
AMENDED AND RESTATED
ENTERTAINMENT CENTER DEVELOPMENT AGREEMENT

between

THE CITY OF IRVING

and

ARK GROUP OF IRVING, INC.

Dated as of August 27, 2015

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AMENDED AND RESTATED
ENTERTAINMENT CENTER DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED ENTERTAINMENT CENTER DEVELOPMENT AGREEMENT (this "**Agreement**") is entered into as of August 27, 2015, (the "**Execution Date**") by and between the City of Irving, Texas, a municipal corporation of the State of Texas and a home rule city (the "**City**"), and ARK Group of Irving, Inc., a Texas corporation (the "**Company**").

RECITALS

WHEREAS, the City submitted to the citizens at an election called and held on November 6, 2007 (the "**Election**"), in accordance with and pursuant to authority granted by Chapter 334, TEXAS LOCAL GOVERNMENT CODE, as amended (the "**Act**"), a proposition for the construction of a "convention center and a related multi-functional theater, performance hall, music hall, and community and entertainment venue, and related infrastructure" (the "**Convention and Entertainment Center Project**"); and

WHEREAS, a majority of the citizens voting at such election voted in favor of the proposition; and

WHEREAS, defined terms under the Act have the same meanings as in the Act except as expressly provided to the contrary in this Agreement; and

WHEREAS, the convention center facility (the "**Convention Center**") is complete and operational, the City now intends, as a part of the Convention and Entertainment Center Project, to construct a convention center full service headquarters hotel (the "**Hotel**") and a multi-functional theater, performance hall, music hall, and community and entertainment venue, and related infrastructure consisting of a performance hall, restaurants, a pedestrian walkway, an open air plaza and parking facilities, all as more particularly described in Section 1.1 below (collectively the "**Entertainment Center**"); and

WHEREAS, the Entertainment Center is an approved venue project under the Act; and

WHEREAS, the City owns an approximately 40 acre tract of land in the Las Colinas Urban Center and the City desires to use approximately 18.06 acres on the southern portion of the land to build the Entertainment Center (the "**Site**") as described on Exhibit A; and

WHEREAS, the City and the Company entered into that certain Entertainment Center Development Agreement dated July 25, 2013 and effective on August 5, 2013 (the "**Prior Development Agreement**"), to govern the design and construction of the Entertainment Center and the rights and obligations of the parties during the development period; 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 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**"); 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 Lease and the Economic Development Agreement, together with the TIF Reimbursement Agreement, are referred to herein collectively as the "**Amended and Restated Transaction Documents**;" and

WHEREAS, the Company has requested that the City enter into this Agreement to replace the Prior Development 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 waives claims against the City related thereto, all as more particularly described below; and

WHEREAS, pursuant to the authority granted to the City in the Act, and in consideration of the undertakings of the Company contained herein and the other agreements described herein and of the continuing economic benefits to be derived therefrom by the City and its citizens, the City, upon the occurrence of the conditions stated herein, the City has agreed to contract with the Company in the financing and development of the Entertainment Center and to share in the costs thereof to the extent provided in this Agreement and the other agreements described herein or contemplated hereby;

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and confessed by each of the parties hereto, the parties have agreed and do hereby agree as follows:

EFFECTIVE DATE. In reliance on the representations, warranties, covenants and agreements contained in this Agreement, the City has executed this Agreement to be effective on the Execution Date, and the Prior Development 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 (and referenced in Section 1.27 below), 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 (and referenced in Section 1.27 below) 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.

ARTICLE I ENTERTAINMENT CENTER DEVELOPMENT

Section 1.1. The Entertainment Center.

(a) The City and the Company will undertake the design, development, construction, maintenance, management, use and operation, for the use and benefit of the public, the City and its citizens, of a new multi-use Entertainment Center in the Irving Las Colinas Urban Center. The Entertainment Center "**Project Scope Criteria**" includes:

(1) an amphitheater and performance hall with a capacity of at least 6,500 people, including suites and boxes which include a minimum indoor capacity of 3,000 people (the "**Amphitheater/Performance Hall**");

(2) a minimum of 100,000 square feet of heated buildings that will house a minimum of nine full service restaurants, four entertainment venues and 5,000 square feet of retail space (collectively the "**Restaurants**");

(3) 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 Amphitheater/Performance Hall and adjacent to the Restaurants;

(4) 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 outdoor stages (the "**Plaza**");

(5) approximately 1,200-space structured parking garage (the "**Parking Facilities**") that will serve the Entertainment Center; and

(6) 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**").

(b) The Amphitheater/Performance Hall, the Restaurants, the Walkway, the Plaza, the Promenade, the Parking Facilities, and some or all of the Entertainment Center Infrastructure will be constructed on the Site.

(c) The Entertainment Center includes the Amphitheater/Performance Hall, the Restaurants, the Walkway, the Plaza, the Parking Facilities, the Promenade, the Entertainment Center Infrastructure, and the surrounding portions of the Site. All of the "related infrastructure," as defined in the Act, for the Entertainment Center will relate to and enhance the use, value or appeal of the venue.

(d) The City and the Company intend for the Entertainment Center to be designed, developed, constructed, maintained, managed, used and operated substantially in accordance with the terms of this Agreement.

(e) The City and the Company estimate that the Total Entertainment Center Costs (defined in Section 1.28(a)(4)) will be \$165,000,000 as of the date of this Agreement.

Section 1.2. Project Scope. Subject to the terms and conditions set forth in this Agreement, (a) the City shall own the Entertainment Center; (b) the Company shall plan, design, construct, complete and make operational the Entertainment Center, along with ancillary development on the Site which may include office and boutique hotel uses, subject to the City's approval as provided herein; and (c) the City and the Company shall fund their respective funding commitments as contemplated herein.

Section 1.3. Ownership of Entertainment Center.

(a) Land and Improvements. The City owns the Site and shall own all improvements including without limitation, fixtures and equipment, as provided in Section 1.3(b) existing or to be constructed on the Site (the "**Improvements**"). The Site together with all Improvements now or hereafter located on the Site are, collectively, the "**Entertainment Center**". The Project Scope Criteria are the minimum Improvements to be constructed on the Site.

(b) Personal Property. All items of personal property (if any) that are purchased, in whole or in part, with the City Construction Contribution (defined in Section 2.1(b)) by the Company for operation of the Entertainment Center, will be owned by the City in accordance with the terms hereof, including any removable floor seating for the Amphitheater/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 Amphitheater/Performance Hall) will be owned by the City in accordance with the terms hereof. The Company may place or install in or on any portion of the Entertainment Center other items of personal property (for example, furniture (other than fixed audience seats at the Amphitheater/Performance Hall), trade fixtures and office equipment) as the Company shall deem desirable for its operation. Such items of personal property placed by the Company on or in the Entertainment Center shall not become part of the real property, even if nailed, screwed, or otherwise fastened to the improvements or buildings, but shall retain their status as personal property owned by the Company.

Such personal property may be removed by the Company at any time, so long as the Company is not in default under this Agreement and so long as any damage occasioned by such removal is thereupon repaired. Likewise, such items of personal property purchased by performing arts groups, private citizens, or subtenants of the Company (for example and without limitation, musical instruments, sets, music, recordings and computers) shall not be owned by the City.

(c) Intellectual Property.

(1) **"Intellectual Property"** shall mean all intellectual property rights of any kind, 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.

(2) 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 Company hereby assigns to the City all City Intellectual Property Rights that the Company has or may acquire in the future.

(d) Tax Exemption. Pursuant to Section 334.044 of 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), TEXAS TAX CODE, does not apply to a leasehold or other possessory interest granted by a municipality. A venue project (such as the Entertainment Center) is exempt from taxation under Section 11.11, TEXAS TAX CODE, while a municipality owns the venue project. 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) acquired by the City pursuant to this Agreement shall 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 (i) 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, (ii) 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 Agreement regarding acceptance of Improvements comprising the Entertainment Center 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 (including any staging area relating to the Entertainment Center), 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, (iii) the City's confirming in writing to the Company the City's acceptance of delivery of the donation of such tangible personal property, and (iv) 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. If, despite the best efforts of the parties, the Entertainment Center or any part thereof is ultimately subject to taxation by any taxing authority, the Company shall be responsible for and shall pay same as and when due.

Section 1.4. Design and Construction of Entertainment Center.

(a) Company's Role. Subject to the provisions of this Agreement, the Company will, or will cause persons and entities engaged by the Company to, plan, design, engineer, construct and furnish the Entertainment Center. The Company will furnish, or will cause persons and entities engaged by the Company to furnish, all materials, labor, facilities, furniture, fixtures and equipment, landscaping, signage and other items necessary to begin and fully complete the construction of the Entertainment Center. The Company will comply with, and will take commercially reasonable steps to cause its agents and contractors to comply with, all requirements of law applicable to the construction of the Entertainment Center.

