

SECOND AMENDED AND RESTATED AGREEMENT
TO DESIGN, CONSTRUCT AND LEASE A PERFORMING ARTS CENTER

This Second Amended and Restated Agreement to Design, Construct and Lease a Performing Arts Center (this "Agreement") is made as of the 6TH day of May, 2009 (the "Execution Date"), by and among Las Vegas Performing Arts Center Foundation, a Nevada nonprofit corporation ("PAC"), City Parkway V, Inc. ("CP"), a Nevada nonprofit corporation, and the City of Las Vegas, Nevada, a political subdivision of the State of Nevada ("City" and, together with CP, the "City Parties") (the City Parties and PAC are individually and collectively herein referred as the "Party(ies)").

RECITALS

WHEREAS, CP is the owner of certain real property consisting of an approximately 61-acre site located in the Parkway Center commercial subdivision in downtown Las Vegas, Clark County, Nevada and depicted on the Union Park Map attached hereto as **Exhibit "A"** ("Union Park"); and

WHEREAS, CP shall convey to City the real property consisting of the entire PAC Campus Site; and

WHEREAS, PAC is a 501(c)(3) organization dedicated to developing, building and operating a performing arts center campus in the boundaries of City which will benefit the residents of City and Southern Nevada and foster the growth of cultural amenities and economic development in City and the region; and

WHEREAS, CP, on behalf of City, desires to develop Union Park for the vital and best interests of City, and the health, safety, morals and welfare of its residents which are in accord with the public purposes and provisions of applicable federal, state and local laws and requirements; and

WHEREAS, the Parties entered into that certain Agreement to Design, Construct, and Lease a Performing Arts Center on December 27, 2005 (the "Original Agreement"), as amended and restated by that certain Amended and Restated Agreement to Design, Construct and Lease a Performing Arts Center on May 16, 2007 ("First Amended Agreement"), which sets forth the Parties' desire to design, develop and build a performing arts campus in several phases on the PAC Campus Site; and

WHEREAS, pursuant to NRS 244A.860 (the "Act"), the Board of County Commissioners (the "Board") of Clark County Nevada, a political subdivision of the State of Nevada ("County"), by ordinance has imposed a fee upon the lease of a passenger car by a short-term lessor in the County in the amount of two percent (2%) of the total amount for which the passenger car was leased, excluding any taxes or other fees imposed by a Governmental Authority (the "Rental Car Fee"); and

WHEREAS, the monies received by the County from the Rental Car Fee (the "Pledged Rental Car Fees") must be used to pay the costs to acquire, improve, equip, operate and maintain within the County a performing arts center, or to pay the principal of, interest on or other payments due with respect to bonds issued to pay such costs, including bonds issued to refund bonds issued to pay such costs, or any combination thereof; and

WHEREAS, on June 1, 2006, City and County entered into an Amended and Restated Interlocal Agreement Regarding the Distribution of Taxes for a Performing Arts Center (the "Interlocal Agreement") whereby County will provide to City the proceeds of the Pledged Rental Car Fees to enable City to use all proceeds of the Pledged Rental Car Fees to acquire, improve, equip, operate and maintain a performing arts center within the County, or to pay the principal of, interest on or other payments due with respect to bonds (including the Bonds) issued to pay such costs, including bonds issued to refund bonds issued to pay such costs, or any combination thereof, all as set forth in the Interlocal Agreement;

WHEREAS, PAC shall design and the City shall build the Primary Theater Project, including the Education Building, which shall be funded, in part, by the Pledged Rental Car Fees as stated herein; and

WHEREAS, County (pursuant to the County Bond Law, NRS 244A.011 through 244A.065) and City (pursuant to City Bond Law, NRS 268.672 through 268.740) are each authorized to acquire, improve, equip, operate and maintain a "building project" as defined in NRS 268.676 and NRS 244A.019, respectively, and it is contemplated by the Parties that such performing arts center authorized to be financed in County by the Act will be a "building project" as defined in NRS 268.676 and NRS 244A.019; and

WHEREAS, City and County intend that City issue notes, bonds or other obligations secured wholly or in part by the Pledged Rental Car Fees pursuant to resolutions and ordinances of City authorizing the issuance thereof (collectively, the "Bond Ordinance") in order to fund, in

part, the acquisition, establishment, construction or expansion of the Primary Theater Project (which will be located in County) and otherwise to use all proceeds of the Pledged Rental Car Fees distributed to City to pay the costs to acquire, improve, equip, operate and maintain such performing arts center, or to pay the principal of, interest on or other payments due with respect to the Bonds and other bonds issued to pay such costs, including bonds issued to refund bonds issued to pay such costs, or any combination thereof; and

WHEREAS, the Parties desire to amend and restate the First Amended Agreement to reflect the current status of the Construction Contract, the amount of parking required by PAC, the potential development of the Remainder Site and certain other matters as more particularly set forth herein; and

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City Parties and PAC hereby agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1 Effect of Agreement and Definitions. The Parties hereby agree that this Agreement shall amend and restate and supersede in all respects the Original Agreement and the First Amended Agreement and that the Original Agreement and First Amended Agreement are of no further force and effect. PAC agrees that any rights of PAC in the land subject to the Original Agreement are hereby extinguished; provided, however, that PAC shall not be deemed to extinguish any of its rights in the PAC Campus Site as defined herein. Unless otherwise defined herein, the capitalized terms used herein have the meanings ascribed to those terms in this Section:

“Act” shall have the meaning set forth in sixth Recital.

“Agreement” shall have the meaning set forth in the first paragraph of hereof.

“Applicable Laws” shall have the meaning given such term in the definition of “Requirements”.

“Architect” means the architect of record for the design and construction administration of the Primary Theater Project as selected pursuant to Section 4.2 below.

“Architect Agreement” means the agreement with the Architect for the design and construction administration of the Primary Theater Project.

“Bidding Requirements” means (i) Chapters 332, 338 and 339 of the NRS and (ii) any other Requirements applicable to the bidding and award of the Construction Contract.

“Board” shall have the meaning set forth in the sixth Recital.

“Bond Costs” means the costs, fees and expenses incurred in connection with the issuance of any Bonds, including, but not limited to, (i) rating agency and other financing fees, (ii) the fees and disbursements of bond counsel, (iii) any underwriter’s discount, (iv) the fees and disbursements of any financial advisors, (v) all costs of preparing and printing the Bonds, the preliminary official statement, the final official statement and all other documentation supporting issuance of the Bonds, and (vi) any other issuance costs of a similar nature incurred in connection with issuance of Bonds.

“Bond Net Proceeds” means the original proceeds of any Bonds less Bond Costs.

“Bond Ordinance” shall have the meaning set forth in the eleventh Recital.

“Bonds” means City issued general obligation notes, bonds or other obligations secured wholly or in part by the Pledged Rental Car Fees in order to fund, in part, the acquisition, improvement, construction, equipment or expansion of the Primary Theater Project and other bonds issued to pay such costs, including bonds issued to refund bonds issued to pay such costs, or any combination thereof.

“Campus Site Plan” shall have the meaning set forth in Section 3.1 of this Agreement.

“City” shall have the definition set forth in the first paragraph of this Agreement.

“City Construction Fund Contribution” means (i) the Bond Net Proceeds, and (ii) any Pledged Rental Car Fees received by City after the issuance of the Bonds but prior to Final Completion in excess of what is determined by City necessary to pay annual debt service on the Bonds.

“City Contingency Amount” shall have the meaning set forth in Section 6.2(b).

“City Default” shall have the meaning set forth in Section 10.3.

“City Obligations” means those obligations of City as set forth in the Environmental Exhibit.

“City Parties” shall have the meaning set forth in the first paragraph of this Agreement.

“City Project Representative” means that person designated by City pursuant to Section 4.1 hereof to serve as its representative and primary point of contact in connection with all matters relating to this Agreement.

“City Work” means all those items to be designed, engineered, constructed or completed by City in connection with the PAC Campus Project as set forth in Article 7 below, including, without limitation, the City Obligations.

“City Work Cost” means all costs of the design, engineering, construction and completion of City Work.

“CMAR” means Whiting-Turner Contracting Company who has been selected as the Construction Manager at Risk pursuant to NRS 338.169 through NRS 338.1699 for the construction of the Primary Theater Project pursuant to this Agreement.

“Completion Approvals” means that each Governmental Authority that has authority for any element of the Primary Theater Project has approved the construction of such element as being complete in accordance with all applicable Requirements.

“Commercial Projects” means projects of a commercial nature, including, without limitation, retail, office and residential.

“Completion Bond” shall have the meaning set forth in Section 5.1(i).

“Construction Contingency Fund” shall have the meaning provided in Section 6.2(b).

“Construction Contract” means the contract awarded for the construction of the Primary Theater Project as more fully described in Article 5 below.

“Construction Documents” means documents based on the approved Design Development Documents and latest Primary Theater Project Budget which set forth in detail the requirements for construction of the Primary Theater Project. The Construction Documents shall include drawings and specifications to establish the quality levels of materials and systems required for the Primary Theater Project and shall be in such detail and format to allow City to bid the Primary Theater Project pursuant to the Bidding Requirements.

“Construction Fund” means the sum of (i) the City Construction Fund Contribution and any earnings thereon, (ii) the Reynolds Construction Grant Fund Contribution when and to the extent such funds are disbursed to City in accordance with the provisions of the Grant Agreement, and any earnings thereon; and (iii) subject to the provisions of Section 6.2(b) and Section 6.2(c), the Construction Contingency Fund and any earnings thereon.

“County” shall have the meaning set forth in the sixth Recital.

“Courtyard” means an approximately 7,800 square foot outdoor open space located on the west side of the Primary Theater and the south side of the Education Building as depicted on Exhibit “C-2” attached hereto.

“CP” shall have the meaning set forth in the first paragraph of this Agreement.

“Default Rate” shall have the meaning set forth in Section 10.2(a).

“Design Development Documents” means design documents which shall include a site plan, grading plan, floor plans, elevations with key details, landscape and streetscape, material, finishes and colors, site signage, refined 3-D massing, solar shading, and a LEED checklist with explanation, all of which are based on the approved Schematic Design Documents illustrating and describing the refinement of the Primary Theater Project.

“Determine”, “Determined”, “Approve”, “Approved”, “Estimate” or “Estimated” shall mean a reasonable determination, approval or estimate by a Party made pursuant to this Agreement. If a Party disagrees with any such determination or estimate by the other Party, the Party disagreeing is entitled to resolve such dispute in accordance with the provisions of Article 10 hereof.

“Education Building” means a facility consisting of class rooms, offices, commercial retail and office space constituting approximately 70,200 square feet, which will be constructed on the northwest corner of the PAC Campus Site as shown on Exhibit “C-2” attached hereto.

“Environmental Condition” shall have the meaning ascribed to such term in the Environmental Exhibit.

“Environmental Exhibit” means Exhibit “B” attached hereto setting forth the Parties’ obligations with respect to environmental remediation of the PAC Campus Site.

“Environmental Laws” shall have the meaning ascribed to such term in the Environmental Exhibit.

“Excess Fees” means any Pledged Rental Car Fees received by City after the issuance of the Bonds in excess of what is determined by City to be needed to pay annual debt service on the Bonds.

“Execution Date” shall have the meaning set forth in the first paragraph of this Agreement.

“Final Completion” means (i) the completion of the construction of the Primary Theater Project in accordance with the Construction Documents, as evidenced by the issuance of all

applicable Completion Approvals, together with a certification by the Architect that the Primary Theater Project has been completed in accordance with the Construction Documents and all applicable Requirements, (ii) all undisputed amounts due in connection with the development and construction have been paid in full or in City's Determination the remaining balance, if any, in the Construction Fund will be sufficient to pay all remaining amounts due, (iii) all claims relating to the Construction Contract or otherwise relating to the Primary Theater Project are resolved or in City's Determination will be resolved on a satisfactory basis such that the remaining balance, if any, in the Construction Fund will be sufficient to pay any remaining claims, (iv) delivery to City of evidence Approved by City that the Project has been completed on a lien-free basis and (v) there is no outstanding or threatened litigation between any of City, PAC, the Architect or the CMAR.

"Final Contract Project Cost" means the sum of (i) the total final bid pursuant to the Construction Contract, including all contingencies and fees, and plus (ii) any other estimated costs to be incurred in connection with the Project through Final Completion other than those costs which, pursuant to the terms hereof, shall not be paid out of the Construction Fund.

"First Amended Agreement" shall have the meaning set forth in the fifth Recital.

"Future Phase" means the development by PAC of the Remainder Site or any portion thereof as a parking garage, a museum and/or another mutually acceptable use. The current conceptual site plan for the Remainder Site is shown on **Exhibit "C-2"** attached hereto. For the avoidance of doubt, if the City develops and constructs the Parking Garage on the Garage Site, such Parking Garage shall not constitute a Future Phase for purposes of this Agreement.

"Garage Site" shall have the meaning set forth in Section 2.2(b)(i).

"Governmental Authority" or "Governmental Authorities" means (i) the United States of America, the State of Nevada, City, County, any other community development district and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over the Primary Theater Project (or any portion thereof) and (ii) any public utility or private entity which will be accepting and/or approving design and/or construction of any element of the Project.

"Grading Plan" means that Preliminary Grading Plan – Raised Option, dated October 20, 2006, prepared by Kimley-Horn of which the CAD file was transmitted to R.J. Reissig of HKS

Architects by Thomas Ackeret of Kimley-Horn by a posting to FTP DROPBOX as of November 17, 2006.

“Hazardous Substances” shall have the meaning ascribed to such term in the Environmental Exhibit.

“Grant Agreement” means that certain Grant Agreement, dated as of _____, 2009, by and between City and Donald W. Reynolds Foundation, a Nevada nonprofit corporation (the “Reynolds Foundation”).

“Interlocal Agreement” shall have the meaning set forth in the eighth Recital.

“LOA” means that Lease and Operating Agreement in the form attached hereto as **Exhibit “G”**.

“Museum Project” means a museum, Courtyard (to the extent not a part of the Primary Theater Project) and/or other mutually acceptable use to be located on the northern portion of the Remainder Site as shown on **Exhibit “C-2”**.

“Museum Site” shall have the meaning set forth in Section 2(b)(ii).

“NRS” means the Nevada Revised Statutes, as amended from time to time.

“Operating Budget” means a projected budget of all the costs and expenses for the operation of the Primary Theater Project by PAC for the first five (5) years.

“Operating Endowment” means that endowment pledged by the Reynolds Foundation to PAC pursuant to that certain Endowment Agreement, dated March 17, 2005, as amended.

“Original Agreement” shall have the meaning set forth in the fifth Recital.

“Owners’ Association” shall mean the Union Park Master Association formed pursuant to that Community Charter for Union Park for the purpose of owning, managing, and maintaining all common area improvements in Union Park, governing various issues within Union Park and for developing the Union Park Design Standards and rules and regulations created in connection therewith or in any way relating thereto.

“PAC” shall have the meaning set forth in the first paragraph.

“PAC Campus Project” means the Primary Theater Project, and, to the extent undertaken by PAC, any Future Phases.

“PAC Campus Site” means the 4.77-acre site more particularly described and depicted on **Exhibit “C-1”** attached hereto and includes, without limitation, all surface and subsurface soils

and surface water, all water percolating in the surface and subsurface soils, and all underground water.

“PAC Contingency Amount” shall have the meaning set forth in Section 6.2(b).

“PAC Default” shall have the meaning set forth in Section 10.1.

“PAC Obligations” shall have the meaning set forth in the Environmental Exhibit.

“PAC Project Representative” means that person designated by PAC pursuant to Section 4.1 hereof to serve as its representative and primary point of contact in connection with all matters relating to this Agreement.

“Parking Garage” shall have the meaning set forth in Section 2.2(b).

“Party(ies)” shall have the definitions set forth in the first paragraph of this Agreement.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government, or any city or political subdivision thereof.

“Pledged Rental Car Fees” shall have the meaning set forth in the seventh Recital.

“Pre-Construction Costs” shall have the meaning set forth in Section 6.1(a).

“Primary Theater Project” means the buildings containing the primary performing arts center theater of no less than 2,000 seats, the Education Building, and any corresponding space (including, but not limited to, back-of-house space) needed to operate the foregoing, including the Service Court as shown on **Exhibit “C-2”** attached hereto. Also included in the Primary Theater Project is the installation and/or construction of a temporary surface for the Courtyard. All other work related to the Courtyard shall be part of the Museum Project. The buildings comprising the Primary Theater Project shall be designed and constructed in accordance with this Agreement and ultimately leased to and operated by PAC pursuant to the LOA.

“Primary Theater Site” means a portion of the 4.77-acre site, identified as the Large Hall, the Education Center, Courtyard and the Service Court, which is indicated with hatched lines on **Exhibit “C-1”** attached hereto, which shall be sufficient in size and orientation to construct the Primary Theater Project, the metes and bounds for which shall be approved in writing by the City Parties.

“Private Use Limitation” means that no more than nine percent (9%) of the value of the space in the Primary Theater Project which has been financed with the Bonds can be used by entities other than (i) not-for-profit entities qualifying pursuant to Section 501(c)(3) of the Tax

Code in activities that are not unrelated trades or businesses for those entities determined by applying Section 513 of the Tax Code, and (ii) state and local governments.

“Project Budget” means a budget as revised from time to time setting forth the estimated Projects Costs for the Primary Theater Project.

“Project Contracts” means the Architect’s Agreement, the Construction Contract, and all other contracts related to the design and construction of the Primary Theater Project other than contracts between PAC and the Project Manager, PAC Project Representative, cost consultants, theatre consultants and acoustical engineers.

“Project Costs” shall mean all costs and expenses of designing, constructing and equipping the Primary Theater Project but excluding, except as specifically provided in the Environmental Exhibit, all City Work Costs and all other costs which, pursuant to the terms hereof, shall not be paid out of the Construction Fund.

“Project Information” means those studies, reports and other information referenced in **Exhibit “D”** attached hereto.

“Project Manager” means a project management firm engaged by PAC to represent PAC and City in connection with the design and construction of the Primary Theater Project and to provide project administration, value engineering and estimating services.

“Project Manager Contract” means the contract between PAC and the Project Manager.

“Project Representative” shall have the meaning set forth in Section 4.1.

“Remainder Site” means the PAC Campus Site less the Primary Theater Site. The Remainder Site is shown as the non-hatched areas on **Exhibit “C-1”** attached hereto.

“Rental Car Contingency Amount” shall have the meaning set forth in Section 6.2(b).

“Rental Car Fee” shall have the meaning set forth in the sixth Recital.

“Requirement” means (i) any and all laws, rules, regulations, constitutions, orders, ordinances, charters, statutes, codes, executive orders and requirements (now existing or hereafter applicable) of all Governmental Authorities having jurisdiction over City, CP, PAC or the Primary Theater Project or any street, road, avenue or sidewalk comprising a part of, or lying in front of, the Primary Theater Project, or any vault in or under the Primary Theater Site (including, without limitation, Environmental Laws, the American with Disabilities Act and any of the foregoing relating to handicapped access or parking, the building code of City and any of the foregoing of any applicable fire rating bureau or other body exercising similar functions)

(collectively, “Applicable Laws”); (ii) any temporary or final certificates of completion and/or occupancy issued for the Primary Theater Project or City Work, as then in force; (iii) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried in connection with the design and construction of the Primary Theater Project; (iv) the Union Park Design Standards and (v) any and all terms, conditions or covenants of any and all easements, covenants, conditions or restrictions of record, declarations, or other indentures, documents or instruments of record.

“Responding Party” shall have the meaning set forth in Section 2.3(a).

“Response Period” shall have the meaning set forth in Section 2.3(b).

“Requesting Party” shall have the meaning set forth in Section 2.3(a).

“Reynolds Construction Grant Fund Contribution” shall mean the Grant (as defined in the Grant Agreement), which will be paid to City for the construction and development of the Primary Theater Project in accordance with the provisions of the Grant Agreement.

“Reynolds Foundation” shall have the meaning given such term in the definition of “Grant Agreement”.

“Schematic Design Documents” means design documents based on the agreed Primary Theater Project building program which establishes the site plan for the entire PAC Campus Site, parking and access, pedestrian access and open space, conceptual elevations, 3-D massing, building program, and a preliminary LEED checklist, in order to illustrate the scale and relationship of the PAC Campus Site building components, including the Preliminary Theater Site site plan, preliminary building plans, sections and elevations.

“Site(s)” means all or any of the Primary Theater Site and the Remainder Site.

“Target Date” shall have the meaning set forth in Section 2.2(b)(i).

“Tax Code” shall have the meaning set forth in Section 6.7.

“Union Park” shall have the meaning set forth in the first Recital.

“Union Park Design Review Committee” shall mean the committee, formed by the City Parties in consultation with Newland Communities, LLC, which shall be responsible for reviewing the Schematic Design Documents, the Design Development Documents, and the Construction Documents for the Primary Theater Project, and which shall be responsible for reviewing all required design document submittals for the remainder of the PAC Campus Project.

“Union Park Design Standards” shall mean all design standards incorporated in the Site Development Plan Review denoted by Case Number SDR-16267 and approved by the Las Vegas City Council on November 16, 2006, and any future amendments thereto.

“Unresolved Issue” shall have the meaning set forth in Section 10.5(a).

ARTICLE 2

GENERAL INTENT

Section 2.1 General. The Parties agree that the overall purpose of this Agreement is to govern the design, financing, construction and ultimate leasing to PAC of the Primary Theater Project, and to provide for the development of the Remainder Site. The Parties acknowledge that the overall effort of the development of the Primary Theater Project and the Remainder Site will take their mutual good faith cooperation and effort. The Parties hereto agree to cooperate to achieve the objectives hereof by furnishing such information to the other as is Determined necessary by a Party over the term hereof to effectuate the intent and purposes hereof, including, without limitation, any continuing disclosure agreements which may be needed under any Requirements including the Requirements of the United States Securities Exchange Commission. The Parties agree that the Primary Theater Project is a public work project as defined in Chapters 338 and 339 of NRS and is subject to all other Requirements governing the construction of public work projects in the State of Nevada. Except as provided in the LOA, the Parties agree that the Primary Theater Project at all times will remain the property of and owned by City, including, without limitation, all material whether on-site or off-site used in constructing the Primary Theater Project.

Section 2.2 Phased Development of the PAC Campus Site. The Parties have agreed to develop the PAC Campus Site in multiple phases. The Parties shall enter into such amendments and modifications to this Agreement and the LOA and such other additional documents as may be reasonably required to reflect the phasing of the development of the PAC Campus Site.

(a) Primary Theater Project. The Primary Theater Project shall be constructed on the Primary Theater Site and, upon Final Completion, shall be leased to PAC pursuant to the LOA.

(b) Remainder Site. Currently, the Parties intend for the Remainder Site to be the site of both the Museum Project and a potential City parking garage with approximately 400 parking spaces for the use by patrons of the Primary Theater Project and the Museum Project

(the “Parking Garage”). The approximate location of each of these uses on the Remainder Site is shown on Exhibit “C-2” attached hereto. These uses will be addressed at a later date by separate agreements between City and PAC, including a separate lease made by City in favor of PAC for the Remainder Site.

(i) Parking Garage. City shall use commercially reasonable efforts to design, develop, construct and operate the Parking Garage; provided, however, that City may use a third party to operate the Parking Garage. In the event that City, despite its exercise of commercially reasonable efforts, is unable to commence construction of the Parking Garage within three (3) years from the date of issuance of the Certificate of Occupancy for the Primary Theater Project by the City of Las Vegas Building and Safety Department (the third (3rd) anniversary of the date of issuance of said certificate of occupancy being the “Target Date”), then (A) City shall be relieved of any obligation to build the Parking Garage on the portion of the Remainder Site intended therefor (the “Garage Site”); and (B) from and after the Target Date, PAC shall have the exclusive right and option to develop the Garage Site as parking facilities and/or such other uses as City and PAC may mutually agree; provided, however, that in the event PAC does not commence construction of such development prior to the third (3rd) anniversary of the Target Date, PAC’s exclusive right and option to develop the Garage Site shall terminate.

(ii) Museum Project. Currently, PAC is in discussions with a museum about the possibility of PAC constructing the Museum Project and leasing space within the Museum Project to such museum. PAC shall have the exclusive right and option to develop the portion of the Remainder Site intended for the Museum Project (the “Museum Site”); provided, however, that in the event PAC does not commence construction of such development prior to the earlier of (A) the Target Date; or (B) the date the pledged funding for the Museum Project from the Reynolds Foundation expires, if ever, PAC’s exclusive right and option to develop the Museum Site shall terminate.

(iii) Commercial Projects. The Parties agree that the Remainder Site may be used for Commercial Projects in addition to or instead of the Parking Garage and the Museum Project. The management and costs of the operations of these commercial spaces within the Remainder Site will be the sole responsibility of PAC, including, but not limited to, responsibility to provide parking for the Commercial Projects.

(iv) Interim Period. PAC may use the Remainder Site for construction staging during the construction of the Primary Theater Project. During the period commencing upon completion of construction of the Primary Theater Project and continuing until commencement of construction of any Future Phase, PAC shall install and maintain a fence with a screen around the perimeter of the Remainder Site to the extent such site is visible to the public.

(v) No Obligation to Develop. Notwithstanding anything herein to the contrary, PAC shall not have any obligation to develop the Remainder Site or any portion thereof.

Section 2.3 Approval of a Party. In the event a Party seeks a Determination, Approval or Estimate from the other Party, then the following procedures shall apply:

(a) the Party seeking the Determination, Approval or Estimate (“Requesting Party”) shall notify the other Party (“Responding Party”) of such request in writing along with all supporting information and documentation for the Responding Party to respond in an informed manner.

(b) The Responding Party shall respond in writing within thirty (30) days (the “Response Period”) either granting or denying the request with a written description why the request was denied in the event of a denial by the Responding Party. If the Responding Party fails to respond to the Requesting Party within the Response Period, then the Responding Party shall be deemed to have granted the request of the Requesting Party.

(c) After a denial, the Requesting Party shall have the option to resubmit to the Responding Party revisions of the specific submissions addressing the Responding Party’s objections.

(d) In the event (i) the Requesting Party elects not to resubmit the request or (ii) after the resubmission of the item objected by the Responding Party the Parties cannot agree on the final submission, the matter will be referred to resolution pursuant to the provisions of Section 10.5.

The Parties agree that they may be able to rely conclusively on the Approval, Estimate or Determination of the other Party’s Project Representative in connection with this Section 2.3. Notwithstanding anything to the contrary contained in this Agreement, the Response Period shall be extended for City if City determines that the City Council must review any matter submitted

to City under this Section 2.3 by such time period as reasonably necessary to submit such matter to the City Council for consideration, provided, however, that City shall provide PAC with a written notice during the Response Period of such determination and its Estimate of the required time for a response from the City Council.

Section 2.4 LOA. Within five (5) business days after the occurrence of Final Completion, City and PAC shall execute and enter into the LOA and deliver it to the other; provided, however, that a condition precedent thereto is that the Operating Endowment remains in effect. City and PAC agree that upon execution and delivery of the LOA, the LOA shall govern and control the relationship of City and PAC as it relates to the Primary Theater Project, Primary Theater Site and the operation thereof.

