

**LEASE AND USE AGREEMENT**

**By and between**

**City of Minneapolis**

**and**

**The Minnesota Orchestral Association**

## TABLE OF CONTENTS

1.	PURPOSE .....	1
2.	DEMISE AND DESCRIPTION OF PREMISES .....	2
3.	GRANT AGREEMENT .....	2
4.	TERM AND OPTIONS TO RENEW .....	2
5.	STATUTORY TERMINATION .....	3
6.	RENT .....	4
7.	PAYMENT OF ASSESSMENTS .....	4
8.	PAYMENT OF UTILITIES .....	5
9.	REPORTING AND PROGRAM OVERSIGHT .....	6
10.	TENANT REPRESENTATIONS, WARRANTIES AND COVENANTS .....	7
11.	LANDLORD REPRESENTATIONS, WARRANTIES AND COVENANTS .....	9
12.	WARRANTIES OF TITLE AND QUIET POSSESSION .....	10
13.	USE OF PREMISES .....	10
14.	ABANDONMENT OF PREMISES .....	10
15.	LANDLORD'S RIGHT OF ENTRY .....	10
16.	ENCUMBRANCE OF TENANT'S LEASEHOLD INTEREST .....	11
17.	NON-RENEWAL OR EARLY TERMINATION OF THIS LEASE, PAYMENT FOR IMPROVEMENTS TO TENANT .....	11
18.	INTENTIONALLY OMITTED .....	13
19.	SUBLETTING AND ASSIGNMENTS .....	13
20.	NOTICES .....	13
21.	CONSTRUCTION OF ORCHESTRA HALL IMPROVEMENTS .....	14
22.	CONSTRUCTION OF ADDITIONAL BUILDINGS AND IMPROVEMENTS .....	15

23.	REPAIRS AND DESTRUCTION OF IMPROVEMENTS .....	16
24.	MECHANICS' LIENS .....	17
25.	INDEMNIFICATION OF LANDLORD.....	17
26.	INSURANCE.....	19
27.	PROHIBITION OF INVOLUNTARY ASSIGNMENT .....	21
28.	EVENTS OF DEFAULT .....	22
29.	NOTICE OF DEFAULT.....	23
30.	DEFAULT AND TERMINATION.....	24
31.	ADDITIONAL REMEDIES .....	24
32.	SPECIAL TERMINATION PROCEDURE .....	25
33.	LANDLORD'S RIGHT TO PERFORM.....	26
34.	LANDLORD DEFAULTS AND TENANT REMEDIES .....	26
35.	NO REMEDY EXCLUSIVE.....	27
36.	EFFECT OF EMINENT DOMAIN.....	27
37.	SURRENDER OF LEASE: EFFECT ON SUBLEASES .....	28
38.	OWNERSHIP OF IMPROVEMENTS.....	28
39.	AMENDMENT, MODIFICATION, AND WAIVER.....	28
40.	APPROVAL BY STATE OF MINNESOTA.....	28
41.	EFFECT OF TENANT'S HOLDING OVER. ....	29
42.	PARTIES BOUND .....	29
43.	TIME OF ESSENCE .....	29
44.	CAPTIONS .....	29
45.	NO PARTNERSHIP, JOINT VENTURE, OR FIDUCIARY RELATIONSHIP CREATED HEREBY .....	29
46.	CUMULATIVE RIGHTS.....	29

47.	SEVERABLE PROVISIONS .....	29
48.	ENTIRE AGREEMENT .....	29
49.	REFERENCE TO GENDER .....	30
50.	MINNESOTA LAW .....	30
51.	FURTHER ASSURANCES .....	30
52.	SHORT-FORM RECORDABLE LEASE.....	30
53.	FEDERAL INCOME TAX DEDUCTIONS .....	30
54.	BROKERAGE FEES .....	30
55.	COMPLIANCE WITH G.O. COMPLIANCE LEGISLATION AND THE COMMISSIONER’S ORDER.....	31
56.	LISTING OF JOBS.....	31
57.	RECORD KEEPING AND REPORTING .....	31
58.	NON-DISCRIMINATION .....	32
59.	WORKER’S COMPENSATION .....	32
60.	PREVAILING WAGE.....	32
61.	COMPLIANCE WITH LANDLORD’S CONTRACTING REQUIREMENTS .....	32
63.	HAZARDOUS WASTE POLLUTION AND CONTAMINANTS .....	33
64.	WAIVER OF SUBROGATION.....	34
65.	WAIVER OF CERTAIN DAMAGES .....	35
66.	COMPLIANCE WITH LAWS .....	35
67.	LIMITATION ON LIABILITY.....	35
68.	PREMISES MAINTENANCE ESCROW.....	36
69.	GRANT AGREEMENT PREVAILS .....	36

## LEASE AND USE AGREEMENT

### ORCHESTRA HALL

THIS LEASE AND USE AGREEMENT is entered into this 25th day of June, 2012, between the **CITY OF MINNEAPOLIS**, a Minnesota municipal corporation ("**Landlord**"), and **THE MINNESOTA ORCHESTRAL ASSOCIATION**, a Minnesota nonprofit corporation ("**Tenant**").

#### 1. PURPOSE.

a. Landlord believes that it serves the public interest of the City of Minneapolis to promote and provide for performing arts in the City. Landlord and Tenant believe that Orchestra Hall ("**Orchestra Hall**") furthers that public purpose, and that Orchestra Hall is and will continue to be a preeminent concert hall and cultural asset in the state of Minnesota and throughout the upper Midwest.

b. The governmental program authorized by Minnesota Statutes §§ 471.15-471.191; Minnesota Session Laws of 2010, Chapter 189, § 21, Subd. 11; and established by official action of the City by Resolution 2012R-290 is a program for performing arts to be conducted in Orchestra Hall (the "**Governmental Program**"), which shall achieve Landlord's goal of supporting and improving the cultural fabric of the State and region and promoting economic development and tourism. Landlord and Tenant acknowledge and agree that the goal of the Governmental Program will be to maintain a regionally renowned concert hall and that the success of Orchestra Hall requires that Tenant continue to have broad and unfettered artistic freedom in content and selection of all performances and programs in the operation of Orchestra Hall and it is the intent of the parties hereto that Tenant shall have such discretion and control. Landlord further recognizes that Orchestra Hall will be utilized by multiple performing arts organizations, in addition to the Minnesota Orchestra, and that the success of the Governmental Program will consequently require Tenant to act as an overall facility master developer, operator and promoter. The Landlord also acknowledges that demand and use is likely to vary over time and by season and that Tenant will not be expected to be open on a continuous, uninterrupted basis. As a consequence, Tenant will require broad discretion and control over the timing and programming of Orchestra Hall. Compliance with the Governmental Program shall be evidenced by the fact that at least half of the earned revenue is being generated by the production or presentation of music and other performance programs.

c. This Lease is being entered into in accordance with the provisions of Minnesota Session Laws of 2010, Chapter 189, § 21, Subd. 11 and Minn. Stat. § 16A.695, and rules, regulations, and orders issued pursuant thereto in order to carry out this public purpose.

2. DEMISE AND DESCRIPTION OF PREMISES. In consideration of the rents, mutual promises, and covenants contained herein, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, those certain parcels of real property legally described on Exhibit A attached hereto, together with all existing improvements and improvements to be constructed thereon (together the real property and improvements, the "**Premises**"), all located in the City of Minneapolis, Minnesota. The Premises are leased to Tenant on an AS-IS basis and Tenant acknowledges that Landlord has made no representations or warranties as to the condition, quality, buildability, or suitability for development of the Premises.

Tenant acknowledges that Landlord's interest in the Premises is pursuant to that certain fifty (50) year Ground Lease entered into by and between the Landlord and The Minnesota Orchestral Association (the "**Ground Landlord**"), of even date herewith (the "**Ground Lease**"), and further will be subject to the Grant Agreement and Declaration described in Section 3 hereof. Tenant acknowledges that its rights in the Premises are subject to the Ground Lease and the Grant Agreement and Declaration.

3. GRANT AGREEMENT. Landlord and Tenant acknowledge that the costs of design and construction of renovations on the Premises of the Orchestra Hall Improvements (as defined more fully in Section 21 of this Lease and generally described on the attached Exhibit B, variously referred to herein as the "**Orchestra Hall Improvements**" or the "**Improvements**") will be funded, in part, through the proceeds of a state grant in the aggregate amount of \$14,000,000 ("**State Grant Proceeds**") from the State of Minnesota acting by and through its Department of Employment and Economic Development (the "**State**"). The State Grant Proceeds have been provided to Landlord pursuant to the terms of a General Obligation Bond Proceeds Grant Agreement Construction Grant (the "**Grant Agreement**"), a copy of which is attached hereto as Exhibit C, and Orchestra Hall is "state bond financed property" as such term is defined therein and is subject to the General Obligation Bond Financed Declaration attached thereto and recorded in the Office of the Hennepin County Registrar of Titles on June \_\_, 2012 as Document No. \_\_\_\_\_ (the "**Declaration**"). All capitalized terms that are not otherwise defined in this Lease shall have the meaning ascribed to those terms in the Grant Agreement.

This Lease requires Tenant to comply with the Grant Agreement and to fulfill certain obligations therein, which are set out more fully herein.

4. TERM AND OPTIONS TO RENEW. The initial term of this Lease shall be for twenty (20) years, commencing on the date of this Agreement and ending June 24, 2032, unless sooner terminated as hereinafter provided. This term is acknowledged to be substantially less than the useful life of Orchestra Hall (which the parties agree is forty (40) years from the date of this Agreement. As used herein the expression "**Term**" refers to the initial Term and to any renewal thereof as hereinafter provided.

Subject to the conditions set forth below, Tenant shall renew this Lease for two successive periods, the first of which shall be for twenty (20) years, and the second shall be for the remaining term of the Ground Lease. Each renewal shall be upon the

identical terms and conditions contained herein, unless the parties otherwise agree in writing, including but not limited to, the condition that Tenant is operating the Governmental Program. Each renewal shall be confirmed by Tenant by giving a written notice of renewal to Landlord three (3) years prior to the renewal year. The parties acknowledge that said three (3) year notice period is necessitated by the advance booking required for many performers and performance companies. Notwithstanding any failure to comply with the notice period, so long as notice is given not less than six (6) months prior to the end of the applicable term, proper notice shall be deemed to have been given. As a condition precedent to such renewal, the Landlord shall have determined by action of the City Council of the City of Minneapolis ("**City Council**"), such action to be taken within three (3) months of receipt of said notice from Tenant, that Tenant has demonstrated that such renewal continues to carry out the Governmental Program and that Tenant is suited and able to perform the functions contained in this Lease and upon such demonstration the Landlord shall act in good faith to renew this Lease. In no event shall Tenant be entitled to renew the Term hereof even though such confirmation notice is timely given, if (a) the Lease has been terminated, or (b) an Event of Default has occurred and is continuing as of the date of the expiration of the initial term hereof or the renewal term. Tenant's right to the second renewal term is conditioned upon the Term of this Lease having been extended by the previous renewal term. Notwithstanding anything to the contrary contained herein, Landlord is not required to renew this Lease with Tenant, and may at that time, in its sole option and discretion (i) decide to self operate the Governmental Program in the Premises, (ii) contract with some other entity to operate the Governmental Program in the Premises, or (iii) determine that the Premises is no longer needed or useful for the operation of the Governmental Program and sell its interest in the Premises.

## 5. STATUTORY TERMINATION.

a. Notwithstanding any other provisions of this Lease to the contrary, if the Governmental Program is terminated or changed in response to changes in state law in such a manner as to (a) cause this Lease and the operation of Orchestra Hall to be inconsistent with the changed Governmental Program or (b) remove the statutory authority for the Landlord to operate the Governmental Program, then this Lease may be terminated by 485 days written notice to Tenant (the "**Termination Date**"), provided however that Landlord agrees that it will not terminate or change the Governmental Program during the Term unless required to do so by applicable State law. Any termination must be approved by the City Council, and provided further that any termination pursuant to this Section 5 will be deemed automatically rescinded and of no force or effect if within said 485 day period (i) the State law requiring the Governmental Program to be terminated or changed or precluding the Landlord's operation of the Governmental Program is repealed or modified in such a manner as to permit the Governmental Program to continue in a form that does not cause this Lease and operation of Orchestra Hall on the Premises to be inconsistent therewith, or (ii) Tenant conforms its operation to the changed Governmental Program. Tenant's failure to cease operation of Orchestra Hall on the Termination Date shall be a default under this Lease.

b. The parties agree to cooperate in good faith to attempt to obtain State legislation that permits the Governmental Program and this Lease to continue.

6. RENT. No rent is required to be paid to Landlord by Tenant for the initial Term and the renewal Terms provided, however, that anything else contained herein or elsewhere notwithstanding, it is the intention of the parties that this Lease is a complete "net" Lease and that all costs and expenses, of any nature or kind whatsoever, attributable to the Premises or Tenant's use thereof during the Term hereof, or the renewal Terms, including but not limited to the operation and maintenance of the Premises and the operation of the Governmental Program, shall be the sole responsibility of Tenant, and Landlord shall not have any liability therefore, provided that damage to persons or property shall be governed by Section 25 hereof.

7. PAYMENT OF ASSESSMENTS.

a. Taxes as Additional Rental. As "Additional Rent" hereunder, Tenant shall pay and discharge as they become due, promptly and before delinquency, all real estate taxes, personal property taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special or ordinary or extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, and kind which shall be levied, assessed, charged, or imposed or which may become a lien or charge on or against the Premises or any part thereof, the leasehold of Tenant herein, any Improvements now or hereafter thereon, or on or against Tenant's estate hereby created, which may be a subject of taxation, during the entire Term hereof, including the renewal Terms, excepting only those taxes hereinafter specifically excepted in subsection (c).

b. Assessments Affecting Improvements. Specifically, but without any way limiting the generality of the requirements of subsection (a), Tenant shall pay all special assessments and levies or charges made by any municipal or political subdivision for local improvements and may pay them in cash as they shall fall due and before they shall become delinquent, or in installments each year as assessed by any such municipal or political subdivision. If, by making any such election to pay in installments, any such installments shall be payable after the termination of this Lease or any extended Term thereof, such unpaid installments shall be prorated as of the date of termination, and amounts payable after such date shall be paid by Landlord. All of the taxes and charges under this Section shall be prorated at the commencement and expiration of the Term hereof.

c. Contesting Taxes. If Tenant shall in good faith desire to contest the validity or amount of any tax, assessment, levy, or other governmental charge herein agreed to be paid by Tenant, Tenant shall be permitted to do so and to defer payment of such tax or charge, the validity or amount of which Tenant is so contesting, until final determination of the consent, on giving to Landlord written notice thereof prior to the commencement of any such contest, provided,

however, that Tenant shall be absolutely obligated to pay such tax or charge no later than thirty (30) days before such unpaid tax or charge will result in a forfeiture of the Premises or any part thereof. If Tenant does undertake any such contest it shall diligently pursue such contest to completion.

d. Disposition of Rebates. All rebates on account of any such taxes, rates, levies, charges, or assessments required to be paid and paid by Tenant under the provisions hereof shall belong to Tenant, and Landlord will on the request of Tenant execute any receipts, assignments, or other acquaintances that may be necessary on the Premises in order to secure rebates that may be received by Landlord. All rebates on account of any such taxes, rates, levies, charges, or assessments paid by Landlord shall belong to Landlord, provided Tenant has not reimbursed Landlord for such payments and Tenant shall have no obligation to reimburse Landlord to the extent of such rebates received and retained by Landlord.

e. Landlord's Right to Pay Taxes on Behalf of Tenant. In the event Tenant shall fail to comply with the preceding terms of this Section, Landlord may, but shall not be obligated to, pay any such taxes or assessments and charge it, plus interest on such amount at a rate of 2% over the prime rate established by U.S. Bank National Association, or its successor, from the date paid by Landlord, as Rent immediately due and payable, subject, however, to subsection (d) above.

f. Receipts. Tenant shall at the request of Landlord obtain and deliver to Landlord receipts or duplicate receipts for all taxes, assessments, and other items required hereunder to be paid by Tenant, promptly on payment thereof.

g. Acknowledgement. Tenant acknowledges that Landlord has made no representations or warranties of any kind with respect to the amount of any real estate taxes, special assessments, or other charges which may be levied against the Premises throughout the initial Term, or the renewal Terms, of this Lease. Landlord agrees to cooperate with Tenant in the taking of any reasonable action determined by Tenant to be necessary to obtain or maintain tax exempt status for Tenant's use of the Premises, provided, however, that Tenant shall be responsible for all actual out of pocket costs and expenses incurred by Landlord in connection with such cooperation.

8. PAYMENT OF UTILITIES. As Additional Rent, Tenant shall fully and promptly pay for all water, gas, heat, light, power, telecommunications, and all other utilities of every kind furnished to the Premises throughout the term hereof, and Landlord shall have no responsibility of any kind for any thereof.

9. REPORTING AND PROGRAM OVERSIGHT.

a. After completion of the Orchestra Hall Improvements, Tenant shall promptly submit to the Landlord, upon written request, such documentation, information and reports as are needed by the Landlord to fulfill its reporting requirements under the Grant Agreement.

b. (1) On or before each December 1, commencing on the December 1 first following the Completion Date, Tenant shall submit to the City of Minneapolis, Director of Community Planning and Economic Development ("**CPED Director**") the following information (hereinafter, the "Annual Report"):

A) A report of major activities at Orchestra Hall for the current fiscal year of Tenant, and a description of how the major activities meet the performing arts element of the Governmental Program.

B) Tenant's annual budget for the next fiscal year, including revenues and expenses (and including all capitalized expenditures for Improvements), which shall demonstrate that forecast revenues (from all sources) will be equal to or exceed forecast program expenses and that Tenant has an amount of unencumbered funds equal to or greater than two and a half (2.5) times the amount it cost to maintain the Premises in the most recent fiscal year (the "Maintenance Obligation"). For purposes of this Agreement, the cost to maintain the Premises means the following expenses:

- i. salary, benefits and related overhead for core building operation staff;
- ii. building equipment operation and maintenance;
- iii. building repairs;
- iv. property tax payments (including any special assessments);
- v. permits;
- vi. snow and ice removal;
- vii. waste removal;
- viii. landscaping maintenance;

- ix. utilities (e.g., electricity, steam and water/sewer) at half the cost incurred for the full building program operations;
- x. stormwater fees;
- xi. security services;
- xii. fire/smoke alarm/sprinkler services and maintenance;
- xiii. property and liability insurance; and
- xiv. similar costs needed to maintain the building and its value.

C) Tenant's projected budgets for funding operations of Orchestra Hall for the next three fiscal years that show that forecast revenues (from all sources) will be equal to or greater than forecast program expenses while still maintaining the Maintenance Obligation.

D) A report of Tenant's expenditures for Improvements in the prior year.

(2) No later than forty-five (45) days after submittal to the CPED Director by Tenant, and upon a finding that the Tenant is carrying out the governmental program, that revenues equal or exceed program expenses, and the Maintenance Obligation is projected to be maintained for the next three fiscal years, the CPED Director, shall approve the budget of Tenant upon the City's findings that Tenant is carrying out the Governmental Program and the revenues (from all sources) equal or exceed the program expenses and forward its approval to the Commissioners of Minnesota Management and Budget and the Minnesota Department of Employment and Economic Development. If the CPED Director does not approve the budget, the CPED Director shall submit his/her report and findings and all written materials that the CPED Director received from Tenant along with a written description of the actions that the CPED Director intends on taking in order to comply with the requirements imposed by Section 2.04 of the Grant Agreement, if any, to the City Council and the Commissioners of Minnesota Management and Budget and the Minnesota Department of Employment and Economic Development.

10. TENANT REPRESENTATIONS, WARRANTIES AND COVENANTS.  
Tenant covenants with and warrants and represents to Landlord as follows:

a. It has legal authority to enter into, execute, and deliver this Lease, and that it has taken all corporate and other actions necessary and incident to its execution and delivery of such documents.

b. It will comply with all of the terms, conditions, covenants, requirements, and/or warranties in this Lease, at all times during the term hereof.

c. It will comply with the terms, conditions, covenants, requirements and/or warranties in the Grant Agreement, the G.O. Compliance Legislation, and the Commissioner's Order (the latter two as defined in the Grant Agreement).

d. It will construct the Orchestra Hall Improvements and operate Orchestra Hall in compliance with the Grant Agreement, the G.O. Compliance Legislation, and the Commissioner's Order.

e. It has made no material false statement, or material misstatement of fact, in connection with its receipt of this Lease, and all of the information previously submitted to Landlord, the State, or the Commissioner of Minnesota Management and Budget (the "**Commissioner**"), or to be submitted to Landlord, the State, or the Commissioner of the Minnesota Office of Management and Budget in the future, relating to this Lease or the Grant given to Landlord or the disbursement of any of the proceeds of the Lease or Grant, is and will be true, complete and correct by Tenant in all material respects.

f. The execution and delivery of this Lease by Tenant will not cause or constitute a violation of any provisions of Tenants Articles of Incorporation, Operating Agreement or By-laws, or of the laws of the State of Minnesota, and there are no actions, suits, or proceedings pending, or to the actual knowledge of the undersigned officers of Tenant, threatened, before or by any judicial body or governmental authority against or affecting it relating to the Premises, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into this Lease, or to perform any of the acts required of it in this Lease.

g. Neither the execution or delivery of this Lease, nor compliance with any of the terms, conditions, requirements, or provisions contained herein, is prevented by, is a breach of, or will result in a breach of any term, condition, or provision of any agreement or document to which it is now a party, or by which it, or any of its properties, is bound.

h. Subject to Unavoidable Delays (as defined in the Section 21), by no later than the Completion Date, the Orchestra Hall Improvements will be substantially completed in such a manner as will allow Orchestra Hall to commence the Governmental Program as specified in Section 1 of this Lease.

i. As of the date hereof, the Premises and the contemplated use thereof will not violate in any material respect any applicable zoning or use statute, ordinance, building code, rule or regulation, or any covenant or

agreement of record, relating to the Premises, except violations that will be corrected as part of the construction of the Improvements.

j. The construction of the Orchestra Hall Improvements will be performed in material compliance with all applicable laws, statutes, rules, ordinances, and regulations, including but not limited to building code, disability, access, zoning, air quality, pollution control, recyclable materials, and prevailing wage requirements as issued by any federal, state, or local political subdivisions having jurisdiction over the Premises.

k. All applicable licenses, permits, and bonds required for the construction of the Orchestra Hall Improvements have been or shall be obtained.

l. It shall furnish satisfactory evidence regarding the representations, warranties and covenants contained herein as may be required by Landlord or the State and requested in writing from time-to-time.

m. It shall not take any actions inconsistent with this Lease.

n. It will not pay for billboard advertising using Landlord-derived funds.

11. LANDLORD REPRESENTATIONS, WARRANTIES AND COVENANTS.

Landlord covenants with and warrants and represents to Tenant as follows:

a. It has legal authority to enter into, execute, and deliver this Lease, and that it has taken all official and other actions necessary and incident to its execution and delivery of such documents.

b. It will comply with all of the terms, conditions, covenants, requirements, and/or warranties in this Lease applicable to Landlord at all times during the term hereof.

c. It will comply with all of the terms, conditions, covenants, requirements and/or warranties in the Grant Agreement, the G.O. Compliance Legislation, and the Commissioner's Order subject to Tenant's compliance with all terms and conditions of this Lease.

d. The execution and delivery of this Lease by Landlord will not cause or constitute a violation of any provisions of its charter, or of the laws of the State of Minnesota, and there are no actions, suits, or proceedings pending, or to the actual knowledge of the undersigned officers of Landlord, threatened, before or by any judicial body or governmental authority against or affecting it relating to the Premises, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into this Lease, or to perform any of the acts required of it in this Lease.

e. Neither the execution or delivery of this Lease, nor compliance with any of the terms, conditions, requirements, or provisions contained herein, is prevented by, is a breach of, or will result in a breach of any term, condition, or provision of any agreement or document to which it is now a party, or by which it, or any of its properties, is bound.

12. WARRANTIES OF TITLE AND QUIET POSSESSION. Landlord covenants that Landlord is seized of the Premises as ground tenant pursuant to the Ground Lease and, assuming Tenant fully performs as required by this Lease, Tenant shall have quiet and peaceable possession of the Premises during the Term, in accordance with this Lease.

13. USE OF PREMISES. Subject to the other terms and provisions contained herein, Tenant shall be permitted to use Orchestra Hall only for the construction of the Improvements, construction of additional buildings and improvements pursuant to Section 22 herein, maintenance and repair of the Premises and operation of Orchestra Hall in order to achieve the Governmental Program as set forth in Section 1.b. above.

No use shall be made or shall be permitted to be made of the Premises nor shall any acts be done which will jeopardize the tax-exempt status of the general obligation bonds that funded the State Grant Proceeds or cause a cancellation of any insurance policy covering the Improvements on the Premises, or any part thereof. Tenant shall, at its sole cost, comply with all requirements necessary for the maintenance of insurance of any insurance organization or company, as herein provided, covering any building and appurtenances located on the Premises.

