

~~94-05834~~ Rec Fee ~~.00~~
Total ~~.00~~

Recording requested by and when recorded return to: CLERK OF THE BOARD OF SUPERVISORS 105 East Anapamu Street Santa Barbara, California 93101	Recorded Official Records County of Santa Barbara Kenneth A Pettit Recorder 2:50pm 11 Jul 94 PUBL M 95
--	---

~~Presented for recording pursuant to
California Government Code section
6103~~

AMENDED AND RESTATED MANAGEMENT AND LEASE AGREEMENT

~~This~~ **THIS AMENDED AND RESTATED MANAGEMENT AND LEASE AGREEMENT**
is made by and between the

~~_____~~ **COUNTY OF SANTA BARBARA**, a political
~~_____~~ ~~Subdivisions~~ subdivision of the State of California,
~~_____~~ ~~herinafter~~ hereinafter referred to as
"COUNTY";

and

~~_____~~ **SANTA BARBARA COUNTY BOWL**
FOUNDATION, a
~~_____~~ ~~California NonProfit Public Benefit~~
~~_____~~ ~~Corporation hereinafter referred to as~~
~~"FOUNDATION"~~

~~SANTA BARBARA COUNTY BOWL FOUNDATION, a~~
~~California NonProfit~~ Nonprofit Public Benefit
Corporation hereinafter referred to as
"FOUNDATION"

with reference to the following:

~~_____~~ WHEREAS, the COUNTY is the owner of that certain real property located in the City of
Santa Barbara, County of Santa Barbara, commonly known and referred to as the Santa Barbara
~~County~~ Bowl (County ~~Assessor's~~ Assessor's Parcel No. 29-202-01 and 29-110-23),
together with the outdoor amphitheater, buildings and improvements situated thereon ~~7~~ (the
"Premises" as more particularly described herein); and

~~_____~~ WHEREAS, the COUNTY is desirous of encouraging educational education,
cultural, amusement, and recreational opportunities for the general benefit of the public; and

~~WHEREAS, pursuant to California Government Code Section 25536 the COUNTY may lease County owned property for amusement or recreational purposes; and~~

 WHEREAS, the COUNTY desires to provide for the development of

art, elocution, public speaking, music, dancing, drama and theatrics for amusement or recreational purposes, as well as for the management, maintenance and improvement of the County Bowl facility including, without limitation, the capital improvements set forth in the Master Plan; and

WHEREAS, ~~it is the County Board of Supervisors is in the best interest of the public that the real~~authorized pursuant to California Government Code Section 25536, by a four-fifths vote of said Board to lease County property designated for park, amusement or recreation purposes; and improvements situated thereon of said

~~WHEREAS, the COUNTY be leased to and the FOUNDATION entered into that certain Management and Lease Agreement dated as of June 28, 1994 pursuant to which COUNTY leased the Premises to the FOUNDATION (the "Original Lease"); and~~

~~WHEREAS, the Original Lease has previously been amended by six (6) amendments (collectively, the "1994 Lease") and FOUNDATION has made substantial improvements to the Premises and developed the operation of the Premises into one of the premier outdoor live performing arts venues in the world; and~~

~~WHEREAS, in light of the prior amendments to the Original Lease and FOUNDATION'S substantial improvements to the Premises and successful operation of the Premises, the parties now desire to amend and restate the 1994 Lease on the terms and subject to the conditions set forth herein;~~

NOW, THEREFORE, in consideration of the premises, and the mutual promises, covenants and conditions herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, COUNTY and FOUNDATION agree as follows:

~~1. 1. —~~DEFINITIONS: The For the purposes of this Agreement, the following words and phrases are defined and terms shall be construed have the meanings as hereinafter set forth; defined in this Section. Capitalized terms which are otherwise used herein shall have the meanings as defined elsewhere in this Agreement.

AGREEMENT: This Amended and Restated Management and Lease Agreement document consisting of the terms and conditions set forth herein and the exhibits attached hereto and made a part hereof, as it may be amended from time to time as provided herein.

~~ANCHOR TENANT: The person, persons or entity selected by the FOUNDATION to stage revenue generating performances to provide funds for the operation, maintenance, and improvements at the Premises.~~

BOWL: ~~_____~~ The Santa Barbara ~~County~~ Bowl facility, a multipurpose outdoor amphitheater used for community programs, stage events, musical performances and other performing art events with an existing maximum capacity of 5,000 seats.

COMMERCIAL ARTIST: A live performing artist, a Performance by whom has been or is reasonably likely to be promoted at the Bowl by the Promoter, as determined in the reasonable and final discretion of the FOUNDATION or the Promoter.

COMMERCIAL EVENT: A Performance at the Bowl for the general public which is not a Community Event.

COMMUNITY EVENT: A Community Event shall be defined as any of the following: (i) a Performance at the Bowl for the general public which is promoted by the Promoter and performed by a Commercial Artist who donates all or a portion of the Commercial Artist’s fee to a charitable or nonprofit cause or organization. For this type of Community Event, preference will be given if the Commercial Artist makes the donation to a local charitable non-profit.; (ii) a Performance at the Bowl by an artist for Santa Barbara community school children which is held during daylight hours and which is co-sponsored by the FOUNDATION and a local public or private educational agency or organization; (iii) a Performance at the Bowl by an artist other than a Commercial Artist which is co-sponsored by the FOUNDATION and a local public or private nonprofit organization, the proceeds of which, if any, are for the co-sponsoring organization.

CONTRACTOR: ~~_____~~ Any person licensed in accordance with the laws of the State of California to perform work in the construction trades, who undertakes or performs work himself or by or through others, to construct, alter, repair, add to, improve or demolish any buildings, structures or other improvements at the Premises.

COUNTY: County of Santa Barbara, a political subdivision of the State of California.

~~PARK DEPARTMENT: The Santa Barbara County Park~~

~~Department.~~
~~FOUNDATION: _____~~ EDUCATION

OUTREACH PROGRAM A community outreach program established by FOUNDATION
dedicated to supporting arts education for Santa Barbara area
students which is primarily administered by FOUNDATION's
Education Outreach Committee.

EFFECTIVE DATE: The date on which this Agreement has been fully executed by
FOUNDATION and COUNTY.

FOUNDATION: Santa Barbara ~~County~~ Bowl Foundation,
~~Inc.~~, a California non-profit public benefit corporation.

MASTER PLAN: _____ The Santa Barbara County Bowl Master Plan
approved by the COUNTY on October 27, 1993, as it presently exists or as it may be amended
from time to time.

PERFORMANCES:— Any type of live entertainment including, but not limited to, the following: opera or operetta, dance, symphonic, classical and popular musical presentations, other live musical productions, stage plays, cultural exchange presentations, and live comedy.

PREMISES:— The ~~premises~~ Premises granted, consisting generally of the real property, buildings, structures and improvements which are located at 1122 N. Milpas Street, Santa Barbara, California, and more particularly described in Section 3 hereof.

2. PROMOTER: The person, persons or entity selected by the FOUNDATION, in its discretion, to stage revenue generating performances to provide funds for the operation, maintenance, and improvements at the Premises.

2. ADMINISTRATION AND ENFORCEMENT:

The ~~Par~~ General Services Department, or such other COUNTY agency as may be designated in writing from time to time pursuant to Section 29 hereof, shall be the priority contact with the FOUNDATION and is the reviewing agency which will make periodic visits to the Premises for inspection and/or other matters as necessary.

The FOUNDATION shall employ a FOUNDATION ~~manager~~ General Manager skilled in the operation of a business similar to the Bowl. The FOUNDATION ~~manager~~ General Manager is the person with whom the COUNTY may deal on a regular basis regarding the operation and management of the Bowl. FOUNDATION shall at all times ~~Provide~~ provide a General Manager for the Bowl.

3. DESCRIPTION OF PREMISES: The COUNTY hereby leases to the

~~3.~~ FOUNDATION and the FOUNDATION hereby leases and accepts from the COUNTY that certain real property described in Exhibit "A"" attached hereto and incorporated herein by reference, together with all the buildings and improvements now situated or hereafter constructed thereon for the term and subject to the conditions hereinafter set forth. Said property shall hereinafter be referred to as the "Premises"".

~~4.~~ USE: The COUNTY leases said Premises to the FOUNDATION

4. for the purposes of a public outdoor amphitheater pursuant to California Government Code Section 25536.

The FOUNDATION shall operate said Premises as a public outdoor amphitheater, all as set forth in the Articles of Incorporation of the FOUNDATION, filed in the office of the Secretary of the State of California, on March 24, 1981, as amended and the Bylaws of the FOUNDATION. ~~Said, as amended.~~ The current form of the FOUNDATION's Bylaws and Articles of Incorporation are attached hereto as Exhibit "B"" and are incorporated by this reference as though fully set forth.

The Foundation may not change its articles of incorporation or by-laws without County approval. The FOUNDATION hereby accepts and shall abide by and comply with ~~COUNTY's~~ COUNTY's Santa Barbara County Bowl Mission Statement as it may affect all policies, operations, and capital improvements. The Mission Statement is as follows:

"It shall be the mission of FOUNDATION to develop, manage, and preserve the ~~County~~ COUNTY Bowl as a valuable community asset, with objectives to insure that the FOUNDATION operates the County Bowl:

- ~~A.~~ As a multipurpose facility ~~maximizing access for~~
~~to support~~ community ~~programs,~~ access to the cultural arts, and to stage events,
musical performances
A. and other performing art events.
- ~~B.~~ In a manner that enhances the cultural life of our
B. citizens, contributes to Santa ~~Barbara's~~ Barbara's unique quality of life, and
presents programs which reflect the multicultural nature of our residents.
- C. By providing consistent long term professional management.

~~management.~~
- ~~D.~~ By development of management and capital improvement
D. financial plans whose goal is self-~~sufficiency.~~ "

FOUNDATION shall not use or commit said Premises or any portion thereof to be improved, developed, used or occupied, in any manner or for any purpose that is in any way in violation of this Agreement, the Mission Statement, the California Environmental Quality Act ("CEQA") documents applicable to the Bowl, the Bowl's Master Plan, as amended, its Articles of Incorporation, its ~~By Laws~~ Bylaws or any valid law, ordinance or regulation of any Federal, State, County or Municipal governmental agency, body or entity.

~~5. TERM: The term of this Agreement shall be for a period of forty five (45) years, more or less, commencing on the date executed by COUNTY, and terminating January 1, 2039, unless sooner terminated as herein provided.~~

5. TERM; TERMINATION: Subject to the provisions of this Section 5, the term of this Agreement shall be for a period of forty-five (45) years, more or less, commencing June 1, 2011 and ending May 31, 2056, unless sooner terminated as herein provided. If the FOUNDATION successfully completes the Santa Barbara County Bowl Master Plan, they shall be eligible for an automatic twenty-five (25) year option to extend this Agreement.