Section 2.5 Exclusivity. Each of City and CP agrees that so long as this Agreement and/or the LOA is in effect City and CP shall deal exclusively with PAC and not negotiate with third parties in connection with the development and operation of a performing arts center within Union Park unless it is an accessory use to a hotel/casino. Notwithstanding the foregoing, the City may consider pursuant to Title 19 of the Las Vegas Municipal Code a site development plan application or similar entitlements for the operation of a private theater or similar land use within the City of Las Vegas city limits other than within Union Park.

Section 2.6 Union Park. PAC acknowledges and agrees that Union Park is intended to be developed as a mixed-use urban development, including, without limitation, office, residential, a performing arts center, medical facilities and other uses.

Section 2.7 Interlocal Agreement. Pursuant to NRS 244A.860 and the Interlocal Agreement, City assumed all responsibility for the acquisition, design, construction, improvement, equipment, operation and maintenance of the Primary Theater Project and agreed to use the Pledged Rental Car Fees to pay the costs incurred for the acquisition, development, construction, operation and maintenance the Primary Theater Project, or to pay the principal of, interest on or other payments due with respect to the Bonds and other bonds issued to pay such costs, including bonds issued to refund bonds issued to pay such costs, or any combination thereof. Pursuant to NRS 244A.860 and subject to and in accordance with the terms of this Agreement, City hereby delegates to PAC, and PAC hereby assumes from City, all responsibility for the design, equipment, operation and maintenance of the Primary Theater Project and PAC

agrees to use the Pledged Rental Car Fees that it receives from City to pay the costs associated with such obligations.

ARTICLE 3

PAC CAMPUS SITE

Section 3.1 PAC Campus Site Plan.

(a) The Parties agree that the various components of the PAC Campus Site will be constructed pursuant to a master site plan prepared by PAC in connection with the design of the Primary Project (the "Campus Site Plan"). The current Campus Site Plan is attached hereto as **Exhibit "C-2"**. The Campus Site Plan will be modified from time to time as the projects thereon are designed. The Campus Site Plan shall show building footprints, parking requirements and configuration, on-street parking to be reserved as public rights-of-way, ingress and egress and traffic flow solutions and shall show the Remainder Site within the PAC Campus Site. The Campus Site Plan will be subject to CP's review and Approval. The Campus Site Plan will be in conformance with all applicable Requirements. In connection therewith, PAC and CP agree that (i) the parking for the Primary Theater Project will not be required to be located on the PAC Campus Site but rather will be provided by City and CP elsewhere within Union Park and/or adjacent properties in accordance with the LOA and (ii) PAC shall be solely responsible for providing the parking for any Commercial Projects within the PAC Campus Site, regardless of the location of such parking.

(b) To accommodate the Primary Theater Project, CP shall approve of certain, non-exclusive access easements required for accessing the Primary Theater Project Site and which are mutually agreeable to the Parties. Such easements shall be limited expressly to that area or areas deemed necessary by the Parties and where there is neither a commercially reasonable design alternative, nor ingress and egress from adjacent, future public rights of way (either City Parkway, Discovery Drive, or the Promenade). CP agrees to grant such access easements to PAC prior to, or concurrent with execution of the LOA.

(c) To accommodate the construction of the Primary Theater Project and as part of the City Work described in Section 7.1, CP has approved of raising the grade of the proposed streets adjacent to the PAC Campus Site in accordance with the Grading Plan. Notwithstanding the foregoing, CP may change such Grading Plan as may be necessitated by the preparation of, and adherence to a Technical Drainage Study for Union Park.

Section 3.2 PAC Campus Site Condition and Obligations.

(a) PAC acknowledges that it has undertaken its own independent reviews, investigations and testing of (i) the physical condition of the PAC Campus Site including the existence of Hazardous Substances in soil and groundwater located within or upgradient from the PAC Campus Site, (ii) the feasibility of developing the PAC Campus Project or any portion thereof and (iii) all other matters deemed necessary in PAC's sole judgment to determine the overall risk and feasibility of PAC's investment of monetary and other resources into the PAC Campus Project or any portion thereof. PAC hereby specifically acknowledges that such reviews, investigation and testing has enabled PAC to adequately assess the feasibility of developing the PAC Campus Project. PAC acknowledges that (i) PAC is not relying on any representations or warranties made by City or City's agents except as specifically set forth herein and (ii) except as otherwise provided in this Agreement, City shall not be liable to PAC, in any event whatsoever, to correct any latent or patent defects in the PAC Campus Site or surrounding areas. City represents and warrants that it has provided PAC with the Project Information. All Project Information provided by City to PAC, including, without limitation, those studies, reports, and other documents relating to Hazardous Substances in soil and groundwater within and without the PAC Campus Site, have been delivered without representation or warranty.

(b) The Parties acknowledge that they are aware of the presence of certain Hazardous Substances on the PAC Campus Site and the need to conduct remediation of such Hazardous Substances, in whole or in part, in connection with any development of the PAC Campus Site and to comply with all Environmental Laws relating to the remediation of such Hazardous Substances.

(c) City agrees at its sole cost and expense to perform City Obligations on the terms and conditions set forth in the Environmental Exhibit. PAC agrees that, except for the City Obligations, City shall have no obligation to remediate, dispose of, or otherwise handle Hazardous Substances on, in, about, or emanating from the PAC Campus Site in accordance with Environmental Laws.

Section 3.3 PAC's Access to PAC Campus Site.

(a) PAC, and its agents, representatives and employees (including, without limitation, architects and engineers), will have the right to enter upon and inspect the PAC Campus Site as PAC may determine necessary in connection with its rights and obligations

under this Agreement and conduct such boundary and topographic surveys, soil and engineering tests and environmental assessments with engineers or consultants licensed in the State of Nevada as PAC may reasonably require, provided that such inspections and tests will not materially damage the PAC Campus Site in any respect.

(b) PAC agrees that prior to undertaking any type of tests, investigations or other activities which involve borings, soil removal or any other penetration of the surface of the PAC Campus Site, PAC will provide City with a copy of the engagement letter for such activities with the consultant retained by PAC and a detailed description of the intended scope of activities on the PAC Campus Site. PAC agrees that such engagement letter shall be subject to the Approval of City, which Approval shall, in this instance only, be granted or denied within five (5) business days of PAC's submission of such engagement letter to City, subject to City obtaining any required approvals of the same from the State of Nevada Department of Environmental Protection and/or Union Pacific Railroad of Omaha, Nebraska. PAC agrees that City shall have the right to have its representatives present during such activities. In addition, PAC acknowledges that Union Pacific Railroad may have to be notified of such investigations and may have representatives present during such investigations.

(c) All such tests and inspections shall be conducted in accordance with standards customarily employed in the industry and in compliance with all Requirements. PAC will promptly restore or cause to be restored the PAC Campus Site to its original condition as existed prior to any such inspections and/or tests. If PAC, its agents, representatives or employees undertake any boring or other disturbance of the soil, the soil so disturbed will be recompacted to the original condition of the PAC Campus Site and PAC will obtain at its own expense a certificate from a soils engineer which certifies that such soil so disturbed has been recompacted to the original condition of the PAC Campus Site. To the extent that any costs for damages and/or injuries are not covered by any insurance policy protections or are in excess of the insurance policy limits, PAC agrees to indemnify, hold harmless and defend (with counsel reasonably acceptable to City) City and its respective affiliates or assignees and their respective officers, agents, servants and employees against and from any and all liability, loss, cost, damage or expense (including attorneys' fees) resulting from or relating to PAC's tests and inspections pursuant to this Section 3.3. The indemnity obligations of PAC under this Section will survive any termination of this Agreement. PAC covenants and agrees upon request of City to promptly

deliver to City without charge therefor, the results and copies of any and all third party feasibility studies, including, but not limited to, environmental studies, soils studies, market studies and financial analyses and related correspondence.

Section 3.4 Reserved.

Section 3.5 Owners' Association. CP is in the process of creating the Owners' Association. PAC agrees that pursuant to the LOA, PAC will be required to comply with the Owners' Association in all respects, including the payment of all regular and special assessments levied against the PAC Campus Site, whereby such assessments shall be subject to a reduced fee structure for nonprofit organizations described in Section 501(c)(3) of the Tax Code or comparable status under the Tax Code.

ARTICLE 4

DESIGN OF PRIMARY THEATER PROJECT; PRIMARY THEATER PROJECT BUDGET; PRIMARY THEATER PROJECT APPROVALS; FUTURE PHASES

Section 4.1 Design of Primary Theater Project. Each of PAC and City agrees to appoint a representative ("Project Representative") to serve as such Party's primary representative in connection with the development of the Primary Theater Project. PAC and City agree that they shall work together in the design and budgeting of the Primary Theater Project, but that PAC shall take the lead in the design of the Primary Theater Project. PAC agrees that the design of the Primary Theater Project shall conform to the Union Park Design Standards in place at time approval is sought, notwithstanding the ability of PAC to request a commercially reasonable waiver pursuant to the process described in Section 5.0, "Design Review Process" of the Union Park Design Standards. PAC agrees that City shall have the right to have the City Project Representative and other City staff members as determined by City attend all regular and other major meetings related to the design of the Primary Theater Project. In connection therewith, PAC agrees to provide City with a schedule of regular and special meetings related to the design of the Primary Theater Project so that the City Project Representative and other City staff members as determined by City may attend all such meetings. PAC agrees to coordinate such meetings so that the City's Project Representative will be able to attend and that such meetings will be no less than monthly during the design process. PAC and City agree that the design of the Primary Theater will be funded as set forth in Section 6.1 hereof.

Section 4.2 Architect and Major Design Consultants. PAC and City agree that PAC will engage an Architect to provide all of the design, engineering and construction administration services required for the design and construction of the Primary Theater Project. It is the mutual intent of the Parties that the Architect shall engage all other professionals and consultants necessary for all design and construction period services for the Primary Theater Project except for the Project Manager, PAC Project Representative, cost consultants, theatre consultants, acoustic engineers and any other professionals Approved in writing by City. In connection with the Architect and the other design professionals other than those excluded in this Section 4.2 above, the following guidelines shall apply:

(a) PAC agrees that City will have at least two representatives on any selection committees formed to choose the Architect and other design professionals other than those excluded pursuant to this Section 4.2 above.

(b) The Architect Agreement will be subject to the Approval of City and PAC and will be entered into only by PAC and will provide, in part, that (i) City is the owner of the Project and will be entitled to enforce all rights of PAC under the Architect Agreement, (ii) City is a third party beneficiary to PAC's rights under the Architect Agreement and has the right to assume PAC's interest in the Architect Agreement upon the occurrence and continuation of a PAC Default hereunder, (iii) the Architect shall only look to PAC for payment in connection with its services and that City shall have no liability for any amounts due to the Architect in connection with its services, (iv) any proposed waiver or release of the Architect's obligations under the Architect Agreement will require City's Approval in writing, (v) the Architect maintain professional liability coverage in the amount of no less than \$3,000,000, comprehensive general and auto liability insurance in a combined single limit of no less than \$1,000,000 and workmen's compensation insurance as required by all applicable Requirements with such insurers as Approved by City and PAC; and (vi) City shall be named as the owner under all policies of insurance required by the Architect Agreement, and both City and PAC shall be named additional insureds on the comprehensive general and auto liability insurance policy.

Section 4.3 Design Schedule. PAC, in consultation with the Architect and the Project Manager, shall provide City with a schedule for the design of the Primary Theater Project by the Architect for City's Approval. PAC and City agree that such schedule for the design of the

Project shall include, but not be limited to, the following critical path items for Approval by City and by the Union Park Design Review Committee pursuant to Section 2.3 hereof:

(a) Conceptual drawings of the Primary Theater Project prepared by the Architect along with a Project Site plan and the building program for the Primary Theater Project, including a written program which shall set forth PAC's objectives, schedule, constraints and criteria, including space requirements and relationships and site requirements.

(b) Schematic Design Documents along with a preliminary Project Budget.

(c) Design Development Documents along with an updated Project Budget.

(d) Construction Documents along with an updated Project Budget.

City agrees that the purpose of its review and Approval of items (b) – (d) of this Section 4.3 is for the purpose of determining that the Schematic Design Documents, Design Development Documents and Construction Documents are consistent with the items Approved by the City in paragraph (a) above, and with the Union Park Design Standards. PAC acknowledges that as part of complying with the Requirements, the submittals by PAC for items (b) through (d) of this Section 4.3 shall be reviewed by both City and by the Union Park Design Review Committee. PAC agrees and acknowledges that City does not have the sole authority to review and Approve items (b) through (d) and that Approval of such items shall require the review and approval of the Union Park Design Review Committee.

Section 4.4 Project Manager. PAC agrees at all times to engage and at all times use the services of a qualified Project Manager to represent and assist City and PAC in the management of the design and construction of the Primary Theater Project. All costs of the Project Manager shall be borne directly by PAC and shall at no time be paid out of the Construction Fund. Prior to termination by PAC of the Project Manager Contract or any engagement of a replacement Project Manager, PAC shall provide City with reasonable advance written notice of the same and provide City with an opportunity to consult with PAC on such action.

Section 4.5 Project Budget and PAC Fundraising.

(a) The Parties agree that during the design process that PAC shall formulate and the Parties shall from time to time refine the Project Budget with the goal that upon completion of the design of the Primary Theater Project and as a condition precedent to the bidding of the Construction Contract the Parties shall have a mutually Approved Project Budget.

PAC shall formulate the Project Budget and the Parties shall refine the Project Budget all in cooperation with the Project Manager. The Project Budget will contain from time to time the Estimated amount of City Construction Fund Contribution, the Reynolds Construction Grant Fund Contribution and the Construction Contingency Fund. The Parties agree that the final Project Budget shall require the mutual Approval of the Parties.

(b) In addition to the Project Budget, the Parties agree that during the design process that PAC shall formulate and refine the Operating Budget for review and Approval of City. The Operating Budget will include the estimated funds available from the Operating Endowment and projected Excess Fees, if any.

(c) PAC agrees to continue its fundraising campaign to raise any and all funds needed for the Operating Budget in excess of what is readily available from the Operating Endowment and projected Excess Fees, if any. PAC agrees to diligently pursue such fundraising campaign and to keep the City's Project Representative fully informed in writing on a quarterly basis as to the actual and projected progress of such fundraising campaign.

Section 4.6 Project Approvals. Except for permits and approvals related to the City Work, PAC shall be responsible for obtaining all permits and approvals required for the construction of the Primary Theater Project. The costs of such permits and approvals shall be funded pursuant to Section 6.1 hereof. PAC agrees and acknowledges that nothing in this Agreement constitutes an approval of or permits for the construction of the Primary Theater Project and that all approvals and permits for the construction of the Project must be obtained by PAC pursuant to all applicable Requirements. City agrees to cooperate in the permitting and approval process and City will sign all permit applications required for the Primary Theater Project.

Section 4.7 Design and Construction of Future Phases. PAC shall be solely responsible at its sole cost and expense for the design and construction of each Future Phase on the PAC Campus Site other than the Parking Garage if it is developed and constructed by City. PAC agrees that no proceeds from the Bonds and no other monies or funds of the City Parties will be available or obligated in anyway to pay for the cost of design, construction and operation of the Future Phases unless City agrees to develop and construct the Parking Garage. Notwithstanding the foregoing, PAC may use such funds for design and construction costs of mechanical equipment or electrical equipment which serve the Primary Theater Site and Future

Phases, to the extent permissible by City Bond Law. Until the Target Date, PAC shall design each Future Phase so that the Garage Site remains available and usable for the development of a Parking Garage.

ARTICLE 5

CONSTRUCTION OF THE PROJECT

Section 5.1 Selection of CMAR and Award. The Parties agree that the Primary Theater Project shall be the first phase of the PAC Campus Project and is a public work project which will be constructed by City in compliance with NRS. The Parties agree that the Primary Theater Project will be constructed by selecting and entering into a contract between City and a Construction Manager at Risk pursuant to NRS 338.169 through NRS 338.1699. As noted in the definition of “CMAR”, Whiting-Turner Contracting Company has been selected as the CMAR and shall perform preconstruction and construction services for the Primary Theater Project. CMAR has been performing preconstruction services and upon completion of the design of the Primary Theater Project, City will award the Construction Contract to CMAR for a total guaranteed maximum price. The Parties agree that City shall not be required to proceed with the award of the Construction Contract unless the following conditions precedent are fulfilled or waived by City at its sole discretion:

(a) CMAR has provided a written, constructability review to City that (i) the design of the Primary Theater Project is complete in all respects pursuant to the Architect Agreement and the Primary Theater Project is ready to be awarded to CMAR for construction and (ii) the latest Project Budget is a fair and accurate estimate of the Primary Theater Project;

(b) City is prepared and has determined that it will be able to issue the Bonds in a principal amount not less than the amount projected in the then current Project Budget, has further determined that it can issue Bonds on reasonable underwriting parameters and past underwriting criteria of City and has obtained all third party approvals required by the Requirements for the issuance of the Bonds, including any approvals required under the Interlocal Agreement (City agrees that, provided it may lawfully do so, it will act reasonably in making or not making the determinations in this Section 5.1(b));

(c) City and the Reynolds Foundation have entered in the Grant Agreement;

(d) All permits and approvals for the construction of the Primary Theater Project have been obtained or City has determined that they will be obtained during construction when required by applicable Requirements;

(e) The Parties have mutually approved the then current Project Budget in writing;

(f) (i) the Operating Endowment remains committed and in full force in all respects as confirmed in writing by the Reynolds Foundation; and (ii) PAC has entered into an amendment to the Endowment Agreement in order to obtain the Reynolds Foundation's approval of the estimated Final Completion Date;

(g) there is no occurrence and continuance of a material PAC Default;

(h) the County has performed and continues to perform pursuant to the Interlocal Agreement and has paid and continues to pay City all of the Pledged Rental Car Fees required to be paid to City pursuant to the Interlocal Agreement; and

(i) the CMAR has provided a performance, payment and completion bond covering 50% of the construction costs of the Primary Theater Project pursuant to the Construction Contract (the "Completion Bond").

Section 5.2 Award of Construction Contract. Upon the fulfillment of the Bidding Requirements, City will promptly award the Construction Contract to CMAR for construction of the Primary Theater Project. City agrees to use commercially reasonable efforts in consulting with PAC prior to the award of the Construction Contract, to the extent permissible under NRS.

Section 5.3 Construction of Primary Theater Project. The Parties agree that City will be entering into the Construction Contract with CMAR and that the Project Manager will principally administer and enforce the Construction Contract on behalf of City and PAC subject to the terms of the Construction Contract. PAC shall be a third party beneficiary to City's rights under the Construction Contract and PAC and the Project Manager shall also be an additional insured under all insurance policies required thereunder. In connection with the Construction Contract, the Parties agree as follows:

(a) The Project Manager will continue to manage the construction of the Primary Theater Project pursuant to the Project Manager Contract.

(b) The City Project Representative will be invited and permitted to attend all regular Primary Theater Project meetings and any other meetings determined material by the City Project Representative.

(c) The City Project Representative will be fully informed of all developments relating to the Primary Theater Project and will be copied on all correspondence received or originated by PAC, the Project Manager or the Architect during construction of the Primary Theater Project.

(d) Any of the following must first be Approved in writing by PAC prior to implementation by City: (i) any proposed modification to the Construction Contract, (ii) any proposed waiver of any of City's rights under the Construction Contract, (iii) any proposed waiver or release of the CMAR's obligations under the Construction Contract and (iv) any proposed waiver of any conditions to payment due under the Construction Contract.

(e) Except for non-monetary field change orders and monetary change orders in an amount less than \$25,000 which are approved by the Project Manager, all change orders must first be approved in writing by both Parties.

(f) PAC and the Project Manager shall consider in good faith all directions from City to PAC which are Determined necessary by City in connection with the administration of the Primary Theater Project.

(g) City shall make all payments due under the Construction Contract in strict compliance with the terms of the Construction Contract.

(h) At such time that (i) City Determines that the Project Manager is not administering the Construction Contract in a manner Determined by City in the best interest of the Primary Theater Project or (ii) a material PAC Default has occurred and is continuing, City may take over direct administration and management of the Construction Contract and the construction of the Primary Theater Project subject to the terms of this subsection (h). City agrees that in the event City Determines that the Project Manager is not administering the Construction Contract in a manner Determined by City in the best interest of the Primary Theater Project, City shall give prior written notice of such determination to PAC and, prior to City exercising any rights under this subsection (h), PAC shall have thirty (30) days to rectify the problems to City's Approval, including the engagement of a new Project Manager. In the event PAC disagrees with such Determination or PAC does not rectify the problems to City's

Approval, PAC shall have the right to seek resolution of such dispute in accordance with Section 10.5 prior to City exercising any such rights.

(i) City and PAC agree that, pursuant to the LOA, City shall assign to PAC any and all rights and warranties of City related to the Project Contracts and the construction of the Primary Theater Project and that PAC will be entitled to enforce all such rights and warranties. PAC acknowledges that it shall have no cause of action whatsoever against City in connection with the design and construction of the Primary Theater Project and shall look only to the Architect, CMAR and other design professionals in connection with any defects, latent or patent, or other deficiencies or problems in the design and construction of the Primary Theater Project.

Section 5.4 Notice to Proceed. The Parties agree that City shall not issue the notice to proceed to CMAR until the following conditions precedent are satisfied:

- (a) City has issued the Bonds in the amounts and on the terms set forth in the then current Project Budget;
- (b) All conditions as set forth in Section 5.1 remain fulfilled; and
- (c) The financial or any other condition of CMAR has not changed such that City has determined that CMAR is not able to perform under the Construction Contract.

Section 5.5 Construction Insurance. The Parties agree that all of the insurance required under the Construction Contract shall be maintained during the course of construction of the Primary Theater Project and the cost thereof shall be a Project Cost.

Section 5.6 Casualty. PAC agrees that all insurance proceeds payable in connection with damage or destruction of the Primary Theater Project prior to Final Completion shall be payable to City to be deposited in the Construction Fund pursuant to the terms and conditions of this Agreement. Prior to Final Completion, City shall have the sole right to settle, compromise or adjust any insurance or other claim in such manner as City may determine, and for this purpose, City may take such action as City deems appropriate. City shall apply all such insurance proceeds to the repair and or restoration of the Primary Theater Project upon the satisfaction of the following conditions (a) all such insurance proceeds are deposited with City; (b) PAC shall have deposited with City the amount necessary, if any, to pay the difference between the cost of restoration or repair of the Primary Theater Project and the amount of such insurance proceeds; (c) PAC shall have delivered to City a budget of all costs of reconstruction,

repair and or restoration for the Primary Theater Project, reasonably acceptable to City; and (d) City and all applicable Governmental Authorities shall have approved the final plans and specifications for the reconstruction, repair or restoration of the Primary Theater Project. Subject to the conditions set forth in the foregoing sentence, City shall disburse such insurance proceeds from the Construction Fund as necessary to pay for the reconstruction, repair or restoration of the Primary Theater Project pursuant to the terms of the Construction Contract. Notwithstanding anything herein to the contrary, any and all insurance proceeds payable in connection with damage or destruction to furniture, fixtures and/or equipment of the Primary Theater Project which were paid for by PAC (and not paid from the Construction Fund) shall be payable to PAC.

Section 5.7 Termination of Agreement. The Parties agree that in the event that all of the conditions precedent for the award of the Construction Contract set forth in Section 5.1 hereof are not fulfilled by May 31, 2009 for any reason whatsoever, then either Party shall have the right to terminate this Agreement upon written notice to the other Party. Upon such termination of this Agreement, all respective rights and obligations of the Parties under this Agreement (including, without limitation Section 2.5 hereof) shall terminate and be null and void except for the Parties obligations pursuant to Section 6.1 and Section 10.6 hereof.

ARTICLE 6

FINANCING OF THE DEVELOPMENT OF THE PRIMARY THEATER PROJECT

Section 6.1 Design.

(a) PAC agrees that it shall be responsible for funding all the services of the Project Manager and other preconstruction services (including obtaining Primary Theater Project permits and approvals in accordance with Section 4.6 above) through the award of the Construction Contract by City (the "Pre-Construction Costs") subject to the contribution by City to PAC of Pledged Rental Car Fees pursuant to paragraph (b) below. PAC agrees that it shall be responsible for funding all the services of the Architect regardless of when such services are rendered.

(b) City agrees to pay PAC Pledged Rental Car Fees received by City prior to issuance of the Bonds at such time as (i) the conceptual drawings referenced in Section 4.3(a) above have been Approved by City; and (ii) an initial Project Budget has been Approved by City. Such Pledged Rental Car Fees shall be applied along with PAC funds to pay all such Pre-Construction Costs.

(c) Until the issuance of the Bonds, PAC agrees that no later than February 1 of each year PAC shall submit to City PAC's projected preconstruction budget for the twelve (12) month period commencing on the next July 1 in detail reasonably acceptable to City. Such budget shall set forth and include PAC's request to use any Pledged Rental Car Fees projected to be received during such twelve (12) month period.

(d) After the issuance of the Bonds and until Final Completion, PAC agrees that no later than February 1 of each year PAC shall submit to City PAC's projected construction budget for the twelve (12) month period commencing on the next July 1 in detail reasonably acceptable to City. Such budget shall set forth and include PAC's request that any Excess Fees projected to be received during such twelve (12) month period be deposited into the Construction Fund. Subject to Section 6.1(e) below, after issuance of the Bonds but prior to Final Completion, City shall deposit such Excess Fees into the Construction Fund.

(e) All of the City's obligations under this Agreement are subject to the City Council lawfully making an appropriation to pay the amount needed to fulfill such obligations and are binding upon City only to the extent such an appropriation is made. Nothing contained in this Agreement obligates City to make any such appropriation. City agrees that any Pledged Rental Car Fees received by City shall be used as permitted only by NRS 244A.860(3) and the Interlocal Agreement. Subject to the first sentence of this Section 6.1(e), City agrees that the City Manager shall, in the budget presented to the governing body of City for each of the City's fiscal years, show (i) prior to the issuance of the Bonds, any Pledged Rental Car Fees as being used for the purposes permitted by NRS 244A.860(3) and the Interlocal Agreement that are shown in such projected annual preconstruction budget pursuant to Section 6.1(c); (ii) after the issuance of the Bonds and until Final Completion, any Excess Fees as being used for the purposes permitted by NRS 244A.860(3) and the Interlocal Agreement that are shown in such projected annual construction budget pursuant to Section 6.1(d); and (iii) appropriations for any other obligations of City under this Agreement for such fiscal year. Payments of Pledged Rental Car Fees prior to the issuance of the Bonds, if any, shall be made to PAC quarterly. After the issuance of the Bonds but prior to Final Completion, payments of Excess Fees, if any, shall be deposited into the Construction Fund quarterly.

Section 6.2 Construction of the Project and Cost Overruns.

(a) The Parties agree that construction of the Primary Theater Project shall be funded solely out of the Construction Fund. PAC agrees that City shall have no other obligation whatsoever to provide any other elements of work, material or funds for the construction of the Primary Theater Project whatsoever other than (i) the amounts to be paid by City pursuant to Section 6.1, (ii) the City Construction Fund Contribution, (iii) the City Contingency Amount and (iv) the City Work Cost.