Furthermore, during the term of this Lease, Tenant shall comply with all applicable laws affecting the Premises if either: (a) the breach of such laws might result in any penalty on Landlord or the forfeiture of Landlord's title to the Premises; or (b) the breach of which would have an adverse effect on public health or safety. Tenant shall not commit or allow to be committed any waste of or nuisance on the Premises. Throughout the Term of this Lease, the operation of the Governmental Program on the Premises shall be subject to Unavoidable Delays, as defined in Section 21 herein.

14. ABANDONMENT OF PREMISES. If Tenant shall abandon, vacate, or surrender the Premises or shall be dispossessed by process of law, or otherwise, any personal property belonging to Tenant and left on the Premises shall be deemed to be abandoned, at the option of Landlord.

15. LANDLORD'S RIGHT OF ENTRY. Tenant shall permit Landlord and the agents and employees of Landlord to enter into and on the Premises at all reasonable times during business hours and with at least five (5) days written notice for the purpose of inspecting them or for the purpose of posting notices of non-responsibility for alterations, additions, or repairs, without any charge to Landlord and without any liability to Landlord for any loss of occupation or quiet enjoyment of the Premises thereby occasioned.

16. ENCUMBRANCE OF TENANT'S LEASEHOLD INTEREST: With the prior approval of Landlord and the Commissioner, Tenant may encumber by mortgage or other proper instrument its leasehold interest in the Premises including all Improvements placed by Tenant thereon, as security for any indebtedness of Tenant incurred to finance or refinance Improvements on the Premises as provided in the Grant Agreement, provided such mortgage contains an acknowledgement that the mortgagee's rights are subject to the rights of Landlord under this Lease and the Ground Lease and the rights of the State under the Grant Agreement and the Declaration. Any such mortgage or other instrument shall provide that Tenant shall have access to insurance and condemnation proceeds so as to allow Tenant the right to rebuild or restore any portions of the Premises destroyed or condemned in the event that Landlord permits such rebuilding or restoration under the terms of this Lease. No such mortgage or encumbrance, or any foreclosure, conveyance, or exercise of right by any secured lender shall relieve Tenant from its liabilities hereunder, nor prevent Landlord from exercising its rights to terminate the Lease.

If Tenant so encumbers its leasehold interest and if Tenant or the holder of the indebtedness secured by such encumbrance gives notice to Landlord of the existence thereof and the address of such holder, then Landlord will mail or deliver to such holder at that address a duplicate copy of all notices in writing which Landlord may, from time-to-time, give to or serve on Tenant under and pursuant to the terms and provisions hereof. Such copies shall be mailed or delivered to such holder at or as near as possible to the same time such notices are given to or served on Tenant.

Such holder may, at its option, at any time before the rights of Tenant are terminated as provided herein, pay any of the rent due hereunder or pay any taxes and assessments or do any other act or thing required of Tenant by the terms hereof or do any act or thing that may be necessary and proper to be done in the observance of the covenants and conditions hereof or to prevent the termination hereof. All payments so made, and all things so done and performed by such holder, if done prior to the rights of Tenant having been terminated, shall be as effective to prevent a termination of the rights of Tenant hereunder as they would have been if done and performed by Tenant.

Upon such holder succeeding to the interest of Tenant hereunder, such holder shall be bound by all terms and conditions of this Lease, and shall be deemed to have assumed all of Tenant's obligations hereunder from and after such time as it succeeds to the interest of Tenant.

17. NON-RENEWAL OR EARLY TERMINATION OF THIS LEASE, PAYMENT FOR IMPROVEMENTS TO TENANT

a. In the event that the Landlord terminates this Lease pursuant to Section 30 for a default under Subsection 28(c) and has determined to continue to carry out the Governmental Program in the Premises, at the time of the termination, the Landlord shall reimburse the Tenant for its Investment (as defined in subsection e. below) as follows:

100% of the total Investment less 2% for each year (pro-rated for any partial year) which has elapsed since commencement of this Lease as of the date of termination.

b. In the event that the Landlord does not renew this Lease upon any renewal date pursuant to Section 4 and the Landlord has determined to continue to carry out the Governmental Program in the Premises, then, at the time of non-renewal:

(i) if the non-renewal is upon the first renewal date, the Landlord shall reimburse Tenant for sixty percent (60%) of its Investment; and

(ii) if the non-renewal is upon the second renewal date, the Landlord shall reimburse Tenant for twenty percent (20%) of its Investment.

c. In the event the Landlord terminates this Lease pursuant to Section 30 for a default other than under Subsection 28(c) and the Landlord has determined to continue to carry out the Governmental Program in the Premises, then the Landlord shall have no obligation to reimburse the Tenant for its Investment.

d. In the event the Landlord determines by City Council action to discontinue the Governmental Program in the Premises, for any reason, including a change in the applicable legislation authorizing the Governmental Program, upon termination or nonrenewal of this Lease, then the Premises shall be sold and proceeds distributed as provided in Section 4.02 of the Grant Agreement and Section 13.1 of the Ground Lease. The relative contributions of the State, the Landlord and the Tenant and the relative contributions of the Landlord and the Tenant are set forth in Exhibit B and Exhibit C of the Ground Lease, respectively.

e. **"Investment"** means the amount of money or like-kind contributions contributed initially and subsequently for the acquisition and betterment of the Premises by or on behalf of the Tenant. The parties agree that the determination of Investment for purposes of this section shall not be subject to either depreciation or discount for passage of time, nor shall it be subject to appreciation in value, it being the intent of the parties to look solely to the actual dollar amount of same. The parties agree that the projected amount of Investment by or on behalf of the Tenant, as of the date of entry into this Lease, is agreed to be as provided on Exhibit C to the Ground Lease (with the Priority Private Debt either paid as debt or considered to be part of the Investment of Use Agreement Tenant, as shown thereon). Tenant shall annually advise the CPED Director, as provided in Section 9.b.(1) D), of the amount of all capital improvements and capitalized repairs for the applicable year that augment the Tenant's Investment in the Improvements, and the amount of Tenant's Investment shall be adjusted annually to reflect such additional amounts. Any

dispute as to the Investment amount shall be resolved by binding arbitration by an arbitrator selected by the Chief Judge of the Hennepin County District Court and in accordance with the Rules of the American Arbitration Association for Commercial Arbitration, provided that discovery shall be allowed pursuant to procedures approved by the arbitrator.

f. Amounts to be paid by the Landlord to the Tenant for its Investment in the Premises shall be due and payable ninety (90) days after the termination or non-renewal of this Lease (the "**Payment Date**"), except those sums which cannot be determined as of such date shall be due and payable upon determination. All amounts due hereunder, if not paid, shall earn interest from and after the Payment Date, until paid in full at the rate of two percent (2%) over the prime rate announced from time-to-time by U.S. Bank National Association.

g. This Section 17 shall survive the termination or non-renewal of this Lease.

18. Intentionally Omitted.

19. SUBLETTING AND ASSIGNMENTS. Tenant shall not assign any of its rights hereunder, or sublet all or any portion of the Premises, without Landlord's prior written consent which consent may not be unreasonably delayed or withheld; provided, however, that Tenant may sublet or license from time-to-time without Landlord's consent such space as appropriate for theatrical, musical, educational and cultural activities that further the Governmental Program or for other permitted ancillary uses, subject to the limitations in Section 13. All subtenants and licensees shall operate the licensed or subleased premises for the purpose and in a manner so as to be related and ancillary to the Governmental Program.

Further notwithstanding the foregoing, Tenant shall be permitted to mortgage its interest hereunder to any mortgagee, provided such mortgage is in connection with Tenant's financing or refinancing of the development or improvement of the Premises as contemplated herein subject to the requirements of Section 16 hereof. On the foreclosure of any such mortgage, the mortgagee may thereafter assign or transfer its interest in the leasehold to any other assignee or transferee, subject to the provisions of Minn. Stat. §16A.695 and the Grant Agreement, provided that any assignee thereof shall agree to be bound by the terms and conditions of this Lease. Thereafter, there shall be no other assignments or transfers of the leasehold interest without the prior written consent of Landlord, which consent may be given or withheld in Landlord's sole discretion, and Landlord's consent to one assignment or transfer shall not be deemed to be consent to any subsequent assignment or transfer. Any other transfer or assignment without Landlord's consent shall be void and shall at the option of Landlord constitute an Event of Default hereunder.

20. NOTICES. All communications, demands, notices, or objections permitted or required to be given or served under this Lease (a "Notice") shall be in writing and shall be deemed to have been duly given or served when delivered in person to the

other party or its authorized agent or two (2) days after being deposited in the United States mail, postage prepaid, for mailing by certified or registered mail, return receipt requested, and addressed to the other party to this Lease, to the address set forth next to such party's signature at the end of this Lease, or if to a person not a party to this Lease, at the following addresses:

To Tenant: The Minnesota Orchestral Association  
1111 Nicollet Mall  
Minneapolis, MN 55403  
Attention: Chief Executive Officer/President

And a copy to: Faegre & Benson LLP  
90 South Seventh Street  
2200 Wells Fargo Center  
Minneapolis, MN 55402  
Attention: John H. Herman/Peter J. Berrie

To Landlord: Minneapolis Department of Community  
Planning and Economic Development  
105 Fifth Avenue South, Suite 200  
Minneapolis, MN 55401  
Attention: Director

And a copy to: Minneapolis City Attorney  
105 Fifth Avenue South, Suite 405  
Minneapolis, MN 55401  
Attention: CPED Attorney

Any party may change its address by giving Notice in writing, stating its new address, to any other party as provided in the foregoing manner. Commencing on the tenth (10th) day after the giving of such notice, such newly designated address shall be such party's address for the purposes of all communications, demands, notices, or objections permitted or required to be given or served under this Lease

21. CONSTRUCTION OF ORCHESTRA HALL IMPROVEMENTS. Tenant shall construct the Orchestra Hall Improvements, described on Exhibit B, attached hereto and incorporated herein, at its own expense and subject to and in accordance with all terms and conditions of this Lease, the Grant Agreement and the Disbursing Agreement between Landlord, Tenant, the State, and other parties, and in material compliance with all applicable federal, state and local laws, rules and regulations, and in material compliance with the terms and conditions of all applicable licenses and permits and Landlord shall authorize the disbursal of the State Grant Proceeds to Tenant to be used to construct the Orchestra Hall Improvements as provided herein and in accordance with the Grant Agreement and Disbursing Agreement. The State is the final arbiter of whether and when State Grant Proceeds are disbursed. The Improvements shall be substantially completed no later than December 1, 2013 (the "**Completion Date**"), subject to delays in the performance obligations for construction of the

Orchestra Hall Improvements due to the unforeseeable causes beyond the control of Tenant and without the fault or negligence of either party, including but not limited to adverse or severe weather conditions, acts of God, acts of the public enemy, strikes and other similar labor troubles, fire, floods, epidemics, quarantines, unavailability of power, unavailability of materials, delays due to damage or destruction of the Premises or the equipment used to construct the same, discovery of hazardous materials or other concealed site conditions including environmental issues, or delays of contractors due to such discovery, and litigation commenced by third parties which by injunction or other similar judicial action directly results in delays and other casualty to the Premises, or affect the validity of this Lease ("**Unavoidable Delays**"). All of such Orchestra Hall Improvements, including any fixtures related to the operation of any buildings located on the Premises, shall immediately become the property of the Ground Landlord, and Landlord and Tenant shall have only a leasehold interest therein, subject to the terms and provisions contained herein and in the Ground Lease. Upon request of the Ground Landlord, Tenant will execute and deliver to the Ground Landlord bills of sale from time-to-time transferring to the Ground Landlord title to personal property which becomes a fixture and property of the Ground Landlord under the preceding sentence. Tenant is hereby authorized by Landlord to provide for the construction and equipping of the Orchestra Hall Improvements in accordance with Minnesota Session Laws of 2010, Chapter 189, § 21, Subd. 11.

22. CONSTRUCTION OF ADDITIONAL BUILDINGS AND IMPROVEMENTS.

Tenant, but only with the prior written approval of Landlord, which approval shall not be unreasonably delayed or withheld, shall have the right to make such alterations, improvements, and changes to any building or improvement which may from time-to-time be on the Premises as Tenant may deem necessary or to replace any such building or improvement with a new one. Notwithstanding the preceding sentence, Landlord agrees that changes to Orchestra Hall that Tenant in its judgment determines do not reduce the value of Orchestra Hall as a whole or reduce the ability of Tenant to operate the Governmental Program, do not require the consent of Landlord. Landlord and Tenant acknowledge that during such additional construction, the Governmental Program may be interrupted as is reasonably necessary for orderly and safe construction to occur, provided that the Governmental Program shall resume immediately upon completion of construction. Any new building constructed by Tenant on the Premises, and any changes to Orchestra Hall or to new buildings, shall be constructed in material compliance with all applicable federal, state and local laws, rules and regulations; and in compliance with the terms and conditions of all applicable licenses and permits; and, together with any fixtures related to the operation of any buildings located on the Premises, shall immediately become the property of the Ground Landlord, and Landlord and Tenant shall have only a leasehold interest therein, subject to the terms and provisions contained herein and in the Ground Lease. Upon request of the Ground Landlord, Tenant will execute and deliver to the Ground Landlord bills of sale from time-to-time transferring to the Ground Landlord title to personal property which becomes a fixture and property of the Ground Landlord under the preceding sentence. Tenant shall annually certify the costs of any capital Improvements to and as part of the Annual Report.

23. REPAIRS AND DESTRUCTION OF IMPROVEMENTS.

a. Maintenance of Improvements. Tenant shall, throughout the Term of this Lease, at its own cost and without any expense to Landlord, keep and maintain the Premises, including all buildings and improvements of every kind which may be a part thereof, and all appurtenances thereto, including public and private sidewalks located thereon and adjacent thereto, in good, sanitary, lawful, and neat order, condition, and repair and, except as specifically provided herein, shall restore and rehabilitate any improvements of any kind which may be destroyed or damaged by fire, casualty, or any other cause whatsoever. Landlord shall not be obligated to make any repairs, replacements, or renewals of any kind, nature, or description whatsoever to the Premises or any buildings or improvements thereon.

b. Damage to and Destruction of Buildings or Improvements. The damage or destruction or partial destruction of any building or other improvement which is a part of the Premises shall not release Tenant from any obligation hereunder, except as hereinafter expressly provided.

In case of damage to or destruction of such building or improvement which is not substantial, Tenant shall at its own expense promptly repair and restore the same to a condition as good or better than that which existed prior to such damage or destruction, and Tenant shall have the right to any insurance proceeds the premium for which has been paid by Tenant, to be used by Tenant to pay the cost of such repair and restoration.

In the case of damage to or destruction of such building or improvement which is substantial, Tenant shall at its own expense promptly repair and restore the same to a condition as good or better than that which existed prior to such change or destruction, provided that the cost of the restoration is covered by insurance plus any deductible under such policy. If a damage or destruction is not so covered, and the damage is substantial, the parties shall consult as to whether to proceed with renovation, and how to pay the uninsured costs thereof. If the parties determine that it is inappropriate to rebuild the building or improvements on the Premises this Lease and Tenant's interest in the Premises shall be terminated and shall have the same effect as if a sale shall have occurred (subject to Landlord's determination that the Premises are no longer usable or needed by Landlord to carry out the Governmental Program), and the insurance proceeds shall be paid in accordance with the provisions of Section 17(d) above. No settlement with the insurance company shall be agreed to by Tenant without the prior written consent of Landlord, the Ground Landlord, and the Commissioner.

Except as otherwise provided in this Section, and without limiting such obligations of Tenant, if Tenant elects to rebuild, and any mortgagee consents to rebuilding, if necessary, it is agreed that the proceeds of any insurance covering such damage or destruction shall be paid to Landlord and Tenant, to be held in

escrow for such repair or replacement with an escrow agent acceptable to Landlord, Tenant, and any mortgagee, to be disbursed in accordance with standard commercial construction lending conditions customarily required by institutional lenders. The Tenant shall not be obligated to operate the Governmental Program on the Premises from the date of damage or destruction of the buildings or improvements until repair or reconstruction of the buildings or improvements on the Premises is complete.

24. MECHANICS' LIENS. Tenant hereby covenants and agrees that Tenant will not permit or allow any mechanics' or material supplier's liens to be placed on Landlord's interest in the Premises during the Term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so filed against Landlord's interest, Tenant shall take all steps necessary to remove it within 120 days of its being filed; provided, however, that Tenant may contest any such lien provided Tenant first posts a surety bond or letter of credit or cash with the applicable court sufficient to release the Premises from such lien, or otherwise protect Landlord from foreclosure thereof.

25. INDEMNIFICATION OF LANDLORD.

a. To the fullest extent permitted by law, Tenant shall, and hereby does, indemnify, save, hold harmless, and defend Landlord, its officials, employees, representatives, and agents but only when acting in their capacities as such (collectively, the "Indemnified Party" or "Indemnified Parties"), from and against all claims, costs (including reasonable attorneys fees to the extent provided in clause (e) below), liabilities, losses, or damages suffered or incurred by any of the Indemnified Parties arising from or as a result of any loss, injury, death, or damage to persons or property arising out of the use, possession, construction of improvements, operation, or maintenance of the Premises or any part thereof, or as a result of Tenant's failure to comply with the Grant Agreement, whether such loss, injury, death, or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of Indemnified Parties.

b. Tenant hereby waives and releases all claims against the Indemnified Parties for damages to any building and improvements which are now on or hereafter placed or built on the Premises and to the property of Tenant in, on, or about the Premises. Tenant also agrees that it will not assert against the Indemnified Parties in any legal proceeding any claim, cross-claim or third party claim for which Tenant is obligated under the provisions of clause (a) of this Section 25 to provide indemnification to the Indemnified Parties.

c. Notwithstanding the provisions of clauses (a) and (b) above, the provisions of clause (a) and (b) above of this Section 25 shall not apply to claims, costs, liabilities, losses, or damages which are caused by the willful or intentional misconduct of the Indemnified Parties. No person or entity other than the Indemnified Parties shall have any benefit whatsoever from the agreements

contained in clause (a) and (b) above, other than any indirect benefit accruing to taxpayers or residents of the City of Minneapolis by reason of the benefit to Landlord and the Indemnified Parties of such agreements, and shall not be deemed to be a third party beneficiary of the agreements of Tenant contained in clauses (a) and (b) above.

d. Nothing in this Section 25 shall be construed to, and shall not, expand Landlord's maximum liability over the limits set forth in Minnesota Statutes, Chapter 466, as amended from time-to-time, or any other or successor law which has the effect of limiting Landlord's liability.

e. Promptly after receipt by an Indemnified Party of notice of the commencement of any action for which Tenant has indemnified the Indemnified Parties hereunder, the Indemnified Party will notify Tenant in writing of the commencement thereof, and, subject to the provisions hereinafter stated, Tenant shall assume, at its expense, the defense of such action (including the employment of counsel, who shall be counsel reasonably satisfactory to the Indemnified Parties) insofar as such action shall relate to any alleged liability for which Tenant has indemnified the Indemnified Parties hereunder. The Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall not be at the expense of Tenant unless (i) the employment of such counsel has been specifically authorized by Tenant, or (ii) the named parties to any such action (including any impleaded parties) include more than one of the Indemnified Parties and a conflict of interest among Tenant and Indemnified Parties exists, and as a result Tenant and the Indemnified Parties cannot adequately be represented by the same counsel. In the case of such a conflict of interest, Tenant shall not have the right to assume the defense of such action on behalf of such Indemnified Parties and the Indemnified Party shall have the right to select separate counsel, at the expense of Tenant but subject to the limitation set forth in the following sentence, to assume such legal defense and to otherwise participate in the defense of such action on behalf of the Indemnified Parties. In connection with any one such action or separate but substantially arising out of the same general allegations or circumstances, Tenant shall not be liable for the fees and expenses of more than one separate firm of attorneys for all such Indemnified Parties, which firm shall be reasonably acceptable to Tenant and shall be designated in writing by the Indemnified Parties. Tenant shall not be liable for any settlement of any such action effected without its written consent. If such action is settled with the written consent of Tenant, or if there be a final judgment for the plaintiff in any such action, with or without the consent of Tenant, Tenant agrees to indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment, but only to the extent provided in subsection (a) of this Section 25. This indemnity includes reimbursement for expenses reasonably incurred by any of the Indemnified Parties in investigating the claim and in defending it if Tenant declines to assume the defense.

f. The obligations of Tenant to indemnify Landlord shall survive expiration or termination of this Agreement. The rights of the Landlord hereunder shall be in addition to any other rights or remedies which the Landlord may have against Tenant under this Lease or any other document, or at law or in equity.

## 26. INSURANCE.

a. Insurance Coverage of Premises. Tenant shall at all times during the Term of this Lease and at Tenant's sole expense keep all Improvements which are now or hereafter a part of the Premises insured against "all risks", for those risks that are available at commercially reasonable rates, for the full insurable value of such Improvements, and during the construction of the Orchestra Hall Improvements "builders risk" and standard fire and extended coverage, with a deductible not to exceed \$100,000, and with loss payable to Ground Landlord, Landlord, Tenant, the State, and any mortgagee holding Priority Private Debt or an otherwise permitted encumbrance on the Premises, as their respective interests may appear. Any loss adjustment shall be made in accordance with the requirements for the use and distribution of insurance proceeds in the event of damage as otherwise provided herein, but shall require the prior written consent of Ground Landlord, Landlord, the State, Tenant, and any mortgagee. Tenant shall be responsible for any insurance deductible.

b. Commercial General Liability Insurance. Tenant shall maintain in effect throughout the Term of this Lease, at its own expense, commercial general liability insurance covering the Premises and its appurtenances and the sidewalks fronting on the Premises in the amount of at least Two Million Dollars combined single limit, and insurance on all boilers and other pressure vessels, fired or unfired. Such insurance shall: (i) be primary with respect to Landlord's insurance or self-insurance; (ii) not exclude explosion, collapse and underground property damage; (iii) be written on an "Occurrence" Form policy basis; (iv) shall name Ground Landlord, Landlord and the State of Minnesota as additional insureds thereunder; and (v) not contain an "aggregate" policy limit (combined general liability and excess liability) of less than Ten Million Dollars per annual policy period unless specifically approved in writing by Landlord. Additionally, Ground Landlord, Landlord and the State of Minnesota shall be named as additional insureds on any contractor's general liability insurance maintained by the general contractor or construction manager responsible for constructing the improvements to the Premises.

c. Workers' Compensation Insurance. Tenant shall maintain Workers' Compensation Insurance with not less than statutory minimum limits, and Employers' Liability Insurance with minimum limits of at least \$100,000 per accident and with an all states endorsement.

d. Insurance Certificates. Tenant shall supply to Landlord, concurrently with signing this Lease and thereafter as reasonably requested by Landlord, current insurance certificates for policies required in this Section. Tenant shall promptly furnish to Landlord all endorsements showing Landlord's additional insured status on a form that provides coverage for completed operations and liability arising out of the named insured's operations and other written notices which modify or change any insurance coverage with respect to the Premises or Tenant's operation at the Premises, and all paid premium receipts by Tenant regarding such required insurance.

e. Additional Required Insurance. The limits cited under each insurance requirement above establish minimums; and it is the sole responsibility of Tenant to purchase and maintain additional insurance that Tenant may determine to be necessary in relation to this Lease or its operation of the Premises.

f. Non-waiver of Statutory Limits. Nothing in this contract shall constitute a waiver by Landlord of any statutory limits or exceptions on liability.

g. Placement of Insurance. Tenant shall place the insurance with responsible insurance companies authorized and licensed to do business in the State of Minnesota having an A.M. Best Company rating of at least A:VIII, and shall deliver endorsements and certificates in the form required above evidencing such coverage to Landlord on the date of Tenant's execution of this Lease and from time-to-time thereafter as reasonably required by Landlord. The policies required in this Section shall be endorsed to indicate that the insurer cannot cancel or change the insurance without first giving Ground Landlord, Landlord and the State thirty (30) days' written notice.

h. Landlord's Right to Pay Premiums on Behalf of Tenant. Tenant shall pay all of the premiums therefor and deliver such policies, or certificates thereof, to Landlord. In the event of the failure of Tenant, either to effect such insurance in the names called for or to pay the premiums there for or to deliver such policies or certificates thereof to Landlord, Landlord shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums therefore. Such premiums, together with interest thereon at the rate of two percent (2%) over the prime rate of US Bank National Association, accruing from the date of payment by Landlord, shall be repayable to Landlord within thirty (30) days after written notice of the payment of such insurance, and failure to repay the premiums shall carry with it the same consequences as failure to pay any installment of Rent. All rebates on account of any such premiums paid by Landlord shall belong to Landlord, provided Tenant has not reimbursed Landlord for such premiums and Tenant shall have no obligation to reimburse Landlord to the extent of such rebates received and retained by Landlord.