This Agreement may be terminated at any time by FOUNDATION in the event that (i) the California State Board of Equalization determines that the Premises do not qualify for an exemption from real property taxes; and (ii) FOUNDATION reasonably determines in its sole and final discretion that as a result of the loss of an exemption from real property taxes it would no longer be economically feasible for FOUNDATION to continue the possession and operation of the Premises pursuant to this Agreement. In the event that such determinations are made,

FOUNDATION may terminate this Agreement by written notice to COUNTY, given not less than ninety (90) days prior to the effective date of termination. Following such notice, the parties shall reasonably cooperate with one another to effect an orderly transition of possession of the Premises from FOUNDATION to COUNTY, provided that FOUNDATION may, at its election, serve as COUNTY's exclusive agent with respect to the continued operation of the Premises in accordance with the Promotion Services Agreement, if any, then in effect between FOUNDATION and Promoter such that the Premises shall continue to be operated and Performances presented at the Premises by Promoter pursuant to the Promotion Services Agreement and otherwise on substantially the same terms and conditions as are set forth in this Agreement (other than with respect to FOUNDATION's possession of the Premises as tenant). The terms and conditions for FOUNDATION's function as COUNTY's agent for the continued operation of the Premises pursuant to this Section 5 shall be as mutually agreed by FOUNDATION and COUNTY.

~~6.~~ OPERATIONAL RELATIONSHIP: FOUNDATION shall provide a service to the COUNTY in operating and managing the Premises including but not limited to: promoting the Bowl facility, subject to the provisions of Section 7, sponsoring ~~community access events~~Community Events, and improving the Premises on behalf of

6. _____ the COUNTY and its citizens. As a condition of this Agreement, FOUNDATION shall ~~enter and~~ continuously maintain a ~~contract with an Anchor Tenant~~ Promotion Services Agreement with a Promoter, selected by FOUNDATION in its discretion, to stage popular performances at the Bowl, unless other arrangements are approved in advance in writing by County. Subject to the provisions of this Agreement, FOUNDATION shall have the right to determine in its discretion the terms and conditions of the contract with the ~~Anchor Tenant~~ Promoter, including but not limited to the terms for contract termination and the scheduling of all events. ~~FOUNDATION shall be subject to COUNTY'S agreement with MCA Concert, Inc. during the pendency of that agreement.~~

7. _____ ~~7.~~ OPERATIONAL RESPONSIBILITIES:

A. _____ ~~A.~~ OPERATION AND MANAGEMENT OF BOWL: FOUNDATION shall be granted the exclusive right to stage or cause to be staged Performances at the Bowl.

1. Subject to the terms of this agreement, FOUNDATION reserves to itself and the ~~Anchor Tenant~~ Promoter the right to utilize the Bowl anytime during the year.
2. Consistent with FOUNDATION's operation of the Premises in accordance with this Agreement, FOUNDATION shall not interfere with the ~~public's~~ Bowl's public patrons' enjoyment and use of the Premises or surrounding public property for the purposes for which they were intended.
- ~~3.~~ 3. _____ FOUNDATION shall not conduct, allow or operate any business on the Premises not specified in the terms set forth herein.
FOUNDATION shall not use the Premises for any purpose which is not set forth in the provisions of this Agreement.
- ~~4.~~ _____ FOUNDATION shall cause to be employed security

4. ~~WC 1076~~ guards in sufficient numbers to assure that the outside perimeter of the Premises is secure during Performances and shall cause to be employed and pay for ushers and security guards in sufficient numbers to assure the safety and well being of patrons within the Premises during all events staged by ~~Anchor Tenant~~Promoter.

~~5. Subject to the provisions of this Agreement,~~ FOUNDATION shall at all times conduct its business 5. in a quiet and orderly manner to the satisfaction of the COUNTY ~~and~~ consistent with a live entertainment outdoor music and performing arts venue. FOUNDATION shall use its best efforts to prohibit intoxication, profane or indecent language or behavior, or boisterous or loud conduct in or about the Premises and if conditions warrant, shall call upon the aid of peace officers to assist in maintaining peaceful conditions. FOUNDATION shall coordinate safety services, including but not limited to ambulance life support equipment and staff, and the Santa Barbara City Police Department to protect the patrons using the Premises during Performances.

~~6. Subject to audit by COUNTY, FOUNDATION shall have~~ 6. all rights and obligations over the control of the creation and accountability of tickets printed, sold and collected from all Performances at the Bowl.

~~7. FOUNDATION shall provide a "Settlement Statement" for each Performance following the Performance. COUNTY shall provide a form for this purpose, and the completed form shall include a Statement of the Gross Receipts by source of sales, and such other information as the COUNTY may require, including cash register tape of sales.~~

B. PERFORMANCES: Subject to any applicable CEQA requirements, changes in the performing arts industry, the economy and other factors beyond the reasonable control of FOUNDATION, FOUNDATION shall use its best efforts to stage or cause to be staged a maximum of ~~twenty-five (25) Performances~~ thirty-seven (37) Commercial Events at the Bowl during the season ~~by the Anchor Tenant, and a maximum of twelve (12).~~

C. SANTA BARBARA BOWL ARTS SUBSIDY:

1. FOUNDATION's Exclusive Staging Rights. COUNTY acknowledges and agrees that FOUNDATION has the sole and exclusive authority to stage Performances at the Bowl, whether directly by FOUNDATION or indirectly through the Promoter, and that no third party including without limitation any commercial or nonprofit organization, group or charity has any right to access the Bowl facility for the purpose of promoting or staging any event or Performance including, without limitation any Community Event, and FOUNDATION has no obligation of any kind to promote or stage any such third party events or Performances.

2. Calculation of Subsidy Amount. FOUNDATION acknowledges COUNTY's desire to promote the public's appreciation of and access to cultural arts in the Santa Barbara community and to that end FOUNDATION has voluntarily established and funded on an ongoing basis the Education Outreach Program as part of FOUNDATION's operation of the Bowl. In addition, FOUNDATION agrees to contribute to the cost of events sponsored by the Santa Barbara Arts Commission (the "SB Arts Commission") (or similar committee dedicated to the promotion of the public's appreciation of and access to cultural arts in the Santa Barbara community as designated by the Board of Supervisors should the SB Arts Commission ever cease to exist) funding for community cultural arts programs. The amount payable by FOUNDATION to the SB Arts Commission shall be designated as the "Santa Barbara Bowl Arts Subsidy" (the "SBBF Arts Subsidy") and shall be calculated as follows: (i) twenty-five cents (\$0.25) per paid ticket sold for Commercial Events in the 2010, 2011, 2012, 2013 and 2014 Bowl concert seasons; (ii) fifty cents (\$0.50) per paid ticket sold in the 2015 and subsequent Bowl concert seasons, provided that (i) the foregoing per ticket charge shall not exceed fifty cents (\$0.50) per ticket; and (ii) the total amount of the SBBF Arts Subsidy shall not exceed Fifty Thousand Dollars (\$50,000) in any one (1) concert season

through and including the 2019 Bowl concert season. Beginning in the 2020 Bowl concert season and every five (5) years thereafter, the total annual Fifty Thousand Dollars (\$50,000) SBBF Arts Subsidy amount shall be subject to a Cost of Living (CPI) Adjustment. The CPI adjustment shall be made on each and every fifth year commencing with the 2020 Bowl concert season and every fifth concert season thereafter throughout the Term of this Agreement.

Solely for the purpose of computing the percentage by which the total annual SBBF Arts Subsidy amount shall be adjusted, the month of **March** immediately preceding the date of that next scheduled annual payment shall be considered to calculate the CPI adjustment. The rate of increase or decrease shall be determined by calculating the percentage difference between the CPI index from March 2015 and March 2020 and increasing or decreasing the total annual SBBF Arts Subsidy amount by the percentage increase or decrease. The total annual SBBF Arts Subsidy amount shall be increased or decreased every five years by applying the same methodology as described in the previous sentence.

The CPI, to which reference is made in this Section, is the Index issued by the United States of Labor Statistics, Consumer Price Index, All Urban Consumers, Los Angeles-Riverside-Orange County area, All Items, Base Index 1982-1984=100, or if the Index shall no longer be published, then any successor of comparable index which is mutually acceptable to the parties to this Agreement.

In recognition of FOUNDATION's support of Santa Barbara community cultural arts, COUNTY and the SB Arts Commission shall use best efforts to publicly designate the foregoing payment in all relevant communications, event and program advertising and printed materials as the "Santa Barbara Bowl Arts Subsidy". The SBBF Arts Subsidy shall be paid to and used by the SB Arts Commission as it determines appropriate for the direct funding of cultural arts events and programs in the Santa Barbara community.

~~B-~~ 3. Annual Subsidy Payment. The SBBF Arts Subsidy shall be paid annually by FOUNDATION to the SB Arts Commission within one hundred twenty (120) days after the final Performance of the concert season. At the time the SBBF Arts Subsidy is paid by FOUNDATION to the SB Arts Commission, FOUNDATION shall provide COUNTY with a written accounting of (i) the total number of paid tickets sold during the ~~season by the FOUNDATION.~~ immediately preceding concert

season; and (ii) FOUNDATION's calculation of the SBBF Arts Subsidy. COUNTY specifically acknowledges and agrees that (a) FOUNDATION's payment of the SBBF Arts Subsidy as provided herein fully and finally discharges any obligation of FOUNDATION to promote or support community access to the cultural arts in the Santa Barbara community whether under the Master Plan, this Agreement or otherwise; (b) no additional concession, payment or accommodation of any kind by FOUNDATION with respect to community access to the cultural arts or other COUNTY general fund purposes shall ever be required by COUNTY from FOUNDATION; and (c) the provisions of this Section 7.C. constitute a material and valuable concession by FOUNDATION to COUNTY and valuable consideration to COUNTY.

4. Community Events. During the 2010 through 2014 Bowl concert seasons, the FOUNDATION shall continue to endeavor to stage Community Events. The parties acknowledge and agree that commencing in the 2015 Bowl concert season, the SBBF Arts Subsidy shall be calculated at the rate of fifty cents (\$0.50) per paid ticket sold subject to a maximum amount Fifty Thousand Dollars (\$50,000) in any one (1) Bowl season and FOUNDATION's payment of the SBBF Arts Subsidy shall fully satisfy FOUNDATION's community access cultural arts obligations under this Agreement. Accordingly, commencing in the 2015 Bowl concert season, FOUNDATION may, but shall have no further obligation to stage any Community Events at the Bowl.

~~C.~~ D. MAINTENANCE AND REPAIRS:— FOUNDATION shall provide maintenance and repairs to the Premises in accordance with the provisions herein and in particular those of Section 11 below.

~~D.~~ E. IMPROVEMENTS:— FOUNDATION shall improve the Premises in accordance with the provisions contained herein and of the Master Plan attached hereto as Exhibit C and incorporated herein by reference.

~~E. — ASSUMPTIONS OF CURRENT OBLIGATIONS:— RENT:~~
In addition to any other amounts payable by FOUNDATION acknowledges that COUNTY has entered into a number of contracts, leases and agreements regarding all or a portion of the Premises which contracts, leases and agreements are still in effect and FOUNDATION is willing to assume COUNTY'S obligations contained therein.

