

EXHIBIT "G"

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**").

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 Subsection 1 of Section 3 of Chapter 15, Statutes of Nevada of the 20th Special Session (2003) (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 other than those required to be used for the culinary and hospitality academy (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, Landlord and County have entered into an Interlocal Agreement Regarding the Distribution of Taxes for a Performing Arts Project (as amended 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 the 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 the 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 and Tenant entered into that certain Agreement to Design, Construct and Lease a Performing Arts Center dated _____, 2005, as such may have been amended, (the "**Design and Construction Agreement**") whereby the Parties agreed to design and construct such 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 agree 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.

“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.

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

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

“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 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.

“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.

“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.

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

“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 performing arts center 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 any of such performing arts center and all singular appurtenances, rights, privileges, and easements thereunto appertaining.

“Private Use Limitation” means that the value of space in the Premises which has been financed with the Bonds 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
- must not be more than nine percent (9%) of the value of the space in the Premises financed with the Bonds.

“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.

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 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 and 00/100ths Dollars (\$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 Section 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.

3.2 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, insurance, utilities, repairs, restoration and maintenance.

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, under, 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. 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 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, under, 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 Agreement 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 and establish a reserve in an amount determined by Landlord, provided that the amount of such reserve shall not exceed the combined maximum annual debt service on the Bonds then outstanding (the "**Excess Fees**") shall be used only as permitted by NRS 244A.840(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.840(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. Payments to Tenant of Excess Fees, if any, shall be made quarterly.

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 7.1 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 1,800 parking spaces in Union Park (the "**Parking Facilities**"), provided, however, that in the event Tenant elects to construct the Project in phases, the initial Parking Facilities shall be reduced by 400 parking spaces until such time as the second phase of the development has been completed. 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 exclusive 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. 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 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. 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.

(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. In addition, Landlord hereby grants to Tenant and the Tenant Parties a non-exclusive license, at no cost or expense to Tenant or any Tenant Party, to traverse Union Park in order to (a) travel between the Premises and the Parking Facilities along sidewalks and pathways and (b) to drive in, through and out of the Parking Facilities to and from any public street.

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 prior to the applicable delinquency date 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 therefor.

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 (as established by an MAI appraisal), without reduction for depreciation. The full replacement cost shall be determined annually upon renewal of the insurance policy to ensure compliance with the foregoing requirement throughout the term of the Lease. Absent such annual 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 law.

(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 law, 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 rating of at least "BBB" or higher from Standard & Poor's Rating Services, a division of The McGraw Hill Companies; (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 law); 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 "A" 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.

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.

(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(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 parties other than Landlord the Landlord Parties nor, unless otherwise permitted under this Lease, 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 claims, losses, damages, expenses (including reasonable attorneys' fees), penalties and charges 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 States 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 Law, 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 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. 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 Law, 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 Law, 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
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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
6725 Via Austi Parkway, Suite 360
Las Vegas, Nevada 89119
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 Schreck Brignone
300 South Fourth Street, Suite 1200
Las Vegas, Nevada 89101
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.

24.13 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.

24.14 Attorney's Fees. The prevailing party in any action regarding this Lease shall be entitled to receive its costs and legal expenses including, without limitation, reasonable attorneys' fees, whether such action is prosecuted to judgment or not.

24.15 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.

24.16 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.

24.17 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.

24.18 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.

24.19 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.

24.20 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.

24.21 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.

24.22 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 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

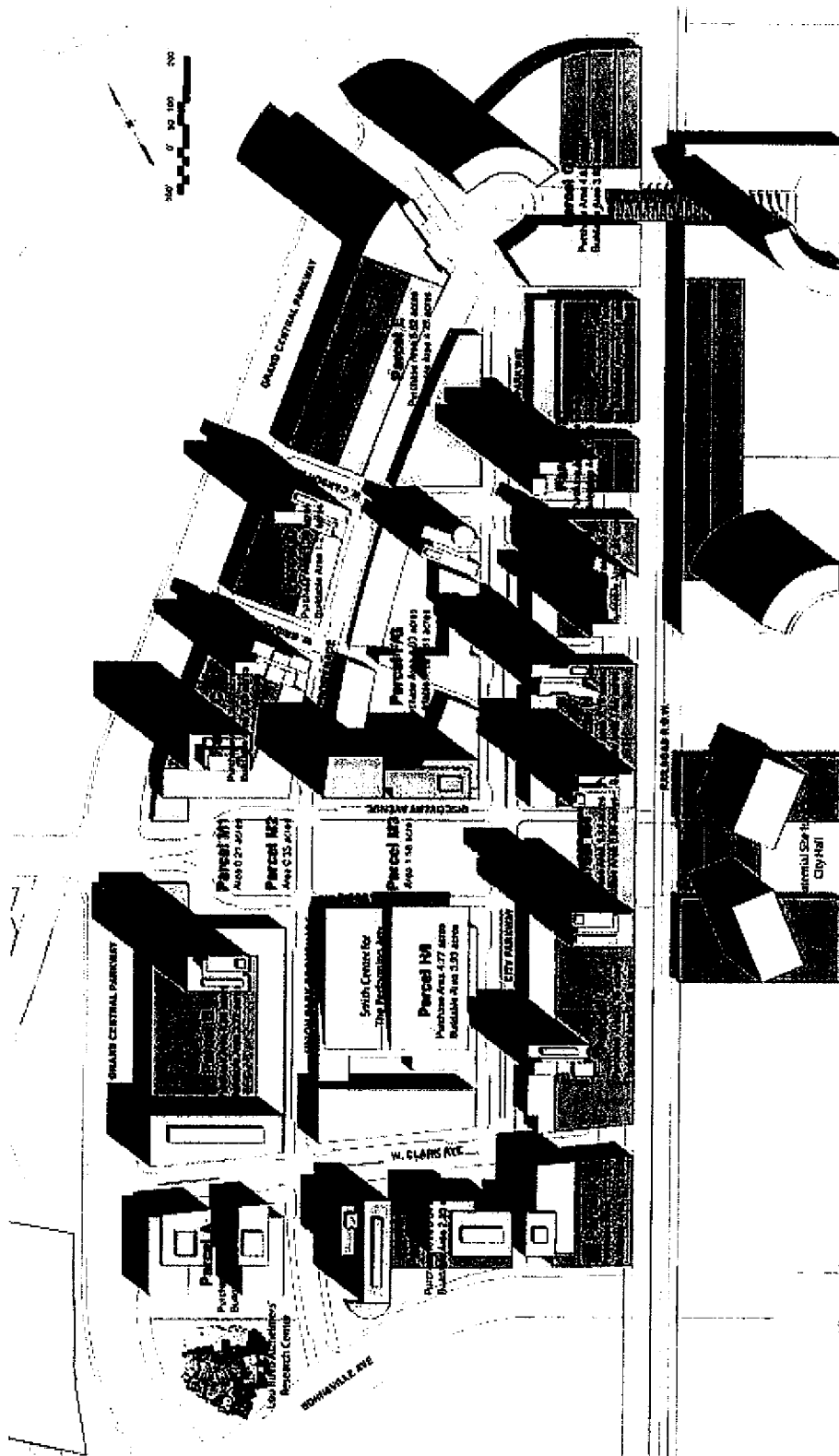


EXHIBIT "B"
DESCRIPTION OF PREMISES

(To be provided prior to execution of Lease and Operating Agreement)

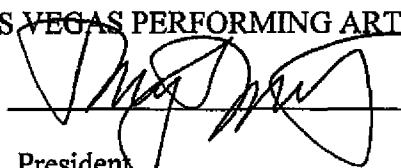
EXHIBIT "C"
Disclosure of Principals
LVPACF Board of Directors

The Board of Directors of the Las Vegas Performing Arts Center Foundation as well as all persons and entities holding more than 1% interest in the Las Vegas Performing Arts Center Foundation or any principal of the Las Vegas Performing Arts Center Foundation are the following:

<u>FULL NAME</u>	<u>BUSINESS ADDRESS</u>	<u>BUSINESS PHONE</u>
1. Don Snyder, Chairman, 6725 Via Austi Pkwy. Ste. 360., Las Vegas, NV 89119		614-0109
2. Keith Boman, Vice Chairman, 601 S. Rancho Dr. Ste D-28, Las Vegas, NV 89106		383-0677
3. Kim Sinatra, Secretary, 3131 Las Vegas Blvd. S., Las Vegas, NV 89109		770-2112
4. Gary Jacobs, Asst. Secretary, 3600 Las Vegas Blvd. S., Las Vegas, NV 89109		693-7129
5. Scott MacTaggart, Director, 530 Las Vegas Blvd. S., Las Vegas, NV 89101		385-3373
6. Robert Forbuss, Director, 3980 Howard Hughes Pky. Ste 550, Las Vegas, NV 89109		379-4400
7. Nancy Houssels, Director, 2580 Sorrell St., Las Vegas, NV 89146		252-3270
8. Charles Atwood, Director, One Caesars Palace Dr., Las Vegas, NV 89109		407-6387
9. Richard Bryan, Director, 300 S. 4 th Street, #1700, Las Vegas, NV 89101		383-8916
10. Alan Feldman, Director, 3799 Las Vegas Blvd. S., Las Vegas, NV 89109		891-7147
11. Richard Plaster, Director, 801 S. Rancho Dr. E-4., Las Vegas, NV 89106		671-6000
12. Jacquelyn Shropshire, Director, 2877 Paradise Rd. #1601, Las Vegas, NV 89109		838-4933

I hereby certify under penalty of perjury, that the foregoing list is full and complete.

LAS VEGAS PERFORMING ARTS CENTER FOUNDATION

By: 

Its: President

Subscribed and sworn to before me this

5th day of MARCH, 2007.


Notary Public

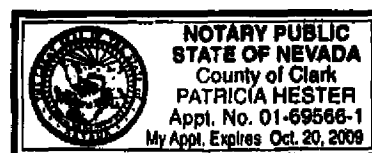


EXHIBIT "D"

FORM OF MEMORANDUM OF LEASE

APN(S): _____

WHEN RECORDED MAIL TO AND
MAIL TAX STATEMENTS TO:

Las Vegas Performing Arts Center Foundation
6725 Via Austi Parkway, Suite 360
Las Vegas, Nevada 89119
Attention: President

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this "**Memorandum**") is made and entered into as of the ____ day of _____, 2005 (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 6725 Via Austi Parkway, Suite 360, Las Vegas, Nevada 89119, Attention: President ("**Tenant**").

A. **WHEREAS**, Landlord owns certain real Premises described on Exhibit A attached hereto and incorporated herein by this reference (the "**Premises**" and, together with all the Premises 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 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)

3596-001\city - performing arts loa 121205.doc

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 _____, 2005, disclosed pursuant to a Memorandum of Lease which was recorded on _____, 2005 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)

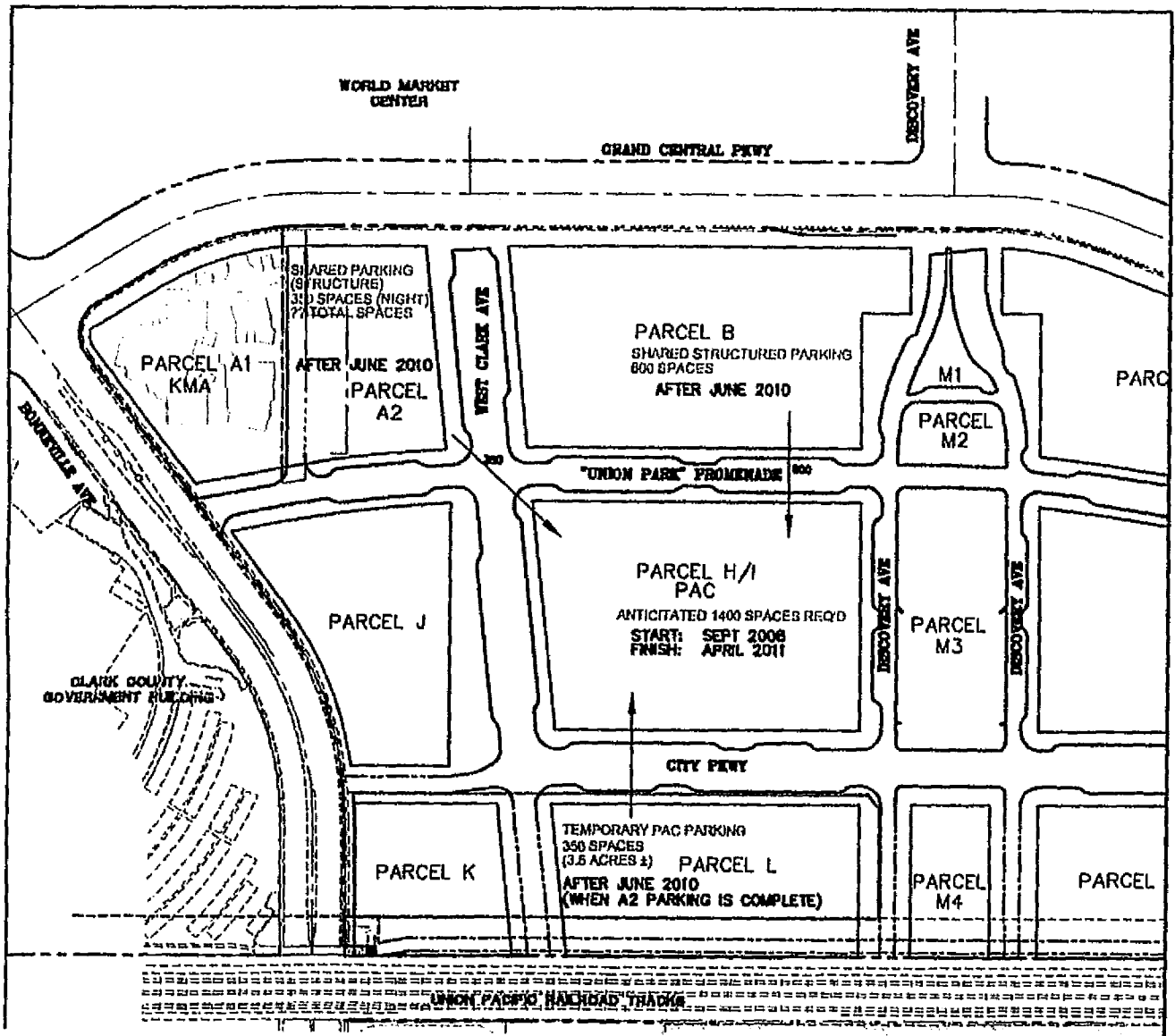
This instrument was acknowledged before me on _____, 20__ by
_____ as _____ of Las Vegas Performing Arts Center
Foundation.

