

B & C ROANOKE, LLC
AS LESSOR-SELLER,
CITY OF ROANOKE RAPIDS, NORTH CAROLINA
AS LESSEE-BUYER
LEASE- PURCHASE AGREEMENT

DMS *WJ*

LEASE-PURCHASE AGREEMENT

This LEASE-PURCHASE AGREEMENT (this "Agreement") is dated as of June 30, 2005, and is entered into by and between **B&C ROANOKE, LLC**, a North Carolina limited liability company, (the "Lessor", "Lessor-Seller" or "Seller"), and the **CITY OF ROANOKE RAPIDS, NORTH CAROLINA**, a public body politic and a political subdivision of the State of North Carolina (the "Lessee", "Lessee-Buyer" or "Buyer"), (each a "Party" and collectively, the "Parties").

PREAMBLES

WHEREAS, the Parties, Moonlight Bandit Productions, LLC and Roanoke Rapids Entertainment One, LLC, have previously determined to cooperate in a plan for the development of certain entertainment facilities in or adjacent to the limits of the City of Roanoke Rapids, North Carolina for the purpose of promoting economic development, tourism and the creation of jobs; and

WHEREAS, as part of such plan, the Parties, Moonlight Bandit Productions, LLC, a North Carolina limited liability company (the "Company") and Roanoke Rapids Entertainment One, LLC, a North Carolina limited liability company entered into an Economic Development Agreement, dated as of June 30, 2005 (the "Economic Development Agreement"), providing for the development, construction and equipping of the Theater described in the Economic Development Agreement (the "Property"); and

WHEREAS, in furtherance of the development of the Theater, and pursuant to the Economic Development Agreement, Lessor-Seller proposes to lease the Property to Lessee-Buyer, and Lessee-Buyer proposes to sublease the Property to Company; and

NOW THEREFORE, for and in consideration of the premises and the mutual promises, covenants and agreement herein contained, Lessor-Seller hereby leases to Lessee-Buyer and Lessee-Buyer hereby accepts and leases from Lessor-Seller the Property, and the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS; RULE OF CONSTRUCTION

Section 1.1 Definitions. All capitalized terms used in this Lease and not otherwise defined have the meanings assigned to them in the Economic Development Agreement, unless the context clearly requires otherwise. In addition, the following terms have the meanings specified below, unless the context clearly requires otherwise:

"Additional Rent" means all charges to be paid by Lessee-Buyer under this Agreement with the exception of Base Rent and Supplemental Rent.

"Agreement" means this Lease-Purchase Agreement, as amended, modified or supplemented from time to time.

"Base Rent" shall have the meaning described in Article V.

"Business Day" shall have the meaning described in Section 20.5.

2


"*Commencement Date*" shall have the meaning described in Section 4.1.

"*Company*" shall mean Moonlight Bandit Productions, LLC.

"*Company's Option to Purchase*" means the option to purchase granted by Lessor-Seller to Company pursuant to the Option to Purchase Agreement dated as of Jun 30, 2005.

"*Developer*" means B&C Roanoke, LLC, the Lessor-Seller.

"*Events of Default*" shall have the meaning described in Article XVIII.

"*Lease*" means this Lease-Purchase Agreement, as amended, modified or supplemented from time to time.

"*Lease Term*" shall have the meaning described in Article IV.

"*Leased Property*" means "Property, the real property more particularly described in Exhibit A, attached hereto and incorporated by reference herein.

"*Lessee*" means Lessee-Buyer, the City of Roanoke Rapids.

"*Lessor*" means Lessor-Seller, B & C Southeast, L.L.C., d/b/a Blanchard & Calhoun Commercial.

"*Lessor's Work*" shall have the meaning described in Section 8.1.

"*Property*" means "Leased Property", the real property more particularly described in Exhibit A, attached hereto and incorporated by reference herein.

"*Rent*" shall have the meaning described in Article V.

"*Sublease*" means that certain Sublease between City, as Sublessor, and Company, as Sublessee, dated as of Jun 30, 2005 relating to the sublease of the Leased Property under this Lease.

"*Sublessee*" means Moonlight Bandit Productions, LLC.

"*Sublessor*" shall mean the Sublessor under the terms of the Sublease.

"*Supplemental Rent*" shall have the meaning described in Article V.

Section 1.2 References. All references to articles or sections are references to articles or sections of this Lease, unless the context clearly indicates otherwise.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 *Representations, Covenants and Warranties.* Lessor-Seller and Lessee-Buyer each represent, covenant and warrant for the other's benefit as follows:

(a) Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated hereby, results in a breach of the terms, conditions or provisions of any agreement or instrument to which either of the Parties is now a party or by which either is bound, or constitutes a default under any of the foregoing.

(b) To the knowledge of each Party hereto, there is no litigation or proceeding pending or threatened against such Party (or against any other person) affecting the rights of such Party to execute or deliver this Lease or to comply with its obligations under this Lease. To the best knowledge of each of the Parties, neither the execution and delivery of this Lease by such Party, nor compliance by such Party with its obligations under this Lease, requires the approval of any regulatory body or any other entity the approval of which has not been applied for or obtained.

(c) Lessor-Seller is duly organized, validly existing and in good standing under the laws of the State of North Carolina and has full power and authority to enter into and perform all obligations under this Agreement. This Agreement, and all instruments executed by Lessor-Seller to perform Lessor-Seller's obligations under this Agreement are and will be duly authorized by all appropriate Lessor-Seller action and will be enforceable against Lessor-Seller in accordance with their terms.

(d) Lessee-Buyer is a municipal corporation existing under the laws of the State of North Carolina with full power and authority to enter into and perform all of Lessee-Buyer's obligations under this Agreement pursuant to North Carolina General Statutes specifically but not limited to GS 160A-17. This Agreement has been, and all instruments executed by Lessee-Buyer to perform Lessee-Buyer's obligations under this Agreement will be duly authorized by all appropriate Lessee-Buyer action and will be enforceable against Lessee-Buyer in accordance with their terms.

