

**IRVING CITY COUNCIL MEETING  
SUPPLEMENTAL AGENDA  
THURSDAY, JULY 11, 2013  
7:00 PM**

COUNCIL CHAMBER - CIVIC CENTER COMPLEX - 825 West Irving Boulevard, Irving, TX 75060

This meeting can be adjourned and reconvened, if necessary, within 24 hours on the following day in the First Floor City Council Conference Room.

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**INDIVIDUAL CONSIDERATION**

35. Resolution -- Approving Settlement of a Lawsuit with Las Colinas Group, LP

**Administrative Comments**

1. This item supports Strategic Goal No. 8: Sound Governance.
2. **Impact:** The Memorandum of Understanding with Irving Music Factory, LLC, requires resolution of litigation with Las Colinas Group, LP, prior to considering a development agreement for the construction of the entertainment center.
3. This item is placed on the agenda in anticipation of receipt of a settlement of the lawsuit. If that is not received, this item should be tabled.
4. The City Attorney will brief the Council in Executive Session.

**Recommendation**

The resolution be approved.

36. Resolution -- Approving the Entertainment Center Development Agreement Between the City of Irving and Irving Music Factory, LLC

**Administrative Comments**

1. This item supports Strategic Goal No. 3: Economic Development.
2. **Impact:** This development agreement will construct a 17.8 acre LEED certified entertainment center adjacent to Irving Convention Center and hotel site.
3. Entertainment center will include: a multi-functional amphitheater and performance hall with a capacity of at least 6,500 people and a minimum indoor capacity of 3,000 people, minimum of nine full-service restaurants, minimum of four limited food service/entertainment venues, minimum of 5,000 square feet of retail space, a landscaped pedestrian walkway, three outdoor live music stages, an open air plaza for outdoor festivals, concerts and other events, and an approximately 1,200-space structured parking garage that will serve the entertainment center, convention center and hotel.
4. Developer shall be responsible for total project costs, less the amount of City contribution, including all predevelopment costs. Total projects costs are estimated at approximately \$165 million. Developer contribution is estimated at approximately \$125

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million.

5. City contribution will include the issuance of Hotel Occupancy Tax (HOT) revenue bonds with a pledge of 2% (Brimer) HOT, estimated at \$40,000,000; Tax Increment Reinvestment Zone No. 1 funding, paid in accordance with the city's reimbursement policy, of \$24 million for construction of the garage and \$20 million for public infrastructure; and rebates of certain project generated revenues.
6. Developer must obtain the Private Funding Commitment before December 31, 2013 and close its financing by March 1, 2014.
7. City will own all Intellectual Property related to the plans and specifications for the construction of the entertainment center.
8. City shall have the right to audit project records and expenditures.
9. Benefits of the entertainment center include: a destination marketing icon for the city that attracts visitors and business and creates synergy with the convention center and hotel; a catalyst project for development and business retention in the Urban Center; business personal property revenue for city; 1550 jobs at the Irving Music Factory when fully operational; and 400-500 construction jobs.
10. Development agreement with Irving Music Factory, LLC is expressly conditioned upon the delivery of a binding and enforceable release, executed by LCG and any related entities, of all claims arising from the prior development agreement and lease with LCG. This item is being posted in anticipation of a settlement. If that is not received, this item should be tabled.

### **Recommendation**

The resolution be approved.

37. Resolution -- Amending the Tax Increment Reinvestment Zone No. 1 Property Owner/Company Reimbursement Policy

### **Administrative Comments**

1. This item supports Strategic Goal No. 3: Economic Development.
2. **Impact:** Approval of this resolution will provide a mechanism for the City to accumulate funds for TIF reimbursement to the Irving Music Factory LLC for public infrastructure projects.
3. The Entertainment Center Development Agreement anticipates that Irving Music Factory LLC (IMF) will request \$44 million in TIF funds for public infrastructure projects within TIF No. 1 (the Urban Center). Specifically, \$24 million for a parking garage and \$20 million for various public infrastructure projects all at the proposed Entertainment Center.
4. The proposed amendment to the TIF Property Owner/Company Reimbursement Policy will continue to fund the on-going administrative expenditures, DCURD annual capital costs, previously approved TIF developer project costs and reimbursement requests

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from participating governmental entities.

5. All remaining unrestricted TIF funds will be transferred to a restricted account in the TIF Project fund called "Entertainment Center". Unrestricted funds will be transferred to the restricted account at the end of each fiscal year until it accumulates \$44 million. Once the Council adopts a TIF reimbursement agreement with IMF, these funds will be used to reimburse IMF for completed public infrastructure projects.
6. TIF developer reimbursement requests approved after July 11, 2013 will not be eligible to receive TIF reimbursements until the earlier of the IMF has received \$44 million in TIF reimbursements or August 31, 2018. Any funds remaining in the restricted account on August 31, 2018 will be released for any TIF project costs approved after July 11, 2013.

**Recommendation**

The resolution be approved.

**CERTIFICATION**

I, the undersigned authority, do hereby certify that this Notice of Meeting was posted on the Kiosk at the City Hall of the City of Irving, Texas, a place convenient and readily accessible to the general public at all times, and said Notice was posted by the following date and time: Friday, July 5, 2013 at 5:00 p.m., and remained so posted at least 72 hours before said meeting convened.

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

\_\_\_\_\_  
Date Notice Removed

## AGENDA ITEM SUMMARY

Meeting: 7/11/2013

DOC ID: 5480

Recommending Department: City Attorney's Office

LSR No:

### Resolution -- Approving Settlement of a Lawsuit with Las Colinas Group, LP

#### Administrative Comments

1. This item supports Strategic Goal No. 8: Sound Governance.
2. **Impact:** The Memorandum of Understanding with Irving Music Factory, LLC, requires resolution of litigation with Las Colinas Group, LP, prior to considering a development agreement for the construction of the entertainment center.
3. This item is placed on the agenda in anticipation of receipt of a settlement of the lawsuit. If that is not received, this item should be tabled.
4. The City Attorney will brief the Council in Executive Session.

#### Recommendation

The resolution be approved.

#### ADDITIONAL COMMENTS:

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**Contract Required:**

**Review Completed By:**

**Previous Action:** RES-2013-164 (5-9-13)

**Council Action:** Approve MOU w/ IMF

#### CURRENT YEAR FINANCIAL IMPACT:

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TBD

#### REVISION INFORMATION:

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Prepared: 7/1/2013 09:13 AM by Belinda Rowlett

Last Updated: 7/5/2013 09:24 AM by Jennifer Phillips

CITY OF IRVING

COUNCIL RESOLUTION NO. (ID # 5480)

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WHEREAS, the City previously entered into a development agreement with Las Colinas Group, LP (“**LCG**”), to develop the Entertainment Center, which agreement terminated by its terms on August 6, 2012; and

WHEREAS, LCG has filed suit against the City in the 193rd Judicial District Court in Dallas County, Texas, Cause No. DC-12-08748-L (the “**Lawsuit**”), alleging breach of the development agreement, seeking both damages and specific performance, which Lawsuit is currently on appeal to the Fifth Judicial Court of Appeals in Cause No. 05-13-00375-CV; and

WHEREAS, the City on May 9, 2013, approved Resolution No. RES-2013-164 a Memorandum of Understanding with Irving Music Factory, LLC (“**IMF**”), to design, construct and operate an entertainment center; and

WHEREAS, City’s willingness to enter into any Development Agreement with IMF is expressly conditioned upon, among other things, IMF’s delivery of a binding and enforceable release, executed by LCG, Concessionaire and any related entities, of all claims arising out of, or related to, the prior development agreement and lease with LCG, including, but not limited to, all claims that were asserted, or could have been asserted, in the Lawsuit;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS:

SECTION I. THAT the City Council hereby directs the City Attorney to take all appropriate action related to the settlement of Las Colinas Group, LP vs. The City of Irving, Cause No. DC-12-08748-L, and the Mayor is authorized to execute any and all settlement documents upon approval of the City Attorney's Office.