(Signature of Notarial Officer)

(Print Name of Notarial Officer)

3596-001\city - performing arts loa 121205.doc

EXHIBIT "F" to Lease and Operating Agreement
Location of Initial Parking Facilities



**EXHIBIT "H": FUTURE PHASE DDA
DISPOSITION AND DEVELOPMENT AGREEMENT**

THIS DISPOSITION AND DEVELOPMENT AGREEMENT ("Agreement") is entered into this ___ day of ___, 200_, by and between CPY PARKWAY V, INC., a Nevada not-for-profit corporation ("CPY") and Las Vegas Performing Arts Center Foundation, a Nevada non-profit corporation (the "Developer").

WITNESSETH:

WHEREAS, CPY and Developer entered into that certain Amended and Restated Agreement to Design, Construct and Lease a Performing Arts Center dated _____, 2007, as such may have been amended, (the "**Design and Construction Agreement**") whereby the Parties agreed to design and construct such performing arts center.

WHEREAS, because all conditions precedent to the conveyance of the Site (hereinafter defined) have been fulfilled, the Parties are obligated to enter into this Agreement whereby CPY shall convey to Developer for no consideration certain real property that is depicted in **Exhibit "A"** and is described more particularly in **Exhibit "B"** which are attached to this Agreement (the "Site");

WHEREAS, CPY and Developer mutually desire that the Site be developed with _____.

WHEREAS, the parties desire to set forth in this Agreement the terms and conditions for the sale, acquisition and development of the Site.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and conditions contained herein, the parties agree as follows:

1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to facilitate economic development for the community and to accomplish the sale to, and purchase by the Developer of the Site as hereinafter described, which will lead to the creation of additional jobs and positive economic impacts, as further described hereinafter.

The development of the Site pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City of Las Vegas, Nevada ("City"), and the health, safety, morals and welfare of its residents and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

2. THE SITE

(a) The Site consists of approximately ____ acres as depicted in **Exhibit "A"** and described more particularly in **Exhibit "B"**, each of which are attached to this Agreement.

(b) The Site will be annexed into the Union Park Commercial Association at Closing. The Site will be subject to all obligations and restrictions as set forth in the Union Park Commercial Association's governing and controlling documents, including the obligations to pay assessments as set forth therein ("UPCA Documents"). All such documentation shall be provided to Developer as part of Developer's feasibility review pursuant to Section 14 below.

3. PARTIES TO THE AGREEMENT

(a) CPY is a Nevada not-for-profit corporation. The office of CPY is located at 400 Stewart Boulevard, Las Vegas, Nevada 89101.

(b) The Developer is _____, a _____. The principal office of the Developer is located at _____. Wherever the term "Developer" is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided, including any development entity controlled by the Developer. The Developer shall disclose to CPY its principals in accordance with Agency Resolution No. RA-4-99.

(c) The qualifications and identity of the Developer are of particular concern to CPY, and it is because of such qualifications and identity that CPY has entered into this Agreement with the Developer. Developer agrees that (i) no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein and (ii) the Developer shall not assign all or any part of this Agreement without the prior written approval of CPY.

(d) This Agreement may be terminated by CPY if there is any change (voluntary or involuntary) in the membership, management or control of the Developer except as expressly provided herein. Notwithstanding the foregoing, the following shall be permitted transfers and shall not require CPY's approval hereunder:

(i) A transfer to any person or entity in which the Developer has a minimum of fifty-one percent (51%) of the ownership interest and management control;

(ii) A transfer resulting from the death or mental or physical incapacity of an individual;

(iii) A transfer or assignment in trust for the benefit of a spouse, children, grandchildren, other family members or for charitable purposes; and

(iv) A transfer of stock in a publicly held corporation or of the beneficial interest in any publicly held partnership or real estate investment trust.

4. **ACQUISITION OF SITE; DEVELOPMENT PROJECT**

(a) CPY agrees to convey the Site to Developer for no consideration.

(b) Developer agrees to construct on the Site a _____ building consistent with the following general parameters:

(the "Project"). The Developer agrees that the Developer and CPY shall enter into that Development Declaration in the form attached hereto as **Exhibit "C"** (the "Declaration") at the Closing which shall govern and control the development and use of the Site, including the commencement and completion of construction of the Project and the use of the Site.

5. **GENERAL REPRESENTATIONS AND WARRANTIES**

(a) Representations and Warranties by CPY. CPY represents and warrants that as of the date hereof and the date of close of escrow:

(i) CPY is a Nevada not-for-profit corporation.

(ii) CPY has all requisite power and authority to enter into and perform its obligations under this Agreement.

(iii) By proper action of CPY, CPY's signatories have been duly authorized to execute and deliver this Agreement.

(iv) To CPY's actual knowledge, no condemnation, eminent domain or similar proceedings have been instituted or threatened against the Site.

(v) To CPY's actual knowledge, there are no legal actions, suits or proceedings pending or threatened before any judicial body or any governmental or quasi-governmental authority against the Site or against CPY

which would inhibit CPY's ability to perform its obligations under this Agreement.

(vi) To CPY's actual knowledge, there are no legal actions, suits or proceedings, pending or threatened, before any judicial body or any governmental or quasi-governmental authority, against or affecting the Site.

(vii) To CPY's actual knowledge, the execution, delivery and performance of this Agreement by CPY will not (i) conflict with or be in contravention of any provision of law, order, rule or regulation applicable to CPY or the Site, or (ii) result in any lien, charge or encumbrance of any nature on the Site other than as permitted by this Agreement.

(viii) The execution of this Agreement by CPY does not violate any provision of any other agreement to which CPY is a party.

(ix) Except as may be specifically set forth herein, no approvals or consents not heretofore obtained by CPY are necessary in connection with the execution of this Agreement by CPY or with the performance by CPY of its obligations hereunder.

As used in this Agreement, the term "CPY's actual knowledge" means the actual knowledge of the President of CPY which is Scott Adams.

(b) Representations and Warranties of the Developer

The Developer represents and warrants to CPY that as of the date hereof and the date of Close of Escrow:

(i) The Developer is a _____ duly organized and existing under the laws of the State of _____ and qualified to do business in the State of Nevada.

(ii) The Developer has all requisite power and authority to carry out business as now and whenever conducted and to enter into and perform its obligations under this Agreement.

(iii) By proper action of the Developer, the Developer's signatories have been duly authorized to execute and deliver this Agreement.

(iv) The execution of this Agreement by the Developer does not violate any provision of any other agreement to which the Developer is a party.

(v) Except as may be specifically set forth in this Agreement, no approvals or consents not heretofore obtained by the Developer are necessary in connection with the execution of this Agreement by the Developer or with the performance by the Developer of its obligations hereunder.

(vi) Neither the Developer nor any of its principals is currently a debtor in a case under the Bankruptcy Code (Title 11 U.S.C.), is the subject of an involuntary petition under the Bankruptcy Code, has made an assignment for the benefit of creditors or is insolvent and unable to pay its debts as they become due.

(vii) To the Developer's actual knowledge, there are no legal actions, suits or proceedings pending or threatened before any judicial body or any governmental or quasi-governmental authority against the Developer which would inhibit the Developer's ability to perform its obligations under this Agreement.

6. TITLE AND SURVEY

(a) CPY shall cause Escrow Holder to deliver to Developer within ten (10) days after the Effective Date of this Agreement a current preliminary title report on the Site together with copies of all documents referred to in the report (collectively, the "Title Report"). In addition, Developer shall have the option of obtaining a survey of the Site at its cost and expense no later than thirty (30) days (the "Survey Period") after the Effective Date (the "Survey"). Within ten (10) days following the expiration of the Survey Period, Developer shall notify CPY in writing of Developers' disapproval of any exception shown on the Title Report or the Survey ("Disapproved Exceptions"). In connection therewith any exception not disapproved by Developer in writing within such time shall be deemed accepted by Developer. Such approved exceptions and the UPCA Documents are hereinafter referred to as the "Permitted Exceptions". Within ten (10) days after receipt of Developer's notice of Disapproved Exceptions, CPY shall deliver written notice to Developer indicating whether or not CPY will remove or cure the Disapproved Exceptions. If CPY gives Developer notice that it will not remove a Disapproved Exception, Developer may either (i) waive Developer's prior disapproval and close Escrow, or (ii) terminate this Agreement, in which event Escrow Holder shall cancel the Escrow and promptly return all documents to the depositing party without any further instructions from the parties. Except as otherwise specified in this Agreement, upon termination of this Agreement pursuant to this Section, the parties shall have no further obligation or liability to each other.

(b) CPY shall cause Escrow Holder at Close of Escrow to issue to Developer a standard CLTA owner's policy of title insurance (the "Title Policy")

as to the Site, with a limit of liability in the amount of the Purchase Price subject only to the Permitted Exceptions.

7. **FEASIBILITY REVIEW; INSPECTION**

(a) All undefined terms contained in this Section 7 shall have that meaning as set forth in the Project Environmental Management Agreement attached hereto as **Exhibit "D"** (the "Environmental Management Agreement").

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

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

(d) CPY agrees at its sole cost and expense to perform CPY Obligations on the terms and conditions set forth in the Environmental Management Agreement. Developer agrees that except for the CPY Remediation Work CPY shall have no other obligation for the remediation of the Site in connection with the presence of Hazardous Substances.

(e) Developer, and its agents, representatives and employees (including, without limitation, architects and engineers) will have the right to enter upon and inspect the Site as Developer 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 Developer may reasonably require, provided that such inspections and tests will not materially damage the Site in any respect.

(f) Developer 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 Site, Developer will provide CPY with a copy of the engagement letter with the consultant retained by Developer and a detailed description of the intended scope of activities on the Site. Developer agrees that such plan shall be subject to the approval of CPY. Developer agrees that CPY shall have the right to have its representatives present during such activities. In addition, Developer acknowledges that Union Pacific Railroad may have to be notified of such investigations and also has the right to have representatives present during such investigations.

(g) All such tests and inspections shall be conducted in accordance with standards customarily employed in the industry and in compliance with all applicable laws, rules and regulations. Developer will promptly restore or cause to be restored the Site to its original condition as existed prior to any such inspections and/or tests. If Developer, its agents, representatives or employees undertake any boring or other disturbance of the soil, the soil so disturbed will be recompact to the original condition of the Site and Developer will obtain at its own expense a certificate from a soils engineer which certifies that such soil so disturbed has been recompact to the original condition of the 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, Developer agrees to indemnify, hold harmless and defend (with counsel reasonably acceptable to CPY) CPY, 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 Developer's tests and inspections pursuant to this Section 7. The indemnity obligations of Developer under this Section will survive any termination of this Agreement. Developer covenants and agrees upon request of CPY to promptly deliver to CPY without charge therefore, 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.

(h) Developer shall have the right to terminate this Agreement upon written notice to CPY on or before_____, 20__ in the event Developer determines that the Site is not suitable for development of the Project. If this Agreement is terminated pursuant to the foregoing provisions of this paragraph (h), Developer shall pay to Escrow Holder an amount equal to the cost of the

cancellation of Escrow, and neither party will have any further rights or obligations under this Agreement except as otherwise provided herein.

(i) The Developer acknowledges and agrees that the Site is to be sold and conveyed to and accepted by the Developer in an "as is" condition with, if any, all faults and defects. Except as otherwise specifically stated in this Agreement, CPY makes no representations or warranties of any kind whatsoever, either expressed or implied, with respect to the Site or any of such related matters; in particular, but without limitation, CPY makes no representations or warranties with respect to the use, condition, title, occupation or management of the Site, compliance with applicable statutes, laws, codes, ordinances, regulations or requirements relating to leasing, zoning, subdividing, planning, building, fire, safety, health or environmental matters, compliance with covenants, conditions and restrictions (whether or not of record,) other local, municipal, regional, state or federal requirements, or other statutes, laws, codes, ordinances, regulations or requirements affecting or relating to the Site. The Developer acknowledges that notwithstanding any prior or contemporaneous oral or written representations, statements, documents or understandings, this Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and the purchase and sale of the Site and supersedes any such prior or contemporaneous oral or written representations, statements, documents or understandings.

(j) Notwithstanding anything to the contrary contained herein, CPY and Developer agree that the Site shall comply with the terms and conditions of the Project Management Agreement attached to this Agreement as **Exhibit "D"** including the performance and payment by CPY of the City Obligations. The terms and conditions of the Project Environmental Management Agreement shall survive the closing of the sale of the Site and are incorporated into the Development Declaration.