Each insurer mentioned in this Section shall agree, by endorsement on the policy or policies issued by it, or by independent instrument furnished to

Landlord, and in form acceptable to Landlord, that it will give to Landlord and the State thirty (30) days' written notice before the policy or policies in question shall be altered or cancelled.

i. Increase in Coverage. The insurance and the size of any applicable deductible required to be maintained pursuant to this Lease shall be subject to review as to its adequacy by an Independent Insurance Consultant, as defined below, once every three years beginning in the year 2016. The Independent Insurance Consultant shall not be an employee or officer of Landlord. Tenant shall cause such review to be conducted and shall cause such Consultant to prepare a written report regarding such review containing such Consultant's recommendations, if any, for changes in such insurance. Tenant shall cause copies of such report to be delivered promptly to Landlord and agrees to follow the recommendations of such Independent Insurance Consultant to the extent practicable. For purposes of this subsection, the term "Independent Insurance Consultant" means any person who is not an employee or officer of Tenant, appointed by Tenant, qualified to survey risks and to recommend insurance coverage for organizations engaged in like operations to those of Tenant and having a favorable reputation for skill and experience in such surveys and such recommendations, and who may be a broker or agent with whom Tenant transacts business, and reasonably acceptable to Landlord.

j. Blanket Insurance Policies. Notwithstanding anything to the contrary contained in this Section, Tenant's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Tenant; provided, however, that the coverage afforded Landlord will be at least as broad in all material respects as that afforded by the underlying primary policy.

## 27. PROHIBITION OF INVOLUNTARY ASSIGNMENT.

Neither this Lease nor the leasehold estate of Tenant nor any interest of Tenant hereunder in the Premises or in any buildings or improvements thereon shall be subject to involuntary assignment, transfer, or sale, by operation of law or otherwise, and any such attempt at involuntary assignment, transfer, or sale shall be void and of no effect. For purposes of this Section, the merger or consolidation of Tenant with any other entity or entities shall be deemed to be a transfer and prohibited by this Section unless either: (i) such merger is with another entity and Tenant is the survivor and remains exempt from income tax under § 501(c)(3) of the Internal Revenue Code of 1986 as amended (the "Code"); or (ii) such merger is with another entity which is exempt from income tax under § 501(c)(3) of the Code, Tenant is not the surviving entity, said surviving entity expressly assumes all obligations of Tenant hereunder, said surviving entity remains exempt from income tax under § 501(c)(3) of the Code, and said surviving entity has comparable or higher "net worth" (or its equivalent under accounting principles applicable to Section 501(1)(3) organizations) as Tenant has on the date hereof.

The occurrence of any involuntary assignment prohibited by the provisions of this Section 27 shall be deemed to constitute a Default under Section 28 hereof, and upon the expiration of the applicable cure period contained in Section 29 hereof, Landlord shall be entitled to exercise all remedies set forth in this Lease, subject, however, to the provisions of Section 32 hereof.

28. EVENTS OF DEFAULT. Any of the following events shall constitute a "Default" under this Lease:

a. Subject to Unavoidable Delays, if construction of the Orchestra Hall Improvements has not been commenced or completed by the dates required by Section 21 and have not been completed substantially in accordance with the plans and specifications as amended from time-to-time in accordance with the provisions contained in the Section 21 and the Grant Agreement; or

b. Subject to any payments being contested in good faith, if Tenant fails to fully and completely pay all sums lawfully owing for the completion of the Orchestra Hall Improvements in accordance with the plans and specifications; or

c. If, without the written consent of Landlord and the Commissioner, any part of the Premises ceases to be used as a performing arts venue and related and ancillary activities to achieve the Governmental Program; or

d. If a default under Section 27 hereof occurs; or

e. If, without the written consent of Landlord, the State, and the Commissioner, and except for the permitted encumbrances identified on Exhibit E attached hereto, and except as allowed under Sections 16, 17 or 19 hereof, Tenant sells, transfers, leases, encumbers, or otherwise conveys, in any way or manner, whether voluntary or involuntary, or by action of law, all or any part of its interest in the Premises, or amends or modifies any agreement relating to such sale which had previously been so consented to and approved by Landlord and the Commissioner or

f. If, without the written waiver of Landlord, Tenant fails to annually certify that the Premises is being used as a performing arts and education center and related and ancillary activities to achieve the Governmental Program as required in Section 1 of this Lease; or

g. If, without the written waiver of Landlord, Tenant fails to provide the Annual Report meeting the requirements of Section 9.b(1) to Landlord; or

h. If Tenant fails to continuously maintain the insurance required by Section 26 of this Lease; or

i. If Tenant, upon request, refuses to allow Landlord, the Commissioner, or any auditor for the State of Minnesota or for the Minnesota Legislature, to inspect audit, copy, or abstract any and all of Tenant's financial

records (books, records, papers) or other documents relevant to this Lease, the Grant Agreement, or the Premises; or

j. If Tenant, upon request, refuses to allow Landlord, the Commissioner, or any authorized representative of the State of Minnesota, to inspect the Premises; or

k. If Tenant fails to cooperate fully with Landlord in complying with any of the provisions of the Grant Agreement, G.O. Compliance Legislation, or the Commissioner's Order or Tenant fails to comply with the Grant Agreement, G.O. Compliance Legislation, or the Commissioner's Order and such failure results in a default notice from the State Entity, as defined therein; or

l. If any representation or warranty made by Tenant hereunder prove to have been untrue or incorrect in any material respect, as of the time such representation or warranty was made; or,

m. If, without the written consent or waiver of Landlord, Tenant fails to fully comply with any other material provision, term, condition, covenant, or warranty contained in this Lease, or fails to fully comply with any provisions of the Declaration; or

n. If, under any material document, instrument or agreement relating to the acquisition, construction, financing, or refinancing, of the improvements to the Premises, there occurs an event which constitutes an event of default by Tenant thereunder, after applicable grace and cure periods, and the other party thereto gives notice to Tenant of the default, if notice is required before the exercise of remedies.

## 29. NOTICE OF DEFAULT.

a. Upon the occurrence of a Default, an Event of Default shall not be deemed to have occurred under this Lease unless Landlord has given Tenant written notice of the Default and Tenant has failed to cure such Default within the time period specified in subsection (b) below or, if applicable, in subsection (c) below.

b. For those Defaults described in Section 27 and subsections 28 (i) and (j) the notice and cure period shall be ten (10) days; for those Defaults described in subsection 28 (h) the notice and cure period shall be thirty (30) days (provided said insurance does not expire); and for all other Defaults the notice and cure period shall be sixty (60) days if prior to the Completion Date and ninety (90) days if after the Completion Date.

c. Notwithstanding the preceding paragraph of this Section 29, (i) in the event that a Default occurs prior to the Completion Date and cannot be cured within the applicable cure period provided in subsection (b) above, and in the event that Tenant has commenced the action necessary to cure the Default

during the applicable cure period provided in the subsection (b) above, then Tenant shall have such time as shall be reasonably necessary to cure such default so long as Tenant is reasonably, continuously and diligently pursuing efforts to cure such default, on the condition that Tenant diligently pursues the cure; and (ii) in the event that a Default occurs after the issuance of the Completion Date and cannot be cured within the applicable cure period provided in subsection (b) above, and in the event that Tenant has commenced the action necessary to cure the Default during the applicable cure period provided in subsection (b) above, then Tenant shall have such time as shall be reasonably necessary to cure such Default so long as Tenant is reasonably, continuously and diligently pursuing efforts to cure such Default; provided, however, that in no event shall Tenant's cure period exceed the cure period allowed Landlord or Tenant under the Grant Agreement.

Notwithstanding the provisions of this Section set forth above, in no event shall any cure period, including any extension of a cure period, be greater than the cure period available under the Grant Agreement if the Default by Tenant hereunder also causes a default or event of default by Landlord under the Grant Agreement.

Additionally, no extensions of the cure period set forth in subsection (b) above shall be granted or allowed for a Default under Section 27 hereof.

d. Before it exercises any remedies under this Lease for an uncured Event of Default, Landlord will first comply with the obligations under the Recognition, Agreement.

30. DEFAULT AND TERMINATION. (a) Prior to the Completion Date, upon the occurrence and during the continuance of an Event of Default under this Lease, Landlord, in addition to the other rights or remedies it may have, including damages, shall have the immediate right to terminate this Lease by delivery of written notice of termination; (b) after the Completion Date, upon the occurrence and during the continuance of an Event of Default under this Lease, subject to Section 32 hereof, Landlord, in addition to the other rights or remedies it may have, including damages, shall have the immediate right to terminate this Lease by delivery of written notice of termination, and reenter the Premises and remove all persons and property otherwise from the Premises.

31. ADDITIONAL REMEDIES. Notwithstanding anything in this Lease or any other agreement to the contrary, upon the occurrence, and during the continuance, of a Default, in addition to the remedies in Section 30 and this Section, Landlord may immediately refrain from making any payments from the Grant Agreement. In addition, during the continuance of an Event of Default under this Lease, and after giving Tenant any notice required by Section 29 hereof and the running of any applicable time period without Tenant having cured, Landlord may (a) in addition to the remedies in Section 30 and this Section, exert any remedies it may have in law or equity and, (b) if the State issues a demand, commences an action, actually receives payment from Landlord, or exercises any other remedies against Landlord, then Landlord may also similarly

demand, commence an action, or exercise any other remedies against, and be immediately entitled to receive from Tenant, or do to Tenant that which the State does to Landlord on the condition that such demand, action, payment, or other action by the State against Landlord is caused by a Default by Tenant under this Lease.

32. SPECIAL TERMINATION PROCEDURE. After the Completion Date for the Orchestra Hall Improvements, if Tenant is in default under subsection 28(c), Landlord agrees that it will not exercise the remedy of termination of the Lease provided in Section 30 hereof on the condition that Tenant does each of the following:

a. Within ninety (90) days of the occurrence of a Default, Tenant shall have retained, at its sole expense, an independent consultant qualified to analyze Tenant's operation at the Premises and reasonably acceptable to Landlord, (hereinafter the "**Consultant**");

b. Within sixty (60) days of the retention of the Consultant, Tenant shall have delivered to Landlord a written report of the Consultant analyzing its operations at the Leased Premises (the "**Consultant's Report**");

c. Within fifteen (15) days of the delivery of the Consultant's Report, Tenant shall have met with Landlord to discuss the findings and recommendations of the Consultant;

provided, however, that in the event that Tenant has not retained the Consultant, delivered the Consultant's Report, or met with Landlord, within the required time period, then Landlord shall have the right to proceed to exercise the remedy of termination of this Lease without regard to the succeeding provisions of this Section 32. Landlord and Tenant acknowledge and agree that Tenant shall not be required to pay more than \$40,000 (adjusted for inflation) for the fees and expenses of each Consultant's Report. Landlord agrees that if after any time during the process set forth in subsections (a), (b) or (c) above, the Default has been cured, Tenant shall not be required to proceed with the remaining portion of the process set forth in subsections (a), (b) and (c) above.

In the event that Tenant has retained the Consultant, delivered the Consultant's Report, and met with Landlord as required hereinabove, Landlord further agrees that it will not exercise the remedy of termination of this Lease unless and until (i) the governing body of Landlord has considered a resolution at which meeting representatives of Tenant shall have the right to be heard; (ii) Landlord's governing body shall adopt a resolution authorizing the termination of this Lease, and (iii) Tenant shall have failed to cure the Event of Default within thirty (30) days of the adoption of such resolution.

Tenant acknowledges and agrees that: a) Landlord is not required to accept or adopt all or any portion of the Consultant's Report; and b) in the event that Landlord determines, in its sole discretion, to accept any of the recommendations of the Consultant's Report, the acceptance of which requires an amendment to this Lease, or a waiver of the Default or Event of Default, Landlord shall have the right, as a condition

to agreeing to any such amendment or waiver, to impose any conditions Landlord deems appropriate, in its reasonable discretion.

33. LANDLORD'S RIGHT TO PERFORM. In addition to any other provision contained herein, in the event that an Event of Default by Tenant shall have occurred and be continuing, Landlord may, at Landlord's option but without any obligation, take any action to perform the obligations of Tenant which gave rise to the Event of Default or with respect to which Tenant is otherwise in Default under this Lease, and Landlord shall not be liable, or be held liable or in any way responsible for any loss, inconvenience, annoyance, or damage resulting to Tenant on account thereof, other than for Landlord's willful or intentional misconduct. Tenant shall repay to Landlord on demand the entire expense of Landlord's performance together with interest at the rate of two percent (2%) in excess of the prime rate of US Bank National Association, accruing from the date of any disbursement.

Landlord shall be permitted to enter the Premises while exercising any right given to it by the terms of this Section. Any act or thing done by Landlord pursuant to the provisions of this Section shall not be or be construed to be a waiver of any such Default or Event of Default by Tenant, or as a waiver of any covenant, term, or condition herein contained or the performance thereof, or of any other right or remedy of Landlord, hereunder or otherwise.

34. LANDLORD DEFAULTS AND TENANT REMEDIES.

a. In the event that (i) Landlord (a) fails to observe, perform or comply with any provision, term, condition, covenant, agreement or warranty required to be observed, performed or complied with by Landlord under this Lease, or (b) fails to observe, perform or comply with any obligation, provision, term, covenant, condition or agreement to be observed, performed or complied with by Landlord under the Grant Agreement, unless Landlord's failure is the result of a Default by Tenant under this Lease, and (ii) Landlord fails to cure such Default within ten (10) days of written notice of default from Tenant, then a Landlord Event of Default shall exist under this Lease. Upon the occurrence and during the continuance of a Landlord Event of Default, Tenant may exercise any of the following remedies:

1. subject to Sections 65 and 67 hereof, commence an action at law to recover the damages incurred by Tenant and caused by Landlord Event of Default, which damages shall be limited to the cost of curing Landlord's Default;

2. commence an action in equity to compel the performance by Landlord of those actions or inactions which serve as the basis of a Landlord Event of Default; or

3. in addition to any other provision contained herein, in the event that an Event of Default by Landlord shall have occurred and be

continuing, Tenant may, at Tenant's option but without any obligation, take any action to perform the obligations of Landlord, which gave rise to the Event of Default or with respect to which Landlord is otherwise in Default under this Lease, and Tenant shall not be liable, or be held liable or in any way responsible for any loss, inconvenience, annoyance, or damage resulting to Landlord on account thereof, other than for Tenant's willful or intentional misconduct. Landlord shall repay to Tenant on demand the entire expense of Tenant's performance together with interest at the rate of two percent (2%) in excess of the prime rate of US Bank National Association, accruing from the date of any disbursement.

Landlord agrees to comply with all terms and conditions of the Grant Agreement (unless Landlord's failure to comply is the result of Tenant's failure to comply with the terms and conditions of this Lease) and Tenant agrees to cooperate fully with Landlord in so complying. Landlord and Tenant further agree that in the event that Landlord fails to comply with any provision in the Grant Agreement then, if Landlord fails to cure such failure within sixty (60) days of Landlord's receipt of Tenant's written demand or the State's notice of default, Tenant shall have the right to take such action.

35. NO REMEDY EXCLUSIVE. No remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time-to-time and as often as may be deemed expedient.

36. EFFECT OF EMINENT DOMAIN.

a. Effect of Total Condemnation. In the event that the entire Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall be terminated and all proceeds shall be payable in the same manner as if the Premises were sold pursuant to Section 17 above.

b. Effect of Partial Condemnation. In the event that a portion of the Premises shall be so appropriated or taken to an extent that Tenant can no longer operate the Governmental Program, then Tenant shall have the right to give Landlord written notice of the right to treat the partial condemnation as a sale pursuant to Section 17(d) above within one hundred twenty (120) days after such portion of the Premises has been so appropriated or taken. Provided the Landlord agrees in such determination, in that event, this Lease shall be terminated and the proceeds of the condemnation shall be applied as if the condemned portion of the Premises were sold in accordance with Section 17(d) above. In the event the Landlord does not concur, Tenant shall either continue

the program on the residual property, or shall have the right to terminate this Lease.

In the event of partial taking in which Tenant elects to continue this Lease in the Premises, this Lease shall continue in full force as to the part not taken, and the condemnation award for the Premises shall be applied first to restore the remaining portion of the Premises to a configuration and condition so that the Premises can be used for the purposes set forth in Section 1 hereof (with the condemnation proceeds to be held by a mutually agreeable escrow agent in escrow for such restoration to be disbursed in accordance with standard commercial construction conditions customarily required by institutional lenders), and, to the extent of any remaining proceeds, as if the condemned portion of the Premises were sold in accordance with Section 17(d) above.

None of the foregoing provisions shall preclude Tenant from making a separate claim against the condemning authority for the value of any trade fixtures, furniture, and equipment taken by said condemning authority and its relocation expenses provided such claim does not diminish or impair the award with respect to the Premises.

37. SURRENDER OF LEASE: EFFECT ON SUBLEASES. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall operate as an assignment to Landlord of any or all such subleases, subtenancies, or license agreements.

38. OWNERSHIP OF IMPROVEMENTS. The parties acknowledge that Ground Landlord is the absolute owner of any and all buildings or improvements of any nature or kind on the Premises, regardless of who placed such buildings or improvements thereon, together with any and all fixtures related to any of the buildings located on the Premises, and, except as provided in Section 17, upon the termination or expiration of the Term of this Lease Tenant shall not have any interest whatsoever therein. Prior to expiration of the Term or any termination of this Lease, the Tenant shall have the right under Sections 23 and 36 hereof, to share in the insurance and condemnation proceeds.

39. AMENDMENT, MODIFICATION, AND WAIVER. No amendment, modification, or waiver of any condition, provision, or term of this Lease shall be valid or of any effect unless made in writing, signed by the party or parties to be bound or its duly authorized representative, and approved in writing by the State and the Commissioner, and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by any party of any default of another party shall not affect or impair any right arising from any subsequent default.

40. APPROVAL BY STATE OF MINNESOTA. This Lease shall not be valid or of any effect until signed by both parties and consent in writing has been given by the Commissioner.

41. EFFECT OF TENANT'S HOLDING OVER. Any holding over after the expiration of the Term of this Lease, with consent of Landlord, shall be construed to be a tenancy from month to month, at the same Rent as required to be paid by Tenant for the period immediately prior to the expiration of the Term hereof, and shall otherwise be on the terms and conditions herein specified, so far as they are applicable.

42. PARTIES BOUND. This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective assigns, executors, heirs, and successors.

43. TIME OF ESSENCE. Time is of the essence in this Lease, and of each and every covenant, term, condition, and provision hereof.

44. CAPTIONS. All captions, headings, or titles in the subsections or Sections of this Lease are inserted for convenience of reference only and shall not constitute a part of this Lease as a limitation of the scope of the particular subsections or Sections to which they apply.

45. NO PARTNERSHIP, JOINT VENTURE, OR FIDUCIARY RELATIONSHIP CREATED HEREBY. Nothing contained in this Lease shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between Landlord and Tenant, it being understood that the sole relationship created hereby is one of landlord and tenant. All laws and statutes of the State of Minnesota relative to landlord and tenant relationships shall be applicable to the parties hereto.

46. CUMULATIVE RIGHTS. Except as otherwise expressly stated herein, no right or remedy herein conferred on or reserved to Tenant or Landlord is intended to be exclusive of any other right or remedy hereof provided by law, but each shall be cumulative in, and in addition to, every other right or remedy given herein or not or hereafter existing at law, in equity, or by statute.

47. SEVERABLE PROVISIONS. Each provision, section, sentence, clause, phrase, and word of this Lease is intended to be severable. If any provision, sentence, clause, phrase, and word hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of the Lease

48. ENTIRE AGREEMENT. This Lease and the Ground Lease (and the other agreements contemplated in those agreements) contain the entire understanding of the parties hereto with respect to the transactions contemplated hereby and supersede all prior agreements and understandings between the parties with respect to such subject matter. No representations, warranties, undertakings, or promises, whether oral, implied, written, or otherwise, have been made by either party hereto to the other unless expressly stated in this Lease or unless mutually agreed to in writing between the parties hereto after the date hereof, and neither party has relied on any verbal representations, agreements, or understandings not expressly set forth herein.

49. REFERENCE TO GENDER. Where appropriate, the feminine gender may be read as the masculine gender or the neuter gender; the masculine gender may be read as the feminine gender or the neuter gender; and the neuter gender may be read as the masculine or the feminine gender.

50. MINNESOTA LAW. This Lease shall be construed and enforced in accordance with the laws of the State of Minnesota.

51. FURTHER ASSURANCES. In addition to any other information which may be reasonably requested, either party shall without charge, from time-to-time hereafter, but not more often than once every twelve (12) months, within thirty (30) days after written request, certify by written instrument duly executed and acknowledged to any person, firm, or corporation specified in such request:

- a. whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment;
- b. whether the responding party has actual knowledge (without obligation to make inquiry) of any Event of Default under the Lease and;
- c. whether the responding party has actual knowledge (without obligation to make inquiry) of any offsets, counterclaims, or defenses to the terms and obligations under the Lease.

Any such certificate may be relied on by the party who requested it and any other person, firm, or corporation to whom it may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing it. For any request more frequent than every twelve (12) months, the responding party may require payment of its reasonable costs in preparation of the estoppel response.

52. SHORT-FORM RECORDABLE LEASE. The parties will at any time, at the request of either one, promptly execute duplicate originals of an instrument, in recordable form, which will constitute a short form of this Lease, setting forth a description of the Premises, the term of this Lease, and options to renew, and any other portions hereof, excepting the rent provisions, as either party may request.

53. FEDERAL INCOME TAX DEDUCTIONS. Only Tenant shall have the right to take deductions on its tax returns with respect to such buildings, structures, improvements, changes, alterations, repairs, additions, and installations and the depreciation or amortization thereof; provided, however, that Landlord makes no representations or warranties as to the amount of any taxes or deductions or the treatment of any particular tax item.

54. BROKERAGE FEES. Each party hereto warrants that it has not incurred any real estate brokerage fees, finders' fees, loan brokerage fees, or any other fees to any third party in connection with this Lease, and in the event that any third party institutes legal action in an effort to recover such fees, the parties shall jointly defend

such action. If a judgment is obtained against the parties jointly, the party responsible for breach of this warranty shall reimburse the other for the latter's attorneys' fees, court costs, expenses, and share of the judgment.

55. COMPLIANCE WITH G.O. COMPLIANCE LEGISLATION AND THE COMMISSIONER'S ORDER.

a. Tenant acknowledges and agrees that Orchestra Hall on the Premises is "state bond financed property", as such term is used in the Grant Agreement, G.O. Compliance Legislation and Commissioner's Order, and that therefore, the provisions contained in such statute and Order apply to the Premises and this Lease.

b. Landlord and Tenant acknowledge and agree that Landlord will not receive any money from Tenant pursuant to this Lease, and as a result thereof the Commissioner does not reasonably expect to receive any monies as contemplated by Section 4.02, paragraph (f) of the Commissioner's Order, and therefore the provisions of Section 4.05 of the Commissioner's Order do not apply.

56. LISTING OF JOBS. Tenant shall, for one year from the date hereof, list any vacant or new positions it may have with state workforce centers, as required by Minn. Stat. § 116L.66 as such may subsequently be amended, modified or replaced. Further, Tenant shall comply with the Governor's Executive Order 08-01 regarding e-verification that all newly hired employees are legally entitled to work in the United States.

57. RECORD KEEPING AND REPORTING. Tenant shall maintain books, records, documents, and other evidence pertaining to the costs or expenses associated with the construction of the Orchestra Hall Improvements, the operation of the Governmental Program, and compliance with the requirements contained in this Lease and the Grant Agreement, and shall, upon ten (10) day's prior written request, allow Landlord, State, and either the Legislative Auditor or State Auditor for the State of Minnesota, whichever is applicable, to inspect, audit, copy, or abstract, any and all of its books, records, papers, or other documents relevant to this Lease or the Grant Agreement. Tenant shall use generally accepted accounting principles in the maintenance of such books and records, and shall retain all of such books, records, documents and other evidence (i) relating to the construction of the Orchestra Hall Improvements, for a period of six (6) years from the date that the Orchestra Hall Improvements have been initially constructed and put into operation, and (ii) relating to the operation of the Governmental Program, for a period of six (6) years from the date such books, records, documents and other evidence are created.

Landlord agrees to protect such information as non-public or trade secret information to the extent such protection is available under Minnesota Statutes, Chapter 13. Nothing herein shall be construed to require Landlord to incur any costs or expenses in complying with this provision unless Tenant agrees in advance to pay or

reimburse Landlord for any costs and expenses incurred by Landlord in complying with this agreement.

58. NON-DISCRIMINATION. Tenant agrees not to engage in unlawful discriminatory practices with respect to the Premises or the operation or management of Orchestra Hall, and it shall, with respect thereto, fully comply with all applicable provisions in Minn. Stat. Chapters 363A and 181, as such may be amended, modified or replaced.

59. WORKER'S COMPENSATION. Tenant agrees to fully comply with all applicable provisions relating to worker's compensation contained in Minn. Stat. §§ 176.181 Subd. 2, and 176.182, as such may be amended, modified or replaced, with respect to the Premises.

60. PREVAILING WAGE. Tenant agrees to comply with all applicable provisions of Minn. Stat., Chapter 177, including, but not limited to §§ 177.41 - 177.435 as amended from time-to-time.

