FIRST AMENDMENT TO CHAPTER 380, GRANT, AND DEVELOPMENT AGREEMENT

by and among

CITY OF MCKINNEY, TEXAS,

MCKINNEY ECONOMIC DEVELOPMENT CORPORATION,

MCKINNEY COMMUNITY DEVELOPMENT CORPORATION as City Parties

and

VENU HOLDING CORPORATION, SUCCESSOR-BY-NAME-CHANGE TO NOTES LIVE, INC., as Owner

Dated as of October 15, 2024

SUNSET AMPHITHEATER
MCKINNEY, TEXAS

FIRST AMENDMENT TO CHAPTER 380, GRANT, AND DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO CHAPTER 380, GRANT, AND DEVELOPMENT AGREEMENT (this "First Amendment") is made and entered into effective as of October 15, 2024 by and among CITY OF MCKINNEY, TEXAS, a Texas home rule municipal corporation ("City"), MCKINNEY ECONOMIC DEVELOPMENT CORPORATION, a Type A, non-profit development corporation created and existing under the laws of the State of Texas (the "State"), including the Texas Development Corporation Act ("MEDC"), MCKINNEY COMMUNITY DEVELOPMENT CORPORATION, a Type B, non-profit development corporation created and existing under the laws of the State, including the Texas Development Corporation Act ("MCDC") and VENU HOLDING CORPORATION, successor-by-name-change to Notes Live, Inc., a corporation organized under the laws of the State of Colorado ("Owner"). The City, MEDC and MCDC are sometimes collectively referred to as the "City Parties." City Parties and Owner are sometimes collectively referred to herein as the "Parties" and individually as a "Party."

WITNESSETH:

WHEREAS, the City Parties and Owner previously entered into a Chapter 380, Grant, and Development Agreement effective April 16, 2024 (the "Original Agreement"), concerning the development, construction, operation and maintenance of a new, first class, state-of-the-art amphitheater/outdoor entertainment venue facility and related project improvements thereon to promote economic development in the City by providing world-class concerts and live shows, as well as other entertainment and civic events;

WHEREAS, Owner desires to make certain changes to the Original Agreement as hereinafter set forth;

WHEREAS, the City Parties find that the amendments set forth herein promote the purposes of the Original Agreement;

Now, THEREFORE, in consideration of the premises, the City Parties and the Owner agree as follows:

ARTICLE I

AMENDMENTS TO ORIGINAL AGREEMENT

Section 1.1 Amendments.

- (a) The Original Agreement is hereby amended by deleting Sections 3.3.1, 3.3.2, 8.1.2, 9.8.4(c), 15.1.1, 21.1, 21.8, 22.4(d), 23.1.1(e), and 23.2.1(f) in their entirety and inserting in their respective places the following:
 - **3.3.1** <u>Delivery of Possession</u>. Owner shall acquire the Land from MEDC on or before the date that is thirty (30) days following Entitlement, as hereinafter defined (the

"Closing Date"), for a purchase price of Thirty-Five Million and No/100 Dollars (\$35,000,000.00) (the "Purchase Price"). On the Closing Date, and subject to the satisfaction of the closing conditions set forth herein, and the payment of the Purchase Price, MEDC shall deliver to Venu Holding Corporation or Sunset Ground at McKinney, LLC marketable title and exclusive possession, use and occupancy of the Land free of all tenancies and parties in possession subject only to (i) the Permitted Exceptions, as specifically described on Exhibit C, (ii) a covenant prohibiting the Land from being used for multi-family residential purposes, (iii) the rights and reservations of the MEDC under this Agreement, and (iv) if applicable, the Deed of Trust conveying a first-priority lien on the Land set forth in Section 3.3.2. Owner shall not conduct or caused to be conducted any land disturbance activities on the Land until after closing. The Parties expressly agree that the Declaration and Establishment of Covenants, Conditions, Restrictions and Grant of MEDC, record in Clerk's File Nos. 20080207000147650, by 20120820001026570 and 20130125000114540, Real Property Records, Collin County, Texas shall not constitute a Permitted Exception unless and until MEDC delivers to Owner an Estoppel Certificate Regarding Declaration in form and substance approved by Owner.

3.3.2 Payment of Purchase Price; Default. At closing, Owner shall have the option to pay the Purchase Price (i) in full, in cash, plus Owner's closing costs under standard commercial transaction terms for property of a similar nature located in Collin County, Texas, or (ii) with Ten Million and No/100 Dollars (\$10,000,000.00), plus Owner's closing costs, paid in cash, and the remaining Twenty-Five Million and No/100 Dollars (\$25,000,000.00) represented by a secured promissory note to MEDC in substantial conformance with the form of note attached hereto as Exhibit B (the "Note"), bearing no interest and subject to prepayment at any time with no penalty, and secured by a Deed of Trust in substantial conformance with the form of Deed of Trust attached hereto as Addendum 1 (the "Deed of Trust") conveying a first-priority lien on the Land and guaranteed by the personal guaranties of J.W. Roth and Kevin O'Neil in substantial conformance with the form of Personal Guaranty attached hereto as Addendum 2 (each a "Personal Guaranty," and, together, the "Personal Guaranties"). At its cost, Owner shall provide the MEDC with a Mortgagee's Title Policy in the amount of the Note, insuring the MEDC's lien/loan. If Owner exercises its right to pay the Purchase Price pursuant to option (ii), the Note shall be due and payable in full to MEDC thirty (30) days following the earlier of (x) Owner's receipt of a Temporary Certificate of Occupancy ("TCO") or (y) the occurrence of an Owner Default. Further, if payment option (ii) is exercised, until the \$10,000,000.00 has been reimbursed to Owner or retained by MEDC following an Owner default pursuant to the Agreement, MEDC shall invest the \$10,000,000.00 paid under option (ii) in a public fund investment pool, or other investment instrument in accordance with MEDC's investment policies, which shall accrue interest at the Texpool rate of interest received by MEDC pursuant to such investment. As of the effective date of this First Amendment, the interest rate on the MEDC's invested funds is 4.75%. All interest earned on the principal amount of such deposit (the "Accrued Interest"), from the date of such deposit until the earlier of (a) June 30, 2026, (b) the date the \$10,000,000.00 has been reimbursed to Owner pursuant to the Agreement, and (c) the date the \$10,000,000.00 has been retained by MEDC pursuant to the Agreement, shall be paid by MEDC to Owner, by ACH or wire transfer, monthly, in arrears, on or before the tenth (10th) day of each month. Owner shall repay to MEDC the entirety of all Accrued Interest paid to Owner through a

temporary adjustment to the Ticket Fee (as described in Section 12.3.2) revenue split pursuant to Section 9.8.2(b). Specifically, until such time as MEDC has received reimbursement for all Accrued Interest paid to Owner, the City, pursuant to Section 9.8.2(b), shall remit to MEDC \$0.50 of each \$1.00 Ticket Fee, retain for the City \$0.10 of each \$1.00 Ticket Fee, and remit to Owner the remaining \$0.40 of each \$1.00 Ticket Fee. From and after the date on which MEDC has received from such adjusted Ticket Fee distributions an amount equal to the aggregate Accrued Interest paid to Owner, the Ticket Fee revenues shall be split \$0.90 per \$1.00 Ticket Fee to Owner and \$0.10 per \$1.00 Ticket Fee to the City as set forth in Section 9.8.2(b).

- **8.1.2** Operator Agreement. Owner shall enter into a fully executed, binding contract or contracts with the Operator or, if more than one Operator, with each Operator (individually or collectively, the "Operator Agreement") by December 15, 2024, a copy or copies of which shall be provided to City Parties (with redactions for trade secrets if mandated by a non-disclosure agreement between Owner and Operator) as soon as practicable thereafter. The Operator Agreement (and each of them, if more than one) shall expressly provide that the Operator Agreement and the Operator's rights and responsibilities thereunder are subject to the terms of this Agreement.
- **9.8.4** (c) In addition to the above contributions, subject to the terms of this Agreement, MEDC shall reimburse Owner, within thirty (30) days of Owner's receipt of a TCO, if such TCO is received within thirty-six (36) months from Entitlement, or within thirty (30) days of Owner's receipt of a CO if a TCO is not received within thirty-six (36) months from Entitlement, all purchase monies previously paid by Owner to MEDC for the Land, up to the Purchase Price, and, in the event Owner paid the Purchase Price through a combination of cash, the Note, the Deed of Trust, and the Personal Guaranties in accordance with Section 3.3.2, MEDC shall release Owner and guarantors from their respective obligations under the Note, the Deed of Trust, and the Personal Guaranties.
- 15.1.1 The Project Improvements During the Term; Upon Termination of the Term. Upon Owner's payment of the Purchase Price, and except as may otherwise be set forth in the Note, Deed of Trust and/or Personal Guaranties, all construction materials, consumables, improvements, repairs, alterations and all other property attached or otherwise installed as fixture on or in the Complex Site, or that shall be incorporated into and constitute the Project Improvements to be constructed on the Complex Site shall, immediately upon the completion of their installation, become part of the Complex Site, and shall be deemed owned by Owner, and title to all of such Project Improvements shall be and remain in Owner (or Affiliates or other parties over whom Owner maintains legal and operational control).
- **21.1** <u>Assignment</u>. Owner hereby acknowledges that City Parties have entered into this Agreement because of Owner's financial strength, goodwill, ability and expertise and that, accordingly, this Agreement is one which is personal to Owner, and Owner agrees for itself and its successors and assigns in interest hereunder that it shall not, during the Term of this Agreement, relinquish control of the Complex Site, the Project Improvements, the Property generally, subject only to the rights granted to the Operator under the terms of the Operating Agreement, or Sunset Ground at McKinney, LLC. As used in this Section

- <u>21.1</u>, the term "control" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the Complex Site or Sunset Ground at McKinney, LLC. Any assignment, sale, transfer, conveyance, mortgage, pledge encumbrance or other transfer in contravention of the foregoing agreement (each a "<u>Transfer</u>") without the prior written Approval of City, shall not be permitted hereunder and shall constitute an Event of Default. In no event shall the City Parties have any control or discretion over the financing or ownership structure utilized by Owner, provided Owner maintains operational control of the Complex as provided herein above; provided, however, upon City's reasonable, written request, Owner shall provide City with evidence reasonably satisfactory to the City that Owner maintains operational control of the Complex.
- **21.8** General Provisions. Owner shall, in connection with any assignment, conveyance, or lease, upon the written request of City, provide Notice to City of the name, legal composition and address of any assignee or grantee. In addition, upon the written request of City, Owner shall provide City with a description of the nature of the assignee's or grantee's business to be carried on in the Complex Site. In no event, however, shall Owner be required to provide City with a copy of any assignment agreement, deed, or lease. Each such lease (including each Capital Lease) shall expressly provide that the rights and obligations thereunder are subject to the terms of this Agreement.
- **22.4** <u>City Parties Covenants</u>. (d) Subject to Owner's satisfaction of all conditions precedent to the sale of the Land, including Owner's payment of the Purchase Price, the MEDC covenants that it shall execute and deliver to Owner at closing a special warranty deed and such other customary closing documents as may be reasonably required by Owner's title or escrow agent to vest in Owner fee simple title to the Land, insurable subject only to the Permitted Exceptions, the restrictive covenant regarding multi-family residential uses, the rights and reservations of the MEDC under this Agreement, and, if applicable, the Deed of Trust and first-priority lien on the Land set forth in <u>Section 3.3.2</u>.
- 23.1.1 Owner Default. (e) The failure of Owner to keep, observe or perform any of the terms, covenants or agreements contained in this Agreement, the Deed of Trust, or the Development Documents on Owner's part to be kept, performed or observed (other than those referred to in clauses (a)-(d) above and (f) below) if: (1) such failure is not remedied by Owner (a) in the case of a monetary default, within ten (10) days after Notice from a City Party to Owner of such default and (b) in the case of a non-monetary default, thirty (30) days after Notice from a City Party to Owner of such default, or (2) in the case of any such default that cannot with due diligence and good faith be cured within ten (10) days (with respect to a monetary default) or thirty (30) days with respect to a non-monetary default, Owner fails to commence to cure such default within ten (10) or thirty (30) days, as applicable, after Notice from a City Party to Owner of such default, or Owner fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith; it being intended that, in connection with any such default which is not susceptible of being cured with due diligence and in good faith within such ten (10) or thirty (30) day time period, as applicable, but is otherwise reasonably susceptible of cure, the time within which Owner is required to cure such default shall be extended for such additional period as may be

necessary for the curing thereof with due diligence and in good faith; *provided, however*, that if such default is not cured within one hundred eighty (180) days after Notice from a City Party of such default, (notwithstanding Owner's diligent prosecution of curative efforts), then such failure shall constitute an Event of Default under this Agreement; or

- **23.2.1** <u>City Parties' Remedies</u>. (f) In the event of an Owner Default pursuant to Section <u>23.1.1(f)</u>, City Parties may terminate this Agreement by providing written Notice to Owner and Owner shall not be entitled to receive any additional City Party contributions or incentives set forth in <u>Section 9.8</u>. If an Owner Default pursuant to <u>Section 23.1.1(f)</u> occurs after Owner has purchased the Land from MEDC but prior to the time MEDC has reimbursed Owner pursuant to <u>Section 9.8.4(c)</u>, MEDC shall retain the Purchase Price, including any amount of the Purchase Price already paid to MEDC, and may exercise any remedies provided by the Deed of Trust, Development Documents, or applicable law.
- (b) Article IX of the Original Agreement is hereby amended by adding the following as Section 9.1.3 and Section 9.1.4:
 - 9.1.3 Eminent Domain for Public Infrastructure. Owner shall use all reasonable efforts to acquire, by negotiated purchase, right-of-way or easements located offsite of the Complex and required under the traffic study and Article IX with respect to the installation of qualified public infrastructure for the Complex. In the event Owner is unable to acquire the needed right-of-way or easements by negotiated purchase on or before February 1, 2025, the City will cooperate with the Owner, at the sole cost and expense of Owner, including attorneys' fees, to acquire the needed right-of-way or easements including, but not limited to, the exercise by the City of its power of eminent domain. The determination of a public purpose and any decision to exercise such power is, however, within the sole discretion of the City. Notwithstanding anything in this Agreement to the contrary, in the event that lawful possession in eminent domain of less than all of the needed right-of-way and easements is obtained by the City by October 31, 2025, completion of the referenced public infrastructure by Owner shall not be a condition precedent to issuance of a Temporary Certificate of Occupancy.
 - 9.1.4 Agreed Changes to Complex Design. Notwithstanding anything in this agreement to the contrary, the Parties agree that the Complex shall include, at Owner's expense, an enclosed stage, an eight-foot (8') high, opaque barrier along the southern perimeter of the Complex Site, sidewalks along the perimeter of the Complex that are not less than eight feet (8') wide (as such are depicted on the submitted Site Plan), a sound-attenuating wall attached to that face of the parking garage lying adjacent to the easternmost, internal fire lane from the amphitheater, a redesigned Owner's Suite (under Section 12.8.2), and a designated Suite (under Section 12.8.1), all as more particularly shown and in substantial conformity with the graphics set forth on Addenda 3-7 attached hereto and made a part hereof by reference. In addition, for all street frontages, the landscape buffer shall be a minimum of eight feet, five inches (8'5"), except US75 which shall be a minimum of thirty feet (30'), and a minimum of fifty percent (50%) of the required street trees shall be provided within the landscape buffer, with remaining street trees being provided throughout the Complex.

