

**SECOND AMENDED AND RESTATED
ENTERTAINMENT CENTER LEASE AGREEMENT**

between

THE CITY OF IRVING, TEXAS

Landlord

and

ARK GROUP OF IRVING, INC.

Tenant

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SECOND AMENDED AND RESTATED ENTERTAINMENT CENTER LEASE AGREEMENT

THIS SECOND AMENDED AND RESTATED ENTERTAINMENT CENTER LEASE AGREEMENT (this "Lease") is made and entered into as of _____, 2015 (the Execution Date), by the City of Irving, Texas, a municipality and home rule city in the State of Texas (the "City" or "Landlord"), and ARK Group of Irving, Inc., a Texas corporation (the "Company" or "Tenant").

BACKGROUND:

- A. The City is the owner of the fee simple estate in a tract of land located in Irving, Dallas County, Texas, more particularly described on Exhibit A attached hereto (the "Site"), together with all Improvements (defined below) now or hereafter located on the Site (the Site and the Improvements being collectively, the "Entertainment Center").
- B. The Entertainment Center consists of the Site and the following Improvements to be constructed thereon:
1. Entertainment Center consisting primarily of the following:
 - (a) an Amphitheater and Performance Hall with a capacity of at least 6,500 people, including suites and boxes which includes a minimum indoor capacity of 3,000 people (the "Amphitheater/Performance Hall");
 - (b) minimum of 100,000 square feet of heated buildings that will house a minimum of nine (9) full service restaurants, four (4) entertainment venues and 5,000 square feet of retail space (the "Restaurants");
 - (c) a landscaped pedestrian walkway (the "Walkway") connecting the Entertainment Center to the Convention Center owned by the City to the north of the Site (the "Convention Center") and the on-site promenade (the "Promenade") outside of the Performance Hall and adjacent to the Restaurants;
 - (d) an open air plaza of approximately 50,000 square feet that will be utilized for outdoor festivals, concerts and other events and will contain a minimum of two (2) outdoor stages (the "Plaza");
 - (e) approximately 1,200-space structured parking garage (the "Parking Facilities") that will serve the Entertainment Center;
 - (f) on-site utilities and other aboveground and underground infrastructure supporting the Entertainment Center and off-site infrastructure required to connect to existing City utility infrastructure (the "Entertainment Center Infrastructure").
- C. The City, as authorized by City Charter Article III, Section 5(b), and pursuant to TEXAS LOCAL GOVERNMENT CODE Section 334.041(b), desires to lease the Entertainment Center to the Company and the Company desires to lease the Entertainment Center from the City on the terms specified below.
- D. The City and the Company entered into a separate and independent Entertainment Center Development Agreement dated July 25, 2013, and effective on August 5, 2013 (the "Prior Development Agreement"), and, concurrently herewith, are amending and

restating such agreement (as amended and restated, the "Development Agreement"), that governs the design and construction of the Entertainment Center and the rights and obligations of the parties during the Development Period (defined below).

- E. The City and the Company entered into a separate and independent Economic Development Incentive Agreement, Revised, approved by City Council Resolution No. RES-2013-452 executed December 12, 2013 (the "Prior Economic Development Agreement"), and, concurrently herewith, are amending and restating such agreement (as amended and restated, the "Economic Development Agreement"), that governs certain Grants (as defined in the Economic Development Agreement).
- F. The City and the Company entered into a separate and independent Entertainment Center TIF Reimbursement Agreement dated September 5, 2013, as amended and restated pursuant to that certain First Amended and Restated TIF No. 1 Reimbursement Agreement dated December 11, 2014, (the "Prior TIF Reimbursement Agreement"); and, concurrently herewith, are amending and restating such agreement (as amended and restated, the "TIF Reimbursement Agreement").
- G. The Prior Development Agreement, together with the Prior Economic Development Agreement and Prior TIF Reimbursement Agreement, are referred to herein collectively as the "Transaction Documents". The Development Agreement, together with the Economic Development Agreement and the TIF Reimbursement Agreement, are referred to herein collectively as the "Amended and Restated Transaction Documents".
- H. The City, the Company and the Irving Convention and Visitors Bureau (the "ICVB") entered into a separate and independent Entertainment Center Booking Agreement dated September 5, 2013, approved by City Resolution No. RES-2013-293, and, concurrently herewith, are repealing City Resolution No. RES-2013-293.
- I. The City, as tenant, has entered into a Parking Lease Agreement with SP Millennium Center, L.P., as landlord (the "Urban Towers Parking Agreement"), covering certain parking rights in the complex known as Urban Towers, 222 East Las Colinas Boulevard, Irving, Texas 75039 (the "Urban Towers Parking Facilities"). The City will assign its rights and obligations under the Urban Towers Parking Agreement to the Company on the terms specified below.
- J. The City and the Company entered into an Entertainment Center Lease Agreement dated as of September 5, 2013, as amended and restated pursuant to that certain First Amended and Restated Entertainment Center Lease Agreement dated as of December 12, 2013 (the "Prior Lease").
- K. The Company has requested that the City enter into this Second Amended and Restated Entertainment Center Lease to replace the Prior Lease. The City has agreed to enter into this Lease and the Amended and Restated Transaction Documents; provided that such documents survival beyond the Drop Date (defined below) is conditioned upon the terms set forth below in Section 1 of this Lease, each of which conditions may be waived by the City in its sole discretion, and provided further that the Company gives the City certain assurances related to the Prior Lease and the Transaction Documents and waives claims against the City related thereto, all as more particularly described below.

AGREEMENT:

1. AMENDMENT; DEMISE; CONVEYANCE; NET LEASE.

- (a) Reliance. In reliance on the representations, warranties, covenants and agreements contained in this Lease, the City has executed this Lease to be effective on the Execution Date, and the Prior Lease is hereby amended, restated and replaced in its entirety with this Lease.
- (b) Drop Date. Notwithstanding the present effectiveness of this Lease or any other provision in this Lease to the contrary, the Lease shall automatically terminate on December 31, 2015 (the "Drop Date") without further action from either Party if the Conditions Precedent (defined below) set forth in Section 1(c) below have not been satisfied by the Company or waived by the City on or before the Drop Date in the manner provided below. Following such termination, the parties hereto shall have no further rights or obligations to one another except for the provisions of this Lease that by their respective terms survive termination or expiration of the Lease. The Company acknowledges and agrees that it shall not request, and the City is under no obligation to consider, any extension of the Drop Date.
- (c) Conditions Precedent To this Lease. Each of the following Conditions Precedent must be satisfied by the Company on or before the Drop Date or the Lease will automatically terminate:
 - (1) Closing of Private Financing. The Company has delivered to the City's counsel for inspection a financing letter (the "Financing Letter") dated June 12, 2015, from a prospective Company Mortgagee (defined below), which the Company represents and warrants to the City, is true, correct and presently effective. The Company and a Company Mortgagee (including without limitation, all lenders in a loan syndicate formed by the Company Mortgagee) shall have entered a loan agreement and various ancillary loan documents (including, without limitation, one or more promissory notes or similar binding promises to pay the Company Mortgagee by the Company in form sufficient to create a debt in the amount of the Loan as defined below) (such documents collectively referred to herein as the "Credit Agreement") providing for a construction loan on market terms in the minimum principal amount required to fund the Total Entertainment Center Costs (as defined in the Development Agreement) currently estimated to be \$172,725,964 after deducting from those costs (i) the Developer Fee line item of \$14,750,000 as found in the Project Budget used to derive the Total Entertainment Center Costs (which amount shall be payable by Tenant and which amount shall be guaranteed by Hamilton Street Properties, LLC in accordance with the terms of that certain letter to Tenant dated December 4, 2013), (ii) less the Net Bonds Proceeds of \$35,048,923, (iii) less the \$1,600,000 Venue Project Fund contribution, and (iv) less any equity and/or cash contributions from the Company, but only to the extent that such contributions will actually offset or pay down the Total Entertainment Center Costs and are required in the Credit Agreement, which remaining amount is currently estimated to be \$115,900,000 (such remaining amount referred to herein as the "Loan") but which may be adjusted as

permitted under the Development Agreement, the proceeds of which are to be used for the construction of the Entertainment Center and payment of costs and expenses related thereto consistent with the terms of the Lease and the Amended and Restated Transaction Documents. Promptly upon the full execution of the Credit Agreement, the Company shall (a) deliver a certificate to the City certifying that the Credit Agreement has been executed and the loan reflected therein has closed; (b) contemporaneously therewith, it shall make available to the City's counsel true and correct executed copies of the Credit Agreement for inspection, together with a certificate certifying that (i) such copies are true and correct copies of the originals, (ii) none of such documents have been amended or modified in any respect and no rights of any party thereunder have been waived, and (iii) such documents are valid, binding and enforceable obligations of the parties thereto and represent the complete understanding and agreement of the parties thereto; (c) contemporaneously therewith, deliver for retention by the City executed copies of the Credit Agreement (redacted as reasonably requested by Company Mortgagee); and (d) contemporaneously therewith, deliver to the City a revised amortization schedule based on the actual amount of the Loan (fully amortizing over 30 years at 7% interest) prepared in a manner consistent with the preparation of the example attached to this Lease as Exhibit B, which will replace the example attached hereto as Exhibit B, and which shall be binding on the parties absent manifest error.

- (2) Officer's Certificate; Resolutions. The City shall have received all resolutions, certificates and documents relating to (a) the organization, existence, good standing and foreign qualification of the Company, and (b) the corporate authority for the execution, delivery and enforceability of this Lease and the Credit Agreement.
- (3) Compliance Certificate. The Company shall have delivered to the City a certificate from an authorized officer of the Company certifying that after giving effect to the amendments set forth in this Lease, all conditions precedent to the effectiveness of this Lease have been satisfied in all respects.
- (4) No Default. After giving effect to the amendments set forth in this Lease, no Event of Default shall have occurred which is continuing.

This Lease shall continue in full force and effect beyond the Drop Date if, and only if, each condition precedent set forth in Section 1(c)(1)-(4) (each a "Condition Precedent" and collectively, the "Conditions Precedent") has been satisfied by the Company, or waived by the City in its sole discretion, on or before the Drop Date. If each of the Conditions Precedent have not been satisfied by the Company or waived by the City on or before the Drop Date, this Lease and the Amended and Restated Transaction Documents shall automatically terminate and all rights and obligations of the parties hereunder and thereunder shall be deemed to have expired and terminated without further action by either party, and no provision of the Lease and the Amended and Restated Transaction Documents shall be of any further force or effect, except for any provisions that by their explicit terms survive termination or expiration of

the Lease and/or the Amended and Restated Transaction Documents. Upon such termination, if any, the Company will execute and deliver to the City an acknowledgment that, for all purposes, this Lease has terminated, and agrees to execute any other documents reasonably requested by the City to confirm such termination. Such acknowledgment shall be an exclusive obligation of the Company, but is not a condition precedent to the automatic termination of this Lease. Upon fulfillment, if any, of all of the Conditions Precedent, the City will promptly execute and deliver to the Company, with a copy to the Company Mortgagee, an acknowledgment that, for all purposes, this Lease shall remain effective subject to its terms.

- (d) Representations and Warranties of the Company. To induce the City to enter into this Lease, the Company hereby represents and warrants to the City, as of the Execution Date, as follows:
- (1) Reaffirmation of Existing Representations and Warranties. After giving effect to the amendments set forth in this Lease and the Amended and Restated Transaction Documents, each representation and warranty of the Company contained in this Lease and the Amended and Restated Transaction Documents is true and correct in all material respects on the date hereof.
 - (2) Due Authorization; No Conflict. The execution, delivery and performance by the Company of this Lease are within the Company's powers, have been duly authorized by all necessary action, require no action by or in respect of, or filing with, any governmental body, agency or official and do not violate or constitute a default under any provision of applicable law or any material agreement binding upon the Company or result in the creation or imposition of any lien upon any of the assets of the Company.
 - (3) Validity and Enforceability. This Lease constitutes the valid and binding obligation of the Company enforceable in accordance with its terms.
 - (4) No Default or Event of Default. After giving effect to this Lease, no Event of Default has occurred which is continuing.
- (e) Release. As of the Execution Date, the Company and the City hereby each acknowledge and confirm that: (i) it does not have any grounds, and hereby agrees not to challenge (or to allege or to pursue any matter, cause, or claim arising under or with respect to the Prior Lease or the Transaction Documents), in any case based upon acts or omissions of either party occurring prior to the Execution Date, or facts otherwise known or unknown to it as of the Execution Date, the effectiveness, genuineness, validity, collectability, or enforceability of the Prior Lease or any of the other Transaction Documents, or any of the terms or conditions of the Prior Lease or the Transaction Documents, or any party's performance obligations under the Prior Lease or the Transaction Documents; and (ii) it does not possess (and hereby forever and irrevocably waives, remises, releases, discharges, and holds harmless the other party and its affiliates, stockholders, directors, officers, employees, attorneys, agents, and representatives and each of their respective heirs, executors, administrators, successors, and assigns (collectively, the "Indemnified Parties") from and

against, and agrees not to allege or pursue, any action, cause of action, suit, debt, claim, counterclaim, cross-claim, demand, defense, offset, opposition, and/or other right of action whatsoever, known or unknown, whether in law, equity, or otherwise (which it, all those claiming by, through, or under it, or its successors or assigns, have or may have) against the Indemnified Parties, or any of them, by reason of, any matter, cause, or thing whatsoever, with respect to events or omissions occurring or arising on or prior to the Execution Date and relating to the Prior Lease or the Transaction Documents, or any of the terms and conditions of the Prior Lease or the Transaction Documents, or any party's performance obligations under the Prior Lease or the Transaction Documents or any transaction relating thereto, or the relationship between the Company and the City. Except as otherwise provided herein, neither the City nor the Company releases the other party to this Lease or the Amended and Restated Transaction Documents, or any other person or entity, from any action, cause of action, suit, debt, claim, counterclaim, cross-claim, demand, defense, offset, opposition, and/or other right of action whatsoever, whether in law, equity, or otherwise arising from or under this Lease or the Amended and Restated Transaction Documents and based on acts and omissions occurring after the Execution Date.

The parties acknowledge that the Company entered into certain subleases under the Prior Lease (the "Subleases"). The City has not seen or approved such Subleases. In the event this Lease and the Amended and Restated Transaction Documents terminate in accordance with Section 1(b) and 1(c) above, and notwithstanding the Release described in Section 1(e) above, the Company shall, at the City's request, ensure that such Subleases are terminated and shall indemnify, defend and hold the City harmless from and against any and all claims made by the parties to the Subleases against the City.

This Section 1(e) shall survive the termination of this Lease.

(f) Demise; Conveyance; Net Lease.

(1) Entertainment Center. The City leases to the Company, and the Company leases from the City, the Entertainment Center, to have and to hold the Entertainment Center, together with all rights, privileges, easements, and appurtenances belonging to or in any way pertaining to the Entertainment Center, upon the terms specified herein.

(2) Urban Towers Parking Agreement. In the event the Conditions Precedent are satisfied, the City shall assign to the Company, and the Company shall assume and agree to perform, all of the City's rights and obligations under the Urban Towers Parking Agreement effective as of the first day of the Initial Term.

(3) Net Lease.

a. The Rent (defined below) payable under this Lease and all other costs related to the Company's use or operation of the Entertainment Center shall be absolutely net to the City except as otherwise specified herein, and the Company shall pay during the Lease Term, without (except as otherwise expressly set forth

herein) any offset or deduction whatsoever, all such Rent and other costs; and

- b. The City shall have no responsibility whatsoever for the construction, maintenance, operation, repair, or replacement of the Entertainment Center or any portion thereof (except as may be otherwise set forth herein or in the Development Agreement).

2. LEASE TERM

- (a) Development Period. The "Development Period" is the time period commencing on the date that the Bonds (as defined in the Development Agreement and including any refundings thereof) are issued by the City (the "Bond Closing Date") and continuing through the last day of the calendar month in which a notice of completion of construction of the Improvements is recorded by the Company in the Official Public Records of Dallas County, Texas. The Bond Closing Date occurred February 20, 2014.
- (b) Initial Term. The "Initial Term" of this Lease commences on the first day of the first full calendar month after the calendar month in which all of the Completion Conditions (as defined below) have been completed or waived by the City as required in the Development Agreement (the "Commencement Date"), and continues for thirty (30) years thereafter. The Company will record a notice of completion of construction of the Improvements associated with the Project Scope Criteria promptly after receipt by the Company of the final certificate of occupancy for that portion of the Entertainment Center from the City. The Company will thereafter and on an ongoing basis record a notice of completion of construction for any Improvements made to the Entertainment Center promptly after receipt by the Company of the final certificates of occupancy for such Improvements. Each consecutive calendar year period during the Initial Term shall be referred to herein as a "Lease Year". The first Lease Year shall commence on the first day of the first January following the Commencement Date and end one year thereafter.

