

RECORDING REQUESTED BY:

City of Ojai, California

WHEN RECORDED, RETURN TO:

City of Ojai, California
Carlton Strobel, City Clerk
Post Office Box 1570
Ojai, California 93024

LEASE

THIS LEASE (this "Lease") is made and entered into this ____ day of _____, 2010 by and between the ***CITY OF OJAI, CALIFORNIA***, a municipal corporation ("Lessor"), and ***OJAI FESTIVALS LTD.***, a California non-profit public benefit corporation ("Lessee") (hereinafter sometimes referred to collectively as the "Parties" and each individually as a "Party").

RECITALS:

A. In accordance with that certain Memorandum of Understanding among the Parties and the Ojai Redevelopment Agency ("Agency"), last dated July 14, 2009 (the "MOU"), Lessor, Agency and Lessee have collaborated to design and fund the construction by City of a new public performance facility to replace the existing Libbey Bowl and related facilities (the "Premises") within Libbey Park (the "Park") located at 205 East Ojai Avenue in the City of Ojai and more specifically described in Exhibit "A" attached hereto and incorporated herein by reference. A site map reflecting the location of the Park and the Premises is also attached hereto as Exhibit "B" and incorporated herein by reference.

B. Among the many non-profit organizations which currently use the Premises on an annual basis, Lessee's use of the Premises and adjacent facilities for the Ojai Music Festival (the "OMF") which has been in existence since 1947, is among the most prominent events.

C. Pursuant to its authority set forth in Government Code Section 37380 and in consideration of Lessee's meeting its goals set forth in the MOU, Lessor desires to lease the Premises to Lessee for the OMF and pursuant to the terms and conditions stated herein, and Lessee desires to lease the Premises from Lessor for the OMF pursuant to such terms and conditions.

NOW, THEREFORE, the Parties hereby agree as follows:

ARTICLE I

LEASED PREMISES

Lessor hereby leases to Lessee and Lessee hires from Lessor, inasmuch as they may lawfully do so, for the term stated, at the rental and upon the conditions contained in this Lease, the Premises, with a non-exclusive right of access to the Public Areas of the Park (as hereinafter defined).

ARTICLE II

TERM OF LEASE

SECTION 2.01. The term of this Lease (the "Term"), subject to the use and occupancy restrictions set forth in Article III below, shall be for a period of up to twenty-five (25) days per annum for ninety nine (99) years, commencing as of the date when (i) Lessee has met, to the reasonable satisfaction of Lessor, all of its objectives as described in the MOU, attached hereto as Exhibit "C" and incorporated by reference, and (ii) the reconstruction of the Premises, as described in the MOU, is completed (the "Commencement Date") with use of Lessee secured donations.

SECTION 2.02. This Lease shall terminate without further notice upon the expiration of the Term or any additional successive extension term and any holding over by Lessee after the expiration of any such term shall not constitute a renewal hereof or give Lessee any rights hereunder in and to the Premises.

SECTION 2.03. This Lease may be terminated: (i) by Lessor, for cause in accordance with Articles XIII and XV herein, or (ii) at any time, prior to the expiration of the Term, upon written agreement of Lessor and Lessee, or (iii) by Lessee if Lessor consistently fails to meet the requirements of the Maintenance Standards referenced in Section 6.03 following, or (iv) without cause by Lessee with three (3) years' notice to Lessor without cause starting January 1, 2021, or (v) if adjoining buildings or land uses unduly restrict or interfere with the production of the Ojai Music Festival, or (vi) if Lessee ceases to produce the Ojai Music Festival. This Lease may also be extended, at any time prior to the expiration of the Term, upon written agreement of Lessor and Lessee.

ARTICLE III

USE AND OCCUPANCY

SECTION 3.01. During the Term, Lessee shall, at Lessee's sole cost and subject to Lessee obtaining all applicable permits from Lessor, use and occupy the Premises for the OMF events and performances over a continuous period of up to fourteen (14) days ending the Tuesday after the second full weekend of June following the first Commencement Date, and the same date range thereafter, during the Term (the "OMF Date"), and for further events related to the OMF over an additional eleven (11) days (the "Additional Festival Dates"), for

a total of up to twenty-five (25) days per annum for use for the Festival or other OMF events; provided, however, that Lessee's use of the Premises for the Additional Festival Dates shall not conflict with other scheduled legacy events held on the Premises, as reflected on Lessor's calendar of events for the Premises published each year. (The OMF Date and the Additional Festival Dates shall, collectively, be referred to as the "Occupancy Dates").

SECTION 3.02. The OMF Date may be modified by Lessee upon providing Lessor with notice at least twelve (12) months in advance of the proposed new OMF date. Approval by the Lessor shall not be unreasonably withheld.

SECTION 3.03 During the thirty (30)-day period immediately preceding the OMF Date and thirty (30) days immediately following the OMF Date, for each year of the Term, Lessor agrees to refrain from leasing the Premises for a classical music concert, without the prior written consent of Lessee, which consent shall not be unreasonably withheld.

SECTION 3.04. Lessee shall provide Lessor with at least forty-five (45) days' notice prior to each Additional Festival Date proposed, and Lessor shall provide Lessee with written confirmation or rejection of such date within five (5) business days of receipt of Lessor's written request. Each such proposed Additional Festival Date shall be approved by Lessor, unless Lessor's response to Lessee indicates that the Premises are already rented to another user on the proposed Additional Festival Date, or some other business reason as to why the Premises cannot be used by Lessee on such proposed date, including, but not limited to, scheduled maintenance and repairs, or a non-compatible event in the Park or the surrounding downtown Ojai corridor. Any failure to notify Lessee of Lessor's approval or denial of a requested Additional Festival Date within the required five (5) business days shall be deemed to be approval by Lessor of such event.

SECTION 3.05. Recognizing that numerous non-profit organizations desire also to use the Premises on a regular basis, Lessee shall advise Lessor of any scheduled Additional Festival Dates it has determined to eliminate by notifying Lessor of such fact at least thirty (30) days prior to each such Additional Festival Date.

SECTION 3.06 During the Occupancy Dates, the Premises and all improvements constructed and maintained thereon shall be used by Lessee for the use specified in Section 3.01 and for no other use or purpose without prior written approval of Lessor. Lessee shall at all times during the Occupancy Dates comply with, and cause all persons using or occupying any part of the Premises to comply with, all public laws, ordinances and regulations, as amended from time to time, now or hereafter applicable thereto and to all operations thereon.

SECTION 3.07. During the Term, and in conjunction with Lessee's use of the Premises during the Occupancy Dates, Lessee shall have the non-exclusive right to use the Public Areas of the Park (as hereinafter defined) for itself, its employees, agents, customers, invitees and licensees. The term "Public Areas" means that portion of the Park that, at the time in question, has been designated for common use by or for the benefit of the public, including the restrooms, water fountains, parking areas, access and perimeter walkways,

landscaped areas, stairways and/or ramps. All Public Areas shall be subject to the exclusive control and management of Lessor or any other persons or nominees that Lessor may have delegated or assigned to exercise management or control, in whole or in part, in Lessor's place and stead. Lessor shall have the right to close, if necessary, all or any portion of the Public Areas as is deemed necessary by Lessor to effect necessary repairs, maintenance, or construction, or to maintain the safety of Lessee or the general public. Lessor will not schedule normal, routine, or non-emergency repairs, maintenance, or construction in the "Premises" or the "Public Areas" during the Festival's "Occupancy Dates." Lessor will maintain the Public Areas in a clean, orderly, and sanitary manner. Lessor is responsible for all repairs of the Public Areas, except those necessitated by the negligence of Lessee. Such negligence by Lessee must be proved by Lessor, and if challenged by Lessee be brought forward to an independent arbitrator for determination. The unsuccessful party will pay the costs of the arbitration. Lessee shall fully and faithfully comply with and observe the rules and regulations for the Public Areas, including any addition or amendments to such rules and regulations that may be hereafter enacted by Lessor in Lessor's sole discretion. Neither Lessee nor Lessor shall be liable in any way for the failure of any other occupant of the Public Areas to comply with and observe these rules and regulations.