61. COMPLIANCE WITH LANDLORD'S CONTRACTING REQUIREMENTS.

a. Equal Employment Opportunity. The Tenant must develop and cause its general contractor to develop an affirmative action plan meeting the requirements of Section 139.50, Minneapolis Code of Ordinances. In addition, the Tenant agrees that during the term of this Agreement:

(1) The Tenant will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, sexual orientation, disability, age, marital status, status with regard to public assistance, or national origin. The Tenant will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, ancestry, sex, sexual orientation, disability, age, marital status, status with regard to public assistance, or national origin. Such action shall include, but not be limited, to the following: advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Tenant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Landlord setting forth the provisions of this nondiscrimination clause.

(2) The Tenant will, in all solicitations or advertisements for employees placed by or on behalf of the Tenant, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, ancestry, sex, sexual orientation, disability, age, marital status, status with regard to public assistance, or national origin.

(3) The Tenant will comply with all applicable provisions of the Minneapolis Code of Ordinances, Chapters 139-141, incorporated herein by reference, and other applicable federal, state and local laws, rules and regulations regarding equal employment opportunities.

(4) The Tenant will include the provisions of paragraphs (a) through (c) of this Section in every contract or purchase order over \$50,000 relating to construction of the Orchestra Hall Improvements, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors in excess of \$50,000, so that such provisions will be binding upon each such contractor, subcontractor, or vendor, as the case may be.

b. Conflict of Interests/Code of Ethics. Tenant agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with Tenant's responsibilities under this Agreement and that Tenant shall not employ any person having such an interest. Tenant agrees to be bound by the Landlord's Code of Ethics, Minneapolis Code of Ordinances, Chapter 15. Tenant certifies that to the best of its knowledge (without any investigation or inquiry), all Landlord employees and officers participating in this Agreement have also complied with that ordinance. It is agreed by the parties that any such violation of the Code of Ethics constitutes grounds for the Landlord to void this Agreement. All questions relative to this section shall be referred to the Landlord and shall be promptly answered.

g. Contract Documents. Tenant shall incorporate in all contracts for the Orchestra Hall Improvements, to which it is a party, the requirements of this Section and Section 60, and shall cause its contractors and subcontractors for the Orchestra Hall Improvements to incorporate the requirements of this Section in all subcontracts, including contracts for purchase of materials and services.

### 63. HAZARDOUS WASTE POLLUTION AND CONTAMINANTS.

a. For purposes of this Section 63, the following defined terms shall have the following meanings:

(1) Hazardous Substance means asbestos, urea formaldehyde, polychlorinated biphenyls ("PCBs"), nuclear fuel or material, chemical waste, radioactive material, explosives, known carcinogens, petroleum products and by-products and other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law;

(2) Environmental Laws means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., the Hazardous Materials Transportation Act, §1802 et seq.,

the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., the Clean Air Act, 33 U.S.C. §1321 et seq., the Clean Air Act, 42 U.S.C. §7401 et seq., the Minnesota Environmental Response and Liability Act, Minn. Stat. Ch. 115B, the Minnesota Petroleum Tank Release and Cleanup Act, Minn. Stat. Ch. 115C, and any other federal, state, county, municipal, local or other statute, law relating to Hazardous Substances;

b. Tenant agrees to comply with all Environmental Laws applicable to the Premises. Tenant shall bear all costs and expenses arising from compliance with all Environmental Laws. If Tenant fails to comply with any Environmental Laws, Landlord shall have the right, but not the obligation, to undertake such compliance and charge Tenant the costs of compliance plus interest at the rate of ten percent per annum accruing from the date of disbursement and also with reasonable attorney fees.

c. Tenant agrees to defend, indemnify and hold harmless Landlord, its officers, employees and agents (hereinafter collectively referred to as the "**Indemnitees**") from and against and shall reimburse each such Indemnitee for any and all loss, claim, liability, damage, judgment, penalty, injunctive relief, injury to person, property or natural resources, cost, expense, action or cause of action arising in connection with or as the result of the existence, use, handling, storage, transportation, manufacture, release or disposal of any Hazardous Substance in, on or under the Premises, whether foreseeable or unforeseeable, regardless of the source, the time of occurrence or the time of discovery (hereinafter collectively referred to as "Loss") . The foregoing indemnification against Loss includes, without limitation, indemnification against all costs in law or in equity of removal, response, investigation, or remediation of any kind, and disposal of such Hazardous Substances, all costs of determining whether the Premises are in compliance with, and of causing the Premises to be in compliance with, all applicable Environmental Laws, all costs associated with claims for damages to persons, property, or natural resources, and the Indemnitees' reasonable consultants' fees, court costs and expenses incurred in connection with any thereof.

d. The obligations of Tenant to indemnify the Indemnitees shall survive expiration or termination of this Lease. The rights of the Indemnitees hereunder shall be in addition to any other rights or remedies which the Indemnitees may have against Tenant under this Lease or any other document, or at law or in equity.

64. WAIVER OF SUBROGATION. Tenant, on behalf of itself and its insurer, hereby waives all claims and rights of recovery against Landlord which it would, but for this Section, have to Landlord for losses occurring to the Premises and to the improvements, betterments, trade fixtures, equipment, personal property and other property located therein or thereupon:

a. to the extent actually covered by insurance required to be carried by the party waiving; or

b. to the extent actually covered by any other insurance being carried by the party waiving at the time of such occurrence.

**65. WAIVER OF CERTAIN DAMAGES. IN CONSIDERATION OF ENTERING INTO THIS LEASE, LANDLORD AND TENANT HEREBY WAIVE AND FOREVER GIVE UP ANY RIGHT TO CLAIM OR RECOVER DAMAGES FOR LOST INCOME OR PROFITS AS A RESULT OF ANY BREACH OF THIS LEASE OR ANY DOCUMENTS OR AGREEMENTS REFERRED TO HEREIN. THE AGREEMENTS AND WAIVERS SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LEASE.**

66. COMPLIANCE WITH LAWS. Tenant agrees that it will comply with all present and future laws, ordinances, and regulations, as amended and in effect from time-to-time, applicable to its use, occupancy, alteration or improvement of the Premises.

67. LIMITATION ON LIABILITY. Notwithstanding anything to the contrary in this Lease (except as otherwise provided in Sections 17 and 34 herein), the Ground Lease, and the Grant Agreement, it is understood and agreed by Landlord and Tenant that no covenant, provision or agreement of Landlord herein or in the Ground Lease or the Grant Agreement or in any other document executed by Landlord in connection with the Governmental Program, or any obligation herein or therein imposed upon Landlord or breach thereof, shall give rise to a pecuniary liability of Landlord, its officers, employees, or agents, or a charge against Landlord's general credit or taxing powers or shall obligate Landlord, its officers, employees, or agents, financially in any way. No failure of Landlord to comply with any term, condition, covenant, or agreement therein shall subject Landlord, its officers, employees, or agents, to liability for any claim for damages, costs, or other financial or pecuniary charges except to the extent that the same can be paid or recovered from this Lease or revenues therefrom. No execution on any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or taxing powers of Landlord. In making the agreements, provisions, and covenants set forth herein, Landlord has not obligated itself except with respect to the application of revenues hereunder as hereinabove provided and the obligation to request the State Grant Proceeds from the State and provide the State Grant Proceeds to Tenant for the construction of the Orchestra Hall Improvements. If, notwithstanding the provisions of this Section, Landlord, its officers, employees, or agents, incur any expense, or suffer any losses, claims, or damages or incur any liabilities, Tenant will indemnify and hold harmless Landlord, its officers, employees, or agents, from the same and will reimburse Landlord, its officers, employees, or agents, for any legal or other expenses incurred by Landlord, its officers, employees, or agents, in relation thereto, and this covenant to indemnify, hold harmless and reimburse Landlord, its officers, employees, or agents shall survive the termination of this Lease.

68. PREMISES MAINTENANCE ESCROW. If any Annual Report fails to document that there are sufficient unencumbered Tenant funds to fully fund the Maintenance Obligation, Tenant shall, upon ninety (90) days' notice and failure to replenish unencumbered funds to required Maintenance Obligation levels, deposit with the Landlord funds in the amount of two (2) times the amount it cost to maintain the Premises as described in Section 9(b)(1)(B) in the most recent fiscal year for the Landlord to escrow and use for costs to maintain the Premises as described in Section 9(b)(1)(B) incurred by the Landlord in the event that Landlord terminates this Agreement pursuant to Section 30 herein (the "Property Maintenance Escrow"). Any interest earned shall become a part of the Property Maintenance Escrow. Landlord shall be under no obligation to pay or earn interest on the Property Maintenance Escrow. If Landlord has not terminated the Agreement pursuant to Section 30 herein within two (2) years of deposit of the Property Maintenance Escrow, the Property Maintenance Escrow and any accrued interest will be returned to the Tenant. If Landlord does terminate the Agreement pursuant to Section 30, the terms of this Section 68 shall survive and Landlord shall return any unencumbered balance in the Property Maintenance Escrow to Tenant promptly upon sale of the Premises pursuant to Article IV of the Grant Agreement. This provision is not intended to be a liquidated damages provision or to lessen or cap Tenant's responsibilities to indemnify the Landlord pursuant to this or any other Agreement.

69. GRANT AGREEMENT PREVAILS. Whenever there shall exist a conflict between the provisions of this Lease and the Grant Agreement, the Grant Agreement shall prevail. Landlord shall not amend or otherwise modify the Grant Agreement without the prior written consent of Tenant.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

*[Signature pages follow.]*

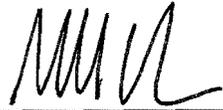
Signature Page to Lease/Use Agreement by and between City of Minneapolis and The Minnesota Orchestral Association

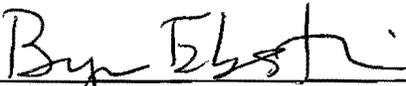
Tenant's Address:

1111 Nicollet Mall  
Minneapolis, MN 55403

TENANT:

THE MINNESOTA ORCHESTRAL  
ASSOCIATION

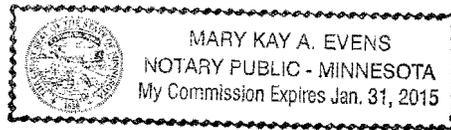
By   
Name: Michael Henson

By   
Name: Bryan Ebensteiner

STATE OF MINNESOTA    )  
                                  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of June, 2012, by Michael Henson, the President and Chief Executive Officer, and by Bryan Ebensteiner, the Chief Financial Officer, of The Minnesota Orchestral Association, a Minnesota nonprofit corporation, on behalf of the nonprofit corporation.

  
Notary Public



Signature Page to Lease/Use Agreement by and between City of Minneapolis and The Minnesota Orchestrals Association

Landlord's address:

Minneapolis Department of Community Planning and Economic Development  
105 Fifth Avenue South, Suite 200  
Minneapolis, MN 55401

LANDLORD::

CITY OF MINNEAPOLIS

By *Kevin D. Carpenter*  
Its Finance Officer

Department head Responsible for Monitoring Contract:

*Christy Lutz*  
Deputy Director, CPED

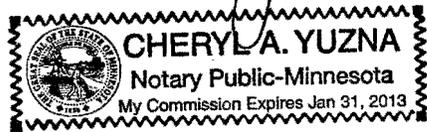
Approved as to form:

*Scott*  
Assistant City Attorney

STATE OF MINNESOTA    )  
  )ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this 8 day of June, 2012, by Kevin Carpenter, the Finance Officer of the City of Minneapolis, a Minnesota municipal corporation, on behalf of the City.

*Cheryl A. Yuzna*  
Notary Public



## EXHIBIT A

### Legal Description of Orchestra Hall

The land is situated in the City of Minneapolis, County of Hennepin, State of Minnesota, and is described as follows:

Tract B Registered Land Survey No. 1750 in the Office of the Registrar of Deeds, Hennepin County, Minnesota.

## EXHIBIT B

### Orchestra Hall Improvements

#### **Project Summary**

Built in 1974, the original Orchestra Hall was designed by Hardy Holzman Pfeiffer Architects and includes a 2,200 seat performance space with superb acoustics designed by Cyril Harris, Acoustical Engineer. The building incorporates a modestly sized lobby that was anticipated to be replaced by a more appropriately sized space in the future. The building site was also designed to have an addition in the direction of the Nicollet Mall for a multi-function space (originally conceptualized for restaurant/multipurpose use). The Minnesota Orchestra Association, "Building for the Future Campaign" has to-date raised over \$30 M to address the overdue issues of a new Patron Experience in an expanded and re-imagined lobby and with the additional of the planned multi-function space, the "City Room."

The existing Orchestra Hall building coverage is 42,037 sf. With the new expansion of 11,564 sf the footprint will be increased to 53,601 sf.

The expanded building is unchanged in height, with 4 floors at and above grade and a lobby height of just over 53' above grade.

The lobby is to be expanded to the north, west and east. The re-imagined lobby expansion uses transparency to full advantage to showcase audience activity to others in Orchestra Hall's urban neighborhood, providing a two-way visual connection for people inside and outside the building, particularly around Peavey Plaza and on Nicollet Mall. Revitalizing the streetscape, the Hall's front drive on 11th Street will be moved to the west, making a drop off to a new Nicollet front door and a tree-lined avenue on 11th with a generously scaled sidewalk that links Marquette Avenue to Nicollet Mall and in turn Orchestra Hall to its surroundings. The lobby is expanded to the north with an addition of glass and a warm limestone wall incorporating a soaring window through which patrons may view the downtown skyline to the north. A 120' long granite interior bench along the ground floor 11th street bay window animates the expanded 11th street sidewalk. The expansion of the lobby to the west culminates in the City Room. This is a new multipurpose space of stone and wood with abundant natural light. The City Room addresses Orchestra Hall to Nicollet Mall and the new Peavey Plaza. During warmer months large sliding glass doors will open the City Room space to a south/west exterior terrace at grade overlooking Peavey, creating a flow from interior to exterior offering patrons an opportunity to enjoy this urban oasis. To the south of the City Room at the so called Tier Drop level above is an elevated roof terrace from which patrons will enjoy views of the city and Peavey Plaza during intermissions.

The enclosure of the new lobby is composed of warm limestone, durable black granite at grade and elegantly proportioned glass curtain wall throughout. Significant areas of interior wall and ceiling surfaces will be of sound absorbing white oak panels

that provide visual warmth, complement the tones of the existing brick volume of the auditorium and soften the live acoustics of the lobby. Visible through clear glass walls this interior wood will characterize the appearance of the lobby from the street. The lobby floor will be a light colored stone.

The lobby interior is about openness, ease of access, elegant ADA compliance and clear routes of movement, generous walkways, gentle stairs, views throughout, warm natural materials, places to gather with built in seating surfaces and drink rails. The new lobby will also remove a very energy inefficient façade and replace it with state of the art glass to dramatically improve energy use. The lobby will have fire and life safety improvements up to code.

The back of house area of Orchestra Hall at the south end of the building continues to provide the existing loading access off of 12th and the Stage Door on Marquette Ave. The back of house is proposed to receive ADA compliant upgrades. Sprinkler and other fire and life safety upgrades will occur in this part of the building as well as. The Auditorium will receive ADA compliance and fire/life safety code upgrades, new flooring, new sound and lighting systems, new seating and some minor on stage acoustic refinements on stage to enhance the ability of the musicians to hear one another without altering the room acoustics for patrons. The current world class acoustical treatment overall will be maintained.

The existing skyway connection at Marquette Avenue is shortened in length as the new facility expands to the east property line. The non code compliant ramp in the skyway connection will be eliminated and a more generous arrival area will be created within Orchestra Hall. This bridge to Orchestra Hall is the last link in the skyway route of the south downtown and ends in an awkward dead-end. A new stair and a reversible escalator will bring the skyway pedestrians down to street level and street pedestrians up to the skyway all on an axis with the new marquee entrance on Peavey/Nicollet. The building design creates new linkages within the city.

The site work is proposed to be a visually clean paving of stone and concrete. Orchestra Hall Square and the adjacent City Room terrace site design will be unified in materials and design intent with the new Peavey Plaza for a revitalized anchor to the south downtown.

This project will have no impact on the State of Minnesota's operating expenses.

**Building/Project Data Sheet**

<b>Name of Project:</b>	Orchestra Hall
<b>Agency:</b>	N/A
<b>Project/Building Location:</b>	1111 Nicollet Mall, Minneapolis, Minnesota
<b>Building Occupancy Type:</b>	Assembly

**Primary Space Types:** Auditorium, Production Support, Concessions

**Type of Construction:** New Construction, Remodel

**Building Size:**

Number of Stories: 4

Square Feet per Floor: Basement 15,133 square feet

Main Level: 55,231 square feet

Tier 1: 14,696 square feet

Tier 2: 15,231 square feet

Tier 3: 6,741 square feet

Total Square Feet: 107,032 square feet

Space Efficiency: N/A

Office Space: Approximately 2,000 square feet

**Site Size:** 1.67 acres

**Parking:**

Type (surface/structured): None

Area of Parking: N/A

Number of Stalls: 0

**Roofing Type:** Built-up Bituminous Roof (existing, new over addition)

**Exterior Wall Type:** Glass curtain wall, masonry, precast concrete with stone facings (new at renovated facades and loading area, window replacement on west/Peavey façade, otherwise existing)

**Interior Wall Type:** Masonry and Metal Stud Partition (new and existing)

**Structural System Type:** Steel Column, Framing, with Concrete Floors on Joists, and Steel Joist Roof System (new and existing)

**Mechanical System Type:** District Steam Heat, On Site Chillers (motor upgrades, control upgrades)

<b>Fire Protection Description:</b>	Fully Protected Sprinkler throughout, elevator fire systems to code; all new alarms (new throughout)
<b>Electrical System Type:</b>	Main Distribution Switchboards and Panel boards (new and existing); lighting (upgraded throughout to energy efficient systems)
<b>Technology Systems:</b>	Building Network and Servers (Existing); auditorium electronics (new); energy systems control (new)
<b>Total Project Cost:</b>	\$52,000,000
<b>Non-State Sources:</b>	\$38,000,000
<b>Furniture, Fixtures, Equipment Signage Cost:</b>	\$550,000
<b>Predesign Cost:</b>	\$0
<b>Commissioning and Relocation Cost:</b>	\$1,500,000
<b>Site Acquisition Cost:</b>	\$0
<b>Phasing Cost:</b>	\$0
<b>Total Construction Cost:</b>	\$40,500,000
<b>Cost Per Square Foot:</b>	\$378
<b>Technology Cost:</b>	\$750,000
<b>Building Cost:</b>	\$37,943,478
<b>Hazardous Materials Abatement Cost:</b>	\$90,000
<b>Parking Cost:</b>	\$0

**EXHIBIT C**

**Grant Agreement**

---

**GENERAL OBLIGATION BOND PROCEEDS**

**Grant Agreement - Construction Grant  
for the  
Minneapolis Orchestra Hall  
Project**

---

**SPAP-10-0019-P-FY12**

# TABLE OF CONTENTS

## RECITALS

### Article I - DEFINITIONS

Section 1.01 – Defined Terms

### Article II - GRANT

Section 2.01 – Grant of Monies

Section 2.02 – Public Ownership

Section 2.03 – Use of Grant Proceeds

Section 2.04 – Operation of the Real Property and Facility

Section 2.05 – Public Entity Representations and Warranties

Section 2.06 – Ownership by Leasehold or Easement

Section 2.07 – Event(s) of Default

Section 2.08 – Remedies

Section 2.09 – Notification of Event of Default

Section 2.10 – Survival of Event of Default

Section 2.11 – Term of Grant Agreement

Section 2.12 – Modification and/or Early Termination of Grant

Section 2.13 – Excess Funds.

### Article III – USE CONTRACTS

Section 3.01 – General Provisions

Section 3.02 – Initial Term and Renewal

Section 3.03 – Reimbursement of Counterparty

Section 3.04 – Receipt of Monies Under a Use Contract

### Article IV – SALE

Section 4.01 – Sale

Section 4.02 – Proceeds of Sale

### Article V – COMPLIANCE WITH G.O. COMPLIANCE LEGISLATION AND THE COMMISSIONER'S ORDER

Section 5.01 – State Bond Financed Property

Section 5.02 – Preservation of Tax Exempt Status

Section 5.03 – Changes to G.O. Compliance Legislation or the  
Commissioner's Order

### Article VI – DISBURSEMENT OF GRANT PROCEEDS

Section 6.01 – The Advances

Section 6.02 – Draw Requisitions

Section 6.03 – Additional Funds

Section 6.04 – Condition Precedent to Any Advance

Section 6.05 – Construction Inspections

Article VII- MISCELLANEOUS

Section 7.01 – Insurance

Section 7.02 – Condemnation

Section 7.03 – Use, Maintenance, Repair and Alterations

Section 7.04 – Records Keeping and Reporting

Section 7.05 – Inspections by State Entity

Section 7.06 – Data Practices

Section 7.07 – Non-Discrimination

Section 7.08 – Worker’s Compensation

Section 7.09 – Antitrust Claims

Section 7.10 – Review of Plans and Cost Estimates

Section 7.11 – Prevailing Wages

Section 7.12 – Liability

Section 7.13 – Indemnification by the Public Entity

Section 7.14 – Relationship of the Parties

Section 7.15 – Notices

Section 7.16 – Binding Effect and Assignment or Modification

Section 7.17 – Waiver

Section 7.18 – Entire Agreement

Section 7.19 – Choice of Law and Venue

Section 7.20 – Severability

Section 7.21 – Time of Essence

Section 7.22 – Counterparts

Section 7.23 – Matching Funds

Section 7.24 – Source and Use of Funds

Section 7.25 – Project Completion Schedule

Section 7.26 – Third-Party Beneficiary

Section 7.27 – Public Entity Tasks

Section 7.28 – State Entity and Commissioner

Required Acts and Approvals.

Section 7.29 – Applicability to Real Property and Facility

Section 7.30 – E-Verification

Section 7.31 – Additional Requirements

Attachment I – DECLARATION

Attachment II – LEGAL DESCRIPTION OF REAL PROPERTY

Attachment III – SOURCE AND USE OF FUNDS

Attachment IV – PROJECT COMPLETION SCHEDULE

**General Obligation Bond Proceeds**  
**Grant Agreement - Construction Grant**  
**for the**  
**Minneapolis Orchestra Hall**  
**Project**

**THIS AGREEMENT** shall be effective as of June 25, 2012 , and is between the City of Minneapolis, a Minnesota municipal corporation and home rule charter city (the “Public Entity”), and the Minnesota Department of Employment and Economic Development (the “State Entity”).

**RECITALS**

A. Under the provisions contained in Minn. Stat. §§ 471.15-471.191 (the “Statutory Authority”) and specific language contained in 2010 Minn. Law Chap. 189, Sec. 21, Subd. 11 (the “G.O. Bonding Legislation”) the Public Entity has been given the authority to predesign, design, construct, furnish and equip the renovation of a performing arts center in downtown Minneapolis; and

B. Under the G.O. Bonding Legislation, the State of Minnesota has allocated \$14,000,000.00 (the “G.O. Grant”), which is to be given to the Public Entity as a grant to assist it in the predesign, design, construction, furnishing and equipment of the renovation of Orchestra Hall at its current location in downtown Minneapolis as authorized by such legislation; and

C. Under the Statutory Authority and G.O. Bonding Legislation, the Public Entity has been given the authority to establish and maintain a performing arts center (the “Governmental Program”); and

D. The monies allocated to fund the grant to the Public Entity are proceeds of state general obligation bonds authorized to be issued under Article XI, § 5(a) of the Minnesota Constitution; and

E. The Public Entity’s receipt and use of the G.O. Grant to acquire an ownership interest in and/or improve real property (the “Real Property”) and, if applicable, structures situated thereon (the “Facility”) will cause the Public Entity’s ownership interest in all of such real property and structures to become “state bond financed property”, as such term is used in Minn. Stat. § 16A.695 (the “G.O. Compliance Legislation”) and in that certain “Third Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property” executed by the Commissioner of Minnesota Management and Budget and dated March 9, 2010 (the “Commissioner’s Order”), even though such funds may only be a portion of the funds being used to acquire such ownership interest and/or improve such real

property and structures and that such funds may be used to only acquire such ownership interest and/or improve a part of such real property and structures.

F. The Public Entity and the State Entity desire to set forth herein the provisions relating to the granting of such monies and the disbursement thereof to the Public Entity, and the operation of the Real Property and, if applicable, Facility.

**IN CONSIDERATION** of the grant described and other provisions in this Agreement, the parties to this Agreement agree as follows.

## Article I

### DEFINITIONS

Section 1.01 **Defined Terms.** As used in this Agreement, the following terms shall have the meanings set out respectively after each such term (the meanings to be equally applicable to both the singular and plural forms of the terms defined), unless the context specifically indicates otherwise:

“Advance(s)” – means an advance made or to be made by the State Entity to the Public Entity and disbursed in accordance with the provisions contained in Article VI hereof.

“Agreement” - means this General Obligation Bond Proceeds Grant Agreement - Construction Grant for the Minneapolis Orchestra Hall Project, as such exists on its original date and any amendments, modifications or restatements thereof.

“Approved Debt” – means public or private debt of the Public Entity that is consented to and approved, in writing, by the Commissioner of MMB, the proceeds of which were or will be used to acquire an ownership interest in or improve the Real Property and, if applicable, Facility, other than the debt on the G.O. Bonds. Approved Debt includes, but is not limited to, all debt delineated in **Attachment III** to this Agreement; provided, however, the Commissioner of MMB is not bound by any amounts delineated in such attachment unless he/she has consented, in writing, to such amounts.