8. **ESCROW**

(a) CPY and Developer agrees to open an escrow with Nevada Title Company (the "Title Company"), as escrow agent (the "Escrow Agent"), in Clark County, Nevada, within three (3) days after both parties have fully executed this Agreement. This Agreement constitutes the joint escrow instructions of CPY and the Developer, and a fully executed copy of the Agreement shall be delivered to the Escrow Agent upon the opening of escrow. CPY and the Developer shall provide such additional escrow instructions as shall be necessary and consistent with this Agreement. The Escrow Agent hereby is empowered to act under this Agreement, and, upon indicating its acceptance of the provisions of this Section 8 in writing, delivered to CPY and

to the Developer after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder.

(b) All funds received in this escrow shall be deposited by the Escrow Agent with other escrow funds of the Escrow Agent in a general interest bearing escrow account or accounts with any state or national bank doing business in the State of Nevada. Such funds may be transferred to any other such general interest bearing escrow account or accounts. All disbursements shall be made by check of the Escrow Agent. All adjustments shall be made on the basis of a 30 (thirty) day month. Any interest that is earned on funds deposited under this paragraph shall be for the benefit of the party responsible for depositing those funds with the Escrow Agent and apply to the Purchase Price or returned to the Developer pursuant to this Agreement.

(c) The Escrow Agent shall not be obligated to return any such money, papers or documents except upon the written instructions of both CPY and the Developer or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction.

(d) Any amendment of these escrow instructions shall be in writing and signed by both CPY and the Developer. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment. All communications from the Escrow Agent to CPY or the Developer shall be directed to the addresses and in the manner established in this Agreement for notices, demands and communications between CPY and the Developer.

9. **CLOSE OF ESCROW**

(a) Provided that the Developer is not in default under this Agreement and all conditions precedent to such conveyance have occurred, the closing of the sale and acquisition of the Site by CPY to Developer (the "Closing" of "Close of Escrow") shall be completed on or prior to _____, 20__ (the "Closing Date"). CPY and the Developer agree to perform all acts necessary to conveyance of title in sufficient time for title to be conveyed in accordance with the foregoing provision.

(b) No later than one (1) day prior to the Close of Escrow, CPY shall deposit in the Escrow the following documents:

(i) A grant bargain and sale deed in the form of **Exhibit "F"** attached hereto, duly executed and acknowledged by CPY and in recordable form, deeding to Developer all of CPY's right, title, and interest in the Site (the "GBS Deed").

(ii) A customary non-foreign transferor declaration (the "Non-foreign Transferor Declaration") duly executed by CPY.

(iii) Two originals of the Declaration duly executed and acknowledged by CPY.

(iv) Any of the UPCA Documents which are required to be executed and acknowledged by CPY duly executed and acknowledged by CPY.

(c) No later than one (1) day prior to the Close of Escrow Developer shall deposit in Escrow the following:

(i) Two originals of the Declaration duly executed and acknowledged by Developer.

(ii) Any of the UPCA Documents required which are to be executed and acknowledged by Developer duly executed and acknowledged by Developer.

(d) At such time as the conditions precedent to Close of Escrow have been satisfied or waived, Escrow Holder shall perform the acts set forth below in the following order:

(i) Date, as of the date of Close of Escrow, all instruments calling for a date.

(ii) Record the GBS Deed.

(iii) Record the Declaration.

(iv) Record the UPCA Documents requiring to be recorded

(v) Deliver the Developer's Title Policy to Developer.

(v) Prepare and submit to the Internal Revenue Service the information return and statement concerning the closing of the Escrow (the "Information Return") required by Section 6045(e) of the Internal Revenue Code of 1986, unless the Information Return is not required under the regulations promulgated under Section 6045(e).

(e) The instruments that are required to be recorded and/or delivered under this Agreement shall provide that the Recorder shall return them to Escrow Holder after recordation, and upon receipt thereof, Escrow Holder shall deliver the following:

- (i) To CPY:
 - A. A copy of the GBS Deed as recorded;
 - B. The original recorded Declaration in counterparts;
 - C. All originals in counterparts of the recorded UPCA Documents; and
 - D. Plain copies of the Real Property Transfer Declaration.
- (ii) To Developer:
 - A. The original recorded GBS Deed;
 - B. An original in counterparts of the Declaration and a copy of the recorded Declaration;
 - C. An original in counterparts of the UPCA Documents and a copy of the recorded UPCA Documents;
 - D. Plain copies of the Real Property Transfer Tax Declaration; and
 - E. The original of the Non-foreign Transferor Declaration.

Possession shall be delivered to the Developer concurrently with the conveyance of title, except that limited access shall be permitted before conveyance of title as permitted in this Agreement.

10. PRORATIONS AND COSTS

(a) Except as may be otherwise expressly provided in this Agreement, all revenues, income and expenses of the Site with respect to the period prior to the Close of Escrow shall be for the account of CPY, and all revenues, income and expenses of the Site with respect to the period after the Close of Escrow shall be for the account of Developer. Accordingly, the following expenses (hereinafter collectively referred to as the "Apportioned Amount") shall be allocated and apportioned as of the Close of Escrow on the basis of a 30-day month and a 365-day year, and shall be paid or credited by CPY to Developer or by Developer to CPY, as the case may be (i.e., prorated), at the Close of Escrow: (i) real and personal Site taxes, assessments and special district levies applicable to the Site (based on the tax bills for the current year);

(ii) charges for electricity, gas, telephone, water, sewage, cable and other utilities furnished to the Site; (iii) annual license, permit and/or inspection fees applicable to the Site; and, (iv) all other reasonable and customary expenses (including prepaid expenses), incurred by CPY in connection with the ownership or operation of the Site. In addition, if any of the foregoing expenses cannot be accurately allocated on the Close of Escrow, the same shall be allocated as soon as practicable after the Close of Escrow, and either CPY or Developer shall promptly pay to the other the sum determined pursuant to such subsequent allocation.

(b) The Developer shall deposit into escrow along with any amounts due pursuant to paragraph (a) immediately next above the following fees, charges and costs after the Escrow Agent has notified the Developer of the amount of such fees, charges and costs ("Developer's Closing Expenses"), but not earlier than ten (10) days prior to the scheduled date for the close of escrow:

- (i) Fees for recording the Deed;
- (ii) The entire amount of any state, county or City documentary transfer tax;
- (iii) Fees for recording any UPCA Documents required to be recorded in connection with the UPCA Documents;
- (iv) The cost of the premium for to obtain the Title Policy and any additional or special endorsements required by Developer to the title Policy;
- (v) The cost of recording the Declaration; and
- (vi) One-half (1/2) of any escrow fees.

(c) CPY shall deposit in escrow along with any amounts due pursuant to paragraph (a) immediately next above the following fees, charges and costs after the Escrow Agent has notified the Agency of the amount of such fees, charges and costs, but not earlier than one (1) day prior to the scheduled date for the close of escrow:

- (i) One-half (1/2) of any escrow fees.

11. CONDITIONS PRECEDENT TO CLOSE OF ESCROW

(a) Each of the following shall constitute a condition precedent to the obligations of CPY to close the Escrow and may be waived only by a written waiver executed by CPY and delivered to Developer and Escrow Holder:

(i) All of Developer's representations and warranties set forth in Section 5 above contained in this Agreement are true and correct in all material respects as of the Close of Escrow.

(i) Developer shall not have committed a Developer Event of Default (as hereinafter defined).

(ii) Developer shall have executed, acknowledged where required, and deposited with Escrow Holder all of the documents required to be delivered by Developer as required by this Agreement.

(b) Each of the following shall constitute a condition precedent to the obligations of Developer to close the Escrow and may be waived only by a written waiver executed by Developer and delivered to CPY and Escrow Holder:

(i) All of CPY's representations and warranties set forth in Section 5 above contained in this Agreement are true and correct in all material respects as of the Close of Escrow.

(ii) CPY shall have executed, acknowledged where required, and deposited with Escrow Holder all of the documents required to be delivered by CPY as required by this Agreement.

(iii) The Escrow Holder is prepared to have the Developer's Title Policy issued by the Title Insurer.

(iv) CPY shall not have committed a CPY Event of Default (as hereinafter defined).

12. **DEFAULTS AND REMEDIES**

(a) Developer's Events of Default. The occurrence of any of the following prior or subsequent to Close of Escrow, shall be a "Developer Event of Default" hereunder:

(i) The failure by Developer to timely deliver the documents as required by subsection 6.3 (b), unless such failure is as a result of the failure to be satisfied of one or more of Developer's conditions precedent to Close of Escrow set forth in Section 5.2 above;

(ii) The filing of a petition or the institution of proceedings of, by, or against Developer pursuant to the Bankruptcy Reform Act of 1978, as amended, or any successor statute or pursuant to any state bankruptcy, insolvency, moratoria, reorganization, or similar laws which is not dismissed within ninety (90) days; or Developer's making a general assignment for the benefit of its creditors or the entering by Developer into any compromise or arrangement with its creditors generally; or Developer's becoming insolvent in the sense that Developer is unable to pay its debts as they mature or in the sense that Developer's debts exceed the fair market value of Developer's assets; or

(iii) The failure of Developer to perform any material act to be performed by it, to refrain from performing any material prohibited act or to fulfill any material condition to be fulfilled by it under this Agreement, or under any agreement referred to herein or attached hereto as an exhibit, which failure is not cured by the Developer within the relevant cure period set forth below. The Developer shall cure any monetary default within five (5) business days after receipt of written notice from CPY. Developer shall cure any nonmonetary default within ten (10) business days after receipt of written notice from CPY; provided, however, that in the event that such nonmonetary default is of a nature that it cannot be cured within such ten (10) business day period, then the Developer shall commence to cure such failure within such ten (10) business day period and shall diligently prosecute such cure to its completion.

(iv) Any of Developer's representations and warranties set forth herein shall be untrue in any material way as of the date set for Close of Escrow.

(b) CPY's Events of Default. The occurrence of any of the following prior to Close of Escrow, shall be an "CPY Event of Default" hereunder:

(i) The failure of CPY to perform any act to be performed by it, to refrain from performing any prohibited act or to fulfill any condition to be fulfilled by it under this Agreement; or

(ii) Any of CPY's representations and warranties set forth in herein shall be untrue in any material way as of the date set for Close of Escrow.

(c) CPY's Remedies. In the event of the occurrence of the event of a Developer Event of Default prior to the Close of Escrow, CPY, as its sole

right and remedy, as its sole and exclusive remedy shall have the right to terminate this Agreement.

(d) In the event a CPY Event of Default occurs prior to the Close of Escrow, the Developer's remedy shall be to pursue one, but not both, of the following remedies:

(i) Obtain specific performance of the obligations of CPY hereunder; or

(ii) Terminate this Agreement.

13. **BROKERAGE COMMISSIONS**

Each party warrants and represents to the other that no broker, finder or other intermediary hired or employed by it is entitled to a commission, finder's fee or other compensation based upon the transaction contemplated hereby and each party (the "Indemnitor") shall indemnify and hold harmless the other party from and against any and all liens, demands, liabilities, causes of action, judgments, costs, claims, damages, suits, losses and expenses, or any combination thereof, including attorneys' fees, of any nature, kind or description, caused by or arising out of the claim of any broker, finder or other intermediary alleging to have been employed or hired by the Indemnitor, to a commission, finder's fee or other compensation based upon the transactions contemplated hereby.

14. **TIME OF ESSENCE**

Time is of the essence of this Agreement and every obligation hereunder. Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days. In the event that the final date for payment of any amount or performance of any act hereunder falls on a Saturday, Sunday or holiday, such payment may be made or act performed on the next succeeding business day.

15. **SURVIVAL**

The representations and warranties contained in this Agreement, and the covenants that extend beyond the conveyance of title, shall survive the recordation of any deed and shall not be deemed merged into such deed.

16. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and bind the successors and assigns of the respective parties hereto, subject to the provisions of this Agreement regarding assignment.

17. NONLIABILITY OF CPY OFFICIALS AND EMPLOYEES

No official or employee of CPY or the CPY shall be personally liable to the Developer for any default or breach by CPY, for any amount which may become due to the Developer or for any obligation of CPY under the terms of this Agreement.

18. NOTICES, DEMANDS AND COMMUNICATIONS

Formal notices, demands and communications between CPY and the Developer shall be sufficiently given if made in writing and dispatched by registered or certified mail, postage prepaid, return receipt requested or by personal delivery, to the principal offices of CPY and the Developer as set forth in this Section 18. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate in writing.

If to CPY: Office of Business Development
CPY of Las Vegas
400 Stewart Avenue
Las Vegas, Nevada 89101

With a copy to: CPY Attorney's Office
CPY of Las Vegas
400 Stewart Avenue
Las Vegas, Nevada 89101

If to the Developer: Las Vegas Performing Arts Center Foundation
6725 Via Austi Parkway, Suite 360
Las Vegas, NV 89119
Attention: President
Facsimile No. 702-614-0205

With a copy to: Las Vegas Performing Arts Center Foundation
6725 Via Austi Parkway, Suite 360
Las Vegas, NV 89119
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. 702-770-1519

19. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement is executed in three duplicate originals, each of which is deemed to be an original. This includes Exhibits A, B, C, D, E, F and G attached hereto and incorporated herein by reference, all of which constitute the entire understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of CPY and the Developer and no waiver of one provision shall be construed as a waiver of that provision in the future or as a waiver of any other provision. All amendments hereto must be in writing and signed by the appropriate authorities of CPY and the Developer.

20. NO THIRD PARTY BENEFICIARIES

This Agreement is intended for the exclusive benefit of CPY and Developer and their respective permitted assigns and is not intended and shall not be construed as conferring any benefit on any third party or the general public.

21. SEVERABILITY

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision shall be invalidated, it shall be deemed to be severed from this Agreement and the remaining provisions shall remain in full force and effect.

22. **GOVERNING LAW**

The interpretation and enforcement of this Agreement shall be governed in all respects by the laws of the State of Nevada.

23. **CAPTIONS**

The captions contained in this Agreement are for the convenience of the parties and shall not be construed so as to alter the meaning of the provisions of the Agreement.

