

## AGENDA ITEM SUMMARY

Meeting: 2/15/2018

DOC ID: 9201

Recommending Department: City Manager's Office

LSR No:

### Resolution -- Making Findings Related to ARK Group of Irving, Inc. Fulfilling Completion Conditions of the Entertainment Center Development Agreement

#### Administrative Comments

1. This item is recommended by the City Manager's office.
2. Effective February 10, 2018, the ARK Group of Irving, Inc. has satisfied Completion Conditions for the entertainment center under the terms of the Development Agreement.
3. Completion Conditions are defined as:
  - a. A Letter of Compliance for every building/structure identified on the conceptual site plan approved by City Council by Resolution RES 2014-214 with the Walkway, Promenade, Plaza, and all Entertainment Center Related Infrastructure (including but not limited to landscaping, hardscaping, exterior lighting, flatwork, surface parking, and drive approaches) completed with the last Letter of Compliance; and
  - b. Certificates of occupancy (CO) for:
    - i. The Amphitheater/Performance Hall, and
    - ii. A minimum of nine full service restaurants, four entertainment venues, and 5,000 square feet of retail space, collectively containing not less than 100,000 sq. ft., and
    - iii. Two outdoor stages of the Plaza, and
    - iv. The Parking Facilities (approximately 1,200-space structured parking garage).
4. In evaluating the satisfaction of Completion Conditions, the city is using the following definitions:
  - a. **Full service restaurant** is a food service establishment where patrons order and are served while seated (waiter/waitress service) and pay after eating.
  - b. **Entertainment venue** is an establishment with a submitted interior finish out plan that includes a permanent stage, DJ booth, or other similar permanent entertainment space.
  - c. **Retail** is an establishment primarily engaged in selling general merchandise or pre-packaged food items.
5. As of February 10, 2018, the City of Irving Inspections Department has issued Letters of Compliance (LoC) for all buildings on the site.

Building	Date LoC Issued
A1	09/08/2017
A2	01/31/2018

Building	Date LoC Issued
A3	11/09/2017
A4	09/13/2017
B1 (Parking Garage/Stores)	09/22/2017
B1 (Office)	01/11/2018
C1	01/17/2018
C2	01/02/2018
D1	02/10/2018
D2	09/07/2017

6. The following Certificates of Occupancy have been issued:

Establishment	Date CO Issued
<b>Amphitheater/Performance Hall</b>	
The Pavilion at the TMF	09/08/2017
<b>Full Service Restaurant</b>	
1. Boi Na Braza	12/29/2017
2. Grimaldi's Coal Brick-Oven Pizzeria	01/23/2018
3. Yard House	01/15/2018
4. Gloria's Latin Cuisine	01/24/2018
5. Kabuki Japanese Restaurant	02/05/2018
6. Thirsty Lion Gastropub & Grill	10/25/2017
7. Bar Louie	09/13/2017
8. Highway 61 South	01/05/2018
9. Texas Jam House	12/20/2017
<b>Entertainment Venue</b>	
1. Bar Manzanilla	01/10/2018
2. Martini Ranch	01/23/2018
3. C-Bar	01/23/2018
4. Wine Bar	01/23/2018
<b>Retail – 5,266 sq. ft.</b>	
Hitching Post – 3,002 sq. ft.	01/04/2018
Toyota Music Factory Retail Store – 2,264 sq. ft.	01/26/2018
<b>Outdoor Stages</b>	
Large Plaza Platform	N/A*
Small Plaza Portable Platform	N/A*
<b>Parking Facilities</b>	
Parking Garage	09/22/2017

\*Approved through final Letter of Compliance.

7. The full service restaurants listed comply with the city's definition of full service restaurant. This has either been verified by city staff (based upon current operations or the operations of other similar locations) or the sub-tenant has provided information regarding operations.
8. The entertainment venues listed have an identified stage, DJ booth, or other entertainment feature on their interior finish plans submitted to the Inspections Department.
9. For retail, the Hitching Post has been verified by the sub-tenant as a retail store selling clothing, jewelry, and other accessories. The Toyota Music Factory Retail

Store is operated by the ARK Group. It is identified as a retail establishment on its CO. It meets the minimum requirements for a CO. The ARK Group has verbally indicated that it will sell Toyota Music Factory branded merchandise.

10. Including the square footage of restaurant patios and common areas within building C1, the total square footage of the nine full service restaurants, four entertainment venues, and retail space is 100,497 sq. ft.
11. The attached resolution makes findings that the ARK Group of Irving, Inc. has satisfied Completion Conditions as of February 10, 2018, under the terms of the Development Agreement.
12. As a result, the Initial Term of the Lease will begin on March 1, 2018. The Urban Towers Parking Agreement will also be assigned to ARK effective March 1, 2018.
13. The TIF Agreement will remain in effect. Payment will be determined by the Confirming Audit and completion of other obligations of the TIF Agreement.

