

CULTURAL TRUST AGREEMENT

This **CULTURAL TRUST AGREEMENT** (this "Agreement") is made as of [Effective Date] (the "Effective Date"), among and between the Austin-Rosewood Community Development Corporation, a Texas local government corporation (the "Corporation") **SMG**, a Pennsylvania general partnership (together with its successors and assigns, the "Manager"), and **AUSTIN ECONOMIC DEVELOPMENT CORPORATION**, a Texas nonprofit local government corporation (the "AEDC"). The Corporation and the Manager are each referred to herein as the "MYEC Parties". The MYEC Parties and AEDC are referred to herein individually as a "Party" and collectively as the "Parties."

BACKGROUND:

A. AEDC has been commissioned by the City of Austin (the "City") to establish a Cultural Trust to support the preservation of and creation of creative space for the benefit of the public, supporting artists and organization of the arts, the preservation of historic and iconic cultural buildings and spaces for creative and cultural uses, iconic venue projects described in City of Austin Resolution 2021203-046, and the overall promotion of creative and cultural arts within the City (the "Cultural Trust Program").

B. In November of 2021, AEDC issued RFP #2021-1 (the "RFP"), seeking proposals from qualifying respondents to enter into long-term agreements to allocate public funds to (i) acquire/secure existing cultural arts and music venues to help preserve and maintain their continued operation, and (ii) support equitable access to affordable space for diverse cultural arts and music venues.

C. The City has dedicated \$12,000,000 in proceeds of a general obligation bond approved by voters in the November 2018 election for the Cultural Trust Program for the acquisition of land and interests for cultural and creative arts facilities (the "CFB Proceeds").

D. The Manager operates and manages the Millennium Youth Entertainment Complex, an approximately 55,000 square-foot public family-oriented entertainment center for youth located on approximately 4.978 acres of City-owned land in Austin, Texas (the "Facility"). The purpose of the Facility is to provide a safe, secure and comfortable environment (free from drugs, gangs, crime, and violence) where families can enjoy a wide range of affordable, high quality recreational and entertainment activities and missions.

E. The Facility was constructed at the direction of the City by the Corporation, which was created by the City in November of 1995 for purposes of aiding and acting on behalf of the City for the development of the land upon which the Facility is located.

F. The Manager submitted a proposal in response to the RFP, seeking \$400,000 in funding from the Cultural Trust Program, for purposes of financing new upgrades to their existing theater located at the Facility (the "Theater") and designed for cinematic presentations, and converting the Theater into a performing arts space (the "Theater Improvements").

G. At the recommendation of AEDC (in its capacity as administrator of the Cultural Trust Program), the City, the Corporation, and the MYEC Parties have entered into that certain Agreement for Improvement of Entertainment Center Facilities for Public Use Funded with Bond Funds dated concurrently herewith (the "City Agreement"), whereby the City has agreed to pay utilize \$400,000 from the CFB Proceeds to partially fund the Theater Improvements (The "Cultural Trust Funds").

H. AEDC and the MYEC Parties desire to enter into this Agreement to supplement the terms of the City Agreement, and to ensure that the purposes of the Cultural Trust Program continue to be met.

ACCORDINGLY, in consideration of the foregoing and the covenants, agreements, representations and warranties set forth in this Agreement, the Parties hereby agree as follows:

Section 1. Purpose of this Agreement; Project Description.

- (a) *Purpose of this Agreement.* The purpose of this Agreement is to recognize the Theater Improvements, and future use of the Theater as a component of the Cultural Trust Program and to ensure that the purposes of the Cultural Trust Program continue to be met as applicable to the Theater Improvements. The Cultural Trust Program is a community arts stabilization trust designed to create and preserve spaces that support artists and arts organizations, preserves historic and iconic cultural buildings and spaces for creative and cultural uses, and functions in a way that provides for cultural facilities to exist in all parts of the City. By its acceptance of the Cultural Trust Funds, the MYEC Parties hereby accept the Theater Improvements' designation as part of the Cultural Trust Program.
- (b) *Project Description.* The Theater Improvements will achieve the purposes of the Cultural Trust Program by creating approximately 1,800 square feet of functional, multi-purpose performing arts space and related supporting spaces that will be available to members of the public. The Theater Improvements will continue to be operated by the MYEC Parties as a component of the Facility in accordance with the existing Facility Management Agreement dated October 1, 2009, between the MYEC Parties and the Corporation (the "Facility Management Agreement").