ARTICLE IV

RENT

In consideration of Lessee's completion of its fundraising and other objectives set forth in the MOU, Lessee shall pay to Lessor as rent, the sum of One Dollar (\$1.00) for each and every year of the Term. The rent shall be paid to City, in advance, on the Commencement Date and on the yearly anniversary date of the Commencement Date.

ARTICLE V

UTILITIES, TAXES, ASSESSMENTS AND FEES

SECTION 5.01. Lessor shall pay for all water, light, power, rubbish removal and janitorial service supplied to and used on the Premises; provided, however, that Lessee shall reimburse Lessor for these incremental costs incurred during all Occupancy Dates.

SECTION 5.02. Except as provided in Sections 5.06 and 5.07 herein, Lessor shall pay and discharge its Pro-Rata Share (as defined below) of all taxes, general and special assessments and other charges of every description which during the Term shall be levied on or assessed against the Premises and all interests thereon. The term "Pro-Rata Share", as used herein, shall mean a percentage of the total taxes, general and special assessments and other charges levied against the Premises each year equal to the percentage of days included in the Occupancy Dates for each year of the Term to the total days within such year.

SECTION 5.03. Subject to Lessee's right to pay taxes in installments, as provided below, all payments to be made by Lessee pursuant to this Article shall be made no later than ten (10) days before any fine, penalty, interest or cost for non-payment may be

added thereto. Lessee shall furnish Lessor, within five (5) days after the date of payment, as provided in this Article, with official receipts, or photocopies thereof, evidencing any such payment.

SECTION 5.04. If by any law any such tax is payable or may at the option of the taxpayer be paid in installments, Lessee may pay its Pro-Rata Share of the tax, together with any accrued interest on the unpaid balance of the tax, in installments as they become due.

SECTION 5.05. Lessee shall have the right to contest the amount or validity of any such assessment by appropriate legal proceedings but this right shall not be deemed or construed in any way as relieving or modifying Lessee's duty and obligation to pay any such imposition at the time and in the manner provided in this Article. Lessor shall, upon request, join in any such proceeding if Lessee determines that it shall be necessary or convenient for Lessor to do so in order for Lessee to prosecute properly such proceedings. Lessor shall not be subject to any liability for the payment of any costs or expenses in connection with any such proceeding brought by Lessee. Lessor shall not be required to join in any such proceeding if, in the opinion of the City Council after advice of the City Attorney, it would be improper or inappropriate for Lessor to so participate. Lessee hereby covenants to defend, indemnify and hold Lessor harmless from the costs and expenses of any such proceeding. Lessee, upon commencing such contest, shall deliver to Lessor a good and sufficient surety bond guaranteeing payment of any taxes, penalties and interest thereon found due as a result of such contest.

SECTION 5.06. During the Term, Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon fixtures, furnishings, equipment and all other personal property of Lessee contained in, on or about the Premises. Lessee shall also pay promptly any taxes levied upon the business or other activities of Lessee, upon or in connection with the Premises. Furthermore, Lessee shall promptly pay any fees imposed by law for any licenses or permits for any business or activity of Lessee upon the Premises. Lessee shall defend, protect and hold harmless Lessor and the Premises from all liability for any and all such taxes, assessments and charges, together with any interest, penalty or other sums thereon imposed, and from any sale or other proceeding to enforce payment thereof.

SECTION 5.07. Lessee shall pay and be solely responsible for any taxes, including possessory and other leasehold interest tax, that may be assessed by reason of this Lease and Lessee's occupation of the Premises. Pursuant to Revenue and Taxation Code Section 107.6, Lessee is hereby informed that a possessory interest subject to property taxation may be created by this Lease and that the party in whom the possessory interest is vested (Lessee) may be subject to the payment of property taxes levied on such interest.

ARTICLE VI

MANAGEMENT, MAINTENANCE AND REPAIRS

SECTION 6.01. Lessor, as owner of the Premises, is currently responsible for the management of the Premises, including the scheduling of its use, administration of all Leases

SECTION 8.03. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration. If such insurance proceeds shall be insufficient for such purpose, Lessee shall make up the deficiency out of its own funds.

SECTION 8.04. Should Lessee fail or refuse to make the repairs or restoration as hereinabove provided then in such event such failure or refusal shall constitute a default under the covenants and conditions hereof and all insurance proceeds so collected shall be forthwith paid over to and retained by Lessor on its own account. Lessor may, but shall not be required to, use and apply the same for and to the repair or restoration of the Premises and Lessor may also contemporaneously, at its option, terminate this Lease.

SECTION 8.05. If during the Term, the Premises, or any part thereof, shall be damaged or destroyed by fire or other casualty caused by the negligent or intentional act of Lessor, Lessor shall, at its cost and expense, repair or restore the same according to the original plans thereof or such modified plans as shall be previously approved in writing by Lessee. If the Premises are not available for use by the Festival for any of its Occupancy Dates by reason of such damage or destruction, Lessor will reimburse Lessee for reasonable incremental costs of relocating its events to an alternate location within Ventura County, California no later than sixty (60) days following any Occupancy Date.

ARTICLE IX

CONSTRUCTION LIENS

In the event that Lessor shall grant its consent to a request by Lessee to make repairs, alterations and/or improvements to the Premises pursuant to Section 7.02, the following shall apply:

SECTION 9.01. Lessee shall not suffer or permit to be enforced against the Premises, or any part thereof, any mechanic's, materialman's, contractor's or subcontractor's lien or stop-work order arising from any claim growing out of work of any construction, repair, restoration, replacement or improvement or any other claim or demand howsoever the same may arise. Lessee shall pay or cause to be paid all of such liens, claims or demands before any action is brought to enforce the same against the Premises. Lessee agrees to defend, indemnify and hold Lessor and the Premises free and harmless from all liability for any and all such liens, claims and demands, together with reasonable attorney's fees and all costs and expenses incurred in connection therewith.

SECTION 9.02. If Lessee shall, in good faith, contest the validity of any such lien, claim or demand, Lessee shall, at its expense, defend itself and Lessor against the same and shall pay and satisfy any adverse judgment that may be rendered thereon before the enforcement thereof against Lessor or the Premises upon the condition that, if Lessor shall require, Lessee shall furnish to Lessor a surety bond satisfactory to Lessor in an amount equal to such contested lien, claim or demand, including attorney's fees and interest, indemnifying Lessor against liability for the same and holding the Premises free from the effect of such

and Use Permits, scheduling of maintenance and repairs, and similar management responsibilities (the "Management Responsibilities"). If at some point during the Term of this Lease, Lessor should determine to assign, transfer or outsource the Management Responsibilities, or any part thereof, to a third party, Lessor shall first consult with Lessee, in good faith, prior to a final determination of any substantive change in the Management Responsibilities. Lessor acknowledges that the Council-appointed Bowl Management Responsibilities Task Force will make recommendations to the Council on how to best operate the Bowl. Lessor intends to implement these recommendations to the best of its abilities and powers.