- (c) Appendix A to the Original Agreement is hereby amended as follows:
- (i) the following definition of "Deed of Trust" is inserted between the definitions of "Debt" and "Default Rate":

"<u>Deed of Trust</u>" has the meaning set forth in <u>Section 3.3.2</u>.

(ii) the following definition of "Development Documents" is inserted between the definitions of "Default Rate" and "Dispute or Controversy":

"<u>Development Documents</u>" has the meaning set forth in the Deed of Trust.

- (iii) the definition of "Letter of Credit" is deleted in its entirety.
- (iv) the definition of "Operator" is deleted in its entirety and replaced with the following:
 - "Operator" shall mean the entertainment promoter entity or entities identified in the Operator Agreement, namely, Live Nation Entertainment, Inc., Anschutz Entertainment Group, Inc., Oak View Group, LLC, ASM Global, and/or Opry Entertainment Group/Ryman Hospitality Properties, including approved affiliates thereof.
- (v) the definition of "Owner" is deleted in its entirety and replaced with the following:
 - "Owner" means Venu Holding Corporation, formerly known as Notes Live, Inc., a Colorado corporation, or, as the case may dictate, Sunset Ground at McKinney, LLC.
- (d) Exhibit B (Form of Note) to the Original Agreement is deleted in its entirety and replaced with the Form of Note attached hereto as Addendum 8.

ARTICLE II

PROVISIONS OF GENERAL APPLICATION

- Section 2.1. <u>Effect of Headings</u>. The Article and Section headings herein are for convenience only and shall not affect the construction hereof.
- Section 2.2. <u>Capitalized Terms</u>. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Original Agreement.
- Section 2.3. <u>Original Agreement in Full Force and Effect</u>. Except to the extent modified by this First Amendment, all provisions of the Original Agreement are hereby confirmed to be in full force and effect.

- Section 2.4. <u>Partial Invalidity</u>. If any section of this First Amendment or its application to any Party or circumstance shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this First Amendment or the application of such section to persons or circumstances, other than those as to which it is so determined invalid or enforceable to any extent, shall not be affected thereby, and each section hereof shall be valid and enforceable to the fullest extent permitted by law.
- Section 2.5. <u>Governing Law</u>. This First Amendment shall be governed by and construed in accordance with the laws of the State of Texas.
- Section 2.6. <u>Counterparts</u>. This First Amendment may be executed in any number of counterparts, each of which when executed and delivered will be deemed an original, and such counterparts shall together constitute one and the same instrument.
- Section 2.7. <u>Authorized Signatories</u>. The persons signing this First Amendment are duly authorized to execute it on behalf of the Party they purport to represent, and each Party warrants that it is authorized to execute this First Amendment and to perform its duties hereunder.
- Section 2.8. <u>Successors and Assigns</u>. This First Amendment and all terms and conditions contained herein shall inure to the benefit and be binding upon the successors and permitted assigns of the Parties.

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EXECUTED in multiple counterparts as of the date first written above.

CITY:
CITY OF MCKINNEY, TEXAS, a Texas home rule municipal corporation
By:
Name: Paul G. Grimes
Title: City Manager

MEDC:

MCKINNEY ECONOMIC DEVELOPMENT CORPORATION, a Texas non-profit corporation

By:
Name: Michael A. Kowski, Jr.
Title: President and CEO
_

Name: Brian S. Loughmiller Title: Chairman of the Board

MCDC:

MCKINNEY COMMUNITY DEVELOPMENT CORPORATION, a Texas non-profit corporation

By:	
Name: Cindy Schneible	
Title: President	
By:	
37 4 1 75 1 1 777	1

Name: Angela Richardson-Woods Title: Chair of the Board

OWNER:

VENU	HOLDING	CORPORATION,
successor	-by-name-chang	ge to Notes Live, Inc.,
a Colorac	lo corporation	

Name: JW Roth

Title: Chairman and CEO

LIST OF ADDENDA

Addendum 1	Form of Deed of Trust
Addendum 2	Form of Personal Guaranty
Addendum 3	Preliminary Elevations and Sections
Addendum 4	City of McKinney Owner Suite
Addendum 5	10' Sidewalk and Garage Soundwall
Addendum 6	BOH Privacy Fence
Addendum 7	Owners Club Location
Addendum 8	Form of Note

ADDENDUM 1 TO FIRST AMENDMENT TO CHAPTER 380, GRANT, AND DEVELOPMENT AGREEMENT

Form of Deed of Trust

After Recording, Return To: Mark Houser City Attorney City of McKinney, Texas 222 N. Tennessee McKinney, Texas 75069

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

DEED OF TRUST - SECURITY AGREEMENT -ASSIGNMENT OF RENTS - COLLATERAL ASSIGNMENT OF LEASES -FINANCING STATEMENT - FIXTURE FILING

COLLATERAL INCLUDES FIXTURES

NOTICE: THIS DEED OF TRUST SECURES FUTURE ADVANCES AND FUTURE OBLIGATIONS

THE STATE OF TEXAS \$

COUNTY OF COLLIN \$

A. DEFINITIONS.

1. "<u>Beneficiary</u>" means the McKinney Economic Development Corporation, a Type A, non-profit development corporation created and existing under the laws of the State of Texas.

2. "Beneficiary's Address" is:

McKinney Economic Development Corporation 7300 SH 121 SB Suite 200 McKinney, Texas 75070 Attention: President/CEO

- 3. "<u>Deed of Trust</u>" means this Deed of Trust Security Agreement Assignment of Rents Collateral Assignment of Leases Financing Statement Fixture Filing.
- 4. "<u>Development Agreement</u>" means that certain Chapter 380, Grant, and Development Agreement by and among the City of McKinney, Texas, the Grantor, the McKinney Community Development Corporation and Notes Live, Inc., dated as of April 16, 2024, as amended by the First Amendment to Chapter 380, Grant, and Development Agreement by and among the City of McKinney, Texas, the Beneficiary, the McKinney Community Development Corporation and Venue Holding Corporation, successor-by-name-change to Notes Live, Inc., dated as of October 15, 2024, as the same may be further amended, extended, and modified from time to time.

5.	" <u>Development Documents</u> " means, collectively, the "Promissory Note," as defined herein,
	and the "Personal Guaranties," as defined in the Development Agreement, of J.W. Roth and
	Kevin O'Neil, each dated as of [], 2024, which secure the Promissory
	Note.
_	"Fee 4: D-4-2"
0.	"Effective Date" means [], 2024.
7.	"Grantor" means Sunset Ground at McKinney, LLC, a Colorado corporation, and, as the case
, .	may dictate, Venu Holding Corporation, formerly known as Notes Live, Inc., a Colorado
	corporation.
	1
8.	"Grantor's Address" is:
	r
	Colorado Springs, Colorado 80920

- 9. "<u>Land</u>" means that certain real property described on <u>Exhibit "A"</u> attached hereto and incorporated herein for all purposes, as well as certain perpetual easements appurtenant thereto.
- 10. "Promissory Note" means, that certain Promissory Note secured by this Deed of Trust dated as of the date hereof by Venue Holding Corporation, formerly known as Notes Live, Inc., as maker, payable to the order of Beneficiary, as payee, in the original principal amount of up to Twenty-Five Million and No/100 Dollars (\$25,000,000.00), as the same may be amended, extended, and modified from time to time.
- 11. "Property" means the Land, together with all fixtures and improvements now or hereafter existing or placed thereon, all of Grantor's rights, privileges, interests and common elements pertaining thereto, all appurtenant permits of Grantor pertaining to the use of the real property, all of Grantor's interest in any vacated alleys and streets abutting the Land and the rights of Grantor with respect to any unvacated, abutting alleys or streets, and all of Grantor's interest in any easements, minerals, mineral rights and water rights and air rights and all other appurtenances and incidents of ownership pertaining to such above-described Land and other real property. The Property also includes all other property and interests described in Section J(6) below.
- 12. "Trustee" means Mark Houser.
- 13. "Trustee's Address" is:

222 N. Tennessee McKinney, Texas 75069

14. All capitalized terms not otherwise defined herein shall have the meaning given them in the Development Agreement.

B. GRANT; CONVEYANCE.

Grantor, for the purpose of securing the Indebtedness hereinafter described, and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) to Grantor in hand paid by the Trustee, the receipt and adequacy of which consideration is hereby acknowledged by Grantor, and for the further consideration of the uses, purposes and trusts hereinafter set forth, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY, WITH THE POWER OF SALE, the Property unto Trustee and Trustee's substitutes or successors as trustee hereunder.

This conveyance is made subject to the exceptions listed on the Schedule of Permitted Exceptions attached hereto as **Exhibit "B"** and incorporated herein for all purposes (the "**Permitted Exceptions**").

TO HAVE AND TO HOLD the Property unto the said named Trustee, and the Trustee's substitutes and successors as trustee hereunder, and the Trustee's assigns forever. Grantor does hereby bind itself, and its executors, administrators, representatives, successors, and assigns to warrant and forever defend the Property unto the Trustee, and the Trustee's substitutes or successors as trustee hereunder, and the Trustee's assigns forever, against the claim or claims of all persons claiming or to claim the same or any part thereof.

The following terms and conditions apply to and are part of this Deed of Trust and constitute covenants and agreements of Grantor.

C. INDEBTEDNESS.

This conveyance is made in trust to secure payment of all of the following obligations (collectively, the "**Indebtedness**"):

- 1. All indebtednesses, liabilities, and obligations of Grantor owing and to become owing to Beneficiary under or by virtue of or in connection with the Development Agreement and the other Development Documents, including, without limitation, the indebtedness of Venue Holding Corporation evidenced by the certain Promissory Note, and all renewals, extensions, rearrangements, increases, and modifications of any or all of said Development Documents and all renewals, extensions, rearrangements, increases, and modifications of any or all of said indebtednesses, liabilities, and obligations.
- 2. All other indebtedness, obligations, and liabilities of Venue Holding Corporation and Grantor to Trustee or the Beneficiary, whether now or hereafter existing, incurred or arising hereunder or under any other document, instrument, or agreement given in whole or in part to further secure the Promissory Note or evidence the debt or extension of credit represented by the Promissory Note and the Development Agreement, all as the same may be renewed, extended, rearranged, increased, and modified from time to time.
- 3. All other sums and future advances, with interest thereon, advanced by Beneficiary to Venue Holding Corporation or Grantor in accordance herewith to protect the security of this Deed of Trust.

<u>D. GRANTOR'S WARRANTIES, REPRESENTATIONS, COVENANTS, AND AGREEMENTS.</u>

Grantor warrants, represents, covenants, and agrees that:

- 1. <u>Lawfully Seized</u>. Grantor is lawfully seized of the Property and has good right and authority to grant, bargain, sell, transfer, pledge, affect, hypothecate, encumber, assign and mortgage the Property pursuant to this Deed of Trust.
- 2. <u>No Liens or Encumbrances</u>. The Property is free from all liens and encumbrances, except the Permitted Exceptions.
- 3. <u>Title and Priority</u>. Grantor shall protect the title and possession of the Property and pay when due all taxes and assessments now existing or hereafter levied or assessed upon the Property, or the interest therein created by this Deed of Trust; and shall preserve and maintain the lien hereby created as a first and prior lien on the Property, subject only to any other liens held by or for the benefit of Beneficiary.
- 4. <u>Property Condition</u>. Grantor shall keep the improvements and fixtures on the Property in good repair and condition, and shall not permit or commit any waste thereof; and Grantor shall keep said improvements maintained as necessary so as not to impair the insurance carried thereon.
- 5. Insurance. Grantor shall insure and keep insured the Property and all improvements and fixtures on the Property in accordance with Article XIX of the Development Agreement and shall comply with the insurance requirements set forth in Article XIX of the Development Agreement. Grantor shall deliver to Beneficiary the policies of such insurance naming Beneficiary as additional insured and/or loss payee. Grantor shall deliver any proceeds received under policies of general liability, fire, extended coverage, and property damage insurance, and, to the extent that proceeds relate to Beneficiary's position as an additional insured under other required insurance policies, any proceeds received under such other policies, to Beneficiary. Any proceeds (up to the amount of the then outstanding Indebtedness) which Beneficiary may receive under any such policy, or policies, may be applied by Beneficiary, at its option, to reduce the Indebtedness hereby secured (either then matured or accrued or, with respect to principal, to mature in the future), and in such order as Beneficiary may elect, but if no Event of Default, or event which with the giving of notice or the passage of time or both would be an Event of Default, has occurred and is continuing, Beneficiary shall permit Grantor to use said proceeds to repair or replace all improvements and fixtures damaged or destroyed and covered by said policy or policies, so long as Grantor satisfies the following conditions to the reasonable satisfaction of Beneficiary: (a) delivery to Beneficiary of any additional amount that is needed to pay all costs of the repair or restoration; (b) establishment of an arrangement for full and final lien releases and disbursement of funds acceptable to Beneficiary in its reasonable discretion; (c) delivery to Beneficiary in form and content acceptable to Beneficiary of all of the following: (i) plans and specifications for the work, (ii) a contract for the work, signed by a licensed contractor, (iii) a cost breakdown for the work, (iv) evidence that, upon completion of the work, the size, capacity, nature, and value of the

Property will be reasonably comparable to those that existed immediately before the damage occurred; and (v) evidence (satisfactory to Beneficiary in its reasonable discretion) that the repair or restoration can be completed by Grantor by the earlier of the amount of time reasonably estimated by a licensed contractor selected by Grantor and reasonably acceptable to Beneficiary or sixty (60) days prior to the Maturity Date (provided that Beneficiary may, in its sole and absolute discretion, permit Grantor a longer period of time for repairs or restoration); and (d) maintenance of the fair market value requirements as may be set forth in the Development Agreement, or otherwise.

