

08-27-2001

Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002)

RI



U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

Tab settings

101823771

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

08/20/01

County of San Bernardino

- Individual(s), Association, General Partnership, Limited Partnership, Corporation-State, Other County

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment, Merger, Security Agreement, Change of Name, Other

Execution Date: October 28, 1999

2. Name and address of receiving party(ies)

Name: The Marcus Corporation

Internal Address:

Street Address: 250 East Wisconsin Ave., Ste 1700

City: Milwaukee State: WI Zip: 53202

- Individual(s) citizenship, Association, General Partnership, Limited Partnership, Corporation-State, Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,403,292

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Alan H. Bernstein

Internal Address: Caesar, Rivise, Bernstein, Cohen & Pokotilow, Ltd.

Street Address: 1635 Market Street, 12th Fl.

City: Philadelphia State: PA Zip: 19103

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41) \$ 40.00

- Enclosed, Authorized to be charged to deposit account

8. Deposit account number:

03-0075

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Alan H. Bernstein

Signature

Date

Name of Person Signing

08/24/2001 DBYRNE 00000120 030075 2403292

Total number of pages including cover sheet, attachments, and document:

01 FC:481 40.00 CH

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

TRADEMARK REEL: 002355 FRAME: 0656

**TRADEMARK ASSIGNMENT**

WHEREAS, the County of San Bernardino, located at County Government Center, 385 North Arrowhead Avenue, Fifth Floor, San Bernardino, California ("County"), is the current owner of the service mark ULTRASCREEN (the "Mark"), as evidenced by application Serial No. 75/579,495 (the "Application"); and

WHEREAS, The Marcus Corporation, a Wisconsin corporation located and doing business at 250 East Wisconsin Avenue, Suite 1700, Milwaukee, Wisconsin ("Marcus"), wishes to acquire the Mark and the Application, together with the goodwill of the business in connection with which the Mark and the Application are used.

NOW, THEREFORE, in consideration of and in exchange for the sum of \$1.00 and other valuable and legally sufficient consideration, the receipt of which County hereby acknowledges, County hereby agrees to and does sell, assign and transfer to Marcus its entire right, title and interest in and to the Mark and the Application together with the goodwill of the business to which the Mark and the Application pertain, as well as all rights of enforcement and recovery for past infringement of the Mark.

IN WITNESS WHEREOF, a duly authorized officer of County has executed this agreement as of the 2nd day of November, 1999.

COUNTY OF SAN BERNARDINO

By: Jon D. Mikels  
Chairman, Board of Supervisors

Jon D. Mikels  
Print Name

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

EARLENE PROAT, Clerk of the Board of Supervisors  
By: Earlene Proat  
Deputy

Date: 11/2/99

APPROVED AS TO LEGAL FORM:

ALAN K. MARKS, County Counsel, San Bernardino County, California  
By: Alan K. Marks  
Deputy

Date: 11-1-99

## ASSIGNMENT AGREEMENT

The parties to this Agreement are as follows:

County of San Bernardino  
County Government Center  
385 North Arrowhead Avenue  
Fifth Floor  
San Bernardino, California 92415-0120  
Attention: County Administrator  
Facsimile: (909) 387-5430  
(hereinafter "COUNTY")

The Marcus Corporation  
250 East Wisconsin Avenue, Suite 1700  
Milwaukee, Wisconsin 53202  
Facsimile: (414) 905-2669  
(hereinafter "MARCUS")

1. COUNTY, has adopted and has been using, and is the owner of all trademark rights in, the mark ULTRASCREEEN for educational, historical, information and training services including a museum and for entertainment services in the nature of theatre exhibitions, for which said mark has been used on or about May 23, 1997, as evidenced by ASN 75/579,495, filed in the United States Patent and Trademark Office on October 29, 1998.

2. COUNTY wishes to assign and transfer to MARCUS, ownership of the mark ULTRASCREEEN and all of the right, title and interest of said COUNTY in and to the mark ULTRASCREEEN, together with the above trademark application for the registration of said mark and the goodwill of the business associated with and symbolized by the mark, in the form shown in the Trademark Assignment at Exhibit A hereto (the "ASSIGNMENT").

3. It is the desire of COUNTY and MARCUS to record the assignment of said trademark application and the transfer to MARCUS of the aforesaid mark.