SECTION 6.02. Lessor shall, at Lessor's sole cost and expense (except as provided in Section 5.01), maintain in good order, condition and repair the entire Premises in accordance with a set of standards for cleaning and maintenance comparable to other similar performance venues, such standards to be agreed upon by Lessor and Lessee prior to the Commencement Date (the "Maintenance Standards").

ARTICLE VII

IMPROVEMENTS

SECTION 7.01. Lessor may, but shall not be required or obligated to, make any changes, alterations, additions, or improvements in or about the Premises or any part thereof during the Term except as required to effect repairs or replacements necessitated by damage or the age of the Premises and its components. If Lessor does want or need to make changes, alterations, additions, or improvements in or about the Premises or any part thereof during the Term, such changes materially affecting the use or look of the Premises must be mutually agreeable to Lessee. Lessee will not unreasonably withhold such approval.

SECTION 7.02. Lessee shall make no repairs, permanent alterations and/or permanent improvements to the Premises during the Term without the prior written consent of Lessor.

ARTICLE VIII

RESTORATION

SECTION 8.01. If during any of the Occupancy Dates during the Term, the Premises, or any part thereof, shall be damaged or destroyed by fire or other casualty caused by the negligent or intentional act of Lessee, Lessee shall, at its cost and expense, repair or restore the same according to the original plans thereof or such modified plans as shall be previously approved in writing by Lessor.

SECTION 8.02. Such work of repair or restoration shall be commenced within ninety (90) days after the damage or loss occurs and shall be completed with due diligence but in no event later than one (1) year after such work is commenced and shall be otherwise done in accordance with the requirements of this Article VIII.

lien or claim or if Lessor shall request, Lessee shall procure and record a bond freeing the Premises from the effect of such lien or claim or action thereon.

SECTION 9.03. If Lessee fails to discharge such lien or furnish a bond against the foreclosure thereof, Lessor may, but is not obligated to, discharge the same and take such other action as Lessor deems necessary to discharge the same or take such other action as Lessor deems necessary to prevent a judgment of foreclosure upon said lien from being executed against Lessee's property. All costs and expenses, including reasonable attorney's fees incurred by Lessor, shall be repaid by Lessee within thirty (30) days after demand, and, if unpaid, may be treated by Lessor as a rental payment which is in default for more than thirty (30) days.

SECTION 9.04. Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of Lessor, expressed or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any improvement, alteration or repair of or to the Premises. Lessor shall have the right at all reasonable times to post and keep posted on the Premises such notices of non-responsibility as Lessor may deem necessary for the protection of Lessor and the fee of the Premises from mechanic's and materialman's liens or notices of stop-work.

ARTICLE X

CONDEMNATION

SECTION 10.01. In the event that Lessee's leasehold interest, as set forth herein (the "Leasehold") or any part thereof shall be taken for public purposes by condemnation or as a result of any action or proceeding in eminent domain or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, the interests of Lessor and Lessee in the award or consideration for such transfer and the effect of the taking or transfer upon this Lease shall be as provided by this Article.

SECTION 10.02. In the event that the entire Leasehold is taken or so transferred, this Lease and all of the right, title and interest hereunder shall cease on the date title to the Leasehold so taken or transferred, vests in the condemning authority.

SECTION 10.03. In the event of the taking or transfer of only a part of the Leasehold, leaving the remainder of the Lease Term of such duration as to be not effectively and practicably usable, in the opinion of Lessee, for the purpose of operation thereon of the OMF, this Lease and all right, title and interest hereunder shall cease on the date ownership of the Leasehold or the portion thereof so taken or transferred vests in the condemning authority.

SECTION 10.04. In the event of such taking or transfer of only a part of the Leasehold, leaving the remainder of the Premises in such location, form, shape or size as not to be effectively and practicably usable, in the opinion of Lessee, for the operation thereon of

the OMF, this Lease and all right, title and interest hereunder shall cease on the date ownership of the Leasehold or portion thereof so taken or transferred vests in the condemning authority.

SECTION 10.05. Any compensation or damages awarded or payable because of the taking of all or any portion of the Leasehold by eminent domain shall be allocated between Lessor and Lessee as follows:

(a) All compensation or damages awarded or payable because of any improvements constructed by Lessee after the Commencement Date with Lessor's prior written consent and located on the portion of the Premises taken by eminent domain where only a portion of this Lease is taken by eminent domain and Lessee does not terminate this Lease shall be paid to and be the sole property of Lessee, free and clear of any claims of Lessor or any persons claiming rights to the Premises or Leasehold through or under Lessor.

(b) All compensation or damages awarded or payable because of any improvements constructed on the Premises by Lessee after the Commencement Date with the prior written consent of Lessor taken by eminent domain where this Lease is terminated because of the taking by eminent domain, whether all or only a portion of the Premises is taken by eminent domain, shall be allocated between Lessor and Lessee as follows:

(i) That percentage of the compensation or damages awarded or payable because of the improvements that equals the percentage of the full term of this Lease that has, at the time of the taking, not expired shall belong to and be the sole property of Lessee.

(ii) That percentage of the compensation or damages awarded or payable because of the improvements that equals the percentage of the full term of this Lease that has, at the time of the taking, expired shall belong to and be the sole property of Lessor.

(iii) The term "time of taking", as used in this subsection, shall mean 12:01 A.M. of, whichever shall first occur, the date title or the date physical possession of the portion of the Premises on which the improvements are located is taken by Lessee or the entity exercising the eminent domain power.

(c) All compensation or damages awarded or payable because of any improvements constructed on the Premises by Lessee after the Commencement Date but so constructed without the prior written consent of Lessor taken by eminent domain where this Lease is terminated because of the taking

by eminent domain, whether all or only a portion of the Premises is taken by eminent domain, shall belong to and be the sole property of Lessor.

(d) Any severance damages awarded or payable because only a portion of the Premises is taken by eminent domain shall be divided based on the value of the original investment by Lessor and Lessee as recognized in the final cash committed to building the Premises and/or any applicable improvements, except to the extent needed to replace any improvements taken by eminent domain with equivalent improvements on the remaining portion of the Premises where Lessee does not terminate this Lease.

SECTION 10.06. Lessor recognizes Lessee's substantial investment into the Premises and will make every reasonable effort to prevent such act of eminent domain at Lessor's expense. Should the Premises be taken by eminent domain in whole or part to render the Premises unusable for its Occupancy Dates, Lessor shall assist Lessee to relocate to another facility within the Ojai Valley and waive any fees associated with such a move provided such fees are legally imposed by Lessor.

SECTION 10.07. Nothing in this Lease shall be deemed or construed in any way as constituting a waiver or relinquishment of Lessor's constitutional power of eminent domain.

ARTICLE XI

INSURANCE

SECTION 11.01. During each Occupancy Date of the Term, Lessee shall maintain, keep in force and pay all premiums required to maintain and keep in force the following insurance:

(a) Public liability and property damage: Limits of not less than Two Million Dollars (\$2,000,000.00) for personal or bodily injuries, including accidental death for any one occurrence, and property damage in an amount of not less than Fifty Thousand Dollars (\$50,000.00) for any one occurrence. The property damage insurance shall cover damage or destruction of any property, other than that which is owned, leased or in the care, custody or control of Lessee with the limit applying to any one accident, disaster or claim.

In the event Lessor, at any time, requests that additional public liability and property damage insurance be required, Lessee must agree to increase the insurance to the amounts requested by Lessor. If Lessee does not agree to the new amounts, Lessee and Lessor shall each select an insurance appraiser or broker who, in turn, will select a third insurance appraiser or broker. These three (3) insurance brokers or appraisers will render a decision on the amount of increased insurance required, which decision will be adhered to by Lessee.

