear or assume any liability or responsibility for any environmental impacts or damages caused by or traceable to any pre-existing hazardous substances, toxic substances, pollutants, contaminants or hazardous waste materials (collectively "**Hazardous Materials**") and shall have no obligation to undertake the defense of any claim or action, whether in existence now or brought in the future arising out of the existence of pre-existing Hazardous Materials nor to undertake environmental response, remediation or clean-up relating to pre-existing Hazardous Materials.

- 1.3 Cirque expressly acknowledges and agrees that except for the Lessor's representations and warranties set forth above, the Lessor makes no other warranties or representations whatsoever regarding the condition of the Site or its suitability for the Permitted Use.
- 1.4 Cirque expressly agrees and acknowledges that this Agreement constitutes a lease for use of the Site only and does not and shall not grant Cirque any right of estate, title or other interest whatsoever in or to the Site other than what is provided herein.

2. TERM

This lease shall come into force as of the date hereof and, unless terminated earlier pursuant to Sections 20 and 25 hereto, shall expire upon the earlier of: (i) twelve o'clock midnight on the date which is the last day of the Occupation Period (as hereinafter defined) or (ii) as soon as Cirque has returned the Site in accordance with the terms of Section 22 and the Lessor has executed the release form attached as **Schedule 22.2** hereto (the "**Term**"). During the Term, Cirque shall have the right to use and occupy the Site during the period of December 14, 2009 to April 2, 2010 (the "**Occupation Period**").

3. USE OF SITE

- 3.1 The Site shall be used and occupied by Cirque throughout the Occupation Period solely for the purposes of presenting to the public performances of the Show (in

accordance with the Show Schedule attached hereto as **Schedule 3.1**) and other activities, including but not limited to the following:

- 3.1.1 the necessary preparation and installation of Cirque's equipment on the Site for the presentation of the Show, including, without restriction, tents, signs, fences, generators, lighting equipment;
- 3.1.2 the operation of concession stands for the sale of merchandising products and of food stands or restaurants on the Site for the sale and consumption of nonalcoholic and alcoholic beverages and food;
- 3.1.3 the holding of promotional events by Cirque or its sponsors;
- 3.1.4 the operation of a ticket box office for the sale of Show tickets;
- 3.1.5 the installation of sanitary vans, office trailers and kitchen facilities for the use of Cirque's staff; and
- 3.1.6 the removal of Cirque equipment and restoration of the Site as required pursuant to Section 22 hereto;

(collectively referred to as the "**Permitted Use**").

The Lessor acknowledges and agrees that Cirque shall be drilling approximately 1,000-1,200 holes in average 5' deep by 2" in diameter in the ground of the Site for the setting-up and installation of the above-mentioned equipment.

- 3.2 Cirque shall at all times maintain the Site in a neat and orderly fashion, minimize any dust in conformance with governmental standards and prevent any Hazardous Material from being placed, stored, or used on the Site. Notwithstanding the foregoing, Cirque shall have the right to handle, transport, store or dispose on the Site Hazardous Material necessary for Cirque's business such as diesel, propane, oxy-acetylene, paints, lubricant solvents, used oil, pressurized gases (helium and air), cleaning products household and industrial (typically water based) as long as such handling, transportation, storage and disposal is performed in strict compliance with all applicable local, state, and federal laws and regulations. Cirque hereby indemnifies and holds harmless the Lessor and its officers, employees and agents from and against actions and liabilities relating to the Cirque's handling, transportation, storage and disposal of Hazardous Material on or about the Site.
- 3.3 Cirque has prepared a preliminary site plan setting forth the location of Cirque's installations and equipment on the Site, including, without restriction, the location of Cirque's tents, ticket box office, concession and food stands, office trailers and vans, which preliminary site plan is attached hereto as **Schedule 3.3**. A final

version of such site plan shall be provided to Lessor prior to the first day of the Occupation Period and shall replace the preliminary version attached hereto.

- 3.4 All Cirque's vehicles and other vehicles required by Cirque in connection with the Show shall at all times during the Occupation Period be provided with full and uninterrupted access to the Site and have the right to circulate freely on the Site. Cirque is responsible for all costs related to obtaining off-site vehicle storage/marshalling location(s) during the Occupation Period.
- 3.5 The Lessor acknowledges and agrees that Cirque shall, at all times throughout the Occupation Period, have the right to sell, use or display any goods or products on or from the Site and to grant to third parties the exclusive right to sell, use or display any goods or products on or from the Site. Cirque shall, at all times and without restriction, have the right to promote, advertise and display anywhere on the Site during the Occupation Period (i) the goods and products and the name and logo of any third party with whom Cirque has entered into any agreement relating to the sale and use of such products by Cirque on or from the Site; (ii) the goods and products and the name and logo of any sponsor of the Show; and (iii) the name and logo of any charity organization with which Cirque is associated.
- 3.6 Subject to Section 13, the Lessor acknowledges and agrees that Cirque may store on the Site any of the hazardous materials pre-approved by the City's Fire Department, as itemized in **Schedule 3.6 ("Pre-approved Materials")** and any other hazardous materials subsequently approved by the City's Fire Department which are necessary to Cirque's business to be used, kept, and stored on the Site provided that Cirque obtains the Fire Department's approval prior to bringing such other hazardous materials on Site.

4. RENT

For and in consideration of the terms, covenants and conditions herein contained, along with the sum of Ninety-Five Thousand United States Dollars (US\$ 95,000) which shall be paid by Cirque to Lessor as follows: (i) fifty percent (50%) within ten (10) days of the execution hereof and (ii) fifty percent (50%) on the first day of the Occupation Period and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, Lessor agrees to lease the Site to Cirque.

5. COMPLIMENTARY TICKETS

- 5.1 The Lessor shall receive from Cirque a total of Four Hundred (400) complimentary tickets for the dress rehearsal of the Show, which is currently scheduled to take place on February 3, 2010 (the "**Dress Rehearsal Tickets**") and Twenty Five (25) invitations for two (2) persons for the Show's Premiere which is currently scheduled to take place on February 4, 2010 (the "**Premiere Invitations**"). The location of the seats for the Dress Rehearsal Tickets shall be determined by Cirque. No later than seven (7) days prior to the dress rehearsal of

the Show, the Lessor shall provide to Cirque a list indicating (i) the name of the neighborhood associations to which the Dress Rehearsal Tickets shall be distributed and the boundaries of the area represented by each neighborhood association; and (ii) the number of Dress Rehearsal Tickets granted to each neighborhood association. It is the understanding of the parties that the Dress Rehearsal Tickets will be distributed by the neighborhood associations at the discretion of their respective board of directors.