"Completion Conditions" as used herein means the occurrence and delivery to the City by the Company of each of the following:

1. A letter of compliance, as defined in section 111.1.2 of the Irving Building Code for every building including without limitation those identified as A1, A2, A3, A4, B1, C1, C2, D1 and D2 on that certain dimension control plan prepared by Architect (as defined in the Development Agreement) dated April 17, 2015, and every structure shown on the Conceptual Site Plan approved by Resolution RES 2014-214; with the Walkway, Promenade, Plaza and all Entertainment Center Related Infrastructure, including but not limited to landscaping, hardscaping, exterior lighting, flatwork, surface parking, paving, and drive approaches completed with the last letter of compliance; and
2. Certificates of occupancy for:
 - a. the Amphitheater/Performance Hall, and
 - b. a minimum of nine full service restaurants, four entertainment venues and 5,000 square feet of retail space, collectively containing not less than 100,000 square feet,
 - c. two outdoor stages of the Plaza, and

d. the Parking Facilities.

According to the Development Agreement, each of the Completion Conditions must be satisfied by the Company within 24 months following the calendar month in which the Conditions Precedent are fulfilled or such failure shall be a default thereunder.

- (c) Renewal Terms. Provided that (1) the Lease is in full force and effect and (2) no Event of Default by the Company then exists and remains uncured on the date of exercise or on the date of commencement of the Renewal Term, Tenant shall have three (3) options (each a "Renewal Term Option") to extend the Lease Term for an additional term of thirty (30) years each with respect to the first two Renewal Term Options and an additional nine (9) years with respect to the third Renewal Term Option (each a "Renewal Term"), commencing at 12:00 a.m. on the day immediately following the last day of the then-current Lease Term by delivering written notice (the "Renewal Notice") to Landlord of such election at any time prior to the date that is twenty-four (24) months prior to the expiration of the then-current Lease Term (the "Renewal Exercise Period"). If Tenant fails to exercise the Renewal Term Option on or before the Renewal Exercise Period, or if Tenant purports to exercise a Renewal Term Option during an Renewal Exercise Period, but the conditions to exercise of such Renewal Term Option have not been satisfied on or before the exercise of such Renewal Term Option by Tenant or the commencement of the Renewal Term, as applicable, all of Tenant's rights with respect to each Renewal Term Option shall expire and terminate upon the last day of the then-current Lease Term. If Tenant exercises a Renewal Term Option in accordance with the terms and conditions of this Section 2(c), the Lease Term shall be extended for one Renewal Term upon the same terms, covenants and conditions as are contained herein for the Initial Term, except as the Base Rent rate, which shall be adjusted as determined in accordance with Section 2(d) below.

- (d) Base Rent for Renewal Terms. Within thirty (30) days after receipt of Tenant's Renewal Notice, Landlord shall deliver to Tenant written notice of the Base Rent rate for the applicable Renewal Term, which shall be based on Landlord's determination of the Market Rental Rate. Tenant shall, within thirty (30) Business Days after receipt of Landlord's notice, provide written notification (a "Rate Notice") to Landlord as to whether Tenant accepts or rejects Landlord's determination of the Market Rental Rate. If Tenant fails to timely provide a Rate Notice, then it will be deemed to have accepted Landlord's determination of the Market Rental Rate. If Tenant timely delivers a Rate Notice stating that Tenant accepts Landlord's determination of the Market Rental Rate, or if Tenant is deemed to have accepted the same as provided herein, then at the request of either Party, on or before the commencement of the applicable Renewal Term, Landlord and Tenant shall execute an amendment to this Lease extending the term on the same terms and conditions provided in this Lease, except as set forth in this Section 2. If Tenant timely delivers a Rate Notice stating that Tenant objects to Landlord's determination of the Market Rental Rate for the applicable Renewal Term, then the Parties agree to negotiate, in good faith, for thirty (30) Business Days from the date that Landlord receives Tenant's Rate Notice to determine a mutually acceptable Basic Rental rate.
- (e) Determination of Market Rental Rate by Appraisal. If the Parties have not reached an agreement with respect to the Market Rental Rate within such thirty (30) Business Day period, Tenant's exercise shall nonetheless be effective, to request that such Market Rental Rate be determined by an appraisal by giving Notice thereof to Landlord. If Notice of appraisal is given, then an appraisal shall be made by three (3) appraisers, one designated by the Landlord, one designated by the Tenant, and the third (who must be a realtor and a qualified member of the American Institute of Appraisers, or, if such institute is no longer in existence, then the equivalent appraisal agency) to be appointed by the prior two appraisers designated to appraise the value as of the applicable appraisal date of the Entertainment Center. This appraisal shall be based on the appraisal of that portion of the Entertainment Center consisting of the appraised assets which shall be defined for purposes of this Section 2(e) as the Amphitheater/Performance Hall, 100,000 square feet of the site's heated buildings (taking into consideration a minimum of nine (9) full service restaurants (if then in operation), four (4) entertainment venues (if then in operation), and 5,000 square feet of retail space)), the Walkway and Promenade, an open air plaza of approximately 50,000 sq. feet, a 1,200-space structured parking garage, and on-site utilities and other above-ground and under-ground infrastructure supporting the Entertainment Center and off-site infrastructure required to connect to existing City utility infrastructure, and shall be signed by each of the appraisers or a majority of them and shall be final and binding upon the Parties. It is further agreed that whenever an appraisal shall become proper under this Lease and Tenant shall have properly requested same in a Notice, if either Party shall fail or neglect for a period longer than thirty (30) days thereafter to appoint an appraiser and to notify the other party in writing the name of such appraiser, then the non-defaulting party may, upon fifteen (15) days' notice to the other Party, apply to the Judge of any District Court of Dallas County, Texas for the appointment of the other two appraisers, and such Judge is fully authorized to appoint the same, and the written appraisal, signed by them, or a majority of them, shall be final and binding upon the Parties. Each Party shall pay the fee of

the appraiser appointed by or for such Party, and the fee of the third appraiser shall be shared jointly by both Tenant and Landlord. Upon determination of the Market Rental Rate, the Parties shall execute an amendment to this Lease to establish and evidence such Market Rental Rate and the Base Rent for such Renewal Term. The Base Rent for the Renewal Term determined as of each date of commencement of a Renewal Term ("Adjustment Date") shall be effective until again adjusted in accordance with the provisions of this Lease. In the event the Base Rent is not determined on or prior to the Adjustment Date, Tenant shall continue to pay Base Rent at of the rate in effect immediately prior to the then applicable Adjustment Date subject to an adjustment after a determination is made.

Notwithstanding the foregoing, it is expressly understood that such appraisals defined above to determine the Market Rental Rate of the Entertainment Center shall be done using comparable properties that contain arts, cultural, entertainment, and sporting venues owned by government entities which are leased and operated by private companies. Such comparable properties should be ones which are used to provide venues for arts, entertainment, or sporting events for the public's benefit and shall include entertainment centers, stadiums, arenas, convention centers, concert halls, and/or performing arts centers (in Texas or other states). In the event that any comparable properties are newer than the Entertainment Center, the depreciated value and/or technological obsolescence of the Entertainment Center shall be taken into consideration and an appropriate discount shall be applied to the Market Rental Rate of the Entertainment Center as determined to be appropriate by the appraisers selected pursuant to this Section 2(e).

- (f) Lease Term. The Development Period, the Initial Term, and any Renewal Terms are collectively referred to as the "Lease Term."

3. RENTAL

- (a) Rent. The term "Rent" means the Base Rent, Prepaid Rent, Additional Rent and all other sums payable by the Company to the City under this Lease and the Development Agreement. No Rent is payable by the Company during the Development Period, however Prepaid Rent is an amount equal to all unreimbursed portions of the Company's Construction Contribution pursuant to the Development Agreement. Such Prepaid Rent is allocated to the City's equity in the Entertainment Center. The parties agree that such Prepaid Rent represents fair market value for leasing the Entertainment Center during the Initial Term. Under no circumstances shall Company ever have any claim against the City, nor shall City ever have any liability, for return, recapture or repayment of the Prepaid Rent.
- (b) Base Rent in Initial Term. Commencing on the first day of the Initial Term (the "Rent Commencement Date") and continuing on the annual anniversary thereafter as long as this Lease remains in effect, the Company shall pay to the City Base Rent in the amount of one dollar per calendar year, in advance.
- (c) Prepaid Rent in Initial Term. Commencing on the Rent Commencement Date, the Company shall receive from the City a credit against Prepaid Rent equal to

one-thirtieth of the Prepaid Rent. Continuing on the annual anniversary thereafter as long as this Lease remains in effect, the Company shall receive from the City a credit against Prepaid Rent equal to one-thirtieth of the Prepaid Rent. Under no circumstances shall Company ever have any claim against the City, nor shall City ever have any liability, for return, recapture or repayment of the Prepaid Rent or any remaining portion thereof.

- (d) Base Rent in Renewal Terms. Base Rent in each Renewal Term shall be determined as provided in Section 2 above.
- (e) Additional Rent. In addition to the Base Rent, the Company shall pay for the benefit of or provide to the City, as Additional Rent, the following, but only to the extent such Additional Rent does not exceed the calculated rate for private payments permitted under the Bond Ordinance:
 - (1) the Company shall provide the City the right to exclusive use by the City or the ICVB of one of the three (3) largest box suites in the Performance Hall, the location of such suites to be determined by the Company. This use shall include the customary number of admission tickets associated with a box suite provided at no cost to the City; and
 - (2) the Company shall provide a food and beverage credit to the City for its use of the box suite in the maximum monthly amount of \$12,500 such maximum amount to increase by 2 percent per annum, but shall not be carried forward each month.

If the Company fails to perform the obligations above in this Section 3(e), the sole and exclusive remedy for such Performance Failure shall be as described in Section 14(g) below.

- (f) Utilities. The Company is responsible for obtaining and paying for all utilities used in connection with the operation of the Entertainment Center.
- (g) Security Deposit. There shall be no security deposit.

4. USE OF ENTERTAINMENT CENTER

- (a) Use. The Company may use the Entertainment Center for the construction and operation of the Amphitheater and Performance Hall, the Restaurants, Entertainment Venues, the Walkway, the Plaza, the Parking Facilities, and the Entertainment Center Infrastructure, repairs and renovations to and replacements of the Entertainment Center, and any other related lawful use, including the operation of the Entertainment Center as a public multi-venue, multi-use entertainment venue with restaurants, performance suites, hospitality suites, retail, and motion picture theater. The Company may include additional Improvements on the Site, at its sole expense and not as part of Company Contribution, up to 100,000 square feet of office use that relates to and enhances the use, value, or appeal of a venue, and a hotel use, but the hotel use may only occur if the Convention Center Headquarters Hotel is not constructed by January 1, 2017.

- (b) Prohibited Uses. The Company may not use the Entertainment Center for any use prohibited by the Act (as defined in Section 8(a) hereof) or other Applicable Laws or expressly prohibited under this Lease or in a manner that would render the insurance thereon void.
- (c) Compliance with Laws. The Company shall comply, and shall require under applicable subleases, that its subtenants comply, with all Applicable Laws. The Company or any subtenant may contest the enforcement or validity of any Applicable Laws. If requested by the Company, the City may join (but has no obligation to join) the Company as a party to any such contest at no out-of-pocket cost to the City.
- (d) Programming. During each Lease Year, the Company shall book and stage or cause to be booked and staged a minimum of one hundred (100) live performance dates in the Amphitheater/Performance Hall, and Plaza combined, with a minimum ticketed attendance during each Lease Year of 100,000.

If the Company fails to perform the obligations above in this Section 4(d), the sole and exclusive remedy for such Performance Failure shall be as described in Section 14(g) below.

- (e) Naming Rights. During the Lease Term, the Company has the exclusive authority, control, and rights in selecting the name of the Entertainment Center as a whole or for any portion thereof and the exclusive right to assign the name of the Entertainment Center to a third party as a sponsor, but neither the Entertainment Center nor any portion thereof may be named for any entity whose business is a sexually oriented business. The Entertainment Center as a whole may not be named for any entity whose business is the manufacture, sale, or distribution of tobacco or alcohol products. If any geographic reference is included in the name of the Entertainment Center, then the word "Irving" shall also be included in the name. The Company shall retain all revenue generated from naming rights. The Company may grant a security interest in its naming rights arising by, through or under this Lease to the Company Mortgagee.
- (f) Operation of the Entertainment Center. The Company shall manage and operate the Entertainment Center, or cause the Entertainment Center to be managed and operated, as an efficient, first class, multi-use, multi-venue public entertainment venue with restaurants. Without limiting the generality of the foregoing:
 - (1) The Company shall operate and maintain the Entertainment Center in accordance with Applicable Laws and in a good, safe, attractive, sanitary order and repair consistent with the industry standards and practices for a first-class multi-use, multi-venue public entertainment venue with restaurants.
 - (2) The Company shall maintain or cause to be maintained all necessary licenses, permits and authorizations for the operation of the Entertainment Center.
 - (3) The Company shall maintain, repair and, as needed, replace (including regular periodic inspection and testing) all heating, ventilation and

cooling, electrical, plumbing, life safety and other systems within the Entertainment Center.

- (4) The Company shall maintain, repair and, as needed, replace the roof, foundation and other structural elements of the Entertainment Center.
- (5) The Company shall establish, coordinate and administer commercially reasonable preventative maintenance programs for the Entertainment Center and its constituent systems and elements.
- (6) The Company shall use commercially reasonable efforts to fully lease the Restaurants to at least nine (9) full service restaurants each with a full kitchen, cooking and service staff on the premise; but at all times maintain a minimum occupancy of 50,000 square feet of the Restaurants with full service restaurants as described here open for business an average of thirty (30) hours per week.

If the Company fails to perform the obligations above in this Section 4(f)(6), the sole and exclusive remedy for such Performance Failure shall be as described in Section 14(g) below.

- (7) At least once each Lease Year, the Company agrees to make the Performance Hall available at no cost (other than labor costs directly related to staging the event) to a non-profit, charitable organization or group of non-profit charitable organizations identified by Irving Arts Center that generally support the arts for a fundraising event for such organization(s). The Company may select the same organization(s) from year to year or may select a different organization(s) each year. The Company agrees, and shall cause the concert promoter for the Entertainment Center, to cooperate with such organization(s) in booking each fundraising event. The Company further agrees to provide a \$50,000 food and beverage credit to the organization(s) for each annual fundraising event.

If the Company fails to perform the obligations above in this Section 4(f)(7), the sole and exclusive remedy for such Performance Failure shall be as described in Section 14(g) below.

- (8) The Company shall cooperate with Irving Independent School District, Carrollton-Farmers Branch Independent School District and Coppell Independent School District to make the Entertainment Center available one day (including the same evening thereof) out of each Lease Year for graduation ceremonies at a minimal cost (which shall include all labor costs directly related to staging the event); provided a District shall request a graduation date fifteen (15) months in advance and the first District to make a request for a given Lease Year will be entitled to the foregoing one day usage of the Entertainment Center for such Lease Year; and on terms mutually agreeable to the District and Company.

If the Company does not perform the obligations above in this Section 4(f)(8), the sole and exclusive remedy for such Performance Failure shall be as described in Section 14(g) below.

- (9) The Company shall commence, defend and settle in good faith, at no out-of-pocket cost to the City, such legal actions or proceedings concerning the management, use or operation of the Entertainment Center as are necessary or required in the opinion of the Company; and
 - (10) The Company shall issue or cause to be issued admission tickets and account for all admissions to all events at the Entertainment Center and to timely pay to the City all Admission Taxes due thereon in accordance with Applicable Law.
- (g) Quarterly Reports. Tenant shall deliver to Landlord, as soon as practicable, and in any event, within thirty (30) days after the end of each calendar quarter (the last day of March, June, September and December of every year during the Initial Term and any Renewal Terms), a detailed summary (certified as true and correct by an authorized officer of Tenant, as the act of Tenant) of its compliance, or lack thereof, with the requirements of each of Sections 3(e), 4(d), 4(f)(6), 4(f)(7), and 4(f)(8) of the Lease, in form and substance reasonably satisfactory to Landlord (each a "Quarterly Report" and collectively, "Quarterly Reports").

5. BOOKING TERMS AND PROVISIONS

It is the parties' intent that the Entertainment Center be operated in cooperation with the Convention Center as part of the same City-owned project. In this regard, the City and the Company agree to the following booking terms and provisions:

- (a) Advanced Booking. For dates that are twelve (12) months in advance of the date of booking and continuing on a rolling twelve (12) month basis, the City and the ICVB have the exclusive first right to book events on open dates at the Performance Hall between the hours of 7:00 a.m. and 5:00 p.m., Irving, Texas time, at the then current rental rates charged to third parties for the use of the Performance Hall. As part of the foregoing rental rights, the City and ICVB shall have the right to book programming which is not open to the general public and to which tickets are not sold on the same terms and rates during such daytime hours within any rolling twelve (12) month period, subject to the then-current availability of the Entertainment Center. The foregoing rights are subject to not booking more than three consecutive days in any two week period.
- (b) Ticket Purchasing. The City, ICVB, or any customer of the ICVB shall have a right as of the date that tickets for an event go on sale to the general public (but not as of the date that any pre-sale for artists, fan clubs, sponsorship groups, or similar groups commences) to buy a portion or all of the tickets for an event open to the general public at the Entertainment Center, subject to the then-current availability of tickets to such event; provided that neither the City nor ICVB may resell, and the City and ICVB shall use commercially reasonable efforts to prohibit any customer of ICVB from reselling, such tickets for greater than such tickets' face value. Any purchase of at least 50 percent of the total number of tickets for a performance shall be subject to a reasonable minimum charge for

food and beverage. If requested by the City, ICVB and/or a customer of ICVB, the Company shall reasonably cooperate with such party or parties to book a private event and/or an event with a performer selected by such requesting party, subject to (i) all cost associated therewith (including, without limitation, guaranty payments and deposits) being paid for by the requesting party and any prepaid expenses or deposits to be paid by the requesting party prior to the event as required by the artists or operator of the Performance Hall, (ii) the then-current availability of the Entertainment Center and (iii) compatibility with the Company's strategic programming plan for the Entertainment Center.