4. NOW THEREFORE, IN CONSIDERATION of \$20,000.00 payable by MARCUS to COUNTY, and for other good and valuable consideration paid by MARCUS to COUNTY, the receipt of which is hereby acknowledged by COUNTY, and in further consideration of the fact that it is the desire of COUNTY to be legally bound hereby, said COUNTY does hereby agree to sell, assign and transfer unto MARCUS its

mark ULTRASCREEN and any trademark application for said mark and the goodwill of the business associated with and symbolized by the mark, in the form shown in the ASSIGNMENT. Also included in this assignment are any and all rights which COUNTY has against persons who have infringed upon the ULTRASCREEN mark. These rights include the right to sue and recover for all damages and profits arising out of past infringement of the ULTRASCREEN mark. MARCUS understands and agrees that the trademark application for said mark is not yet finalized, is expected to take from six to 18 months to finalize, and that MARCUS will be responsible to pay for all remaining fees (currently estimated to be \$700.00) to complete the application. MARCUS also understands and agrees that the COUNTY makes no representations or warranties concerning the mark or the application for such mark except as set forth herein.

5. Attorney's Fees. If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under Paragraph 6 Hold Harmless.

6. Hold Harmless. MARCUS agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless the COUNTY, its authorized officers, agents, volunteers and employees, from any and all claims, actions, losses, damages, and/or liability arising out of this agreement by an act, error or omission of MARCUS, including the acts, errors or omissions of any person employed by MARCUS or acting on MARCUS' behalf, and for any costs or expenses incurred by the COUNTY on account of any claim therefore except where such indemnification is prohibited by law.

7. Jury Trial Waiver. MARCUS and COUNTY hereby waive their respective right to trial by jury and agree to accept trial by judge alone for any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either MARCUS against COUNTY or COUNTY against MARCUS on any matter whatsoever arising out of, or in any way connected with, this agreement, the

relationship of MARCUS and COUNTY, MARCUS's use of the servicemark, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

8. Choice of Law. This agreement shall be governed by and construed in all respects in accordance with the internal laws and decisions of the State of California, without respect to California's choice of laws provisions, except to the extent said laws and decisions are superseded by federal law.

9. Venue. The parties acknowledge and agree that this agreement was entered in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this agreement will be San Bernardino County or the United States District Court having jurisdiction over San Bernardino County. Each party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this agreement is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Central District of San Bernardino County or the United States District Court having jurisdiction over San Bernardino County.

10. Notices. Any notice, demand or request provided for or permitted to be given pursuant to this agreement shall be in writing and shall be deemed to have been properly given (i) upon receipt, if hand delivered; (ii) upon deposit thereof at any main or branch United States Post Office, if sent by United States registered or certified mail, return receipt requested; (iii) on the first business day following deposit thereof at the office or drop box of a nationally recognized overnight delivery service, if sent by such service; or (iv) upon confirmation of receipt, if sent by telecopy, addressed to

COUNTY or MARCUS at the address and/or facsimile indicated above or at such other address or facsimile as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its hereunto duly authorized representative, and has caused its corporate seal to be hereunto affixed and duly attested on the dates indicated below.

COUNTY OF SAN BERNARDINO:

The Marcus Corporation,  
A Wisconsin corporation

By Jon D. Michel  
Chairman, Board of Supervisors

By Douglas A. Neis  
Douglas A. Neis

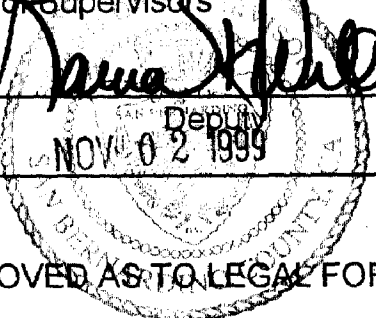
Date NOV 02 1999 #99-1083

Title: Treasurer

Date October 28, 1999

SIGNED AND CERTIFIED THAT  
A COPY OF THIS DOCUMENT  
HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

EARLENE SPROAT, Clerk of the  
Board of Supervisors  
By Earlene Sproat  
Date NOV 02 1999



APPROVED AS TO LEGAL FORM:

