

Document #6

SECOND AMENDMENT TO SUBLEASE AGREEMENT

Second Amendment to Sublease Agreement made this 29th day of March, 2001 ("Second Amendment") between the COUNTY OF MACOMB ("County"), by and through its Parks and Recreation Commission ("Commission"), and HILLSIDE PRODUCTIONS, INC., a Michigan corporation ("Hillside").

RECITALS:

- A. On May 19, 1999, County and Hillside entered into a Sublease Agreement pursuant to which County leased to Hillside that portion of Freedom Hill County Park commonly designated as the "Freedom Hill Amphitheater", for the purpose of allowing Hillside to manage and operate an entertainment facility/concession for the benefit and welfare of the general public, and which Sublease Agreement was amended by an Amendment to Sublease Agreement dated March 21, 2000. The property leased under the Sublease Agreement is the fenced Amphitheater area depicted on the Master Plan referenced in paragraph 1 below and is sometimes referred to herein as the "Premises".
- B. Pursuant to the terms of the Sublease Agreement, Hillside has performed substantial development and underground improvements to said Freedom Hill Amphitheater in order to fully develop the Freedom Hill Amphitheater as a public entertainment facility.
- C. County desires Hillside to complete improvements to Freedom Hill County Park in accordance with the Freedom Hill Amphitheater Master Plan designed by Hillside's architects and referenced herein.
- D. County and Hillside desire to further amend the Sublease Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and in further consideration of the mutual covenants contained herein, County and Hillside hereby agree that the Sublease Agreement dated May 19, 1999, as amended by the Amendment to Sublease dated March 21, 2000, is hereby further amended as follows:

1. **Master Plan.** The County authorized Hillside to perform additional improvements to the Freedom Hill County Park area surrounding the Freedom Hill Amphitheater in accordance with and as designated in the Freedom Hill Amphitheater Master Plan ("Master Plan") prepared by Rosetti Architects dated February 9, 2001, a copy of which Master Plan is attached to this Second Amendment as Exhibit A. The improvements authorized to be performed by Hillside include the completion of the underground improvements, creation of an additional gravel parking area and the

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finishing of an interior gravel roadway to Schoenherr road, and shall be at their own cost and expense. All improvements to be performed by Hillside shall be performed in compliance with permits to be obtained by Hillside from local municipal and State of Michigan authorities, as applicable, prior to commencement of the work and shall revert to the County upon termination of the remaining term of the Sublease Agreement. All references to the "remaining term" of the Sublease Agreement as used in this Second Amendment shall be deemed to include any extensions pursuant to the Amendment to Sublease.

2. **Parking Revenue.** The County shall continue to collect the parking fees for all events at Freedom Hill County Park, including the Freedom Hill Amphitheater. The determination of parking rates shall be made mutually by the County and Hillside. Parking revenues shall be divided on the following basis during the remaining term of the Sublease Agreement; 75% to Hillside; 25% to the County; provided, however, Hillside guarantees the County shall receive parking revenues in the minimum amount of \$125,000 per year during the remaining term of the Sublease Agreement. Subparagraphs (a) and (b) of paragraph 3 of the Sublease Agreement are hereby deleted in their entirety.

3. **Gross Ticket Revenue.** Hillside shall pay to the County 1% of all gross revenue derived from ticket sales for events held at the Amphitheater during the remaining term of this Sublease Agreement; provided, however, Hillside shall not be obligated for such payment with respect to any events held prior to the completion of the roof over the Amphitheater seating area. Hillside agrees to begin construction of such roof as soon as reasonably feasible upon the obtaining of any necessary permits after the end of the 2001 event season. Upon completion of the roof, such payments will be due once a year within forty-five (45) days of the last event being held at the Amphitheater by Hillside for which tickets were sold. Hillside shall provide, at County's request, a detailed accounting of all ticket revenues for each event held. The parties further agree that the Commission may conduct a reasonable audit of the records concerning ticket sales made by Hillside. For purposes of this paragraph 3, "gross revenue derived from ticket sales" shall be based upon the general admission ticket price for each seat and shall not include any amounts for parking, VIP or hospitality services, or any similar charges.

4. **Reimbursement for Improvements.** In consideration of the reallocation and payment of parking revenues as set forth in paragraph 2 above, Hillside agrees to waive reimbursement for the underground improvements previously made by Hillside in connection with the Amphitheater as referenced in paragraph 6(d) of the Sublease Agreement.

5. **Acknowledgment of Condition of Property.** Hillside acknowledges that it is aware that part of the property which it is leasing, known as the "Premises" and other property to be developed as part of the Master Plan, is a former landfill which was operated by the South Macomb Disposal Authority. Hillside agrees that any

improvement, development or any other use of the area which was formerly used as a landfill, will be done in accordance with all applicable federal and state statutes and/or regulations concerning closed landfills.