SECTION II. THAT this resolution shall take effect from and after its final date of passage, and it is accordingly so ordered.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS,  
on July 11, 2013.

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BETH VAN DUYNE  
MAYOR

ATTEST:

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Shanae Jennings  
City Secretary

APPROVED AS TO FORM:

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Charles R. Anderson  
City Attorney

## AGENDA ITEM SUMMARY

Meeting: 7/11/2013

DOC ID: 5474

Recommending Department: Development Services

LSR No: 14985

### Resolution -- Approving the Entertainment Center Development Agreement Between the City of Irving and Irving Music Factory, LLC

#### Administrative Comments

1. This item supports Strategic Goal No. 3: Economic Development.
2. **Impact:** This development agreement will construct a 17.8 acre LEED certified entertainment center adjacent to Irving Convention Center and hotel site.
3. Entertainment center will include: a multi-functional amphitheater and performance hall with a capacity of at least 6,500 people and a minimum indoor capacity of 3,000 people, minimum of nine full-service restaurants, minimum of four limited food service/entertainment venues, minimum of 5,000 square feet of retail space, a landscaped pedestrian walkway, three outdoor live music stages, an open air plaza for outdoor festivals, concerts and other events, and an approximately 1,200-space structured parking garage that will serve the entertainment center, convention center and hotel.
4. Developer shall be responsible for total project costs, less the amount of City contribution, including all predevelopment costs. Total projects costs are estimated at approximately \$165 million. Developer contribution is estimated at approximately \$125 million.
5. City contribution will include the issuance of Hotel Occupancy Tax (HOT) revenue bonds with a pledge of 2% (Brimer) HOT, estimated at \$40,000,000; Tax Increment Reinvestment Zone No. 1 funding, paid in accordance with the city's reimbursement policy, of \$24 million for construction of the garage and \$20 million for public infrastructure; and rebates of certain project generated revenues.
6. Developer must obtain the Private Funding Commitment before December 31, 2013 and close its financing by March 1, 2014.
7. City will own all Intellectual Property related to the plans and specifications for the construction of the entertainment center.
8. City shall have the right to audit project records and expenditures.
9. Benefits of the entertainment center include: a destination marketing icon for the city that attracts visitors and business and creates synergy with the convention center and hotel; a catalyst project for development and business retention in the Urban Center; business personal property revenue for city; 1550 jobs at the Irving Music Factory when fully operational; and 400-500 construction jobs.
10. Development agreement with Irving Music Factory, LLC is expressly conditioned upon the delivery of a binding and enforceable release, executed by LCG and any related entities, of all claims arising from the prior development agreement and lease with LCG. This item is being posted in anticipation of a settlement. If that is not received, this item should be tabled.

#### Recommendation

The resolution be approved.

**ADDITIONAL COMMENTS:**

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**Contract Required:** Yes  
**Previous Action:** RES-2013-164

**Review Completed By:** Karen Brophy  
**Council Action:** Approved MOU

**ATTACHMENTS:**

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RES Development Agreement (070313\_City V6 Dev Agreement) (DOCX)  
RES Development Agreement (070513\_City V7 Dev Agreement) (DOCX)  
RES Exhibit a - Irving Music Factory Site (PDF)  
RES Exhibit a - Irving Music Factory Site (PDF)  
RES Exhibit C - TIF 1 Reimbursement Agreement (07\_03\_13 TIF 1 Reimbursement Agmt - V2) (DOC)  
RES Exhibit C TIF 1 Reimbursement Agreement (07\_03\_13 TIF 1 Reimbursement Agmt -V2) (DOC)

**CURRENT YEAR FINANCIAL IMPACT:**

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Debt issuance and TIF funding contributions to be accounted in subsequent agenda items.

**REVISION INFORMATION:**

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Prepared: 6/26/2013 09:06 AM by Cynthia Castro  
Last Updated: 7/5/2013 09:14 AM by Jennifer Phillips



CITY OF IRVING

COUNCIL RESOLUTION NO. (ID # 5474)

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WHEREAS, on August 2, 2007, the City Council approved Resolution No. 8-2-07-316, which designated and, subject to approval at an election, authorized a venue project under authority of Chapter 334, Texas Local Government Code, described as a convention center and a related multi-functional theater, performance hall, music hall, and community and entertainment project; and

WHEREAS, at an election held November 6, 2007, the voters approved the proposition authorizing the planning, acquisition, establishment, development, construction, and financing of the convention center and entertainment venue project; and

WHEREAS, the City previously entered into a development agreement with Las Colinas Group, L.P. (“**LCG**”), to develop the Entertainment Center, which agreement terminated by its terms on August 6, 2012; and

WHEREAS, LCG has filed suit against the City in the 193rd Judicial District Court in Dallas County, Texas, Cause No. DC-12-08748-L (the “**Lawsuit**”), alleging breach of the development agreement, seeking both damages and specific performance, which Lawsuit is currently on appeal to the Fifth Judicial Court of Appeals in Cause No. 05-13-00375-CV; and

WHEREAS, on May 9, 2013, the City Council approved a Memorandum of Understanding, by the adoption of Resolution No. RES-2013-164, with Irving Music Factory, LLC, for the design, construction, and operation of an entertainment center; and

WHEREAS, Irving Music Factory, LLC, has delivered a binding and enforceable release, executed by LCG, Concessionaire and any related entities, of all claims arising out of, or related to, the prior development agreement and lease with LCG, including, but not limited to, all claims that were asserted, or could have been asserted, in the Lawsuit;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS:

SECTION I. THAT the City Council hereby approves the attached Entertainment Center Development Agreement between the City of Irving and Irving Music Factory, LLC, for the design, construction, and operation of an entertainment center, and the Mayor is authorized to execute said agreement substantially in the form of the agreement attached hereto, and as approved by the City Attorney.

SECTION II. THAT this resolution shall take effect from and after its final date of passage, and it is accordingly so ordered.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS,  
on July 11, 2013.