ALAN K. MARKS, County Counsel  
San Bernardino County, California

By Alan K. Marks  
Deputy  
Date 11-1-99

**Exhibit A**

**TRADEMARK ASSIGNMENT**

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COUNTY OF SAN BERNARDINO

By: \_\_\_\_\_  
Chairman, Board of Supervisors

\_\_\_\_\_  
Print Name

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

EARLENE SPROAT, Clerk of the Board of Supervisors

By \_\_\_\_\_  
Deputy

Date: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

ALAN K. MARKS, County Counsel, San Bernardino County, California

By \_\_\_\_\_  
Deputy

Date: \_\_\_\_\_

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF SAN BERNARDINO COUNTY, CALIFORNIA  
AND RECORD OF ACTION**

Agree. 96-362; 96-363; 99-1083;  
CCR

November 2, 1999

**FROM: WILLIAM H. RANDOLPH**  
County Administrative Officer

**SUBJECT: ACTIONS RELATED TO SALE OF THE COUNTY ULTRASCREEN THEATRE**

**RECOMMENDATION:**

1. Approve Amendment No. 2 to Agreement with Ontario Mills Limited Partnership (Mills) terminating the lease (**County Contract #96-362**), as amended, which provided for the County's UltraScreen Theatre location at Ontario Mills Mall, and authorizing reconveyance of the facility back to Mills for net consideration of \$1.6 million.
2. Approve Amendment No. 2 to Agreement with Ogden Entertainment Services, Inc. (Ogden) terminating the management agreement between the County and Ogden (**County Contract #96-363**), as amended, for operation of the UltraScreen Theatre.
3. Direct the Purchasing Agent to make arrangements for the removal, transport, storage, and disposition of all County-owned furniture, fixtures, and equipment located at the UltraScreen Theatre in accordance with the termination agreement with Mills.
4. Approve **Agreement #99-1083** in the amount of \$20,000 with Marcus Corporation for sale of the UltraScreen servicemark.  
(FOUR VOTES REQUIRED)

**BACKGROUND:**

On May 18, 1999, the Board authorized the County Administrative Office to explore various options relative to the problem of ongoing financial deficits at the County's UltraScreen Theatre in Ontario. Since its opening in May, 1997, the UltraScreen Theatre has experienced operating and debt service deficits approximating \$130,000 per month. The Board's direction included the options of renegotiating the current lease arrangement with the Mills Corporation, reviewing the management agreement with Ogden Entertainment for operation of the Theatre, and/or negotiating the sale of the facility.

Since that time, staff has explored various options to address the Theatre's financial dilemma and has negotiated an agreement with the Mills whereby Mills would purchase back the facility from the County and terminate the current lease arrangement between both parties. Approval of **Recommendation #1** would approve an agreement with the Mills for this purpose. The following are salient provisions of the proposed agreement:

The Mills would purchase the County facility for a sum of \$2.325 million, and the County would pay an early termination payment to Mills of \$725,000, for net consideration to the County of \$1.6 million.

cc: CAO-Randolph w/agrees.  
County Counsel-Hinesley  
w/2 of each agree.  
Contractors c/o County Counsel  
(Hinesley) w/2 agrees. each  
Auditor/Controller w/agrees.  
SBD w/agrees.  
CCR-Thomas  
Purchasing-De La Torre  
RES-Ahuero  
File w/agrees.

Record of Action of the Board of Supervisors

**APPROVED BOARD OF SUPERVISORS  
COUNTY OF SAN BERNARDINO**

MOTION	<u>MOVE</u>	<u>ABSENT</u>	<u>AYE</u>	<u>AYE</u>	<u>SECOND</u>
	1	2	3	4	5

EARLENE SPROAT, CLERK OF THE BOARD

BY \_\_\_\_\_

DATED: November 2, 1999



The County would close operation of the facility on November 14, 1999, and current land rent, common area maintenance fees, and promotional fees paid by the County to Mills would cease on that date.

The County would terminate its lease with Mills for the Theatre on December 30, 1999, and reconvey the facility back to the Mills on the same date. All County-owned furnishings and equipment would be removed from the facility. The agreement grants the County until January 31, 2000, to remove the IWERKS theater projection equipment if this cannot be accomplished by December 30, 1999.

Termination of the County's UltraScreen Theatre operation would also require a termination of the County's existing agreement with Ogden for management of the Theatre. Ogden has agreed to terminate the management agreement, subject to all outstanding operating expenses made by Ogden on behalf of the County being reimbursed, and the County being responsible for early termination costs. Approval of **Recommendation #2** would approve the agreement with Ogden terminating County Contract #96-363 for management of the Theatre subject to these conditions.

