

**AMENDED AND RESTATED
ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

THIS Amended and Restated Economic Development Incentive Agreement by and between the CITY OF IRVING, TEXAS a home-rule city and municipal corporation of Dallas County, Texas (the "City") and ARK GROUP OF IRVING, INC. (the "Company"), a Texas corporation, for the development of a convention center entertainment related facilities and ancillary uses (the "Entertainment Center") is executed as of this 27th day of August, 2015 (the "Execution Date")

WHEREAS, Irving is a municipality with a population of 216,290 which is more than 140,000 but less than 1.5 million, is located in Dallas County, a county with a population of one million or more, and has adopted a capital improvement plan for the expansion of an existing convention center facility, and thus is an eligible central municipality per Section 351.001(7)(A) of TEXAS TAX CODE; and

WHEREAS, the City and Garfield Public/Private have executed that certain Development Agreement dated May 7, 2015 for the design, construction and operation of a 350-room convention center headquarters hotel (the "Headquarters Hotel") including hotel rooms, public meeting space, restaurants, parking, and other related and ancillary facilities; and

WHEREAS, the Headquarters Hotel is located on land that is owned by the City and that is located immediately adjacent and within 1,000 feet of the Irving Convention Center, a convention center facility owned by the City; and

WHEREAS, 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"), to govern the design and construction of the Entertainment Center a convention center entertainment related facility located immediately adjacent to the Headquarters Hotel on Property within the boundaries of the hotel and convention center entertainment-related facilities project (together called the "Hotel Project"); and

WHEREAS, the City and the Company entered into a separate and independent Entertainment Center Lease Agreement dated 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") and concurrently herewith, are amending and restating such agreement (as amended and restated, the "Lease"); and

WHEREAS, 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"); and

WHEREAS, the Development Agreement and the Lease, together with the TIF Reimbursement Agreement, are referred to herein collectively as the "Amended and Restated Transaction Documents;" and

WHEREAS, the City and the Company entered into that certain Economic Development Incentive Agreement dated September 5, 2013 and revised on December 12, 2013 (the "Prior Agreement"); and

WHEREAS, the Company has requested that the City enter into this Amended and Restated Economic Development Incentive Agreement to replace the Prior Agreement, and the City has agreed to enter into this Agreement, provided that this Agreement's survival beyond the Drop Date (defined below) is conditioned upon the terms set forth in Section 1 of the Lease, and provided further that the Company gives the City certain assurances related to the Prior Development Agreement and Prior Lease and waives claims against the City related thereto, all as more particularly described in the Lease; and

WHEREAS, the Company has advised the City that a contributing factor which would induce the Company to complete the Entertainment Center would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, pursuant to section 351.102(c) of TEXAS TAX CODE, the City as an eligible central municipality is entitled to receive all funds from the Hotel Project that an owner of a qualified hotel project may receive under Section 151.429(h) of TEXAS TAX CODE and Section 2303.5055 of TEXAS GOVERNMENT CODE, and such funds will consist of refunds to the City of the State of Texas's share of hotel occupancy taxes and the State of Texas's share of sales and use taxes generated by the Hotel Project for a period of ten years after the date of initial occupancy; and

WHEREAS, the construction and operation of the Entertainment Center will generate new City hotel occupancy taxes, City sales and use taxes, City mixed beverage taxes, and City ad valorem taxes; and

WHEREAS, the City has found that providing a grant of funds to the Company in exchange for the Company's completion of the Entertainment Center portion of the Hotel Project will promote local economic development and stimulate business and commercial activity and create jobs within the City (the "Program"); and

WHEREAS, the City has determined that the Program will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the Program contain controls likely to ensure that public purpose is accomplished; and

WHEREAS, Article III, Section 52-a of the TEXAS CONSTITUTION and Chapter 380 of TEXAS LOCAL GOVERNMENT CODE provide constitutional and statutory authority for establishing and administering the Program to provide grants or incentives of public money to promote local economic development and to stimulate business and commercial activity in the City; and

NOW THEREFORE, in consideration of the foregoing and the mutual agreements, covenants, and payments authorized herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

EFFECTIVE DATE. In reliance on the representations, warranties, covenants and agreements contained in the Lease, the City has executed this Agreement to be effective on the Execution Date, and the Prior Agreement is hereby amended, restated and replaced in its entirety with this Agreement.