ARTICLE III

LEASE DEMISE

Section 3.1 Demise. Lessor hereby leases the Leased Property to Lessee, and Lessee hereby leases the Leased Property from Lessor, in accordance with the provisions of this Lease, upon the terms and provisions hereinafter set forth and subject to the conditions hereinafter set forth.

ARTICLE IV

TERM

Section 4.1. *Term.* The term of this Lease shall be for a period commencing on the "Commencement Date", which shall be the date when the Theater on the Leased Property is Fully Operational, as described in the Agreement and has been accepted in writing by Lessee, and ending on March 15, 2010. The term of the Lease shall be referred to as the "Lease Term."

Section 4.2 *Termination.* Notwithstanding the foregoing, the Lease Term shall terminate on the earliest to occur of the following:

4
 

(a) The occurrence of an Event of Default and subsequent termination by Lessor under Article XVIII;

(b) The date on which Company exercises Company's Option to Purchase pursuant to its separate Option to Purchase Agreement with Lessor.

(c) The date on which the Lessee-Buyer purchases the Property pursuant to the terms and conditions set forth below, which may only be exercised upon termination of the Company's Option to Purchase.

(d) The effective date of notice of termination by Lessee following the date on which all Real Property Debt has been satisfied in full.

Section 4.3. *Termination of Obligations.* Termination of the Lease Term shall terminate all the Parties' obligations under this Lease and, except for the purchase of the Property by the Lessee-Buyer, shall terminate Lessee-Buyer's rights of possession under this Lease.

ARTICLE V

RENT

Section 5.1. During the Lease Term, Lessee shall pay to Lessor Rent as follows:

(a) "Base Rent" in an amount equal to the monthly installments due on the Real Property Debt, which shall be based upon a monthly amortization of the Real Property Debt at the then applicable rate of interest for the Real Property Debt, but in no event shall the monthly Base Rent be more than the amount of the payment actually due on the Real Property Debt for such period. It is recognized that interest rates may fluctuate from time to time resulting in an adjustment to the Base Rent. The Base Rent shall be due and payable on or before the 5th day of each month. If the Commencement Date falls on a date other than the first day of the month, Base Rent shall be prorated for the initial partial month of this Lease.

(b) "Supplemental Rent" actually paid by the Sublessee under the Sublease of the Leased Property in which Lessee is Sublessor, until the Real Property Debt is paid in full. All of the Supplemental Rent received by Lessee pursuant to the Sublease of the Leased Property shall be paid, prior to payment in full of the Real Property Debt, into and held in an escrow account with an escrow agent mutually satisfactory to Lessor and Lessee (the "Equity Fund"), to be distributed to satisfy any payments required under Section 2.2.6.2 of the Economic Development Agreement. All Base Rent, Supplemental Rent and any items of Additional Rent or other charges to be paid by Lessee under this Lease are referred to as "Rent".

ARTICLE VI

QUIET ENJOYMENT

Section 6.1. *Quiet Enjoyment.* Lessor covenants that Lessee shall, during the Lease Term, peaceably and quietly have and hold and enjoy the Leased Property without suit, trouble or hindrance, except as expressly required or permitted by this Lease. Lessor shall not interfere with the quiet use

5
 

and enjoyment of the Leased Property during the Lease Term by Lessee, its Sublessee, successors or assigns. Lessor shall, at Lessee's request, join and cooperate fully in any legal action in which the Lessee or its Sublessee, successors or assigns, respectively, assert their right to such possession and enjoyment, or which involves the imposition of any taxes or other governmental charges on or in connection with the Leased Property. In addition, Lessee, its Sublessee, successors or assigns, may at their own expense join in any legal action affecting their possession and enjoyment of the Leased Property, and shall be joined (to the extent legally possible) in any action affecting their liabilities hereunder.

ARTICLE VII

USE

Section 7.1. For so long as the Sublease shall remain in effect, the Leased Property shall be used exclusively for music, theater and entertainment purposes, corporate meetings, revivals, gospel gatherings, dance and performance competitions, and other uses not inconsistent with the scheduled performances, and for no other purpose, without the prior written consent of Lessor and Lessee. Upon termination of the Sublease, the Leased Property may be used in such manner as deemed appropriate by the Lessee.

ARTICLE VIII

CONSTRUCTION OF THEATER

Section 8.1. *Construction and Development of the Leased Property.* Lessor has acquired or shall acquire the Leased Property and shall construct on the Leased Property a Theater and related site improvements, including but not limited to the installation and equipping of the Theater, all in accordance with the Plans and other applicable specifications, requirements, restrictions, building codes and laws and regulations relating thereto ("Lessor's Work"). Lessor's Work shall be completed in a good and workmanlike manner and the Leased Property and Theater thereon shall be Fully Operational prior to the commencement of this Lease such that the Leased Property and Theater located thereon, together with the related driveways, parking spaces, landscaping and other improvements are complete and ready for occupancy. Lessor's construction shall comply fully with all applicable zoning ordinances, governmental and regulatory requirements, and provisions of the Americans With Disabilities Act, and shall be subject to all applicable terms set forth in the Economic Development Agreement.

Section 8.2. *Title to Leased Property.* Title to the Theater and the remainder of the Leased Property shall be held by Lessor, subject only to ad valorem taxes for the current year, utility easements for utilities serving the Leased Property, deeds of trust securing the Real Property Debt, and other Permitted Encumbrances, unless Company should exercise its Option to Purchase and title shall pass to Company, whereupon this Lease shall terminate as provided in Article IV.

ARTICLE IX

COOPERATION AND ADVANCES

Section 9.1. *Cooperation.* Each Party shall cooperate fully with the other in filing any proof of loss or taking any other action under this Lease. In no event shall Lessor or Lessee voluntarily

 

settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Leased Property without the written consent of the other Party hereto.