(b) Prior to the commencement date of the construction of the Primary Theater Project, City shall transfer Three Million Seven Hundred Seven Thousand Dollars (\$3,707,000) from deposited rental car funds (the "Rental Car Contingency Amount"), and contribute Eight Million Dollars (\$8,000,000) (as may subsequently be reduced pursuant to this clause (b), the "City Contingency Amount"), to a construction contingency fund (the "Construction Contingency Fund"), which Construction Contingency Fund shall only be used to pay additional Project Costs as Approved by City and PAC, or, in the case of a change order to the Construction Contract in an amount less than \$25,000, the Project Manager. Within six (6) months from the commencement date of the construction of the Primary Theater Project, PAC shall deposit Three Million Dollars (\$3,000,000) into the Construction Contingency Fund (the "PAC Contingency Amount"). Upon the deposit of the PAC Contingency Amount, City shall withdraw Three Million Dollars (\$3,000,000) from the Construction Contingency Fund and thereafter the City Contingency Amount shall equal Five Million Dollars (\$5,000,000).

(c) In the event the Construction Contingency Fund is to be used to pay additional Project Costs in accordance with clause (b) above, the Parties agree that the Construction Contingency Fund shall be disbursed in the following order: (i) the Rental Car Contingency Amount until such funds are exhausted; and (ii) the remaining funds in the Construction Contingency Fund shall be disbursed pro-rata with 62.5% from the City Contingency Amount and 37.5% from the PAC Contingency Amount. To the extent any portion of the City Contingency Amount is used to pay additional Project Costs pursuant to the terms of this Section 6.2, PAC shall reimburse City for such amount from Excess Fees, to the extent such Excess Fees are paid to PAC, in accordance with the provisions of the LOA relating to the same. Upon (a) Final Completion, (b) joint execution by the Parties of the LOA and (c) City's payment of all remaining Project Costs, the then remaining balance in the Construction Contingency Fund

shall be distributed as follows: (A) any remaining Rental Car Contingency Amount shall be paid to PAC; and (B) the portion of the Construction Contingency Fund remaining after deducting any remaining Rental Car Contingency Amount shall be paid 37.5% to PAC and 62.5% to City.

(d) In the event the City Determines or Estimates at anytime that for any reason whatsoever the remaining Final Contract Project Cost exceeds the remaining balance of the Construction Fund, City shall have the unilateral and unconditional right to suspend construction of the Primary Theater Project until such time as PAC deposits into the Construction Fund additional funds to cover the difference between the remaining Final Construction Project Cost and the remaining balance of the Construction Fund, including any amount for liquidated damages due to delay of the Primary Theater Project pursuant to the Construction Contract unless such delay was caused by a City Default in which event City shall be required to fund the amount attributable thereto.

Section 6.3 Deposit of Construction Fund; Accounting for Bond Proceeds; Investments; Application of Bond Proceeds. The City Construction Fund Contribution, the Reynolds Construction Fund Contribution and the Construction Contingency Fund will be held by City in separate accounts or sub-accounts but will not be held in separate bank accounts. Interest income allocated according to City's generally applied principles will be credited to the Construction Fund, except that any interest income earned at yield above the yield on the Bonds, determined by City in accordance with the applicable Internal Revenue Service regulations, will be retained (or may be withdrawn) by City to make rebate payments to the United States. Amounts shall be withdrawn from the Construction Fund solely to pay Project Costs in accordance with the terms of this Agreement. In the event of any inconsistency or conflict between this Agreement and the Grant Agreement with respect to the Reynolds Construction Grant Fund Contribution, the provisions of the Grant Agreement shall control.

Section 6.4 Payment and Application of the Construction Funds. During the construction of the Project, City shall pay from the Construction Fund the payments due (a) under the Construction Contract pursuant to the terms and conditions of the Construction Contract, and (b) for all other items in the Final Contract Project Cost. City shall provide PAC with all documents related to disbursements of the Construction Fund, including, without limitation, all invoices, lien release and other documents required under or requested pursuant to

the Construction Contract. City shall provide PAC with monthly statements showing accrued interest, disbursements and remaining balance of the Construction Fund

Section 6.5 Surplus Construction Funds. Upon (a) Final Completion, (b) joint execution by the Parties of the LOA and (c) City's payment of all remaining Project Costs, the then remaining balance in the Construction Fund shall be distributed to PAC pursuant to the terms of the LOA and only for purposes permitted under NRS 244A.860(3) and the Interlocal Agreement; provided, however, that any Construction Contingency Fund portion of the then remaining balance in the Construction Fund shall be distributed in accordance with Section 6.2(c).

Section 6.6 Issuance of the Bonds. City agrees to commence the process of issuing the Bonds in such time as to meet the projected and scheduled commencement of the construction of the Primary Theater Project. The Parties acknowledge that the amount and terms of the Bonds will be dependent on numerous factors including the estimated amount of the Pledged Rental Car Fees and the terms and conditions of the underwriting of the Bonds. PAC agrees that City is not in anyway guaranteeing or warranting the amount of the Bond Net Proceeds, the amount of the Pledged Rental Car Fees, underwriting terms and conditions or any other factors related to the issuance of the Bonds. City's only obligation with respect to this Section 6.6 is to use its good faith best commercially reasonable efforts to issue the Bonds based on the Pledged Rental Car Fees. PAC agrees that City shall have no liability whatsoever to PAC or any other Person in the event the principal amount of the Bonds, the interest rate payable thereunder, the Bond Net Proceeds or any other terms and conditions of the Bonds are not as projected or otherwise anticipated by the Parties.

Section 6.7 Tax Covenant. It is anticipated that the Bonds will be issued as tax-exempt Bonds under the provisions of the Internal Revenue Code of 1986, as amended (the "Tax Code"). Each of the Parties hereto agrees that it will not take any action or omit to take any action with respect to the Bonds, the proceeds thereof, any of that Party's funds or the facilities financed with the proceeds of the Bonds if the act or omission (i) would cause interest on the Bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Tax Code, or (ii) would cause interest on the Bonds to lose its exclusion from alternative minimum taxable income as defined in Section 55(b)(2) of the Tax Code, except to the extent such interest is required to be included in the adjusted earnings adjustment applicable to

corporations under Section 56 of the Tax Code in calculating corporate alternative minimum taxable income. This covenant is to remain in force and effect until the date in which all obligations of Parties in fulfilling the tax covenant contained in the ordinance of City authorizing issuance of the Bonds have been satisfied and fully discharged. Among other things, this covenant requires that PAC maintain its status as an organization described in Section 501(c)(3) of the Tax Code while it uses any portion of the Primary Theater Project and that PAC will neither make nor allow any use of the Primary Theater Project to carry out any activity that is an unrelated trade or business for PAC determined by applying Section 513 of the Tax Code. In connection therewith, PAC agrees that its use of the Primary Theater Project shall not exceed the Private Use Limitation.

ARTICLE 7

CITY WORK

Section 7.1 City Work. City agrees that it shall complete the City Work at City's sole cost and expense. All elements of City Work Cost shall be paid directly by City and shall not be paid out of the Construction Fund. City agrees that City Work shall be complete in connection with all applicable Requirements. City further agrees that none of the Construction Fund shall be used to pay City Work Cost. City Work shall consist of the following:

(a) City shall install or cause to be installed all streets, sidewalks, utilities and any other improvements offsite to each portion of the PAC Campus Site as is necessary to construct and operate each respective phase of the PAC Campus Project, including, without limitation, electric, gas, sewer, telephone, data, cable and water. Such work shall include the work necessary to raise the grade of adjacent streets as described above in Section 3.1(c). The utilities shall be stubbed to the back of the curb in such location as Determined by City in consultation with PAC. The streets to be initially installed by City are identified on Exhibit "E" attached hereto. In addition, City will be installing all curb, gutter and on-street public metered parking around the perimeter and within a portion of the PAC Campus Site as part of the City Work. City shall require that such improvements remain within public rights-of-way owned by the City. Such perimeter improvements will be constructed to the standard specifications and design for Union Park in accordance with the Union Park Design Standards. PAC agrees that as Future Phases are developed by PAC any alteration or modification to such perimeter

improvements will be at the sole cost and expense of PAC without any contribution or reimbursement by City.

(b) City shall perform or cause to be performed the City Obligations.

(c) City shall construct and maintain the Initial Parking Facilities as defined in the LOA.

(d) City shall take all steps to subdivide or demise the PAC Campus Site into a separate legal parcel in compliance with all applicable Requirements.

Section 7.2 Performance of City Work. In the event any necessary elements of City Work are not complete at the time of commencement of the construction of the Primary Theater Project and any Future Phase, City agrees that it shall complete such elements of the City Work in coordination with the construction of each of the Primary Theater Project and any Future Phase in such a manner so as not to delay the construction of the PAC Campus Project. Performance of the City Obligations shall be included with respect to Known Hazardous Substances (as such term is defined in the Environmental Exhibit) in the schedule of the performance of the construction of the PAC Campus Project.

Section 7.3 City Obligation for Project Operations. PAC agrees that in no event shall City have any obligation, liability or responsibility whatsoever pursuant to this Agreement or otherwise to provide any funds for the start-up and/or ongoing operation and maintenance of the PAC Campus Project except with respect to Pledged Rental Car Fees for the Primary Theater Project as provided in the LOA and in connection with the Parking Garage in the event City develops and constructs the same.

ARTICLE 8

REPRESENTATIONS AND WARRANTIES

Section 8.1 City Parties' Representations and Warranties. In addition to any other representations and warranties made by any of the City Parties herein, each of the City Parties hereby represents and warrants to PAC, which representations and warranties are continuing in nature and shall survive throughout the term of this Agreement, as follows:

(a) There are no pending or, to the best of each of the City Parties' knowledge, threatened actions, suits, condemnation or other proceedings before or by any judicial body or any Governmental Authority against or affecting the PAC Campus Project or the PAC Campus Site.

(b) Each of the City Parties has the full authority and power to execute this Agreement. This Agreement has been duly executed and delivered by each of the City Parties and constitutes the valid and legally binding obligation of each of the City Parties, enforceable in accordance with its terms, except as the enforceability hereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and general principles of equity.

(c) City possesses good and marketable fee simple title to the PAC Campus Site and the real property underlying the Initial Parking Facilities.

(d) The execution or delivery of this Agreement will not: (i) violate any Applicable Law, injunction, judgment, order, decree, ruling, charge or other restriction of any Governmental Authority to which any of the City Parties or the PAC Campus Site is subject; (ii) violate any provision of any of the City Parties' charter documents, as amended; or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, give any person the right to accelerate, terminate, modify or cancel, or require any notice under, any agreement, license, permit, authorization, instrument or other arrangement to which any of the City Parties is a party or by which any of them are bound or which any of their assets are subject (or result in the imposition of any lien upon any of their assets).

(e) None of the City Parties has received any written notice nor do either of them have any knowledge of or intent to impose any utility connection moratorium or rezone the PAC Campus Site.

(f) No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any Governmental Authority or third person on the part of any of the City Parties is required in connection with their execution and delivery of this Agreement.

(g) There are no unrecorded contracts, leases, easements or other agreements, or claim of any third party, affecting the use, title, occupancy or development of the PAC Campus Site or the PAC Campus Project, and no person, firm or entity has any right of first refusal, option or other right to acquire all or any part of the PAC Campus Project or the PAC Campus Site.

Section 8.2 PAC's Representations and Warranties. In addition to any other representations and warranties made by PAC herein, PAC hereby represents and warrants to

City, which representations and warranties are continuing in nature and shall survive throughout the term of the Agreement, as follows:

(a) PAC is a nonprofit corporation validly existing under the laws of the State of Nevada and is an organization described in Section 501(c)(3) of the Tax Code.

(b) PAC has the full authority and power to execute this Agreement. This Agreement has been duly executed and delivered by PAC and constitutes the valid and legally binding obligation of PAC, enforceable in accordance with its terms, except as the enforceability hereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and general principles of equity.

(c) The execution or delivery of this Agreement will not: (i) violate any Applicable Law, injunction, judgment, order, decree, ruling, charge or other restriction of any Governmental Authority to which PAC is subject; (ii) violate any provision of PAC's articles of incorporation or bylaws, as amended; or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, give any person the right to accelerate, terminate, modify or cancel, or require any notice under, any agreement, license, permit, authorization, instrument or other arrangement to which PAC is a party or by which it is bound or which any of its assets are subject (or result in the imposition or any lien upon any of its assets).

ARTICLE 9

CITY EXCULPATION AND RIGHT TO SUSPEND PRIMARY THEATER PROJECT

Section 9.1 Exculpation. PAC agrees that City shall have no liability whatsoever to PAC in connection with the design and construction of the Primary Theater Project or any Future Phases except as a result of a City Default. PAC hereby waives and releases any claim or cause of action PAC may have against City in connection with the design and construction of the Primary Theater Project or Future Phases including any actions or non-actions taken by or not taken by City pursuant to any Project Contracts other than related to a City Default. PAC agrees that, upon executing the LOA, PAC will have undertaken its own independent reviews, investigations and testing as to the completion of the Primary Theater Project in compliance with the Construction Documents.

ARTICLE 10

DEFAULT, REMEDIES AND DISPUTE RESOLUTION

Section 10.1 Defaults by PAC. PAC shall be in default of this Agreement upon any of the following (each a “PAC Default”):

(a) PAC shall fail to make full payment of any material undisputed sum of money required to be paid by PAC hereunder when such payment is due and payable and such failure continues for thirty (30) days after written notice thereof from City;

(b) PAC shall fail to perform any other term, covenant or condition of PAC contained in this Agreement, and such failure continues for thirty (30) days after written notice thereof from City; provided, however, that if such failure is impossible to correct within thirty (30) days, PAC shall not be deemed in default if PAC commences correction within said thirty (30) day period and diligently pursues such correction to completion; and

(c) PAC makes a representation or warranty in this Agreement, or in any certificate, demand, or request made under this Agreement, that proves to be incorrect, at any time during the term of this Agreement, in any material respect.

Section 10.2 Remedies for PAC Default. Should a PAC Default occur, City shall have the following rights and remedies:

(a) City may, but shall not be obligated to, advance the amount required to cure any failure by PAC to make any payment when required hereunder and shall be entitled to recover from PAC the sum so advanced, plus interest from the date the payment was due at the prime rate prevailing during the period of the PAC Default, as it may change from time to time, based on such rate as published in the Wall Street Journal or if more than one rate is published on any day, the average of such rates, plus 2% per annum (the “Default Rate”).

(b) City shall have the right to suspend/and or terminate all or any part of the design and construction of the Primary Theater Project as City Determines appropriate. In connection therewith, (i) City may utilize any Pledged Rental Car Fees it has received which have not already been applied to payment of Pre-Construction Costs or Project Costs and the Construction Fund to pay the costs associated with such suspension or termination and (ii) in the event there are not sufficient Pledged Rental Car Fees or funds in the Construction Fund to pay the costs associated with such suspension or termination, then City may advance the amount required in connection with such suspension or termination and shall be entitled to recover from

PAC the sum so advanced, plus interest at the Default Rate. In the event of a complete termination of the Primary Theater Project, this Agreement shall automatically terminate and all respective further obligations of the Parties under this Agreement (including, without limitation, Section 2.5 hereof) shall terminate and be null and void except for the obligations of the Parties pursuant to Section 6.1 and Section 10.6 hereof.

(c) In addition to any other remedies it may have, in the event of a PAC Default due to a violation of Section 6.7 by PAC, City (i) may demand payment by PAC of any damages City incurs as a result of a breach of such covenant which amounts shall be paid by PAC within thirty (30) days of City's written demand therefor and (ii) may specifically enjoin such violation.

(d) City may exercise any other remedy available to it at law or in equity, including specific performance of the provisions of this Agreement. The provisions of this Section are not intended as a limitation on the remedies that may be available to City in case of a PAC Default.

Section 10.3 Default by City. Each of the City Parties shall be in default of this Agreement upon any of the following (each a "City Default"):

(a) Any of the City Parties shall fail to make full payment of any material undisputed sum of money required to be paid by any City Party hereunder when such payment is due and payable and such failure continues for thirty (30) days after written notice thereof from PAC;

(b) Any of the City Parties shall fail to perform any other term, covenant or condition of such City Party contained in this Agreement, and such failure continues for thirty (30) days after written notice thereof from PAC; provided, however, that if such failure is impossible to correct within thirty (30) days, the City Parties shall not be deemed in default if the applicable City Party commences correction within said thirty (30) day period and diligently pursues such correction to completion; and

(c) Any City Party makes a representation or warranty in this Agreement, or in any certificate, demand, or request made under this Agreement, that proves to be incorrect, at any time during the term of this Agreement, in any material respect.

Section 10.4 Remedies for City Default. Upon a City Default, PAC may exercise any remedy available to it at law or in equity, including specific performance of the provisions of this

Agreement. The provisions of this Section are not intended as a limitation on the remedies that may be available to PAC in case of a City Default.

Section 10.5 Dispute Resolution. The Parties agree that any dispute related to Section 6.7 or any action for equitable relief shall be pursuant to a court of law in compliance with Section 11.2 below. If any other dispute arises out of or relates to this Agreement, or the breach thereof, the Parties agree to proceed as follows:

(a) PAC and the City Parties hereby agree and commit to each other to resolve any open issues relating to the PAC Campus Project in a commercially reasonable manner as promptly as possible and to cause such Party's Project Representative to be readily available to address such issues as they arise. In the event the Parties are divided with respect to any such open issue relating to or in connection with the PAC Campus Project ("Unresolved Issue"), and the Project Representatives are unable to reach agreement, after good faith negotiations, with respect to a proposed course of action concerning such Unresolved Issue, then such Unresolved Issue shall be resolved exclusively by the City Manager of City, on behalf of the City Parties or any of them, and Myron Martin, on behalf of PAC, unless and until PAC or the City Parties selects another individual with similar status to resolve such Unresolved Issue on its behalf. Thereafter, if the Unresolved Issue has not been resolved, the Parties agree to proceed with the Mediation and Arbitration provisions set forth next below.

(b) If said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Construction Industry Mediation Rules, before resorting to arbitration, litigation, or some other dispute resolution procedure.

(c) Any controversy or claim arising out of or related to this Agreement or the breach thereof not settled pursuant to paragraphs (a) and (b) immediately above, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof. Claims among the Parties shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. Notice of demand for arbitration shall be filed in writing with the other party and with the American Arbitration Association.

(d) The Parties agree that pending final resolution of a claim including arbitration, unless otherwise agreed in writing, the Parties, as the case may be, shall proceed diligently with performance of the Agreement.

(e) Demand for arbitration of any claim may be made within a reasonable time after the claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations. A party who files a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded. When a party fails to include a claim through oversight, inadvertence or excusable neglect, or when a claim has matured or been acquired subsequently, the arbitrator or arbitrators may permit amendment.

(f) The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with Section 11.12 hereof.

(g) All dispute resolution proceedings pursuant to this Section 10.5 shall take place in Clark County, Nevada.

Section 10.6 Indemnification. Each Party (the “Indemnifying Party”) agrees to hold harmless, indemnify and defend the other Party from and against all losses, liabilities, or expenses, claims, demands, action or causes of action arising out of the wrongful or negligent act, errors or omissions of such Party or any of its employees, agents or servants, including a breach of this Agreement, but excluding, except as otherwise provided in Subsection 6B of Exhibit “B” attached hereto, any such losses, liabilities, injuries, or expenses of any nature arising out of any Environmental Condition existing prior to the Execution Date. The Parties hereto understand and agree that neither this Section nor any other provision of this Agreement shall constitute a waiver by City of any protection it has against liabilities or damages or any limitations thereon under Chapter 41 of NRS or other protections or limitations that arise by virtue of City’s status as a political subdivision of the States of Nevada, and that City’s indemnifications hereunder are limited by and subject to Chapter 41 of NRS.

ARTICLE 11

MISCELLANEOUS

Section 11.1 No Waiver. No failure or delay on the part of any Party to this Agreement to enforce the provisions hereof shall operate as a waiver thereof, nor shall a single or partial

enforcement of any provision hereof preclude any other or further enforcement or exercise of any other right, power or remedy that any Party of this Agreement may have.

Section 11.2 Time of Essence. Time is of the essence to this Agreement. Each Party agrees that it shall perform all of its obligations under this Agreement promptly when required.

Section 11.3 No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties hereto, and no person is intended to be or shall be construed to be a third party beneficiary of this Agreement.

Section 11.4 Successors or Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and their assigns. No assignment of this Agreement or any right or obligation hereunder by any of the Parties hereto shall be valid unless the other Party hereto consents to that assignment in writing. The Parties hereto hereby consent to City pledging the Pledged Rental Car Fees it receives as security for the Bonds.

Section 11.5 Books and Records. Each of the Parties to this Agreement agrees, to the extent applicable to a Party, to maintain proper books and records pertaining to the Primary Theater Project, including, but not limited to, the Operating Budget, the Bonds, the funds and accounts established for the payment of the Bonds and evidencing expenditures and receipts of the Bonds Proceeds and to make such books and records available for inspection by the other Party hereto during normal business hours.

Section 11.6 Amendments. This Agreement may be modified at any time by the Parties hereto, but only by a written instrument signed by each of the Parties.

Section 11.7 Severability. If any provision of this Agreement is deemed to be invalid or unenforceable, the invalidity or unenforceability shall not affect the remaining provisions of this Agreement that can be given effect without the invalid or unenforceable provision, and the Parties hereto agree to replace the invalid or unenforceable provision with a valid provision which has as nearly as possible the same effect.

Section 11.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be regarded as the original and all of which shall constitute the same agreement.

Section 11.9 Notices. All notices required or permitted to be given hereunder shall be in writing, addressed to the Parties respective addresses set forth below, and may be delivered by

hand, by facsimile, by nationally recognized private courier, or by United States mail. Notices delivered by mail will be deemed given five (5) business days after being deposited in the United States mail, postage prepaid, registered or certified mail (return receipt requested). Notices delivered by hand, by facsimile, or by nationally recognized private courier will be deemed given on the first business day following receipt; provided that a notice delivered by facsimile will only be effective if such notice is also delivered by hand, by nationally recognized private courier or deposited in the United States mail, postage prepaid, registered or certified mail (return receipt requested), on or before two (2) business days after its delivery by facsimile. Any party may change its address for notice by giving notice of such change of address to the other party in the manner herein provided.

If to City: City of Las Vegas, Nevada
400 Stewart Avenue
Las Vegas, Nevada 89101
Attention: City Manager
Facsimile No. 702-388-1807

With a copy to: Las Vegas City Attorney
400 Stewart Avenue
Las Vegas, Nevada 89101
Attention: City Attorney
Facsimile No. 702-386-1749

If to CP: City Parkway V, Inc.
400 Stewart Avenue
Las Vegas, Nevada 89101
Attention: City Manager
Facsimile No. 702-388-1807

With a copy to: Las Vegas City Attorney
400 Stewart Avenue
Las Vegas, Nevada 89101
Attention: City Attorney
Facsimile No. 702-386-1749

If to PAC to: Las Vegas Performing Arts Center Foundation
241 West Charleston Blvd., Suite 111
Las Vegas, NV 89102
Attention: President
Facsimile No. 702-614-0205

With a copy to: Las Vegas Performing Arts Center Foundation
241 West Charleston Blvd., Suite 111
Las Vegas, NV 89102
Attention: Chief Financial Officer
Facsimile No. 702-614-0205

and with a copy to: Kim Sinatra, Esq.
3131 Las Vegas Boulevard South
Las Vegas, NV 89109
Facsimile No. 702-770-1518

Section 11.10 Disclosure of Principals. Pursuant to Resolution R-105-99 adopted by City Council effective October 1, 1999, PAC warrants that it has disclosed, on Exhibit "F" attached hereto, all members of the Board of Directors of PAC, as well as all persons and entities holding more than 1% interest in PAC or any principal of PAC. Throughout the term hereof, PAC shall notify City Parties in writing of any material change in the above disclosure within 15 days of any such change.

Section 11.11 Governing Law. The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Agreement, without giving effect to its conflict of law provisions.

Section 11.12 Jurisdiction and Venue. Except as set forth in Section 10.5, each Party agrees to submit to personal jurisdiction in Clark County, Nevada in any action or proceeding arising out of this Agreement and, in furtherance of such agreement, each Party hereby agrees and consents that, without limiting other methods of obtaining jurisdiction, personal jurisdiction over each Party in any such action or proceeding may be obtained within or without the jurisdiction of any court located in Nevada and that any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon each Party by registered or certified mail to or by personal service at the last known address of each Party, whether such address be within or without the jurisdiction of any such court. Each Party hereto consents to, and waives any objection to Clark County, Nevada as the proper and exclusive venue for any dispute arising out of or relating to this Agreement or any alleged breach hereof.

Section 11.13 Force Majeure. Neither party shall be in breach of this Agreement if it fails to perform as required hereunder due to labor disputes, civil commotion, war, warlike operation, terrorist acts, sabotage, governmental regulations or control, fire or other casualty,

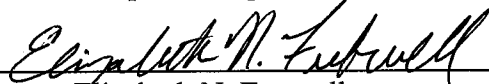
inability to obtain any materials, or other causes beyond such party's reasonable control. The financial inability of a Party to perform its obligations hereunder shall not operate to excuse or otherwise limit a Party's obligations hereunder. The provisions of this Section shall in no event excuse a violation of Section 6.7.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

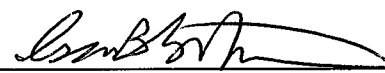
“CP”

CITY PARKWAY V, INC.,
a Nevada nonprofit corporation

By: 
Name: Elizabeth N. Fretwell,
Title: President

“CITY”

CITY OF LAS VEGAS, NEVADA,
a political subdivision of the State of Nevada

By: 
Name: Oscar B. Goodman
Title: Mayor

“PAC”

LAS VEGAS PERFORMING ARTS
CENTER FOUNDATION,
a Nevada nonprofit corporation

By: 
Name: MYRON MARTIN
Title: PRESIDENT

APPROVED AS TO FORM:

By:  4/23/09
Teresita L. Ponticello,
Chief Deputy City Attorney

Attest: By 
BEVERLY K. BRIDGES, CMC, City Clerk

ACKNOWLEDGMENTS

STATE OF NEVADA §
COUNTY OF CLARK §

On this 11th day of May, _____, personally appeared before me, the undersigned, a Notary Public in and for the County of Clark, State of Nevada, OSCAR B. GOODMAN, who acknowledged that he executed the above instrument.

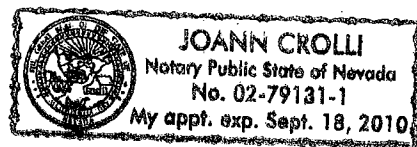
Stacey L Campbell
NOTARY PUBLIC, in and for said
County and State



STATE OF NEVADA §
COUNTY OF CLARK §

On this 6 day of May, 2009, personally appeared before me, the undersigned, a Notary Public in and for the County of Clark, State of Nevada, MYRON MARTIN, who acknowledged that he executed the above instrument.

Joann Crolli
NOTARY PUBLIC, in and for said
County and State



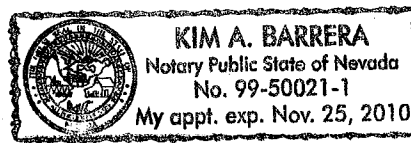
ACKNOWLEDGMENTS

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

On this 14 day of May, 2009, personally appeared before me,
the undersigned, a Notary Public in and for the County of Clark, State of Nevada, ELIZABETH
N. FRETWELL, who acknowledged that he executed the above instrument.



NOTARY PUBLIC, in and for said
County and State



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Exhibit “B” – Project Environmental Management

I.

Definitions

Capitalized Terms. Unless otherwise defined below, all capitalized terms used in this Exhibit “B” have the meanings ascribed to such terms in the Agreement.