- 5.2 The Lessor acknowledges and agrees that the Dress Rehearsal Tickets and Premiere Invitations received under Section 5.1 are for gratis distribution and shall not be sold or offered in a sweepstake organized by Lessor or any third party. The Lessor understands and agrees that the dress rehearsal may be interrupted by Cirque at any time, at its sole discretion. Interruption of the dress rehearsal shall not be considered as a Cirque default under Section 20.1.1 of the Agreement.
- 5.3 Lessor undertakes to use best efforts to return to Cirque, at least seven (7) calendar days before the performance of Dress Rehearsal any tickets which shall not have been distributed by Lessor at that time.

6. INSURANCE

6.1 Site Insurance

Not less than five (5) days prior to the beginning of the Occupation Period, Cirque shall obtain, at its sole cost, and deliver to the Lessor, a certificate of insurance evidencing coverage per the attached **Schedule 6.1**.

6.2 Parking Insurance

- 6.2.1 The Lessor shall obtain at its own cost and maintain during the Term of this Agreement the following insurance or self-insurance which at a minimum, equates to the following insurance coverage and provisions:

- Comprehensive general liability in the amount of One Million United States Dollars (US\$2,000,000) per occurrence covering bodily injury, property damages and non owned automobile liability;
- Automobile insurance liability for physical damage not less than One Million United States Dollars (US\$1,000,000); and
- Workers Compensation with statutory limit and Employers liability in the amount of One Million United States Dollars (US\$1,000,000) per accident.

- 6.2.2 Not less than three (3) months prior to the beginning of the Occupation Period, the Lessor shall provide to Cirque an "Affidavit of Insurance" evidencing the foregoing self-insurance.

7. UTILITIES

No less than three (3) months prior to the beginning of the Occupation Period, the Lessor shall be responsible for providing a plan of all underground utilities on the Site and within the public right of way and acknowledges that Cirque shall rely on such plan for the drilling of holes in the ground of the Site for the setting-up of its equipment. The Lessor shall waive any claims against Cirque for damages arising from the striking by Cirque of any utilities which are not located as indicated on the plan provided by the Lessor. Prior to any set up or installation of any equipment on the Site and at its own expense, Cirque shall engage the services of a qualified company whose name shall be submitted in advance, to mark any potential utilities located on the Site.

8. SITE WORK, IMPROVEMENTS, PUBLIC SERVICES AND OTHER SERVICES

- 8.1 Each party shall proceed to make at its sole cost and expense the Site preparation work described in Schedule 8.1-A for the Lessor Site Preparation Work and Schedule 8.1-B for Cirque Site Preparation Work herein attached (collectively the "Site Preparation Work").
- 8.2 Lessor shall complete all of its Site Preparation Work prior to the first day of the Occupation Period. Lessor agrees to reimburse any reasonable costs incurred by Cirque as a result of Lessor's failure to complete the aforementioned Site Preparation Work on time. Cirque shall commence Site Preparation Work as of the first day of the Occupation Period. Cirque shall be entitled to make other improvements and modifications to the Site which may be required from time to time for the Permitted Use. Any garbage or debris resulting from the parties' Site Preparation Work shall be removed by the party generating the garbage or debris, at no cost to the other party prior to completion of the Site Preparation Work creating such garbage or debris (or such other time period agreed to by the parties). Lessor shall be responsible, at its sole cost and expense and at the expiry of the Occupation Period, for the restoration work as described in Schedule 8.2-A and Cirque shall be responsible, at its sole cost and expense and before the end of the Occupation Period, for the restoration work as described in Schedule 8.2-B.
- 8.3 The Lessor shall be responsible, at its sole cost and expense, for providing at the Site the utilities and services described in Schedule 8.3 attached hereto. Notwithstanding the foregoing, Cirque shall be solely responsible, at its sole cost and expense, for hook up and disconnection of its equipment to any and all utilities used by Cirque for the Site. Without limiting the generality of the foregoing, Cirque shall pay, directly to the supplier(s) the costs related to the sewer, water and the telecommunication services provided on the Site during the Occupation Period.

- 8.4 Lessee agrees that, in the performance of this Agreement, Lessee shall perform its obligations under the agreement in conformance with City Council Policy 4-6, Environmentally Preferable Procurement Policy. A description for environmentally preferable procurement and the Policy can be found on the City's website at the following link: <http://www.sanjoseca.gov/esd/natural-energy-resources/epp.htm>.

Environmental procurement policies and activities related to the completion of work by Lessee will include wherever practicable, but are not limited to:

- A. Use of recycled and/or recyclable products in daily operations (i.e. 30, 50, 100% PCW paper, chlorine process free; triclosan free hand cleaner, etc.)
- B. Use of Energy Star Compliant equipment.
- C. Vehicles and vehicle operations (i.e. Alternative Fuel, Hybrid, etc.)
- D. Internal waste reduction and reuse protocol(s).
- E. Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products, etc.

9. PARKING FACILITIES

- 9.1 Regular Parking Facilities: During the Occupation Period, the Lessor shall be responsible for the off-site parking areas depicted by the hatching on the parking plan attached hereto as **Schedule 9.1** and referred to as the "**Regular Parking Facilities**" on such plan, for parking of Cirque's Show spectators' vehicles. For greater clarity, during the Occupation Period, the Lessor has exclusive control of and responsibility for the Regular Parking Facilities and traffic control management on or adjacent to the Regular Parking Facilities and shall make all required arrangements related thereto. The established parking fee by the Lessor is Ten United States Dollars (US\$10.00) per vehicle. Lessor shall provide five (5) disabled parking spaces located on Mission Street and four (4) disabled parking spaces located in the VIP Parking Facilities. Such disabled parking shall be provided in conformity with all applicable laws, ordinances, rules and regulations having jurisdiction over the Site and surrounding areas. Cirque shall not be entitled to any revenues in connection with the operation of the Regular Parking Facilities during the Occupation Period. Cirque shall not be required to pay any costs related to the provision of said Regular Parking Facilities.
- 9.2 VIP Parking Facilities: During the Occupation Period, the Lessor also has exclusive control of and responsibility for the VIP parking facilities and traffic control management on the area depicted by the hatching on the parking plan attached hereto as **Schedule 9.1** and referred to as the "**VIP Parking Facilities**" on such plan. VIP Parking Facilities shall be clearly identified by the Lessor and shall be provided at no cost to VIP spectators or Cirque. The VIP Parking

Facilities shall include at least one hundred (100) parking spaces. VIP ticket holders shall not be charged by Lessor for such parking spaces in the VIP Parking Facilities. Lessor shall ensure that only VIP ticket holders are accessing the VIP Parking Facilities, in accordance with the procedure which shall be agreed upon by the Cirque representative on tour and Lessor prior to the first performance of the Show at the Site.