(b) Fire and extended coverage: All improvements located on or appurtenant to the Premises shall be kept insured against loss or damage by fire and such other risks as are now or hereafter included in extended coverage endorsements in common use for commercial structures, including vandalism and malicious mischief. The amount of such insurance shall be sufficient to prevent either Lessor or Lessee from becoming a co-insurer under the provisions of the policies but in no event shall the amount be less than the greater of Three Million Dollars (\$3,000,000.00) or ninety percent (90%) of the then actual replacement cost excluding the cost of replacing excavations and foundations but without deduction for depreciation ("full insurable value").

If any dispute arises as to whether the amount of insurance complies with the above which cannot be resolved by agreement between Lessor and Lessee, Lessor may, not more often than once every twelve (12) months, request the carrier of the insurance then in force to determine the full insurable value as defined in this provision. The resulting determination shall be conclusive between the Parties for the purpose of this Lease.

Lessor shall cooperate fully with Lessee to obtain the largest possible recovery and all policies of fire and extended coverage insurance required by this Article shall provide that the proceeds shall be paid to Lessee and held in trust by Lessee for the uses and purposes prescribed by this Lease.

SECTION 11.02. At all times, Lessor shall maintain, keep in force, and pay all premiums required to keep in force insurance, or its statutory equivalent, at levels adequate to cover the Bowl against fire, casualty, third party liability or other loss.

SECTION 11.03. All insurance required by express provisions of this Lease shall be carried only with responsible insurance companies licensed to do business in the State of California. All such policies shall be non-assessable and shall contain language to the effect that:

(a) Any loss shall be payable notwithstanding any independent act or negligence of Lessor, its officers, agents and employees that may otherwise result in a forfeiture of the insurance;

(b) The insurer waives the right of subrogation against Lessor and Lessor's officers, agents and employees;

(c) The policies are primary and non-contributing with any insurance that may be carried by Lessor; and

(d) The policies cannot be cancelled or materially changed except after thirty (30) days' prior written notice by the insurer to Lessor.

SECTION 11.04. All public liability and property insurance policies required to be furnished by Lessee under the provisions of this Lease shall name Lessor as an additional insured thereunder.

SECTION 11.05. Promptly upon receipt of them, Lessee shall furnish Lessor with copies of all insurance policies. Lessee shall furnish Lessor with binders representing all insurance required by this Lease prior to the Commencement Date.

ARTICLE XII

ASSIGNMENT AND SUBLETTING

SECTION 12.01. Lessee shall not assign this Lease without the prior written consent of Lessor. Approval of such reassignment shall not be unreasonably withheld. Lessor will attempt to respond to Lessee within thirty (30) days of such a request provided it is made in writing.

SECTION 12.02. Lessee may sublet the Premises during any Occupancy Date after obtaining Lessor's prior written consent which consent may not be unreasonably withheld by Lessor, but no subletting shall release Lessee of any obligations hereunder, or alter the primary liability of Lessee for the payment of rent or for the performance of any other obligations to be performed by Lessee.

Lessee agrees and this Lease is made and accepted upon and subject to the following conditions:

There will be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, mental or physical disability, or ancestry, in the leasing subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises nor shall Lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the Premises.

The foregoing covenants shall run with the land.

ARTICLE XIII

DEFAULT AND REMEDIES

SECTION 13.01. In the event Lessee:

(a) Fails to pay or cause to be paid any insurance premium, lien, stop notice, claim, charge or demand herein provided to be paid or caused to be paid by Lessee at all times in the manner herein provided;

(b) Defaults in the payment of any installment of rent or any other sum when due and payable;

(c) Fails to commence or complete any restoration or replacement of the Premises as required within the time and in the manner herein provided;

(d) Fails to use or operate the Premises and use the Public Areas as herein required;

(e) Defaults in the performance of or breach of any covenant, condition or restriction of this Lease herein provided to be kept or performed by Lessee;

(f) Dissolves, or fails to maintain its non-profit Internal Revenue Service tax-exempt status;

and if such failure, default or breach shall continue uncured for a period of thirty (30) days following service upon Lessee of written notice by Lessor, then and in any such event, Lessor may, at its option, terminate this Lease by giving Lessee written notice. Thereupon, the rights of Lessee in and to the Premises shall cease and Lessor may, without further notice, demand, or legal process, re-enter and take possession of the Premises and evict Lessee and all persons claiming under Lessee therefrom. Lessee and all such persons shall quit and surrender possession of the Premises to Lessor.

SECTION 13.02. Any termination of this Lease as herein provided shall not relieve Lessee from the payment of any sum or sums then due and payable to Lessor hereunder or any claim for damages then or theretofore accruing against Lessee hereunder. Any such termination shall not prevent Lessor from enforcing the payment of any such sum or sums or claims for damages by any remedy provided by law or from recovering damages from Lessee for any default herein. All rights, options and remedies of Lessor contained in this Lease shall be construed to be cumulative and no one of them shall be exclusive of the other. Lessor shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease. No waiver by Lessor of any breach of any of the covenants, conditions or restrictions of this Lease shall be construed or held to be a waiver of any other succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained.

ARTICLE XIV

SURRENDER AND REMOVAL

Any improvements made to the Premises by Lessee during the Term with Lessor's consent shall be owned by Lessee until the expiration or sooner termination of this Lease at which time they shall become the sole property of Lessor, unless such improvements are reasonably movable. Such movable improvements shall be removed by Lessee at Lessor's re-

quest and Lessee's expense, or purchased by Lessor at a mutually agreeable price from Lessee.

ARTICLE XV

LESSOR'S GENERAL PROTECTIVE PROVISION

SECTION 15.01. Lessee shall permit Lessor or Lessor's agents, representatives or employees to enter upon the Premises during any Occupancy Date for the purpose of inspection, determining whether agreements in this Lease are being complied with and making emergency repairs to the Premises.

SECTION 15.02. In the event that Lessee shall fail to pay and discharge or cause to be paid or discharged, when due and payable,

(a) Any charge upon or in connection with the Premises which has resulted from Lessee's occupancy,

(b) Any lien or claim for labor or material employed or used in connection with Lessee's occupancy of the Premises,

(c) Any claim for damages arising out of the improvement, repair, restoration, replacement, maintenance and use of the Premises by Lessee,

(d) Any judgment on any contested lien or claim against Lessee,

(e) Any insurance premium or expense in connection with Lessee's use and occupancy of the Premises, or

(f) Any other claim, charge or demand which Lessee has agreed to pay or cause to be paid under the covenants and conditions of this Lease,

and if Lessee, after thirty (30) days' written notice from Lessor so to do, shall fail to pay and discharge the same, Lessor may, at its option, pay any such insurance, expense, lien, claim, charge or demand or settle or discharge any action therefor or judgment thereon. All costs, expenses and other sums incurred or paid by Lessor in connection with any of the foregoing shall be paid by Lessee to Lessor upon a written ten (10)-day demand. Failure to so pay upon such demand shall constitute a material breach of this Lease by Lessee enabling Lessor, at its option, to terminate this Lease.

SECTION 15.03. In the event that Lessor shall sell or transfer the Premises or any part thereof and as a part of such transaction shall assign its interest as owned in and to this Lease, then from and after the effective date of such sale, assignment or transfer, Lessor shall have no further liability under this Lease to Lessee except as to matters of liability which shall have accrued and are unsatisfied as of such date, it being intended that the covenants and obligations contained in this Lease of Lessor shall

be binding upon Lessor and its successors and assigns only during and in respect of their respective successive periods of ownership of the fee.