~~Therefore, COUNTY does hereby assign pursuant to FOUNDATION and FOUNDATION does hereby accept and take from COUNTY all the rights and duties under such contracts, leases and agreements which COUNTY has heretofore entered in to with~~

~~regard to the Premises and which remain in effect at the time of COUNTY'S execution of this Agreement. COUNTY shall provide FOUNDATION with a copy of any or all of these contracts, leases and agreements within ninety (90) days of the execution of this Agreement by COUNTY, provided~~

~~1076 however, that COUNTY's failure to provide such copies shall not relieve FOUNDATION of its obligations under this section.~~

~~Nothing herein is intended to limit FOUNDATION's right or ability to secure contracts, leases or agreements with other competent and qualified persons or entities, as herein described upon the natural termination of the existing contracts, leases and agreements in effect at the time of COUNTY's execution of this Agreement.~~

~~8. RENT: As consideration for the granting of this~~
8. Agreement, the FOUNDATION shall be responsible for maintaining, repairing, improving and operating said Premises, at its own expense, including the material, labor and all costs associated with the improvements set forth in the Master Plan and any additions or amendments thereto. FOUNDATION shall be responsible for the payment of any property tax or possessory tax assessed against the Premises. COUNTY shall cooperate with FOUNDATION and shall execute and deliver any and all documents which may reasonably be necessary in obtaining any welfare exemption or other property tax exemption which may be applicable to FOUNDATION's use and occupancy of the Premises.

As further consideration, the FOUNDATION shall fully implement, at its own expense, the Master Plan, ~~achieving~~using its best efforts to achieve all objectives thereof, including but not limited to the construction of capital improvements as specified therein. COUNTY acknowledges and agrees that FOUNDATION has fully performed its obligations under the 1994 Lease including, without limitation, the construction of substantial renovations, additions, alterations and improvements to the Premises in accordance with the Master Plan.

~~of capital improvements as specified therein.~~

~~It is understood by the parties that the estimated cost for remodeling the buildings on the Premises in accordance with the Master Plan is approximately Twelve Million Four Hundred Forty Four Thousand Dollars (\$12,444,000), as estimated in 1992.~~

~~9. CERTIFICATES OF PARTICIPATION MASTER LEASE POOL PAYMENTS:~~

~~FOUNDATION shall reimburse to COUNTY the proportional costs for COUNTY's lease payments on the portion of 1991 Certificates of Participation known as the Master Lease Pool. FOUNDATION shall be~~

~~C-1076 responsible for the lease payments for the period from August 1994 through February 1996 as shown on Exhibit "D", attached hereto and made a part hereof. The actual Master Lease Pool payments may vary depending on period earning adjustments. The FOUNDATION will be billed by the Park Department semiannually based on the actual payment expense. FOUNDATION shall reimburse the COUNTY within thirty days of billing by the Park Department.~~

~~10. It is understood and agreed by the parties that FOUNDATION has acquired certain real property contiguous to the Premises located at 1130 North Milpas Street, Santa Barbara, California APN: 029-201-004 (the "Rudy Property") as part of its planned improvement of the Premises and enhancement of the Bowl facility and that FOUNDATION continues in its efforts of capital fundraising for the construction of additional renovations, additions, alterations and improvements to the Premises in accordance with the Master Plan. At the expiration or earlier termination of the Lease Term, title to all real property owned by FOUNDATION, including without limitation the Rudy Property, shall be transferred to COUNTY. Title to all such real property shall be conveyed to COUNTY either (i) free and clear of any monetary indebtedness; or (ii) subject to existing monetary indebtedness which FOUNDATION shall have the continuing obligation to pay as and when it comes due. The timing of FOUNDATION'S implementation of the Master Plan shall be subject to any delays caused by economic constraints or other factors which are beyond the control of the FOUNDATION. FOUNDATION'S failure to comply with the provisions of this Section 8 shall constitute a default subject to the provisions of Sections 37 and 38.~~

~~9. PUBLIC FINANCING RESOURCES: FOUNDATION has previously reimbursed to COUNTY the proportional costs for COUNTY'S lease payments on the portion of 1991 Certificates of Participation known as the Master Lease Pool. The parties shall cooperate with one another in connection with the availability of future certificates of participation and other sources of public financing to assist FOUNDATION in its improvement of the Premises pursuant to the Master Plan. As a condition to any public financing, FOUNDATION shall convey title to COUNTY to any real property then owned by FOUNDATION and such conveyed real property shall become part of the Premises governed by this Agreement. Subject to the provisions of Section 42, FOUNDATION shall be free to incur secured and unsecured~~

indebtedness, the proceeds of which are to be used in a manner consistent with FOUNDATION's rights and obligations under this Agreement. Any secured indebtedness incurred by FOUNDATION shall be secured by real or personal property owned solely by FOUNDATION.

10. EQUIPMENT, TITLE AND WARRANTIES:— Title to the Premises and all buildings and improvements now located or hereafter constructed thereon is and shall be vested in COUNTY at all times. At such time as the Rudy Property is owned free and clear by FOUNDATION, FOUNDATION may convey title to the Rudy Property to COUNTY and COUNTY shall accept title to such property in its "AS IS" condition with no representation or warranty of any kind by FOUNDATION. Following such conveyance, the Rudy Property shall become part of the Premises and shall be governed by this Agreement. Prior to such conveyance, the Rudy Property shall remain owned by FOUNDATION and may be included in FOUNDATION's implementation of the Master Plan. From time to time throughout the term of this Agreement, FOUNDATION shall be free to expend its resources as it deems appropriate and to lease or purchase such additional real and personal property assets of any kind or nature whatsoever which FOUNDATION reasonably determines are necessary or appropriate for the successful operation of the Bowl.

At the inception of the 1994 Lease, COUNTY shall furnish furnished the equipment and furniture which ~~is presently~~ was then located on the Premises to FOUNDATION for use on the Premises during the term of ~~this agreement, the 1994 Lease.~~ Title, possession and all associated rights to such personal property ~~shall pass~~ passed to FOUNDATION upon execution of ~~this agreement~~ the 1994 Lease by both parties. ~~Upon~~ Subject to applicable legal requirements, upon termination of this ~~agreement~~ Agreement, title, possession and all associated rights to such personal property, or property subsequently obtained by FOUNDATION as a replacement or addition to said furniture or equipment, shall pass to COUNTY ~~for continued use at the Bowl.~~ in its "AS IS" condition with no representation or warranty by FOUNDATION to COUNTY for continued use at the Bowl or to such other nonprofit tax exempt organization designated by COUNTY which satisfies the requirements of Internal Revenue Code Section 501(c)(3) as a qualifying successor organization to FOUNDATION's assets. The personal property referred to in this section includes, without limitation, chairs, desks, lamps, refrigerators, tables, phones, fax machines, computers, miscellaneous cables and cords, and any other personal property acquired by FOUNDATION during the term of this the 1994 Lease and this Agreement.

~~The~~ FOUNDATION hereby takes and accepts the Premises in their

~~WC 1076~~ present condition and neither the COUNTY nor FOUNDATION shall have ~~ne any~~ responsibility to remove any existing equipment, structures, installation, utility or pipelines, or repair any condition existing on the Premises except as provided in Section 41(D) herein.

~~A.~~ FOUNDATION shall furnish all equipment required to A. sponsor or stage an event; COUNTY shall not be obliged to furnish any such equipment during the term of this lease. Said equipment includes, but is not limited to, theater lights, super troopers, legs, borders, cyclorama, lighting trees for stage lighting, lamps for the outdoor light trees, and sound system. It is understood that this list is not a complete inventory of what the FOUNDATION may be required to furnish, but constitutes, without limitation, examples of what the FOUNDATION shall provide through lease or otherwise.

FOUNDATION shall provide personnel and equipment necessary to protect the Premises from theft, burglary, or vandalism.

~~B.~~ Should FOUNDATION wish to dispose of equipment B. and/or personal property transferred by COUNTY to FOUNDATION pursuant to this section, FOUNDATION shall first offer such equipment/property to COUNTY. If COUNTY wishes to have such property/equipment returned, then FOUNDATION shall transfer the same to COUNTY without payment.

~~11.~~ MAINTENANCE AND REPAIRS: FOUNDATION shall have sole responsibility for scheduling and providing ground and building

11. ~~WC 1076~~ maintenance and repair services on the Premises. Said maintenance and repair shall be performed as necessary to keep said grounds and ~~building(s)~~ buildings clean, neat, sanitary and safe.

It is mutually understood that all maintenance and repair work is the sole responsibility of the FOUNDATION and such work will be done in a competent and workmanlike manner.

12. ~~12.~~ ALTERATIONS AND CONSTRUCTION:— During the term of this Agreement no improvements, structural additions, changes or exterior alterations, repairs or restoration, including work pursuant to the Master Plan, shall be made to any building or structure located on the Premises without the prior written approval of the COUNTY.

FOUNDATION shall cause all improvements to be developed consistent with the Master Plan, including any subsequent amendments thereto. COUNTY shall have sole authority to amend the Master Plan.

Any exterior construction or interior alteration project in, on, or about the Premises which exceeds Twenty—Five Thousand Dollars (\$25,000) in aggregate, or which requires a permit from the Santa Barbara County Planning and Development Department, Building and Safety Division, shall be presented to COUNTY in written form with proposed plans and specifications prior to any construction or alterations. ~~COUNTY~~ COUNTY, through its General Services Department, shall issue a written approval or disapproval of any plans and specifications submitted pursuant to this section. No construction or alteration which has been disapproved by COUNTY shall be performed, except where COUNTY issues a subsequent written approval of such work. Any improvements constructed by FOUNDATION shall be constructed in conformity with the laws governing improvements on real property owned by COUNTY including without limitation the California Public Contracts Act and the California Labor Code pursuant to Section 12.A, below.

Any COUNTY approval shall be deemed conditioned upon FOUNDATION acquiring all necessary permits to proceed from governmental agencies at its sole expense, furnishing a copy thereof to the ~~Park~~General Services Department prior to the commencement of the work, and compliance by FOUNDATION with all ~~Conditions~~conditions of said permit in a prompt and expeditious manner. Any and all permits or clearances required shall be made only on the merits of the application thereof, and nothing in this Agreement shall be construed to require that COUNTY, or any other government agency, grant such permits or clearances. FOUNDATION shall give the ~~Park~~General Services Department, or designee, not less than ten (10) days written notice prior to the commencement of any ~~work~~construction or alteration in, on or about the Premises, ~~which exceeds Twenty-Five Thousand Dollars (\$25,000) in aggregate, or which requires a permit from the Santa Barbara County Planning and the Park~~Development Department ~~shall have the right to, Building and Safety Division, and COUNTY, through its General Services Department, may~~ post Notices of Nonresponsibility in or on the Premises as provided by law.

~~Any~~FOUNDATION, while performing any construction or alterations ~~by FOUNDATION~~ pursuant to this Agreement, shall keep the leasehold and improvements free and clear of liens for labor and materials expended by or for FOUNDATION or on its behalf, except as provided in Section 42 below, and FOUNDATION shall hold COUNTY harmless and defend COUNTY with respect to any construction or alterations. ~~Non-~~If any claims or stop notices against FOUNDATION exist more than forty-five (45) days after the Notice of Completion has been recorded on any project in excess of Twenty-Five Thousand Dollars (\$25,000), or if FOUNDATION fails to comply with any part of this Section, FOUNDATION will be in default of this Agreement, subject to the provisions of Sections 37 and 38." ~~compliance with this section shall constitute a material breach hereof.~~

When improvements are constructed by FOUNDATION, under the provisions of this Agreement, FOUNDATION shall inform COUNTY of the date of completion of said improvements at the time of completion.