10. PERMITS

Cirque shall obtain and maintain, at its own costs and expense, all necessary permits, licenses and approvals required for the Permitted Use (including but not limited to the Site Preparation Work) during the Occupation Period, and the Lessor shall cooperate with Cirque in doing so. Notwithstanding the foregoing, the Conditional Use Permit and all permits or equivalent authorizations as may be required for the Conditional Use Permit shall be applied for and obtained by the Lessor, at its sole cost and expense.

11. PEACEABLE ENJOYMENT

The Lessor agrees that Cirque, upon paying the Rent and observing and performing all the obligations herein contained, may peacefully and quietly enjoy the Site during the Occupation Period, without any disruption or interruption by the Lessor.

12. EXCLUSIVITY

The Lessor represents warrants and covenants to Cirque that no other circus-type events will be performed on or from the real property owned by the Lessor during the Occupation Period and for at least three (3) months prior and after the Occupation Period.

13. COMPLIANCE

Cirque, in the performance of its activities hereunder, shall comply with all laws, ordinances, rules and regulations having jurisdiction over the Site. The Lessor, in the performance of its obligations hereunder, shall comply with all laws, ordinances, rules and regulations having jurisdiction over the Site.

14. LIENS

- 14.1 Cirque acknowledges and agrees that Cirque has no authority to, and that Cirque shall not cause or permit any lien or encumbrance of any kind to attach to the Site.
- 14.2 Should the Lessor create, cause or permit any lien or encumbrance of any kind to attach to the Site, the Lessor shall obtain a written commitment from the beneficiary of such lien, in a form acceptable to Cirque, not to exercise any of its rights on Cirque's equipment and property.

15. LESSOR'S ACCESS TO THE SITE

The Lessor shall have the right to enter upon the Site at all reasonable times and upon reasonable notice to Cirque provided Lessor does not interfere with Cirque's activities and operation.

16. SIGNS

Cirque shall be entitled to erect on the Site, at its own cost and expense, signs and banners which do not violate the Lessor's sign ordinance (Title 23 of the San Jose Municipal Code). Cirque shall bear the cost of the installation, repair, maintenance and removal of any such signs and banners.

17. TICKETING

Lessor acknowledges and agrees that Cirque shall have the right, in its sole and absolute discretion, to choose and utilize any and all ticket agencies (collectively, the "**Ticket Agencies**") for the sale of tickets of the Show. Lessor represents and warrants to Cirque that Lessor is not party to, is not aware of, and will not enter into or permit the entering into of, any agreements, including any ticketing agreements that would conflict with Cirque's right to utilize any and all Ticket Agencies.

18. TRADEMARKS

The Lessor acknowledges that the name "**Cirque du Soleil**" and the title, logo, visuals and other marks of the Show are the sole and exclusive property of Cirque and its affiliates and are Cirque's or its affiliates' duly registered and established trade and service marks (collectively the "**Cirque Marks**"). The Lessor may not use such Cirque Marks for any purpose without Cirque's prior written approval, which may be withheld in Cirque's sole discretion.

19. UNION

No union contracts applicable to the Lessor or the Site will bind the Cirque or will interfere with Cirque's activities during the Occupation Period.

20. TERMINATION

20.1 **Termination by the Lessor** - In addition to its other rights at law, in equity or otherwise, the Lessor shall be entitled to terminate this Agreement upon written notice to Cirque, in which case Cirque shall forthwith vacate the Site upon the occurrence of any of the following events:

20.1.1 the failure by Cirque to comply with or perform any term, condition, covenant and to cure such event within seven (7) days after the Lessor gives Cirque written notice of such default;

- 20.1.2 any representation made or warranty given by Cirque hereunder shall prove to be untrue in any material respect;
 - 20.1.3 the appointment of a receiver, receiver-manager, trustee, liquidator or custodian is duly appointed to administer all or a substantial part of the business of Cirque, which appointment is not vacated within thirty (30) days; or
 - 20.1.4 the making by Cirque of a general assignment or attempted assignment for the benefit of creditors which has not been withdrawn within thirty (30) days of its filing or the filing by Cirque of a voluntary petition of bankruptcy or is petitioned into bankruptcy and such petition has not been dismissed, stayed or withdrawn within thirty (30) days of its filing.
- 20.2 **Termination by Cirque** - In addition to its other rights at law, in equity or otherwise, Cirque shall be entitled to terminate this Agreement upon written notice to Lessor, upon the occurrence of any of the following events:
- 20.2.1 the failure by Cirque to obtain any of the required permits, licenses, authorizations or consents for the Permitted Use;
 - 20.2.2 the failure by the Lessor to comply with or perform any term, condition or covenant and to cure such event within seven (7) days after Cirque gives the Lessor written notice of such default;
 - 20.2.3 any representation made or warranty given by the Lessor hereunder shall prove to be untrue in any material respect;
 - 20.2.4 the appointment of a receiver, receiver-manager, trustee, liquidator or custodian is duly appointed to administer all or a substantial part of the business of the Lessor, which appointment is not vacated within thirty (30) days; or
 - 20.2.5 the making by the Lessor of a general assignment or attempted assignment for the benefit of creditors which has not been withdrawn within thirty (30) days of its filing or the filing by the Lessor of a voluntary petition of bankruptcy or is petitioned into bankruptcy and such petition has not been dismissed, stayed or withdrawn within thirty (30) days of its filing.
- 20.3 In the event of Cirque terminating this Agreement prior to the beginning of the Occupation Period for any of the reasons set forth in Section 20.2. hereof, then Cirque shall have no obligation to pay to the Lessor any Rent which would have otherwise been payable but for the termination of the Agreement, and Cirque shall be entitled to recover from the Lessor any Rent paid prior to the effective termination date. Only in the event of a termination of the Agreement in accordance with Section 20.2.1, Cirque's recovery from the Lessor of any Rent

paid prior to the effective termination date shall be less Site preparation costs required of Lessor by this Agreement and incurred by Lessor up to and including the date of termination of Agreement by Cirque.