TEXAS FINANCE CODE SECTION 307.052. COLLATERAL PROTECTION INSURANCE NOTICE: (A) GRANTOR IS REQUIRED TO [1] KEEP THE PROPERTY INSURED AGAINST DAMAGE IN THE AMOUNT BENEFICIARY HEREIN SPECIFIES; [2] PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER; AND [3] NAME BENEFICIARY AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS; (B) GRANTOR MUST. REOUIRED \mathbf{BY} BENEFICIARY. DELIVER BENEFICIARY A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND (C) IF GRANTOR FAILS TO MEET ANY REQUIREMENT LISTED IN SECTIONS (A) OR (B) OF THIS PARAGRAPH, BENEFICIARY MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF GRANTOR AT THE GRANTOR'S EXPENSE.

- 6. Mortgagee's Policy of Title Insurance. Grantor shall, upon execution hereof and at Grantor's cost, cause to be delivered to Beneficiary a mortgagee's policy of title insurance in the form promulgated for use in Texas, insuring the lien hereof in the priority herein indicated with no exceptions to title other than the Permitted Exceptions and any standard pre-printed exceptions reasonably acceptable to Beneficiary, provided that unless waived by the Beneficiary, the "survey exception" and the "tax exception" shall be deleted to the full extent allowed by current law and regulation at the sole cost and expense of Grantor. Such policy shall be in an amount equal to the original maximum principal amount of the Indebtedness (plus accrued interest, if applicable), and issued by an underwriter or underwriters reasonably acceptable to Beneficiary.
- 7. <u>Inaction by Grantor; Rights of Beneficiary</u>. In the event Grantor shall fail to keep the improvements and fixtures on the Property in good repair and condition, or to pay prior to delinquency all taxes and assessments, as aforesaid, or to preserve the priority of the lien of this Deed of Trust on the Property, or to keep the improvements and fixtures insured, as aforesaid, or to deliver the policies of insurance or the renewals thereof to Beneficiary, as aforesaid, or to perform any act or take any action Grantor is required to perform or take hereunder or under the Development Agreement or other Development Documents, then Beneficiary may, at its option, but without being required to do so, make such repairs, pay such taxes and assessments, purchase any tax title thereon, remove any prior liens, and prosecute or defend any suits in relation to the preservation of the priority of the lien of this Deed of Trust on the Property, insure and keep insured the improvements and fixtures thereon in an amount not to exceed that above stipulated, or perform any such act or take any such action Grantor is required to perform or take hereunder or under the Development Agreement or other

Development Documents; any sums that may be so paid out by Beneficiary and all sums paid for insurance premiums, as aforesaid, including the costs, expenses and attorneys' fees paid in any suit affecting the Property when necessary to protect the Property or the lien hereof shall bear interest from the dates of such payments at the maximum rate allowed by applicable law and shall be paid by Grantor to Beneficiary upon demand, at the Beneficiary's Address (or elsewhere as Beneficiary may designate) and shall be deemed a part of the Indebtedness and recoverable as such in all respects.

- 8. Right of Entry. Beneficiary may, during normal business hours, acting through one or more agents, go upon the Property for the purpose of testing, inspecting, appraising, or repairing the Property or determining Grantor's compliance with this Deed of Trust; provided however, in no event shall Beneficiary be required to so act, nor shall Beneficiary have any duty whatsoever to report any deficiencies, defects, or other matters learned by Beneficiary to Grantor or any other person, such rights herein in this section granted being for the purposes of assisting Beneficiary in preserving and protecting its collateral for the Indebtedness; provided further, in no event shall such rights herein in this section granted be exercised in any manner to commit a breach of peace or other unlawful act, and such grant is so limited, but Grantor to the maximum lawful extent hereby authorizes Beneficiary's entry onto and into the Property for the above-described limited purposes, subject to the limitations set forth in this Section D(8).
- 9. No Liens. Grantor will not, without the prior written consent of Beneficiary, which may be withheld in Beneficiary's sole discretion, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual (except for the lien for ad valorem taxes on the Property which are not delinquent), security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Exceptions, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Deed of Trust, and should any of the foregoing become attached hereafter in any manner to any part of the Property without the prior written consent of Beneficiary, Grantor will cause the same to be promptly discharged and released.
- 10. <u>Debts for Construction</u>. Grantor will cause all debts and liabilities of any character, including, without limitation, liabilities for labor, material, and equipment, and all debts and charges for utilities servicing the Property, incurred in the construction, maintenance, operation, and development of the Property to be promptly paid.
- 11. <u>No Financing Statement</u>. There is no financing statement covering all or any part of the Property or its proceeds on file in any public office which has not been granted or assigned to the Beneficiary, or concurrently herewith terminated.
- 12. <u>No Homestead</u>. No portion of the Property is being used as Grantor's business or residential homestead. Grantor expressly represents that the Property forms no part of any property owned, used, or claimed by Grantor as exempted from forced sale under the Constitution or laws of the State of Texas, and Grantor renounces all and every claim thereto under Constitution or any such law or laws. Grantor stipulates that this is a material representation

- made by it and that but for such representation Beneficiary would not have accepted the Promissory Note and agreed to the loan or extension of credit evidenced hereby and thereby.
- 13. Not a Foreign Person. Grantor is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended (hereinafter called the "<u>Internal Revenue Code</u>"), Sections 1445 and 7701 (i.e. Grantor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code and regulations promulgated thereunder).
- 14. <u>Payment and Performance</u>. Grantor will make prompt payment, as the same becomes due, of the Indebtedness and shall punctually and properly perform all of Grantor's covenants, obligations, and liabilities under the Development Agreement and Development Documents.
- 15. <u>Existence</u>. Grantor will continuously maintain its existence and its right to do business in the State of Texas.
- 16. <u>Operation of Property</u>. Grantor will operate the Property in a good and workmanlike manner and in accordance with all the Development Documents and all applicable laws and will pay all fees or charges of any kind in connection therewith.
- 17. Protection and Defense of Lien. If the validity or priority of this Deed of Trust or of any rights, titles, liens or security interests created or evidenced hereby with respect to the Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly or if any legal proceedings are instituted against Grantor with respect thereto, Grantor will give prompt written notice thereof to Beneficiary and at Grantor's own cost and expense will diligently endeavor to cure any defect that may be developed or claimed, and will take all necessary and proper steps for the defense of such legal proceedings, including, without limitation, the employment of counsel, the prosecution or defense of litigation, and the release or discharge of all adverse claims.
- 18. <u>Condemnation</u>. Promptly upon obtaining knowledge (and, in no event more than seven (7) business days after obtaining knowledge) of the institution of any proceedings for the condemnation of the Property or any portion thereof, or any other proceedings resulting in injury or damage to the Property, or any portion thereof, Grantor will notify Beneficiary of the pendency of such proceedings. Beneficiary may participate in any such proceedings, and Grantor shall from time to time deliver to Beneficiary all instruments requested by it to permit such participation.
- 19. <u>Further Assurances</u>. Grantor will, on request of Beneficiary, promptly (i) correct any defect, error or omission which may be discovered in the contents of this Deed of Trust or in any other instrument now or hereafter executed in connection herewith or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents and leases) and do such further acts as may be necessary or proper to carry out more effectively the purposes of this Deed of Trust and such other instruments and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof and thereof to be covered hereby

and thereby including, without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Property; (iii) execute, acknowledge, deliver, procure and record or file any commercially reasonable document or instrument (including, without limitation, any financing statement) deemed advisable by Beneficiary to protect the lien or security interest hereunder against the rights or interests of third persons; and (iv) provide such commercially reasonable certificates, documents, reports, information, affidavits and other instruments and do such further commercially reasonable acts as may be necessary or proper in the reasonable determination of Beneficiary to enable Beneficiary to comply with the requirements or requests of any agency having jurisdiction over Beneficiary or any examiners of such agencies with respect to the Indebtedness, Grantor or the Property.

E. DEFAULT.

1. Acceleration; Nonjudicial Foreclosure Sale; Proceeds of Sale. Upon or following any Event of Default (hereinafter defined), Beneficiary may elect to declare all or any part of the entire unpaid principal portion of the Indebtedness hereby secured, all earned and unpaid interest accrued thereon, and all other earned and unpaid obligations hereby secured immediately due and payable. Upon a default in the payment of said Indebtedness (or any part thereof) as and when due or so declared due, it shall thereupon, or at any time thereafter, be the duty of the Trustee, at the request of Beneficiary (which request is hereby conclusively presumed), to enforce this trust. Trustee shall advertise the sale of the Property, then subject to the lien hereof, for at least twenty-one (21) days preceding the date of sale by posting written or printed notice thereof at the courthouse door of the county where the Land is situated and by filing a copy of said notice with the county clerk of said county, which notice may be posted and filed by the Trustee acting, or by any person acting for Trustee; and, the Beneficiary or Trustee shall at least twenty-one (21) days preceding the date of sale, serve written or printed notice of the proposed sale by certified mail, return receipt requested, on each debtor obligated to pay the Indebtedness secured by this Deed of Trust according to the records of Beneficiary, by the deposit of such notice, enclosed in a prepaid wrapper, properly addressed to such debtor at debtor's most recent address as shown by the records of Beneficiary, in a post office or official depository under the care and custody of the United States Postal Service; such notices shall include such information as is required by applicable law and such other information as the Trustee or Beneficiary may elect to include. The Trustee shall then sell the Property, then subject to the lien hereof, at public auction in accordance with such notice at the county courthouse of said county where the Land is situated (provided where the Land is in more than one county, the notice to be posted and filed as herein provided shall be posted at the courthouse door of each of such counties where the Land is situated, and shall be filed with county clerk of each such county and said Property may be sold at the county courthouse of any one of such counties, and the notices so posted and filed shall designate the county where the Property will be sold), on the first Tuesday in any month between the hours of 10:00 A.M. and 4:00 P.M., to the highest bidder for cash, selling all of the Property as an entirety or in such parcels as the Trustee acting may elect, and make due conveyance to the purchaser or purchasers, with general warranty binding Grantor, Grantor's successors and assigns forever. The sale shall take place at the area of the county courthouse designated in the manner required by Section 51.002(a), Texas Property Code, as amended, or any then applicable successor statute thereto; the sale shall begin at the time stated in the notice of sale or not later than three

- (3) hours after that time, or at such other time as is required by applicable law. Out of the money arising from such sale, the Trustee acting shall pay first, all the expenses of advertising the sale and making the conveyance, including a commission of no more than five percent (5%) to herself, which commission Grantor stipulates is reasonable and which commission shall be due and owing in addition to the attorneys' fees provided for in the Indebtedness, and then to Beneficiary the full amount of principal, interest, attorneys' fees and other charges due and unpaid on said Indebtedness, rendering the balance of the sales price, if any, to Grantor, Grantor's successors or assigns, or to whomsoever shall be legally entitled thereto. The recitals in the conveyance to the purchaser or purchasers shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against Grantor, Grantor's successors and assigns.
- 2. Fair Market Value. If any of the Property is foreclosed upon pursuant to a judicial or nonjudicial foreclosure sale and the purchaser at such foreclosure sale is a bona fide third party purchaser, Grantor agrees that the purchase price for the Property sold at the foreclosure sale shall be deemed to be for all purposes the "fair market value" of the Property sold, as such term is defined by Section 51.003 of the Texas Property Code, as amended, and Grantor waives the right to provide evidence to the contrary. Grantor further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Property for purposes of calculating deficiencies that may be owed by Grantor, any guarantor, and others against whom recovery of a deficiency may be sought.
- 3. <u>No Further Acts Required.</u> Notwithstanding any other provision of this Deed of Trust, if Beneficiary and Trustee comply with the requirements of Section 51.002, Texas Property Code, or any successor provisions of Texas statutes, no further compliance or act by them under this <u>Section E</u> shall be required.
- 4. Right to Stop Action; Right to Pursue Alternative Actions. In the event a foreclosure hereunder should be commenced by the Trustee, Beneficiary may at any time before the sale of said Property direct the Trustee to abandon the sale, and may then institute suit for the collection of all Indebtedness then due (or any part thereof) and/or for the foreclosure of this Deed of Trust lien. If Beneficiary should institute a suit for the collection of all or any part of Indebtedness and/or for a foreclosure of this Deed of Trust lien, it may at any time before the entry of a final judgment in said suit dismiss the same or amend it so as to no longer seek judicial foreclosure, and require the Trustee to sell the Property in accordance with the provisions of this Deed of Trust. Beneficiary may, at any time, whether or not nonjudicial foreclosure hereunder has commenced or is proceeding or has been concluded, commence or pursue a suit on the Indebtedness then due or any deficiency without seeking judicial foreclosure of the lien hereby created.
- 5. <u>Right to Purchase</u>. Beneficiary, or its assignee, shall have the right to purchase at any sale of the Property (or any part thereof), being the highest bidder, and to have the amount for which such Property (or any part thereof) is sold credited on the Indebtedness then owing.
- 6. Substitute or Successor Trustees. References to the Trustee include any duly appointed