DROP DATE. Notwithstanding the present effectiveness of this Agreement or any other provision in this Agreement to the contrary, this Agreement shall automatically terminate on December 31, 2015 (the "**Drop Date**"), without further action of either Party if the Conditions Precedent set forth in Section 1(c) of the Lease, have not been satisfied by the Company or waived by the City on or before the Drop Date in the manner provided in the Lease. Following such termination, the parties hereto shall have no further rights or obligations to one another except for the provisions of this Agreement that by their respective terms survive termination or expiration of the Lease or this Agreement. 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.

This Agreement 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) of the Lease (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 Agreement 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 this Agreement 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 this Agreement 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 Agreement 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 Agreement. 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 Agreement shall remain effective subject to its terms.

1. **Definitions.**

- a. “Area Reports” means reports from the Comptroller to the City as provided in Section 321.3022 of the TEXAS TAX CODE that identify amounts paid from the Comptroller to the City, by period, of City Sales Taxes and City Mixed Beverage Taxes. If during the Term due to a change in law or policy the Comptroller ceases providing such reports with respect to either or both City Sales Taxes and City Mixed Beverage Taxes, “Area Report” means alternative documentation that the Parties agree establishes the amounts of City Sales Taxes or City Mixed Beverage Taxes received by the City for Grant Periods.
- b. “City Mixed Beverage Tax” means payments or allocations to the City from the Comptroller of mixed beverage taxes imposed by Chapter 183 of the TEXAS TAX CODE, paid by any mixed beverage permittee, and attributable to mixed beverages sold at the Property.
- c. “City Sales/Beverage Tax Grant” means the economic development incentive grant described in Section 4(b) of this Agreement.
- d. “City Sales Taxes” means City general municipal sales and use taxes imposed pursuant to Section 321.103(a) of TEXAS TAX CODE arising (i) from any person’s collection of City Sales Taxes as a result of sales of Taxable Items Consummated at the Entertainment Center, (ii) from any person’s payments to vendors or directly to the Comptroller of City Sales Taxes on purchases of Taxable Items Consummated at the Entertainment Center, and (iii) from City Sales Taxes paid by any person in connection with the construction or equipping of the Entertainment Center.
- e. “Comptroller” means the Office of the Texas Comptroller of Public Accounts or any successor governmental agency that administers functions relevant to this Agreement.
- f. “Consummated” shall have the meaning assigned by Section 321.203 of TEXAS TAX CODE, or its successor, including after a change of law the applicable principles for determining the incidence of local sales and use taxes.
- g. “Default” has the meaning assigned in Section 7 of this Agreement,
- h. “Entertainment Center” means the Property together with all improvements now or hereafter located on the Property.

- i. “Grant” means any or all of the State Refund Grant and City Sales/Beverage Tax Grant.
- j. “Grant Period” means the total period during which tax receipts are used to compute Grant payment amounts due. Solely by way of example, the City Sales/Beverage Tax Grant period will be the period that commences with the first calendar quarter following the first Lease Year, as defined in the Lease Section 2(b), or Initial Occupancy, whichever occurs later, and that ends with the date that is the fortieth anniversary of the first Grant payment. Tax amounts reported for tax reporting periods that are partially in and partially out of a Grant Period may be prorated for purposes of computing Grant amounts due, based on the number of days in the tax reporting period that fall within a Grant Period divided by the total number of days in the tax reporting period.
- k. “Headquarters Hotel” means a 350-room convention center headquarters hotel including hotel rooms, public meeting space, and restaurants.
- l. “Hotel Project” means the improvements to real property and any related personal property, consisting of the Headquarters Hotel, parking, convention center entertainment-related facilities, the Entertainment Center and other related and ancillary facilities.
- m. “Hourly Wage” means the mean hourly earnings of private industry workers in a service establishment for the Dallas Fort Worth metropolitan area, of the National Compensation Survey-Wages, as published by the U.S. Department of Labor, Bureau of Labor Statistics.
- n. “Initial Occupancy” means the first night a person pays for the use or possession of or for the right to the use or possession of a room or space at the Headquarters Hotel or, the hotel constructed by the Company under Section 4(a) of the Lease, whichever occurs first.
- o. “Lease” means the Second Amended and Restated Lease Agreement approved concurrently herewith, between the Company and the City.
- p. “Lease Year” means each consecutive calendar year as provided in the Lease Section 2(b); the first Lease Year shall commence on the first day of the first January following the Commencement Date and end one year thereafter, as provided in the Lease Section 2(b).
- q. “Party” or “Parties” means the Company and the City.
- r. “Property” means the City-owned land described in **Exhibit “A”**.
- s. “Quarterly Report” means the report specified by Lease Section 4(g) which Company shall deliver to City, 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), which is a detailed summary (certified as true and correct by an authorized officer of Company, as the act of Company) 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 City (each a "Quarterly Report" and collectively, "Quarterly Reports").

