



County of Los Angeles  
**CHIEF ADMINISTRATIVE OFFICE**

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DAVID E. JANSSEN  
Chief Administrative Officer

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Fifth District

January 9, 2007

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors:

**APPROVE THE WALT DISNEY CONCERT HALL LEASE  
(AMENDED AND RESTATED)  
(FIRST DISTRICT) (3-VOTES)**

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Approve the attached Walt Disney Concert Hall Lease (Lease) with the Performing Arts Center of Los Angeles County (PACCLAC), subject to minor revisions to be approved by County Counsel and the Chief Administrative Officer, and authorize the Chairman to execute the final Lease upon presentation.
2. Approve the attached Agreement to Terminate Leases and Other Agreements (Termination Agreement) with Walt Disney Concert Hall Inc. (Disney) to terminate the Walt Disney Concert Hall Master Lease (Master Lease), the Concert Hall Sublease, and other agreements between the County and Disney related to the development and financing of the Walt Disney Concert Hall, and authorize the Chairman to execute the agreement.
3. Authorize the CAO to consent to, execute, and record any and all documents necessary to accept title to the Walt Disney Concert Hall and to complete the termination of the prior leases and agreements related to the construction and lease of the Concert Hall.

4. Consent to the subleases for the use of Music Center facilities between PACLAC, as sublessor, and the Los Angeles Philharmonic Association, the Los Angeles Master Chorale, the Center Theatre Group and the Los Angeles Opera, as sublessees.

#### **PURPOSE/JUSTIFICATION**

Approval of the recommended actions will complete all matters related to the construction, ownership, and lease of the Walt Disney Concert Hall (Concert Hall) that began with the gift of Mrs. Lillian Disney in 1987, and will put in place long-term subleases with performing arts organizations who are the resident companies at the Music Center facilities, including the Concert Hall.

The new Walt Disney Concert Hall Lease between the County and PACLAC will replace the 1992 leases related to construction and leasing of the Concert Hall. Your Board's consent to PACLAC's subleases with the resident performing arts organizations at the Music Center is required by the Operating Sublease for the original Music Center and the new Walt Disney Concert Hall Lease.

#### **FISCAL IMPACT/FINANCING**

Approval of the recommended actions will have no impact on the Maintenance and Operation Agreement or the Operating Sublease between the County and PACLAC for the maintenance and operation of the Concert Hall and the original Music Center campus.

In September 2002 the County entered into a Cash Flow Funding Agreement with Disney. The Agreement provided that the County would advance funds from time to time until December 31, 2003, to cover certain construction costs, when due, which Disney otherwise lacked funds to pay. Disney has repaid the County in full, plus interest, in accordance with the terms and conditions contained in the Cash Flow Funding Agreement.

#### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

In 1992, your Board approved several leases and agreements relating to the construction and operation of the Concert Hall among the County, Disney, Walt Disney Concert Hall Inc. II (Disney II, now dissolved), Music Center Operating Company (now PACLAC and successor to Disney II) and the Los Angeles Philharmonic Association (LAPA). In 1999, your Board approved amendments to those documents to create the new CalArts Sublease and reflect the revised project scope and schedules.

The litigation arising out of the Concert Hall construction has been settled and all contractor liens have been released and removed from the chain of title to the Concert Hall Parcel according to the Preliminary Title Report issued by Chicago Title Company. Disney has complied with all conditions for issuance of a Certificate of Completion under the Master Lease and has provided title insurance as further assurance that the County is receiving title to the Concert Hall free of all liens arising out of the construction.

The CAO, under delegated authority in the Master Lease, will issue to Disney a Certificate of Completion which confirms that Disney has constructed the Concert Hall in accordance with the terms of the Master Lease and which vests title to the Concert Hall in the County. Disney has executed a Quitclaim Deed to the County for the Concert Hall Parcel and a Bill of Sale for fixtures and other personal property located on the Concert Hall Parcel.

Disney fulfilled all of its duties under the Master Lease and other agreements with the County and dissolved its corporate status as of December 31, 2006. In order to obtain the State's approval to dissolve, Disney had to demonstrate that it has no continuing obligations that required its continued existence. The recommended Termination Agreement terminates the Master Lease and other agreements between the County and Disney related to the construction and financing of the Concert Hall and contains a mutual release of obligations between the parties that releases Disney from any further obligations to the County arising out of its role as developer of the Concert Hall.

Disney entered into an Assignment and Assumption Agreement with PACLAC by which PACLAC assumes other obligations of Disney that have not been terminated by the Termination Agreement. The CAO, under authority delegated by the Master Lease, has consented on behalf of the County to the assumption by PACLAC of certain of Disney's obligations.

The proposed Lease with PACLAC is effective upon termination of the Master Lease and will replace the Master Lease and subleases entered into in 1992 under which PACLAC would have been the ultimate sublessee to operate the Concert Hall under the third sublease in a chain of subleases. Under the proposed Lease, PACLAC will lease and operate the Concert Hall directly from the County in accordance with terms that are substantially similar to the 1992 agreements. The proposed Lease requires PACLAC to contract for performances and food concessions and retains the maintenance standards for the Concert Hall previously approved by your Board.

Nothing in the Lease affects the 1992 Maintenance and Operation Agreement, or the 1963 Operating Sublease between the County and PACLAC, that address who is responsible for maintenance and operation of the Concert Hall and the original Music Center respectively.

Since substantial completion of the Concert Hall in 2003, PACLAC has booked performances and maintained the facility under a Transitional Services Agreement and a Transitional Occupancy Agreement with Disney. Disney and PACLAC have agreed to terminate these agreements effective upon the approval of the proposed Lease.

The Master Lease and the proposed Lease require that the County consent to long-term agreements with the Concert Hall's resident performing arts organizations. The Operating Sublease for the original Music Center requires that the County consent to long term agreements with the resident performing arts organizations for those facilities. PACLAC's proposed subleases have been reviewed and approved by County Counsel.

#### **IMPACT ON CURRENT SERVICES**

There is no impact on current services associated with the recommended actions.

#### **NEGATIVE DECLARATION/ENVIRONMENTAL IMPACT REPORT**

The County certified an Environmental Impact Report (EIR) for the construction and operation of the Concert Hall in 1991, which was amended in 1996, 1999 and 2005. The recommended actions concerning the Concert Hall are consistent with the amended EIR.

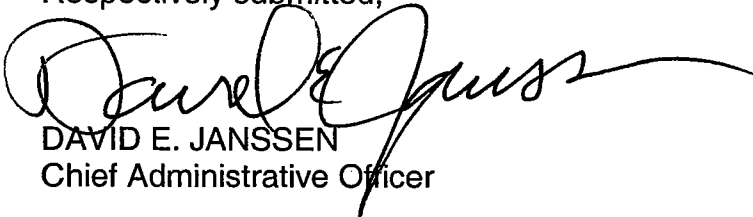
The recommended action concerning the original Music Center facilities is categorically exempt under the California Environmental Quality Act under State Guidelines section 15323 in that it continues the normal operations of an existing facility for public gatherings for which the facility was designed.

The Honorable Board of Supervisors  
January 9, 2007  
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**CONCLUSION**

Please return eight (8) approved copies of this letter to my office in addition to eight (8) executed originals of the attached documents.

Respectively submitted,



DAVID E. JANSSEN  
Chief Administrative Officer

DEJ:JSE  
DJT:DKM:mdc

Attachments (2)

c: Karen Lichtenberg, County Counsel

WALT DISNEY CONCERT HALL LEASE

Dated as of January \_\_, 2007

By and Between

PERFORMING ARTS CENTER OF LOS ANGELES COUNTY  
as Lessee ("PACLAC")

and

THE COUNTY OF LOS ANGELES  
as Lessor ("County")

## WALT DISNEY CONCERT HALL LEASE

THIS WALT DISNEY CONCERT HALL LEASE (this "PACLAC WDCH Lease"), dated as of January \_\_, 2007, is made and entered into by and between the COUNTY OF LOS ANGELES, a public body corporate and politic of the State of California ("County"), as lessor, and PERFORMING ARTS CENTER OF LOS ANGELES COUNTY, a California public benefit corporation ("PACLAC"), as lessee, with reference to the following Recitals:

### RECITALS

A. County is the owner of the Concert Hall Parcel (as defined below), which is an air rights parcel within Lot 1 of Tract No. 30779, in the City of Los Angeles, County of Los Angeles, State of California, as per that certain Map recorded April 1, 1976, in Book of Maps 862, Pages 16 to 20, inclusive, of the Official Records of Los Angeles County (said Lot 1 being referred to herein as "Parcel K"), lying northerly of the northerly line of Second Street as such street presently exists and was dedicated for public use in connection with the development described in these recitals.

B. The Concert Hall Parcel has been improved with, among other improvements, a symphony concert hall for the use and benefit of the citizens of Los Angeles County known as the Walt Disney Concert Hall (the "Concert Hall").

C. The following leases are or may be in effect with respect to the Concert Hall Parcel (collectively, the "Original Concert Hall Leases"):

(1) that certain Walt Disney Concert Hall Master Lease dated as of December 23, 1992 between County, as lessor, and Walt Disney Concert Hall, Inc., a California non-profit corporation (formerly known as Walt Disney Concert Hall I, Inc.) ("Disney"), as lessee, as amended to date (as so amended, the "Concert Hall Master Lease");

(2) that certain Walt Disney Concert Hall Sublease dated as of December 23, 1992 between Disney, as sublessor, and County, as sublessee, as amended to date (as so amended, the "Concert Hall Sublease");

(3) that certain Walt Disney Concert Hall Disney II Sublease dated as of December 23, 1992 between County, as sublessor, and Walt Disney Concert Hall II, Inc., a California non-profit corporation ("Disney II"), as amended to date and as assigned by Disney II to PACLAC (as so amended and assigned, the "Disney II Sublease");

(4) that certain Walt Disney Concert Hall Philharmonic Sublease dated as of December 23, 1992 between PACLAC (formerly known as The Music Center Operating Company) as sublessor, and the Los Angeles Philharmonic Association, a California public benefit corporation ("Philharmonic"), as sublessee, as amended to date (as so amended, the "Existing Philharmonic Sublease"); and

(5) That certain CalArts Sublease (the "CalArts Sublease") between the County and California Institute of the Arts ("CalArts") which leased portions of the Concert Hall Parcel and the Garage Parcel to CalArts.

D. The Concert Hall Master Lease provides that Disney is responsible for constructing the Concert Hall and certain other improvements on the Concert Hall Parcel and, when completed, as evidenced by County's issuance of a "Certificate of Completion" described in Section 6.13 thereof, all such improvements will become part of the leased premises.

E. It is anticipated that the following actions and transactions will occur on or about the date of this PACLAC WDCH Lease (collectively, the "Commencement Conditions"):

(1) County will issue a Certificate of Completion pursuant to the Concert Hall Master lease;

(2) Disney will execute and deliver a deed covering the Concert Hall and the other improvements located on the Concert Hall Parcel naming County as grantee;

(3) County and Disney will terminate the Concert Hall Master Lease and the Concert Hall Sublease; and

(4) PACLAC and Philharmonic will execute that certain Amended and Restated Philharmonic Sublease in the form approved by County (the "Philharmonic Sublease"), which will amend, restate and replace and the Existing Philharmonic Sublease in its entirety.

F. PACLAC desires to (i) terminate the Disney II Sublease, (ii) become the direct lessee of the Concert Hall Parcel and the improvements thereon, and (iii) sublease certain of the premises to (a) Philharmonic upon the terms of the Philharmonic Sublease for the purpose of having the Orchestra use the Concert Hall as its principal place of performance, (b) LAMC pursuant to the terms of the LAMC sublease dated \_\_\_\_\_, 2007 ("LAMC Sublease"), and (c) licensees of the Entertainment Space and Facilities for use by licensees. All such subleases or licenses shall be subject to the terms hereof including, without limitation, the requirements of Section 8.1.2 and Article 28 hereof. Subject to the occurrence of



all of the Commencement Conditions, which occurrence is a condition to the effectiveness of this PACLAC WDCH Lease, County shall lease the Premises to PACLAC and PACLAC shall to lease the Premises from County upon the terms of this PACLAC WDCH Lease.

NOW, THEREFORE, in consideration of the above recitals and the covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County hereby leases the Premises to PACLAC upon the following terms and conditions:

## **ARTICLE 1**

### **CERTAIN DEFINITIONS**

1.1 For the purposes of this PACLAC WDCH Lease, the following words and terms shall have the meanings indicated. All capitalized terms used in this PACLAC WDCH Lease and not defined in this Article are defined where indicated in the glossary of defined terms attached to the table of contents of this PACLAC WDCH Lease.

Affiliate: Any Person Controlling, Controlled by, or under common Control with the specified Person, or in the case of Persons which are non-profit organizations, their "Affiliate" relationship may exist through substantial joint or common fund-raising, board members, and substantial related, joint or common activities and goals.

Approved Operator: RA Music, Inc., a California corporation, or an approved successor.

Authority: The Parking Authority of the County of Los Angeles.

Board of Supervisors: The Board of Supervisors of the County of Los Angeles.

Bunker Hill Redevelopment Plan: The Redevelopment Plan for the Bunker Hill Urban Renewal Project approved and adopted by the City Council of the City of Los Angeles by Ordinance Number 113,231 on March 31, 1959, amended by Ordinance Number 135,900 on January 12, 1968 and Ordinance Number 140,662 on June 25, 1970.

Business Day: Any day which is not a Saturday, Sunday or legal holiday on which offices of the State of California are closed for business.

CalArts Premises: The property leased by County to CalArts under the CalArts Sublease.

CCAO: The Chief Administrative Officer of Los Angeles County or a designee.

Commencement Date: The first date upon which all of the Commencement Conditions have been satisfied.

Concert Hall Charges: All costs and expenses incurred by PACLAC in connection with the arrangement, booking and presentation of performances at the Concert Hall and services related to the use and occupancy of the Premises, or imposed upon PACLAC pursuant to the terms of this PACLAC WDCH Lease, other than those costs and expenses to be paid or reimbursed by County pursuant to Article 7 hereof or as otherwise provided herein or in agreements between County and PACLAC.

Concert Hall Parcel: The air rights parcel defined as the "Concert Hall Parcel" in the Concert Hall Master Lease, as modified by the CalArts Sublease.

Concession Agreement: That certain Restaurant, Food and Beverage Service Agreement and Catering License Agreement dated as of September 16, 2002 between PACLAC and the Approved Operator and any replacement agreement with an Approved Operator.

Control: The possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the controlled Person. The ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting interests of, or the possession of the right to vote or direct the vote of at least fifty-one (51%) of the voting interests in, any Person shall be presumed to constitute Control.

CRA: The Community Redevelopment Agency of the City of Los Angeles.

County: As defined in the first paragraph of this PACLAC WDCH Lease or a permitted successor or assignee pursuant to the provisions of this PACLAC WDCH Lease.

Dance Company: The dance component of PACLAC Presentations.

Entertainment Space and Facilities: Those certain portions of the Concert Hall outlined and labeled as the "Entertainment Space and Facilities" on those certain design development drawings attached to the Philharmonic Sublease as Exhibits E-1-2 and E-1-9 through E-1-13, as such exhibits may be amended by agreement among Philharmonic, PACLAC and County, and which portions of the Concert Hall generally consist of the following:

(a) The auditorium including all entrance halls, lobbies, elevators, restroom facilities and similar areas and facilities which are used for receiving, seating, including accommodations for the handicapped, handling and discharging patrons during the stage rehearsals, and production and presentation of performances or events and programs; and

(b) The orchestra pit and wardrobe rooms, if any, the stage, loading areas, stacking area, dressing rooms, backstage restroom facilities and rehearsal rooms and similar areas which are used for the rehearsal, stage rehearsal, production and presentation of such events; and

(c) The Built-In Theater Equipment (as defined in the Philharmonic Sublease).

As provided on Exhibit E-1-9 to the Philharmonic Sublease, the spaces labeled as 1a and 1b thereon are not part of the Entertainment Space and Facilities.

501(c) (3) Organization: An organization that (a) meets the requirements of Section 145 of the Internal Revenue Code of 1986, as amended, and (b) is operating in reliance on a determination letter from the Internal Revenue Service (which has not been revoked or withdrawn) recognizing such organization's tax exempt status under Section 501(c) (3) of the Internal Revenue Code.

Force Majeure Events: War; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; terrorist acts or other acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; unusually severe weather; unforeseeable periods of civil unrest; periods of national mourning; unforeseeable or unusual inability to secure necessary labor, materials or tools; acts or omissions of the other party in breach of its obligations under this PACLAC WDCH Lease; acts or failure to act of the County or any other public or governmental agency or entity (other than the County acting in its capacity as landlord) or any other causes beyond the control or without the fault of the party claiming an extension of time to perform or excuse from performance.

Founders Room: The space designated as Founders Room on those certain design development drawings attached to the Philharmonic Sublease as Exhibits E-1-2 and E-1-9 through E-1-13, as such exhibits may be amended by agreement among Philharmonic, PACLAC and County.

Garage: The underground parking garage within the Garage Parcel and certain other related street improvements and site mitigation measures.

Garage Construction Agreement: That certain Garage Construction Agreement dated as of December 23, 1992 among County, Disney and the Authority.

Garage Financing: The issuance by the County of certificates of participation or other evidences of indebtedness to finance the construction of the Garage.

Garage Parcel: A portion of Parcel K (i.e., the portion that is not part of the Concert Hall Parcel and not included within the leased premises of the CalArts Sublease) and certain real property located beneath Grand Avenue between First Street on the north and Second Street on the south that has been or may be vacated by the City of Los Angeles, as more particularly described in that certain Garage Site Lease dated as of December 23, 1992 between County and the Authority.

Giftshop: The giftshop constructed as part of the Concert Hall in the location labeled as "Philharmonic Retail" on the design development drawings attached to the Philharmonic Sublease as Exhibit E-1-4 and operated by PACLAC or another operator chosen by PACLAC (provided that CCAO shall have the right to approve any operator other than PACLAC or the Philharmonic, which approval shall not be unreasonably withheld or delayed) under a sublease or license from PACLAC for the benefit of the Resident Companies provided that such organizations are 501(c)(3) Organizations.

Impositions: All taxes and assessments (including, without limitation, real estate taxes, excise taxes, ad valorem taxes and possessory interest taxes, if any, levied upon the Concert Hall Parcel, the Improvements, or the operation thereof, and all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term of this PACLAC WDCH Lease), and all water, sewer or similar rents, rates and charges, whether general or special, ordinary or extraordinary, and including all interest and penalties thereon, which at any time during the Term of this PACLAC WDCH Lease are assessed, levied, confirmed or imposed, or become a lien, upon the Concert Hall Parcel and/or the Improvements or any part thereof.

Improvements: Any and all buildings, structures and other improvements which have been or may at any time be erected on or affixed to the Concert Hall Parcel during the term of this PACLAC WDCH Lease, including without limitation, the Concert Hall, the Giftshop. The term "Improvements" includes, but is not limited to, landscaping and pedestrian plazas which are located upon the Concert Hall Parcel at any time hereafter; all fixtures, appliances, machinery, operating equipment and apparatus which are at any time affixed or attached to any of the buildings now or hereafter constructed on the Concert Hall Parcel (but excluding the chiller plant); all components of the heating, ventilating and air conditioning equipment located within the Concert Hall Parcel; and all components of the plumbing, lighting, refrigeration, cleaning, security, sound and electrical systems of such buildings. The term "Improvements" specifically

excludes the Garage, the CalArts Sublease facility, PACLAC's Equipment, the Philharmonic Center, Philharmonic Equipment (as defined in the Philharmonic Sublease) and the LAMC Equipment (as defined in the LAMC Sublease).