- (c) Cross-Promotion. The City, the ICVB and the Company shall cooperate to develop complementary and cross-promotional programming and marketing opportunities related to, by way of example and not limitation, ticket packages (including parking), promotion of hotels located in the City of Irving, and complementary programming at no costs to Company at the Entertainment Center with events hosted at the Convention Center.

6. IMPROVEMENTS

- (a) Plan Approval. Plan approval (the "Approved Plans") for the improvements (the "Improvements") to be constructed on the Site and leased to the Company as part of the Entertainment Center shall be in accordance with Article I of the Development Agreement. Any material change to the Approved Plans, or any plans and specifications for any Improvements other than the Approved Plans, is subject to approval by the City and the Company.
- (b) Alterations. After completion of construction of the Entertainment Center under the Development Agreement, the Company may, at any time and from time to time and at no out-of-pocket cost to the City, alter structurally or otherwise remodel, reconstruct, and add to the Entertainment Center, or any part thereof, subject to approval by the City of any structural alterations to the Entertainment Center.
- (c) Liens. The Company shall protect, indemnify, defend, and hold harmless the City from and against all bills, claims, liens, and rights to liens for labor and materials and architects', contractors' and subcontractors' claims related to the construction and completion of any alterations or additions to the Improvements. This indemnity provision shall survive termination or expiration of this Lease or the Company's right of possession hereunder. Upon bonding over any such liens, providing other adequate security, or establishing sufficient reserves (to be held in the Maintenance and Operations Reserve (defined in Section 6(g)(3)), in each case acceptable to the City, the Company may contest any and all bills, fees, and claims, being obligated to pay the contested item only if and when liability is established against the Company or against the Entertainment Center, but in no event later than such time as necessary to prevent foreclosure by the holder of the lien.

(d) Title to the Entertainment Center.

- (1) Site and Improvements. The City will own the Entertainment Center Site and all Improvements and additions and alterations thereto existing or to be constructed thereon, subject to Section 6(d)(2).
- (2) Personal Property. All items of personal property (if any) that are purchased, in whole or in part, with the City Construction Contribution (defined in the Development Agreement) or proceeds from the Venue Project Fund, if applicable, will be owned by the City in accordance with the terms hereof, including any removable floor seating for the Performance Hall. Items of personal property purchased with Company funds that become fixtures (other than trade fixtures) or otherwise are attached to the Improvements and/or that are reasonably necessary to the operation of any such Improvements (for example, elevators, escalators, HVAC systems, security equipment, sound and lighting equipment, acoustic materials, curtains, stage rigging and fixed audience seats at the Performance Hall) will be owned by the City in accordance with the terms hereof. The Company may place or install in or on the Entertainment Center other items of personal property [for example, furniture (other than fixed audience seats at the Performance Hall), trade fixtures and office equipment] as the Company deems desirable for its operation. Such items of personal property placed by the Company on or in the Entertainment Center will not become part of the real property, even if nailed, screwed, or otherwise fastened to the Improvements, but will retain their status as personal property. Such personal property may be removed by the Company at any time, so long as the Company is not in default under this Lease and so long as any damage occasioned by such removal is thereupon repaired. Likewise, such items of personal property purchased by performing arts groups or private citizens (for example and without limitation, musical instruments, sets, music, recordings and computers) will not be owned by the City.
- (3) Intellectual Property.
 - a. "Intellectual Property" means all intellectual property rights of any kind and reasonably related rights with respect to the Entertainment Center (e.g., sublicensable license rights to a third party's intellectual property) including patent rights (whether design or utility), copyrights, trademark and service mark rights, trade dress rights, utility model rights, moral (personal) rights, rights of publicity, trade secret rights, industrial design rights, and web site and internet domain rights.
 - b. The City will own all Intellectual Property related to the plans and specifications for the construction of the Entertainment Center (the "City Intellectual Property Rights"). The City assigns to the Company an irrevocable license to use all City Intellectual Property Rights in connection with (i) the construction, repair, replacement, remodeling, renovation, and physical operation of the Entertainment Center during the Lease Term; and (ii) other venue projects that are not within 150 miles of the Entertainment Center or within the Austin and Oklahoma

City metropolitan areas. Upon the end of the Lease Term, or upon termination of the Lease for any reason, Company shall, upon the City's request, immediately return at least one copy of all City Intellectual Property and all materials, models, drawings, plans and other documents, either in physical or electronic form, constituting, evidencing or reflecting any of the City Intellectual Property to the City; provided, that City further grants to Company an irrevocable worldwide limited license in and to all of said construction plans and specifications for Company's use with the construction, repair, replacement, remodeling, renovation, and physical operation at any time of other real properties so long as said other real properties are not located within 150 miles of the Entertainment Center or within the Austin and Oklahoma City metropolitan areas.

- c. The Company shall own all intellectual property rights in, to and relating to the Entertainment Center, whether now in existence or created in the future, including without limitation all copyrights, trademarks, trade dress and merchandising rights in the Entertainment Center, all names, logos and likenesses, except City Intellectual Property (collectively the "Entertainment Center Intellectual Property"), as well as all rights to protect, enforce and license any or all of the Entertainment Center Intellectual Property.
 - d. The Company hereby grants to the City an irrevocable, royalty free license in and to all of the Entertainment Center Intellectual Property; provided, however, that the City may only use such Entertainment Center Intellectual Property to the extent same is reasonably necessary for the City's ownership, operation and full enjoyment of the Entertainment Center. The Company represents and warrants to the City that it has the right and authority to grant a license in the Entertainment Center Intellectual Property.
 - e. The Company reserves the right to use the Entertainment Center Intellectual Property during the Lease Term in connection with the construction, repair, replacement, remodeling, renovation, marketing and operation of the Entertainment Center. Upon the end of the Lease Term, or upon termination of the Lease for any reason, the Company shall, upon request of the City, immediately provide the City all materials, models, drawings, plans and other documents, either in physical or electronic form, constituting, evidencing or reflecting any of the Entertainment Center Intellectual Property so that the City may make use of the Entertainment Center Intellectual Property for the purposes of the license granted hereunder. The Company may grant a security interest in its rights to the Entertainment Center Intellectual Property arising by, through and under this Lease to the Company Mortgagee.
- (e) Surrender. At the natural expiration of this Lease, the Company shall, and shall cause its subtenants, to surrender to the City possession of the Entertainment Center. Twenty four months prior to the natural expiration of this Lease, City shall provide Company notice of the City's choice of method of surrender of the

Site as either (1) with all the Improvements thereon (excluding all furniture, furnishings, trade fixtures, equipment, and other personal property therein owned or paid for by the Company or its subtenants) in good condition and repair, ordinary wear and tear and damage by casualty or Taking excepted; or (2) removal of all furniture, furnishings, trade fixtures, equipment, and other personal property therein owned or paid for by the Company or its subtenants and complete demolition and removal of the Improvements. If this Lease or the Company's right to possession of the Entertainment Center is terminated following an Event of Default by the Company, the Company shall surrender possession of the Entertainment Center to the City, a Company Mortgagee, or one of their respective designees in accordance with this Agreement, but subject to the rights of any subtenant with all the Improvements thereon (excluding all furniture, furnishings, trade fixtures, equipment, and other personal property therein owned or paid for by the Company or its subtenants) in good condition and repair, ordinary wear and tear and damage by casualty or Taking excepted.

(f) Casualty Damage.

- (1) Subject to this Section 6(f), if the Entertainment Center is wholly or partially destroyed by fire or other casualty, then the Company shall promptly repair and restore the Entertainment Center to the condition existing prior to the damage. The Company shall file all claims and negotiate all settlements with insurance carriers related to the damage. The Company may make alterations and additions to the Improvements in connection with its repair and restoration, subject to approval by the City of any structural changes.
- (2) If there is any casualty damage to the Entertainment Center, Rent will abate proportionately on the portion of the Entertainment Center rendered untenable from the date of the casualty damage until repair and restoration thereof is completed; and the Company may elect to extend the Initial Term or then current Renewal Term, as applicable, for a time period equal to the time period from the date of the casualty damage until repair and restoration of the Entertainment Center is completed (but in no event for a time period longer than five (5) years), in which event the commencement dates for any subsequent Renewal Terms will be extended by the same time period.
- (3) If at any time during the Term, the Entertainment Center or any part thereof shall be damaged or destroyed by any casualty, then Tenant shall, as soon as possible, secure or cause to be secured the area of damage or destruction to safeguard against injury to persons or property and, promptly thereafter, remediate any hazard and restore the Site and the Improvements thereon to a presentable condition whether by repair or by demolition, removal of debris and screening from public view. Tenant shall promptly commence and thereafter proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of adjusting the insurance loss) to repair, restore, replace or rebuild the Entertainment Center as nearly as practicable to a condition substantially equivalent to that existing immediately prior to such damage or destruction. Such repair, restoration, replacement or rebuilding, including

temporary repairs for the protection of other property pending the completion of any such work, remediation of hazards and restoration of the Entertainment Center to a presentable condition or any demolition and debris removal required are sometimes referred to in this Section 6(f) as the "Casualty Repair Work". Notwithstanding anything to the contrary in this Section 6(f)(3), if at any time during the term, the Entertainment Center or any part thereof shall be damaged or destroyed and applicable federal, state and city laws prohibit the rebuilding of the Entertainment Center in spite of the Company's diligent efforts to do so, Insurance Proceeds (hereinafter defined) shall be paid in the following order: first to the City to pay all outstanding principal, interest, and amounts necessary to defease or pay the Bonds in full; second to the City to pay any unamortized TIF Revenues (as that term is defined in the Development Agreement) received by the Company over time pursuant to Section 2.3 of the Development Agreement, or otherwise (based on an amortization schedule over a term of 30 years at 7% interest); third to the Company for the payment of reasonable costs associated with the demolition and removal of the Improvements (which the Company covenants to immediately undertake and diligently prosecute in a good and workmanlike manner to completion, and which obligation the Company acknowledges will not be limited to the amount of Insurance Proceeds actually received by the Company); fourth to the Company Mortgagee to pay the lesser of: (i) all outstanding indebtedness of the Company to the Company Mortgagee, or (ii) the amount of unamortized indebtedness which would then remain outstanding as if the Loan had been made on a fully amortizing basis on a 30 year amortization at 7% interest (by way of example only, the chart attached hereto as Exhibit B would accurately demonstrate the amortization concept described above if the Loan was in the original principle amount of \$115,900,000.00; the amortization table attached hereto shall be replaced in accordance with the procedure described in Section 1(c) if the Conditions Precedent are satisfied by the Company); and last, the remaining Insurance Proceeds to the City for use by the City for any lawful purpose. In such instance, provided that the Company has caused the Improvements to be demolished and removed from the Site and returned the Site to its pre-construction condition and in compliance with Applicable Laws, this Lease shall thereafter terminate and be of no further force and effect, save and except for the provisions of this Lease which by their respective terms survive its expiration or termination.

(4) Insurance Proceeds for Casualty Repair Work.

- a. Requirements for Disbursement. Insurance proceeds paid pursuant to the policies of insurance required under the Lease hereof for loss of or damage to the Entertainment Center (herein sometimes referred to as the "Insurance Proceeds"), shall be paid and delivered to the Insurance Trustee and shall be applied to the payment of the costs of the Casualty Repair Work and shall be paid out to or for the account of Tenant from time to time as such Casualty Repair Work progresses. The Insurance Trustee shall make such payments or disbursements of such Insurance

Proceeds upon the request from Tenant when accompanied by a certificate dated not more than fifteen (15) calendar days prior to such request, signed by an authorized representative of Tenant, and, to the extent an architect is reasonably required to be retained with respect to the nature of the Casualty Repair Work being performed, by a qualified architect in charge of the Casualty Repair Work selected by Tenant, setting forth the following:

- i. That the sum then requested either has been paid by Tenant or is due to contractors, subcontractors, materialmen, architects, engineers or other persons who have rendered services or furnished materials in connection with the Casualty Repair Work, giving a reasonably detailed description of the services and materials and the several amounts so paid or due; and
- ii. That except for the amount stated in such certificate to be due (or except for statutory or contractual retainage not yet due and payable), there is no outstanding indebtedness for such Casualty Repair Work known to the persons signing such certificate which is then due to persons being paid, after due inquiry.

Insurance Proceeds paid or disbursed to the Tenant, whether from the Insurance Trustee, the issuers of any insurance policies or otherwise shall be held by the Tenant in trust for the purposes of paying the cost of the Casualty Repair Work and shall be applied by Tenant to such Casualty Repair Work or otherwise in accordance with the terms of this Section.

- b. Disbursements for Work Performed. Upon compliance with Section 6(f)(4)(a), the Insurance Trustee shall, out of the Insurance Proceeds and the Casualty Shortfall Funding, (defined below), if any, pay or cause to be paid to Tenant or to the persons named in the certificate the respective amounts stated therein to have been paid by Tenant or to be due to such persons, as the case may be. The distribution of funds out of the Insurance Proceeds for Casualty Repair Work shall not constitute or be deemed to constitute (i) an approval or acceptance by the Landlord of the relevant Casualty Repair Work or (ii) a representation or indemnity by the Landlord to the Tenant or any other Person against any deficiency or defects in such Casualty Repair Work or against any breach of contract.
- c. Disbursements of Excess Proceeds. If the Insurance Proceeds (and other funds, if any, including the Casualty Shortfall Funding) received by the Insurance Trustee shall exceed the entire cost of the Casualty Repair Work, the Insurance Trustee shall pay the amount of any such excess proceeds to Tenant, but only after Landlord has been furnished with reasonably satisfactory evidence that all Casualty Repair Work has been completed and

that no mechanics' liens exist or may arise in connection with the Casualty Repair Work and after all Rentals then due hereunder have been paid and after Event of Defaults hereunder have been cured and provided no uncured potential Event of Default of which Landlord has delivered Notice to Tenant shall then exist and for which Tenant has not provided Landlord with assurances reasonably acceptable to Landlord that such potential Event of Default will be cured within the applicable cure period.

- d. No Obligation of Parties. Under no circumstances shall either Landlord or Company Mortgagee be obligated to make any payment, disbursement or contribution toward the cost of the Casualty Repair Work or the fees and costs of the Insurance Trustee (which fees and costs, if any, may be deducted by the Insurance Trustee from the Insurance Proceeds).
- e. Insufficient Funds. In the event of a Casualty for which the Insurance Proceeds are to be distributed to the Insurance Trustee, within five (5) Business Days after the first distribution of any Insurance Proceeds to the Insurance Trustee in accordance with the terms hereof and following the earlier to occur of (i) final settlement of Tenant's insurance claim related to such Casualty or (ii) the entry of a final non-appealable judgment disposing of Tenant's insurance claim related to such Casualty, Tenant shall deposit with the Insurance Trustee an amount sufficient to cover any difference between the reasonably anticipated cost of the Casualty Repair Work and the amount of the Insurance Proceeds which will be deposited with the Insurance Trustee (a "Casualty Shortfall Funding"). Notwithstanding any provision of this Lease to the contrary, Tenant shall be obligated to pay for all costs and expenses of any such Casualty Repair Work that are not covered by Insurance Proceeds or for which Insurance Proceeds are inadequate.

"Insurance Trustee" means any Company Mortgagee designated to serve as Insurance Trustee under the Lease by notice from Tenant to Landlord or, if no Company Mortgagee then exists or if the Company Mortgagee so designated does not satisfy the following requirements for being an Insurance Trustee, then an Institutional Lender having offices in the State of Texas, designated by Tenant and Approved by Landlord, but only if, and for so long as, any such Company Mortgagee or Institutional Lender satisfies all of the following requirements:

- f. such person is not an affiliate of Tenant, the Operator or any of their Principals; and
- g. such person delivers a written notice to Landlord that such person has agreed to act as the Insurance Trustee under the terms of the Lease and agrees for the benefit of Landlord, the Tenant, and if applicable, any Company Mortgagee, that during all times such person acts as the Insurance Trustee it will (x) receive and

disburse Insurance Proceeds pursuant to the terms of the Lease and (y) will notify Landlord and Tenant of its removal or resignation as Insurance Trustee at least thirty (30) calendar days prior to the effective date of any such removal or resignation.

During such periods as (i) there is no Company Mortgagee, (ii) there is no Institutional Lender qualified to serve and then serving as Insurance Trustee or (iii) the Company Mortgagee so designated does not satisfy the above requirements for being an Insurance Trustee and Tenant shall fail to designate an Insurance Trustee in accordance with the above, then, in any such event, Landlord shall act as Insurance Trustee.

