

**ENTERTAINMENT CENTER**  
**SECOND AMENDED AND RESTATED**  
**TIF No. 1 REIMBURSEMENT AGREEMENT**

STATE OF TEXAS           §  
COUNTY OF DALLAS       §  
CITY OF IRVING           §

This Second Amended and Restated Agreement (this "Agreement"), is made and entered into as of the 27th day of August, 2015, (the "Execution Date") by and between the City of Irving, Texas (the "City"), a home rule city in Dallas County, Texas, acting through its Mayor, and ARK Group of Irving, Inc. a Texas corporation ("Company" or "Owner"), acting through its duly authorized representatives, for the purposes and considerations stated below:

**WITNESSETH:**

WHEREAS, the Tax Increment Reinvestment Zone No. 1, City of Irving, Texas (the "TIF District"), is a zone designated by the City under the laws of the State of Texas, as authorized by Chapter 311 of the TEXAS TAX CODE, as amended (the "Code"); and

WHEREAS, the City and the Company entered into a separate and independent Entertainment Center Development Agreement dated July 25, 2013 and effective on August 5, 2013 (the "Prior Development Agreement"), to govern the design and construction of the Entertainment Center and the rights and obligations of the parties during the development period, and concurrently herewith, are amending and restating such agreement (as amended and restated, the "Development Agreement"); 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 Development Agreement and the Lease, together with the Economic Development Agreement, are referred to herein collectively as the "Amended and Restated Transaction Documents;" and

WHEREAS, the Company and the City entered into that certain First Amended and Restated TIF No. 1 Reimbursement Agreement dated December 11, 2014, for the

reimbursement of public infrastructure improvements pursuant to Sections 311.008 (3) and 311.101 (b) of the Code (the "Prior Agreement"); and

WHEREAS, the Company and the City have determined to amend and replace the Prior Agreement with the execution of this Agreement; and

WHEREAS, the contemplated use of the Property, the contemplated improvements to the Property, and the other terms hereof are consistent with encouraging development of the TIF District in accordance with the purposes for its creation, in compliance with the criteria adopted by the TIF District and City and all applicable law; and

WHEREAS, the Tax Increment Reinvestment Zone No. 1 Board of Directors recommended approval of the reimbursement to Company in an amount not to exceed \$44,000,000 at its October 14, 2014, Board of Directors meeting; and

WHEREAS, the terms of this Agreement and the Project meet the applicable guidelines and criteria of the TIF District and City;

NOW, THEREFORE, the City of Irving, for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, which consideration includes the construction of the public infrastructure; and Company, for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, which consideration includes the reimbursement set forth below, do hereby contract, covenant and agree as follows:

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

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

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

## I. DEFINITIONS

Wherever used in this Agreement, the following capitalized terms shall have the meanings ascribed to them:

- A. "Actual Project Costs" shall mean the actual Project Costs for the Project as identified in the submittal discussed in Paragraph III A of this Agreement.
- B. "Approved Construction Costs" shall mean the Project Costs that are eligible for reimbursement in accordance with the terms of this Agreement.
- C. "Estimated Project Costs" shall mean the anticipated Project Costs for the Project as more particularly described in the Request.
- D. "Improvements" shall mean:
  - (i) 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");
  - (ii) 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");
  - (iii) 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;
  - (iv) 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");
  - (v) approximately 1,200-space structured parking garage (the "Parking Facilities") that will serve the Entertainment Center; and

- (vi) on-site utilities and other above-ground and underground infrastructure supporting the Entertainment Center and off-site infrastructure required to connect to existing City utility infrastructure (the "Entertainment Center Infrastructure").
- E. "Payee" shall mean Company, the entity that will be receiving the reimbursement.
- F. "Payor" shall mean Company, the entity that will pay the Project Costs.
- G. "Project" shall mean the public improvements listed on **Exhibit "B"**, attached and incorporated herein for all purposes.
- H. "Project Costs" shall mean the construction costs of the Project subject to reimbursement in accordance with the Policy shown in **Exhibit "A"**, and this Agreement.
- I. "Property" shall mean the 16.787 acre tract owned by City and located within the boundaries of the TIF District and Irving Independent School District, and which is located south of the Irving Convention Center more particularly described in **Exhibit "C"**, attached and incorporated herein for all purposes.
- J. "Request" shall mean the Payment of Project Cost Request prepared by Company, in the form shown in **Exhibit "D"** attached hereto and incorporated herein for all purposes.