- 20.4 In the event of Cirque terminating this Agreement during the Occupation Period for any of the reasons set forth in Section 20.2 hereof, then the Rent to which the Lessor shall be entitled shall be reduced on the basis of the number of days during which Cirque occupied the Site prior to the effective termination date. Only in the event of termination of the Agreement in accordance with Section 20.2.1, Cirque's recovery from Lessor of any Rent paid prior to the effective termination date shall be reduced by the amount of any Site preparation costs required of Lessor by this Agreement and incurred by Lessor up to and including the date of termination of Agreement by Cirque.

21. INDEMNITY

- 21.1 Cirque hereby agrees to indemnify, defend and hold harmless the Lessor, its affiliates and their respective directors, officers and employees from and against any and all costs, loss, damages, claims, liability and/or expenses, including defense costs, legal fees and attorneys' fees, and claims for damages of any nature whatsoever, including but not limited to, bodily injury, death related to Cirque's operations, personal injury, or property damage arising in any manner from or in connection with the use and occupancy of the Site pursuant to this Agreement, except for costs, loss, damages, liability, claims and/or expenses solely resulting from the act, omission, negligence or misconduct of the Lessor, its agents, officers and/or employees.
- 21.2 The Lessor hereby agrees to indemnify and hold harmless Cirque, its affiliates and their respective directors, officers and employees from any and all claims (including personal injury or property damages), suits, expenses, damages or other liabilities, including reasonable legal fees subject to Lessor's prior approval, collectively referred to herein as "claims", arising out of the breach by the Lessor of any of its obligations or representations or warranties made by the Lessor in this Agreement including any claims arising out of the breach by the Lessor of any of its obligations or representations or warranties made by the Lessor in connection with the operation of the Regular Parking Facilities and VIP Parking Facilities.
- 21.3 All representations, warranties and indemnities given under this Agreement shall survive the termination of this Agreement.

22. RETURN OF SITE

- 22.1 At the end of the Occupation Period or upon earlier termination of this Agreement, Cirque's obligation in respect to the return condition of the Site shall be the following:

- 22.1.1 to remove from the Site all tents, equipment and other personal property (including but not limited to signs, fences, generators, lighting equipment) placed by it on the Site;
 - 22.1.2 to remove at its own cost any and all garbage and debris placed by Cirque onto the Site during the Occupation Period;
 - 22.1.3 to complete, at its sole cost and expense, the restoration work as described in **Schedule 8.2-B**
- 22.2 On the last day of the Occupation Period, a duly authorized representative of the Lessor and of Cirque shall together inspect the Site to ensure that Cirque has removed all of its tents, equipment and other personal property placed by it on the Site and has restored the Site as mentioned in **Schedule 8.2-B** and to evaluate the state of the Site. After such inspection, if the Lessor, acting reasonably, is satisfied with the return condition of the Site in accordance with the terms of this Section 22, the Lessor agrees to sign the release form attached as **Schedule 22.2** hereto.

23. SUBLEASING AND ASSIGNMENT

- 23.1 Cirque shall have no right to assign its rights hereunder or to sublease the Site, unless Cirque shall have obtained the prior written consent of the Lessor to such assignment or sublease, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, nothing in this Section 23 shall prevent Cirque from assigning or subleasing its rights hereunder, without the Lessor's consent, to any corporation which controls, is controlled by or is under the same control as Cirque.
- 23.2 The Lessor shall have the right to sell or otherwise transfer or dispose of the Site, or to assign this Agreement or any interest of the Lessor hereunder, provided that the purchaser or assignee assumes, in writing, the Agreement and the obligations of the Lessor hereunder.

24. NOTICES

All notices, demands, consents, requests or waivers required or permitted to be given or made hereunder shall be in writing and shall be delivered by hand or mailed by prepaid registered mail or sent by fax, addressed:

if to the Lessor, as follows: **CITY OF SAN JOSE**, 200 East Santa Clara Street, San Jose, CA 95113, USA, Attention: Paul Krutko, Telephone: (408) 535-8182, Fax: (408) 292-6719.

if to Cirque, as follows: **CIRQUE DU SOLEIL AMERICA, INC.**, 980, Kelly Johnson Drive, Las Vegas, Nevada, 89119, USA. With a copy to: Tour Development Director: 8400 2^e Avenue, Montreal, Quebec, H1Z 4M6, Telephone:

(514) 722-2324, Fax: (514) 722-3692, and a copy to: Vice president, Legal Services, Cirque du Soleil, 8400 2^e Avenue, Montreal, Quebec, H1Z 4M6, Telephone: (514) 722-2324, Fax: (514) 723-7617.

Any such notice, demand, consent, request or waiver, if delivered, shall be deemed to have been given on the date of delivery, or if appropriate, on the date delivery is refused, if mailed, on the third (3rd) business day following the date of mailing thereof as aforesaid and if sent by fax, on the first (1st) business day following the day of delivery thereof by fax. Either party may change its address, fax number or the name of the person indicated as the recipient by notice to the other in the manner aforesaid. In the event of interruption or threatened interruption in postal service, such notice shall be delivered addressed as aforesaid or sent by fax.

25. FORCE MAJEURE

In the event that the Site, or any portion thereof, shall be destroyed or damaged, prior to the commencement of the Occupation Period, by fire or other calamity so as to prevent the use of the Site for the Permitted Use, or if the Site cannot, at the commencement of the Occupation Period, be used for the Permitted Use due to strikes (other than strikes of Cirque's employees), acts of God, national emergency, or other events beyond the control of either of the parties hereto, then either party may terminate this Agreement by written notice to the other at no charge or liability to either party. In the event Cirque has made any payment to the Lessor pursuant to Section 4, such payment shall be returned to Cirque, less Site preparation costs required of Lessor by this Agreement and incurred by Lessor up to and including the date of termination.