Section 9.2. *Advances; Performances of Obligations.* If either of the Parties hereto fails to pay any amount required to be paid by it under this Lease or the Agreement or fails to take any other action required of it under this Lease or the Agreement, the other Party may (but is under no obligation to) pay such amounts or perform such other obligations. The Parties hereto each agree to reimburse the other Party for any such payments made on its behalf and for its costs incurred in connection with performing such other obligations together with interest thereon at the rate of prime rate plus 1% per annum.

ARTICLE X

OTHER COVENANTS

Section 10.1. *Covenants.* The Parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be, or for otherwise carrying out the intention of this Lease.

Section 10.2. *Compliance with Requirements.* During the Lease Term, the Parties shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the Leased Property or any portion thereof (or be diligently and in good faith contesting such orders), and all current and future requirements of all insurance companies writing policies covering the Leased Property or any portion thereof.

ARTICLE XI

SUBLEASE, ASSIGNMENT, AND INDEMNIFICATION

Section 11.1. *Sublease.* It is recognized that Lessee will be subleasing the Leased Property to Company as contemplated in the Economic Development Agreement. Lessor hereby consents to the Sublease to Company and the delegation of all duties and obligations under this Lease pursuant to the Sublease. However, notwithstanding the delegation of duties and obligations pursuant to the Sublease, Lessee shall remain primarily obligated for all duties and obligations under this lease.

Section 11.2. *Indemnification.* To the extent permitted by law, each Party shall and hereby agrees to indemnify and save the other harmless against and from all claims, by or on behalf of any person, firm, corporation or other legal entity, arising from the operation or use of the Leased Property by such Party during the Lease Term, including any arising from any act of negligence of the indemnifying Party or of any of its agents, contractors or employees or any violation of law by the indemnifying Party or breach of any covenant or warranty by the indemnifying Party hereunder.

ARTICLE XII

UTILITIES, TAXES, INSURANCE AND LEASE MANAGEMENT FEE

7  

Section 12.1. *Taxes.* Lessee, or its Sublessee, successors or assigns, shall pay all taxes applicable to such party's personal property. Further, Lessee, its Sublessee, successors or assigns, agree to pay during the term of the Lease, the ad valorem taxes and any special assessments assessed by any lawful authority on the Leased Property as an item of Additional Rent. All such taxes shall be paid, and proof of such payment shall be provided to Lessor, at least twenty days prior to the date the payment of such taxes would be delinquent. The real property taxes for any partial year shall be prorated.

Section 12.2. *Utilities.* Lessee, or its Sublessee, successors or assigns, shall be responsible for providing and paying the cost of all desired utilities services to the Leased Property, including, but not limited to, water, sewer, electricity, natural gas and telephone.

Section 12.3 *Insurance.* During the Lease Term, Lessee, its Sublessee, successors or assigns, at their sole expense, shall maintain insurance on their personal property located on the Leased Property, as well as a general comprehensive public liability insurance policy insuring Lessee, Lessor and any other persons designated by Lessor against any and all liability for injury to or death of a person or persons, and for damage to or destruction of property occasioned by or arising out of or in connection with the use or occupancy of the Leased Property. The limits of such policy or policies shall be in an amount of not less than \$3,000,000 with respect to injuries to or death of any one person, and in an amount of not less than \$3,000,000 with respect to any one accident or disaster, and in an amount of not less than \$3,000,000 with respect to property damaged or destroyed. Such policy or policies shall be non-cancelable except after thirty days prior written notice to Lessor and Lessee. Such policy or policies or duly executed certificates of insurance as required shall be delivered to Lessor and Lessee simultaneously with the execution of this Lease and thereafter at least ten days prior to the expiration of each policy term. In the event Lessee, or its Sublessee, successors or assigns, fail to maintain such insurance or to provide Lessor certificates thereof, in addition to any of the remedies available to Lessor, Lessor may obtain such insurance and Lessee, or its Sublessee, successors or assigns, immediately shall reimburse the cost thereof to Lessor.

Lessor shall obtain and maintain in full force during the Lease Term a policy or policies of casualty insurance providing fire and extended coverage, as well as such other risks as Lessor may reasonably determine with respect to the building and improvements located on the Leased Property in an amount equal to the full replacement cost of such building and improvements. The policy or policies shall provide that all proceeds shall be payable to Lessor and Lessee or Lessor's lender, to be used to the extent available for repair and restoration as described in Article XVI so long as this Lease has not been terminated. Lessee, or its Sublessee, successors or assigns, shall pay to Lessor, in addition to the Base Rent, as an item of Additional Rent, the cost of the casualty insurance which Lessor is to maintain under this Section. Such Additional Rent shall be payable monthly in advance along with Lessee's payment of Base Rent, based upon Lessor's estimate of such costs, with adjustment to actual amounts being made upon determination of such actual amounts.

Section 12.4 *Waiver of Subrogation.* Lessor and Lessee hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any other perils insured in policies of insurance covering such property, even if such loss or damage shall have been caused by the fault or negligence of the other Party, or anyone for whom such party may be responsible. All policies of insurance required under this Lease shall contain waiver of subrogation endorsements in favor of Lessor and Lessee, as applicable, and copies of same shall be delivered to each of the Parties upon request.

Section 12.5 *Lease Management Fee*. As an item of Additional Rent, Lessee will pay monthly to Lessor a Lease Management Fee in an amount equal to one-twelfth (1/12th) of One Percent (1%) of the outstanding Real Property Debt, provided however that beginning on the first anniversary of this agreement and continuing monthly thereafter, the amount shall increase to one-twelfth (1/12th) of two percent (2%) of the outstanding real property debt. Sublessee shall not be responsible for any portion of this Lease Management Fee.