Section 2. Installation of Theater Improvements. The City has agreed in the City Agreement to install the Theater Improvements at the Facility in the manner more particularly described in the City Agreement with the proceeds of the Cultural Trust Funds. The MYEC Parties shall timely perform its obligations to the City under the City Agreement. The MYEC Parties agree to immediately notify AEDC of any actual or anticipated delay in completion of the Theater Improvements. Upon reasonable advance notice, and subject to the MYEC Parties' and the City's construction safety and premises liability rules and requirements, AEDC and its representatives shall be entitled to enter the premises and inspect the progress of installation of the Theater Improvements during installation.

Section 3. Management and Use of the Theater Improvements. Without impairing or modifying the obligations of the MYEC Parties under the City Agreement or the Facility Management Agreement, the MYEC Parties hereby agree, for the benefit of AEDC, that the Theater Improvements shall at all times be used as a functional public performing arts space available to the general public. The MYEC Parties further agree, for the benefit of AEDC (but only to the extent consistent with the Facility Management Agreement), that the MYEC Parties shall at all times maintain and keep the Theater and Theater Improvements in good working order and condition, subject to ordinary wear and tear, and to manage and operate the Theater Improvements in a manner that, in the MYEC Parties' good faith judgment, generates cultural benefits to the Austin community by providing a public performing arts space that is affordable and available to the general public.

Section 4. Cultural Trust Program Designation. Subject to obtaining any required approvals from the Corporation or the City, the MYEC Parties shall designate, recognize, and otherwise promote the Theater Improvements as a component and asset of the Cultural Trust Program as may be reasonably requested by AEDC, including, by way of example: (i) the installation of a plaque or signage at a visible location within the Theater, and (ii) recognition of the Theater on the MYEC Parties' website as an asset of the Cultural Trust Program administered by AEDC. The MYEC Parties further agree to accommodate the reasonable requests of AEDC for tours and site visits at the Facility in connection with the promotion of the Cultural Trust Program.

Section 5. Annual Plans, Reports and Access to Records.

- (a) *Annual Plans.* By January 1 of each calendar year, the Manager will work with AEDC each year to finalize an affordable rate sheet that will be used for usage of the Theater, and will provide an anticipated marketing plan to ensure maximum utilization of the Theater by the public.
- (b) *Annual Reports.* By January 1 of each calendar year, the Manager will provide AEDC an annual report of space utilization, marketing efforts, and photographic evidence of the use of the Theater. These reports may be adjusted year by year, as agreed to by both parties, but at minimum the Manager should be tracking attendance to events (ideally so that audience demographics and local/tourism attendees are estimated), space utilization, marketing efforts as well as information about the types of performances and activities that are produced/performed in the Theater. It is intended that there will be a reporting template developed to initiate the tracking at the beginning of the term.
- (c) *Access to Records.* If requested, the MYEC Parties shall provide AEDC with access to the financial records of the MYEC Parties related to Theater usage fees collected for the Theater for purposes of tracking Cultural Trust Program goals.

Section 6. Term of Agreement. The term of this Agreement shall commence on the Effective Date and continue until [REDACTED], unless earlier terminated by AEDC.

Section 7 General Provisions.

- (a) *Notice.* Any notice, demand, statement, request or consent made hereunder shall be in writing and may be personally served or sent by mail or courier service and shall be deemed to have been given when delivered in person or by courier service to the addresses set forth below. Notices delivered by email to the Parties' designated representatives shall also be deemed to have been delivered only if receipt is acknowledged in writing by the recipient.