(g) Maintenance of the Improvements; Excess Brimer Revenues; Maintenance and Operations Reserve.

(1) Maintenance. Subject to Sections 6(f) and 9, the Company shall keep and maintain, or cause to be kept and maintained, the Improvements in accordance with Section 4(f) subject to ordinary wear and tear, notwithstanding the amount of Excess Brimer Revenue available and budgeted pursuant to Section 6(g)(4).

(2) Excess Brimer Revenues. All Brimer revenues in excess of the amounts needed for the payment of debt service on the Refunding Bonds and the Bonds, including payment of any amounts due to any funds or accounts under the Bond Ordinance, and the City's administrative costs directly relating to the Entertainment Center as approved in the City's annual budget (the "Excess Brimer Revenues"), shall be held by the City and accrue to the benefit of the Company in a restricted account within the City's Venue Project Fund. Such amounts shall be used to reimburse the Company for the payment of Venue Project Costs as submitted and approved in the manner provided in Section 6(n). The payment of such Excess Brimer Revenues shall be subject to the flow of funds in the City's Bond Ordinance authorizing the issuance of the Bonds and shall be released to fund the payment of Venue Project Costs, including construction costs not previously paid by the Bonds or TIF Revenues. Payment of Venue Project Costs with the proceeds of the Bonds will be pursuant to the provisions of the Bond Ordinance. Excess Brimer Revenues will fund Venue Project Costs in the following order: first to fund the Maintenance and Operations Reserve; next to reimburse the Company for Entertainment Center construction costs not already paid by the City Construction Contribution, and then to reimburse any lawful Venue Project Costs expended following completion of construction. Excess Brimer Revenues shall not be used to reimburse the Company any expenditure related to any payments to Las Colinas Group, LP, or Billy Bob Barnett and B Concessionaire or any related entity relative to the prior agreements to develop an entertainment center in Irving.

(3) Maintenance and Operations Reserve. Excess Brimer Revenues will be used to fund a "Maintenance and Operations Reserve" in an initial minimum amount of \$1,050,000. The minimum amount will be adjusted annually thereafter to equal the sum of \$900,000 plus 25 percent of the

annual Urban Towers Parking Agreement Basic Rent plus 25 percent of Tenant's annual premiums for the insurance required by Section 11 of this Lease. The Maintenance and Operations Reserve is a restricted account within the City's Venue Project Fund. Any interest earned on the Maintenance and Operations Reserve shall be retained in such account and shall be held in addition to, and may not be used to satisfy the minimum amounts of the Maintenance and Operations Reserve required herein. Upon the expiration or earlier termination of this Lease or the removal of the Company as the tenant hereunder, the funds in the Maintenance and Operations Reserve will be retained by the City in the Venue Project Fund as a restricted account that shall be used pursuant to the terms of a New Lease pursuant to Section 13(d).

The City may, from time to time following an Event of Default and without prejudice to any other remedy, use all or a part of the Maintenance and Operations Reserve account to perform any obligation the Company fails to perform hereunder. To the extent that following any such application of the Maintenance and Operations Reserve account the balance of the Maintenance and Operations Reserve account is less than the required minimum amount, the City shall use Excess Brimer Revenues to restore the Maintenance and Operations Reserve account to the required minimum amount. To the extent Excess Brimer Revenues are not sufficient to restore the Maintenance and Operations Reserve account to the required minimum amount, the Company shall pay to the City on demand, such amount as is necessary to restore the Maintenance and Operations Reserve account to the required minimum amount.

(4) Maintenance and Operations Annual Work Plan and Budget.

Not later than April 30 of each calendar year, the City's Budget Officer shall provide the Company an estimate of the Excess Brimer Revenues anticipated for the fiscal year beginning the next October 1.

Not later than June 1 of each calendar year, the Company shall submit its proposed annual maintenance and operations work plan and budget, showing its proposed expenditure of Excess Brimer Revenues for maintenance and operations of the Entertainment Center during the coming fiscal year of the City. The Company will provide its estimates of insurance premiums for policies required by the Lease. The maintenance and operations work plan shall address (i) any concerns or deficiencies identified in annual physical inspection described in Section 6(i), (ii) payment of Urban Towers Parking Agreement Basic Rent and insurance premiums for policies required by this Lease, and (iii) any requested reimbursement of construction costs not already paid by the City Construction Contribution.

The City may submit objections to the work plan or budget on or prior to July 1. If the City timely gives notice of objections, then the City and the Company will cooperate in good faith to resolve the City's objections. Once the City approves the Company's work plan and budget request, the City will, within its annual budget, provide for funding the maintenance

and operations expenditures from available Excess Brimer Revenues and the Company will then proceed with the work plan and the City will fund the costs as provided in Section 6(l).

Absent approval from the City, the Company may not use any other funds in the Venue Project Fund, except as provided in the annual budget, and as it may be amended. Any unexpended funds at the end of the fiscal year shall remain in the Venue Project Fund for appropriation in future budgets.

- (h) Company Audit Rights. The Company shall have the right to audit, upon reasonable notice and, at its own expense, all of the City's expenditures and financial records related to the Venue Project Fund. Upon written request by the Company, the City shall give the Company access to all records controlled by, or in the direct or indirect possession of the City (other than records subject to legitimate claims of attorney-client privilege) relating to the Venue Project Fund and permit the Company to review and copy such records in connection with conducting a reasonable audit of such accounts.
- (i) City Audit Rights. The City shall have the right to audit, upon reasonable notice and, at its own expense, all of the Company's expenditures, and financial records related to the Company's expenditure of funds meeting its obligation to keep and maintain the Entertainment Center in good, safe, sanitary and attractive condition and repair at all times in conformance with the standards for similar first class public multi-use entertainment venues, and other records related to Quarterly Reports. Upon written request by the City, the Company shall give the City access to those certain records controlled by, or in the direct or indirect possession of the Company (other than records subject to legitimate claims of attorney-client privilege) with respect to the amounts deposited to and withdrawn from the Company accounts showing the expenditure of the Company to maintain and operate the Entertainment Center to the standard described above, and permit the City to review and copy such records in connection with conducting a reasonable audit of such, information, funds and accounts. The City and the Company shall reasonably cooperate with the assigned independent auditors (internal or external) in this regard, and shall retain and maintain all such records for at least three (3) years from the date of completion of the Entertainment Center. All audits must be diligently conducted.
- (j) Annual Inspection. The City shall have the right to conduct annual physical inspection of the Entertainment Center to enforce the Company's compliance with its obligations under the Lease. The Company shall maintain records of all maintenance work performed on the Entertainment Center and make those records available to the person performing the annual physical inspection.
- (k) City's Right of Entry. The City and its authorized agents shall have the right, during normal business hours, to enter the demised premises (1) to inspect the general condition and state of repair thereof, (2) to make repairs required or permitted under this Lease, or (3) for any other reasonable purpose. The City shall give the Company at least twenty-four (24) hours advance notice in writing, except when the City is acting in the performance of its Governmental Functions pursuant to Section 10(a).

During the final 150 days of the Lease Term, the City and its authorized agents shall have the right to erect and maintain on or about the demised premises customary signs advertising the property for lease or for sale in accordance with Applicable Laws.

- (l) Waiver of Fees. The City waives all permit, license, inspection, impact, tap, and other fees payable to the City in connection with the design, construction, repair, renovation, replacement, and operation of the Entertainment Center.
- (m) Warranties. All rights under construction warranties related to the construction, renovation, or replacement of the Entertainment Center will be assigned to the City as owner of the Entertainment Center but will be administered by the Company on behalf of the City; provided, however, that any net funds received by the Company after deduction of expenses by the parties in settlement or compromise of, or otherwise resulting from, rights associated with any of such warranties will promptly be paid by the Company to repair, replace or correct any properties or facilities of the Entertainment Center to conform to approved plans and specifications. Any excess of such funds will be deposited in the Capital Improvements Reserve. The City shall take all commercially reasonable steps to facilitate the Company's administration of the warranties.
- (n) Payment of Venue Project Costs. Once the City approves the Company's annual work plan and budget under Section 6(g)(4), then the City shall disburse funds from the Venue Project Fund account to reimburse the Company the actual costs of such, provided that a Payment Certificate (defined below) authorizing such payment is duly completed in the manner described in Section 6(n)(1).
 - (1) "Payment Certificate" shall mean a written certificate in the form of AIA G702 and G703 for construction costs and such other form as is reasonably acceptable to the City and the Company for maintenance and operations costs, in each case prepared by the Company, a copy of which is provided to the City, that:
 - a. reasonably identifies and represents that the identified Venue Project Costs are authorized Venue Project Costs eligible for reimbursement pursuant to such Payment Certificate and certifies that the amounts do not include contract retentions (other than those that are due);
 - b. has attached to it a copy of invoice(s) relating to such Venue Project Costs that reasonably identifies the vendor(s), the goods, services, and materials provided by such vendor(s) and the total amount paid with respect to such goods, services, and materials; and
 - c. has been executed by the Company or its designee to certify that the fees, costs, expenses, and other charges reflected on the Payment Certificate constitute Venue Project Costs have been paid in full.
 - (2) If a Payment Certificate is completed and executed in accordance with Section 6(n)(1) above and is submitted to the City, then the City shall promptly, and in no event later than ten (10) business days after receipt of the Payment Certificate by the City, either note the City's approval of

payment from the Venue Project Fund and return it to the Company or, if the City questions the correctness of the Payment Certificate, deliver a detailed notice to the Company specifying its objections. If the City timely gives notice of its disapproval, then payment with respect to disputed portion(s) of the Payment Certificate will not be made until the Company and the City jointly settle such dispute. The City and the Company shall meet promptly and cooperate in good faith to resolve any such disputes as expeditiously as possible. Within two (2) business days after the City approves each Payment Certificate, the City shall wire transfer the amount requested in the Payment Certificate (or the undisputed portions thereof if only a portion of the Payment Certificate is disputed) to the Company from the Venue Project Fund in accordance with wire transfer instructions provided by the Company.

7. QUIET ENJOYMENT

The City has full right to make this Lease and, subject to the terms hereof, the Company shall have quiet and peaceful enjoyment of the Entertainment Center during the term of this Lease.

8. TAXES

(a) Tax Exempt Status. As of the Execution Date, pursuant to Section 334.044 of Chapter 334 of the Texas Local Government Code (the "Act"), while an approved venue project (such as the Entertainment Center) is owned, used, and held for public purposes by a municipality, Section 25.07(a) of the Texas Tax Code does not apply to a leasehold or other possessory interest held by a municipality. The Act, the Texas Constitution, the Texas Tax Code, and all other laws, statutes, ordinances, regulations, codes, guidelines, and regulations of all governmental or quasi-governmental entities and agencies having jurisdiction over the Entertainment Center (such entities and agencies being collectively, "Governmental Authorities") are collectively referred to herein as "Applicable Laws." It is the intent of the parties that any additions to and alterations to the Entertainment Center will also be exempt properties under Applicable Laws. If any Governmental Authority challenges the tax exempt status of the Entertainment Center or any alterations or additions thereto, then the City shall take all actions necessary (as determined by the City in its sole discretion) to attempt to establish the tax exempt status thereof. If the City is unsuccessful in doing so, then the Company will be responsible for and pay the cost of any ad valorem taxes or other taxes or assessments levied or assessed against the Entertainment Center or any alterations or additions thereto ("EC Ad Valorem Taxes"). The Company will cooperate with the City in any such action upon request by the City. If the Company is required to pay any EC Ad Valorem Taxes, then the Company may credit the amount of the EC Ad Valorem Taxes paid by the Company to the City (but not paid to any other taxing jurisdiction) in any calendar year against the rent for such calendar year. In no event may such credit exceed the amount of rent due the City in the applicable calendar year.

(b) Assignment or Sale by City. The City may not assign its interest in this Lease except in connection with a sale of the Entertainment Center. If any sale of the Entertainment Center by the City or any successor results in any EC Ad Valorem

Taxes being assessed or levied against the Entertainment Center or a loss of the sales tax exemption under Section 8(f), then the new owner of the Entertainment Center will be solely responsible for the EC Ad Valorem Taxes and the payment of any such sales taxes and in no event shall Tenant have any liability therefore.

- (c) Payment of Personal Property Taxes. The Company shall pay, or cause to be paid, all taxes, special assessments, and governmental charges of every character imposed during the term of this Lease upon any personal property and trade fixtures owned by the Company or any subtenant from the Company located in the Entertainment Center, or any part thereof. The Company shall pay, or cause to be paid, all such taxes, charges, and assessments before the same become delinquent. The Company shall indemnify and save harmless the City from all such taxes, charges and assessments. This indemnity provision shall survive termination or expiration of this Lease or the Company's right of possession hereunder. The Company and its subtenants have the exclusive right to render such personal property and trade fixtures located in the Entertainment Center for all taxing jurisdictions.
- (d) Tax Contests. The Company and its subtenant(s), at no cost to the City, may contest the validity or amount of any such personal property taxes, charges, and assessments it or any subtenant is obligated to pay under this Lease, in which event the payment thereof may be deferred during the pendency of the contest.
- (e) Exclusions. The Company is not responsible for:
 - (1) any income taxes imposed under any existing or future laws of the United States or any state or any political or taxing authority on the rent provided for in this Lease;
 - (2) any estate, inheritance, gift, capital gains tax, or other tax imposed under any existing or future laws of the United States or any state or any political or taxing authority on the transfer of the interest of the City or any successor to the City by death or otherwise;
 - (3) any gross receipts, sales, excise, or use taxes, if any, imposed on rent paid under this Lease;
 - (4) any margin tax, franchise tax, or license fee levied upon or against the City or any successor; or
 - (5) any taxes and fees similar to any of the above excepted taxes and fees imposed on the City or any successor.
- (f) Construction Sales Tax Exemption. To the extent requested by the Company, the City shall cooperate with the Company in seeking a ruling from the Comptroller of Public Accounts of the State of Texas confirming that items of tangible personal property (other than machinery or equipment and its accessories, and repair and replacement parts not incorporated into the real property and leased or rented tangible personal property used in the performance of the construction, repair, renovation, or replacement of the Entertainment Center) acquired by the City pursuant to this Lease will be exempt

from sales tax. The City and the Company shall take reasonable steps to establish and maintain the foregoing exemption, including without limitation, by (1) structuring construction contracts and subcontracts as "separated contracts" within the meaning of the Texas Tax Code, containing separately stated contract prices for materials and labor, (2) executing and delivering an agreement or agreements between the City and the Company providing for donation and assignment of items of tangible personal property (including without limitation materials, equipment and supplies) to the City as and when incorporated into the Entertainment Center (subject to other applicable provisions of this Lease regarding acceptance of Improvements by the City, issuance of certificates of occupancy, compliance with construction codes, the timing of general and special warranties) or as and when delivered to the Site, except that the construction contracts the Company enters into with its contractors shall provide that for incorporated tangible personal property and for delivered tangible personal property stored on or away from the Site, (x) the risk of loss shall remain with the contractor until final completion and acceptance of the Improvements; and (y) special warranties given for the tangible personal property incorporated or stored shall not commence until final completion and acceptance of the Improvements, (3) the City's confirming in writing to the Company the City's acceptance of delivery of the donation of such tangible personal property, and (4) the Company's issuing exemption certificates to its contractors provided by the City and requiring that all contractors issue resale certificates to their subcontractors, in each case claiming appropriate exemption from tax.

9. CONDEMNATION

- (a) Right of Eminent Domain. The City shall use reasonable efforts to cause all other Governmental Authorities to refrain from exercising, any right of eminent domain related to the Entertainment Center or any interest of the Company under this Lease or any personal property and trade fixtures located in the Entertainment Center owned by the Company or any subtenant from the Company.
- (b) Notice; Cooperation. If any eminent domain proceeding is filed against the City or the Company or any subtenant from the Company for any public or quasi-public use or improvements by virtue of eminent domain (a "Condemnation Proceeding"), then each party shall promptly notify the other party of the filing of the Condemnation Proceeding. Each party may file its own claim for a separate award in any Condemnation Proceeding, but the parties shall cooperate, to the extent possible, in an attempt to maximize the award to be received by each in the Condemnation Proceeding.
- (c) Total Taking. If a Condemnation Proceeding results in the taking of all or substantially all of the Entertainment Center or, in the Company's sole discretion access to the Entertainment Center is materially impaired by taking under the Condemnation Proceeding, then this Lease will terminate as of the date the condemning authority takes possession of the Entertainment Center or the applicable portions thereof (a "Taking").
- (d) Partial Taking; Restoration. If a Condemnation Proceeding results in a Taking of less than all or substantially all of the Entertainment Center, then this Lease will

remain in effect as to that part of the Entertainment Center not taken, unless so much of the Entertainment Center or the access thereto is taken as to render the balance unsuitable for use by the Company for the uses and purposes contemplated, in which event the Company may terminate this Lease by giving notice of termination to the City within six (6) months after the date of the Taking. If this Lease is not terminated, then the Company shall restore or repair the portion of the Improvements, if any, then on the Entertainment Center not taken in the Condemnation Proceeding and will be reimbursed from the proceeds awarded in the Condemnation Proceeding for the costs incurred by the Company for the restoration or repair from the awards given in the Condemnation Proceeding. The Company's obligation to repair and restore is limited to the aggregate amount of awards available to the Company from the Condemnation Proceeding.