A. ~~A.~~ The FOUNDATION hereby agrees that, in entering into a contract for construction and remodeling of any new improvements in excess ~~for~~of Twenty ~~Five~~ Thousand Dollars (\$25,000), such contract must contain the following requirements:

1. ~~PREVAILING WAGE:~~ The ~~Contractor~~contractor shall comply with Labor Code Section 1774 and 1775, if applicable to the work. The Director of Industrial Relations may from time to time issue updated wage determinations for certain crafts that supersede previous determinations. These periodically updated prevailing wage rates are incorporated by this reference and shall apply to the contract between FOUNDATION and any Contractor. These revisions to the general prevailing wage rates are available at the Department of Industrial Relations, Division of Labor Statistics and Research, 455 Golden Gate Avenue, 5th Floor, Room 5184, San Francisco, California 94102, or such other location as may subsequently be designated. The FOUNDATION may seek and shall comply with a determination of the Director of Industrial Relations as to the applicability of prevailing wage laws as to any project undertaken by FOUNDATION.

2. ~~PERFORMANCE, PAYMENT, AND WARRANTY BONDS:~~

 a. ~~For~~ contracts in excess of Twenty ~~Five~~ Thousand Dollars (\$25,000), the Contractor shall deliver to ~~the~~ FOUNDATION, on forms ~~substantially similar to those attached hereto as Exhibits "E" and "F", and~~ approved by COUNTY, an executed Standard Performance Bond and Standard Labor and Material Payment Bond and

a minimum of one (1) year Maintenance (Warranty) Bond, all with a California admitted surety insurer and each payable in an amount equal to one hundred (100%) percent of the contract amount as guarantee for the faithful performance of the

~~Contractor~~contractor, the payment of all persons who have, and fulfill, contracts which are directly with the ~~Contractor~~contractor, and the warranty of the work.

COUNTY recommends that FOUNDATION, for its own protection, require such bonds on all projects associated with the Premises. The sureties of all bonds shall be such

surety company or companies as are approved by COUNTY. No contract involving government funds in excess of Twenty-Five Thousand Dollars (\$25,000) shall be in effect, and no work shall be performed thereunder, until all bonds have been approved by COUNTY.

~~b.~~ b. The insurance and surety companies providing or underwriting such bonding shall be duly admitted and registered by the California Department of Insurance and shall be acceptable to FOUNDATION and COUNTY.

~~c.~~ c. The performance bond required by the contract shall remain in full force and effect during the warranty periods required by the contract so as to give FOUNDATION and COUNTY recourse on the bond if the Contractor fails to remedy defects during the warranty period.

d. ~~Contractor's~~ Contractor's Payment and Performance Bond shall name the FOUNDATION and COUNTY as ~~obligees~~ obliges.

e. Any contract for construction or alteration of the Premises shall include provisions for warranty of the labor and materials provided thereunder. Said provisions shall be identical to those attached hereto as Exhibit ~~"G"~~ "G" unless other provisions are approved in writing by the General Services Department.

~~approved in writing by the Park Department.~~

~~B.~~ B. The FOUNDATION shall obtain at its sole expense any and all necessary permits and agency approvals required by law, including but not limited to building permits, environmental clearance, and design review by County Board of Architectural Review (BAR). Any and all permits or clearances required shall be made only on the merits of the application thereof, and nothing in this Agreement shall be construed to require the COUNTY, or any other government agency, to grant such permits or clearances.

~~C.~~ C. The FOUNDATION shall be responsible for the cost of any improvements in the adjacent streets, sidewalks, curbs, or driveways which the City of Santa Barbara or any other public agency may require, including any assessments therefor.

~~13.~~ 13. ~~13.~~ UTILITIES AND SERVICES: ~~—~~ FOUNDATION shall make all arrangements for and pay for utilities and services furnished to or used by it on the Premises, including but not limited to, water, electrical, sewer, trash collection and natural gas, and for any required connection charges for said utilities. FOUNDATION shall pay on demand by any public utility or service company the total cost of said utilities or service.

FOUNDATION shall pay for any and all new utilities or services used and/or installed on the Premises. Installation costs shall include not only the costs of installing utilities or services on the Premises, but also the cost of bringing such utilities or services to the Premises. If FOUNDATION is constructing or

~~WC-1076~~ remodeling improvements and additional utility or service is required as a result of ~~FOUNDATION'S~~FOUNDATION'S changes or increased utility or service requirements, including without limitation electrical wiring, plumbing, conduits or mains, FOUNDATION shall pay on demand from any public utility or service company the total costs of said utility and/or service. FOUNDATION shall hold COUNTY harmless from any costs described in this section.

14. INDEMNIFICATION:— FOUNDATION shall defend, indemnify and hold harmless the COUNTY, its officers, agents and employees, from any and all claims, demands, actions, costs, expenses (including ~~attorney's~~attorney's fees), judgments, or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof, including, but not limited to, any act or omission to act on the part of the FOUNDATION and/or ~~FOUNDATION'S~~FOUNDATION'S agents, officers, employees, and independent contractors.

~~15.~~—INSURANCE:— FOUNDATION shall procure the following
_insurance ~~coverage's~~coverages at its sole cost and expense.
~~Certificate~~ Current certificate(s) of Insurance shall be furnished to the COUNTY ~~prior to~~ FOUNDATION'S ~~at all times~~
during FOUNDATION'S occupancy. _All insurance coverages are to be placed with insurers which (1) have a ~~Best's~~Best's rating of no less than B+~~++~~++VIII, and (2) are admitted by the California Department of Insurance to do business in the State of California. _All other insurers require the prior approval of the COUNTY. _ Such insurance coverages, in the minimum limits as specified below, shall be maintained during the term of the Agreement. ~~Failure~~ and FOUNDATION's failure to comply with the ~~insurance requirements~~

~~provisions of this Section 15 shall place FOUNDATION in constitute a default- subject to the provisions of Sections 37 and 38.~~ Upon request by the ~~Par~~

15. General Services Department, FOUNDATION shall provide certified copies of any insurance policies to the ~~Par~~General Services Department within ten (10) working days from the date of the request. The COUNTY may periodically review and amend the minimum limits for the required insurance coverages. In the event of a change in the minimum limits, the COUNTY shall inform FOUNDATION of such change by giving written notice to FOUNDATION no less than sixty (60) days prior to the effective date of such change.

- A. ~~WORKERS'~~WORKERS' COMPENSATION INSURANCE: Statutory Workers' Compensation and Employer's Liability Insurance with limits of at least One Million Dollars (\$1,000,000) shall cover all ~~FOUNDATION'S~~FOUNDATION'S staff while performing any work incidental to the performance of the Agreement. The policy shall provide that no cancellation, major change in coverage, or expiration shall be effective or occur until at least thirty (30) days after receipt of such notice by COUNTY.

~~B.~~ GENERAL AND AUTOMOBILE LIABILITY INSURANCE: The general liability insurance shall include personal injury liability coverage, shall afford coverage for all premises and operations of FOUNDATION, shall include contractual liability for the Agreement between the COUNTY and FOUNDATION, shall include products/completed operations liability coverage if FOUNDATION sells merchandise, food and beverage and shall include liquor liability coverage if FOUNDATION sells alcoholic beverages. The automobile liability

B. ~~wc 1076~~ insurance shall cover all owned, non-owned and hired motor vehicles which are operated on behalf of FOUNDATION pursuant to FOUNDATION'S activities hereunder. COUNTY, its officers, employees, and agents shall be named as ~~"~~"Additional Insureds"~~"~~ on any policy. The limit of liability of said general liability insurance policy or policies shall not be less than Two Million Dollars (\$2,000,000) per occurrence combined single limit for bodily injury and property damage. Personal injury coverage should also be in the amount of Two Million Dollars (\$2,000,000) per person aggregate. The limit of liability of said policy or policies for automobile liability insurance shall not be less than ~~one~~Once Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage. Said policy or policies shall contain a provision that such insurance as is afforded by this policy shall be primary and contributory to the full limits stated in the declarations, and if COUNTY has other valid and ~~collectible~~collectible insurance for a loss covered by this policy, that other insurance shall be excess only. Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall provide that COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

~~e.~~ DIRECTORS AND OFFICERS LIABILITY INSURANCE:
The

directors and officers liability insurance shall include protection against any claim arising out of any actual or alleged error or

C. ~~WC 1076~~ misstatement or act of omission or neglect or ~~breach~~ breach of duty by the directors and officers of the FOUNDATION in the discharge of their duties with the FOUNDATION individually or collectively, or any matter claimed against them solely by reasons of their being or having been directors and officers of the FOUNDATION.

16. ~~16.~~ PROPERTY INSURANCE:— FOUNDATION agrees to reimburse to COUNTY the proportional costs for COUNTY to provide all risk property coverage on any and all buildings subject to this Agreement. In the event of any loss to any buildings subject to the Agreement caused by any occurrence that is covered by such all risk property insurance, then COUNTY shall be responsible for any payment of any deductible. FOUNDATION agrees that the above described all risk property coverage shall not cover the personal property of FOUNDATION, nor is there any intention that said coverage insure such interest.

FOUNDATION shall reimburse the COUNTY for amount of said property insurance premium within thirty days of billing by the ~~Par~~ General Services Department.

FOUNDATION'S obligation to reimburse COUNTY for the entire ~~cost~~ costs and expense of carrying the necessary property insurance for the Premises shall terminate after FOUNDATION completes all of the following:

A. — FOUNDATION obtaining the equivalent all risk property insurance from a separate insurance company or companies, with all policies of insurance being written by companies approved

~~A. WC 1076~~ in writing by the COUNTY, and all policies naming COUNTY, its officers, employees and agents as additional insured parties.

B. FOUNDATION submitting to the ~~Park~~ General Services Department, satisfactory evidence of compliance with said required all risk property insurance in the form of a Certificate of Insurance naming the COUNTY as ~~Additional~~ additional Insureds.

~~C.~~ FOUNDATION providing for an agreement under which

C. the insurance company or companies supplying such all risk property insurance notify COUNTY in writing at least thirty (30) days prior to cancellation ~~of~~ or all or any part of such policy.

~~D.~~ FOUNDATION'S obligation shall not terminate until

D. all policies have been approved in writing by COUNTY.

All property insurance carried by either party shall include provisions denying to the insurer acquisition by subrogation of rights of recovery against the other party to the extent the rights have been waived by the insured prior to occurrence of loss or injury.

17. AGENTS' INSURANCE: ~~-~~ FOUNDATION shall require all agents, contractors, permittees, and licensees performing any activities or duties on said Premises, to carry such general liability insurance as is customary among prudent operators of similar businesses under comparable circumstances.

~~18.~~ SUBLEASES, ~~-~~LICENSES, AGREEMENTS: ~~-~~ Notwithstanding any other provisions of this Agreement, FOUNDATION may issue and shall control, regulate, and administer all licenses, subleases, rental

18. ~~WC 1076~~ agreements and concession agreements on the Premises or any part thereof including, without limitation FOUNDATION's agreement with the Promoter, for the use of the Premises for ~~performances~~Performances, meetings, films, lectures, classes, musical events, theater, and other such ordinary uses associated with the Premises, without the prior written consent of COUNTY. This waiver of consent shall not relieve FOUNDATION of its duties as manager and lessee under this Agreement.

