WAIVER AND CONSENT

THIS WAIVER AND CONSENT ("Waiver and Consent") is made and entered into effective as of December 16, 2009, by and between the City of Las Vegas, Nevada, a political subdivision of the State of Nevada ("City"), and Bank of Nevada ("Lender").

A. City is the owner of the real property commonly identified as Clark County Assessor's Parcel Number 139-33-610-026, Las Vegas, Nevada (the "Premises").

B. City has entered into that certain Third Amended and Restated Agreement to Design, Construct and Lease a Performing Arts Center dated as of November 4, 2009 (together with all amendments and modifications thereto, the "Agreement"), with Las Vegas Performing Arts Center Foundation, a Nevada nonprofit corporation ("Company"), with respect to the Premises.

C. Pursuant to Section 2.4 of the Agreement, within five (5) business days after the occurrence of Final Completion (as defined therein), Company and City will enter into a Lease and Operating Agreement (the "Lease") for the lease of a portion of the Premises (the "Leased Premises").

D. Lender has previously entered or is about to enter into a Revolving Line of Credit Agreement (the "Credit Agreement") and related documents with Company, and to secure the obligations arising under such Credit Agreement, Company has granted or will grant to Lender a security interest in and lien upon certain assets of Company, including, without limitation, all fixtures (but excluding fixtures attached to and made a part of the real property to which they are attached, which fixtures are listed on Exhibit A attached hereto), equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, supplies, and articles of personal property, of every kind and character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by Company, which are now or hereafter situated in, on or about the Premises, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Premises or stored elsewhere) for use or installation in or on the Premises, and all renewals and replacements of, substitutions for and additions to the foregoing, including, without limitation, all items listed on Exhibit B attached hereto (collectively, the "Collateral").

NOW, THEREFORE, in consideration of any financial accommodations extended by Lender to Company at any time, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. City acknowledges that (a) the Agreement is in full force and effect, (b) City is not aware of any existing default under the Agreement, (c) City is not aware of any defense, offset, claim or counterclaim by or in favor of City against Company under the Lease or against the obligations of City under the Agreement, and (d) except as disclosed to Lender, no portion of the Leased Premises is encumbered in any way by any deed of trust or mortgage lien or ground or superior lease.

2. City will provide Lender with written notice of any default by Company under the Agreement or, after execution, the Lease that may result in termination of the Lease (a "Default Notice"). Lender shall have at least fifteen (15) days following receipt of such Default Notice to cure such default, but Lender shall not be under any obligation to cure any default by Company under the Agreement or Lease. No action by Lender pursuant to this Waiver and Consent shall be deemed to be an assumption by Lender of any obligation under the Agreement or Lease, and, except as provided in paragraphs 6 and 7 below, Lender shall not have any obligation to City.

3. City acknowledges the validity of Lender's lien on the Collateral and, until such time as the obligations of Company to Lender are paid in full, City waives and releases any interest in the Collateral, agrees that any rights it may have in or to the Collateral, no matter how arising, shall be subordinate to the rights of Lender in respect thereof, and agrees not to distrain or levy upon any Collateral or to assert any lien, right of distraint or other claim against the Collateral for any reason. City hereby authorizes Lender to record with the appropriate public office any financing, continuation or other statements in connection with Company's grant of a security interest to Lender in the Collateral covered by this Waiver and Consent, which financing statement may encumber the Premises to the extent of Lender's interest in the Collateral.

4. Prior to termination of the Lease, Lender or its representatives or invitees may enter upon the Leased Premises at any reasonable time and with prior notice to the City without any interference by City to inspect or remove any or all of the Collateral.

5. From and after a termination of the Lease, City will permit Lender and its representatives and invitees to access the Leased Premises; provided that such period (the "Disposition Period") shall not exceed up to ninety (90) days following receipt by Lender of a Default Notice or, if the Lease has expired by its own terms (absent a default thereunder), up to thirty (30) days following Lender's receipt of written notice of such expiration. If any injunction or stay is issued that prohibits Lender from removing the Collateral, the commencement of the Disposition Period will be deferred until such injunction or stay is lifted or removed.

6. During any Disposition Period, (a) Lender and its representatives and invitees may inspect, repossess, remove and otherwise deal with the Collateral, in each case without interference by City, and (b) Lender acknowledges and consents that the City shall have the right to makethe Leased Premises available for inspection by City and prospective tenants and Lender agrees to cooperate in City's reasonable efforts to re-lease the Leased Premises.

7. Lender shall promptly repair at Lender's expense, or reimburse City, for any physical damage to the Leased Premises actually caused by the conduct of such auction or sale and any removal of Collateral by or through Lender (ordinary wear and tear excluded). Lender shall not be liable for any diminution in value of the Leased Premises caused by the absence of Collateral removed, and Lender shall not have any duty or obligation to remove or dispose of any Collateral or any other property left on the Leased Premises by Company. Lender shall indemnify and hold harmless the City, its officers and employees ("City") from any and all claims, liabilities, damages, losses, suits, actions, decrees and judgments which may be recovered from or sought against the City, as a result of, by reason of, or as a consequence of, any action or omission, negligent or otherwise, on the part of Lender, its representatives and

invitees in inspecting, removing, repossessing and otherwise dealing with the Collateral in the Leased Premises.