## II. GENERAL PROVISIONS

- A. The declarations, determinations and findings declared, determined and found in the preamble to this Agreement are hereby adopted, restated and made a part of this Agreement.
- B. Policies and Procedures. All policies and procedures set forth and followed by the TIF District and City in the approval of this Agreement conform to the requirements of the Code.
- C. Property. City is the owner of the Property, which is located solely within the limits of the CITY and solely within the boundaries of the TIF District.
- D. Public property. The Project is and will permanently remain accessible to the public.
- E. Availability of funds. The payment of any Request is subject to availability of funds in the TIF No. 1 Fund restricted account "Entertainment Center." To the extent funds are not available for such payment, no payments shall be due until funds are available.

- F. Project costs. The reimbursement approved in this Agreement does not exceed the estimated project costs identified within the TIF District's TIF Project and Finance Plans.
- G. Benefits. The Project includes benefits, both tangible and intangible to be shared by owners of real property adjacent to the Property and the residents of the CITY.
- H. Reimbursement - Public Infrastructure. The Project includes the reimbursement of expenses for eligible public infrastructure improvements identified in the TIF District's TIF Project and Finance Plans.
- I. TAX CODE Requirements compliance. This Agreement complies with the requirements of Chapter 311 of the TEXAS TAX CODE; the Policy constituting the TIF District's and City's reimbursement guidelines and criteria, and has been adopted pursuant to resolutions of the TIF District and City authorizing execution of this Agreement.
- J. Condition of reimbursement. No reimbursement payments shall be made to Payee should Company be delinquent in the payment of its *ad valorem* taxes for its real and/or personal property located within the TIF District; provided that (1) a delinquency shall not include the Company's protesting or litigating a disputed property tax liability, and (2) any payments to the Company delayed by this paragraph shall be paid upon the company's payment of such delinquent *ad valorem* taxes.
- K. Improvement - Public Benefit. The Improvements which have been and will be constructed by Company are a public good to the residents of the City and the other participating TIF District taxing entities.
- L. Undocumented workers. Company covenants and certifies that it does not and will not knowingly employ any undocumented worker as that term is defined by Section 2264.001(4) of the TEXAS GOVERNMENT CODE. In accordance with Section 2264.052 of the TEXAS GOVERNMENT CODE, if Company is convicted of a violation occurring under 8 U.S.D. SECTION 1324A(F), Company shall repay to the City the full amount of any payment(s) made under this Agreement, plus ten percent (10%) per annum penalty fee from the date the payment was made. Repayment shall be paid within one hundred twenty (120) days after Company receives written notice of violation from the City.

### III. PAYMENT OF REIMBURSEMENT

- A. Payments pursuant to this Agreement shall be in accordance with the Tax Increment Reinvestment Zone No. 1, City of Irving, Property Owner/Company Reimbursement Policy (the "Policy") adopted December 12, 2002, and as revised July 25, 2013, attached as **Exhibit "A"** and incorporated herein for all purposes, except in case of a conflict, this Agreement shall control.

- B. The City agrees to reimburse Company for Approved Construction Costs described on **Exhibit “B”** of this Agreement, in an amount determined according to Section 1.10 of the Development Agreement, but not to exceed \$44,000,000 as provided herein.
- C. As a condition precedent to receiving a reimbursement for the Approved Construction Costs,
- 1) Company shall cause the Project to be constructed to satisfy the Completion Conditions set forth in Section 1.14 of the Development Agreement, in accordance with the terms of this Agreement and all applicable ordinances of the City;
  - 2) Company shall complete the Project and the City shall have accepted the Project as constructed in accordance with City applicable ordinances;
  - 3) Company shall prepare and submit to the TIF District, upon completion of construction of the Project, a detailed listing and itemization of all Actual Project Costs associated with the construction of the Project, certified by Company as true and correct and that all costs incurred have been paid to the contractor constructing the Project;
  - 4) City shall complete the Confirming Audit, as defined in Section 1.10 of the Development Agreement;
  - 5) Company shall produce records identifying the payment of all components of the Project, where “components” is defined as all items from the list of Project Costs as set forth on **Exhibit “B”** of this Agreement. The foregoing provisions of this Section III (C) are solely conditions to the Company’s reimbursement hereunder, and nothing in this Agreement shall obligate the Company to construct the Project or any other improvements on the Property.
- D. Once the conditions precedent have been met, the City staff shall review such records for compliance with this Agreement. Upon approval of such submittal, the Estimated Project Costs shall be known as Approved Project Costs and are then eligible for reimbursement in accordance with the terms of the Policy, the Payment Calculation Formula and this Agreement.
- E. Should the Actual Project Costs exceed the Estimated Project Costs, Company shall not be entitled to reimbursement for such additional costs unless they are approved by the City Council, and they shall then be known as Approved Project Costs. Additionally, should the scope of work for the Project change after the Request has been approved, Company shall not be entitled to reimbursement

unless and until such changes to the Project have been approved by the City Council.