“Activity and Use Limitations” means legal or physical restrictions or limitations, on the use of, or access to, a site or facility, such as institutional or engineering controls and Hazardous Substances monitoring in soil and groundwater, that are intended to reduce or eliminate potential exposure to Hazardous Substances present in the soil or groundwater on or within the PAC Campus Site, or to prevent activities that could interfere with the effectiveness of a cleanup remedy approved by NDEP or recommended by the Risk Assessment in order to ensure maintenance of a condition for the PAC Campus Site of no significant risk to public health or the environment.

“Applicable Environmental Guidance” means all applicable Requirements, Activity and Use Limitations, Environmental Laws, the Soil and Groundwater Management Plan, and the Risk Assessment. To the extent Applicable Environmental Guidance is in conflict as to any matter affecting human health or the environment, including the extent to which Hazardous Substances in soil or groundwater should be removed or remediated or both to acceptable levels of risk for the PAC Campus Project, the Applicable Environmental Guidance that is most protective of human health and the environment shall be the Applicable Environmental Guidance for purposes of this Agreement.

“Certified Environmental Manager” (“CEM”) means a person having been certified by the NDEP as an “Environmental Manager” pursuant to Nevada Administrative Code Chapter 459.

“City Obligations” has the meaning set forth below.

“City Remediation Cost Cap” shall mean, for the Primary Theater, the City’s responsibility for the following costs incurred through completion of construction of the Primary Theater:

- (a) A cumulative amount to not exceed \$3,489,130, for the following matters: (i) One half the cost of the Risk Assessment pursuant to Subsection 3B(a), below; (ii) soil remediation or disposal pursuant to Subsection 3B(b) or 3B(c) below; (iii) treatment of contaminated groundwater pursuant to Subsections 3B(b) or 3B(d) below; (iv) with the exception of actions resulting in Excess Remediation Costs, the value as Determined by City of any transportation, disposal, remediation, or other actions performed by UPRR in connection with the UPRR

Environmental Obligations; and (iv) payment of any Excess Remediation Costs claims by UPRR pursuant to Subsection 3B(f), below.

(b) An amount not to exceed \$2,837,000 for Activity and Use Limitations recommended in the Risk Assessment pursuant to Subsection 3B(e), below.

The City Remediation Cost Cap, if any, for any Future Phase shall be determined by the Parties during the negotiations for developing any Future Phase. The City does not by this Agreement commit to fund a City Remediation Cost Cap for any Future Phase. Notwithstanding the foregoing, the City may, in its sole and absolute discretion, choose to fund City Remediation Cost Caps for Future Phases depending upon the availability of Pledged Rental Car Fees or other funds for such purposes, and the appropriateness of using Pledged Rental Car Fees or other funds for any particular proposed Future Phase.

“Deed Covenants” means obligations of Union Pacific Railroad set forth in the attached deed from Union Pacific Railroad to Ply Stadium Partners, Inc. and successors in title.

“Environmental Condition” means (a) a Release or threat of a Release of any Hazardous Substances affecting the Premises for which investigation, response, evaluation, treatment, removal, remediation, monitoring, abatement or any type of corrective action is required under any Environmental Laws, (b) any condition or activity at the Premises that is not in compliance with any Environmental Laws, and (c) any condition or activity at the Premises which results in or forms the basis for a claim by any Governmental Authority or citizen or citizen group for compliance, injunctive relief, damages (including, without limitation, natural resources or toxic tort damages), penalties, or removal, response, remedial or other action pursuant to any Environmental Laws and/or a third party seeking damages and/or injunctive relief related to actual or alleged personal injury, medical monitoring, wrongful death and/or property damage.

“Environmental Laws” means any past, present or future federal, state or local law, statute, rule, regulation, code, ordinance, order, decree, judgment, injunction, notice, policy, or binding agreement, and all amendments thereto, issued, promulgated, or entered into by any Governmental Authority, relating in any way to the environment, the preservation, degradation, loss, damage, restoration or reclamation of natural resources, waste management, health, industrial hygiene, safety matters, Environmental Conditions or Hazardous Substances.

“Environmental Permits” means all necessary federal, state, and local permits or other approvals relating to the handling, treatment, or disposal of Hazardous Substances in connection with the Primary Theater.

“Excess Remediation Costs” are those costs defined as such in Section 2.3(a)(iii) of the October 21, 1996, Purchase and Sale Agreement between Ply Stadium Partners, Inc. and UPRR.

“Hazardous Substances” means any product, byproduct, compound, substance, chemical, material or waste, including, without limitation, asbestos, solvents, degreasers, heavy metals, refrigerants, nitrates, urea formaldehyde, polychlorinated biphenyls, dioxins, petroleum and

petroleum products, fuel additives, and any other material, whose presence, characteristics, nature, quantity, intensity, existence, use, manufacture, possession, handling, disposal, transportation, spill, Release, threatened Release, treatment, storage, production, discharge, emission, remediation, cleanup, abatement, removal, migration, or effect, either by itself or in combination with other materials is or is allegedly: (a) injurious, dangerous, toxic, hazardous to human or animal health, aquatic or biota life, safety or welfare or any other portion of the environment; (b) regulated, defined, listed, prohibited, controlled, studied or monitored in any manner by any Governmental Authority or Environmental Laws; or (c) a basis for liability to any Governmental Authority or third party under any regulatory, statutory or common law theory.

“Known Hazardous Substances” means those Hazardous Substances described in the Project Information, including without limitation, petroleum hydrocarbons, metals, volatile organic compounds, semi-volatile organic compounds, and polychlorinated biphenyls.

“NDEP” means the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection.

“PAC Obligations” has the meaning set forth below.

“Primary Theater” shall mean the Primary Theater Project and Primary Theater Site.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any Hazardous Substances into the environment, including the abandonment, discarding, burying or disposal of barrels, tanks, containers and other receptacles containing any Hazardous Substances.

“Risk Assessment” means a health risk assessment prepared by a well-qualified PhD environmental professional acceptable to both Parties that for all Known Hazardous Substances (i) identifies exposure pathways and exposure parameters to derive health-based soil and groundwater screening levels based on reasonable maximum exposure parameters, (ii) establishes soil and groundwater screening levels that represent chemical concentrations which would not result in adverse health effects under the assumed future land use of the PAC Campus Site, (iii) identifies potential exposures during construction as a component of the analysis, (iv) develops appropriate Activity and Use Limitations for redevelopment of the PAC Campus Site that will maintain protection of public health and the environment while, to the extent consistent with such mandate, minimizing overall Project Cost and City Work Costs, and (v) supersedes and replaces the Converse Consultants’ September 24, 2002 Risk-Based Evaluation performed for City Parkway IV & V but only as to the PAC Campus Site and subject to the review and written concurrence of Converse Consultants.

“Soil and Groundwater Management Plan” means a plan approved by NDEP for handling Hazardous Substances in soil and groundwater encountered during and after construction of the Primary Theater.

“UPRR” means Union Pacific Railroad of Omaha, Nebraska.

“UPRR Environmental Obligations” are obligations of UPRR set forth in the Deed Covenants.

II.

Environmental Conditions

1B. Limited Survival. Except for Subsections 3B(g) (City insurance obligations), 4B (as it relates to certain PAC cost obligations to comply with Applicable Environmental Guidance relating to the construction and operation of the Primary Theater), and 6B (PAC Indemnity) of this Exhibit “B”, each of which shall survive the termination of this Agreement and the execution of the LOA, the provisions, terms, covenants and conditions of this Exhibit “B” to the Agreement shall become null, void and unenforceable upon the termination of this Agreement.

2B. Acknowledgements. The Parties acknowledge that:

(a) They are aware of the presence of Known Hazardous Substances affecting the PAC Campus Site and NDEP has determined that UPRR is responsible, at a minimum, for satisfying the UPRR Environmental Obligations;

(b) NDEP may not require UPRR to remove or remediate all Hazardous Substances in soil that exceed NDEP’s soil action levels or all Hazardous Substances in groundwater that exceed NDEP’s maximum contaminant levels which may result in residual Hazardous Substances being left within the PAC Campus Site after NDEP releases UPRR from responsibility for the UPRR Environmental Obligations;

(c) if after UPRR has completed the UPRR Environmental Obligations to NDEP’s satisfaction, concentrations of Hazardous Substances remain in soil or groundwater within the PAC Campus Site above NDEP action levels or maximum contaminant levels, then Hazardous Substances may need to be removed or remediated from soil or groundwater to a level that is protective of health and the environment as determined by the Risk Assessment;

(d) Activity and Use Limitations as identified and recommended by the Risk Assessment may need to be developed, designed, operated, maintained and enforced within the PAC Campus Site to maintain protection of health and the environment to the extent residual Hazardous Substances remain within the PAC Campus Site after UPRR completes the UPRR Environmental Obligations;

(e) higher water table conditions exist on certain portions of Union Park and may require dewatering of the PAC Campus Site, including removal or treatment or both of groundwater encountered during and after completion of construction of the Primary Theater and after UPRR has satisfied the UPRR Environmental Obligations pertaining to groundwater; and

(f) UPRR may assert a claim for Excess Remediation Costs and may record a lis pendens, lien or other encumbrance against the PAC Campus Site in connection with asserting such claim.

3B. City Obligations and PAC Obligations Regarding Hazardous Substances. City Obligations and PAC Obligations regarding Hazardous Substances shall, subject to the City Remediation Cost Cap, consist of the following matters:

(a) Risk Assessment. As soon as practicable after the Effective Date, PAC shall commission and obtain the Risk Assessment. PAC and the City shall each be responsible for paying one-half of the cost of the Risk Assessment. PAC shall include the City Project Representative in all communications with the person or entity selected to perform the Risk Assessment, and the Parties and their Project Representatives shall keep strictly confidential and protected from disclosure to any third parties all such communications.

(b) UPRR Environmental Obligations. To the extent required by Applicable Environmental Guidance, City shall use commercially reasonable efforts to require UPRR to complete the UPRR Environmental Obligations in connection with the construction of the Primary Theater. The value as Determined by City of any transportation, disposal, remediation, or other actions performed by UPRR in connection with the UPRR Environmental Obligations shall be charged against the City Remediation Cost Cap. To the extent UPRR fails to discharge any UPRR Environmental Obligations, City agrees, at City's sole and exclusive cost subject to the City Remediation Cost Cap, to perform the UPRR Environmental Obligations, and may in City's sole discretion seek reimbursement from UPRR. All costs for City's performance of the UPRR Environmental Obligations hereunder shall, subject to Subsection 4B, be charged against the City Remediation Cost Cap.

(c) Soil Remediation and Disposal Obligations. City shall, at City's election, either dispose of or remediate in a manner that complies with Applicable Environmental Guidance all contaminated soils excavated and delivered by PAC to City at an agreed upon location within the Union Park property during construction of the Primary Theater or cause others to do the same. Subject to Subsection 4B, City shall be responsible for all costs incurred to dispose of or remediate such soil, and the City's costs for such disposal or remediation shall be charged against the City Remediation Cost Cap. Subject to subsection 4B, the Parties shall bear as a Project Cost any cost to dispose of clean excess PAC Campus Site soils or excess PAC Campus Site soils remediated pursuant to this Section 3B, and the City's portion of such disposal costs shall not be charged against the City Remediation Cost Cap.

(d) Dewatering and Treatment. If and to the extent Applicable Environmental Guidance dictates that groundwater encountered during construction of the Primary Theater requires treatment, then City shall accept such water for treatment at a location acceptable to both Parties (the "Delivery Point"). City shall properly handle, treat, or otherwise dispose of all such delivered groundwater in compliance with Environmental Laws and shall obtain and maintain all Environmental Permits. During construction of the Primary Theater, City shall be solely responsible for any costs to treat and dispose of contaminated water delivered to the Delivery Point, which costs, subject to Subsection 4B, shall be charged against the City Remediation Cost Cap. Subject to Subsection 4B, any costs incurred to deliver contaminated water to the Delivery Point during construction, including but not limited to the design, construction, and permitting of any necessary wells, pumping, and transmission facilities,

together with associated power costs ("Delivery Costs"), shall be borne by the Parties as a Project Cost and the City's portion of such Delivery Costs shall not be charged against the City Remediation Cost Cap.

(e) Activity and Use Limitations. During the construction of the Primary Theater, the City, subject to Subsection 4B, shall be responsible for up to \$2,079,000 of the cost of Activity and Use Limitations determined and recommended by the Risk Assessment, and all such costs shall be charged against the City Remediation Cost Cap. To the extent the cost of Activity and Use Limitations incurred during construction of the Primary Theater Project exceeds \$2,329,000, PAC shall be solely responsible for all such costs.

(f) UPRR Excess Remediation Costs Claims. City shall in City's absolute and sole discretion either: (i) promptly pay any claim for reimbursement made by UPRR for Excess Remediation Costs; or (ii) notify UPRR and PAC that any such claim or some portion thereof for reimbursement is disputed in good faith. City shall promptly work with UPRR to resolve any disputed claim. To the extent City and UPRR cannot agree upon a disputed claim and UPRR records a lien or lis pendens against the PAC Campus Site, City shall promptly take action to remove such lien or lis pendens by bonding or otherwise and shall work to resolve immediately, finally and completely any litigation, arbitration, mediation, complaint, settlement, demand, claim or other action by UPRR for Excess Remediation Costs. Subject to Subsection 4B, any Excess Remediation Costs paid by City shall be charged against the City Remediation Cost Cap.

(g) Insurance. City agrees that during the term of this Agreement and of the LOA and any extended term of the LOA and this Agreement, City shall (i) in good faith use its reasonable best efforts to maintain at all times a pollution legal liability insurance policy or equivalent form of pollution insurance in which the PAC Campus Site is a covered property ("Policy") and (ii) request the underwriter to add PAC as a co-insured or additional insured at City's sole cost on any Policy. Any costs associated with maintaining the Policy or adding PAC to the Policy as a co-insured or additional insured shall not be charged against the City Remediation Cost Cap. After exhausting its good faith and reasonable best efforts to maintain the Policy, if City cannot agree to the terms and conditions for renewal of the Policy at any time during the term or extended term of the LOA or this Agreement, City shall provide PAC with written notice of same not less than 90 days before termination of the term of the Policy.

(h) CEM Contract. City shall promptly enter into a contract on terms and conditions acceptable to PAC that requires the CEM to promptly perform the work described below. City shall be exclusively responsible for all CEM costs incurred under the CEM contract through completion of construction of the Primary Theater, and such costs shall, subject to Subsection 4B, be charged against the City Remediation Cost Cap. At a minimum, the CEM contract shall require the CEM to promptly perform the following work:

1. Promptly prepare and submit to NDEP for approval the Soil and Groundwater Management Plan, which plan shall cover at least the following matters:

(i) Procedures for CEM Hazardous Substances testing of all excavated soils and any groundwater encountered before, during and after completion of construction of the Primary Theater;

(ii) the location of and any measures necessary for the protection of human health and the environment associated with excavated soil stockpiles that NDEP will approve for use as fill for the Primary Theater;

(iii) the location of and any measures necessary for the protection of human health and the environment associated with excavated soil stockpiles containing concentrations of Hazardous Substances exceeding that allowed by NDEP to be used as fill for the Primary Theater;

(iv) the Environmental Permits and the responsibility therefor, including, but not limited to, Clark County Department of Air Quality Management dust permitting, NDEP/federal storm water discharge permits, NDEP/federal point source discharge permits, and any Nevada Department of Conservation and Natural Resources – Division of Water Resources well construction and water appropriation permits;

(v) the method and timing of progress reports, and the method and timing of reporting the discovery of Hazardous Substances encountered during construction that do not constitute Known Hazardous Substances previously reported to NDEP; and

(vi) technology and the construction of any facilities to be used for on-site treatment and disposal of soil or groundwater, if any, containing or found to contain Hazardous Substances.

2. Obtain on behalf of and in the name of City all necessary Environmental Permits for the Project;

3. Oversee the testing, storage, handling, treatment, and transportation of any Hazardous Substances encountered during construction of the Primary Theater;

4. Deliver to City at the conclusion of the Primary Theater construction all records relating to any treatment facility constructed to treat soil or groundwater contamination, including applicable Environmental Permits;

5. Coordinate UPRR's discharge of the UPRR Environmental Obligations with the Architect, CMAR, and UPRR. The CEM shall regularly provide to the Parties a report of matters relating to the handling, storage, treatment, and disposal of Hazardous Substances encountered during construction of the Primary Theater, including updates regarding UPRR's discharge of UPRR Environmental Obligations;

6. To the extent any dispute arises with UPRR regarding UPRR Environmental Obligations, the CEM shall immediately report such dispute to the Parties; and

7. Ongoing soil and groundwater monitoring, sampling, testing, and reporting as may be required by Applicable Environmental Guidance throughout the term of this Agreement.

4B. Allocation of Applicable Environmental Guidance Compliance Costs in Excess of City Remediation Cost Cap. With respect to any Hazardous Substances within or affecting the Primary Theater Site, PAC shall design and construct the Primary Theater in a manner consistent with Applicable Environmental Guidance. If and to the extent the City Remediation Cost Cap has been exhausted, the Parties shall bear the costs of compliance with Applicable Environmental Guidance during the course of construction as a Project Cost until the Construction Fund component of the Final Contract Project Cost is exhausted. Once the Construction Fund component of the Final Contract Project Cost is exhausted, PAC shall be solely responsible for all costs necessary to comply with Applicable Environmental Guidance relating to construction or operation of the Primary Theater, whether incurred by City or PAC under their respective obligations hereunder, and whether incurred before or after completion of the Primary Theater.

5B. Mutual Release. Each Party for itself and each Party's agents, representatives, successors, assigns, members, administrators, officers, directors, employees, and all other persons associated with each Party hereby irrevocably releases waives, remises, acquits and forever discharges all other Parties and each of their agents, representatives, successors, assigns, members, administrators, officers, directors, employees ("Released Party") from any and all claims or potential claims, causes of action and any demands whatsoever, whether presently known or unknown, vested or contingent, in law or in equity, and for claims of any nature whatsoever, whether based on Environmental Laws or any other federal, state or local statute or ordinance, or based on a tort, contract, common law or other theory of recovery, for any liability, obligation, responsibility, loss, cost, claim, damage, order, judgment, decree, expense (including, without limitation, reasonable attorney and expert fees and disbursements, including court costs and costs of appeal), penalty or fine incurred in connection with, arising from or out of, or related to any Release of Hazardous Substances or any violation of Environmental Laws occurring on the PAC Campus Site prior to the Effective Date. Nothing in this Section or this Agreement shall be construed as a release or waiver of any claim, arising from a breach of any term, condition, covenant, representation or warranty contained in this Agreement, or against UPRR or any other party responsible for a Release of Hazardous Substances affecting the PAC Campus Site or any violation of Environmental Laws.

6B. Indemnity. PAC shall have no indemnification obligation under this Agreement or otherwise in connection with any Hazardous Substance generated, stored, manufactured, produced, released, spilled, present, located, discharged or disposed of on, under, beneath, or within the soil, subsurface, surface water, or ground water of the Premises prior to the Execution Date, EXCEPT that PAC shall indemnify, hold harmless, and defend City, City's affiliates, council members, mayor, employees, agents, officers, successors, and assigns of and from all losses or claims for personal injury, property damage, or natural resource damages arising wholly or in part out of any failure by PAC, its contractors, subcontractors, representatives or

agents to design, construct, or operate the Primary Theater in conformance with Applicable Environmental Guidance.

Exhibit "C-1" – Depiction of Primary Theater Site and Remainder Site

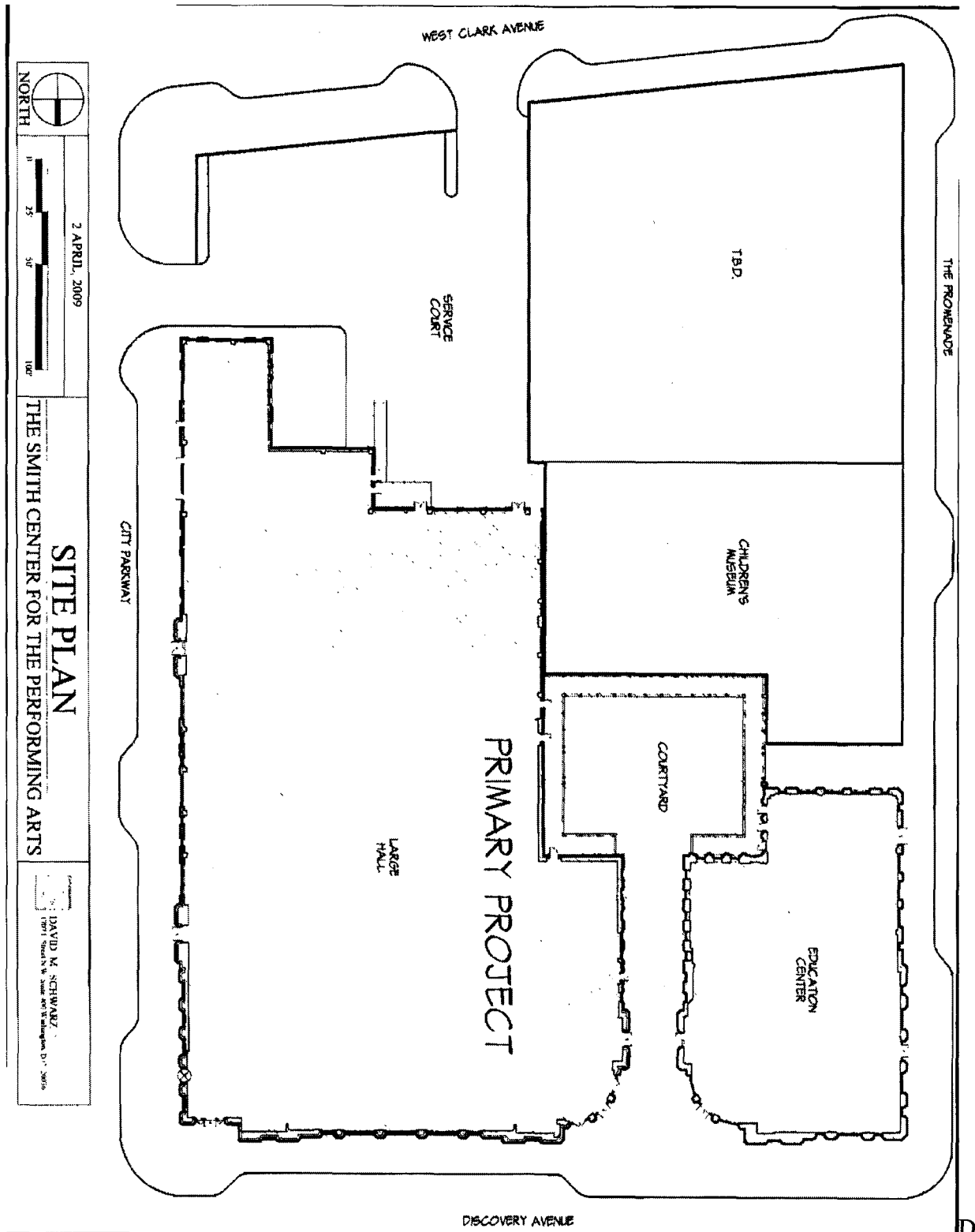


Exhibit "C-2" - Campus Site Plan

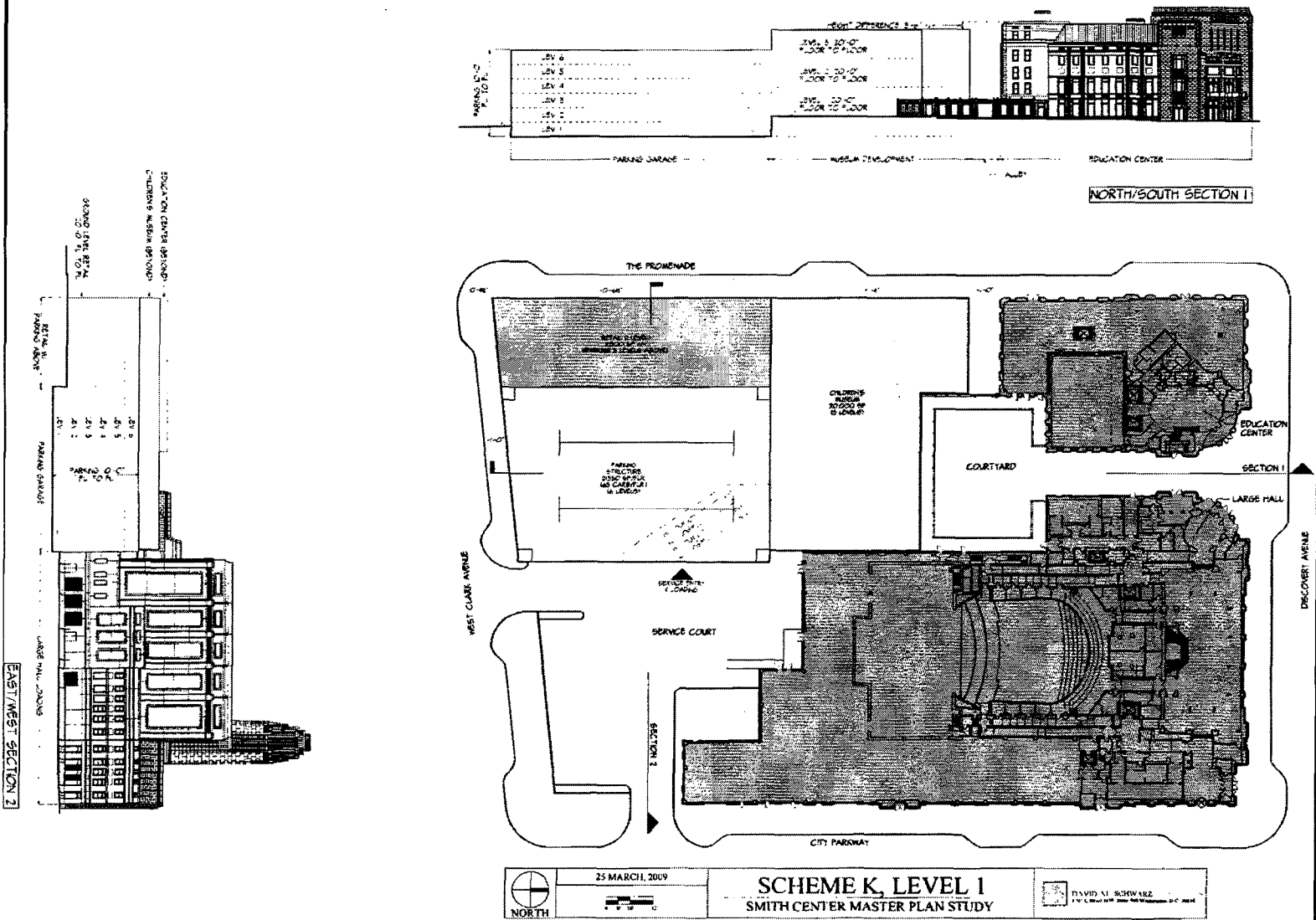


Exhibit "D" – List of Due Diligence Documents Delivered to PAC

Union Park Environmental Disclosure Documents

Electronic Documents on Two Compact Discs

<u>Identifier</u>	<u>Title/Text Reference</u>
01	01) Preliminary Title Report, Lawyers Title Company.pdf, June 17, 2004 02) CPV Vesting Deed.pdf
02	ALTA Survey – G.C. Wallace, June 28, 2002 01) G. C. Wallace - 61-Acre ALTA Survey pg1 2002.pdf 02) G.C. Wallace - 61-Acre ALTA Survey pg2 2002.pdf 03) G.C. Wallace - ALTA Survey Easement Docs 1.pdf 04) G.C. Wallace - ALTA Survey Easement Docs 2.pdf
03	As-Built Maps - Bonneville, Grand Central Parkway and Ogden, 1992, 1993, 1995, 1999, & 2000 01) Bonneville Ave.pdf 02) Main and Bonneville Intersection.pdf 03) Ogden Avenue.pdf 04) Parkway Center.pdf
04	Remedial Action Plan Site Characterization Investigation and Recommended Remedial Action Plan, July 29, 1989 -Appendices Appendices.tif, Appendix A - Summary of Buried Disposal Area Investigation.tif Appendix B - Investigative Procedures.tif Appendix C - Chain-of-Custody Records.tif Appendix D - Field and Laboratory QA&QC Program.tif Appendix E - Health and Safety Plan.tif Appendix F - Regional Geology and Hydrogeology.tif Appendix G - Exploratory Boring Logs.tif Appendix H - Soil and Hydrogeologic Conditions By Area.tif Appendix I - Gauging Data and Hydrographs.tif Appendix J - Soil Laboratory Data Reports.tif Appendix K - Ground-Water Laboratory Data Reports.tif Appendix L - Maps of Approx Dist of Soils Containing PH.tif Appendix M - Observed Versus Actual Thickness of Liquid Hydrocarbon.tif Appendix N - Liquid Hydrocarbon Volume Estimates.tif Appendix O - Air Quality Monitoring Report.tif Appendix P - Report of Industrial Hygiene Evaluation.tif Appendix Q - Desert Research Institute Report.tif Appendix R - Health Risk Assessment.tif Appendix S - USPCI Report of Oil Recovery Operations.tif OIL RECOVERY SYSTEM.TIF -Table of Contents and Executive Summary.tif - Sect 1 Introduction.tif - Sect 2 Purpose & Scope.tif - Sect 3 Site Background.tif - Sect 4 Hydrocarbon Contamination.tif