(b) City's Role. The City shall have no responsibility for the cost of planning, design, engineering construction, furnishing/equipping or operating the Entertainment Center (before, during or after construction) except to the extent of the City Construction Contribution provided below. The Company will not hold the City responsible for any costs of the Entertainment Center other than the City Construction Contribution as defined below. The City shall have no liability for any claims that may arise out of design or construction of the Entertainment Center, and the Company shall cause all of its contractors, architects, engineers, and consultants to agree in writing that they will look solely to the Company, not to the City, for payment of all costs and valid claims associated with the Entertainment Center.

Section 1.5. Architect(s) and Engineer(s). The Company shall have the right to select, terminate and replace the architect(s) (each an "**Architect**") and the engineer(s) (each an "**Engineer**") for the Entertainment Center, subject to the approval of the city council, in the manner

provided in Section 1.24. The Architect and Engineer shall be individuals or firms experienced with performing arts venues of the nature contemplated herein. To the extent not already under binding contract as of the date of this Agreement, the Company shall contractually obligate them to indemnify the Company and the City as joint indemnitees consistent with the provisions of Chapter 130, TEXAS CIVIL PRACTICES AND REMEDIES CODE, and Section 271.904, TEXAS LOCAL GOVERNMENT CODE, and to maintain insurance (including errors and omissions coverage) for the benefit of the Company and the City as additional insureds, in each case in form and substance not less than is customary for a City-operated design project with a similar scope.

Section 1.6. Engineering. The Company shall require in its contracts with the Architect or structural engineer (if the Company contracts directly with such structural engineer) that the structural elements of the Entertainment Center be engineered in accordance with generally accepted engineering practices and engineered at a standard for an estimated useful life of the structural elements of not less than 40 years.

Section 1.7. Interconnectivity. The Company shall design, build and construct the Entertainment Center such that the Entertainment Center is connected to and operates fully with the City's communication, technology and emergency systems.

Section 1.8. General Contractor. The Company shall have the right to select, terminate and replace the general contractor(s) (each, a "**General Contractor**") for the Entertainment Center, subject to the approval of the city council, in the manner provided in Section 1.24.

Section 1.9. City Participation in Project Design. In connection with designing the Entertainment Center, the Company shall consult with the City's Designee. The city council, in the manner provided in Section 1.24, shall have the right to approve the conceptual site plan design, renderings, selection of exterior building materials with a materials board and construction budget of the Entertainment Center. In addition, the City's Designee shall: (i) enforce City code requirements applicable to the Entertainment Center, (ii) verify that the design conforms to applicable City codes and general construction ordinances and regulations, (iii) verify that the design conforms to the provisions of this Agreement, including, but not limited to, the Project Scope Criteria, (iv) approve all connections or tie-ins between the Entertainment Center and existing and future City streets, storm sewers, water and sewer facilities and utilities, (v) any matter involving an issue of public safety, and (vi) approve the proposed vehicle access and circulation in order to maximize efficient and effective traffic flow to and from public streets, during events held at the Entertainment Center.

Section 1.10. Project Scope Verification. The Company will from time to time as reasonably requested by the City's Designee, but not less than quarterly, verify to the City's Designee that the Entertainment Center is being constructed substantially in accordance with the Project Scope Criteria and matters approved in Section 1.9, including the disbursements of the Company Contribution to pay Venue Project Costs. To the extent the City's Designee has concerns about such verification that cannot be answered by the Company to the City's Designee's satisfaction, the Company will cause the appropriate Architect, Engineer, accountants or General Contractor to consult with the Company and the City's Designee regarding such concerns. The Company may at any time or from time to time change any element of the Project Scope Criteria with notice to the City's Designee; provided, however, that if any such proposed change in the

Project Scope Criteria would result in (i) a decrease in the capacity of the Amphitheater/Performance Hall, the number of Restaurants or of the capacity of the Parking Facilities by 10 percent or more, (ii) an increase in the time to completion of any component of the construction by more than 60 days, or (iii) a material increase or reduction in the Total Entertainment Center Costs by 10 percent or more, such change shall not be made by the Company without first having been approved by the city council, in the manner provided in Section 1.24. A request by the Company to decrease the capacity of the Amphitheater/Performance Hall or the number of Restaurants or of the capacity of the Parking Facilities by 10 percent or more or to reduce the Total Entertainment Center Costs by 10 percent or more, shall be accompanied by a proportionate reduction in the City's Construction Contribution, and if approved shall result in a proportionate reduction in the City's Construction Contribution. A request to increase the time of completion of any component of construction by more than 60 days shall be accompanied by a payment from the Company of liquidated damages equal to \$2,500/day for each day beyond 60 days.

Within 60 days after the Completion Conditions set forth in Section 1.14 below have been satisfied, the City's Designee will complete an audit (the "**Confirming Audit**") in the manner provided in Section 2.10 below to confirm that the Company Contribution (as defined in Section 2.2(b) below) equals or exceeds the City Construction Contribution (as defined in Section 2.1(b) below) at the time of the Confirming Audit. If the Company Contribution, less TIF Revenues received pursuant to Section 2.3, does not equal or exceed the City Construction Contribution at the time of the Confirming Audit then there shall be a reduction in the City Construction Contribution so that the Company Contribution does equal or exceed the City Construction Contribution.

Section 1.11. Walkway. The City's Designee and the Company shall cooperate in approving the final design and location of the Walkway prior to construction of the Walkway. If the mutually approved location of the Walkway causes a change in the configuration of the Site as specified in Exhibit A, then this Agreement will be amended to reflect the revised configuration.

Section 1.12. Joint Cooperation; Access for Planning and Development.

(a) Cooperation and Timely Response. During the planning, design, development and construction of the Entertainment Center, the parties agree to cooperate and coordinate with each other, and to assign appropriate, qualified personnel to this project. To ensure that neither the design nor the construction of the Entertainment Center is delayed due to delays in the delivery of the City responses or delays in other required City actions, the City shall assign at all times an adequate number of City personnel to the Entertainment Center and shall respond and cause the City's Designee and other City personnel to respond in an expeditious manner to all submissions and requests by the Company, the Architect, the Engineer or the General Contractor within 15 days of receipt of such request. The City will make reasonable efforts to accommodate urgent or emergency requests during construction. The City may not unreasonably withhold, delay, or condition any consent or approval under this section.

(b) Access to Site and Site Records. The City will grant the Company access to the Site under the lease agreement to facilitate testing, planning, the preparation of plans and specifications, demolition, environmental remediation and construction. Upon 3 days' advance written notice to

the City's Designee, the Company may perform such testing and sampling (nondestructive and destructive) at the Site as it deems advisable; provided, however, the Company will provide proof of insurance for any such activity at the Site. The City's Designee will allow the Company and its consultants reasonable access to City's records related to the Site, during normal business hours, upon advance notice and scheduling with City's designated personnel.

Section 1.13. City Not Responsible. By performing the functions described in this Article, the City shall not, and shall not be deemed to, assume the obligations or responsibilities of the Company, Architect(s), Engineer(s) or General Contractor(s), whose respective obligations pursuant to their respective agreements with the Company shall not be affected by the City or the City's Designee's exercise of the functions described in this Article. The City or the City's Designee's review of any plans or specifications is solely for the City's own purposes, and the City does not make any representation or warranty concerning the appropriateness of any such plans or specifications for any purpose. The City's approval of (or failure to disapprove) any such plans and specifications shall not render the City, its officers or employees liable for same, and the Company assumes and shall be responsible for any and all claims arising out of or from the use of such plans and specifications.

Section 1.14. Schedule of Project. The Company shall use commercially reasonable efforts to adhere to any Schedule of Projected Project Expenditures submitted pursuant to Section 1.28(a)(4). The Company will update the Projected Project Expenditures from time to time as appropriate. The Company will construct and open the project for business expeditiously. Construction of the Entertainment Center began in the 3rd quarter of 2014. The City's issuance of a grading permit for the Site is considered commencement of construction.

Each of the following “**Completion Conditions**” must be satisfied by the Company within 24 months following the calendar month in which the Conditions Precedent (as defined in Section 1(c) of the Lease) are fulfilled and shall be evidenced by the issuance of

1. A letter of compliance, as defined in section 111.1.2 of the Irving Building Code, for every building including those identified as A1, A2, A3, A4, B1, C1, C2, D1 and D2 on the dimension control plan prepared by Architect 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, and
 - c. two outdoor stages of the Plaza, and
 - d. the Parking Facilities.

The City acknowledges and agrees that the Entertainment Center project may be delayed by factors beyond the Company's control, including 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 unavailability 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; condemnation proceedings; or unusually adverse weather conditions; regardless whether any such factor is similar to any of those enumerated or not ("**Force Majeure**"). In the event of a Force Majeure the above 24-month construction schedule shall be extended during the period of delay.