- (e) Temporary Taking. If there is a Taking of all or part of the Entertainment Center for temporary public or quasi-public use, then this Lease does not terminate, the Rent will not be adjusted, the Company will repair and restore any damage to the Entertainment Center resulting from such Taking, and the Company is entitled to the full award made or damages granted in connection with the temporary taking attributable to any period prior to the expiration of the Lease Term, including any Renewal Terms.
- (f) Condemnation Award. In any Condemnation Proceeding, the City and the Company are each entitled to such separate awards as may be given to them by the condemning Governmental Authority.

10. GOVERNMENTAL FUNCTION, EASEMENTS, ZONING AND RESTRICTIONS

- (a) No Limitation on City's Governmental Function. The Company recognizes the authority of the City under its charter and ordinances to exercise its police powers in accordance with Applicable Laws to protect the public health, safety, and welfare. Such powers extend to the Company's activities, its General Contractor's construction activities, and its subtenants' activities on City property, and the Company recognizes the City's authority to take appropriate enforcement action in accordance with Applicable Laws to provide such protection. Whenever, in the City's judgment such action is required, the City shall immediately notify the Company to resolve the situation. No lawful action taken by the City pursuant to these police powers shall subject the City to any liability under this Lease, including without limitation liability for costs incurred by the General Contractor, any subtenant or the Company, and as between the Company and the City, any such costs shall be the sole responsibility of the Company, its General Contractor and its subtenants as the case may be.

The parties acknowledge that all references to "City" herein (which, for the purposes of this provision, shall be deemed to include any references in this Lease to City as the owner of the fee interest in the Site) shall refer only to City in its capacity as owner of the Site. The term "City" and the duties and rights assigned to it under this Lease, thus exclude any action, omission or duty of the City when performing its Governmental Function (defined below). Any action, omission or circumstance arising out of the performance of the City of its Governmental Function may prevent City from performing its obligations under

the Lease and shall not cause or constitute a default by City under this Lease or give rise to any rights or claims against the City in its capacity as a party to this Lease, it being acknowledged that Company's remedies for any injury, damage or other claim resulting from any such action, omission or circumstances arising out of the Governmental Function of the City shall be governed by the laws and regulations concerning claims against the City as a home rule city. In addition, no setoff, reduction, withholding, deduction or recoupment shall be made in or against any payment due by Company to City under this Lease as a result of any action or omission of the City when performing its Governmental Function.

"Governmental Function" means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which the City is authorized or required to perform in its capacity as a home rule municipality in accordance with Applicable Laws.

- (b) City Consents. Any consent or approval by or on behalf of the City or the City Designee (defined below) required in connection with the operation of the Entertainment Center or otherwise under this Lease shall not be unreasonably withheld, delayed, or conditioned. Any review associated with any determination to give or withhold any such consent or approval shall be conducted in a timely and expeditious manner with due regard to the cost to the Company associated with delay. Any consent or approval by or on behalf of the City or City Designee shall not include any implied or imputed approval. No approval by the City or City Designee shall be deemed to constitute or include any approval required under any City code or in connection with any Governmental Function of the City, unless such written approval shall so specifically state. Any consent or approval by or on behalf of the City requiring action of the city council shall be considered within thirty (30) calendar days of the Company's or the Company Mortgagee's (but only to the extent it has a right to so request under the terms of this Lease) written request, or at the next regularly scheduled city council meeting occurring at least ten (10) calendar days after receipt of the Company's or the Company Mortgagee's (but only to the extent it has a right to so request under the terms of this Lease) written request. Any consent or approval requiring action of the City Designee shall be considered within ten (10) calendar days after receipt of the Company's or the Company Mortgagee's (but only to the extent it has a right to so request under the terms of this Lease) written request (and the last to be received of any required information under the terms of this Lease and any follow-up information reasonably requested by the City or the City Designee and related to the applicable consent or approval). Delays resulting from the City's or the City Designee's wrongful act or failure to act will extend the schedule and the Company's performance obligations or Company Mortgagee's grace period under Section 13 a like amount of days. The City Designee is acting in the City's capacity as the Landlord under this Lease and not in connection with the performance of any Governmental Function. The "City Designee" shall mean the City Manager or his/her authorized designee.
- (c) Easements, Dedications, and Abandonments. In order to develop and operate the Entertainment Center, it may be necessary or desirable that street, water, sewer, drainage, gas, power lines, set back lines, and other easements, and dedications, and similar rights be granted or dedicated over or within portions of the Entertainment Center by plat, replat, grant, deed or other appropriate

instrument or that existing easements and rights-of-way be abandoned by the City. The City shall, on request of the Company, join with the Company in executing and delivering such documents, from time to time, and throughout the Lease Term, as may be appropriate, necessary or required by the several governmental agencies, public utilities and companies for the purposes of granting such easements and dedications or obtaining such abandonments, in each case in order to develop and operate the Entertainment Center.

- (d) Zoning. If the Company deems it necessary or appropriate to obtain use, zoning, site plan approval or any permit from the City or any other governmental entity having jurisdiction over the Entertainment Center, or any part thereof, the City, in its capacity as owner of Site and not in its capacity as the controlling municipal authority, shall cooperate with the execution of petitions, applications or other similar documents as may be reasonably necessary for the construction or operation of the Entertainment Center.

11. INSURANCE

- (a) Special Form Property Coverage for Entertainment Center. During the Lease Term, the Company shall, at no out-of-pocket cost to the City, keep and maintain causes of loss – special form (ISO Form CP 10 30) property insurance covering the Entertainment Center and related facilities for the full replacement value of the Improvements, subject to reasonable deductibles as determined by the Company not to exceed \$1,000,000, together with business income and expense coverage in an amount sufficient to cover twelve (12) months of Fixed Rent and the annual minimum amounts of Additional Rent.
- (b) The Company's Insurance. The Company must maintain the following insurance (the Company's Insurance) during the Lease Term:

<u>Insurance Coverage</u>	<u>Policy Limit(s)</u>
Workers' Compensation	State required limits and policy form (subject to the paragraph below)
Employer's Liability	Injury by accident or disease: \$1,000,000
Commercial general liability ISO Form CG 00 01 12 04, or equivalent	Each Occurrence: \$1,000,000 General Aggregate: \$2,000,000 Products-Completed Operations: \$2,000,000
Liquor liability	Each occurrence/aggregate: \$5,000,000
Business auto liability	Per accident/aggregate: \$1,000,000
Umbrella/excess liability insurance	Each occurrence/aggregate: \$25,000,000
Causes of loss-special form property insurance	100% of replacement cost of the Company's business personal property and leasehold improvements
Garage Coverage ISO Garage Coverage Form CA 00 05 1001	Limits as required under the Urban Towers Parking Agreement

The carriers for all insurance policies required herein must have an A.M. Best Insurance Guide "Best's Rating" of at least A- and a "Financial Size Category" of at least Class VII and be authorized to sell insurance in Texas. All liability insurance policies and the Garage Coverage must name the City and any Company Mortgagee as an "additional insured" and the liability policies must be primary, with the City's liability policies being secondary and noncontributing. All property insurance policies must waive subrogation against the City and the Company. The Company must deliver to the City certificates evidencing all

required insurance and copies of all required endorsements prior to entering the Entertainment Center, and thereafter at least thirty (30) days prior to expiration of each insurance policy. The rights of any Company Mortgagee (defined below) to any proceeds under any insurance required under the Lease shall be subordinate to the rights of the City to such proceeds. If approved in advance by the City in its sole discretion (as determined by the City Manager), the Company, in lieu of Workers' Compensation insurance, may provide Non-Subscriber Coverage in such minimum amounts as approved by the City Manager.

- (c) **Mutual Release.** *The City and the Company release each other and any Company Mortgagee(s) and any subtenants from all Claims for Losses of or to (1) the Entertainment Center, (2) furniture, fixtures, equipment, and other tangible and intangible property owned by the Company and any subtenants, or (3) business or revenues, provided the Losses are covered by the releasing party's property insurance or would have been covered by the required insurance if the releasing party does not maintain the property insurance coverages required by this Lease. The party incurring the Loss is responsible for any deductible or self-insured retention under its property insurance; but the Company, not the City, is responsible for any deductible or self-insured retention under the insurance obtained under Section 11(a). The parties will notify the issuing property insurance companies of the releases set forth in this Section and will have the property insurance policies endorsed, if necessary, to prevent invalidation of coverage. THE WAIVERS AND RELEASES IN THIS SECTION APPLY NOTWITHSTANDING ANY SINGLE ACTION RULE UNDER WORKERS' COMPENSATION STATUTES OR IF THE LOSS IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR STRICT LIABILITY OF THE RELEASED PARTY, BUT DO NOT APPLY TO THE EXTENT THE LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE RELEASED PARTY. Claim means the assertion of a legal right, including a demand, legal action, suit, or proceeding, whether filed or threatened, alleging responsibility for a Loss. "Loss" means any actual or alleged liability, cost, or expense (including Legal Costs), loss, damages, judgment, or penalty of any nature or description suffered by a person or property, including (1) harm to, impairment, loss, or diminution in the value of tangible or intangible property or its use, and loss of business or revenues, or (2) physical harm to or death of a natural person.*

12. SUBLETTING AND ASSIGNMENT BY THE COMPANY

- (a) **Right to Sublease.** The Company may sublease the Entertainment Center in whole or in part at any time without the City's consent. The making of any sublease does not release the Company from, or otherwise affect in any manner, any of the Company's obligations under this Lease.
- (b) **Form of Sublease.** The Company shall include in all subleases the obligation of the subtenants to recognize and comply with the provisions of this Lease, including, without limitation, the provisions of Section 5. The Company must include in all its subleases provisions that require the subtenants to (1) comply with all Applicable Laws, specifically identifying the food and beverage reporting requirements of the zoning ordinance; and (2) provide information necessary for the Company to comply with the Economic Development Incentive Agreement.

- (c) Right to Assign. The Company may assign this Lease at any time with the City Designee's consent obtained pursuant to Section 10(b). Provided the following requirements are satisfied, City will not unreasonably withhold its consent to an assignment:
- (1) The Company shall provide reasonably detailed written evidence to the City at least thirty (30) calendar days prior to such assignment, concerning the type of assignment, the interests affected by the assignment, the identity, reputation and financial condition of the proposed assignee, and such other information related to the assignment and the assignee as City may reasonably request; which at a minimum shall include:
 - a. The name and address of the proposed assignee (and, if not an individual, reasonable information concerning its legal structure, organization, qualification and licensing); and
 - b. Provision to a certified public accountant ("CPA"), of City's choice, on mutually agreed terms to prevent such information, if confidential, from becoming publicly available, of detailed financial information regarding the proposed assignee, including a copy of its most recent audited balance sheet (or if no such audited balance sheet is available, then a balance sheet certified by the appropriate officer of such assignee) and income statement, and those for its prior two (2) fiscal years, credit references and a report from a recognized credit reporting service, sufficient to allow CPA to issue an opinion to City regarding the financial condition of the proposed assignee of a tangible net worth equal to or greater than Twenty-Five Million and No/100 Dollars (\$25,000,000);
 - c. Business references showing that the proposed assignee has successfully operated a venue of the size and quality as the Entertainment Center a minimum of five years in the past ten; and
 - d. Confirmation that the proposed assignee (including its affiliates) has not been a party to any litigation adverse to the City in the past ten years.
 - (2) No uncured Event of Default by the Company shall exist (subject to the Company Mortgagee cure rights in Section 13(e) with respect to a proposed assignment by a Company Mortgagee only).
 - (3) City may conduct its own independent investigation of the proposed assignee and the Company shall cooperate reasonably with the City in the conduct of such investigation.
 - (4) The Company shall, in each case other than an assignment to a Company Mortgagee or its designee, deliver to the City an instrument in recordable form under which the assignee of the Company's interest in this Lease assumes the performance of the Company's obligations hereunder. After delivery by the Company to the City of the assignment

and assumption described above, the Company shall be relieved of any and all future liabilities or obligations hereunder that first arise after the date of such assignment, and the City will look only to such successor of the Company for performance of all obligations of the Company under this Lease of every kind and character thereafter to accrue. Each successor to the Company may make a further assignment of this Lease and be relieved from future liability hereunder as long as the conditions of this Section 12(c) are fulfilled.

- (d) Retail and Amphitheater Subleases. The Company is responsible for the cost of designing and constructing subtenant improvements, at no cost to the City, in accordance with plans and specifications therefor approved by the City, which approval may not be unreasonably withheld, conditioned, or delayed by the City if the exterior design of such improvements is compatible with the remainder of the Entertainment Center. Any such improvements will become part of the Improvements and title thereto will automatically pass to the City free and clear of any liens and encumbrances upon issuance by the City of the final certificate of occupancy for such improvements. Final completion of all such subtenant improvements is not a requirement to achieve completion of the Improvements for purposes of the calculation of the Commencement Date under Section 2(b).
- (e) Recognition of Subleases. If the City terminates this Lease due to any default by the Company, then the City will not terminate any sublease(s) of the Entertainment Center, or any portion or portions thereof, or disturb the possession or leasehold rights of such subtenant(s), except for a default by such subtenant(s) of the provisions of such sublease(s); provided that the terms of such sublease(s) comply with the terms of this Lease. The City shall continue all non-defaulting sublease(s) in effect and, if requested by any subtenant, enter into a direct lease between the City (or any successor to the Company as tenant under this Lease) and the subtenant. The Company must include in all its subleases a comparable provision to the foregoing that requires the subtenant to enter into a direct lease with the City (or any successor to the Company as tenant under this Lease) if the City so elects. The form and substance of any direct lease with any subtenant under this Section 12(e) must comply with Section 12(b) above.
- (f) Notices of Default under Subleases. The Company shall copy the City on all notices of default sent by the Company under any sublease and to deliver promptly to the City a copy of any notice of default by the Company under any sublease received by the Company.

13. FINANCING

- (a) Right to Finance. The Company and its subtenants may from time to time and at any time encumber by one or more mortgages, deeds of trust, security agreements, or other instruments in the nature thereof (each, a "Mortgage"; a Mortgage granted by the Company being a "Company Mortgage"), as security for loans, indebtedness, or obligations (each, a Debt; a Debt of the Company being a "Company Debt"), all of its interests in the Entertainment Center, including, without limitation, its leasehold or sub-leasehold interest, as applicable, in the Entertainment Center. Any such Debt and Mortgage may be for such amount

and on such other terms as the Company may approve. Neither the Company nor any of its subtenants (each a "Subtenant") have the right to grant any Mortgage that encumbers the City's fee interest in the Entertainment Center or any portion thereof, and any such Mortgage that purports to do so will be invalid.

- (b) Notices to Company Mortgagees. If at any time after any Company Mortgage is recorded in the Official Public Records of Dallas County, Texas, the Company or the holder of the Company Mortgage notifies the City in writing of the existence of the Company Mortgage and furnishes the City with the address(es) to which the Company Mortgagee desires copies of notices to the Company under this Lease be sent (each such holder of a Company Mortgage of whom the City is given notice being a "Company Mortgagee"), then the City shall thereafter mail (by certified mail) to each Company Mortgagee or agent thereof, at the address so given, by any method of delivery permitted hereunder at the same time that the notice is placed in the mail or otherwise delivered to the Company, duplicate copies of any and all notices of default required to be sent pursuant to this Lease. The City's failure to deliver copies of any notices to any Company Mortgagee will not impair or negate the validity or effectiveness of any notice delivered to the Company nor delay the City's right to pursue any available remedy other than termination of this Lease or dispossession of the Company as tenant under this Lease, but will delay the start of any cure periods afforded to such Company Mortgagee under this Section 13 until such time as such notices are delivered to the Company Mortgagee, or, with respect solely to those Events of Default for which no cure period is applicable, delay the City's right to terminate this Lease or dispossess the Company under this Lease for a period of thirty (30) calendar days.
- (c) Right to Cure. Any Company Mortgagee, at its option, acting either directly or indirectly through a designee, may cure the default and perform any other obligation of the Company as necessary to prevent the forfeiture of this Lease or the dispossession of the Company as tenant under this Lease. All actions taken by the Company Mortgagee or its designee will be effective to prevent a forfeiture of the rights of the Company hereunder as if timely done and performed by the Company. Any Company Mortgagee may, if the Company desires, provide that, as between any Company Mortgagee or its designee and the Company, the Company Mortgagee or its designee, on curing any such default or defaults or performing any obligations on the part of the Company, will be thereby subrogated to or put in the position of assignee of any or all of the rights of the Company under this Lease covered by the Company Mortgage (subject to Section 13(e)).
- (d) Option for New Lease. If this Lease terminates for any reason other than expiration by passage of time of the Initial Term or any Renewal Term, then the Company shall, and the City shall use commercially reasonable efforts to, deliver notice of the termination to any Company Mortgagee about which the City has been notified. Upon request by any Company Mortgagee received by the City within ninety (90) days after the Company's Mortgagee's receipt of the notice of termination, the City will enter into a new lease (a "New Lease") of the Entertainment Center with the Company's Mortgagee or its designee (including without limitation, a Company Mortgagee Designee, as hereinafter defined) for the unexpired balance of the Lease Term, including any Renewal Terms, on the

same terms as this Lease promptly after the Company's Mortgagee or its designee satisfies the conditions set forth in Section 13(e). If more than one (1) Company Mortgagee exercises the foregoing option for a new lease, the City shall enter into a new lease with the Company Mortgagee, or its designee, having the highest priority among those Company Mortgagees who exercised the option.