- Sect 5 Lead Contamination.tif
- Sect 6 Assessment of Potential Mobility and Fate of Contaminants.tif
- Sect 7 Health Risk Assessment.tif
- Sect 8 Site Remediation Criteria.tif
- Sect 9 Recommended Remedial Action.tif
- PLATE 01.TIF, PLATE 02.TIF, PLATE 03.TIF, PLATE 04.TIF, PLATE 05.TIF,
PLATE 06.TIF, PLATE 07.TIF, PLATE 08.TIF, PLATE 09.TIF, PLATE 10.TIF,
PLATE 11.TIF, PLATE 12.TIF, PLATE 13.TIF, PLATE 14.TIF
- 01) Final Remedial Action Plan 06-5-1992.pdf
- 02) Addendum I to RAP 08-18-1992.pdf
- 03) Request For Final Closure 10-06-1997.pdf
- 04) Depart of the Army Letter 12-09-2003.pdf
- 05) Interim Closure Report of Rem Action 09-27-93.pdf
- 06) NDEP Letter 03-26-1998.pdf
- 07) NDEP Remediation Requirements Sept 10, 1991.pdf
- 08) Phase 1 Env Site Assess Northern Tract 11-10-2000.pdf
- 09) Phase 1 Env Site Assess Southern Tract 11-10-2000.pdf
- 10) Converse Risk Assessment Addendum - arsenic evaluation final - 07-03-2007.pdf
- 11) Kleinfelder Soil and water management plan - arsenic addendum final 7-5-07.pdf
- 05 Plystadium Agreement
 - 01) Plystadium Agreement.pdf
 - 02) Amended and Restated Mem of Rights.pdf
 - 03) Estoppel Certificate.pdf
 - 04) Termination of Mem of Repurchase Option.pdf
 - 05) Trustee's Deed - Lehman to PAMI.pdf
 - 06) Grant Bargain Sale Deed UPRR Ply Stadium
- 06 Pollution Legal Liability Select
 - Pollution Legal Liability Select Policy.pdf
- 07 Environmental Risk Management – Converse Consultant, August 23, 2000
 - 01) Environmental Risk Management 08-23-2000.pdf
 - 02) Risk-Based Evaluation 09-24-2002.pdf
 - 03) Hydrocarbon Free Product Plumes Map.pdf
 - 04) Soil Impact Map.pdf
- 08 Trenching Exercise – Converse Consultants.pdf, Sept 11, 2002
- 09 Terracon Primary Theater Project & Primary Theater Project Environmental Site Assessment.pdf – March 26,
2003 & April 2, 2003
 - Phaselexec.pdf
 - Phasellexec.pdf
- 10 Preliminary Geotechnical Studies – Converse Consultants.pdf, June 27, 2002
 - Northern Prelim. Geotech.pdf
 - Southern Prelim. Geotech.pdf
- 11 Groundwater Monitoring Reports
 - Abandoned Wells July 2004
 - Abandoned Wells July 2004.pdf
 - Completion of Well Plugging Abandonment Former Las Vegas Rail Yard.htm
 - 01) 2nd Quarter 1991 Groundwater Report.pdf
 - 02) 2nd Quarter 2001 Groundwater Report.pdf
 - 03) 3rd Quarter 2001 Groundwater Report.pdf

04) 4th Quarter 2001 Groundwater Report.pdf
05) 1st Quarter 2002 Groundwater Report.pdf
06) 2nd Quarter 2002 Groundwater Report.pdf
07) 1st Half 2002 Semi-annual Compliance Report.pdf
08) 3rd Quarter 2002 Groundwater Report.pdf
09) 4th Quarter 2002 Groundwater Report.pdf
10) 1st Half 2003 Groundwater Report.pdf
11) 1st Half 2003 Semi-annual Compliance Report.pdf
12) 2nd Half 2003 Groundwater Report.pdf
13) 2nd Half 2003 Semi-annual Compliance Report.pdf
14) 1st Half 2004 Groundwater Report.pdf
15) 1st Half 2004 Semi-annual Compliance Report.pdf
16) 2nd Half 2004 Groundwater Report.pdf
17) 2nd Half 2004 Semi-annual Compliance Report.pdf
18) 1st Half 2005 Groundwater Report.pdf
19) 1st Half 2005 Semi-annual Compliance Report.pdf
TABLE 2 Groundwater Analytical Data 06-16-2004.xls
UP letter Jan 7 2004.tif
Well Monitoring Modification Plan 05-06-2004.tif

12

Maps

01) Union Park Concentration.pdf
02) Union Park Contamination.pdf
03) Union Park remediation.pdf
04) Remediation Depth.jpg

Exhibit "E" – Streets to Be Installed by City

23596\1\1260537.7

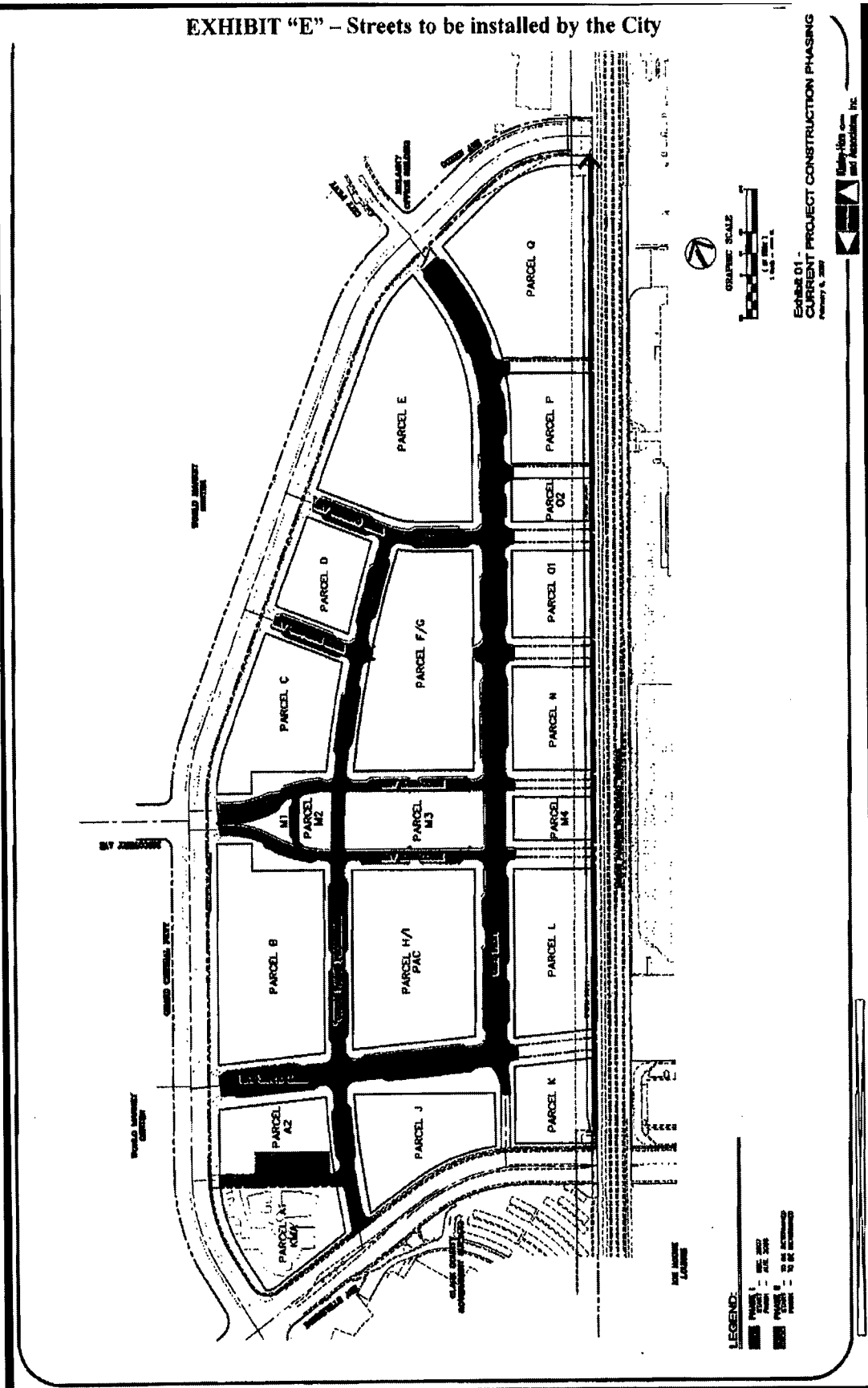


Exhibit "F"
CERTIFICATE
DISCLOSURE OF OWNERSHIP/PRINCIPALS

1. Definitions

"City" means the City of Las Vegas.

"City Council" means the governing body of the City of Las Vegas.

"Contracting Entity" means the individual, partnership, or corporation seeking to enter into a contract or agreement with the City of Las Vegas.

"Principal" means, for each type of business organization, the following: (a) sole proprietorship – the owner of the business; (b) corporation – the directors and officers of the corporation; but not any branch managers of offices which are a part of the corporation; (c) partnership – the general partner and limited partners; (d) limited liability company – the managing member as well as all the other members.

2. Policy

In accordance with Resolution 79-99 and 105-99 adopted by the City Council, Contracting Entities seeking to enter into certain contracts or agreements with the City of Las Vegas must disclose information regarding ownership interests and principals. Such disclosure generally is required in conjunction with a Request for Proposals (RFP). In other cases, such disclosure must be made prior to the execution of a contract or agreement.

3. Instructions

The disclosure required by the Resolutions referenced above shall be made through the completion and execution of this Certificate. The Contracting Entity shall complete Block 1, Block 2, and Block 3. The Contracting Entity shall complete either Block 4 or its alternate in Block 5. Specific information, which must be provided, is highlighted. An Officer or other official authorized to contractually bind the Contracting Entity shall sign and date the Certificate, and such signing shall be notarized.

4. Incorporation

This Certificate shall be incorporated into the resulting contract or agreement, if any, between the City and the Contracting Entity. Upon execution of such contract or agreement, the Contracting Entity is under a continuing obligation to notify the City in writing of any material changes to the information in this Certificate. This notification shall be made within fifteen (15) days of the change. Failure to notify the City of any material change may result, at the option of the City, in a default termination (in whole or in part) of the contract or agreement, and/or a withholding of payments due the Contracting Entity.

**CERTIFICATE - DISCLOSURE OF OWNERSHIP/PRINCIPALS
(CONTINUED)**

Block 1	<u>Contracting Entity</u>
Name: Las Vegas Performing Arts Center Foundation Address 241 West Charleston Blvd., Suite 111, Las Vegas, NV 89102 Telephone: 702-614-0109 EIN or DUNS: EIN 88-0361875	

Block 2	Description
Subject Matter of Contract/Agreement: The Smith Center for the Performing Arts RFP #: 	

Block 3	Type of Business
☐ Individual ☐ Partnership ☐ Limited Liability Company ☒ Corporation	

Block 4	<u>Disclosure of Ownership and Principals</u>		
In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.			
	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1.	Don Snyder	241 West Charleston Blvd., #111 Las Vegas, NV 89102	702-614-0109
2.	Dr. Keith Boman	601 South Rancho, Suite D28 Las Vegas, NV 89106	702-383-0677
3.	Kim Sinatra	3131 Las Vegas Blvd., So Las Vegas, NV 89109	702-770-2112
4.	Charles Atwood	One Howard Hughes Drive, No 604N Las Vegas, NV 89169	(702) 804-5232
5.	Gary Jacobs	3600 Las Vegas Blvd. South Las Vegas, NV 89109	702-693-7129
6.	Scott MacTaggart	530 Las Vegas Blvd. South Las Vegas, NV 89101	702-385-3373
7.	Senator Richard Bryan	1700 Bank of America Plaza 300 South 4 th Street Las Vegas, NV 89101	702-383-8916

8.	Alan Feldman	3260 South Industrial Building C Las Vegas, NV 89109	(702) 650-6947
9.	Robert Forbuss	2436 High Vista Circle Henderson, NV 89014	702-379-4400
10.	Nancy Houssels	2580 Sorrell Street Las Vegas, NV 89146	702-252-3270
11.	Richard Plaster	801 South Rancho Suite E-4 Las Vegas, NV 89106	702-671-6000
12.	Jacquelyn Shropshire	2877 Paradise Road, #1601 Las Vegas, NV 89109	702-838-4933
13.	Roger P. Thomas	680 Pilot Road, Suite 1 Las Vegas, NV 89119	702-770-5050
14.	Myron Martin	241 West Charleston Blvd. #111 Las Vegas, NV 89102	702-614-0109

The Contracting Entity shall continue the above list on a sheet of paper entitled "Disclosure of Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets: _____

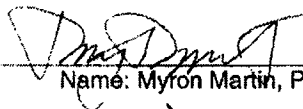
Block 5 **Disclosure of Ownership and Principals - Alternate**

If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this Certificate in lieu of providing the information set forth in Block 4 above. A description of such disclosure documents must be included below.

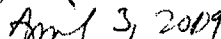
Name of Attached Document: _____

Date of Attached Document: _____ Number of Pages: _____

I certify, under penalty of perjury, that all the information provided in this Certificate is current, complete, and accurate. I further certify that I am an individual authorized to contractually bind the above named Contracting Entity.

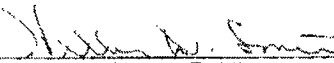


Name: Myron Martin, President


Date: April 2, 2009

Subscribed and sworn to before me this 3
day of April

_____, 2009.



Notary Public

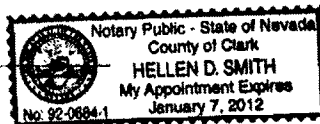


Exhibit “G” – Form of Lease and Operating Agreement

THIS LEASE AND OPERATING AGREEMENT (this “**Lease**”) is entered into as of _____, 20__ (the “**Commencement Date**”) by and between the City of Las Vegas, Nevada, a political subdivision of the State of Nevada (“**Landlord**”), and Las Vegas Performing Arts Center Foundation, a Nevada nonprofit corporation (“**Tenant**”). Landlord and Tenant are sometimes collectively referred to herein as the “**Parties**”.

RECITALS

WHEREAS, Landlord owns certain real property consisting of an approximately 61-acre site located in the Parkway Project in downtown Las Vegas, Clark County, Nevada commonly referred to as Union Park depicted on the map attached hereto as **Exhibit “A”** and incorporated herein by this reference (“**Union Park**”);

WHEREAS, pursuant to NRS 244A.860 (the “**Act**”), the Board of County Commissioners of Clark County Nevada (the “**Board**”), a political subdivision of the State of Nevada (“**County**”), by ordinance has imposed a fee upon the lease of a passenger car by a short-term lessor in the County in the amount of not more than two percent (2%) of the total amount for which the passenger car was leased, excluding any taxes or other fees imposed by a governmental entity (the “**Rental Car Fee**”); and

WHEREAS, the monies received by the County from the Rental Car Fee (the “**Pledged Rental Car Fees**”) must be used to pay the costs to acquire, improve, equip, operate and maintain within the County a performing arts center, or to pay the principal of, interest on or other payments due with respect to bonds issued to pay such costs, including bonds issued to refund bonds issued to pay such costs, or any combination thereof; and

WHEREAS, County (pursuant to the County Bond Law, NRS 244A.011 through 244A.065) and Landlord (pursuant to the Landlord Bond Law, NRS 268.672 through 268.740) are each authorized to acquire, improve, equip, operate and maintain a “building project” as defined in NRS 268.676 and 244A.019, respectively, and it is contemplated by the Parties that such performing arts center authorized to be financed in the County by the Act will be a “building project” as defined in NRS 268.676 and NRS 244A.019; and

WHEREAS, on June 1, 2006, Landlord and County entered into an Amended and Restated Interlocal Agreement Regarding the Distribution of Taxes for a Performing Arts Project (the “**Interlocal Agreement**”) whereby County will provide to Landlord the Pledged Rental Car Fees to enable Landlord to use all of the Pledged Rental Car Fees to acquire, improve, equip, operate and maintain such performing arts center within the County, or to pay the principal of, interest on or other payments due with respect to bonds (including the Bonds) issued to pay such costs, including bonds issued to refund bonds issued to pay such costs, or any combination thereof, all as set forth in the Interlocal Agreement; and

WHEREAS, Landlord and County intended that Landlord issue notes, bonds or other obligations secured wholly or in part by the Pledged Rental Car Fees pursuant to resolutions and ordinances of Landlord authorizing the issuance thereof (collectively, the “**Bond Ordinance**”) in order to fund, in part, the acquisition, establishment, construction or expansion of a performing arts center (which will be located in the County) and otherwise to use all of the Pledged Rental Car Fees distributed to Landlord to pay the costs to acquire, improve, equip, operate and maintain such performing arts center, or to pay the principal of, interest on or other payments due with respect to the Bonds and other bonds issued to pay such costs, including bonds issued to refund bonds issued to pay such costs, or any combination thereof; and

WHEREAS, pursuant to the Bond Ordinance Landlord has issued Bonds the proceeds of which have funded in part the design and construction of such performing arts center; and

WHEREAS, Landlord, City Parkway V, Inc. and Tenant entered into that certain Second Amended and Restated Agreement to Design, Construct and Lease a Performing Arts Center dated _____, 2009 (as may be further amended from time to time, the “**Design and Construction Agreement**”) whereby the parties thereto agreed to design and construct a performing arts center; and

WHEREAS, the construction of the performing arts center has been completed pursuant to the Design and Construction Agreement and pursuant to the Design and Construction Agreement, the Parties are obligated to enter into this Lease whereby the Landlord shall lease to Tenant, and Tenant shall lease from the Landlord, the performing arts center.

NOW, THEREFORE, in consideration of the terms, covenants, conditions and provisions hereinafter set forth and other good and valuable consideration, it is hereby mutually

agreed by and between Landlord and Tenant that the foregoing recitals are true and correct, and further agreed as follows:

AGREEMENT

SECTION 1 DEFINITIONS

1.1 **Definitions.** As used herein the following terms shall have the following definitions:

“**Act**” shall have the meaning set forth in the second Recital.

“**Activity and Use Limitations**” means legal or physical restrictions or limitations, on the use of, or access to, a site or facility, such as institutional or engineering controls and Hazardous Substances monitoring in soil and groundwater, that are intended to reduce or eliminate potential exposure to Hazardous Substances present in the soil or groundwater on or within the Premises Site, or to prevent activities that could interfere with the effectiveness of a cleanup remedy approved by the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, or recommended by the Risk Assessment in order to ensure maintenance of a condition for the Premises of no significant risk to public health or the environment.

“**Adjustment Date**” shall have the meaning set forth in 14.1.

“**Alterations**” shall have the meaning set forth in **Section 7** herein.

“**Applicable Environmental Guidance**” means all Applicable Laws, Activity and Use Limitations, Environmental Laws, the Soil and Groundwater Management Plan, and the Risk Assessment. To the extent Applicable Environmental Guidance is in conflict as to any matter affecting human health or the environment, including the extent to which Hazardous Substances in soil or groundwater should be removed or remediated or both to acceptable levels of risk for the Project, the Applicable Environmental Guidance that is most protective of human health and the environment shall be the Applicable Environmental Guidance for purposes of this Lease.

“**Applicable Laws**” shall have the meaning set forth in **Section 5.1**.

“**Board**” shall have the meaning set forth in the second recital.

“**Bonds**” means those bonds issued by Landlord pursuant to the Bond Ordinance the proceeds of which were used in the construction, improvement or equipment of the Premises or

any improvements or appurtenances therefore pursuant to the Design and Construction Agreement, any additional bonds issued by Landlord to finance improvements of, additions to or equipment for the Premises or any other improvements or appurtenances therefore, and any bonds that refund or refinance any bonds described in this definition.

“Bond Ordinance” shall have the meaning set forth in sixth Recital.

“Charge” shall have the meaning set forth in **Section 12**.

“City Contingency Amount” shall have the meaning set forth in the Design and Construction Agreement.

“City Reimbursement Amount” shall have the meaning set forth in **Section 6.3(c)**.

“Commencement Date” shall have the meaning set forth in the first paragraph of this Lease.

“County” shall have the meaning set forth in the second Recital.

“Covered Hazardous Substances” shall have the meaning set forth in **Section 5.4**.

“CPI-U” means the Consumer Price Index for All Urban Wage Earners and Clerical Workers, Los Angeles/Riverside/Orange County, all items (1982-84 = 100), as issued by the U.S. Department of Labor, Bureau of Labor Statistics. If the Department of Labor ceases to issue the CPI-U, Landlord may select a substitute index or measure of cost of living to calculate the appropriate cost of living increase.

“CPI-U Percentage Increase” means the percentage obtained by dividing (a) the difference (but not less than zero) between (i) the CPI-U most recently published prior to the Adjustment Date and (ii) the CPI-U published most recently preceding the date that is twelve (12) months prior to the Adjustment Date by (b) the CPI-U published most recently preceding the date that is twelve (12) months prior to the Adjustment Date.

“Damaged” shall have the meaning set forth in **Section 14.1**.

“Deed” shall have the meaning set forth in **Section 22.1**.

“Default Rate” shall have the meaning set forth in **Section 3.2**.

“Design and Construction Agreement” shall have the meaning set forth in the eighth Recital.

“Environmental Condition” means (a) a Release or threat of a Release of any Hazardous Substances affecting the Premises for which investigation, response, evaluation, treatment, removal, remediation, monitoring, abatement or any type of corrective action is required under

any Environmental Laws, (b) any condition or activity at the Premises that is not in compliance with any Environmental Laws, and (c) any condition or activity at the Premises which results in or forms the basis for a claim by any Governmental Authority or citizen or citizen group for compliance, injunctive relief, damages (including, without limitation, natural resources or toxic tort damages), penalties, or removal, response, remedial or other action pursuant to any Environmental Laws and/or a third party seeking damages and/or injunctive relief related to actual or alleged personal injury, medical monitoring, wrongful death and/or property damage.

“Environmental Laws” means any past, present or future federal, state or local law, statute, rule, regulation, code, ordinance, order, decree, judgment, injunction, notice, policy, or binding agreement, and all amendments thereto, issued, promulgated, or entered into by any governmental authority, relating in any way to the environment, the preservation, degradation, loss, damage, restoration or reclamation of natural resources, waste management, health, industrial hygiene, safety matters, Environmental Condition or Hazardous Substances.

“Excess Fees” shall have the meaning set forth in **Section 6.3(b)** herein.

“Governmental Authority” or “Governmental Authorities” means the United States of America, the State of Nevada, the City of Las Vegas, Clark County, any other community development district and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over the Premises (or any portion thereof).

“Hazardous Substances” means any product, byproduct, compound, substance, chemical, material or waste, including, without limitation, asbestos, solvents, degreasers, heavy metals, refrigerants, nitrates, urea formaldehyde, polychlorinated byphenyls, dioxins, petroleum and petroleum products, fuel additives, and any other material, whose presence, characteristics, nature, quantity, intensity, existence, use, manufacture, possession, handling, disposal, transportation, spill, Release, threatened Release, treatment, storage, production, discharge, emission, remediation, cleanup, abatement, removal, migration, or effect, either by itself or in combination with other materials is or is allegedly: (a) injurious, dangerous, toxic, hazardous to human or animal health, aquatic or biota life, safety or welfare or any other portion of the environment; (b) regulated, defined, listed, prohibited, controlled, studied or monitored in any

manner by any Governmental Authority or Environmental Laws; or (c) a basis for liability to any Governmental Authority or third party under any regulatory, statutory or common law theory.

“Initial Parking Facilities” shall have the meaning set forth in **Section 9.1(a)**.

“Initial Parking Term” shall have the meaning set forth in **Section 9.1(b)**.

“Interlocal Agreement” shall have the meaning set forth in the fifth Recital.

“Known Hazardous Substances” means those Hazardous Substances described in the Project Information, including without limitation, petroleum hydrocarbons, metals, volatile organic compounds, semi-volatile organic compounds, and polychlorinated byphenyls.

“Landlord” shall have the meaning set forth in the first paragraph of this Lease.

“Landlord Events of Default” shall have the meaning set forth in **Section 20.1**

“Landlord Parties” shall have the meaning set forth in **Section 15.1(a)**.

“Lease” shall have the meaning set forth in the first paragraph of this Lease.

“Lease Term” shall have the meaning set forth in **Section 2.2** hereof.

“Losses” shall have the meaning set forth in **Section 15.1(a)**.

“Major Damage” shall have the meaning set forth in **Section 14.2(a)**.

“Minor Alterations” means all nonstructural Alterations other than any single nonstructural Alteration which costs in excess of \$1,000,000, which amount shall be increased by the applicable CPI-U Percentage on the Adjustment Date.

“Minor Damage” shall have the meaning set forth in **Section 14.1**.

“NRS” means the Nevada Revised Statutes as in effect from time to time.

“Operating Budget” shall have the meaning set forth in **Section 6.4**.

“Owners’ Association” shall have the meaning provided to such term in the Design and Construction Agreement.

“Parking Facilities” shall have the meaning set forth in **Section 9.1(a)**.

“Parking Property” shall have the meaning set forth in **Section 9.1(a)**.

“Parties” shall have the meaning set forth in the first paragraph of this Lease.

“Permitted Use” means the operation by a not-for-profit entity qualifying pursuant to Section 501(c)(3) of the Tax Code of a performing arts center and operations reasonably related thereto, provided, however that in no event shall any use of the Premises exceed the Private Use Limitation.