Insurance Requirements: All present or future requirements of any insurer of the Premises or any part thereof pursuant to the insurance policies which County is required to maintain as provided in Article 16 hereof or pursuant to the rules, orders, regulations or requirements of the national and local Board of Fire Underwriters or any other similar body having jurisdiction over the Premises, and those of any appropriate agency, office, department, board or commission thereof if the County elects not to self-insure.

LAMC: Los Angeles Master Chorale, a California public benefit corporation, which is subleasing from PACLAC the Entertainment Space and Facilities for the periods of time specified in said sublease.

LAMC Licensee: A Person receiving a sublicense from LAMC for the use of the Entertainment Space and Facilities on a short-term basis at a time available under the Events Schedule for the purpose of presenting performances which are permitted under its sublease.

Legal Requirements: All laws, statutes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, building codes, zoning codes, standards, permits, licenses, and other policies and requirements formally adopted by any federal, state, local or municipal government, and the appropriate departments, commissions, boards, courts, authorities, agencies, officials and officers thereof, now or hereafter in effect, and all covenants, conditions and restrictions of record, which are or at any time hereafter may become applicable to the Premises or any part thereof or to the use or manner of use of all or any part of the Premises or any of the sidewalks, curbs, streets or ways adjacent thereto, including, without limitation the requirements of the CRA set forth in the OPA and the Bunker Hill Redevelopment Plan.

Logical Evolution: A refinement or amplification of the previously approved phase of the plans that is not inconsistent with and flows naturally and foreseeably from the previously approved phase of the plans and is in accordance with custom and practice in the field of architectural and engineering design and the construction industry in Southern California, code requirements, applicable plan check, permit conditions and the timely availability of materials.

Music Center: The complex of concert halls, theaters and venues consisting of (a) the Music Center Original Campus, (b) the WDCH Campus, and (c) all improvements and facilities located upon the subject parcels and associated with the foregoing.

Music Center Original Campus: That certain real property which is improved with a plaza, performance facilities known as the Dorothy Chandler Pavilion, the Ahmanson Theatre, the Mark Taper Forum, and the office building annex known as the De Lisa Building which together with the box offices, administrative offices, restaurants, rehearsal rooms, storage and associated facilities, balconies, plazas, patios and all other improvements and facilities associated with the foregoing which are leased from the County by PACLAC pursuant to the terms of an Operating Sublease dated as of June 25, 1963, as amended.

Occupancy Period: The period from July 1 through and including June 30 each year throughout the Term.

Officer's Certificate: A certificate signed by an officer of County or PACLAC, as the case may be, setting forth the information required therein. The party certifying shall state that, to the best of its knowledge, the information furnished is complete and accurate.

OPA: That certain Owner Participation Agreement, dated as of July 3, 1991, among the CRA, Disney and County, with respect to the development of Parcels K, Q and W-2 of the Bunker Hill Redevelopment Plan Area together with the First Implementation Agreement dated December 4, 1992, the Second Implementation Agreement dated August 5, 1999 and the Third Implementation Agreement dated as of or about the date hereof.

Original Execution Date: December 23, 1992.

Other Resident Companies: All or any of the Resident Companies other than Philharmonic and LAMC.

PACLAC: As defined in the first paragraph of this PACLAC WDCH Lease or a permitted successor or assignee pursuant to the provisions of this PACLAC WDCH Lease.

PACLAC Licensee: A Person receiving a sublicense from PACLAC for the use of the Entertainment Space and Facilities on a short-term basis at a time available under the Events Schedule for the purpose of presenting performances which are permitted under Section 6.1 of this PACLAC WDCH Lease.

PACLAC Presentations: PACLAC acting in the capacity as a licensee of the Entertainment Space and Facilities on behalf of its Presenting and Programming Department, its Educational Division, or for presentations or productions undertaken by PACLAC for its own account or co-sponsored with others.

Permitted Licensee: Each of the following shall be considered a Permitted Licensee for purposes of this PACLAC WDCH Lease: (a) PACLAC Presentations, Dance Company and PACLAC Licensees, (b) Philharmonic and Philharmonic Licensees, (c) LAMC and LAMC Licensees, and (d) Other Resident Companies and their licensees.

Permitted Assignee: One or more of the Resident Companies or other performing arts organizations approved by County which regularly perform in the complex of concert halls and theatres commonly referred to as the Music Center, provided that such organization is a 501(c)(3) Organization.

Person: An individual, a corporation, association, partnership, joint venture, organization or other business entity, or a governmental or political unit or agency.

Philharmonic Center: The building and related improvements constructed in the areas outlined and labeled as the "LAPA Center" on those certain design development drawings attached to the Philharmonic Sublease as Exhibits E-1-3 and E-1-16A through E-1-18, as such exhibits may be amended by agreement among Philharmonic, PACLAC and County. The Philharmonic Center shall not exceed 22,500 square feet without the consent of CCAO and the utilities serving the Philharmonic Center (other than water) shall be capable of being metered separately from the utilities for the remainder of the Premises. County shall be a third party beneficiary of the restrictions set forth in this definition of the Philharmonic Center.

Philharmonic Licensee: A Person receiving a sublicense from the Philharmonic for the use of the Entertainment Space and Facilities on a short-term basis at a time available under the Events Schedule for the purpose of presenting performances which are permitted under Section 6.1 of the Philharmonic Sublease.

Philharmonic Period: The period beginning with the Commencement Date and ending upon the expiration or earlier termination of the Philharmonic Sublease, except that the period shall be extended to also include any period during which there is a Satisfactory Replacement Orchestra Agreement with a Satisfactory Replacement Orchestra as provided in Section 8.1 of this PACLAC WDCH Lease.

Premises: The Concert Hall Parcel together with the Improvements thereon and the Philharmonic Center, but excepting therefrom the CalArts Premises.

Reception Areas: Lobby areas, including hallways utilized during or in connection with performances for the assembly and discharge of patrons at the Concert Hall, Founders Room, and associated public areas at the Concert Hall including those portions of the plazas, gardens and reception areas of the Concert

Hall outlined and labeled as the "Reception Areas" on those certain design development drawings attached to the Philharmonic Sublease as Exhibits E-1-1 and E-1-4 through E-1-8, as such exhibits may be amended by agreement among Philharmonic, PACLAC and County. As provided on Exhibit E-1-9 to the Philharmonic Sublease, the spaces labeled as 1a and 1b thereon are not part of the Reception Areas.

Resident Companies: The entities which have entered into subleases or licensee agreements with PACLAC having a term of one year or more for the purpose of presenting performances at the Premises or at one or more of the other venues at the Music Center. At this time the Resident Companies consist of Center Theater Group, Los Angeles Opera Company, LAMC, and Philharmonic.

Restoration: Following material damage by fire or other casualty or a Partial Taking, any repair, replacement or rebuilding, together with any applicable alterations and additions, (and also including any temporary repairs of the Premises required pending completion of such work), made in accordance with the terms and provisions of this PACLAC WDCH Lease and necessary for the continued use and operation of the Premises as contemplated by and pursuant to the terms of this PACLAC WDCH Lease.

Short Form Lease: That certain Short Form Lease in the form of Exhibit B attached hereto.

Taking: A transfer during the term hereof of all or any portion of the Premises, or any leasehold or other interest therein or right accruing thereto, as the result or in lieu or in anticipation of, the exercise of the right of condemnation or eminent domain by any governmental entity or agency, or any other compensable government activity affecting the Premises or any part thereof.

Transitional Occupancy Agreement: That certain agreement dated as of June 14, 2003 and amended by a First Amendment dated September 25, 2003 between Disney and PACLAC and Philharmonic providing for the use and occupancy of the Improvements prior to the issuance of the Certificate of Completion by County.

WDCH Campus: The Concert Hall Parcel and related Improvements including the Concert Hall, the other Entertainment Space and Facilities, the Reception Areas, and the associated offices, giftshop, restaurants, rehearsal rooms, storage and related facilities and including the Philharmonic Center which are subleased from the County by PACLAC pursuant to the terms of this PACLAC WDCH Lease, but excluding the CalArts Premises.



## **ARTICLE 2**

### **LEASE OF PROPERTY**

#### **2.1 Leasing Clauses**

Upon the conditions, limitations, covenants and agreements set forth herein, and for the Term hereinafter set forth, County hereby leases to PACLAC and PACLAC hereby leases from County the Premises as of the date hereof, subject to the OPA, and all other matters of record,

BUT SPECIFICALLY RESERVING THEREFROM all oil, gas, and hydrocarbon substances and minerals of every kind and character lying more than 500 feet below the surface of Parcel K, together with the right to drill into or through, and to use and occupy all parts of Parcel K lying more than 500 feet below the surface thereof for any and all purposes incidental to the exploration for, or the production of oil, gas, hydrocarbon substances or minerals, but without, however, any right to use either the surface of Parcel K or any portion of Parcel K within 500 feet of the surface for any purposes.

#### **2.2 Delivery of Possession**

County shall be deemed to have delivered possession of the Premises to PACLAC on the Commencement Date. Any occupancy by PACLAC and its licensees prior to the Commencement Date shall be considered occupancy pursuant to the Original Concert Hall Leases and the Transitional Occupancy Agreement.

#### **2.3 Reservation of Reception Areas and Entertainment Space and Facilities**

Subject to Section 6.2 below and Philharmonic's rights provided in Section 2.4 of the Philharmonic Sublease and the rights of LAMC under Section 2.4 of the LAMC Sublease, County may use and occupy the Reception Areas and the Entertainment Space and Facilities during times other than those for which the Reception Areas and Entertainment Space and Facilities have been previously reserved on the Events Schedule as provided in the Philharmonic and LAMC Subleases; provided, however, that any such use does not occur during the period commencing sixty (60) minutes before and ending thirty (30) minutes after a scheduled performance. Any such use and occupancy by County shall be subject to PACLAC's reasonable prior consent and shall be conditioned upon County's payment of all out-of-pocket costs actually incurred by PACLAC, if any, with respect to County's use and occupancy of the Reception Areas and/or Entertainment Space and Facilities. Any unenclosed, outdoor space in the Reception Areas which has not been reserved on the Events Schedule in accordance with the terms of this PACLAC WDCH Lease or the Philharmonic and LAMC Subleases shall be open to the public.

### **ARTICLE 3**

#### **TERM OF LEASE**

#### **3.1 Term**

The term of this PACLAC WDCH Lease (the "Term") shall begin on the Commencement Date, and end at 11:59 P.M. on December 31, 2066 (the "Expiration Date"), unless extended or sooner terminated as hereinafter provided.

#### **3.2 First Extension of Term**

Provided that County shall have delivered the County's First Extension Notice described below, and further provided that PACLAC is not in default under this PACLAC WDCH Lease and that this PACLAC WDCH Lease is in full force and effect at the time PACLAC exercises the option to extend provided herein, then PACLAC shall have the option (the "First Extension Option") to extend the Term for an additional period commencing on the day after the Expiration Date and terminating fifteen (15) years thereafter (the "First Extension Expiration Date") with the same force and effect as if such fifteen (15) year period had originally been included in the definition of "Term". Unless amended by County and PACLAC prior thereto, this PACLAC WDCH Lease as extended shall be upon all of the terms, covenants and conditions contained in this PACLAC WDCH Lease and applicable to the original Term, except the term "Expiration Date" shall be deemed to refer to the First Extension Expiration Date.

##### **3.2.1 County's First Extension Notice.**

At any time between eleven (11) and six (6) years prior to the Expiration Date, County in its sole and absolute discretion, may deliver a Notice ("County's First Extension Notice") to PACLAC granting PACLAC the First Extension Option, subject to any conditions deemed necessary or appropriate by County. If County does not deliver the County's First Extension Notice within the time period established in this Section 3.2.1, then PACLAC shall have no right to extend the Term of this PACLAC WDCH Lease and this PACLAC WDCH Lease shall terminate on the original Expiration Date provided for in Section 3.1 above.

##### **3.2.2 Exercise.**

The First Extension Option must be exercised by irrevocable Notice (the "First Extension Exercise Notice") delivered by PACLAC to County during the extension notice period commencing on the date of PACLAC's receipt of the County's First Extension Notice and ending one year thereafter.

### **3.2.3 Failure to Deliver.**

PACLAC's failure to deliver the First Extension Exercise Notice to County in accordance with the terms hereof within the one-year extension notice period provided above shall be deemed to be a waiver by PACLAC of all of its rights provided in this Article 3 to extend the Term of this PACLAC WDCH Lease, time being of the essence.

### **3.2.4 Extension of Term.**

Provided that (a) County shall have delivered to PACLAC the County's First Extension Notice, (b) PACLAC shall have delivered to County the First Extension Exercise Notice within the one-year extension notice period provided for in Section 3.2.2 above, and (c) all the applicable conditions of this Section 3.2 shall have otherwise been satisfied, then effective as of the date of delivery of PACLAC's First Extension Exercise Notice, the Term of this PACLAC WDCH Lease shall be deemed extended for fifteen (15) years with the same force and effect as if such fifteen (15) year period had originally been included in the definition of "Term." This PACLAC WDCH Lease as extended shall be upon all of the terms, covenants and conditions contained in the PACLAC WDCH Lease and applicable to the original Term, except (i) the First Extension Option provisions shall be deleted, and (ii) the term "Expiration Date" shall be deemed to refer to the First Extension Expiration Date.

### **3.3 Second Extension of Term**

Provided that County shall have delivered the County's Second Extension Notice described below, and further provided that PACLAC is not in default under this PACLAC WDCH Lease and that this PACLAC WDCH Lease is in full force and effect at the time PACLAC exercises the option to extend provided herein, then PACLAC shall have the option (the "Second Extension Option") to extend the Term for an additional period commencing on the day after the First Extension Expiration Date and terminating on the date which is fifteen (15) years thereafter (the "Second Extension Expiration Date") with the same force and effect as if such fifteen (15) year period had originally been included in the definition of "Term". Unless amended by County and PACLAC prior thereto, this PACLAC WDCH Lease as extended shall be upon all of the terms, covenants and conditions contained in this PACLAC WDCH Lease and applicable to the original Term, except the term "Expiration Date" shall be deemed to refer to the Second Extension Expiration Date.

#### **3.3.1 County's Second Extension Notice.**

At any time after the tenth (10<sup>th</sup>) but prior to the twelfth (12<sup>th</sup>) anniversary of the original Expiration Date set forth in Section 3.1 above, County,

in its sole and absolute discretion, may deliver a Notice ("County's Second Extension Notice") to PACLAC granting PACLAC the Second Extension Option, subject to any conditions deemed necessary or appropriate by County. If County does not deliver the County's Second Extension Notice within the time period established in this Section 3.3.1, then PACLAC shall have no right to further extend the Term of this PACLAC WDCH Lease and this PACLAC WDCH Lease shall terminate on the First Extension Expiration Date as provided for in Section 3.2 above.

### **3.3.2 Exercise.**

The Second Extension Option must be exercised by irrevocable Notice (the "Second Extension Exercise Notice") delivered by PACLAC to County during the extension notice period commencing on the date of PACLAC's receipt of the County's Second Extension Notice and ending one year thereafter.

### **3.3.3 Failure to Deliver.**

PACLAC's failure to deliver the Second Extension Exercise Notice to County in accordance with the terms hereof within the one-year extension notice period provided above shall be deemed to be a waiver by PACLAC of all of its rights provided in this Article 3 to further extend the Term of this PACLAC WDCH Lease, time being of the essence.

### **3.3.4 Extension of Term.**

Provided that (a) County shall have delivered to PACLAC the County's Second Extension Notice, (b) PACLAC shall have delivered to County the Second Extension Exercise Notice within the one-year extension notice period provided for in Section 3.3.2 above, and (c) all the applicable conditions of this Section 3.3 shall have otherwise been satisfied, then effective as of the date of delivery of PACLAC's Second Extension Exercise Notice, the Term of this PACLAC WDCH Lease shall be deemed extended for a final additional fifteen (15) years with the same force and effect as if such fifteen (15) year period had originally been included in the definition of "Term." This PACLAC WDCH Lease as extended shall be upon all of the terms, covenants and conditions contained in the PACLAC WDCH Lease and applicable to the original Term, except (i) the Second Extension Option provisions shall be deleted, and (ii) the term "Expiration Date" shall be deemed to refer to the Second Extension Expiration Date.

## **ARTICLE 4**

### **RENT**

#### **4.1 Base Rent**

During the term of this PACLAC WDCH Lease, PACLAC shall pay to County the rent ("Base Rent") yearly in advance on the Commencement Date and each anniversary of the Commencement Date during the Term the sum of One Dollar (\$1).

#### **4.2 Additional Rent**

During the term of this PACLAC WDCH Lease, as "Additional Rent", PACLAC shall perform such duties and covenants, satisfy such obligations and liabilities, and pay such sums and costs and expenses as are required to fulfill its obligations hereunder.

#### **4.3 Compensation to PACLAC**

PACLAC shall be entitled to collect all sums due from (a) Philharmonic under the Philharmonic Sublease and Operating Memorandum, (b) LAMC under the LAMC Sublease and Operating Memorandum, (c) the other Resident Companies pursuant to agreements with PACLAC, and (d) all rentals and other charges received from concessionaires, performers, performance companies and producers booked by PACLAC with respect to the Concert Hall, and after paying all Concert Hall Charges may retain such amounts as PACLAC's total compensation with respect to its duties and obligations hereunder with respect to the Concert Hall; provided that nothing herein shall limit PACLAC's right to receive compensation or reimbursement from County for its services and expenses under the PACLAC Agreement (as defined in Section 7.3). County hereby further agrees that all such sums and amounts collected and retained by or on behalf of PACLAC in connection with the Premises shall not in any manner be deemed Additional Rent.

## **ARTICLE 5**

### **CONDITION OF THE PREMISES**

As of the Original Execution Date, neither County nor PACLAC had any actual knowledge of any soil condition or subsurface fault or the presence of any Hazardous Materials at, upon, under or within the Concert Hall Parcel, except as disclosed by the Preliminary Environmental Site Assessment for Bunker Hill Lot #16 prepared by Geo-Tox as Project No. 8E-062, dated April 18, 1990 and that certain LeRoy Crandall and Associates letter, dated September 10, 1990, regarding Geotechnical Investigation. PACLAC acknowledges and agrees that, except as provided in this Article 5, County makes no representation or warranty, express or implied, written or oral, with respect to the condition of the Parcel K or the

Premises or their fitness or availability for any particular use, including, but not limited to, any of the following: (a) the physical condition of Parcel K or the Premises; (b) the suitability of Parcel K or the Premises for the uses intended by PACLAC, including without limitation the condition of title to the Concert Hall Parcel. PACLAC may elect to obtain title insurance at its sole cost and expense. PACLAC acknowledges that the Improvements and the Philharmonic Center have been constructed and are hereby accepted in their "as is" condition as of the Commencement Date.

## **ARTICLE 6 USE**

### **6.1 Permitted Uses**

During the Term of this PACLAC WDCH Lease, PACLAC shall use and occupy the Premises, and shall in any license or conveyance require that the Permitted Licensees and any other licensees, sublessees or assignees shall use and occupy the Premises, in a lawful manner and only for the uses authorized herein and upon the conditions provided herein.

#### **6.1.1 Authorized Uses**

The Premises may be used as a concert hall, auditorium, music hall and center with related facilities such as ticket offices, rehearsal spaces, dressing rooms, a giftshop, food and beverage service areas, display areas for memorabilia, offices for the Permitted Licensees and their employees, storage and backstage areas, Founders Room and garden, restaurant, and associated lobby, plaza and outdoor areas, subject to County's reasonable approval as to the location, size and maintenance costs of any office space and food and beverage service areas (the office space and food and beverage service areas existing as of the Commencement Date are hereby approved by County).