26. PREVAILING WAGE

- 26.1 Should any portions of the services required by this Agreement be defined as a Public Work under Section 1771 of the California Labor Code and provided that no exception to this definition is applicable for such portions of the services required by this Agreement, Cirque undertakes to pay, or cause to be paid, prevailing wages, as set forth in the California Labor Code Section 1770 et. seq., for all labor performed to facilitate the Site Preparation Work under this Agreement. Cirque shall include in all agreements for such labor, a requirement that the employer provide all workers with written notice that prevailing wages apply.
- 26.2 Cirque shall maintain, or cause to be maintained, all records documenting the payment of prevailing wages as required by the State prevailing wage law. Cirque shall maintain these records for a minimum period of three (3) years, or for any longer period required by law, from the date of the expiration or earlier termination of this Agreement. Cirque shall provide to the Lessor, at no cost to the Lessor, a copy of all such records within ten (10) working days of a request for such records by the Lessor's Office of Equality Assurance.

- 26.3 The Lessor believes that the Site preparation Work to be performed by Cirque is a Public Work under Section 1771 of the California Labor Code and is subject to the payment of prevailing wages. Cirque shall indemnify Lessor for any claims, costs or expenses which the Lessor incurs as a result of Cirque's failure to pay, or cause to be paid, prevailing wages.
- 26.4 The Lessor hereby covenants and agrees to comply with the provisions of Public Work under Section 1771 of the California Labor Code ("Labor Code") to the extent applicable to the Lessor Site Preparation Work and agrees to indemnify Cirque for any claims, costs or expenses which Cirque incurs as a result of Lessor's failure to pay, or cause to be paid, prevailing wages under the Labor Code.

27. MISCELLANEOUS

- 27.1 **Governing Law; Venue; and Severability** - This Agreement shall be construed by and governed in accordance with the laws of the State of California, USA. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be exclusively vested in a state court in the County of Santa Clara or, if federal jurisdiction is appropriate, exclusively in the United States District Court for the Northern District of California, San Jose, California. If for any reason whatsoever any term, obligation or condition of this Agreement or the application thereof to any person or circumstance is to any extent held or rendered invalid, unenforceable or illegal, then such term, obligation or condition shall be deemed severable and divisible from the remainder of this Agreement and its invalidity, unenforceability or illegality shall not affect, impair or invalidate the remainder of the Agreement or any part thereof and such term, obligation or condition shall continue to be applicable to and enforceable against any other person or circumstance other than those to which it has been held or rendered invalid, unenforceable or illegal.
- 27.2 **Waiver** - No waiver, whether written or tacit, of any remedy or provisions of the present agreement shall be deemed to constitute a waiver of any other provision hereof or a permanent waiver of the provision concerned, unless otherwise stated in writing by the party to be bound thereby.
- 27.3 **Extended Meanings** - Words importing the singular number only shall include the plural and vice versa, and words importing the masculine gender shall include the feminine gender, and words importing persons shall include firms and corporations. The descriptive headings are included only for the convenience of the parties and shall not be deemed to form part hereof.
- 27.4 **Independent Contractors** - Notwithstanding any provisions of this Agreement, nothing in this Agreement shall be construed as constituting Cirque the mandatory of the Lessor or as creating the relationship of principal and agent or of

partnership or of joint venture or as creating any other relationship between the Lessor and Cirque other than that of landlord and tenant.

27.5 **Nondiscrimination** – Cirque shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin in the use, occupancy, tenure or enjoyment of the Site.

27.6 **Gifts**

27.6.1 Cirque is familiar with the Lessor's prohibition against the acceptance of any gift by a Lessor officer or designated employee, which prohibition is found in the San Jose Municipal Code.

27.6.2 Cirque agrees not to offer any Lessor officer or designated employee any gift prohibited by said Code.

27.6.3 The offer or giving of any prohibited gift shall constitute a material breach of this Agreement by Cirque. In addition to any other remedies Lessor may have in law or equity, the Lessor may terminate this Agreement for such breach as provided in Section 20.1.1 of this Agreement.

27.7 **Security** – Cirque shall be solely responsible for the security of the Site during the Occupation Period, and for the safety and security of its employees, agents, contractors, customers, patrons, property, equipment and goods.

27.8 **Distinction from Regulatory Approval** – Cirque agrees and acknowledges that this Agreement does not and shall not be construed to indicate or imply that the City of San Jose, acting as a permitting authority, has hereby granted Cirque any approval or permits required by law for the use of the Site contemplated in this Agreement.

27.9 **Entire Agreement** - This Agreement together with the Schedules referred to herein set forth the entire Agreement and understanding between the parties concerning the lease of Site. No subsequent alteration, amendment, change or addition to this agreement shall be binding upon the Lessor or Cirque unless in writing and duly signed by Cirque and the Lessor.

27.10 **Accessory Agreement and Documents** - Each of the parties shall, at the request and cost of the other, execute all such agreements, instruments and documents as shall be necessary to give effect to the present Agreement or to facilitate its application and execution.

27.11 **Counterparts** - The present agreement may be executed in one or more counterparts, each of which shall be deemed original and such counterparts together shall constitute one and the same instrument.

27.12 **Successors and Assigns** - All rights and liabilities herein granted to or imposed upon the respective parties hereto extend to and bind the successors and assigns of the Lessor and the permitted successors and assigns of Cirque, as the case may be. No right, however, shall ensure to the benefit of any assignee or successor of Cirque unless such successor or the assignment to such assignee has been made in accordance with Section 23 hereof.

IN WITNESS WHEREOF, this Agreement has been executed on the ____ day of _____, 2009.

CITY OF SAN JOSE

CIRQUE DU SOLEIL AMERICA, INC.

