

Controller's Office

To the Honorable Mayor and City Council of the City of Houston:

I hereby certify, with respect to the money required for the contract, agreement, obligation, or expenditure contemplated by the ordinance set out below that:

- ( ) Funds have been encumbered out of funds previously appropriated for such purpose.
- ( ) Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- ( ) Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- (  ) No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- ( ) The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- ( ) A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.
- ( ) Other.

Date: 6-22, 2011.

*Ronald C. King*  
City Controller of the City of Houston

*MS  
JPS*

FUND REF: N/A AMOUNT: -- ENCUMB. NO.: RF90034-11

City of Houston, Texas, Ordinance No. 2011-546

AN ORDINANCE APPROVING AND AUTHORIZING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF HOUSTON, TEXAS, AND INDEPENDENT ARTS COLLABORATIVE FOR THE DEVELOPMENT, CONSTRUCTION, AND OPERATION OF A MULTI-TENANT PERFORMING ARTS FACILITY IN THE CITY; CONTAINING FINDINGS AND OTHER PROVISIONS RELATED TO THE FOREGOING SUBJECT; AND DECLARING AN EMERGENCY.

\* \* \* \* \*

**WHEREAS**, pursuant to Article III, Section 52-a of the Texas Constitution and Chapter 380, Texas Local Government Code, as amended, the City is authorized to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money, to promote state or local economic development and to stimulate business and commercial activity in the City; and

**WHEREAS**, by Ordinance No. 99-674 adopted by City Council on June 20, 1999, the City established the City of Houston Chapter 380 Program, pursuant to the provisions of Chapter 380 of the Texas Local Government Code, including "Criteria for Chapter 380 Assistance" attached as Exhibit "A" to Ordinance No. 99-674; and

**WHEREAS**, Section 2 of Ordinance No. 99-674 provides that the Director of the City's Planning and Development Department or such Director's designee shall administer the Chapter 380 Program ("Program Administrator"); and

**WHEREAS**, the Director of the Planning and Development Department has designated the Deputy Director of Economic Development and Finance Department as Program Administrator; and

**WHEREAS**, Independent Arts Collaborative ("Developer") has submitted an application for assistance pursuant to the Chapter 380 Program; and

**WHEREAS**, the Program Administrator has reviewed Developer's application for assistance initiating the required consideration for economic assistance and determined that Developer has satisfied the qualifications for assistance; and

**WHEREAS**, the City desires to enter into an economic development agreement with Developer by which, in consideration for Developer's agreement to invest approximately \$12,500,000.00 to develop, construct, and operate a multi-tenant performing arts facility

and create at least 25 full-time equivalent jobs in the Midtown area of the City (“Economic Impact Area”), the City agrees to reimburse to Developer the incremental increase in the City’s portion of sales and mixed beverage tax revenues generated in the Economic Impact Area, subject to Developer’s compliance with and fulfillment of certain specific conditions (“Agreement”); and

**WHEREAS**, the Program Administrator has further determined that the Agreement attached hereto as Exhibit “A” generally meets the criteria for Chapter 380 assistance guidelines set forth in Ordinance No. 99-674; and

**WHEREAS**, the City Council hereby waives any requirements in Ordinance No. 99-674 with which Developer or the City has not complied; and

**WHEREAS**, the City Council finds that the incentives offered to the Developer will advance the local economic development, stimulate new business and commercial investment, diversify the economy, create new jobs, and result in favorable global media reporting for the City; **NOW, THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

**Section 1.** Findings. That the facts and recitals contained in the preamble of this Ordinance are hereby found and declared to be true and correct and are hereby adopted as part of this Ordinance.

**Section 2.** Approval of the Economic Development Agreement. That the City Council hereby approves and authorizes the contract, agreement, or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of

Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

**Section 3.** That the Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such contracts, agreements, or other undertakings described in the title of this Ordinance, in the event of changed circumstances.

**Section 4.** That the City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under such contracts, agreements, or other undertakings without further authorization from Council.

**Section 5.** That City Council officially finds, determines, recites, and declares that sufficient written notice of the date, hour, place, and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings law, Chapter 551, TEX. GOV'T CODE (Vernon's 2010), as amended, and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered, and formally acted upon. City Council further ratifies, approves, and confirms such written notice and the contents and posting thereof.

**Section 6.** That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign


this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 22nd day of June, 2011.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JUN 28 2011.

  
\_\_\_\_\_  
City Secretary

(Prepared by Legal Department Donna Capps )  
(DRC:drc June 8, 2011) Assistant City Attorney  
(Requested by Andy Icken, Chief Development Officer, Economic Development Department)  
(L. D. File No. 0341100044001)

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AYE	NO	
✓		MAYOR PARKER
....	....	COUNCIL MEMBERS
	ABSENT	STARDIG
✓		Johnson
✓		CLUTTERBUCK
✓		ADAMS
✓		SULLIVAN
✓		HOANG
✓		PENNINGTON
✓		GONZALEZ
✓		RODRIGUEZ
✓		COSTELLO
✓		LOVELL
✓		NORIEGA
✓		BRADFORD
✓		JONES
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT  
REVIEW  
DATE: JUN 28 2011

**EXHIBIT A**

**Economic Development Agreement  
Between the City of Houston, Texas, and Independent Collaborative Arts**

## ECONOMIC DEVELOPMENT AGREEMENT

THIS AGREEMENT (the "Agreement") by and between the CITY OF HOUSTON, TEXAS, a Texas home-rule municipal corporation (the "City"), and INDEPENDENT ARTS COLLABORATIVE, a Texas nonprofit corporation (the "Developer"), is entered into as of the date the City Controller countersigns hereto (the "Effective Date").

### RECITALS

WHEREAS, Developer owns or has contracted to purchase certain tracts of land totaling approximately 50,000 square feet within the corporate limits of the City, as described on the property description marked as Exhibit "A" attached hereto (the "Property"), for the purpose of developing a multi-tenant performing arts facility with appurtenant office, performance and rehearsal space (the "Project");

WHEREAS, Developer intends to develop the Project in conjunction with a proposed commercial, retail, and parking project planned to be constructed on property adjacent to the Property as described on the property description marked as Exhibit "A-1" attached hereto (the "Adjacent Property") (the "Adjacent Project");

WHEREAS, the Adjacent Project will provide necessary parking and compatible entertainment choices for the patrons of the Project, increasing the Project's feasibility and its economic impact to the City;

WHEREAS, the Developer agrees to finance and develop the Project in accordance with the terms and conditions of the Agreement;

WHEREAS, the City recognizes the Project and the Adjacent Project will attract tourism and commerce to the surrounding area that otherwise would not occur, resulting in a positive economic impact that the Project will bring to the City through timely development and diversification of the economy, elimination of unemployment and underemployment through the production of new jobs, the attraction of new businesses, and the additional ad valorem, mixed beverage, and sales and use tax revenue generated by the Project and the Adjacent Project for the City;

WHEREAS, the City has established a program in accordance with Article III, Chapter 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code ("Chapter 380") under which the City has the authority to use public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the City;

WHEREAS, consistent with Article III, Section 52-a of the Texas Constitution, Chapter 380, and other law, the City agrees to make a grant to Developer to advance the public purposes of developing and diversifying the economy of the state, eliminating unemployment or underemployment in the state, and developing or expanding transportation or commerce in the state;

WHEREAS, in consideration of the design, timely construction, and development of the Project, which will bring additional sales tax and ad valorem tax revenues and mixed beverage tax revenues to the City and additional jobs resulting from the construction of the Project and the Adjacent Project, the City desires to enter into this Agreement pursuant to Chapter 380 and other laws applicable to the development of municipal infrastructure as an economic incentive for the Developer to develop and construct the Project and for the Developer to coordinate with the owners of the Adjacent Property to construct the Adjacent Project;

WHEREAS, the City has concluded and hereby finds that this Agreement promotes economic development in the City of Houston and, as such, meets the requirements under Chapter 380 and the City's established economic development program, and, further, is in the best interests of the City and Developer;

WHEREAS, to ensure that the benefits the City provides under this Agreement are utilized in a manner consistent with Chapter 380 and other law, the Developer has agreed to comply with certain conditions for receiving those benefits, including performance conditions relating to raising private funds for the Project, job creation and Project operations;

WHEREAS, in consideration of the Developer's raising private funds for the Project, to create employment, and to operate the Project in accordance with the performance measures set forth herein, which will generate Retained Sales Tax Revenues and Retained Mixed Beverage Tax Revenues (as defined herein) to the City, the City agrees to grant to the Developer the Maximum Reimbursement Amount (as defined herein);

WHEREAS, consistent with Chapter 380 and other law, City and the Developer, as contemplated in this Agreement agree to work together to advance the public purposes of developing and diversifying the economy of the state, eliminating unemployment or underemployment in the state, and developing or expanding transportation or commerce in the state; and

NOW, THEREFORE, for and in consideration of the promises and the mutual agreements set forth herein, the City and Developer hereby agree as follows:

## **ARTICLE I GENERAL TERMS**

A. Incorporation of Recitals. The recitals to this Agreement are hereby incorporated for all purposes.

B. Definitions and Terms. The terms "Adjacent Project," "Adjacent Property," "Agreement," "Chapter 380," "City," "Developer," "Effective Date," "Project," and "Property" shall have the meanings given to such terms in the Recitals, and the following terms have the following meanings:

"Adjacent Property Base Tax" shall mean, for each respective tax, the amount of:  
i) sales and use tax received by the City under Chapter 321, Texas Tax Code; and ii) mixed beverage tax received by the City under Chapter 183, Texas Tax Code, received by the City for the third calendar quarter of 2010.