#### **6.1.2 Events Schedule and Supervision**

PACLAC shall supervise the arrangement, booking and presentation of performances and services related to performances in the Concert Hall and shall pay or cause to be paid all Concert Hall Charges. PACLAC shall be entitled to enter into agreements whereby the Concert Hall Charges are reimbursed by Philharmonic, LAMC, the Other Resident Companies, and other Permitted Licensees. In complying with its obligations set forth in the immediately preceding sentence, PACLAC shall enter into long or short term licenses or contracts with performers, performance companies and producers as PACLAC shall select to perform or cause performances to be held in the Concert Hall. The quality and type of such performances must be dignified, of artistic merit and high caliber, must comply

with Sections 8.1.2 and 8.2 below and shall not be prohibited by Section 6.2 below. In addition, PACLAC shall comply with the following:

(a) Subject to PACLAC's right to contest such obligations, PACLAC shall duly and punctually pay or cause to be paid all Concert Hall Charges and provide for the discharge of all claims which it has authorized or incurred for labor, materials and supplies furnished for or in connection with the Concert Hall, and all taxes and assessments lawfully levied or assessed upon or with respect to any of the revenues received by PACLAC under Section 4.3.

(b) PACLAC shall cooperate, coordinate and consult with County and the Philharmonic to ensure the efficient operation in scheduling performances and other services of the Concert Hall.

(c) PACLAC shall keep proper books of records and accounts in which compete and correct entry shall be made of all transactions relating to the Concert Hall and the services to be provided hereunder. Said books of records and accounts shall be available at all reasonable times for inspection by County, and shall be audited at such times and in such manner as County shall determine.

(d) No officer, director or employee of PACLAC shall have any financial interest, direct or indirect, in any contract made by PACLAC with respect to the licensing or use of the Concert Hall or any other aspect of Concert Hall operations without the prior written consent of County. Notwithstanding the foregoing, no consent of County shall be required for any license or use of the Premises by PACLAC Presentations, including Dance Company, so long as such performances are otherwise in compliance with the terms and provisions of this PACLAC WDCH Lease.

## **6.2 Prohibited Uses**

PACLAC shall not use or occupy the Premises or any part thereof, or permit or suffer the Premises or any part thereof to be used or occupied: (i) for any ultrahazardous, unlawful, or illegal business, use or purpose, nor in a manner as to constitute a nuisance of any kind, (ii) in any manner which could result in an adverse tax effect on the tax-exempt status of the Garage Financing ("Adverse Tax Effect"), (iii) in any manner inconsistent with or in violation of any Legal Requirements, (iv) by any Person during the Term in such manner as might make possible a claim or claims of adverse use, adverse possession, prescription or other similar claims of, in or with respect to the Premises or any part thereof, (v) to qualify for fulfillment of any municipal or governmental requirements for construction or maintenance of any building or other improvements or premises not leased hereunder, and no building or other Improvement constructed on the

Concert Hall Parcel shall rely on any other property not leased hereunder in order to qualify for fulfillment of any governmental or municipal requirement, except for any parking requirements fulfilled by the use of the Garage, or (vi) in any manner detrimental to the Concert Hall's reputation or the reputation of County.

Immediately upon the discovery of any such unlawful, illegal or ultrahazardous use, or of any use in violation of this PACLAC WDCH Lease, PACLAC shall take or cause to be taken all necessary steps, legal and equitable, to discontinue such use, and to remove any occupants or other persons causing such use, in an expeditious manner. PACLAC shall not by act or omission impair the integrity of the Concert Hall Parcel as a single parcel separate and apart from all other premises and any attempt by PACLAC to take such action shall be null and void. Notwithstanding the foregoing, nothing contained herein shall limit or prevent PACLAC from jointly operating and administering the Premises with the Music Center Original Campus.

## **ARTICLE 7**

### **MAINTENANCE AND OPERATION**

#### **7.1 Concert Hall Maintenance and Operation**

During the term of this PACLAC WDCH Lease, County, at County's own cost and expense, shall operate and maintain, or cause others to operate and maintain, the Improvements in a good, clean and safe condition, in compliance with all Legal Requirements, Insurance Requirements, and the requirements set forth in the following sentence. As of any particular date, County shall operate and maintain, or cause others to operate and maintain, the Improvements in accordance with the maintenance standards then in effect for the Music Center Original Campus. County's maintenance and operation obligations of the Concert Hall shall include providing or paying for (a) all necessary utilities such as heat, light, water, gas, air conditioning and sewer service, but excluding telephone and other communications services; (b) all security, custodial and janitorial services; (c) all ushers and ticket takers; (d) all landscaping materials, supplies and maintenance services. To the extent imposed by law on owners of abutting property, County shall also maintain, or cause others to maintain, the abutting sidewalks and curbs in good and clean order and condition, subject to reasonable wear and tear.

#### **7.2 Concert Hall Operation and Maintenance – Philharmonic Period**

PACLAC and County desire that the Concert Hall be recognized as among the finest performing arts halls. Therefore, during the Philharmonic Period, County shall operate and maintain, or cause others to operate and maintain, the Improvements in a manner consistent with the quality of the materials, finishes and equipment in the Concert Hall on the Commencement Date and taking into account the age of the hall and intensity of its use, equal or superior to that of the following major concert halls: Benaroya Hall, Seattle, Washington; Davies Hall, San Francisco, California; and Myerson Hall, Dallas, Texas (the "Philharmonic



Maintenance Standard"). Not less than once during every five (5) years during the Term, County and PACLAC shall review the maintenance and operation standards, including, without limitation, the custodial and physical maintenance standards theretofore agreed upon by County and PACLAC, to determine whether such custodial and physical maintenance standards require revision to meet the Philharmonic Maintenance Standard. County's obligations under this Section 7.2 shall be conditioned upon either (i) the Philharmonic's compliance with its obligations under the Philharmonic Sublease to use the Concert Hall as the Orchestra's principal location for performances and to schedule and cause the Orchestra to perform each year the Minimum Number of Performances, or any greater minimum number of performances that are required by the Philharmonic Sublease, or (ii) the Satisfactory Replacement Orchestra's compliance with its obligations under the Satisfactory Replacement Orchestra Agreement to use the Concert Hall as the Satisfactory Replacement Orchestra's principal location for performances and to schedule and cause the Satisfactory Replacement Orchestra to perform each year the Minimum Number of Performances, or any greater minimum number of performances that are required by the Satisfactory Replacement Orchestra Agreement, in each case as provided therein.

#### **7.2.1 Elements of Maintenance and Operation.**

In order to satisfy County's obligation set forth in Section 7.2 above, during the Philharmonic Period County shall:

(a) maintain and preserve the Improvements, including without limitation, any operating equipment other than PACLAC's, LAMC's or Philharmonic's Equipment used in connection with the Concert Hall, in excellent condition and working order, accomplishing the necessary preventative maintenance and repair or replacement of any items which are not in excellent working order and condition; and

(b) make necessary and appropriate capital improvements to preserve the Concert Hall and its ability to be utilized by the public and the Philharmonic and other musical organizations to meet the Philharmonic Maintenance Standard including, but not limited to, from time to time making capital improvements and replacements which, to the extent reasonable and practicable in light of the remaining useful life of the Concert Hall and the remaining Term of this PACLAC WDCH Lease, take into account state of the art, technological and other changes in the maintenance and operation of concert halls described in Section 7.2 above (collectively, the improvements described in this clause (b), subject to Section 7.2.2 below, shall be referred to herein as "Capital Improvements").

### **7.2.2 Exclusions from Capital Improvements.**

The term "Capital Improvements," as used in Section 7.2.1(b) above and elsewhere in this PACLAC WDCH Lease, shall specifically exclude the following:

- (a) betterments or changes which are not required to maintain the Concert Hall's position and to meet the Philharmonic Maintenance Standard but which are nonetheless deemed desirable by PACLAC;
- (b) alterations or additions to the landscaping, grounds or pedestrian plazas surrounding the Concert Hall on the Concert Hall Parcel, and any alterations to the Concert Hall (either exterior or interior) or the Concert Hall operating equipment during the first five years after the opening of the Concert Hall to the public; and
- (c) any additions to or expansions of the structure of the Concert Hall (which will be deemed to be Alterations as defined in Article 10 below and shall be governed by the terms of such Article).

### **7.3 Maintenance Agreement**

County and PACLAC are parties to an agreement dated as of December 23, 1992, as amended by an amendment dated as of September 14, 1999 and by the Second Amendment dated June 23, 2003 (as so amended, the "PACLAC Agreement"). Pursuant to the PACLAC Agreement, County has appointed PACLAC as County's agent to perform all of County's obligations under this PACLAC WDCH Lease relating to the operation and maintenance of the Improvements. If for any reason PACLAC shall no longer be engaged to perform services as provided in the PACLAC Agreement, County shall enter into an agreement (which shall be in substantially the same form as the PACLAC Agreement, except for changes reasonably approved by PACLAC) to perform said services with another entity approved by PACLAC, such approval not to be unreasonably withheld.

### **7.4 Maintenance and Operation Budget**

Each year during the Term, County, PACLAC, and the Philharmonic shall engage in a budgetary process as provided in Section 7.4.1 below to determine the amount of funds and services required for the ensuing year to perform County's maintenance and operation obligations as set forth in Sections 7.1 and 7.2 above.

#### **7.4.1 Budgetary Process**

County operates on a July 1 through June 30 fiscal year and is required by state law to adopt its budget for any fiscal year (the "County Budget") by August 30 of such fiscal year. On or before February 15 of each year during the Term, PACLAC shall, after consultation with Philharmonic, deliver to County a written estimate of the amount of funds and services required for the ensuing year to perform County's maintenance and operation obligations set forth in Sections 7.1 and 7.2 above (a "Budget Proposal"). On or before May 31st of each year, County shall deliver a Notice to PACLAC advising PACLAC as to whether the CCAO has recommended to the Board of Supervisors that such Budget Proposal be included in its entirety in the County Budget for the ensuing fiscal year. If PACLAC disagrees with the CCAO's recommendation regarding the Budget Proposal, PACLAC may request the Board of Supervisors to approve the entire Budget Proposal for inclusion in the County Budget. If the County Budget, as approved by the Board of Supervisors, does not include the entire Budget Proposal, PACLAC may pursue the remedies set forth in Section 7.5 below

#### **7.5 Arbitrable Disputes**

Subject to Section 7.7 below, all Arbitrable Disputes that have not been resolved through a reasonable period of good faith negotiations shall be settled by binding arbitration in accordance with the procedure set forth in Section 7.6 below. For the purposes of this Section 7.5, the term "Arbitrable Dispute" shall refer to any dispute between PACLAC and County regarding (a) whether the Philharmonic Maintenance Standard is being met at any time during the Philharmonic Period, (b) whether at any time after the Philharmonic Period any element of maintenance and operation required by Section 7.1 above is being performed by County in accordance with the standard set forth in said Section, (c) whether in any year County is supplying adequate services or funding for any such element of maintenance or operation, or (d) whether County was obligated under the terms of this PACLAC WDCH Lease to include the entire "Budget Proposal" submitted by PACLAC to the County under Section 7.4 for such "County Budget" in any given County Budget (as such terms are defined herein). The term "Arbitrable Dispute" shall expressly exclude all disputes between PACLAC and County concerning County's provision of any Capital Improvements that PACLAC deems to be required by Section 7.2.1(b) above or which are new or additional Capital Improvements and not capital repairs, replacement or restoration of the existing Improvements.

#### **7.6 Arbitration**

The procedures for arbitration shall be as follows:

### **7.6.1 Notice of Arbitration**

If PACLAC or County desires to initiate an arbitration proceeding under this Section 7.6, such party shall deliver Notice thereof to the other party specifying the nature of the Arbitrable Dispute to be arbitrated.

### **7.6.2 Appointment of Arbitrators**

Within twenty (20) days after the delivery date of any arbitration Notice pursuant to Section 7.6.1 above, County and PACLAC shall each appoint one (1) arbitrator who is qualified to decide the applicable dispute, and shall notify the other party of the appointed arbitrator's name and address. The arbitrator appointed by County shall not be affiliated with County. The arbitrator appointed by PACLAC shall not be affiliated with PACLAC, the Philharmonic, or the Concert Hall. The first two arbitrators shall appoint a third arbitrator who is personally familiar with the operation and maintenance of concert halls meeting the Philharmonic Maintenance Standard. If the three arbitrators to be so appointed are not appointed within a thirty (30) day period after delivery of the applicable arbitration notice, then the arbitrator or arbitrators who have been selected shall proceed to carry out the arbitration.

### **7.6.3 Arbitration Procedures**

The arbitrator or arbitrators so selected shall furnish County and PACLAC with a written decision within thirty (30) days after the selection of the last arbitrator to be selected. Any decision so submitted shall be signed by a majority of the arbitrators if more than two have been selected. If only two arbitrators have been selected and they are unable to agree, then either County or PACLAC shall be entitled to apply to the presiding judge of the Superior Court of the County of Los Angeles for the selection of the third arbitrator (who shall be personally familiar with the operation and maintenance of concert halls meeting the Philharmonic Maintenance Standard). In designating arbitrators and in deciding the disputes, the arbitrators shall act in accordance with the commercial rules of arbitration then in force of the American Arbitration Association (or if the American Arbitration Association is no longer in existence, then a similar organization mutually acceptable to PACLAC and County), subject, however, to such limitations as may be placed upon them by the provisions of this PACLAC WDCH Lease. The cost of arbitration shall be borne equally by County and PACLAC, provided, however, that County and PACLAC shall each bear their own legal fees in connection with any arbitration hereunder. Such arbitration shall be final and binding and either County or PACLAC shall be entitled to seek and obtain such judicial enforcement as is available under applicable law for the enforcement and collection of arbitrators' decisions and awards above.

## **7.7 Capital Improvement Disputes**

Any request that County make any Capital Improvement to the Concert Hall must be made in writing by PACLAC. In the event that County rejects any request by PACLAC that County make any such Capital Improvements to the Concert Hall, if the parties are unable to resolve the dispute through a reasonable period of good faith negotiations then PACLAC may make a direct request to the Board of Supervisors for the approval of such Capital Improvement. If the Board of Supervisors rejects the requested Capital Improvement, PACLAC's sole recourse shall be to obtain a decision from a court of competent jurisdiction holding that the rejection of the requested Capital Improvement by the Board of Supervisors constitutes a default under County's obligations under this PACLAC WDCH Lease to make certain Capital Improvements, and ordering County to make such Capital Improvement or to pay as damages to PACLAC the cost, whether or not expended theretofore, of making such Capital Improvement as determined by the Court. PACLAC hereby covenants to use any such damage award solely to reimburse or pay for the cost of such Capital Improvement.

## **7.8 Facility User's Fee**

County shall have the right to impose a facility user's fee ("Facility User's Fee") of no more than ten percent (10%) on all tickets sold for performances in the Concert Hall. County shall have the right to apply any and all revenues from the Facility User's Fee to the performance of its obligations under this PACLAC WDCH Lease. The Facility User's Fee is a charge against any person purchasing a ticket to the Concert Hall for the privilege of using, and the right to use, the facilities thereof during their presence therein, and shall be collected by Philharmonic and LAMC and paid to PACLAC. Subject to obtaining approval by CCAO and compliance with the other requirements of this PACLAC WDCH Lease, the Facility User's Fees shall be used by PACLAC from time to time to make Alterations or improvements to the Premises which may include purchases of, or repairs or improvements to furniture, fixtures, equipment, facilities and information and performance technology systems, or the financing thereof, which enhance, or are otherwise reasonably appropriate for use in connection with, performances, rehearsals and audience services in, on or about the Entertainment Space and Facilities and associated facilities (the "Expenditure Standard"). Provided there is no material increase in the maintenance obligations of County, CCAO shall not unreasonably withhold consent to the use of the Facility User's Fees for purposes which meet the Expenditure Standard. Any unused Facility User's Fees shall be carried forward for use in future years for approved uses meeting the Expenditure Standard.

## **7.9 Garage**

### **7.9.1 County's Provision of Parking**

County hereby covenants, for the Term of this PACLAC WDCH Lease, to provide parking to serve (a) all of the patrons of the Concert Hall during any performances at the Concert Hall, and (b) the patrons of the Café (as defined in Section 7.11) and the Restaurant (as defined in Section 7.12). At the request of PACLAC, but subject to the next sentence, County shall reserve, during performances at the Concert Hall, certain parking areas in the Garage for parking by certain patrons or groups of patrons (the identity of which shall be approved by County) of the Concert Hall. The location of such areas within the Garage and the number of spaces to be included in such area shall be mutually satisfactory to PACLAC and County; provided, however, that (i) County shall not be obligated to reserve either any number of spaces or areas for any Persons that would have an Adverse Tax Effect; and (ii) in no event shall the total number of parking spaces in any such reserved area exceed ten percent (10%) of the total number of parking spaces in the Garage. County's provision of such reserved area shall in no event limit County's use of the Garage during times in which no performances are scheduled. In addition, at the request of PACLAC, County shall provide parking in the Garage for the employees of the Philharmonic. County shall charge such employees and Café, Restaurant and Concert Hall patrons (including the patrons using the reserved spaces, as provided above) prevailing rates for parking in the Garage, as determined by County.

#### **7.9.2 Operation and Maintenance**

County shall operate and maintain the Garage during the Term of this PACLAC WDCH Lease in good repair and in a clean and safe condition, in compliance with all Legal Requirements applicable to the Garage. In performing its obligations pursuant to this Section 7.9.2, County shall operate and maintain the Garage in a condition at least equal to the condition in which the underground parking structure beneath the Dorothy Chandler Pavilion was being operated and maintained as of December 23, 1992.

#### **7.10 Giftshop**

Notwithstanding anything to the contrary contained in this PACLAC WDCH Lease, unless County otherwise agrees in writing with PACLAC, County shall not be required to perform any maintenance or operation services in connection with the operation of the Giftshop, except County shall provide trash collection, electricity, light, heat, and air conditioning, air ventilating and handling services to the Giftshop. PACLAC hereby covenants that, subject to the obligations of County as provided above, if and so long as PACLAC shall operate and maintain the Giftshop or permit the operation and maintenance of the Giftshop to be performed by Philharmonic or another entity, such operator shall maintain its status as a 501(c)(3) Organization for the entire period prior to the date upon which the Garage Financing has been paid in its entirety and the debt instruments issued thereunder have been retired.

## **7.11 Café**

Pursuant to the Concession Agreement, a café ("Café") has been constructed on the Concert Hall Parcel in the locations labeled as "Café" and "Future Servery" on the design development drawings attached to the Philharmonic Sublease as Exhibit E-1-4 and operated by the Approved Operator. PACLAC covenants that, notwithstanding any provisions of the Concession Agreement to the contrary, PACLAC shall have such rights of continuing oversight over Café operations as County and PACLAC shall agree are necessary to ensure that the nature and quality of the service, decor, and cuisine are compatible with the standard of the Concert Hall. Notwithstanding anything to the contrary in this PACLAC WDCH Lease, (i) County shall not be responsible or liable for any of the costs of constructing the Café, and (ii) unless County otherwise agrees in writing with PACLAC, County shall not be required to perform any maintenance or operation services in connection with the operation of the Café, or have any responsibility or liability for any of the costs of maintaining or operating the Café, except that County shall provide trash collection, electricity, light, heat, and air conditioning, air ventilating and handling services to the Café.