By: _____
Name: _____
Title : _____

By: _____
Jacques Marois
Senior Vice President, Touring Shows

Approved as to Form

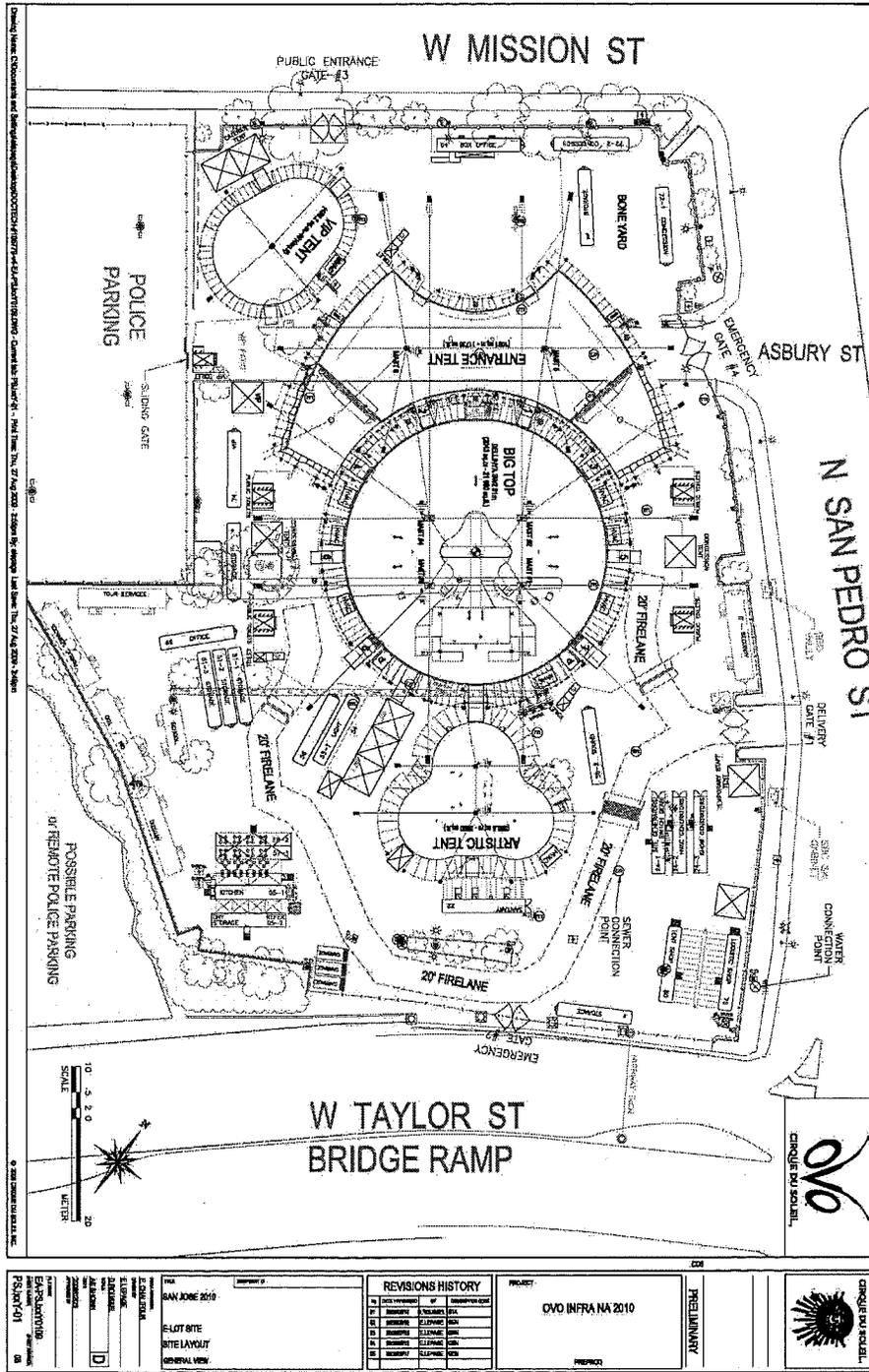
Barbara Jordan
Sr. Deputy City Attorney

SCHEDULE 3.1
SHOW SCHEDULE

<i>OVO San Jose Performance Schedule</i>			
Wednesday Feb 03 2010	Dress Rehearsal		7:30 PM
Thursday Feb 04 2010	Premiere		8:00 PM
Friday Feb 05 2010			8:00 PM
Saturday Feb 06 2010		4:00 PM	8:00 PM
Sunday Feb 07 2010		1:00 PM	5:00 PM
Monday Feb 08 2010	Dark		
Tuesday Feb 09 2010			8:00 PM
Wednesday Feb 10 2010			8:00 PM
Thursday Feb 11 2010			8:00 PM
Friday Feb 12 2010		4:00 PM	8:00 PM
Saturday Feb 13 2010		4:00 PM	8:00 PM
Sunday Feb 14 2010		1:00 PM	5:00 PM
Monday Feb 15 2010	Dark		
Tuesday Feb 16 2010			8:00 PM
Wednesday Feb 17 2010			8:00 PM
Thursday Feb 18 2010	Option	4:00 PM	8:00 PM
Friday Feb 19 2010		4:00 PM	8:00 PM
Saturday Feb 20 2010		4:00 PM	8:00 PM
Sunday Feb 21 2010		1:00 PM	5:00 PM
Monday Feb 22 2010	Dark		
Tuesday Feb 23 2010	Dark		
Wednesday Feb 24 2010			8:00 PM
Thursday Feb 25 2010		4:00 PM	8:00 PM
Friday Feb 26 2010		4:00 PM	8:00 PM
Saturday Feb 27 2010		4:00 PM	8:00 PM
Sunday Feb 28 2010		1:00 PM	5:00 PM
Monday Mar 01 2010	Dark		
Tuesday Mar 02 2010			8:00 PM
Wednesday Mar 03 2010			8:00 PM
Thursday Mar 04 2010	Option	4:00 PM	8:00 PM
Friday Mar 05 2010		4:00 PM	8:00 PM
Saturday Mar 06 2010		4:00 PM	8:00 PM
Sunday Mar 07 2010		1:00 PM	5:00 PM
Monday Mar 08 2010	Dark		
Tuesday Mar 09 2010			8:00 PM
Wednesday Mar 10 2010			8:00 PM
Thursday Mar 11 2010	Option	4:00 PM	8:00 PM
Friday Mar 12 2010		4:00 PM	8:00 PM
Saturday Mar 13 2010		4:00 PM	8:00 PM
Sunday Mar 14 2010		1:00 PM	5:00 PM
Monday Mar 15 2010	Dark		
Tuesday Mar 16 2010	Dark		
Wednesday Mar 17 2010			8:00 PM
Thursday Mar 18 2010		4:00 PM	8:00 PM
Friday Mar 19 2010		4:00 PM	8:00 PM
Saturday Mar 20 2010		4:00 PM	8:00 PM
Sunday Mar 21 2010		1:00 PM	5:00 PM
Confirmed Performances			61
Options			3
Total performances			64

SCHEDULE 3.3

SITE PLAN



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SCHEDULE 3.6

PRE-APPROVED MATERIALS

NOTE THIS IS A TENTATIVE LIST – FINAL LIST TO BE APPROVED BY CITY'S FIRE

PROPANE:

Staff Kitchen:

- One (1) 500-gallon propane tank which will supply the staff kitchen trailer;
- The propane tank is used for cooking and for water heating;
- The propane tank will be provided and installed by a licensed supplier;
- The propane tank will be refilled every 15 days;
- The refuelling will be done in the morning and never when public is on the Site;
- The propane tank will be protected by concrete barriers on all sides;
- 100lbs propane tanks for BBQ
- A no-smoking zone (25 feet) will be enforced around the propane tank and no-smoking signs will be installed in the said zone.