As required in the County's agreement with Mills for purchase of the Theatre, the County is required to remove its furniture, fixtures, and equipment by December 30, 1999. Approval of **Recommendation #3** would direct the Purchasing Agent to proceed with making arrangements for the removal, transport, storage, and eventual sale of all County-owned items within these categories, including the IWERKS theater projection equipment. All such property would be declared surplus and disposed of in accordance with County purchasing procedures.

Also, the County has been approached by Marcus Corporation, an established theater owner headquartered in Milwaukee, Wisconsin, requesting the purchase of the County's "UltraScreen" servicemark. With the imminent sale of the UltraScreen Theatre back to the Mills, the County's need to retain the servicemark no longer exists. Approval of **Recommendation #4** would approve an agreement with Marcus Corporation to sell the UltraScreen servicemark for compensation to the County of \$20,000.

Approval of these actions will bring the County's UltraScreen Theatre operation to a close, effective November 14, 1999, and sell the facility back to the Mills on December 30, 1999. The County's monthly operating deficits averaging \$95,000 per month will be eliminated. The County will still be obligated to make monthly debt service payments, estimated at \$45,000 per month, on the outstanding debt for both the facility and IWERKS projection equipment. Proceeds from the sale of facility and the County-owned property removed from the facility will be applied against the outstanding bonded indebtedness.

Once the sale is completed, all equipment and furnishings are sold, and the proceeds applied to the outstanding indebtedness, the County will need to decide whether to use general fund monies to retire the remaining debt immediately, or continue making annual debt service payments on the remaining balance. We will return with an analysis for Board consideration later this year.

**REVIEW BY OTHERS:** The recommended actions have been reviewed by County Counsel (Chief Deputy Rex Hinesley) on 10/29/1999, the Real Estate Services Department, and the Purchasing Agent.

**FINANCIAL IMPACT:** Closure of the Theatre will end the County's monthly operating deficits and result in \$1.6 million in net revenue from the sale of the facility. In addition, sale of surplus equipment from the Theatre, including the IWERKS projection equipment, is estimated at \$1.4 million. The sales proceeds will be applied against the outstanding debt service of \$7.4 million.

**SUPERVISORIAL DISTRICTS:** All

**PRESENTER:** William H. Randolph

**\*\*Testimony is taken**

11/2/99 lw #58a

**TRADEMARK**

**REEL: 002355 FRAME: 0664**



County of San Bernardino

F A S

CONTRACT TRANSMITTAL

FOR COUNTY USE ONLY

<input checked="" type="checkbox"/> New <input type="checkbox"/> Change <input type="checkbox"/> Cancel		Vendor Code	Dept.	Contract Number				
			SC	A	99-1083			
County Department			Dept.	Orgn.	Contractor's License No.			
Community & Cultural Resources								
County Department Contract Representative			Ph. Ext.		Amount of Contract			
Kevin G. Thomas			387-2577					
Fund	Dept.	Organization	Appr.	Obj/Rev Source	Activity	GRC/PROJ/JOB Number		
EML	CCR	CCR		9970				
Commodity Code			Estimated Payment Total by Fiscal Year					
			FY	Amount	I/D	FY	Amount	I/D
Project Name								
UltraScreen Service								
Mark								

CONTRACTOR The Marcus Corporation

Birth Date \_\_\_\_\_ Federal ID No. or Social Security No. \_\_\_\_\_

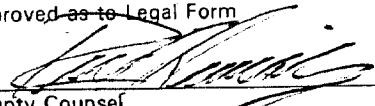
Contractor's Representative Jeffrey J. Femrite

Address 250 E. Wisconsin Ave., Ste. 1750, Milwaukee, WI 53262 Phone (414) 905-1447

Nature of Contract: *(Briefly describe the general terms of the contract)*

**Purchase of San Bernardino County's interest in and rights to the "UltraScreen" Service Mark by The Marcus Corporation for Twenty Thousand Dollars (\$20,000).**