Section 1.15. Permits; Fees. The Company shall contractually obligate and cause each General Contractor, Architect, Engineer and consultant working on the Entertainment Center to obtain (and to contractually obligate their respective subcontractors to obtain), as applicable, all City permits, licenses and approvals required by law, rule, regulation or ordinance in connection with the construction of the Entertainment Center and all other permits or approvals (if any) issued by other governmental agencies, to the extent required by Applicable Law. The Company shall cause all work on the Entertainment Center to be performed in accordance with all Applicable Laws and all directions and regulations of all government bodies/agencies having jurisdiction and in a good and workmanlike manner. To the fullest extent permitted under Applicable Law, the City shall take all actions permitted to be taken by the City to facilitate the construction and operation of the Entertainment Center. The City, in its capacity as owner of the Site and not in its capacity as the controlling municipal authority, shall cooperate with the execution of permit applications and other similar documents, as may be reasonably necessary for the work on the Entertainment Center under this Agreement. The City waives all City of Irving permit, license, inspection, impact, tap, and other fees in connection with the design, construction, repair, renovation, and replacement of the Entertainment Center. "**Applicable Law(s)**" include any law, statute, ordinance, rule, regulation, order or determination of any governmental authority, including without limitation any board of fire underwriters (or other private sector body exercising similar functions), or any recorded restrictive covenant or deed restriction affecting the Entertainment Center or the Site or, including, without limitation, all applicable zoning ordinances and building codes, accessibility laws and codes, flood disaster laws, health laws and regulations, and environmental laws.

Section 1.16. Construction Contracts. The Company shall have the right and responsibility to negotiate and enter into all contracts necessary for the design, engineering, construction and completion of the Entertainment Center. The City's Designee shall review all construction contracts related to the construction of the Entertainment Center and shall have the right to interpose objections concerning the contracts which objections shall be addressed by the Company to the City's Designee's satisfaction prior to commencement of the contract. The Company shall grant the City's Designee reasonable access to any and all construction contracts to enable the City's Designee to approve the contracts and monitor the design and construction of the Entertainment Center as provided in this Agreement. All contracts relating to the design, development, renovation and construction of the Entertainment Center shall be approved by the City's Designee if they include the following terms: (i) indemnify the City and its officers and employees against any costs or liabilities thereunder, and (ii) acknowledge that the City has no obligations and liability thereunder, and (iii) otherwise comply with the other requirements of this

Agreement. In addition, the construction documents utilized by the Company to govern construction of the Entertainment Center shall be in such form and shall contain such terms as are customary for significant real estate development construction contracts in the north Texas area. The Company shall obtain the consent of the City's Designee, within 30 days, regarding the form of construction contract to be used by the Company, including with respect to how the Company's form of construction contract provides protections to the City that are not substantially less than the protections in the comparable documents typically used by the City for similar projects in terms of size, scope and cost.

Section 1.17. General Contractor Assurances. Unless otherwise agreed to by the city council, the Company shall contractually arrange for, or shall contractually require that each General Contractor (or subcontractor, as reasonably determined by the Company) furnish payment and performance bonds, in the principal amount of 100 percent of the total contract amount, signed by a corporate surety or sureties, acceptable to the City's Designee, and authorized to do insurance business in the State of Texas and licensed to issue surety bonds in the State of Texas, with the Company and the City as joint obligees on the bonds (or other appropriate security), indemnification (which shall include commitments to defend and hold harmless) and insurance (including, as applicable, commercial general liability, builders risk, workers' compensation/occupational health, auto liability coverage and excess umbrella coverage), in form and substance customary for a project with a scope similar to the Entertainment Center. The performance and payment bonds shall be written on such bond forms and shall contain such terms as are customary for significant real estate development construction project performance and payment bonds in the north Texas area. The form of performance and payment bond to be used by the Company shall be approved by the City's Designee, within 15 days of receipt of same, and such form of performance and payment bond must provide protections to the Company and the City that are not substantially less than the protections in the comparable documents typically used by the City for public works construction projects of similar size. Each such bond, indemnity and insurance policy shall inure to the benefit of both the Company and the City; provided, however, that any funds received by the City or the Company from any such bond, indemnity or insurance policy with respect to casualty losses relating to the Entertainment Center shall be dedicated to payment of costs to complete the Entertainment Center (or to repay debt that can be redrawn to pay such costs). The Company shall furnish to the City reasonable evidence of the performance and payment bonds, indemnification and insurance provided by each General Contractor (or subcontractor, as reasonably determined by the Company). Such insurance shall include commercial general liability, builders risk, workers' compensation/occupational health, auto liability and excess umbrella coverage, each in form and substance not less than is customary for a construction project with a scope similar to that of the Entertainment Center. The parties acknowledge and agree that the City may structure a bonding and insurance program at the level of any General Contractor or (if commercially reasonable) at the subcontractor level to avoid unnecessary duplication and expense and may use an Owner Controlled Insurance Program (OCIP) or Rolling Owner Controlled Insurance Program (ROCIP) to accomplish this. Notwithstanding the foregoing, in no event shall the Company forgo any bonding at any General Contractor or subcontractor level unless the Company has substantially equivalent coverage at the corresponding General Contractor or subcontractor level, as applicable. The Company Mortgagee shall be named as a loss payee, additional insured or otherwise on all contractor assurances required by this Section 1.17.

Section 1.18. Promoter Participation. The City's participation in the Entertainment Center pursuant to this Agreement is conditioned upon the Company entering into an agreement with a concert producer and promoter approved by the city council no later than December 31, 2013, or the City may terminate this Agreement and its participation hereunder. The City preapproves ARK Promotions, ARK Management, ARK Ventures, Live Nation, AEG Worldwide, and Front Line Management, Inc.

Section 1.19. Additional Requirements. In connection with the design and construction of the Entertainment Center, the Company shall take or contractually obligate the following entities or persons to take the following actions and to undertake the following responsibilities:

(a) the Company shall provide to the City's Designee copies (both hard copy and electronic format, to the extent the Company has both formats) of schematic design, design development and construction plans and specifications for the Entertainment Center (including revisions) as such plans and specifications are currently in existence and as completed after the date hereof;

(b) with regard to the development and construction of the Entertainment Center, the Company or such person selected by and contracting with the Company shall provide the City's Designee a copy of the detailed construction schedule outlining the major items of work of each major construction contractor, and any revisions to such schedule;

(c) the Company shall provide construction documents to the City's Designee, signed and sealed by one or more registered professional architects or engineers licensed in the State of Texas;

(d) the Architect(s) of record shall have on-site observation responsibilities of a standard as are customary for significant real estate development projects in the north Texas area and of a standard at least comparable to that set forth in Section 2.6.5 of AIA Document B141/CMA;

(e) the Company shall provide the City's Designee with not less than 3 business days' written advance notice of regularly-scheduled construction meetings that involve the Company, any General Contractor and the Architect(s) or other similar engineering expert(s), and shall permit the City's Designee to attend and observe such meetings as reasonably necessary to monitor the project and shall provide the City's Designee with copies of such construction schedules as are discussed and reviewed at any such regularly-scheduled construction meeting;

(f) the Company or any General Contractor shall arrange for and be financially responsible for site security;

(g) the Company or any General Contractor shall comply with, and shall require that its agents and subcontractors comply with, all applicable laws regarding the use, removal, storage, transportation, disposal and remediation of hazardous materials (defined below);

(h) the Company or any General Contractor shall notify and obtain the City's Designee's approval within 15 days of receipt of the request, and which shall not be unreasonably

withheld, for all field changes that directly result in non-material changes to preexisting plans for Entertainment Center's connections with City streets, storm sewers and utilities;

(i) the Company shall or shall cause its General Contractor to promptly repair, restore or correct, on a commercially reasonable basis, all damage caused by the General Contractor or its subcontractors to property or facilities of the City and to reimburse the City for out-of-pocket costs actually incurred by the City that are directly related to the City's necessary emergency repairs or such damage;

(j) the Company shall provide the City's Designee with copies of all available building systems, training, operation and maintenance manuals and materials for the Entertainment Center within a reasonable time following completion of construction;

(k) the Company shall provide the City one complete set of as-built drawings (hard copy and electronic format) for the Entertainment Center within a reasonable time following completion of construction;

(l) the Company shall allow the City's Designee to conduct a reasonable pre-final and final inspection of the Entertainment Center following substantial completion of construction. Following substantial completion of construction, the Company shall make available to the City's Designee, the Company's proposed punch list and shall reasonably consult with the City's Designee regarding such punch list; provided, however, that the Company shall not be required to add to such list any item proposed by the City's Designee unless such item constitutes an item of nonconformance to a technical specification set forth in the Project Scope Criteria. After (i) the punch list items are performed to meet specifications, (ii) receipt of certification by the Architect or Engineer that the construction performed conforms in all material respects with the approved plans and specifications, and (iii) a certificate of occupancy has been issued in accordance with City ordinances, the City shall accept the Entertainment Center, provided, however, that warranty obligations of the General Contractor and correction of defective work in accordance with the Construction Contract shall not by such acceptance become the responsibility of the City, but shall remain the responsibility of the General Contractor;

(m) the Company shall promptly obtain correction of defective work and shall cause such work to be corrected in accordance with the construction contract;

(n) the Company shall cause to be performed any soils, construction and materials testing commercially reasonable for a project of this nature by certified independent laboratories under contract to the Company or any General Contractor, and paid by the Company or such General Contractors. During construction of the Entertainment Center, the Company shall make available to the City's Designee copies of the results of all such tests relating to the Entertainment Center. After substantial completion of the Entertainment Center, the Company shall deliver to the City the results of all such tests not previously delivered to the City's Designee.