**Recommendation**

City Council make findings that ARK has satisfied Completion Conditions under the Development Agreement.

**ADDITIONAL COMMENTS:**

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**Contract Required:** No                      **Review Completed By:** Karen Brophy

**Previous Action:**                              **Council Action:**

**Discretionary Contract Disclosure Form Required:**

**Certificate of Interested Parties (Form 1295) Required:**

**CURRENT YEAR FINANCIAL IMPACT:**

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None

**REVISION INFORMATION:**

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Prepared: 2/9/2018 09:44 AM by Marivi Gambini  
Last Updated: 2/13/2018 04:29 PM by Brad Kearney

CITY OF IRVING

COUNCIL RESOLUTION NO. (ID # 9201)

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WHEREAS, at an election held on November 6, 2007, the voters approved the proposition authorizing 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, the City and ARK Group of Irving, Inc. a Texas corporation, (the "Company") entered into that certain Entertainment Center Development Agreement dated July 25, 2013, and effective on August 5, 2013, as amended and restated October 22, 2015 (the "Development Agreement"), to govern the design and construction of the Entertainment Center and the rights and obligations of the parties during the development period; and

WHEREAS, the City and the Company entered into a separate and independent Entertainment Center Lease Agreement dated September 5, 2013, as amended and restated pursuant to that certain First Amended and Restated Entertainment Center Lease Agreement dated as of December 12, 2013, as amended and restated in the Second Amended and Restated Entertainment Center Lease Agreement dated as of October 22, 2015 (the "Lease"); and

WHEREAS, the City and the Company entered into a separate and independent Entertainment Center TIF Reimbursement Agreement dated September 5, 2013, as amended and restated pursuant to that certain First Amended and Restated TIF No. 1 Reimbursement Agreement dated December 11, 2014, as amended and restated in the Second Amended and Restated Entertainment Center TIF Reimbursement Agreement dated as of October 22, 2015 (the "TIF Reimbursement Agreement"); and

WHEREAS, capitalized words capitalized words in this resolution shall have the meaning ascribed to them in the Development Agreement, unless specifically provided otherwise; and

WHEREAS, pursuant to the provisions of section 1.14 of the Development Agreement, the Company shall satisfy certain Completion Conditions, more fully defined therein; and

WHEREAS, a letter of compliance, as defined in section 111.1.2 of the Irving Building Code, has been issued for every building including those identified as A1, A2, A3, A4, B1, C1, C2, D1 and D2 on the dimension control plan prepared by Architect dated April 17, 2015, and every structure shown on the conceptual site plan approved by Resolution RES 2014-214; and

WHEREAS, the Walkway, Promenade, Plaza and all Entertainment Center Related Infrastructure, including, but not limited to, landscaping, hardscaping, exterior lighting, flatwork, surface parking, paving and drive approaches have been completed with the last letter of compliance; and

WHEREAS, the last letter of compliance was issued February 10, 2018; and

WHEREAS, prior to February 10, 2018, certificates of occupancy have been issued for:

- a. the Amphitheater/Performance Hall, and
- b. a minimum of nine full service restaurants, where patrons order and are served while seated and pay after eating; four entertainment venues with interior finish out plans that include a platform, DJ booth or other permanent entertainment space; and 5,000 square feet of retail space, primarily engaged in selling general merchandise or prepackaged food items; collectively containing not less than 100,000 square feet, and
- c. two outdoor stages of the Plaza, consisting of a permanent platform and a movable platform; and
- d. the Parking Facilities.

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

- SECTION I. THAT the statements contained in the preamble of this resolution are accepted as true, are hereby adopted as findings of fact and incorporated into this resolution as if restated here.
- SECTION II. THAT Completion Conditions as defined in Section 1.14 of the Development Agreement have been fulfilled and satisfied by Company as of February 10, 2018.
- SECTION III. THAT Company has satisfied Completion Conditions within 24 months following February, 2016, that being the month in which the Conditions Precedent (as defined in Section 1(c) of the Lease) were fulfilled.
- SECTION IV. THAT the Initial Term of the Lease shall commence on March 1, 2018.
- SECTION V. THAT the assignment of the Urban Towers parking agreement shall become effective as of March 1, 2018, as provided in Section 1(f)(2) of the Lease.
- SECTION VI. THAT the TIF Agreement shall remain in full force and effect.
- SECTION VII. THAT this resolution does not, and shall not be deemed to, address the further obligations of the Company under section III. of the TIF Agreement.
- SECTION VIII. 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 February 15, 2018.

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RICHARD H. STOPFER  
MAYOR

ATTEST:

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Shanae Jennings  
City Secretary

APPROVED AS TO FORM:

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Kuruvilla Oommen  
City Attorney