“Pledged Rental Car Fees” shall have the meaning set forth in the third Recital.

“Premises” means that parcel of real property legally described on Exhibit “B” attached hereto and the Primary Theater Project constructed on such parcel of real property, including any and all other improvements now or hereafter located thereon and any and all fixtures and personal property used in connection with the operation of such Primary Theater Project and all singular appurtenances, rights, privileges, and easements thereunto appertaining.

“Primary Theater Project” shall have the meaning provided to such term in the Design and Construction Agreement.

“Private Use Limitation” means that no more than nine percent (9%) of the value of the space in the Primary Theater Project which has been financed with the Bonds can be used by entities other than (i) not-for-profit entities qualifying pursuant to Section 501(c)(3) of the Tax Code in activities that are not unrelated trades or businesses for those entities determined by applying Section 513 of the Tax Code, and (ii) state and local governments.

“Project Information” means those disclosures and all studies, reports and other information set forth in **“Exhibit D”** to the Design and Construction Agreement.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any Hazardous Substances into the environment, including the abandonment, discarding, burying or disposal of barrels, tanks, containers and other receptacles containing any Hazardous Substances but does not mean any subsurface passive migration or leaching of any Hazardous Substances existing on the Premises as of the Commencement Date.

“Rent” shall have the meaning set forth in **Section 3.1**.

“Rental Car Fee” shall have the meaning set forth in the second Recital.

“Repair” shall have the meaning set forth in **Section 14.1**.

“Restoration Conditions” shall have the meaning set forth in **Section 14.2(b)**.

“Risk Assessment” means the risk assessment prepared pursuant to **“Exhibit B”** (Project Environmental Management) to the Design and Construction Agreement.

“Soil and Groundwater Management Plan” means the soil and groundwater management plan prepared and approved pursuant to **“Exhibit B”** (Project Environmental Management) to the Design and Construction Agreement.

"Substitute Parking Facilities" shall have the meaning set forth in **Section 9.1(c)**.

"Tax Code" shall have the meaning set forth in **Section 5.2**.

"Tenant" shall have the meaning set forth in the first paragraph of this Lease.

"Tenant Events of Default" shall have the meaning set forth in **Section 19.1**.

"Tenant Indemnified Parties" shall have the meaning set forth in **Section 15.3**.

"Tenant Parties" shall have the meaning set forth in **Section 9.1**.

"Tenant's Property" shall have the meaning set forth in **Section 4.3**.

"Transfer Documents" shall have the meaning set forth in **Section 22.1**.

"Union Park" shall have the meaning set forth in the first Recital.

"Union Park Master Association" shall have the meaning provided to such term in the Design and Construction Agreement.

SECTION 2 DEMISE OF PREMISES AND TERM

2.1 Demise. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, to have and to hold the Premises during the Lease Term and subject to the terms and conditions herein contained.

2.2 Term. This Lease shall be effective and the term of the Lease (the "**Lease Term**") shall commence on the Commencement Date and continue until 11:59 p.m. on the day before the ninety-ninth (99th) anniversary of the Commencement Date.

2.3 Holding Over. Should Tenant hold possession of the Premises after the expiration or earlier termination of the Lease Term, such holding over shall create a tenancy from month to month only, upon the same terms and conditions set forth herein.

SECTION 3 RENT

3.1 Rent. Tenant shall pay to Landlord annual rent for the Premises in the amount of One Dollar (\$1.00), payable on the Commencement Date and thereafter on each anniversary of the Commencement Date during the Lease Term (the "**Rent**"). Tenant hereby covenants and agrees to pay Rent to Landlord as provided herein, without prior demand, deduction or set-off whatsoever, in lawful money of the United States of America at such place or places as may from time to time be designated in writing by Landlord.

3.2 Default Rate. If Tenant fails to pay, when due and payable, any Rent or any other amounts or charges to be paid by Tenant to Landlord hereunder within ten (10) days after written

notice from Landlord that the amount is past due, such unpaid amounts shall bear interest from the due date thereof to the date of payment at a rate equal to the prime rate of interest last ascertained by the Commissioner of Financial Institutions of the State of Nevada pursuant to NRS 99.040, plus five (5) percentage points (the "**Default Rate**"). Additionally, if Landlord fails to pay, when due and payable, any amounts or charges to be paid by Landlord hereunder within ten (10) days after written notice from Tenant that the amount is past due, such unpaid amounts shall bear interest from the due date thereof to the date of payment at the Default Rate.

3.3 **Triple Net Lease.** Tenant hereby acknowledges that this Lease is intended to be a fully net lease and that all costs related to the ownership, operation and maintenance of the Premises shall be borne and paid exclusively by Tenant, including all utilities, taxes, assessments (including those levied by the Owners' Association so long as they are on a reduced fee structure for nonprofit organizations), insurance, repairs, restoration and maintenance with respect to the Premises; provided, however, that Tenant shall not be responsible for the maintenance or repair of Union Park or any portion thereof (other than the Premises) and shall not be required to reimburse Landlord for any costs incurred by Landlord in its maintenance and repair thereof.

SECTION 4

CONDITION OF PREMISES AND SURRENDER

4.1 Condition of Premises; Completion of Duties under Design and Construction Agreement.

(a) Tenant agrees and acknowledges that it has been involved in all aspects of the design and construction of the Premises. In connection therewith, Tenant agrees as follows: (i) Tenant is fully aware of the physical condition of the Premises and accepts the Premises "as-is", (ii) except for the representations and warranties set forth herein, Tenant is not relying on representations or warranties made by Landlord or Landlord's agents, if any, (iii) Tenant is aware of the presence of certain Hazardous Substances on the Premises and accepts the Premises subject to the existence of such Hazardous Substances, (iv) Landlord shall not be liable to Tenant, in any event whatsoever, to correct any latent or patent defects in the Premises, and (v) any and all information provided by Landlord to Tenant, including, without limitation, those studies, reports, and other documents relating to Hazardous Substances in soil and groundwater within and without the Premises, have been delivered without representation or warranty.

(b) Tenant and Landlord both mutually acknowledge and agree that both Parties have performed their respective obligations under the Design and Construction Agreement and that by entering into this Lease they have no further obligations under the Design and Construction Agreement except (i) to the extent as may be provided in a separate instrument signed by both Tenant and Landlord and (ii) for those obligations which survive pursuant to the terms of the Design and Construction Agreement.

4.2 **Design/Contractor Warranties.** Tenant agrees that Landlord shall have no responsibility or obligation whatsoever in connection with the condition of the Premises at any time, including any problems or defects (whether patent or latent) related to the design and

construction of the Premises. Landlord hereby assigns to Tenant any of Landlord's rights or warranties under the Design and Construction Agreement and any other design or construction contracts or otherwise related to the design and construction of the Premises to cause the correction or repair of any problems or defects related to the design and construction of the Premises. Tenant agrees at its sole cost and expense to diligently pursue any such rights or warranties pursuant to such design and construction contracts in order to correct or repair any such problems or defects related to the design and/or construction of the Premises.

4.3 Surrender of the Premises. Upon the expiration or earlier termination of this Lease, Tenant shall, at its sole cost and expense, within fifteen (15) days after receipt of written notice, remove all personal property and trade fixtures which Tenant has installed or placed in or on the Premises (all of which are hereinafter collectively referred to as "**Tenant's Property**"), from the Premises and repair all damage thereto resulting from such removal and Tenant shall thereupon surrender the Premises. In the event Tenant shall fail to remove any of Tenant's Property, Landlord shall retain such Tenant's Property without any payment or offset therefore.

SECTION 5 USE OF PREMISES

5.1 Purpose; Comply with Laws. Tenant may use and occupy the Premises for the Permitted Use only and no other use whatsoever. Tenant shall, at all times during the Lease Term, comply with all federal, state and local governmental rules, policies, permits, authorizations, regulations, ordinances, codes, statutes and laws, now or hereafter in effect pertaining to the Premises or any party's use thereof (collectively, the "**Applicable Laws**").

5.2 Tax Covenant. Tenant and Landlord acknowledge that the Bonds have been issued as tax-exempt Bonds under the provisions of the Internal Revenue Code of 1986, as amended (the "**Tax Code**"). Landlord and Tenant agree that they will not take any action or omit to take any action with respect to the Bonds, the proceeds thereof, any of Tenant's funds or the facilities financed with the proceeds of the Bonds (including, without limitation, exceeding the Private Use Limitation) if the act or omission (i) would cause interest on the Bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Tax Code, or (ii) would cause interest on the Bonds to lose its exclusion from alternative minimum taxable income as defined in Section 55(b)(2) of the Tax Code, except to the extent such interest is required to be included in the adjusted earnings adjustment applicable to corporations under Section 56 of the Tax Code, in calculating corporate alternative minimum taxable income.

5.3 Environmental Conditions.

5.3.1 No Hazardous Substances. Tenant shall not have any liability whatsoever under this Lease to Landlord for any Hazardous Substances generated, stored, manufactured, produced, released, spilled, present, located, discharged or disposed of on, under, beneath, or within the soil, subsurface, surface water, or ground water of the Premises prior to or as of the Commencement Date, except as set forth in this **Section 5.3** and **Section 5.4**. After the Commencement Date, Tenant shall not use the Premises, or permit any entity or person to use

the Premises, for the generation, storage, manufacture, production, releasing, discharge, or disposal or any Hazardous Substances; provided, however, Tenant shall be permitted to store, use and dispose of Hazardous Substances to the extent packaged and contained in theatrical, cleaning or office products for consumer use in quantities for ordinary day-to-day use. If Tenant knows, or has reasonable cause to believe, that Hazardous Substances have come to be located in, on, under or about the Premises, other than Known Hazardous Substances affecting the Premises, Tenant shall immediately give Landlord written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, license, claim, action, or proceeding given to, or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, Hazardous Substances including but not limited to all such documents as may be involved in any reportable use involving the Premises. If any Hazardous Substances, other than Known Hazardous Substances, are present in or about the Premises, Landlord shall have the right upon twenty-four (24) hour advance written notice to Tenant to engage a consultant to inspect the Premises and to review Tenant's use of Hazardous Substances and all of Tenant's practices with respect to its use of such Hazardous Substances. Tenant shall cooperate in all respects with such inspections and reviews. All costs of such consultants shall be reimbursed to Landlord within fifteen (15) days of written demand therefor by Landlord. No termination, cancellation or release agreement entered into by Landlord and Tenant shall release Tenant from its obligations under this **Section 5.3**, unless specifically so provided in such agreement.

5.3.2 Compliance with Applicable Environmental Guidance. Tenant, at Tenant's sole cost and expense, shall at all times during the Lease Term substantially comply with Applicable Environmental Guidance. Such costs and expenses include but are not limited to all costs and expenses for ongoing diversion, treatment, and disposal of groundwater, Risk Assessment compliance, monitoring of Known Hazardous Substances, and maintenance of any Activity and Use Limitations.

5.4 Environmental Indemnity. Tenant shall have no indemnification obligation in connection with any Hazardous Substances generated, stored, manufactured, produced, released, spilled, present, located, discharged or disposed of on, under, beneath, or within the soil, subsurface, surface water, or ground water of the Premises prior to or as of the Commencement Date, except as set forth below in this **Section 5.4**. Tenant shall indemnify, protect, defend and hold Landlord, its agents, employees, lenders and ground lessor, if any, and the Premises, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits and attorneys' and consultants' fees arising out of or otherwise involving: (i) Tenant's failure to use or occupy the Premises in a manner consistent with Applicable Environmental Guidance; or (ii) any Hazardous Substances brought onto the Premises by or for Tenant or by anyone under Tenant's control after the Commencement Date and during the Lease Term ("Covered Hazardous Substances"). Tenant's indemnification obligations under this **Section 5.4** shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Tenant during the Lease Term, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation and/or abatement of any Covered Hazardous Substances. No termination, cancellation or release agreement entered into by Landlord and Tenant shall release

Tenant from its obligations under this **Section 5.4**, unless specifically so provided in such agreement. Tenant's indemnity obligations provided in this **Section 5.4** shall include, without in any way limiting the foregoing:

- (i) All reasonable costs, expenses and attorneys' fees incurred or sustained by any party in making any investigation on account of any claim, demand, loss, liability, cost, charge, suit, order, judgment or adjudication, in prosecuting or defending any action brought in connection therewith, in obtaining or seeking to obtain a release therefrom and in enforcing any of the agreements herein contained;
- (ii) Liability for required costs and expenses of abatement, correction or clean-up, fines, damages, response costs or penalties pursuant to the provisions of any Applicable Laws or Environmental Laws; and
- (iii) Liability for personal injury or Premises damage arising under any statutory or common-law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance, or for the carrying on of an abnormally dangerous activity, and response costs.

Tenant's indemnity in this **Section 5.4** shall survive termination of this Lease and shall be in addition to and does not supersede the indemnity of Landlord by Tenant in Section 6B of "**Exhibit B**" to the Design and Construction Agreement (the "**Section 6B Design Agreement Indemnity**"), which Section 6B Design Agreement Indemnity shall expressly survive the execution and termination of this Lease.

5.5 **Inspection.** Landlord or its agents, employees or contractors may enter the Premises during normal business hours after twenty-four (24) hours prior written notice to Tenant (except, in the case of emergency no such notice will be required) to examine the Premises to determine compliance with the terms of this Lease.

5.6 **Landlord Use.** Landlord shall have the right to use the Premises from time to time for events in connection with Landlord's municipal function or as otherwise desired by Landlord provided that each use of the Premises by Landlord (i) shall not interfere with any scheduled events at the Premises, (ii) shall be at the sole cost and expense of Landlord, including, without limitation, the reimbursement of Tenant's cost relating to such use and (iii) that Landlord shall coordinate such use of the Premises with Tenant including providing reasonable advance notice thereof. Landlord and Tenant agree that they will attempt to schedule Landlord's use of the Premises annually in connection with the Landlord's review of the Operating Budget.

SECTION 6 ADDITIONAL COVENANTS OF LANDLORD AND TENANT

6.1 No New Encumbrances. Landlord shall not, without Tenant's prior approval, cause or permit the Premises to become subject to any liens or encumbrances in addition to those recorded against the Premises as of the Commencement Date.

6.2 Operating Endowment. Tenant has received a gift from the Reynolds Foundation of an endowment in the amount of \$45,000,000, the earnings of which shall be used for the operation and maintenance of the Premises. Tenant agrees to comply with all the terms and conditions of the endowment and to use the earnings thereon solely in connection with the operation and maintenance of the Premises. Tenant agrees not to materially change the permitted uses of the Operating Endowment without the written consent of the Landlord.

6.3 Compliance with Budget Law and Excess Fees.

(a) All of the Landlord's obligations under this Lease are subject to the governing body of Landlord lawfully making an appropriation to pay the amount needed to fulfill such obligations and are binding upon Landlord only to the extent such an appropriation is made. Nothing contained in this Lease obligates Landlord to make any such appropriation.

(b) Landlord agrees that any Pledged Rental Car Fees received by Landlord in excess of what is determined by Landlord to be needed to pay annual debt service on the Bonds (the "**Excess Fees**") shall be used only as permitted by NRS 244A.860(3) and the Interlocal Agreement. Landlord agrees that, subject to paragraph (a) immediately next above, Landlord's manager shall, in the budget presented to the governing body of Landlord for each of Landlord's fiscal years, show (i) any Excess Fees as being used for the purposes permitted by NRS 244A.860(3) and the Interlocal Agreement that are set forth in the Operating Budget and (ii) any other obligations of Landlord under this Lease which have a fiscal requirement on Landlord.

(c) Landlord shall pay Tenant any Excess Fees on a quarterly basis. Tenant agrees that any Excess Fees it receives from Landlord will be used first to pay all amounts necessary to satisfy all of Tenant's obligations under Tenant's credit facility. After Tenant's credit facility has been fully repaid, Tenant agrees that any additional Excess Fees it receives from Landlord will be used to pay to Landlord the sum of Twenty Million Dollars (\$20,000,000) plus the amount of the City Contingency Amount to the extent actually expended and used pursuant to Section 6.2(b) and Section 6.2(c) of the Design and Construction Agreement (provided such amount shall not exceed Five Million Dollars (\$5,000,000) in any event) (the "**City Reimbursement Amount**"), as reimbursement for funds that Landlord contributed for the construction of the Primary Theater Project on Tenant's behalf; provided, however, that Tenant shall not have to pay to City the City Reimbursement Amount to the extent that City has refinanced the Bonds and in connection therewith has been reimbursed for the City Reimbursement Amount or portion thereof. Thereafter, Tenant shall be free to use the Excess Fees for the purposes permitted by NRS 244A.860(3) and the Interlocal Agreement.

6.4 Annual Operating Budget. Tenant agrees that no later than February 1 of each year Tenant shall submit to Landlord an operating budget for the performing arts center for the twelve (12) month period commencing on the next July 1 (the "**Operating Budget**") showing in

detail reasonably acceptable to Landlord, Tenant's projected operating costs and revenues for such calendar year. Such budget shall set forth the amount of Excess Fees Tenant projects to use during such twelve (12) month period.

6.5 Interlocal Agreement. Pursuant to NRS Section 244A.860 and the Interlocal Agreement, Landlord assumed all responsibility for the acquisition, design, construction, improvement, equipment, operation and maintenance of the performing arts center and agreed to use the Pledged Rental Car Fees to pay the costs incurred for the acquisition, development, construction, operation and maintenance the performing arts center, or to pay the principal of, interest on or other payments due with respect to the Bonds and other bonds issued to pay such costs, including bonds issued to refund bonds issued to pay such costs, or any combination thereof. Pursuant to NRS Section 244A.860 and subject to and in accordance with the terms of this Lease, Landlord hereby delegates to Tenant, and Tenant hereby assumes from Landlord all responsibility for the design, equipment, operation and maintenance of the performing arts center and PAC agrees to use the Pledged Rental Car Fees that it receives from Landlord to pay the costs associated with such obligations.

SECTION 7 ALTERATIONS

Except for Minor Alterations, Tenant shall not make any alterations, additions, or improvements to the Premises (collectively "Alterations") without Landlord's prior written consent, which shall not be unreasonably withheld or conditioned, including, without limitation, any Alterations to the exterior of the Premises (including signage). Tenant shall deliver to Landlord, for Landlord's approval (which approval shall not be unreasonably withheld) prior to bidding any construction of the Alterations (except for Minor Alterations), a complete set of plans and specifications for the proposed Alterations (except for Minor Alterations), copies of contracts with general contractors, evidence of contractor's insurance and bonds, and all then necessary permits for such construction. Except for Minor Alterations, Landlord may require Tenant to provide demolition and/or lien and completion bonds in form and amount satisfactory to Landlord. Tenant shall promptly remove any Alterations constructed in violation of this **Section 7** promptly following Landlord's written demand therefore. All Alterations will be accomplished in a good and workmanlike manner, in conformity with all Applicable Laws, and by a contractor approved by Landlord which approval shall not be unreasonably withheld, provided that Landlord's approval of the contractor shall not be required for Minor Alterations. Landlord's approval of the plans, specifications and working drawings for any Alterations shall create no responsibility or liability on the part of Landlord for their completeness, design,

sufficiency, or compliance with all Applicable Laws. Except for Minor Alterations, upon completion of any such work, Tenant shall provide Landlord with “as built” plans, CADD drawings, copies of all construction contracts, and proof of payment for all labor and materials. All Alterations, including Minor Alterations, shall be made in compliance with and in accordance with NRS Chapter 338.

SECTION 8 UTILITIES

Landlord and Tenant acknowledge that this Lease is intended to be a fully net lease and that Tenant shall be responsible for all repairs required to the Premises and for the provision of all utilities at the Premises, including, but not limited to, water, sewage, trash removal, waste disposal, janitorial, electricity, telephone, security, and cleaning of the Premises, together with any taxes thereon. Tenant shall contract with and pay, directly to the appropriate supplier, the cost of all utilities and services supplied to the Premises.

SECTION 9 PARKING FACILITIES AND COMMON AREAS

9.1 Offsite Parking.

(a) At all times during the Lease Term, Landlord shall provide to Tenant, and to its agents, employees, servants, contractors, tenants, licensees, customers, and business invitees (collectively, the “**Tenant Parties**”), the use of 1,200 parking spaces in Union Park (the “**Parking Facilities**”). At all times during the Lease Term when Landlord or one of its affiliates owns the real property on which the Parking Facilities are located (collectively, the “**Parking Property**”), or any portion thereof, such Parking Facilities, or applicable portion thereof, (i) shall be for the use of Tenant and the Tenant Parties on weekends and after business hours on weekdays only during events; and (ii) may be used by Tenant and the Tenant Parties in a nonexclusive manner at all other times while the Parking Facilities are open. At all times during the Lease Term when Landlord or one of its affiliates does not own the Parking Property, or any portion thereof, such Parking Facilities, or applicable portion thereof, shall be for the nonexclusive use of Tenant and the Tenant Parties on weekends and after business hours on weekdays only during events. Notwithstanding anything herein to the contrary, concurrent with the execution of this Lease, Landlord and Tenant shall enter into a parking license agreement, in form and substance reasonably acceptable to Landlord and Tenant, whereby Landlord grants Tenant and the Tenant Parties the exclusive right to use the Parking Facilities, however they may be comprised in light of bonding requirements, on weekends and after business hours on weekdays only during events. The Parking Facilities will be subject to reasonable rules and regulations as Landlord or private parking garage owners, as applicable, may from time to time impose. At all times during the Lease Term, Landlord shall use commercially reasonable efforts

to provide the Parking Facilities in a location which is reasonably close in proximity to the front door of the performing arts center. Landlord intends to initially provide the Parking Facilities to Tenant at the location substantially consistent with Exhibit "F" attached hereto ("**Initial Parking Facilities**"). At all times during the Lease Term and during which Landlord or one of its affiliates owns the Parking Property, or any portion thereof, Landlord shall (A) keep and maintain in good order, condition and repair such Parking Facilities; and (B) shall manage, or shall utilize the services of a parking management company to manage, such Parking Facilities located thereon to ensure and enforce the exclusive parking rights granted to Tenant and the Tenant Parties hereby.

(b) During the first five (5) years following the Commencement Date ("**Initial Parking Term**"), Landlord shall provide the Parking Facilities to Tenant and the Tenant Parties at no charge to the Tenant or the Tenant Parties, provided that Tenant does not charge any of the Tenant Parties a fee or charge to use the Parking Facilities. At the end of the Initial Parking Term, Landlord agrees to consider a request from Tenant in its Operating Budget for Landlord to continue to provide the Parking Facilities free of charge for another five (5) year period provided that Tenant again does not charge any of the Tenant Parties a fee or charge to use the Parking Facilities. Following expiration of the Initial Parking Term and in the event that Landlord does not agree to continue to provide the Parking Facilities free of charge, Landlord shall be permitted to charge a fee to the Tenant Parties for use of the Parking Facilities, provided that such charge shall not exceed the reasonable going market rate for parking in downtown Las Vegas, Nevada.

(c) Tenant acknowledges and agrees that Landlord is developing, or causing to be developed, Union Park for other commercial, residential, and entertainment uses. Tenant hereby agrees that as construction on Union Park progresses that Landlord shall have the right to relocate the Parking Facilities to locations on Union Park other than the location identified as the Initial Parking Facilities ("**Substitute Parking Facilities**") so long as the requirements and conditions set forth in subsections (a) and (b) above are satisfied. Landlord agrees to give Tenant no less than ninety (90) days notice prior to any relocation of any Parking Facilities to Substitute Parking Facilities. Tenant acknowledges that the Substitute Parking Facilities may be in the form of surface parking, parking in a structured garage, or a combination thereof. Landlord shall use commercially reasonable efforts to provide the Substitute Parking Facilities at a location which is reasonably close in proximity to the front door of the performing arts center. Tenant agrees that such relocation may require Landlord to charge a fee to Tenant for use of the Substitute Parking Facilities, subject to the terms specified in subsection (b) above.

(d) In the event Landlord relocates City Hall to Main Street (across the railroad tracks from Union Park) at the location currently planned for City Hall, Landlord shall make available to Tenant and the Tenant Parties the parking garage related to or on the City Hall site as Parking Facilities subject to the requirements set forth in this Section; provided, however that such parking garage shall not constitute Parking Facilities hereunder until such time as, and only for such period as, pedestrian access reasonably acceptable to Tenant connecting such parking garage to Union Park is open to the public. Tenant agrees that nothing contained in this Lease or otherwise creates any agreement or obligation whatsoever on the part of Landlord or any department, employee or agent of Landlord to construct City Hall or any other building or

project within Union Park except as otherwise provided in the Design and Construction Agreement.

(e) In the event that Landlord desires to convey or lease the Parking Property, any portion thereof, or any real property on which Landlord intends that the Parking Facilities, or any portion thereof, be located, to a party other than one of Landlord's affiliates, Landlord agrees that such real property will be conveyed or leased, as applicable, subject to a covenant running with such real property requiring the transferee or tenant thereof, as applicable, to provide Tenant and the Tenant Parties with the Parking Facilities and otherwise comply with the terms and provisions of this **Section 9** hereof.

9.2 Access to Parking Facilities. Landlord hereby grants to Tenant and the Tenant Parties a non-exclusive irrevocable license, at no cost or expense to Tenant or any Tenant Party, to traverse Union Park in order to drive in, through and out of the Parking Facilities to and from any public street. Additionally, Landlord shall cause the Union Park Master Association and/or other applicable property owners to grant to Tenant and the Tenant Parties a non-exclusive irrevocable license, at no cost or expense to Tenant or any Tenant Party, to traverse Union Park in order to travel between the Premises and the Parking Facilities along sidewalks and pathways.

SECTION 10

TAXES

10.1 Real Property Taxes and Assessments. Tenant shall pay or cause to be paid all taxes and assessments as they come due which (i) are or may become a lien on the Premises or which are assessed against or imposed upon the Premises or (ii) are charged against trade fixtures, utility installations, furnishings, equipment or any other personal property belonging to Tenant. Tenant shall furnish Landlord with receipts (or if receipts are not immediately available, with copies of canceled checks evidencing payment with receipts to follow promptly after they become available) showing payment of such taxes and assessments at least fifteen (15) days following Landlord's request therefor. Notwithstanding the foregoing, Tenant may in good faith, by appropriate proceedings and upon notice to Landlord, contest the validity, applicability or amount of any asserted tax or assessment so long as (a) such contest is diligently pursued, and (b) Landlord reasonably determines, in its subjective opinion, that such contest suspends the obligation to pay the tax and that nonpayment of such tax or assessment will not result in the sale, loss, forfeiture or diminution of the Premises or any part thereof or any interest of Landlord therein; provided, however, that Tenant shall promptly cause to be paid any amount adjudged by a court of competent jurisdiction to be due, with all interest, costs and penalties thereon, promptly after such judgment becomes final; and provided, further, that in any event each such contest shall be concluded, the taxes, assessments, interest, costs and penalties shall be paid prior to the date any writ or order is issued under which the Premises may be sold, lost or forfeited.

10.2 Taxes Related to Tenant Activities. Tenant shall pay when due any and all taxes, assessments or fees for which Tenant is liable and which arise directly or indirectly from Tenant's activities on the Premises. Within ten (10) business days of written demand from

Landlord, Tenant shall furnish Landlord evidence satisfactory to Landlord of the timely payment of any such tax, assessment or fee.