ARTICLE XIII Hazardous Waste

Section 13.1 *Lessee's Duties*. Lessee shall not cause any hazardous waste, hazardous substance, hazardous material, toxic substance, hazardous air pollutant or toxic pollutant within the meaning of any such term as used in the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Reauthorization Act of 1986, the Hazardous Materials Transportation Control Act, the Toxic Substances Control Act, the Clean Air Act, the Clean Water Act, the North Carolina Oil Pollution and Hazardous Substances Control Act of 1978, the North Carolina Inactive Hazardous Sites Act or the North Carolina Water and Air Resources Act, any amendment thereof or regulations promulgated pursuant thereto, or in any other federal, state or local law, regulation or ordinance, to be used on or about the Leased Property without the express written consent of Lessor. In the event of such use, Lessee represents and warrants that Lessee shall, with respect to Lessee's operation on the Leased Property, obtain and maintain in full force and effect, at all times, any and all permits and licenses required by the aforementioned acts and/or regulations, or any similar acts or regulations, and agrees to, and hereby does indemnify and hold harmless Lessor, its successors and assigns, against all claims, losses, damages, fines, penalties and costs, including attorney fees, arising or assessed on account of the aforementioned substances brought upon the Leased Property by Lessee or the failure of Lessee to comply with the aforementioned acts or regulations, or any similar acts or regulations, or on account of the manufacture, use or storing of any substances controlled by said acts or regulations on the Leased Property by Lessee, or on account of any spill or release of such substances on the Leased Property by Lessee. Provided, however, nothing contained herein shall prohibit the use of common office cleaners and solvents relating to the general cleaning and maintenance of the Leased Property. This covenant shall survive the termination of this Lease. It is provided, however, that Lessor understands that Lessee plans to use the Leased Property for a theater and entertainment facility. Lessor consents to the possession and use on the Leased Property of any of the foregoing substances if used in the ordinary course of such business and used in compliance with the law.

Section 13.2 *Lessor's Duties*. Lessor, its employees, agents, contractors and subcontractors shall not cause any hazardous waste, hazardous substances, hazardous material, toxic substance, hazardous air pollutant or toxic pollutant within the meaning of any such term as used in the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Reauthorization Act of 1986, the Hazardous Materials Transportation Control Act, the Toxic Substances Control Act, the Clean Air Act, the Clean Water Act, the North Carolina Oil Pollution and Hazardous Substances Control Act of 1978, the North Carolina Inactive Hazardous Sites Act or the North Carolina Water and Air Resources Act, any amendments thereof or regulations promulgated pursuant thereto, or in any other federal, state or local law, regulation, or ordinance, to be used, dumped or placed on or about the Lease Property. In the event of such use, dumping or placement, Lessor represents and warrants that Lessor shall obtain and maintain in full force and effect, at all times, any and all permits and licenses required by the aforementioned acts and/or regulations, or any similar acts or regulations, and agrees to, and hereby does indemnify and hold harmless Lessee, its successors and assigns, against all claims, losses, damages, fines, penalties and costs, including attorneys' fees, arising or assessed on account of the aforementioned substances or the failure of Lessor to comply with the aforementioned acts or

regulations, or any similar acts or regulations, or on account of the manufacture, use or storing of any substance controlled by said acts or regulations on the Leased Property by Lessor, or anyone acting under or on behalf of Lessor, or on account of any spill or release of such substances on the Leased Property by Lessor, or anyone acting under or on behalf of Lessor.

ARTICLE XIV

SUBORDINATION

The Lessee agrees that this Lease shall be subordinate to any mortgages or deeds of trust that may hereafter be placed upon the Leased Property to secure the Real Property Debt, to any and all advances made or to be made under them, to the interest and all obligations secured by them, and to all renewals, replacements and extensions of them. The Lessee shall execute such documents as reasonably requested by Lessor's lender to attorn to the rights of the lender and/or to verify the existence and status of this Lease. Provided, however, the mortgagee or beneficiary named in any such mortgage or deed of trust shall recognize the Lease of the Lessee and agree, upon foreclosure, to perform Lessor's obligations under this Lease and agree not to disturb Lessee's possession in the event of foreclosure except under the terms of this Lease.

If the holder of any such mortgage or deed of trust shall succeed to the rights of Lessor, Lessee shall attorn to and recognize such successor as Lessee's lessor under this Lease and shall promptly execute and deliver any instrument that may be necessary to evidence such attornment.

ARTICLE XV

REPAIRS

Section 15.1 *Maintenance and Repairs*. Lessee, its Sublessee, successors or assigns, shall maintain the Leased Property, subject to ordinary wear and tear, and repair and pay the cost of all glass breakage and other repairs not covered by insurance. All repairs and replacements required shall promptly be performed and shall be of a quality and class at least equal to the quality and class of the Leased Property at the time of entry by Lessee. Lessee will not make any repairs or take any action that will violate any warranty that exists for any structures, systems, fixtures or equipment on the property. The provisions of this Section shall not apply to replacements for which casualty insurance proceeds are paid to Lessor. Lessor immediately shall apply insurance proceeds received as a result of casualty loss toward the repair and replacement of the Leased Property.

In the event Lessee, its Sublessee, successors or assigns fail to provide such repair and maintenance required to be performed by Lessee herein, then in addition to other remedies available to Lessor, Lessor may perform or have performed such repair and maintenance and Lessee, its Sublessee, successors or assigns immediately shall reimburse the costs thereof to Lessor, as Additional Rent.

Section 15.2 *Structural Changes*. Lessee, at the sole cost and expense of Lessee, shall have the right to make renovations, additions and improvements of or to the Leased Property at any time and from time to time in accordance with Plans and Specifications submitted to and approved in writing by Lessee and Lessor, which approval Lessor agrees not to unreasonably withhold. Any and all repairs, replacements, renovations, additions or improvements of or to the Leased Property shall be and become property of Lessor and shall remain and be surrendered as part of the Leased Property, without cost to Lessor, at the expiration of this Lease; provided, however, that at any time prior to the expiration of the Lease Term, Lessee, its Sublessee, successors or assigns may remove such trade fixtures installed



by them as may be affixed to the Leased Property provided that such removal can be effected without damaging materially the Leased Property. Any damage so caused, whether material or otherwise, upon removal of said trade fixtures by Lessee shall be immediately repaired at the expense of the Party removing such trade fixtures. Upon termination of this Lease and surrender of the Leased Property by Lessee to Lessor, the Leased Property shall be in as good condition as when received by Lessee, excepting only deterioration caused by ordinary wear and tear.