“Adjacent Property Incremental Increase” shall mean, for each calendar quarter after the Effective Date, the amount of sales and use tax received by the City under Chapter 321, Texas Tax Code, and the amount of mixed beverage tax received by the City under Chapter 183, Texas Tax Code, above the Adjacent Property Base Tax, continuing through the Term of this Agreement.

“Adjacent Reimbursement Amount” shall mean the Retained Sales Tax Revenues plus the Retained Mixed Beverage Tax Revenues derived from the Adjacent Property.

“Base Tax” shall mean, for each respective tax, the amount of: i) sales and use tax received by the City under Chapter 321, Texas Tax Code; and ii) mixed beverage tax received by the City under Chapter 183, Texas Tax Code, received by the City for the complete calendar quarter preceding the Reimbursement Date.

“City Commitment” shall have the meaning ascribed to it in Article V, Section B of this Agreement.

“Economic Impact Area” shall mean the area designated in Exhibit "C" from which the Reimbursement Amount will be paid to the Developer.

“Force Majeure” shall have the meaning ascribed to it in Article VI, Section B of this Agreement.

“Incremental Increase” shall mean, for each calendar quarter after the Reimbursement Date, the amount of sales and use tax received by the City under Chapter 321, Texas Tax Code, and the amount of mixed beverage tax received by the City under Chapter 183, Texas Tax Code, above the Base Tax, continuing through the Term of this Agreement.

“Maximum Reimbursement Amount” shall mean \$6,000,000 from either the Retained Sales Tax Revenues or the Retained Mixed Beverage Tax Revenues, or a combination thereof.

“Parties” or “Party” shall mean the City and the Developer, the parties to this Agreement.

“Reimbursement Amount” shall mean the Retained Sales Tax Revenues plus the Retained Mixed Beverage Tax Revenues, excluding the portion derived from the Adjacent Property.

“Reimbursement Date” shall mean the date on which the Developer receives from the City a certificate of occupancy for the Project for use and occupancy of the Project for its intended purpose as a multi-tenant performing arts facility.

“Reimbursement Fund” shall mean the special fund created by the City as described in Article V, Section A of this Agreement.

“Retained Mixed Beverage Tax Revenue(s)” shall mean 1) with respect to the Reimbursement Amount, 100% of the amount of Incremental Increase in mixed beverage tax generated by businesses in the Economic Impact Area and collected by or for the City and remitted to the City by the State Comptroller, pursuant to Chapter 183 of the Texas Tax Code; and 2) with respect to the Adjacent Reimbursement Amount, 100% of the amount of the Adjacent Property Incremental Increase in mixed beverage tax generated by businesses located on the Adjacent Property and collected by or for the City and remitted to the City by the State Comptroller, pursuant to Chapter 183 of the Texas Tax Code, with the aggregate total not to exceed the Maximum Reimbursement Amount, during the Term of this Agreement.

“Retained Sales Tax Revenue(s)” shall mean 1) with respect to the Reimbursement Amount, 100% of the amount of Incremental Increase in sales and use tax generated by businesses in the Economic Impact Area and collected by or for the City and remitted to the City by the State Comptroller, pursuant to Chapter 321 of the Texas Tax Code; and 2) with respect to the Adjacent Reimbursement Amount, 100% of the amount of Adjacent Property Incremental Increase in sales and use tax generated by businesses located on the Adjacent Property and collected by or for the City and remitted to the City by the State Comptroller, pursuant to Chapter 321 of the Texas Tax Code, with the aggregate total not to exceed the Maximum Reimbursement Amount, during the Term of this Agreement.

“State Comptroller” shall mean the Comptroller of Public Accounts for the State of Texas, or such other agency responsible for collecting sales and use taxes and mixed beverage taxes within the State of Texas and remitting them to the City.

C. Singular and Plural. Words used herein in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular herein also apply to such words when used in the plural where the context so permits and vice versa.

## **ARTICLE II THE PROJECT**

The Developer intends to construct (or cause to be constructed) the Project, a multi-tenant performing arts facility with appurtenant office, performance and rehearsal space. The Developer intends to coordinate with the owner of the Adjacent Property in the development of the Adjacent Property as a retail and commercial center with an approximately 750-space parking garage. A conceptual site plan for the Project and the Adjacent Project is attached hereto as Exhibit "B."

Developer shall satisfy all City permitting requirements, including, but not limited to, Chapter 9 of the City's Department of Public Works and Engineering Infrastructure Design Manual and building permitting requirements.

**ARTICLE III  
REPRESENTATIONS**

A. Representations of the City. The City hereby represents to the Developer that as the date hereof:

The City is a duly created and existing municipal corporation and home rule municipality of the State of Texas under the laws of the State of Texas and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

The City has the power, authority and legal right under the laws of the State of Texas and the City Charter to enter into and perform this Agreement and the execution, delivery and performance hereof (i) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation, and (ii) do not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the City under any agreement or instrument to which the City is a party or by which the City or its assets may be bound or affected.

This Agreement has been duly authorized, executed and delivered by the City and, constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms except to the extent that (i) the enforceability of such instruments may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights and (ii) certain equitable remedies including specific performance may be unavailable.

The execution, delivery and performance of this Agreement by the City do not require the consent or approval of any person which has not been obtained.

B. Representations of the Developer. The Developer hereby represents to the City that as of the date hereof:

The Developer is duly authorized and existing and in good standing under the laws of the State of Texas, and is qualified to do business in the State of Texas.

The Developer has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof, (i) have been duly authorized, and will not, to the best of its knowledge, violate any judgment, order, law or regulation applicable to the Developer, and (ii) do not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Developer under any agreement or instrument to which the Developer is a party or by which the Developer or its assets may be bound or affected.

This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the Developer, enforceable in accordance with its terms except to the extent that the enforceability of such instruments may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights.

**ARTICLE IV  
DEVELOPER COMMITMENTS**

In consideration of City agreeing to pay Developer the Maximum Reimbursement Amount in accordance with the terms, provisions and conditions of this Agreement, Developer agrees to the following, which are not obligations of Developer, but are conditions that must be fulfilled in order to receive the Maximum Reimbursement Amount:

A. Project Funding. Developer shall raise at least \$10,000,000 from private funding sources other than the Retained Sales Tax Revenues and Retained Mixed Beverage Tax Revenues to be used toward the design and construction of the Project. Developer shall be deemed to have met this condition upon submitting to the City a list of Project funding sources for the Project totaling \$10,000,000.

B. Job Retention. The Developer's receipt of the Reimbursement Amount and the Adjacent Reimbursement Amount is subject to the following commitment (the "Job Creation Condition"): the Developer agrees that at least 25 full-time equivalent positions will be employed by tenants or businesses located at the Property or at the Adjacent Property. As used herein, the term "jobs" shall mean full-time equivalent positions providing a regular work schedule of at least 35 hours per week; provided that two part-time positions shall be equivalent to and considered one full-time equivalent position (For purposes hereof, a part-time position shall mean position, which is not a full-time equivalent position, which provides a regular work schedule of at least 20 hours per week). The Developer shall annually submit documentation as reasonably necessary to evidence that the Developer has satisfied the Job Creation Condition.

If the Developer does not satisfy the Job Creation Condition for any period during the Term of this Agreement and if such failure continues for sixty (60) days after written notice to Developer, the City may, as its sole and exclusive remedy, beginning on the date which is sixty (60) days after such written notice until Developer has provided evidence that it has satisfied the Job Creation Condition, reduce the Maximum Reimbursement Amount to be paid to Developer by a percentage by which the Developer does not satisfy the Job Creation Condition.