10.3 Landlord Receives Statement or Bill. Whenever Landlord shall receive any statement or bill for any tax, payable in whole or in part by Tenant, or shall otherwise be required to make any payment on account thereof, Tenant shall pay the amount due hereunder within ten (10) business days after written demand therefor accompanied by delivery to Tenant of a copy of such tax statement.

SECTION 11 MAINTENANCE AND REPAIRS

11.1 No Landlord Repairs. Landlord shall have no responsibility or liability for failure to supply any services or maintenance or to make any repairs on the Premises. Landlord shall not be liable for any loss or damage to persons or property sustained by Tenant or other persons, which may be caused by or in connection with the Premises, or any appurtenances thereto, being out of repair or by bursting or leakage of any water, gas, sewer or steam pipe, or by theft, or by any act or neglect of any occupant of the Premises, or of any other person other than those caused by Landlord or any Landlord Party.

11.2 Tenant Repairs.

(a) Tenant shall keep and maintain in good order, condition and repair (including, without limitation, any such replacement and restoration as is required for that purpose) the Premises, every part thereof and any and all appurtenances thereto wherever located, including, without limitation, all repairs and replacements, structural and nonstructural, foreseen and unforeseen, which are necessary to maintain and preserve the Premises in good condition and operation. All repairs shall be made in accordance with all Applicable Laws, including NRS Chapter 338, promptly, efficiently, and in a good workmanlike manner. Tenant agrees to provide Landlord a schedule of regular maintenance and repair that Tenant shall undertake in connection with the Premises. Landlord shall have the right to conduct an annual inspection of the Premises to determine Tenant's compliance with this **Section 11.2** and Tenant agrees to cooperate in such annual inspection.

(b) If Tenant fails to maintain or repair the Premises as required by this Lease and such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant (provided, however, that if the failure complained of in such notice is of such a nature that the same can be rectified or cured, but cannot with reasonable diligence be done within said thirty (30) day period, then such failure shall be deemed to be rectified or cured if Tenant shall, within said thirty (30) day period, commence to rectify and cure the same and shall thereafter complete such rectification and cure with all due diligence but in no event later than one hundred eighty (180) days after such written notice), then Landlord may, without declaring Tenant in default of this Lease and upon ten (10) days prior notice to Tenant (except that no notice shall be required in the case of an emergency), enter the Premises and perform such maintenance or repair on behalf of Tenant. In such case, Tenant shall reimburse Landlord for all costs incurred

in performing such maintenance or repair, including twenty percent (20%) of such costs for Landlord's supervision, promptly upon demand. Tenant agrees that, provided that Landlord has followed the procedures set forth in this subsection (b) for the exercise of Landlord's right to cure Tenant's failure to maintain or repair the Premises, Landlord shall be entitled to apply any Excess Fees to pay the costs of such maintenance or repair or to reimburse Landlord for such costs incurred by Landlord.

SECTION 12

LIENS

Tenant shall pay when due all claims for labor and material furnished to the Premises. Tenant shall give Landlord at least thirty (30) days prior written notice of the commencement of any work on the Premises. Landlord may elect to record and post notices of non-responsibility on the Premises. Tenant will not permit to be created or to remain undischarged any lien, encumbrance or other charge (arising out of any work done or materials or supplies furnished by any contractor, subcontractor, mechanic, laborer or materialman or any mortgage, conditional sale, security agreement or chattel mortgage, or otherwise by or for Tenant) which might be or become a lien or encumbrance or other charge (collectively a "Charge") against or upon the Premises or any part thereof. If any Charge by a person engaged by Tenant or Tenant's contractor to work on the Premises shall be filed against or upon the Premises or any part thereof, Tenant shall within thirty (30) days after demand from Landlord cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause any Charge to be discharged within the period aforesaid, then, in addition to any other right or remedy it may have, Landlord may, but shall not be obligated to, discharge the same by payment, deposit or by bonding proceedings. Any amount so paid by Landlord and all interest, costs and expenses, including reasonable attorneys' fees, incurred by Landlord in connection therewith shall constitute additional rent payable by Tenant under the Lease and shall be paid by Tenant to Landlord promptly upon demand. No work which Landlord permits Tenant to do shall be deemed to be for the immediate use and benefit of Landlord and no Charge shall be allowed against the estate, rights, title or interests of Landlord by reason of any consent given by Landlord to Tenant to do work in or about the Premises or provide materials therefore.

SECTION 13 INSURANCE

13.1 Maintain Insurance Policies. Tenant shall, at Tenant's expense, maintain in force and effect on the Premises at all times the following insurance:

(a) Insurance against loss or damage to the Premises by fire, windstorm, tornado and hail and against loss and damage by such other, further and additional risks as may be now or hereafter embraced by an "all-risk" or "special form" form of insurance policy. The amount of such insurance shall be not less than one hundred percent (100%) of the full replacement cost (insurable value) of the Premises. The full replacement cost shall be determined by Landlord and Tenant annually upon renewal of the insurance policy to ensure compliance with the foregoing requirement throughout the Lease Term; provided that the full replacement cost of the Premises shall be established by an MAI appraisal every five (5) years during the Lease Term. Absent such adjustment, each policy shall contain such terms as are necessary to insure that the policy limit will be increased over time to reflect the effect of inflation. Full replacement cost, as used herein, means, with respect to the Premises, the cost of replacing the Premises without regard to deduction for depreciation, exclusive of the cost of excavations, foundations and footings below the lowest basement floor. Tenant shall also maintain insurance against loss or damage to furniture, furnishings, fixtures, equipment and other items (whether personalty or fixtures) included in the Premises and owned by Tenant from time to time, to the extent applicable, in the amount of the cost of replacing the same, in each case, with such coverage as is necessary to insure that the amount will be increased over time to reflect the effect of inflation, or annual valuation. Each policy or policies shall contain a replacement cost endorsement and either an agreed amount endorsement (to avoid the operation of any co-insurance provisions) or a waiver of any co-insurance provisions, all subject to Landlord's approval. The maximum deductible shall be \$100,000.00 or such other amount that is acceptable to Landlord based on its assessment of market conditions as the same shall apply to properties similar to the Premises.

(b) Commercial general liability insurance against claims for personal injury, bodily injury, death and Premises damage occurring on, in or about the Premises in amounts not less than \$2,000,000.00 per occurrence and \$2,000,000.00 in the aggregate plus umbrella coverage in an amount not less than \$2,000,000.00. During any construction on the Premises, Tenant's general contractor for such construction shall also provide the insurance required in this subsection (b). Landlord hereby retains the right to periodically review the amount of said liability insurance being maintained by Tenant and to require an increase in the amount of said liability insurance should Landlord deem an increase to be reasonably prudent under then existing circumstances.

(c) Boiler and machinery insurance is required if steam boilers or other pressure-fired vessels are in operation at the Premises. Minimum liability coverage per accident must equal the greater of the replacement cost (insurable value) of the Premises housing such boiler or pressure-fired machinery or \$2,000,000.00. If one or more HVAC units that serve(s) all or a material part of the Premises is in operation at the Premises, "Systems Breakdowns"

coverage shall be required, as determined by Landlord. Minimum liability coverage per accident must equal the value of such unit(s).

(d) If the Premises or any part thereof are situated in an area now or subsequently designated by the Federal Emergency Management Agency ("FEMA") as a special flood hazard area (Zone A or Zone V), flood insurance in an amount equal to the lesser of: (i) the minimum amount required, under the terms of coverage, to compensate for any damage or loss on a replacement basis or (ii) the maximum insurance available under the appropriate National Flood Insurance Administration program. The maximum deductible shall be \$100,000.00 per building or a higher minimum amount as required by FEMA or other Applicable Laws.

(e) During the period of any construction, renovation or alteration of the Premises which exceeds \$50,000.00, at Landlord's request, a completed value, "All Risk" Builder's Risk form, or "Course of Construction" insurance policy in non-reporting form with replacement cost and no co-insurance, in an amount approved by Landlord, may be required. During the period of any construction of any addition to the existing Premises, a completed value, "All Risk" Builder's Risk form or "Course of Construction" insurance policy in non-reporting form, in an amount approved by Landlord, shall be required.

(f) When required by Applicable Laws, ordinance or other regulation, Worker's Compensation and Employer's Liability Insurance covering all persons subject to the workers' compensation laws of the state in which the Premises is located.

(g) Such other insurance on the Premises or on any replacements or substitutions thereof or additions thereto as may from time to time be required by Landlord against other insurable hazards, casualties or matters, but only to the extent such matters at the time are commonly insured against in the case of Premises similarly situated, including, without limitation, earthquake and law and ordinance insurance, due regard being given to the height and type of buildings, their construction, location, use and occupancy.

(h) All such insurance shall (i) be with insurers fully licensed and authorized to do business in Nevada and which insurers, unless otherwise approved in writing by Landlord, shall have and maintain a "General Policyholders' Rating" of "BBB" or better and a "financial rating" of 10 or better, as set forth in the most current issue of "Best's Insurance Guide," or such comparable ratings as Landlord shall approve, in its sole discretion; (ii) contain the complete address of the Premises (or a complete legal description); (iii) be for terms of at least one year with premium prepaid; (iv) be subject to the approval of Landlord as to insurance companies, amounts, content, forms of policies, method by which premiums are paid and expiration dates; (v) contain deductibles which do not exceed \$100,000.00 or an amount subject to Landlord's approval (except that the deductible with respect to the policy described in clause (d) above, shall not exceed \$100,000.00 or a higher minimum amount as required by FEMA or other Applicable Laws); and (vi) include a standard, non-contributory, Landlord clause naming Landlord as an additional insured under all liability insurance policies and as the owner of the Premises on all Premises insurance policies.

13.2 Certificates of Insurance. Insurance required to be maintained by Tenant hereunder shall be in companies duly authorized to do business in Nevada holding a "General Policyholders' Rating" of "BBB" or better and a "financial rating" of 10 or better, as set forth in the most current issue of "Best's Insurance Guide," or such comparable ratings as Landlord shall approve, in its sole discretion. A certificate issued by the insurance carrier for each policy of insurance required to be maintained by Tenant hereunder shall be delivered to Landlord and all other named insureds on or before the Commencement Date and thereafter, as to policy renewals, within thirty (30) days prior to the expiration of the term of each such policy. Each certificate of insurance required to be maintained by Tenant hereunder shall be in form and substance reasonably satisfactory to Landlord and shall expressly evidence insurance coverage as required by this Lease and shall contain an endorsement or provision requiring not less than thirty (30) days' prior written notice to Landlord of such cancellation. Any proposed diminution in the perils insured against, or reduction of the amount of coverage of the particular policy in question, initiated by the insurer or Tenant shall require not less than thirty (30) days prior written notice to Landlord. If Tenant fails to maintain any insurance coverage as required by this Lease, Landlord may, without declaring Tenant in default of this Lease, procure any such insurance coverage. In such case, Tenant shall reimburse Landlord within thirty (30) days of demand for all costs incurred in obtaining such insurance. Tenant agrees that Landlord shall be entitled to apply any Excess Fees to pay the costs of procuring such insurance coverage in the event Tenant fails to reimburse Landlord within such thirty (30) day period.

13.3 Waiver of Rights of Recovery. Tenant hereby waives any and all rights of recovery from Landlord, its stockholders, directors, officers, partners, managers, members, agents and employees for any loss or damage, including, without limitation, consequential loss or damage, caused by any peril or perils (including negligent acts) enumerated in each form of property insurance policy required to be maintained by Tenant hereunder.

13.4 Waiver of Subrogation. Provided it does not violate any Applicable Laws or regulations or jeopardize Tenant's insurance coverage(s), each policy of property insurance (and to the extent obtainable with respect to public liability insurance) provided for in this Section shall contain an express waiver of any and all rights of subrogation thereunder whatsoever against both Landlord and Tenant, and their stockholders, directors, officers, partners, members, managers, agents and employees. All such policies carried by Tenant shall be written as primary policies and not contributing with or in excess of the coverage, if any, which Landlord may carry. Anything contained herein to the contrary notwithstanding the amounts of all insurance required hereunder to be paid by Landlord or Tenant shall be not less than an amount sufficient to prevent the applicable party from becoming a co-insurer.

13.5 No Prohibited Items or Use. Tenant agrees that it will not keep, use, sell or offer for sale in or upon the Premises any article or permit any activity which may be prohibited by any standard form of insurance policy or conduct or permit the conduct of any use which violates the terms and conditions of any insurance policy required to be maintained pursuant to this Lease.

SECTION 14 DESTRUCTION OF PREMISES; CONDEMNATION

14.1 Minor Damage. Should the Premises or any portion thereof be damaged or destroyed by any cause whatsoever ("**Damaged**") which Damage is assessed in an amount less than One Million Dollars (\$1,000,000) ("**Minor Damage**"), Tenant shall provide Landlord with prompt written notice of the same and shall promptly repair, reconstruct and restore (collectively, "**Repair**") such Minor Damage to the Premises in accordance with the terms of this Lease and Applicable Laws including, but not limited to, NRS Chapter 338. Tenant may, without the prior written consent of Landlord, settle, compromise or adjust or apply any insurance or other claim so long as the amount of the claim (but not the settlement or compromise thereof) is less than \$1,000,000. Landlord and Tenant agree that any insurance proceeds payable in connection with Minor Damage shall be payable directly to Tenant to be used for such Repair and Landlord shall have no claim whatsoever to such proceeds. All repair undertaken by Tenant shall be in compliance with **Section 12** hereof. Such dollar amounts contained in this **Section 14.1** shall be increased by the applicable CPI-U Percentage Increase on the first day of each year during the Lease Term (in each case, an "**Adjustment Date**").

14.2 Major Damage.

(a) Should the Premises or any portion thereof be Damaged which Damage is assessed in an amount of One Million Dollars (\$1,000,000) or more ("**Major Damage**"), Tenant shall provide Landlord with prompt written notice and, subject to the provisions of this **Section 14.2**, promptly Repair such Major Damage to the Premises in accordance with the terms of this Lease and Applicable Laws including, but not limited to, NRS Chapter 338. In the event that the amount of the claim (but not the settlement or compromise thereof) is \$1,000,000 or more, Tenant may not settle, compromise or adjust or apply any insurance or other claim without Landlord's prior written consent, which consent shall not be unreasonably withheld. Upon the occurrence and during the continuation of a Tenant Event of Default, Landlord shall have the sole right to settle, compromise or adjust any insurance or other claim related to Major Damage of the Premises in such manner as Landlord may determine, and for this purpose, Landlord may, in its own name or in the name of Tenant, take such action as Landlord deems appropriate. Such dollar amounts contained in this **Section 14.2(a)** shall be increased by the applicable CPI-U Percentage Increase on the Adjustment Date.

(b) Landlord and Tenant agree that any insurance proceeds payable in connection with Major Damage to the Premises shall be payable directly to Landlord to be used pursuant to and in accordance with this **Section 14.2**. Subject to the satisfaction or waiver of the Restoration Conditions, Landlord shall disburse such insurance proceeds to Tenant as necessary to pay for the Repair of the Major Damage to the Premises on a monthly construction draw basis with a ten percent (10%) retention which retention will be disbursed to Tenant upon presentation to Landlord that such Repair has been completed on a lien free basis. For purposes of this **Section 14.2(b)**, the term "**Restoration Conditions**" means: (i) Tenant shall have delivered written notice to Landlord of its intention to commence Repair of the Major Damage to the Premises within sixty (60) days from the date that Landlord provides Tenant with notice that the

condition in subsection (ii) below has been satisfied; (ii) all insurance proceeds shall have been deposited with Landlord; (iii) Tenant shall have deposited with Landlord in the form of cash, letter of credit or other assets approved by Landlord the amount necessary, if any, to pay the difference between the cost of such Repair for the Premises and the amount of such insurance proceeds; (iv) Tenant shall have delivered to Landlord a budget of all costs of such Repair for the Premises which budget is reasonably acceptable to Landlord; and (v) Landlord and all applicable governmental agencies shall have approved the final plans and specifications for such Repair of the Premises, which approval by Landlord shall not be unreasonably withheld.

(c) In the event that following any Major Damage to the Premises, the Restoration Conditions are not satisfied within eighteen (18) months of the occurrence of such Major Damage, then either Tenant or Landlord shall have the right to terminate this Lease upon written notice to the other. In the event that this Lease is terminated pursuant to this Section, the insurance proceeds obtained as a result of such Major Damage shall be distributed as follows: (i) first, to satisfy and fully discharge any Bonds then outstanding; (ii) second, to repay any of Tenant's donors who require repayment in the event that the performing arts center is not operational; (iii) third, to pay for the costs of demolition of the buildings located on the Premises; and (iv) lastly, to Landlord and Tenant in proportion to their respective contributions to the Construction Fund (as defined in the Design and Construction Agreement).

(d) Except as set forth in this **Section 14.2**, Tenant agrees that Landlord shall have no obligation or liability whatsoever to Repair any Damage whatsoever to the Premises.

14.3 Condemnation. Should the whole or any part of the Premises be condemned or taken by a competent condemning authority for any public or quasi-public purpose, Tenant and Landlord shall each be entitled to seek recovery of condemnation proceeds for their respective interests in the Premises, and any fixtures, equipment, or personal property that is taken by the condemning authority. For purposes of this **Section 14.3**, a deed granted in lieu of condemnation shall be deemed a taking. If the whole of the Premises be condemned or taken, then this Lease shall terminate upon the taking of physical occupancy by the condemning authority. If a part of the Premises is taken which materially interferes with Tenant's use of the Premises, Tenant shall have the option to terminate this Lease by notifying Landlord of such election in writing within sixty (60) days after such taking. In no event shall a taking terminate this Lease without such notification. If such partial taking does not result in termination of this Lease, this Lease shall continue in full force and effect.

SECTION 15 INDEMNIFICATION AND LANDLORD EXEMPTION

15.1 Indemnification and Exemption of Landlord from Liability.

(a) Tenant shall indemnify and hold harmless Landlord and all agents, servants and employees of Landlord (collectively, the "**Landlord Parties**") from and against all claims, losses, damages, expenses (including reasonable attorneys' fees), penalties and charges (collectively the "**Losses**") arising from or in connection with any of the following during the

Lease Term (i) Tenant's use of the Premises, or (ii) the conduct of Tenant's business, or (iii) any activity, work or things done, permitted or suffered by Tenant in or about the Premises. Tenant shall further indemnify and hold harmless Landlord from and against any and all Losses arising from any default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any negligence of Tenant, or any of Tenant's agents, contractors, or employees during the Lease Term, and from and against all Losses incurred in the defense of any such claim or any action or proceeding brought thereon. If any action or proceeding be brought against Landlord by reason of any such claim, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by legal counsel reasonably satisfactory to Landlord. Tenant, as a material part of its consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in or upon the Premises arising from any cause during the Lease Term and Tenant hereby waives all claims in respect thereof against Landlord. Tenant's indemnity is not intended to nor shall it relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to the provisions of this Lease. Tenant's obligations under this **Section 15.1(a)** shall survive any termination of this Lease.

(b) The Landlord Parties shall not be liable for any and all Losses arising from or in connection with any damage or injury to the person, business (or any loss of income therefrom), goods, wares, merchandise or other property of Tenant, Tenant's employees, invitees, customers, or any other person in or about the Premises, or any other person claiming under Tenant whether such damage or injury is caused by or results from: (a) fire, steam, electricity, water, gas or rain; (b) the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or any other cause; (c) the failure, delay or diminution in the quality or quantity of any utilities or services supplied to the Premises, (d) inconvenience or annoyance arising from the necessity of repairing any portion of the Premises; (e) the interruption for any reason in the use of the Premises; (f) the destruction of the Premises; or (g) any conditions arising in or about the Premises, or from other sources or places, nor shall any of the same be construed as an eviction of Tenant, nor work an abatement of Rent, nor relieve Tenant from any obligation under this Lease. Without limiting the foregoing, the Landlord Parties shall not be liable for any and all claims, losses, damages, expenses, penalties and charges arising from or in connection with the following: (i) any defect or shortcoming in or failure of plumbing, heating or air conditioning or ventilation systems, elevators, electric wiring or installation thereof, water pipes, stairs, railings or walks; (ii) any equipment or appurtenances becoming out of repair; (iii) the bursting, leaking or running of any tubing, radiant panel, fire sprinkler system, electric fixture, valve, fitting, tank, washstand, water closet, waste pipe, drain or other pipe or tank or any other water and/or moisture related release and/or condition and all consequences and/or conditions relating from same, upon or about the Premises; (iv) the backing up of any sewer pipe or downspout; (v) the escape of steam, hot or cold water; (vi) water, snow or ice being upon or coming through the roof of the Premises or any other place upon or near the Premises; (vii) the failing of any fixture, brick, plaster or stucco; (viii) broken glass; (ix) any act or omission of cotenants or other occupants of the Premises; or (x) any act or omission of the Parties (other than Landlord or the Landlord Parties) nor, unless otherwise permitted under this Lease, shall any of the foregoing work an abatement of Rent, nor relieve Tenant from any obligation under this Lease. Landlord shall not be liable for any such damage or injury even though the cause of or the means of repairing such damage or injury are

not accessible to Tenant. Tenant shall have no rights whatsoever to offset or deduct against any Rent or any other sums due Landlord under the Lease for any reason whatsoever, including Landlord's default, nor shall Tenant have any rights at any time to cure any defaults of the Landlord under this Lease.

15.2 Indemnity Limitation. Notwithstanding anything in this Lease to the contrary, Landlord shall be liable for, and Tenant shall not be obligated to indemnify and hold the Landlord Parties harmless from and against, any Losses arising from or in connection with any of the foregoing arising prior to the Commencement Date or by reason of any act, omission or negligence of the Landlord Parties.

15.3 Landlord Indemnification Obligations. Tenant and its officers, managers, directors, shareholders, members, agents, servants and employees (collectively, the "**Tenant Indemnified Parties**") shall not be liable for, and Landlord shall indemnify and hold the Tenant Indemnified Parties harmless from and against, any Losses arising from or in connection with any act, omission or negligence of Landlord. The Parties hereto understand and agree that neither this Section nor any other provision of this Lease shall constitute a waiver by Landlord of any protection it has against liabilities or damages or any limitations thereon under Chapter 41 of NRS or other protections or limitations that arise by virtue of Landlord's status as a political subdivision of the State of Nevada, and that Landlord's indemnifications hereunder are limited by and subject to Chapter 41 of NRS. If any action or proceeding be brought against any of the Tenant Parties by reason of any such claim, Landlord, upon notice from Tenant, shall defend the same at Landlord's expense. Tenant shall have the right to select independent counsel to defend Tenant pursuant to this **Section 15.3** provided that such independent counsel is approved by Landlord (which approval shall not be unreasonably withheld) and that Tenant pays all costs and fees of such independent counsel. Landlord's obligations under this **Section 15.3** shall survive any termination of this Lease.

SECTION 16

ASSIGNMENT AND SUBLETTING

16.1 With Respect to Tenant. Tenant shall not assign, transfer or sublet this Lease nor the leasehold estate hereby created or any interest herein, or license the use of all or any portion of the Premises, whether by assignment, mortgage, sublease, license, transfer, operation of law, without the prior express written consent of the Landlord, which consent shall not be unreasonably withheld. Upon any valid assignment of this Lease, Tenant shall be relieved of all obligations accruing from the effective date of the assignment. No sublease shall affect Tenant's obligation to perform its agreements hereunder.

16.2 With Respect to Landlord. During the term of this Lease, Landlord shall not sell, mortgage, pledge, hypothecate, encumber or otherwise transfer, assign or dispose of all or any part of the Premises, this Lease or any interest in the Premises or this Lease.

SECTION 17
PROHIBITION OF LEASEHOLD ENCUMBRANCES

Tenant shall not in anyway pledge or encumber any or part of its interest in this Lease without the prior written consent of Landlord which consent may be granted or withheld at Landlord's sole discretion.

SECTION 18
ESTOPPEL CERTIFICATE

Tenant shall, without charge, within ten (10) business days of any demand therefor by Landlord, execute and deliver to Landlord and/or Landlord's designee a recordable certificate stating that this Lease is in full force and effect, such defenses or offsets as are claimed by Tenant, if any, the date to which all rentals have been paid, and such other information as reasonably and customarily contained in a commercial estoppel certificate concerning this Lease, the Premises and Tenant as Landlord or said designee may request. In the event that Tenant fails to execute and/or deliver any such certificate or offset statement to Landlord within said ten (10) business days, Tenant hereby appoints Landlord and its permitted successors and assigns, as attorney-in-fact of Tenant irrevocably to execute and deliver any and all such documents for and on behalf of Tenant. Similarly, Landlord shall, without charge, within ten (10) business days of any demand therefor by Tenant, execute and deliver to Tenant and/or Tenant's designee a recordable certificate stating that this Lease is in full force and effect, such defenses or offsets as are claimed by Landlord, if any, the date to which all rentals have been paid, and such other information as reasonably and customarily contained in a commercial estoppel certificate concerning the Lease, the Premises and Landlord as Tenant and/or said designee may request. In the event that Landlord fails to execute and/or deliver any such certificate or offset statement to Tenant within said ten (10) business days, Landlord hereby appoints Tenant, its successors and assigns, as attorney-in-fact of Landlord irrevocably to execute and deliver any and all such documents for and on behalf of Landlord.

SECTION 19
DEFAULT

19.1 Tenant's Default. Each of the following events shall be deemed to be events of default by Tenant under this Lease (collectively, "Tenant Events of Default");

(a) Tenant fails to pay when or before due any sum of money required to be paid by Tenant under this Lease and such failure continues for thirty (30) days after written notice thereof from Landlord;

(b) Except as provided in paragraph (c) next below, Tenant fails to perform or comply with any other term, covenant or condition of this Lease on the part of Tenant to be kept and performed and such default continues for thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the failure complained of in such notice is of such a nature that the same can be rectified or cured, but cannot with reasonable diligence be done within said thirty (30) day period, then such failure shall be deemed to be rectified or cured if Tenant shall, within said thirty (30) day period, commence to rectify and cure the same and shall thereafter complete such rectification and cure with all due diligence but in no event later than one hundred eighty (180) days after such written notice;

(c) Tenant violates the covenant and restriction set forth in **Section 5.2** hereof and such violation continues for more than five (5) days after written notice from Landlord;

(d) Tenant makes a representation or warranty in this Lease, or in any certificate, demand, or request made under this Lease, that proves to be incorrect, at any time during the Lease Term, in any material respect;

(e) There is filed any petition in bankruptcy by or against Tenant, which petition is not dismissed within ninety (90) days of its filing, or there is appointed a receiver or trustee to take possession of Tenant or of all or substantially all of the assets of Tenant, or there is a general assignment by Tenant for the benefit of creditors, or any action is taken by or against Tenant under any state or federal insolvency or bankruptcy act, or any similar law now or hereafter in effect, including, without limitation, the filing of execution or attachment against Tenant and such levy continues in effect for a period of sixty (60) calendar days; and

(f) If Tenant abandons or vacates the Premises for thirty (30) consecutive days or fails to operate the Premises for ninety (90) consecutive days.

19.2 Landlord's Remedies. Upon the occurrence of any Tenant Event of Default, Landlord shall, in addition to any other rights or remedies provided for herein or at law or in equity, have the option to pursue any one or more of the following remedies without notice or demand whatsoever:

(a) Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord, or, if permitted by Applicable Laws, Landlord shall have the right to effect a lock out of Tenant from the Premises, in which event Tenant hereby releases Landlord from any and all damages including, but not limited to, damages related to interruption of Tenant's business.