- t. "State Refund Grant" means the economic development incentive grant described in Section 4(a) of this Agreement.
 - u. "State Sales Taxes" means limited sales and use taxes imposed pursuant to Chapter 151 of TEXAS TAX CODE and arising (i) from any person's collection of State Sales Tax as a result of sales of Taxable Items Consummated at the Entertainment Center, (ii) from any person's payments to vendors or directly to the Comptroller of State Sales Tax on purchases of Taxable Items Consummated at the Entertainment Center, and (iii) from State Sales Tax paid by any person in connection with the construction of the Entertainment Center.
 - v. "Taxable Items" has the meaning assigned by Section 151.010 of TEXAS TAX CODE.
 - x. All terms used with an initial capital letter in this Agreement and not defined herein have the same meanings as in the Development Agreement or Lease.
2. **Term.** This Agreement shall become effective as of the Execution Date, and, provided the Lease is still in effect, shall remain in full force and effect for forty (40) years and six (6) months after Initial Occupancy. This Agreement shall expire on the earliest of termination of the Lease or forty (40) years and six (6) months after Initial Occupancy.
3. **Company's Obligations.** In consideration of the City entering into this Agreement providing for the payment of funds constituting a grant to the Company under the terms and conditions set forth herein, the Company agrees to:
- a. Design and construct or cause to be designed and constructed the Entertainment Center, as described in the Development Agreement, on the Property. The Company shall have completed the Entertainment Center in accordance with the Schedule of Project stated in Section 1.14 of the Development Agreement.
 - b. Maintain and operate the Entertainment Center in compliance with the Lease during the Term.
 - c. Create and maintain, or cause its subtenants to create and maintain, 725 new jobs in a combination of full time and part-time jobs that equal at least 400,000 hours of annual paid employment on the Property, during the first ten years after Initial Occupancy.

- d. Render, or cause its subtenants to render, business personal property that it owns at the Entertainment Center to the Dallas Central Appraisal District and remain current on all real and business personal property taxes imposed on the Company during the Term.
- e. Provide documentation necessary to support a claim by the City to the Comptroller under Sections 351.102(c) and 151.429(h) of TEXAS TAX CODE for a refund of sales taxes, and for the City to obtain the Area Reports.
- f. Provide updated and supplemental documentation as necessary to allow the City to claim refunds of State Sales Tax, City Sales Taxes and City Mixed Beverage Taxes for all periods during the Term for which the Company is entitled to receive Grants.
- g. Provide the Quarterly Reports and other documentation necessary to support the Company compliance with this Section 3 and the conditions listed in Section 5(a). Compliance with annualized conditions will be provided on a 12 month look-back basis.
- h. Use the words “Irving, Texas” or “Irving, TX” when printing an address on literature, all stationery, business cards, or other printed or electronic materials which identify the Entertainment Center.
- i. Covenant and certify that the Company does not and will not knowingly employ an undocumented worker as that term is defined by Section 2264.001(4) of the TEXAS GOVERNMENT CODE. If after receiving a Grant, the Company is convicted of a violation under 8 U.S.C. SECTION 1324a(f), the Company shall repay to the City the full amount of the Grant made under this Agreement, plus eight percent (8%) interest per annum from the date the Grant was made. Repayment shall be paid within one hundred twenty (120) days after the date the Company receives notice of violation from the City. Pursuant to Section 2264.101(c), TEXAS GOVERNMENT CODE, a business is not liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

4. **Grants by City**

In exchange for the Company’s compliance with all terms and provisions of this Agreement, and subject to the conditions stated in Section 5, City shall, as an incentive, make the following Grants:

- a. **State Refund Grant.** For a Grant Period beginning with the first calendar quarter following the first Lease Year, or Initial Occupancy, whichever occurs later, and continuing for ten years following Initial Occupancy, City shall provide the

Company an economic development incentive grant in an amount equal to all refunds received by the City from the Comptroller of State Sales Taxes.