## **7.12 Restaurant**

Pursuant to the Concession Agreement, a restaurant ("Restaurant") has been constructed on the Concert Hall Parcel in the location labeled as "Future Restaurant" on the design development drawings attached to the Philharmonic Sublease as Exhibit E-1-4 and is operated by the Approved Operator. PACLAC covenants that, notwithstanding any provisions of the Concession Agreement to the contrary, PACLAC shall have such rights of continuing oversight over Restaurant operations as County and PACLAC shall agree are necessary to ensure that the nature and quality of the service, decor, and cuisine are compatible with the standard of the Concert Hall. Notwithstanding anything to the contrary in this PACLAC WDCH Lease, (i) County shall not be responsible or liable for any of the costs of constructing the Restaurant, and (ii) unless County otherwise agrees in writing with PACLAC, County shall not be required to perform any maintenance or operation services in connection with the operation of the Restaurant, or have any responsibility or liability for any of the costs of maintaining or operating the Restaurant, except that County shall provide trash collection, electricity, light, heat, and air conditioning, air ventilating and handling services to the Restaurant.

## **7.13 Maintenance and Operation of Philharmonic Center**

Notwithstanding anything to the contrary in this PACLAC WDCH Lease, PACLAC and County intend that Philharmonic shall be solely responsible for the payment of all costs relating to the operation and maintenance of the Philharmonic Center. Such costs shall include payment or reimbursement of the cost of any All Risk policy as provided in Section 16.1.1 attributable to the

Philharmonic Center if such policy is maintained by County. County may determine in the future that it is necessary to make certain capital and operating repairs, replacements or renewals to the Philharmonic Center. If County decides that any such repairs, replacements or renewals ("Capital Work") is necessary, it shall give Notice to PACLAC and Philharmonic that such Capital Work is necessary and the probable expense thereof. If Philharmonic, PACLAC and County disagree with respect to the necessity of such work, the matter shall be resolved in accordance with the provisions of Article 28 of the Philharmonic Sublease. If it is determined that the Capital Work is necessary, or if Philharmonic determines unilaterally that any such Capital Work is necessary, then subject to the reasonable approval and conditions of PACLAC, County, at County's election, shall either (i) perform or cause the performance of the Capital Work and Philharmonic shall reimburse County for all of the costs associated with such Capital Work within ten (10) days after County's written demand therefor (County may, at its election, submit progress billings to Philharmonic during the course of the Capital Work or a single bill after the Capital Work if completed), or (ii) County may request that Philharmonic perform the Capital Work, in which event Philharmonic shall, at Philharmonic's sole cost and expense, perform or cause the performance of such Capital Work within the time period and subject to the conditions set forth in Article 10 for Alterations and such additional conditions as may be reasonably established by County or PACLAC. PACLAC and County shall have no responsibility for the performance of such Capital Work unless the cost is paid or reimbursed by Philharmonic. PACLAC covenants to include the substance of this Section 7.13 and Sections 8.1, 8.1.1 and 8.1.2 in the Philharmonic Lease and County shall be a third party beneficiary of such provisions.

## **ARTICLE 8**

### **PERFORMANCES IN CONCERT HALL**

#### **8.1 Philharmonic Period**

During the Philharmonic Period the Philharmonic or a Satisfactory Replacement Orchestra shall utilize the Concert Hall subject to and in accordance with the terms hereof and the terms of the Philharmonic Sublease or the Satisfactory Replacement Orchestra Agreement.

##### **8.1.1 Philharmonic Sublease**

Concurrently with the execution and delivery of this PACLAC WDCH Lease, PACLAC and the Philharmonic are delivering the Philharmonic Sublease, a copy of which has been furnished to County and approved by the CCAO. Philharmonic has agreed to use the Concert Hall as the Orchestra's principal location for performances for the entire term of the Philharmonic Sublease. The terms and conditions of the Philharmonic Sublease and any amendments thereto shall be such that the standard of operation and maintenance of the Concert Hall,



which the Philharmonic is entitled to have maintained by its sublessor, shall not exceed the obligations of County under this PACLAC WDCH Lease. The Philharmonic Sublease shall prescribe that the Philharmonic must schedule and cause to be performed at the Concert Hall, before a paying audience, at least 128 performances per year not including open rehearsals with an invited audience (the "Minimum Number of Performances"), of which not less than 108 shall be presentations by the Orchestra, as well as the consequences including financial imposed upon Philharmonic should it fail to meet such requirement. Without reducing the minimum number of the Minimum Number of Performances that must be presented by the Orchestra pursuant to the previous sentence, and excluding any presentations in excess of the Minimum Number of Performances, presentations by orchestras other than the Orchestra shall be by orchestras of recognized international, national or regional quality (such as the Seattle Symphony, the Glendale Symphony, the Hollywood Bowl Orchestra and the symphony orchestras of the University of Southern California and UCLA) which are likely to attract significant audiences to the Concert Hall. The Philharmonic will agree to a procedure, satisfactory to County and PACLAC, pursuant to which the Philharmonic and/or PACLAC will book performances for the Concert Hall for all available dates upon which the Orchestra or LAMC is not scheduled to perform at the Concert Hall. So long as the Garage Financing is outstanding, PACLAC agrees not to change or amend any provision in the Philharmonic Sublease, if such change or amendment will cause an Adverse Tax Effect. County shall be entitled to certain preferential tickets for performances by Philharmonic in accordance with the terms and provisions of Section 8.5 of this PACLAC WDCH Lease and Section 8.4 of the Philharmonic Sublease. PACLAC shall not amend the terms of the Philharmonic Sublease with respect to any of the foregoing provisions of the Philharmonic Sublease described in this Section unless the CCAO has approved or consented to such amendment in its sole discretion. Notwithstanding the foregoing, PACLAC shall have the right to terminate the Philharmonic Sublease if: (a) there is a material breach by Philharmonic of the Philharmonic Sublease prior to its expiration or termination, (b) PACLAC proposes a replacement orchestra which is of similar stature in the United States music community with an agreement to perform the Minimum Number of Performances and (c) PACLAC demonstrates to County's reasonable satisfaction that the termination by PACLAC and proposed replacement will not be likely to adversely affect the revenue from the Garage or increase the County's cost of operation and maintenance of the Concert Hall and the Garage from that which it could reasonably have expected had the Philharmonic continued as sublessee under the Philharmonic Sublease. Any such replacement orchestra which is proposed by PACLAC from time to time and which fulfills the requirements of clauses (b) and (c) shall be deemed a "Satisfactory Replacement Orchestra" upon (1) approval of such orchestra by the County and (2) execution of a lease or other agreement ("Satisfactory Replacement Orchestra Agreement") between such orchestra and PACLAC which shall be for a term not greater than the remaining Term hereof and otherwise approved by County. PACLAC shall deliver

to County a copy of any proposed amendment to the Philharmonic Sublease for its records or any proposed Satisfactory Replacement Orchestra Agreement for County approval. If County disapproves of such a proposed amendment or Satisfactory Replacement Orchestra Agreement on the ground that such amendment or agreement would cause an Adverse Tax Effect, then PACLAC may deliver to County the opinion of a nationally recognized bond counsel (to be chosen from a list of five (5) such firms provided by County at such time) which concludes that subject to qualifications and limitations reasonably acceptable to County, there will be no such Adverse Tax Effect, in which case County approval shall be deemed obtained. PACLAC shall use reasonable efforts in good faith to enforce all of the provisions of the Philharmonic Sublease and any Satisfactory Replacement Orchestra Agreement. County's obligations under Section 7.2 above shall be conditioned upon either (i) the Philharmonic's compliance with its obligations under the Philharmonic Sublease to use the Concert Hall as the Orchestra's principal location for performances and to schedule and cause the performance of the Minimum Number of Performances (including the minimum number which must be performed by the Orchestra, as provided above), in each case as provided in the Philharmonic Sublease and this PACLAC WDCH Lease or (ii) the Satisfactory Replacement Orchestra's compliance with its obligations under the Satisfactory Replacement Orchestra Agreement to use the Concert Hall as the Satisfactory Replacement Orchestra's principal location for performances and to schedule and cause the Satisfactory Replacement Orchestra to perform the Minimum Number of Performances.

#### **8.1.2 Right to Schedule Performances and Maintenance of Events Schedule**

Subject to and in accordance with the rights of Philharmonic under the Philharmonic Sublease, PACLAC shall have the right and responsibility for maintaining the Events Schedule for the use of the Entertainment Space and Facilities at the Premises. The use of the Entertainment Space and Facilities shall be considered licensed to each user by PACLAC during the times specified in the Events Schedule. With respect to Philharmonic such license shall be subject to the terms of the Philharmonic Sublease, in the case of LAMC shall be subject to the terms of the LAMC Sublease, and with respect to other users shall be subject to the terms of the license or booking agreement entered into by Philharmonic and such user.

(a) With respect to the booking of the Concert Hall, PACLAC will use commercially reasonable, good-faith efforts to enter into agreements in form reasonably satisfactory to CCAO, with reputable and responsible parties to cause performances in the Concert Hall, so that the Concert Hall will be used for performances which are consistent with the requirements of Article 6 of this PACLAC WDCH Lease ("Concert Hall Class Performances").

PACLAC shall file information regarding the Concert Hall Class Performances

on the Events Schedule, which shall be maintained by PACLAC and available for inspection by CCAO in the offices of PACLAC during normal business hours. PACLAC shall use commercially reasonable, good-faith efforts to cause the Concert Hall to be booked for Concert Hall Class Performances on a regular and recurring basis throughout the year.

(b) By February 1 of each year during the Term of this PACLAC WDCH Lease, PACLAC and County shall establish in writing the estimated number for performances to be held in the Concert Hall during the next Occupancy Period. PACLAC shall use all commercially reasonable good faith efforts to enter into agreements with performance companies and/or booking agencies (including, without limitation, those suggested from time to time by County or its designee), which will agree to perform and/or book as many Concert Hall Class Performances in the Concert Hall as is practically feasible to achieve the number of performances estimated pursuant to the first sentence of this Section 8.1.2(b).

(c) PACLAC agrees to use its best efforts in good faith to enforce all agreements for performances which it enters into.

## **8.2 Performances After Philharmonic Period**

PACLAC agrees that throughout the Term of this PACLAC WDCH Lease after the Philharmonic Period (the "Post Philharmonic Period"):

(a) It will consult with CCAO regarding the booking of, and will enter into agreements reasonably satisfactory to County (or its designee) with such reputable and responsible entities approved by County in its reasonable discretion as will agree to cause performances in, the Concert Hall so that the Concert Hall will be used for symphonic performances and other Concert Hall Class Performances on such a regular and recurring basis that the Concert Hall will be operating regularly throughout the year and, subject to the then need of Concert Hall patrons for parking, generating parking revenue for the Garage in a significant amount on a regular and recurring basis (collectively, the "Post Philharmonic Operating Standard").

(b) By February 1 of each year during the Post Philharmonic Period, PACLAC and County shall by written agreement establish the average minimum number of performances which need to be held in the Concert Hall during each month of the next Occupancy Period ("Minimum Average Monthly Number of Performances") in order to achieve the Post Philharmonic Operating Standard and PACLAC shall use all commercially reasonable good faith efforts to enter into agreements with performance companies and/or booking agencies (including, without limitation, those suggested from time to time by County or its designee), which will agree to perform and/or book as

many Concert Hall Class Performances in the Concert Hall as is practically feasible, but is not less than the Minimum Average Monthly Number of Performances.

(c) PACLAC agrees to use its best efforts in good faith to enforce all agreements for performances which it enters into.

### **8.3 [Intentionally Omitted]**

### **8.4 OPA Compliance**

PACLAC agrees that it will comply with, and shall cause the Philharmonic under the Philharmonic Sublease (and any Satisfactory Replacement Orchestra under any Satisfactory Replacement Orchestra Agreement) to comply with, all of the provisions of the OPA applicable to the booking, scheduling and presentation of performances in the Concert Hall.

### **8.5 County Tickets**

In the Philharmonic Sublease, the LAMC Sublease and all contracts and agreements with PACLAC Licensees, including without limitation each Satisfactory Replacement Orchestra Agreement, if any, for the lease, license or use of the Concert Hall for an event requiring a pass or ticket for admission, PACLAC shall require and include or cause to be included a provision in each such contract or agreement that the lessee, licensee or user shall provide County without charge an aggregate of twenty (20) passes or tickets for a program or event, which at the request of CCAO may be allocated among the various performances if more than one performance of a particular program or event is presented; provided, however, PACLAC or the lessee, licensee or user, as applicable, shall give County written notice of the tickets so reserved not later than thirty (30) days prior to the performance and County must request such tickets not less than fifteen (15) days prior to the performance or they may be offered for sale to the general public. There shall be no obligation to provide tickets for "invitation only" or "special benefit" performances for which tickets are not being sold to the general public, unless the provider has made separate advance arrangements with the CCAO. Through operating memoranda, CCAO and PACLAC may modify these requirements if they would prevent the booking of an event, or as may be required by law or otherwise mutually agreed.

### **8.6 Founder's Tickets**

The parties acknowledge that founders and associate members of the Music Center and/or similar categories of membership and their designees may be provided with priority by PACLAC for purchase of tickets to any and all performances presented in the Concert Hall.

## **ARTICLE 9 IMPOSITIONS**

### **9.1 Payment of Impositions**

Subject to County's right to contest as provided in Section 9.2 below, during the Term of this PACLAC WDCH Lease, except as to the Philharmonic Center, the Restaurant (other than water, sewer or similar rents, rates and charges therefor) and the Café (other than water, sewer or similar rents, rates and charges therefor), County shall pay and discharge Impositions, if any, before the first day on which a penalty or interest thereon may accrue or be assessed for nonpayment or, if no penalty or interest thereon may accrue or be assessed, then before such Impositions become delinquent or past due.

### **9.2 Contest**

County may contest, at its sole cost and expense, the amount or validity of any Imposition by appropriate proceedings promptly initiated and diligently conducted in good faith. County may postpone or defer payment of such Imposition during the course of such proceedings, provided that neither the Premises nor any part thereof or interest therein would by reason of such postponement or deferment be in danger of being forfeited, sold or foreclosed for nonpayment of such Imposition. Upon the termination of any such proceedings, County shall pay the amount of such Imposition or part thereof as shall be finally determined in such proceedings to be payable (after exhaustion of any rights of appeal), the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees, interest, penalties or other liabilities incurred in connection therewith.

### **9.3 PACLAC Joinder in Contest**

Upon the written request of County, PACLAC shall either join in the proceedings described in Section 9.2 above or permit the same to be brought in its name by County, at the sole risk, cost and expense of County. PACLAC shall not be responsible for or subjected to any liability for the payment of any costs, expenses or charges in connection with any such proceedings and County shall indemnify, defend and hold PACLAC harmless from any and all such costs, expenses, charges, amounts and liabilities arising out of such proceedings, except that with respect to proceedings involving the Philharmonic Center, County shall be entitled to reimbursement by Philharmonic as a part of the obligation of the Philharmonic to pay all operating costs and expenses for the Philharmonic Center. PACLAC covenants to include the substance of this Section 9.3 in the Philharmonic Sublease and County shall be a third party beneficiary of such provision.

## **ARTICLE 10 ALTERATIONS**

PACLAC may make alterations, additions and renovations to the Improvements ("Alterations") only with the written approval of CCAO, which approval may be granted or withheld in CCAO's sole and absolute discretion, unless any such proposed Alteration would increase the cost of maintaining and operating the Concert Hall by an aggregate amount of less than Seventy Thousand Dollars (\$70,000) annually, in which case the CCAO's approval or disapproval will be granted or withheld in the CCAO's reasonable discretion. Any such approved Alterations shall be made at PACLAC's sole cost and expense (subject to reimbursement by Philharmonic under the Philharmonic Sublease, or by County under the PACLAC Agreement, or in accordance with the terms of this PACLAC WDCH Lease). Notwithstanding the foregoing, PACLAC shall notify County in advance of any proposed Alterations including a reasonable description of the proposed work, but CCAO's consent shall not be required for minor cosmetic changes to the interior of the Premises, nor for Alterations costing less than \$150,000 in the aggregate in any twelve (12)-month period (exclusive of any Alterations approved by the County) which (i) do not require any modifications to the structure of the Concert Hall, (ii) do not affect the exterior appearance of the Concert Hall, and (iii) do not materially affect building systems or the cost to the County of operating and maintaining the Improvements. As applicable, CCAO agrees to provide its consent or a written explanation of its withholding of consent within ten (10) business days of County's receipt of PACLAC's notice, together with such other materials as are reasonably necessary for County's analysis of the proposed Alteration.

### **10.1 Alteration Plans**

Prior to commencing any construction or other work in connection with any Alteration, PACLAC shall, at PACLAC's sole cost and expense, submit to County (a) schematic, design development and working drawing phases of the plans for the construction of such Alteration, prepared by or under the supervision of an architect selected by PACLAC in accordance with the provisions of this Lease (the "Alteration Plans"), (b) a licensed general contractor's written estimate of the cost of completing the construction of such Alteration, (c) evidence that PACLAC has in hand or available from Philharmonic, insurers, lenders, donors or other third parties, all necessary funds required to pay for such Alteration, and (d) such additional information as may be reasonably required by the CCAO. If the Alteration requires CCAO's approval and CCAO disapproves any phase of the Alteration Plans, CCAO shall so notify PACLAC by written notice within thirty (30) days after County's receipt of such phase of the Alteration Plans, which notice shall set forth in reasonable detail the reasons for CCAO's disapproval. If CCAO fails to so notify PACLAC within said thirty (30) day period, CCAO shall be deemed

to have disapproved the applicable phase of the Alteration Plans unless such plans constitute a Logical Evolution, in which case they shall be deemed approved by CCAO if PACLAC at the time of submission of such Alteration Plans delivers to CCAO a transmittal letter containing the following text prominently displayed in bold faced type:

**"PURSUANT TO ARTICLE 10 OF THE WALT DISNEY CONCERT HALL LEASE, IF THESE MATERIALS CONSTITUTE A LOGICAL EVOLUTION (OTHER THAN APPROVED GOVERNMENTAL CHANGES) FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU, YOU HAVE THIRTY (30) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN THIRTY (30) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM."**

CCAO shall promptly meet and confer in good faith with PACLAC to discuss the basis for any such disapproval. PACLAC shall modify the applicable phase(s) of the Alteration Plans in accordance with the CCAO's comments and resubmit the revised Alteration Plans to the CCAO for County's approval as provided above. The design development and working drawing phases of the Alteration Plans shall each be a Logical Evolution from the phase(s) of the Alteration Plans previously approved by County. To the extent such drawings are a Logical Evolution, they shall be deemed to be approved by County for purposes of this Article. Any Alteration shall be performed in accordance with the provisions of this Article 10, including the Construction Requirements.