(e) Obligation to Cure. In order for any Company Mortgagee or its designee, including without limitation, a Company Mortgagee Designee to become the tenant of the Entertainment Center, whether pursuant to the Company Mortgagee's right of subrogation under Section 13(c), a new lease under Section 13(d), or otherwise, the Company Mortgagee or its designee, including without limitation, a Company Mortgagee Designee must first:

- (1) cure any monetary default of the Company;
- (2) cure any non-monetary default of the Company, excluding those that by their nature are incapable of cure by any other person or entity (provided that any new successor to the Company shall not be permitted to continue such default of the Company or any similar default with respect to the new successor to the Company going forward); and
- (3) to the extent the City has appointed or entered into any arrangement with a replacement or successor tenant under this Lease or other operator of the Entertainment Center (any such party, a "City-Designated Successor"), reimburse the City for any reasonable costs incurred by the City related to terminating or otherwise unwinding any such arrangement between the City and a City-Designated Successor.

(f) Modifications; Surrender.

- (1) Except in connection with exercising the City's remedies following an Event of Default for which any Company Mortgagee(s) has received notice and been afforded any applicable cure periods hereunder as set forth in this Section 13 or Section 14, the City may not accept any surrender of or agree to any termination of this Lease without the prior written consent thereto by any Company Mortgagee(s). Any attempt to do so without such written consent will be void and of no force and effect.
- (2) The City may (in its sole and absolute discretion) modify this Lease from time to time for the purpose of incorporating herein such additional mortgagee protective provisions as may be reasonably requested by any Company Mortgagee if such modifications are reasonably acceptable to the City, impose no additional material obligations on the City or restrict any of the City's rights hereunder (including restricting remedies following an Event of Default), and are not inconsistent with any of the monetary terms of this Lease or standards of performance set forth herein. Notwithstanding any provision in this Lease to the contrary, the City is under no obligation to modify, amend or revise the terms of this Lease, and its failure to do so, regardless of reason or lack thereof, shall not be a breach of this Lease, and shall neither excuse the Company's

performance under this Lease, nor give rise to any claim, defense or offset by or on behalf of the Company.

- (g) Rights Cumulative. All rights of any Company Mortgagee under this Lease are cumulative and non-exclusive.
- (h) Company Mortgagee Designee. As used in this Lease, any "Company Mortgagee Designee" shall include a designee selected by the Company Mortgagee, and any third party that acquires the right to become the tenant under this Lease from Company Mortgagee by assignment, as a purchaser, by foreclosure, deed-in-lieu of foreclosure, sale or otherwise, provided that, in each case, City Designee has approved such designee in accordance with the terms of this Lease (each a "Company Mortgagee Designee"). Notwithstanding anything to the contrary herein the Qualifying Company Mortgagee Designee (defined below) may become tenant under this Lease without the prior written consent of the City Designee. Any other designee may do so only with the City Designee's prior written approval, not to be unreasonably withheld or delayed; provided, however, if the Company Mortgagee selects the then-current operator of the City's Convention Center as the Company Mortgagee Designee, then such operator/designee shall be deemed approved without any further action required by the City. The provisions of this Section 13(h) shall apply both with respect to this Lease and any new lease entered into under Section 13(d) or otherwise. A "Qualifying Company Mortgagee Designee" means the Company Mortgagee and any wholly-owned subsidiary of the Company Mortgagee and any other lenders party to the Credit Agreement.
- (i) Consent of Company Mortgagee Required. No cancellation or surrender of this Lease by the Company prior to the expiration of the Initial Term shall be effective as to any Company Mortgagee unless resulting from a failure or refusal by a Company Mortgagee to comply timely with the provisions of this Section 13 respecting the cure of Events of Default under this Lease. No Company Mortgagee shall be bound by any material modification of this Lease unless such modification is consented to by such Company Mortgagee, which consent shall not be unreasonably withheld unless the modification adversely affects the value of the Company Mortgagee's collateral.
- (j) Notice to Company Mortgagee. Notwithstanding anything herein to the contrary, if any Event of Default shall occur, Landlord shall have no right to terminate this Lease or terminate Tenant's right to possession of the Entertainment Center without terminating this Lease unless Landlord shall deliver notice to Company Mortgagee of Landlord's intent to so terminate at least thirty (30) calendar days in advance of the proposed effective date of such termination. This notice of termination shall be in addition to any notices previously copied to the Company Mortgagee and shall specify that it is the notice required by Section 13(i). The provisions of Section 13(k) below shall apply if, within such thirty (30) calendar day termination notice period, any such Company Mortgagee shall (a) pay or cause to be paid all amounts then due and in arrears as specified in the termination notice to such Company Mortgagee and which may become due during such thirty (30) calendar day period, and (b) cure or, in good faith and with reasonable diligence and continuity, (i) commence to cure all non-monetary requirements of this Lease then in default (excluding those that by their nature

are incapable of cure by other person or entity) or (ii) commence to exercise its rights with respect to Tenant's interest in this Lease by foreclosure, assignment in lieu thereof, preparing for a sale or transfer of Tenant's interests or otherwise with respect to a Company Mortgage (which may include a petition to lift any stay imposed in bankruptcy proceedings and any application to remove any injunction limiting its right to take such actions, so long as, in each case, the same is diligently and continuously pursued). So long as such Company Mortgagee timely commenced cure under (i) above, and thereafter diligently pursued the same, the thirty (30) day period shall be extended for so long as Company Mortgagee diligently prosecutes such cure up to but not to exceed an additional thirty (30) days from the expiration of the initial thirty (30) day period. So long as such Company Mortgagee timely commenced the pursuit of the exercise of its rights under (ii) above, and thereafter diligently pursued the same, the initial thirty (30) day period shall be extended to allow Company Mortgagee to pursue the exercise of such rights, provided that it continues to diligently pursue same, but such extension shall not exceed an additional sixty (60) days from the expiration of the initial thirty (30) day period.

(k) Procedure on Event of Default.

- (1) Transfers After Acquisition Upon Event of Default. Subject to the provisions of Section 13(e), any Qualifying Company Mortgagee Designee or other permitted acquirer of the leasehold estate pursuant to a Foreclosure Event may, upon acquiring the leasehold estate under the Lease, subject to the consent of Landlord to the extent required in the Lease with respect to any such proposed transfer of the leasehold estate, sell and assign the leasehold estate on such terms and to such persons (but without modifying this Lease) and thereafter shall be relieved of all obligations of "Tenant" under this Lease arising after the date of such transfer, provided (i) such transfer includes and is subject to the Development Agreement, (ii) such transferee assumes in writing for the benefit of Landlord all of the obligations of "Tenant" under this Lease and the Development Agreement and (iii) Landlord is notified of such transfer and provided a copy of such assumption promptly following such transfer.
- (2) Foreclosure Event a Permitted Transfer. Notwithstanding any other provisions of this Lease to the contrary, any Foreclosure Event shall be deemed to be a permitted transfer to the extent, and only to the extent, the requirements set forth in this Lease with respect to a transfer of Tenant's interest herein have been satisfied.
- (3) Post-Foreclosure Operation. Notwithstanding any other provisions of this Lease, in the event of the acquisition of the leasehold estate by any Company Mortgagee Designee or any permitted purchaser at a Foreclosure Event, the operation of the Entertainment Center by or on behalf of any such acquirer of the leasehold estate under this Lease shall be subject to the provisions and requirements of this Lease and the Development Agreement, and such act in accordance with the requirements of this Lease.

"Foreclosure Event" shall mean and refer to any foreclosure of any lien or security interest or conveyance in lieu of foreclosure with respect to any Company Mortgage pursuant to which a Company Mortgagee Designee acquires all, but not less than all, of Tenant's rights, titles, interests and obligations under this Lease and the leasehold estate. A Foreclosure Event shall not relieve Tenant of any of its obligations under this Lease.

- (l) No Subordination by Landlord. No provision of this Lease requires, or shall be construed to require, Landlord to subordinate Landlord's interest in the Rent, this Lease, or the Entertainment Center to a Company Mortgage.
- (m) Subleases and Subrents. After termination of this Lease and during the period thereafter during which any Company Mortgagee Designee shall be entitled to enter into a New Lease, Landlord will not terminate any sublease that conforms to the requirements of this Lease or the Prior Lease with any Subtenant (each a "Sublease") or the rights of any Subtenant thereunder unless such Subtenant shall be in default under such Sublease, and has failed to cure same within the time provided under such Sublease, nor shall Landlord modify or amend any of the terms of any Sublease to which Landlord has agreed in writing to recognize and not disturb. During such periods Landlord shall receive all gross revenues, as agent of such Company Mortgagee Designee and shall deposit such gross revenues in a separate and segregated account in trust for the Company Mortgagee Designee, but may withdraw such sums as are required to be paid to Landlord under this Lease at the time and in the amounts due hereunder and as other sums are required to pay the cost of operations for the Entertainment Center, as reasonably necessary, and, upon the execution and delivery of the New Lease, Landlord shall account to Tenant thereunder for the balance, if any (after application as aforesaid) of the gross revenues received by Landlord from the operation of the Entertainment Center, and Landlord shall thereupon assign the gross revenues to such Tenant and assign any Subleases (to which Landlord has agreed in writing to recognize and not disturb) to the Company Mortgagee Designee. The collection of gross revenues by Landlord acting as an agent pursuant to this Section shall not be deemed an acceptance by Landlord for its own account of the attornment of any Subtenant unless Landlord shall have agreed in writing with such Subtenant that its tenancy shall be continued following the expiration of any period during which a Company Mortgagee Designee may be granted a New Lease as Tenant, in which case such attornment shall take place upon the expiration of such period but not before. Under no circumstances shall Landlord be obligated to perform any obligations of any person under any Subleases.

14. DEFAULT

- (a) Event of Default by the Company. Each of the failures specified in Sections 14(b), 14(c), 14(d), 14(e), 14(f), and 14(g) constitute an "Event of Default" by the Company under this Lease if not cured by the Company within any applicable time period specified in the applicable section or immediately upon the occurrence thereof if no cure time is specified.
- (b) Monetary Default by the Company. If the Company defaults in payment of Rent or Additional Rent under this Lease, then the City shall deliver to the Company a

notice specifying the default. If the default continues for ten (10) days after the date of delivery of the notice, then the City may at the City's election take any of the remedies set forth hereinafter. If the Company defaults in payment of any other money required to be paid to the City by the Company under this Lease, including the Maintenance and Operations Reserve of Section 6(g)(3), or Urban Towers Parking Agreement Basic Rent or Insurance premiums, then the City shall deliver to the Company a notice specifying the default. If the default continues for ten (10) days after the date of delivery of the notice, then the City may at the City's election take any of the remedies set forth hereinafter.

- (c) Failure by the Company to Carry Required Insurance. The failure by the Company at any time to carry the insurance required by it under Section 11.
- (d) Non-Monetary Default by the Company. Save and except for conditions, defaults, failures, and occurrences described in Sections 14(b), 14(c), 14(e), 14(f), and 14(g) of this Lease (each of which shall be subject to the respective notice and cure provisions set forth therein only, if any), if the Company defaults in the performance of any of its other obligations under this Lease, then the City shall deliver to the Company a notice specifying the default. If the Company does not commence to cure the default within thirty (30) business days, or does not complete the cure within sixty (60) business days, after the date of delivery of the notice, then the City may at the City's election take any of the remedies set forth hereinafter; provided, if the default is one that is not capable of being cured within sixty (60) business days, then the City may not exercise its remedies unless the Company does not commence to cure the default within thirty (30) business days, or does not complete the cure within ninety (90) business days, after the date of delivery of the notice.
- (e) Cross Default Under the Development Agreement. The occurrence of an Event of Default (as defined in the Development Agreement) by the Company under the Development Agreement (subject to applicable notice and cure periods thereunder).
- (f) Cross Default Under the Urban Towers Parking Agreement. The occurrence of an Event of Default (as defined in the Urban Towers Parking Agreement) by the Company under the Urban Towers Parking Agreement. A default under the Urban Towers Parking Agreement is subject to the notice and cure provision of Section 14(b).
- (g) Failure to Comply with one or more of Sections 3(e), 4(d), 4(f)(6), 4(f)(7), and 4(f)(8). From and after the commencement of the Initial Term, failure by Tenant to comply with one or more of the requirements in one or more of Sections 3(e), 4(d), 4(f)(6), 4(f)(7), and 4(f)(8) (each individual failure a "Performance Failure" and collectively, "Performance Failures") shall result in the following forfeitures of Grants (as that term is defined under the Economic Development Agreement) (each a "Grant Forfeiture" and collectively, "Grant Forfeitures"):
 - (1) For each occurrence of a Performance Failure under Section 3(e) during any Lease Year, an amount equal to \$25,000;

- (2) For each occurrence of a Performance Failure under Section 4(d) during a Lease Year, \$30,000 per show for each show that is not booked and staged, and \$30 for each ticket short of the minimum annual ticketed attendance of 100,000;
- (3) For a Performance Failure under Section 4(f)(6) during a Lease Year, \$10 per unoccupied square foot of Restaurant space short of the 50,000 square feet of occupied Restaurant space required under Section 4(f)(6);
- (4) For each Performance Failure under Section 4(f)(7) during a Lease Year, an amount equal to \$50,000; and
- (5) For each Performance Failure under Section 4(f)(8) during a Lease Year, an amount equal to \$25,000.

Each of the applicable amounts set forth above for a Performance Failure and the Cap (defined below) shall be increased annually based on the percentage change, if any, from the preceding Lease Year in the Consumer Price Index as published by the Department of Labor, in the subsection titled "Consumer Price Index for All Urban Consumers" (such index, the "CPI"). For purposes of recalculating such amounts and notwithstanding anything in the preceding sentence to the contrary, no increase to any Performance Failure amount or the Cap amount resulting solely from a CPI adjustment shall exceed 3.0% for any given Lease Year, and no Performance Failure amount or the Cap amount shall ever be decreased as a result of any applicable CPI percentage change below the original amount of such Performance Failure amount or the Cap amount set forth above in this Section 14(g).

The Grant Forfeitures described by this Section 14(g) shall not exceed \$3,000,000 (the "Cap") in the aggregate in any Lease Year. The Grant Forfeitures shall be withheld by the City from the quarterly Grant payments described in Section 5 of the Economic Development Agreement. If the amount of Grant Forfeitures exceeds the amount of Grant payments available to be withheld under the Economic Development Agreement at any time (such excess amounts, the "Outstanding Grant Forfeitures"), such Outstanding Grant Forfeitures will continue to accrue and accumulate until all such Outstanding Grant Forfeitures have been withheld from future Grant payments. Grant Forfeiture and Outstanding Grant Forfeiture amounts withheld and retained by the City may be used for any lawful purpose. Upon expiration of the Economic Development Agreement, and subject to the Bonds having been paid-in-full and retired, Tenant shall pay Grant Forfeiture and Outstanding Grant Forfeiture amounts to the City in cash as Additional Rent.

The City's sole and exclusive remedy for a Performance Failure related to Sections 3(e), 4(f)(7), and 4(f)(8) shall be limited to the Grant Forfeitures described in this Section 14(g).

A Performance Failure shall not disturb the possession or leasehold rights of the Company or any subtenant absent an Event of Default. A Performance Failure shall not constitute an Event of Default except as provided in this Section 14(g).

If any Performance Failure under Section 4(d) or 4(f)(6) shall continue for four consecutive quarters following the last day of the Lease Year during which the Performance Failure occurred, the Company shall be in breach of this Lease. To be clear, after a Performance Failure under Section 4(d) or 4(f)(6), performance for the purpose of curing such failure, shall be tested quarterly (based on a four quarter look back as if such four quarter period was a Lease Year), and if such performance requirement is satisfied on a four quarter look back basis during any one of such four consecutive quarters, the Performance Failure shall be deemed cured and the review of any future performance requirements under Sections 4(d) or 4(f)(6) shall again be measured at the end of each Lease Year. Notwithstanding any Grant Forfeitures, a Performance Failure that is not cured as describe above shall be an Event of Default by the Company, without need for further notice, and the City may immediately terminate this Lease thereafter. For the avoidance of doubt, a Company Mortgagee shall have no extended cure rights with respect to an Event of Default under this Section 14(g) and such termination shall become effective immediately, the terms of this Lease to the contrary notwithstanding. Quarters in Recession shall be excluded from the calculation above. For purposes of this Agreement, "Recession" shall mean a recession consisting of two (2) consecutive quarters of negative economic growth as measured by the gross domestic product ("GDP") for the Dallas-Fort Worth metropolitan area according to the U.S. Department of Commerce, Bureau of Economic Analysis. If the Company is claiming a Recession for purposes of this paragraph, it must deliver written notice of the commencement of such Recession not later than thirty (30) days after it becomes aware of the same, and if it fails to so notify the City of such Recession, it shall not be entitled to exclude such quarters from the time period described in the first sentence of this paragraph. Notwithstanding any provision herein to the contrary, an exclusion of quarters, if any, claimed as a result of a Recession shall only be allowed during the Recession. There shall be no quarters excluded for either (i) a perceived "slow-down" going into a Recession, or (ii) any "recovery" period coming out of a Recession.