ARTICLE XVI

CASUALTY

In the event the Leased Property is damaged by fire, the elements, unavoidable accidents or other casualty, but is not thereby rendered untenable either in whole or in part, Lessor at its sole expense shall cause such damage to be repaired and the Rent shall not be abated.

If by reason of any such occurrence the Leased Property shall be rendered wholly or partly untenable, Lessor shall repair and restore the Leased Property to as good a condition as that existing immediately prior to said occurrence and this Lease shall not terminate, except that the Rent shall abate equitably for that period of time when the Leased Property is partly or wholly untenable for the purpose of the Lease. In the event repairs are not completed within one hundred eighty (180) days of the date of such occurrence, or if Lessor determines such repairs cannot be completed within such time, either Lessor or Lessee may terminate this Lease upon thirty (30) days written notice to the other party following the date of receipt of notice by Lessee that repairs cannot be completed within the one hundred eighty (180) day time period.

ARTICLE XVII

MECHANIC'S LIENS

Lessee hereby agrees to keep the Leased Property free from any liens for any work performed, materials furnished, or obligations incurred by, or at the direction of, Lessee. Lessee shall have no right to encumber or subject the interests of Lessor in the Leased Property to any mechanic's, materialmen's, or other liens of any nature whatsoever, and upon the filing of any such lien, Lessee, its Sublessee, successors or assigns shall have such lien discharged by bond or otherwise within thirty (30) days after filing.

ARTICLE XVIII

EVENTS OF DEFAULT

Section 18.1. *Events of Default.* The following shall be "Events of Default" under this Lease and the term "Default" shall mean, whenever it is used in this Lease, any one or more of the following events:

- (a) Lessee's failure to make any payments hereunder within fifteen (15) days following notice of such failure.
- (b) Lessee's failure to observe and perform any covenant, condition or agreement on its part to be observed or performed (other than as described in (a) above) for a period of 30 days after written notice specifying such failure and requesting that such failure be remedied

shall have been given to Lessee by Lessor, unless the Lessor shall agree in writing to an extension of such time period prior to its expiration; provided, however, if Lessee has undertaken a cure within such thirty (30) day period and it is continuously and diligently pursuing such cure, Lessee shall have an additional reasonable period of time, not to exceed ninety (90) days, within which to cure or correct such failure; and further provided, that if by reason of Force Majeure the Lessee is unable in whole or in part to carry out any of its agreements contained herein, the Lessee shall not be deemed in default during the continuance of any such event or occurrence.

(c) Lessee's breach of the Economic Development Agreement, which shall remain uncured for a period of thirty (30) or more days; provided, however, if Lessee has undertaken a cure of such breach within such thirty (30) day period and is continuously and diligently pursuing such cure, Lessee shall have an additional reasonable period of time, not to exceed ninety (90) days, within which to cure or correct such failure; and further provided, that if by reason of Force Majeure the Lessee is unable in whole or in part to carry out such obligations, the Lessee shall not be deemed in default during the continuance of any such event or occurrence.

Section 18.2. *Remedies on Default.* Whenever any Event of Default shall have happened and be continuing, the Lessor may take one or any combination of the following remedial steps:

(a) Terminate this Agreement, evict the Lessee from the Leased Property or any portion thereof and re-lease the Leased Property or any portion thereof;

(b) Take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due or to enforce performance and observance of any obligation, agreement or covenant of Lessee under this Lease; provided, however, in the event Lessee assigns the Sublease to Lessor, Lessee shall have no further duty, obligation or liability arising under this Lease subsequent to such assignment. It shall not be necessary for Lessor to consent to the assignment of the Sublease in order to terminate Lessee's duties, obligations and liabilities under this Lease.

Any amount collected pursuant to action taken under this Section shall be applied in accordance with the Agreement.

Section 18.3. *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Lessor is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, and any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lessor to exercise any remedy reserved in this Article XVIII, it shall not be necessary to give any notice, other than such notice as may be required in this Article XVIII.

Section 18.4. *Waivers.* If any agreement contained herein should be breached by any Party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. A waiver of an event of default under the Agreement shall constitute a waiver of any corresponding Event of Default under this Lease; provided that no such waiver shall extend to or affect any subsequent or other Event of Default under this Lease or impair any right consequent thereon.

Section 18.5. *Agreement To Pay Attorneys' Fees and Expenses.* If any Party to this Lease shall default under any provision hereunder and the non-defaulting Party shall employ attorneys or

incur other expenses for the collection of any payments due hereunder, or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting Party herein contained, the defaulting Party agrees that it shall pay on demand therefore to the non-defaulting Party the fees of such attorneys and such other expenses so incurred by the non-defaulting Party, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction.

ARTICLE XIX

Contract to Purchase Property

In addition to the agreement to lease the property as set forth above, the Lessee-Buyer agrees to purchase, and the Lessor-Seller agrees to sell and convey the Leased Property to the Lessee-Buyer on the following terms and conditions:

19.1. **Purchase Price.** The purchase price for said Property shall be ONE DOLLAR (\$1.00), plus the balance of Real Property Debt, including prepayment penalties, if any, and other costs associated with early retirement of the Real Property Debt (the "**Purchase Price**"). The foregoing Purchase Price shall be paid at Closing in cash, certified funds or by bank check.

19.2. **Financing.** The City covenants that it will take immediate action upon the execution of this Agreement to obtain financing and to obtain LGC approval, if required. In the event the City is unable to obtain financing and financing approval or if such is delayed, the parties will negotiate in good faith to enter into a new lease agreement.