ARTICLE XVI

QUIET ENJOYMENT

Lessee, paying the rents herein provided and performing and observing the covenants and conditions by it to be kept and performed, may peaceably hold and enjoy the Premises subject to the terms, covenants and conditions of this Lease during the Occupancy Dates occurring within the Term.

ARTICLE XVII

HOLD HARMLESS

SECTION 17.01. To the fullest extent permitted by law, Lessee shall defend, indemnify and save Lessor, its officers, agents, employees, boards and commissions harmless from and against any and all claims, suits, liabilities or proceedings arising out of any act, omission or negligence of Lessee or of any of Lessee's contractors, licensees, agents, servants, employees, sublessees or assignees or arising out of any accident, injury or damage whatsoever caused or occurring to any person or property on the Premises. However, the foregoing shall not and does not require Lessee to defend, indemnify and save Lessor harmless based upon any active or passive negligence, willful, reckless or intentional (as distinguished from negligent) act or omission, if any, by Lessor or any of its officers, agents or employees.

SECTION 17.02. Lessor shall give written notice to Lessee within thirty (30) days after any suit shall have been served on Lessor wherein it is alleged that operation or use by Lessee or conditions on the Premises caused by Lessee during the Term have created a liability of Lessor. Lessor shall give written notice to Lessee within thirty (30) days after the filing of any written claim against Lessor wherein it is alleged that operation or use by Lessee or conditions on the Premises during the Term have created a liability of Lessor. Such notice, however, shall not be required in those instances where Lessee shall also have otherwise received notice of such claim or suit. The failure to provide such notice shall not release Lessee from any of its obligations under this Article XVII except to the extent that Lessee is prejudiced by such failure.

ARTICLE XVIII

MISCELLANEOUS PROVISIONS

SECTION 18.01 Lessee has entered into this Lease based on Lessor's representations that it will be responsible for bringing about timely completion of the construction of the Premises so that it is available for use by Lessee on May 28, 2011

to accommodate the 2011 Ojai Music Festival produced by Lessee. If this completion date is not achieved, Lessee will be forced to locate and occupy an alternative venue for the 2011 Festival. Lessor acknowledges that Lessee will incur substantial additional costs and revenue losses as a result. Therefore, Lessor agrees that if its contractor fails to complete construction by the date specified in the bid documents and the Construction Contract (April 11, 2011) thereby forcing Lessee to occupy, or prepare to occupy, an alternative venue, Lessor will pay to Lessee, no later than ten (10) days after receipt, an amount of funds equal to the amount of the Liquidated Damages that is received by Lessor per the terms of the Construction Contract. Lessor acknowledges that it will pursue receipt of full liquidated damages due in a timely manner.

SECTION 18.02. No failure by Lessor or Lessee to insist upon the performance by the other of any covenant, agreement, term or condition of this Lease, or to exercise any right or remedy subsequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Lease but each and every covenant, condition, agreement and term of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

SECTION 18.03. Time is of the essence of this Lease and of each provision hereof.

SECTION 18.04. Each and all of the covenants, conditions and restrictions in this Lease shall inure to the benefit of and shall be binding upon the successors-in-interest of Lessor and the authorized encumbrancers, assignees, transferees, sublessees, licensees and other successors-in-interest of Lessee.

SECTION 18.05. This Lease, together with the MOU, contains the entire agreement of the Parties with respect to the matters covered by this Lease. No other agreement, statement or promise made by any Party or to any employee, officer or agent of any Party which is not contained in this Lease shall be binding or valid.

SECTION 18.06. If any material term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, this Lease shall be deemed terminated in accordance with Articles XIII and XV.

SECTION 18.07. All references to the Occupancy Dates or the Term of this Lease shall include all extensions of such Occupancy Dates and/or the Term.

SECTION 18.08. In the event that either Lessor or Lessee shall bring any action or proceeding for damages for an alleged breach of any provision of this Lease to recover rents or to enforce, protect or establish any right or remedy of either Party, the prevailing Party shall be entitled to recover as a part of such action or proceeding reasonable attorney's fees and court costs whether or not said action proceeds to judgment.

SECTION 18.09. This Lease is not subject to modification except in writing.

SECTION 18.10. All notices, rents and other communications hereunder shall be in writing and deemed duly given (a) on the date of delivery if delivered personally, or if by facsimile, upon written confirmation of receipt by facsimile, or otherwise, (b) on the first business day following the date of dispatch if delivered by a recognized next-day courier service or (c) on the earlier of confirmed receipt or the second business day following the date of mailing if delivered by registered mail, certified mail or first class mail, postage prepaid, if to Lessor: to the City Manager at City Hall, 401 South Ventura Street, Post Office Box 1570, Ojai, California 93024 or at such other place as Lessor may from time to time designate in writing, with copy to Monte L. Widders, City Attorney, Myers, Widders, Gibson, Jones & Schneider, L.L.P., 5425 Everglades Street, Post Office Box 7209, Ventura, California 93006; or if to Lessee: to Ojai Festivals Ltd., 201 South Signal Street, Post Office Box 185, Ojai California 93024 or at such other place as Lessee may from time to time designate in writing.

SECTION 18.11. This Lease may be executed in one or more counterparts each of which shall be deemed an original and together shall constitute one and the same agreement.

SECTION 18.12. Pursuant to Government Code Section 37393, a copy of this Lease shall be recorded with the Ventura County Recorder.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the date first written above.

CITY OF OJAI, CALIFORNIA

By _____
Steven Olsen, Mayor

OJAI FESTIVALS LTD.

By _____
Esther Wachtell, President

ATTEST:

Carlton Strobel, City Clerk

APPROVED AS TO FORM:

Monte L. Widders, Attorney for
Lessor

ACKNOWLEDGMENTS

STATE OF CALIFORNIA)
) ss.
COUNTY OF VENTURA)

On _____, 2010 before me, _____, a Notary Public, personally appeared Steven Olsen, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA)
) ss.
COUNTY OF VENTURA)

On _____, 2010 before me, _____, a Notary Public, personally appeared Esther Wachtell, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

EXHIBIT "A"

[DESCRIPTION OF NEW FACILITY]