- i. If during the Term the Texas Legislature, the Comptroller, or Texas courts amend or interpret the provisions of Sections 351.102(c) and 151.429(h) of TEXAS TAX CODE or Section 2303.5055 of TEXAS GOVERNMENT CODE to authorize the City to receive refunds of taxes generated at the Property other than State Sales Taxes, the State Refund Grant shall be increased by the amount of all such taxes that are refunded to the City.
 - ii. If during the Term the Texas Legislature amends the provisions of Sections 351.102(c) and 151.429(h) of TEXAS TAX CODE or Section 2303.5055 of TEXAS GOVERNMENT CODE to authorize the City to receive refunds of State Sales Taxes, or other taxes for a period that exceeds ten years, the Grant Period for the State Refund Grant shall be increased to correspond to the period during which the City receives such refunds.
- b. **City Sales/Beverage Tax Grant.** For a Grant Period beginning with the first calendar quarter following the first Lease Year, or Initial Occupancy, whichever occurs later, and continuing for forty years following the first Grant payment, the City shall provide the Company an economic development incentive grant in an amount of lawfully available funds equal to all City Sales Taxes and City Mixed Beverage Taxes. The City Sales/Beverage Tax Grant shall also include an amount equal to City Sales Taxes attributable to periods prior to Initial Occupancy, if any, for City Sales Taxes paid with regard to construction of the Entertainment Center.

5. **Computation and Payment of Grants.**

- a. **Company's Reports.** Commencing in the first Lease Year, and as a condition precedent to receiving a Grant, the Company shall provide the Quarterly Reports and at the same time certify compliance with Section 3 of this Agreement and the following:
 - i. the Lease is in full force and effect, with no uncured Tenant defaults; and
 - ii. Section 6(g)(3) of the Lease minimum funding of the Maintenance and Operations Reserve.
- b. **City's Conditions Precedent to Payment of Grant.** City shall make no Grant to the Company, and the Company shall not be entitled to receipt of any Grant, in any one or combination of the following situations:
 - i. Brimer HOT Revenues are not adequate to pay the debt service on the Refunding Bonds and the Bonds described in the Development Agreement Article II and the Lease Section 6(g)(ii); or

- ii. Funding the Maintenance and Operations Reserve has not been maintained in the minimum amount required by the Lease Section 6(g)(3).

In any such event, City shall use that portion of the refund of State Sales Taxes, City Sales Taxes and the City Mixed Beverage Taxes received from the Comptroller necessary to make the payments and minimum funding stated in this Section 5(b) items (i) and (ii) inclusive. Portions of the refund of State Sales Taxes, City Sales Taxes and the City Mixed Beverage Taxes received from the Comptroller in excess of those required to make the payments and minimum funding stated in this Section 5(b) items (i) and (ii) inclusive will be granted to the Company.

- c. **Forfeiture of Grant for Performance Failure.** Each Performance Failure, as defined in the Lease Section 14(g), shall result in the following forfeitures of Grants (each a "Grant Forfeiture" and collectively, "Grant Forfeitures"):
 - i. For each occurrence of a Performance Failure under Section 3(e) of the Lease during any Lease Year, an amount equal to \$25,000;
 - ii. For each occurrence of a Performance Failure under Section 4(d) of the Lease 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;
 - iii. For a Performance Failure under Section 4(f)(6) of the Lease 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);
 - iv. For each Performance Failure under Section 4(f)(7) of the Lease during a Lease Year, an amount equal to \$50,000; and
 - v. For each Performance Failure under Section 4(f)(8) of the Lease during a Lease Year, an amount equal to \$25,000.
 - vi. For a failure to perform under Section 3(c) of this Agreement, an amount equal to the Hourly Wage for each hour short of 400,000 hours of annual paid employment.

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 5(c).

The Grant Forfeitures described by this Section 5(c) 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 this Section 5. If the amount of Grant Forfeitures exceeds the amount of Grant payments available to be withheld under this 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.

The Performance Failures, as defined in Lease Section 14(g) shall be determined at the conclusion of each Lease Year. A Performance Failure under Lease Sections 4(d) or 4(f)(6) 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) of the Lease shall again be measured at the end of each Lease Year.