Forklifts:

- Thirty (30) propane tanks (33 lbs) will be used for forklifts and propane heaters;
- The propane tanks will be provided by a local licensed supplier;
- The propane tanks will be refilled every 15 days;
- The delivery will be done in the morning and never when public is on the Site;
- The propane tanks will be caged in and kept in one location only;
- A no-smoking zone will be enforced around the propane tanks and no-smoking signs will be installed in the said zone.

DIESEL:

- 6400 gallons of diesel in trailer mounted generators with double wall tanks
- UL 142 listed;
- A total of 3 standby generator trailers will be parked on site;
- Fuel deliveries will be done by a local licensed supplier three (3) times a week;
- Fuel deliveries will be scheduled in the morning and never when public is on the Site.

WELDING AND CUTTING GAS:

Minor welding work is done on site for maintenance of our equipment;

The welding work will be rendered by a local licensed supplier

- 2 Oxygen tanks compressed (K size)
- 2 Acetylene, dissolved (WS size)
- 2 Pure Argon (T size)
- Argon 65/70....CO2 30

Shops

- Paint, spray paint, solvents, pvc glue stored and locked in Fire cabinet, only for maintenance purposes and in minimal quantity
- Multi purpose grease
- Small propane bottle for plumbing torch
- Barrels for hazardous waste (paint, spray paint cans, solvents, used oils, etc)

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SCHEDULE 6.1

INSURANCE REQUIREMENTS

Cirque shall procure at its own cost and maintain for the Term of the Agreement the following insurance:

- i) Comprehensive general liability insurance for bodily injury and material damages in the amount of One Million United States Dollars (US \$1,000,000.00) per occurrence and Umbrella liability insurance in the amount of Five Million United States Dollars (US \$5,000,000.00) per occurrence and in the aggregate. Such insurance shall include :
 - Contractual liability;
 - Non owned and hired automobile liability;
 - Cross liability coverage and the severability of insurance clause;
 - Products and completed operations; and
 - Liquor liability.
- ii) Automobile insurance liability for bodily injury and material damages in the amount of Two Million United States Dollars (US \$ 2,000,000.00);
- iii) Workers' Compensation insurance within statutory limits and employers liability amount of One million United States Dollars (US \$1,000,000.00);
- iv) Property insurance coverage within all risks form, for the full replacement cost, covering equipment owned by Cirque.

The Comprehensive general liability insurance coverage to be provided above shall include as additional insured, the Lessor, its officials, employees, agents and contractors.

Cirque's insurances shall be primary insurance. Any insurance or self-insurance maintained by the Lessor, its officials, employees, agents and contractors shall be excess of the Cirque's insurance and shall not contribute with it.

Certificates of insurance and "Additional Insured" endorsement shall be provided to the Lessor evidencing all of the above insurance.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose - Human Resources
Risk Management
200 East Santa Clara St., 2nd Floor Wing
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San Jose, CA 95113-1905

v) Contractors and Subcontractors

Cirque shall ensure that all its contractors and subcontractors maintain adequate insurance coverage and shall obtain separate certificates evidencing same for each subcontractor.

SCHEDULE 8.1-A

LESSOR SITE PREPARATION WORK

	RESPONSIBILITY
1. Removal of the chain link fence that bisects the Site	Lessor
2. Removal of three (3) wood light poles and the overhead electric line.	Lessor
3. Removal of all on-site signage.	Lessor

SCHEDULE 8.1-B

CIRQUE SITE PREPARATION WORK

Installation of a temporary fence (8 feet in height) with gates along the Site perimeter. The fence posts are anchored into the ground. The gates are 24 feet wide (same height as the fence) and are equipped with a minimum of three (3) hinges.

The fence to be installed is in good condition and is free of dirt, soil or concrete.

A tension wire is installed at the bottom.

- Installation of a temporary water connection in the vicinity of the Site limits. The location of the temporary water connection shall be approved by the City prior to installation by Cirque. Water shall be potable.

The connection (min. diameter of 2 inches) shall be capable to supply a minimal flow rate of 2,600 gallons / hour under a minimal pressure of 60 PSI.

- Provision and installation of a temporary sewer connection (100 mm diameter minimum) within the Site limits.
- Construction of a Site access on Mission Street. The work consists of the following: (i) removal of the existing shrubs and vegetation (if any) between the side walk and the parking lot, except that Cirque shall remove no trees without permission of Lessor, (ii) placement of a 4 to 6 inch layer of compacted crushed stone, and (iii) placement of a 2-inch layer of compacted asphalt.
- Removal of asphalt curbs and asphalt ramps left on the Site last time Cirque presented *Kooza* on same site.
- As may be required by the Department of Transportation or General Services, installation of thin asphalt overlays within the Site limits.
- Installation of temporary asphalt curbs around the Big Top and concession tents. The curbs are designed for preventing run-off water to enter the tents.
- Installation of temporary asphalt ramps. The ramps are designed for pedestrian access to the tents and also to allow traffic over various cables, wires and hoses (electric, water, sewer, telecommunication, etc.).
- Installation of shallow trenches for temporary electrical line installation.
- As may be required by the Department of Transportation or General Services, asphalt repairs in paved areas.

SCHEDULE 8.2-A

LESSOR RESTORATION WORK

At Lessor's discretion, the following work shall be completed:

	RESPONSIBILITY
A) Reinstatement of three (3) wood light poles and overhead electric line	Lessor
B) Reinstatement of chain link fence bisecting the Site (if need be)	Lessor
C) Reinstatement of signage	Lessor

SCHEDULE 8.2-B

CIRQUE RESTORATION WORK

- Removal of the temporary fence. Filling of holes with compacted sand and/or any suitable granular material. The upper 5cm is filled with cold patch asphalt where necessary.
- Filling of stake holes ($\pm 1,200$) with compacted sand and/or any suitable granular material. The upper 5cm is filled with hot mix or cold patch asphalt material.
- Removal and off-site disposal of the asphalt composing the temporary curbs, and the ramps, mounds and gutters.
- Removal of asphalt paving on Asbury
- Reinstatement of areas where shallow trenches have been installed to their original condition.
- Reinstatement of Site access located on Mission Street.
- Asphalt repairs of damaged paved areas, as may be required as reasonably required by City.
- Housekeeping including, but not limited to, the removal of trash and debris, temporary signs, event materials, etc.
- Cleaning of paved areas with a power sweeper truck.