FOUNDATION shall require all sublessees, licenses, and concessionaires ~~(“subleases”)~~ including the ~~Anchor Tenant~~Promoter, to maintain the following insurance coverages, and to satisfy other requirements, as set forth below:

~~A.~~A. INSURANCE: Sublessee Subleases shall procure the following

insurance coverage at its sole cost and expense for the uses or occupancy of the Premises. Certificates of Insurance shall be maintained by the FOUNDATION and made available to COUNTY upon request. All insurance coverage are to be placed with insurers which (1) have a Best's rating of no less than B++VIII, and (2) are admitted insurance companies in the State of California. All other insurers require prior approval from the COUNTY. Such insurance coverage, in the minimum limits as specified below, shall be maintained during the term of the sublease.

~~Sublessees'~~Sublessees failure to comply with the insurance requirements shall ~~place FOUNDATION in default, constitute a breach of this Agreement subject to the provisions of Sections 37 and 38.~~ Upon request by FOUNDATION, Sublessees shall provide certified copies of any insurance policies to FOUNDATION within ten (10) working days.

~~1.~~ 1. Workers' Compensation Insurance. Statutory
Workers' Compensation and ~~Employer's~~Employer's Liability Insurance with
 limits of at least One Million Dollars (\$1,000,000) shall cover all Sublessees'
 employees or agents while performing any work incidental to the performance of the
 sublease. The policy shall provide that no cancellation, major ~~change~~change in
 coverage, or expiration shall be effective or occur until at least thirty (30) days after
 receipt of such notice by FOUNDATION.

~~2.~~2. General and Automobile Liability
 Insurance. The general liability insurance shall include
 personal injury liability coverage, shall afford coverage for
 all Premises and operations of sublessee, shall include
 contractual liability for the Agreement between the—
 Sublessee— and FOUNDATION,— shall include
 products/completed operations liability coverage if Sublessee
 sells merchandise, food and beverage, and shall include liquor
 liability coverage if alcoholic beverages are sold. The
 automobile liability insurance shall cover all owned, non-
 owned and hired motor vehicles which are operated on behalf of
 Sublessee pursuant to Sublessee's activities hereunder.
 COUNTY, its officers, employees, and agents and FOUNDATION,
 its directors, officers, employees, and agents, shall be named
 as "Additional Insureds". The limit of liability of said
 policy or policies shall not be less than One Million Dollars
 (\$1,000,000) per occurrence combined single limit for bodily
 injury and property damage. Personal injury coverage should
 also be in the amount of One Million Dollars (\$1,000,000) per
 person

~~WC 1076~~ aggregate. Said policy or policies shall contain a provision that such insurance as is afforded by this policy shall be primary and contributory to the full limits stated in the declarations, and if COUNTY has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only. Said policy or policies shall provide that COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

B. ~~INDEMNIFICATION~~: ~~Sublessee~~ Subleases shall defend, indemnify and hold harmless, the COUNTY, its officers, agents, and employees; and FOUNDATION, its directors, officers, agents, and employees, from any and all claims, demands, damages, cost, expenses (including attorneys' fees), judgments or liabilities arising ~~out of~~ of the sublease or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of Sublessee or his agents or employees or other independent contractors responsible to him; except those claims, actions, demands, costs, expenses (including attorneys' fees ~~→~~), judgments or liabilities resulting solely from the negligence or willful misconduct of FOUNDATION.

The COUNTY may periodically review its ~~polices~~ policies and practices for subleasing of real ~~Property~~ property. In the event of a ~~change~~ change in subleasing requirements, the COUNTY shall inform FOUNDATION of such change and FOUNDATION shall comply with the change upon the written notice to FOUNDATION. FOUNDATION shall implement such change on any and all subsequent agreements with sublessees.

~~any and all subsequent agreements with sublessees.~~

~~19. REVENUES: The COUNTY shall transfer any and all funds in the County Bowl Capital Improvement Trust Fund and all other Funds reserved for the Bowl operation to the FOUNDATION within thirty (30) days after execution of this Agreement, except for the amount of current unpaid expenditure obligations incurred by the COUNTY on behalf of the Bowl. The FOUNDATION shall spend such funds only on improvement, maintenance and operation of the Premises and other expenses reasonably associated with FOUNDATION operations and activities.~~

19. REVENUES:

Any and all revenue generated by FOUNDATION from the Premises, including, but not limited to, ticket sales, membership, donations, gifts, benefits, and subleases shall be retained by FOUNDATION and utilized solely for ~~thesuch~~ purposes ~~set forth herein.~~ FOUNDATION agrees that any and all revenues ~~received by~~ which are consistent with FOUNDATION's operation of the Bowl and FOUNDATION's nonprofit charitable status as a tax exempt organization under Internal Revenue Code Section 501(c)(3). FOUNDATION shall spend such funds on improvement, maintenance and operational costs associated with the Premises, the acquisition costs of such additional real and personal property of any kind whatsoever in furtherance of the Bowl's Master Plan and such other expenditures including without limitation the Education Outreach Program and related expenditures, which FOUNDATION reasonably determines are necessary and appropriate, consistent with or complimentary to FOUNDATION's operation of the Bowl, business, operations and activities. FOUNDATION shall be ~~spent only on improvement, maintenance~~ free to pursue and develop such supplementary and additional business activities and sources of revenue of any kind as its deems necessary and appropriate, consistent with or complimentary to the Bowl Master Plan, the governing CEQA document pertaining to the Bowl and FOUNDATION's operation of the Premises and other expenses reasonably associated with Bowl Bowl, business, operations and activities. ~~specifically including any such~~

additional business and revenue generating activities which may develop in the entertainment music industry throughout the term of this Agreement. No member of ~~the~~ ~~FOUNDATION~~FOUNDATION's Board of Directors shall receive any financial or material benefit whatsoever from the use of such funds ~~other than in a manner which is permitted under the California Nonprofit Corporation Law including Section 5233 et seq. of the California Corporations Code.~~ Consistent with the foregoing, FOUNDATION may pay reasonable compensation to members of FOUNDATION's Board of Directors for services provided to FOUNDATION including without limitation, construction oversight, legal and accounting services, provided that all such compensation arrangements are reasonable and appropriate and approved by the FOUNDATION Board of Directors in accordance with the requirements of the California Nonprofit Corporation Law including Section 5233 et seq. of the California Corporations Code.

~~20.~~—RECORDS, ACCOUNTS AND AUDITS: __ FOUNDATION shall keep and maintain good and sufficient books and records according to Generally Accepted Accounting Principles which shall include: receipts, charges, credits, disbursements and any and all other transactions in connection therewith including Federal, State and

~~20. WC 1076~~ local tax returns; records of daily bank deposits of the entire receipts from transactions at or from the operation of the FOUNDATION; sales slips; daily dated cash register tapes; sales books; duplicated bank deposit slips; bank statements. ~~Such booksbook~~ and records shall be separate from other business interests not a part of this Agreement. ~~Such books and records shall be kept on or within 50one~~ hundred (100) miles of the Premises and shall be available for the inspection and audit by officers, employees and agents of the COUNTY at all reasonable times. ~~Such records shall be maintained by FOUNDATION for a period of four (4) years from the date of production, except that contracts shall be maintained for four (4) years from the date of their termination. Failure to observe the provisions of this Section 20 shall be material breach and COUNTY may, at its option, terminate this Agreement on such basis.~~

At its option, COUNTY may require FOUNDATION to make and complete an annual audit of receipts of FOUNDATION'S entire business affairs and records relating to the FOUNDATION'S operation under this Agreement, prepared and signed by a certified public accountant, or licensed public accountant who has prepared such audit in accordance with standards established and published by the American Institute of Certified Public Accountants and any amendments or additions thereto or successors thereof. If such an audit is required, FOUNDATION shall provide and deliver to the County Auditor/Controller and the ~~Park~~General Services Department, a copy of the annual audit upon its completion.

Such audit shall be signed by such certified public accountant or licensed public accountant and set out in language therein to the effect that they have examined said financial records pertaining to receipts from operations as the same are defined in this Agreement, and their examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of said financial records and such other auditing procedures considered necessary under the circumstances and that in carrying out those procedures, whether anything came to their attention which caused them to believe that the said gross receipts reported to COUNTY are not as stated and such audit shall contain an opinion as to whether the reports examined fairly present the income described in the Agreement for the period being examined in conformity with described accounting principles applied on a consistent basis.

Such certified public accountant or licensed public accountant shall be entirely independent of FOUNDATION and FOUNDATION'S Board of Directors, sublessees, licensees, contractors and other entities doing business under this Agreement and shall not be an employee, directly or indirectly, and shall have no financial interest whatsoever in the business of FOUNDATION, FOUNDATION'S sublessees, contractors or other entities doing business under this Agreement. In the event that FOUNDATION fails to provide such audit, the ~~Park~~General Services Department may employ a certified public accountant or licensed public accountant to conduct such audit, and FOUNDATION in such

~~WC-2076~~ case shall be liable for the costs and expenses of such audit. Failure to provide the necessary information for the COUNTY'S certified public accountant to conduct the required audit within ten (10) days shall be deemed to be a material breach of this Agreement.

~~21. MERCHANDISE, FOOD AND BEVERAGE: BEVERAGES:~~
FOUNDATION or

21. FOUNDATION'S concessionaires or ~~Anchored Tenant Promoter~~ shall have the right to offer for sale to the public an appropriate selection of merchandise, food and beverages.

~~A.~~ ALCOHOLIC BEVERAGE SALE: FOUNDATION or FOUNDATION'S

A. concessionaire may sell alcoholic beverages for Performances at the Bowl. The license for the sale of alcoholic beverages shall be paid for by the FOUNDATION or FOUNDATION'S concessionaire. The location and sale of alcoholic beverages must comply with the rules and regulations of the Alcoholic Beverage Control Board and shall have prior review by the Santa Barbara City Police Department.

~~B.~~ VENDING MACHINES: FOUNDATION shall have the right to

B. install or contract to install vending machines on the Premises.

~~C.~~ MERCHANDISE: The FOUNDATION, ~~Anchored Tenant Promoter~~ or its

~~_____~~ contracted performers may sell customized merchandise

C. ~~_____~~ identified with the FOUNDATION or the Performance.

~~D.~~ PRICING OF MERCHANDISE, FOOD and BEVERAGE: The prices to

1076

D. be charged for merchandise, food and beverage shall be uniform at all times and shall be generally comparable to prices charged in similar establishments in Southern California.

E. ~~E.~~—FOOD QUALITY, APPLICABLE LAW: All foods, drinks, beverages, confectionery and other products intended for human consumption, and permitted to be sold, or kept for sale by the FOUNDATION or FOUNDATION’S concessionaire upon the Premises, shall be of a high quality and shall be kept and sold in accordance with all Federal, State and County food and beverage laws, ~~and~~ ordinances and regulations.

F. ~~2.2.~~—ADDITIONAL GOODS AND SERVICES: Subject to the Master Plan and the governing CEQA document applicable to the Bowl, FOUNDATION shall have the right to offer for sale through its website and/or at the Premises such additional goods and services which FOUNDATION deems necessary or appropriate for the successful operation of the Bowl as an outdoor performing arts venue which is competitive with other such venues in the performing arts industry. Subject to the Master Plan and the governing CEQA document applicable to the Bowl, in accordance with the provisions of Section 19, FOUNDATION shall be free to pursue and develop such supplementary and additional business activities and sources of revenue of any kind as it deems necessary and appropriate and consistent with its operation of the Bowl.