#### **IV. TIMING OF PAYMENT**

The reimbursement authorized pursuant to this Agreement shall be made from the TIF District's Distributable Funds (as defined in the Formula) and shall be determined at the beginning of each fiscal year of the District. The reimbursement funds shall be payable to Company by the City as they become available. Any Request submitted on or before the August 31<sup>st</sup> prior to the beginning of the next fiscal year is eligible for payment during such next fiscal year.

#### **V. RECORDS**

No later than August 31 of each year after the Execution Date, Payee shall submit to the TIF District a project status report and intent to continue in the event the reimbursement shall not have been paid to Payee. If Company doesn't provide the notice required by this Section, Company shall have fourteen (14) days to cure this defect after its receipt of notice to cure sent to Company by the TIF District.

#### **VI. ASSIGNMENT OR TRANSFER OF REIMBURSEMENT**

This Agreement may not be assigned by any party without the express written consent of the City and the TIF District other than (a) a collateral assignment by the Company in connection with a mortgage by the Company of its leasehold interest under the Lease; or (b) as permitted by Section XVII below. The provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

#### **VII. NOTICES**

All notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid or by hand delivery:

**TIF DISTRICT**

Chief Financial Officer  
825 West Irving Boulevard  
Irving, Texas 75060

**CITY OF IRVING, TEXAS**

City Secretary  
825 West Irving Boulevard  
Irving, Texas 75060

**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

**VIII. CITY COUNCIL AUTHORIZATION**

This Agreement was authorized by Resolution No. RES-2015-\_\_\_\_\_of the City Council approved on the \_\_day of August, 2015.

**IX. TIF DISTRICT AUTHORIZATION**

The Board of Directors of the TIF DISTRICT, by Resolution No. TIF-10-14-14-95 adopted the 14<sup>th</sup> day of October, 2014, recommends reimbursement of Eligible Approved Construction Costs in an amount not to exceed \$44,000,000.

**X. OWNER AUTHORIZATION**

This Agreement was entered into by a duly authorized representative of Company.

**XI. SEVERABILITY**

In the event any section, subsection, paragraph, sentence, phrase or word is held invalid, illegal, or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete the invalid section, subsection, paragraph, sentence, phrase or word.

**XII. ESTOPPEL CERTIFICATE**

Any party may request an estoppel certificate from another party in connection with a bona fide business purpose. The certificate, which will upon request be addressed to a subsequent purchaser or assignee of Company, shall include, but not necessarily be limited to, statements (to the best knowledge of the party providing such) that this Agreement is in full force and effect, and such other matters reasonably requested by the party(ies) to receive the certificate. Any such certificate on behalf of the City shall be provided by the Chief Financial Officer for the City.



### **XIII. APPLICABLE LAW**

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be in a State District Court of Dallas County, Texas. This Agreement is performable in Dallas County, Texas.

### **XIV. ENTIRE AGREEMENT**

This Agreement constitutes the entire reimbursement agreement between the parties, supersedes all prior agreements between the parties as to this subject matter, and prior understanding or written or oral agreements or representations between the parties, on the matter of TIF reimbursement and can be modified only by written instrument subscribed to by all parties. This Agreement does not modify, alter, or amend the Amended and Restated Transaction Documents. This Agreement may be executed in multiple counterparts, each of which shall be considered an original.

### **XV. TERM**

In the event the Company has not satisfied the "Completion Conditions" (as defined in Section 1.14 of the Development Agreement) within 24 months following the calendar month in which the Conditions Precedent (as defined in Section 1(c) of the Lease) are fulfilled, this Agreement shall automatically terminate, without further action by either party, and no provision of the Agreement shall be of any further force or effect, except for any provisions that by their explicit terms survive termination or expiration of the Agreement.