“Architect”, if any – means Kuwabara Payne McKenna Blumberg, which will administer the Construction Contract Documents on behalf of the Public Entity.

“Code” - means the Internal Revenue Code of 1986, as amended from time to time, and all treasury regulations, revenue procedures and revenue rulings issued pursuant thereto.

“Commissioner of MMB” - means the commissioner of the Minnesota Department of Management and Budget, and any designated representatives thereof.

“Commissioner’s Order” - means that certain “Third Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property” executed by the Commissioner of Minnesota Management and Budget and dated March 9, 2010.

“Completion Date” – means December 1, 2013, the date of projected completion of the Project.

“Contractor” - means any person engaged to work on or to furnish materials and supplies for the Construction Items including, if applicable, a general contractor.

“Construction Contract Documents” - means the document or documents, in form and substance acceptable to the State Entity, including but not limited to any construction plans and specifications and any exhibits, amendments, change orders, modifications thereof or supplements thereto, which collectively form the contract between the Public Entity and the Contractor or Contractors for the completion of the Construction Items on or before the Completion Date for either a fixed price or a guaranteed maximum price.

“Construction Items” – means the work to be performed under the Construction Contract Documents.

“Counterparty” - means any entity with which the Public Entity contracts under a Use Contract.

“Declaration” - means a declaration, or declarations, in the form contained in **Attachment I** to this Agreement and all amendments thereto, indicating that the Public Entity’s ownership interest in the Real Property and, if applicable, Facility is bond financed property within the meaning of the G.O. Compliance Legislation and is subject to certain restrictions imposed thereby.

“Draw Requisition” - means a draw requisition that the Public Entity, or its designee, submits to the State Entity when an Advance is requested, as referred to in Section 6.02.

“Event of Default” - means one or more of those events delineated in Section 2.07.

“Facility”, if applicable, - means the performing arts center referred to as Minneapolis Orchestra Hall, which is located, or will be constructed and located, on the Real Property and all equipment that is a part thereof that was purchased with the proceeds of the G.O. Grant.

“Fair Market Value” – means either (i) the price that would be paid by a willing and qualified buyer to a willing and qualified seller as determined by an appraisal that assumes that all liens and encumbrances on the property being sold that negatively affect the value of such property, will be paid and released, or (ii) the price bid by a purchaser under a public bid procedure after reasonable public notice, with the proviso that all liens and

encumbrances on the property being sold that negatively affect the value of such property, will be paid and released at the time of acquisition by the purchaser.

“G.O. Bonding Legislation” – means the legislation delineated in Recital A hereinabove as the G.O. Bonding Legislation.

“G.O. Bonds” - means that portion of the state general obligation bonds issued under the authority granted in Article XI, § 5(a) of the Minnesota Constitution, the proceeds of which are used to fund the G.O. Grant and any bonds issued to refund or replace such bonds.

“G.O. Compliance Legislation” - means Minn. Stat. § 16A.695 as such may subsequently be amended, modified or replaced from time to time unless such amendment, modification or replacement imposes an unconstitutional impairment of a contract right.

“Governmental Program” – means the operation of the Real Property and, if applicable, Facility for the purpose specified and identified in Recital C of this Agreement as the Governmental Program.

“G.O. Grant” - means a grant of monies from the State Entity to the Public Entity in the amount identified as the “G.O. Grant” in Recital B to this Agreement, as the amount thereof may be modified under the provisions contained herein.

“Initial Acquisition and Betterment Costs” – means the cost to acquire the Public Entity’s ownership interest in the Real Property and, if applicable, Facility if the Public Entity does not already possess the required ownership interest, and the costs of betterments of the Real Property and, if applicable, Facility; provided, however, the Commissioner of MMB is not bound by any specific amount of such alleged costs unless he/she has consented, in writing, to such amount.

“Inspecting Engineer”, if any - means the State Entity's construction inspector, or its designated consulting engineer.

“Leased/Easement Premises” - means the real estate and structures, if any, that are leased to the Public Entity under a Real Property/Facility Lease or granted to the Public Entity under an easement.

“Lessor/Grantor” – means the fee owner/lessor or grantor of the Leased/Easement Premises.

“Outstanding Balance of the G.O. Grant” – means the portion of the G.O. Grant that has been disbursed to or on behalf of the Public Entity minus any portion thereof previously paid back to the Commissioner of MMB.

“Ownership Value”, if any – means the value, if any, of the Public Entity’s ownership interest in the Real Property and, if applicable, Facility that existed concurrent with the

Public Entity's execution of this Agreement. Such value shall be established by way of an appraisal or by such other manner as may be acceptable to the State Entity and the Commissioner of MMB. The parties hereto agree and acknowledge that such value is \$0.00 or \_\_\_ Not Applicable; provided, however, the Commissioner of MMB is not bound by any inserted dollar amount unless he/she has consented, in writing, to such amount. If no dollar amount is inserted and the blank "Not Applicable" is not checked, a rebuttable presumption that the Ownership Value is \$0.00 shall be created.

"Project" - means the Public Entity's acquisition, if applicable, of the ownership interests in the Real Property and, if applicable, Facility denoted in Section 2.02 along with the performance of activities denoted in Section 2.03.

"Public Entity" - means the entity identified as the "Public Entity" in the lead-in paragraph of this Agreement.

"Real Property" - means the real property located in the County of Hennepin, State of Minnesota, legally described in **Attachment II** to this Agreement.

"Real Property/Facility Lease" - means a long-term lease of the Real Property, the Facility, if applicable, or both by the Public Entity as lessee thereunder.

"State Entity" - means the entity identified as the "State Entity" in the lead-in paragraph of this Agreement.

"Subsequent Betterment Costs" – means the costs of betterments of the Real Property and, if applicable, Facility that occur subsequent to the date of this Agreement, are not part of the Project, would qualify as a public improvement of a capital nature (as such term in used in Minn. Constitution Art. XI, §5(a) of the Minnesota Constitution), and the cost of which has been established by way of written documentation that is acceptable to and approved, in writing, by the State Entity and the Commissioner of MMB.

"Use Contract" - means a lease, management contract or other similar contract between the Public Entity and any other entity that involves or relates to any part of the Real Property and/or, if applicable, Facility.

"Useful Life of the Real Property and, if applicable, Facility" – means (i) 30 years for Real Property that has no structure situated thereon or if any structures situated thereon will be removed, and no new structures will be constructed thereon, (ii) the remaining useful life of the Facility as of the effective date of this Agreement for Facilities that are situated on the Real Property as of the date of this Agreement, that will remain on the Real Property, and that will not be bettered, or (iii) the useful life of the Facility after the completion of the construction or betterments for Facilities that are to be constructed or bettered.

**Article II**

**GRANT**

**Section 2.01 Grant of Monies.** The State Entity shall make and issue the G.O. Grant to the Public Entity, and disburse the proceeds in accordance with the provisions of this Agreement. The G.O. Grant is not intended to be a loan even though the portion thereof that is disbursed may need to be returned to the State Entity or the Commissioner of MMB under certain circumstances.

**Section 2.02 Public Ownership.** The Public Entity acknowledges and agrees that the G.O. Grant is being funded with the proceeds of G.O. Bonds, and as a result thereof all of the Real Property and, if applicable, Facility must be owned by one or more public entities. Such ownership may be in the form of fee ownership, a Real Property/Facility Lease, or an easement. In order to establish that this public ownership requirement is satisfied, the Public Entity represents and warrants to the State Entity that it has, or will acquire, the following ownership interests in the Real Property and, if applicable, Facility, and, in addition, that it possess, or will possess, all easements necessary for the operation, maintenance and management of the Real Property and, if applicable, Facility in the manner specified in Section 2.04:

(Check the appropriate box for the Real Property and, if applicable, for the Facility.)

Ownership Interest in the Real Property.

- Fee simple ownership of the Real Property.
- A Real Property/Facility Lease for the Real Property that complies with the requirements contained in Section 2.06.  
(If the term of the Real Property/Facility Lease is for a term authorized by a Minnesota statute, rule or session law, then insert the citation: \_\_\_\_\_.)
- An easement for the Real Property that complies with the requirements contained in Section 2.06.  
(If the term of the easement is for a term authorized by a Minnesota statute, rule or session law, then insert the citation: \_\_\_\_\_.)

Ownership Interest in, if applicable, the Facility.

- Fee simple ownership of the Facility.
- A Real Property/Facility Lease for the Facility that complies with all of the requirements contained in Section 2.06.  
(If the term of the Real Property/Facility Lease is for a term authorized by a Minnesota statute, rule or session law, then insert the citation: \_\_\_\_\_.)

Not applicable because there is no Facility.

**Section 2.03 Use of Grant Proceeds.** The Public Entity shall use the G.O. Grant solely to reimburse itself for expenditures it has already made, or will make, in the performance of the following activities, and may not use the G.O. Grant for any other purpose.

(Check all appropriate boxes.)

- Acquisition of fee simple title to the Real Property.
- Acquisition of a leasehold interest in the Real Property.
- Acquisition of an easement for the Real Property.
- Improvement of the Real Property.
- Acquisition of fee simple title to the Facility.
- Acquisition of a leasehold interest in the Facility.
- Construction of the Facility.
- Renovation of the Facility.
- \_\_\_\_\_

(Describe other or additional purposes.)

**Section 2.04 Operation of the Real Property and Facility.** The Real Property and, if applicable, Facility must be used by the Public Entity or the Public Entity must cause such Real Property and, if applicable, Facility to be used for the operation of the Governmental Program or for such other use as the Minnesota legislature may from time to time designate, and for no other purposes or uses.

The Public Entity may enter into Use Contracts with Counterparties for the operation of all or any portion of the Real Property and, if applicable, Facility; provided that all such Use Contracts must have been approved, in writing, by the Commissioner of MMB and fully comply with all of the provisions contained in Sections 3.01, 3.02 and 3.03.

The Public Entity must, whether it is operating the Real Property and, if applicable, Facility or has contracted with a Counterparty under a Use Contract to operate all or any portion of the Real Property and, if applicable, Facility, annually determine that the Real Property and, if applicable, Facility is being used for the purpose required by this Agreement, and shall annually

supply a statement, sworn to before a notary public, to such effect to the State Entity and the Commissioner of MMB.

For those programs, if any, that the Public Entity will directly operate on all or any portion of the Real Property and, if applicable, Facility, the Public Entity covenants with and represents and warrants to the State Entity that: (i) it has the ability and a plan to fund such programs, (ii) it has demonstrated such ability by way of a plan that it submitted to the State Entity, and (iii) it will annually adopt, by resolution, a budget for the operation of such programs that clearly shows that forecast program revenues along with other funds available for the operation of such program will be equal to or greater than forecast program expenses for each fiscal year, and will supply to the State Entity and the Commissioner of MMB certified copies of such resolution and budget.

For those programs, if any, that will be operated on all or any portion of the Real Property and, if applicable, Facility by a Counterparty under a Use Contract, the Public Entity covenants with and represents and warrants to the State Entity that: (i) it will not enter into such Use Contract unless the Counterparty has demonstrated that it has the ability and a plan to fund such program, (ii) it will require the Counterparty to provide an initial program budget and annual program budgets that clearly show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iii) it will promptly review all submitted program budgets to determine if such budget clearly and accurately shows that the forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iv) it will reject any program budget that it believes does not accurately reflect forecast program revenues or expenses or does not show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, and require the Counterparty to prepare and submit a revised program budget, and (v) upon receipt of a program budget that it believes accurately reflects forecast program revenues and expenses and that shows that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, it will approve such budget by resolution and supply to the State Entity and the Commissioner of MMB certified copies of such resolution and budget.

**Section 2.05 Public Entity Representations and Warranties.** The Public Entity further covenants with, and represents and warrants to the State Entity as follows:

A. It has legal authority to enter into, execute, and deliver this Agreement, the Declaration, and all documents referred to herein, and it has taken all actions necessary to its execution and delivery of such documents.

B. It has legal authority to use the G.O. Grant for the purpose or purposes described in Recital B of this Agreement.

C. It has legal authority to operate the Governmental Program.

D. This Agreement, the Declaration, and all other documents referred to herein are the legal, valid and binding obligations of the Public Entity enforceable against the Public Entity in accordance with their respective terms.

E. It will comply with all of the terms, conditions, provisions, covenants, requirements, and warranties in this Agreement, the Declaration, and all other documents referred to herein.

F. It will comply with all of the provisions and requirements contained in and imposed by the G.O. Compliance Legislation, the Commissioner's Order, and the G.O. Bonding Legislation.

G. It has made no material false statement or misstatement of fact in connection with its receipt of the G.O. Grant, and all of the information it has submitted or will submit to the State Entity or Commissioner of MMB relating to the G.O. Grant or the disbursement of any of the G.O. Grant is and will be true and correct.

H. It is not in violation of any provisions of its charter or of the laws of the State of Minnesota, and there are no actions, suits, or proceedings pending, or to its knowledge threatened, before any judicial body or governmental authority against or affecting it relating to the Real Property and, if applicable, Facility, or its ownership interest therein, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into this Agreement, the Declaration, or any document referred to herein, or to perform any of the acts required of it in such documents.

I. Neither the execution and delivery of this Agreement, the Declaration, or any document referred to herein nor compliance with any of the terms, conditions, requirements, or provisions contained in any of such documents is prevented by, is a breach of, or will result in a breach of, any term, condition, or provision of any agreement or document to which it is now a party or by which it is bound.

J. The contemplated use of the Real Property and, if applicable, Facility will not violate any applicable zoning or use statute, ordinance, building code, rule or regulation, or any covenant or agreement of record relating thereto.

K. The Project will be completed in full compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Project.

L. All applicable licenses, permits and bonds required for the performance and completion of the Project have been, or will be, obtained.

M. All applicable licenses, permits and bonds required for the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04 have been, or will be, obtained.

N. It will operate, maintain, and manage the Real Property and, if applicable, Facility or cause the Real Property and, if applicable, Facility, to be operated, maintained and managed in compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Real Property and, if applicable, Facility.

O. It will fully enforce the terms and conditions contained in any Use Contract.

P. It has complied with the matching funds requirement, if any, contained in Section 7.23.

Q. It will not, without the prior written consent of the State Entity and the Commissioner of MMB, allow any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested to be created or exist against the Public Entity's ownership interest in the Real Property or, if applicable, Facility, or the Counterparty's interest in the Use Contract, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner of MMB will consent to any such lien or encumbrance that secures the repayment of a loan the repayment of which will not impair or burden the funds needed to operate the Real Property and, if applicable, Facility in the manner specified in Section 2.04, and for which the entire amount is used (i) to acquire additional real estate that is needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04 and will be included in and as part of the Public Entity's ownership interest in the Real Property and, if applicable, Facility, and/or (ii) to pay for capital improvements that are needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

R. It reasonably expects to possess the ownership interest in the Real Property and, if applicable, Facility described Section 2.02 for the entire Useful Life of the Real Property and, if applicable, Facility, and it does not expect to sell such ownership interest.

S. It does not reasonably expect to receive payments under a Use Contract in excess of the amount the Public Entity needs and is authorized to use to pay the operating expenses of the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract or to pay the principal, interest, redemption premiums, and other expenses on any Approved Debt.

T. It will supply, or cause to be supplied, whatever funds are needed above and beyond the amount of the G.O. Grant to complete and fully pay for the Project.

U. The Construction Items will be completed substantially in accordance with the Construction Contract Documents by the Completion Date, and all such items along with, if applicable, the Facility will be situated entirely on the Real Property.

V. It will require the Contractor or Contractors to comply with all rules, regulations, ordinances, and laws bearing on its performance under the Construction Contract Documents.

W. It has or will promptly record a fully executed Declaration with the appropriate governmental office and deliver a copy thereof to the State Entity and to Minnesota Management and Budget (attention: Capital Projects Manager) that contains all of the recording information.

X. It shall furnish such satisfactory evidence regarding the representations and warranties described herein as may be required and requested by either the State Entity or the Commissioner of MMB.

#### **Section 2.06 Ownership by Leasehold or Easement.**

A. A Real Property/Facility Lease or easement must comply with the following provisions.

1. It must be in form and contents acceptable to the Commissioner of MMB, and specifically state that it may not be modified, restated, amended, changed in any way, or prematurely terminated or cancelled without the prior written consent and authorization by the Commissioner of MMB.

2. It must be for a term that is equal to or greater than 125% of the Useful Life of the Real Property and, if applicable, Facility, or such other period of time specifically authorized by a Minnesota statute, rule or session law.

3. Any payments to be made under it by the Public Entity, whether designated as rent or in any other manner, must be by way of a single lump sum payment that is due and payable on the date that it is first made and entered into.

4. It must not contain any requirements or obligations of the Public Entity that if not complied with could result in a termination thereof.

5. It must contain a provision that provides sufficient authority to allow the Public Entity to operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

6. It must not contain any provisions that would limit or impair the Public Entity's operation of the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

7. It must contain a provision that prohibits the Lessor/Grantor from creating or allowing, without the prior written consent of the State Entity and the Commissioner of MMB, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Leased/Easement Premises or the Lessor/Grantor's interest in the Real Property/Facility Lease or easement, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner of MMB will consent to any such lien or encumbrance if the holder of such lien or encumbrance executes and files of record a document under which such holder subordinates such lien or encumbrance to the Real Property/Facility Lease or easement and agrees that upon foreclosure of such lien or encumbrance to be bound by and comply with all of the terms, conditions and covenants contained in the Real Property/Facility Lease or easement as if such holder had been an original Lessor/Grantor under the Real Property/Facility Lease or easement.

8. It must acknowledge the existence of this Agreement and contain a provision that the terms, conditions and provisions contained in this Agreement shall control over any inconsistent or contrary terms, conditions and provisions contained in the Real Property/Facility Lease or easement.

9. It must provide that any use restrictions contained therein only apply as long as the Public Entity is the lessee under the Real Property/Facility Lease or grantee under the easement, and that such use restrictions will terminate and not apply to any successor lessee or grantee who purchases the Public Entity's ownership interest in the Real Property/Facility Lease or easement. Provided, however, it may contain a provisions that limits the construction of any new structures on the Real Property or modifications of any existing structures on the Real Property without the written consent of Lessor/Grantor, which will apply to any such successor lessee or grantee.

10. It must allow for a transfer thereof in the event that the lessee under the Real Property/Lease or grantee under the easement makes the necessary determination to sell its interest therein, and allow such interest to be transferred to the purchaser of such interest.

11. It must contain a provision that prohibits and prevents the sale of the underlying fee interest in the Real Property and, if applicable, Facility without first obtaining the written consent of the Commissioner of MMB.

12 The Public Entity must be the lessee under the Real Property/Lease or grantee under the easement.

B. The provisions contained in this Section are not intended to and shall not prevent the Public Entity from including additional provisions in the Real Property/Facility Lease

or easement that are not inconsistent with or contrary to the requirements contained in this Section.

C. The expiration of the term of a Real Property/Facility Lease or easement shall not be an event that requires the Public Entity to reimburse the State Entity for any portion of the G.O. Grant, and upon such expiration the Public Entity's ownership interest in the Real Property and, if applicable, Facility shall no longer be subject to this Agreement.

D. The Public Entity shall fully and completely comply with all of the terms, conditions and provisions contained in a Real Property/Facility Lease or easement, and shall obtain and file, in the Office of the County Recorder or the Registrar of Titles, whichever is applicable, the Real Property/Facility Lease or easement or a short form or memorandum thereof.

**Section 2.07 Event(s) of Default.** The following events shall, unless waived in writing by the State Entity and the Commissioner of MMB, constitute an Event of Default under this Agreement upon either the State Entity or the Commissioner of MMB giving the Public Entity 30 days written notice of such event and the Public Entity's failure to cure such event during such 30 day time period for those Events of Default that can be cured within 30 days or within whatever time period is needed to cure those Events of Default that cannot be cured within 30 days as long as the Public Entity is using its best efforts to cure and is making reasonable progress in curing such Events of Default, however, in no event shall the time period to cure any Event of Default exceed 6 months unless otherwise consented to, in writing, by the State Entity and the Commissioner of MMB.

A. If any representation, covenant, or warranty made by the Public Entity in this Agreement, in any Draw Requisition, in any other document furnished pursuant to this Agreement, or in order to induce the State Entity to disburse any of the G.O. Grant, shall prove to have been untrue or incorrect in any material respect or materially misleading as of the time such representation, covenant, or warranty was made.

B. If the Public Entity fails to fully comply with any provision, term, condition, covenant, or warranty contained in this Agreement, the Declaration, or any other document referred to herein.

C. If the Public Entity fails to fully comply with any provision, term, condition, covenant or warranty contained in the G.O. Compliance Legislation, the Commissioner's Order, or the G.O. Bonding Legislation.

D. If the Public Entity fails to complete the Project, or cause the Project to be completed, by the Completion Date.

E. If the Public Entity fails to provide and expend the full amount of the matching funds, if any, required under Section 7.23 for the Project.

F. If the Public Entity fails to record the Declaration and deliver copies thereof as set forth in Section 2.05.W.

Notwithstanding the foregoing, any of the above delineated events that cannot be cured shall, unless waived in writing by the State Entity and the Commissioner of MMB, constitute an Event of Default under this Agreement immediately upon either the State Entity or the Commissioner of MMB giving the Public Entity written notice of such event.

**Section 2.08 Remedies.** Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of the State Entity, the State Entity or the Commissioner of MMB may enforce any or all of the following remedies.

A. The State Entity may refrain from disbursing the G.O. Grant; provided, however, the State Entity may make such disbursements after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder.

B. If the Event of Default involves a failure to comply with any of the provisions contained herein other than the provisions of Sections 4.01 or 4.02, then the Commissioner of MMB, as a third party beneficiary of this Agreement, may demand that the Outstanding Balance of the G.O. Grant be returned to it, and upon such demand the Public Entity shall return such amount to the Commissioner of MMB.

C. If the Event of Default involves a failure to comply with the provisions of Sections 4.01 or 4.02, then the Commissioner of MMB, as a third party beneficiary of this Agreement, may demand that the Public Entity pay the amounts that would have been paid if there had been full and complete compliance with such provisions, and upon such demand the Public Entity shall pay such amount to the Commissioner of MMB.

D. Either the State Entity or the Commissioner of MMB, as a third party beneficiary of this Agreement, may enforce any additional remedies they may have in law or equity.

The rights and remedies herein specified are cumulative and not exclusive of any rights or remedies that the State Entity or the Commissioner of MMB would otherwise possess.

If the Public Entity does not repay the amounts required to be paid under this Section or under any other provision contained in this Agreement within 30 days of demand by the Commissioner of MMB, or any amount ordered by a court of competent jurisdiction within 30 days of entry of judgment against the Public Entity and in favor of the State Entity and/or the Commissioner of MMB, then such amount may, unless precluded by law, be taken from or offset against any aids or other monies that the Public Entity is entitled to receive from the State of Minnesota.

**Section 2.09 Notification of Event of Default.** The Public Entity shall furnish to the State Entity and the Commissioner of MMB, as soon as possible and in any event within 7 days after it has obtained knowledge of the occurrence of each Event of Default or each event which with the giving of notice or lapse of time or both would constitute an Event of Default, a

statement setting forth details of each Event of Default or event which with the giving of notice or upon the lapse of time or both would constitute an Event of Default and the action which the Public Entity proposes to take with respect thereto.

**Section 2.10 Survival of Event of Default.** This Agreement shall survive any and all Events of Default and remain in full force and effect even upon the payment of any amounts due under this Agreement, and shall only terminate in accordance with the provisions contained in Section 2.12 and at the end of its term in accordance with the provisions contained in Section 2.11.

**Section 2.11 Term of Grant Agreement.** This Agreement shall, unless earlier terminated in accordance with any of the provisions contained herein, remain in full force and effect for the time period starting on the effective date hereof and ending on the date that corresponds to the date established by adding a time period equal to 125% of Useful Life of the Real Property and, if applicable, Facility to the date on which the Real Property and, if applicable, Facility is first used for the operation of the Governmental Program after such effective date. If there are no uncured Events of Default as of such date this Agreement shall terminate and no longer be of any force or effect, and the Commissioner of MMB shall execute whatever documents are needed to release the Real Property and, if applicable, Facility from the effect of this Agreement and the Declaration.

**Section 2.12 Modification and/or Early Termination of Grant.** If the Project is not started on or before the date that is 5 years from the effective date of this Agreement or all of the G.O. Grant has not been disbursed as of the date that is 4 years from the date on which the Project is started, or such later dates to which the Public Entity and the State Entity may agree in writing, then the State Entity's obligation to fund the G.O. Grant shall terminate. In such event, (i) if none of the G.O. Grant has been disbursed by such dates then the State Entity's obligation to fund any portion of the G.O. Grant shall terminate and this Agreement shall terminate and no longer be of any force or effect, and (ii) if some but not all of the G.O. Grant has been disbursed by such dates then the State Entity shall have no further obligation to provide any additional funding for the G.O. Grant and this Agreement shall remain in full force and effect but shall be modified and amended to reflect the amount of the G.O. Grant that was actually disbursed as of such date. This provision shall not, in any way, affect the Public Entity's obligation to complete the Project by the Completion Date.