Solely by way of example, if at the end of Lease Year One, the Company's Quarterly Reports show a Performance Failure in Lease Year One, then the City shall calculate the Grant Forfeitures as provided in this Section 5(c). If a Performance Failure was under Lease Sections 4(d) or 4(f)(6), then if the first Quarterly Report of the following year, Lease Year Two, when combined with the prior three Quarterly Reports as if such four quarter period was a Lease Year ("Quarterly Look-back"), still shows a Performance Failure under Lease Sections 4(d) or 4(f)(6), City shall calculate the Grant Forfeitures, as above. Quarterly Look-back and Grant Forfeitures, if any, shall continue in that Lease Year Two, until the Quarterly Reports show no Performance Failure under Lease Sections 4(d) or 4(f)(6) on a four quarter Quarterly Look-back basis. If each consecutive Quarterly Report of Lease Year Two, shows a Performance Failure under Lease Sections 4(d) or 4(f)(6), then the Lease and this Agreement shall immediately terminate without need for further notice (i.e., the Lease and this Agreement terminate if there is a Performance Failure under Lease Sections 4(d) or 4(f)(6) for two consecutive years). If on the other hand, any Quarterly Look-back shows no Performance Failure under Lease Sections 4(d) or 4(f)(6) for such four quarter period, then this Agreement shall remain in effect, and Company's performance shall again be measured at the end of each Lease Year unless and until there is another

Performance Failure under Lease Sections 4(d) or 4(f)(6) in which case the Quarterly Look-back process will be used again in the same manner as described above.

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.

- d. **Area Reports.** No later than the date of Initial Occupancy, the City shall submit a request to the Comptroller for Area Reports. During the Term the City shall take such other actions as are necessary to cause the Comptroller to issue Area Reports throughout the Term, including but not limited to supplementing its request for Area Reports to include any new sales tax permit holders or mixed beverage tax permittees that should be included in the Area Reports if and to the extent the Company identifies any such new sales tax permit holders or mixed beverage tax permittees and if necessary provides Waiver of Confidentiality forms.
- e. **State Refund Grant.** The City shall make quarterly payments to the Company of the State Refund Grant within thirty days after the City's receipt of the Company's Quarterly Report. Each State Refund Grant payment shall be equal to the amount of the State Sales Taxes refund received by the City from the Comptroller of State Sales Taxes pursuant to Sections 351.102(c) and 151.429(h) of TEXAS TAX CODE.
- f. **City Sales/Beverage Tax Grant.** The City shall make quarterly payments to the Company of the City Sales/Beverage Tax Grant. Each City Sales/Beverage Tax Grant payment shall be equal to the amount of the City Sales Taxes and the City Mixed Beverage Taxes received by the City from the Comptroller for such calendar quarter, as identified in the Area Reports for such quarter. The City shall make such Grant payments within thirty (30) days after the latest of (i) the City's receipt of the Company's Quarterly Report, (ii) the City's receipt of Area Reports that identify amounts of City Sales Taxes and City Mixed Beverage Taxes for all months in a quarter and (iii) the City's receipt from the Comptroller of the City Sales Taxes and the City Mixed Beverage Taxes for all periods in the quarter.

g. **Adjustments to Grant Amounts.** If (i) the final result of an assessment, audit, refund claim or other action by a taxpayer or taxing authority results in a change in the amount of tax liability for a prior tax period of any City tax revenue that was used as the basis for the computation of any Grant payment due under this Agreement, and (ii) such change in tax liability results in a payment to or from the City of such taxes, whether by actual payment, credit, offset, or otherwise, then (iii) for the Grant type computed with reference to that type of tax, the City will adjust the Grant payment otherwise due for the Grant Period in which the City makes or receives such payment up or down, as the case may be, to account for such prior period's tax liability adjustment and payment. If the adjustment required by this Section 5(f) cannot be fully accomplished by adjusting the Grant payment for the Grant Period in which the City makes or receives such payment, the Grant payment due for subsequent Grant Periods shall be adjusted as necessary.

6. **Indemnification.**

THE COMPANY IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT IS ACTING INDEPENDENTLY, AND THE CITY ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE PROPERTY OR IMPROVEMENTS. THE COMPANY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES, AND VOLUNTEERS IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, AND LIABILITY OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS, AND ATTORNEYS' FEES WHICH MAY ARISE DUE TO ANY DEATH OR INJURY TO A PERSON OR THE LOSS OF, LOSS OF USE, OR DAMAGE TO PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE OF THIS AGREEMENT, EXCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES.