SCHEDULE 8.3

UTILITIES AND SERVICES

1. Water:

Water shall be potable

Minimum water pressure available at connection (hook up): 60 psi

Minimum diameter at connection point (hook up): 2 inches

Water connection point to be provided at the Site as shown on the **map attached to this Schedule 8.3**

2. Sanitary sewer:

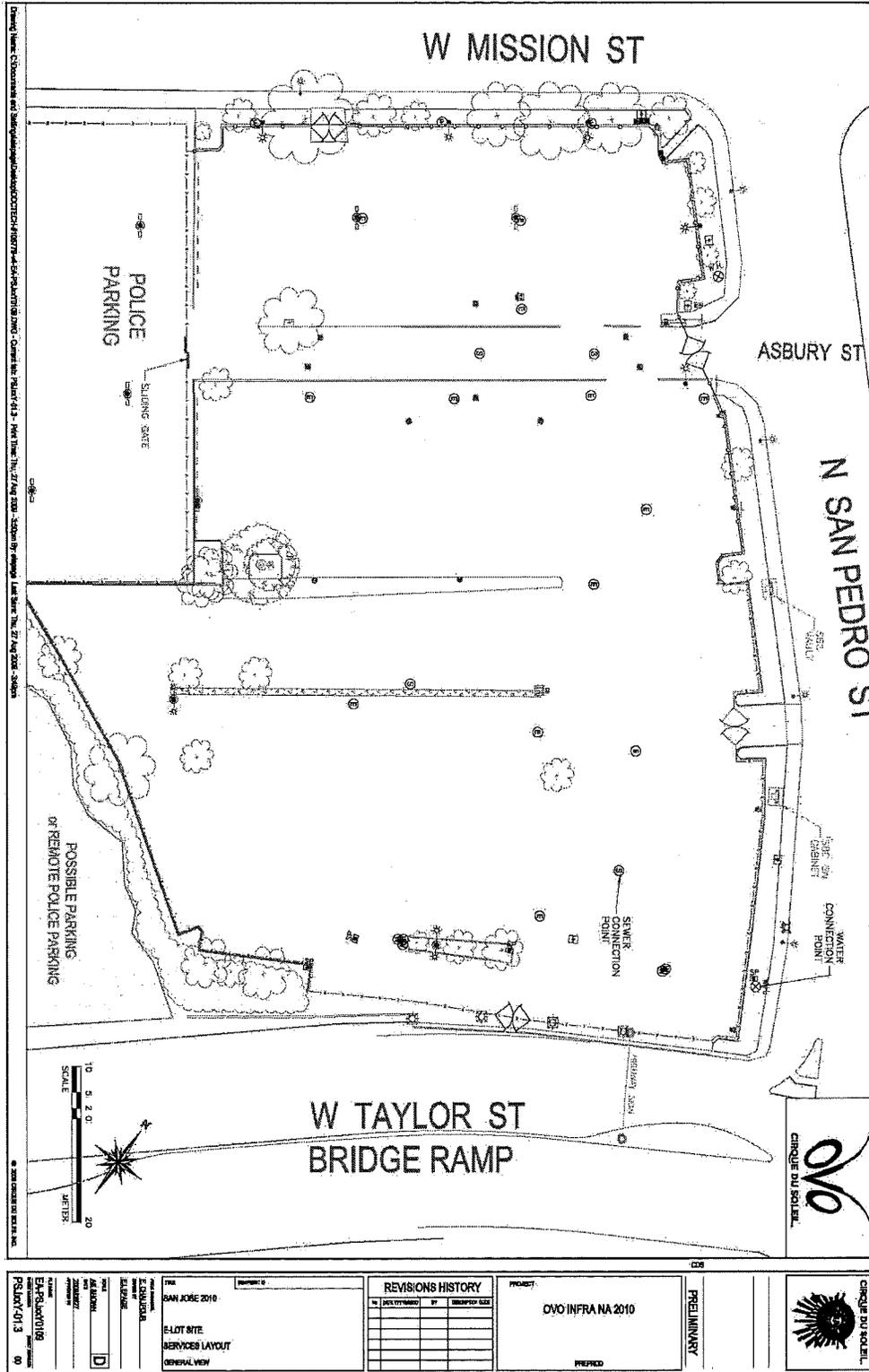
Sewer connection (inlet) to be provided at the Site as shown on the **map attached to this Schedule 8.3**

Minimum diameter at connection point (hook up): 4 inches

3. Telephone box:

Lessor shall provide a telephone box located on or adjacent to the Site having a minimum of fifty (50) points of entry. Cirque shall make all required arrangements with the local telephone company, in order to obtain telecommunications services and shall coordinate the installation process with the Lessor. Cost of telephone lines to be paid by Cirque.

MAP OF SCHEDULE 8.3



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SCHEDULE 9.1
PARKING FACILITIES

CIRQUE du SOLEIL EVENT PARKING

-  **Cirque du Soleil Site**

-  **CSJ Operated Event Parking**
 - C Lot197
 - Half Circle VIP Lot100
 - On-street Parking150

-  **Privately Operated Parking**
 - BofA Parking Lot51
 - 777 North First150
 - County Parking Garage329
 - Total 887

-  **Parking Entrances**

-  **Parking Directional Signs**

-  **Passenger Loading Zone**

-  **ADA Accessible Parking**



SCHEDULE 22.2

RELEASE

I, the undersigned, a duly authorized representative of the City of San Jose (the "**Lessor**"), acknowledge having inspected the site (the "**Site**") leased to Cirque du Soleil America, Inc. ("**Cirque**") according to the lease agreement between the Lessor and Cirque dated _____ (the "**Agreement**") and declare that the Site has been returned to the Lessor by Cirque in a satisfactorily condition in accordance with the terms and conditions of the Agreement. Therefore, the Lessor hereby waives all claims it may have against Cirque in respect to the return condition of the Site.

SIGNED on this _____ day of _____ 2009.

CITY OF SAN JOSE

By:
(Print name)