- substitute trustee hereunder, and may be one or more persons so designed by this Deed of Trust or any subsequent appointment by Beneficiary; in such event, either or any of such Trustees may act in accordance with this instrument without the joinder of the other designated Trustee.
- 7. Appointment of Substitute and Successor Trustees. Beneficiary, in any event and at any time (whether or not an Event of Default has occurred or the foreclosure process has been commenced), is hereby authorized to appoint a substitute trustee, or a successor trustee, to act instead of the Trustee named herein (or subsequently appointed) without other formality than the designation in writing of a substitute or successor trustee. The authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the Indebtedness hereby secured has been paid in full, or until said Property is sold hereunder, and each substitute and successor trustee shall succeed to all of the rights and powers of the original Trustee named herein. Any requirement that such appointment be recorded in any real property records is, to the extent not prohibited by applicable law, hereby waived by Grantor.
- 8. Surrender of Property. In the event any sale is made of the Property, or any portion thereof, under the terms of this Deed of Trust, Grantor, Grantor's successors and assigns, shall forthwith upon the making of such sale surrender and deliver possession of the Property so sold to the purchaser at such sale, and in the event of their failure to do so they shall thereupon from and after the making of such sale be and continue as tenants at will of such purchaser, and in the event of their failure to surrender possession of said Property upon demand, the purchaser, or its heirs, successors or assigns, shall be entitled to institute and maintain an action for forcible detainer of said Property (as well as other available causes of action).
- 9. Sale of a Portion of the Property. At Beneficiary's request, Trustee shall advertise or sell less than all of the Property, by sales in tracts or parcels, or by sales of personal property under provisions of the Uniform Commercial Code, or in any other lawful manner. In such cases, this Deed of Trust and the power of sale herein contained and the security interests or assignments herein created, as applicable, shall continue in full force as to the unsold Property, for one or more additional sales, until property covered by this Deed of Trust shall have been lawfully sold and until such time shall remain in full force and effect as to all unsold properties until released in writing.
- 10. <u>Vendor's Lien</u>. Should the Indebtedness, or any part thereof, be secured by a vendor's lien or other lien, then said vendor's lien or other lien may be enforced separately, in accordance with applicable law, upon the occurrence of any Event of Default, at Beneficiary's election.
- 11. Indemnity. EXCEPT AS PROHIBITED BY LAW, GRANTOR HEREBY AT ALL TIMES INDEMNIFIES, DEFENDS, AND HOLDS TRUSTEE AND BENEFICIARY HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND COURT COSTS CONNECTED WITH ANY ACTS OR OMISSIONS OF THE TRUSTEE ACTING OR PURPORTING TO ACT AS TRUSTEE IN CONNECTION WITH THE PROPERTY OR THIS DEED OF TRUST. GRANTOR AGREES THAT IT WILL COORDINATE ITS DEFENSE WITH THE ATTORNEY GENERAL OF THE STATE OF TEXAS AS

MAY BE REQUIRED BY LAW. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE GRANTOR TO INDEMNIFY AND HOLD HARMLESS THE TRUSTEE FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE TRUSTEE. GRANTOR AGREES THAT GRANTOR HAS INDEMNIFIED TRUSTEE AND BENEFICIARY FOR TRUSTEE'S OWN NEGLIGENCE. GRANTOR AGREES AND COVENANTS THAT, WITHOUT NECESSARY LIMITATION, TRUSTEE MAY BE AN OFFICER, DIRECTOR, AGENT OR ATTORNEY OF, OR PRINCIPAL IN BENEFICIARY.

12. <u>Reasonable Conditions</u>. The Trustee may set reasonable conditions for conducting the public sale by Section 51.0075, Texas Property Code.

Without limitation of the foregoing:

- a. To the extent allowed by law, in the event that, at any sale, a bidder whose bid is the highest shall request an opportunity to obtain cash, the Trustee may recess such sale or delay final acceptance of such bid, for a reasonable time to allow said bidder to obtain cash and Trustee shall announce such recess and the time at which the sale shall resume; at such appointed time, the Trustee may conclude the sale without the necessity to reopen bidding if the bidder requesting the recess shall then present such cash bid price to the Trustee, otherwise the Trustee may, at its election, either reopen the bidding (and exclude the defaulting bidder) or without reopening bidding accept the second highest bid for cash previously made, or Trustee may take such other action as is legally required or permitted.
- b. The requirement that a bid shall be payable in cash shall be deemed satisfied if payment is made in the legal tender of the United States of America or by such other commonly recognized cash equivalent, as Trustee, in its reasonable discretion, may deem acceptable.
- c. In the event that the Trustee is required by law to take any other or different action, the Trustee may so act.
- d. The Grantor agrees that the Trustee and the Beneficiary may delay notice, posting and/or sale, and modify terms of sale (to the extent permitted by statute) as may be necessary to comply with any (if any) requirement of applicable law or covenants affecting the Property.
- 13. <u>Limited Duties of the Trustee</u>. The duties of the Trustee under this Deed of Trust are limited to exercising the power of sale in accordance with this Deed of Trust and applicable law.
- 14. <u>Receiver</u>. In addition to all other remedies herein provided for, Grantor agrees that upon the occurrence and during the continuance of an Event of Default, Beneficiary shall as a matter of right be entitled to the appointment of a receiver or receivers for all or any part of the Property, whether such receivership be incident to a proposed sale of the Property or otherwise, and without regard to the value of the Property or the solvency of any person or persons liable for

the payment of the Indebtedness, and Grantor does hereby consent to the appointment of such receiver or receivers, waives any and all defenses to such appointment and agrees not to oppose any application therefor by Beneficiary, but nothing herein is to be construed to deprive Beneficiary of any other right, remedy or privilege it may now have under the law to have a receiver appointed; provided, however, that the appointment of such receiver or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Beneficiary to receive payment of the Rents pursuant to this Deed of Trust. Any money advanced by Beneficiary in connection with any such receivership shall be subject to and covered by **Section D(7)** hereof.

15. Remedies Cumulative. All remedies herein expressly provided for are cumulative of any and all other remedies existing at law or in equity and are cumulative of any and all other remedies provided for in the Development Agreement and/or any of the other Development Documents, or any part thereof, or otherwise benefitting Beneficiary, and Trustee and Beneficiary shall, in addition to the remedies herein provided, be entitled to avail themselves of all such other remedies as may now or hereafter exist at law or in equity for the collection of the Indebtedness and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and resort to any remedy provided for hereunder, in the Development Agreement, and/or under any such other Development Documents or provided for by law shall not prevent the concurrent or subsequent employment of any other appropriate remedy or remedies.

F. RELEASES AND EXTENSIONS; SPECIAL APPLICATIONS; WAIVERS; OTHER SECURITY; OTHER DOCUMENTS; ENVIRONMENTAL.

- 1. <u>Superior Lien</u>. The lien hereby granted shall take precedence over and be a prior lien to any other lien of any character whether vendor's, materialmen's, or mechanic's lien hereafter created on the Property. In the event the proceeds of the Indebtedness secured hereby are used to pay off and satisfy any liens heretofore existing on said Property or any part thereof, then Beneficiary is, and shall be, subrogated to all of the rights, powers, equities, liens, and remedies of the holders of the indebtedness so paid.
- 2. Extensions; Alterations; Other Liens. Any extension, or extensions, may be made of the time of payment of all, or any part, of the Indebtedness secured hereby, and any part of the Property may be released from this lien without altering or affecting the priority of the lien created by this Deed of Trust, nor shall any such actions advance the lien priority of, or create a priority over this lien of, any junior encumbrancer, mortgagee or purchaser, or any person acquiring an interest in the Property hereby conveyed, or any part thereof. It is the intention of the parties hereto to preserve this lien on the Property superior to any other liens (except as herein otherwise specifically provided) that now exist or may hereafter exist, or that may be fixed, given, or imposed by law notwithstanding any such extension of the time of payment, or the release of a portion of said Property from this lien. In the event that for any reason the reduction of or repayment of any part of the Indebtedness has the effect of, or Beneficiary has a good faith belief that such would have the effect of, adversely affecting the validity of the lien of this instrument, then Beneficiary at its option may elect to curtail or cease any further advances or undertakings to be secured hereby. Grantor will not allow any mechanic's or materialman's

liens to be filed against the Property.

- 3. <u>Unsecured Indebtedness</u>. In the event any portion of the Indebtedness hereinabove described cannot be lawfully secured by this Deed of Trust lien on said Property, it is agreed that the first payments made on said Indebtedness shall be deemed applied to the discharge of that portion of said Indebtedness.
- 4. <u>Waiver of Notice</u>. Except as provided in the Development Agreement, Development Documents, in the Promissory Note, and in <u>Section L</u> below, unless (and then to the extent not) prohibited by applicable law, the Grantor, and each surety, endorser, guarantor and other person liable or to become liable for payment of any of the Indebtedness:
 - e. <u>waive</u>: opportunity to cure breach or default; grace; all notices, demands, and presentments for payment; all notices of dishonor, non-payment, acceleration of maturity, or intention to accelerate maturity, redemption, prepayment, and acceleration; notations of payment; protest; dishonor; all other notices whatsoever; and, diligence in taking any action to collect amounts hereunder or in the handling of any collateral securing the Promissory Note at any time; and
 - f. consent and agree (without notice of any of the following): to any substitution, subordination, exchange, or release of any security for the Indebtedness or the release of any party primarily or secondarily liable on the Indebtedness; that the Beneficiary shall not be required first to institute suit or exhaust its remedies against the Grantor or others liable or to become liable on the Indebtedness or to enforce its rights against them or any security therefor; and, to any extension, renewal, rearrangement, or postponement of the time or manner of payment of the Indebtedness and to any other indulgence with respect hereto or thereto. Grantor waives any right of redemption.

Notwithstanding any other provision in this instrument, or in any other document, instrument, or agreement given to evidence or secure any of the Indebtedness, notice required under Section 51.002(d) of the Texas Property Code, is not waived to the extent, but only to the extent, applicable hereto, unless otherwise permitted by applicable law.

- 5. Additional Security; No Marshalling. The Indebtedness (or any part thereof) may be secured by other guaranties, sureties, collateral, assignments, contracts, or agreements than as evidenced herein. Acceptance or taking hereof or thereof, release or partial release, discharge, modification, extension, or subordination hereof or thereof or impairment hereof or thereof, shall in no manner reduce, release, affect, or impair remaining security, and Beneficiary may pursue and recover upon its rights or remedies hereunder or thereunder in such order as it may elect in its sole discretion. Marshalling of assets is waived.
- 6. Environmental and Other Legal Matters; Indemnity. Grantor warrants and represents and covenants (as to future use) that the Property, any past or present use of the Property, and any existing or future development or use of the Property do not and will not violate in any material respect any applicable law, statute, ordinance, rule, regulation, resolution, or order, or any restrictive covenant or deed restriction or other contract or agreement affecting the Property, including, without limitation, any applicable zoning ordinance or building code (collectively,

"Applicable Laws"), including, without limitation, any statutes, regulations, or governmental orders pertaining to health or the environment (collectively, "Applicable Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), the Texas Water Code, and the Texas Solid Waste Disposal Act. GRANTOR AGREES AT ALL TIMES TO DEFEND, INDEMNIFY AND HOLD BENEFICIARY AND TRUSTEE HARMLESS FROM AND AGAINST AND TO REIMBURSE BENEFICIARY AND TRUSTEE WITH RESPECT TO, ANY AND ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, FIXED OR CONTINGENT, ASSERTED AGAINST OR INCURRED BY BENEFICIARY OR TRUSTEE OR ANY SUCCESSORS OR ASSIGNS AT ANY TIME BY REASON OF, CONNECTED WITH, OR ARISING OUT OF THE PROPERTY OR ANY PRIOR, PRESENT, OR FUTURE USE OF OR CONDITION ON THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY VIOLATIONS OF, OR CLAIMS UNDER, ANY APPLICABLE LAWS, INCLUDING, WITHOUT LIMITATION, APPLICABLE ENVIRONMENTAL LAWS. GRANTOR AGREES THAT IT WILL COORDINATE ITS DEFENSE WITH THE ATTORNEY GENERAL OF THE STATE AS MAY BE REQUIRED BY LAW. THIS INDEMNITY IS A CONTRACTUAL AGREEMENT THAT SHALL SURVIVE REPAYMENT OF THE INDEBTEDNESS, FORECLOSURE, OR RELEASE OF THE DEED OF TRUST LIEN, JUDICIAL SALE OF THE PROPERTY, OR RECEIPT OF THE PROPERTY OR ANY PART THEREOF BY BENEFICIARY OR ITS SUCCESSORS OR ASSIGNS UNDER A DEED IN LIEU OF FORECLOSURE. THIS INDEMNITY SHALL PERTAIN TO ANY MATTER INDEMNIFIED AGAINST ARISING IN WHOLE OR IN PART PRIOR TO THE TIME THAT THE INDEBTEDNESS HAS BEEN SATISFIED IN FULL AND FINALLY AND BENEFICIARY NO LONGER HAS ANY LIEN OR SECURITY INTEREST ON ANY PART OF THE PROPERTY. THIS INDEMNITY SHALL RUN IN FAVOR OF AND SHALL BENEFIT BENEFICIARY AND TRUSTEE OR THEIR SUCCESSORS OR ASSIGNS BUT NOT ANY PURCHASER OF THE PROPERTY OR ANY PART THEREOF FROM BENEFICIARY OR TRUSTEE OR THEIR SUCCESSORS OR ASSIGNS UNDER ANY FORECLOSURE SALE OR UNDER ANY DEED IN LIEU OF FORECLOSURE; PROVIDED, HOWEVER, THAT NOTWITHSTANDING THE FOREGOING THIS INDEMNITY SHALL BENEFIT A PARTY ACOUIRING THE PROPERTY OR A PART THEREOF UNDER ANY FORECLOSURE SALE OR UNDER ANY DEED IN LIEU OF FORECLOSURE IF SUCH PARTY IS THE BENEFICIARY OR THE BENEFICIARY'S SUCCESSORS OR ASSIGNS, IS ACQUIRING THE PROPERTY ON BEHALF OF THE BENEFICIARY OR THE BENEFICIARY'S SUCCESSORS OR ASSIGNS, OR IS ACQUIRING THE PROPERTY AS AN AFFILIATE OF THE BENEFICIARY OR THE BENEFICIARY'S SUCCESSORS OR ASSIGNS. The Grantor, on the request of any governmental agency, or, at the reasonable request of the Beneficiary, shall conduct such assessments or remedial work as may be necessary or prudent to determine the existence or non-existence of, and extent of, or the disposition, leakage, migration or occurrence of, any toxic or hazardous substance or