If any of the foregoing entities or persons shall fail in a material respect to perform any of its contractual obligations described above (or elsewhere under this Agreement), the Company shall use commercially reasonable efforts to enforce such contractual obligations against such entities or persons.

Section 1.20. Procurement of Goods and Services from Irving Businesses and/or Historically Underutilized Businesses. In constructing the Entertainment Center, the Company agrees to comply with the City's Good Faith Effort Program.

Section 1.21. Leadership in Energy and Environmental Design. All construction of and relating to the Restaurants shall meet Leadership in Energy and Environmental Design standards and the Company shall obtain U.S. Green Building Council LEED minimum level certification for the building shell of the Restaurants (“**LEED Certification**”). However, the conditioned spaces in Building B1 need not have LEED Certification if the HVAC systems, including but not limited to the cooling tower, chillers, air handlers, condenser and chilled water pumping systems, of those conditioned spaces are separate from and independent of the HVAC system designed for heating and cooling of the office building. LEED Certification is not required of the second floor open air concessions of Building D1, Building D2 (Amphitheater), the Parking Facilities and office building. The buildings referenced in this Section 1.21 are those shown on the dimensional control plans prepared by Architect dated April 17, 2015.

Section 1.22. Title and Mechanic's Liens.

(a) Title. The Company agrees to do nothing before or during construction that would cloud or otherwise prejudice the City's ability to secure clear title to the Entertainment Center and its constituent components.

(b) Mechanic's Liens. The Company agrees that the Company will not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against the Entertainment Center for work or materials furnished to the Company in connection with any construction, improvements, renovation, maintenance or repair thereof made by the Company or any contractor, agent or representative of the Company. The Company shall cause any such claim of lien to be fully discharged no later than 30 days after the Company's receipt of written notice of the filing thereof; provided, however, that in the event the Company, in good faith, disputes the validity or amount of any such claim of lien, and if the Company shall either (i) give to the City such security as the City may reasonably require to insure payment thereof and prevent any sale, foreclosure, or forfeiture of the Entertainment Center or any portion thereof by reason of such nonpayment or (ii) cause such lien to be bonded around in accordance with Texas law, the Company shall not be deemed to be in breach of this section so long as the Company is diligently pursuing a resolution of such dispute with continuity and, upon entry of final judgment resolving the dispute, if litigation or arbitration results therefrom, promptly discharges said lien.

Section 1.23. No Limitation on City's Governmental Functions. 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 or its General Contractor's construction 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 Agreement, including without limitation liability for costs incurred by the General Contractor or

the Company, and as between the Company and the City, any such costs shall be the sole responsibility of the Company and its General Contractor.

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 Agreement 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 Agreement, thus exclude any action, omission or duty of the City when performing its Governmental Functions. Any action, omission or circumstance arising out of the performance of the City of its Governmental Functions may prevent City from performing its obligations under the Agreement and shall not cause or constitute a default by City under this Agreement or give rise to any rights or claims against the City in its capacity as a party to this Agreement, 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 Functions 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 Agreement 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.

Section 1.24. City Consents. Any consent or approval by or on behalf of the City and the City's Designee required in connection with the design, construction, or operation of the Entertainment Center or otherwise under this Agreement 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 and the City's Designee shall not include any implied or imputed approval. No approval by the City or the City's Designee shall be deemed to constitute or include any approval required under any City code or in connection with any Governmental Functions 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 30 calendar days of the Company's written request, or at the next regularly scheduled city council meeting occurring at least 10 calendar days after receipt of the Company's written request. Delays resulting from the City's act or failure to act will extend the schedule and the Company's performance obligations a like amount of days.

Section 1.25. Capacity of City's Designee. **"City's Designee"** shall mean the City Manager or his designee. The City's Designee shall have full authority to administer those portions of this Agreement specifically stated herein. Notwithstanding anything to the contrary in the Agreement, all references in the Agreement to "City's Designee" or to employees, agents, representatives, contractors and the like of City shall refer only to persons acting in the City's capacity as the owner of the Site and thus all such references specifically exclude any employees, agents, representatives, contractors and the like acting in connection with the performance of the

Governmental Functions of the City. Without limiting the foregoing, all police, fire, permitting, regulatory, water and power, health and safety and sanitation employees of the City shall be deemed to be acting in connection with the performance of the Governmental Functions of the City. A delay in the City's performance of its Governmental Functions, whether resulting from the City's acts or failure to act, will extend the schedule and the Company's performance obligations a like amount of days.

The parties acknowledge that City is a municipal corporation operating pursuant to its Charter in addition to being the owner of the Site, and that no representation, consent, approval or agreement by City's Designee shall be binding upon, constitute a waiver by or estop the City from exercising any of its rights, powers or duties in connection with its Governmental Functions nor will any portion of any action by the City's Designee be deemed to waive any immunities granted to the City when performing its Governmental Functions, which are provided under Applicable Law, including Section 101.0215(a), TEXAS CIVIL PRACTICE AND REMEDIES CODE, as may be amended or replaced. For example, approval by the "City" of project design provided in Section 1.9 shall not constitute satisfaction of any requirements of, or the need to obtain any approval by, the City's Fire Department, Planning and Development Department, Capital Improvement Projects Department, and any other applicable department acting in connection with the performance of the Governmental Functions of the City. Further, any consent to jurisdiction by City is only with respect to matters arising in its capacity as a party to the Agreement and expressly does not constitute a waiver of the City's governmental immunity or a consent to jurisdiction for any actions, omissions or circumstances, in each case arising out of the performance of the Governmental Functions of the City.

Section 1.26. Right of the City to Make Inspection. The City and the City's Designee shall have the right, during normal business hours, and on 24 hours' or other reasonable notice, to enter the Entertainment Center for the purpose of inspection of the progress of construction; provided, however, the City and the City's Designee shall comply with reasonable restrictions generally applicable to all visitors to the Site that are imposed by the Company or its General Contractor or subcontractors. If the Company is in material default under this Agreement beyond any applicable cure period or in the event of an emergency which is not being timely addressed, the City and the City's Designee may enter the Site to make any repairs to the Improvements, both interior and exterior, and of every kind or nature which are required of the Company under this Agreement but which the Company has failed to perform after reasonable notice (other than in the case of an emergency in which notice is impossible or impractical). The Company shall be obligated to reimburse the City the reasonable costs incurred by the City for any such repairs. Nothing contained in this paragraph shall be deemed to impose on the City any obligation to actually make repairs or alterations.

Section 1.27. Conditions to Continue City Funding.

The City has completed the issuance of its Bonds (defined in Section 2.1(a)) to fund the City Construction Contribution. The City shall have no obligation to expend Net Bond Proceeds (defined in Section 2.1(e)), \$1,600,000 Brimer HOT Revenues (defined in Section 2.3(a)), Excess Brimer HOT Revenue (defined in Section 2.5(b)) or any other funds until each condition precedent set forth in the Lease 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 in the manner provided in the Lease.

Section 1.28. Conditions to Continuing Construction.

(a) Conditions to Company's Start of Construction. The Company shall not commence any additional construction unless and until the following are satisfied:

(1) execution of this Agreement and the Amended and Restated Transaction Documents by both parties;

(2) all of the Conditions Precedent are satisfied;

(3) approval, to the extent provided in this Agreement and in accordance with the procedures set forth in this Agreement, of the plans and specifications for the Entertainment Center for which the Company is requesting permission to commence construction;

(4) the Company shall have provided the City's Designee: (i) an estimate of the total cost to plan, acquire, establish, develop, construct, market and open the Entertainment Center (such estimate of total cost as approved and from time to time updated, the "**Total Entertainment Center Costs**"); (ii) an estimate of the Venue Project Costs, certified as reasonable by the Architect or Engineer or by the Company's third party construction cost consultant; (iii) a schedule of construction and expenditure of the Total Entertainment Center Costs, on a monthly basis (as updated and approved from time to time, the "**Schedule of Projected Project Expenditures**") that has been prepared by the Architect or Engineer or by the Company's third party construction cost consultant that has been approved by the City or the City's Designee; (iv) certification by the Company that the Credit Agreement defined in Lease 1(c)(1) remains in full force and effect; and (v) unless otherwise agreed to by the City, information reasonably satisfactory to the City's Designee evidencing the existence of insurance and performance and payment bonds as required by this Agreement for the Entertainment Center; and

(5) the Company shall have obtained all building permits, zoning and other regulatory approvals required for the Improvements.

(b) Company's Obligation to Resume Construction. The Company shall have the obligation to resume construction within sixty (60) days following the date the Conditions Precedent are satisfied.

Section 1.29. Predevelopment Costs. The Company shall pay all predevelopment Venue Project Costs of professional services of planning, designing, engineering, establishing and developing the Entertainment Center rendered prior to the issuance of the building permit for the Entertainment Center. Once the first building permit is issued for the Entertainment Center, such costs, to the extent they are Venue Project Costs, may be reimbursed from Excess Brimer HOT Revenues.