In the event the Company has satisfied the Completion Conditions within 24 months following the calendar month in which the Conditions Precedent are fulfilled, and payment has been requested in accordance with Paragraph III, this Agreement shall continue in full force and effect until the earlier of the date the reimbursement is paid in full or the date the TIF District shall terminate in accordance with City ordinance 7394.

The TIF District shall terminate no later than December 31, 2018. Notwithstanding the amount of reimbursement made prior to that date, this Agreement shall terminate and no further payments shall be made following the termination of the TIF District. The City shall not be responsible or liable in any way for any payment under this Agreement following the termination of the TIF District.

### **XVI. MAXIMUM REIMBURSEMENT**

Notwithstanding any other provision of this Reimbursement Agreement, the maximum reimbursement from the TIF District to ARK Group of Irving, Inc., shall not exceed forty-four million dollars (\$44,000,000.00).

## XVII. LENDER PROTECTION PROVISIONS

A. 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 XVII 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.

B. Right to Cure. Any Company Mortgagee, at its option, acting either directly or indirectly through a designee, may cure the default and perform any other obligation of the Company as necessary to prevent the termination of this Agreement. All actions taken by the Company Mortgagee or its designee will be effective to prevent a forfeiture of the rights of the Company hereunder as if timely done and performed by the Company. Any Company Mortgagee may, if the Company desires, provide that, as between any Company Mortgagee or its designee and the Company, the Company Mortgagee or its designee, on curing any such default or defaults or performing any obligations on the part of the Company, will be thereby subrogated to or put in the position of assignee of any or all of the rights of the Company under this Agreement covered by the Company Mortgage (subject to Section XVII.D.).

C. Option for New Agreement. If this Agreement terminates for any reason other than automatic termination at the Drop Date, then the Company shall, and the City shall use commercially reasonable efforts to, deliver notice of the termination to any Company Mortgagee about which the City has been notified. Upon request by any Company Mortgagee received by the City within ninety (90) days after the Company's Mortgagee's receipt of the notice of termination, the City will enter into a new TIF reimbursement agreement (a "New Agreement") 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 XVII.D. 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.

D. Obligation to Cure. In order for any Company Mortgagee or its designee, including without limitation, a Company Mortgagee Designee actions, whether pursuant to the Company Mortgagee's right of subrogation under Section XVII.B., a new lease under Section XVII.C., 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.

E. 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 XVII, 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.

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

G. 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 XVII.G. shall apply both with respect to this Agreement and any new agreement entered into under Section XVII.C. 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.

H. Consent of Company Mortgagee Required. No cancellation or surrender of this Agreement by the Company prior to the commencement of the Initial Term (as defined in the Lease) shall be effective as to any Company Mortgagee unless resulting from a failure or refusal by a Company Mortgagee to comply timely with the provisions of this Section 7 respecting the cure of Events of Default under this Agreement. No Company Mortgagee shall be bound by any material modification of this Agreement unless such modification is consented to by such Company Mortgagee, which consent shall not be unreasonably withheld unless the modification adversely affects the value of the Company Mortgagee's collateral.

I. 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 XVII.I. The provisions of Section XVII.J. 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.

J. Procedure on Event of Default.

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

ii. Foreclosure Event a Permitted Transfer. Notwithstanding any other provisions of this Agreement to the contrary, any Foreclosure Event shall be deemed to be a permitted transfer to the extent, and only to the extent, the requirements set forth in this Agreement with respect to a transfer of Company's interest herein have been satisfied.

iii. Post-Foreclosure Operation. Notwithstanding any other provisions of this Agreement, in the event of the acquisition of the Company's interest herein by any Company Mortgagee Designee or any permitted purchaser at a Foreclosure Event, the operation of the Entertainment Center by or on behalf of any such acquirer of the Company's interest herein under this Agreement shall be subject to the provisions and requirements of this Agreement and the Lease, and such act in accordance with the requirements of this Agreement.

"Foreclosure Event" shall mean and refer to any foreclosure of any lien or security interest or conveyance in lieu of foreclosure with respect to any Company Mortgage pursuant to which a Company Mortgagee Designee acquires

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

(Signature page follows)

EXECUTED as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**CITY OF IRVING, TEXAS**

By: \_\_\_\_\_  
Beth Van Duyne, Mayor

ATTEST:

\_\_\_\_\_  
Shanae Jennings, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Charles Anderson, City Attorney

**ARK GROUP OF IRVING, INC.**

By: \_\_\_\_\_  
Noah Lazes, President

THE STATE OF TEXAS  
COUNTY OF DALLAS

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§

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Beth Van Duyne, Mayor of the City of Irving, Texas, a municipal corporation, known to me to be the person and representative whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said City of Irving, Texas, a municipal corporation, that he was duly authorized to perform the same by appropriate resolution of the City Council for the City of Irving and that he executed the same as the act of the said City for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2015.