24. **COUNTERPARTS**

This Agreement may be signed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same Agreement.

25. **TIME FOR ACCEPTANCE OF AGREEMENT BY CPY**

This Agreement will have been approved on _____, 200_ by the Las Vegas City Council. The effective date of this Agreement shall be the date when this Agreement has been signed by CPY ("Effective Date").

SIGNATURE BLOCKS ON NEXT PAGE

CPY:

DEVELOPER:

Date of CPY Council Approval:

_____, 2001.

CPY PARKWAY IV-A, INC.

By: _____
PRESIDENT

APPROVED AS TO FORM:

Date

ATTEST:

BARBARA JO RONECUS, CPY Clerk

_____, 2001

LIST OF EXHIBITS

EXHIBIT "A"	SITE DEPICTION
EXHIBIT "B"	SITE LEGAL DESCRIPTION
EXHIBIT "C"	DECLARATION
EXHIBIT "D"	ENVIRONMENTAL MANAGEMENT AGREEMENT
EXHIBIT "E"	PROJECT INFORMATION
EXHIBIT "F"	GRANT, BARGAIN AND SALE DEED

EXHIBIT "A"
SITE DEPICTION

(To be provided prior to execution of Agreement)

EXHIBIT "B"
SITE LEGAL DESCRIPTION

(To be provided prior to execution of Agreement)

EXHIBIT "C"
To Disposition and Development Agreement
Development Declaration and Parking Agreement

THIS DEVELOPMENT DECLARATION AND PARKING AGREEMENT ("Development Declaration"), made this ____ day of _____, 200_, by CITY PARKWAY V, INC., a Nevada not-for profit corporation ("Declarant"), AND LAS VEGAS PERFORMING ARTS CENTER FOUNDATION, a Nevada not-for profit corporation ("Purchaser"), is made with reference to the following facts:

RECITALS

1. Concurrently with the original Recordation of this Development Declaration, Declarant is conveying as gift to Purchaser the real property described on Attachment "A" hereto (the "Property") situated in the City of Las Vegas, Nevada.

2. The Property is part of a larger parcel of real property known as Union Park, a mixed use master planned community, the boundaries of which are described on Attachment "C" hereto ("Union Park"). Declarant, together with certain affiliates of Declarant, is the master developer of Union Park. Among the distinguishing characteristics of Union Park are the clear delineation of land use areas throughout the community, together with the strict exercise of architectural and occupancy controls over individual construction and development projects, so as to ensure the harmonious growth and development of Union Park and the maximization of the value of Declarant's remaining land holdings. It is vitally important to Declarant that the intensity of development in Union Park be limited on certain parcels of property (including the Property). Should the development limitations imposed by Declarant be exceeded, Union Park and its planned development could be negatively impacted. Such conditions could in turn adversely affect the ability of Declarant to develop its remaining affected land holdings within Union Park.

3. The Property is to be used exclusively for the construction, development and operation of a _____ (the "Project"), all as more particularly described on the Conceptual Development Plan attached hereto as Attachment "D."

4. In connection with its acquisition of the Property, Purchaser has represented to Declarant that it is acquiring the Property to develop the same in accordance with certain covenants, conditions, restrictions, reservations and limitations more particularly set forth below (for convenience herein, collectively referred to as the "Restrictions"), and Declarant is gifting the Property to Purchaser on the basis of Purchaser's continuing compliance with such Restrictions. Purchaser acknowledges, among other things, that: (i) the gift of the Property to Purchaser for no consideration reflects the limitations on use referred to above and (ii) without certain transfer, use and development restrictions set forth below and hereby agreed to be reasonable, the Property or an interest in Purchaser could be sold by Purchaser for an immediate gain prior to fulfilling certain express requirements of Purchaser and contrary to the express intent of the parties hereto.

5. But for the representations made by Purchaser with respect to development of the Project, and Purchaser's unique skills, expertise and suitability in development, construction and operation of similar projects, Declarant would not have gifted the Property to Purchaser; instead, Declarant either would have sold the Property to another party willing to conform to the Restrictions or would have retained the Property itself for development in a manner consistent with its long-range master planning program and thereby retained the benefits of ownership,

including future appreciation in value of the Property. Declarant agreed to sell the Property to Purchaser, pursuant to the terms of the Purchase Agreement, in reliance on Purchaser's representation that it will develop the Property as represented herein, and, if Purchaser should change the use of the Property, Declarant will be substantially and irreparably damaged.

6. This Development Declaration is made in order to promote the purposes set forth in these Recitals, and the parties intend that the Restrictions, and all other declarations supplemental hereto, will be understood and construed in furtherance of said purposes.

Now, Therefore, in consideration of the foregoing, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by Purchaser, the parties hereto agree as follows:

Definitions.

Unless the context otherwise specifies or requires, the terms defined in this Article 1 shall, as used in this Development Declaration, have the meanings herein set forth:

"Attachment" means the following exhibits that are attached hereto and made a part of this Development Declaration:

- A. Description of the Property
- B. Description of Union Park
- C. Development Plan
- D. Construction Schedule
- E. Environmental Management Exhibit

- G. Initial Parking Facilities

"Benefitted Property" means initially all of Union Park. Declarant shall have the right, by a duly Recorded amendment to this Development Declaration, to unilaterally add to, subtract from, or substitute for the Benefitted Property any real property owned by Declarant and the term "Benefitted Property," as used herein, shall refer to such added, reduced, or substituted real property, effective upon the Recordation of such amendment.

"City" means the City of Las Vegas, Nevada.

"Commencement Requirement" means the obligation of the Owner to achieve Construction Commencement of the Project by the Construction Commencement Deadline, as set forth in subsection 7.1(a).

"Completion Requirement" means the obligation of the Owner to Substantially Complete the Project, as set forth in subsection 7.1(b).

"Construction Commencement" means the first date on which Owner shall have performed all of the following:

- 1.1.2 entered into bona fide contract(s) with one or more general contractors for the construction of the Project.
- 1.1.3 obtained a building permit from the City of Las Vegas for the commencement of construction of the Project.
- 1.1.4 Substantially Completed grading of the Property.
- 1.1.5 obtained a satisfactory inspection by a building inspector for the City of Las Vegas for the foundations for the building or buildings comprising the Project.

"Construction Commencement Deadline" means the date by which Construction Commencement must occur pursuant to Section 7.1(a).

"Construction Completion Deadline" means the date by which the construction of the Project must be Substantially Complete pursuant to Section 7.1(b).

"Declarant" means City Parkway, Inc., and, to the extent provided in Article 12 of this Development Declaration, its successors and assigns

"Deed of Trust" means a mortgage as well as a deed of trust.

"Default Rate" means a variable rate of interest equal to the prime or reference rate of interest announced from time to time by Bank of America, NT&SA plus 5% per annum, or the maximum rate permitted by law, if less.

"Development Declaration" means this instrument, as it may from time to time be amended or supplemented.

"Development Plan" is described in Section 3.1.

"Development Schedule" means that schedule for the development and construction of the Project as set forth in Attachment "D".

"Improvement-Improvements" means any and all physical improvements and includes, without limitation, buildings, outbuildings, display or storage areas, roads, driveways, parking areas, fences, walls, beams, screening walls and barriers, retaining walls, stairs, decks, water lines, sewers, electrical and gas distribution facilities, hedges, windbreaks, plantings, planted trees and shrubs and other landscape materials, courts, malls or plazas, retaining walls, irrigation systems and controllers, waterworks, fountains, utilities, control systems, delivery passages, sidewalks, walkways, pedestrian bridges, stairways, ramps poles, Signs, loading areas, and all other structures, installations, and landscaping of every type and kind, whether above or below the land surface and any replacements, additions, repairs or alterations thereto of any kind whatsoever, whether interior or exterior.

"Mortgage" means a Deed of Trust as well as a mortgage.

"Mortgagee" means a beneficiary under, or holder of, a Deed of Trust as well as a mortgagee under a Mortgage.

"Occupant" means a lessee or licensee of an Owner, or any other person or entity other than an Owner in lawful possession of any portion of the Property with the permission of the Owner.

"Owner" means Purchaser and its successors as the Record owner of fee simple title to any portion of the Property, excluding any entity or person who holds such interest as security for the payment of an obligation, but including contract sellers and any Mortgagee or other security holder in actual possession of any portion of the Property.

"Permitted Use" means

"Project" means the Improvements to be built on the Property in compliance with the Development Plan.

"Property" means the real property described on Attachment "A" hereto together with all of the real property hereafter made subject to this Development Declaration.

"Purchase Agreement" means that certain Disposition and Development Agreement between Declarant and Purchaser dated as of _____, 200_.

"Record-Recorded-Recordation" means, with respect to any document, the recordation of said document in the Office of the County Recorder of Clark County, Nevada.

"Recordation Date" means the date on which this Development Declaration is Recorded, and if Recorded on more than one date, then the first of such dates.

"Restrictions" means each and every covenant, condition, restriction, reservation or limitation contained in this Development Declaration.

"Sign" means any structure, device, or contrivance, electric or nonelectric, upon or within which any poster, bill, bulletin, printing, lettering, painting, device, or other advertising of any kind whatsoever is used, placed, posted, tacked, nailed, pasted, or otherwise fastened or affixed; provided, however, the term "Sign" as used herein shall not refer to any such structure, device or contrivance located entirely within an enclosed building and not visible to persons outside of such building.

"Street-Streets" means any street, highway, road, or thoroughfare, public or private, within or adjacent to the Property and shown on any Recorded subdivision or parcel map, or record of survey, whether designated thereon as street, boulevard, place, drive, road, court, terrace, way, lane, circle, or otherwise.

"Substantially Complete" means, with respect to any Improvement, that such Improvement is sufficiently complete so that it may be used for the purpose for which it is intended, that all necessary governmental approvals for the construction, use and occupancy thereof have been obtained; and, with respect to any such Improvement to be owned or maintained by a governmental authority or public utility company, that such governmental authority or public utility company has accepted dedication thereof. "Substantial Completion" of the Project means that all Improvements shown or reasonably inferable from the Development Plan have been Substantially Completed.

"Union Park" means all of the real property described on Attachment "C" hereto or the mixed use master planned community being developed by the Declarant on the land so described, as the context requires.

ARTICLE 2. Property Encumbered.

2.1 General Declaration. Declarant hereby declares that all of the Property is, and shall be, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved, or transferred in whole or in part, subject to this Development Declaration. All of the Restrictions set forth herein are declared and agreed to be in furtherance of a general plan for the subdivision, improvement, and sale of the Property and are established for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property and every part thereof. All of Restrictions shall run with all of the Property for all purposes and shall be binding upon and inure to the benefit of Declarant and its successors in interest as set forth in this Development Declaration.

2.2 Uniform Act Does Not Apply. Pursuant to NRS 116.1207, the Nevada Uniform Common Interest Ownership Act does not apply to the Property or to this Development Declaration.

ARTICLE 3. Design and Construction of Improvements.

3.1 Development Plan. Purchaser agrees that Purchaser's construction and operation of the Project shall be in compliance in all respects with the Development Plan. No Improvement shall be erected, placed, altered, maintained, or permitted to remain on any portion of the Property that is not consistent in all respects with the Development Plan.

3.2 Approval of Alterations Subsequent to Completion of Project. Except for the interior of any completely enclosed structure, no new construction, alteration, grading, addition, excavation, modification, decoration, redecoration, reconstruction or removal of the Improvements shall be commenced or maintained by Owner until drawings and specifications consistent with the Development Plan have been submitted to, and approved in writing by, Declarant. Declarant, in its sole discretion, shall have the right to disapprove any drawings and specifications submitted hereunder on any reasonable grounds.

3.3 No Waiver of Future Approvals. Declarant's approval of any proposals or drawings and specifications for any work done or proposed or approval in connection with any other matter requiring the approval and consent of Declarant shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, drawings and specifications, or matters subsequently or additionally submitted for approval or consent. Such approval shall not constitute or be deemed a waiver of any requirement contained in this Development Declaration which relates to the conditions upon such construction, or the manner in which such construction shall be performed.

3.4 Approval. Declarant may approve drawings and specifications as submitted, or as altered or amended, or it may grant its approval to the same subject to specific conditions. Upon approval or conditional approval by Declarant of any drawings and specifications submitted, a copy of such drawings and specifications, together with any conditions, shall be deposited for permanent record with Declarant, and a copy of such drawings and specifications, bearing such approval together with any conditions, shall be returned to the applicant submitting the same.

3.5 Declarant Not Liable. Declarant shall not be liable for damage, loss, or prejudice suffered or claimed by any person on account of:

- 3.5.1 The approval or disapproval of any plans, drawings, and specifications, whether or not in any way defective; or
- 3.5.2 The construction of any Improvement, or performance of any work, whether or not pursuant to approved plans, drawings, and specifications.

Declarant's approval of proposals, drawings or specifications shall not constitute a representation, warranty or guarantee, either express or implied, that such proposals, drawings or specifications comply with good engineering design or with zoning or building ordinances, or other governmental regulations or restrictions. By approving such proposals, drawings or specifications Declarant does not assume any liability or responsibility therefor, or for any defect in the structure constructed from such proposals, drawings or specifications.

3.6 Construction without Approval. If any Improvement shall be erected, placed, or maintained upon the Property, or any new use commenced upon the Property, other than in accordance with the provisions of this Article, such alteration, erection, placement, maintenance, or use shall be deemed to have been undertaken in violation of this Development Declaration, and upon written notice from Declarant, any such Improvement so altered, erected, placed, maintained, or used upon any portion of the Property in violation of this Development Declaration shall be removed or altered so as to conform to this Development Declaration, and any such use shall cease or be amended so as to conform to this Development Declaration.