C. Operational Condition. Developer shall continuously operate the Project on the Property during the Term of this Agreement, subject only to (i) events of Force Majeure, (ii) reasonable periods of closing actually required for repair or restoration following casualty and condemnation, and (iii) temporary closings (not to exceed 270 days, and not more frequently than once each 5 years) for repair, renovations and/or alterations of the Property.

D. Utilization of Local Contractors and Suppliers. Developer's receipt of the Maximum Reimbursement Amount is subject to the following condition (the "Local Requirement"): in consideration of the Maximum Reimbursement Amount, Developer agrees to exercise commercially reasonable efforts to utilize local contractors and suppliers in the construction of the Project, with a goal of at least 30% of the total dollar amount of all construction contracts and supply agreements being paid to local contractors and suppliers. A contractor or supplier shall be considered as local if it has maintained an office within the City of Houston for at least one year.

E. Affirmative Action. Developer shall demonstrate good faith efforts to comply with the City's Affirmative Action program in the design and construction of the Project.

## **ARTICLE V REIMBURSEMENT**

A. Reimbursement Fund. The City hereby covenants and agrees upon the Effective Date of this Agreement to create a special fund (the "Reimbursement Fund") for the benefit of the Developer for the purpose of paying the Developer the Maximum Reimbursement Amount. Following the Developer meeting the funding condition of Article IV, Section A, the City shall deposit the Retained Sales Tax Revenues and Retained Mixed Beverage Tax Revenues into the Reimbursement Fund pursuant to this Agreement. The Reimbursement Fund shall always remain unencumbered by the City and segregated from all other funds of the City. Such funds are held in trust by the City for the Developer to be used in accordance with the terms hereof as long as Developer is in compliance with this Agreement. To the fullest extent permitted by law, the City agrees that: (i) it will not pledge or apply the Reimbursement Fund to any other purpose or payment of any obligation of the City except for the obligations arising under this Agreement; (ii) it will not commingle the Reimbursement Fund with any other funds of the City; (iii) it will not take any action or omit to take any action that will affect the continued existence of the Reimbursement Fund or the availability for deposit therein of the Maximum Reimbursement Amount; and (iv) it will direct the investment of the Reimbursement Fund in accordance with Texas law applicable to investment of funds by municipalities. The Reimbursement Fund shall be used only to pay the Maximum Reimbursement Amount to the Developer.

B. City Commitment.

1. Calculation of Reimbursement Amount and Adjacent Reimbursement Amount; Deposit of Retained Sales Tax Revenues and Mixed Beverage Tax Revenues. For each calendar quarter during the Term of this Agreement, the City shall determine the amount of the Retained Sales Tax Revenues and Retained Mixed Beverage Tax Revenues received each calendar quarter by the City from the State Comptroller in cooperation with the Developer and the State Comptroller. The Parties acknowledge that the City may not receive sufficient information from the State Comptroller to determine the Retained Sales Tax Revenues and Retained Mixed Beverage Tax Revenues until 15 or more days into the subsequent month. Based upon the quarterly calculation by City of the Reimbursement Amount and the Adjacent Reimbursement Amount, the City hereby agrees to deposit the Retained Sales Tax Revenues and Retained Mixed Beverage Taxes due to Developer in the Reimbursement Fund within thirty (30) business days following receipt of the funds from the State Comptroller.
2. Confidential Information. The City hereby designates this Agreement as a Revenue Sharing Agreement, thereby entitling the City to request sales tax information and mixed beverage tax information from the State Comptroller, pursuant to section 321.3022, Texas Tax Code, as amended.

Unless determined otherwise by the Texas Attorney General in writing, any information received relating to the Retained Sales Tax Revenues and Retained Mixed Beverage Tax Revenues shall be considered confidential proprietary financial information not subject to immediate release to the public. The City shall seek a written opinion from the Texas Attorney General, raising any applicable exception to release, prior to any release to a third-party under the Texas Public Information Act.

3. Maintenance of Records. The City shall maintain complete books and records showing deposits to and disbursements from the Reimbursement Fund, which books and records shall be deemed complete if kept in accordance with generally accepted accounting principles as applied to Texas municipalities. Such books and records shall be available for examination by the duly authorized officers or agents of the Developer during normal business hours upon request made not less than five business days prior to the date of such examination. The City shall maintain such books and records throughout the Term of this Agreement and store the same for four years thereafter. Developer shall, upon not less than five (5) business days prior written notice, have the right to review and audit such books and records.
  
4. Payment of Reimbursement Amounts. Beginning on the Reimbursement Date and continuing through each calendar quarter throughout the Term of this Agreement, the City shall pay the Reimbursement Amount and Adjacent Reimbursement Amount due to the Developer within 45 days following the end of the month for which Retained Sales Tax Revenues and Retained Mixed Beverage Tax Revenues are received by the City and deposited into the Reimbursement Fund, pursuant to this Agreement (the "City Commitment"). The City Commitment is an unconditional obligation of payment by the City (but solely from the Reimbursement Fund), if the Economic Impact Area generates the Retained Sales Tax Revenue and Retained Mixed Beverage Tax Revenues. Such payments are not subject to any reduction, whether offset or otherwise. The City Acknowledges that the Reimbursement Amount and the Adjacent Reimbursement Amount may be applied by the Developer to the costs of designing and constructing the Project, and that the Developer, in coordination with the development of the Adjacent Project, may agree with the owners or developers of the Adjacent Property to pay up to \$3,000,000 of the Reimbursement Amount or the Adjacent Reimbursement Amount to such owners or developers, on the condition that a parking garage with at least 750 spaces be constructed to serve the Project, the Adjacent Project, and the general public, subject to commercially reasonable charges and fees for such parking.

**ARTICLE VI**  
**DEFAULT AND REMEDY**

A. Payment Default. The City agrees that its failure to either pay the Reimbursement Amount and Adjacent Reimbursement Amount when due, is an event of default (a "Payment Default") and that the Developer shall be entitled to any and all of the remedies available in this Article or otherwise at law or equity.

B. General Events of Default. A party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such party fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement.

Before any failure of any party to perform its obligations under this Agreement, except a Payment Default, shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement, except a Payment Default, may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within 30 days of the receipt of such notice.

Upon a breach of this Agreement, the non-defaulting party, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance, or both. Except as otherwise set forth herein, no action taken by a party pursuant to the provisions of this Section or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies; and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other party.

Notwithstanding anything in this Agreement which is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed hereunder by any party (except for a Payment Default) is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending or threatened litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures, or tornadoes] labor action, strikes or similar acts) the time for such performance shall be extended by the amount of time of such delay ("Force Majeure").

In addition to any other right or remedy available to Developer pursuant to this Agreement, in the event of a Payment Default or a material breach by the City under this Agreement which continues for 30 days after written notice to the City thereof and the City's failure to cure or diligently proceed to cure such breach to Developer's reasonable satisfaction, Developer shall have the right (but not the obligation), in its sole discretion, to exercise its rights with regard to mandamus, specific performance or mandatory permanent injunction to require the City to perform.

**ARTICLE VII  
GENERAL PROVISIONS**

A. Time of the essence. Time is of the essence of this Agreement. The parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation, including, without limitation, subject to Developer's compliance with all applicable laws, expeditiously processing permits and approvals to facilitate Developer's timely procurement of all entitlements required for the Project.

B. Notices. Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed or sent by rapid transmission confirmed by mailing written confirmation at substantially the same time as such rapid transmission, or personally delivered to an officer of the receiving party at the following addresses:

If to the Developer:

Jill Jewett  
Independent Arts Collaborative  
3333 W. Alabama, Suite 110  
Houston, Texas 77098

If to the City of Houston:

Director of Finance Department  
City of Houston, Texas  
P.O. Box 1562  
Houston, Texas 77002

Notice shall be deemed to have been received on the date such notice is personally delivered or three days from the date such notice is mailed or sent by rapid transmission. Either party may change its address by written notice in accordance with this Section. Any communication addressed and mailed in accordance with this Section shall be deemed to be given when so mailed, any notice so sent by rapid transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when received for by, or actually received by, an authorized officer of the Developer or the City, as the case may be.

C. Amendments and waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is approved by the Developer and the City. No course of dealing on the part of the Developer or the City nor any failure or delay by the Developer or the City with respect to exercising any right, power or privilege pursuant to this Agreement shall operate as a waiver thereof, except as otherwise provided in this Section.



D. Invalidity. In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provisions of this Agreement and, to that end, all provisions, covenants, agreements or portions of this Agreement are declared to be severable.

E. Successors and assigns. Developer may assign, without City consent, all or part of its rights (including the right to receive payments), duties and obligations under this Agreement to any lender; investor; escrow agent; affiliate, subsidiary, or related party of the Developer; or an owner or Developer of the Project or the Adjacent Project.