This Agreement shall also terminate and no longer be of any force or effect upon the Public Entity's sale of its ownership interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01 and transmittal of all or a portion of the proceeds of such sale to the Commissioner of MMB in compliance with the provisions contained in Section 4.02, or upon the termination of Public Entity's ownership interest in the Real Property and, if applicable, Facility if such ownership interest is by way of an easement or under a Real Property/Facility Lease. Upon such termination the State Entity shall execute, or have executed, and deliver to the Public Entity such documents as are required to release the Public Entity's ownership interest in the Real Property and, if applicable, Facility, from the effect of this Agreement and the Declaration.

Section 2.13 **Excess Funds.** If the full amount of the G.O. Grant and any matching funds referred to in Section 7.23 are not needed to complete the Project, then, unless language in the G.O. Bonding Legislation indicates otherwise, the G.O. Grant shall be reduced by the amount not needed.

## Article III

### USE CONTRACTS

Section 3.01 **General Provisions.** If the Public Entity has statutory authority to enter into a Use Contract, then it may enter into Use Contracts for various portions of the Real Property and, if applicable, Facility; provided that each and every Use Contract that the Public Entity enters into must comply with the following requirements:

A. The purpose for which it was entered into must be to operate the Governmental Program in the Real Property and, if applicable, Facility.

B. It must contain a provision setting forth the statutory authority under which the Public Entity is entering into such contract, and must comply with the substantive and procedural provisions of such statute.

C. It must contain a provision stating that it is being entered into in order for the Counterparty to operate the Governmental Program and must describe such program.

D. It must contain a provision that will provide for oversight by the Public Entity. Such oversight may be accomplished by way of a provision that will require the Counterparty to provide to the Public Entity: (i) an initial program evaluation report for the first fiscal year that the Counterparty will operate the Governmental Program, (ii) program budgets for each succeeding fiscal year showing that forecast program revenues and additional revenues available for the operation of the Governmental Program (from all sources) by the Counterparty will equal or exceed expenses for such operation for each succeeding fiscal year, and (iii) a mechanism under which the Public Entity will annually determine that the Counterparty is using the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract to operate the Governmental Program.

E. It must allow for termination by the Public Entity in the event of a default thereunder by the Counterparty, or in the event that the Governmental Program is terminated or changed in a manner that precludes the operation of such program in the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract.

F. It must terminate upon the termination of the statutory authority under which the Public Entity is operating the Governmental Program.

G. It must require the Counterparty to pay all costs of operation and maintenance of that portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract, unless the Public Entity is authorized by law to pay such costs and agrees to pay such costs.

H. If the Public Entity pays monies to a Counterparty under a Use Contract, such Use Contract must meet the requirements of Rev. Proc. 97-13, 1997-1 CB 632, so that such Use Contract does not result in "private business use" under Section 141(b) of the Code.

I. It must be approved, in writing, by the Commissioner of MMB, and any Use Contract that is not approved, in writing, by the Commissioner of MMB shall be null and void and of no force or effect.

J. It must contain a provision requiring that each and every party thereto shall, upon direction by the Commissioner of MMB, take such actions and furnish such documents to the Commissioner of MMB as the Commissioner of MMB determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal income taxation.

K. It must contain a provision that prohibits the Counterparty from creating or allowing, without the prior written consent of the State Entity and the Commissioner of MMB, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Real Property or, if applicable, Facility, the Public Entity's ownership interest in the Real Property or, if applicable, Facility, or the Counterparty's interest in the Use Contract, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner of MMB will consent, in writing, to any such lien or encumbrance that secures the repayment of a loan the repayment of which will not impair or burden the funds needed to operate the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract in the manner specified in Section 2.04 and for which the entire amount is used (i) to acquire additional real estate that is needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04 and will be included in and as part of the Public Entity's ownership interest in the Real Property and, if applicable, Facility, and/or (ii) to pay for capital improvements that are needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

L. If the amount of the G.O. Grant exceeds \$200,000.00, then it must contain a provision requiring the Counterparty to list any vacant or new positions it may have with state workforce centers as required by Minn. Stat. § 116L.66, as it may be amended, modified or replaced from time to time, for the term of the Use Contract.

M. It must contain a provision that clearly states that the Public Entity is not required to renew the Use Agreement beyond the original term thereof and that the Public Entity may, at its sole option and discretion, allow the Use Agreement to expire at the end of its original term and thereafter directly operate the governmental program in the Real Property

and, if applicable, Facility or contract with some other entity to operate the governmental program in the Real Property and, if applicable, Facility.

**Section 3.02 Initial Term and Renewal.** The initial term for a Use Contract may not exceed the lesser of (i) 50% of the Useful Life of the Real Property and, if applicable, Facility for the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract, or (ii) the shortest term of the Public Entity's ownership interest in the Real Property and, if applicable, Facility.

A Use Contract may allow for renewals beyond its initial term on the conditions that (a) the term of any renewal may not exceed the initial term, (b) the Public Entity must make a determination that renewal will continue to carry out the Governmental Program and that the Counterparty is suited and able to perform the functions contained in Use Contract that is to be renewed, (c) the Use Contract may not include any provisions that would require, either directly or indirectly, the Public Entity to either make the determination referred to in this Section or to renew the Use Contract with the Counterparty after the expiration of the initial term or any renewal term, and (d) no such renewal may occur prior to the date that is 6 months prior to the date on which the Use Contract is scheduled to terminate. Provided, however, notwithstanding anything to the contrary contained herein the Public Entity's voluntary agreement to reimburse the Counterparty for any investment that the Counterparty provided for the acquisition or betterment of the Real Property and, if applicable, Facility that is the subject of the Use Contract if the Public Entity does not renew a Use Contract if requested by the Counterparty is not deemed to be a provision that directly or indirectly requires the Public Entity to renew such Use Contract.

**Section 3.03 Reimbursement of Counterparty.** A Use Contract may but need not contain, at the sole option and discretion of the Public Entity, a provision that requires the Public Entity to reimburse the Counterparty for any investment that the Counterparty provided for the acquisition or betterment of the Real Property and, if applicable, Facility that is the subject of the Use Contract if the Public Entity does not renew a Use Contract if requested by the Counterparty. If agreed to by the Public Entity, such reimbursement shall be on terms and conditions agreed to by the Public Entity and the Counterparty.

**Section 3.04 Receipt of Monies Under a Use Contract.** The Public Entity does not anticipate the receipt of any funds under a Use Contract, provided, however, if the Public Entity does receive any monies under a Use Contract in excess of the amount the Public Entity needs and is authorized to use to pay the operating expenses of the portion of the Real Property and, if applicable, Facility that is the subject of a Use Contract, and to pay the principal, interest, redemption premiums, and other expenses on Approved Debt, then a portion of such excess monies must be paid by the Public Entity to the Commissioner of MMB. The portion of such excess monies that the Public Entity must and shall pay to the Commissioner of MMB shall be determined by the Commissioner of MMB, and absent circumstances which would indicate otherwise such portion shall be determined by multiplying such excess monies by a fraction the numerator of which is the G.O. Grant and the denominator of which is sum of the G.O. Grant and the Approved Debt.

## Article IV

### SALE

Section 4.01 **Sale.** The Public Entity shall not sell any part of its ownership interest in the Real Property and, if applicable, Facility unless all of the following provisions have been complied with fully.

A. The Public Entity determines, by official action, that such ownership interest is no longer usable or needed for the operation of the Governmental Program, which such determination may be based on a determination that the portion of the Real Property or, if applicable, Facility to which such ownership interest applies is no longer suitable or financially feasible for such purpose.

B. The sale is made as authorized by law.

C. The sale is for Fair Market Value.

D. The written consent of the Commissioner of MMB has been obtained.

The acquisition of the Public Entity's ownership interest in the Real Property and, if applicable, Facility at a foreclosure sale, by acceptance of a deed-in-lieu of foreclosure, or enforcement of a security interest in personal property used in the operation thereof, by a lender that has provided monies for the acquisition of the Public Entity's ownership interest in or betterment of the Real Property and, if applicable, Facility shall not be considered a sale for the purposes of this Agreement if after such acquisition the lender operates such portion of the Real Property and, if applicable, Facility in a manner which is not inconsistent with the requirements imposed under Section 2.04 and the lender uses its best efforts to sell such acquired interest to a third party for Fair Market Value. The lender's ultimate sale or disposition of the acquired interest in the Real Property and, if applicable, Facility shall be deemed to be a sale for the purposes of this Agreement, and the proceeds thereof shall be disbursed in accordance with the provisions contained in Section 4.02.

The Public Entity may participate in any public auction of its ownership interest in the Real Property and, if applicable, Facility and bid thereon; provided that the Public Entity agrees that if it is the successful purchaser it will not use any part of the Real Property or, if applicable, Facility for the Governmental Program.

Section 4.02 **Proceeds of Sale.** Upon the sale of the Public Entity's ownership interest in the Real Property and, if applicable, Facility the proceeds thereof after the deduction of all costs directly associated and incurred in conjunction with such sale and such other costs that are approved, in writing, by the Commissioner of MMB, but not including the repayment of any debt associated with the Public Entity's ownership interest in the Real Property and, if applicable, Facility, shall be disbursed in the following manner and order.

A. The first distribution shall be to the Commissioner of MMB in an amount equal to the Outstanding Balance of the G.O. Grant, and if the amount of such net proceeds shall be

less than the amount of the Outstanding Balance of the G.O. Grant then all of such net proceeds shall be distributed to the Commissioner of MMB.

B. The remaining portion, after the distribution specified in Section 4.02A, shall be distributed to (i) pay in full any outstanding Approved Debt, (ii) reimburse the Public Entity for its Ownership Value, and (iii) to pay interested public and private entities, other than any such entity that has already received the full amount of its contribution (such as the State Entity under Section 4.02.A and the holders of Approved Debt paid under this Section 4.02.B), the amount of money that such entity contributed to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs. If such remaining portion is not sufficient to reimburse interested public and private entities for the full amount that such entities contributed to the acquisition or betterment of the Real Property and, if applicable, Facility; then the amount available shall be distributed as such entities may agree in writing and if such entities cannot agree by an appropriately issued court order.

C. The remaining portion, after the distributions specified in Sections 4.02.A and B, shall be divided and distributed to the State Entity, the Public Entity, and any other public and private entity that contributed funds to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs, other than lenders who supplied any of such funds, in proportion to the contributions that the State Entity, the Public Entity, and such other public and private entities made to the acquisition and betterment of the Real Property and, if applicable, Facility as such amounts are part of the Ownership Value, Initial Acquisition and Betterment Costs, and Subsequent Betterment Costs.

The distribution to the State Entity shall be made to the Commissioner of MMB, and the Public Entity may direct its distribution to be made to any other entity including, but not limited to, a Counterparty.

All amounts to be disbursed under this Section 4.02 must be consented to, in writing, by the Commissioner of MMB, and no such disbursements shall be made without such consent.

The Public Entity shall not be required to pay or reimburse the State Entity or the Commissioner of MMB for any funds above and beyond the full net proceeds of such sale, even if such net proceeds are less than the amount of the Outstanding Balance of the G.O. Grant.

## Article V

### COMPLIANCE WITH G.O. COMPLIANCE LEGISLATION AND THE COMMISSIONER'S ORDER

Section 5.01 **State Bond Financed Property.** The Public Entity and the State Entity acknowledge and agree that the Public Entity's ownership interest in the Real Property and, if applicable, Facility is, or when acquired by the Public Entity will be, "state bond financed property", as such term is used in the G.O. Compliance Legislation and the Commissioner's Order, and, therefore, the provisions contained in such statute and order apply, or will apply, to the Public Entity's ownership interest in the Real Property and, if applicable, Facility and any Use Contracts relating thereto.

Section 5.02 **Preservation of Tax Exempt Status.** In order to preserve the tax-exempt status of the G.O. Bonds, the Public Entity agrees as follows:

A. It will not use the Real Property or, if applicable, Facility, or use or invest the G.O. Grant or any other sums treated as "bond proceeds" under Section 148 of the Code including "investment proceeds," "invested sinking funds," and "replacement proceeds," in such a manner as to cause the G.O. Bonds to be classified as "arbitrage bonds" under Section 148 of the Code.

B. It will deposit into and hold all of the G.O. Grant that it receives under this Agreement in a segregated non-interest bearing account until such funds are used for payments for the Project in accordance with the provisions contained herein.

C. It will, upon written request, provide the Commissioner of MMB all information required to satisfy the informational requirements set forth in the Code including, but not limited to, Sections 103 and 148 thereof, with respect to the G.O. Bonds.

D. It will, upon the occurrence of any act or omission by the Public Entity or any Counterparty that could cause the interest on the G.O. Bonds to no longer be tax exempt and upon direction from the Commissioner of MMB, take such actions and furnish such documents as the Commissioner of MMB determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal taxation, which such action may include either: (i) compliance with proceedings intended to classify the G.O. Bonds as a "qualified bond" within the meaning of Section 141(e) of the Code, (ii) changing the nature or terms of the Use Contract so that it complies with Revenue Procedure 97-13, 1997-1 CB 632, or (iii) changing the nature of the use of the Real Property or, if applicable, Facility so that none of the net proceeds of the G.O. Bonds will be used, directly or indirectly, in an "unrelated trade or business" or for any "private business use" (within the meaning of Sections 141(b) and 145(a) of the Code), or (iv) compliance with other Code provisions, regulations, or revenue procedures which amend or supersede the foregoing.

E. It will not otherwise use any of the G.O. Grant, including earnings thereon, if any, or take or permit to or cause to be taken any action that would adversely affect the exemption from federal income taxation of the interest on the G.O. Bonds, nor otherwise

omit, take, or cause to be taken any action necessary to maintain such tax exempt status, and if it should take, permit, omit to take, or cause to be taken, as appropriate, any such action, it shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

**Section 5.03 Changes to G.O. Compliance Legislation or the Commissioner's Order.** In the event that the G.O. Compliance Legislation or the Commissioner's Order is amended in a manner that reduces any requirement imposed against the Public Entity, or if the Public Entity's ownership interest in the Real Property or, if applicable, Facility is exempt from the G.O. Compliance Legislation and the Commissioner's Order, then upon written request by the Public Entity the State Entity shall enter into and execute an amendment to this Agreement to implement herein such amendment to or exempt the Public Entity's ownership interest in the Real Property and, if applicable, Facility from the G.O. Compliance Legislation or the Commissioner's Order.

## **Article VI DISBURSEMENT OF GRANT PROCEEDS**

**Section 6.01 The Advances.** The State Entity agrees, on the terms and subject to the conditions set forth herein, to make Advances from the G.O. Grant to the Public Entity from time to time in an aggregate total amount not to exceed the amount of the G.O. Grant. If the amount of G.O. Grant that the State Entity cumulatively disburses hereunder to the Public Entity is less than the amount of the G.O. Grant delineated in Section 1.01, then the State Entity and the Public Entity shall enter into and execute whatever documents the State Entity may request in order to amend or modify this Agreement to reduce the amount of the G.O. Grant to the amount actually disbursed. Provided, however, in accordance with the provisions contained in Section 2.11, the State Entity's obligation to make Advances shall terminate as of the dates specified in such Section even if the entire G.O. Grant has not been disbursed by such dates.

Advances shall only be for expenses that (i) are for those items of a capital nature for the Project, (ii) accrued no earlier than the effective date of the G.O. Bonding Legislation, or (iii) have otherwise been consented to, in writing, by the State Entity and the Commissioner of MMB.

It is the intent of the parties hereto that the rate of disbursement of the Advances shall not exceed the rate of completion of the Project or the rate of disbursement of the matching funds required, if any, under Section 7.23. Therefore, the cumulative amount of all Advances disbursed by the State Entity at any point in time shall not exceed the portion of the Project that has been completed and the percentage of the matching funds required, if any, under Section 7.23 that have been disbursed as of such point in time. This requirement is expressed by way of the following two formulas:

Formula #1

Cumulative Advances  $\leq$  (G.O. Grant)  $\times$  (percentage of matching funds, if any, required under Section 7.23 that have been disbursed)

Formula #2

Cumulative Advances  $\leq$  (G.O. Grant)  $\times$  (percentage of Project completed)

**Section 6.02 Draw Requisitions.** Whenever the Public Entity desires a disbursement of a portion of the G.O. Grant, which shall be no more often than once each calendar month, the Public Entity shall submit to the State Entity a Draw Requisition duly executed on behalf of the Public Entity or its designee. Each Draw Requisition shall be submitted on or between the 1<sup>st</sup> day and the 15<sup>th</sup> day of the month in which an Advance is requested, and shall be submitted at least 7 calendar days before the date the Advance is desired. Each Draw Requisition with respect to construction items shall be limited to amounts equal to: (i) the total value of the classes of the work by percentage of completion as approved by the Public Entity and the State Entity, plus (ii) the value of materials and equipment not incorporated in the Project but delivered and suitably stored on or off the Real Property in a manner acceptable to the State Entity, less (iii) any applicable retainage, and less (iv) all prior Advances.

Notwithstanding anything herein to the contrary, no Advances for materials stored on or off the Real Property will be made by the State Entity unless the Public Entity shall advise the State Entity, in writing, of its intention to so store materials prior to their delivery and the State Entity has not objected thereto.

At the time of submission of each Draw Requisition, other than the final Draw Requisition, the Public Entity shall submit to the State Entity such supporting evidence as may be requested by the State Entity to substantiate all payments which are to be made out of the relevant Draw Requisition or to substantiate all payments then made with respect to the Project.

At the time of submission of the final Draw Requisition which shall not be submitted before completion of the Project, including all landscape requirements and off-site utilities and streets needed for access to the Real Property and, if applicable, Facility and correction of material defects in workmanship or materials (other than the completion of punch list items) as provided in the Construction Contract Documents, the Public Entity shall submit to the State Entity: (i) such supporting evidence as may be requested by the State Entity to substantiate all payments which are to be made out of the final Draw Requisition or to substantiate all payments then made with respect to the Project, and (ii) satisfactory evidence that all work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities, and that all requisite certificates of occupancy and other approvals have been issued.

If on the date an Advance is desired the Public Entity has complied with all requirements of this Agreement and the State Entity approves the relevant Draw Requisition and receives a current construction report from the Inspecting Engineer recommending payment, then the State Entity shall disburse the amount of the requested Advance to the Public Entity.

**Section 6.03 Additional Funds.** If the State Entity shall at any time in good faith determine that the sum of the undisbursed amount of the G.O. Grant plus the amount of all other funds committed to the Project is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the Project, then the State

Entity may send written notice thereof to the Public Entity specifying the amount which must be supplied in order to provide sufficient funds to complete the Project. The Public Entity agrees that it will, within 10 calendar days of receipt of any such notice, supply or have some other entity supply the amount of funds specified in the State Entity's notice.

**Section 6.04 Condition Precedent to Any Advance.** The obligation of the State Entity to make any Advance hereunder (including the initial Advance) shall be subject to the following conditions precedent:

A. The State Entity shall have received a Draw Requisition for such Advance specifying the amount of funds being requested, which such amount when added to all prior requests for an Advance shall not exceed the amount of the G.O. Grant delineated in Section 1.01.

B. The State Entity shall have either received a duly executed Declaration that has been duly recorded in the appropriate governmental office, with all of the recording information displayed thereon, or evidence that such Declaration will promptly be recorded and delivered to the State Entity.

C. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that (i) the Public Entity has legal authority to and has taken all actions necessary to enter into this Agreement and the Declaration, and (ii) this Agreement and the Declaration are binding on and enforceable against the Public Entity.

D. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity has sufficient funds to fully and completely pay for the Project and all other expenses that may occur in conjunction therewith.

E. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity is in compliance with the matching funds requirements, if any, contained in Section 7.23.

F. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, showing that the Public Entity possesses the ownership interest delineated in Section 2.02.

G. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Real Property and, if applicable, Facility, and the contemplated use thereof are permitted by and will comply with all applicable use or other restrictions and requirements imposed by applicable zoning ordinances or regulations, and, if required by law, have been duly approved by the applicable municipal or governmental authorities having jurisdiction thereover.

H. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that that all applicable and required building permits, other permits, bonds and licenses necessary for the Project have been paid for, issued, and obtained, other

than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

I. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that that all applicable and required permits, bonds and licenses necessary for the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04 have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

J. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Project will be completed in a manner that will allow the Real Property and, if applicable, Facility to be operated in the manner specified in Section 2.04.

K. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity has the ability and a plan to fund the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04.

L. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the insurance requirements under Section 7.01 have been satisfied.

M. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, of compliance with the provisions and requirements specified in Section 7.10 and all additional applicable provisions and requirements, if any, contained in Minn. Stat. § 16B.335, as it may be amended, modified or replaced from time to time. Such evidence shall include, but not be limited to, evidence that: (i) the predesign package referred to in Section 7.10.B has, if required, been reviewed by and received a favorable recommendation from the Commissioner of Administration for the State of Minnesota, (ii) the program plan and cost estimates referred to in Section 7.10.C have, if required, received a recommendation by the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways and Means Committee, and (iii) the Chair of the Minnesota House of Representatives Capital Investment Committee has, if required, been notified pursuant to Section 7.10.G.

N. No Event of Default under this Agreement or event which would constitute an Event of Default but for the requirement that notice be given or that a period of grace or time elapse shall have occurred and be continuing.

O. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Contractor will complete the Construction Items substantially in conformance with the Construction Contract Documents and pay all amounts lawfully owing to all laborers and materialmen who worked on the Construction Items or supplied materials therefore, other than amounts being contested in good faith. Such evidence may be in the form of payment and performance bonds in amounts equal to or greater than the

amount of the fixed price or guaranteed maximum price contained in the Construction Contract Documents that name the State Entity and the Public Entity dual obligees thereunder, or such other evidence as may be acceptable to the Public Entity and the State Entity.

P. No determination shall have been made by the State Entity that the amount of funds committed to the Project is less than the amount required to pay all costs and expenses of any kind that may reasonably be anticipated in connection with the Project, or if such a determination has been made and notice thereof sent to the Public Entity under Section 6.03, then the Public Entity has supplied, or has caused some other entity to supply, the necessary funds in accordance with such section or has provided evidence acceptable to the State Entity that sufficient funds are available.

Q. The Public Entity has supplied to the State Entity all other items that the State Entity may reasonably require.

**Section 6.05 Construction Inspections.** The Public Entity and the Architect, if any, shall be responsible for making their own inspections and observations of the Construction Items, and shall determine to their own satisfaction that the work done or materials supplied by the Contractors to whom payment is to be made out of each Advance has been properly done or supplied in accordance with the Construction Contract Documents. If any work done or materials supplied by a Contractor are not satisfactory to the Public Entity or the Architect, if any, or if a Contractor is not in material compliance with the Construction Contract Documents in any respect, then the Public Entity shall immediately notify the State Entity, in writing. The State Entity and the Inspecting Engineer, if any, may conduct such inspections of the Construction Items as either may deem necessary for the protection of the State Entity's interest, and that any inspections which may be made of the Project by the State Entity or the Inspecting Engineer, if any, are made and all certificates issued by the Inspecting Engineer, if any, will be issued solely for the benefit and protection of the State Entity, and the Public Entity will not rely thereon.

## **Article VII MISCELLANEOUS**

**Section 7.01 Insurance.** The Public Entity shall, upon acquisition of the ownership interest delineated in Section 2.02, insure the Facility, if such exists, in an amount equal to the full insurable value thereof (i) by self insuring under a program of self insurance legally adopted, maintained and adequately funded by the Public Entity, or (ii) by way of builders risk insurance and fire and extended coverage insurance with a deductible in an amount acceptable to the State Entity under which the State Entity and the Public Entity are named as loss payees. If damages which are covered by such required insurance occur, then the Public Entity shall, at its sole option and discretion, either: (y) use or cause the insurance proceeds to be used to fully or partially repair such damage and to provide or cause to be provided whatever additional funds that may be needed to fully or partially repair such damage, or (z) sell its ownership interest in the damaged Facility and portion of the Real Property associated therewith in accordance with the provisions contained in Section 4.01.

If the Public Entity elects to only partially repair such damage, then the portion of the insurance proceeds not used for such repair shall be applied in accordance with the provisions contained in Section 4.02 as if the Public Entity's ownership interest in the Real Property and Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 4.02 upon the ultimate sale of the Public Entity's ownership interest in the Real Property and Facility. If the Public Entity elects to sell its ownership interest in the damaged Facility and portion of the Real Property associated therewith, then such sale must occur within a reasonable time period from the date the damage occurred and the cumulative sum of the insurance proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 4.02, with the insurance proceeds being so applied within a reasonable time period from the date they are received by the Public Entity.

The State Entity agrees to and will assign or pay over to the Public Entity all insurance proceeds it receives so that the Public Entity can comply with the requirements that this Section imposes thereon as to the use of such insurance proceeds.

If the Public Entity elects to maintain general comprehensive liability insurance regarding the Real Property and, if applicable, Facility, then the Public Entity shall have the State Entity named as an additional named insured therein.