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BETH VAN DUYNE  
MAYOR

ATTEST:

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Shanae Jennings  
City Secretary

APPROVED AS TO FORM:

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Charles R. Anderson  
City Attorney

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**NOTE: DRAFT FOR DISCUSSION PURPOSES ONLY. ALTHOUGH THIS DRAFT REPRESENTS SIGNIFICANT PROGRESS TOWARD THE FINAL AGREEMENT, NEGOTIATION, REVISION AND LEGAL REVIEW ARE ONGOING. LEGAL APPROVAL OF A DEVELOPMENT AGREEMENT AS TO FORM CAN ONLY COME AS THE DOCUMENT IS FINALIZED, AND WILL ALSO BE CONTINGENT ON DELIVERY OF DISMISSAL OF THE LAWSUIT AND AN EXECUTED, FULL, ENFORCEABLE AND BINDING RELEASE OF ALL CLAIMS BY LCG AND ANY ASSOCIATED MEMBERS, PARTNERS, ENTITIES AND INDIVIDUALS.**

**For discussion purposes only**

**At this writing the required release has not been received**

*City's willingness to enter into any Development or Lease Agreement with Company is expressly conditioned upon, among other things, the Company's delivery of a binding and enforceable release, executed by LCG, Concessionaire and any related entities, of all claims arising out of, or related to, the prior development agreement and lease with LCG, including, but not limited to, all claims that were asserted, or could have been asserted, in the Lawsuit.*

ENTERTAINMENT CENTER DEVELOPMENT AGREEMENT

between

THE CITY OF IRVING

and

Irving Music Factory, LLC

Dated as of

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Entertainment Center Development Agreement  
Draft 7/5/13 v.7

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## ENTERTAINMENT CENTER DEVELOPMENT AGREEMENT

THIS ENTERTAINMENT CENTER DEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into as of \_\_\_\_\_, 2013, by and between the City of Irving, Texas, a municipal corporation of the State of Texas and a home rule city (the “**City**”), and Irving Music Factory, LLC, a North Carolina limited liability company (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, 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 head quarters 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 previously entered into a development agreement with Las Colinas Group, L.P. (“**LCG**”), to develop the Entertainment Center, which agreement terminated by its terms on August 6, 2012; and

WHEREAS, LCG has filed suit against the City in the 193<sup>rd</sup> Judicial District Court in Dallas County, Texas, Cause No. DC-12-08748 (the “**Lawsuit**”), alleging breach of the development agreement, seeking both damages and specific performance, which Lawsuit is currently on appeal to the Fifth Judicial Court of Appeals in Cause No. 05-13-00375-CV; and

WHEREAS, the City and the Company desire to resolve all matters pertaining to the Lawsuit; and

WHEREAS, the City and the Company desire to negotiate and enter into this Entertainment Center Development Agreement (the “**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, 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, and upon the occurrence of the conditions stated herein, including the dismissal of the Lawsuit, has agreed to join with the Company in the financing and development of the Entertainment Center and to share in the costs thereof to the extent provided in and in accordance with the terms of this Agreement and the other contracts and agreements referred to or incorporated 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 hereto have agreed and do hereby agree as follows:

THE CITY’S WILLINGNESS TO ENTER INTO THIS DEVELOPMENT AGREEMENT WITH THE COMPANY IS EXPRESSLY CONDITIONED UPON, AMONG OTHER THINGS, THE COMPANY’S DELIVERY OF A BINDING AND ENFORCEABLE RELEASE, EXECUTED BY LCG, CONCESSIONAIRE AND ANY RELATED ENTITIES, OF ALL CLAIMS ARISING OUT OF, OR RELATED TO, THE PRIOR DEVELOPMENT AGREEMENT AND LEASE WITH LCG, INCLUDING, BUT NOT LIMITED TO, ALL CLAIMS THAT WERE ASSERTED, OR COULD HAVE BEEN ASSERTED, IN THE LAWSUIT. IT IS THE PARTIES’ INTENT THAT THIS AGREEMENT, WHILE FULLY EXECUTED AS OF THIS DATE, SHALL ONLY BECOME EFFECTIVE UPON THE DISMISSAL OF THE LAWSUIT. TO THAT EFFECT, THE PARTIES AGREE THAT THIS AGREEMENT SHALL BECOME AND BE EFFECTIVE ONLY UPON THE DISMISSAL OF THE LAWSUIT. IF THE DISMISSAL OF THE LAWSUIT SHALL NOT HAVE OCCURRED ON OR BEFORE DECEMBER 31, 2013, THIS AGREEMENT SHALL BE VOID AB INITIO AND OF NO FORCE OR EFFECT.

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:



- (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 under-ground 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 million 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; (c) the City and the Company shall enter into a use and lease agreement (the “**Lease Agreement**”) whereby the Company shall occupy and operate the Entertainment Center, excluding the off-site infrastructure, for the benefit of the public as

provided therein, and (d) 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 the Entertainment Center and all improvements (including without limitation, fixtures and equipment, as provided in Section 1.3(b)) existing or 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(e)) 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 in the Entertainment Center and/or that are reasonably necessary to the operation of any such improvement (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 sub-tenants 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 (together with any other Intellectual Property assigned to the City by the Company hereunder, 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. The City assigns to the Company an irrevocable license during the term of the Lease Agreement to use all City Intellectual Property Rights in connection with the construction, repair, replacement, remodeling, renovation, and physical operation of the Entertainment Center. The rights granted to Company by City in this section shall at all times be subject to, and the Company agrees to be bound by, the restrictions and licenses contained in the agreements, if any, the City has with the creator, licensor or transferor of the City Intellectual Property Rights, to the extent disclosed to the Company in advance and in writing; provided, however, that the Company shall not be required by any such agreement to pay any amounts or to incur any substantial liability in respect of any such restrictions and licenses.

(3) The City and the Company acknowledge that ARK designs, LLC (“**ARK**”), will own all Intellectual Property related to the Entertainment Center, including but not limited to all Intellectual Property related to the operation and promotion of the Entertainment Center (collectively, the “**ARK Intellectual Property Rights**”), other than: (i) the City Intellectual Property Rights; and (ii) rights related to the filming of productions and performances at the Entertainment Center and the subsequent replay and distribution thereof (collectively, the “**Content Rights**”) and that ARK has previously granted a perpetual license of such ARK Intellectual Property Rights to Company, pursuant to that certain Intellectual Property Licensee Agreement dated as of [insert date]. Prior to Closing Date, as defined herein, Company shall cause ARK to grant a perpetual license of such ARK Intellectual Property Rights to the City solely for use in connection with the operation of the Entertainment Center, in substantial form as the Intellectual Property License Agreement attached as Exhibit\_\_\_ (the “**IP License Agreement**”).

(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. Provided, however, in such event the Company may credit the amount paid in property taxes to the City of Irving in the year in which the Entertainment Center becomes taxable to the payment of Annual Rent (as defined in the Lease Agreement) to the City in that year. In no event shall such credit exceed the amount of Annual Rent due the City in such year.

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 and obligations under the Lease Agreement. 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 Project, 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 Engineers 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 authority, 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 (defined above), (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 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 per cent 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 per cent 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 per cent or more or to reduce the Total Entertainment Center Costs by 10 per cent 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 Entertainment Center is substantially complete and after inspection by the City Designee and issuance by the City of a temporary certificate of occupancy, the City Designee will complete an audit (the "**Confirming Audit**") in the manner provided in Section 2.11 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(e) below] at the time of the Confirming Audit. If the Company Contribution 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 and the Lease 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 Engineers or the General Contractor within fifteen 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 three 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 is expected to begin in the 2<sup>nd</sup> quarter of 2014, but in no event shall construction commence later than 4<sup>th</sup> quarter of 2014. The City's issuance of a grading permit for the Site shall be considered commencement of construction. Build out of the Entertainment Center, evidenced by the issuance of a certificate of occupancy for every element of the Project Scope Criteria, shall be completed no later than the 2<sup>nd</sup> quarter of 2016. 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 construction schedule shall be extended accordingly.