(h) Enforcement of Remedies by the City.

Upon the occurrence of an Event of Default by the Company, and subject to any rights of a Company Mortgagee or its designee under Section 13, the City may pursue any available remedy or enforce the performance of this Lease in any mode provided in this Agreement or by law, or this Lease may be terminated at the City's discretion, as evidenced by a resolution duly adopted by the city council. Upon the City's giving valid notice of its adopted resolution to terminate or to dispossess the Company's right to possess the Entertainment Center, this Lease or the Company's right of possession shall terminate as if that were the date originally fixed herein for the expiration of the term hereof, and all Prepaid Rent shall be deemed earned and the Company shall have no claim against the City for return or repayment of any portion of Prepaid Rent. The City's remedies are cumulative and the City's exercise of any specific remedy will not prevent the City from exercising any other available remedy. No waiver by the City of any default by the Company will be treated as a waiver of any subsequent delay by the Company.

Without limiting the generality of the above clause, upon the occurrence of an Event of Default by the Company, the City may perform (or cause to be performed) any act that the Company is obligated to perform under the terms of this Lease (and enter upon the Entertainment Center in connection therewith if necessary) in the Company's name and on the Company's behalf, without being liable for any claim for damages therefor, and the Company shall reimburse the City on demand for any actual, out-of-pocket expenses which the City may incur in thus effecting compliance with the Company's obligations under this Lease (including, but not limited to, collection costs and legal expenses), plus interest thereon at a default rate equal to the lesser of 18 percent per annum or the maximum rate permitted under Applicable Law.

- (i) No Waiver. No waiver by either party of any default or breach of any covenant, condition, or stipulation herein contained will be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition, or stipulation hereof.
- (j) Bankruptcy. The bankruptcy or insolvency of the Company, an assignment by the Company for the benefit of the Company's creditors, the appointment of a trustee, liquidator or receiver for the Company, reorganization by the Company, an admission by the Company of its inability to pay its debts as the same become due, or the seeking or granting of any order of relief in any proceeding commenced by or against the Company under any present or future federal or state bankruptcy, insolvency, or creditors relief statute does not affect this Lease so long as all covenants of the Company are continued in performance by the Company or its successors or legal representatives.
- (k) Default by the City. If the City defaults in the performance of any of its obligations under this Lease and does not cure the default within sixty (60) days after the date of a notice from the Company specifying the default, then the Company may enforce the performance of this Lease against the City, abate payment of any Base Rent or Additional Rent as long as the default remains uncured, and act reasonably to cure the default on behalf of the City and setting off against future Base Rent or Additional Rent the reasonable costs incurred by the Company in effecting the cure; provided, however, the Company's sole source for recovery and City's sole obligation for any damages, if any, (other than the foregoing abatement and setoff rights) will be limited to the extent of lawfully available Excess Brimer Revenues (subject to, without limitation, the pledge of such Brimer Revenues to the repayment of the Bonds as set forth in the City ordinance authorizing the Bonds). In no instance shall the Company be entitled to nor have any claim against the City for recapture, return or repayment of any portion of the Prepaid Rent. The Company's remedies are cumulative and the Company's exercise of any specific remedy will not prevent the Company from exercising any other available remedy.

15. LIMITATIONS ON LIABILITY

- (a) Non-Liability of the City and INDEMNIFICATION. The City is not liable to the Company or to the Company's subtenants, or to the Company's or the subtenants' employees, agents, insurers, contractors, invitees, patrons, or visitors and the Company hereby waives all claims against the City for any injury

to persons or damage to property caused by any negligence, gross negligence, intentional conduct, or any other act or omission of the Company, Company's subtenants, or either of their agents, employees, or contractors, or due to fire or other casualty, or due to any building on the Entertainment Center and appurtenances thereon being improperly constructed, or being or becoming out of repair, or due to any cause whatsoever by reason of the condition, use, occupancy, or enjoyment of the Entertainment Center by the Company and its subtenants. **THE COMPANY, ON BEHALF OF ITSELF, ITS AFFILIATES, AND ITS SUBSIDIARIES, AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY FROM AND AGAINST ANY AND ALL DAMAGES, LIABILITIES, CLAIMS, SUITS, DEMANDS, CAUSES OF ACTION, JUDGMENTS AND EXPENSES, INCLUDING COSTS AND ATTORNEYS' FEES, BROUGHT BY ANY THIRD PARTY AS A RESULT OF ANY DAMAGE TO ANY PROPERTY, ANY INJURY TO ANY PERSON, OR ANY VIOLATION OF APPLICABLE LAW OCCURRING IN, ON OR ABOUT THE PROPERTY. THE INDEMNITIES IN THIS AGREEMENT ARE SPECIFICALLY INTENDED TO OPERATE AND BE APPLICABLE TO ANY CLAIMS, DAMAGES, OR INJURIES CAUSED BY OR ARISING FROM ANY ACTUAL OR ALLEGED NEGLIGENCE, GROSS NEGLIGENCE, FAULT, INTENTIONAL CONDUCT, VIOLATION OF APPLICABLE LAW, BREACH OF CONTRACT, BREACH OF WARRANTY, PREMISE OR PRODUCT DEFECT, OR OTHER ACT OR OMISSION BY OR OF COMPANY OR ITS SUBTENANTS, OR EITHER OF THEIR EMPLOYEES, AGENTS, CONTRACTORS, INVITEES, VISITORS, OR PATRONS, INVOLVING THE CONDITION, USE, OCCUPANCY OR ENJOYMENT OF THE ENTERTAINMENT CENTER.**

- (b) Limitations on Liability of the Company. The term "the Company," as used in this Lease means only the holder for the time in question of the Company's interest in this Lease. Notwithstanding anything to the contrary contained in this Lease, the liability of ARK Group of Irving, Inc., under this Lease for a default by ARK Group of Irving, Inc., under this Lease is limited to the interest of ARK Group of Irving, Inc., in the Entertainment Center under this Lease and the revenues derived therefrom, and to the Reserves required to be maintained by the Company hereunder. The prior sentence is personal to ARK Group of Irving, Inc., and does not apply to any successor to ARK Group of Irving, Inc. Notwithstanding anything to the contrary herein, the provisions of this Section 15(b) will govern in the event of any conflict with any other provision herein.
- (c) Termination of Development Agreement. If the Development Agreement terminates or is terminated for any reason other than completion of construction of the Entertainment Center, then this Lease shall automatically terminate and neither the City nor the Company shall have any rights, liabilities or obligations hereunder except those that expressly survive the termination of this Lease; provided, however, nothing in the foregoing provision shall limit the rights or remedies of a non-defaulting party if the Development Agreement is terminated as a result of the default of the other party.
- (d) Waiver of Consequential Damages. Notwithstanding anything in this Lease to the contrary, (1) the City hereby waives any consequential damages, compensation or claims for inconvenience, loss of business, rents or profits as a result of any injury or damage, whether or not caused by the willful or wrongful

act of the Company or its representatives, agents or employees, and (2) the Company hereby waives any consequential damages, compensation or claims for inconvenience, loss of business, rents or profits as a result of any injury or damage, whether or not caused by the willful or wrongful act of the City or its representatives, agents or employees.

16. FORCE MAJEURE

If the curing of any default (other than failure to pay rent, taxes, insurance premiums, or other sums of money) or the performance of any other obligation under this Lease is delayed by war; riots; civil commotion; terrorist acts or activities; acts of God; governmental restrictions, regulations, or interferences; fire or other casualty; strikes; lockouts; labor shortages; or shortages of or delays in obtaining materials; acts or failure to act by any Governmental Authority (including changes in interpretation of building codes, ordinances, and regulations and delays in issuing or failure or refusal to issue permits and approvals); casualty damage; Takings; unusually adverse weather conditions; or any other circumstances reasonably beyond the control of the party obligated or permitted under the terms hereof to do or perform the same and without such party's fault, regardless whether any such circumstance is similar to any of those enumerated or not; then such party will be excused from doing or performing the same during the period of delay.

17. ESTOPPEL CERTIFICATES

The City and the Company shall each, from time to time, without additional consideration and promptly upon request, execute and deliver to each other or to any person whom the requesting party may designate, an estoppel affidavit consisting of statements, if true (or modified as necessary to make them true), that: (1) this Lease is in full force and effect, with Rent and Additional Rent current through the date of the certificate (or stating the date through which Rent and Additional Rent has been paid); (2) this Lease has not been modified or amended (or setting forth all modifications and amendments); (3) to such party's knowledge, the other party is not then in default, and the Company and the City have fully performed all of the Company's and the City's obligations hereunder; and (4) the transactions, if any, described in the request do not constitute an Event of Default under this Lease.

18. LANDLORD'S LIEN

The City waives all landlord's liens that the City may hold, constitutional, statutory, or otherwise, on any furniture, fixtures, equipment, inventory, and other tangible and intangible property located in the Entertainment Center and owned by the Company or any subtenant.

19. REPRESENTATIONS AND WARRANTIES

(a) The City's Representations and Warranties. The City hereby represents and warrants to the Company as of the Execution Date:

(1) Existence. The City is a municipal corporation and a home rule city of the State of Texas duly incorporated and currently existing pursuant to the

constitution and laws of the State of Texas, including the Texas Local Government Code and Texas Government Code.

- (2) Authority. The City has all requisite power and authority to own the Entertainment Center, to execute and deliver this Lease and to consummate the transactions herein contemplated, and by proper action in accordance with all Applicable Law has duly authorized the execution and delivery of this Lease, and the consummation of the transactions herein contemplated.
- (3) Binding Obligation. This Lease is a valid and binding obligation of the City and is enforceable against the City in accordance with its terms.
- (4) No Defaults. The execution by the City of this Lease and the consummation by the City of the transactions contemplated hereby (i) do not, as of the Execution Date, result in a breach of any of the terms or provisions of, or constitute a default, under the City's charter or any resolution, indenture, agreement, instrument or obligation to which the City is a party or by which the Entertainment Center or any portion thereof is bound; and (ii) do not, to the knowledge of the City, constitute a violation of any law, order, rule or regulation applicable to the City or any portion of the Entertainment Center of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over the City of any portion of the Entertainment Center.
- (5) Consents. No permission, approval or consent by third parties or any other governmental authorities is required in order for the City to enter into this Lease, make the agreements herein contained or perform the obligations of the City hereunder other than those which have been obtained.
- (6) Proceedings. There are no actions, suits or proceedings pending or, to the City's knowledge, threatened or asserted against the City affecting the City's obligations under this Lease or any portion of the Entertainment Center, at law or in equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.
- (7) Impositions. The City has not received any notice of any condemnation actions, special assessments or increases in the assessed valuation of taxes or any impositions of any nature that are pending or being contemplated with respect to the Entertainment Center or any portion thereof.
- (8) Compliance with Laws. The City has not received any notice of any violation of any ordinance, regulation, law or statute of any governmental agency pertaining to the Entertainment Center or any portion thereof.
- (9) Encumbrances. The City has not placed or granted any liens or security interests against the Entertainment Center, and there are no actions

pending, to the City's knowledge, that would result in the creation of any lien on any portion of the Entertainment Center, including, but not limited to, water, sewage, street paving, electrical or power improvements which give rise to any lien, completed or in progress. During the Lease Term, the City shall not grant any lien, security interest, encumbrance, easement, restriction, covenant or other exception to title on all or any portion of the Entertainment Center that unreasonably impairs the Company's use of the Entertainment Center without the prior written consent of the Company, which consent shall not be unreasonably withheld or conditioned and with all due consideration to facilitating the further development and utilization of the Entertainment Center.

(10) Limitations. Except as otherwise expressly provided herein, the Entertainment Center is leased by the City on an "AS IS, WHERE IS, WITH ALL FAULTS" basis, without representation or warranty of any kind, either express or implied, as to the condition of the Entertainment Center (or any portion thereof), its merchantability, its condition or its fitness for the Company's intended use or for any particular purpose.

(b) The Company's Representations, Warranties and Covenants. The Company hereby represents and warrants to the City as of the Execution Date, and covenants (as to clause (7) only) as specified below:

(1) Existence. The Company is duly organized, validly existing and in good standing under the laws of the State of Texas, and shall maintain said status during the Lease Term.

(2) Authority. The Company has all requisite power and authority to own its property, operate its business, enter into this Lease and consummate the transactions herein contemplated, and by proper action has duly authorized the execution and delivery of this Lease and the consummation of the transactions herein contemplated.

(3) Binding Obligations. This Lease is a valid obligation of the Company and is binding upon the Company in accordance with its terms.

(4) No Default. The execution by the Company of this Lease and the consummation by the Company of the transactions contemplated hereby do not, as of the Execution Date, result in a breach of any of the terms or provisions of, or constitute a default or condition which upon notice or lapse of time or both would ripen into default under, the organizational documents of the Company or under any indenture, agreement, instrument or obligation to which the Company is a party or is bound.

(5) Consents. No other permission, approval or consent by third parties or any other governmental authorities is required in order for the Company to enter into this Lease or consummate the transactions herein contemplated, other than those which have been obtained.

(6) As-Is. Except as otherwise expressly provided herein, the Entertainment Center is accepted by the Company on an "AS IS, WHERE IS, WITH ALL

FAULTS" basis, without representation or warranty of any kind, either express or implied, as to the condition of the Entertainment Center, its merchantability, its condition or its fitness for the Company's intended use or for any particular purpose.

20. MISCELLANEOUS

- (a) Relationship. Nothing herein contained may be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of Company or of joint venture between the parties hereto, it being understood and agreed that neither the computation of Rent, nor any other provision contained herein, nor any acts of the parties hereto, may be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.
- (b) Defined Terms. All terms used with an initial capital letter in this Lease and not defined herein have the same meanings as in the Development Agreement.
- (c) Numbers and Gender. Whenever the singular number is used, the same includes the plural, and words of any gender include each other gender.
- (d) Memorandum of Lease. Upon the signing of this Lease, the City and the Company shall execute and deliver a Memorandum of Lease in a mutually approved form to provide public notice of this Lease. The Company, at its cost, may record the Memorandum of Lease in the Official Public Records of Dallas County, Texas. If this Lease expires or is validly terminated in accordance with its terms, then, within thirty (30) days after request from the City, the Company will deliver a recordable release of the Memorandum of Lease. The Company's obligations under this Section 20(d) survive the expiration or earlier termination of this Lease.
- (e) Dispute Resolution. Prior to, and as a condition precedent to, instituting any legal action against the other in relation to any matter arising out of this Lease, the Company and the City shall submit each material dispute to non-binding mediation with a mutually agreed upon mediator.
- (f) Heading. The headings, captions, and arrangements used in this Lease are, unless specified otherwise, for convenience only and shall not be deemed to limit, amplify, or modify the terms of this Lease, nor affect the meaning thereof.
- (g) References. All references to "Exhibit," "Exhibits," "Section," "Sections," "Subsection," or "Subsections" contained in this Lease are, unless specifically indicated otherwise, references to exhibits, sections, and subsections of this Lease. All Exhibits attached to this Lease are incorporated herein and made a part hereof for all purposes.
- (h) Notices. All notices, demands, requests, approvals, or other communications required or permitted under this Lease must be in writing and, unless personal delivery is effected earlier, will be deemed delivered:

- (1) three (3) business days after deposit in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, on a business day during business hours; or
- (2) the next business day after delivery to any nationally recognized overnight delivery service on a business day during business hours for prepaid delivery on the next business day; or
- (3) on the business day sent, if sent by facsimile (and the sending facsimile generates a written confirmation of sending) or e-mail prior to 3:00 p.m., Irving, Texas time, with a confirming copy being sent by one of the other specified methods on the same business day;

in each case addressed as follows:

If to the City:

City of Irving
825 West Irving Boulevard
Irving, Texas 75060
Attention: City Manager
Telephone: 972-721-2521
Facsimile: 972-721-2420

With copy to:

City of Irving
825 West Irving Boulevard
Irving, Texas 75060
Attention: Charles R. Anderson
City Attorney
Telephone: 972-721-2541
Facsimile: 972-721-2750
E-mail: canderson@cityofirving.org

If to the Company:

ARK Group Irving, Inc.
19401 Old Jetton Road, Suite 101
Cornelius, North Carolina 28031
Attention: Noah Lazes
Telephone: 704-987-0612
Facsimile: 704-987-0767
E-mail: Noah@arkgroupus.com

with copies to:

Johnston, Allison & Hord
1065 East Morehead Street
Charlotte, North Carolina 28204
Attention: Robert Lindauer
Telephone: 704-332-1181
Facsimile: 704-376-1628
E-mail: rlindauer@jahlaw.com

and:
Shupe Ventura Lindelow & Olson, PLLC
9406 Biscayne Boulevard
Dallas, Texas 75218
Attention: Misty Ventura
Telephone: 214-328-1101
Facsimile: 214-329-9258
E-mail: misty.ventura@svlandlaw.com

If to any Company Mortgagee, if any, at any address subsequently provided by the Company as specified in Section 13.