Section 1.30. Representations and Warranties of the Company. To induce the City to enter into this Agreement and the Amended and Restated Transaction Documents, the Company hereby represents and warrants to the City, as of the Execution Date, as follows:

(a) Reaffirmation of Existing Representations and Warranties. After giving effect to the amendments set forth in this Agreement, each representation and warranty of the Company contained in this Agreement is true and correct in all material respects on the date hereof.

(b) Due Authorization; No Conflict. The execution, delivery and performance by the Company of this Agreement 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.

(c) Validity and Enforceability. This Agreement constitutes the valid and binding obligation of the Company enforceable in accordance with its terms.

(d) No Default or Event of Default. After giving effect to this Agreement, no Event of Default has occurred which is continuing.

Section 1.31. 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 Development Agreement 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 Development Agreement or any of the other Transaction Documents, or any of the terms or conditions of the Prior Development Agreement or the Transaction Documents, or any party's performance obligations under the Prior Development Agreement 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 Development Agreement or the Transaction Documents, or any of the terms and conditions of the Prior Development Agreement or the Transaction Documents, or any party's performance obligations under the Prior Development Agreement 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 Agreement 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 Agreement 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 design and construction contracts under Section 1.16 of the Prior Development Agreement (the "Contracts"). In the event this Agreement terminates in accordance with Section 1.27 above, and notwithstanding the release described in this Section 1.31, the Company shall ensure that such Contracts are terminated and shall indemnify, defend and hold the City harmless from and against any and all claims made by the parties to the Contracts against the City.

This Section 1.31 shall survive the termination of this Agreement.

ARTICLE II FUNDING FOR CONSTRUCTION OF THE ENTERTAINMENT CENTER

Section 2.1. Definitions.

(a) "**Bonds**" means the City's hotel occupancy tax revenue bonds issued by the City pursuant to the Act and Bond Ordinance No. ORD-2013-9534.

(b) "**Brimer HOT Revenues**" means the 2 percent hotel occupancy tax revenues collected pursuant to Chapter 334, TEXAS LOCAL GOVERNMENT CODE, as amended.

(c) "**City Construction Contribution**" means the City's out-of-pocket financial contribution to the Venue Project Costs of constructing the Entertainment Center, including the Net Bond Proceeds, \$1,600,000 Brimer HOT Revenues held in the Venue Project Fund prior to August 5, 2013, and the TIF Revenues not to exceed \$44,000,000.

(d) "**Hotel**" means the convention center full service headquarters hotel located adjacent to the Entertainment Center and qualifying as a "hotel project" pursuant to Chapter 351, TEXAS TAX CODE, as amended.

(e) "**Net Bond Proceeds**" means that amount of proceeds from bonds issued by the City pursuant to Ordinance No. ORD-2013-9534; which amount is \$35,048,922.61.

Section 2.2. Company Contribution.

(a) The Company estimates the Total Entertainment Center Costs will be approximately \$165,000,000. The Company shall be responsible for all Total Entertainment Center Costs in excess of the City Construction Contribution, and any amounts to be waived, paid, reimbursed or funded by the City pursuant to this Agreement.

(b) The Company will pay approximately \$125,000,000 in private funds to plan, design, acquire, establish, develop, construct, market and open the Entertainment Center. The amounts paid and to be paid by the Company in connection with the foregoing (exclusive of the Net Bond Proceeds) are referred to in this Agreement as the "**Company Contribution.**"

Section 2.3. City Construction Contribution.

(a) Contribution and Amount. The City Construction Contribution is and shall be limited to (i) Net Bond Proceeds; (ii) \$1,600,000 Brimer HOT Revenues held in the Venue Project Fund prior to August 5, 2013 approved by City Resolution No. RES-2014-106 dated March 20, 2014; and (iii) the amount of Tax Increment Reinvestment Zone No. 1 revenue described below ("**TIF Revenues**"), not to exceed \$44,000,000 in total.

(b) Tax Increment Reinvestment Zone No. 1. Upon the Company's demonstration of compliance with Section 1.27 herein, the City shall use its reasonable and best efforts to obtain TIF Revenues, in an amount not to exceed \$44,000,000, from Tax Increment Reinvestment Zone No. 1 in accordance with Chapter 311, TEXAS TAX CODE, as amended ("**Zone Act**"), to the extent Company applies, constructs and demonstrates capital expenditures in compliance with the TIF Project and Financing Plan, Zone Act and City ordinances. Any TIF Revenues shall be paid to Company as reimbursement for construction of lawful project costs, not reimbursed by Net Bond Proceeds, under the Zone Act and, pursuant to the Second Amended and Restated TIF No. 1 Reimbursement Agreement between the City and Company, approved concurrently herewith. This portion of the City Construction Contribution shall only be obtained from TIF Revenues. Should there be insufficient TIF Revenues available, or should any other conditions exist that make it impossible to fund all or any portion of the total, the Company shall have no right to demand the City Construction Contribution from any other funds of the City.

(c) Bond Proceeds. The City deposited the Net Bond Proceeds pursuant to the ordinance authorizing the issuance of the bonds (the "**Bond Ordinance**"), and reserved such funds for payment of approved Venue Project Costs as requested from time to time by the Company in accordance with the terms of the Bond Ordinance. The portion of the City Construction Contribution to be funded by the issuance of debt shall only be obtained through the issuance of the Bonds. The Company shall have no right to demand the City Construction Contribution from any funds of the City, other than those described in this Section 2.3.

Section 2.4. Existing Brimer HOT Revenue Debt.

The City has currently outstanding its Hotel Occupancy Tax Revenue Refunding Bonds, Taxable Series 2014A, payable from Brimer HOT Revenues and issued pursuant to Bond Ordinance No. ORD-2013-9533 (the "**Refunding Bonds**"). Such Refunding Bonds were issued on a parity basis with the Bonds described in Section 2.3 hereof. Such Refunding Bonds refunded the City's Hotel Occupancy Tax Revenue Refunding Bonds, Taxable Series 2011 (the "**Series 2011 Bonds**").

Section 2.5. Payment of Venue Project Costs with Excess Brimer HOT Revenues.

(a) Brimer HOT Revenues Prior to the Issuance of Bonds. Prior to the issuance of the City's Bonds pursuant to Section 2.3, but while the Series 2011 Bonds or the Refunding Bonds are outstanding, all Brimer HOT Revenues in excess of the amounts needed for the payment of debt service on the Series 2011 Bonds or the Refunding Bonds and in excess of the City's administrative costs directly relating to the Entertainment Center shall be held by the City and accrue to the benefit of the Company, commencing on August 5, 2013, the date that the Prior Development Agreement

became effective. 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 2.9. The City Construction Contribution of \$1,600,000 Brimer HOT Revenue held in the Venue Project Fund prior to August 5, 2013, shall be used to reimburse Company for the payment of Venue Project Costs solely attributed to actual construction hard costs, excluding soft costs, as submitted and approved in the manner provided in Section 2.9 all in accordance with City Resolution No. RES-2014-106.

(b) Brimer HOT Revenues Subsequent to the Issuance of Bonds. Subsequent to the issuance of the Bonds pursuant to Section 2.3, all Brimer HOT 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 (the "**Excess Brimer HOT Revenues**"), shall be held by the City and accrue to the benefit of the Company. 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 2.9. The payment of such Excess Brimer HOT 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 pursuant to the provisions of the Bond Ordinance. Excess Brimer HOT Revenues will fund Venue Project Costs in the following order: first to fund the \$900,000 reserve account to be provided in the lease agreement; 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 under this Agreement submitted prior to Substantial Completion.

(c) Additional Bonds. Should the Company request, the City, in its discretion, may issue additional bonds (the "**Additional Bonds**") containing a pledge of any portion of a ticket tax levied by the City pursuant to Chapter 334, TEXAS LOCAL GOVERNMENT CODE, as amended, and the payment of debt service on the Additional Bonds and any other amounts due under the City's ordinance(s) issuing the Additional Bonds shall be subordinate to the reimbursement of Venue Project Costs under this Section 2.6.

Section 2.6. Venue Project Costs. The Venue Project Costs of the Entertainment Center (collectively, the "**Venue Project Costs**") shall be costs for which funds from the Venue Project Fund may be used under the Act, including without limitation the following:

(a) land preparation costs, including without limitation (i) all environmental testing, remediation and sampling necessary with respect to the Site; (ii) surveys, (iii) soils and hydrological testing and studies, (iv) engineering work and (v) the cost of designing and constructing or renovating internal utilities that will be necessary or convenient to service the Entertainment Center;

(b) land planning, design, architectural and engineering costs incurred by the Company or the City for the preparation of plans, specifications and designs for the Entertainment Center;

(c) costs incurred by the Company to construct, equip, and furnish the Entertainment Center, including for construction oversight and assessments by the Architect, Engineer and other consultants;

(d) all on-site work and off-site connection work to cause utilities to be available at the Entertainment Center, utility relocation and street improvements;

(e) fees and expenses of the General Contractor, subcontractors, consultants and other similar persons incurred by the Company, directly in connection with the planning, design, engineering, construction, equipping and furnishing of the Entertainment Center;

(f) costs incurred by the Company in connection with removing, or providing security for, any lien or encumbrance that arose in connection with the design, engineering, construction, equipping or furnishing of the Entertainment Center;

(g) costs incurred for any "related infrastructure" (as such term is defined in the Act) that is not located on the Site and including without limitation (A) costs of detention facilities and other related infrastructure improvements and (B) costs of acquiring right-of-way for designing and constructing various necessary roadway improvements which otherwise might constitute "related infrastructure";

(h) zoning and land use issues and confirmation that all zoning and land use ordinances, codes and laws allow the development and construction of the Entertainment Center as contemplated by this Agreement, and/or the availability of variances and special use permits for any non-compliance);

(i) fees paid by the City to the City's Designee and other reasonable out-of-pocket fees paid relating to its oversight and administration of the construction of the Entertainment Center, including any deductible paid pursuant to Section 6.22 herein; and

(j) such other costs and expenses as the parties hereto shall mutually approve in writing.