waste, in, about, over or under the Property or any part thereof, and effect a lawful remediation thereof, if necessary to comply with Applicable Laws, and shall commence and complete any such actions with diligence and at the Grantor's sole expense. Any such studies or reports on such assessment or remediation shall be promptly delivered in their entirety to the Beneficiary. Without limitation of the foregoing, should the Beneficiary have any reasonable belief that any toxic or hazardous waste or substance exists on, in, under, or about the Property, or any part thereof, or following an Event of Default or the occurrence of an event that but for the passage of time or giving of notice or both would constitute an Event of Default, should the Beneficiary contemplate foreclosure of its liens or security interests against the Property or any part thereof, or otherwise have made or contemplate making a demand for possession of the Property or any part thereof, the Beneficiary may, at its sole option, but at the Grantor's expense, enter upon the Property or any part thereof, at any time during normal business hours and conduct such environmental inspections, testing, borings, drillings, sampling, or any other similar procedures (including, but not limited to, the installation of monitoring wells or apparatus) (herein, "Environmental Testing") as the Beneficiary may believe in its sole discretion to be necessary or appropriate (no such action shall be deemed to render Beneficiary a mortgagee in possession). Without limitation of the foregoing, the Beneficiary may, at any time during normal business hours upon at least forty-eight (48) hours prior notice to Grantor given via], conduct Environmental Testing at Grantor's sole email to Grantor at [expense. The Beneficiary may act through its own employees or through any agents or contractors it may select. The Grantor shall not impede or restrict in any manner the Beneficiary's access to the Property, or any part thereof, nor shall the Grantor interfere with the Beneficiary in any manner in connection with such Environmental Testing. Any reports or assessments obtained or developed by the Beneficiary shall be the sole property of the Beneficiary and shall not be the property of the Grantor (regardless of whether the Grantor has paid the cost thereof or not). Should any such reports require remediation, then upon Beneficiary's demand (or, if earlier, as soon as Grantor has knowledge of such matter requiring remediation) the Grantor shall immediately and with all diligence implement and complete, at the Grantor's sole cost and expense, any actions reasonably required to alleviate or remediate any environmental condition or other matter identified by such report in strict conformity with Applicable Laws.

G. ASSIGNMENT OF RENTS AND LEASES.

1. <u>Assignment of Rents</u>. Grantor assigns ABSOLUTELY, AND NOT COLLATERALLY, to Beneficiary all present and future rents and other income, rent loss insurance proceeds, and damage awards against tenants or lessees, all other receipts, and all guaranties of any Leases from the Property (collectively, the "<u>Rents</u>"); "<u>Leases</u>" mean all leases, licenses, subleases, sublicenses, and other use or occupancy agreements pertaining to the Property. As long as an Event of Default has not occurred, Grantor shall have the privilege to collect the Rents as they accrue and become payable but not for more than one month in advance of the month to which such payment relates. Grantor shall apply all Rents to payment of the Indebtedness as due and payable, but if the Rents as collected exceed the Indebtedness that is then due and payable, Grantor may retain the excess. Upon the occurrence and during the continuance of an Event of Default, Grantor's privilege to collect the Rents shall automatically and concurrently cease and terminate and Grantor shall have no further right to collect the Rents, and Beneficiary for itself

may collect all Rents, and if the Property or any part is vacant, Beneficiary as Grantor's agent may rent the same. Beneficiary neither has nor assumes any obligations as lessor or landlord with respect to the Leases or any occupant of the Property. Beneficiary may exercise Beneficiary's rights and remedies under this **Section G** without taking possession of the Property. Upon termination of Grantor's privilege to collect Rents hereunder, all Rents collected by Grantor or Beneficiary shall be applied first to costs and expenses incurred in exercising Beneficiary's rights and remedies under this Deed of Trust, including this assignment of rents, and then to the Indebtedness (except unearned interest and other unearned charges, if any) in such order as Beneficiary may elect until all principal and accrued interest owing on the Promissory Note and all the other Indebtedness shall have been fully and finally paid. If Grantor becomes a voluntary or involuntary bankrupt, Beneficiary's filing a proof of claim in bankruptcy will be tantamount to the appointment of a receiver under Texas law. Notwithstanding anything in this **Section G** to the contrary, the assignment of Rents hereunder, the rights of Beneficiary hereunder related to such assignment of Rents, and the obligations of Grantor hereunder related to such assignment of Rents, are subject to, and are limited to the extent required by, the Texas Assignment of Rents Act, Chapter 64 of the Texas Property Code, as amended.

- 2. <u>Effect of Release</u>. If, as, and when, but not before, Grantor is entitled to have this instrument released under <u>Section M</u> below, Beneficiary, at Grantor's request and expense, shall prepare and record a release of this Assignment. A release of the lien of this Deed of Trust executed by Beneficiary shall be deemed to release this Assignment (whereupon this Assignment shall be void and of no further force or effect) unless this Assignment is affirmatively excluded from such release. Such release, and any reassignment thereby made or effected, shall be without warranty (express or implied) by or recourse upon Beneficiary.
- 3. Effect of Foreclosure. In the event of foreclosure of the lien of this Deed of Trust judicially or by sale or otherwise, Beneficiary shall be deemed to transfer and assign (without warranty or recourse, other than by or on behalf of Grantor) all of Beneficiary's rights under this Assignment without additional consideration to the purchaser at any such sale or to any other person entitled to the Property by virtue of foreclosure of the lien of this Deed of Trust; in the event of sale of less than all of the Property, Rents pertaining to the portion of the Property sold shall be deemed so transferred and assigned and the balance retained until sale of the remaining Property. There shall be no duty or liability to account to Grantor for any Rents accruing after the foreclosure of the lien of this Deed of Trust, nor prior to such foreclosure except as specifically provided in this Section G.
- 4. <u>Collateral Assignment of Leases</u>. Grantor hereby collaterally assigns to Beneficiary, as additional security for the Indebtedness, all Leases, now existing or hereafter executed or created; provided however, nothing herein shall permit the leasing or licensing of the Property in violation of this Deed of Trust. Beneficiary assumes no, and shall have no, liability with respect to any Leases except if Beneficiary specifically and in writing undertakes the duties of lessor or landlord. All notices and communications from any lessee or licensee under any Lease shall be immediately delivered to Beneficiary by Grantor. The provisions of <u>Section G(2)</u> and <u>Section G(3)</u> above shall also apply to this portion of the Assignment. At Beneficiary's request, Grantor shall deliver such subordination and/or estoppel letters from the lessees or

licensees under any Lease, in such form, as Beneficiary may reasonably require.

- 5. <u>Warranties Concerning Leases and Rents</u>. Grantor represents and warrants as of the date hereof that:
 - a. Grantor has good title to the Leases and Rents and authority to assign them;
 - b. all existing Leases are valid, unmodified and in full force and effect, except as indicated herein, and no default exists thereunder;
 - c. unless otherwise provided herein, no Rents have been or will be assigned, mortgaged or pledged; and
 - d. no Rents have been or will be waived, released, discounted, set off or compromised.
- 6. Grantor's Covenants of Performance. Grantor covenants to:
 - a. perform all of its material obligations under the Leases and give prompt notice to Beneficiary of any such failure to do so where failure to so perform would reasonably be expected to have a material adverse effect;
 - b. give immediate notice to Beneficiary of any notice Grantor receives from any tenant or subtenant under any Leases, specifying any claimed default by any party under such Leases that would reasonably be expected to have a material adverse effect;
 - c. enforce the tenant's obligations under the Leases where the failure to do so would reasonably be expected to have a material adverse effect;
 - d. defend, at Grantor's expense, any proceeding pertaining to the Leases, including, if Beneficiary so requests, any such proceeding to which Beneficiary is a party except to the extent that failure to defend would not reasonably be expected to have a material adverse effect; and
 - e. neither create nor permit any encumbrance upon its interest as lessor of the Leases, except this Deed of Trust and any other encumbrances permitted by this Deed of Trust, the Development Agreement or the Development Documents.
- 7. <u>Prior Approval for Actions Affecting Leases</u>. Grantor shall not, without the prior written consent of Beneficiary:
 - a. receive or collect Rents more than one month in advance; or
 - b. waive or release any material obligation of any tenant under the Leases except if deemed reasonable and prudent by Grantor, exercising its judgment in the ordinary course of business.
- 8. <u>Settlement for Termination</u>. Grantor agrees that no settlement for damages for termination of any of the Leases under the Federal Bankruptcy Code, or under any other federal, state or local

statute, shall be made except if deemed reasonable and prudent by Grantor, exercising its judgment in the ordinary course of business, or with the prior written consent of Beneficiary. Grantor hereby assigns any such payment to Beneficiary to be applied to the Indebtedness as Beneficiary may elect and agrees to endorse any check for such payment to the order of Beneficiary; provided, however, that if no Event of Default or event that but for the passage of time or giving of notice or both then exists, Beneficiary shall make such funds available to Grantor to pay costs associated with re-tenanting the space (such as leasing commissions and tenant improvement cost), instead of applying the payment to the Indebtedness.

- 9. Beneficiary in Possession. Beneficiary's acceptance of this assignment shall not, prior to entry upon and taking possession of the Property by Beneficiary, be deemed to constitute Beneficiary a "mortgagee in possession," nor obligate Beneficiary to appear in or defend any proceedings relating to any of the Leases or to the Property, take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under the Leases, or assume any obligation for any deposits delivered to Grantor by any tenant and not delivered to Beneficiary. Beneficiary shall not be liable for any injury or damage to any person or property in or about the Property.
- 10. <u>Appointment of Attorney</u>. Grantor hereby irrevocably appoints Beneficiary its attorney-in-fact, coupled with an interest, empowering Beneficiary to subordinate any Leases to this Deed of Trust.
- 11. Indemnification. GRANTOR HEREBY AT ALL TIMES DEFENDS, INDEMNIFIES AND HOLDS BENEFICIARY HARMLESS FROM ANY AND ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND COURT COSTS IMPOSED ON OR INCURRED BY BENEFICIARY FROM ANY CLAIMS UNDER THE LEASES, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS BY GRANTOR WITH RESPECT TO PAYMENTS OF RENTS MADE DIRECTLY TO BENEFICIARY AFTER AN EVENT OF DEFAULT AND CLAIMS BY ANY TENANT FOR SECURITY DEPOSITS OR FOR RENTAL PAYMENTS MORE THAN ONE (1) MONTH IN ADVANCE AND NOT DELIVERED TO BENEFICIARY. GRANTOR AGREES THAT IT WILL COORDINATE ITS DEFENSE WITH THE ATTORNEY GENERAL OF THE STATE AS MAY BE REQUIRED BY LAW. ALL AMOUNTS INDEMNIFIED AGAINST HEREUNDER, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, IF PAID BY BENEFICIARY SHALL BEAR INTEREST AT THE **MAXIMUM** ALLOWABLE BY LAW, AND SHALL BE PAYABLE BY GRANTOR TO BENEFICIARY WITHOUT DEMAND. THE FOREGOING INDEMNITIES SHALL NOT TERMINATE UPON THE FORECLOSURE, RELEASE OR OTHER TERMINATION OF THIS DEED OF TRUST BUT WILL SURVIVE FORECLOSURE OF THIS DEED OF TRUST OR CONVEYANCE IN LIEU OF FORECLOSURE AND THE REPAYMENT OF THE INDEBTEDNESS AND THE DISCHARGE AND RELEASE OF THIS DEED OF TRUST. THE DEVELOPMENT AGREEMENT AND THE OTHER DEVELOPMENT DOCUMENTS.

- 12. <u>Records</u>. Upon request by Beneficiary, Grantor shall deliver to Beneficiary executed originals of all Leases and copies of all records relating thereto and entered into after the date hereof.
- 13. <u>Merger</u>. There shall be no merger of the leasehold estates, created by the Leases, with the fee estate of the Land without the prior written consent of Beneficiary.
- 14. <u>Right to Rely</u>. Grantor hereby irrevocably authorizes and directs the tenants under the Leases to pay Rents to Beneficiary upon written demand by Beneficiary following an Event of Default without further consent of Grantor, and the tenants may rely upon any written statement delivered by Beneficiary to the tenants. Any such payment to Beneficiary shall constitute payment to Grantor under the Leases. The provisions of this Paragraph are intended solely for the benefit of the tenants and shall never inure to the benefit of Grantor or any person claiming through or under Grantor, other than a tenant who has not received such notice. The assignment of Rents set forth in <u>Section G(1)</u> is not contingent upon any notice or demand by Beneficiary to the tenants.