7. **Termination and Default**

a. The Company is considered to be in default under this Agreement if the Company fails to fulfill its obligations under Section 3 of this Agreement, excluding obligations under Section 3(c) and 3(g) of this Agreement, which are subject only to the Grant Forfeitures described in Section 5 of this Agreement. The City is considered to be in default under this Agreement if the City fails to fulfill its obligations under Section 4 or Section 5 of this Agreement. If either the Company or the City defaults (a "Default"), the defaulting Party shall cure such Default within sixty (60) days after the delivery of written notice of such Default from the other Party, or if such failure cannot be cured within such sixty (60) day period in the exercise of all due diligence, then if the defaulting Party commences an attempt to cure within such sixty (60) day period, such longer period as the Party thereafter continues diligently to prosecute the cure of such Default. During any period for cure of

such Default granted by this paragraph, the City shall suspend Grant payments that otherwise would be due under this Agreement; provided, if the Company cures such Default, the City shall resume making Grant payments, but any subsequent Grant payment shall be computed exclusive of any Grant payable for a reporting period during which an uncured Default existed under this Agreement. Solely by way of example, if an uncured Company Default existed under this Agreement from January 1 through January 31 and the Company cured such Default on February 1, then any subsequent Grant payment would exclude from the Grant computation any taxes imposed on transactions that occurred during the month of January, reported on returns filed in February.

Further, the Company is considered to be in default under this Agreement if the Company is in default of the Lease. If the Company is in Default of this Agreement because the Company is in default of the Lease, then the provisions of the Lease shall control. Any termination of the Lease, including without limitation a termination pursuant to Lease Section 14(g), shall result in the immediate termination of this Agreement.

b. If the Company does not cure a Default in the time period allowed by this Agreement, the City, by formal action of the city council adopting a resolution, may terminate this Agreement as its sole and exclusive remedy under this Agreement for Default, although the City does not thereby waive any remedies granted by the Lease. If the City does not cure a Default in the period specified in this Agreement, the Company may terminate this Agreement.

c. 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 Agreement 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 Agreement. 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 Agreement, but will delay the start of any cure periods afforded to such Company Mortgagee under this Section 7 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 Agreement for a period of thirty (30) calendar days.

d. 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 termination of this Agreement. 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 Agreement covered by the Company Mortgage (subject to Section 7(f)).

e. Option for New Agreement. If this Agreement terminates for any reason other than automatic termination at the Drop Date, 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 economic development incentive agreement (a "New Agreement") of the Entertainment Center with the Company's Mortgagee or its designee (including without limitation, a Company Mortgagee Designee, as hereinafter defined) on the same terms as this Agreement promptly after the Company's Mortgagee or its designee satisfies the conditions set forth in Section 7(f). If more than one (1) Company Mortgagee exercises the foregoing option for a new agreement, the City shall enter into a new agreement with the Company Mortgagee, or its designee, having the highest priority among those Company Mortgagees who exercised the option.

f. Obligation to Cure. In order for any Company Mortgagee or its designee, including without limitation, a Company Mortgagee Designee actions, whether pursuant to the Company Mortgagee's right of subrogation under Section 7(d), a new lease under Section 7(e), or otherwise, the Company Mortgagee or its designee, including without limitation, a Company Mortgagee Designee must first:

- i. cure any monetary default of the Company;
- ii. 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
- iii. to the extent the City has appointed or entered into any arrangement with a replacement or successor under this Agreement 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.

g. Modifications; Surrender. 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 7, the

City may not accept any surrender of or agree to any termination of this Agreement 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.

The City may (in its sole and absolute discretion) modify this Agreement 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 Agreement or standards of performance set forth herein. Notwithstanding any provision in this Agreement to the contrary, the City is under no obligation to modify, amend or revise the terms of this Agreement, and its failure to do so, regardless of reason or lack thereof, shall not be a breach of this Agreement, and shall neither excuse the Company's performance under this Agreement, nor give rise to any claim, defense or offset by or on behalf of the Company.

h. Rights Cumulative. All rights of any Company Mortgagee under this Agreement are cumulative and non-exclusive.

i. Company Mortgagee Designee. As used in this Agreement, any "Company Mortgagee Designee" shall include a designee selected by the Company Mortgagee, and any third party that acquires the right under this Agreement 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 Agreement (each a "Company Mortgagee Designee"). Notwithstanding anything to the contrary herein the Qualifying Company Mortgagee Designee (defined below) may become tenant under this Agreement 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 7(i) shall apply both with respect to this Agreement and any new agreement entered into under Section 7(e) 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.