## **10.2 Construction Requirements**

The following procedures, restrictions and requirements (the "Construction Requirements") shall apply to all construction of new Improvements (all of which shall be subject to County prior approval in writing) or Alterations (including structural repairs and restoration following damage or destruction) which is undertaken by PACLAC pursuant to this PACLAC WDCH Lease at the Premises (except that (d), (e), (f) and (h) shall only be applicable to new Improvements and to Alterations for which County approval is required):

(a) PACLAC shall cause any and all construction work to be done diligently, in a good and workmanlike manner, and in accordance with Alteration Plans (which must have been approved by County, if required under Section 10.1) and in compliance with all applicable Legal Requirements and permits;

(b) PACLAC shall cause the work to be of quality and class at least equal to the original work or installations in the Premises;

(c) PACLAC shall cause the work to be completed lien free subject to Section 10.4 below and without cost or expense to County, except as otherwise agreed by County;

(d) PACLAC shall demonstrate to the reasonable satisfaction of CCAO the estimated costs to complete the subject work and the availability of necessary funds for the payment of such costs including a reasonable contingency amount;

(e) Prior to the commencement of the subject work PACLAC shall provide to CCAO copies of necessary governmental permits, insurance certificates or copies of policies for required insurance, a copy of the construction contract with a licensed general contractor reasonably acceptable to the CCAO, and payment and performance bonds from PACLAC and/or the general contractor to the extent required by law and/or by the CCAO (and, in the case of PACLAC, provided that such bonds are available on commercially reasonable terms);

(f) Each contract between PACLAC and a General Contractor shall give County (i) the right to receive notices of any default by PACLAC thereunder and reasonable opportunity to cure any such default (after PACLAC's right to cure has ended and County has given written notice to PACLAC of County's intention to cure), and (ii) the right but not the obligation to assume PACLAC's obligations and rights under such contract, if PACLAC defaults under such contract and all applicable cure periods available to PACLAC under such contract have expired without cure. County's exercise of its rights pursuant to the immediately preceding sentence shall not be in lieu of or constitute a waiver of any other right County may have against PACLAC, any guarantor or surety, or any other Person or entity. In addition, PACLAC shall cause each construction contract and subcontract to contain the provisions concerning non-discrimination and liens as provided in Section 10.3 below;

(g) PACLAC shall permit County in its proprietary capacity and its consultants and representatives reasonable access to the Premises during construction for the purpose of inspecting the work and its progress, provided: (i) there is no unreasonable interference with the work then in progress, (ii) the representatives of County are properly identified, and (iii) a representative of PACLAC shall have the right to accompany the County representatives (nothing contained herein shall limit or restrict in any way the right of County in its governmental capacity to conduct inspections of the Premises or the work at any time under applicable building codes and regulations);



(h) During the course of construction PACLAC shall permit CCAO or his representatives to be present at the construction meetings with contractor and architect and/or to receive copies of the minutes for such meetings; and

(i) To the extent it is commercially reasonable to do so, PACLAC will cause the work to be performed in such a manner as will not unreasonably interfere with any scheduled performances or unreasonably or unnecessarily interfere with any rehearsals at the Concert Hall.

### **10.3 Construction Contract Provisions**

To the extent required by the OPA or applicable Legal Requirements and unless otherwise approved by the CCAO, the following provisions or substantially similar clauses shall be included in all construction contracts and subcontracts affecting the Premises which are entered into pursuant to this Article 10:

#### **10.3.1 Provisions Concerning Non-Discrimination:**

"During the performance of this contract, Contractor agrees as follows:

(a) Contractor will not discriminate against any qualified employee or qualified applicant for employment because of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex, or sexual orientation. Contractor will take affirmative action to ensure that qualified applicants are employed, and that qualified employees are treated during employment, without regard to their race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex or sexual orientation. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the CRA setting forth the provision of this nondiscrimination clause;

(b) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state

that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex, or sexual orientation;

(c) Contractor will send to each labor union or representative of workers with which Contractor has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the CRA, advising the labor union or worker's representative of Contractor's commitments under Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

(d) Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor;

(e) Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor or the Secretary of Housing and Urban Development pursuant thereto, and will permit access to the Contractor's books, records, and accounts by City and the Agency, the Secretary of Housing and Urban Development, and the Secretary of Labor at Normal business hours upon reasonable notice for purposes of investigation to ascertain compliance with such rules, regulations, and orders; and

(f) In the event of Contractor's noncompliance with the nondiscrimination clauses of this Section, or with any of the said rules, regulations, or orders, the OPA may be canceled, terminated, or suspended with respect to the rights under the OPA of the non-complying party and Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized by Executive Order 11246 of September 24, 1965, or by rule, regulations, or order of the Secretary of Labor, or as otherwise provided by law."

### **10.3.2 No Lien Provision:**

"No Lien on County's Interest. Under no circumstance whatsoever shall any lien, including without limitation any mechanic's lien, materialman's lien, or any lien for goods, labor, materials, services or work delivered to or performed at the Premises or on the Concert Hall Parcel, attach to or encumber County's fee, interest in the Improvements or reversionary interest in the Concert Hall Parcel or Parcel K. All contractors, subcontractors and any other providers of goods, labor, materials, services or work, to or for the benefit or improvement of the Premises, are hereby put on notice of this restriction."

## **10.4 Mechanics Liens**

### **10.4.1 Removal of Liens**

If any mechanic's lien, materialman's lien, or any other lien is filed against the Premises, or any stop notice is served, for work or labor performed or claimed to have been performed, or goods, materials or services furnished or claimed to have been furnished upon or with respect to the Premises at any time during the course of construction of the Project, then unless PACLAC elects to contest such lien or stop notice in accordance with the provisions of Section 10.4.3 below, PACLAC shall discharge or cause the discharge of such lien or stop notice within sixty (60) days thereafter whether by payment, release, or posting of a bond or other similar assurance in the amount of 100% of the face amount of any such lien or stop notice, or PACLAC shall obtain title insurance against the enforcement of such lien reasonably satisfactory to County. If such lien or stop notice is discharged other than by recorded full release and satisfaction (by bond), the same must be reasonably satisfactory in form and substance to County.

### **10.4.2 Notice of Non-Responsibility**

County shall have the right to post on the Concert Hall Parcel any and all notices of nonresponsibility which County in its sole and absolute discretion deems appropriate. The filing of any lien against County's interest in the Premises in contravention of this provision, however, shall not be deemed to be a default of PACLAC under this Lease if PACLAC, diligently and in good faith, discharges or contests such lien as provided in Section 10.4.3 below.

### **10.4.3 Contest**

PACLAC, at its sole cost and expense, may contest by appropriate legal proceedings, promptly initiated and diligently conducted in good faith, the

amount, validity or application in whole or in part of any lien if the effect of such contest or proceedings completely stays any enforcement of the lien or stop notice: provided that (a) if in County's reasonable opinion the payment bond or bonds delivered to County pursuant to Section 10.2 above do not guarantee full payment of the claim giving rise to such lien, PACLAC shall provide County with such additional assurance and security reasonably satisfactory to County assuring County that no lien, charge, encumbrance, loss or damage of any kind whatsoever can or will affect County's interest in the Premises or Parcel K as a result of PACLAC's nonpayment or contest of any such lien, (b) PACLAC shall indemnify County and defend and hold County harmless from and against all liability, costs, claims, damages, interest penalties and expense in connection with or arising out of such contest, and (c) PACLAC shall prosecute such contest in good faith and with due diligence to a final determination.

#### **10.4.4 Reimbursement Requirement**

Anything in Section 10.4 or other provisions of this PACLAC WDCH Lease to the contrary notwithstanding, PACLAC shall not be obligated to pay for work completed or secure lien releases with respect to Alterations which constitute Capital Improvements which are to be made by or at the expense of County, except to the extent that PACLAC has received payment or reimbursement by County for such work and has failed to pay over to the contractor the amount so advanced by County.

#### **10.5 Prohibited Alterations**

PACLAC shall not, without the prior written consent of CCAO, demolish or remove any structural element of any of the Improvements or the Philharmonic Center.

#### **10.6 Capital Improvements**

Nothing contained in this Article 10 shall have any effect upon, or expand or create any right of County, to disapprove or avoid, County's obligation to make certain capital improvements to the Concert Hall, as more particularly provided herein.

#### **10.7 Title to Improvements**

Title to the Premises (including any Alteration or Restoration) is and shall remain vested in County, subject to and encumbered by this PACLAC WDCH Lease.

**ARTICLE 11**  
**DAMAGE TO OR DESTRUCTION OF**  
**CONCERT HALL PARCEL OR IMPROVEMENTS**

**11.1 PACLAC to Give Notice**

If, at any time during the Term of this PACLAC WDCH Lease, the Premises or any material portion thereof shall be partially or totally damaged or destroyed, whether or not resulting from the fault or neglect of PACLAC, or any of its agents or employees, PACLAC shall deliver written notice thereof to County as soon as possible thereafter, generally describing the nature and extent of such damage or destruction.

**11.2 Restoration**

Subject to Sections 11.3, 11.4, and 11.5 below, in the case of any substantial damage or destruction to all or a material portion of the Premises, if the insurance proceeds on account of such damage or destruction (including amounts required to be provided by County pursuant to its obligation to provide insurance or to self insure certain risks for the Improvements as required herein and also including the proceeds of any insurance carried with respect to the Philharmonic Center) are sufficient for the purpose, PACLAC shall have the option in its sole and absolute discretion to promptly commence and complete (subject to Force Majeure Events) the Restoration utilizing such proceeds and amounts. PACLAC shall notify County in writing promptly after the occurrence of any such damage or destruction as to whether or not PACLAC has elected to undertake the Restoration. PACLAC shall perform the Restoration, in compliance with this Article 11 and the Construction Requirements (except for those which by their nature could not apply to this situation), and in accordance with the Alteration Plans, with such alterations and additions as may be made at PACLAC's election, with County's reasonable approval, provided that PACLAC provides satisfactory assurances to County that (a) PACLAC has funds which, together with insurance proceeds and amounts received, or which in the reasonable judgment of County and PACLAC will be received, on account of such damage or destruction, are sufficient to pay for the restoration, rebuilding or replacement in accordance with the Alteration Plans together with such alterations and additions, and (b) such alterations and additions will not materially increase the cost of maintaining or operating the Concert Hall. PACLAC shall provide adequate security and protection for the Premises during the course of any Restoration. If PACLAC elects to undertake a Restoration of the damaged Improvements, County shall make the insurance proceeds, including any deductibles or retained amounts, payable on account of such damage or destruction available to PACLAC to pay for the costs of such Restoration as they are incurred. During the course of the Restoration of all or any portion of the Improvements, County shall be excused from its obligation to operate and maintain the portion of the Improvements being so restored.

### **11.3 Termination or Partial Termination**

In the event that, after a casualty resulting in substantial damage or destruction to all or a material portion of the Premises, PACLAC for any reason elects not to undertake a Restoration of the Premises notwithstanding the availability of sufficient insurance proceeds for such purpose, PACLAC shall so notify County promptly in writing of the part of the damaged Premises which it is electing not to restore, this Lease shall terminate with respect to such part of the Premises, and the insurance proceeds payable or paid on account of such damage or destruction of such Improvements shall be paid to County. County shall then have the option in County's sole and absolute discretion to undertake the Restoration of such damaged Improvements or to retain the insurance proceeds for any other use.

### **11.4 Casualty at End of Term**

Notwithstanding any provision of this Article 11 to the contrary, if all or any substantial portion of the Premises are damaged or destroyed during the last ten (10) years of the initial Term of this Lease, or any time during the Term of the first or second extension period, then County shall have the option, in its sole and absolute discretion, to decide whether to make any insurance proceeds payable on account of such damage or destruction available for Restoration. If County elects not to make such insurance proceeds available for a Restoration, this Lease shall terminate with respect to the damaged portion of the Premises, and all insurance proceeds payable or paid on account of such damage or destruction of the Improvements shall be paid to County to be used as County elects in its sole and absolute discretion (subject to the right to use available insurance proceeds to restore the Philharmonic Center). If County elects to make such insurance proceeds available for Restoration, County shall so notify PACLAC and PACLAC shall have the option, in its sole and absolute discretion, to perform the Restoration of the Premises (which shall be done in accordance with Section 11.2 above). If PACLAC for any reason elects not to undertake such Restoration of the Premises, PACLAC shall so notify County promptly in writing, this Lease shall terminate with respect to the damaged portion of the Premises, and the insurance proceeds payable or paid on account of such damage or destruction of the Improvements shall be paid to County. County shall then have the option in County's sole and absolute discretion to undertake the Restoration of the damaged Improvements or to retain the insurance proceeds for any other use.

### **11.5 Insufficient Proceeds**

Subject to Section 11.4 above, if all or any substantial portion of the Premises are damaged or destroyed and there are either no insurance proceeds or insufficient insurance proceeds to complete the Restoration of the Premises, PACLAC shall as promptly as practicable notify County of its election either to (a)

commence and complete (subject to Force Majeure Events) Restoration of all or a part of the damaged Premises, in which case PACLAC shall be responsible to pay the entire cost of such Restoration in excess of the available insurance proceeds, or (b) if the insurance proceeds made available by County are sufficient, remove any rubble and cause the portion of the Concert Hall Parcel occupied by the damaged improvements with respect to which PACLAC has elected not to undertake Restoration to be restored to a safe condition and, upon completion of such removal and restoration, this Lease shall terminate with respect to such portion of the Concert Hall Parcel. Promptly after making such election, PACLAC shall undertake the chosen course of action and diligently prosecute such course to completion. If PACLAC elects to undertake a Restoration of all or a portion of the Premises as provided in clause (a) above, County shall make the insurance proceeds, if any, including any deductibles and retained amounts payable on account of such damage or destruction available to PACLAC to pay for the costs of such Restoration as they are incurred. If PACLAC elects not to undertake a Restoration of a part of the Premises and elects to do the work as provided in clause (b) above, County shall make insurance proceeds, if any (including any deductibles and retained amounts), payable on account of such damage or destruction available to PACLAC to pay for the costs of such removal and restoration to a safe condition, and County and PACLAC shall negotiate a mutually acceptable use on the Concert Hall Parcel for any remaining insurance proceeds. If such insurance proceeds are not sufficient to enable PACLAC to pay for the costs of such removal and restoration to a safe condition and PACLAC elects not to undertake a Restoration of the Premises, this Lease shall terminate with respect to the damaged or destroyed portion of the Premises and PACLAC shall bear no further liability for or with respect to such portion.

## **ARTICLE 12**

### **TAKINGS**

#### **12.1 PACLAC to Give Notice**

If at any time during the Term a Taking occurs, or any proceedings or negotiations commence which might result in a Taking, PACLAC shall immediately deliver written notice thereof to County generally describing the nature and extent of such Taking or the nature of such proceedings or negotiations and the nature and extent of the Taking which might result therefrom, as the case may be.

#### **12.2 Total Taking**

In case of a Taking of all of the Premises, or such a substantial portion of the Premises that the part of the Premises remaining after such Taking (even if a Restoration were undertaken) would be unsuitable or economically infeasible, in County's opinion after good faith consultation with PACLAC, for use as a Concert Hall, including related uses, then this PACLAC WDCH Lease shall terminate as of

the date title vests in the condemning authority or the date the condemning authority is entitled to possession, whichever first occurs. Any Taking of the Premises of the character referred to in this Section 12.2 is referred to herein as a "Total Taking".

### **12.3 Partial Taking**

In the event of any Taking of the Premises other than a Total Taking (a "Partial Taking"), (a) this PACLAC WDCH Lease shall remain in full force and effect (and the Term shall not be reduced or affected) as to the portion of the Premises remaining immediately after such Partial Taking, and (b) PACLAC, to the extent Net Awards, if any, shall be sufficient for the purpose, shall within a reasonable period of time commence and complete, subject to Force Majeure Events, Restoration of the Premises as nearly as possible to the value, condition and character thereof immediately prior to such Partial Taking. PACLAC shall perform such Restoration in compliance with the Construction Requirements and in accordance with the approved Alteration Plans, with such alterations and additions as may be made at PACLAC 's election, with County's reasonable approval, provided PACLAC provides satisfactory assurances to County that (a) PACLAC has sufficient funds available to complete such alterations and additions, and (b) such alterations and additions will not materially increase the cost of maintaining or operating the Concert Hall; provided further, however, that in case of a Taking for temporary use PACLAC shall not be required to effect a Restoration until such Taking shall have terminated.

### **12.4 Application of Net Awards**

Awards and other payments on account of a Taking, less costs, fees and expenses incurred in the collection thereof ("Net Awards") shall be applied as follows:

#### **12.4.1 Partial Taking**

In case of a Partial Taking, PACLAC shall furnish to County evidence of the total cost of the Restoration required by Section 12.3 above. Net Awards received on account of a Partial Taking shall be applied to pay the cost of the Restoration of the Improvements, provided that, in the case of a Taking for temporary use, PACLAC shall not be obligated to effect a Restoration until such Taking shall have terminated. PACLAC 's obligation to restore shall be limited to the amount of the Net Awards. The balance, if any, remaining after the required Restoration shall be paid to County except in the event that County is the governmental entity performing the Partial Taking, in which event such balance shall be paid to PACLAC. Notwithstanding the foregoing, any award payable with respect to the Philharmonic Center and not used for Restoration shall be payable to the Philharmonic.



#### **12.4.2 Total Taking**

Net Awards received on account of a Total Taking shall be paid to County except in the event that County is the governmental entity performing the Taking, in which event the Net Awards shall be paid to PACLAC and except that any award payable with respect to the Philharmonic Center shall be payable to the Philharmonic.

### **ARTICLE 13 COMPLIANCE WITH ENVIRONMENTAL LAWS**

#### **13.1 Parties' Covenant**

Neither PACLAC nor County shall ever cause or permit, with such party's actual knowledge, any Hazardous Material to be placed, held, located, used or disposed of on, under or at the Premises or any part thereof or disposed of or discharged from the Premises into the atmosphere, soil or any watercourse, body of water or wetlands, at any time during the Term of this PACLAC WDCH Lease, except to the extent placed or used on the Premises in the manner permitted by applicable law. For purposes of this PACLAC WDCH Lease, the term "Hazardous Material" means any material or substance defined as a hazardous, toxic or dangerous substance, waste or material in any Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, nor or at any time hereafter in effect (collectively referred to herein as "Environmental Laws"). PACLAC shall not be liable under this PACLAC WDCH Lease for any violation of Environmental Laws which is attributable (i) to conditions existing prior to the Commencement Date, (ii) Hazardous Materials which during the term of this PACLAC WDCH Lease migrate to the Premises from adjoining properties, including the Garage, or (iii) the actions or inaction of County and not the actions of PACLAC.

#### **13.2 Violation of PACLAC's Covenant**

If PACLAC causes or, with PACLAC's actual knowledge, permits any Hazardous Material to be placed, held, located, used or disposed of on, under or at the Premises in violation of PACLAC's covenant set forth in Section 13.1 above, PACLAC shall contain, abate or control such Hazardous Material and, if necessary, remove and dispose of same in accordance with all applicable Environmental Laws and Legal Requirements. If PACLAC fails to undertake such action within (a) sixty (60) days after PACLAC's receipt of written notice from County requiring PACLAC to undertake such action (or such longer period as reasonably may be required, provided PACLAC is diligently attempting to complete such action), or (b) such shorter period as may be required by any Environmental Laws or Legal Requirement, County may (but shall not be obligated to) cause such action to be

taken by a third party contractor or contractors after giving PACLAC at least ten (10) Business Days' Notice of its intention to do so, and the amount of any cost, expense or expenditure therefor shall be paid immediately by PACLAC. If County makes any payment or incurs any costs or expenses in connection therewith, such amounts, together with interest thereon from the date paid by County, shall be deemed Additional Rent, payable by PACLAC to County on demand.

### **13.3 Violation of County's Covenant**

If County causes or, with County's actual knowledge, permits any Hazardous Material to be placed, held, located, used or disposed of on, under or at the Premises in violation of County's covenant set forth in Section 13.1 above or is otherwise responsible for costs of remediation as provided in Section 13.1 above, County shall contain, abate or control such Hazardous Material and, if necessary, remove and dispose of same in accordance with all applicable Environmental Laws and Legal Requirements. If County fails to undertake such action within (a) sixty (60) days after County's receipt of written notice from PACLAC requiring County to undertake such action (or such longer period as reasonably may be required, provided County is diligently attempting to complete such action), or (b) such shorter period as may be required by any Environmental Laws or Legal Requirement, PACLAC may (but shall not be obligated to) cause such action to be taken by a third party contractor or contractors after giving County at least ten (10) Business Days' Notice of its intention to do so, and the amount of any cost, expense, or expenditure therefor shall be paid immediately by County. If PACLAC makes any payment or incurs any costs or expenses in connection therewith, such amounts, together with interest thereon from the date paid by PACLAC, shall be payable by County to PACLAC on demand.