F. Exhibits, titles of articles, sections and subsections. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

G. Applicable law. This Agreement is a contract made under and shall, be construed in accordance with and governed by the laws of the United States of America and the State of Texas, and any actions concerning this Agreement shall be brought in either the State Courts of Harris County, Texas or the United States District Court for the Southern District of Texas.

H. Entire agreement. This Agreement represents 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.

I. Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: i) the payment to Developer of the Maximum Reimbursement Amount; or ii) 15 years from the Reimbursement Date (the "Term").

J. Approval by the parties. Whenever this Agreement requires or permits approval or consent to be hereafter given by any of the parties, the parties agree that such approval or consent shall not be unreasonably withheld or delayed.

K. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

L. Interpretation. This Agreement has been jointly negotiated by the parties and shall not be construed against a party because that Party may have primarily assumed responsibility for the drafting of this Agreement.

M. Conflicts with Ordinances. The City and the Developer agree that any City ordinance, or regulation by any other agency over which the City has control, whether heretofore or hereafter adopted, that addresses matters that are covered by this agreement shall not be enforced by the City or the other regulatory agency within the property, and that the provisions of this agreement govern development of the property.

N. Powers. The City hereby represents and warrants to Developer that the City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, is enforceable in accordance with its terms and provisions and does not require the consent of any other governmental authority.

### **ARTICLE VIII PROPERTY RIGHT OF WAY**

Subject to adherence to standard right of way abandonment procedures and ordinances, the City agrees to support and bring forth for City Council approval, upon Developer's submission of a right of way abandonment application prior to the Reimbursement Date, an ordinance or other appropriate form of agreement for the abandonment of the right of way known as Berry Street, between Travis Street and Main Street ("Right of Way") to facilitate the development of the Property and the Adjacent Property as a functional commercial retail and performing arts center. Pursuant to the Authority of Chapter 380 and other law, the cost for the abandonment of the right of way shall be at no cost, conditioned upon the Developer completing the Project. The City acknowledges and agrees that the Developer may convey the abandoned right of way to the Adjacent Property owner.

[EXECUTION PAGES FOLLOW]

## ECONOMIC DEVELOPMENT AGREEMENT

THIS AGREEMENT (the "Agreement") by and between the CITY OF HOUSTON, TEXAS, a Texas home-rule municipal corporation (the "City"), and INDEPENDENT ARTS COLLABORATIVE, a Texas nonprofit corporation (the "Developer"), is entered into as of the date the City Controller countersigns hereto (the "Effective Date").

### RECITALS

WHEREAS, Developer owns or has contracted to purchase certain tracts of land totaling approximately 50,000 square feet within the corporate limits of the City, as described on the property description marked as **Exhibit A** attached hereto (the "Property"), for the purpose of developing a multi-tenant performing arts facility with appurtenant office, performance and rehearsal space (the "Project");

WHEREAS, Developer intends to develop the Project in conjunction with a proposed commercial, retail, and parking project planned to be constructed on property adjacent to the Property as described on the property description marked as **Exhibit A-1** attached hereto (the "Adjacent Property") (the "Adjacent Project");

WHEREAS, the Adjacent Project will provide necessary parking and compatible entertainment choices for the patrons of the Project, increasing the Project's feasibility and its economic impact to the City;

WHEREAS, the Developer agrees to finance and develop the Project in accordance with the terms and conditions of the Agreement and the Parties intend to use good faith efforts to come to an agreement on mutually acceptable terms to convey the Property to the City after completion of the Project;

WHEREAS, the City recognizes the Project and the Adjacent Project will attract tourism and commerce to the surrounding area that otherwise would not occur, resulting in a positive economic impact that the Project will bring to the City through timely development and diversification of the economy, elimination of unemployment and underemployment through the production of new jobs, the attraction of new businesses, and the additional ad valorem, mixed beverage, and sales and use tax revenue generated by the Project and the Adjacent Project for the City;

WHEREAS, the City has established a program in accordance with Article III, Chapter 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code ("Chapter 380") under which the City has the authority to use public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the City;

WHEREAS, consistent with Article III, Section 52-a of the Texas Constitution, Chapter 380, and other law, the City agrees to make a grant to Developer to advance the public purposes of developing and diversifying the economy of the state, eliminating unemployment or underemployment in the state, and developing or expanding transportation or commerce in the state;

WHEREAS, in consideration of the design, timely construction, and development of the Project, which will bring additional sales tax and ad valorem tax revenues and mixed beverage tax revenues to the City and additional jobs resulting from the construction of the Project and the Adjacent Project, the City desires to enter into this Agreement pursuant to Chapter 380 and other laws applicable to the development of municipal infrastructure as an economic incentive for the Developer to develop and construct the Project and for the Developer to coordinate with the owners of the Adjacent Property to construct the Adjacent Project;

WHEREAS, the City has concluded and hereby finds that this Agreement promotes economic development in the City of Houston and, as such, meets the requirements under Chapter 380 and the City's established economic development program, and, further, is in the best interests of the City and Developer;

WHEREAS, to ensure that the benefits the City provides under this Agreement are utilized in a manner consistent with Chapter 380 and other law, the Developer has agreed to comply with certain conditions for receiving those benefits, including performance conditions relating to raising private funds for the Project, job creation and Project operations;

WHEREAS, in consideration of the Developer's raising private funds for the Project, to create employment, and to operate the Project in accordance with the performance measures set forth herein, which will generate Retained Sales Tax Revenues and Retained Mixed Beverage Tax Revenues (as defined herein) to the City, the City agrees to grant to the Developer the Maximum Reimbursement Amount (as defined herein);

WHEREAS, consistent with Chapter 380 and other law, City and the Developer, as contemplated in this Agreement agree to work together to advance the public purposes of developing and diversifying the economy of the state, eliminating unemployment or underemployment in the state, and developing or expanding transportation or commerce in the state; and

NOW, THEREFORE, for and in consideration of the promises and the mutual agreements set forth herein, the City and Developer hereby agree as follows:

## **ARTICLE I GENERAL TERMS**

A. Incorporation of Recitals. The recitals to this Agreement are hereby incorporated for all purposes.

B. Definitions and Terms. The terms "Adjacent Project," "Adjacent Property," "Agreement," "Chapter 380," "City," "Developer," "Effective Date," "Project," and "Property" shall have the meanings given to such terms in the Recitals, and the following terms have the following meanings:

"Adjacent Property Base Tax" shall mean, for each respective tax, the amount of:  
i) sales and use tax received by the City under Chapter 321, Texas Tax Coded derived from the Adjacent Property; and ii) mixed beverage tax received by the City under

Chapter 183, Texas Tax Code derived from the Adjacent Property, received by the City for the third calendar quarter of 2010.

“Adjacent Property Incremental Increase” shall mean, for each calendar quarter after the Effective Date, the amount of sales and use tax received by the City under Chapter 321, Texas Tax Code derived from the Adjacent Property, and the amount of mixed beverage tax received by the City under Chapter 183, Texas Tax Code derived from the Adjacent Property, above the Adjacent Property Base Tax, continuing through the Term of this Agreement.

“Adjacent Reimbursement Amount” shall mean the Retained Sales Tax Revenues plus the Retained Mixed Beverage Tax Revenues derived from the Adjacent Property.

“Base Tax” shall mean, for each respective tax, the amount of: i) sales and use tax received by the City under Chapter 321, Texas Tax Code derived from the Economic Impact Area; and ii) mixed beverage tax received by the City under Chapter 183, Texas Tax Code derived from the Economic Impact Area, received by the City for the complete calendar quarter preceding the Reimbursement Date.

“City Commitment” shall have the meaning ascribed to it in Article V, Section B of this Agreement.

“Economic Impact Area” shall mean the area designated in **Exhibit C** from which the Reimbursement Amount will be paid to the Developer.

“Force Majeure” shall have the meaning ascribed to it in Article VI, Section B of this Agreement.

“Incremental Increase” shall mean, for each calendar quarter after the Reimbursement Date, the amount of sales and use tax received by the City under Chapter 321, Texas Tax Code derived from the Economic Impact Area, and the amount of mixed beverage tax received by the City under Chapter 183, Texas Tax Code derived from the Economic Impact Area, above the Base Tax, continuing through the Term of this Agreement.

“Maximum Reimbursement Amount” shall mean \$6,000,000 from either the Retained Sales Tax Revenues or the Retained Mixed Beverage Tax Revenues, or a combination thereof.

“Parties” or “Party” shall mean the City and the Developer, the parties to this Agreement.

“Reimbursement Amount” shall mean the Retained Sales Tax Revenues plus the Retained Mixed Beverage Tax Revenues, excluding the portion derived from the Adjacent Property.