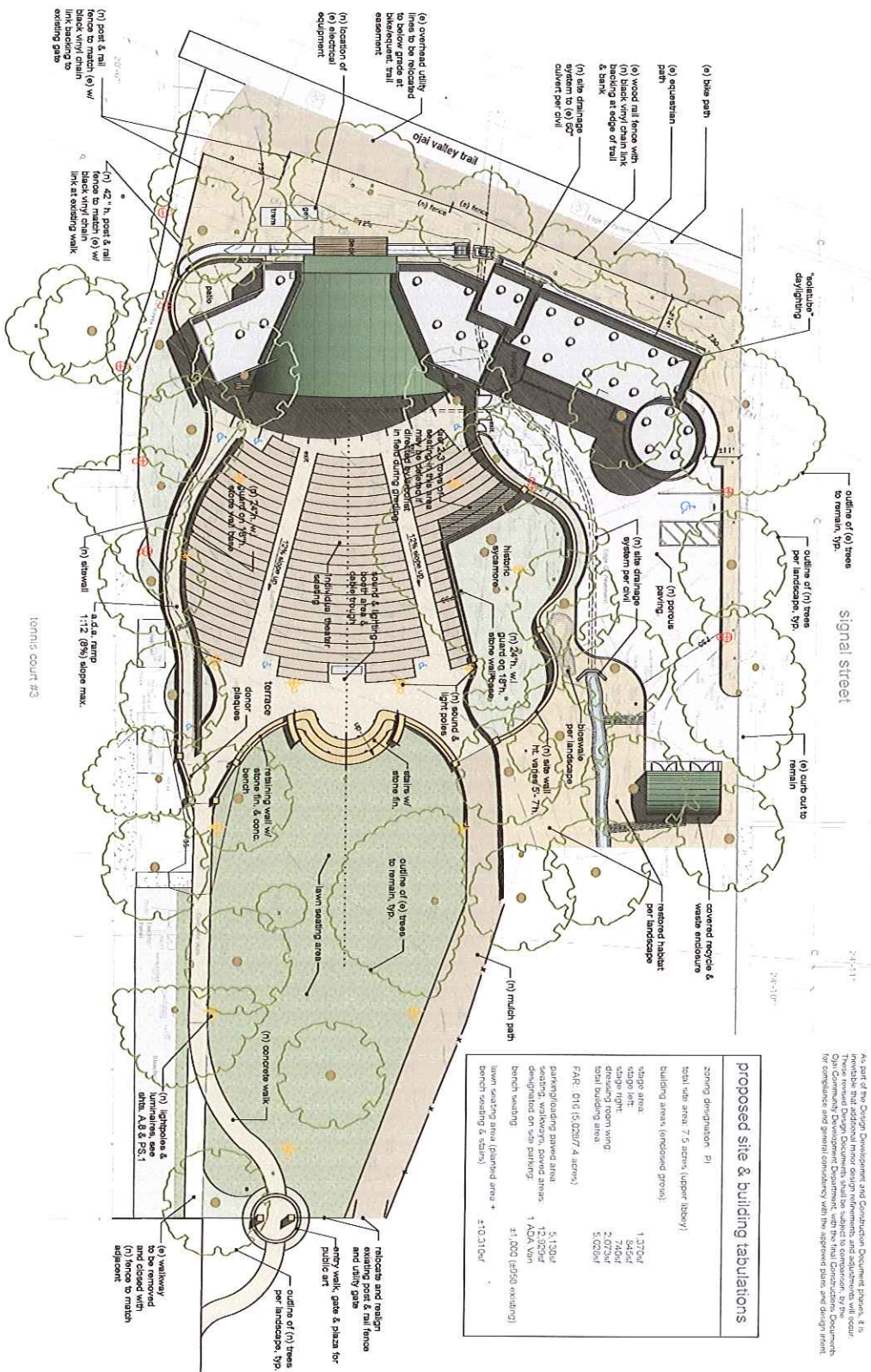
[TO BE SUPPLIED AT A LATER DATE]

EXHIBIT "B"

[SITE MAP]

~~[TO BE SUPPLIED AT A LATER DATE]~~

Attached



see landscape plans for (e) S, (n) trees & glazing
see site # 3 for light fixture type & note
see site # 3-1 for prescriptive study path

(e) = existing feature
(n) = new feature

⊙ = (n) 5:1 lightpoint/luminaire
⊙ = (n) sound & light pole w/
event house lighting & 2:1 luminaire
⊙ = (n) sound & light pole w/
event house lighting
trial location & swirits of sound &
light poles subject to change

libbey bowl
proposed site plan

proposed site & building tabulations

zoning designation: P1	total site area: 7.5 acres (upper libbey)
building areas (enclosed gross)	1,970sf
stage area	32,500sf
stage int	7,400sf
dressing room wing	2,073sf
total building area	5,020sf
FAR: 0.16 (5,020sf / 4 acres)	
parking/loading staged area	5,130sf
seating, walkways, paved areas:	12,820sf
designated on site parking	1,400 van
bench seating	±1,000 (±250 existing)
lawn seating area (planned area + bench seating & stairs)	±10,310sf

These updated Design Documents, including plans, sections, and details, dated 12.21.20, constitute the final design for the project. In the original Planning Commission submission dated November 9, 2009, the project was approved for the 2009-2011 period. On November 10, 2020, revised Design Documents were approved by the Planning Commission. The project is subject to the 2020-2024 term of the approved resolution and other minor refinements. As part of the Design Development and Construction Document phases, it is inevitable that additional minor design refinements and adjustments will occur. These revised Design Documents shall be subject to approval by the City of Ojai. The project is subject to the 2020-2024 term of the approved resolution for compliance and general consistency with the approved plans and design.

DAVID BURY O'DONNAY ARCHITECTS LTD.
221 South Blvd
Ojai, California
93023
760.847.1700
310.266.0930
310.266.0930
310.266.0930

project:
Libbey Bowl Reconstruction and Improvement
Libbey Park
Ojai, CA

client:
City of Ojai

401 South Ventura Street
Ojai, CA 93023
In association with:
The Ojai Music Festival
201 South Santa Street
Ojai, CA 93023

consultant:
STUDIO LANDSCAPE CORPORATION
439 W. El Estero Drive
Ojai, CA 93023
805-468-8394

scale:
12:1 (AS) Rev



City of Ojai

Proposed Site Plan
A.3

EXHIBIT "C"

[MOU]

~~[TO BE SUPPLIED AT A LATER DATE]~~

Attached

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this "Memorandum") is entered into by the ***CITY OF OJAI, CALIFORNIA***, a municipal corporation ("City"), the ***OJAI REDEVELOPMENT AGENCY***, a public body, corporate and politic ("Agency"), and ***OJAI FESTIVALS LTD.***, a California non-profit public benefit corporation ("OFL"). City, Agency and OFL shall be collectively referred to as the "Parties".

This Memorandum is predicated upon the following facts, understandings and intentions of the Parties:

A. Libbey Bowl (the "Bowl") was constructed with private funds in 1957 in what was originally referred to as Ojai Civic Park (the "Park") and was called "Festival Bowl". The Bowl and the Park were, at that time, owned by the Ojai Civic Association, a private non-profit corporation. The building of the Bowl was undertaken in order to better accommodate the Ojai Music Festival (the "OMF"), which began its Festival performances in 1946. In the late 1970s the ownership of both the Park and the Bowl was transferred from the Civic Association to City. At that time the Bowl was renamed Libbey Bowl and the Park renamed Libbey Park.

B. The Bowl is an outdoor performance space with approximately eight hundred (800) fixed bench seats, space for an extra one hundred (100) rental chairs and an adjacent lawn seating an additional six hundred (600) people. The performance area consists of a raised stage over which is a shell and related support facilities.

C. Over twenty (20) non-profit organizations currently use the Bowl annually for various events. One of the most prominent of these events is the OMF which is renowned worldwide for its innovative programming; attracts important media, artists and patrons to City from throughout Southern California, the nation and the world; attracts a number of its patrons to move to or regularly visit City, many of whom have now become prominent community leaders and donors; works closely with the local business community to maximize the OMF's economic benefit to the broader community; augments music education in the Ojai Valley schools through its year-round *BRAVO!* music education program at no charge to the schools; regularly raises and provides funds to City in support of maintaining and improving the Bowl; and provides vital leadership to the non-profit and arts community in City and Ventura County.

D. The Bowl is a City-owned asset and is now managed and maintained by City's Public Works Department. The Bowl is within the Redevelopment Project area of Agency.

E. After consulting with numerous advisors (contractors, Public Works Department staff and users), City, Agency and OFL have determined that the Bowl and its supporting facilities and the seating area have deteriorated to the point that normal maintenance and

repairs are no longer feasible and the only practical course of action is to demolish and construct a new Bowl and supporting facilities with newly-constructed seating.

F. Recognizing the urgent need for immediate repairs, City made repairs costing approximately Thirty Thousand Dollars (\$30,000.00) in the spring of 2008 to extend the functionality of the Bowl for an estimated two (2) to three (3) more years.