j. Consent of Company Mortgagee Required. No cancellation or surrender of this Agreement by the Company prior to the commencement of the Initial Term (as defined in the Lease) 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 7 respecting the cure of Events of Default under this Agreement. No Company Mortgagee shall be bound by any material modification of this Agreement 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.

k. Notice to Company Mortgagee. Notwithstanding anything herein to the contrary, if any Event of Default shall occur, the City shall have no right to terminate this Agreement unless the City shall deliver notice to Company Mortgagee of the City'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 7(k). The provisions of Section 7(l) 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 Agreement 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 the Company's interest in this Agreement by foreclosure, assignment in lieu thereof, preparing for a sale or transfer of the Company'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.

l. Procedure on Event of Default.

i. Transfers After Acquisition Upon Event of Default. Subject to the provisions of Section 7(f), any Qualifying Company Mortgagee Designee or other permitted acquirer of the leasehold estate pursuant to a Foreclosure Event may, upon acquiring the Company's rights under this Agreement, subject to the consent of the City to the extent required in the Agreement with respect to any such proposed transfer, sell and assign the Company's rights under this Agreement on such terms and to such persons (but without modifying this Agreement) and thereafter shall be relieved of all obligations of Company under this Agreement arising after the date of such transfer, provided (i) such transfer includes and is subject to the Lease, (ii) such transferee assumes in writing for the benefit of City all of the obligations of the Company under this Development Agreement and the

"Tenant" under the Lease and (iii) City is notified of such transfer and provided a copy of such assumption promptly following such transfer.

ii. Foreclosure Event a Permitted Transfer. Notwithstanding any other provisions of this Agreement 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 Agreement with respect to a transfer of Company's interest herein have been satisfied.

iii. Post-Foreclosure Operation. Notwithstanding any other provisions of this Agreement, in the event of the acquisition of the Company's interest herein 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 Company's interest herein under this Agreement shall be subject to the provisions and requirements of this Agreement and the Lease, and such act in accordance with the requirements of this Agreement.

"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 Company's rights, titles, interests and obligations under this Agreement. A Foreclosure Event shall not relieve the Company of any of its obligations under this Agreement.

8. General Provisions.

- a. Representations and Warranties. The Company represents and warrants to the City that it has the requisite authority to enter into this Agreement. The Company represents and warrants to the City that it will not violate any federal, state or local laws in operating the Entertainment Center, that all proposed improvements of the Entertainment Center shall conform to the applicable building codes, zoning ordinances and all other ordinances and regulations.
- b. Section or Other Headings. Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- c. Confidentiality. The City designates this Agreement as a revenue sharing agreement, thereby entitling the City to request sales tax information from the Comptroller pursuant Section 321.3022 of TEXAS TAX CODE. The City shall notify the Company within five (5) business days after receiving any Public Information Act request that seeks disclosure of information provided by or concerning the Company, and the parties shall reasonably cooperate to determine whether or to what extent the requested information may be released without objection and

without seeking a written opinion of the Texas Attorney General. The City shall take the position that any information responsive to a Public Information Act request relating to the Company that the parties do not mutually agree to release without objection is information not subject to release to the public pursuant to Section 321.3022(f) of TEXAS TAX CODE, section 552.110 of TEXAS GOVERNMENT CODE, or other applicable law. The City shall seek a written opinion from the Texas Attorney General raising any applicable exception to release of such information prior to any release to a third party under the Texas Public Information Act. If the City seeks a written opinion from the Texas Attorney General pursuant to Section 552.305 of TEXAS GOVERNMENT CODE, the City may require the Company to draft and submit to the Texas Attorney General the substantive comments or arguments in support of such opinion request. The City shall provide the Company timely notice and an opportunity to review and comment on any opinion request submitted by City.

- d. **Rights to Audit.** 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 Grants. 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 funds and accounts for such revenues and permit the Company to review and copy such records in connection with conducting a reasonable audit of such accounts. The City shall have the right to audit, upon reasonable notice and, at its own expense, all of the Company's records related to the conditions precedent to the Grants stated in Section 3 and Section 5(a) to confirm that the conditions have been satisfied. Upon written request by the City, the Company shall give the City access to all records controlled by, or in the direct or indirect possession of, the Company (other than records subject to legitimate claims of attorney-client privilege) relating to the Company's compliance with conditions precedent to the Grants stated in Section 3 and Section 5(a) and permit the City to review and copy such records in connection with conducting a reasonable audit of such conditions. Any discrepancy in Grant payments found in either such audit shall be submitted to the other Party for review and City shall make appropriate adjustment in payment of the Grant in the next Grant Period.
- e. **Amendment.** This Agreement may only be amended, altered, or revoked by written instrument signed by the Company and the City and approved by the City through its City Council.
- f. **Assignment.** This Agreement may not be assigned by either Party without the express written consent of the other Party, which consent shall not be unreasonably withheld or delayed, other than (a) a collateral assignment by the Company in connection with a mortgage by the Company of its leasehold interest under the Lease; or (b) as permitted by Section 7 above. The provisions hereof shall inure to

the benefit of and be binding upon the Parties and their respective successors and assigns.