### **13.4 County's Indemnification**

Notwithstanding any other provision of this Article 13, County hereby indemnifies PACLAC and agrees to defend and hold PACLAC harmless from and against all liability, loss, damage, costs, or expenses arising out of or as a result of, any Hazardous Material (a) existing or ongoing on, under, within or at the Concert Hall Parcel or the Garage Parcel as of the Original Execution Date, (b) migrating after the Original Execution Date from neighboring property to the Premises as a result of a condition existing upon such neighboring property, (c) placed, held, located, used, stored or disposed of at, in or on the Premises or the Garage Parcel by County in the performance of County's maintenance and operation obligations pursuant to this PACLAC WDCH Lease, or (d) with respect to or as a direct or indirect result of, the violation by County of its covenant contained in Section 13.1 above.

### **13.5 PACLAC's Indemnification**

PACLAC hereby indemnifies County and agrees to defend and hold County harmless from and against any and all loss, liability, damages, injuries, costs, and expenses which at any time or from time to time may be paid, incurred or suffered by, or asserted against, County for, with respect to or as a direct or indirect result of, the violation by PACLAC of its covenant contained in Section 13.1 above.

### **13.6 Survival**

County's and PACLAC's liability for the undertakings and indemnifications set out in this Article 13 shall survive the termination of this PACLAC WDCH Lease.

## **ARTICLE 14**

### **COMPLIANCE WITH LEGAL REQUIREMENTS AND INSURANCE REQUIREMENTS**

#### **14.1 Compliance with Legal Requirements**

PACLAC shall, at PACLAC's sole cost and expense, comply with or cause the compliance with all Legal Requirements applicable to its use and operation of the Premises or occupation thereof, whether or not such compliance shall be required on account of any particular use to which the Premises or any part thereof may be put, or is of a kind now within the contemplation of the parties hereto. County shall, at County's sole cost and expense, cause the Improvements to comply with all Legal Requirements applicable to the Improvements, including any Alterations to the Improvements that may be required from time to time by Legal Requirements, whether or not such Legal Requirements existed as of the Commencement Date, except that County shall not be responsible with respect to Alterations made by PACLAC after the Commencement Date. PACLAC acknowledges that nothing in this PACLAC WDCH Lease is intended to satisfy, waive or otherwise affect any of the Legal Requirements imposed by County acting in its governmental capacity.

#### **14.2 Contest of Legal Requirements**

Each of PACLAC and County may contest in good faith at its sole cost and expense any Legal Requirement for which it is responsible pursuant to Section 14.1, provided that noncompliance therewith while contesting such Legal Requirement shall not constitute a crime or offense punishable by fine or imprisonment. A party's good faith noncompliance with such Legal Requirement during such contest shall not be deemed a breach of this PACLAC WDCH Lease, provided that the non-complying party shall indemnify, defend and hold the other party harmless from and against all liability, costs, claims, damages, interest,

penalties and expenses incurred by such other party in connection with such contest or noncompliance, and shall prosecute such contest in good faith and with due diligence to a final determination by the court, authority or governmental body having jurisdiction.

#### **14.3 Compliance with Insurance Requirements**

Neither PACLAC nor County, in connection with the exercise of its rights or the performance of its obligations hereunder, shall permit to be done any act or thing upon the Premises which would invalidate or be in conflict with the terms of any fire and/or casualty insurance policies covering the Premises and the fixtures and personal property thereon. Each of PACLAC and County shall comply or cause compliance with all present and future Insurance Requirements, and neither shall knowingly do or permit to be done in or upon the premises, or bring to keep anything therein or use the same in any manner, which could result in the denial of such fire and casualty insurance coverage.

#### **14.4 Contest of Insurance Requirements**

If any Insurance Requirement shall require County to perform any work or meet any condition which County in good faith may deem unfair, unreasonable, or otherwise improper, County may, at County's sole cost and expense, contest the validity of such Insurance Requirement, provided that noncompliance therewith shall not adversely affect the Premises, or result in the cancellation or interruption of any insurance coverage required hereunder. County's good faith noncompliance with such Insurance Requirement during such contest shall not be deemed a breach of this PACLAC WDCH Lease, provided that County shall indemnify PACLAC and defend and hold PACLAC harmless from and against all liability, costs, claims, damages, interest, penalties and expenses incurred by PACLAC in connection with or arising because of such contest or noncompliance, and shall prosecute such contest in good faith and with due diligence to a final determination. Such right to contest applies only to the requirements imposed by insurers under insurance policies, and does not apply to the requirements relating to insurance to be maintained under Article 16 below.

### **ARTICLE 15 UTILITIES AND SERVICES**

#### **15.1 Utilities and Services**

Except as otherwise provided herein and in the Philharmonic Sublease, County shall pay or cause to be paid promptly when due all service charges for gas, water, sewer, electricity, heat, power and all other utilities or services used, rendered or supplied to, upon or in connection with the Premises. Notwithstanding the foregoing, PACLAC shall pay or cause to be paid all charges for telephone or

other communications services used, rendered, or supplied to, upon or in connection with the Premises.

## **15.2 County's Right to Contest**

County, at its sole cost and expense, may contest by appropriate legal proceedings, promptly initiated and diligently conducted in good faith, the amount, validity or application in whole or in part of any such utility or service charges, provided that: (a) County shall indemnify PACLAC and defend and hold PACLAC harmless from and against all liability, costs, claims, damages, interest penalties and expense in connection with or arising out of such contest, and (b) County shall prosecute such contest in good faith and with due diligence to a final determination. Notwithstanding the foregoing, County shall pay or deposit with the utility that amount in dispute, pending final resolution, if the failure to make such payment or deposit shall result in an interruption of the subject service.

## **ARTICLE 16 INSURANCE**

### **16.1 Insurance Coverage Required of County**

At all times during the term of this PACLAC WDCH Lease, County shall keep in effect, without cost or expense to PACLAC, the following insurance coverage:

#### **16.1.1 All Risk**

An "all risk" policy or policies covering the Improvements, insuring against loss or damage caused by fire, lightning, flood and the additional perils included in standard extended coverage and in "all risk" policies, in an amount equal to at least one hundred (100%) percent of the full replacement cost of the Improvements (and the Philharmonic Center provided that the cost of such coverage on the Philharmonic Center is paid or reimbursed by Philharmonic), and including a deductible not to exceed One Million Dollars (\$1,000,000) in any calendar year, or such greater amount as may be approved by County from time to time to conform to coverage amounts then customarily maintained for premises similarly situated; provided, however, that County's obligation under this subsection may be satisfied by a program of self-insurance in accordance with Section 16.4 below;

#### **16.1.2 Earthquake**

Earthquake coverage insuring the Improvements in an amount not less than the probable maximum loss which the Improvements (and the Philharmonic Center provided that the cost of such coverage on the Philharmonic Center is paid

or reimbursed by Philharmonic) may sustain in an earthquake measuring 7.0 on the Richter Scale, occurring along the San Andreas, Newport/Inglewood or Santa Monica faults as determined by structural engineers selected by County and reasonably approved by County, less a deductible not to exceed ten percent (10%) of the replacement cost of the Improvements; provided, however, that if County cannot secure such policy of insurance required to be maintained under this Section 16.1.2 from reputable insurers at a reasonable premium cost, and if County cannot place a Blanket Policy with such coverage with reputable insurers at a reasonable premium cost, County will not be required to carry any such insurance coverage;

#### **16.1.3 General Liability**

Commercial general liability insurance against claims for bodily injury, personal injury, or death and property damage occurring upon, in or about the Premises, and on, in or about the adjoining sidewalks and passageways, providing coverage in the sum of at least One Million Dollars (\$1,000,000) combined single limit per occurrence, or such greater amount as may be determined by County, from time to time throughout the Term, subject to the adjustment of such amounts from time to time to conform to the liability coverage then customarily maintained for premises similarly situated; provided, however, that County's obligation under this Section 16.1.3 may be satisfied by a program of self-insurance in accordance with Section 16.4 below;

#### **16.1.4 Boiler and Machinery**

Boiler and machinery insurance policies, insuring against loss or damage by explosion of steam boilers, pressure vessels and similar apparatus located on the Improvements with a limit of liability not less than Five Million Dollars (\$5,000,000) per occurrence; provided, however, that County's obligation under this Section 16.1.4 may be satisfied by a program of self-insurance in accordance with Section 16.4 below; and

#### **16.1.5 Workers' Compensation**

During the period of any work on or about the Premises, workers' compensation insurance as required by Section 3700 of the California Labor Code, such insurance to cover all persons employed by County in connection with the Premises, including employer's liability insurance with a limit of not less than One Million Dollars (\$1,000,000) or such greater amount as may be determined by County; provided, however, that County's obligation under this Section 16.1.5 may be satisfied by a program of self-insurance in accordance with Section 16.4 below.

## **16.2 Delivery of Policies by County**

During the term of this PACLAC WDCH Lease, not less than fifteen (15) days after renewal of any renewed policies theretofore furnished pursuant to this Section 16.2, County shall furnish or cause to be furnished to PACLAC a certificate of insurance containing a statement of insurance then in force and stating that the insurance then in force complies with the provisions of this PACLAC WDCH Lease and that the premiums thereon have been paid. Upon the request of PACLAC, County shall furnish or cause to be furnished to PACLAC certified copies of the original policies for all such insurance including appropriate endorsements.

## **16.3 Blanket Policy**

All insurance policies required to be maintained by County under Section 16.1, except for worker's compensation insurance, may be effected by inclusion of the Premises in a blanket policy covering other properties owned, leased or controlled by County, including, without limitation, the County of Los Angeles Consolidated Property Insurance Program (any such blanket policy being referred to herein as a "Blanket Policy"), provided that the coverage limits, in the aggregate, afforded under any Blanket Policy shall not be less than the respective coverages required to be maintained pursuant to Subsections 16.1.1, 16.1.2, 16.1.3, and 16.1.4 above (except to the extent that earthquake coverage is not available at a reasonable premium cost, in which event such Blanket Policy will not be required to contain earthquake coverage). PACLAC acknowledges that the aggregate limits of any Blanket Policy may be less than the sum of the required coverages for all insured properties, and that the proceeds payable under any such Blanket Policy could be insufficient to satisfy all covered losses in the event that more than one insured property were the subject of a single, simultaneous, covered loss. PACLAC acknowledges that County has disclosed the aggregate coverage limits of its existing Consolidated Property Insurance Program, and PACLAC agrees that such existing Consolidated Property Insurance Program shall be sufficient for purposes of this Section 16.3 (provided the Premises are added to the list of insured properties thereunder). In all other respects any Blanket Policy shall comply with the other provisions of this Article 16. In the event County elects to include the Premises in a Blanket Policy, County shall deliver notice to PACLAC stating coverages and deductibles that County intends to insure through such Blanket Policy.

## **16.4 Self-Insurance**

To the extent that County self-insures as permitted above, County's risk manager, or an independent insurance consultant, shall annually certify to PACLAC the sufficiency of such self-insurance. Notwithstanding anything to the contrary contained in this Section 16.4, County shall not be required to maintain or

cause to be maintained more insurance than is specifically referred to above, or any policies of insurance if such policies of insurance with standard terms and deductibles cannot be obtained by County from reputable insurers at a reasonable cost in the open market (in which event County shall be required to self-insure in amounts equal to the insurance amounts required to be maintained above, except with respect to earthquake insurance described in Section 16.1.2 above).

## **16.5 Insurance Coverage Required of PACLAC**

At all times during the term of this PACLAC WDCH Lease, PACLAC shall keep in effect, without cost or expense to County, the following insurance coverage:

### **16.5.1 General Liability**

Commercial general liability insurance against claims for bodily injury, personal injury, or death and property damage occurring upon, in or about the Premises, and on, in or about the adjoining sidewalks and passageways, providing coverage in the sum of at least One Million Dollars (\$1,000,000) combined single limit per occurrence, or such greater amount as may be determined by County, from time to time throughout the Term, subject to the adjustment of such amounts from time to time to conform to the liability coverage then customarily maintained for premises similarly situated; and

### **16.5.2 Worker's Compensation**

During the period of any work on or about the Premises, workers' compensation insurance as required by Section 3700 of the California Labor Code, such insurance to cover all persons employed by County in connection with the Premises, including employer's liability insurance with a limit of not less than One Million Dollars (\$1,000,000) or such greater amount as County shall reasonably require.

## **16.6 Delivery of Policies by PACLAC**

During the term of this PACLAC WDCH Lease, not less than fifteen (15) days after renewal of any renewed policies theretofore furnished pursuant to this Section 16.6, PACLAC shall furnish or cause to be furnished to County a certificate of insurance containing a statement of insurance then in force and stating that the insurance then in force complies with the provisions of this PACLAC WDCH Lease and that the premiums thereon have been paid. Upon the request of County, PACLAC shall furnish or cause to be furnished to County certified copies of the original policies for all such insurance including appropriate endorsements.



## **16.7 Requirements for Policies**

All insurance policies required to be carried under this PACLAC WDCH Lease shall be effected under valid and enforceable policies issued by (a) reputable domestic insurers having a rating in the current Best's Guide of A- or better and being in a financial size category of VII or greater in Best's Guide (or a comparable rating and financial category in Best's Guide if Best's rating system or financial classification changes, or in any similar insurance guide if Best's Guide is no longer published), or (b) other reputable nondomestic insurers meeting the standards adhered to by the County of Los Angeles in obtaining all of its insurance policies, in either case all such insurers being approved to transact business in the State of California. All insurance policies required to be maintained under this Lease shall be for a term of not less than one (1) year, and shall provide:

### **16.7.1**

An adequate cross-liability provision ensuring that the full amount of any losses sustained shall be payable notwithstanding any act, omission or negligence of PACLAC or County which might otherwise result in forfeiture of such insurance including, without limitation, a waiver by any insured prior to a loss, of any or all rights of recovery against any party for losses covered by such policies;

### **16.7.2**

A waiver of all rights of subrogation to the extent permitted under such insurance policies against any named insured;

### **16.7.3**

That except for third party claims involving general and property damage liability and worker's compensation insurance, all claims (a) not exceeding Two Hundred Fifty Thousand Dollars (\$250,000) shall be adjusted solely by County, and (b) greater than Two Hundred Fifty Thousand Dollars (\$250,000) shall be adjusted jointly by PACLAC and County; provided, however, that all insurance proceeds payable on account of any casualty resulting in damage or destruction shall be paid directly to County to be applied in accordance with the provisions of this PACLAC WDCH Lease;

### **16.7.4**

That except for workers' compensation policies, the policies shall list as additional insureds, as their interests may appear, PACLAC, County, Philharmonic, LAMC, members of their boards and commissions, officers, agents, employees, contractors, invitees and volunteers, and shall provide coverage on a "primary" basis regardless of (a) any other insurance that County or such other

insureds may elect to purchase or maintain (such other insurance shall be in excess of the insurance required hereunder and not contribute with it), or (b) any failure of any such Person to comply with the reporting provisions of such policies;

#### **16.7.5**

That such policies shall not be suspended, voided, canceled, reduced in coverage or in limits or materially changed without at least thirty (30) days' prior written notice to each insured named therein, including, without limitation, PACLAC and County; and

#### **16.7.6**

That the insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

### **16.8 Insurance Rebates**

County shall be entitled to receive and retain any insurance rebates attributable to policies it purchases and pays for.

## **ARTICLE 17 LEASE TRANSFER**

### **17.1 Consent Requirement for Lease Transfer**

Except as otherwise provided in this Article 17, no Lease Transfer shall be valid. For purposes of this PACLAC WDCH Lease, the term "Lease Transfer" shall mean any assignment, sublease, license agreement, concession agreement, management agreement, mortgage, deed of trust, pledge, encumbrance or any other agreement or instrument pursuant to which County or PACLAC, or any Person comprising County or PACLAC, attempts to transfer to any other Person any interest in the Premises or any portion thereof, or any right to occupy the Premises or any portion thereof. Notwithstanding the preceding sentence, the term "Lease Transfer" shall not include (a) the Philharmonic Sublease or the LAMC sublease, (b) any Satisfactory Replacement Orchestra Agreement, (c) the Concession Agreement or (d) any agreements entered into as described in Section 17.3 below. Any Lease Transfer in violation of this Article 17 shall be void and of no effect.

## **17.2 Permitted Assignments**

### **17.2.1 County**

County may not participate in any Lease Transfer without first obtaining PACLAC's consent to such Lease Transfer, which consent will not be unreasonably withheld.

### **17.2.2 PACLAC**

Subject to the last sentence of this Section 17.2.2, PACLAC may assign its interest under this PACLAC WDCH Lease to an Affiliate without County's consent, but only after prior good faith consultation with County. Subject to the last sentence of this Section 17.2.2, PACLAC may assign its interest under this PACLAC WDCH Lease to a Permitted Assignee, but only after obtaining County's consent, which consent shall not be unreasonably withheld. Except as provided in the preceding two sentences and Section 17.3 below, PACLAC may not participate in any Lease Transfer without first obtaining County's consent to such Lease Transfer, which consent may be granted or withheld in the County's sole and absolute discretion. Additionally, PACLAC may not, in any event, participate in any Lease Transfer that would cause an Adverse Tax Effect.

## **17.3 Other Agreements**

### **17.3.1 Giftshop**

PACLAC may enter into an agreement with a 501(c)(3) Organization to operate and/or maintain the Giftshop, and any such agreement shall not be deemed to be a Lease Transfer.

### **17.3.2 Performance Agreements; Concessions**

At any time during the Term of this PACLAC WDCH Lease and subject to its terms and conditions, PACLAC and/or, to the extent permitted by PACLAC, a Permitted Licensee may enter into agreements or amendments thereof from time to time with (a) performers, or (b) caterers or restaurant operators for purposes of providing food and beverage services in appropriate areas of the Entertainment Space and Facilities and Reception Areas, provided that no Adverse Tax Effect is created. Any such agreements and amendments shall not be deemed to be Lease Transfers.

## **17.4 Standards and Conditions for All Assignments**

Any assignment of this PACLAC WDCH Lease whether with consent as required or as otherwise permitted under Section 17.2 shall be in writing, in form and substance reasonably satisfactory to the non-assigning party, and shall be

executed by the assignee who shall therein and thereby assume this PACLAC WDCH Lease and all of the agreements, terms, obligations, liabilities, covenants and conditions hereof on the part of the assigning party to be performed after the effective date of such assignment until expiration of the Term, and a duplicate original of such assignment and assumption, in recordable form, shall be delivered to the non-assigning party before the same shall be effective. An assignment and assumption agreement meeting the requirements of this Section 17.4 is referred to herein as a "Lease Assignment". This Article 17 shall apply to each assignee of this PACLAC WDCH Lease, and each assignee shall have the right to assign this PACLAC WDCH Lease only in accordance with the provisions of this Article 17.