“Reimbursement Date” shall mean the date on which the Developer receives from the City a certificate of occupancy for the Project for use and occupancy of the Project for its intended purpose as a multi-tenant performing arts facility.

“Reimbursement Fund” shall mean the special fund created by the City as described in Article V, Section A of this Agreement.

“Retained Mixed Beverage Tax Revenue(s)” shall mean 1) with respect to the Reimbursement Amount, 100% of the amount of Incremental Increase in mixed beverage tax generated by businesses in the Economic Impact Area and collected by or for the City and remitted to the City by the State Comptroller, pursuant to Chapter 183 of the Texas Tax Code; and 2) with respect to the Adjacent Reimbursement Amount, 100% of the amount of the Adjacent Property Incremental Increase in mixed beverage tax generated by businesses located on the Adjacent Property and collected by or for the City and remitted to the City by the State Comptroller, pursuant to Chapter 183 of the Texas Tax Code, with the aggregate total not to exceed the Maximum Reimbursement Amount, during the Term of this Agreement.

“Retained Sales Tax Revenue(s)” shall mean 1) with respect to the Reimbursement Amount, 100% of the amount of Incremental Increase in sales and use tax generated by businesses in the Economic Impact Area and collected by or for the City and remitted to the City by the State Comptroller, pursuant to Chapter 321 of the Texas Tax Code; and 2) with respect to the Adjacent Reimbursement Amount, 100% of the amount of Adjacent Property Incremental Increase in sales and use tax generated by businesses located on the Adjacent Property and collected by or for the City and remitted to the City by the State Comptroller, pursuant to Chapter 321 of the Texas Tax Code, with the aggregate total not to exceed the Maximum Reimbursement Amount, during the Term of this Agreement.

“State Comptroller” shall mean the Comptroller of Public Accounts for the State of Texas, or such other agency responsible for collecting sales and use taxes and mixed beverage taxes within the State of Texas and remitting them to the City.

C. Singular and Plural. Words used herein in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular herein also apply to such words when used in the plural where the context so permits and vice versa.

## **ARTICLE II THE PROJECT**

The Developer intends to construct (or cause to be constructed) the Project, a multi-tenant performing arts facility with appurtenant office, performance and rehearsal space. The Developer intends to coordinate with the owner of the Adjacent Property in the development of the Adjacent Property as a retail and commercial center with an approximately 750-space parking garage. A conceptual site plan for the Project and the Adjacent Project is attached hereto as **Exhibit B**.

Developer shall satisfy all City permitting requirements, including, but not limited to, Chapter 9 of the City's Department of Public Works and Engineering Infrastructure Design Manual and building permitting requirements.

### **ARTICLE III REPRESENTATIONS**

A. Representations of the City. The City hereby represents to the Developer that as the date hereof:

The City is a duly created and existing municipal corporation and home rule municipality of the State of Texas under the laws of the State of Texas and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

The City has the power, authority and legal right under the laws of the State of Texas and the City Charter to enter into and perform this Agreement and the execution, delivery and performance hereof (i) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation, and (ii) do not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the City under any agreement or instrument to which the City is a party or by which the City or its assets may be bound or affected.

This Agreement has been duly authorized, executed and delivered by the City and, constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms except to the extent that (i) the enforceability of such instruments may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights and (ii) certain equitable remedies including specific performance may be unavailable.

The execution, delivery and performance of this Agreement by the City do not require the consent or approval of any person which has not been obtained.

B. Representations of the Developer. The Developer hereby represents to the City that as of the date hereof:

The Developer is duly authorized and existing and in good standing under the laws of the State of Texas, and is qualified to do business in the State of Texas.

The Developer has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof, (i) have been duly authorized, and will not, to the best of its knowledge, violate any judgment, order, law or regulation applicable to the Developer, and (ii) do not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Developer under any agreement or instrument to which the Developer is a party or by which the Developer or its assets may be bound or affected.

This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the Developer, enforceable in accordance with its terms except to

the extent that the enforceability of such instruments may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights.

#### **ARTICLE IV DEVELOPER COMMITMENTS**

In consideration of City agreeing to pay Developer the Maximum Reimbursement Amount in accordance with the terms, provisions and conditions of this Agreement, Developer agrees to the following, which are not obligations of Developer, but are conditions that must be fulfilled in order to receive the Maximum Reimbursement Amount:

A. Project Funding. Developer shall raise at least \$10,000,000 from private funding sources other than the Retained Sales Tax Revenues and Retained Mixed Beverage Tax Revenues to be used toward the design and construction of the Project. Developer shall be deemed to have met this condition upon submitting to the City a list of Project funding sources for the Project totaling \$10,000,000.

B. Job Retention. The Developer's receipt of the Reimbursement Amount and the Adjacent Reimbursement Amount is subject to the following commitment (the "Job Creation Condition"): the Developer agrees that at least 25 full-time equivalent positions will be employed by tenants or businesses located at the Property or at the Adjacent Property. As used herein, the term "jobs" shall mean full-time equivalent positions providing a regular work schedule of at least 35 hours per week; provided that two part-time positions shall be equivalent to and considered one full-time equivalent position (For purposes hereof, a part-time position shall mean position, which is not a full-time equivalent position, which provides a regular work schedule of at least 20 hours per week). The Developer shall annually submit documentation as reasonably necessary to evidence that the Developer has satisfied the Job Creation Condition.

If the Developer does not satisfy the Job Creation Condition for any period during the Term of this Agreement and if such failure continues for sixty (60) days after written notice to Developer, the City may, as its sole and exclusive remedy, beginning on the date which is sixty (60) days after such written notice until Developer has provided evidence that it has satisfied the Job Creation Condition, reduce the Maximum Reimbursement Amount to be paid to Developer by a percentage by which the Developer does not satisfy the Job Creation Condition.

C. Operational Condition. Developer shall continuously operate the Project on the Property during the Term of this Agreement, subject only to (i) events of Force Majeure, (ii) reasonable periods of closing actually required for repair or restoration following casualty and condemnation, and (iii) temporary closings (not to exceed 270 days, and not more frequently than once each 5 years) for repair, renovations and/or alterations of the Property.

D. Utilization of Local Contractors and Suppliers. Developer's receipt of the Maximum Reimbursement Amount is subject to the following condition (the "Local Requirement"): in consideration of the Maximum Reimbursement Amount, Developer agrees to exercise commercially reasonable efforts to utilize local contractors and suppliers in the construction of the Project, with a goal of at least 30% of the total dollar amount of all



construction contracts and supply agreements being paid to local contractors and suppliers. A contractor or supplier shall be considered as local if it has maintained an office within the City of Houston for at least one year.

E. Affirmative Action. Developer shall demonstrate good faith efforts to comply with the City's Affirmative Action program in the design and construction of the Project.

## **ARTICLE V REIMBURSEMENT**

A. Reimbursement Fund. The City hereby covenants and agrees upon the Effective Date of this Agreement to create a special fund (the "Reimbursement Fund") for the benefit of the Developer for the purpose of paying the Developer the Maximum Reimbursement Amount. Following the Developer meeting the funding condition of Article IV, Section A, the City shall deposit the Retained Sales Tax Revenues and Retained Mixed Beverage Tax Revenues into the Reimbursement Fund pursuant to this Agreement. The Reimbursement Fund shall always remain unencumbered by the City and segregated from all other funds of the City. Such funds are held in trust by the City for the Developer to be used in accordance with the terms hereof as long as Developer is in compliance with this Agreement. To the fullest extent permitted by law, the City agrees that: (i) it will not pledge or apply the Reimbursement Fund to any other purpose or payment of any obligation of the City except for the obligations arising under this Agreement; (ii) it will not commingle the Reimbursement Fund with any other funds of the City; (iii) it will not take any action or omit to take any action that will affect the continued existence of the Reimbursement Fund or the availability for deposit therein of the Maximum Reimbursement Amount; and (iv) it will direct the investment of the Reimbursement Fund in accordance with Texas law applicable to investment of funds by municipalities. The Reimbursement Fund shall be used only to pay the Maximum Reimbursement Amount to the Developer.

B. City Commitment.

1. Calculation of Reimbursement Amount and Adjacent Reimbursement Amount; Deposit of Retained Sales Tax Revenues and Mixed Beverage Tax Revenues. For each calendar quarter during the Term of this Agreement, the City shall determine the amount of the Retained Sales Tax Revenues and Retained Mixed Beverage Tax Revenues received each calendar quarter by the City from the State Comptroller in cooperation with the Developer and the State Comptroller. The Parties acknowledge that the City may not receive sufficient information from the State Comptroller to determine the Retained Sales Tax Revenues and Retained Mixed Beverage Tax Revenues until 15 or more days into the subsequent month. Based upon the quarterly calculation by City of the Reimbursement Amount and the Adjacent Reimbursement Amount, the City hereby agrees to deposit the Retained Sales Tax Revenues and Retained Mixed Beverage Taxes due to Developer in the Reimbursement Fund within thirty (30) business days following receipt of the funds from the State Comptroller.