H. CONDEMNATION.

Beneficiary shall be entitled to receive any and all sums which have or may become payable to Grantor for the condemnation of the Property, or any part thereof, for public or quasipublic use, or by virtue of private sale in lieu thereof, and any sums which have or may be awarded or become payable to Grantor for damages caused by public works or construction on or near the Property. All such sums are hereby assigned to Beneficiary, who may, after deducting therefrom all expenses actually incurred by Beneficiary, including attorneys' fees, release same to Grantor or apply the same to the reduction of the Indebtedness hereby secured (whether to matured or unmatured principal or to earned and unpaid interest or other earned and unpaid charges) as and in such manner as Beneficiary may elect, with the balance, if any, after satisfaction of the Indebtedness, paid to Grantor, Grantor's successors or assigns or whomsoever may be legally entitled thereto. Beneficiary shall not be, in any event or circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any such sums. Without limitation of any other right of Beneficiary, if the Indebtedness described is or includes revolving or advancing credit, then Beneficiary may as a condition to any further draws or advances on such credit require that any proceeds received under this paragraph or as a result of other casualty to the Property be pledged (in form and substance satisfactory to Beneficiary) to Beneficiary as additional and/or replacement collateral for the Indebtedness and not applied immediately to the repayment of principal Indebtedness if such principal may be drawn. If no Event of Default has occurred and is continuing, and no event or condition, that with the giving of notice or the lapse of time or both would constitute an Event of Default, Beneficiary will make available to Grantor such proceeds to rebuild the Property under such conditions as Beneficiary may reasonably impose.

I. NUMBER; SUCCESSORS AND ASSIGNS; HEADINGS.

If this Deed of Trust is executed by more than one person the singular reference to Grantor (including pronouns) shall mean each and/or all and/or any of the persons who are Grantor. The obligations of Grantor hereunder (whenever more than one person is bound by the obligations and duties of Grantor) shall be joint and several. References to Grantor, if more than one, mean each and/or all of Grantor. All of the covenants and agreements herein undertaken to be performed by

and the rights conferred upon the Grantor named herein shall be binding upon and inure to the benefit of not only said person but also its respective heirs, executors, administrators, grantees, successors, and assigns. Paragraph or section or article headings used in this instrument are for convenience only and do not limit or restrict the contents of such paragraphs or sections or articles; references to a paragraph or section or article include all sections, paragraphs, sub-paragraphs, or sub-sections, unless otherwise stated. Use of the terms "herein," "hereof," or the like include this entire instrument and not merely the paragraph or section or article in which such term is used, unless otherwise specified. References herein to any gender shall include each other gender, unless otherwise specified; references to the singular shall include the plural and vice versa, unless otherwise specified. Reference to the Beneficiary mean the herein named Beneficiary and its successors and assigns and any future owner and transferee or holder of the debt instruments described or referred to in Section C. References to the Trustee include the herein named Trustee and any successor or substitute trustee(s) appointed hereunder. The term "lien" includes security interests and assignments. The terms "including" or "include" shall be interpreted as if followed by the words "without limitation."

J. SECURITY AGREEMENT.

- 1. <u>Lien on Fixtures</u>. It is understood and agreed that by this instrument Grantor has granted, fixed, created, and perfected a Deed of Trust lien upon and against the Property, inclusive of all goods which are or are to become fixtures thereon, and hereby has also created and granted to the Beneficiary, pursuant to the Uniform Commercial Code of Texas (U.C.C.), a security interest in and to the Property, all of which, including replacements, substitutions, and additions thereto, and all proceeds thereof, shall be deemed to be and remain a part of the Property covered by this Deed of Trust.
- 2. Financing Statements. Grantor shall execute and deliver to Beneficiary all financing statements that may be required by Beneficiary to establish and maintain the validity and priority of Beneficiary's security interest, and Grantor shall bear all costs thereof, including all record searches reasonably required by Beneficiary. Beneficiary hereby is authorized by Grantor to file or record a financing statement or financing statements covering the collateral recited in this Deed of Trust in any and/or all appropriate filing locations. If Beneficiary should dispose of any of the Property under the U.C.C., ten (10) days written notice by Beneficiary to Grantor at mkowski@mckinneyedc.com and mhouser@bhlaw.net shall be deemed to be reasonable notice; provided however, Beneficiary may dispose of all or any such Property in accordance with the real property foreclosure procedures of this Deed of Trust in lieu of proceeding under the U.C.C., or Beneficiary may proceed under the U.C.C. as to any Property subject thereto in lieu of proceeding under the real property foreclosure provisions of this Deed of Trust
- 3. Change of Name, Address, or Structure. Grantor shall give advance notice in writing to Beneficiary of any proposed change in Grantor's name, address, identity, general partners, members, managers, or structure and shall execute and deliver to Beneficiary, prior to or concurrently with the occurrence of any such change, all additional financing statements that Beneficiary may require to establish and maintain the validity and priority of Beneficiary's security interest with respect to any of the Property described or referred to herein.

- 4. <u>Fixture Filing</u>. Some of the items of the Property described herein are goods that are or are to become fixtures related to the Land or improvements thereon, and it is intended that, as to those goods, this Deed of Trust shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Land is situated.
- 5. <u>Information Requests</u>. Information concerning the security interest created by this instrument may be obtained from Beneficiary, as secured party, at Beneficiary's Address.
- 6. <u>Definition of Property</u>. The term Property as used in this Deed of Trust also includes the following, now owned or hereafter acquired by Grantor or in which Grantor now has or hereafter may acquire an interest:
 - a. any and all fixtures, machinery, equipment, engines, boilers, incinerators, building materials, appliances, and goods of every nature whatsoever now or hereafter located in, or on, or used, or intended to be used, in connection with the Land, improvements, fixtures and other rights and interests first above-described in this instrument (the "Real Property"), including but not limited to: those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air, fire prevention and extinguishing apparatus, security and access control apparatus; plumbing and plumbing fixtures; refrigerating, cooking, and laundry equipment; floor coverings and interior and exterior window treatments; furniture and cabinets; interior and exterior paintings; and plant and lawn maintenance equipment;
 - b. any and all plans and specifications for development of or construction of improvements upon the Real Property;
 - c. any and all contracts and subcontracts relating to the Real Property;
 - d. any and all accounts, contract rights, instruments, documents, utility service commitments, and general intangibles arising from or by virtue of any transactions related to the Real Property, including, without limitation, all leases, licenses, and rental or use agreements, and all receipts and income therefrom to the extent subject to the U.C.C., including all equivalent dwelling units ("EDUs") of sewer, water, or wastewater capacity attributable to the Property and all of Grantor's right, title, and interest in and to any existing or future Utility Services Agreement providing for water and/or sanitary sewer service, such EDUs and any water commitment of the applicable water system or other water or wastewater provider, executed through the construction of off-site water mains, or other valuable consideration, together with all related impact fee credits, development benefits and rights, and other entitlements attributable to the Real Property and described above;
 - e. any and all permits, franchises, certificates, and all other rights and privileges obtained in connection with the Property, including rights, allocations, taps, and connections; capital improvement contracts; utility construction agreements with municipal or other public utilities; regional detention rights; rights to refunds and reimbursements from any municipal utility district or other governmental (or

quasi-governmental) authority; rights under any traffic phasing agreements or similar contracts; rights under preliminary plans, plats, and other development approvals; rights to receive or install water, wastewater, electricity, gas, telephone telecommunications (including cable television, internet, ISDN & DSL lines, etc.), drainage, or other utilities or services; rights to build, construct, or install streets, driveways, or other access to the Real Property; rights under any declaration of covenants, conditions, and restrictions, including rights as declarant; and all other development rights, powers, privileges, options, or other benefits associated with, that pertain to, are attributable to, are appurtenant to, apply to, or which otherwise benefit the Real Property;

- f. any and all proceeds arising from or by virtue of the sale or other disposition of any of the Real Property;
- g. any and all proceeds payable or to be payable under each policy of insurance relating to the Real Property;
- h. any and all proceeds arising from the taking of all or a part of the Real Property for any public or quasi-public use under any law, or by any right of eminent domain, or by a private or other purchase in lieu thereof;
- i. all other interest of every kind and character which Grantor now has or at any time hereafter acquires in and to the Real Property; and
- j. all substitutions, additions, replacements of the Real Property and all proceeds (of whatever type) from any disposition of any of the Real Property.

K. CONFORMITY WITH APPLICABLE LAWS.

1. No Usury. Notwithstanding anything herein or in any other documents, instruments or agreements evidencing, collateral to, or securing the Indebtedness contained, all contracts and other agreements between Beneficiary and Grantor (or any other obligor on the Indebtedness), now existing or hereafter arising, oral or written, including all such documents, instruments and agreements, are hereby expressly limited so that in no event or contingency whatsoever, shall the amount paid or to be paid to Beneficiary, or contracted for, received, charged or collected by Beneficiary which amounts are or constitute interest, ever exceed the highest rate allowed by the laws of the State of Texas (or applicable federal law, whichever shall provide for or permit the higher rate) on the Indebtedness hereby secured (or if different rates apply to different portions thereof, then each such portion shall be so restricted according to its respective applicable rate or rates) or on any money obligation hereunder and in no event shall Grantor (or any other obligor on the Indebtedness) be obligated to pay interest thereon in excess of such rate. The parties hereto stipulate that in the event any applicable law limiting the amount of interest or other charges permitted to be collected is interpreted so that any charge provided for in this Deed of Trust or in any other such documents, instruments or agreements evidencing, collateral to, or securing the Indebtedness whether considered separately or together with other charges that are considered a part of this Deed of Trust or any other such documents, instruments or agreements evidencing, collateral to, or securing the Indebtedness

or any charge provided in any other part of the Indebtedness secured hereby, would violate such law by reason of the acceleration of any part of the Indebtedness secured hereby, or deduction to or the non-funding of principal, or demand, performance of covenants, restrictions on use of funds, escrow of funds, or compensating balance agreements, or for any other reason, such charge is ipso facto reduced to the extent necessary to eliminate such violation. In the event of acceleration of (or demand for) all or any part of the Indebtedness, such acceleration (or demand) shall not be deemed or interpreted to include unearned interest or unearned charges or principal that is not outstanding or otherwise owing, and any contrary interpretation is hereby waived and negated. In the event that a late charge is imposed on all or any part of the Indebtedness, then such late charge, to the extent deemed interest under applicable law, shall be limited and treated in accordance with this paragraph. The amounts of interest, if any, previously paid to Beneficiary in excess of the amounts permitted by applicable law shall be applied by Beneficiary to reduce the principal of the Indebtedness or, at Beneficiary's option, refunded to Grantor, its heirs or assigns, or to the obligors of the Indebtedness if other than Grantor. To the extent not prohibited by applicable law, determination of the legal maximum amount of interest shall at all times be made by amortizing, prorating, allocating, and spreading in equal parts during the period of the full stated term of the applicable Indebtedness (including, unless prohibited by law, any extension or renewal periods thereof), all interest and late charges at any time contracted for, charged, or received in connection with the Indebtedness so that the actual rate of interest is uniform throughout the term thereof. Any reference herein to a stated rate of interest (e.g., fifteen percent (15%) per annum) shall be in all cases deemed to mean such rate or the highest lawful rate (whichever is the lesser).

- 2. Effect of Laws. If the enactment or expiration of applicable laws, rules, or regulations has the effect of rendering any provision of this Deed of Trust or the documents, instruments or agreements evidencing, collateral to, or securing the Indebtedness or any part thereof unenforceable or illegal according to their terms, this Deed of Trust or said documents, instruments, or agreements, shall be deemed to be modified and amended to the minimum extent necessary to cure any such unenforceability or illegality. In addition, if any subsequently enacted law, rule or regulation applicable to this Deed of Trust or the documents, instruments or agreements evidencing, collateral to, or securing the Indebtedness or any part thereof shall permit the charging of an interest rate higher than formerly permitted, then unless prohibited by law, said higher interest rate shall immediately be incorporated herein and therein by reference for all purposes of determining the maximum legal rate applicable hereto or thereto.
- 3. Additional Charges and Fees. In the event that other charges or fees are imposed on or with respect to the Indebtedness or any part thereof that constitute interest under applicable law with regard to any transaction hereby secured, the contracted-for rate of interest with respect to such portion of the Indebtedness shall be deemed to be a rate that is the lesser of the specified rate in the applicable agreement adjusted by said charges or fees, or the maximum rate, if any, applicable to such transaction (any such charges having also been reduced as necessary so as not to exceed such maximum rate, if any) for the purpose of calculating a contracted-for rate of interest as, if and to the extent required by applicable law.
- 4. <u>Maximum Rate of Interest</u>. Grantor agrees that the usury limit or ceiling applicable to the Indebtedness, or any part thereof, shall be at all times the highest allowed by applicable law;

to the extent the documents, instruments or agreements evidencing, collateral to, or securing the Indebtedness, or any part thereof, contractually provide for a lesser rate or amount or maximum rate, such provisions shall be solely for the purpose of calculating and determining the Indebtedness from time to time owing, and shall not be deemed to establish a lower maximum rate for violation of which Beneficiary would be subject to penalties for usury. Grantor agrees that should Beneficiary charge, contract for, or receive interest at a rate or amount that is greater than the agreed upon rate or amount, but less than, after giving effect to this $\underline{\textbf{Section K}}$ and after applicable laws, the highest lawful maximum rate or amount, Grantor's recourse (which shall to the maximum lawful extent, be its sole recourse) shall be to recover such difference from the then current transferee or holder of the Indebtedness.

L. EVENT OF DEFAULT.

An "Event of Default" shall mean any of the following: (i) an "Event of Default" as defined in the Development Agreement; (ii) an event of default under any other Development Document; (iii) the occurrence of any default or acceleration or foreclosure under any document, instrument or agreement evidencing, collateral to, or secured by any subordinate lien on the Property or any part thereof beyond any applicable cure period; (iv) any failure by Grantor to make any payment under this Deed of Trust, the Development Agreement, or any other Development Document when due; and (v) any breach of or default by Grantor or failure by Grantor to observe or perform, any non-monetary covenant, condition or agreement under this Deed of Trust for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to Grantor, or if such default is not capable of being cured within thirty (30) days, then if such default is not remedied within one hundred eighty (180) days provided that Grantor commenced such cure within the initial thirty (30) days and is thereafter diligently prosecuting the cure to completion; provided, however, that if a shorter cure period is specified in the Development Agreement or another Development Document then such shorter cure period shall control. Notice to be given under this **Section L** shall be deemed given when mailed by certified mail, return receipt requested, to Grantor at Grantor's Address, or when delivered by personal delivery to Grantor.