#### **17.5 Release of PACLAC**

Upon the closing of any assignment of PACLAC's entire interest under this PACLAC WDCH Lease permitted pursuant to Section 17.2.2 above, and the delivery to County by PACLAC and the assignee of an executed counterpart of the Lease Assignment required by Section 17.4 above, PACLAC shall be released and relieved of all further liability under this PACLAC WDCH Lease that arises out of or relates to any act or omission occurring from and after the effective date of such Lease Assignment, and each subsequent assignee, upon making a further Lease Assignment in compliance with the conditions set forth in this Article 17, shall be released and relieved of all further liability under this PACLAC WDCH Lease that arises out of or relates to any act or omission occurring from and after the effective date of such further Lease Assignment; provided, however, that PACLAC hereby covenants that for as long as PACLAC enjoys any benefit from the Concert Hall, PACLAC will take all actions required to maintain, and PACLAC will not take any actions that would threaten, PACLAC's status as a 501(c)(3) Organization until the date upon which the Garage Financing has been paid in its entirety and the debt instruments issued thereunder have been retired. Any such release shall be self-operative, provided, however, that County, at the written request of PACLAC (or its then successor as tenant under this PACLAC WDCH Lease), shall, within fifteen (15) Business Days after written request therefor, deliver to such requesting party an Officer's Certificate acknowledging such release (but excluding from such release any claims pending or unknown as of the effective date of such Lease Assignment) upon compliance by such requesting party with the conditions of this Article 17.

#### **17.6 No Waiver**

The consent by one party to any Lease Transfer hereunder shall not in any way be construed to relieve the assigning party's permitted assignee from obtaining the express consent in writing of the other party to any further Lease Transfer to the extent such consent is required pursuant to the terms of this PACLAC WDCH Lease.

### **17.7 No Release of County**

Unless PACLAC otherwise agrees in its sole and absolute discretion, (a) a Lease Transfer by County shall not release or relieve County of its obligations hereunder whether arising before or after such Lease Transfer, and (b) County shall at all times be liable as a primary party for such obligations and not just as a guarantor.

## **ARTICLE 18 ENTRY BY COUNTY**

### **18.1 Right to Enter**

PACLAC hereby grants County and County's employees, agents and independent contractors the right to enter the Premises at reasonable times to carry out County's obligations hereunder as landlord; provided, however, that except in the event of an emergency or a security-related matter, County will not enter the Premises in any manner that would interfere with any performance, or unnecessarily or unreasonably interfere with any rehearsal, in the Concert Hall.

### **18.2 Inspection**

County and its agents and independent contractors shall have the right, during reasonable business hours and upon reasonable notice to PACLAC (except in case of any emergency or a security-related matter, in which event no time restriction shall apply), to enter the Premises to inspect them for the purpose of determining whether PACLAC is in compliance with the terms of this PACLAC WDCH Lease; provided, however, that such entry shall not interfere with any performance in the Concert Hall or unnecessarily or unreasonably interfere with any rehearsal in the Concert Hall or any other business being conducted on the Premises (except in case of any emergency or a security-related matter, in which case such limitation shall not apply to the extent the emergency situation requires that such interference occur). Nothing contained in this Section or elsewhere in this Lease shall limit the rights and powers of the County of Los Angeles, acting in its governmental capacity, to enter and inspect the Premises as required or permitted by any Legal Requirements of the County of Los Angeles.

## **ARTICLE 19 EVENTS OF DEFAULT: TERMINATION**

### **19.1 County Events of Default**

Each of the following events ("County Events of Default") shall constitute events of default hereunder by County and a breach of this PACLAC WDCH Lease.

#### **19.1.1 Lease Transfer**

County shall participate in any Lease Transfer that is not expressly permitted under the provisions of Article 17 of this PACLAC WDCH Lease.

#### **19.1.2 Insurance**

County shall fail to obtain or maintain any of the insurance coverage required to be maintained pursuant to Article 16 above, and shall fail to obtain such insurance or deliver to PACLAC a certificate of self-insurance for such coverage, within fifteen (15) Business Days after County's receipt of Notice from PACLAC, which Notice must specifically state that if County shall not procure such insurance coverage or deliver a certificate of self insurance with respect to such coverage within fifteen (15) Business Days after County's receipt of such Notice, then PACLAC may procure such insurance coverage on County's behalf.

#### **19.1.3 Maintenance and Operation**

With respect to County's obligations to maintain and operate the Improvements as provided in Sections 7.1 and 7.2 above, only if County shall fail to comply with any arbitration decision made by the arbitrators pursuant to Section 7.6 above and such noncompliance shall continue for a period of sixty (60) days after Notice from PACLAC or, if such compliance cannot reasonably be completed within such sixty (60) day period, then, subject to Force Majeure Events, County shall not have commenced such compliance in good faith within such sixty (60) day period or shall not diligently and continuously proceed therewith to completion within a reasonable period after its receipt of such Notice.

#### **19.1.4 Capital Improvements**

With respect to County's obligations to make Capital Improvements as provided in Section 7.2 above, only if County shall fail to comply with a final, non-appealable court order, rendered as provided in Section 7.7 above, to make certain Capital Improvements or to pay damages to PACLAC in the amount of the cost of such Capital Improvements and such noncompliance shall continue for a period of sixty (60) days after Notice from PACLAC or, if such compliance cannot reasonably be completed within such sixty (60) day period (it being agreed that damages can be paid to PACLAC within such time), then, subject to Force Majeure Events, County shall not have commenced such compliance in good faith within such sixty (60) day period or shall not diligently and continuously proceed therewith to completion within a reasonable period after its receipt of such Notice.

### **19.1.5 Failure to Perform**

County shall fail to perform or comply with any of the other agreements, terms, covenants or conditions hereof on County's part to be performed or complied with hereunder and such non-performance or noncompliance shall continue for a period of sixty (60) days after Notice from PACLAC or, if such performance cannot reasonably be completed within such sixty (60) day period, then, subject to Force Majeure Events, County shall not have commenced such performance in good faith within such sixty (60) day period or shall not diligently and continuously proceed therewith to completion of such performance within a reasonable period after its receipt of such Notice.

## **19.2 PACLAC Remedies**

### **19.2.1 Termination**

At any time that a County Event of Default shall have occurred and be continuing, PACLAC shall have the right to terminate this PACLAC WDCH Lease by giving Notice from PACLAC of such termination to County, which Notice shall specify the County Event of Default claimed and the date for termination, and upon such date this PACLAC WDCH Lease and PACLAC's leasehold estate and right to possession of the Premises under this PACLAC WDCH Lease shall terminate, as if the date of termination were the Expiration Date of the Term.

### **19.2.2 PACLAC's Right to Cure**

Subject to any applicable conditions and limitations set forth elsewhere in this PACLAC WDCH Lease, at any time that a County Event of Default shall have occurred and be continuing, PACLAC may, if it so desires in PACLAC's sole and absolute discretion and without any obligation whatsoever to do so, perform or cause to be performed any of County's unperformed obligations hereunder. Such performance by PACLAC shall not be deemed either to waive or release or excuse any County Event of Default or the right of PACLAC to take any action provided herein or permitted by law in the case of such County Event of Default. The amount of any cost, expense or expenditure incurred by PACLAC in connection therewith together with interest thereon from the date paid by PACLAC shall be payable by County to PACLAC on demand. No such action by PACLAC shall terminate this PACLAC WDCH Lease or PACLAC's right to possession hereunder.

### **19.2.3 Suit for Damages**

At any time that any County Event of Default shall have occurred and be continuing, or at any time after termination of this PACLAC WDCH Lease pursuant to Section 19.2.1 above, PACLAC may sue to recover from County any

and all damages necessary to compensate PACLAC for the detriment proximately caused by County's failure to perform its obligations under this PACLAC WDCH Lease, including, without limitation, all amounts payable hereunder which are due, owing and unpaid by County to PACLAC at the time any such suit is brought, including, without limitation, recovering the cost incurred by PACLAC of performing County's obligations in default hereunder. Suit or suits for the recovery of any deficiency or damages may be brought by PACLAC from time to time at PACLAC's election.

#### **19.2.4 Remedies Cumulative**

At any time that a County Event of Default shall have occurred and be continuing, PACLAC shall have the right of injunction to restrain the same and the right to invoke any remedy allowed by law or in equity, as if specific remedies, indemnity or reimbursement were not herein provided. Except for PACLAC's remedies provided in Article 7 above (which shall be exclusive remedies except to the extent that County fails to comply with any arbitration decision or court order rendered pursuant to Section 7.6 or 7.7 above), (a) the provision in this PACLAC WDCH Lease for any remedy shall not preclude PACLAC from exercising any other remedy at law or in equity upon the occurrence of a County Event of Default hereunder, and (b) the rights and remedies given to PACLAC in this PACLAC WDCH Lease are distinct, separate and cumulative, and no one of them, whether or not exercised by PACLAC, shall be deemed to be in exclusion of any other right or remedy provided herein, by law or equity, or pursuant to any other agreement between PACLAC and County.

#### **19.3 PACLAC Events of Default**

Each of the following events ("PACLAC Events of Default") shall constitute events of default hereunder by PACLAC and a breach of this PACLAC WDCH Lease:

##### **19.3.1 Lease Transfer**

PACLAC shall participate in any Lease Transfer that is not expressly permitted under the provisions of Article 17 of this PACLAC WDCH Lease.

##### **19.3.2 Insurance**

PACLAC shall fail to obtain or maintain any of the insurance coverage required to be maintained pursuant to Article 16 above, and shall fail to obtain such insurance within fifteen (15) Business Days after PACLAC's receipt of Notice from County, which Notice must specifically state that if PACLAC shall not procure such insurance coverage within fifteen (15) Business Days after PACLAC's receipt of



such Notice, then County may procure such insurance coverage on PACLAC's behalf.

### **19.3.3 Failure to Meet Minimum Average Monthly Number of Performances**

During the Post Philharmonic Period and provided such failure to perform is not attributable to a Force Majeure Event, if, following the receipt by PACLAC of a Notice from County that PACLAC has failed to cause the Minimum Average Monthly Number of Performances to be held in the Concert Hall over a period of at least ninety (90) days, PACLAC shall have failed to achieve the Minimum Average Monthly Number of Performances at the Concert Hall over the period of ninety (90) days following such Notice.

### **19.3.4 Failure to Perform**

PACLAC shall fail to perform or comply with any of the other agreements, terms, covenants or conditions hereof on PACLAC's part to be performed or complied with, including without limitation its obligations in Article 8 hereof, and such non-performance or noncompliance shall continue for a period of sixty (60) days after Notice from County or, if such performance cannot reasonably be completed within such sixty (60) day period, then, subject to Force Majeure Events, PACLAC shall not have commenced such performance in good faith within such sixty (60) day period or shall not diligently and continuously proceed therewith to completion of such performance within a reasonable period after its receipt of such Notice.

### **19.3.5 Default Under Philharmonic Sublease**

A "PACLAC Event of Default" (as finally determined in accordance with Section 19.3 of the Philharmonic Sublease) shall have occurred and be continuing under the Philharmonic Sublease.

## **19.4 County's Remedies**

### **19.4.1 Termination**

Upon the occurrence of a PACLAC Event of Default, and at any time thereafter until PACLAC shall have cured such PACLAC Event of Default, and provided that with respect to a PACLAC Event of Default under Section 19.3.5 above, a determination by an arbitration as set forth in Section 28.4 of the Philharmonic Sublease that a PACLAC Event of Default has occurred shall be conclusive, then County shall have the right to terminate this PACLAC WDCH Lease and PACLAC's right to possession of the Premises by giving Notice of such termination to PACLAC, which Notice shall specify the PACLAC Event of Default claimed and the date for termination, and upon such date this PACLAC WDCH

Lease and PACLAC's leasehold estate and right to possession of the Premises under this PACLAC WDCH Lease shall terminate, as if the date of termination were the Expiration Date of the Term. Subject to the rights of any third parties pursuant to the terms of any non-disturbance agreements applicable to the Premises that have been executed by County (in its capacity as lessor hereunder), after such termination of this PACLAC WDCH Lease, County may remove in accordance with applicable Legal Requirements any or all persons in possession of the Premises, and take possession thereof.

#### **19.4.2 Passage of Title to County**

If this PACLAC WDCH Lease shall be terminated as provided above, all of the right, title, estate and interest of PACLAC in and to (a) the Premises, including, without limitation, the Improvements and any Alteration thereto, (b) all insurance policies (except blanket policies) with respect to the Improvements, and all proceeds thereof, and (c) all personal property located at and/or used in connection with the Premises except for PACLAC's Equipment, shall automatically pass to, vest in and belong to County without further action on the part of either party, free of any claim thereto by PACLAC. Nothing in clause (a) of the previous sentence is intended to in any way modify or limit Section 10.7.

#### **19.4.3 County's Right to Cure**

Subject to any applicable conditions and limitations set forth elsewhere in this PACLAC WDCH Lease, at any time that a PACLAC Event of Default shall have occurred and be continuing, County may, if it so desires in County's sole and absolute discretion and without any obligation whatsoever to do so, perform or cause to be performed any of PACLAC's unperformed obligations hereunder. County may enter the Premises for the purpose of correcting or remedying any default and remain therein until such PACLAC Event of Default has been corrected or remedied, but such performance by County shall not be deemed either to waive or release any PACLAC Event of Default or the right of County to take any action provided herein in the case of such default. The amount of any cost, expense or expenditure incurred by County in connection therewith together with interest thereon from the date paid by County shall be deemed Additional Rent, payable by PACLAC to County on demand. No such action by County shall terminate this PACLAC WDCH Lease or PACLAC's right to possession.

#### **19.4.4 Suit for Damages**

At any time that a PACLAC Event of Default shall have occurred and be continuing, or at any time after termination of this PACLAC WDCH Lease pursuant to Section 19.4.1 above, County may sue to recover from PACLAC any and all damages necessary to compensate County for the detriment proximately caused by PACLAC's failure to perform its obligations under this PACLAC WDCH

Lease, including, but not limited to, (a) all amounts payable hereunder which are due, owing and unpaid by PACLAC to County at the time any such suit is brought, and (b) in the case of termination, such costs and expenses as County may incur in recovering possession of the Premises, removing persons or property therefrom, and in connection with the appointment of and the performance by a receiver to protect the Premises. Suit or suits for the recovery of any deficiency or damages may be brought by County from time to time at County's election.

#### **19.4.5 Remedies Cumulative**

In the event of a breach of this PACLAC WDCH Lease by PACLAC, County shall have the right of injunction to restrain the same and the right to invoke any remedy allowed by law or in equity, as if specific remedies, indemnity or reimbursement were not herein provided. The provision in this PACLAC WDCH Lease for any remedy shall not preclude County from any other remedy at law or in equity, and the rights and remedies given to County in this PACLAC WDCH Lease are distinct, separate and cumulative, and no one of them, whether or not exercised by County, shall be deemed to be in exclusion of any other right or remedy provided herein, by law or equity, or pursuant to any other agreement between County and PACLAC.

### **ARTICLE 20**

#### **501(C)(3) ORGANIZATION**

PACLAC hereby covenants that, for so long as it enjoys any benefit from the Concert Hall, PACLAC will take all actions required to maintain, and PACLAC will not take any actions that would threaten, PACLAC's status as a 501(c)(3) Organization, until the date upon which the Garage Financing has been paid in its entirety and the debt instruments issued thereunder retired. The provisions of this Article 20 shall survive the termination of this PACLAC WDCH Lease until the date upon which the Garage Financing has been paid in its entirety.

### **ARTICLE 21**

#### **ESTOPPEL CERTIFICATES**

Each party will execute, acknowledge and deliver to the other party, within ten (10) Business Days after a written request therefor, an Officer's Certificate certifying (a) that this PACLAC WDCH Lease is unmodified and in full force and effect (or, if there have been modifications, that this PACLAC WDCH Lease is in full force and effect as modified, and stating the modifications), and (b) (i) in the case of such a certificate delivered by PACLAC, that no notice has been (x) given by PACLAC of any County Event of Default which has not been cured, or (y) received by PACLAC of any PACLAC Event of Default which has not been cured, except defaults specified in said certificate and that, to PACLAC's knowledge, there are then existing no facts which, with the passage of time or

delivery of notice, or both, would constitute a County Event of Default or a PACLAC Event of Default hereunder, or (ii) in the case of such a certificate delivered by County, that no notice has been (xx) given by County of any PACLAC Event of Default which has not been cured, or (yy) received by County of any County Event of Default which has not been cured, except defaults specified in said certificate and that, to County's knowledge, there are then existing no facts which, with the passage of time or delivery of notice, or both, would constitute a PACLAC Event of Default or a County Event of Default hereunder.

## **ARTICLE 22**

### **END OF LEASE TERM**

Upon the Expiration Date or earlier termination of this PACLAC WDCH Lease, PACLAC shall peaceably and quietly quit, surrender and yield up to County the Premises and all personal property located thereon and used in connection therewith, including, without limitation, all operating equipment except PACLAC's Equipment, in good order and condition, ordinary wear and tear excepted, free and clear of all lettings, occupancies, liens or encumbrances other than the Permitted Encumbrances and any other encumbrances placed on the Concert Hall Parcel pursuant to the terms of this PACLAC WDCH Lease.

## **ARTICLE 23**

### **NOTICES**

Any notice, demand, request, consent, approval or communication (each of which is herein referred to as a "Notice") which either party hereto desires or is required or permitted to give or cause to be given to the other shall be in writing and shall be delivered or addressed to such other party at the address set forth below or to such other address as that party may from time to time direct by Notice given in the manner herein prescribed, and such Notice shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile transmission, or if by mail then the earlier to occur of when actually received or on the third (3rd) Business Day after the deposit thereof in the United States Mail in Los Angeles County, California, postage prepaid, registered or certified, addressed as hereinafter provided. All Notices shall be addressed as follows:

If to County:           County of Los Angeles  
                              713 Hall of Administration  
                              500 West Temple Street  
                              Los Angeles, California 90012  
                              Attention: Chief Administrative Officer  
                              Facsimile Number: (213) 687-4822

With a copy to:       County of Los Angeles

648 Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012  
Attention: County Counsel  
Facsimile Number: (213) 626-7446

If to PACLAC: Performing Arts Center of Los Angeles County  
135 North Grand Avenue  
Los Angeles, California 90012  
Attention: President  
Facsimile Number: (213) 972-7373

With a copy to: Sidley Austin LLP  
555 West 5th Street, 40th Floor  
Los Angeles, California 90013  
Attention: Stephen G. Contopoulos  
Facsimile Number: (213) 896-6600

## **ARTICLE 24**

### **GENERAL PROVISIONS**

#### **24.1 Entire Agreement; Conflicting Provisions**

This PACLAC WDCH Lease and the PACLAC Agreement sets forth all of the agreements, conditions and understandings between County and PACLAC relating to the leasing of the Premises by PACLAC, and the maintenance and operation of the Improvements, and there are no promises, agreements, conditions, understandings, warranties or representations, oral or written, expressed or implied, between the parties other than as set forth or referred to herein.

#### **24.2 No Oral Modification**

No statement, action or agreement hereafter made shall be effective to amend, waive, modify, discharge, terminate or effect an abandonment of this PACLAC WDCH Lease in whole or in part unless such agreement is in writing and signed by the party against whom such amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced.

#### **24.3 Successor and Assigns**

Except as specifically set forth herein, the covenants and agreements herein contained shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

#### **24.4 Table of Contents and Section Headings**

The table of contents and Articles and Section headings are inserted herein only for convenience and are in no way to be construed as part of this PACLAC WDCH Lease, or as indicative of the meaning of the provisions of this PACLAC WDCH Lease or the intention of the parties, or as a limitation in the scope of the particular Articles or Sections to which they refer.

#### **24.5 No Partnership or Joint Venture**

Nothing in this PACLAC WDCH Lease shall be deemed to create a partnership or joint venture between the parties or to render either party liable in any manner for the debts or obligations of the other.

#### **24.6 Short Form Lease**

At the request of either party hereto, both parties shall execute, cause to be acknowledged and deliver the Short Form Lease and the requesting party shall cause, at its sole cost and expense, said Short Form Lease to be recorded in the Official Records in the office of the County Recorder for Los Angeles County.