G. City, Agency and OFL have agreed to enter into a collaboration memorialized by this Memorandum to design, fund and construct a new facility to replace the existing Bowl and related facilities (the "Project").

H. The Parties acknowledge that the Project has a very tight schedule and is of the highest priority. Therefore, City has agreed to use its best efforts to conduct a Project review process on an efficient and timely basis in order to optimize design, utilization and construction of the new facility, maximize funding availability and to attempt to meet the deadlines set forth in the Project schedules referenced herein. The Parties, if they deem it necessary, will either designate from City staff or engage an outside consultant to act as project manager.

I. City/Agency, recognizing the redevelopment of the Bowl as being important to the success of Agency's duly-adopted Redevelopment Plan, have committed Seven Hundred Fifty Thousand Dollars (\$750,000.00) to the design and construction of the Project, in addition to the Seventy Thousand Dollars (\$70,000.00) the City has already approved and spent for the concept design.

J. OFL has agreed to use its best efforts to raise, from private donations and other sources, a substantial portion of the design and construction costs for the Project.

NOW, THEREFORE, the following confirms the mutual intentions of the Parties as follows:

1. Mutual Benefits. It is the intention of the Parties that this Memorandum have the following mutual benefits:

(a) Provide the resources necessary to pay for the costs of the Project's design and construction.

(b) Enable the engagement of competent professionals to assist in the Project's design and construction.

(c) Encourage the participation of a broader spectrum of potential donors to the Project's costs.

(d) Preserve City's reputation as a center for music and the arts and further OFL's ability to provide continuing cultural, educational and other public benefits to the community.

2. **Public Benefits.** This Memorandum and the commitments of the Parties provides the following benefits to the general public:

(a) Cooperation and coordination in preserving and protecting a valuable City asset by both the public and private sectors.

(b) Provides City with a knowledgeable and experienced partner in the design and construction of the Bowl.

(c) Ensures the public's health and safety by the reconstruction of a worn and dilapidated Bowl facility.

(d) Promotes the continued vibrant local tourist-oriented economy of City.

3. **Benefits to OFL.** This Memorandum provides the following benefits to OFL:

(a) Enhances the ability of OFL to raise the private donations that will pay a substantial portion of the Project's costs.

(b) Ensures the viability of OFL's annual OMF by providing a safe, modern, up-to-date performance facility for the use of its performers and patrons.

(c) Establishes a unique public-private partnership dedicated to preserving City's historic performance asset and OMF's renowned musical reputation, both for now and for many years in the future.

4. **City's/Agency's Commitments.**

(a) **Design.**

(i) City and Agency have entered into a contract with David Bury & Company, Architects Ltd. (the "Architect") to design the Project, as architect. While City is the client, City intends to, and will cause Architect to, regularly consult with OFL in a collaborative manner in the design process.

(ii) City/Agency intends that the Project design will reflect the historic character of the existing Bowl (primarily the stage, but not the supporting facilities) and have sufficient flex-

ibility to accommodate OFL's annual OMF and the range of other different events generally produced in the Bowl. The Project design will aim to improve the functioning of the facility, allow greater flexibility and efficiency in its use and conform to current building standards.

(iii) City/Agency intends that any public art placed in or adjoining the Bowl as part of the Project, consistent with City's Public Art Program, or placed in the future will be of a high standard and will be subject to the reasonable collaboration of OFL.

(iv) City/Agency intends to request Architect to prepare a preliminary budget for the Project and to highlight any aspects of the Project that Architect feels will be particularly or exceptionally costly.

(v) City/Agency and Architect intend to periodically provide presentations and reports (the "Presentations") to OFL in order to facilitate OFL's input to the Project's design and construction. In addition, City will make available to OFL, at no cost to OFL, all design, construction and other public documents related to the Project.

(vi) City/Agency intends to prepare a construction cost estimate prepared by the City Engineer and to share such estimate with OFL. The Parties will collaborate on revisions or additions to the estimate. OFL may, at its election, request that City/Agency engage an independent cost estimator. City intends to give such a request its serious consideration.

(vii) City and/or Agency will pay Architect and Architect's consultants, from the Dedicated Account described in Section 4(c)(iii) hereof, from the Agency Commitment Amount described in Section 4(c)(ii) or from other City/Agency funds.

(b) Schedule.

(i) City/Agency intends to prepare a schedule for the completion of each of the design phases for the Project.

(ii) City/Agency intends, also, to prepare, upon completion of the design development phase, a schedule for the Bidding, Bid Award and Construction phases of the Project.

(iii) OFL will have the right to review all schedules and to provide input into their finalization.

(iv) City/Agency shall endeavor to begin Project construction in the summer of 2010 immediately following the June, 2010 OMF. City/Agency shall use their best efforts to complete Project construction by May 1, 2011 in order to accommodate presentation of the 2011 OMF, which is planned to be the first event to use the new Bowl on June 9-12, 2011.

(c) *Financing.*

(i) The Parties estimate that the total Project costs (both hard and soft costs) will be approximately Three Million Dollars (\$3,000,000.00) (the "Estimated Project Costs"). However, the Parties further acknowledge that it is extremely difficult to accurately predict the final Project costs.

(ii) City has expended an initial amount of Seventy Thousand Dollars (\$70,000.00) toward the initial concept design phase. City/Agency have agreed to commit an additional amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00) as the City/Agency commitment (the "CAC") toward the costs of completed architectural services, Project permit processing normally performed by consultants and construction of the Project.

(iii) City will establish a Dedicated Account (the "Dedicated Account") into which it will deposit all outside contributions to the Project, both by the general public as well as by OFL. City/Agency shall ensure that funds from the Dedicated Account will be used only for the design and construction of the Project.

(iv) City/Agency intends that City's costs in processing the Project that are normally incurred through the retention of consultants will be paid from the CAC. All other processing costs incurred from City imposed fees or through the utilization of City staff will either be waived or paid from City/Agency funds other than the CAC. Such costs are to include, without limitation, plan check fees, street closure fees, environmental assessment costs, public art program costs and all other such costs or fees that would normally be assessed to a private developer and/or contractor to compensate City for its staff's involvement in the Project.

(v) Other than those benchmarks set forth in this Memorandum, the Parties intend to agree on additional benchmarks (separate from this Memorandum) for public pledges and cash contributions made and received for the Project to maintain the Project schedule.

(vi) City intends to provide and/or allow recognition opportunities for donors to the Project.

(d) Permits.

(i) City, as lead agency, intends to process all applications for appropriate land use and building permits before City boards and commissions as well as all other applicable governmental agencies. City intends to consult with OFL before agreeing to any conditions of approval for such permits.

(ii) City/Agency intend to undertake the appropriate level of environmental review for the Project as required by the California Environmental Quality Act. The cost for such environmental review shall be taken from the CAC or other non-CAC City/Agency funds in a manner consistent with the staff/consultant distinctions contained in Section 4(c)(iv). City/Agency further intend to carry out, at its own expense, any mitigation measures required by such review. City intends to consult with OFL before agreeing to any such mitigation measures. The cost of such mitigation, if any, shall be charged to the CAC or other non-CAC City/Agency funds in a manner consistent with the staff/consultant distinctions contained in Section 4(c)(iv).

(iii) Notwithstanding anything to the contrary contained herein, City, its boards, commissions and City Council and Agency and its Board shall have sole final regulatory discretion over the approval, disapproval or conditions of approval of the Project. City/Agency do, however, intend to collaborate, in good faith, with OFL on all aspects of the Project's design and construction.

(e) Bidding.