*(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)*

Approved as to Legal Form  
  
 County Counsel  
 Date 11-1-99

Reviewed as to Affirmative Action  
 \_\_\_\_\_  
 Date \_\_\_\_\_

Reviewed for Processing  
 \_\_\_\_\_  
 Agency Administrator/CAO  
 Date **TRADEMARK**

## ASSIGNMENT AGREEMENT

The parties to this Agreement are as follows:

County of San Bernardino  
County Government Center  
385 North Arrowhead Avenue  
Fifth Floor  
San Bernardino, California 92415-0120  
Attention: County Administrator  
Facsimile: (909) 387-5430  
(hereinafter "COUNTY")

The Marcus Corporation  
250 East Wisconsin Avenue, Suite 1700  
Milwaukee, Wisconsin 53202  
Facsimile: (414) 905-2669  
(hereinafter "MARCUS")

1. COUNTY, has adopted and has been using, and is the owner of all trademark rights in, the mark ULTRASCREEEN for educational, historical, information and training services including a museum and for entertainment services in the nature of theatre exhibitions, for which said mark has been used on or about May 23, 1997, as evidenced by ASN 75/579,495, filed in the United States Patent and Trademark Office on October 29, 1998.

2. COUNTY wishes to assign and transfer to MARCUS, ownership of the mark ULTRASCREEEN and all of the right, title and interest of said COUNTY in and to the mark ULTRASCREEEN, together with the above trademark application for the registration of said mark and the goodwill of the business associated with and symbolized by the mark, in the form shown in the Trademark Assignment at Exhibit A hereto (the "ASSIGNMENT").

3. It is the desire of COUNTY and MARCUS to record the assignment of said trademark application and the transfer to MARCUS of the aforesaid mark.

4. NOW THEREFORE, IN CONSIDERATION of \$20,000.00 payable by MARCUS to COUNTY, and for other good and valuable consideration paid by MARCUS to COUNTY, the receipt of which is hereby acknowledged by COUNTY, and in further consideration of the fact that it is the desire of COUNTY to be legally bound hereby, said COUNTY does hereby agree to sell, assign and transfer unto MARCUS its

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7. Jury Trial Waiver. MARCUS and COUNTY hereby waive their respective right to trial by jury and agree to accept trial by judge alone for any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either MARCUS against COUNTY or COUNTY against MARCUS on any matter whatsoever arising out of, or in any way connected with, this agreement, the

relationship of MARCUS and COUNTY, MARCUS's use of the servicemark, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

8. Choice of Law. This agreement shall be governed by and construed in all respects in accordance with the internal laws and decisions of the State of California, without respect to California's choice of laws provisions, except to the extent said laws and decisions are superseded by federal law.

9. Venue. The parties acknowledge and agree that this agreement was entered in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this agreement will be San Bernardino County or the United States District Court having jurisdiction over San Bernardino County. Each party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this agreement is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Central District of San Bernardino County or the United States District Court having jurisdiction over San Bernardino County.

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COUNTY or MARCUS at the address and/or facsimile indicated above or at such other address or facsimile as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its hereunto duly authorized representative, and has caused its corporate seal to be hereunto affixed and duly attested on the dates indicated below.

COUNTY OF SAN BERNARDINO:

The Marcus Corporation,  
A Wisconsin corporation

By Jon D. Michel  
Chairman, Board of Supervisors

By Douglas A. Neis  
Douglas A. Neis

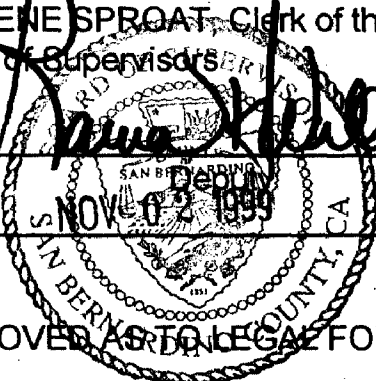
Date NOV 02 1999 #99-1083

Title: Treasurer

Date October 28, 1999

SIGNED AND CERTIFIED THAT  
A COPY OF THIS DOCUMENT  
HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

EARLENE SPROAT, Clerk of the  
Board of Supervisors  
By Earlene Sproat  
Date NOV 03 1999



APPROVED AS TO LEGAL FORM:

ALAN K. MARKS, County Counsel  
San Bernardino County, California

By Alan K. Marks  
Deputy  
Date 11-1-99

**Exhibit A**

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COUNTY OF SAN BERNARDINO

By: \_\_\_\_\_  
Chairman, Board of Supervisors

\_\_\_\_\_  
Print Name

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

EARLENE SPROAT, Clerk of the Board of Supervisors

By \_\_\_\_\_  
Deputy

Date: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

ALAN K. MARKS, County Counsel, San Bernardino County, California

By \_\_\_\_\_  
Deputy

Date: \_\_\_\_\_

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Jon D. Mikels

Print Name

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By: Alan K. Marks  
Deputy

Date: 11-1-99



**REPORT / RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF SAN BERNARDINO COUNTY, CALIFORNIA  
AND RECORD OF ACTION**

Agree. 96-362; 96-363; 99-1083;  
CCR

November 2, 1999

**FROM: WILLIAM H. RANDOLPH**  
County Administrative Officer

**SUBJECT: ACTIONS RELATED TO SALE OF THE COUNTY ULTRASCREEN THEATRE**

**RECOMMENDATION:**

1. Approve Amendment No. 2 to Agreement with Ontario Mills Limited Partnership (Mills) terminating the lease (**County Contract #96-362**), as amended, which provided for the County's UltraScreen Theatre location at Ontario Mills Mall, and authorizing reconveyance of the facility back to Mills for net consideration of \$1.6 million.
2. Approve Amendment No. 2 to Agreement with Ogden Entertainment Services, Inc. (Ogden) terminating the management agreement between the County and Ogden (**County Contract #96-363**), as amended, for operation of the UltraScreen Theatre.
3. Direct the Purchasing Agent to make arrangements for the removal, transport, storage, and disposition of all County-owned furniture, fixtures, and equipment located at the UltraScreen Theatre in accordance with the termination agreement with Mills.
4. Approve **Agreement #99-1083** in the amount of \$20,000 with Marcus Corporation for sale of the UltraScreen servicemark.  
(FOUR VOTES REQUIRED)

**BACKGROUND:**

On May 18, 1999, the Board authorized the County Administrative Office to explore various options relative to the problem of ongoing financial deficits at the County's UltraScreen Theatre in Ontario. Since its opening in May, 1997, the UltraScreen Theatre has experienced operating and debt service deficits approximating \$130,000 per month. The Board's direction included the options of renegotiating the current lease arrangement with the Mills Corporation, reviewing the management agreement with Ogden Entertainment for operation of the Theatre, and/or negotiating the sale of the facility.

Since that time, staff has explored various options to address the Theatre's financial dilemma and has negotiated an agreement with the Mills whereby Mills would purchase back the facility from the County and terminate the current lease arrangement between both parties. Approval of **Recommendation #1** would approve an agreement with the Mills for this purpose. The following are salient provisions of the proposed agreement:

The Mills would purchase the County facility for a sum of \$2.325 million, and the County would pay an early termination payment to Mills of \$725,000, for net consideration to the County of \$1.6 million.

cc: CAO-Randolph w/agrees.  
County Counsel-Hinesley  
w/2 of each agree.  
Contractors c/o County Counsel  
(Hinesley) w/2 agrees. each  
Auditor/Controller w/agrees.  
SBD w/agrees.  
CCR-Thomas  
Purchasing-De La Torre  
RES-Ahuero  
File w/agrees.

Record of Action of the Board of Supervisors

**APPROVED BOARD OF SUPERVISORS  
COUNTY OF SAN BERNARDINO**

MOTION	<u>MOVE</u>	<u>ABSENT</u>	<u>AYE</u>	<u>AYE</u>	<u>SECOND</u>
	1	2	3	4	5

EARLENE SPROAT, CLERK OF THE BOARD

BY *William H. Randolph*

DATED: November 2, 1999

November 2, 1999

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The County would close operation of the facility on November 14, 1999, and current land rent, common area maintenance fees, and promotional fees paid by the County to Mills would cease on that date.

The County would terminate its lease with Mills for the Theatre on December 30, 1999, and reconvey the facility back to the Mills on the same date. All County-owned furnishings and equipment would be removed from the facility. The agreement grants the County until January 31, 2000, to remove the IWERKS theater projection equipment if this cannot be accomplished by December 30, 1999.