Any party or Company Mortgagee may change its address and specify as its address for the purposes hereof any other address in the United States of America by giving the other party and Company Mortgagee or both parties, as applicable at least fifteen (15) days' prior notice. Notices given by counsel for any party or any Company Mortgagee are effective as notices by the party or Company Mortgagee, as applicable.

- (i) Laws and Venue. This Lease is being executed and delivered, and is intended to be performed, in the State of Texas, and the applicable laws of such State and of the United States govern the rights and duties of the parties hereto and the validity, construction, enforcement and interpretation hereof. Venue for any action to interpret or enforce the rights of either party under this Lease will be in a court of competent jurisdiction in Dallas County, Texas.
- (j) Partial Invalidity. If any provision of this Lease is held to be illegal, invalid, or unenforceable under any present or future laws effective during the term hereof, such provision shall be fully severable; and this Lease will be construed and enforced as if such illegal, invalid, or unenforceable provision never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Lease a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.
- (k) Entire Agreement; Amendments. This Lease embodies the entire agreement between the parties relating to the subject matter hereof, supersedes all prior agreements and understandings, if any, relating to the subject matter hereof, and may be amended only by an instrument in writing executed jointly by the City and the Company.
- (l) Counterparts. This Lease may be executed in a number of identical counterparts, each of which constitutes an original and all of which constitute, collectively, one agreement; but in making proof of this Lease, it shall not be necessary to produce or account for more than one such counterpart. Facsimile and e-mail signatures are binding on the party providing same.
- (m) Successors and Assigns. This Lease is binding upon and inures to the benefit of the City and the Company and their respective successors and assigns.

- (n) Merger of Title. No merger of the Company's interest in this Lease or of the leasehold estate created by this Lease with the fee simple estate in the Entertainment Center, or any part thereof, will occur by reason of the fact that the same person may acquire or own or hold, directly or indirectly, (1) the Company's interest in this Lease or the leasehold created by this Lease and (2) the fee estate in the Entertainment Center or any part thereof or any interest therein, and no such merger will occur unless and until all persons having an interest in the ownership interests described in (1) and (2) above join in a written instrument effecting such merger and record same.
- (o) Approvals; Consents. Neither the City nor the Company may unreasonably withhold, condition, or delay any consent or approval related to this Lease; provided, that the foregoing restriction does not apply to any approval required by the City in the exercise of its Governmental Function.
- (p) Time is of the Essence. Time is of the essence with respect to this Lease.
- (q) Legal Costs. If either party does not comply with any of the terms of this Lease to be complied with on its part and the other party commences a legal proceeding or arbitration or mediation to enforce the terms of the Lease, the prevailing party in any such proceeding or arbitration or mediation will be entitled to receive from the other party its reasonable Legal Costs. "Legal Costs" means court costs, attorneys' and paralegals' fees, experts' fees, and other costs and expenses incurred in investigating, preparing, prosecuting, or settling any legal action or proceeding or arbitration, mediation, or other method of alternative dispute resolution.
- (r) Brokers. The City and the Company each represent and warrant to the other that it has not been represented by any broker in the negotiation of this Lease.
- (s) Perpetuities. To the extent that the rule against perpetuities is applicable hereto, but not otherwise, the rights and options hereunder granted to the Company, any Company Mortgagee, or a designee of any Company Mortgagee, expire upon the earlier to occur (1) the last day of the last Renewal Term, or (2) twenty (20) years after the date of death of the last to die of the following parties: (i) the present living issue of the forty-first President of the United States, George Herbert Walker Bush, or (ii) each presently living person who was born in a hospital located in Dallas County, Texas, during the calendar year ending December 31, 2014.
- (t) Obligations to Defend Validity of Lease. If litigation is filed by an unaffiliated third party against the Company or the City in an effort to enjoin either party's performance of this Lease, as long as the Company is not in default of this Lease, the parties hereto shall take reasonable steps to support and defend the validity of this Lease. Either party may intervene in any such matter in which the other party hereto has been named as a defendant. Each party is responsible for its Legal Costs in connection with any such litigation.

- (u) Exclusive Dealing and Non-Compete Covenants.
- (1) During the Lease Term, the Company, and any affiliated entity, successor or assign, will not solicit or accept any proposal of, or enter into any plan or agreement with, any entity other than the City regarding any project or facility having a purpose similar to the Entertainment Center (meaning any similarly sized performance venue with adjacent or incorporated retail and restaurant element(s)) within 150 miles of the Entertainment Center or within the Austin and Oklahoma City metropolitan areas. Further, the Company will not own or operate any other facility or project having a purpose similar to the Entertainment Center within 150 miles of the Entertainment Center or within the Austin and Oklahoma City metropolitan areas. Nothing in this Section 20(u)(1) prevents the Company from owning or operating a facility or project having a purpose similar to the Entertainment Center in the Houston metropolitan area. Nothing in this Section 20(u)(1) imposes any limitations on any non-affiliated concert promoter for the Entertainment Center. This Section 20(u)(1) shall not apply to a Qualifying Company Mortgagee Designee, but shall apply to all successors and assigns thereafter. The portions of this Section 20(u)(1) regarding the Austin and Oklahoma City metropolitan areas restrictions shall not apply to a successor to Tenant following a Foreclosure Event, but shall apply to all successors and assignees thereafter.
- (2) During the Lease Term, the City will not, directly or indirectly, own, manage, operate, control, finance, sponsor, develop, provide City-owned land or in any other way participate in or cooperate with (subject to Applicable Laws) any entertainment or multi use venue similar to the Entertainment Center located anywhere within the City, excluding any existing City facilities and excluding any similar facility currently under negotiation by the City as of the date of this Lease.
- (v) Gift to Public Servant. The Company shall not, and shall use commercially reasonable efforts to cause its contractors and agents to not, offer, or agree to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.

For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

Notwithstanding any other legal remedies, the City may require the Company to remove any employee or contractor of Company from performance responsibilities under this Lease who has violated the restrictions of this section or any similar state or federal law.

From the date of execution, and until six (6) months after the conclusion of any lease, agreement or legal relationship between the parties, the Company, its principals, contractors and legal representatives shall not make political contributions to, or political expenditures on behalf of, any sitting member of the

Irving City Council, candidate for a seat on the Irving City Council, or any person with the first degree of consanguinity or affinity of any such council member or candidate.

- (w) Business Days. "Business days" are all weekdays other than New Year's Day, Martin Luther King, Jr. Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after Thanksgiving, Christmas Eve and Christmas Day.
- (x) Purpose of City's Entering Lease. The purpose of the City entering into this Lease is to provide a public benefit to the community-at-large by locating the Entertainment Center in the City. The location of the Entertainment Center in the City is intended to secure long-term economic benefits for the City's community-at-large by attracting new business and commercial activity to the City. Such public benefits include, but are not limited to, increases in the revenue for the City, the County and the State of Texas and increased employment opportunities for residents of the City and the County.
- (y) Relationship with ICVB. The parties acknowledge that the ICVB is a department of the City of Irving, Texas, and that the City's execution of this Lease shall bind the ICVB with respect to the provisions hereof, including the rights and obligations of the ICVB set forth in Section 5.

21. PROMOTER PARTICIPATION

On September 5, 2013, the Company entered into a contract with a concert promoter for the Entertainment Center approved by the City which contract contains an express acknowledgement of an agreement to adhere to the requirements of the Company under Section 4(f)(7). During the Lease Term, Company shall continue to contract with a concert producer and promoter approved by the city council. The City preapproves ARK Promotions, ARK Management, ARK Ventures, Live Nation, AEG Worldwide, and Front Line Management, Inc.

22. ENVIRONMENTAL MATTERS

- (a) Environmental Investigation and Remediation. The Company is responsible for performing any environmental investigation and remediation work that may be required in connection with the use and occupancy of the Entertainment Center (or any portion thereof) caused by the presence of Hazardous Materials (defined below) in, on, under or about the Entertainment Center. Such environmental investigation and remediation work will be carried out in accordance with all Applicable Laws. The Company will notify and advise the City of the remediation the Company will undertake and the procedures to be used. The Company will complete the remediation with due diligence and comply with, and shall cause its agents and contractors to comply with, all Applicable Laws regarding the use, removal, storage, transportation, disposal and remediation of Hazardous Materials. The Company's obligation as provided above to undertake environmental investigation and remediation of the Entertainment Center is a continuing obligation of the Company throughout the Lease Term.

- (b) Presence and Use of Hazardous Materials. The Company may not, without the City's prior consent, keep on or around the Entertainment Center, for use, disposal, treatment, generation, storage, or sale, any substance designated as, or containing components designated as hazardous, dangerous, toxic, or harmful, including without limitation Hazardous Materials, or subject to regulation, by federal, state, or local law, regulation, statute, or ordinance, unless such use by the Company is in accordance with prudent property management practices with respect to the intended purpose and use of the Entertainment Center and is in compliance with all Applicable Laws. With respect to any such Hazardous Materials, the Company shall:
- (1) Comply promptly with all government requirements for reporting, keeping, and submitting manifests, and obtaining and keeping current identification numbers.
 - (2) Submit to the City true and correct copies of all reports, manifests, and identification numbers at the same time as they are required to be and/or are submitted to the appropriate government authorities.
 - (3) Within thirty (30) days of the City's request, submit written reports to the City regarding the Company's use, storage, treatment, transportation, generation, disposal, or sale of Hazardous Materials and provide evidence satisfactory to the City of the Company's compliance with the Applicable Laws.
 - (4) Allow the City or the City's agent or representative to come on the Entertainment Center at all times to check the Company's compliance with all applicable government regulations regarding Hazardous Materials; provided, however, that the City will at all times use reasonable efforts to minimize any disruption to the use of the Entertainment Center by the Company.
 - (5) Comply with all Applicable Laws regarding the proper and lawful use, sale, transportation, generation, treatment, and disposal of Hazardous Materials. Any and all costs to the City and associated with the City's routine inspection of the Entertainment Center and the City's routine monitoring of the Company's compliance with this section, including the City's Legal Costs, will be the obligation and liability of the City; provided, however, that if it is ever determined that Hazardous Materials are present on, in, under or at the Entertainment Center in violation of this section, then the Company shall be required to reimburse the City for all of the reasonable out-of-pocket costs incurred by the City with respect to the City's inspection of the Entertainment Center and the City's monitoring of the Company's use, storage, treatment, transportation and disposal of the Hazardous Materials that are located at the Entertainment Center.
- (c) Cleanup Costs; Default, and Indemnification. The Company will be fully and completely liable for any and all cleanup costs, and any and all other charges, fees, and penalties (civil and criminal) imposed by any government authority with respect to the Company's use, disposal, transportation, generation, or sale of Hazardous Materials, in, on, under, or about the Entertainment Center. If the

Company breaches its obligations under this section and such breach is not cured following notice and within the applicable cure period, the City may take any and all action reasonably appropriate to remedy such breach, including taking all appropriate action to clean up or remediate any contamination resulting from the Company's use, generation, storage, or disposal of Hazardous Materials in violation of the provisions of this Lease, and the Company will promptly pay all reasonable out-of-pocket costs incurred by the City in connection therewith. The Company will defend, indemnify, and hold harmless the City, its officers, agents, employees, and councilmembers, from and against any and all claims, demands, liabilities, causes of action, suits, judgments, damages, and expenses (including reasonable out-of-pocket Legal Costs of clean up and remediation) arising from the Company's failure to comply with the provisions of this section. This indemnity provision shall survive termination or expiration of this Lease or the Company's right of possession hereunder, even if the City's knowledge of any breach by the Company of the Company's obligations under this section first arises after the expiration or termination of the Lease Term.

- (d) Hazardous Materials. The term "Hazardous Materials" means any substance, material, or waste now or hereafter classified or considered to be hazardous, toxic, or dangerous under any federal, state, or local laws, rules and regulations affecting the Entertainment Center relating to pollution or the protection or regulation of human health, natural resources, or the environment, including, but not limited to, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Texas Hazardous Substances Spill Prevention and Control Act, as amended, the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder, but does not include normal cleaning and restaurant supplies and petroleum products in vehicles in the Parking Facilities to the extent used in compliance with Applicable Laws.

(Signature pages follow.)

EXECUTED as of the Execution Date first written above.

THE CITY OF IRVING, TEXAS

By: _____
Beth Van Duyne, Mayor

(Seal)

ATTEST:

Shanae Jennings, City Secretary

APPROVED AS TO FORM:

Charles R. Anderson, City Attorney

THE COMPANY:

ARK Group of Irving, Inc.
a Texas corporation

By: _____
Noah Lazes, President

EXHIBIT A

LEGAL DESCRIPTION OF THE SITE

DESCRIPTION, of a 16.787 acre tract of land situated in the McKinney & Williams Survey, Abstract No. 1056, Dallas County, Texas; said tract being all of Lot 2, Block A, Irving Convention Center Addition, an addition to the City of Irving, Texas according to the plat recorded in Instrument No. 20080313272 of the Official Public Records of Dallas County, Texas; said tract also being part of that tract of land described in Special Warranty Deed to City of Irving, Texas recorded in Volume 2001214, Page 5844 of the Deed Records of Dallas County, Texas; said tract also being all of the abandonment of Fuller Drive, abandoned by Ordinance No. 2008-8980 of said deed records; said 16.787 acre tract more particularly described as follows;

BEGINNING, at a point for the beginning of a non-tangent curve to the right and the north end of a circular corner clip at the intersection of the north right-of-way line of Fuller Drive (a 65-foot wide right-of-way) and the west right-of-way line of Las Colinas Boulevard (a variable width right-of-way);

THENCE, in a southwestwardly direction, along said curve to the right and said circular corner clip, having a central angle of 85 degrees, 40 minutes, 37 seconds, a radius of 90.00 feet, a chord bearing and distance of South 34 degrees, 22 minutes, 07 seconds West, 122.39 feet, an arc distance of 134.58 feet to a point for the end of said circular corner clip;

THENCE, South 77 degrees, 12 minutes, 26 seconds West, along the said north line of Fuller Drive, a distance of 391.96 feet to a point for the beginning of a tangent curve to the right; said point being the beginning of a circular corner clip at the intersection of the said north line of Fuller Drive and the east right-of-way line of State Highway No. 114 (John Carpenter Freeway) (a variable width right-of-way);

THENCE, in a northerly direction, along said curve to the right and said circular corner clip having a central angle of 55 degrees, 17 minutes, 51 seconds, a radius of 88.14 feet, a chord bearing and distance of North 75 degrees, 08 minutes, 40 seconds West, 81.80 feet, an arc distance of 85.07 feet to a point for the end of said circular corner clip; said point being the beginning of a non-tangent curve to the right;

THENCE, along the said east line of State Highway No. 114, the following three (3) calls:

In a northerly direction, along said curve to the right, having a central angle of 10 degrees, 25 minutes, 49 seconds, a radius of 3,669.72 feet, a chord bearing and distance of North 07 degrees, 46 minutes, 24 seconds West, 667.12 feet, an arc distance of 668.04 feet to a 1/2-inch iron rod with "PRISM" cap found at the end of said curve;

North 01 degrees, 45 minutes, 43 seconds West, a distance of 119.38 feet to a 1/2-inch iron rod with "PRISM" cap found for angle point;

North 00 degrees, 15 minutes, 59 seconds West, a distance of 448.76 feet to a point for corner;

THENCE, Due East, departing the said east line of State Highway No. 114, a distance of 739.91 feet to a point for corner in the said west line of Las Colinas Boulevard;

THENCE, along the said west line of Las Colinas Boulevard, the following four (4) calls:

South 23 degrees, 58 minutes, 26 seconds West, a distance of 4.17 feet to a point for the beginning of a tangent curve to the left;

In a southerly direction, along said curve to the left, having a central angle of 35 degrees, 46 minutes, 32 seconds, a radius of 1687.02 feet, a chord bearing and distance of South 06 degrees, 05 minutes, 10 seconds West, 1036.35 feet, an arc distance of 1053.38 feet to a point for the end of said curve;

South 32 degrees, 21 minutes, 44 seconds West, a distance of 9.17 feet to a point for the beginning of a non-tangent curve to the left;

In a southerly direction, Along said curve to the left, having a central angle of 00 degrees, 18 minutes, 42 seconds, a radius of 3,748.41 feet, a chord bearing and distance of South 08 degrees, 18 minutes, 50 seconds East, 20.38 feet, an arc distance of 20.38 feet to the POINT OF BEGINNING;

CONTAINING: 731,259 square feet or 16.787 acres of land, more or less.

EXHIBIT B

EXAMPLE AMORTIZATION CHART FOR THE LOAN