The Public Entity may require a Counterparty to provide and maintain any or all of the insurance required under this Section; provided that the Public Entity continues to be responsible for the providing of such insurance in the event that the Counterparty fails to provide or maintain such insurance.

At the written request of either the State Entity or the Commissioner of MMB, the Public Entity shall promptly furnish to the requesting entity all written notices and all paid premium receipts received by the Public Entity regarding the required insurance, or certificates of insurance evidencing the existence of such required insurance.

If the Public Entity fails to provide and maintain the insurance required under this Section, then the State Entity may, at its sole option and discretion, obtain and maintain insurance of an equivalent nature and any funds expended by the State Entity to obtain or maintain such insurance shall be due and payable on demand by the State Entity and bear interest from the date of advancement by the State Entity at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per annum based upon a 365-day year. Provided, however, nothing contained herein, including but not limited to this Section, shall require the State Entity to obtain or maintain such insurance, and the State Entity's decision to not obtain or maintain such insurance shall not lessen the Public Entity's duty to obtain and maintain such insurance.

**Section 7.02 Condemnation.** If after the Public Entity has acquired the ownership interest delineated in Section 2.02 all or any portion of the Real Property and, if applicable, Facility is condemned to an extent that the Public Entity can no longer comply with the provisions contained in Section 2.04, then the Public Entity shall, at its sole option and discretion, either: (i) use or cause the condemnation proceeds to be used to acquire an interest in

additional real property needed for the Public Entity to continue to comply with the provisions contained in Section 2.04 and, if applicable, to fully or partially restore the Facility and to provide or cause to be provided whatever additional funds that may be needed for such purposes, or (ii) sell the remaining portion of its ownership interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01. Any condemnation proceeds which are not used to acquire an interest in additional real property or to restore, if applicable, the Facility shall be applied in accordance with the provisions contained in Section 4.02 as if the Public Entity's ownership interest in the Real Property and, if applicable, Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 4.02 upon the ultimate sale of the Public Entity's ownership interest in the remaining Real Property and, if applicable, Facility. If the Public Entity elects to sell its ownership interest in the portion of the Real Property and, if applicable, Facility that remains after the condemnation, then such sale must occur within a reasonable time period from the date the condemnation occurred and the cumulative sum of the condemnation proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 4.02, with the condemnation proceeds being so applied within a reasonable time period from the date they are received by the Public Entity.

As recipient of any of condemnation awards or proceeds referred to herein, the State Entity agrees to and will disclaim, assign or pay over to the Public Entity all of such condemnation awards or proceeds it receives so that the Public Entity can comply with the requirements that this Section imposes upon the Public Entity as to the use of such condemnation awards or proceeds.

**Section 7.03 Use, Maintenance, Repair and Alterations.** The Public Entity shall (i) keep the Real Property and, if applicable, Facility, in good condition and repair, subject to reasonable and ordinary wear and tear, (ii) complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Real Property and promptly restore in like manner any portion of the Facility, if applicable, which may be damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefore, (iii) comply with all laws, ordinances, regulations, requirements, covenants, conditions and restrictions now or hereafter affecting the Real Property or, if applicable, Facility, or any part thereof, or requiring any alterations or improvements thereto, (iv) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair, (v) comply with the provisions of any Real Property/Facility Lease if the Public Entity's ownership interest in the Real Property and, if applicable, Facility, is a leasehold interest, (vi) comply with the provisions of any easement if its ownership interest in the Real Property and, if applicable, Facility is by way of such easement, and (vii) comply with the provisions of any condominium documents and any applicable reciprocal easement or operating agreements if the Real Property and, if applicable, Facility, is part of a condominium regime or is subject to a reciprocal easement or use agreement.

The Public Entity shall not, without the written consent of the State Entity and the Commissioner of MMB, (a) permit or suffer the use of any of the Real Property or, if applicable, Facility, for any purpose other than the purposes specified in Section 2.04, (b) remove, demolish or substantially alter any of the Real Property or, if applicable, Facility, except such alterations as

may be required by laws, ordinances or regulations or such other alterations as may improve such Real Property or, if applicable, Facility by increasing the value thereof or improving its ability to be used to operate the Governmental Program thereon or therein, (c) do any act or thing which would unduly impair or depreciate the value of the Real Property or, if applicable, Facility, (d) abandon the Real Property or, if applicable, Facility, (e) commit or permit any waste or deterioration of the Real Property or, if applicable, Facility, (f) remove any fixtures or personal property from the Real Property or, if applicable, Facility, that was paid for with the proceeds of the G.O. Grant unless the same are immediately replaced with like property of at least equal value and utility, or (g) commit, suffer or permit any act to be done in or upon the Real Property or, if applicable, Facility, in violation of any law, ordinance or regulation.

If the Public Entity fails to maintain the Real Property and, if applicable, Facility in accordance with the provisions contained in this Section, then the State Entity may perform whatever acts and expend whatever funds that are necessary to so maintain the Real Property and, if applicable, Facility and the Public Entity irrevocably authorizes and empowers the State Entity to enter upon the Real Property and, if applicable, Facility, to perform such acts as may be necessary to so maintain the Real Property and, if applicable, Facility. Any actions taken or funds expended by the State Entity hereunder shall be at its sole option and discretion, and nothing contained herein, including but not limited to this Section, shall require the State Entity to take any action, incur any expense, or expend any funds, and the State Entity shall not be responsible for or liable to the Public Entity or any other entity for any such acts that are undertaken and performed in good faith and not in a negligent manner. Any funds expended by the State Entity to perform such acts as may be necessary to so maintain the Real Property and, if applicable, Facility shall be due and payable on demand by the State Entity and bear interest from the date of advancement by the State Entity at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per annum based upon a 365 day year.

**Section 7.04 Records Keeping and Reporting.** The Public Entity shall maintain or cause to be maintained books, records, documents and other evidence pertaining to the costs or expenses associated with the Project and operation of the Real Property and, if applicable, Facility needed to comply with the requirements contained in this Agreement, the G.O. Compliance Legislation, the Commissioner's Order, and the G.O. Bonding Legislation, and upon request shall allow or cause the entity which is maintaining such items to allow the State Entity, auditors for the State Entity, the Legislative Auditor for the State of Minnesota, or the State Auditor for the State of Minnesota, to inspect, audit, copy, or abstract, all of such items. The Public Entity shall use or cause the entity which is maintaining such items to use generally accepted accounting principles in the maintenance of such items, and shall retain or cause to be retained (i) all of such items that relate to the Project for a period of 6 years from the date that the Project is fully completed and placed into operation, and (ii) all of such items that relate to the operation of the Real Property and, if applicable, Facility for a period of 6 years from the date such operation is initiated.

**Section 7.05 Inspections by State Entity.** Upon reasonable request by the State Entity and without interfering with the normal use of the Real Property and, if applicable, Facility, the Public Entity shall allow and will require any entity to whom it leases, subleases, or enters into a

Use Contract for any portion of the Real Property and, if applicable, Facility to allow the State Entity to inspect the Real Property and, if applicable, Facility.

**Section 7.06 Data Practices.** The Public Entity agrees with respect to any data that it possesses regarding the G.O. Grant, the Project, or the operation of the Real Property and, if applicable, Facility, to comply with all of the provisions and restrictions contained in the Minnesota Government Data Practices Act contained in Chapter 13 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

**Section 7.07 Non-Discrimination.** The Public Entity agrees to not engage in discriminatory employment practices regarding the Project, or operation or management of the Real Property and, if applicable, Facility, and it shall, with respect to such activities, fully comply with all of the provisions contained in Chapters 363A and 181 of the Minnesota Statutes that exist as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

**Section 7.08 Worker's Compensation.** The Public Entity agrees to comply with all of the provisions relating to worker's compensation contained in Minn. Stat. §§ 176.181 subd. 2 and 176.182, as they may be amended, modified or replaced from time to time, with respect to the Project and the operation or management of the Real Property and, if applicable, Facility.

**Section 7.09 Antitrust Claims.** The Public Entity hereby assigns to the State Entity and the Commissioner of MMB all claims it may have for over charges as to goods or services provided with respect to the Project, and operation or management of the Real Property and, if applicable, Facility that arise under the antitrust laws of the State of Minnesota or of the United States of America.

**Section 7.10 Review of Plans and Cost Estimates.** The Public Entity agrees to comply with all applicable provisions and requirements, if any, contained in Minn. Stat. § 16B.335, as it may be amended, modified or replaced from time to time, for the Project, and in accordance therewith the Public Entity agrees to comply with the following provisions and requirements if such provisions and requirements are applicable.

A. The Public Entity shall provide all information that the State Entity may request in order for the State Entity to determine that the Project will comply with the provisions and requirements contained in Minn. Stat. § 16B.335, as it may be amended, modified or replaced from time to time.

B. Prior to its proceeding with design activities for the Project the Public Entity shall prepare a predesign package and submit it to the Commissioner of Administration for the State of Minnesota for review and comment. The predesign package must be sufficient to define the purpose, scope, cost, and projected schedule for the Project, and must demonstrate that the Project has been analyzed according to appropriate space and needs standards. Any substantial changes to such predesign package must be submitted to the Commissioner of Administration for the State of Minnesota for review and comment.

C. If the Project includes the construction of a new building, substantial addition to an existing building, a substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then the Public Entity shall not prepare final plans and specifications until it has prepared a program plan and cost estimates for all elements necessary to complete the Project and presented them to the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways and Means Committee and the chairs have made their recommendations, and it has notified the Chair of the Minnesota House of Representatives Capital Investment Committee. The program plan and cost estimates must note any significant changes in the work to be performed on the Project, or in its costs, which have arisen since the appropriation from the legislature for the Project was enacted or which differ from any previous predesign submittal.

D. The Public Entity must notify the Chairs of the Minnesota State Senate Finance Committee, the Minnesota House of Representatives Capital Investment Committee and the Minnesota House of Representatives Ways and Means Committee of any significant changes to the program plan and cost estimates referred to in Section 7.10.C.

E. The program plan and cost estimates referred to in Section 7.10.C must ensure that the Project will comply with all applicable energy conservation standards contained in law, including Minn. Stat. §§ 216C.19 to 216C.20, as they may be amended, modified or replaced from time to time, and all rules adopted thereunder.

F. If any of the G.O. Grant is to be used for the construction or remodeling of the Facility, then both the predesign package referred to in Section 7.10.B and the program plan and cost estimates referred to in Section 7.10.C must include provisions for cost-effective information technology investments that will enable the occupant of the Facility to reduce its need for office space, provide more of its services electronically, and decentralize its operations.

G. If the Project does not involve the construction of a new building, substantial addition to an existing building, substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then prior to beginning work on the Project the Public Entity shall just notify the Chairs of the Minnesota State Senate Finance Committee, the Minnesota House of Representatives Capital Investment Committee and the Minnesota House of Representatives Ways and Means Committee that the work to be performed is ready to begin.

H. The Project must be: (i) substantially completed in accordance with the program plan and cost estimates referred to in Section 7.10.C, (ii) completed in accordance with the time schedule contained in the program plan referred to in Section 7.10.C, and (iii) completed within the budgets contained in the cost estimates referred to in Section 7.10.C.

Provided, however, the provisions and requirements contained in this Section only apply to public lands or buildings or other public improvements of a capital nature, and shall not apply to

the demolition or decommissioning of state assets, hazardous material projects, utility infrastructure projects, environmental testing, parking lots, exterior lighting, fencing, highway rest areas, truck stations, storage facilities not consisting primarily of offices or heated work areas, roads, bridges, rails, pathways, campgrounds, athletic fields, dams, floodwater retention systems, water access sites, harbors, sewer separation projects, water and wastewater facilities, port development projects for which the Commissioner of Transportation for the State of Minnesota has entered into an assistance agreement under Minn. Stat. § 457A.04, as it may be amended, modified or replaced from time to time, ice arenas, local government projects with a construction cost of less than \$1,500,000.00, or any other capital project with a construction cost of less than \$750,000.00.

**Section 7.11 Prevailing Wages.** The Public Entity agrees to comply with all of the applicable provisions contained in Chapter 177 of the Minnesota Statutes, and specifically those provisions contained in Minn. Stat. §§ 177.41 through 177.435, as they may be amended, modified or replaced from time to time with respect to the Project and the operation of the Governmental Program on or in the Real Property and, if applicable, Facility. By agreeing to this provision, the Public Entity is not acknowledging or agreeing that the cited provisions apply to the Project or the operation of the Governmental Program on or in the Real Property and, if applicable, Facility.

**Section 7.12 Liability.** The Public Entity and the State Entity agree that they will, subject to any indemnifications provided herein, be responsible for their own acts and the results thereof to the extent authorized by law, and they shall not be responsible for the acts of the other party and the results thereof. The liability of the State Entity and the Commissioner of MMB is governed by the provisions contained in Minn. Stat. § 3.736, as it may be amended, modified or replaced from time to time. If the Public Entity is a "municipality" as such term is used in Chapter 466 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, then the liability of the Public Entity, including but not limited to the indemnification provided under Section 7.13, is governed by the provisions contained in such Chapter 466.

**Section 7.13 Indemnification by the Public Entity.** The Public Entity shall bear all loss, expense (including attorneys' fees), and damage in connection with the Project and operation of the Real Property and, if applicable, Facility, and agrees to indemnify and hold harmless the State Entity, the Commissioner of MMB, and the State of Minnesota, their agents, servants and employees from all claims, demands and judgments made or recovered against the State Entity, the Commissioner of MMB, and the State of Minnesota, their agents, servants and employees, because of bodily injuries, including death at any time resulting therefrom, or because of damages to property of the State Entity, the Commissioner of MMB, or the State of Minnesota, or others (including loss of use) from any cause whatsoever, arising out of, incidental to, or in connection with the Project or operation of the Real Property and, if applicable, Facility, whether or not due to any act of omission or commission, including negligence of the Public Entity or any contractor or his or their employees, servants or agents, and whether or not due to any act of omission or commission (excluding, however, negligence or breach of statutory duty) of the State Entity, the Commissioner of MMB, or the State of Minnesota, their employees, servants or agents.

The Public Entity further agrees to indemnify, save, and hold the State Entity, the Commissioner of MMB, and the State of Minnesota, their agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation by the Public Entity, its officers, employees, or agents, or by any Counterparty, its officers, employees, or agents, of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce the provisions contained in Section 7.06.

The Public Entity's liability hereunder shall not be limited to the extent of insurance carried by or provided by the Public Entity, or subject to any exclusions from coverage in any insurance policy.

**Section 7.14 Relationship of the Parties.** Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners or a joint venture between the Public Entity, the State Entity, or the Commissioner of MMB, nor shall the Public Entity be considered or deemed to be an agent, representative, or employee of the State Entity, the Commissioner of MMB, or the State of Minnesota in the performance of this Agreement, the Project, or operation of the Real Property and, if applicable, Facility.

The Public Entity represents that it has already or will secure or cause to be secured all personnel required for the performance of this Agreement and the Project, and the operation and maintenance of the Real Property and, if applicable, Facility. All personnel of the Public Entity or other persons while engaging in the performance of this Agreement, the Project, or the operation and maintenance of the Real Property and, if applicable, Facility shall not have any contractual relationship with the State Entity, the Commissioner of MMB, or the State of Minnesota, and shall not be considered employees of any of such entities. In addition, all claims that may arise on behalf of said personnel or other persons out of employment or alleged employment including, but not limited to, claims under the Workers' Compensation Act of the State of Minnesota, claims of discrimination against the Public Entity, its officers, agents, contractors, or employees shall in no way be the responsibility of the State Entity, the Commissioner of MMB, or the State of Minnesota. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the State Entity, the Commissioner of MMB, or the State of Minnesota including, but not limited to, tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

**Section 7.15 Notices.** In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing and shall be sufficient if personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the business address of the party to whom it is directed. Such business address shall be that address specified below or such different address as may hereafter be specified, by either party by written notice to the other:

To the Public Entity at:

City of Minneapolis  
105 Fifth Avenue South, Suite 200  
Minneapolis, MN 55401  
Attention: Director of Department of Community Planning and Economic  
Development

To the State Entity at:

Minnesota Department of Employment and Economic Development  
332 Minnesota St. – Suite E200  
St. Paul, MN 55101  
Attention: Bruce Strong

To the Commissioner of MMB at:

Minnesota Department of Management and Budget  
400 Centennial Office Bldg.  
658 Cedar St.  
St. Paul, MN 55155  
Attention: Commissioner

**Section 7.16 Binding Effect and Assignment or Modification.** This Agreement and the Declaration shall be binding upon and inure to the benefit of the Public Entity and the State Entity, and their respective successors and assigns. Provided, however, that neither the Public Entity nor the State Entity may assign any of its rights or obligations under this Agreement or the Declaration without the prior written consent of the other party. No change or modification of the terms or provisions of this Agreement or the Declaration shall be binding on either the Public Entity or the State Entity unless such change or modification is in writing and signed by an authorized official of the party against which such change or modification is to be imposed.

**Section 7.17 Waiver.** Neither the failure by the Public Entity, the State Entity, or the Commissioner of MMB, as a third party beneficiary of this Agreement, in any one or more instances to insist upon the complete and total observance or performance of any term or provision hereof, nor the failure of the Public Entity, the State Entity, or the Commissioner of MMB, as a third party beneficiary of this Agreement, to exercise any right, privilege, or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of the Public Entity, the State Entity, or the Commissioner of MMB, as a third party beneficiary of this Agreement, in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

**Section 7.18 Entire Agreement.** This Agreement, the Declaration, and the documents, if any, referred to and incorporated herein by reference embody the entire agreement between the Public Entity and the State Entity, and there are no other agreements, either oral or written, between the Public Entity and the State Entity on the subject matter hereof.

Section 7.19 **Choice of Law and Venue.** All matters relating to the validity, construction, performance, or enforcement of this Agreement or the Declaration shall be determined in accordance with the laws of the State of Minnesota. All legal actions initiated with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued in the State of Minnesota District Court located in the City of St. Paul, County of Ramsey, State of Minnesota.

Section 7.20 **Severability.** If any provision of this Agreement is finally judged by any court to be invalid, then the remaining provisions shall remain in full force and effect and they shall be interpreted, performed, and enforced as if the invalid provision did not appear herein.

Section 7.21 **Time of Essence.** Time is of the essence with respect to all of the matters contained in this Agreement.

Section 7.22 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

Section 7.23 **Matching Funds.** The Public Entity must obtain and supply the following matching funds, if any, for the Project: At least **\$14,000,000.00**.

Any matching funds which are intended to meet the above requirements must either be in the form of (i) cash monies, (ii) legally binding commitments for money, or (iii) equivalent funds or contributions, including equity, which have been or will be used to pay for the Project. The Public Entity shall supply to the Commissioner of MMB whatever documentation the Commissioner of MMB may request to substantiate the availability and source of any matching funds, and the source and terms relating to all matching funds must be consented to, in writing, by the Commissioner of MMB.

Section 7.24 **Source and Use of Funds.** The Public Entity represents to the State Entity and the Commissioner of MMB that **Attachment III** is intended to be and is a source and use of funds statement showing the total cost of the Project and all of the funds that are available for the completion of the Project, and that the information contained in such **Attachment III** correctly and accurately delineates the following information.

A. The total cost of the Project detailing all of the major elements that make up such total cost and how much of such total cost is attributed to each such major element.

B. The source of all funds needed to complete the Project broken down among the following categories:

- (i) State funds including the G.O. Grant, identifying the source and amount of such funds.
- (ii) Matching funds, identifying the source and amount of such funds.

- (iii) Other funds supplied by the Public Entity, identifying the source and amount of such funds.
- (iv) Loans, identifying each such loan, the entity providing the loan, the amount of each such loan, the terms and conditions of each such loan, and all collateral pledged for repayment of each such loan.
- (v) Other funds, identifying the source and amount of such funds.

C. Such other financial information that is needed to correctly reflect the total funds available for the completion of the Project, the source of such funds and the expected use of such funds.

Previously paid project expenses that are to be reimbursed and paid from proceeds of the G.O. Grant may only be included as a source of funds and included in **Attachment III** if such items have been approved, in writing, by the Commissioner of MMB.

If any of the funds included under the source of funds have conditions precedent to the release of such funds, then the Public Entity must provide to the State Entity and the Commissioner of MMB a detailed description of such conditions and what is being done to satisfy such conditions.

The Public Entity shall also supply whatever other information and documentation that the State Entity or the Commissioner of MMB may request to support or explain any of the information contained in **Attachment III**.

The value of the Public Entity's ownership interest in the Real Property and, if applicable, Facility should only be shown in **Attachment III** if such ownership interest is being acquired and paid for with funds shown in such **Attachment III**, and for all other circumstances such value should be shown in the definition for Ownership Value in Section 1.01 and not included in such **Attachment III**.

The funds shown in **Attachment III** and to be supplied for the Project may, subject to any limitations contained in the G.O. Bonding Legislation, be provided by either the Public Entity or a Counterparty under a Use Contract.

Section 7.25 **Project Completion Schedule.** The Public Entity represents to the State Entity and the Commissioner of MMB that **Attachment IV** correctly and accurately delineates the projected schedule for the completion of the Project.

Section 7.26 **Third-Party Beneficiary.** The Governmental Program will benefit the State of Minnesota and the provisions and requirements contained herein are for the benefit of both the State Entity and the State of Minnesota. Therefore, the State of Minnesota, by and through its Commissioner of MMB, is and shall be a third-party beneficiary of this Agreement.

Section 7.27 **Public Entity Tasks.** Any tasks that this Agreement imposes upon the Public Entity may be performed by such other entity as the Public Entity may select or designate,

provided that the failure of such other entity to perform said tasks shall be deemed to be a failure to perform by the Public Entity.

**Section 7.28 State Entity and Commissioner Required Acts and Approvals.** The State Entity and the Commissioner of MMB shall not (i) perform any act herein required or authorized by it in an unreasonable manner, (ii) unreasonably refuse to perform any act that it is required to perform hereunder, or (iii) unreasonably refuse to provide or withhold any approval that is required of it herein.

**Section 7.29 Applicability to Real Property and Facility.** This Agreement applies to the Public Entity's ownership interest in the Real Property and if a Facility exists to the Facility. The term "if applicable" appearing in conjunction with the term "Facility" is meant to indicate that this Agreement will apply to a Facility if one exists, and if no Facility exists then this Agreement will only apply to the Public Entity's ownership interest in the Real Property.

**Section 7.30 E-Verification.** The Public Entity agrees and acknowledges that it is aware of Governor's Executive Order 08-01 regarding e-verification of employment of all newly hired employees to confirm that such employees are legally entitled to work in the United States, and that it will, if and when applicable, fully comply with such order and impose a similar requirement in any Use Agreement to which it is a party.

**Section 7.31 Additional Requirements.** The Public Entity and the State Entity agree to comply with the following additional requirements. In the event of any conflict or inconsistency between the following additional requirements and any other provisions or requirement contained in this Agreement, the following additional requirements contained in this Section shall control.

(If there are no additional requirements then insert the word "NONE".)

A. **Recitals.** The following recitals shall be inserted into the RECITALS:

G. Pursuant to the authority provided in the G.O. Bonding Legislation, the Public Entity is, concurrent with the execution of this Agreement, entering into an agreement with The Minnesota Orchestral Association to construct and develop the Project (as hereinafter defined), and manage and operate the Governmental Program in the Real Property and, if applicable, Facility.

H. The Public Entity and the State Entity have determined that the match required by the G.O. Bonding Legislation has been met, and the Project has sufficient funds to proceed as evidenced by the information shown in **Attachment III** to this Agreement.

I. The State Entity and the Public Entity acknowledge that under the provisions of the G.O. Bonding Legislation, the State of Minnesota has allocated \$2,000,000 in excess of the G.O. Grant for Peavey Plaza (the "Peavey G.O.

Grant”) and that the State Entity and the Public Entity intend to enter into a separate Grant Agreement for the provisions related to the Peavey G. O. Grant and the disbursement thereof.

B. **Definitions.** The definition for “Useful Life of the Real Property and, if applicable, Facility” in Section 1.01 shall be modified as follows with deletions shown as ~~strikethroughs~~ and additions shown as underlined:

“Useful Life of the Real Property and, if applicable, Facility” - means (i) ~~30 years for Real Property that has no structure situated thereon or if any structures situated thereon will be removed, and no new structures will be constructed thereon,~~ (ii) the remaining useful life of the Facility as of the effective date of this Agreement for Facilities that are situated on the Real Property as of the date of this Agreement, that will remain on the Real Property, and that will not be bettered, or (iii) the useful life of the Facility after the completion of the construction or betterments for Facilities that are to be constructed or bettered, which has been determined by the parties hereto to be 40 years from the start of construction or betterment.

The definition for “Priority Private Debt” shall be inserted in Section 1.01 as follows:

“Priority Private Debt” - means debt incurred by The Minnesota Orchestral Association after the date hereof to finance the acquisition and betterment of the Facility, which is entitled to priority payment under Section 4.02, subject only to repayment of the G.O. Grant, provided that the Commissioner of MMB has approved the characterization of such debt as Priority Private Debt in writing. Priority Private Debt may be secured by a mortgage on The Minnesota Orchestral Association’s leasehold interest in the Real Property. The parties acknowledge that as of entry into this Agreement, the Public Entity and the State Entity have approved that certain \$12.4M Revenue Bond Loan to be provided by Wells Fargo Bank, N.A. and U.S. Bank National Association, as Priority Private Debt.