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 re-drawn 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 OSIP or ROSIP 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.

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 three 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.

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; provided, however, that the Company shall have the right to place a mortgage or deed of trust lien upon the Company's leasehold interest in the Entertainment Center as set forth in the Lease Agreement, but such mortgage or deed of trust lien shall cover and affect only the Company's leasehold interest in the Entertainment Center and not the City's fee simple title to the Entertainment Center and will be subject to this Agreement and the Lease Agreement.

(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 thirty (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 ten 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) of the 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, Building Inspections Department, Public Works Department, Planning 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 Entertainment Center or any improvements thereon, 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 City Funding.

(a) The City shall not consider the issuance of its Bonds (defined in Section 2.3(a)) to fund the City Construction Contribution until it has received from the Company an executed irrevocable loan commitment, line of credit or other funding commitment(s) from financial institution(s) or investors in favor of the Company in form and content acceptable to the City, and in an amount equal to the Total Entertainment Center Costs, minus the Net Bond Proceeds (the “**Private Funding Commitment**”) such Private Funding Commitment containing no exceptions or qualifications to funding other than the City’s issuance of its Bonds to fund the Net Bond Proceeds, and other normal and usual conditions acceptable to the City. The date on which the Company fulfills its obligation under this Section 1.27 is referred to as the “**Closing Date.**”

(b) If the Company does not obtain the Private Funding Commitment by December 31, 2013, then the City and the Company will have no further liabilities or obligations under this Agreement, and this Agreement will terminate as of that date.

(c) The City shall not consider the issuance of its Bonds (defined in Section 2.3(a)) to fund the City Construction Contribution until it has received from the Company a binding and enforceable release, executed by LCG, Concessionaire and any related entities, of all claims arising out of, or related to, the prior development agreement and lease with LCG, including, but not limited to, all claims that were asserted, or could have been asserted, in the Lawsuit (the “**Release**”).

(d) If the Company does not obtain the Release by December 31, 2013 then the City and the Company will have no further liabilities or obligations under this Agreement, and this Agreement will terminate as of December 31, 2013.

(e) The City shall not consider the issuance of its Bonds (defined in Section 2.3(a)) to fund the City Construction Contribution until it has received from the Company an agreement with a concert promoter as provided in Section 1.18 no later than December 31, 2013.

(f) If the Company does not obtain the agreement with a concert promoter as provided in Section 1.18 by December 31, 2013 then the City and the Company will have no further liabilities or obligations under this Agreement, and this Agreement will terminate as of December 31, 2013.

Section 1.28. Conditions to Commencing Construction.

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

- (1) execution of this Agreement and the Lease Agreement by both parties;
- (2) dismissal of the Lawsuit;

(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, including the expenditure of the Total Entertainment Center Costs, including the Venue Project 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) the executed Private Funding Commitment; 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 Entertainment Center.

(b) Company's Obligation to Start Construction. The Company shall have no obligation to commence construction unless and until the following are satisfied; provided, however, should it proceed with construction before said matters are addressed, it does so at its own risk:

- (1) execution of this Agreement and the Lease Agreement by both parties;
- (2) dismissal of the Lawsuit;
- (3) satisfaction of the other requirements of Section 1.27;
- (4) the City shall have approved TIF No. 1 Reimbursement Agreement described in Section 2.3 (b) below;
- (5) the City shall have approved the Economic Development Incentive Agreement described in Section 2.4 below;



(6) the City shall have obtained a ruling from the Comptroller of Public Accounts described in Section 2.4 below; and

(7) the City shall have issued its bonds in an amount sufficient to fund the Net Bond Proceeds.

(c) Commencement of Construction. The Company shall use commercially reasonable efforts to commence construction in the second quarter of calendar 2014. In any event, the Company shall commence construction no later than December 31, 2014.

Section 1.29. Predevelopment Costs. The Company shall pay all pre-development 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.

## ARTICLE II

### Funding for Construction of the Entertainment Center

#### Section 2.1. Definitions.

(a) “City Mixed Beverage Tax” means payments or allocations to the City from the Comptroller of mixed beverage taxes imposed by Chapter 183 of TEXAS TAX CODE, as amended, paid by any mixed beverage permittee, and attributable to gross receipts from mixed beverages sold at the Entertainment Center.

(b) “City Sales Taxes” means City general municipal sales and use taxes imposed pursuant to section 321.103(a) of TEXAS TAX CODE, as amended, arising (i) from any person’s collection of City Sales Taxes as a result of sales of Taxable Items Consummated at the Entertainment Center.

(c) “State Sales Taxes” means limited sales and use taxes imposed pursuant to Chapter 151 of TEXAS TAX CODE, as amended, and mixed beverage taxes arising (i) from any person’s collection of State Sales Tax as a result of sales of Taxable Items Consummated at the Entertainment Center, and (ii) from any person’s payments to vendors or directly to the Comptroller of State Sales Tax on purchases of Taxable Items Consummated at the Entertainment Center.

(d) “Net Bond Proceeds” means that amount of proceeds from Bonds issued by the City pursuant to Section 2.3 herein that is net after providing for the payment of issuance costs, the creation of reserves, and the deposit of capitalized interest, and upon terms and conditions that conform to Applicable Law and that are satisfactory to the City.

(e) “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 in an amount not to exceed \$40,000,000 and the TIF Revenues not to exceed \$44,000,000.

(f) “Brimer HOT Revenues” means the 2% hotel occupancy tax revenues collected pursuant to Chapter 334, TEXAS LOCAL GOVERNMENT CODE, as amended.

(g) “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.

Section 2.2. Company Contribution.

(a) The Company estimates the Total Entertainment Center Costs will be approximately \$165 million. 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 million 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. City Construction Contribution is and shall be limited to (i) Net Bond Proceeds from the issuance of the City’s hotel occupancy tax revenue bonds issued by the City pursuant to the Act (the “**Bonds**”), being the amount of Net Bond Proceeds available from the City’s financing of bonds containing a pledge of all or a portion of the Brimer HOT Revenues (on a parity with the bonds issued pursuant to Section 2.5), with 1.5 times coverage, in an amount not to exceed \$40,000,000; (ii) excess Brimer HOT Revenues described in Section 2.6; and (iii) the amount of Tax Increment Reinvestment Zone No. 1 revenue described below (“**TIF Revenues**”), not to exceed \$44,000,000 in total. The issuance of bonds is a governmental function by the City Council of the City and is subject to the sole discretion of the City Council, notwithstanding any provision in this Agreement. Upon the City Council’s decision to issue Bonds pursuant to this Section, under no circumstances shall the City issue an amount of Bonds that would result in Net Bond Proceeds in an amount greater than \$40,000,000.