2. Confidential Information. The City hereby designates this Agreement as a Revenue Sharing Agreement, thereby entitling the City to request sales tax information and mixed beverage tax information from the State Comptroller, pursuant to section 321.3022, Texas Tax Code, as amended. Unless determined otherwise by the Texas Attorney General in writing, any information received relating to the Retained Sales Tax Revenues and Retained Mixed Beverage Tax Revenues shall be considered confidential proprietary financial information not subject to immediate release to the public. The City shall seek a written opinion from the Texas Attorney General, raising any applicable exception to release, prior to any release to a third-party under the Texas Public Information Act.
3. Maintenance of Records. The City shall maintain complete books and records showing deposits to and disbursements from the Reimbursement Fund, which books and records shall be deemed complete if kept in accordance with generally accepted accounting principles as applied to Texas municipalities. Such books and records shall be available for examination by the duly authorized officers or agents of the Developer during normal business hours upon request made not less than five business days prior to the date of such examination. The City shall maintain such books and records throughout the Term of this Agreement and store the same for four years thereafter. Developer shall, upon not less than five (5) business days prior written notice, have the right to review and audit such books and records.
4. Payment of Reimbursement Amounts. Beginning on the Reimbursement Date and continuing through each calendar quarter throughout the Term of this Agreement, the City shall pay the Reimbursement Amount and Adjacent Reimbursement Amount due to the Developer within 45 days following the end of the month for which Retained Sales Tax Revenues and Retained Mixed Beverage Tax Revenues are received by the City and deposited into the Reimbursement Fund, pursuant to this Agreement (the "City Commitment"). The City Commitment is an unconditional obligation of payment by the City (but solely from the Reimbursement Fund), if the Economic Impact Area generates the Retained Sales Tax Revenue and Retained Mixed Beverage Tax Revenues. Such payments are not subject to any reduction, whether offset or otherwise. The City Acknowledges that the Reimbursement Amount and the Adjacent Reimbursement Amount may be applied by the Developer to the costs of designing and constructing the Project, and that the Developer, in coordination with the development of the Adjacent Project, may agree with the owners or developers of the Adjacent Property to pay up to \$3,000,000 of the Reimbursement Amount or the Adjacent Reimbursement Amount to such owners or developers, on the condition that a parking garage with at least 750 spaces be constructed to serve the Project, the Adjacent Project, and the general public, subject to commercially reasonable charges and fees for such parking.

## ARTICLE VI DEFAULT AND REMEDY

A. Payment Default. The City agrees that its failure to either pay the Reimbursement Amount and Adjacent Reimbursement Amount when due, is an event of default (a "Payment Default") and that the Developer shall be entitled to any and all of the remedies available in this Article or otherwise at law or equity.

B. General Events of Default. A party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such party fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement.

Before any failure of any party to perform its obligations under this Agreement, except a Payment Default, shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement, except a Payment Default, may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within 30 days of the receipt of such notice.

Upon a breach of this Agreement, the non-defaulting party, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance, or both. Except as otherwise set forth herein, no action taken by a party pursuant to the provisions of this Section or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies; and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other party.

Notwithstanding anything in this Agreement which is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed hereunder by any party (except for a Payment Default) is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending or threatened litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures, or tornadoes] labor action, strikes or similar acts) the time for such performance shall be extended by the amount of time of such delay ("Force Majeure").

In addition to any other right or remedy available to Developer pursuant to this Agreement, in the event of a Payment Default or a material breach by the City under this Agreement which continues for 30 days after written notice to the City thereof and the City's failure to cure or diligently proceed to cure such breach to Developer's reasonable satisfaction, Developer shall have the right (but not the obligation), in its sole discretion, to exercise its rights with regard to mandamus, specific performance or mandatory permanent injunction to require the City to perform.

**ARTICLE VII  
GENERAL PROVISIONS**

A. Time of the essence. Time is of the essence of this Agreement. The parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation, including, without limitation, subject to Developer's compliance with all applicable laws, expeditiously processing permits and approvals to facilitate Developer's timely procurement of all entitlements required for the Project.

B. Notices. Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed or sent by rapid transmission confirmed by mailing written confirmation at substantially the same time as such rapid transmission, or personally delivered to an officer of the receiving party at the following addresses:

If to the Developer:

Jill Jewett  
Independent Arts Collaborative  
3333 W. Alabama, Suite 110  
Houston, Texas 77098

If to the City of Houston:

Director of Finance Department  
City of Houston, Texas  
P.O. Box 1562  
Houston, Texas 77002

Notice shall be deemed to have been received on the date such notice is personally delivered or three days from the date such notice is mailed or sent by rapid transmission. Either party may change its address by written notice in accordance with this Section. Any communication addressed and mailed in accordance with this Section shall be deemed to be given when so mailed, any notice so sent by rapid transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when received for by, or actually received by, an authorized officer of the Developer or the City, as the case may be.

C. Amendments and waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is approved by the Developer and the City. No course of dealing on the part of the Developer or the City nor any failure or delay by the Developer or the City with respect to exercising any right, power or privilege pursuant to this Agreement shall operate as a waiver thereof, except as otherwise provided in this Section.

- D. Invalidity. In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provisions of this Agreement and, to that end, all provisions, covenants, agreements or portions of this Agreement are declared to be severable.
- E. Successors and assigns. Developer may assign, without City consent, all or part of its rights (including the right to receive payments), duties and obligations under this Agreement to any lender; investor; escrow agent; affiliate, subsidiary, or related party of the Developer; or an owner or Developer of the Project or the Adjacent Project.
- F. Exhibits, titles of articles, sections and subsections. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.
- G. Applicable law. This Agreement is a contract made under and shall, be construed in accordance with and governed by the laws of the United States of America and the State of Texas, and any actions concerning this Agreement shall be brought in either the State Courts of Harris County, Texas or the United States District Court for the Southern District of Texas.
- H. Entire agreement. This Agreement represents 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.
- I. Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: i) the payment to Developer of the Maximum Reimbursement Amount; or ii) 15 years from the Reimbursement Date (the "Term").
- J. Approval by the parties. Whenever this Agreement requires or permits approval or consent to be hereafter given by any of the parties, the parties agree that such approval or consent shall not be unreasonably withheld or delayed.
- K. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.
- L. Interpretation. This Agreement has been jointly negotiated by the parties and shall not be construed against a party because that Party may have primarily assumed responsibility for the drafting of this Agreement.

M. Conflicts with Ordinances. The City and the Developer agree that any City ordinance, or regulation by any other agency over which the City has control, whether heretofore or hereafter adopted, that addresses matters that are covered by this agreement shall not be enforced by the City or the other regulatory agency within the property, and that the provisions of this agreement govern development of the property.

N. Powers. The City hereby represents and warrants to Developer that the City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, is enforceable in accordance with its terms and provisions and does not require the consent of any other governmental authority.

### **ARTICLE VIII PROPERTY RIGHT OF WAY**

Subject to adherence to standard right of way abandonment procedures and ordinances, the City agrees to support and bring forth for City Council approval, upon Developer's submission of a right of way abandonment application prior to the Reimbursement Date, an ordinance or other appropriate form of agreement for the abandonment of the right of way known as Berry Street, between Travis Street and Main Street ("Right of Way") to facilitate the development of the Property and the Adjacent Property as a functional commercial retail and performing arts center. Pursuant to the Authority of Chapter 380 and other law, the cost for the abandonment of the right of way shall be at no cost, conditioned upon the Developer completing the Project. The City acknowledges and agrees that the Developer may convey the abandoned right of way to the Adjacent Property owner.

[EXECUTION PAGE FOLLOWS]

IN TESTIMONY OF WHICH this instrument has been executed in multiple counterparts, each of equal dignity and effect, on behalf of the Developer and the City effective as of the date first above written.

<p>CITY:</p> <p>CITY OF HOUSTON, a Texas home-rule municipal corporation</p> <p>_____</p> <p>Mayor</p> <p>Date: _____</p> <p>ATTEST/SEAL:</p> <p>_____</p> <p>City Secretary</p> <p>Date: _____</p> <p>COUNTERSIGNED:</p> <p>_____</p> <p>City Controller</p> <p>Date: _____</p> <p>APPROVED AS TO FORM:</p> <p>_____</p> <p>Assistant City Attorney</p>	<p>DEVELOPER:</p> <p>INDEPENDENT ARTS COLLABORATIVE</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>
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EXHIBIT A  
DESCRIPTION OF PROPERTY



**Parcel SY7-127B - Bid Proposal Form**



**DESCRIPTION:** ±50,000 square feet of land being all of block six in the Main Street Addition, Harris County, Texas

**LOCATION:** 3400 Main Street, Houston, TX 77002 (in Midtown bordered by Main St., Francis Ave., Travis St. and Holman Ave.)