- g. **Binding Agreements; Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and assigns. The Company may assign all or part of its rights and obligations hereunder only upon prior written approval of the City, which approval shall not be unreasonably withheld or delayed.
- h. **Notice.** Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate Party at the following addresses, or at such other addresses provided by the Parties in writing:

COMPANY: ARK Group of Irving, Inc.
19401 Old Jetton Road, Suite 101
Cornelius, NC 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, NC 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

CITY: City of Irving
City Manager's Office
825 W Irving Blvd
Irving, Texas 75060

Telephone: 972-721-2586
Facsimile: 972-721-2420

with copy to:

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

- i. **Interpretation.** Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.
- j. **Applicable Law.** This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas without regard to any conflict of law rules, and venue shall lie in Dallas County, Texas.
- k. **Dispute Resolution.** Prior to instituting any legal action against the other in relation to any matter arising out of this Agreement, the Company and the City shall submit each material dispute to non-binding mediation with a mutually agreed upon mediator.
- l. **Obligations to Defend Validity of Agreement.** 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 Agreement, as long as the Company is not in default of this Agreement, the Parties hereto shall take reasonable steps to support and defend the validity of this Agreement. Either Party may intervene in any such matter in which the other party hereto has been named as a defendant. Each party shall be responsible for its legal costs.
- m. **Severability.** In the event any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- n. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

- o. **Force Majeure.** If either Party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including, failure, refusal or delay in issuing permits, approvals or authorizations), injunction or court order, terrorist attacks, riots, insurrection, war, fire, earthquake, flood or other natural disaster or other reason of a like nature not the fault of the Party delaying in performing work or doing acts required under the terms of this Agreement (but excluding delays due to financial inability), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

- p. **Independent Parties.** Nothing herein shall be construed as creating a partnership or joint enterprise between the City and the Company. Furthermore, the Parties acknowledge and agree that the doctrine of respondeat superior shall not apply between the City and the Company, nor between the City and any officer, director, member, agent, employee, contractor, subcontractor, licensee, or invitee of the Company.

- q. **No Rights Conferred on Others.** Nothing in this Agreement shall confer any right upon any person other than the City and the Company and no other person is considered a third party beneficiary to this Agreement.

- r. **Approval Not Guaranteed.** Nothing contained in this Agreement shall be construed as obligating the City to approve any application required for development of the Property that is not in conformity with the City's adopted development regulations.

- s. **Purpose of City Incentives.** The purpose of the City's providing incentives, including incentives under this Agreement and all other incentives, with respect to the Entertainment Center 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 revenue for the City, the County and the State of Texas and increased employment opportunities for residents of the City and the County. To the extent, however, it is determined that any portion of the City's motivation for providing such incentives is for a benefit other than to the community-at-large, then the only incentives provided for such non-community-at-large benefits are provided under, and solely allocated and apportioned to, this Agreement (and not under any other agreement).

- t. **Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to the Program.

- u. **Waiver.** No term or condition of this Agreement shall be deemed to have been waived, nor will there be any estoppel to enforce any provision of this Agreement, except by written instrument of the Party charged with such waiver or estoppel.
- v. **Approval by City of Irving, Texas.** This Agreement was approved by the City Council of the City of Irving, Texas at its meeting on ____, 2015.

EXECUTED on this _____ day of _____, 2015.

CITY OF IRVING, TEXAS

By: _____
BETH VAN DUYNE, Mayor

ATTEST:

SHANAE JENNINGS, City Secretary

APPROVED AS TO FORM:

By: _____
CHARLES R. ANDERSON, City Attorney

EXECUTED on this _____ day of _____, 2015.

COMPANY:

ARK GROUP OF IRVING, INC.
A Texas Corporation

By: _____
Noah Lazes, President

Exhibit A

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.