19.3. **Notice of Purchase and Closing Date.** The City may give written notice to Developer at any time during the lease term of its intent to close on the purchase of the Property, which notice shall indicate the intent of the City to proceed to closing on the terms and conditions set forth herein, and which will state the requested date of closing of this transaction. Delivery shall be deemed effective upon hand delivery or when placed in the United States Mail, registered or certified, return receipt requested, with postage pre-paid, or sent by national overnight courier service with confirmation of receipt, addressed to the Lessor-Seller as set out in paragraph 21.1 below. Upon giving notice as set out in paragraph 20.2, the purchase and conveyance of the Property shall be completed within ninety (90) days following the date upon which the Notice to Purchase is given by the City, unless such time limit is extended or renewed by mutual agreement of the parties hereto. Closing shall take place at a time and place determined by City, at which the Purchase Price shall be paid as herein provided and delivery of the Property shall be completed.

19.4. **Right to Make Tests.** City shall have the right to make such engineering analyses, environmental surveys, land surveys, tests of the surface and sub-surface conditions and other tests, examinations and inspections relating to the Property as it deems appropriate. At the request of City, Developer shall provide to City, without cost, a copy of all engineering analyses, environmental surveys, land surveys, tests of the surface and sub-surface conditions, and other tests, examinations and inspections, concerning the Property, which have been completed at any time in the past.

19.5. **Developer's Warranties.** The Developer represents and warrants to the City as follows, which representations and warranties shall survive Closing and/or termination of this Option to Purchase Agreement, as applicable:

19.5.1. The Developer will comply with all municipal, county, state and federal laws,



ordinances, regulations and codes that affect the Property or any improvements thereon. The Developer has received no written notice of, nor does it have any actual knowledge of any uncured violation of any municipal, county, state or federal law, ordinance, regulation or code which would affect the Property or any improvement thereon. If the Developer is notified of any such violation subsequent to the date hereof, the Developer will notify City, and Developer may, in its sole discretion, elect to remove this violation at its sole cost and expense, or if Developer should elect not to remove this violation, the City may: (i) elect to close the transaction contemplated hereby with knowledge of the violation; or (ii) elect to terminate this Purchase Agreement, but such termination shall not affect any other rights or remedies which City may have.

19.5.2. Developer has received no notice of any actions, suits, litigation proceedings or investigations pending and, to the Developer's knowledge, there are none threatened against or affecting the Project, or Developer, and the Developer knows of no pending or threatened condemnation proceedings which would affect the Project or the legality, validity or propriety of the transactions contemplated by this Option to Purchase Agreement.

19.5.3. Developer has no actual knowledge of any claims or actions threatened or pending, which can or may result or ripen into liens by statute or rule of law.

19.5.4. Developer has all necessary power and authority to enter into this Purchase Agreement and to carry out the transactions contemplated by this Purchase Agreement.

19.5.6. This Purchase Agreement is the valid and binding obligation of the Developer and is enforceable in accordance with its terms. The Developer has obtained all necessary approvals essential to the validity and enforceability of this Purchase Agreement.

19.5.7. To the best knowledge of the Developer, the execution of this Purchase Agreement and the consummation of the transactions described in this Purchase Agreement will not violate any contract, order, indenture or agreement by which the Developer is bound.

19.5.8. The Property shall be sold/transferred to the City "as is" with the Developer making no warranties either expressed or implied as to the structures, systems, equipment or fixtures on the Property; provided, however that all warranties given to or available to the Developer from third parties shall specifically be assigned to the City upon transfer of the Property.

19.6. Offer to Purchase by Third Parties. During the term of this Lease-Purchase Agreement, and except for the Option to Purchase executed with the Company, the Developer agrees not to accept or entertain third-party offers for the purchase/sale of the Property.

19.7. Title to Property. Upon the execution of this Lease-Purchase Agreement, the Developer will deliver to the City all evidence of title to the Property in its possession or in the possession of its attorneys, including title insurance policies and opinions of title rendered to the Developer. At closing, Developer shall execute and deliver to City a special warranty deed conveying good and marketable fee simple title to the Property free and clear of all liens or encumbrances except zoning regulations, unviolated restrictive covenants approved in writing by City, easements of record which do not materially impair the City's use of the property, and ad valorem taxes for the year in which the Property is conveyed. Ad valorem taxes are to be prorated between the parties hereto as of the date of closing. The inability to deliver marketable fee simple title at closing, with the exception of the encumbrances listed above, or other encumbrances determined to be acceptable to City in its sole discretion, shall be a basis at the City's sole discretion to withdraw from and refuse to exercise the

option, but such withdrawal and refusal shall not affect any other remedies which City may have at law or in equity.

19.8. **Representation as to Brokerage Commissions.** The Parties represent to each other that the sale contemplated by this Agreement was not brought about by any broker. Each Party indemnifies and agrees to save the other Party harmless from any cost, liability expense or other obligation resulting from any obligation or liability incurred by the indemnifying party to pay any brokerage commission, fee, expense or other form of compensation by reason of the sale and purchase of the Property pursuant to this Agreement.

19.9. **Notices.** Except as otherwise specifically provided, any notice required or permitted by this Purchase Agreement shall be given in accordance with the terms of the Lease.

19.10. **Time of the Essence.** Developer and City understand and agree that in the performance of all obligations, acts and responsibilities set forth in this agreement, time is and shall be of the essence. Each party will take all necessary actions to expedite the performance of all obligations, acts and responsibilities.

19.11. **Examination of Title.** If examination of title to the Property by the attorney for the City discloses any objections to or defects in the title which cannot be cured to the satisfaction of said attorney within a reasonable time, Developer agrees to take such actions as may be requested by the City to satisfy objections to or defects in the title complained of by the attorney for the City; and in such case, time for Closing hereunder shall be extended accordingly.

19.12. **Risk of Loss.** Prior to Closing, except to the extent required under the Lease, the risk of loss from fire or other casualty or condemnation of the Property shall be upon the Developer. In the event the Property is damaged or destroyed by fire or other casualty or taken or threatened by condemnation prior to Closing, the City shall have the right to terminate this Option and receive a refund of any and all payments made pursuant to the provisions of this Option or to proceed to Closing and receive from Developer, in addition to the Property, an assignment from Developer of all of Developer's right, title and interest in and to all amounts due to Developer or collected by Developer as insurance proceeds or condemnation awards.