(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 \$44,000,000.00, 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 applicable City resolution, pursuant to a TIF No. 1 Reimbursement Agreement between the City and Company, substantially in the form attached hereto as Exhibit, and execute and deliver same as of the Closing Date. 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. Upon the Company's demonstration of compliance with Section 1.27 herein, the City shall use its reasonable and best efforts to obtain funds from the issuance, sale, and delivery of the Bonds, in one or more series, on a taxable and/or tax-exempt basis, in an amount to produce Net Bond Proceeds in an amount set forth in Section 2.3(a); and subject to the extent the City is able to market or obtain assurances from reputable investment banking firms or municipal bond underwriters selected by it of its ability to market and sell on a timely basis the Bonds, that will provide Net Bond Proceeds in an amount set forth in Section 2.3(a). The City shall deposit the bond proceeds pursuant to the ordinance authorizing the issuance of the bonds (the "**Bond Ordinance**"), and shall reserve 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 principal amount, structures, maturities, interest rates, provisions and special terms of the Bonds and any other City financing shall be as approved by the City; provided, however, in no event shall it be secured by a lien, security interest or any similar interest in the Entertainment Center. In addition, in no event shall the City issue the Bonds if the rating on any series of Bonds would be less than one of the four highest long-term rating categories for such Bonds. 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 described in (a) and (c) hereof. Should market conditions exist that make it impossible or cost prohibitive (in the reasonable opinion of the City Council and the City's financial advisors) to issue the Bonds, or should the City Council determine that it is not in the best interests of the City to issue Bonds, the Company shall have no right to demand the City Construction Contribution from any other funds of the City. Notwithstanding any provisions of this Agreement, the issuance of debt pursuant to this Agreement is a governmental act of the City Council and subject to their complete discretion.

Section 2.4. Project Revenues.

To the extent the City as an eligible central municipality pursuant to section 351.102(c) of TEXAS TAX CODE, as amended, is entitled to receive all funds from a hotel project that an owner of a qualified hotel project may receive under Section 151.429(h) of TEXAS TAX CODE, as amended, and Section 2303.5055 of TEXAS GOVERNMENT CODE, as amended, the City shall use its reasonable and best efforts in seeking a ruling from the Comptroller of Public Accounts of the State of Texas, that the Entertainment Center qualifies as convention center entertainment-related facilities, restaurants, shops, and parking facilities within 1,000 feet of the Hotel and the City is thus entitled to receive refunds of such State taxes generated in the Entertainment Center Site for a period of ten years after the date of initial occupancy of the Hotel.

City shall use its reasonable and best efforts in obtaining consent of Dallas County pursuant to Section 2303.5055 of TEXAS GOVERNMENT CODE, as amended, for a rebate of County mixed beverage taxes generated in the Entertainment Center Site for a period of ten years after the date of initial occupancy of the Hotel.

City will deposit its share of mixed beverage and sales and use taxes, generated in the Entertainment Center Site for a period of 40 years after the date of initial occupancy of the Entertainment Center and the foregoing State and County revenues (being collectively referred to as the “**Project Revenues**”) to the extent Project Revenues are received from the Comptroller, into a separate account identified in the City’s accounting system, for payment of a grant of all such Project Revenues to Company, pursuant to an Economic Development Incentive Agreement between the City and Company, substantially in the form attached hereto as Exhibit, and execute and deliver same as of the Closing Date.

Section 2.5. Existing Brimer HOT Revenue Debt.

[The City has currently outstanding its Hotel Occupancy Tax Revenue Refunding Bonds, Taxable Series 2011 (the “**Series 2011 Bonds**”), payable from the City’s 2% hotel occupancy tax levied pursuant to Chapter 334, LOCAL GOVERNMENT CODE and issued for construction of the Entertainment Center. The City, to the extent approved by the City Council and subject to market conditions, shall refund the Series 2011 Bonds under Chapter 1207, TEXAS GOVERNMENT CODE, as amended, to refinance and restructure the Series 2011 Bonds into 40-year fixed interest rate debt containing a pledge of the 2% hotel occupancy tax levied pursuant to Chapter 334 and any other lawfully available revenues the City determines in its best interest to pledge (such refinanced Series 2011 Bonds being referred to herein as the “Refunding Bonds”). Such Refunding Bonds shall be issued on a parity basis with the Bonds described in Section 2.3 hereof.

Section 2.6. 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 the date that this Agreement is executed and in effect. 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 2.10.

(b) Brimer HOT Revenues Subsequent to the Issuance of Bonds. Subsequent to the issuance of the City’s 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, 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 2.10. 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. Venue Project Costs will be funded in the following order: first to fund the \$900,000 reserve account described in Section 6.1(j) below; 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, including operating costs once the Lease Agreement commences.

(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 2.7. 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, Engineers 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 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 6.25 herein; and

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

Section 2.8. 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 2.9. Creation and Control of Funds, Payment of Project Costs

(a) 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 2.10. 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:

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

(ii) 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;

(iii) 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, has been 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;

(iv) 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 has been 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;

(v) 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

(vi) 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) If a Payment Certificate is otherwise completed and executed in accordance with Section 2.10(a) above and is submitted to the City’s Designee, then the City’s Designee shall promptly, and in no event later than thirty (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 2.11. 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, and other City and State Tax Refunds described in Section 2.4. 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, revenues in Section 2.4 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 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 Company Contribution, and permit the City to review 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 2.12. 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 five days written notice).

Section 2.13. 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, a quarterly report regarding the Entertainment Center that describes, in reasonable detail, the amount of Project Costs that have been funded through the Company's accounts in construction of the Entertainment Center during the applicable fiscal quarter.

Section 2.14. 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 Agreement. 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 2.6 herein, to the extent any such revenues exist, to its 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, right-of-ways and access rights as it deem reasonably necessary to the development of the Entertainment Center, the Convention Center and Convention Center 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 Sections 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 will 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 such abandonment may be designated a Venue Project Cost.

#### ARTICLE IV

##### Termination

Section 4.1. Company Termination Events. The Company may terminate this Agreement if, prior to December 31, 2013

- (a) the Lawsuit has not been dismissed; or
- (b) the City determines not to approve TIF No. 1 Reimbursement Agreement pursuant to Section 2.3; or
- (c) the City determines not to approve the Economic Development Incentive Agreement pursuant to Section 2.4; or
- (d) the City determines not to sell the Bonds or that market conditions render the City unable to issue and sell the Bonds pursuant to Section 2.3; or
- (e) the City determines not to refinance Series 2011 Bonds for the 40-year refunding period; or
- (f) The Comptroller does not provide the certification pursuant to Section 2.4; or
- (g) An environmental condition is discovered on the Site that causes the Site to be unsuitable for the Entertainment Center and the Company elects not to remediate such condition.

Section 4.2. City Termination Events.

- (a) This Agreement shall be void ad initio and of no force and effect if the Lawsuit is not dismissed by December 31, 2013.
- (b) The City Council may terminate this Agreement if the City determines not to sell the Bonds or that market conditions render the City unable to issue and sell the Bonds on or before March 1, 2014, pursuant to Section 2.3.

(c) This Agreement shall automatically terminate if the Company has not given evidence of its ability to meet its approved Company Contribution in the form of an executed Private Funding Commitment by December 31, 2013.

(d) This Agreement shall automatically terminate if the Company has not entered into an agreement with a concert producer and promoter approved by the City on or before December 31, 2013.

(e) The City Council may terminate this Agreement if the City and the Company have not executed the Lease Agreement by December 31, 2013.

Section 4.3. Termination by Either Party. This Agreement may be terminated by either Party under the following circumstances:

By either party after December 31, 2013, if the Closing Date has not occurred.

Section 4.4. Termination Procedure.

If either party determines that it wishes to terminate this Agreement pursuant to this Section such party must deliver a written notice to the other party to the effect that the notifying party thereby terminates this Agreement. The notice must be in writing and must specify in reasonable detail the factual basis for the termination of this Agreement.