Section 2.7. Non-Venue Project Costs. Venue Project Costs do not include costs incurred by the Company relating to the start-up business costs of the Company or any overhead costs of the Company that are not directly related to the construction costs of the Entertainment Center.

Section 2.8. City's Statutory and Bond Ordinance Funds.

The City has established the "**Venue Project Fund**" as required by the Act, and shall maintain the same at its lawful depository bank, separate and apart from all other accounts and funds of the City. Money on deposit in the Venue Project Fund may be invested in accordance with Applicable Laws. The Venue Project Fund shall be divided into such separate and distinct accounts as may be required to identify the specific sources and amounts of funds on deposit therein at all times. When and as required by the terms and provisions of the Bond Ordinance, and as and by this Agreement, funds on deposit in the Venue Project Fund shall be deposited and/or transferred to various accounts therein or to other funds and accounts in order to assure the timely payment of the Bonds and to provide for the payment of the City's share of each installment payment of approved Venue Project Costs that are to be paid from the proceeds of the Bonds. The City shall establish in the Bond Ordinance such funds and accounts as may be required by

underwriters, investors, rating agencies, and credit providers, to the extent permitted by and consistent with the Act and other Applicable Laws.

Section 2.9. Payment of Venue Project Costs. The Bond Ordinance shall provide that the trustee for the Bonds shall disburse funds held pursuant to the Bond Ordinance to pay Venue Project Costs upon due completion of a Payment Certificate (defined below) authorizing such payment, in the manner set forth below:

(a) "**Payment Certificate**" shall mean a written certificate in the form that shall be attached to the Bond Ordinance, executed by the Company, a copy of which is provided to the City's Designee. The Payment Certificate shall, at a minimum:

(1) (i) reasonably identify and represent that the identified Venue Project Costs are due and owing and authorized to be paid pursuant to such Payment Certificate, (ii) specify the portions of the identified Venue Project Costs that are approved Venue Project Costs, and (iii) certify that the amounts payable do not include contract retentions (other than those that are due);

(2) have attached to it a copy of an invoice(s) relating to such Venue Project Costs which reasonably identifies the payee (or payees), the goods, services and/or materials provided by such payee (or payees) and the total amount due and owing with respect to such goods, services and/or materials;

(3) contain, in the case of any Venue Project Cost covered by such Payment Certificate that was incurred in connection with services, goods or materials provided by the General Contractor or any other contractor, a certification executed by the Architect for the purpose of confirming that such services, goods or materials have been satisfactorily delivered or completed as the case may be;

(4) contain, in the case of any Venue Project Cost covered by such Payment Certificate that was incurred under contracts providing for the fees of the Company, or any of their respective employees or agents a certification executed by the City's Designee for the purpose of confirming that the amount reflected in the invoices attached to such Payment Certificate with respect to such Venue Project Cost is consistent with the terms of the written contract pursuant to which such Venue Project Cost was incurred;

(5) be 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 and are due and owing; and

(6) contain ACH instructions of information for the payments made pursuant to the Payment Certificate, which may specify that payment is made to the Company for distribution to authorized and identified payees, or to the Company for reimbursement of Venue Project Costs.

(b) Following the Company's satisfaction of the Conditions Precedent, if a Payment Certificate is otherwise completed and executed in accordance with Section 2.9(a) above and is submitted to the City's Designee, then the City's Designee shall promptly, and in no event later

than 30 days after receipt of the Payment Certificate by the City's Designee, note approval or disapproval of payment thereunder from funds held under the Bond Ordinance and return it to the Company and the trustee for the funds held under the Bond Ordinance. If the City's Designee timely disapproves or questions the correctness or authenticity of the Payment Certificate by delivering a detailed notice to the Company, then payment with respect to disputed portion(s) of the Payment Certificate shall not be made until the Company and the City's Designee have jointly resolved such dispute. The City's Designee and the Company shall meet promptly and cooperate in good faith to resolve any such disputes as expeditiously as possible.

Section 2.10. Rights to Audit.

(a) 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 financing of the City Construction Contribution, and, if applicable, Brimer HOT Revenues in excess of the amount of such revenues required to pay debt service on the Bonds. 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 the funds and accounts therein and Brimer HOT Revenues, and permit the Company to review and copy such records in connection with conducting a reasonable audit of such accounts.

(b) 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 to pay the Company Contribution. 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 Contribution, and permit the City to review and copy such records in connection with conducting a reasonable audit of such funds and accounts.

(c) 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 3 years from the date of completion of the Entertainment Center. All audits must be diligently conducted.

Section 2.11. Cost Overrun Funding Commitment. The Company is responsible for funding (i) all approved Venue Project Costs in excess of the City Construction Contribution, (ii) all non-Venue Project Costs included in the Total Entertainment Center Costs, and (iii) all Venue Project Costs in excess of the Total Entertainment Center Costs (such excess costs being "Overruns"). If the City reasonably determines at any time that there will be any Overruns, then the City may deliver to the Company a notice (signed by the City and describing in reasonable detail the basis on which the City has made such determination) requesting that the Company either (a) furnish to the City reasonable evidence of the Company's existing financial ability to complete the Entertainment Center in accordance with this Agreement with no Overruns, including those known or reasonably foreseeable, or (b) deposit funds or deliver reasonable evidence of additional financing, in an aggregate amount sufficient to cover the projected Overruns or otherwise provide proof of the availability of sufficient Company funds. Prior to delivering the notice described in

the first sentence of this section, the City may deliver to the Company a request signed by the City that cites this section, expresses that the City has a good faith concern about the Company's financial ability to complete the Entertainment Center due to Overruns as described in this section, and requests reasonable access to Company records in the possession and reasonable control of the Company for the purpose of determining whether there is a sound basis for the City to invoke this section. Upon receiving any such written request, the Company shall reasonably cooperate with the City to make Company records relating to the Venue Project Costs expended, whether there will be any Overruns, and the funding or financing of any Overruns available for review by the City (at the Company's offices during normal office hours on 5 days' written notice).

Section 2.12. Quarterly Reports. During the period prior to the substantial completion of the Entertainment Center, the Company shall furnish to the City, as promptly as practicable after the end of each calendar quarter, or together with the monthly draw requests, a report regarding the Entertainment Center that describes, in reasonable detail, the amount of Venue Project Costs that have been funded through the Company's accounts in construction of the Entertainment Center during the applicable fiscal quarter.

Section 2.13. Financing. The Company Contribution may be financed in any manner determined by the Company. The Overruns may be financed in any manner determined by the Company. The financing of the Company Contribution shall not be secured by, guaranteed by or payable by any of the funds of the City or any interest in the Entertainment Center other than the leasehold mortgage as defined in the Lease. The Company currently contemplates a private loan or private equity financing to finance a portion of the Company Contribution. The Company will be the sole obligor for such financings and neither the City's ownership interest in the Entertainment Center nor Brimer HOT Revenues shall be pledged as security for such loan. The City will allow the Company to pledge reimbursement revenues from the Excess Brimer HOT Revenues pursuant to Section 2.5 herein, to the extent any such revenues exist, to Company's private financing.

ARTICLE III THE SITE

Section 3.1. City's Ownership of the Entertainment Center. The City owns fee simple title to the Site, together with all rights and appurtenances relating thereto, subject to all matters of public record and other matters that would be disclosed by an accurate survey of the Site. The City will provide copies of its files on the Site, including without limitation, surveys, deeds, title policies, and environmental analysis and engineering reports, if any, upon Company's request for same, provided that the City makes no representation with respect to the accuracy or completeness of any of the foregoing. From and after the date hereof, the City shall not grant or convey any interest in the Site (including without limitation any liens, encumbrances or City-controlled restrictions) that would materially adversely affect the design, engineering, construction, furnishing, equipping or operation of the Entertainment Center and shall not use the Site for any purpose other than the Entertainment Center. Notwithstanding the foregoing, the City shall be free to grant such easements, rights-of-way and access rights as it deems reasonably necessary to the development of the Entertainment Center, the Convention Center and the Hotel that do not materially adversely affect the Entertainment Center.