(i) Upon approval of the Project, City/Agency intends to collaborate with OFL in the review of completed construction documents as prepared by the Architect, its consultants and the City Engineer. Subject to available financing as

described below, City intends to timely prepare and issue competitive bidding documents in accordance with state law.

(ii) City/Agency intends to consult with OFL on whether deduct or add alternates should be included in the bidding documents and, if so, what items should be the subject of such deduct or add alternates.

(iii) The Parties acknowledge that it is in their interests, as well as being required state law, that no competitive bidding documents shall be distributed to potential bidders, unless and until there is on hand with City/Agency liquid, unrestricted funds sufficient to pay the construction costs for the Project, as estimated by the City Engineer.

(iv) City intends to consult with OFL regarding review of all bids received. If none of the returned bids fall within the City Engineer's estimated cost of construction, City and OFL will collaborate in determining whether to re-bid the Project. However, the Parties acknowledge that the decision as to whether to accept the lowest responsible bid or to reject all bids will be determined by the City Council and/or Agency Board in their sole discretion. However, it is currently the Parties' intent not to accept a bid in excess of the Estimated Project Costs.

(f) **Construction.** After City/Agency has awarded a contract for the construction of the Project, City/Agency will collaborate with OFL on all contractor proposed or City/Agency proposed change orders. However, the Parties intend that such change orders will be limited to the extent possible.

(g) **Maintenance.** City/Agency and OFL will collaborate on a written schedule and a set of standards for the regular cleaning and maintenance of the Bowl and its related facilities. City intends to be responsible for ongoing cleaning and maintenance of the Bowl in accordance with such schedule and standards at no cost to OFL.

(h) **Repair of the Bowl and Related Facilities.** City/Agency intends to be responsible for ongoing normal repair and replacement of the Bowl and its components and related facilities at no cost to OFL.

(i) **Use of the Bowl.**

(i) City will collaborate with OFL in scheduling OFL's use of the Bowl.

(ii) City and OFL intend to collaborate on devising a method for OFL's use of the Bowl and its related facilities without rental fees to OFL.

5. ***OFL's Commitments.***

(a) ***Program.***

(i) OFL, in consultation with thirteen (13) of the other users of the Bowl who chose to participate, has prepared a draft program, dated July 15, 2008, which also was shared with City (the "Draft Program"). The Draft Program sets forth detailed requirements for each of the functional areas of the Bowl and assigns priorities and standards to each of the proposed Program elements.

(ii) OFL will submit a final version of this Program to City at the time of execution of this Memorandum.

(iii) City will review the Program and intends to use its provisions to assist the Architect in its design of the new Bowl.

(b) ***Design.*** OFL will provide written comments to City at the completion of each Presentation referenced herein. It is expected that such written comments will set forth OFL's suggestions or concerns to be addressed by City/Agency and Architect prior to the next Presentation. If OFL determines that any of its previously-expressed concerns have not been satisfactorily met by City, the Parties intend to meet and confer, in good faith, in an attempt to address and resolve such concerns.

(c) ***Financing.***

(i) OFL intends to carry out a vigorous campaign of public fund-raising in order to raise and/or otherwise cause to be raised One Million Dollars (\$1,000,000.00), which, except for funds needed by OFL to pay for Project soft costs incurred or to be incurred by OFL, such as public relations, fundraising expenses, promotional materials and related purposes or items, OFL intends that all other such additional funds will be deposited in the Dedicated Account (the "OFL Commitment"). It is OFL's intention that the OFL Commitment funds deposited in the Dedicated Account be expended in the following manner:

(A) Within thirty (30) days upon execution of this Memorandum, a deposit of at least Thirty-Five Thousand Dollars (\$35,000.00) for the concept design and design development phases of the Architect's contract;

(B) At the time the City Council of City adopts the environmental impact report and approves the Project, a deposit of Thirty-Five Thousand Dollars (\$35,000.00) for the purpose of having the Architect and its consultants prepare final construction documents; and

(C) The balance to be deposited in the Dedicated Account on or before the distribution of final bidding documents to prospective bidders.

(ii) OFL further intends to take a collaborative role in working with City, the community and other Bowl users to raise additional needed funds for the Project.

(iii) The Parties acknowledge that currently there are no specific, identifiable sources of funds to pay the difference between the total of the Agency Commitment Amount, the OFL Commitment Amount and the Estimated Project Costs (the "Shortfall Amount"). The Parties will meet and collaborate on how to address the Shortfall Amount. In no event, however, will final bidding documents be distributed to prospective bidders unless or until the Shortfall Amount has been adequately provided for.

(iv) Notwithstanding any provision to the contrary, in no event shall OFL's share of any or all Project costs exceed one-third (1/3) thereof or the the amount of the OFL Commitment, whichever is less, without the written approval of OFL.

(d) Use of the Bowl. OFL will collaborate with City/Agency in its scheduling of the annual OMF. Generally, the OMF is scheduled for a continuous period of up to fourteen (14) days and for additional events for a total of up to twenty-five (25) days annually. OFL intends to advise City of any scheduled dates it wishes to eliminate by notifying City at least thirty (30) days prior to such dates. OFL and City/Agency intend, further, to collaborate on such additional dates required by OFL for its use of the Bowl that are not otherwise committed to other users by providing forty-five (45) days' notice to City.

6. ***Lease Agreement.*** City/Agency and OFL intend that City will prepare a Lease Agreement whereby OFL will obtain use of the Bowl generally in accordance with the provisions of this Memorandum, including specifically the provisions of Sections 4(g), 4(h), 4(i) and 5(d). It is the intent of the Parties that such Lease will be approved by OFL and the City Council of City within forty-five (45) days of the adoption of this Memorandum by City and prior to the time when OFL would be required to deposit the balance of the OFL Commitment into the Dedicated Account as set forth in Section 5(c)(i)(C)

7. ***Miscellaneous.***

(a) This Memorandum does not constitute a contractual agreement between the Parties nor a binding development agreement pursuant to Government Code Sections 65864-65869.5.

(b) OFL intends by and for itself, and for any successors-in-interest, to ensure that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the use, occupancy, tenure or enjoyment of the Bowl. OFL further intends to ensure that any person claiming under or through it will not establish or permit any such practice or practices of discrimination or segregation with reference to OFL's performers or performance organizations in the use and occupancy of the Bowl or any portion thereof. All contracts executed by OFL for the Bowl shall contain or be subject to non-discrimination or non-segregation clauses substantially similar to those contained in this subsection (b).

(c) The Parties intend that no member, official or employee of Agency, City and OFL shall have any personal financial interest in the Project except that acting as a member or having provided donations to OFL will not constitute a personal financial interest in the Project.

(d) This Memorandum contains the entire understanding between the Parties with respect to its subject matter.

(e) Other than as set forth herein, this Memorandum does not restrict the discretion of City's staff and City Council and Agency's staff and Board or OFL with respect to the Project's design, financing and construction.

Dated: July 14, 2009.

CITY OF OJAI, CALIFORNIA, a municipal corporation

By Joe DeVito
Joe DeVito, Mayor

ATTEST:

Carlton Strobel
Carlton Strobel, City Clerk

APPROVED AS TO FORM:

Monte L. Widders
Monte L. Widders, City Attorney

Dated: 7 July 2009.

REDEVELOPMENT AGENCY OF THE CITY OF OJAI, a public body, corporate and politic

By Jere A. Kersnar
Jere A. Kersnar, Executive Director

Dated: _____.

OJAI FESTIVALS LTD, a California non-profit public benefit corporation

By Christine T. Drueck, President
July 6, 2009.

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