C. **Section 2.04.** The last paragraph in Section 2.04 shall be modified as follows with deletions shown as ~~strikethroughs~~ and additions shown as underlined:

For those programs, if any, that will be operated on all or any portion of the Real Property and, if applicable, Facility by a Counterparty under a Use Contract, the Public Entity covenants with and represents and warrants to the State Entity that; (i) it will not enter into such Use Contract unless the Counterparty has demonstrated that it has the ability and a plan to fund such program, (ii) it will require the Counterparty to provide an initial program budget and annual program budgets that clearly show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal

year, (iii) it will promptly review all submitted program budgets to determine if such budget clearly and accurately shows that the forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iv) it will reject any program budget that it believes does not accurately reflect forecast program revenues or expenses or does not show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, and require the Counterparty to prepare and submit a revised program budget, and (v) upon receipt of a program budget that it believes accurately reflects forecast program revenues and expenses and that shows that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, it will approve such budget ~~by resolution~~ and supply to the State Entity and the Commissioner of MMB ~~certified copies of such resolution approval and such approved budget with such approval being done by its Director of Community Planning and Economic Development as delegated by the Minneapolis City Council.~~

D. **Section 2.06.** The language contained in Section 2.06.A.9 shall be modified as follows with deletions shown as ~~strikethroughs~~ and additions shown as underlined.

9. It must provide that any use restrictions contained therein only apply as long as the Public Entity is the lessee under the Real Property/Facility Lease or grantee under the easement, and that such use restrictions will terminate and not apply to any successor lessee or grantee who purchases the Public Entity's ownership interest in the Real Property/Facility Lease or easement. ~~Provided, however, it may contain a provisions that limits the construction of any new structures on the Real Property or modifications of any existing structures on the Real Property without the written consent of Lessor/Grantor, which will apply to any such successor lessee or grantee.~~

E. **Section 3.04.** The language in Section 3.04 shall be modified as follows, with deletions shown as ~~strikethroughs~~ and additions shown as underlined.

**Section 3.04 Receipt of Monies Under a Use Contract.** The Public Entity does not anticipate the receipt of any funds under a Use Contract, provided, however, if ~~If~~ the Public Entity does receive ~~receives~~ any monies under a Use Contract in excess of the amount the Public Entity needs and is authorized to use to pay the operating and maintenance expenses of the portion of the Real Property and, if applicable, Facility that is the subject of a Use Contract, and to pay the principal, interest, redemption premiums, and other expenses on Approved Debt, then a portion of such excess monies must be paid by the Public Entity to the Commissioner of MMB. The portion of such excess monies that the Public Entity must and shall pay to the Commissioner of MMB shall be determined by the

Commissioner of MMB, and absent circumstances which would indicate otherwise such portion shall be determined by multiplying such excess monies by a fraction the numerator of which is the G.O. Grant and the denominator of which is sum of the G.O. Grant and the Approved Debt.

F. **Section 4.02.** The language in Section 4.02.B shall be modified as follows, with deletions shown as ~~striketroughs~~ and additions shown as underlined:

B. The remaining portion, after the distributions specified in Section 4.02A, shall be distributed to (i) pay in full any outstanding Approved Debt, (ii) reimburse the Public Entity for its Ownership Value, if any, and (iii) to pay the Public Entity, The Minnesota Orchestral Association (the Counterparty under the Lease/Use Agreement by and between the City of Minneapolis, as Landlord, and The Minnesota Orchestral Association as Tenant, of substantially even date herewith), and any other interested public and private entities holding Priority Private Debt, other than any such entity that has already received the full amount of its contribution (such as the State Entity paid under Section 4.02.A and the holders of Approved Debt paid under this Section 4.02.B), the amount of money that such entity contributed to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs, as provided in that certain Ground Lease for Orchestra Hall by and between The Minnesota Orchestral Association, Landlord, and City of Minneapolis, Tenant, of substantially even date herewith. If such remaining portion is not sufficient to reimburse interested public and private entities for the full amount that such entities contributed to the acquisition or betterment of the Real Property and, if applicable, Facility, then the amount available shall be distributed as such entities may agree in writing and if such entities cannot agree by an appropriately issued court order.

G. **Section 6.01.** The first paragraph in Section 6.01 shall be modified as follows, with deletions shown as ~~striketroughs~~ and additions shown as underlined:

The State Entity agrees, on the terms and subject to the conditions set forth herein, and in that certain Disbursing Agreement (the "Disbursing Agreement") of even date herewith entered into by and amongst the State Entity, the Public Entity, the Counterparty, and other parties providing funds for the completion of the Project, to make Advances from the G.O. Grant to the Public Entity from time to time in an aggregate total amount not to exceed the amount of the G.O. Grant. If the amount of G.O. Grant that the State Entity cumulatively disburses hereunder to the Public Entity is less than the amount of the G.O. Grant delineated in Section 1.01, then the State Entity and the Public Entity shall enter into and execute whatever documents the State Entity may request in order to amend or modify this Agreement to reduce the amount of the G.O. Grant to the amount actually disbursed. Provided, however, in accordance with the provisions contained in Section 2.11, the State Entity's obligation to make Advances shall terminate as of the dates specified in such Section even if the entire G.O. Grant has not been disbursed by such dates. In the event of any conflict between the

provisions contained in this Agreement and in such Disbursing Agreement, the provisions contained in this Agreement shall control.

H. **Construction/Renovation of Facility.** The following applies to the requirements that the Public Entity construct and renovate the Facility:

1. The Public Entity has or will contract with The Minnesota Orchestral Association ("MOA") to construct and renovate the Facility, and the MOA will further contract with Mortenson Construction ("Mortenson") to construct and renovate the Facility.

2. Mortenson shall be designated as the Contractor hereunder, and the contract between the MOA and Mortenson shall be the Construction Contract Documents hereunder.

3. The Construction Contract Documents between MOA and Mortenson shall name the Public Entity as a third party beneficiary thereof, and Mortenson shall in such documents acknowledge and agree that as such third party beneficiary the Public Entity shall have the legal authority to enforce all of the provisions in such documents in the event that the MOA fails to do so.

4. Notwithstanding the fact that the Public Entity has or will contract with the MOA to construct and renovate the Facility and the fact that the MOA will further contract with Mortenson to construct and renovate the Facility, the Public Entity is fully responsible for the construction and renovation of the Facility and if such construction and renovation does not occur the Public Entity will be in default of this Agreement.

5. The Public Entity will require MOA to require Mortenson under the its contract with Mortenson to (i) comply with all rules, regulations, ordinances and laws bearing on the performance of this Agreement, (ii) carry all insurance required under this Agreement naming the State Entity and the Public Entity as named insureds, and (iii) meet all other requirements of this Agreement.

I. **Matching Funds.** Based upon the financial information shown in **Attachment III** to this Agreement and other independent evidence that the Public Entity has supplied to the State Entity, the State Entity agrees and acknowledges that the matching funds requirement contained in Section 7.23 has been satisfied.

J. **Public Entity's Approvals.** The State Entity acknowledges that the Public Entity approvals for draws and other matters under this Agreement and the Disbursing Agreement identified in Section 6.01 shall be given by the Public Entity's duly designated nominee as designated in the fashion provided in such Disbursing Agreement from time to time, which as of the date of this Agreement is Ann Calvert, Principal Project Coordinator.

**K. Waiver of Payment and Performance Bonds.** The State Entity acknowledges that the Public Entity has complied with the requirements contained in Section 6.04.O, and need not supply the payment and performance bonds referred to in such section.

This acknowledgement and waiver by the State Entity is based on:

1. The following representations by the Public Entity, which representations are in addition to any other representation made by the Public Entity in this Agreement.

(i). The Public Entity has entered into contracts with MOA that are sufficient to ensure the completion of the Project in accordance with the requirements imposed by this Agreement.

(ii). The Public Entity has obtained and reviewed financial information from MOA and Mortenson (the "Provided Financial Information") and based upon such financial information has concluded that MOA and Mortenson have sufficient financial assets to complete the Project.

(iii). Based upon the financial information provided by MOA and Mortenson and its analysis thereof, the existence and enforceability of the contracts with MOA and Mortenson, and the authority provided under Minn. Stat. §469.155 Subd. 16, the Public Entity has elected to waive any requirement that MOA and Mortenson provide payment and performance bonds.

2. The State Entity's independent review of the Provided Financial Information.

[THE REMAINING PORTION OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]

**IN TESTIMONY HEREOF**, the Public Entity and the State Entity have executed this General Obligation Bond Proceeds Grant Agreement Construction Grant for the Minneapolis Orchestra Hall Project on the day and date indicated immediately below their respective signatures.

**PUBLIC ENTITY:**

City of Minneapolis,  
a Minnesota municipal corporation

By:   
Kevin Carpenter

Its: Finance Officer

Dated: June 8, 2012

Responsible Department Head:

  
Charles Lutz, Deputy Director, Community Planning  
and Economic Development

Approved as to form:

  
Assistant City Attorney

**STATE ENTITY:**

the Minnesota Department of Employment and  
Economic Development,

By: \_\_\_\_\_  
Mark Phillips

Its: Commissioner

Dated: \_\_\_\_\_, 2012

IN TESTIMONY HEREOF, the Public Entity and the State Entity have executed this General Obligation Bond Proceeds Grant Agreement Construction Grant for the Minneapolis Orchestra Hall Project on the day and date indicated immediately below their respective signatures.

**PUBLIC ENTITY:**

City of Minneapolis,  
a Minnesota municipal corporation

By: Kevin D. Carpenter  
Kevin Carpenter  
Finance Officer

Dated: June 25, 2012

Responsible Department Head:

Charles Lutz  
Charles Lutz, Deputy Director, Community Planning  
and Economic Development

Approved as to form:

Joe Rie  
Assistant City Attorney

**STATE ENTITY:**

the Minnesota Department of Employment and  
Economic Development,

By: Mark Phillips  
Mark Phillips  
Commissioner

Dated: 6-21-, 2012

Michael J. Meyer  
3-53313 6/21/12

## Attachment I to Grant Agreement

### State of Minnesota General Obligation Bond Financed DECLARATION

The undersigned has the following interest in the real property located in the County of Hennepin, State of Minnesota that is legally described in **Exhibit A** attached and all facilities situated thereon (collectively referred to as the "Restricted Property"):

- (Check the appropriate box.)
- a fee simple title,
- a lease, or
- an easement,

and as owner of such fee title, lease or easement, does hereby declare that such interest in the Restricted Property is hereby made subject to the following restrictions and encumbrances:

- A. The Restricted Property is bond financed property within the meaning of Minn. Stat. § 16A.695 that exists as of the effective date of the grant agreement identified in paragraph B below, is subject to the encumbrance created and requirements imposed by such statutory provision, and cannot be sold, mortgaged, encumbered or otherwise disposed of without the approval of the Commissioner of Minnesota Management and Budget, or its successor, which approval must be evidenced by a written statement signed by said commissioner and attached to the deed, mortgage, encumbrance or instrument used to sell or otherwise dispose of the Restricted Property; and
- B. The Restricted Property is subject to all of the terms, conditions, provisions, and limitations contained in that certain        General Obligation Bond Proceeds Grant Agreement – Construction Grant for Minneapolis Orchestra Hall between City of Minneapolis and the Department of Employment and Economic Development, dated       ,        (the "G.O. Grant Agreement").

The Restricted Property shall remain subject to this State of Minnesota General Obligation Bond Financed Declaration for as long as the G.O. Grant Agreement is in force and effect; at which time it shall be released therefrom by way of a written release in recordable form signed by both the Commissioner of Employment and Economic Development and the Commissioner of Minnesota of Management and Budget, or their successors, and such written release is recorded in the real estate records relating to the Restricted Property. This Declaration may not be terminated, amended, or in any way modified without the specific written consent of the Commissioner of Minnesota of Management and Budget, or its successor.

City's address:

CITY OF MINNEAPOLIS

City of Minneapolis  
Department of Community Planning and  
Economic Development  
105 Fifth Avenue South, Suite 200  
Minneapolis, MN 55401

By \_\_\_\_\_  
Its Finance Officer

Department Head Responsible for Monitoring  
Contract:

\_\_\_\_\_  
Deputy Director, CPED

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before the this \_\_\_\_ day of \_\_\_\_\_,  
2012, by Kevin Carpenter, the Finance Officer of the City of Minneapolis, a Minnesota  
municipal corporation, on behalf of the City.

\_\_\_\_\_  
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Faegre & Benson LLP (\_\_\_\_)  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402  
Phone: (612) 766-7000

**Exhibit A to Declaration**  
**LEGAL DESCRIPTION OF RESTRICTED PROPERTY**

Tract B Registered Land Survey No. 1750 in the Office of the Registrar of Deeds, Hennepin County, Minnesota.

**Attachment II to Grant Agreement  
LEGAL DESCRIPTION OF REAL PROPERTY**

Tract B Registered Land Survey No. 1750 in the Office of the Registrar of Deeds, Hennepin County, Minnesota.

**Attachment III to Grant Agreement  
SOURCE AND USE OF FUNDS FOR THE PROJECT**

**SOURCES OF FUNDS:**

**FUNDS AVAILABLE FOR DISBURSEMENT**

State GO Construction Grant	\$14,000,000
Matching Funds from Counterparty	
• Contributions	\$20,647,529
• Approved Loans to a Counterparty	<u>\$12,400,000</u>
Subtotal-Funds Available for Disbursement at Closing	\$47,047,529

**FUNDS DISBURSED AND USED FOR PROJECT COSTS**

Matching Funds from Counterparty	
• Contributions	<u>\$ 4,952,471</u>
<b>TOTAL SOURCES OF FUNDS</b>	<b>\$52,000,000</b>

.....

**USES OF FUNDS**

From GO Grant Funds	
• Construction Costs	\$14,000,000
From Non-Grant Funds-Capitalizable Costs	
• Balance of Construction Costs (includes construction Cost contingency of \$250,000, any excess to be returned to Counterparty)	\$26,250,000
• Architecture and Other Capitalized Soft Costs	\$ 6,220,000
• FFE	555,000
• Signage	\$ 280,000
• Audio/Visual/Technology Upgrades to Structure	\$ 750,000
• Owner Contingency (any excess to be returned to Counterparty)	\$ 937,000
• Financing Costs (Approved Loans)	<u>\$ 1,000,000</u>
Subtotal Non-State (Counterparty) Capital Costs	\$35,992,000
From Non-Grant Funds-Non-Capitalizable Costs	
• Fundraising and Legislative Representation	\$ 508,000
• Transition Costs (Interim Season at	

<b>Minneapolis Convention Center)</b>	<b><u>\$ 1,500,000</u></b>
<b>Subtotal Non Capital Costs</b>	<b>\$ 2,008 ,000</b>
<b>TOTAL USES OF FUNDS</b>	<b>\$52,000,000</b>
<b>LESS PREPAID ITEMS</b>	<b>\$ <u>4,952,471*</u></b>
<b>TOTAL REMAINING TO BE EXPENDED</b>	<b>\$47,047,529</b>

\*of this amount, \$4,445,404 is capitalized and \$507,067 is non-capital

**Determination of State Funding Percentage:**

<b>Total Cost</b>	<b>\$52,000,000</b>	
<b>Less:</b>		
• <b>Past Expenditures</b>	<b>(\$ 4,952,471)</b>	
• <b>Non-Capital Costs</b>	<b>(\$ 1,500,000)</b>	note, net of non-capital prepaid @ \$508,000 deducted above
• <b>Contingency</b>	<b><u>(\$ 1,187,000)</u></b>	sum of \$250,000 const. and \$937,000 general contingency
<b>Total Cost for Funding</b>	<b>\$ 44,360,529</b>	
<b>State Percentage:</b>	<b>\$14,000,000/\$44,360,529 =</b>	<b>31.56 %</b>
<b>Counterparty Percentage:</b>	<b>\$30,360,529/\$44,360,529 =</b>	<b><u>68.44 %</u></b>
		<b>100%</b>

**Attachment IV to Grant Agreement  
PROJECT COMPLETION SCHEDULE**

[see attached]

## Orchestra Hall Renovation Milestone Schedule

ID	Task Name	Duration	Start	Finish	2012												2013											
					Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
1	Design	1 day	Mon 10/3/11	Mon 10/3/11	●																							
2	CD's complete	1 day	Mon 10/3/11	Mon 10/3/11																								
3	Construction	423 days	Tue 11/15/11	Thu 6/27/13	—————																							
4	Bidding and award	180 days	Tue 11/15/11	Mon 7/23/12	—————																							
5	Permit	0 days	Mon 6/11/12	Mon 6/11/12	◆ 6/11																							
6	Site fencing	3 days	Mon 6/18/12	Wed 6/20/12																								
7	Construction	265 days	Thu 6/21/12	Wed 6/26/13	—————																							
8	Completion	1 day	Thu 6/27/13	Thu 6/27/13																								
9	Occupancy	275 days?	Mon 6/18/12	Fri 7/5/13	—————																							
10	Move out of the Hall	2 days	Mon 6/18/12	Tue 6/19/12																								
11	Move back in to the Hall	1 day?	Fri 7/5/13	Fri 7/5/13																								

Project: Outline Schedule v1 Date: Tue 6/5/12	Task	—————	External Milestone	◆	Manual Summary Rollup	—————
	Split	.....	Inactive Task	□	Manual Summary	—————
	Milestone	◆	Inactive Milestone	◇	Start-only	[
	Summary	—————	Inactive Summary	□	Finish-only	]
	Project Summary	—————	Manual Task	—————	Deadline	↓
	External Tasks	—————	Duration-only	.....	Progress	—————

**EXHIBIT D**

**Orchestra Hall Source and Use**

Use Attachment III to the GO Grant Agreement for this exhibit.

**Attachment III to Grant Agreement  
SOURCE AND USE OF FUNDS FOR THE PROJECT**

**SOURCES OF FUNDS:**

**FUNDS AVAILABLE FOR DISBURSEMENT**

<b>State GO Construction Grant</b>	<b>\$14,000,000</b>
<b>Matching Funds from Counterparty</b>	
• <b>Contributions</b>	<b>\$20,647,529</b>
• <b>Approved Loans to a Counterparty</b>	<b><u>\$12,400,000</u></b>
<b>Subtotal-Funds Available for Disbursement at Closing</b>	<b>\$47,047,529</b>

**FUNDS DISBURSED AND USED FOR PROJECT COSTS**

<b>Matching Funds from Counterparty</b>	
• <b>Contributions</b>	<b><u>\$ 4,952,471</u></b>
<b>TOTAL SOURCES OF FUNDS</b>	<b>\$52,000,000</b>

.....

**USES OF FUNDS**

<b>From GO Grant Funds</b>	
• <b>Construction Costs</b>	<b>\$14,000,000</b>
<b>From Non-Grant Funds-Capitalizable Costs</b>	
• <b>Balance of Construction Costs (includes construction Cost contingency of \$250,000, any excess to be returned to Counterparty)</b>	<b>\$26,250,000</b>
• <b>Architecture and Other Capitalized Soft Costs</b>	<b>\$ 6,220,000</b>
• <b>FFE</b>	<b>555,000</b>
• <b>Signage</b>	<b>\$ 280,000</b>
• <b>Audio/Visual/Technology Upgrades to Structure</b>	<b>\$ 750,000</b>
• <b>Owner Contingency (any excess to be returned to Counterparty)</b>	<b>\$ 937,000</b>
• <b>Financing Costs (Approved Loans)</b>	<b><u>\$ 1,000,000</u></b>
<b>Subtotal Non-State (Counterparty) Capital Costs</b>	<b>\$35,992,000</b>
<b>From Non-Grant Funds-Non-Capitalizable Costs</b>	
• <b>Fundraising and Legislative Representation</b>	<b>\$ 508,000</b>
• <b>Transition Costs (Interim Season at</b>	

Minneapolis Convention Center)	<u>\$ 1,500,000</u>
Subtotal Non Capital Costs	\$ 2,008 ,000
<b>TOTAL USES OF FUNDS</b>	<b>\$52,000,000</b>
<b>LESS PREPAID ITEMS</b>	<b>\$ <u>4,952,471*</u></b>
<b>TOTAL REMAINING TO BE EXPENDED</b>	<b>\$47,047,529</b>

\*of this amount, \$4,445,404 is capitalized and \$507,067 is non-capital

**Determination of State Funding Percentage:**

<b>Total Cost</b>	<b>\$52,000,000</b>	
<b>Less:</b>		
• <b>Past Expenditures</b>	<b>(\$ 4,952,471)</b>	
• <b>Non-Capital Costs</b>	<b>(\$ 1,500,000)</b>	note, net of non-capital prepaid @ \$508,000 deducted above
• <b>Contingency</b>	<b><u>(\$ 1,187,000)</u></b>	sum of \$250,000 const. and \$937,000 general contingency
<b>Total Cost for Funding</b>	<b>\$ 44,360,529</b>	

<b>State Percentage:</b>	<b>\$14,000,000/\$44,360,529 =</b>	<b>31.56 %</b>
<b>Counterparty Percentage:</b>	<b>\$30,360,529/\$44,360,529 =</b>	<b><u>68.44 %</u></b>
		<b>100%</b>

## EXHIBIT E

### Permitted Encumbrances

1. Real estate taxes and installments of special assessments not currently due and payable.
2. Easements, covenants, conditions, restrictions, and limitations, if any, that do not impair the use of the Premises.
3. Reservation of any minerals or mineral rights reserved to the State of Minnesota.
4. Building and zoning laws, ordinances, and state and federal regulations.
5. Any liens or other encumbrances created by Tenant in accordance with this Lease.
6. The provisions of Minnesota Statute Section 16A.695 regarding the interests of the State of Minnesota.
7. Terms and conditions of the Covenants and Restrictions set forth in the Quit Claim Deed dated December 9, 2005 and recorded December 22, 2005 as Registrar of Titles Document No. 4204412, including but not limited to the right of re-entry reserved by the Grantor and the use restriction requiring that a portion of the land must be used for park purposes, as shown by Recital on the Certificate of Title

As modified by Declaration of Consent dated June 25, 2012 and recorded June \_\_, 2012 as Registrar of Titles Document No. \_\_\_\_\_.

8. Terms and conditions of the Easement to construct, repair, maintain and use steam and condensate return lines and other rights incidental thereto, dated August 9, 1974 and recorded September 9, 1974 as County Recorder Document No. 4103884, as shown by Recital on the Certificate of Title.
9. Terms and conditions of the Easement to construct, repair, maintain and use electrical control wiring with necessary conduit and other rights incidental thereto, dated August 9, 1974 and recorded September 9, 1974 as County Recorder Document No. 4103885, as shown by Recital on the Certificate of Title.
10. Terms and conditions of the Easement to construct, repair, maintain and use electrical control wiring with necessary conduit and other rights incidental thereto, dated September 20, 1974 and recorded September 24, 1974 as County Recorder Document No. 4106475, as shown by Recital on the Certificate of Title.

11. Terms and conditions of the Easement to construct, repair, maintain and use steam and condensate return lines and other rights incidental thereto, dated September 20, 1974 and recorded September 24, 1974 as County Recorder Document No. 4106476, as shown by Recital on the Certificate of Title.
12. Ground Lease dated as of June 25, 2012, by and between The Minnesota Orchestral Association, a Minnesota nonprofit corporation, as Landlord, and the City of Minneapolis, a Minnesota municipal corporation, as Tenant, as evidenced by Short Form Ground Lease dated as of June \_\_\_\_, 2012, recorded \_\_\_\_\_, 2012, as Document No. \_\_\_\_\_.
13. Lease and Use Agreement dated as of June 25, 2012, by and between the City of Minneapolis, a Minnesota municipal corporation, as Landlord, and The Minnesota Orchestral Association, a Minnesota nonprofit corporation, as Tenant, as evidenced by Short Form Lease dated as of June \_\_\_\_, 2012, recorded \_\_\_\_\_, 2012, as Document No. \_\_\_\_\_.
14. Declaration by the City of Minneapolis, a Minnesota municipal corporation, dated June 25, 2012, recorded \_\_\_\_\_, 2012, as Document No. \_\_\_\_\_.
15. Easement Agreement dated as of June 25, 2012, by and between the City of Minneapolis, a Minnesota municipal corporation, and The Minnesota Orchestral Association, a Minnesota nonprofit corporation, recorded \_\_\_\_\_, 2012, as Document No. \_\_\_\_\_.
16. Easement Agreement dated as of June 25, 2012, by and between The Minnesota Orchestral Association, a Minnesota nonprofit corporation, and NRG Energy Center Minneapolis LLC, a Delaware limited liability company, recorded \_\_\_\_\_, 2012, as Document No. \_\_\_\_\_.
17. Reciprocal Easement and Operating Agreement by and between the City of Minneapolis, a Minnesota municipal corporation, and The Minnesota Orchestral Association, a Minnesota nonprofit corporation, to be executed and recorded after the date hereof.