To the Corporation: Austin-Rosewood Community Development Corporation
Attn: [REDACTED]
[REDACTED]
[REDACTED]
Email: [REDACTED]

To Manager: SMG
Attn: [REDACTED]
[REDACTED]
[REDACTED]
Email: [REDACTED]

To AEDC: Austin Economic Development Corporation
Attn: [REDACTED]
[REDACTED]
[REDACTED]
Email: [REDACTED]

- (b) *Limitation on Remedies.* In no event shall any Party be liable, whether in contract or tort or otherwise, to the other Party for loss of profits, delay damages, punitive damages, exemplary

damages, indirect damages, or for any special incidental or consequential loss or damage of any nature arising at any time or from any cause whatsoever.

- (c) *Amendment or Modification to this Agreement.* This Agreement may be amended, modified and/or restated only by a written instrument adopted by the Parties and signed by the duly authorized representatives of the Parties hereto.
- (d) *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of, Parties and their respective successors and assigns; *provided, however,* that MYEC Parties may not assign any part or all of its rights, interests or obligations under this Agreement without the prior written consent of AEDC, and any assignment made by the MYEC Parties without the prior written consent of AEDC be null, void and of no force or effect.
- (e) *Assignment by AEDC.* No consent by the MYEC Parties shall be required for any partial or full assignment or reassignment of the interests or rights of AEDC under this Agreement to any successor to AEDC's rights under this Agreement; provided always that AEDC shall notify the MYEC Parties in writing with details of the recipient of the assignment or reassignment as soon as possible following such assignment or reassignment, including, but not limited to, the address for notices.
- (f) *Severability.* If any agreement, condition, covenant or term hereof or any application hereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, in whole or in part, all agreements, conditions, covenants and terms hereof and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- (g) *Entire Agreement; Amendment.* This Agreement represents the final, entire agreement among the Parties and supersedes any and all prior commitments, agreements, representations and understandings, whether written or oral, relating to the subject matter hereof and thereof and may not be contradicted or varied by evidence of prior, contemporaneous or subsequent oral agreements or discussions of the Parties hereto. There are no unwritten oral agreements among the parties hereto. The provisions hereof may be amended or waived only by an instrument in writing signed by the Parties.
- (h) *Additional Assurances.* The provisions of this Agreement shall be self-operative and shall not require further agreement by the Parties except as may be herein specifically provided to the contrary; provided, however, at the request of a Party, the other Party shall execute such reasonable additional instruments and take such additional actions as the requesting Party may deem necessary to effectuate this Agreement.
- (i) *Governing Law and Venue.* This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without reference to choice of law principles thereof, and all claims relating to or arising from this Agreement, or the breach of the provisions hereof, whether sounding in tort, contract or otherwise, shall likewise be governed by, construed and enforced in accordance with the laws of the State (without regard to choice of laws or conflict of laws rules). The Parties agree that the proper venue for any action regarding this Agreement shall be in Travis County, Texas.
- (j) *Counterparts; e-Signatures.* This Agreement may be signed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each Party, or that the signature and acknowledgment of all persons required to bind any

party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages. The Parties agree that digital or facsimile signatures shall be given the same legal effect as original signatures, and the Parties hereby agree to accept delivery of digital signatures by e-mail in "pdf" form, or *via* DocuSign, Adobe Sign, or any similar means of digital delivery.

(Signature Page Follows)

The undersigned have signed and delivered this Cultural Trust Agreement to be effective as of the Effective Date.

AUSTIN-ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION:
a Texas local government corporation

By: _____
[NAME, TITLE]

MANAGER:

SMG
a Pennsylvania general partnership

By: _____
[NAME, TITLE]

AEDC:

AUSTIN ECONOMIC DEVELOPMENT CORPORATION
a Texas nonprofit local government corporation

By: _____
Theresa Alvarez, Chief Executive Officer