\_\_\_\_\_  
Notary Public in and for the State of Texas

\_\_\_\_\_  
(Typed/Printed Name of Notary)

My Commission Expires:

\_\_\_\_\_



THE STATE OF \_\_\_\_\_

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§  
§

COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Noah Lazes, the president of ARK Group of Irving, Inc., and known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me he/she executed the same as a duly authorized officer of such partnership, and as the act and deed of such partnership, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2015.

\_\_\_\_\_  
Notary Public in and for the State of

\_\_\_\_\_  
(Typed/Printed Name of Notary)

My Commission Expires:

\_\_\_\_\_

## List of Exhibits

- Exhibit “A” Tax Increment Finance District No. 1, City of Irving, Property Owner/Company Reimbursement Policy
- Exhibit “B” Estimated Public Improvement Project Costs
- Exhibit “C” Property Description
- Exhibit “D” TIF Application, Infrastructure Project Cost Request

## **Exhibit "A"**

### **Tax Increment Finance District # 1 City of Irving Property Owner/Company Reimbursement Policy**

1. Project defined as eligible through the Project and Finance Plans.
2. Project must be located within the boundaries of the TIF District.
3. Prospective projects must be accessible to the public.
4. Prospective projects must demonstrate a benefit, both tangible and intangible, to be shared by adjacent property owners and residents of Irving.
5. The TIF Board will establish reimbursement with approval from City Council based on fund availability.
6. Property owner/Company incurs expenses for projects identified within the TIF Project and Finance Plans.
7. If the property owner/Company is a taxpayer, the project reimbursement payments will only be made when property tax payments are current and paid in full. Reimbursement payments will not be made when property taxes are owed.
8. Reimbursement will be made based on agreed upon terms negotiated for each project. At no time will any Company receive reimbursement that exceeds the actual cost of construction of the project and only to the extent that cost of construction is less than or equal to the amount identified with the TIF Project Plan. Actual cost of construction does not include any interest cost any Company might have paid to secure funding for the project.
9. Commitments for reimbursement can be made up to the estimated project costs identified within the TIF Project and Finance Plans.
10. Remaining TIF funds designated for reimbursement upon termination of the TIF District will be distributed on a first to invest, first to be reimbursed basis.
11. This reimbursement policy will be in accordance with City of Irving financial policies and procedures.

## **Infrastructure Cost Payment Procedure**

Property owners will submit a Payment of Project Cost Request ("Request") to the TIF staff which will describe and outline the following:

1. Narrative description of the owner's property being developed with map to provide geographic and visual orientation ("Property").
2. Description of the proposed improvements to be developed related to the Property ("Improvements").
3. Description of proposed infrastructure development project to be reimbursed by the TIF ("Project").
4. Total cost of the Project ("Project Costs").
5. Entities completing the Project (if known) and their relationship to the owner. Related party profit or owner overhead items should not be included in Project Costs.
6. Estimated construction schedule of the Project and/or components thereof with start and end dates.
7. Entity which will pay the Project Costs ("Payor").
8. Landowner or Company receiving reimbursement will be identified as the "Payee".
9. If the improvements are to be transferred to another entity for ownership or maintained by a party other than the owner then the owner and/or Company will supply a letter of intent from the transferee or organization assuming maintenance responsibilities.
10. Current DCAD assessed value (and amount of any agricultural exemption) of the Property
11. Cost estimate of the Improvements (excluding Project Costs).
12. Estimated completion schedule of the Improvements.
13. Private improvements and Projects must demonstrate a public good applicable to participating TIF District taxing entities. The landowner and/or Company will supply a pro forma that provides a minimum of a ten-year estimate of future incremental taxes directly attributable to the Improvements. The pro forma shall use the current tax rate for each of the participating TIF District taxing entities for each year of the calculation. The current Dallas Central Appraisal District (DCAD) assessed value (with agricultural exemption if applicable) will be used as the base assessed value from which to calculate the future Excess TIF Receipts (as defined in the Payment Calculation Formula). No inflation will be calculated within the pro forma. Excess TIF Receipts must be in excess of the amount reimbursed.
14. Public capital improvements approved within the TIF Project Plan (i.e. streets, drainage, water and sewer system, public spaces, flood control, area personal transit/rail construction and repair) will be constructed and paid for on an as needed basis as determined by the TIF Board and City Council.
15. Under which estimated cost item of Section 2.4 of the Project Plan and Finance Plan for Tax Increment Reinvestment Zone No. 1 ("Plan") the Request is being made.
16. Draft of the Reimbursement Agreement.