22. OBLIGATIONS OF FOUNDATION:

A. ~~A.~~—FOUNDATION BOARD OF DIRECTORS/ARTICLES OF INCORPORATION:

Should the FOUNDATION amend its Bylaws or Articles of Incorporation set forth in Exhibit “B” in any manner which is in conflict with this Agreement without COUNTY approval,

FOUNDATION shall be in ~~Material~~ breach of this Agreement. ~~The~~ subject to the provisions of Sections 37 and 38. Any such amendment shall be subject to the prior written approval of COUNTY through the Director of the General Services Department or such other COUNTY agency as COUNTY may designate.

FOUNDATION shall at all times during the term of this Agreement remain a tax exempt

non-profit Public Benefit Corporation under the laws of the State of California for charitable ~~proposes~~purposes.

The Bylaws of the FOUNDATION shall provide for the appointment of the FOUNDATION'S Board of Directors. ~~The Director of the Park Department shall serve as a non-voting ex-officio member of the Board of Directors.~~ The First District Supervisor, with the concurrence of the Board of Supervisors, shall appoint one voting member of the ~~Board of Directors.~~ FOUNDATION's Board of Directors for a term of one (1) year whose responsibilities shall include, without limitation, serving as an active and participating member of FOUNDATION's Education Outreach Committee. In addition, the Director of General Services or his designee shall serve as a non-voting ex-officio member of FOUNDATION's Board of Directors.

B. PUBLIC MEETINGS:

The FOUNDATION’S Board of Directors shall hold not less than two (2) public meetings annually concerning the current plans, development, policies and capital improvement programs of the Premises. At least two (2) weeks prior to the meeting date, notice of said meetings shall be published in ~~the~~ newspaper of general circulation in the County of Santa Barbara and shall be given in writing to the COUNTY.

~~C. ANNUAL REPORT:~~

C. ANNUAL REPORT:

On or before ~~February~~October 15 of each calendar year, ~~beginning February 15, 1995,~~ FOUNDATION shall submit to the ~~Park~~General Services Department and the Board of Supervisors, through the First District Supervisor, an annual report containing the following information. Either the First District Supervisor or the ~~Park~~General Services Department shall place the report on the Board of Supervisor’s Agenda.

1. A list of the current Board of Directors and officers of the Foundation;
- ~~2.~~ Financial results of operations including gross and 2. net receipts and fundraising progress;
3. Subleases granted hereunder;
4. A report on the condition of the ~~County Bowl~~Bowl facility including planned and completed capital improvements and progress made toward meeting the goals set forth in the Master Plan;

~~facility including planned and completed capital improvements and progress made toward meeting the goals set forth in the Master Plan;~~

- ~~5.~~ A review of the schedule of events for the past

~~5. _____ year, including the number of events and the;~~

~~revenues thereby generated;~~

~~6. —A summary of issues raised at Public Hearings~~

~~Conducted hearings conducted by Foundation pursuant hereto, and the~~

~~6. _____ Resolution resolution of said issues;~~

D. MASTER PLAN IMPLEMENTATION SCHEDULE:

~~As a component of the first Annual Report, From time to time it may be necessary for FOUNDATION to propose amendments or changes to the Master Plan as FOUNDATION deems appropriate. All such changes shall~~

~~submit be subject to COUNTY'S prior written approval and shall include a schedule for the implementation of any amendments or changes to the Master Plan for~~

~~improvement of the Premises ("Master Plan Implementation Schedule" or~~

~~"Schedule"). The Schedule FOUNDATION shall use best efforts to implement the Master Plan in an orderly and cost effective manner subject to any delays or factors beyond the reasonable control of FOUNDATION including, without limitation, any changes in the economy, performing arts industry and other factors. Subject to the foregoing, the Schedule shall set out FOUNDATION'S plan to~~

~~implement the Master Plan and any amendments or changes to the Master Plan in clear, specific, and time-limited~~

~~detail and shall include the following: a start date for construction~~

~~of the first phase, a time table for the implementation of all phases,~~

~~a plan for financing each phase (including an assessment of FOUNDATION'S~~

~~ability to raise funds for each phase) and all other pertinent~~

~~information relevant to such implementation.~~

~~— Should FOUNDATION fail to submit the Schedule to COUNTY by~~

~~February 15, 1995, and fail to cure such omission within thirty (30)~~

~~days form written notice by COUNTY, then COUNTY shall have the right~~

~~to terminate this Agreement with no further liability to FOUNDATION.~~

—COUNTY shall have ninety (90) days from the day of receipt ~~to~~

~~of any proposed amendment to the Master Plan to~~ accept the ~~plan set out in the~~
~~Schedule amendment.~~ Should COUNTY fail to accept

~~the Schedule~~ the amendment as proposed by FOUNDATION, COUNTY shall inform
FOUNDATION of the reasons

~~WC 1076~~ for such nonacceptance and FOUNDATION shall have sixty (60) days to remedy the problem and submit an amended Schedule. ~~If COUNTY fails to accept both the Schedule and the amended Schedule, COUNTY may terminate this Agreement without further liability to FOUNDATION~~proposed amendment. COUNTY and FOUNDATION shall meet and confer in a good faith effort to resolve any questions or concerns with any proposed amendment. COUNTY's failure to accept a proposed amendment within ninety (90) days from the day of receipt of any proposed amendment to the Master Plan shall be deemed to be COUNTY's disapproval of the proposed amendment.

E. ~~E.~~ COUNTY APPROVAL OF ANNUAL REPORTS

~~Beginning in 1996,~~ COUNTY shall review the components of the Annual Reports and shall notify FOUNDATION in writing within sixty (60) days of any deficiencies noted in form, content or in the amount of progress according to the Schedule, the Master Plan and this Agreement. ~~In the event material FOUNDATION shall thereafter use best efforts to correct any deficiencies are not corrected within Twelvetwelve (12) months of after the date of notice, from COUNTY may terminate this agreement by written notice, which shall be effective immediately upon receipt by FOUNDATION, notwithstanding any other provision hereof.~~

F. ~~23.~~ FEMA AND NDAA FUNDING

FOUNDATION may, in its sole discretion, seek reimbursement from the Federal Emergency Management Agency ("FEMA") or the State of California Natural Disaster Assistance Act ("NDAA") for any repairs performed by FOUNDATION to the Premises pursuant to this Agreement. FOUNDATION shall be solely responsible for compliance with any applicable FEMA or NDAA requirements including but not limited to any applicable deadlines for completion of projects and deadlines for applications for reimbursement. To the extent any costs of repairs are funded through loans by COUNTY to FOUNDATION, all such loans shall be repaid by FOUNDATION to COUNTY in accordance with the loan terms as mutually agreed by FOUNDATION and COUNTY.

G. OBLIGATIONS OF FOUNDATION

Upon COUNTY receiving from Verizon Wireless ("Verizon") payment in the sum of Forty-Five Thousand Dollars (\$45,000), which shall relieve Verizon of its

obligations to COUNTY under the terms of the Lease Agreement dated December 5, 2006 between COUNTY and Verizon, COUNTY shall disburse to FOUNDATION the amount of Forty-Five Thousand Dollars (\$45,000) to contribute towards general improvements in accordance with the Master Plan for the benefit of the Premises. In addition, on or before January 1, 2009, COUNTY shall disburse to FOUNDATION the amount of Sixteen Thousand Three Hundred Two Dollars (\$16,302.00). Further, on or before January 1, 2010 and on or before January 1, 2011, COUNTY shall disburse to FOUNDATION the amount of Sixteen Thousand Three Hundred Two Dollars (\$16,302.00), respectively. Each of these three (3) disbursements of Sixteen Thousand Three Hundred Two Dollars (\$16,302.00), together with the initial disbursement in the amount of Forty-Five Thousand Dollars (\$45,000), shall represent COUNTY's contribution in lieu of the water line that was to be installed by Verizon.

ASSIGNMENT, JOINT VENTURE OR BANKRUPTCY:— ___ COUNTY'S intent in entering into this Agreement is to obtain the services of FOUNDATION and not of any other person or entity in the operation, management and improvement of the Premises such that FOUNDATION'S services, as herein specified, form a portion of the consideration for this Agreement. _The parties therefore agree that as to the operation, management and improvement of the Premises, this Agreement shall operate as a personal services contract and the FOUNDATION shall not assign or joint venture the use of the Premises or any part thereof; it shall not allow the Premises to be used or occupied by any other person or for any other use other

23. ~~WC 1076~~ than herein specified; it shall not assign ~~said~~this Agreement ~~nor~~or transfer, assign or in any manner convey any of the rights or privileges therein granted except as provided herein. Neither the Agreement nor the rights herein granted shall be assignable or transferable by any process or proceeding, including insolvency, bankruptcy, and receivership proceedings. Any attempt to assign, joint venture or transfer by any other process, shall be void and without legal effect, and shall constitute ~~cause for immediate termination hereof without liability on the part of COUNTY,~~a default hereunder subject to the provisions of Sections 37 and 38.

24. ABANDONMENT: ~~In~~ Upon FOUNDATION's written notice of intended abandonment or in the event of abandonment or non-use of the Premises by the FOUNDATION ~~at any time, existing and extending over~~for a continuous period of ~~one (1) month~~ninety (90) days or more at any time, except during periods of construction and remodeling, the Premises shall revert to the full control of the COUNTY and the FOUNDATION agrees to surrender the Premises and this Agreement shall be of no further force and effect. If FOUNDATION shall abandon, vacate, or surrender the Premises for a continuous period of ninety (90) days or more, or upon termination of this Agreement, any personal ~~Property~~property left on the Premises thirty (30) days thereafter shall be deemed abandoned, at the option of COUNTY, and COUNTY shall assume full title and ownership thereof.

25. NON-DISCRIMINATION: ~~—~~ — FOUNDATION, in the operations to be conducted pursuant to the provisions of this Agreement, will not discriminate or permit discrimination against any person or class of persons by reason of race, color, age, creed, religion, ancestry, sex, or national origin in any manner prohibited by the laws of the United States, the State of California or any County ordinance. Non-compliance with the provisions of this article after written notice from COUNTY shall constitute a breach hereof subject to the provisions of Sections 37 and 38.

WC

~~1076 laws of the United States, the State of California or any County ordinance. Non-compliance with the provisions of this article shall constitute a material breach hereof and, in addition to any remedies provided by law, COUNTY shall have the right to terminate this Agreement and the interest hereby created without liability therefor.~~

26. ~~26.~~ UNLAWFUL DISCRIMINATION IN EMPLOYMENT:—_____ The provisions required by Section 2-95 of the Santa Barbara County Code are attached hereto, marked Exhibit “H”, and are incorporated herein. FOUNDATION shall incorporate Exhibit “H” in any and all agreements with contractors and sublessees, and sublessees shall perform all obligations of a “Contractor” therein.

27. TAXES AND ASSESSMENTS:—_____ FOUNDATION has been informed and hereby acknowledges that the use or occupancy of the Premises by FOUNDATION constitutes a property interest which may be subject to property taxation. FOUNDATION shall pay and discharge all taxes and assessments, including special and/or possessory interest taxes, if any, levied upon the Premises, based on the use or occupancy of the Premises, whether by FOUNDATION or its sublessees.