#### **24.7 Attorneys' Fees**

In case suit shall be brought for an unlawful detainer of the Premises, for the recovery of any Additional Rent or any other amount due under the provisions of this PACLAC WDCH Lease, or to enforce this PACLAC WDCH Lease or because of the breach of any covenant or condition herein contained on the part of PACLAC or County to be kept or performed, the prevailing party shall be entitled to reasonable attorneys' fees in addition to court costs and any and all other costs recoverable in said action. Such attorneys' fees shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. In any case where this PACLAC WDCH Lease provides that either party is entitled to recover its attorneys' fees from the other, the party so entitled shall be entitled to recover an amount equal to the fair market value of services provided by attorneys employed by it as well as any reasonable attorneys' fees actually paid by it to third parties. Any reference in this PACLAC WDCH Lease to attorneys' fees shall be deemed to include attorneys' disbursements as well.

#### **24.8 Exhibits**

All exhibits attached hereto and/or referred to in this PACLAC WDCH Lease are incorporated herein as though set forth herein in full.

## **24.9 Construction**

The parties agree that each party and its counsel have reviewed and revised this PACLAC WDCH Lease and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this PACLAC WDCH Lease or any amendments or exhibits hereto.

## **24.10 Governing Law**

This PACLAC WDCH Lease shall be governed exclusively by the provisions hereof and by the laws of the State of California. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this PACLAC WDCH Lease invalid, unenforceable or unrecoverable under any applicable law.

## **24.11 Counterparts**

This PACLAC WDCH Lease may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

## **24.12 Quiet Enjoyment**

County covenants and agrees that upon PACLAC's paying the Base Rent and Additional Rent reserved herein and timely performing and observing all of the covenants and provisions of this PACLAC WDCH Lease on PACLAC's part to be performed and observed, PACLAC shall peaceably and quietly enjoy the Premises without disturbance by anyone (subject to any Taking or Partial Taking, and the terms and conditions of this PACLAC WDCH Lease and all Legal Requirements). Subject to the preceding sentence, County makes no warranty whatsoever with respect to title to the Premises.

## **24.13 County's Proprietary Capacity**

The parties acknowledge and agree that in making and entering into this PACLAC WDCH Lease and all of the agreements of County contained in this PACLAC WDCH Lease, County is acting and shall be deemed to be acting solely in County's proprietary capacity for all purposes and in all respects, and nothing contained in this PACLAC WDCH Lease shall be deemed directly or indirectly to restrict or impair in any manner or respect whatsoever any of the governmental powers of the County of Los Angeles, in its governmental capacity, or the rights or obligations or the exercise thereof by County, with respect to the Premises of eminent domain. It is intended that County shall be obligated to fulfill and comply

with all such requirements as may be imposed by any governmental agency or authority legally having or exercising jurisdiction over the Premises.

#### **24.14 County's Approvals and Consents**

Except as otherwise expressly provided herein, all approvals, consents and actions of County required pursuant to this PACLAC WDCH Lease may be given or taken by the Chief Administrative Officer of the County of Los Angeles (or such other person as said Chief Administrative Officer may designate in a Notice delivered to PACLAC) on behalf of County, and shall be deemed binding upon County except that said Chief Administrative Officer (or its designee) shall have no authority to amend, modify or terminate this Lease without the approval of the Board of Supervisors of the County.

#### **24.15 Limitation of Liability**

No member, official or employee of either party shall be personally liable to any other party, or any successor in interest, in the event of any default or breach by PACLAC or County or for the performance of any obligation or payment which shall become due or owing hereunder.

#### **24.16 No Waiver**

No failure by either party to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this PACLAC WDCH Lease, which shall continue in full force and effect, or the respective rights of either party with respect to any other then existing or subsequent breach.

#### **24.17 Interest Rate**

In each case where a provision of this PACLAC WDCH Lease requires the payment of interest from one party to the other, such interest shall accrue at a rate equal to the rate announced by Citibank, N.A. from time to time as its prime rate or, in the event that Citibank, N.A. shall cease to announce a prime rate, then the average prime rate of the three largest domestic United States banks (measured by total assets) then announcing a prime rate.

#### **24.18 Termination of Disney II Sublease**

Effective upon the Commencement Date, the Disney II Sublease is hereby terminated and of no further force or effect.



## **24.19 Descriptions**

Certain areas within the Premises (such as, without limitation, the Entertainment Space and Facilities and the Founder's Room) are described in this PACLAC WDCH Lease by references to the design development drawings attached to the Philharmonic Sublease. At such time as as-built drawings for the Premises have been reviewed and approved by County, the descriptions of such areas in this PACLAC WDCH Lease shall automatically be deemed modified to reflect the boundaries and locations of such areas as reflected on such as-built drawings. Without limiting the foregoing, promptly upon the request of either party at any time thereafter, County and PACLAC shall execute an amendment to this PACLAC WDCH Lease setting forth references to or revised definitions of such areas based on such as-built drawings.

## **ARTICLE 25 NONDISCRIMINATION**

### **25.1 Covenant of Nondiscrimination**

PACLAC herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this PACLAC WDCH Lease is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, age, physical handicap, medical condition, sex, marital status, sexual preference, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises herein leased nor shall PACLAC itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of PACLAC, lessees, sublessees, subtenants or vendees in the Concert Hall Parcel or the Premises herein leased. PACLAC agrees to include in each sublease and other contract entered into by it with respect to the Concert Hall, a covenant by the sublessee or other contracting party to the same effect as PACLAC is obligated in the preceding sentence.

### **25.2 OPA Compliance**

County and PACLAC, respectively, covenant and agree with each other in connection with the performance of their respective obligations hereunder to comply and to cause to be complied with all of the applicable provisions of the OPA regarding nondiscrimination in the operation, and maintenance, leasing or occupancy of the Premises. Additionally, (a) County, at its sole cost and expense, will satisfy the requirements of Sections 302 and 609 of the OPA relating to the maintenance of the Site and the adoption of a parking management and monitoring program, respectively, (b) County, at its sole cost and expense, will comply with all

other ongoing provisions of the OPA applicable to County, and (c) PACLAC, at its sole cost and expense, will comply with all ongoing provisions of the OPA applicable to PACLAC.

## **ARTICLE 26**

### **FORCE MAJEURE**

Subject to the conditions set forth in this PACLAC WDCH Lease, the performance of either party's obligations hereunder, including but not limited to County's operation and maintenance obligations pursuant to Article 7 above, shall not be deemed to be in default where delays are due to Force Majeure Events. The party claiming any such Force Majeure Event shall promptly notify the other party of the occurrence of such delay. Any extension of time for any Force Majeure Event shall be given only for the period of time commencing upon the date that such Force Majeure Event actually prevents the obligated party from performing its obligations hereunder, and ending when such Force Majeure Event ceases to prevent the obligated party from performing its obligations hereunder. Each party agrees to use reasonable efforts to minimize any such period of Force Majeure Event.

## **ARTICLE 27**

### **PACLAC'S EQUIPMENT**

As used herein, the term "PACLAC's Equipment" shall refer to any equipment owned by PACLAC, located at the Premises and used by PACLAC for the operation of the Improvements. County acknowledges that the PACLAC's Equipment shall be the property of PACLAC and PACLAC shall have the right to remove same from the Concert Hall upon the Expiration Date or earlier termination of this PACLAC WDCH Lease. County shall not be responsible for any damage to, or loss, upgrading, replacement, maintenance or repair of PACLAC's Equipment. PACLAC's Equipment shall not include the Philharmonic Equipment (which is the equipment located at the Premises and owned by Philharmonic as provided in the Philharmonic Sublease), the LAMC Equipment (which is the equipment located at the Premises and owned by LAMC as provided in the LAMC Sublease) or the Built-In Theater Equipment, which is the equipment located at the Premises which is owned by County and necessary for the use and operation of the Concert Hall.

## **ARTICLE 28**

### **COUNTY CONTROLS**

PACLAC's rights and obligations hereunder shall be subject to the following separate, distinct and cumulative controls throughout the Term of this PACLAC WDCH Lease.

(a) Any contract for any concession at the Concert Hall, and any other contract to be executed by PACLAC in connection with the Concert Hall having a term of more than three (3) years, shall be filed with CCAO for approval. No such contract shall be valid unless approved by the CCAO in writing. County acknowledges that it has previously approved the Concession Agreement.

(b) PACLAC shall compile and maintain a schedule of maximum and minimum prices to be charged for non-admission services, including, without limitation, food services and refreshments (the "Price Schedule"). PACLAC shall file a proposed Price Schedule with County for its approval. Non admission prices shall be within the limits of the Price Schedule approved by County in writing. Any changes to the approved Price Schedule proposed by PACLAC shall be subject to County approval.

(c) PACLAC shall compile a schedule of reasonable rules and regulations governing the day-to-day operation and maintenance of the Concert Hall ("Schedule of Rules and Regulations") which, after receiving the written approval of CCAO, shall be in effect. Any changes to the approved Schedule of Rules and Regulations shall be subject to approval of the CCAO.

(d) Copies of all proposed contracts, Price Schedules, Schedules of Rules and Regulations and any other documents required to be filed with County pursuant to this Article 28 shall be sent to Executive Officer Clerk of the County Board of Supervisors, together with notice of the action proposed to be taken by the Board of Supervisors in connection therewith. County may order changes in the Price Schedule or the Schedule of Rules and Regulations described in Subparagraphs (b) and (c) of this Article 28 from time to time, but no such change shall affect any agreement entered into by PACLAC and any third party prior to such change under the previously approved Price Schedule or Schedule of Rules and Regulations, as the case may be.

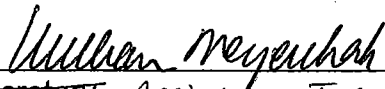
[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this PACLAC WDCH Lease as of the \_\_\_\_\_ day of January, 2007.

PACLAC:

PERFORMING ARTS CENTER OF LOS ANGELES COUNTY

By:   
President

By:   
~~Secretary~~ Assistant Treasurer and  
Chief Financial Officer

County:

COUNTY OF LOS ANGELES

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

ATTEST:

Executive Officer – Clerk of the Board of Supervisors

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

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.  
County Counsel

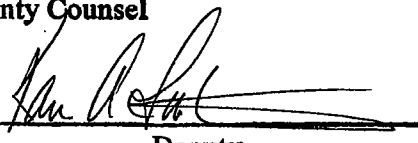
By:   
Deputy

EXHIBIT A  
[Intentionally Omitted]

EXHIBIT B

Short Form Lease

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Office of the County Counsel  
7648 Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012  
Attn: Raymond G. Fortner, Jr., Esq.

---

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made as of this \_\_\_\_ day of January, 2007, by and between the COUNTY OF LOS ANGELES, a public body corporate and politic of the State of California ("Lessor"), with an address at Office of the County Counsel, 648 Hall of Administration, 500 West Temple Street, Los Angeles, California 90012, and PERFORMING ARTS CENTER OF LOS ANGELES COUNTY, a non-profit public benefit corporation ("Lessee"), with an address at 135 North Grand Avenue, Los Angeles, California 90012.

RECITAL

WHEREAS, Lessor and Lessee are parties to that certain PACLAC WDCH Lease of even date herewith (the "Lease"), pursuant to which Lessor leased to Lessee the real property more particularly described in Attachment A attached hereto and by this reference incorporated herein (the "Premises"); unless otherwise defined herein, all capitalized terms used in this Memorandum shall have the meanings set forth for such terms in the Lease; and

WHEREAS, Lessor and Lessee have agreed to enter into this Memorandum for purposes of giving notice of the execution and delivery of the Lease.

NOW, THEREFORE, Lessor leases to Lessee, and Lessee leases from Lessor, the Premises upon the terms and conditions of the Lease, the provisions of which are hereby incorporated by reference. Lessor and Lessee hereby further state as follows:

1. Term. The term of the Lease commenced on \_\_\_\_\_ (the "Commencement Date") and expires on December 31, 2066 unless extended or sooner terminated as provided in the Lease. The Lease contains options to extend the term until December 31, 2096.

2. Notice. The sole purpose of this Memorandum is to give notice of the Lease and certain terms set forth above and is not intended (i) to set forth all of the


terms and conditions thereof, for which reference must be made to the Lease or (ii) to amend or otherwise modify the terms of the Lease. In the event of any inconsistency between this Memorandum and the terms of the Lease, the terms of the Lease shall govern.

3. Counterparts. This Memorandum may be executed in any number of counterparts and all such counterparts taken together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, Lessee and Lessor have executed this Memorandum as of the date first above written.

"Lessee"  
PERFORMING ARTS CENTER OF LOS  
ANGELES COUNTY

By:   
President


By:   
~~Secretary~~ Assistant Treasurer &  
Chief Financial Officer

"Lessor"  
THE COUNTY OF LOS ANGELES

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

ATTEST:  
Executive Officer-Clerk  
Board of Supervisors  
By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
Raymond J. Fortner, Jr.

County Counsel  
By:   
Chief Deputy County Counsel  
ASST.

ATTACHMENT A  
[Legal Description of Premises]



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(Continued)

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## **GLOSSARY OF DEFINED TERMS**

(Continued)

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<b>Taking</b>	<b>Article 1</b>
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## **GLOSSARY OF DEFINED TERMS**

(Continued)

**Transitional Occupancy Agreement      Article 1**

**WDCH Campus                                  Article 1**

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

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### AGREEMENT TO TERMINATE LEASES AND OTHER AGREEMENTS

This Agreement to Terminate Leases and Other Agreements (this "Agreement"), dated as of ~~JANUARY 20~~ <sup>2007</sup> 2006, is made and entered into by and between the County of Los Angeles, a body corporate and politic of the State of California ("County"), and Walt Disney Concert Hall, Inc., a California non-profit corporation ("Disney") formerly known as Walt Disney Concert Hall I, Inc., with reference to the following Recitals:

#### RECITALS

A. County is the owner of the Concert Hall Parcel (as defined in the Concert Hall Master Lease, as defined below), which is an air rights parcel within Lot 1 of Tract No. 30779, in the City of Los Angeles, County of Los Angeles, State of California, as per that certain Map recorded April 1, 1976, in Book of Maps 862, Pages 16 to 20, inclusive, of the Official Records of Los Angeles County (said Lot 1 being referred to herein as "Parcel K"), lying northerly of the northerly line of Second Street as such street presently exists and was dedicated for public use in connection with the development described in these Recitals.

B. The Concert Hall Parcel has been improved with, among other improvements, a symphony concert hall for the use and benefit of the citizens of Los Angeles County known as the Walt Disney Concert Hall (the "Concert Hall").

C. The County and Disney are parties to various agreements relating to the Concert Hall, including that certain Walt Disney Concert Hall Master Lease dated as of December 23, 1992, as amended to date (as so amended, the "Concert Hall Master Lease") and that certain Walt Disney Concert Hall Sublease dated as of December 23, 1992, as amended to date (as so amended, the "Concert Hall Sublease").

D. The County has or will be issuing a Certificate of Completion to Disney under the Concert Hall Master Lease, and the County and the Performing Arts Center of Los Angeles County ("PACLAC") are negotiating the Walt Disney Concert Hall Lease, which is intended to replace the Concert Hall Master Lease and the Concert Hall Sublease. Accordingly, County and Disney have agreed to terminate the Concert Hall Master Lease, the Concert Hall Sublease and

certain other agreements, all as more particularly provided in this Agreement.

NOW, THEREFORE, in consideration of the above Recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Termination of Agreements. Each of the agreements listed on Exhibit A attached hereto (collectively, as the same may have been amended, the "Covered Agreements") shall be terminated upon the effective date of the Walt Disney Concert Hall Lease between the County and PACLAC (the "Effective Date"). PACLAC is an intended third-party beneficiary of this Paragraph 1.

2. Mutual Releases.

2.1 Disney's Release of County. In exchange for the release contained in Paragraph 2.2 below, effective as of the Effective Date, Disney hereby waives, releases, acquits, and forever discharges County from any and all actions, cause of actions, claims, liabilities and demands (collectively, "Claims") that Disney may have against County, whether direct or indirect, known or unknown, foreseen or unforeseen and whether or not asserted and including, without limitation, any and all Claims relating to or arising out of the construction of the Concert Hall and the Concert Hall garage and the Covered Agreements.

2.2 County's Release of Disney. In exchange for the release contained in Paragraph 2.1 above, effective as of the Effective Date, County hereby waives, releases, acquits, and forever discharges Disney from any and all Claims that County may have against Disney, whether direct or indirect, known or unknown, foreseen or unforeseen and whether or not asserted and including, without limitation, any and all Claims relating to or arising out of the construction of the Concert Hall and the Concert Hall garage and the Covered Agreements.

2.3 Scope of Release. With respect to the waivers and releases set forth herein relating to unknown and unsuspected Claims, each of Disney and County hereby acknowledges that its waiver and release is being made with full knowledge and understanding of the consequences and effects of such waiver, and that such waiver is made with the full knowledge, understanding and agreement that California Civil Code Section 1542 provides as follows, and that the protections afforded by said code section are hereby waived:

**"A GENERAL RELEASE DOES NOT EXTEND TO  
CLAIMS WHICH THE CREDITOR DOES NOT KNOW  
OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT  
THE TIME OF EXECUTING THE RELEASE, WHICH  
IF KNOWN BY HIM OR HER MUST HAVE  
MATERIALLY AFFECTED HIS OR HER  
SETTLEMENT WITH THE DEBTOR."**

2.4 Representations Concerning Releases. Each of Disney and County hereby

represents and warrants to the other that it has not assigned or transferred to any person or entity, any claim or cause of action released by this Agreement.

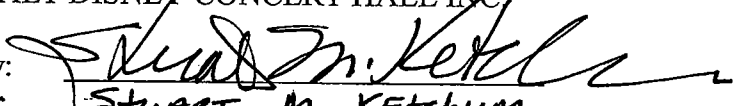
3. Exhibit. Exhibit A to this Agreement is hereby incorporated into and is made a part of this Agreement.

4. Recordation. At the request of either party hereto, the requesting party shall cause, at its sole cost and expense, this Agreement to be recorded in the Official Records in the office of the County Recorder for Los Angeles County.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives.

WALT DISNEY CONCERT HALL INC.

By:

  
STUART M. KETCHUM  
Its: PRESIDENT

COUNTY OF LOS ANGELES

By:

Chairman, Board of Supervisors

ATTEST:

Executive Officer - Clerk of the  
Board of Supervisors

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

Approved as to Form:

Raymond G. Fortner, Jr.  
County Counsel

By:   
Assistant County Counsel

## EXHIBIT A

### Covered Agreements

<u>Agreement</u>	<u>Date</u>
The Walt Disney Concert Hall Master Agreement	June 18, 1992
Concert Hall Gift Assignment Agreement	December 23, 1992
Concert Hall Assignment Security Interest Letter	December 23, 1992
Garage Gift Assignment Agreement	December 23, 1992
Garage Gift Assignment Security Interest Letter	December 23, 1992
Walt Disney Concert Hall Master Lease	December 23, 1992
Walt Disney Concert Hall Sublease	December 23, 1992
Cash Flow Funding Agreement	September 13, 2002

## ACKNOWLEDGMENT

State of California

County of Los Angeles

On Jan 2, 2007 before me, Maria Teresa Bravo, a Notary Public  
(here insert name and title of the officer)

personally appeared Stuart M. Kitchum

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Maria Teresa Bravo

9465 Wilshire Blvd

Suite 330

Beverly Hills, CA 90212

(310) 278-7555

(Seal)





## ACKNOWLEDGMENT

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_,  
(here insert name and title of the officer)

personally appeared \_\_\_\_\_

\_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)