Termination of the County's UltraScreen Theatre operation would also require a termination of the County's existing agreement with Ogden for management of the Theatre. Ogden has agreed to terminate the management agreement, subject to all outstanding operating expenses made by Ogden on behalf of the County being reimbursed, and the County being responsible for early termination costs. Approval of **Recommendation #2** would approve the agreement with Ogden terminating County Contract #96-363 for management of the Theatre subject to these conditions.

As required in the County's agreement with Mills for purchase of the Theatre, the County is required to remove its furniture, fixtures, and equipment by December 30, 1999. Approval of **Recommendation #3** would direct the Purchasing Agent to proceed with making arrangements for the removal, transport, storage, and eventual sale of all County-owned items within these categories, including the IWERKS theater projection equipment. All such property would be declared surplus and disposed of in accordance with County purchasing procedures.

Also, the County has been approached by Marcus Corporation, an established theater owner headquartered in Milwaukee, Wisconsin, requesting the purchase of the County's "UltraScreen" servicemark. With the imminent sale of the UltraScreen Theatre back to the Mills, the County's need to retain the servicemark no longer exists. Approval of **Recommendation #4** would approve an agreement with Marcus Corporation to sell the UltraScreen servicemark for compensation to the County of \$20,000.

Approval of these actions will bring the County's UltraScreen Theatre operation to a close, effective November 14, 1999, and sell the facility back to the Mills on December 30, 1999. The County's monthly operating deficits averaging \$95,000 per month will be eliminated. The County will still be obligated to make monthly debt service payments, estimated at \$45,000 per month, on the outstanding debt for both the facility and IWERKS projection equipment. Proceeds from the sale of facility and the County-owned property removed from the facility will be applied against the outstanding bonded indebtedness.

Once the sale is completed, all equipment and furnishings are sold, and the proceeds applied to the outstanding indebtedness, the County will need to decide whether to use general fund monies to retire the remaining debt immediately, or continue making annual debt service payments on the remaining balance. We will return with an analysis for Board consideration later this year.

**REVIEW BY OTHERS:** The recommended actions have been reviewed by County Counsel (Chief Deputy Rex Hinesley) on 10/29/1999, the Real Estate Services Department, and the Purchasing Agent.

**FINANCIAL IMPACT:** Closure of the Theatre will end the County's monthly operating deficits and result in \$1.6 million in net revenue from the sale of the facility. In addition, sale of surplus equipment from the Theatre, including the IWERKS projection equipment, is estimated at \$1.4 million. The sales proceeds will be applied against the outstanding debt service of \$7.4 million.

**SUPERVISORIAL DISTRICTS:** All

**PRESENTER:** William H. Randolph

**\*\*Testimony is taken**

11/2/99 lw #58a

**TRADEMARK**

**REEL: 002355 FRAME: 0673**



County of San Bernardino

F A S

CONTRACT TRANSMITTAL

FOR COUNTY USE ONLY

<input checked="" type="checkbox"/> New	Vendor Code		Dept.	Contract Number				
<input type="checkbox"/> Change			SC	99-1083				
<input type="checkbox"/> Cancel			A					
County Department			Dept.	Orgn.	Contractor's License No.			
Community & Cultural Resources								
County Department Contract Representative			Ph. Ext.		Amount of Contract			
Kevin G. Thomas			387-2577					
Fund	Dept.	Organization	Appr.	Obj/Rev Source	Activity	GRC/PROJ/JOB Number		
EML	CCR	CCR		9970				
Commodity Code			Estimated Payment Total by Fiscal Year					
			FY	Amount	I/D	FY	Amount	I/D
Project Name								
UltraScreen Service								
Mark								

CONTRACTOR The Marcus Corporation

Birth Date \_\_\_\_\_ Federal ID No. or Social Security No. \_\_\_\_\_

Contractor's Representative Jeffrey J. Femrite

Address 250 E. Wisconsin Ave., Ste. 1750, Milwaukee, WI 53262 Phone (414) 905-1447

Nature of Contract: *(Briefly describe the general terms of the contract)*

**Purchase of San Bernardino County's interest in and rights to the "UltraScreen" Service Mark by The Marcus Corporation for Twenty Thousand Dollars (\$20,000).**

*(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)*

Approved as to Legal Form  County Counsel Date <u>11-1-99</u>	Reviewed as to Affirmative Action  Date _____	Reviewed for Processing  Agency Administrator/CAO Date <b>TRADEMARK</b>
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