8. All notices hereunder shall be in writing, sent by certified mail, return receipt requested or by facsimile, to the respective parties and the addresses set forth on the signature page or at such other address as the receiving party shall designate in writing.

9. This Waiver and Consent may be executed in any number of several counterparts, shall be governed and controlled by, and interpreted under, the laws of the State of Nevada, and shall inure to the benefit of Lender and its successors and assigns and shall be binding upon City and its successors and assigns (including any transferees of the Leased Premises).

SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, this Waiver and Consent is entered into as of the date first set forth above.

Lender:

Bank of Nevada

By: ____________________
Name: Rachelle M. Crupi
Title: EVP

Address:

1115 South Hualapai Way
Las Vegas, Nevada 89117
Attn: Rachelle M. Crupi

Facsimile: (702) 252-3651

City:

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

By: ____________________
Name: OSCAR B. GOODMAN
Title: Mayor

Address:

400 STEWART AVE
LAS VEGAS NV 89101
Attn: ________________

Facsimile: (702) ____-______

Attest: By ____________________
BEVERLY K. BRIDGES, MMC, City Clerk

APPROVED AS TO FORM:

____________________ 11/24/09
Deputy City Attorney

ACKNOWLEDGMENT

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

On this 16th day of December 2009, personally appeared before me, the undersigned a Notary Public in and for the County of Clark, State of Nevada, Michelle M. Crupi, who acknowledged that he/she executed the above instrument.

Patricia B. Roscoe

NOTARY PUBLIC, in and for said County and State

Patricia B. Rosco
Notary Public
State Of Nevada
Date Appointment Exp: 01-15
Certificate No: 02-73661-1

ACKNOWLEDGMENT

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

On this 18TH day of December, 2009, personally appeared before me, the undersigned a Notary Public in and for the County of Clark, State of Nevada, OSCAR B. GOODMAN, who acknowledged that he/she executed the above instrument as the Mayor of the City of Las Vegas.

Stacey L Campbell

NOTARY PUBLIC, in and for said County and State

STACEY CAMPBELL
Notary Public State of Nevada
No. 04-92740-1
My appt. exp. Oct. 14, 2012

The Smith Center for the Performing Arts **Attachment A**

Excluded Fixtures

LARGE HALL & EDUCATION CENTER FF&E		
DIV	**DESCRIPTION**	**Excluded**
10	**Misc. Specialties**	
	Large Hall Signage	$ 323,023
	Education Center Signage	$ 109,498
		$ 432,521
11	**Equipment**	
	Large Hall Theater Equipment	$ 4,397,494
	Education Center Theater Equipment	$ 18,349
	Large Hall Fixed Seating	$ 968,378
	Large Hall Loose Seating Allowance	$ -
	Large Hall Audio/Video System - Coord/Submittal/Eng/Wire In	$ 392,642
	Large Hall Audio/Video System - Equipment Allowance	$ -
	Ed Center Audio/Video System - Coord/Submittal/Eng/Wire In	$ 145,992
	Education Center Audio/Video System - Equipment Allowance	$ -
	Carillon Bells	$ -
	Large Hall Food Service Equipment	$ -
	Education Center Food Service Equipment	$ -
		$ 5,922,855
12	**Furnishings**	
	Large Hall FF&E Interiors	$ -
	Ed Center FF&E Interiors	$ -
	Operations Equipment and Software	$ -
	Other Large Hall Performance Equipment	$ 517,266
	Other Ed Center Performance Equipment	$ -
		$ 517,266
16	**Electrical**	
	Large Hall Owner Supplied Fixtures	$ 2,143,506
	Education Center Owner Supplied Fixtures	$ 557,638
		$ 2,701,144
	Total FF&E	**$ 9,573,786**

The Smith Center for the Performing Arts **Attachment B**
Included Furniture/Equipment/Collateral

LARGE HALL & EDUCATION CENTER FF&E			
DIV	DESCRIPTION		Collateral
10	**Misc. Specialties**		
	Large Hall Signage	$	-
	Education Center Signage	$	-
		$	**-**
11	**Equipment**		
	Large Hall Theater Equipment	$	4,948,943
	Education Center Theater Equipment	$	170,000
	Large Hall Fixed Seating	$	-
	Large Hall Loose Seating Allowance	$	345,590
	Large Hall Audio/Video System - Coord/Submittal/Eng/Wire In	$	-
	Large Hall Audio/Video System - Equipment Allowance	$	2,000,551
	Ed Center Audio/Video System - Coord/Submittal/Eng/Wire In	$	-
	Education Center Audio/Video System - Equipment Allowance	$	883,951
	Carillon Bells	$	611,333
	Large Hall Food Service Equipment	$	833,304
	Education Center Food Service Equipment	$	941,409
		$	**10,735,081**
12	**Furnishings**		
	Large Hall FF&E Interiors	$	6,794,725
	Ed Center FF&E Interiors	$	2,396,775
	Operations Equipment and Software	$	2,482,500
	Other Large Hall Performance Equipment	$	235,000
	Other Ed Center Performance Equipment	$	127,511
		$	**12,036,511**
16	**Electrical**		
	Large Hall Owner Supplied Fixtures	$	-
	Education Center Owner Supplied Fixtures	$	-
		$	**-**
	Total FF&E	**$**	**22,771,592**