6. **Indemnification.** Hillside shall indemnify and hold harmless the Macomb County Parks and Recreation Commission, Macomb County and its officers and employees, from any and all claims, lawsuits, losses, damages or injury to persons or property of whatever kind and nature, whether direct or indirect, arising out of the construction, improvement, development or use by Hillside of the Freedom Hill Amphitheater or other areas of the Park after March 21, 2000, which responsibility shall not be limited to the insurance coverage provided under the Sublease Agreement.

County shall indemnify and hold harmless Hillside and its shareholders, officers and employees, from any and all claims, losses, lawsuits, damages or injury to persons or property of whatever kind and nature, whether direct or indirect, arising out of the County's use and occupancy of the Freedom Hill Park (including the Amphitheater) prior to March 21, 2000, or the condition of the Property (including both the park and Freedom Hill Amphitheater) as such condition existed as of March 21, 2000.

Each party shall indemnify and hold harmless the other, its officers and employees from any and all claims, losses, lawsuits, damages or injury to persons or property of whatever kind and nature, whether direct or indirect, resulting from the carelessness, negligence, intentional act, or improper conduct of the parties, its employees or any person contracted with by the parties.

Nothing contained in this Agreement shall be construed as a waiver of any governmental immunity on the part of the County, its officers or employees as provided by statute or court decision.

7. **Cooperation – Event Scheduling.** In order to ensure the use of the Amphitheater by the general public as part of the Freedom Hill Park, the parties agree to cooperate in the scheduling of County-sponsored events at the Amphitheater during the term of the Sublease Agreement; provided, however, the County agrees that Hillside shall have the first right to scheduling of events during the months of May through October of each year during the term of the Sublease Agreement (the "Season") and that any County-sponsored event shall only be conducted on dates during the Season which do not conflict with Hillside's scheduling of other events. Hillside agrees that all events conducted by it at the Amphitheater will be conducted in accordance with all County and City ordinances and regulations including regulations as to hours of operation. Hillside further agrees to maintain standards of service at the Amphitheater which are consistent with customary standards of service (including amenities and security) at entertainment facilities of a similar nature which may be reasonably required by the Commission in order that the Amphitheater shall be operated consistent with its status as a part of the Freedom Hill Park.

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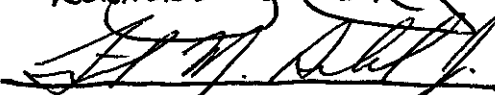
8. **Maintenance.** Hillside will be responsible for all maintenance, including but not limited to, landscaping, lawn and weed mowing, garbage removal, lighting, snowplowing and site clean-up on the "Premises", notwithstanding the provisions of paragraph 10 of the Sublease Agreement. The County will be responsible for the garbage removal and site clean-up after all events which it may conduct on the "Premises".

9. **Taxes.** In the event real or personal property taxes are assessed against Hillside in connection with its operation of the Amphitheater, Hillside agrees that it shall bear the responsibility for the payment of any such real or personal property taxes notwithstanding paragraph 14 of the Sublease Agreement which is hereby specifically amended.


10. **Compliance with Laws.** Hillside shall comply with all federal, state and local laws, rules and regulations concerning the improvements to the premises and/or the operation of the Freedom Hill Amphitheater.

11. **Remaining Sublease Provisions.** All of the terms and provisions of the Sublease Agreement dated May 19, 1999, as amended by the Amendment dated March 21, 2000, and which are not specifically amended herein, remain in full force and effect.

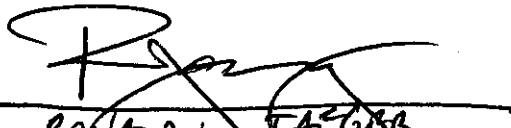
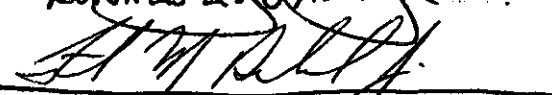
WITNESSED BY:


RONALD L. JAEGER

FRANK M. DUBROVICH III

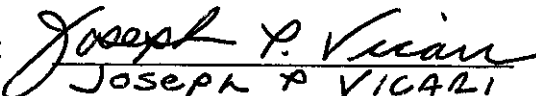
THE COUNTY OF MACOMB, by and through its Parks and Recreation Commission

By: 
JAMES M. FERINA
Its: PRESIDENT

WITNESSED BY:


RONALD L. JAEGER

FRANK M. DUBROVICH III

HILLSIDE PRODUCTIONS, INC., a Michigan corporation

By: 
JOSEPH P. VICARI
Its: PRESIDENT

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