**CONDITIONS:** Property is sold As-Is. Buyer will be required to lease the property back to Seller for a period of up to 6 months at no cost to Seller. The sale is subject to all easements, public utilities, covenants, conditions and deed restrictions.

**NOTE:** Environmental studies of the property have been conducted by the seller are available on the City's website.

**SUBMIT PROPOSAL IN DUPLICATE WITH \$50,000.00 BID DEPOSIT AND A COMPLETED AFFIDAVIT OF NON-INTEREST. ENCLOSE IN A SEALED ENVELOPE MARKED WITH THE PARCEL NUMBER. MAIL OR DELIVER TO: CITY OF HOUSTON, CITY SECRETARY, 900 BAGBY, CITY HALL ANNEX, ROOM P101, HOUSTON, TEXAS 77002.**

**BID PROPOSAL**

CITY OF HOUSTON  
Houston, Texas

The undersigned, \_\_\_\_\_, in compliance with your invitation for bids, hereby agrees to pay the cash price stated below for the property described above.

\$ \_\_\_\_\_  
(Figures)

\$ \_\_\_\_\_  
(Written Price)

Attached is a bidder's deposit in the amount of \$50,000.00. (NOTE: The deposit must be by cashier's check, certified check, money order, or a bond with a corporate surety authorized to do business in the State of Texas.) Also attached is a complete Affidavit of Non-Interest (See Bid Specifications for Sale of Surplus Land, Exhibit C). I hereby certify I have read the City of Houston's BID SPECIFICATIONS FOR SALE OF SURPLUS LAND for Parcel SY7-127B and I understand the provisions contained therein shall be strictly enforced.

\_\_\_\_\_  
(Bidder's Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(If bidding for business, state your title)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(Date)

EXHIBIT A-1  
ADJACENT PROPERTY DESCRIPTION



**Exhibit "A"**

5000 Wilcrest Drive, Suite 210 — Houston, Texas 77042 — (713) 993-0327 — Fax (713) 993-9231

**TRACT I**

**Meters and Boards Description  
1.4423 Acre (62,825 Sq. Ft.)**

**Obedience Smith Survey, Abstract Number 696  
Harris County, Texas**

Being all that certain 1.4423 acre (62,825 sq. ft.) tract of land located in Harris County, Texas and situated in the Obedience Smith Survey, Abstract Number 696, being part and out of Block 13 of Main Street, as recorded under Volume 53, Page 153 of the Harris County Deed Records (H.C.D.R.) and being the same called 1.4423 acre tract as described in a deed to Metropolitan Transit Authority of Harris County, Texas recorded under Harris County Clerk's File Number (H.C.C.F. No.) 20070228871: said 1.4423 acre tract being more particularly described as follows. (Bearings shown hereon are based on MacGregors South End Addition as recorded under Vol. 2, Pg. 4 of the Harris County Map Records (H.C.M.R.);

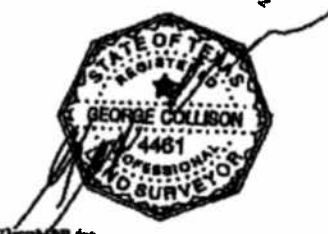
**BEGINNING** at an "X" cut in concrete set marking the intersection of the southeast right-of-way (R.O.W.) line of Travis Street (80 feet R.O.W.) and the northeast R.O.W. line of Berry Avenue (50 feet R.O.W.), same being the west corner of said Block 13, from which a found mag nail bears North 29°47'45" East, 6.75 feet;

**THENCE**, North 35°00'00" East, departing the northeast R.O.W. line of said Berry Avenue and along the southeast R.O.W. line of said Travis Street in common with the northwest line of said Block 13, a distance of 250.00 feet to an "X" cut in concrete set marking the intersection of the southeast R.O.W. line of said Travis Street and the southwest R.O.W. line of Holman Avenue (80 feet R.O.W.) and the north corner of said Block 13 and of the herein described tract;

**THENCE**, South 55°00'00" East, departing the southeast R.O.W. line of said Travis Street and along the southwest R.O.W. line of said Holman Avenue, a distance of 251.30 feet to an "X" cut in concrete found marking the intersection of the southwest R.O.W. line of said Holman Avenue and the northwest R.O.W. line of Main Street (80 feet R.O.W.), same being the east corner of said Block 13 and of the herein described tract;

**THENCE**, South 35°00'00" West, departing the southwest R.O.W. line of said Holman Avenue and along the northwest R.O.W. line of said Main Street in common with the southeast line of said Block 13, a distance of 250.00 feet to an "X" cut in concrete set marking the intersection of the northeast R.O.W. line of said Berry Avenue and the northwest R.O.W. line of said Main Street and the south corner of said Block 13 and of the herein described tract;

**THENCE**, North 55°00'00" West, along the northeast R.O.W. line of said Berry Avenue and the southwest line of said Block 13, a distance of 251.30 feet to **THE POINT OF BEGINNING** and containing 1.4423 acre (62,825 Sq. Ft.). This description is based on a Land Title Survey prepared by Terra Surveying Company, Inc. dated September 23, 2006, Project Number 1708-0701-8.



Compiled by: Carlos Torres, S.I.T.  
Checked by: Chris Broussard, S. I.T.  
Terra Surveying  
5000 Wilcrest Drive, Suite 210  
Houston, Texas  
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**Note: The Company does not represent that the acreage or square footage calculations are correct.**



**Exhibit "A"**

3000 Wilcrest Drive, Suite 210 — Houston, Texas 77042 — (713) 993-0327 — Fax (713) 993-9231

**TRACT II**

**Meters and Bounds Description  
0.9247 Acre (40,280 Sq. Ft.)**

**Obedience Smith Survey, Abstract Number 696  
Harris County, Texas**

Being all that certain 0.9247 acre (40,280 sq. ft.) tract of land located in Harris County, Texas and situated in the Obedience Smith Survey, Abstract Number 696, being all of Lots 3, 5 and 10 and part of Lots 4, 6, 7 and 9 out of Block 7, MacGregors South End Addition, as recorded under Volume 2, Page 4 of the Harris County Map Records (H.C.M.R.), all of Lot 8 and part of Lots 4, 6, 7 and 9 out of Block 14 of Main Street Addition as recorded under Volume 55, Page 153 of the Harris County Deed Records (H.C.D.R.) and being the same called 0.9247 acre tract (Parcel 1) as described in a deed to Metropolitan Transit Authority of Harris County, Texas recorded under Harris County Clerk's File Number (H.C.C.F. No.) 20070579573: said 0.9247 acre tract being more particularly described as follows. (Bearings shown herein are based on said MacGregors South End Addition)

**BEGINNING** at a 5/8-inch iron rod with cap stamped "TERRA SURVEYING" found marking the intersection of the southwest right-of-way (R.O.W.) line of Berry Avenue (50 feet R.O.W.) and the northwest R.O.W. line of Main Street (80 feet R.O.W.) and the east corner of said Block 7 and of the herein described tract;

**THENCE**, South 35°00'00" West, departing the southwest R.O.W. line of said Berry Avenue and along the northwest R.O.W. line of said Main Street in common with the southeast line of said Block 7, a distance of 100.00 feet to the east corner of the called 0.230 acre tract (Parcel 2) of land as described in a deed to Metropolitan Transit Authority of Harris County, Texas recorded under H.C.C.F. No. 20070579573, same being an exterior corner of the herein described tract and being inside a building;

**THENCE**, North 55°00'00" West, departing said R.O.W. line and along the northeast line of said 0.230 acre tract, a distance of 100.00 feet to a 5/8-inch iron rod found marking the north corner of said 0.230 acre tract and an interior corner of the herein described tract, from which a found 60d nail bears South 55°00'00" East 5.35 feet;

**THENCE**, South 35°00'00" West, along the northwest line of said 0.230 acre tract, a distance of 100.00 feet to the west corner of said 0.230 acre tract and the south corner of the herein described tract from which a found 1-inch iron pipe bears North 35°00'00" East 0.20 feet, same being in the northeast R.O.W. line of Winbern Avenue (50.00 feet R.O.W.) and the southwest line of said Block 7;