The Request will be submitted to TIF staff and/or a TIF reimbursement committee, which will study the Request and promptly make a recommendation to the TIF Board; the TIF Board will act on the request and in turn will promptly make a recommendation to the City Council.

The City Council will endeavor to act upon the Request.

If the Request is approved, the property owner and/or the Payor will cause the Project to be constructed. Upon substantial completion (as defined below) of the Project or component thereof, the property owner and/or the Payor will submit a detailed listing of all Project Costs incurred (with backup reasonably satisfactory to the TIF staff), certified by the property owner and/or the Payor (or their representative) that all costs are true and correct, and that all costs incurred have been paid.

The Project or component thereof is considered substantially complete under criteria to be reasonably and consistently applied by the TIF Board and as further defined in the Reimbursement Agreement.

The TIF staff will confirm the submittal of Project Costs incurred in accordance with the Reimbursement Agreement; when the submittal is confirmed by the TIF staff, the item becomes Approved Project Costs and eligible for payment to the Payor (or its assigns) as outlined in the Payment Calculation Formula and more specifically in each Reimbursement Agreement.

Costs in excess of or different from the original Request will require TIF Board approval.

Reimbursement rights to payments may be assigned by the owner/Payee with written notice to the TIF staff.

## **Payment Calculation Formula**

### **Funds Available for Project Payment** (“Distributable Funds”)

Estimated “Unrestricted Funds” (total cash and cash equivalents less encumbrances applicable to prior fiscal year budgeted costs) as of October 1<sup>st</sup> of each year

Plus: Budgeted “TIF Receipts” (Total revenues, net of tax receipts to be reimbursed to governmental entities under Section 2.7 of the Plan) for the ensuing fiscal year

Less: Working Capital (8/12ths of the budgeted Ongoing Administrative Expenses under Section 2.4(c) for the ensuing fiscal year plus 8/12ths of the budgeted Capital Costs for the ensuing fiscal year plus \$50,000)

Less: Budgeted Ongoing Administrative Expenses under Section 2.4(c) for the ensuing fiscal year

Less: Budgeted Capital Costs for the ensuing fiscal year (up to a maximum of 20% of unrestricted funds net of Working Capital and budgeted Ongoing Administrative Expenses). Capital Costs are defined as any Section 2.4 expenditures, excluding Ongoing Administrative Expenses and Approved Project Costs reimbursements. Capital Costs specifically include reimbursement to the City of Irving and Dallas County Utility and Reclamation District.

Less: Up to a maximum of 10% of remaining unrestricted funds to be used by the TIF to fund Approved Project Costs and Capital Costs or accumulate funds for use on a future project at the discretion of the TIF Board.

Beginning July 26, 2013, all remaining unrestricted funds in excess of previously approved project costs and requests from participating governmental entities, will be transferred to a separate restricted account within the TIF Project Fund entitled “Entertainment Center” for the sole purpose to reimburse project costs for the Entertainment Center, as may be approved by the City Council, following recommendation by the TIF Board. This transfer will occur at fiscal year end [September 30, 2013] and each following fiscal year end until the account accumulates \$44,000,000. Any funds remaining in the account August 31, 2018 will be released for any remaining project costs approved after July 26, 2013.

### **Timing for Payment of Distributable Funds**

Distributable Funds are determined at the beginning of each fiscal year. These funds are to be distributed to property owners and/or Payors as funds become available for Projects approved by the City Council prior to July 25, 2013. Approved Project Costs, under Requests submitted on or before August 31st prior to the start of such fiscal year, are eligible for payment.

Each August 31, the property owner and/or Payee will submit a project status and intent to continue.

#### Priority 1 Distribution

Approved Project Costs of the Property will be paid equal to 70% of TIF Excess Tax Receipts of that Property to the extent such costs have not been reimbursed.

TIF Excess Tax Receipts are equal to the difference between the current TIF Receipts and Initial TIF Receipts attributable to each Property. Initial TIF Receipts are those receipts generated from the Property tax assessment in the year in which a Request is submitted. For example, if a Request is submitted in 2002, the Initial TIF Receipts will be those receipts generated from the 2002 assessment (due in January 2003).