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 thirty (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 thirty (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 ninety (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 ninety (90) days, then (i) the Company shall

commence its cure efforts within ninety (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 ninety (90) days;

(d) any uncured Company Event of Default under the Lease Agreement; and

(e) 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 sixty (60) days.

Section 5.2. City's Remedies. Upon the occurrence of an Event of Default by the Company, 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 thirty (30) days if the default is not addressed as herein provided (provided, however, that no such second notice shall be required if the Event of Default hereunder is caused by a Company Event of Default under the Lease Agreement for which all required notices have been given). 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 thirty (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.

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 thirty (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 ninety (90) days after written notice thereof is given by the Company to the City (provided that if such default cannot reasonably be cured within ninety (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 thirty (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. Lease Agreement. The City and the Company each will use their good faith efforts to complete and execute, by December 31, 2013, the Lease Agreement, such Lease Agreement to be consistent with the terms and provisions of this Agreement. The terms of the Lease Agreement shall contain the following provisions in more detailed form:

(a) Annual rent in the amount of \$1.00, payable in advance, during the initial term. Annual rent in the amount of \$500,000.00, payable in advance, during the first renewal term. Annual rent in the amount of \$1,000,000.00, payable in advance, during the second renewal term. Annual rent in the amount of \$1,500,000.00, payable in advance, during the third renewal term;

(b) An initial lease term of 30 years, plus up to three renewal terms at the Company's option; the first two renewals for a period of 30 years each, the third renewal term for a period of 9 years.

(c) The Company, as tenant, shall be responsible at its sole cost and expense for the operation, maintenance, repair, replacement, and upkeep (including all capital expenditures related to any of the foregoing) of the Entertainment Center (excluding off-site infrastructure);

(d) The Company, as tenant, may use excess Brimer HOT Revenues and ticket tax revenues, if any, for the operation, maintenance, repair, replacement, and upkeep (including all capital expenditures related to any of the foregoing) of the Entertainment Center;

(e) The Company will be required to book and stage a minimum of 100 live music performance dates per year in the Amphitheater/Performance Hall and the Plaza combined, with a minimum ticketed attendance of 100,000 on an annual basis;

(f) The Company will be required to keep open for business an average of 30 hours per week a minimum of 50,000 square feet of the Restaurant;

(g) The Company, as tenant, shall be responsible at its sole discretion for the selection of sub-tenants, under terms of a sub-lease that complies with all the terms of the Lease;

(h) The City shall have the right to conduct annual audits and physical inspection to enforce the Company's compliance with its obligations under the lease;

(i) The Company shall be required to keep and maintain, or cause to be kept and maintained, the Entertainment Center in good, safe, sanitary, and attractive condition and repair at all times in conformance with standards for similar first class public multi-use entertainment venues, subject to any additional provisions regarding maintenance of the Entertainment Center agreed to by the City and the Company in the Lease;

(j) The Company shall establish and maintain a reserve account for operations and maintenance, capital improvements and security deposit in the minimum amount of \$900,000 for the benefit of the Entertainment Center and shall submit the budget for this reserve to the City on an annual basis funded with excess Brimer Revenues and thereafter by the Company;

(k) The Company may include additional improvements on the Site, at its sole expense and not as part of Company Contribution, up to 100,000 square feet of office use and a hotel use, but the hotel use may only occur if Hotel is not constructed by January 1, 2017; and

(l) Such other terms and provisions as are consistent with the terms and provisions of this Agreement or otherwise reasonably acceptable to the City Council and the Company.

Section 6.2. City Suites. The Company shall grant the City the exclusive right to use and occupy one of the three largest box suites in the Amphitheater/Performance Hall, the location of such suite to be mutually determined by the City and the Company. In addition, the Company shall provide a food and beverage allocation to the City for its use of the box suite in the maximum monthly amount of \$12,500, such maximum amount to increase by 2% per annum.

Section 6.3. 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 in this Agreement, including those documents listed on Exhibit.

Section 6.4. 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 6.5. Venue for Actions. The venue for any legal action arising out of this Agreement shall lie exclusively in Dallas County, Texas.

Section 6.6. 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 6.7. 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 6.28).

Section 6.8. Successors and Assigns. This Agreement may not be assigned by either party without the express written consent of the other party other than a collateral assignment by the Company in connection with a mortgage by the Company of its leasehold interest under the Lease Agreement or under Section 2.14. The provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 6.9. Entire Agreement; Amendment This Agreement (including the Exhibits attached hereto), and the other documents delivered pursuant hereto and referenced herein constitute the full and entire understanding and agreement between the parties with regard to the subject matter hereof and thereof and supersede any prior or contemporaneous, written or oral agreements or discussions between the parties. 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 6.10. 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, San Antonio, and Oklahoma City metropolitan areas. Nothing in this Section 6.10(a) imposes any limitations on a non-affiliated concert promoter for the Entertainment Center.

(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 6.11. Joint Operation and Booking Agreement. It is the City’s intent that the Convention Center and Entertainment Center be jointly operated as one City project. The City and the Company, or the Company’s design or operator shall enter into an agreement regarding the booking of the Entertainment Center (the “**Booking Agreement**”). The Booking Agreement shall contain, at a minimum, the following provisions:

(a) The lease of the Performance Hall to the City and the Irving Convention Center and Visitors Bureau (the “**ICVB**”) at agreed upon rates as specified in the Booking Agreement.

(b) For dates that are twelve months in advance of the date of booking and continuing on a rolling twelve month basis, the City and/or ICVB shall have the exclusive first right to book events on open dates at the Performance Hall between the hours of 7:00 a.m. and 6:00 p.m., Irving, Texas time.

Section 6.12. 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 6.13. 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 6.14. 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) three (3) business days after deposit in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, on a business day during business hours; or

(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 Blvd.  
Irving, Texas 75060  
Attention: City Manager  
Telephone: 972-721-2586  
Facsimile: 972-721-2420  
E-mail: tgonzlez@cityofirving.org

With copy to:

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

If to the Company:

Irving Music Factory, LLC  
19401 Old Jetton Road  
Suite 101  
Cornelius, NC 28031  
Attention: Noah Lazes  
Telephone: 704-987-0612  
Facsimile: 704-987-0767  
E-mail: Noah@arkgroupus.com

with copies to:

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

and:

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

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 fifteen (15) days' prior notice. Notices given by counsel for any party are effective as notices by the party.

Section 6.15. Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, such provision shall be reformed to the extent necessary to permit enforcement thereof, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 6.16. 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 6.17. 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 6.18. 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 6.19. 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 6.20. 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 6.21. 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 6.22. Limited Waiver of Governmental Immunity. **NOTHING CONTAINED IN THIS AGREEMENT SHALL WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER APPLICABLE LAW OR IN ANY WAY WAIVE OR LIMIT ANY DEFENSES OF CITY, ITS OFFICERS, AGENTS, EMPLOYEES AND REPRESENTATIVES.** The City and Company hereby agree that this Agreement to the extent it constitutes an agreement for providing goods or services to the City, is subject to the provisions of Subchapter I of Chapter 271, Texas Local Government Code, as amended. The City agrees that, in accordance with and by operation of Subchapter I, it has waived governmental immunity to suit for the purpose of adjudicating a claim for breach of this Agreement, subject to the terms and conditions of Subchapter I of Chapter 271, Texas Local Government Code, as amended.