Section 3.2. Condition of Property. The Company is responsible for and shall undertake its own due diligence investigation of the Site and accepts the Site for Company's use on an "AS IS, WHERE IS, WITH ALL FAULTS" basis and subject to the existing physical conditions, matters of record and zoning. To the fullest extent permitted by law, the City hereby disclaims and the Company hereby waives any and all representations and warranties, express or implied, in any way regarding the Site, including without limitation the warranties of commercial habitability, merchantability, marketability, or fitness for a particular purpose. The Company acknowledges that, having been given the opportunity to inspect the Site, the Company is relying solely on its own investigation of the Site and not on any information provided or to be provided by the City and agrees to accept the Site for use and waives all objections or claims against the City arising from or related to the Site or to any hazardous materials (defined below) on the Site; provided, however, that this acknowledgment shall not limit the parties' commitments under Section 3.3 of this Agreement. The Company further acknowledges that any information provided or to be provided with respect to the Site was obtained from a variety of sources and that the City has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information. The City is not liable for or bound in any manner by any verbal or written statements, representations or information pertaining to the Site, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person.

Section 3.3. Environmental Remediation. The City and the Company each acknowledge that it has no knowledge of any necessity of any environmental remediation at the Site. If it is subsequently discovered that any environmental remediation is needed at the Site, then, as promptly as practicable after such discovery, the Company shall present to the City a detailed plan for the environmental remediation of the Site, identifying steps to be taken and setting forth the schedule for such environmental remediation. The City or the City's Designee shall promptly consult with the Company regarding the environmental remediation plan. The City and the Company each shall reasonably cooperate in good faith to finalize the environmental remediation plan as promptly as practicable after its initial delivery by the Company. The final remediation plan shall result in clean up consistent with any remedy standard authorized by Subchapter B of 30 TEXAS ADMINISTRATIVE CODE Chapter 350 as being protective of human health and the environment. Such environmental remediation shall be carried out in accordance with all applicable laws. The Company shall cause its General Contractor or another contractor to perform such environmental investigation and remediation work at the Site. The City shall take all reasonable action to cooperate with the Company and its contractors in conducting such environmental remediation, including without limitation by adopting any commercially reasonable restrictions on the Site required to meet the selected remedy. The costs associated with the environmental remediation shall constitute Venue Project Costs. The City shall cause its employees to reasonably assist the Company in completing the environmental remediation plan.

Section 3.4. Temporary Street Closures. To the extent reasonably requested by the Company in connection with the construction of the Entertainment Center, the City shall grant and issue to the Company all necessary permits to authorize temporary closures of, and shall grant and issue to the Company all necessary permits to make cuts or other perforations in, demolish and excavate all or portions of any street, alley or other public right-of-way that is under the reasonable control of the City and that is contained in whole or in part within the Site or that abuts any portion

of the Site; provided however, all such actions are subject to the City's obligations to preserve and protect the public health, safety and welfare under Applicable Laws.

Section 3.5. Street Abandonment. At the Company's request, the city council will consider appropriate action to close, vacate and abandon any streets, alleys, sidewalks or other public rights-of way that would constitute any portion of the Site. Any costs associated with such abandonment may be designated a Venue Project Cost.

ARTICLE IV TERMINATION

Section 4.1. Termination at Drop Date. If the Conditions Precedent have not been satisfied on or before the Drop Date, this Agreement shall automatically terminate and all rights and obligations of the parties hereunder shall be deemed to have expired and terminated without further action by either party, and no provision of this Agreement shall be of any further force or effect, except for any provisions that by their explicit terms survive termination or expiration of this Agreement.

Section 4.2. Termination after Drop Date. Upon the completion or satisfaction by the parties, or waiver by the parties, of all of the parties' obligations under this Agreement, the Agreement shall expire and the relationship of the parties shall be determined by the Lease. Provided however, the following sections of this Agreement shall survive: Sections 1.31, 6.18, 6.19 and 6.22.

ARTICLE V DEFAULT AND REMEDIES

Section 5.1. Company Default. Each of the following events shall be an "**Event of Default**" by the Company under this Agreement:

(a) the Company shall fail to pay to the City any monetary sum hereby required of it as and when the same shall become due and payable and shall not cure such default within 30 days after the later of the date on which written notice thereof is given by the City to the Company and the date on which any dispute relating to such amount is resolved by agreement or adjudication;

(b) the Company shall fail in any material respect to maintain any of the insurance or bonds required by this Agreement, and the continuation of the failure without cure for a period of 30 days after the City notifies the Company of the failure in writing in accordance with the notice provisions under this Agreement;

(c) the Company shall fail to comply in any material respect with any term, provision or covenant of this Agreement (other than the payment of money to the City) where such failure to comply would materially adversely affect the construction and operation of the Entertainment Center pursuant to this Agreement, and shall not cure such failure within 90 days after written notice thereof is given by the City to the Company; provided, however, that if such default cannot reasonably be cured within 90 days, then (i) the Company shall commence its cure efforts within 90 days of the Company's receipt of notice thereof from the City, (ii) the Company shall pursue

such cure with commercially reasonable diligence and continuity (subject to any commercially reasonable delays for architectural or engineering studies, testing or similar activities or Force Majeure) until such cure is completed, and (iii) the Company shall be given an additional reasonable period of time within which to cure such default in excess of the initial 90 days;

(d) a receiver or trustee is appointed to take possession of all or substantially all of the assets of the Company; or if any action is taken or suffered by the Company pursuant to an insolvency, bankruptcy, or reorganization act in respect of the Company; or if the Company makes a general assignment for the benefit of its creditors; and such appointment, action, or assignment continues for a period of 60 days.

Section 5.2. City's Remedies; Rights of Company Mortgagees.

(a) Upon the occurrence of an Event of Default by the Company, subject to rights and remedies of the Company Mortgagee set forth in this Section 5.2, the City may pursue any legal or equitable remedy or remedies, including, without limitation, specific performance, damages, and termination of this Agreement; provided, however, that the City shall have no right to terminate this Agreement unless the City delivers to the Company a second notice which expressly provides that the City will terminate within 30 days if the default is not addressed as herein provided. Termination or non-termination of this Agreement upon a Company Event of Default shall not prevent the City from suing the Company for specific performance, damages, injunctive relief or other available remedies with respect to obligations that expressly survive termination. Upon termination by the City, the City may occupy the Entertainment Center, and the Company shall assign to the City any of its contracts and agreements related to the Entertainment Center requested by the City to be so assigned. In the event the Company fails to pay any of the expenses or amounts or perform any obligation specified in this Agreement, then to the extent such failure constitutes an Event of Default hereunder, the City may, but shall not be obligated to do so, pay any such amount or perform any such obligations and the amount so paid and the reasonable out-of-pocket costs incurred by the City in said performance shall be due and payable by the Company to the City within 30 days after the Company's receipt of an itemized list of such costs and shall thereafter bear interest at the rate specified in this Agreement. All remedies of the City under this Agreement shall be cumulative.

(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 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 5.2 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.

(c) Right to Cure. Any Company Mortgagee, at its option, acting either directly or indirectly through a designee, may, but shall not be obligated to, 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 5.2(e)).

(d) Option for New Agreement. If this Agreement terminates for any reason other than pursuant to Section 4.1, 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 development 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 5(e). 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.

(e) Obligation to Cure. In order for any Company Mortgagee or its designee, including without limitation, a Company Mortgagee Designee, to become a party to a New Agreement, whether pursuant to the Company Mortgagee's right under Section 5.2(c), under Section 5.2(d), 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.

(f) 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 5, 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.

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

(h) 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 5.2(h) shall apply both with respect to this Agreement and any new agreement entered into under Section 5.2(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 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 5.2 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.

(j) 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 5.2(j). The provisions of Section 5.2(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 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.

(k) Procedure on Event of Default.

(i) Transfers After Acquisition Upon Event of Default. Subject to the provisions of Section 5.2(e), 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 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.

(iv) "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.

Section 5.3. City Default. Each of the following events shall be an Event of Default by the City under this Agreement:

(a) the City shall fail to pay to the Company any monetary sum hereby required of it as and when the same shall become due and payable and shall not cure such default within 30 days after the later of the date on which written notice thereof is given by the Company to the City and the date on which any dispute relating to such amount is resolved or adjudicated;

(b) the City shall fail to comply in any material respect with any term, provision or covenant of this Agreement, other than the payment of money, and shall not cure such failure within 90 days after written notice thereof is given by the Company to the City (provided that if such default cannot reasonably be cured within 90 days, then the City shall have an additional reasonable period of time within which to cure such default); and

(c) The City shall fail to pursue its lawful remedies to cause the trustee for the Bonds to make payments pursuant to the Bond Ordinance in the event that the Trustee shall default in its duties under the Bond Ordinance and unlawfully refuse payment of amounts owed pursuant to a Payment Certificate.

Section 5.4. Company's Remedies. Upon the occurrence of any Event of Default by the City, the Company may pursue any legal or equitable remedy or remedies, to which it may show itself entitled, including termination of this Agreement; provided, however, that the Company shall have no right to terminate this Agreement unless the Company delivers to the City a second notice which expressly provides that the Company will terminate within 30 days if the default is not addressed as herein provided.