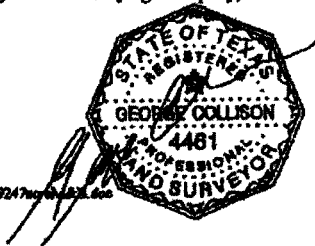
**THENCE**, North 55°00'00" West, along the northeast R.O.W. line of said Winbern Avenue and the southwest line of said Block 7, a distance of 151.40 feet to a 5/8-inch iron rod with cap stamped "TERRA SURVEYING" found marking the intersection of the northeast R.O.W. line of said Winbern Avenue and the southeast R.O.W. line of Travis Street (80 feet R.O.W.) and the west corner of said Block 7 and of the herein described tract;

**THENCE**, North 36°00'00" East, along the southeast R.O.W. line of said Travis Street, a distance of 200.00 feet to a 5/8-inch iron rod with cap stamped "TERRA SURVEYING" found marking the intersection of the southeast R.O.W. line of said Travis Street and the southwest R.O.W. line of aforementioned Berry Avenue, same being the north corner of the aforementioned Block 13 and of the herein described tract;

**THENCE**, South 55°00'00" East, along the southwest R.O.W. line of said Berry Avenue, a distance of 251.40 feet to **THE POINT OF BEGINNING** and containing 0.9247 acre (40,280 Sq. Ft.). This description is based on a Land Title Survey prepared by Terra Surveying Company, Inc. dated September 23, 2008, Project Number 1708-0701-S.

Compiled by: Carlos Torres, S.I.T.  
Checked by: Chris Broussard, S.I.T.  
Terra Surveying  
3000 Wilcrest Drive, Suite 210  
Houston, Texas

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**Note: The Company does not represent that the acreage or square footage calculations are correct.**



**Exhibit "A"**

**TRACT III  
Meters and Bounds Description  
0.2296 Acre (10,000 Sq. Ft.)  
Obedience Smith Survey, Abstract Number 696  
Harris County, Texas**

Being all that certain 0.2296 acre (10,000 sq. ft.) of land located in Harris County, Texas and situated in the Obedience Smith Survey, Abstract Number 696, being part and out of MacGregors South End Addition, Block 7, as recorded under Volume 2, Page 4 of the Harris County Map Records (H.C.M.R.) and being the same called 0.230 acre tract (Parcel 2) as described in a deed to Metropolitan Transit Authority of Harris County, Texas recorded under Harris County Clerk's File Number (H.C.C.F. No.) 20070579573, said 0.2296 acre tract being more particularly described as follows. (Bearings shown hereon are based on said MacGregors South End Addition)

COMMENCING at a 5/8-inch iron rod with cap stamped "TERRA SURVEYING" found marking the intersection of the southwest right-of-way (R.O.W.) line of Berry Avenue (50 feet R.O.W.) and the northwest R.O.W. line of Main Street (80 feet R.O.W.) and the east corner of said Block 7, same being the east corner of a called 0.9247 acre tract (Parcel 1) as described in a deed to Metropolitan Transit Authority of Harris County, Texas recorded under H.C.C.F. No. 20070579573;

THENCE, South 35°00'00" West, departing the southwest R.O.W. line of said Berry Avenue and along the northwest R.O.W. line of said Main Street in common with the southeast line of said Block 7, a distance of 100.00 feet to THE POINT OF BEGINNING of the herein described tract, same being inside a building;

THENCE, South 35°00'00" West, continuing along said common line, a distance of 100.00 feet to a PK nail found marking the intersection of the northwest R.O.W. line of said Main Street and the northern R.O.W. line of Winbera Avenue (50 feet R.O.W.) and the south corner of said Block 7 and of the herein described tract;

THENCE, North 55°00'00" West, departing the northwest R.O.W. line of said Main Street and along the northeast R.O.W. line of said Winbera Avenue and the southwest line of said Block 7, a distance of 100.00 feet to the south corner of a said 0.9247 acre tract and the west corner of the herein described tract from which a 1-inch iron pipe found bears North 86°00'00" East 0.80 feet;

THENCE, North 35°00'00" East, departing said line and along the southeasterly line of said 0.9247 acre tract, a distance of 100.00 feet to a 5/8-inch iron rod found marking an interior corner of said 0.9247 acre tract and the north corner of the herein described tract;

THENCE, South 55°00'00" East, along the southerly line of said 0.9247 acre tract, at a distance of 5.35 feet passing a found 60D nail, in all a total distance of 100.00 feet to THE POINT OF BEGINNING and containing 0.2296 acre (10,000 Sq. Ft.). This description is based on a Land Tide Survey prepared by Terra Surveying Company, Inc. dated September 23, 2004, Project Number 1708-0701-S.

Compiled by: Carlos Torres, S.I.T.  
Checked by: Chris Brouhard, S.I.T.  
Terra Surveying  
3000 Wilcrest Drive, Suite 210  
Houston, Texas

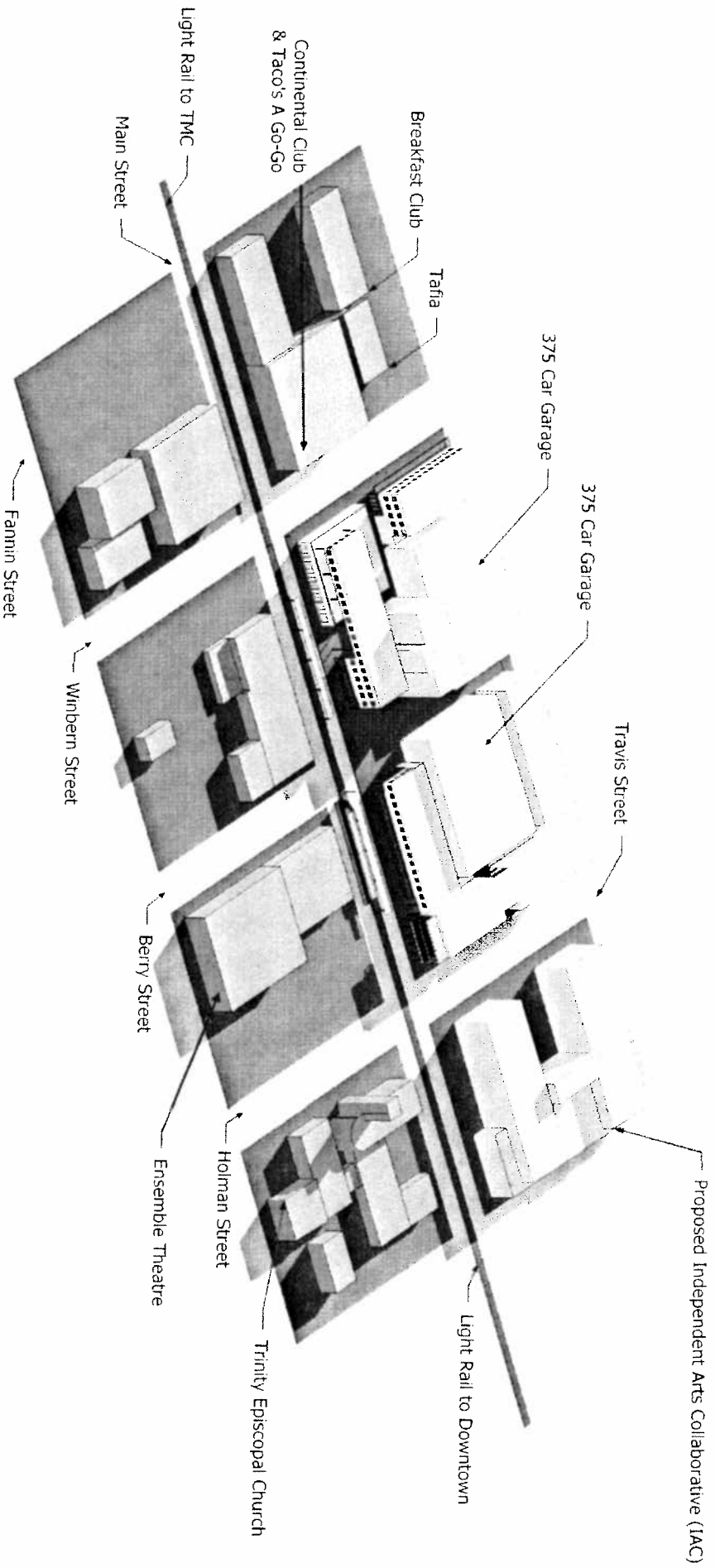


**Note: The Company does not represent that the acreage or square footage calculations are correct.**

EXHIBIT B  
CONCEPTUAL SITE PLAN OF PROJECT AND ADJACENT PROJECT

# Mid-Town Transit-Oriented Development

June 7 2011



( Configuration subject to change )

EXHIBIT C  
ECONOMIC IMPACT AREA