3.7 Construction Standards. All Improvements on the Property shall be constructed by a duly licensed general contractor and duly licensed subcontractors in a good and workmanlike manner in accordance with: (a) plans and specifications approved by Declarant, (b) all applicable laws, regulations, codes, and ordinances, (c) all requirements of governmental authorities and other duly qualified bodies having jurisdiction with respect to each work of improvement, and (d) generally-accepted engineering standards concerning geotechnical and soils conditions. Owner shall be solely responsible for all means, methods, techniques, sequences, and procedures used in the performance or construction of the work on the Property and shall diligently pursue the same to completion. Owner shall be responsible for the application for and the obtaining of all permits and approvals from governmental authorities required for the work.

3.8 Insurance. Prior to commencement of construction on the Property, Owner shall obtain and, at all times prior to completion of the Project, maintain in effect the following policies of insurance: (a) comprehensive general public liability insurance with a single per occurrence limit of not less than Five Million Dollars (\$5,000,000) with respect to the Property and the operations of Owner in, on or about the Property, (b) workers' compensation insurance covering liability arising from claims of workers in respect of and during the period of the performance of the work on the Property, and (c) a standard "all risk" Builder's Risk Policy. All policies of insurance shall be issued by insurance companies authorized to do business in Nevada and with a financial rating of at least "A-IX" status as rated in the most recent edition of Best's Insurance Reports, or such other insurers to which Declarant may consent in writing. All such policies shall provide coverage against claims which may arise out of or result from Owner's performance of the work on the Property or which may arise in connection with the activities of Owner, any contractor or subcontractor of Owner, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. Owner shall furnish Declarant with certified copies of all insurance policies required under this Section before commencing any work on the Property. Each policy shall provide that it may not be canceled or reduced in coverage until thirty (30) days after written notice shall have been given to Declarant of such cancellation or reduction in coverage. All insurance required hereunder (except worker's compensation) shall name Declarant and such of its affiliates as Declarant may designate as additional insureds as to claims by third parties.

3.9 Correction of Defects. In the event of rejection by Declarant or the appropriate governmental authority of any item Improvement on the Property as being defective or as failing to conform to the Development Plan, whether or not completed, Owner shall promptly commence to correct such defect and diligently prosecute such correction to its completion. Owner shall bear all costs of correcting any such rejected Improvement.

Damage to Roads and Off-Site Improvements. Should Owner's construction activities on the Property or otherwise in connection with any work on the Property cause any damage to any public or private right-of-way or to any other Improvement located outside of the Property, whether completed or under construction by Declarant or others, Owner shall, upon demand from Declarant, promptly repair and restore such right-of-way or Improvement. If Owner fails to commence such repair work within five (5) business days after receipt of such notice and diligently prosecute the same to its completion, then Declarant shall have the right to make such repairs, and Owner shall, upon demand, reimburse Declarant for Declarant's expenses incurred in repairing and restoring such right-of-way or improvement. If such Improvement is, at the time of repair, subject to any warranty obligation of the construction contractor which constructed the improvement, Declarant may require that the work of repair be performed by such contractor.

3.8 Additional Obligations. If the City of Las Vegas or any other governmental authority imposes any conditions, fees, or other obligations (in the broadest sense of that word) in connection with the Project, including, without limitation, construction of infrastructure, driveways, curb cuts, sidewalks, perimeter walls, retaining walls, irrigation and drainage systems, landscaping, monuments, and directional Signs ("Additional Obligations"), in addition to those described herein, the performance and satisfaction of such Additional Obligations shall be the sole and exclusive responsibility of Owner, and Declarant shall have no responsibility with respect thereto.

3.9 Indemnity. Owner shall indemnify and hold free and harmless Declarant, its affiliates, and their respective officers, directors, and employees from and against any and all claims, damages, losses, liabilities, demands, and expenses, including, but not limited to, attorneys' fees, court costs, and expenses of litigation (collectively, hereinafter referred to as "Liabilities"), arising out of or resulting from, or claimed to arise out of or result from, in whole or in part, any fault, act, or omission of Owner, any contractor or subcontractor employed by it, any sales agent or marketing representative employed directly or indirectly by Owner, anyone directly or indirectly employed by any of the foregoing entities, or anyone for whose acts any of the foregoing entities may be liable, in connection with the performance or construction of the Project. Notwithstanding the foregoing, the indemnity agreement created herein shall not indemnify Declarant or its affiliates, or any of their respective officers, directors, or employees, against any Liabilities for death or bodily injury to persons or injury to property to the extent such Liabilities arise from the grossly negligent acts or omissions or willful misconduct of Declarant, its agents, servants, or independent contractors who are directly responsible to Declarant; provided, however, that (i) any act or omission of Declarant or its agents, servants or independent contractors with respect to the review of the Development Plan and/or the drawings or specifications related to the Project, or (ii) any inspection or failure to inspect the construction activities of Owner by Declarant, or (iii) any direction or suggestion given by Declarant with respect to construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with work performed on the Property, or the failure to give any such direction or suggestion, shall not be deemed a negligent act or omission or willful misconduct of Declarant relieving Owner of its indemnity obligation hereunder.

3.10 Construction Regulations and Restrictions. During the period of construction of the Project, Owner shall observe the following rules and regulations:

- 3.10.1 No equipment maintenance or construction work of any type shall be performed or conducted on the Property between the hours of 8:00 p.m. and 6:00 a.m.
- 3.10.2 No temporary structures, including construction trailers or other temporary office or sales facilities, shall be placed or maintained on the Property until the appearance and location of such facilities have received the approval of Declarant, which approval shall not be unreasonably withheld.

- 3.10.3 Portions of the Property which are visible from surrounding property shall be kept free of weeds and debris, and all scrap materials generated by the construction activities shall be removed as soon as reasonably possible.
- 3.10.4 Owner shall maintain a concrete wash-out site on the Property and shall not wash trucks or equipment on any other property within Union Park without the prior written consent of the owner thereof.
- 3.10.5 Owner shall not leave any debris or material on any other property within Union Park without the prior written consent of the owner thereof.
- 3.10.6 Owner shall provide at least one (1) covered trash enclosure during any period of construction on the Property. The location, size and design of trash enclosures shall be reasonably acceptable to Declarant. All debris will be placed in one of these enclosures at the end of each day.
- 3.10.7 Owner shall take such action as may be prudent and use its best efforts to employ all commercially reasonable methods, equipment, techniques and activities to control ambient dust and the accumulation of dust on the Property or dispersion of dust from the Property; and
- 3.10.8 Owner shall take such action as may be prudent and use its best efforts to employ all commercially reasonable methods, equipment, techniques and activities to abate noise, and to mitigate and abate noise pollution. Owner warrants that it will not use any equipment or undertake any activity in connection with the construction and development of the Project which will generate unreasonable noise.
- 3.10.9 No mechanical equipment, apparatus or antennae shall be placed above the roof line (which shall be measured by the roof curb or parapet) of any building, except within an enclosure or behind opaque screening which has been approved in writing by Declarant, unless an exemption has been specifically approved in writing by Declarant.

3.11 Parking. [PARKING CLAUSE FOR APPROPRIATE PROJECT MUST BE SELECTED]

Commercial Non-theater Projects:

(a) All parking required for the legal operation of the Project will be provided on the Property or offsite as procured by Owner at Owner's cost and expense and neither CPY nor the City of Las Vegas will be obligated to provide any parking offsite of the Property.

Secondary Theatre:

(a) At all times during the Lease Term, CPY shall provide to Developer, and to its agents, employees, servants, contractors, Developers, licensees, customers, and business invitees (collectively, the "**Developer Parties**"), the use of _____ parking spaces in Union Park (the "**Parking Facilities**"). At all times during the Lease Term, the Parking Facilities (i) shall be for either (x) the exclusive use of Developer and Developer Parties during evening hours and on weekends if CPY or one of its affiliates owns the real property on which the Parking Facilities are located or (y) the nonexclusive use of Developer and Developer Parties during evening hours and on weekends if CPY or one of its affiliates does not own the real property on which the Parking Facilities are located; and (ii) may be used by Developer and the Developer Parties in a nonexclusive manner

during normal business weekday hours. The Parking Facilities will be subject to reasonable rules and regulations as CPY or private parking garage owners, as applicable, may from time to time impose. At all times during the Lease Term, CPY 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. CPY intends to initially provide the Parking Facilities to Developer at the location substantially consistent with Exhibit "G" attached hereto ("**Initial Parking Facilities**"). At all times during the Lease Term and during which CPY or one of its affiliates owns the real property on which the Parking Facilities are located, CPY shall (A) keep and maintain in good order, condition and repair the Parking Facilities; and (B) shall manage, or shall utilize the services of a parking management company to manage, the Parking Facilities to ensure and enforce the exclusive parking rights granted to Developer Parties hereby.

(b) During the first five (5) years following the Recordation Date ("**Initial Parking Term**"), CPY shall provide the Parking Facilities to Developer and the Developer Parties at no charge to the Developer or the Developer Parties, provided that Developer does not charge any of the Developer Parties a fee or charge to use the Parking Facilities. At the end of the Initial Parking Term, CPY agrees to consider a request from Developer in its Operating Budget for CPY to continue to provide the Parking Facilities free of charge for another five (5) year period provided that Developer again does not charge any of the Developer Parties a fee or charge to use the Parking Facilities. Following expiration of the Initial Parking Term and in the event that CPY does not agree to continue to provide the Parking Facilities free of charge, CPY shall be permitted to charge a fee to the Developer 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) Developer acknowledges and agrees that CPY is developing, or causing to be developed, Union Park for other commercial, residential, and entertainment, uses. Developer hereby agrees that as construction on Union Park progresses that CPY 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 subsection (a) and (b) above are satisfied. CPY agrees to give Developer no less than ninety (90) days notice prior to any relocation of any Parking Facilities to Substitute Parking Facilities. Developer acknowledges that the Substitute Parking Facilities may be in the form of surface parking, parking in a structured garage, or a combination thereof. CPY 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. Developer agrees that such relocation may require CPY to charge a fee to Developer for use of the Substitute Parking Facilities, subject to the terms specified in subsection (b) above.

(d) In the event the City relocates City Hall to Union Park at the location currently planned for the City Hall, CPY shall make available to Developer and the Developer Parties the parking garage related to or on the City Hall site as Parking Facilities subject to the requirements set forth in this Section. Developer agrees that nothing contained in this Agreement or otherwise creates any agreement or obligation whatsoever on the part of the City or any department, employee or agent of the City to construct City Hall or any other building or project within Union Park.

(e) In the event that CPY desires to convey the real property to a party other than CPY or one of its affiliates on which CPY intends that the Parking Facilities, or any portion thereof, are to be located, CPY agrees that such real property will be conveyed with a covenant running with title to such real property requiring such party to provide

Developer and the Developer Parties with the Parking Facilities and otherwise comply with the terms and provisions of this Section 3.14 hereof.

j3.15 Access to Parking Facilities. In addition, CPY hereby grants to Developer and the Developer Parties a non-exclusive license, at no cost or expense to Developer or any Developer Party, to traverse Union Park in order to (a) travel between the Project and the Parking Facilities along sidewalks and pathways and (b) to drive in, through and out of the Parking Facilities to and from any public street.

Article 4. Maintenance of the Property and Improvements.

4.1 Condition of Property. The Owner and, with respect to any portion of the Property in the possession of an Occupant, such Occupant of the Property, shall at all times keep it and the buildings, Improvements, and appurtenances thereon in a safe, clean, and wholesome condition and comply, at its own expense, in all respects with all applicable governmental safety ordinances, regulations, requirements, and directives, and the Owner or Occupant shall at regular and frequent intervals remove at its own expense any rubbish of any character whatsoever that may accumulate upon the Property. Owner shall be primarily responsible for the foregoing obligation regardless of the existence of an Occupant.

4.2 Landscaping and Irrigation.

3.11.1 Every portion of the Property shall be landscaped in accordance with the Development Plan. Such landscaping and irrigation shall thereafter be kept and maintained in accordance with this Development Declaration.

3.11.2 Landscaping and irrigation systems, as approved by the Declarant, shall be completed within sixty (60) days after occupancy of any building on the Property unless a written extension of time has been granted by the Declarant.

3.11.3 Landscaping and irrigation equipment, supplies and above-surface pipes and installations shall be screened as required by the Development Plan, except as otherwise permitted in writing by the Declarant.

3.11.4 All planting and irrigation installations shall be maintained in a neat and orderly fashion. If the Declarant determines that any portion of the Property is not being properly maintained, corrective work shall be accomplished within thirty (30) days after receipt of notice from the Declarant of any directions with regard to maintenance or such later date if the corrective work cannot be reasonably accomplished within such thirty (30) day period provided that Owner promptly commences such corrective work and diligently prosecutes the same to completion.

3.11.5 The following criteria shall be deemed minimum landscape maintenance standards:

- (1) All planting areas shall be kept reasonably free of leaves and debris.
- (2) Lawns and ground cover shall be mowed and/or trimmed regularly.
- (3) All plantings shall be kept in a healthy and growing condition. Any dead or damaged plant material resulting from improper maintenance or any other reason shall be replaced with like plant material, provided any change from the original approved plant material shall require approval from the Declarant. Fertilization, cultivation, weeding, spraying, trimming

and pruning shall be performed as part of a regular maintenance program.

- (4) Stakes, guys and ties on trees shall be checked regularly to ensure the correct function of each. Ties shall be adjusted regularly to avoid creating abrasions or girdling of trunks or stems.
- (5) Damage to plantings caused by vandalism, automobiles or acts of nature shall be corrected within thirty (30) days after occurrence to the condition similar to what such plantings were in immediately before the damage occurred. All types and sizes of plantings shall be approved by the Declarant.
- (6) Irrigation and drainage systems shall be kept in proper working condition. Adjustment, replacement of malfunctioning parts and cleaning of systems shall be performed as part of a regular maintenance program.