28. ACCESS BY COUNTY:—_____ FOUNDATION shall permit COUNTY and its authorized agents, employees, and independent contractors to enter onto the Premises at all reasonable times for the purpose of inspecting the Premises to determine whether FOUNDATION is complying with the terms of this Agreement, for the purpose of doing other lawful acts that may be necessary to protect the COUNTY’S interest in said Premises, and for the purpose of performing any duties and obligations on COUNTY’s part to be performed under this Agreement. Other than in instances of an emergency, COUNTY shall provide not less than forty eight (48) hours’ prior written notice to FOUNDATION of COUNTY’s intention to enter upon and inspect the Premises.

WC

~~1076 COUNTY’S interest in said Premises, and for the purpose of performing any duties and obligations on~~

~~COUNTY'S part to be performed under this Agreement.~~

~~29.~~ NOTICES:— Any notice to be given to either party, by the
29. other, shall be in writing and shall be served, either personally or by mail to the following:

COUNTY:— County of Santa Barbara
~~Park~~ General Services Department
~~610 Mission Canyon Road~~
105 East Anapamu Street
Santa Barbara, CA 9310593101
(805) 568-24613400

FOUNDATION:— Santa Barbara ~~County~~ Bowl
Foundation
Attn: General Manager
1122 North Milpas Street
Santa Barbara, CA 93103
(805) 962-7411

~~Or to COUNTY or FOUNDATION at such other place as may be designated in writing.~~

30. ~~30.~~ CAPTIONS:— The title or headings to the sections of this ~~AGREEMENT~~ Agreement are not a part of this Agreement, and shall have no effect upon the construction or interpretation of any part ~~hereof~~ thereof.

31. ~~31.~~ TIME:— Time is of the essence of this Agreement.

32. COUNTY INTEREST:— COUNTY'S interest in FOUNDATION'S operations hereunder shall be deemed that of a landlord, and FOUNDATION'S operations hereunder shall not be considered as an operation of the COUNTY, and FOUNDATION shall be an independent contractor and not an agent, employee, or officer of COUNTY.

33. NO COST TO COUNTY:— Unless a request is made to and granted by COUNTY, and except as otherwise provided herein, no COUNTY funds are to be expended during the term hereof for improvements, maintenance, repair, rebuilding, or restoration of the building or grounds, located on the Premises.

~~restoration of the building or grounds, located on the Premises.~~

~~34.~~ 34. DESTRUCTION OF PREMISES:

A. INSURED AND UNINSURED CASUALTY. In the event of total or partial loss or damage to the buildings and/or improvements on the Premises, as a result of a risk covered by the property insurance, the COUNTY, at its option, shall rebuild or replace the destroyed or damaged buildings and improvements in the same condition they were in prior to such loss in the manner provided in this Section, limited to the extent of the insurance proceeds. The FOUNDATION shall have the right, but not the obligation, to raise matching funds to the extent the insurance proceeds do not cover the cost of rebuilding or replacing any building or improvements on the Premises that are partially or totally damaged or destroyed.

In the event of partial or total damage or destruction as a result of a risk not covered by said insurance, ~~the which has not been identified as a local emergency by the Board of Supervisors,~~ FOUNDATION shall notify the COUNTY in writing within sixty (60) days after the date of such damage or destruction of its intentions to rebuild or replace any building or improvements that are damaged or destroyed or to terminate this Agreement effective ninety (90) days after the date of damage or destruction. The failure of ~~the~~ FOUNDATION to either (1) rebuild and replace; or (2) give written notice of its intentions to rebuild or replace; or (3) give written notice of termination ~~shall may, at the option of COUNTY,~~ result in ~~an automatic~~ termination of this AGREEMENT ~~effective ninety (90) days after the date of such partial or total damage or destruction~~ Agreement pursuant to Sections 37 and 38.

In the event the FOUNDATION elects to terminate this Agreement

~~or it is automatically~~ terminated under the conditions described in this section, it is hereby mutually understood and agreed that the FOUNDATION shall thereafter have no further obligation with respect to the Premises and shall have no obligation to clear the subject real property of damaged or destroyed improvements ~~in a manner satisfactory to the COUNTY'S Building and Safety Division standards.~~

In the event the FOUNDATION elects to raise equal matching funds, COUNTY agrees to cooperate with rebuilding and repairing any buildings or improvements on the Premises. FOUNDATION shall rebuild or replace any building or improvements that were damaged or destroyed in accordance with Section 11 ALTERATIONS AND ~~CONSTRUCTION~~CONSTRUCTION, above.

C. DESTRUCTION OF PREMISES CAUSED BY NATURAL DISASTER

In the event of a natural disaster which has been identified as a local emergency by the Board of Supervisors causing partial loss or damage to the facilities and/or improvements on this Premises as a direct result of the natural disaster, COUNTY, at its option, shall rebuild or replace the destroyed or damaged facilities and improvements in the same condition they were in prior to such loss in the manner provided in this Section, limited to the extent of the insurance proceeds and funds awarded to COUNTY for the disaster. FOUNDATION shall have the right, but not the obligation, to raise matching funds to the extent the insurance proceeds do not cover the cost of rebuilding or replacing any building or improvements on the Premises that are partially or totally damaged or destroyed.

In the event of partial or total damage or destruction to a facility as a result of a natural disaster not covered by said insurance, or by disaster related funding, FOUNDATION shall notify COUNTY in writing within fifteen (15) days of such damage or destruction of that facility, and the intentions of FOUNDATION to rebuild, replace or match funding for such losses. In the event FOUNDATION cannot meet a financial obligation to repair, replace or match funding for such losses, COUNTY will not be precluded from making any repairs to any facilities damaged by such natural disaster at COUNTY'S expense, with no obligation to FOUNDATION.

~~35. ENVIRONMENTAL IMPAIRMENT:—~~ FOUNDATION at FOUNDATION'S 35. expense, shall comply with and perform all applicable laws, regulations, rules, and orders, regardless of when they become or became effective, including without limitation those relating to construction, grading, signage, health, safety, noise, underground tanks, toxic or hazardous materials, environmental protection, waste disposal, clean-up and water and air quality,

and shall furnish the COUNTY satisfactory evidence of such compliance upon the request of the COUNTY. FOUNDATION shall obtain all necessary permits at its sole expense.

~~36. CONVEYANCE OF REAL PROPERTY: In the development,~~

~~maintenance, and administration of the Premises, the~~
FOUNDATION

~~shall be subject to the following limitation and~~
~~restriction: The~~

~~COUNTY shall have the right to convey real property~~
~~interests in~~

WE

~~1076 the Premises, however, if COUNTY grants a fee~~
~~interest in the Premises, COUNTY shall provide for a~~
~~delegation of duties, obligations and executory~~
~~responsibilities under this Agreement to the grantee. Said~~
~~conveyances shall not unduly interfere with FOUNDATION'S~~
~~interests herein and FOUNDATION shall not interfere with~~
~~any such rights granted by COUNTY or with the Grantee~~
~~exercising such rights. COUNTY shall notify FOUNDATION~~
~~before a conveyance of a real property interest and furnish~~
~~FOUNDATION with information concerning such proposed~~
~~conveyance.~~

36. 37. CONVEYANCE OF REAL PROPERTY: In the development,
maintenance, and administration of the Premises and subject to the provisions of this Section 36,
COUNTY and FOUNDATION shall be subject to the following limitations and restrictions: (i)
without the prior written approval of FOUNDATION, which shall not be unreasonably withheld,
COUNTY shall have no right to convey any surface or subsurface real property interest of any
kind in, on, under or above the Premises; (ii) no such conveyances shall unreasonably interfere
with FOUNDATION's use and enjoyment of the Premises or with FOUNDATION's operation of

the Premises as an outdoor live performing arts facility (as reasonably determined by FOUNDATION, in its discretion); and (iii) COUNTY shall indemnify, defend and hold FOUNDATION, its officers, directors and employees harmless from any loss, cost or liability relating to or arising out of any conveyance by COUNTY of any interest in the Premises. In the event that COUNTY (i) conveys all right, title and interest in and to a fee simple interest in the entirety of Premises, this Agreement may be assigned by COUNTY to the transferee provided that COUNTY shall provide for a delegation to and full assumption of all of COUNTY's duties, obligations and executory responsibilities under this Agreement by the transferee pursuant to a form of assignment and assumption agreement which is reasonably approved by FOUNDATION; or (ii) conveys a security interest in COUNTY's fee estate in the Premises to any mortgagee under any mortgage or beneficiary under any deed of trust, the lien of any fee mortgage, deed of trust or other security instrument shall expressly remain subordinate to FOUNDATION's leasehold interest herein created. Subject to the foregoing limitations, no conveyances of any interest in the Premises shall unreasonably interfere with FOUNDATION'S rights and interests herein and, provided FOUNDATION has consented to the conveyance of an interest in the Premises by COUNTY, FOUNDATION shall not interfere with any such rights granted by COUNTY or with the grantee exercising such rights. FOUNDATION shall have no liability or obligation of any kind, financial or otherwise, with respect to any conveyance of any interest in the Premises by COUNTY to any third party or under any agreement between COUNTY and any third party, including any operator of any Cell Site on the Premises, including without limitation, the obligation to pay any direct or indirect cost payable by COUNTY under any such third party agreement whether for the relocation of any Cell Site, or otherwise. With respect to any proposed conveyance of any interest in the Premises by COUNTY, prior to such conveyance COUNTY (i) shall notify FOUNDATION not less than ninety (90) days before a conveyance of any real property interest in the Premises of the proposed conveyance, (ii) request in writing FOUNDATION's approval of such conveyance; (iii) provide FOUNDATION with all relevant documents and information concerning the proposed conveyance, including without limitation, the transferee, the nature of the interest to be conveyed, a copy of any lease, deed or other instrument of conveyance together with the legal description of the portion of the Premises affected, a copy of a survey or map reflecting the area of the Premises which is the subject of the proposed conveyance, a description of any improvements, whether above or below ground, which are contemplated as part of or following the conveyance; (iv) shall meet and confer with FOUNDATION regarding any proposed conveyance so as to minimize any adverse impact on FOUNDATION or its operations; and (v) shall furnish FOUNDATION with all documentation

and information reasonably requested by FOUNDATION concerning such proposed conveyance in order to enable FOUNDATION to assess the proposed transfer, its potential impact on the Bowl operations and to make an informed decision. COUNTY acknowledges and agrees that it shall be reasonable for FOUNDATION to withhold its consent to the conveyance of any interest in the Premises which FOUNDATION reasonably determines is likely to have any adverse impact on the Premises or FOUNDATION's operations including without limitation, adverse impacts on the appearance or utility of the Premises, the cost of operations to the FOUNDATION, existing improvements, traffic flows, available space for future improvement by FOUNDATION, or inconsistencies with FOUNDATION's future development of the Premises including implementation of the Master Plan for the Premises. Any conveyance by COUNTY of any interest in the Premises shall be on such terms and conditions as are reasonably approved by FOUNDATION consistent with the provisions of this Agreement. Attached hereto as Exhibit "D" is a map of the Premises reflecting the location of cellular communications facilities ("Cell Sites") which have been constructed on the Premises as of the date hereof. FOUNDATION agrees to consent to the construction of two (2) additional Cell Sites in the locations designated on the attached map. COUNTY hereby covenants and agrees that no additional Cell Sites or other improvements of any kind shall be constructed by COUNTY or authorized by COUNTY for construction by any third party including without limitation by any cellular communications companies, on the Premises. Subject to the provisions of Section 12, nothing herein shall in any way limit FOUNDATION's right and ability to construct improvements on the Premises as it determines appropriate and no conveyances by COUNTY of any real property interest in the Premises shall adversely impact, impair or impede FOUNDATION's right and ability to construct such improvements on the Premises.