Should sufficient funds not be available to complete all eligible 70% payments, Distributable Funds will be prorated based on the TIF Excess Tax Receipts generated from each applicable Property.

Following the payment of Priority 1 commitments existing prior to July 25, 2013, no additional Priority 1 payments will be made until the Entertainment Center fund accumulates \$44,000,000.

#### Priority 2 Distribution

Balance of unreimbursed Approved Project Costs will be paid to the extent of remaining Distributable Funds for Projects approved prior to July 25, 2013. No additional Priority 2 payments will be made until the Entertainment Center fund accumulates \$44,000,000.

Should sufficient funds not be available to fund all unreimbursed Approved Project Costs, remaining Distributable Funds will be prorated based on the original Project Costs of each Project.

For example, if sufficient Distributable Funds are not available to fund all unreimbursed Approved Project Costs, then payment of the available Distributable Funds would be prorated based on the ratio of (i) the amount of the Approved Project Costs for each unreimbursed individual Eligible Project to (ii) the total of the Approved Project Costs for all unreimbursed Eligible Projects. If the Approved Project Costs of an individual Eligible Project is \$1,000,000 and the total of the Approved Project Costs for all Eligible Projects is \$10,000,000, the individual Eligible Project would receive 1/10<sup>th</sup> or 10% of the available remaining Distributable Funds.

**Exhibit “B”**  
**Estimated Public Improvements Project Costs\***

Amphitheater	\$20,463,348
Restaurants, Retail	\$33,027,147
Retail	\$ 3,586,245
Entertainment Venues	\$14,549,892
Movie Theater	\$ 5,697,000
Parking Garage	\$13,849,000
Site work, Plaza, Infrastructure	\$11,998,763
Architects and Engineers, including reimbursable expenses	\$ 3,190,991
Construction Manager, Fee, General Conditions, Insurance, PCG	\$ 4,452,510
Developer Fees & Supervision	\$14,750,000
Insurance	\$ 1,300,000
Signage and Art Work	\$ 2,800,000
Miscellaneous: geotechnical, traffic signals, construction testing, etc.	\$ 2,529,000
Contingency	\$ 5,158,570
<b>TOTAL Estimated Public Improvement Project Costs</b>	<b>\$137,352,466</b>

\*Figures are the construction budget approved by City Council March 20, 2014, RES 2014-102. Estimate does not include Hotel, Fitness or Office Building space, which are not eligible for TIF reimbursement.

Project Costs already reimbursed by Net Bond Proceeds are not eligible for TIF reimbursement.

The Project reimbursement is capped at \$44,000,000, however, there are no line item caps and budgets for each line item can be shifted.

November 4, 2014



**Exhibit "C"**  
**Property Description**

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

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

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

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

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

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

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

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

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

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

THENCE, along the said west line of Las Colinas Boulevard, the following four (4) calls:  
South 23 degrees, 58 minutes, 26 seconds West, a distance of 4.17 feet to a point for the beginning of a tangent curve to the left;

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

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

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

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

**Exhibit "D"**  
**ARK Group of Irving, Inc. TIF Application**

**Infrastructure Project Cost Request**

Property owners will submit a Payment of Project Cost Request ("Request") to the TIF staff which will describe and outline the following:

1. Narrative description of the owner's property being developed with map to provide geographic and visual orientation ("Property").

"Property" shall mean the 16.787 acre tract owned by City and located within the boundaries of the TIF District and Irving Independent School District, and which is located south of the Irving Convention Center more particularly described in **Exhibit "C"**, attached and incorporated herein for all purposes.

2. Description of the proposed improvements to be developed related to the Property ("Improvements").

**The property will be improved to create an Entertainment Center including but not limited to the following:**

- (i) 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**");
  - (ii) 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**");
  - (iii) 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;
  - (iv) 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**");
  - (v) approximately 1,200-space structured parking garage (the "**Parking Facilities**") that will serve the Entertainment Center; and
  - (vi) on-site utilities and other above-ground and underground infrastructure supporting the Entertainment Center and off-site infrastructure required to connect to existing City utility infrastructure (the "**Entertainment Center Infrastructure**").
3. Description of proposed infrastructure development project to be reimbursed by the TIF ("Project").