If, in Declarant's reasonable opinion, the required landscaping is not maintained in a slightly and well-kept condition, Declarant shall be entitled to the remedies set forth in Section 4.4.

4.3 Maintenance of Grounds. Owner shall be responsible for the maintenance and repair of (i) the Easement Parcel and (ii) all parking areas, driveways, walkways, and landscaping on the Property including, without limitation:

- (a) Maintenance of all parking areas, driveways, and walkways in a clean and safe condition, including the paving and repairing or resurfacing of such areas when necessary with the type of material originally installed thereon or such substitute therefor as shall, in all respects, be equal thereto in quality, appearance, and durability; the removal of debris and waste material and the washing and sweeping of paved areas; the painting and repainting of striping markers and directional signals as required; and
- (b) Cleaning, maintenance, and relamping of any external lighting fixtures, except such fixtures as may be the property of any public utility or government body.

4.4 Remedies for Failure to Maintain and Repair.

- (a) Remedies. If any Owner shall fail to perform the maintenance and repair required by this Development Declaration, then Declarant, after fifteen days prior written notice to such delinquent Owner, shall have the right, not the obligation, to perform such maintenance and repair and to charge the delinquent Owner with costs of such work, together with interest thereon at the Default Rate from the date of performance of such work to the date of reimbursement of Declarant by Owner; provided, however, that in the event that such maintenance and repair cannot reasonably be accomplished within such fifteen (15) day period, Owner shall have a reasonable time period thereafter to perform such maintenance and repair provided that Owner commences the same within the fifteen (15) day period and diligently prosecutes the maintenance and repair to completion. If the delinquent Owner shall fail to reimburse Declarant for all such costs reasonably incurred within ten (10) days after demand therefor, Declarant may, at any time within ninety (90) days after such advance, file for Record in the Office of the County Recorder of Clark County, Nevada, a claim of lien signed by Declarant for

the amount of such charge together with interest thereon; provided, Declarant shall give the Owner ten (10) days advance notice and opportunity to cure prior to filing such claim of lien. The lien created by this Section shall be effective to establish a lien against the interest of the delinquent Owner in the Property together with interest at the Default Rate on the amount of such advance from the date thereof, in addition to Recording fees, cost of title search obtained in connection with such lien or the foreclosure thereof, and court costs and reasonable attorney's fees that may be incurred in the enforcement of such a lien.

- (b) Foreclosure of Lien. Such a lien as described in subsection (a) above, when so established against the Property described in said claim, shall be prior or superior to any right, title, interest, lien, or claim that may be or may have been acquired in or attached to the real property interests subject to the lien subsequent to the time of filing such claim for Record. Such lien shall be for the benefit of Declarant and may be enforced and foreclosed in a like manner as a real estate mortgage is foreclosed in the State of Nevada.
- (c) Cure. If a default for which a notice of claim of lien was filed is cured, Declarant shall file or Record a rescission of such notice, upon payment by the defaulting Owner of the costs of preparing and filing or Recording such rescission, and other reasonable costs, interest, or fees that have been incurred.
- (d) Nonexclusive Remedy. The foregoing lien and the rights to foreclose thereunder shall be in addition to, and not in substitution for, all other rights and remedies that any party may have hereunder and by law, including any suit to recover a money judgment for unpaid assessments.

4.5 Construction Regulations and Restrictions.

- (a) All building exteriors shall be maintained at all times in a neat, orderly and weatherproof manner, including, without limitation, periodic painting if painting is customary with respect to the exterior construction materials employed for such building. The periodic painting shall be the same color originally approved by Declarant. Any change in color shall require the approval of Declarant.
- (b) All hardscape, including but not limited to the Easement Area, paved areas, parking lots, sidewalks, curbs and gutters shall be maintained at all times in a neat, orderly and weatherproof manner.

Article 5. Regulation of Operations and Uses.

5.1 Permitted Uses. The Property at all times shall be used, developed, maintained and operated solely as the Permitted Use.

5.2 Nuisances. No nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any adjacent property or to its Occupants. Without limiting the foregoing, the violation of any of the following provisions shall be deemed a "nuisance":

- (a) No use, excluding reasonable construction and maintenance activity, of the Property that emits dust, sweepings, dirt, or cinders into the atmosphere, or discharges liquid, solid wastes, or other matter into any stream, river, or other

waterway that, in the opinion of Declarant, may adversely affect the health, safety, comfort of, or intended use of their property by persons within the area shall be permitted. No waste nor any substance or materials of any kind shall be discharged into any public sewer serving the Property or any part thereof in violation of any regulation of any public body having jurisdiction over such public sewer.

- 3.11.6 No escape or discharge of any fumes, odors, gases, vapors, steam, acids, or other substance into the atmosphere, which discharge, in the reasonable opinion of Declarant, may be detrimental to the health, safety or welfare of any person or may interfere with the comfort of persons within the area or may be harmful to property or vegetation shall be permitted.
- 3.11.7 Any operation producing intense glare or heat, atomic, electromagnetic, microwave, ultrasonic, laser, or other radiation shall be performed only within an enclosed or screened area and then only in such manner that the glare, heat, or radiation emitted will not be discernible from any point exterior to the Property.
- 3.11.8 Buildings and other structures shall be constructed and machinery and equipment installed and insulated on the Property so that the ground vibration inherently and recurrently generated is not perceptible without instruments at any point exterior to the Property.
- 3.11.9 No rubbish, trash, waste, residue, brush, weeds or undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon the Property or any portion thereof, so as to render said premises a fire hazard, unsanitary, unsightly, offensive, or detrimental to any Person or activity on any other adjacent property or on any public street.
- 3.11.10 No building or other Improvement shall be permitted to fall into disrepair and all buildings and other Improvements shall at all times be kept in good condition and repair (including, without limitation, free of the presence of wood-destroying pests and organisms) and adequately painted or otherwise finished. Any and all exterior repairs, redecorations, modifications or additions shall be made in accordance with, and shall be subject to, this Development Declaration and all applicable statutes, ordinances and governmental regulations. In the event any such exterior repairs, redecorations, modifications or additions would cause a material change in the appearance of the Project, they must first be approved in writing by Declarant.
- 3.11.11 No condition shall be permitted to exist upon the Property which shall induce, breed or harbor infectious plant diseases or noxious insects.
- 3.11.12 No Owner or Occupant shall in any way alter the natural or established drainage of water over the Property from adjoining or other property, nor shall any Owner or Occupant in any way interfere with the natural or established drainage of water from the Property so as to cause or permit water to drain onto, over or under any adjoining or other property except in accordance with a drainage plan approved by Declarant. If it is necessary to change the natural or established drainage flow over the Property, then the Owner or Occupant of the Property shall adequately provide for proper drainage, and such changes shall be approved in writing by the Declarant. For the purposes hereof, "natural" drainage is defined as the drainage which would naturally occur at the time the overall approved grading plan of the Property has been completed by Declarant. For the purposes hereof, "established" drainage is defined as the drainage which occurred or

which would occur at the time the overall grading of the Property, including the finish grading of the Property, was completed.

3.11.13 No adverse environmental condition shall be permitted to exist on the Property, nor shall any toxic or hazardous wastes be permitted to be generated, treated, stored, disposed of, or otherwise deposited in or on or allowed to emanate from the Property or any portion of the Property, including, without limitation, the surface waters and subsurface waters thereof; provided, however, that hazardous substances may be stored or used so long as such storage and use is conducted in compliance with all applicable laws, statutes, ordinances, rules and regulations of any city, county, state or federal governmental or public body.

3.11.14 No Owner or Occupant shall permit anything to be done or kept on the Property that violates any applicable law, statute, rule or regulation of any city, county, state or federal governmental or public body.

5.3 Subdivision. No Owner shall affect any change or amendment to any parcel or final map covering the Property or Record any further parcel or final map of the Property or any portion thereof or facilities thereon, pursuant to Nevada Revised Statutes, Chapter 278, or any similar statute hereafter enacted, and any local ordinances adopted pursuant thereto, nor shall an Owner file any applications with any governmental agency with respect to any of the foregoing matters, unless expressly approved by Declarant, which approval may be granted or withheld by Declarant in its sole discretion.

5.4 Zoning. Owner shall not use or develop or attempt to use or develop the Property or any portion thereof for any purpose other than those purposes expressly allowed (without the benefit of a zone variance, conditional or special use permit, exception or other special administrative procedure) under the zoning ordinances of the City of Las Vegas. All development within the Property shall be subject to all such zoning ordinances and regulations applicable to, and in effect at the time of, such development, except where more restrictive requirements are imposed by this Development Declaration. Development and ownership of the Property shall further be subject, as applicable, to future land use and environmental matters affecting the Property. Owner shall not change or attempt any change in zoning, or obtain or apply for a zoning variance or exception or other similar approval with respect to the use or development of the Property or any portion thereof not expressly allowed under such existing zoning, unless expressly approved by Declarant, which approval may be granted or withheld by Declarant in its sole discretion.

5.5 Mineral Exploration. No portion of the Property shall be used in any manner to explore for or to remove any water, steam, heat, oil, gas or other hydrocarbons, gravel, earth, or any earth substances or other minerals of any kind, provided, however, that this shall not prevent the excavation of earth in connection with the grading or construction of Improvements within the Property. No tools or equipment and no derrick or other structure designed for use in boring for water, steam, heat, oil, gas or other subterranean minerals or other substances, or designed for use in any mining operation or exploration, shall be erected or placed upon or adjacent to the Property.

5.6 Servicemarks. Owner acknowledges that Declarant has the sole right to the "Union Park" tradename, trademark, servicemark and logo (collectively, the "Servicemarks"). Owner covenants and agrees that it shall not use, nor permit other Occupants to use, in any manner whatsoever the Servicemarks or the name "Union Park."

5.7 Waste or Nuisance. No Owner shall commit or suffer to be committed any waste upon the Property or Improvements or any nuisance which may disturb the quiet enjoyment of

any other owner or occupant of land in Union Park, and shall not conduct its business so as to impair, in Declarant's sole but reasonable opinion, the reputation of Union Park. In particular, without limiting the generality of the foregoing, Owner shall not use or permit to be used any medium that might in Declarant's reasonable judgment constitute a nuisance such as loud speakers, sound amplifiers, phonographs, radios, televisions, or any other sound-producing or other device which will carry sound or odors outside the Property reasonably objectionable to Declarant.

Article 6. Enforcement of Restrictions.

6.1 General Purpose and Constructive Notice. The Restrictions shall run and pass with each and every portion of the Property and be binding upon Purchaser, its successors and assigns. Except as specifically set forth herein, the Restrictions shall remain in full force and effect for the entire term of this Development Declaration, notwithstanding Declarant's exercise of any right or remedy herein due to a previous or repeated violation of any one or more of the Restrictions. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every Restriction, provision, covenant, condition, right and limitation contained herein, whether or not any reference to this Development Declaration is contained in the instrument by which such person acquired an interest in the Property.

6.2 Enforcement. The Restrictions shall benefit the Benefited Property and be enforceable solely by Declarant, subject to Declarant's right to assign pursuant to Article 12, notwithstanding any transfers of the Benefited Property or any portion thereof by Declarant. Declarant shall have the right to enforce, by proceedings at law or in equity, all Restrictions, now or hereafter imposed by the provisions of this Development Declaration or any amendment hereto, including the right to prevent the violation of any such Restrictions, and the right to recover damages or other amounts due for such violation. The Owner of the Property shall be primarily liable and the Occupant, if any, secondarily liable for the violation or breach of any covenant, condition, or Restriction herein contained.

6.3 Rights are Cumulative. All rights, options, and remedies of Declarant under this Development Declaration are cumulative, and except as may be explicitly provided herein, no one of them shall be exclusive of any other, and Declarant shall have the right to pursue any one or all of such rights, options, and remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Development Declaration.

6.4 Default and General Remedies. In the event of any breach, violation or failure to perform or satisfy any of the Restrictions, which has not been cured within the period set forth below, Declarant at its sole option and discretion may enforce any one or more of the remedies described below or any other rights or remedies to which Declarant may be entitled by law or equity, whether or not set forth herein. Unless a cure period is otherwise specifically designated herein, such cure period shall commence when written notice is given to Owner of a violation hereunder and shall end ten (10) days thereafter in the case of a monetary default and thirty (30) days thereafter in the case of a non-monetary default; provided that if a non-monetary default is not reasonably susceptible of cure within such 30-day period, then Owner shall have a reasonable time to cure same so long as Owner has commenced such cure promptly and thereafter diligently prosecutes the cure to completion.

- (a) Abatement and Lien. Any breach or violation of the Restrictions or any provision this Development Declaration is hereby declared to be a nuisance, and if not cured or corrected by the Owner within thirty (30) days after receipt of written notice from Declarant, Declarant shall be entitled to enter the Property and summarily abate and remove, without further legal process to the maximum extent permitted by law, any Improvement, structure, thing or condition that may

exist in violation of any of the Restrictions, or to prosecute any remedy allowed by law or equity for the abatement of such nuisance against any person or entity acting or failing to act in violation of the Restrictions provided, however, that in the event that the cure of any such violation or breach cannot reasonably be accomplished within such thirty (30) day period, Owner or Occupant in question shall have a reasonable time period thereafter to cure provided that such cure is commenced within the thirty (30) day period and thereafter diligently prosecuted to completion. No such entry by Declarant or its agents shall be deemed a trespass, and neither Declarant nor its agents shall be subject to liability to the Owner or Occupant of the Property for such entry and any action taken to remedy or remove a violation.