19.13. **Conditions.** Notwithstanding anything to the contrary contained herein, the City shall have the right to terminate this purchase agreement upon failure of any of the following conditions at any time prior to the Closing hereunder:

19.13.1. The property and its use shall comply fully with all federal, state and local laws, rules, regulations, orders and requirements relating to health, safety and the environment, including without limitation those relating to ambient air, surface and groundwater, surface and sub-surface soils and other natural resources and those relating to the manufacture, processing, distribution, use, treatment, storage, handling, transportation, release, disposal or importing and exporting of hazardous substances, hazardous waste, pollutants, contaminants, toxic substances, asbestos, oil, other petroleum or chemical, biological or radioactive substances; the Property and its use shall not previously have been in violation of any such law, rule, regulation, order or requirement; and there shall not exist on the Property any hazardous substance, hazardous waste, pollutant, contaminant, toxic substance, asbestos, oil, other petroleum or chemical, biological or radioactive substance which is subject to regulation under any such law, rule, regulation, order or requirement or storage tank now or previously used for the storage thereof, whether above-ground or underground, except such as may be consented to in writing by the City prior to Closing hereunder.

19.13.2. No portion of the Property shall consist of filled land or shall have been used as a sanitary landfill, and no activity shall be or shall have been conducted thereon which is subject to regulation under the North Carolina Solid Waste Management Act.

19.13.3. No part of the Property shall be "wetlands" as such term is used in Section 404 of The Clean Water Act, or located in a special flood hazardous area or floodway.

19.13.4. The Property shall have unrestricted record access to and from a public street or road at no cost.

Failure of any of the foregoing conditions of this Paragraph and termination of this Purchase Agreement shall be evidenced and determined by written notice to Developer from City or the attorney for City, which notice shall be given prior to Closing hereunder in the same manner provided for notice of exercise hereunder.

19.14. Entire Agreement. This Purchase Agreement sets forth the entire agreement and understanding of the parties with respect to the Agreement and the purchase and sale of the Property. It shall not be modified except in writing signed by the parties hereto.

19.15. Construction. This Purchase Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

19.16. Representations and Warranties Survive. The representations and warranties of the Developer in this Purchase Agreement shall survive the closing.

19.17. Expenses. Whether or not the transactions contemplated hereby are completed, each party shall pay their own expenses with regard to the negotiation, preparation, execution and performance of this Purchase Agreement.

19.18. Binding Effect. This Purchase Agreement shall inure to the benefit and be an obligation of the Developer and its successors and assignees, as well as the City, and its successors and assignees.

19.19. Definitions. All capitalized terms used in this Purchase Agreement and not otherwise defined have the meanings assigned to them in the Lease and Agreement, unless otherwise provided or unless the context clearly requires otherwise.

ARTICLE XX

MISCELLANEOUS

Section 20.1. Notices. Any notice or communication required or permitted by this Lease-Purchase Agreement must be in writing except as otherwise specifically provided, and such notice or communication shall be sufficiently given and deemed given when delivered by hand or five (5) days after being mailed by certified or registered United States mail, postage prepaid, or sent by national overnight courier service with confirmation of receipt, addressed as follows:

If to Lessor:

B & C Roanoke, LLC
2743 Perimeter Pkwy

Bldg 100, Suite 370
Augusta, GA 30909
Attn: Mark Senn
Telephone: (706) 854-6714

If to Lessee: City of Roanoke Rapids
1040 Roanoke Avenue
PO Box 38
Roanoke Rapids, NC 27870
Attention: City Manager
Telephone: 252-533-2840

Any addressee may designate an additional or different address by giving notice to the other Party in the manner provided herein.

Section 20.2. **Binding Effect.** This Lease-Purchase Agreement shall inure to the benefit of and shall be binding upon the Lessor-Seller and Lessee-Buyer and their respective Sublessees, successors and assigns, subject, however, to the limitations contained in Article XI of this Lease

Section 20.3. **Amendments, Changes and Modifications.** This Lease-Purchase Agreement may not be amended, modified or supplemented without the prior written consent of all Parties. Notwithstanding, the parties agree to modify this agreement to incorporate language as may be required by a lending institution involved in the construction or purchase of the leased property.

Section 20.4. **Net Lease.** This Lease shall be deemed and construed to be a "net lease," and the Lessee, its Sublessee, successors or assigns, shall pay absolutely net during the Lease Term all other payments required hereunder, free of any deductions, and without abatement or set-off. The Lessor and Lessee acknowledge and agree that the Lessee or its Sublessee shall have the right to contract with a third party management company to operate and maintain the Theater, and such third party company shall have full right and authority to occupy the Lease Property to perform such management services.

Section 20.5. **Non-Business Days.** If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Lease, shall not be a Business Day, such payment shall be made or act performed or right exercised on the next succeeding day that is a Business Day. Business Day shall mean a day on which banks and public offices are opening and functioning in the normal course of business, and which is not a Saturday, Sunday, federal or North Carolina holiday, or a day upon which a substantial portion of banks and public offices in the area in which the Leased Property is located are closed due to extraordinary events, such as hurricanes, snow storms, tornadoes or other similar events.

Section 20.6. **Severability.** If any provision of this Lease-Purchase Agreement, other than the requirement of the Lessor-Seller to provide quiet enjoyment of the Property, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 20.7. **Execution in Counterparts.** This Lease-Purchase Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

17


Section 20.8. *Applicable Law and Venue.* The Parties intend that this Lease-Purchase Agreement shall be governed by and construed in accordance with North Carolina law. The Parties agree that notwithstanding the principles of conflicts of law, the internal laws of the State of North Carolina shall govern and control the validity, interpretation, performance and enforcement of this Lease-Purchase Agreement. Further, the Parties agree that any action relating to this Lease-Purchase Agreement shall be instituted and prosecuted in the courts of Halifax County, State of North Carolina. Each of the Parties hereto consents to the jurisdiction of said courts and waives any right or defense relating to such jurisdiction and venue.