**The Project includes the reimbursement of expenses for eligible public infrastructure improvements identified in the TIF District's TIF Project and Finance Plans. More specifically outline in Exhibit "B" attached.**

4. Total cost of the Project ("Project Costs").

**\$44,000,000.00 – Detailed in Exhibit "B". To be updated and adjusted as final construction designs completed.**

5. Entities completing the Project (if known) and their relationship to the owner. Related party profit or owner overhead items should not be included in Project Costs.

**The City of Irving owns the subject property (16.787-acres). ARK Group of Irving, Inc. will construct via a selected GC the entire project and be the Master Developer and contact for TIF matters.**

6. Estimated construction schedule of the Project and/or components thereof with start and end dates.

**Construction of the Project is began in the 3rd quarter of 2014. It is anticipated that the Completion Conditions defined in Section 1.14 of the Development Agreement will be satisfied within 24 months after the Conditions Precedent defined in Section 1(c) of the Lease are fulfilled.**

7. Entity which will pay the Project Costs ("Payor").

**ARK Group of Irving, Inc.**

8. Landowner or developer receiving reimbursement will be identified as the "Payee."

**ARK Group of Irving, Inc.**

9. If the improvements are to be transferred to another entity for ownership or maintained by a party other than the owner then the owner and/or developer will supply a letter of intent from the transferee or organization assuming maintenance responsibilities.

**Understood**

10. Current DCAD assessed value (and amount of any agricultural exemption) of the Property.

**The property is owned by the City of Irving with a current assessed value of \$12,447,000.**

11. Cost estimate of the Improvements (excluding Project Costs).

**The total cost of the improvements to the property is projected to be \$121 million excluding the \$44 million of Project Costs or \$165 million total improvements.**

12. Estimated completion schedule of the Improvements.

**Construction of the Improvements began in the 3rd quarter of 2014. It is anticipated that the Completion Conditions defined in Section 1.14 of the Development Agreement will be satisfied within 24 months after the Conditions Precedent defined in Section 1(c) of the Lease are fulfilled.**

13. Private Improvements and Projects must demonstrate a public good applicable to participating TIF District taxing entities. The landowner and/or developer will supply a pro forma that provides a minimum of a 10-year estimate of future incremental taxes directly attributable to the Improvements. The pro forma shall use the current tax rate for each of the participating TIF District taxing entities for each year of the calculation. The current Dallas Central Appraisal District (DCAD) assessed value (with agricultural exemption if applicable) will be used as the base assessed value from which to calculate the future Excess TIF Receipts (as defined in the Payment Calculation Formula). No inflation will be calculated within the pro forma. Excess TIF Receipts must be in excess of the amount to be reimbursed.

**This is not applicable to this project as it will be City of Irving owned.**

14. Public capital improvements approved within the TIF Project Plan (i.e. streets, drainage, water and sewer system, public spaces, flood control, area personal transit/rail construction and repair) will be constructed and paid for on an as needed basis as determined by the TIF Board and City Council.

#### **Understood**

15. Under which estimated cost item of Section 2.4 of the Project Plan and Finance Plan for Tax Increment Reinvestment Zone No. 1 ("Plan") the Request is being made.

#### **Miscellaneous Projects**

16. Draft of Reimbursement Agreement.

#### **Attached at Exhibit "C"**

The Request will be submitted to TIF staff and/or a TIF reimbursement committee, which will study the Request and promptly make a recommendation to the TIF Board; the TIF Board will act on the request and in turn will promptly make a recommendation to the City Council.

The City Council will endeavor to act upon the Request.

If the Request is approved, the property owner and/or the Payor will cause the Project to be constructed. Upon substantial completion (as defined below) of the Project or component thereof, the property owner and/or the Payor will submit a detailed listing of all Project Costs incurred (with backup reasonably satisfactory to the TIF staff), certified by the property owner and/or the Payor (or their representative) that all costs are true and correct, and that all costs incurred have been paid.

The Project or component thereof is considered substantially complete under criteria to be reasonably and consistently applied by the TIF Board and as further defined in the Reimbursement Agreement.

The TIF staff will confirm the submittal of Project Costs incurred in accordance with the Reimbursement Agreement; when the submittal is confirmed by TIF staff, the item becomes Approved Project Costs and eligible for payment to the Payor (or its assigns) as outlined in the Payment Calculation Formula and more specifically in each Reimbursement Agreement.

Costs in excess of or different from the original Request will require TIF Board approval.

Reimbursement rights to payments may be assigned by the owner/Payee with written notice to the TIF staff.