Any costs or expenses paid or incurred by Declarant in abating such nuisance or prosecuting any such remedy (including all reasonable attorneys' fees and costs of collection), together with interest thereon at the Default Rate, shall be a charge against the Property, shall be a continuing lien thereon until paid if Declarant Records a notice of same within ninety (90) days after any such advance with the Office of the County Recorder of Clark County, Nevada, and shall also be the personal obligation of Owner or other person who was owner of the Property when such charges became due and who committed such breach or violation.

- (b) Damages. Declarant may bring a suit for damages for any compensable breach of or noncompliance with any of the Restrictions, or declaratory relief to determine the enforceability of any of the Restrictions.
- (c) Equity. It is recognized that a particular or ongoing violation by Owner of one or more of the foregoing Restrictions may cause Declarant to suffer material injury or damage not compensable in money (including, but not limited to irreparable effects on the type and quality of development on the Benefitted Property or portions thereof), and that Declarant shall be entitled to bring an action in equity or otherwise for specific performance to enforce compliance with the Restrictions or an injunction to enjoin the continuance of any such breach or violation thereof, whether or not Declarant exercises any other remedy set forth herein.

6.5 Right of Entry. During reasonable hours and upon reasonable notice, Declarant, or its agents, shall have the right to enter upon and inspect any portion of the Property and the Improvements thereon covered by this Development Declaration for the purpose of ascertaining whether or not the provisions of this Development Declaration have been or are being complied with, and neither Declarant nor its agents shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

6.6 Violation Deemed to Constitute a Nuisance. The result of every act or omission whereby any covenant, condition, or Restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or in equity against an Owner or Occupant either public or private shall be applicable against every such result and may be exercised by Declarant.

6.7 Attorney's Fees. In any legal or equitable proceeding for the enforcement of this Development Declaration or any provision hereof, whether it be an action for damages, declaratory relief, or injunctive relief, or any other action, the losing party or parties shall pay the attorney's fees of the prevailing party or parties, in such reasonable amount as shall be fixed by the court in such proceedings or in a separate action brought for that purpose. The prevailing party shall be entitled to said attorney's fees even though said proceeding is settled prior to judgment.

6.8 Failure to Enforce Is No Waiver. The failure of Declarant to enforce any requirement, Restriction, or standard herein contained shall in no event be deemed to be a waiver of the right to do so thereafter or in other cases nor of the right to enforce any other Restriction.

6.9 General Purpose and Constructive Notice. The Restrictions shall run and pass with each and every portion of the Property and be binding upon Owner, its successors and assigns, and shall benefit other land owned by Declarant and located in Clark County, Nevada, more particularly described in Attachment "B" hereto (hereinafter referred to as the "Benefitted Property") and be enforceable solely by Declarant notwithstanding any transfers of the Benefitted Property or any portion thereof by Declarant. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every Restriction, provision, covenant, condition, right and limitation contained herein, whether or not any reference to this Development Declaration is contained in the instrument by which such person acquired an interest in the Property. Declarant or its authorized representatives may from time to time, at any reasonable hours, enter upon and inspect the Property, site or any portion thereof or improvements thereon to ascertain compliance with the Restrictions, but without obligation to do so or liability therefor.

Article 7. Completion and Occupancy of Project; Environmental Management Plan.

7.1 Project Development. Declarant has a substantial interest in the expeditious development of the Project due to its impact on the value of the surrounding land and on Declarant's reputation as the master developer of Union Park. Therefore, the parties agree that the occurrence of any of the following events shall constitute a default hereunder and a breach of the Restrictions, which shall entitle Declarant to exercise any of the rights and remedies set forth below.

- (a) Project Design. If Owner fails to design the Project within the time limits set forth in the Development Schedule or design the Project not in compliance with the Development Plan.
- (b) Commencement Requirement. If Owner shall fail to achieve Construction Commencement of the Project, pursuant to the Development Plan on or before the date set forth in the Development Schedule (the "Construction Commencement Deadline"). The Construction Commencement Deadline shall be extended for such period of time as construction commencement is prevented or delayed due to strikes, lockouts, acts or omissions of government agencies, acts of God, wars, riots, civil insurrection or abnormal force of elements or other matters beyond Owner's reasonable control; provided, that in no event shall any extension of time be effective unless Owner delivers to Declarant within 5 days following an event giving rise to such an extension, a written notice setting forth the facts giving rise to each such extension; and provided further, that the period of time for exercise of Declarant's rights herein shall be commensurately extended.
- (c) Completion Requirement. If Owner shall fail to Substantially Complete the Project in compliance with all applicable governmental laws, ordinances, regulations on or before on or before the date set forth in the Development Schedule (the "Construction Completion Deadline"). The Construction Completion Deadline shall be extended for such period of time as construction Completion is prevented or delayed due to strikes, lockouts, acts or omissions of government agencies, acts of God, wars, riots, civil insurrection or abnormal force of elements or other matters beyond Owner's reasonable control; provided, that in

no event shall any extension of time be effective unless Owner delivers to Declarant within 5 days following an event giving rise to such an extension, a written notice setting forth the facts giving rise to each such extension; and provided further, that the period of time for exercise of Declarant's rights herein shall be commensurately extended.

7.2 Environmental Management Plan. Attached as Exhibit "E" is a plan for the management of the environmental remediation of the Property. Declarant agrees to perform the CPY Obligations set forth in the environmental exhibit. Owner agrees that the CPY obligations are the sole and exclusive obligations of CPY in connection with the Property and that CPY shall have no further obligations in connection with the construction and operation of the Project.

Article 8. Violation of Purchaser's Use Covenant.

8.1 Payment of Market Value. In the sole option and discretion of Declarant, Declarant may elect for any violation of the Permitted Use or Prohibited Use Restrictions set forth in Section 5.1, not cured within the time set forth above, as Declarant's exclusive remedy and in lieu of any remedies permitted by Article 10 (Reconveyance Option), to obligate Owner to pay to Declarant sixty (60) days after written demand or upon such approved Conveyance, as the case may be, the then market value for the Property computed as described below, together with interest thereon at the Default Rate from and after the occurrence of any such event until the date of actual payment. No failure by Declarant to exercise its rights to require such payment, and no prior exercise of such as to a continuing or previous violation, shall constitute a waiver of Declarant's rights to require such payment at any later time or times while this Development Declaration is still in effect, and so long as any such violation may continue.

8.2 Determination of Market Value. The market value shall be the then "highest fair market value" of the Property and adding thereto Agreed Interest accruing from the date of occurrence of any such violation to the date of payment of such then market value: The then market value shall be due on the date of notification to Owner by Declarant or such later date as the "highest fair market value" is determined. As used herein, the term "highest fair market value" means the value of the Property (not including the value of any improvements constructed hereon) as mutually determined by the parties hereto, without taking into consideration any of the restrictive events or limitations imposed under this Development Declaration (but, instead, basing such value on the highest and best use for the Property under the applicable zoning ordinances). If the parties cannot so agree within twenty (20) days after written demand by Declarant, then the "highest fair market value" shall be as determined by an independent appraiser appointed by Declarant, who shall be a member of the American Institute of Real Estate Appraisers with at least five (5) years of experience appraising similar properties in Nevada. His decision in this matter shall be final and binding. All fees for such appraiser shall be borne equally by Declarant and Owner. . IT IS EXPRESSLY UNDERSTOOD AND AGREED BETWEEN DECLARANT AND OWNER (A) THAT THE PAYMENT OF THE THEN MARKET VALUE IS A REASONABLE ESTIMATE OF DAMAGES CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS DEVELOPMENT DECLARATION, INCLUDING THE RELATIONSHIP OF SUCH SUM TO THE RANGE OF HARM THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT, AND (B) THAT DECLARANT'S ACTUAL DAMAGES FOR ANY SUCH BREACH BY OWNER HEREUNDER WOULD BE SUBSTANTIAL BUT EXTREMELY DIFFICULT TO ASCERTAIN.

Article 9. Additional Purchase Price.

9.1 Enforcement of Mortgage Lien.

- (a) Creation of Mortgage Lien. Purchaser hereby mortgages the Property (or portion thereof which is being rezoned, used, developed, transferred or otherwise affected in violation of the Restrictions described in this Section) to Declarant with power of sale for the purpose of securing any or all increments of additional purchase price described in this Article and any additional advances by Declarant pursuant to Section 6.9 above.
- (b) Power of Sale. In the event Owner fails to pay all or any portion of the indebtedness secured hereby within ten (10) days after written demand from Declarant, setting forth the amount of any such indebtedness upon determination as provided hereinabove, then Declarant may immediately declare a default hereunder and cause a written notice of default (herein, "Notice of Default") and election to sell the Property and all Improvements thereon to be prepared and Recorded. After three (3) months or such shorter time as may be allowed by law shall have elapsed from the Recordation of such Notice of Default, and after a notice of sale has been given to the extent required by the then applicable law, Declarant, without further legal action or demand on Owner, may cause the Property and Improvements thereon to be sold at such time and place as may be fixed in said notice of sale or at such time and place to which the sale may be postponed as hereinafter provided without additional notice, either as a whole or in separate parcels, and in such order as Declarant alone may determine, at public auction to the highest bidder for cash in lawful money of the United States at the time of sale, or upon such other terms as Declarant may consider advisable. Owner shall have no right to direct or determine whether the Property shall be sold as a whole or in separate parcels, or the order of sale of separate parcels or the portion of the Property to be sold if only a portion is sold. Declarant may postpone the sale of the Property by public announcement thereof at the time and place of sale and from time to time thereafter by public announcement at the time and place of the preceding postponement. In conducting or postponing any such sale, Declarant may act through its agents, officers or employees or any other person designated by Declarant, whether or not such party shall be a licensed auctioneer. At such sale, Declarant shall cause to be delivered to the buyer or buyers, one or more duly executed deed or deeds conveying the property so sold, subject to all the provisions of this Development Declaration, but without any covenant or warranty, either express or implied. The recitals in such deed or deeds with regard to any matters of fact shall be conclusive proof of the truthfulness thereof against the Owner at such sale, its successors and assigns, and all other persons. Any person or entity, including without limitation Declarant, may bid in or purchase at such sale. Purchaser hereby agrees and any subsequent Owner agrees by accepting title to the Property, to surrender, immediately and without demand, possession of the Property to the buyer at such sale. No such sale shall release or extinguish any rights, remedies or provisions contained in this Development Declaration in the event of any further violation of any Restriction set forth herein. Notwithstanding the foregoing, if Owner's default is timely cured in accordance with this Development Declaration or applicable law, Declarant shall, upon request by Owner, Record at Owner's expense an appropriate notice of rescission in accordance with the applicable provisions of the Nevada Revised Statutes.

9.2 Application of Proceeds. Declarant shall apply the proceeds of such sale in the following manner and order:

- (a) Expenses of such sale and all costs, fees, charges and expenses of Declarant, including costs of evidence of title and reasonable attorneys' fees;

- (b) All sums secured hereby; and
- (c) The remainder, if any, to the person or persons legally entitled thereto.

9.3 Foreclosure by Court Action. In addition to the foregoing, Declarant may foreclose the lien created hereby by court action in the manner provided by the laws then applicable to this indenture, in which case Purchaser agrees to pay all costs and expenses thereof, including reasonable attorneys' fees as the court may determine.

9.4 Further Amounts Secured. All interest, fees, costs and expenses required to be paid by Owner hereunder shall also be secured by this Development Declaration, but the combination of all such required interest shall not exceed the maximum rate permitted by law. In the event that only a portion of the Property (or portion thereof which is being rezoned, used, developed, transferred or otherwise affected in violation of the Restrictions) is the subject of a sale or foreclosure action by Declarant hereunder, the lien of this Development Declaration shall continue to attach to all other portions of the Property which are subject to the lien hereof at the time of such sale or foreclosure.

9.5 Notice of Sale. Purchaser hereby requests that copies of the Notice of Default and any notice of sale hereunder be mailed to it at the address set forth below in Section 14.10. Purchaser agrees that any such notice or demand shall be deemed fully given to Purchaser if mailed to it by registered mail at such address, or any more recent address delivered to Declarant as provided below.

9.6 Termination of Lien. The lien created hereby shall terminate with respect to all of the Property on a date sixty (60) years from the Recordation Date, provided that all sums secured hereby have been paid, or at such earlier time as Declarant in its sole option and discretion may release all or portions of the Property from the lien hereof by causing a quitclaim, release or other appropriate instrument executed by Declarant to be Recorded in the Office of the Recorder of Clark County, Nevada.

9.7 Payment for Statement of Obligations. Owner shall, in addition to all other payments specified herein, pay to Declarant the sum of Fifteen Dollars (\$15.00) for each statement requested by Owner regarding the obligation secured by this Development Declaration except for any such statements as are exempt from charge by virtue of the laws of the State of Nevada.

9.8 Waiver of the Statute of Limitations. To the maximum extent permitted by law, Purchaser expressly waives the benefit of and the right to plead and in any way take advantage of any and all statutes of limitation, both as to the indebtedness secured hereby or any other provision hereof, and Purchaser will upon request of Declarant execute and acknowledge (if necessary) further written extensions or waivers of the applicable statutes of limitations with respect to payment of any indebtedness secured hereby and interest thereon.

Article 10. Declarant's Reconveyance Option.

10.1 Option to Reconveyance the Property. In recognition of Declarant's interest in the expeditious development of the Property, Purchaser hereby grants to Declarant the irrevocable, exclusive right and option ("Reconveyance Option") to cause Purchaser to reconvey the Property for the breach or violation of Owner's obligations set forth in Section 7.1 and Section 5.1. The Reconveyance Option shall be exercised as provided below.