Section 20.9. *Captions.* The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease-Purchase Agreement.

Section 20.10. *Memorandum of Lease-Purchase Agreement.* At the request of either party, Lessor-Seller and Lessee-Buyer shall execute a memorandum of this Lease-Purchase Agreement legally sufficient to comply with the relevant provisions of the North Carolina General Statutes.

Section 20.11. *No Joint Venture.* Neither the execution of this Lease-Purchase Agreement nor the performance of any act pursuant to the provisions hereof shall be deemed or construed to have the effect of creating between Lessor-Seller and Lessee-Buyer the relationship of principal and agent, partnership, or joint venture.

Section 20.12. *Entire Agreement.* Lessor-Seller and Lessee-Buyer agree that no representations or inducements have been made other than those expressed herein and in the Economic Development Agreement and other agreements specifically referenced herein, and that this Lease-Purchase Agreement contains the entire agreement between the Parties hereto with respect to the matters described herein.

[Signatures Continue on the Following Page]



IN TESTIMONY WHEREOF, Lessor and Lessee have caused this Lease to be executed in such form as to be binding, as their duly authorized acts, all as of the date first above written.

LESSOR-SELLER:
B&C ROANOKE, LLC

By: Mark Senn
Name: Mark Senn
Title:

LESSEE:
CITY OF ROANOKE RAPIDS, NORTH CAROLINA

By: Drewery N. Beale
Drewery N. Beale, Mayor

[SEAL]

Attest:

Lisa B. Vincent

Lisa B. Vincent, City Clerk

This instrument has been preaudited
in the manner required by The Local
Government Budget and Fiscal Control Act

Name: W. David Dite
Finance Officer, City of Roanoke Rapids
North Carolina

EXHIBIT A

PROPERTY

That certain tract or parcel of land lying and being situate in the City of Roanoke Rapids, Weldon Township, Halifax County, North Carolina, located at or near the intersection of the eastern boundary of the right of way for Interstate Highway 95, and the northern boundary of the right of way for N. C. Highway 125, to contain 15 acres, more or less, with the exact acreage, boundaries and location of the property to be determined by mutual agreement of the parties to this Sublease Agreement at a later time, but nonetheless to be located in the general area shown on that certain plan of "Roanoke Rapids Entertainment Park" dated March 9, 2005, done by DesignWorks, LC, a copy of which has been received by each of the parties. The parties agree that this Exhibit shall be amended at such time as a legal description with the exact acreage and boundaries have been determined and agreed to.

LEGAL DESCRIPTION FOR THE RANDY PARTON THEATER SITE

That certain tract or parcel of land lying and being situate in the City of Roanoke Rapids, Weldon Township, Halifax County, North Carolina, being more particularly described as follows: beginning at a point located on the northeastern edge of the right of way for N. C. Hwy. 125 which is common with the southwest corner of property now or formerly owned by Thomas Earl Ferguson (Ref. Deed Book 1182, Page 103, and Lot 14, P.B. 10, Pg. 33, Halifax Public Registry), thence from said beginning point the following courses and distances: along the northeastern edge of the right of way for N. C. Hwy. 125 a curve having a chord direction of N 38-58-41 W. and a chord length of 451.71 feet, with a radius of 3134.96 feet for a distance (arc length) of 452.11 feet to a point; thence turning N. 46-36-19 E. 20.00 feet to a point; thence turning N. 43-23-41 W. 162.02 feet to a point; thence turning N. 01-16-47 E. 60.02 feet; thence along the eastern edge of the right of way for S. R. 1692 a curve to the left having a radius of 250.00 feet a distance of 275.90 feet to a point; thence continuing along S.R. 1692 N. 25-01-41 W. 187.51 feet to a point; thence continuing along S.R. 1692 a curve to the right having a radius of 768.51 feet a distance of 196.71 feet to a point; thence continuing along S.R. 1692 N. 10-21-41 W. 1047.25 feet to a point; thence continuing along S.R. 1692 N. 17-17-12 W. 50.69 feet to a point; thence turning from the eastern edge of S.R. 1692 N. 30-42-46 E. 848.47 feet to a point; thence continuing N. 30-44-29 E. 121.92 feet to a point; thence continuing N. 38-15-20 E. 262.98 feet to a **point which is the POINT OF BEGINNING** for the property described herein; thence from said point of beginning S. 60-53-33 E. 536.05 feet to a point; thence continuing S. 68-08-18 E. 367.88 feet to a corner; thence turning S. 50-09-17 27.67 feet to a point, thence continuing along a curve to the left having a radius of 588.00 feet a distance of 404.54 feet; thence continuing S. 10-41-51 W. 156.83 feet; thence turning along a curve to the left having a radius of 629.00 feet a distance of 258.69 feet to a point; thence continuing S. 78-16-28 W. 59.89 feet to a corner; thence turning N. 11-43-32 W. 55.16 feet to a point; thence continuing along a curve to the right having a radius of 600.00 feet a distance of 385.03 feet to a corner; thence turning N. 60-53-33 W. 484.00 feet to a corner on the eastern edge of Crossroads Parkway (proposed); thence turning along the eastern edge of Crossroads Parkway (proposed), a curve to the right having a radius of 819.00 feet a distance of 298.78 feet to the point of beginning, containing 8.822 acres, more or less, and being shown and designated as LOT 1 on that certain plat entitled "Plat Showing Revision of Lot # 1, Carolina Crossroads Music and Entertainment District, Phase One", done by Jonathan C. Waters, P.L.S., dated April 26, 2006, and recorded in Plat Cabinet 6, Slide 143-O, Halifax Public Registry. Reference to said recorded plat is hereby made for greater certainty of description of the property described herein.

EXHIBIT B

PERMITTED ENCUMBRANCES

- 1) Easements of Record
- 2) Accrued, But Unpaid Ad Valorem Taxes

EXHIBIT D

SUBLEASE AGREEMENT