Section 6.23. Indemnity. *[To be revised by litigation attorneys depending upon the terms of the Release]* 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 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 6.24. 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 6.25. 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 6.26. 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), loss, 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 6.27. 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 6.28. 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 6.29. Exhibits. The following exhibits are attached hereto and incorporated herein.

(the **“Site”**) as described on Exhibit A [recital]

Intellectual Property License Agreement [1.3]

Form of TIF No. 1 Reimbursement Agreement [2.3(b)]

Form of Economic Development Incentive Agreement [2.4]

\* \* \* \*

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

CITY OF IRVING, Texas

By: \_\_\_\_\_  
BETH VAN DUYNE  
Mayor

Approved as to form:

\_\_\_\_\_  
CHARLES R. ANDERSON  
City Attorney

ATTEST:

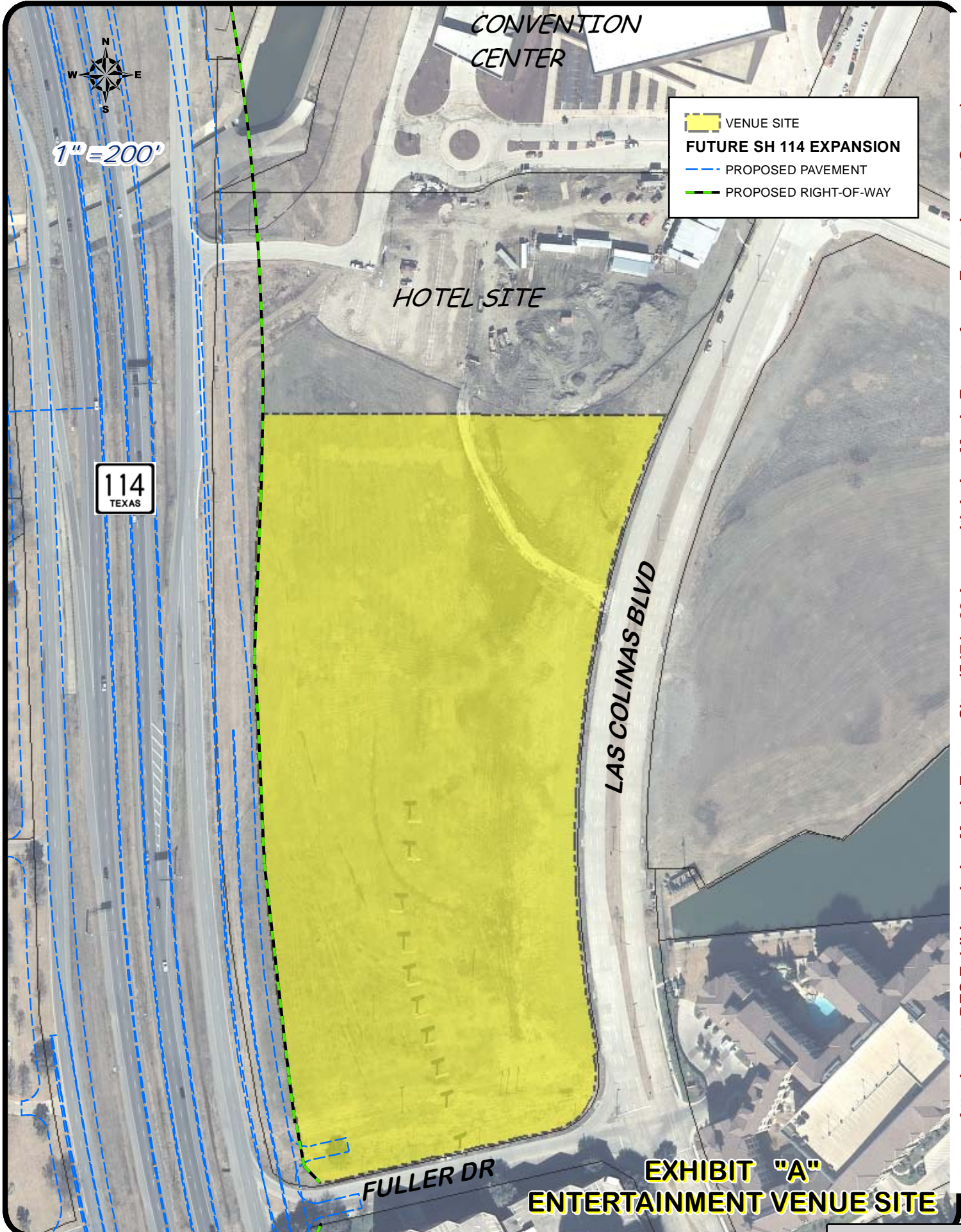
\_\_\_\_\_  
SHANAE JENNINGS  
City Secretary

Irving Music Factory, LLC  
a North Carolina limited Company

By: Irving Music Factory, LLC  
a North Carolina limited liability  
company, Its General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



Attachment: RES Exhibit a - Irving Music Factory Site (5474 : 29 Agree with Irving Music Factory for an Entertainment Center)



EXHIBIT C

July 3, 2013 v.2

**ENTERTAINMENT CENTER**  
**TIF No. 1 REIMBURSEMENT AGREEMENT**

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

This Agreement (this "Agreement"), is made and entered into as of the \_\_\_ day of \_\_\_, 2013, by and between the City of Irving, Texas (the "**City**"), a home rule city in Dallas County, Texas, acting through its Mayor, and Irving Music Factory, LLC, a North Carolina limited partnership ("**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 Company and the City entered into that certain Entertainment Center Development Agreement dated \_\_\_, 2013 (the "Development Agreement"), whereby Company will construct an entertainment center generally described as a multi-functional amphitheater and performance hall, 100,000 square feet of mixed use space including full-service restaurants, limited food service/entertainment venues, and retail space, a landscaped pedestrian walkway, three outdoor live music stages, an open air plaza, and an approximately 1,200-space structured parking garage that will serve the entertainment center, convention center and convention center hotel; and

WHEREAS, the City desires to enter into this Agreement with Company for the reimbursement of public infrastructure improvements pursuant to Sections 311.008 (3) and 311.101 (b) of the Code; 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 \_\_\_\_\_, 2013, 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:

### 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 17.8 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 2264.01(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 on the 12<sup>th</sup> day of December, 2002, and attached as **Exhibit "A"** and incorporated herein for all purposes.
- B. The City agrees to reimburse Company for Approved Construction Costs described on Exhibit "B", in an amount 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 completion 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) Company shall complete the Confirming Audit, as defined in Section 1.10 of the Entertainment Center Development Agreement between the parties dated \_\_\_\_\_, 2013;
  - 5) Company to produce records identifying the payment of all components of the Project. 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 applicable year, 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**

Company may assign the rights to receive the reimbursement to a person providing funds for construction, by providing notice of same to City and TIF District. Otherwise, the right to receive the reimbursement may not be transferred or assigned by Company without the prior approval of both the TIF District and City. Company shall provide both the TIF District and City a copy of such assignment or transfer agreement.

#### **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**

**VIII. CITY COUNCIL AUTHORIZATION**

This Agreement was authorized by Resolution No. RES-2013-\_\_\_\_\_ of the City Council approved on the \_\_\_ day of \_\_\_\_, 2013.