10.2 Exercise of Reconveyance Option. Declarant may exercise its Reconveyance Option by giving written notice to Owner thereof:

- (a) within ninety (90) days after Declarant receives actual notice of Owner's violation of section 5.1. ; or
- (b) within ninety (90) days following the occurrence of any of the events of default described in Section 7.1, which is not cured within thirty (30) days after written notice from Declarant to do so. No failure of Declarant to exercise its Reconveyance Option upon Owner's failure to commence construction as provided above shall constitute a waiver of its right to exercise the Reconveyance Option upon Owner's failure to complete construction and/or satisfy the Completion Requirement, Occupancy Requirement or Continuous Use Requirement.

10.3 Title Condition. Upon Declarant's Reconveyance, the Property shall be subject only to:

- (a) Current taxes not yet delinquent;
- (b) Matters affecting title which exist as of the Recordation Date, or which are created, made, assumed, consented to or requested by Declarant, its successors or assigns; and
- (c) Noninterfering easements for utilities used in connection with the buildings and other improvements constructed on the Property.

In the event any other matters or encumbrances exist or otherwise affect title, Declarant shall have the right to deduct from the Reconveyance Price at the close of escrow an amount, to be reasonably determined by Declarant, as sufficient to discharge such matters or to reimburse Declarant for any costs or expenses to be incurred by Declarant in connection with such matters.

10.4 Restoration Costs.

- (a) Within ten (10) days after Declarant's exercise of its Reconveyance Option, Declarant shall submit to Owner a list of improvements on the Property which are usable to Declarant for the purposes to which Declarant plans to devote the Property (the "Usable Improvements"). Within thirty (30) days of receipt of such list, Owner shall inform Declarant of Owner's costs of the Usable Improvements. Declarant and Owner shall consult in good faith with one another for the purpose of arriving at an agreement concerning such costs. The costs of the Usable Improvements either as stated by Owner, or as determined pursuant to Section 10.5, less depreciation computed on a straight line basis, shall be added to the Reconveyance Price described in Section 10.5.
- (b) Within ninety (90) days after Declarant's exercise of its Reconveyance Option, Owner at its sole cost and expense shall restore the Property to at least as good condition as existed at the date of this Development Declaration and shall remove from the Property all structures, buildings, pavings, landscaping and other improvements except the Usable improvements (collectively, the "Other Improvements") installed by Owner and all materials of whatever nature deposited at any time hereafter upon the Property. All such work shall be accomplished to the sole but reasonable satisfaction of Declarant. If such Other Improvements are not so removed and the Property so restored, then Declarant at any time prior to Closing may accomplish such matters and shall be entitled to a credit against the Reconveyance Price in an amount equal to the cost of accomplishing such matters. Any Improvements not so removed by Owner

within such ninety (90) day period shall automatically become the property of Declarant without the payment of further consideration and without the necessity of any further conveyance or bill of sale.

10.5 Reconveyance Price. Declarant's purchase price for the Property (the "Reconveyance Price") upon its exercise of the Reconveyance Option provided above, shall be the sum of :

- (a) The amount of Purchaser's original costs of acquiring the Property such as escrow fees, title insurance and Recording costs, documentary transfer tax, legal fees and any other closing costs, plus
- (b) The actual direct costs incurred by Owner in constructing the Usable Improvements, if any, on the Property.

10.6 Reconveyance Escrow Terms. Within five (5) days after Declarant's exercise of the option as provided above or as soon thereafter as possible, an escrow shall be created at Stewart Title of Nevada or another escrow company selected by Declarant to consummate the purchase as specified herein, which escrow shall have a time limit of thirty (30) days. Said escrow shall be subject only to approval by Declarant of a then current preliminary title report. Any exceptions shown thereon created after the date hereof, and disapproved by written notice to Owner through escrow, shall be removed by Owner at its sole expense at or prior to closing of escrow. In the event that the Property or any portion thereof is encumbered by a mortgage or deed of trust to which Declarant has subordinated this Option, Declarant may instruct the escrow agent to satisfy the indebtedness secured thereby out of the proceeds payable to Owner through the foregoing escrow. Owner and Declarant shall each pay one-half of the escrow fees; Owner shall pay for documentary tax stamps, for Recording the deed, and for an ALTA extended coverage form owner's policy of title insurance in the amount of the purchase price showing title to the Property vested in Declarant or its assigns free and clear of all liens, encumbrances or other title exceptions other than those set forth in this Development Declaration. Any other costs or expenses shall be allocated between the parties in the manner customary in Clark County, Nevada.

10.7 Other Defaults. Should Owner at any time prior to expiration of the Reconveyance Option commit any act of bankruptcy, or be adjudicated a bankrupt or insolvent, whether voluntarily or involuntarily, or transfer the Property or any portion thereof by operation of law under legal process pursuant to receivership or bankruptcy, or make an assignment for benefit of creditors, then Declarant in its sole discretion may, in addition to any other rights or remedies available to it, exercise the Reconveyance Option at any time prior to expiration of the Reconveyance Option, in the manner provided for herein.

10.8 Binding Effect. The Reconveyance Option shall be binding upon and shall inure to the benefit of the respective successors in interest to the parties hereto.

10.9 Declarant's Remedies. In the event Declarant exercises the Reconveyance Option provided herein and Owner shall fail or refuse to reconvey the Property in accordance with the terms of this Development Declaration, Declarant shall be entitled to pursue any remedy available to it at law or equity, including the right to seek specific performance of Owner's obligations hereunder.

Article 11. RESERVED.

Article 12. Assignment.

12.1 Assignment. Any and all of the rights, powers, and reservations of Declarant herein contained may be assigned to any person, partnership, corporation, or association that will assume the duties of Declarant pertaining to the particular rights, powers and reservations assigned, and upon any such person, partnership, corporation, or association evidencing its consent in writing to accept such assignment and assume such duties, he or it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein provided that Declarant shall, at least ten (10) days prior to such assignment becoming effective, deliver notice to Owner. Any assignment or appointment made under this Article shall be in reasonable form and shall be Recorded.

Without limiting the generality of the preceding paragraph, Declarant shall have the right in its sole discretion to assign all or part of its rights under this Development Declaration to the Master Association. In the event of such an assignment, the Master Association shall have the right to enforce those rights assigned to the Master Association by Declarant against Owner, its successor and assigns.

Article 13 RESERVED.

Article 14. Miscellaneous.

14.1 Constructive Notice and Acceptance. Every person or entity who now or hereafter owns, occupies, or acquires any right, title, or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition, and Restriction contained herein, whether or not any reference to this Development Declaration is contained in the instrument by which such person acquired an interest in the Property.

14.2 Waiver. Neither Declarant nor its successors or assigns shall be liable to any Owner or Occupant of the Property by reason of any mistake in judgment, negligence, nonfeasance, action, or inaction or for the enforcement or failure to enforce any provision of this Development Declaration. Every Owner or Occupant of any of said property by acquiring its interest therein agrees that it will not bring any action or suit against Declarant to recover any such damages or to seek equitable relief because of same.

14.3 Declarant's Right to Terminate Development Declaration. Upon the acquisition of all or portions of the Property by Declarant by or through any operation of law or instrument of transfer, Declarant shall have the right in its sole discretion to terminate this Development Declaration and release such portions or all of the Property from the covenants and Restrictions of this Development Declaration, by executing and Recording an instrument to such effect, in which event the covenants and Restrictions shall be forever terminated and extinguished.

14.4 Runs with Land. The Restrictions shall run with and bind the Property and shall inure to the benefit of and be enforceable by Declarant and its successors and assigns for a term of sixty (60) years from the Recordation Date, unless terminated earlier in accordance with the terms of Section 14.3 above. As used in the preceding sentence, the term "successors and assigns" means and refer to both (a) Declarant's successors and assigns as provided in Section 12.1, and (b) Declarant's successors and assigns as to all or substantially all of Declarant's assets or by merger, consolidation, or other corporate reorganization.

14.5 Rights of Mortgagees. No breach or violation of the Restrictions shall defeat or render invalid the lien of any mortgage, Deed of Trust or similar instrument securing a loan made in good faith and for value with respect to the development or permanent financing of the Property or any portion thereof. Declarant agrees to enter into any subordination agreement requested by a lender under any such deed of trust or mortgage, subject to Declarant's approval of such subordination agreement provided that such approval shall not be unreasonably withheld. However, this Development Declaration and all provisions hereof shall be binding upon and effective against any subsequent Owner and its successors and assigns or other Occupant of the Property or portion thereof whose title is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise, but such subsequent Owner shall have a reasonable period of time after taking title to cure any violation hereunder that is reasonably capable of being cured, provided that such subsequent Owner diligently acts to effect such cure.

14.6 Captions. The captions of Articles and Sections herein are used for convenience only and are not intended to be a part of this Development Declaration or in other way to define, limit, or describe the scope and intent of the particular Article or Section to which they refer.

14.7 Effect of Invalidation. If any provision of this Development Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

14.8 Amendments. Except as provided in this Development Declaration concerning the addition of or substitution for other real property as the Benefitted Property, or concerning the assignment by Declarant of its rights under this Development Declaration, this Development Declaration may only be amended by a writing executed by Declarant and the Record owner of the Property which shall be Recorded against the Property.

14.9 Force Majeure. The time period for the performance of any non-monetary obligation under this Development Declaration shall be extended for any period that such performance is delayed or becomes impossible due to any Act of God, war, civil insurrection, riot, earthquake, fire, weather, sickness, accident, epidemic, act of government or government regulation, general or sympathetic strike or lockout, unavailability of labor or materials, or any other cause beyond the control of a party to this Development Declaration.

14.10 Notices. All notices or other communications between Declarant and Owner required or permitted hereunder shall be in writing and personally delivered or sent by certified United States mail, return receipt requested, postage prepaid, to the following address (until a notice of change thereof shall have been delivered as provided in this Section) or by facsimile copy to the number set forth below:

If to Declarant:

If to Owner:

A notice shall be effective on the date of personal delivery if personally delivered before 5:00 p.m. (local time), otherwise on the day following personal delivery, or two (2) business days

following the date the notice is postmarked, if mailed or, if by facsimile, on the date of actual receipt if received before 5:00 p.m. (local time), otherwise on the next business day. Either party may change the address to which notice are to be given to it by giving notice of such change of address in the manner set forth above for giving notice.

14.11 Interest on Past Due Obligations. Any amount payable by either Declarant or Owner to the other that is not paid within thirty (30) days of written demand shall bear interest commencing on the thirtieth (30th) day following such written demand at a variable rate of interest equal to the prime or reference rate of interest announced from time to time by Bank of America, NT&SA plus 5% per annum, or the maximum rate permitted by law, if less.

14.12 Adjacent Development. Purchaser acknowledges that one or more commercial and retail projects may be developed by Declarant or others in the immediate vicinity of the Property. Applicable ordinances of the City of Las Vegas may require that special use permits or other discretionary approvals are required in connection with the development of these projects. In the event Declarant or a subsequent developer of any such projects seeks any special use permits or other discretionary approvals from the City of Las Vegas or other governmental agency, including without limitation, any application for restricted or non-restricted gaming licenses or location approvals or liquor licenses or rezoning or any other similar approval, Purchaser agrees it shall not oppose such development or such approval and hereby waives any claim against Declarant, its affiliates and successors and their respective officers, directors, agents and employees arising out of the location or development of such facilities. Purchaser acknowledges and agrees that the foregoing covenant is an essential part of the bargain between Declarant and Purchaser and that Declarant would not have agreed to convey the Property to Purchaser for the intended purpose thereof without such agreement by Purchaser and that in the event Purchaser violates such agreement Declarant will be substantially and irrevocably damaged.

SIGNATURE BLOCKS ON NEXT PAGE

CITY PARKWAY V, INC.,
a Nevada not-for-profit corporation

Title: _____

LAS VEGAS PERFORMING ARTS
FOUNDATION, a Nevada not-for-profit
corporation

Title: _____

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

On this ____ day of _____, 2006, _____ before me personally appeared and executed the foregoing Agreement on behalf of City Parkway V, Inc.

NOTARY PUBLIC
My commission expires: _____

[illegible]

On this ____ day of _____, 2006, _____ before me personally appeared and executed the foregoing Agreement on behalf of Lass Vegas Performing Arts Foundation.

NOTARY PUBLIC
My commission expires: _____

EXHIBIT “D”
Form of Environmental Management Agreement
(To be provided prior to the Execution of the Agreement)

EXHIBIT "E"
Project Information

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 Easment 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 Hydrogeoloic 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
- 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) Trusetee'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 Phase I & Phase II Environmental Site Assessment.pdf – March 26, 2003 & April 2, 2003
 - PhaseIexec.pdf
 - PhaseIIexec.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

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Maps

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

EXHIBIT "F"
GRANT, BARGAIN, SALE DEED

(Form to be provided prior to execution of Agreement)

EXHIBIT "I"

To the Amended and Restated Agreement

to Design, Construct, and Lease a Performing Arts Center

	Budget Year	Soil & Water Treatment	Engineered Controls	TOTAL
Large Hall Phase	FY07-08	\$ 3,274,000	\$ 2,329,000	\$ 5,603,000
Cabaret Phase	Future Phase ¹	\$ 215,130	\$ 758,000	\$ 973,130
Small Hall Phase	Future Phase ¹	\$ 1,717,820	\$ 1,382,000	\$ 3,099,820
Retail Phase	Future Phase ¹	\$ 4,776,880	\$ 1,851,000	\$ 6,627,880
		\$ 9,983,830	\$ 6,070,000	\$ 16,053,830
¹ PAC agrees to submit an update to the cost estimates shown above as specified in Section 4.7 of the Agreement. Delineation of the costs for the Cabaret Phase, Small Hall Phase, and Retail Phase does not obligate City Parkway V, Inc., whether express or implied, to provide such funds.				