M. DEFEASANCE.

Should Grantor do and perform all of its obligations herein contained, and should prompt payment of the Indebtedness be made as the same shall become due and payable, and should Beneficiary have no further obligations (howsoever conditioned) to make further advances or incur further undertakings to be secured hereby, then (but only then) this conveyance shall become null and void and of no further force and effect, and shall be released at the expense of Grantor by the Beneficiary. An affidavit, certificate, letter, or statement of any officer, agent, or attorney of Beneficiary indicating that any part of the Indebtedness remains unpaid or that Grantor's obligations remain unperformed or that Beneficiary is obligated to additional advances or undertakings to be secured hereby shall be conclusive evidence to parties other than Beneficiary and Grantor of the continuing validity and effectiveness of this instrument and any person may, and is authorized to, rely thereon.

N. SPECIAL PROVISIONS.

- 1. Due On Sale. It shall be an Event of Default under this Deed of Trust if all or any part of the Property (other than personal property sold in the ordinary course of Grantor's business in a commercially reasonable manner and obsolete or worn personal property replaced by substitutes of equal or greater value and function than the replaced items when new and if subject to the lien hereof in the same priority as the item replaced) shall be leased, sold, conveyed, transferred or otherwise disposed of, or if title thereto shall become vested in any party other than Grantor whether by operation of law or otherwise. Beneficiary may, in its sole discretion, waive this Event of Default, but shall have no obligation to do so, and any waiver may be conditioned upon (to the maximum lawful extent) such one or more of the following which Beneficiary may require: the grantee's or transferee's integrity, reputation, character, creditworthiness, and management ability being satisfactory to Beneficiary in its sole judgment, and grantee or transferee executing, prior to such sale or transfer, a written assumption agreement containing such terms as Beneficiary may require, a principal paydown on the Indebtedness, an increase in the rate of interest payable under the Indebtedness, a transfer fee, any other expenses incurred by Beneficiary (including attorneys' fees) and any other modification of the documents, instruments or agreements evidencing, collateral to or securing the Indebtedness as Beneficiary may require.
- 2. <u>Purpose</u>. Grantor expressly represents that this Deed of Trust and the Promissory Note hereby secured are given for the following purpose, to-wit:

The Promissory Note secured hereby represents funds due and owing as purchase money to the Beneficiary at the special instance and request of Grantor in connection with the acquisition of the Land for the promotion of economic development within the City of McKinney in connection with the construction of a new, first class, state-of-the-art amphitheater/outdoor entertainment venue facility and project improvements located thereon, which such venue shall provide world-class concerts, live shows, and other entertainment and civic events. The Promissory Note is governed by its terms and the terms of the Development Agreement and the other Development Documents.

- 3. <u>Business Purpose</u>. Grantor warrants and covenants that the Promissory Note is given for Grantor's business and investment purposes and not for personal, family, household, or agricultural use.
- 4. Costs and Expenses. Grantor shall pay Beneficiary, on demand (on which date the same shall be due and payable), all out-of-pocket costs and expenses incurred at any time by Beneficiary in negotiating, defending, perfecting, enforcing, or effecting compliance with this Deed of Trust, the Promissory Note, the Development Agreement, Development Documents, or the other documents, instruments or agreements further evidencing, collateral to, or securing the loan represented by the Promissory Note, or incurred at any time by Beneficiary in connection with any title policy premiums, inspection fees, recordation fees, appraisal fees, test appraisal (including appraisals required by applicable agencies or examiners with authority over Beneficiary) or reappraisal fees, taxes, fees, reasonable expenses of Beneficiary's counsel, insurance premiums, and any and all costs or out-of-pocket expenses incurred (including without limitation reasonable attorneys', auditors' and accountants' fees and reasonable time charges of attorneys, paralegals, auditors and accountants who may be employees of

Beneficiary, the State of Texas Attorney General, or the State of Texas) by Beneficiary in accordance with this Deed of Trust, the Development Agreement, and the other Development Documents, with interest thereon as set forth in the Promissory Note, Development Agreement or other Development Documents, if any, on any unpaid amounts from the date due until paid, all except as prohibited by law.

- 5. <u>Controlling Law</u>. This Deed of Trust will be interpreted under, and the rights and liabilities of the Beneficiary and Grantor determined in accordance with, the laws of the State of Texas, excluding its conflict of laws rules.
- 6. Negation of Partnership. Nothing contained herein, in the Development Agreement, or in the other Development Documents is intended to create any partnership, joint venture, or association between Grantor and Beneficiary, or in any way make Beneficiary a co-principal with Grantor with reference to the Property, and any inferences to the contrary are hereby expressly negated.
- 7. Modification or Termination. This Deed of Trust, the Development Agreement and the other Development Documents may only be modified or terminated by a written instrument or instruments executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination that is not so documented shall not be effective as to any party. Grantor agrees that it shall be bound by any modification of this Deed of Trust, the Development Agreement or any of the other Development Documents made by Beneficiary and any subsequent owner of the Property, with or without notice to or consent of Grantor, and no such modification shall impair the obligations of Grantor under this Deed of Trust, the Development Agreement, or under any other Development Document.
- 8. Entire Agreement. This Deed of Trust, the Development Agreement and the other Development Documents constitute the entire understanding and agreement between Grantor and Beneficiary with respect to the transactions arising in connection with the Indebtedness and supersede all prior written or oral understandings and agreements between Grantor and Beneficiary with respect thereto. Grantor hereby acknowledges that, except as incorporated in writing in the Development Documents, there are not, and were not, and no persons are or were authorized by Beneficiary to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Development Documents.

[Signature and acknowledgment on the following page]

THIS WRITTEN DEED OF TRUST, THE DEVELOPMENT AGREEMENT AND THE OTHER DEVELOPMENT DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

Executed as of the date of the acknowledgment to be effective as of the Effective Date.

<u>G</u>	rantor:
	SUNSET GROUND AT MCKINNEY, LLC, a Colorado corporation
	By: Name: Title:
STATE OF	
COUNTY OF §	
This instrument was acknowle, the, the, the	dged before me on the day of, 2024, by of Sunset Ground at McKinney, f of said corporation.
[SEAL]	•
[SLAL]	Printed Name:
	Notary Public, State of
	My Commission Expires:

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

[See Attached]

203263691.3 Exhibit "A"

EXHIBIT "B"

PERMITTED EXCEPTIONS

[See Attached]

203263691.3 Exhibit "B"

ADDENDUM 2 TO

FIRST AMENDMENT TO CHAPTER 380, GRANT, AND DEVELOPMENT AGREEMENT

Form of Personal Guaranty

PERSONAL GUARANTY

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce MCKINNEY ECONOMIC DEVELOPMENT CORPORATION, a Type A, non-profit development corporation created and existing under the laws of the State of Texas (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of VENU HOLDING CORPORATION, a Colorado corporation (herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned, jointly and severally, hereby absolutely and unconditionally guarantees to the Lender the full and prompt payment and performance when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations evidenced by that certain promissory note of even date from Borrower in favor of Lender in the original principle amount of \$25,000,000 (hereinafter referred to as the "Indebtedness").

The Undersigned acknowledges and agrees with the Lender that:

- 1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all Indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.
- 2. The Undersigned represents and warrants to the Lender that the Undersigned has a direct and substantial economic interest in Borrower and expects to derive substantial benefits therefrom and from any loans and financial accommodations resulting in the creation of Indebtedness guaranteed hereby, and that this guaranty is given for a corporate purpose. The Lender may rely conclusively on a continuing warranty, hereby made, that the Undersigned continues to be benefited by this guaranty and the Lender shall have no duty to inquire into or confirm the receipt of any such benefits, and this guaranty shall be effective and enforceable by the Lender without regard to the receipt, nature or value of any such benefits.
- 3. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.
- 4. The liability of the Undersigned hereunder shall be liable for all Indebtedness, without any limitation as to amount or percentage, plus accrued interest thereon and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting

or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to the Lender on account of the Indebtedness from Borrower or any other person out of any collateral security or from any other source to payment of the excess in any order or manner as determined by Lender. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder.

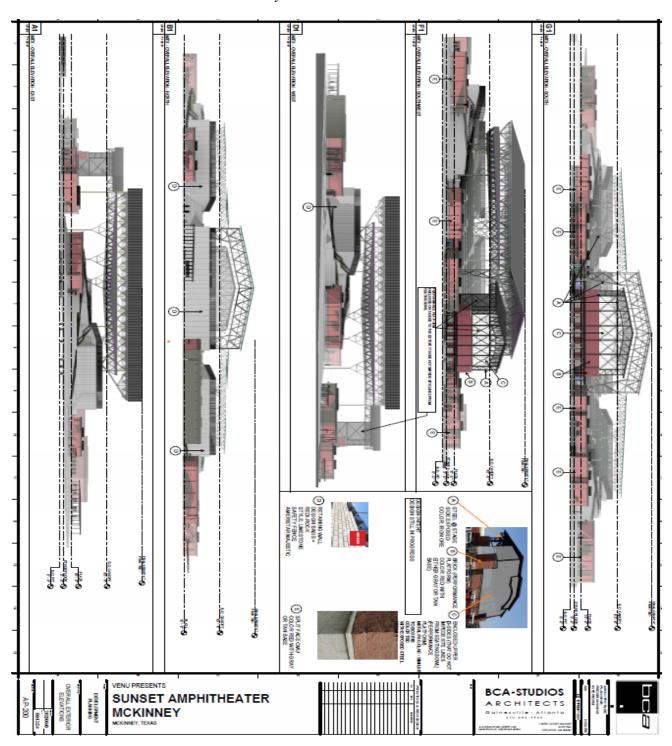
5. The Undersigned will pay or reimburse the Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by the Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

IN	WITNESS	WHEREOF,	this	guaranty	has	been	duly	executed	by	the
Undersigne	ed on this	day (of				, 20)24.		
				J.W. Rot	th, in	dividu	ally			_
				Kevin O	'Neil	, indiv	iduall	y		

"Undersigned" shall refer to all persons who sign this Guaranty, individually and jointly.