**IX. TIF DISTRICT AUTHORIZATION**

The Board of Directors of the TIF DISTRICT, by Resolution No. \_\_\_ adopted the \_\_\_ day of \_\_\_\_, 2013, 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 among the parties, supersedes all prior agreements between the parties as to this subject matter, and prior understanding or written or oral agreements or representations among the parties, on the matter of TIF reimbursement and can be modified only by written instrument subscribed to by all parties. Notwithstanding the foregoing provision, this Agreement does not modify, alter, or amend the Entertainment Center Development Agreement between City and Company executed as of \_\_, 2013. This Agreement may be executed in multiple counterparts, each of which shall be considered an original.

### **XV. TERM**

In the event the Project has not been completed within the second quarter of 2016, Company shall notify the TIF District and the City within thirty (30) days prior to the second anniversary of the execution of this Agreement that it desires to renew this Agreement for a two (2) year period. Upon receipt of that notice by the TIF District and the City, this Agreement shall automatically renew for a two (2) year period. This renewal notice shall be in addition to the notice required in Paragraph V of this Agreement. If Company does not provide the notice required by this paragraph, this Agreement shall terminate on the second anniversary of its execution. In the event this Agreement is renewed, and the Project has not been completed within four years of the execution of this Agreement, this Agreement shall terminate on the fourth anniversary of its execution.

In the event the Project has reached completion, 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.

*[separate signature page follows]*



EXECUTED as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**CITY OF IRVING, TEXAS**

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

ATTEST:

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

APPROVED AS TO FORM:

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

**IRVING MUSIC FACTORY, LLC**

By: \_\_\_\_\_  
its general partner

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

THE STATE OF TEXAS  
COUNTY OF DALLAS

§  
§  
§

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., 2013

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

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

My Commission Expires:

\_\_\_\_\_

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

§  
§  
§

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, the general partner of Irving Music Factory LLC, 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., 2013.

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

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

My Commission Expires:

\_\_\_\_\_

### List of Exhibits

- Exhibit “A” Tax Increment Zone No. 1, City of Irving, Property Owner Company Reimbursement Policy (incorporated in Agreement)
- Exhibit “B” Project - Public Improvement
- Exhibit “C” Property Description (incorporated in Agreement)
- Exhibit “D” 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.

### 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. 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.

#### Priority 2 Distribution

Balance of unreimbursed Approved Project Costs will be paid to the extent of remaining Distributable Funds.

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"**  
**Project – Public Improvements**

**Parking Garage**

Garage allowance	\$ 21,600,000	
Engineering/Design, Construction Management & GC Fee	\$ 2,400,000	
<b>APT Station Total</b>		<b>\$ 24,000,000</b>

**Public Area & Amphitheater Improvements**

Miscellaneous Hard Costs	\$	
Soil Treatment Stabilization	\$	
Water Supply Distribution	\$	
Storm Sewer	\$	
Sanitary Sewer	\$	
Electrical Service Upgrades/Transformers	\$	
Site Lighting	\$	
Tree Uplights	\$	
Tree Grates	\$	
Trees & Landscaping	\$	
Tree Drainage/ Trench Drains	\$	
	\$	
	\$	
Irrigation	\$	
Water Feature	\$	
	\$	
Streets - Concrete, Pavers, Striping, Stops, Curb & Gutters	\$	-
Sidewalks - Concrete, Pavers & ADA Ramps	\$	-
Plaza & Public Gathering Areas	\$	
Walkway	\$	
Engineering/Design, Construction Management & GC Fee	\$	
<b>Public Area &amp; Amphitheater Improvements Total</b>		<b>\$ 20,000,000</b>

<b>TOTAL</b>		<b>\$ 44,000,000</b>

**Exhibit "C"  
Property Description**

## AGENDA ITEM SUMMARY

Meeting: 7/11/2013

DOC ID: 5479

Recommending Department: Financial Services

LSR No: 15118

### Resolution -- Amending the Tax Increment Reinvestment Zone No. 1 Property Owner/Company Reimbursement Policy

#### Administrative Comments

1. This item supports Strategic Goal No. 3: Economic Development.
2. **Impact:** Approval of this resolution will provide a mechanism for the City to accumulate funds for TIF reimbursement to the Irving Music Factory LLC for public infrastructure projects.
3. The Entertainment Center Development Agreement anticipates that Irving Music Factory LLC (IMF) will request \$44 million in TIF funds for public infrastructure projects within TIF No. 1 (the Urban Center). Specifically, \$24 million for a parking garage and \$20 million for various public infrastructure projects all at the proposed Entertainment Center.
4. The proposed amendment to the TIF Property Owner/Company Reimbursement Policy will continue to fund the on-going administrative expenditures, DCURD annual capital costs, previously approved TIF developer project costs and reimbursement requests from participating governmental entities.
5. All remaining unrestricted TIF funds will be transferred to a restricted account in the TIF Project fund called "Entertainment Center". Unrestricted funds will be transferred to the restricted account at the end of each fiscal year until it accumulates \$44 million. Once the Council adopts a TIF reimbursement agreement with IMF, these funds will be used to reimburse IMF for completed public infrastructure projects.
6. TIF developer reimbursement requests approved after July 11, 2013 will not be eligible to receive TIF reimbursements until the earlier of the IMF has received \$44 million in TIF reimbursements or August 31, 2018. Any funds remaining in the restricted account on August 31, 2018 will be released for any TIF project costs approved after July 11, 2013.

#### Recommendation

The resolution be approved.

#### ADDITIONAL COMMENTS:

**Contract Required:** No  
**Previous Action:** N/A

**Review Completed By:** Karen Brophy  
**Council Action:** N/A

#### ATTACHMENTS:

Exhibit A TIF policy red line v2 (2)(PDF)

**CURRENT YEAR FINANCIAL IMPACT:**

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N/A

**REVISION INFORMATION:**

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Prepared: 6/28/2013 12:39 PM by Brad Duff

Last Updated: 7/5/2013 09:18 AM by Jennifer Phillips

CITY OF IRVING

COUNCIL RESOLUTION NO. (ID # 5479)

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WHEREAS, on \_\_\_ 2002, the City Council adopted Resolution No. \_\_\_ approving the Tax Increment Reinvestment Zone No. 1 (“TIF”) reimbursement policy; and

WHEREAS, on July 11, 2013, the City Council adopted Resolution No. RES-2013-\_\_\_ approving an Entertainment Center Development Agreement and expressing its intent to obtain TIF revenues for the Entertainment Center project;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS:

SECTION I. THAT the City Council finds it in the best interest of the Tax Increment Reinvestment Zone No. 1 and the citizens of Irving to accumulate revenues in the TIF fund specifically for the Entertainment Center and that the reimbursement policy be revised to include the following:

Beginning July 12, 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 million. Any funds remaining in the account August 31, 2018, will be released for any remaining project costs approved after July 12, 2013.

SECTION II. THAT the City Council hereby adopts the revised Tax Increment Finance District No. 1 Reimbursement Policy attached as Exhibit A.

SECTION III. THAT this resolution shall take effect from and after its final date of passage, and it is accordingly so ordered.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS,  
on July 11, 2013.

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BETH VAN DUYNE  
MAYOR

ATTEST:

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Shanae Jennings  
City Secretary

APPROVED AS TO FORM:

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Charles R. Anderson  
City Attorney



## Exhibit "A"

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

#### Proposed Amendments to address Entertainment Center request

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 12, 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 12, 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 11, 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 11, 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 11, 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.