(b) Pursuant to its rights of re-entry, Landlord may, but shall not be obligated to (i) remove all persons from the Premises, and (ii) enforce any rights Landlord may have against said Premises or store any personal property remaining in the Premises in any warehouse or elsewhere at the cost and for the account of Tenant. Tenant agrees to hold Landlord free and harmless of any liability whatsoever for the removal and/or storage of any such Premises, whether of Tenant or any third party whomsoever;

(c) Landlord may, without being obligated and without waiving the Tenant Event of Default, cure the Tenant Event of Default, whereupon Tenant shall pay to Landlord, upon demand, all costs, expenses, and disbursements incurred by Landlord to cure the Tenant Event of Default. Landlord shall be permitted to offset said costs, expenses, and disbursements incurred by Landlord against any amounts due or becoming due by Landlord to Tenant under this Lease;

(d) In addition to any other remedies it may have, in the event of a violation of **Section 5.2** by Tenant which remains uncured after five (5) days of Landlord's written notice to Tenant thereof, Tenant shall be liable to Landlord for any damages Landlord incurs as a result of such violation which amounts shall be payable by Tenant to Landlord within thirty (30) days from Landlord's written demand therefor; and

(e) In addition, Landlord shall have all other remedies available to Landlord, including, without limitation, the right to enjoin any violation of **Section 5.2** above.

19.3 Termination Requires Specific Notice. Anything contained herein to the contrary notwithstanding, Landlord shall not be deemed to have terminated this Lease or the liability of Tenant to pay any Rent or other sum of money accruing hereunder, by any re-entry pursuant to Sections 19.2(a) and 19.2(b), or by any action in unlawful detainer or otherwise to obtain possession of the Premises, unless Landlord shall specifically notify Tenant in writing that it has so elected to terminate this Lease.

19.4 Remedies Cumulative. The various rights, options, elections and remedies of Landlord contained in this Lease shall be cumulative and no one of them shall be construed as exclusive of any other, or of any right, priority or remedy allowed or provided for by law or in equity.

19.5 No Waiver. The waiver by Landlord of any breach of this Lease by Tenant shall not be a waiver of any preceding or subsequent breach of this Lease by Tenant. The subsequent acceptance of Rent or any other payment hereunder by Landlord shall not be construed to be a waiver of any preceding breach of this Lease by Tenant. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein provided shall be deemed to be other than on account of the earliest Rent due and payable hereunder.

19.6 Legal Proceedings. Tenant shall reimburse Landlord, upon demand, for any costs or expenses incurred by Landlord in connection with (i) any breach or default of Tenant under this Lease, whether or not suit is commenced or judgment entered or (ii) necessary to protect

Landlord's interest under this Lease in a bankruptcy proceeding, or other proceeding under Title 11 of the United States Code, as amended. Such costs shall include legal fees and costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. Furthermore, if any action for breach of or to enforce the provisions of this Lease is commenced, the court in such action shall award to the party in whose favor a judgment is entered, a reasonable sum as attorneys' fees and costs. Such attorneys' fees and costs shall be paid by the losing party in such action.

SECTION 20 LANDLORD'S DEFAULT

20.1 Landlord's Default. Each of the following events shall be deemed to be events of default by Landlord under this Lease (collectively, "**Landlord Events of Default**"):

(a) Landlord fails to pay when or before due any sum of money required to be paid by Landlord under this Lease and such failure continues for thirty (30) days after written notice thereof from Tenant;

(b) Landlord shall fail to perform or comply with any other term, covenant or condition of this Lease on the part of Landlord to be kept and performed and such failure continues for thirty (30) days after written notice thereof from Tenant to Landlord; provided, however, that if the failure complained of in such notice is of such a nature that the same can be rectified or cured, but cannot with reasonable diligence be done within said thirty (30) day period, then such failure shall be deemed to be rectified or cured if Landlord shall, within said thirty (30) day period, commence to rectify and cure the same and shall thereafter complete such rectification and cure with all due diligence;

(c) Landlord makes a representation or warranty in this Lease, or in any certificate, demand, or request made under this Lease, that proves to be incorrect, at any time during the Lease Term, in any material respect; and

(d) Landlord is in breach of or in default under the Bonds and/or any Bond documents in connection therewith and failed to cure such breach or default within any applicable cure period provided therein.

20.2 Tenant's Remedies. Upon the occurrence of any Landlord Event of Default, Tenant shall, in addition to any other rights or remedies provided for herein or at law or in equity, have the option to pursue any one or more of the following remedies without notice or demand whatsoever:

(a) Tenant may, at its election, terminate this Lease by providing notice thereof to Landlord; and

(b) Tenant may, without being obligated and without waiving the default, cure the default, whereupon Landlord shall pay to Tenant, upon demand, all costs, expenses, and disbursements incurred by Tenant to cure the default. Tenant shall be permitted to offset said

costs, expenses, and disbursements incurred by Tenant against any amounts due or becoming due by Tenant to Landlord under this Lease.

SECTION 21 QUIET ENJOYMENT

Tenant, upon paying the rentals and other payments herein required and upon performance of all of the terms, covenants and conditions of this Lease on its part to be kept, may quietly have, hold and enjoy the Premises during the Lease Term without any disturbance from Landlord or from any other person claiming through Landlord, except as expressly provided otherwise in this Lease.

SECTION 22 RIGHT OF LANDLORD TO CONVEY PREMISES TO TENANT

22.1 Right of Landlord to Convey Premises to Tenant. Tenant agrees that, following the satisfaction and full discharge of the Bonds, Landlord, in Landlord's sole and absolute discretion, shall have the right to convey to Tenant all of Landlord's right title and interest in the Premises in consideration of \$1.00. In the event Landlord desires to exercise its right to convey the Premises to Tenant, Landlord shall give Tenant ninety (90) days written notice of its intent to convey the Premises to Tenant. To be effective, such notice shall be accompanied by a current title report on the Premises, together with a legible copy of every document shown as an exception or requirement thereto. Tenant shall have the right to review and approve such title report and exceptions during such 90-day period provided that (i) such approval shall not be unreasonably withheld (if Tenant's disapproval is based on a monetary encumbrance not created by Tenant or as a result of Tenant's actions, such disapproval shall be deemed reasonable); and (ii) Tenant shall not have the right to disapprove of any title matters created by Tenant or resulting from Tenant's actions. If Tenant notifies Landlord that it approves of the status of title during such 90-day period, Landlord shall promptly convey the Premises to Tenant by the execution and recordation of a customary grant, bargain and sale deed (the "**Deed**") and the execution and delivery to Tenant of such bills of sale and other transfer documents as may be reasonably required by Tenant to transfer the Premises to Tenant (collectively with the Deed, the "**Transfer Documents**"). Upon the recordation of the Deed and the delivery to Tenant of the other Transfer Documents, this Lease shall automatically terminate and be of no further force and effect, provided, however, that the following shall survive any such termination of the Lease: (a) any and all indemnity obligations set forth in Sections 5.4 and 15 of this Lease in connection with anything occurring prior to the termination of the Lease; (b) Landlord's obligations to provide Tenant with the use of parking facilities and access thereto pursuant to and in accordance with **Section 9** of this Lease; and (c) all of Tenant's and Landlord's other rights and obligations set forth in **Sections 4.2, 6.3(b), 6.4, 6.5 and Section 9** of this Lease. Upon the request of Tenant, Landlord shall, concurrently with the execution and delivery to Tenant of the Transfer Documents, enter into a separate agreement in recordable form with Tenant stating the rights and obligations set forth above which are to survive any termination of this Lease pursuant to this

Section, the form of which shall be reasonably acceptable to Tenant. Such separate agreement may be recorded against the real property on which the Parking Facilities or Substitute Parking Facilities, as applicable, are located provided that City is the owner of such real property. Landlord agrees that such conveyance shall be at no expense to Tenant including recording fees, conveyance taxes and other transfer charges.

SECTION 23 REPRESENTATIONS AND WARRANTIES

23.1 Landlord's Representations and Warranties. In addition to any other representations and warranties made by Landlord herein, Landlord hereby represents and warrants to Tenant, which representations and warranties are continuing in nature and shall survive throughout the Lease Term, as follows:

(a) There are no pending or, to the best of Landlord's knowledge, threatened actions, suits, condemnation or other proceedings before or by any judicial body or any Governmental Authority against or affecting the Premises;

(b) Landlord has the full authority and power to execute this Lease. This Lease has been duly executed and delivered by Landlord and constitutes the valid and legally binding obligation of Landlord, enforceable in accordance with its terms, except as the enforceability hereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and general principles of equity.

(c) Landlord possesses good and marketable fee simple title to the Premises;

(d) Neither the execution or delivery of this Lease, nor the consummation of the transaction contemplated hereby, will: (i) violate any Applicable Laws, injunction, judgment, order, decree, ruling, charge or other restriction of any authority to which Landlord or the Premises is subject; (ii) violate any provision of Landlord's charter documents, as amended; or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, give any person the right to accelerate, terminate, modify or cancel, or require any notice under, any agreement, license, permit, authorization, instrument or other arrangement to which Landlord is a party or by which it is bound or which any of its assets are subject (or result in the imposition or any lien upon any of its assets).

(e) Landlord has not received any written notice nor does it have any knowledge of or intent to levy any special assessment, impose any utility connection moratorium or rezone the Premises.

(f) No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any Governmental Authority or third person on the part of Landlord is required in connection with Landlord's execution and delivery of this Lease and the performance of its obligations hereunder.

(g) There are no unrecorded contracts, leases, easements or other agreements, or claim of any third party, affecting the use, title, occupancy or development of the Premises, and no person, firm or entity has any right of first refusal, option or other right to acquire all or any part of the Premises.

23.2 Tenant's Representations and Warranties. In addition to any other representations and warranties made by Tenant herein, Tenant hereby represents and warrants to Landlord, which representations and warranties are continuing in nature and shall survive throughout the Lease Term, as follows:

(a) Tenant is a nonprofit corporation validly existing under the laws of the State of Nevada and is an organization described in Section 501(c)(3) or Section 509(a) of the Tax Code.

(b) Tenant has the full authority and power to execute this Lease. This Lease has been duly executed and delivered by Tenant and constitutes the valid and legally binding obligation of Tenant, enforceable in accordance with its terms, except as the enforceability hereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and general principles of equity.

(c) Neither the execution or delivery of this Lease, nor the consummation of the transaction contemplated hereby, will: (i) violate any Applicable Laws, injunction, judgment, order, decree, ruling, charge or other restriction of any authority to which Tenant is subject; (ii) violate any provision of Tenant's articles of incorporation or bylaws, as amended; or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, give any person the right to accelerate, terminate, modify or cancel, or require any notice under, any agreement, license, permit, authorization, instrument or other arrangement to which Tenant is a party or by which it is bound or which any of its assets are subject (or result in the imposition or any lien upon any of its assets).

SECTION 24 MISCELLANEOUS

24.1 Non-Discrimination. Tenant promises, and it is a condition to the continuance of this Lease, that there will be no discrimination against, or segregation of, any person or group of persons on the basis of race, color, sex, creed, national origin or ancestry in the leasing, subleasing, transferring, occupancy, tenure or use of the Premises or any portion thereof.

24.2 Force Majeure. Neither party shall be in breach of this Lease if it fails to perform as required hereunder due to labor disputes, civil commotion, war, warlike operation, terrorist acts, sabotage, governmental regulations or control, fire or other casualty, inability to obtain any materials, or other causes beyond such party's reasonable control (financial inability excepted); provided, however, that nothing contained herein shall excuse Tenant from the prompt payment of any Rent or charge required of Tenant hereunder.

24.3 Notices. Any and all notices and demands required or desired to be given hereunder shall be in writing and shall be validly given or made (and effective) if served personally, delivered by a nationally recognized overnight courier service, or faxed and deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, to the following addresses:

If to Landlord:

City of Las Vegas, Nevada
400 Stewart Avenue
Las Vegas, Nevada 89101
Attention: City Manager
Facsimile No.: (702) 388-1807

With a copy to:

City Attorney
400 Stewart Avenue
Las Vegas, Nevada 89101
Attention: City Attorney
Facsimile No.: (702) 386-1749

If to Tenant:

Las Vegas Performing Arts Center Foundation
241 West Charleston Blvd., Suite 111
Las Vegas, Nevada 89102
Attention: President
Facsimile: (702) 614-0205

With a copy to:

Kim Sinatra, Esq.
3131 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Facsimile: (702) 770-1520

and

Brownstein Hyatt Farber Schreck, LLP
100 City Parkway, Suite 1600
Las Vegas, NV 89106-4614
Attention: Angela Turriciano Otto
Facsimile No.: (702) 382-8135

Notice shall be deemed to have been given when received by the addressee; provided, however, that notice delivered by facsimile with the original sent by certified or registered mail shall be deemed to have been received on the day it is faxed to the addressee and the person sending the fax has received a printed confirmation thereof generated by its fax machine. Either party may change its address for the purpose of receiving notices by providing written notice to the other.

24.4 Binding on Permitted Successors and Assigns. The terms, provisions, covenants and conditions contained in this Lease shall apply to, bind and inure to the benefit of the parties

hereto and their respective heirs, executors, administrators, legal representatives and permitted successors and assigns.

24.5 Partial Invalidity. If any term, covenant or condition of this Lease, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, covenants and conditions of this Lease, and all applications thereof, not held invalid, void or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

24.6 Time is of the Essence. Time is of the essence of this Lease and all of the terms, covenants and conditions hereof.

24.7 Entire Agreement. Except as expressly stated in **Section 5.4** of this Lease and except with respect to Landlord's environmental insurance obligations set forth in Section 3B(g) of "**Exhibit B**" (Project Environmental Management) to the Design and Construction Agreement, this Lease contains the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. No supplement, modification, waiver or termination of this Lease shall be binding unless executed in writing by the party to be bound. No waiver of any of the provisions of this Lease shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

24.8 No Partnership or Joint Venture. Nothing contained herein shall be deemed to create any partnership, joint venture, agency or other relationship between Landlord and Tenant other than the relationship of landlord and tenant.

24.9 Captions. The captions are descriptive only and for convenience in reference to this Lease and in no way whatsoever define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

24.10 Governing Law; Venue; Waiver of Jury Trial. The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Lease, without giving effect to its conflict of law provisions. Each party hereto consents to, and waives any objection to, Clark County, Nevada as the proper and exclusive venue for any disputes arising out of or relating to this Lease or any alleged breach thereof. Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage.

24.11 Recordation. This Lease shall not be recorded. However, the parties agree to execute, acknowledge and record a Memorandum of Lease in the form attached hereto as Exhibit "D" and incorporated herein by this reference. A Memorandum of Termination of Lease in the

form attached hereto as Exhibit "E" shall also be executed and acknowledged by the parties, shall be held by Landlord, and shall be recorded by Landlord upon termination of the Lease.

24.12 Authorization. All necessary actions shall have been taken under the parties' organizational documents to authorize the individuals signing this Lease on their respective behalves to do so.

24.13 No Brokers. Landlord and Tenant each represent and warrant to the other that they have not entered into any written contractual arrangement with, or promised to pay any broker's fee, finder's fee, commission or other similar compensation to, or otherwise agreed to compensate, any real estate agent or broker in connection with this Lease. Landlord and Tenant each agree to indemnify, defend, save and hold the other harmless from and against all Losses incurred by reason of the breach of the foregoing representation and warranty arising from any claim for compensation founded upon or as a result of acts asserted to have been performed on their respective behalf. Such indemnification obligations shall survive any termination of the Lease.

24.14 Counterparts. The delivery of facsimile copies of any parties' signature hereon, or on any other agreement or instrument to be delivered in connection herewith shall be valid and binding for all purposes. This Lease may be executed in counterparts, each of which executed counterparts shall be deemed an original, but which, together, shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document.

24.15 Interpretation. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s). Whenever in this Lease any words of obligations or duty are used in connection with either party, such words shall have the same force and effect as though framed in the form of express covenants on the part of the party obligated. This Lease shall not be construed either for or against Landlord or Tenant, but this Lease shall be interpreted in accordance with the general tenor of its language.

24.16 Third Parties. Nothing in this Lease, expressed or implied, is intended to confer upon any person, including, without limitation, any entity, other than the parties hereto any rights or remedies under or by reason of this Lease.

24.17 Expenses. Except as otherwise provided in this Lease, each party shall bear its own expenses incurred by it in connection with the negotiation, execution and delivery of this Lease, including, without limitation, the fees and expenses of each party's legal counsel.

24.18 Further Assurances. Each party shall, from time to time after the execution of this Lease, execute and deliver such instruments, documents and assurances and take such further acts as the other party may reasonably request to carry out the purpose and intent of this Lease without undue delay.

24.19 Jurisdiction. Each of Landlord and Tenant agree to submit to personal jurisdiction in Clark County, Nevada in any action or proceeding arising out of this Lease and, in furtherance of such agreement, each party hereby agrees and consents that, without limiting other methods of obtaining jurisdiction, personal jurisdiction over each party in any such action or proceeding may be obtained within or without the jurisdiction of any court located in Nevada and that any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon each party by registered or certified mail to or by personal service at the last known address of each party, whether such address be within or without the jurisdiction of any such court.

24.20 Disclosure of Principals. Pursuant to Resolution R-105-99 adopted by City Council effective October 1, 1999, Tenant warrants that it has disclosed, on Exhibit "C" attached hereto, all members of the Board of Directors of Tenant, as well as all persons and entities holding more than 1% interest in Tenant or any principal of Tenant. Throughout the term hereof, Tenant shall notify Landlord in writing of any material change in the above disclosure within fifteen (15) days of any such change.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the Commencement Date.

“Landlord”

City of Las Vegas, Nevada,
a political subdivision of the State of
Nevada

“Tenant”

Las Vegas Performing Arts Center Foundation,
a Nevada nonprofit corporation

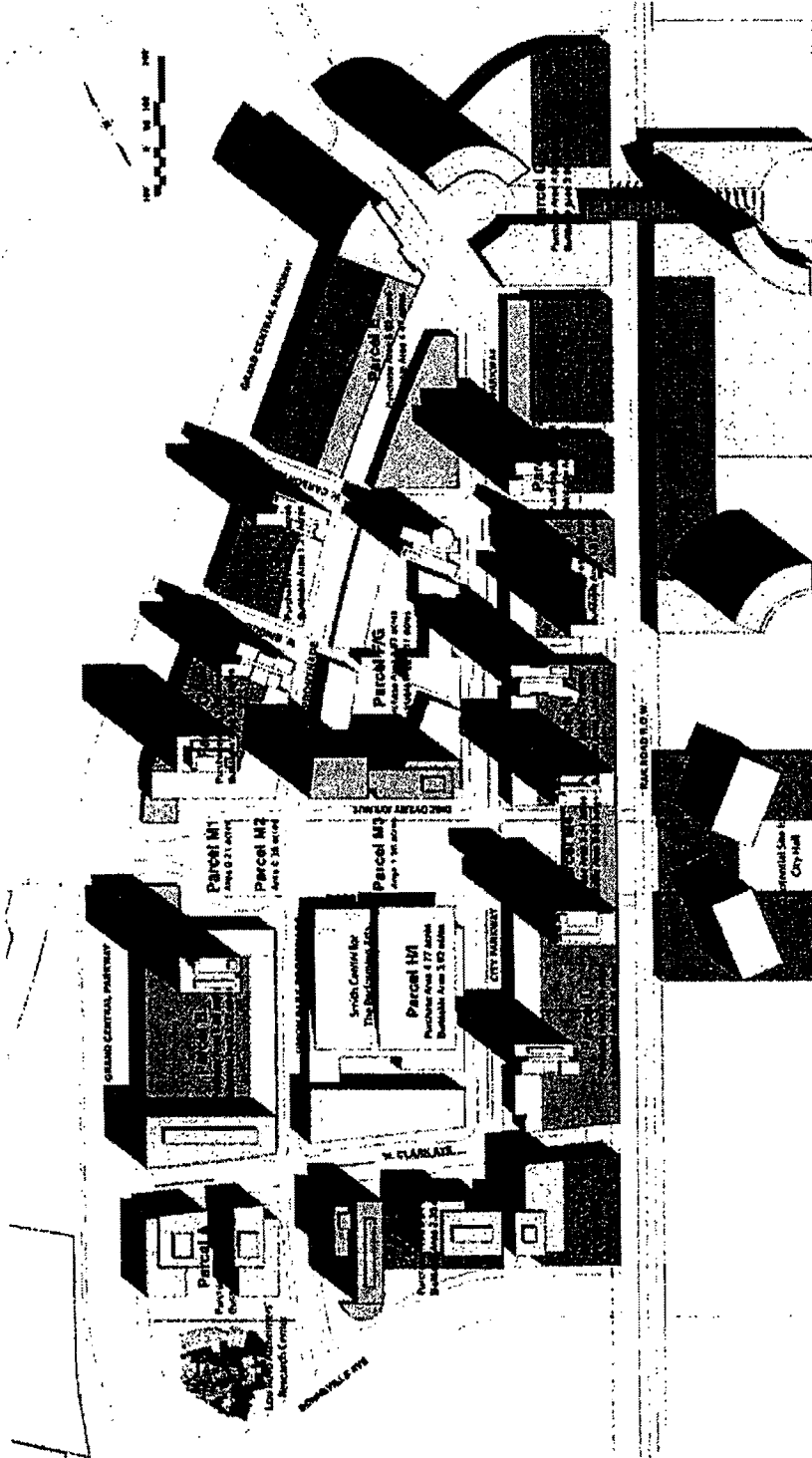
By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

LIST OF EXHIBITS

Exhibit "A"	Depiction of Union Park
Exhibit "B"	Description of Premises
Exhibit "C"	Disclosure of Principals
Exhibit "D"	Form of Memorandum of Lease
Exhibit "E"	Form of Memorandum of Termination of Lease
Exhibit "F"	Location of Initial Parking Facilities

Exhibit "A" — Depiction of Union Park



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EXHIBIT "B"

DESCRIPTION OF PREMISES

[TO BE PROVIDED UPON EXECUTION OF LOA]

EXHIBIT "C"

DISCLOSURE OF PRINCIPALS

[TO BE PROVIDED UPON EXECUTION OF LOA]

EXHIBIT "D"

FORM OF MEMORANDUM OF LEASE

APN(S): _____

WHEN RECORDED MAIL TO AND
MAIL TAX STATEMENTS TO:

Las Vegas Performing Arts Center Foundation
241 West Charleston Blvd., Suite 111
Las Vegas, Nevada 89102
Attention: President

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this "**Memorandum**") is made and entered into as of the ____ day of _____, 20__ (the "**Commencement Date**") by and between the City of Las Vegas, Nevada, whose business address is 400 Stewart Avenue, Las Vegas, Nevada 89101, Attention: City Manager ("**Landlord**"), and Las Vegas Performing Arts Center Foundation, a Nevada nonprofit corporation, whose business address is 241 West Charleston Blvd., Suite 111, Las Vegas, Nevada 89102, Attention: President ("**Tenant**").

A. **WHEREAS**, Landlord owns certain real property described on Exhibit A attached hereto and incorporated herein by this reference (the "**Premises**" and, together with all the improvements now or hereafter located thereon and all and singular appurtenances, rights, privileges, and easements thereunto appertaining, the "**Premises**");

B. **WHEREAS**, Landlord and Tenant have entered into that certain Lease and Operating Agreement, dated as of the Commencement Date (the "**Lease**"), to set forth their agreements, obligations and covenants with respect to the lease by Tenant of the Premises; and

C. **WHEREAS**, the parties to this Memorandum desire to enter into this Memorandum to provide public notice of the existence of the Lease, and certain of its terms and conditions.

NOW THEREFORE, the parties hereto do hereby certify as follows:

1. Definition. Except as otherwise provided herein, all capitalized terms used herein but not defined herein shall have the meanings assigned to such terms in the Lease.

2. Term. The term of the Lease commenced on the Commencement Date and shall continue until the earlier of (a) 11:59 p.m. on the ninety-ninth (99th) anniversary of the Commencement Date; or (b) the date that Tenant acquires the Premises pursuant to the terms of the Lease, unless earlier terminated as provided in the Lease.

3. Right to Parking Facilities and Access Rights. Landlord granted Tenant certain rights to use parking facilities in Union Park, as more particularly described and depicted on Exhibit "B" attached hereto and incorporated herein by this reference, and access rights to such parking facilities as more specifically set forth in the Lease.

4. Permitted Successors and Assigns. The Lease is binding upon and inure to the benefits of Landlord and Tenant and each of their respective permitted representatives, successors and assigns.

5. Purpose of Memorandum of Lease. This Memorandum is intended to serve as public notice of the existence of the Lease and of certain terms and conditions contained therein. This Memorandum does not describe or refer to all of the terms or conditions contained in the Lease. This Memorandum does not modify, amend or vary any of the terms or conditions set forth in the Lease. Reference is made to the Lease for further particulars.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Memorandum to be duly executed as of the date and year first above written.

"Landlord"

"Tenant"

City of Las Vegas, Nevada,
a political subdivision of the State of
Nevada

Las Vegas Performing Arts Center Foundation,
a Nevada nonprofit corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF NEVADA)
)SS.
COUNTY OF CLARK)

This instrument was acknowledged before me on _____, 200_ by
_____ as _____ of City of Las Vegas, Nevada.

(Signature of Notarial Officer)

(Print Name of Notarial Officer)

STATE OF NEVADA)
)SS.
COUNTY OF CLARK)

This instrument was acknowledged before me on _____, 200_ by
_____ as _____ of Las Vegas Performing Arts Center
Foundation.

(Signature of Notarial Officer)

(Print Name of Notarial Officer)

EXHIBIT A TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION OF PREMISES

EXHIBIT B TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION OF UNION PARK

EXHIBIT "E"

FORM OF MEMORANDUM OF TERMINATION OF LEASE

APN(S): _____

WHEN RECORDED MAIL TO AND
MAIL TAX STATEMENTS TO:

City of Las Vegas, Nevada
400 Stewart Avenue
Las Vegas, Nevada 89101
Attention: City Manager

TERMINATION OF MEMORANDUM OF LEASE

The City of Las Vegas, Nevada, a _____, as Landlord, and Las Vegas Performing Arts Center Foundation, a Nevada nonprofit corporation, as Tenant, are parties to that certain Lease and Operating Agreement (the "Lease"), dated _____, 200__, disclosed pursuant to a Memorandum of Lease which was recorded on _____, 200__ in the Official Records of Clark County, Nevada in Book _____, as Instrument No. _____. Notice is hereby given that the Lease was terminated effective _____, 20__.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Termination of Memorandum of Lease to be duly executed as of the date and year first above written.

“Landlord”

“Tenant”

City of Las Vegas, Nevada,
a political subdivision of the State of Nevada

Las Vegas Performing Arts Center Foundation,
a Nevada nonprofit corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF NEVADA)
)SS.
COUNTY OF CLARK)

This instrument was acknowledged before me on _____, 20__ by
_____ as _____ of City of Las Vegas, Nevada.

(Signature of Notarial Officer)

(Print Name of Notarial Officer)

STATE OF NEVADA)
)SS.
COUNTY OF CLARK)

This instrument was acknowledged before me on _____, 20__ by
_____ as _____ of Las Vegas Performing Arts Center
Foundation.

(Signature of Notarial Officer)

(Print Name of Notarial Officer)

Exhibit "F"
Location of Initial Parking Facilities