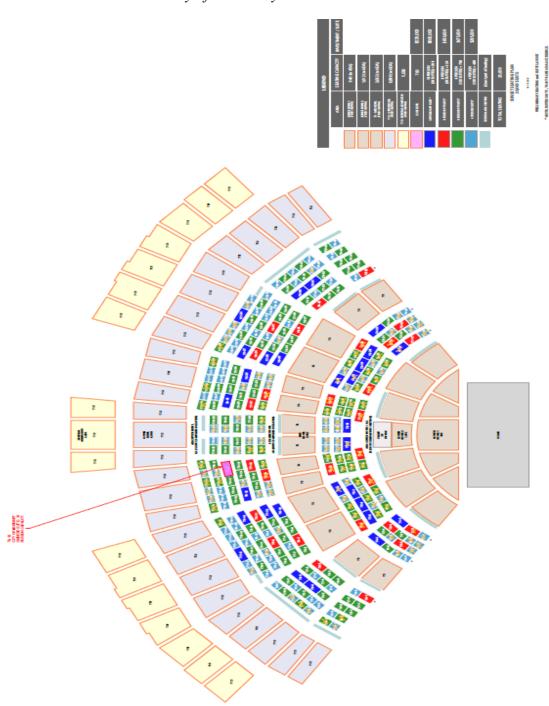
ADDENDUM 3 TO FIRST AMENDMENT TO CHAPTER 380, GRANT, AND DEVELOPMENT AGREEMENT

Preliminary Elevations and Sections



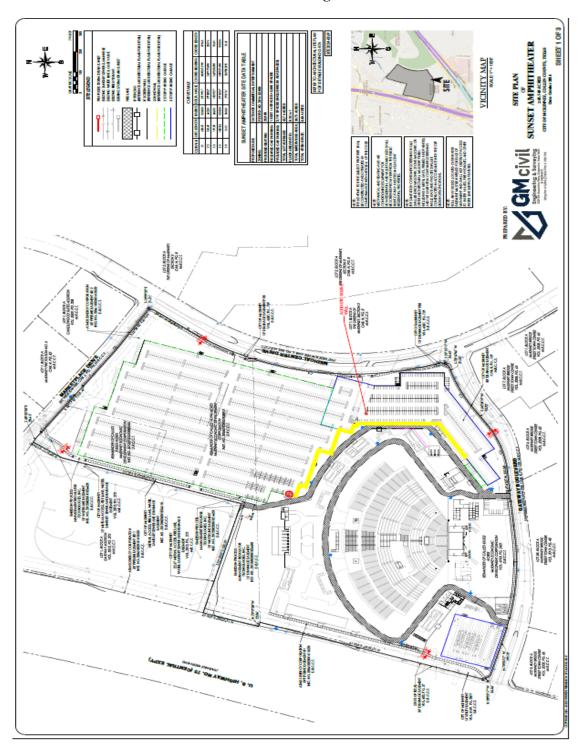
ADDENDUM 4 TO FIRST AMENDMENT TO CHAPTER 380, GRANT, AND DEVELOPMENT AGREEMENT

City of McKinney Owner Suite



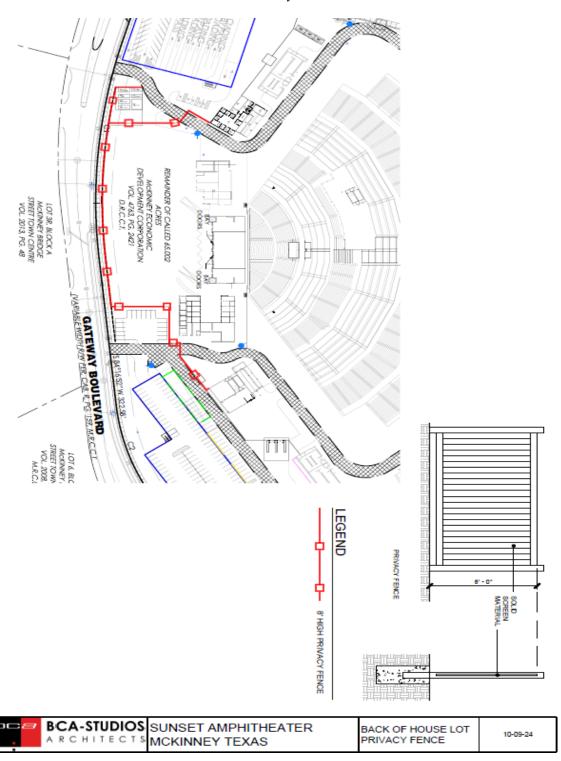
ADDENDUM 5 TO FIRST AMENDMENT TO CHAPTER 380, GRANT, AND DEVELOPMENT AGREEMENT

10' Sidewalk and Garage Soundwall



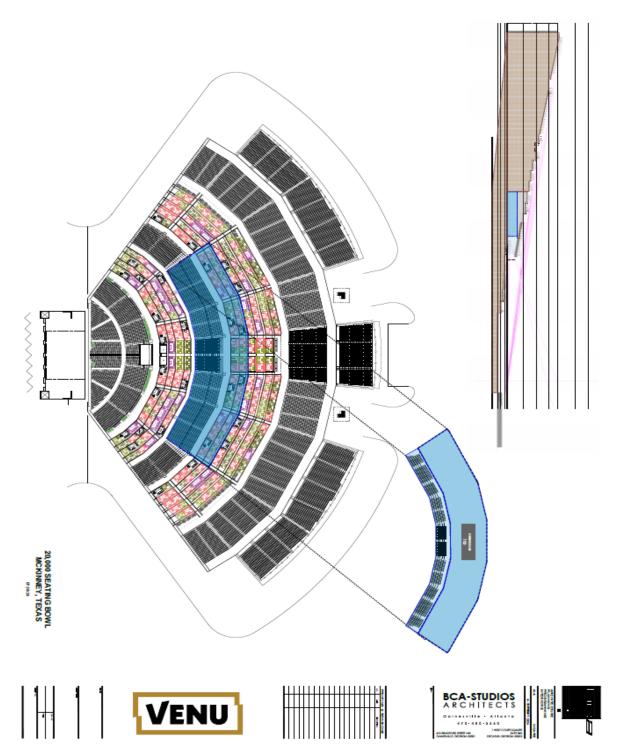
ADDENDUM 6 TO FIRST AMENDMENT TO CHAPTER 380, GRANT, AND DEVELOPMENT AGREEMENT

BOH Privacy Fence



ADDENDUM 7 TO FIRST AMENDMENT TO CHAPTER 380, GRANT, AND DEVELOPMENT AGREEMENT

Owners Club Location



ADDENDUM 8

TO

FIRST AMENDMENT TO CHAPTER 380, GRANT, AND DEVELOPMENT AGREEMENT

Form of Note

PROMISSORY NOTE

Collin County, Texas

\$25,000,000.00	, 2024
Ψ23,000,000.00	, 2024

For value received, VENU HOLDING CORPORATION, FORMERLY KNOWN AS NOTES LIVE, INC., a Colorado corporation, as principal ("Borrower"), promises to pay to the order of MCKINNEY ECONOMIC DEVELOPMENT CORPORATION, a Type A, nonprofit development corporation creating and existing under the laws of the State of Texas ("Lender"), at 7300 SH 121 SB Suite 200, McKinney, Texas 75070, or at such other address as Lender shall from time to time specify in writing, the maximum sum of TWENTY-FIVE MILLION AND NO/100 DOLLARS (\$25,000,000.00), or such lesser amount of loans and advances (collectively, the "Loan") as may be made pursuant to this Promissory Note (the "Note"), in legal and lawful money of the United States of America, with interest on the outstanding principal from the date advanced until paid at the rate set out below. Interest shall be computed on a per annum basis of a year of 360 days and for the actual number of days elapsed, unless such calculation would result in a rate greater than the highest rate permitted by applicable law, in which case interest shall be computed on a per annum basis of a year of 365 days or 366 days in a leap year, as the case may be. The aggregate amount of principal to be advanced hereunder shall not exceed the amount first stated above. Capitalized terms used but not otherwise defined herein have the respective meanings set forth in the "Chapter 380, Grant, and Development Agreement by and among City of McKinney, Texas, McKinney Economic Development Corporation, McKinney Community Development Corporation, as City Parties, and Notes Live, Inc., as Owner," dated as of April 16, 2024, as amended by the "First Amendment to Chapter 380, Grant, and Development Agreement by and among City of McKinney, Texas, McKinney Economic Development Corporation, McKinney Community Development Corporation, as City Parties, and Venu Holding Corporation, successor-by-name-change to Notes Live, Inc., as Owner," dated as of October 15, 2024 (together, the "Development Agreement"), and this Note is subject to all of the terms, benefits and provisions of, and is the Note referred to in, such Development Agreement.

1. Payment Terms.

- (a) The outstanding principal amount, remaining unpaid, of this Note shall be due and payable to Lender on or before that date which is thirty (30) days following the earlier of (x) Borrower's receipt of a TCO (as such term is defined in the Development Agreement), or (y) the occurrence of an Owner Default (as such term is defined in the Development Agreement) or Borrower default (collectively, the "Maturity Date").
- (b) On the Maturity Date, the outstanding unpaid principal balance hereof, and all accrued interest then remaining unpaid, if any, shall then be due and payable. Interest hereunder

shall be calculated on the unpaid principal each day principal is outstanding and all payments made credited as follows: (i) first, to any collection or other costs to which Lender is entitled hereunder or under the Development Agreement, Deed of Trust, or Development Documents, (ii) second, to the discharge of the unpaid interest accrued, and (iii) third, to the reduction of the outstanding unpaid principal.

- 2. <u>Interest Rate</u>. Interest on the outstanding and unpaid principal balance hereof shall be computed at a per annum rate equal to zero percent (0.00%) per annum (the "Note Rate").
- 3. <u>Default Rate</u>. For so long as any Event of Default has occurred and is continuing under this Note or under the Development Agreement, Deed of Trust, or Development Documents, regardless of whether or not there has been an acceleration of the indebtedness evidenced by this Note, and at all times after the maturity of the indebtedness evidenced by this Note (whether by acceleration or otherwise), and in addition to all other rights and remedies of Lender hereunder, interest shall accrue on the outstanding unpaid principal amount hereof (and on such other amounts as are due and owing and expressly stated, in the Development Agreement, Deed of Trust, and Development Documents, to bear interest at the Default Rate, as hereinafter defined) at the highest rate permitted by Applicable Law (as hereinafter defined) (the "<u>Default Rate</u>"), but in no event in excess of the highest rate permitted by Applicable Law, and such accrued interest shall be immediately due and payable. Borrower acknowledges that it would be extremely difficult or impracticable to determine Lender's actual damages resulting from any Event of Default, and such accrued interest is a reasonable estimate of those damages and does not constitute a penalty.
- 4. Payments. All payments and prepayments of principal or interest on this Note shall be made in lawful money of the United States of America in immediately available funds, at the address of Lender indicated above, or such other place as the holder of this Note shall designate in writing to Borrower. If any payment of principal or interest on this Note shall become due on a day which is not a Business Day (as hereinafter defined), such payment shall be made on the next succeeding Business Day, and any such extension of time shall be included in computing interest in connection with such payment. The books and records of Lender shall be prima facie evidence of all outstanding principal of and accrued and unpaid interest on this Note. "Business Day" means a day other than a Saturday, Sunday or a day on which commercial banks in the State of Texas are authorized to be closed or are in fact are closed.
- 5. <u>Prepayment</u>. Borrower reserves the right to prepay, prior to the Maturity Date, all or any part of the principal of this Note without penalty. Any prepayments shall be applied first to accrued interest and then to principal. Borrower will provide written notice to the holder of this Note of any such prepayment of all or any part of the principal at the time thereof. All payments and prepayments of principal or interest on this Note shall be made in lawful money of the United States of America in immediately available funds, at the address of Lender indicated above, or such other place as the holder of this Note shall designate in writing to Borrower.
- 6. <u>Default</u>. Upon the occurrence and continuance of an event of default under this Note, the Development Agreement, the Deed of Trust, or the Development Documents, the holder of this Note may, without further notice or demand, (a) declare the outstanding principal balance of and accrued but unpaid interest on this Note at once due and payable, (b) refuse to advance any

additional amounts under this Note, (c) foreclose all liens securing payment hereof, (d) pursue any and all other rights, remedies and recourses available to the holder hereof, including but not limited to any such rights, remedies or recourses under the Development Agreement, Deed of Trust, and Development Documents, at law or in equity, or (e) exercise any combination of the foregoing; and in the event default is made in the prompt payment of this Note when due or declared due, and the same is placed in the hands of an attorney for collection, or suit is brought on same, or the same is collected through probate, bankruptcy or other judicial proceedings, then the Borrower agrees and promises to pay all costs of collection, including without limitation reasonable attorneys' fees.

- No Usury Intended; Usury Savings Clause. It is the intent of Lender and Borrower in the execution and performance of this Note to remain in strict compliance with Applicable Law from time to time in effect. In furtherance thereof, Lender and Borrower stipulate and agree that none of the terms and provisions contained in this Note shall ever be construed to create a contract to pay, for the use, forbearance or detention of money, (i) interest at a rate or in an amount in excess of the highest lawful rate permitted by Applicable Law (the "Maximum Rate"), or (ii) an amount of interest in excess of that permitted to be charged under Applicable Law. For purposes of this Note, "interest" shall include the aggregate of all charges which constitute interest under Applicable Law that are contracted for, charged, reserved, received or paid under this Note. In no event shall interest contracted for, charged or received hereunder, plus any other charges in connection herewith which constitute interest, exceed the maximum interest permitted by Applicable Law. The amounts of such interest or other charges previously paid to the holder of the Note in excess of the amounts permitted by Applicable Law shall be applied by the holder of the Note to reduce the principal of the indebtedness evidenced by the Note, or, at the option of the holder of the Note, be refunded. To the extent permitted by Applicable Law, determination of the legal maximum amount of interest shall at all times be made by amortizing, prorating, allocating and spreading in equal parts during the period of the full stated term of the Loan and indebtedness, all interest at any time contracted for, charged or received from the Borrower hereof in connection with the Loan and indebtedness evidenced hereby, so that the actual rate of interest on account of such indebtedness is uniform throughout the term hereof. For purposes of this Note, "Applicable Law" shall mean the law in effect from time to time and applicable to the transactions between Lender and Borrower pursuant to this Note which lawfully permits the charging and collection of the highest permissible lawful non-usurious rate of interest on such transactions, including laws of the State of Texas, and to the extent controlling and providing for a higher lawful rate of interest, laws of the United States of America. It is intended that the Texas Finance Code (subject to Section 11 of this Note) shall be included in the laws of the State of Texas in determining Applicable Law.
- 8. <u>Security</u>. The holder of this Note is entitled to the benefits and security provided in the Development Agreement, the Deed of Trust, and the Development Documents.
- 9. <u>Joint and Several Liability; Waiver</u>. Each maker, signer, surety and endorser hereof, as well as all heirs, successors and legal representatives of said parties, shall be directly and primarily, jointly and severally, liable for the payment of all indebtedness hereunder. Lender may release or modify the obligations of any of the foregoing persons or entities, or guarantors hereof, in connection with this Note without affecting the obligations of the others. Subject to any applicable notice and cure provisions contained in the Development Agreement and Deed of Trust, with respect to any Default or Event of Default, all such persons or entities expressly waive

presentment and demand for payment, notice of default, notice of intent to accelerate maturity, notice of acceleration of maturity, protest, notice of protest, notice of dishonor, and all other notices and demands for which waiver is not prohibited by law, and diligence in the collection hereof; and agree to all renewals, extensions, indulgences, partial payments, releases or exchanges of collateral, or taking of additional collateral, with or without notice, before or after maturity. No delay or omission of Lender in exercising any right hereunder shall be a waiver of such right or any other right under this Note, the Deed of Trust, or the Development Documents.

- 10. <u>Texas Finance Code</u>. In no event shall Chapter 346 of the Texas Finance Code (which regulates certain revolving loan accounts and revolving tri-party accounts) apply to this Note. To the extent that Chapter 303 of the Texas Finance Code is applicable to this Note, the "weekly ceiling" specified in such article is the applicable ceiling; provided that, if any applicable law permits greater interest, the law permitting the greatest interest shall apply.
- 11. <u>Governing Law; Venue.</u> This Note is being executed and delivered, and is intended to be performed in the State of Texas. Except to the extent that the laws of the United States may apply to the terms hereof, the substantive laws of the State of Texas (without regard to conflicts of laws principles) shall govern the validity, construction, enforcement and interpretation of this Note. In the event of a dispute involving this Note or any other instruments executed in connection herewith, the undersigned irrevocably agrees that venue for such dispute shall lie in any court of competent jurisdiction in Collin County, Texas.
- 12. <u>Purpose of Loan</u>. Borrower agrees that no advances under this Note shall be used for personal, family or household purposes, and that all advances hereunder shall be used solely for business, commercial, investment, or other similar purposes.
- 13. <u>Captions</u>. The captions in this Note are inserted for convenience only and are not to be used to limit the terms herein.

[Signature on the following page]

SIGNATURE PAGE TO PROMISSORY NOTE

Collin County, Texas

BORRO	WER
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VENU HOLDING CORPORATION, FORMERLY KNOWN AS NOTES LIVE, INC., a Colorado corporation

By:____

Name: JW Roth

Title: Chairman and CEO