Section 5.5. Waiver. Forbearance by the non-defaulting party to enforce one or more of the remedies herein provided upon the occurrence of an Event of Default by the other party shall not be deemed or construed to constitute a waiver of such default. One or more waivers of a breach of any covenant, term or condition of this Agreement by either party hereto shall not be construed by the other party as a waiver of a different or subsequent breach of the same covenant, term or condition. The consent or approval of either party to or of any act by the other party of a nature

requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any other subsequent similar act.

ARTICLE VI
MISCELLANEOUS

Section 6.1. Further Agreements. The City and the Company each will use reasonable efforts to complete and execute all documentation necessary or appropriate to carry out the transactions agreed to by the parties, including the Amended and Restated Transaction Documents.

Section 6.2. GOVERNING LAW. THIS AGREEMENT SHALL BE INTERPRETED AND THE RIGHTS OF THE PARTIES DETERMINED IN ACCORDANCE WITH THE LAWS AND COURT DECISIONS OF THE UNITED STATES APPLICABLE THERETO AND THE LAWS AND COURT DECISIONS OF THE STATE OF TEXAS APPLICABLE TO AN AGREEMENT EXECUTED, DELIVERED AND PERFORMED IN SUCH STATE.

Section 6.3. Venue for Actions. The venue for any legal action arising out of this Agreement shall lie exclusively in Dallas County, Texas.

Section 6.4. Dispute Resolution. The parties commit to use commercially reasonable, diligent efforts to cooperate and resolve in good faith all issues and disputes that may arise out of this Agreement. 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 under reasonable and customary practices to be agreed to in each instance by the parties.

Section 6.5. Obligations to Defend Validity of Agreement. If litigation is filed by a third party against the Company or the City in an effort to enjoin either party's performance of this Agreement, the parties hereto shall take all commercially reasonable steps to support and defend the validity and enforceability 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 (defined in Section 6.24).

Section 6.6. Successors and Assigns. This Agreement may not be assigned by either party without the express written consent of the other party 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 under Section 2.13; or (b) as permitted by Section 5.2. The provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 6.7. Entire Agreement; Amendment. This Agreement (including the Exhibits attached hereto), and the other documents delivered pursuant hereto constitute the full and entire understanding and agreement between the parties with regard to the construction of the Entertainment Center and supersede any prior or contemporaneous, written or oral agreements or discussions between the parties relate to construction of the Entertainment Center. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated, except by a written instrument signed by the parties hereto.

Section 6.8. Exclusive Dealing and Non-Compete Covenants.

(a) 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 county or any city 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 6.8(a) imposes any limitations on a non-affiliated concert promoter for the Entertainment Center. This Section 6.8(a) shall not apply to a Qualifying Company Mortgagee Designee, but shall apply to all successors and assigns thereafter. The portions of this Section 6.8(a) regarding the Austin and Oklahoma City metropolitan areas restrictions shall not apply to a successor to the Company following a Foreclosure Event, but shall apply to all successors and assignees thereafter.

(b) During the term of this Agreement, 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 Agreement.

Section 6.9. 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.

Section 6.10. Representatives. During the term of this Agreement, the City Manager or his designee shall have full authority to administer this Agreement on behalf of the City. The Company shall be entitled to rely on the authority of the City Manager or his designee for such purposes under this Agreement.

During the term of this Agreement, the Company shall designate two individuals who shall have full authority to administer this Agreement on behalf of the Company. The initial Company representatives shall be Noah Lazes and Richard Lazes. The Company may designate a permanent or temporary replacement for any Company representative by delivering a notice to the City executed by the Company.

Section 6.11. Notices. All notices, demands, requests, approvals, or other communications required or permitted under this Agreement must be in writing and sent to the addresses specified below and, unless personal delivery is effected earlier, will be deemed delivered:

(a) 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

(b) 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

(c) 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;

If to the City: City of Irving
825 West Irving Boulevard
Irving, Texas 75060
Attention: City Manager
Telephone: 972-721-2586
Facsimile: 972-721-2420
E-mail: chillman@cityofirving.org

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 of 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

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Any party may change its address and specify as its address for the purposes hereof to any other address in the United States of America by giving the other party at least 15 days' prior notice. Notices given by counsel for any party are effective as notices by the party.

Section 6.12. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable, under any present or future laws, such provision shall be fully severable and this Agreement shall 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 legal, invalid or unenforceable provision, and there shall be added automatically as part of this Agreement provision as similar in its terms to such provision as may be possible and the legal, valid and enforceable.

Section 6.13. Delays or Omissions. Except as otherwise provided herein to the contrary, no delay or omission to exercise any right, power or remedy inuring to any party upon any breach or default of any party under this Agreement shall impair any such right, power or remedy of such party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. All remedies either under this Agreement or by law or otherwise afforded to the parties shall be cumulative and not alternative.

Section 6.14. No Third-Party Beneficiaries. The City and the Company intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the City, the Company or assignees of such parties.

Section 6.15. No Joint Venture. Nothing contained in this Agreement or any other agreement between the Company and the City is intended by the parties to create a Company or joint venture between the Company, on the one hand, and the City on the other hand and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party as an agent of the other for any purpose whatsoever. Neither party shall in any way assume any of the liability of the other for acts of the other or obligations of the other. Each party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

Section 6.16. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

Section 6.17. Titles and Subtitles. The titles of the articles, sections, paragraphs and subparagraphs of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

Section 6.18. Limited Recourse. No officer, director, employee, agent, attorney or representative of the Company shall be deemed to be a party to this Agreement or shall be liable for any of the contractual obligations created hereunder. No elected official of the City and no

officer, agent, employee, attorney or representative of the City shall be deemed to be a party to this Agreement or shall be liable for any of the contractual obligations created hereunder.

Section 6.19. Indemnity. The Company shall indemnify and hold the City, its officers, agents, employees, and representatives, harmless against any and all claims, injuries (including death), demands, liabilities, causes of action, suits, judgments, damages and expenses (including Legal Costs) asserted against the City by any third party and arising from (i) the negligence or intentional misconduct of the Company or its officers, employees, agents, contractors and subcontractors in connection with the development, design and construction of the Entertainment Center, except to the extent caused by the negligence or willful misconduct of the City, the City's Designee, or their respective officers, agents, employees, or representatives, or (ii) the Company's material breach of any provision of this Agreement, including without limitation any insurance obligations. This section shall survive termination or expiration of this Agreement. The provisions of this section are solely for the benefit of the City, and shall not be deemed to be for the benefit of any other person or entity. Notwithstanding the indemnity set forth in this section, the City shall diligently and timely assert all reasonable defenses (including without limitation sovereign immunity and defenses otherwise available to the City as a municipal corporation) against any third-party claim that the City believes is covered by the indemnity in this section.

Section 6.20. 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 Agreement who has violated the restrictions of this section or any similar state or federal law.

From the date of execution, and until 6 months after the conclusion of any agreement or legal relationship between the parties hereto, 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.

Section 6.21. Hazardous Materials. The Company and the City each shall comply with, and shall require that their respective agents, contractors and subcontractors comply with, all applicable laws regarding the use, removal, storage, transportation, disposal and remediation of "hazardous materials." "**Hazardous materials**" means any substance, material or waste which is now or hereafter classified or considered to be hazardous, toxic or dangerous under any federal, state or local laws, rules and regulations affecting the Site relating to pollution or the protection or regulation of human health, natural resources or the environment, but shall exclude any such items

that are necessary for the ordinary performance of the Company's business/construction activities, provided that such are used, stored and disposed of in compliance with all laws.

Section 6.22. Waiver of Subrogation. *The City and Company release each other and any mortgagee(s) from all Claims for Losses of or to (i) the Entertainment Center, (ii) furniture, fixtures, equipment, and other tangible and intangible property owned by the City or the Company, or (iii) 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 party does not maintain the property insurance coverages required by this Agreement. The party incurring the Loss is responsible for any deductible or self-insured retention under its property insurance, provided that any deductible paid by the City shall be a Venue Project Cost. 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), damages, judgment, or penalty of any nature or description suffered by a person or property, including (A) harm to, impairment, loss, or diminution in the value of tangible or intangible property or its use, and loss of business or revenues, or (B) physical harm to or death of a natural person. "Legal Costs" means reasonable 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.*

Section 6.23. Calendar Days. "Days" are all calendar days 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.

Section 6.24. Legal Costs. If either party does not comply with any of the terms of this Agreement to be complied with on its part and the other party commences a legal proceeding or arbitration or mediation to enforce the terms of this Agreement, the prevailing party in any such proceeding or arbitration or mediation will be entitled to receive from the other party its Legal Costs.

Section 6.25. Purpose of City Construction Contribution. The purpose of City's Construction Contribution 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. It is the intention of the Company and the City that the City's Construction Contribution will be used as capital investment in the Entertainment Center.

Section 6.26. Exhibits. The following exhibits are attached hereto and incorporated herein.

Exhibit A - the Site [Recital]

* * * *

This Agreement has been executed and delivered as of the date first written above.

CITY OF IRVING, TEXAS

By: _____
Beth Van Duyne
Mayor

ATTEST:

Shanae Jennings
City Secretary

APPROVED AS TO FORM:

Charles R. Anderson
City Attorney

ARK GROUP OF IRVING, INC.
a Texas corporation

By: _____
Name: _____
Title: _____