37. ~~DEFAULT:~~— The failure of ~~either~~ party to satisfy, observe or perform, any of the covenants, conditions, or reservations set forth herein shall constitute a ~~material default under this Agreement~~ default under this Agreement. In the event of a default by either party under this Agreement, the other party shall provide written notice to the defaulting party specifying in reasonable detail the nature and extent of the default. The other party shall have not less than thirty (30) days or such longer period as may reasonably be necessary to commence and in good faith thereafter pursue to conclusion a cure of any such default hereunder.

38. REMEDY IN EVENT OF DEFAULT:— Upon the occurrence of any default, COUNTY shall have at its option, and in addition to and not as a limitation of any other remedy permitted by law, the right to terminate this Agreement provided that

FOUNDATION has failed to commence good faith efforts to cure such default within thirty (30) days after written notice to FOUNDATION.

39. WAIVER: Waiver of a breach of any term of this Agreement shall not be construed to be a waiver of any future breach of the same or any other requirement contained in this Agreement.

~~40.~~ ~~40.~~ MATERIAL BREACH OF AGREEMENT: When the term material breach is used in this Agreement, it shall be construed to mean that, in addition to other remedies as provided by law, COUNTY has the right to terminate this Agreement in accordance with the provisions of Sections 37 and 38.

WE

~~1076 the right to immediately terminate this Agreement, and the interest hereby created, without liability therefor.~~

~~41.~~ 41. COMPLIANCE WITH THE -LAW: The FOUNDATION shall comply, and shall require in writing that all sublessees, contractors and ~~Anchor Tenants~~ Promoter comply, with all applicable Federal, State, County and Municipal laws, statutes, rules, ordinances and regulations in effect during the term or any part of the term hereof regulating the use of the Premises. Notwithstanding anything contained herein to the contrary, in the event FOUNDATION is either temporarily or permanently enjoined, by a court of competent jurisdiction from operating the Premises, or if the operation of the Premises is rendered impossible due to applicable noise and sound ordinances, then FOUNDATION'S obligations under this Agreement shall be totally suspended for the length of any such injunction or impossibility of operation ~~and~~. In the event FOUNDATION is permanently enjoined from resuming operation of the Premises, COUNTY shall have the option of terminating this ~~lease agreement~~ Agreement after ~~thirty (30) days written~~ notice of its ~~intention to do so.~~ FOUNDATION and FOUNDATION's opportunity to cure such default in accordance with Sections 37 and 38.

~~A.~~ A. DEPARTMENT RULES: FOUNDATION and its volunteer(s)

or employees shall at all times abide by all rules and regulations heretofore adopted or that may hereafter be adopted by COUNTY and cooperate fully with COUNTY employees in the performance of their duties.

~~B.~~ B. SOUND LIMITS: ~~There shall be no night concerts on Sunday through Thursday nights, except during Fiesta week; without prior written approval of the COUNTY.~~ The sound limits, described

~~WC 1076~~ in the COUNTY'S Santa Barbara County Bowl Sound Control Plan set forth and included herein in Exhibit "I" of this Agreement, as the said Plan may be amended by COUNTY from time to time, shall apply to all Performances, and shall be monitored by the FOUNDATION, including the application of fines which shall ~~he~~be imposed by FOUNDATION as set forth in said Sound Control Plan.

~~C.~~ C. PERMITS AND LICENSES: FOUNDATION shall obtain at its sole expense any and all permits or licenses that may ~~he~~be required in connection with the Performances at the Bowl including, but not limited to: tax permits, business licenses, health permits, and police and fire permits.

~~D.~~ D. FOUNDATION shall not store, nor permit the storage of, hazardous materials as defined in Title 23, Subchapter 16 of the California Code of Administrative Regulation, Sections 2610 through 2714 or hazardous substances defined in 42 USC §9601(14), as those laws presently exist or as they may be amended, on the Premises without obtaining the consent of COUNTY, which consent shall not be unreasonably withheld.

FOUNDATION further hereby covenants that it shall notify COUNTY immediately upon the ~~discovery~~discover of any unplanned release of hazardous substance or materials, will promptly remediate any contamination from hazardous substance or materials, which occurs upon the Premises and will deliver the Premises to COUNTY upon the termination of this Agreement, free and clear of unlawful hazardous contamination, except that COUNTY in its sole discretion may

~~WC 1076~~ relieve FOUNDATION of responsibility for such contamination existing on the Premises at the time FOUNDATION took possession of the Premises and which was not caused by FOUNDATION, its agents, officers, employees, or contractors.

~~42.~~ ENCUMBRANCES:— No security interest in this Agreement

42. shall extend to or affect the fee, the reversionary interest~~7~~ or the estate of COUNTY in and to any land or COUNTY-owned improvements now or hereafter erected on, in or about the Premises. Nor shall FOUNDATION encumber the leasehold interest without the express written consent of COUNTY which consent may be subject to conditions.

FOUNDATION may grant lenders such personal property security interests as may be necessary or appropriate to secure any indebtedness of FOUNDATION, the proceeds of which are to be expended by FOUNDATION in a manner consistent with this Agreement and provided that such security interests shall encumber only personal property owned by FOUNDATION which is not an appurtenance to the Premises.

~~43.~~ TERMINATION:— This Agreement shall terminate and all

43. rights of FOUNDATION hereunder shall cease and FOUNDATION shall quietly and peacefully deliver to COUNTY possession and interest in the Premises:

- A. ~~—~~ At the expiration of the term as provided in Section 5, TERM, hereof.
- B. Upon failure of FOUNDATION to satisfy, observe or perform any of the covenants, conditions or reservations set forth in this Agreement after written notice from COUNTY and an opportunity by FOUNDATION to cure any such default in accordance with Sections 37 and 38.

~~e.~~ As indicated under specific provisions set forth C. herein.

~~44.~~ SURRENDER OF PREMISES:— On expiration ~~of~~ thirty (30) days after termination of this Agreement, FOUNDATION shall vacate and surrender possession of the Premises to COUNTY. FOUNDATION shall

~~44. WC 1076~~ surrender the Premises in good condition, except for ordinary wear and tear.

Subject to Sections 10 and 24 hereof, FOUNDATION and its members, licensees, sublessees, ~~Anchor Tenants Promoter~~, contractors, employees and volunteers shall remove all personal property within the above stated time. The FOUNDATION shall perform all ~~restoration~~ repairs made necessary by the removal of any alterations or personal property.

COUNTY may elect to retain or dispose of in any manner any personal property that has not been removed from the Premises on expiration or termination as allowed or required by this Agreement. Title to any such personal property that COUNTY elects to retain or dispose of shall vest in COUNTY. FOUNDATION waives all claims against COUNTY for any damage to FOUNDATION resulting from COUNTY'S retention or disposition of any such personal property. FOUNDATION shall be liable to COUNTY for COUNTY'S ~~cost~~ cost for storing, removing, and disposing of any personal property.

If FOUNDATION fails to surrender the Premises to COUNTY on expiration or thirty (30) days after termination of the term as required by this Section, FOUNDATION shall hold COUNTY harmless from all damages resulting from FOUNDATION'S failure to surrender the Premises, including, without limitation, claims made by a succeeding lessee resulting from FOUNDATION'S failure to surrender the Premises.

45. PRIOR AGREEMENTS AND LEASES:— This Agreement hereby replaces and revokes all prior agreements and/or leases between COUNTY and FOUNDATION.

46. EXHIBITS TO MANAGEMENT AND LEASE AGREEMENT: The following documents shall be attached to and form a part of this Agreement:

~~following documents shall be attached to and form a part of this Agreement:~~

~~EXHIBIT~~Exhibit A: County of Santa Barbara Assessor Parcel Maps identifying the location of the Premises

~~EXHIBIT~~Exhibit B: Article: Articles of Incorporation of Santa Barbara County Bowl Foundation and Bylaws of the Santa Barbara County Bowl Foundation

~~EXHIBIT~~Exhibit C: Santa Barbara County Bowl Master Plan

~~EXHIBIT D~~ 1991 Certificates of Participation, Master Lease Pool Payment Schedule

~~EXHIBIT~~Exhibit D: Cell Site Map
Exhibit E: Payment Bond

~~EXHIBIT~~Exhibit F: Performance Bond

~~EXHIBIT~~Exhibit G: Warranty of Labor and Materials

~~EXHIBIT~~Exhibit H: Unlawful Discrimination

~~EXHIBIT~~Exhibit I: Santa Barbara County Bowl Sound Control Plan

~~_____~~
~~_____~~

47. NAMING OF BOWL FACILITIES: FOUNDATION shall have the right and authority to name specific facilities and areas at the Premises pursuant to the requests of person or organizations who have made financial contributions toward the capital improvement of the Bowl in accordance with Exhibit "J". FOUNDATION shall be required to provide a two (2) week public comment period, through a published notice of intent in a newspaper of general circulation in the City of Santa Barbara, on any proposed facility-naming prior to the facility-naming becoming final and effective. The two (2) week notice period shall also be given in writing to the County Board of Supervisors. This right shall not include the right to alter the historic and commonly known name: the Santa Barbara Bowl, in any fashion at any time.

The term for any facility-naming shall not continue beyond the reasonable life expectancy of the facility named. If any facility is substantially or totally replaced, FOUNDATION shall have a new opportunity to have such facility named through the process described herein. In the event of a disaster as defined in Section 34 DESTRUCTION OF PREMISES CAUSED BY NATURAL DISASTER and if the FOUNDATION and/or COUNTY elect to rebuild, the name of the facility will continue to the extent that the facility itself is rebuilt.

[Signatures appear on following page.]

IN WITNESS WHEREOF, FOUNDATION ~~AND~~and COUNTY have signed this Agreement by the respective authorized officers as set forth below, ~~to be effective with an Effective Date~~ on the date executed by ~~the~~ COUNTY.

COUNTY OF SANTA BARBARA

SANTA BARBARA BOWL FOUNDATION

By: _____
Chair, Board of Supervisors

By: _____
Paul Dore, President

Date: _____

Date: _____

ATTEST:
~~MICHAEL ALLEN~~
CHANDRA L. WALLAR
CLERK OF THE BOARD

~~"COUNTY"~~
~~County of Santa Barbara~~

~~By: _____~~
~~Chair, Board of Supervisors~~

~~Date: _____~~

By: _____

APPROVED AS TO FORM ~~DENNIS MARSHALL~~
COUNTY COUNSEL

~~"FOUNDATION"~~
~~Santa Barbara County Bowl Foundation Inc.~~

~~By: _____~~

By: _____

Dennis A. Marshal

APPROVED AS TO ACCOUNTING FORM ~~+~~
AUDITOR-CONTROLLER

~~APPROVED AS TO INSURANCE FORM ~~+~~~~

~~By: _____~~

~~_____ Bobbie Overgaard~~

~~_____ Risk Manager~~

By: _____
ROBERT _____
Robert W. Geis, C.P.A.

By: _____

APPROVED:

By: _____
Daniel Hernandez
Acting Director of
Parks

APPROVED:

By: _____
Grady Williams
Property Management
Division Manager