

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
DECEMBER 20, 2022 AGENDA**

| Subject: | Type: | Submitted By: |
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| AMENDMENT NO. 1 TO ECONOMIC DEVELOPMENT PROGRAM AWARD PROMISSORY NOTE FOR THE ASTRO THEATER | ◆ RESOLUTION ORDINANCE RECEIVE/FILE | RITA RAMIREZ ASST. CITY ADMINISTRATOR/ COMMUNITY SERVICES DIRECTOR |

SYNOPSIS

An amendment to the previously executed promissory note regarding the Economic Development Program award to City Ventures for the Astro Theater has been requested. This amendment adjusts the formula by which the interest on the loan portion of the award is calculated. This change is necessary to maintain consistency between the terms of the developer's construction loan with American National Bank and the EDP loan.

FISCAL IMPACT

N/A.

RECOMMENDATION

Approval.

BACKGROUND

On September 3, 2021 an Economic Development Program (EDP) Agreement was executed by the City of La Vista, City Centre Music Venue, LLC and Astro Theater, LLC, authorizing an EDP award of up to \$5,500,000 to be used in conjunction with other funding sources for constructing and equipping the Astro Theater project.

In conjunction with this agreement a Promissory Note was submitted to the City outlining how the funds were to be awarded - a \$3 million grant and a \$2.5 million loan, as well as the terms regarding repayment of the loan.

Section 2 of the Note provided that the repayable portion of the EDP award would bear interest and that interest and principal would be paid in the manner described, which included a "Specified Interest Rate" in part based on the Prime Rate published in the Wall Street Journal.

City Centre Music Venue, LLC and Astro Theater, LLC desire to amend the note to change the basis for calculating the "Specified Interest Rate" from the Prime Rate to the secured overnight financing rate (SOFR) published by the Board of Governors of the Federal Reserve System and Three-Year Treasury Rate.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE EXECUTION OF AMENDMENT NO. 1 TO THE ECONOMIC DEVELOPMENT PROGRAM (EDP) AWARD PROMISSORY NOTE FOR THE ASTRO THEATER.

WHEREAS, the Mayor and City Council of the City of La Vista Nebraska have previously executed a promissory note regarding the EDP award to City Centre Music Venue, LLC and Astro Theater, LLC; and

WHEREAS, Section 2 of the Note provided that the repayable portion of the EDP award would bear interest and outlined how that interest would be calculated; and

WHEREAS, City Centre Music Venue, LLC and Astro Theater, LLC desire to amend the note to change the basis by which the interest is calculated; and

WHEREAS, this change is necessary to maintain consistency between the terms of the developer's construction loan with American National Bank and the EDP loan.

NOW, THEREFORE BE IT RESOLVED, by the Mayor and City Council of La Vista, Nebraska, that the execution of Amendment No. 1 to the Economic Development Program (EDP) award promissory note for the Astro Theater is hereby authorized.

PASSED AND APPROVED THIS 20TH DAY OF DECEMBER 2022.

CITY OF LA VISTA

Douglas D. Kindig, Mayor

ATTEST:

Pamela A. Buethe, MMC
City Clerk

**PROMISSORY NOTE - ECONOMIC DEVELOPMENT PROGRAM AWARD
AMENDMENT NO. 1**

\$5,500,000.00

1. The undersigned maker(s), ASTRO THEATER, LLC and CITY CENTRE MUSIC VENUE, LLC, each a Nebraska limited liability company whose address is 222 S. 15th Street #1404S, Omaha, Nebraska 68102, ("Obligor(s)") executed (on August 30, 2021 and September 3, 2021, respectively) and delivered to the CITY OF LA VISTA, a Municipal Corporation in the State of Nebraska, ("City") a PROMISSORY NOTE - ECONOMIC DEVELOPMENT PROGRAM AWARD ("Note"), each promising to pay to the order of the City, at 8116 Park View Boulevard, La Vista, Nebraska 68128-2198, or at such other place as City may from time to time designate, the principal sum of FIVE MILLION, FIVE HUNDRED THOUSAND Dollars (\$5,500,000.00) ("Award") or so much thereof as is advanced and unpaid during the term of this Note under the terms of the agreement ("Award Agreement") between the City and Obligor(s) under the City of La Vista Economic Development Program ("EDP") made on or about an even date herewith, subject to conditions set forth in the Note that among other things provided for a Forgivable Portion of the Award in an amount up to THREE MILLION DOLLARS (\$3,000,000.00), as determined in accordance with the Award Agreement, to be forgiven and discharged upon completion and commencement of operations of the Project without breach in accordance with the Award Agreement, and a Repayable Portion of the Award in an amount up to TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000.00) as determined in accordance with the Award Agreement to be paid to City, with interest from the date hereof on the unpaid principal balance and all sums due under this Note, on or before August 31, 2029 (the "Due Date") as provided in Section 2 of such Note.

2. Section 2 of the Note provided that the Repayable Portion of the Award shall bear interest, and interest and principal shall be paid, in the manner described in Exhibit "2" of the Note, including a "Specified Interest Rate" in part based on the Prime Rate published in the Wall Street Journal ("Prime Rate").

3. Obligor(s) desires to amend the Note including Exhibit "2" and the basis for calculating the "Specified Interest Rate" from the Prime Rate to the secured overnight financing rate ("SOFR") published by the Board of Governors of the Federal Reserve System and Three-Year Treasury Rate, consistent with changes to the Applicable Rate in a corresponding amendment to the September 3, 2021 Construction Loan Agreement between City Centre Music Venue, LLC and American National Bank to construct and equip the Astro Theater event center in La Vista City Centre, and related Side Letter specifying conditions to convert the Construction Loan to a Term Loan ("ANB Interest Modifications").

4. Obligor(s) hereby amends the Note as follows, effective as of the Amendment Effective Date (defined in section "6" below): Exhibit "2" of the Note shall be deleted and replaced in its entirety by Exhibit "2" presented with and incorporated into this Amendment by reference. Before the Amendment Effective Date, Exhibit "2" of the Note originally executed by Obligor(s) on August 30, 2021 and September 3, 2021 shall apply.

5. This Amendment shall be conditional on Obligor(s) executing the ANB Interest Modifications, and providing the City of La Vista Director of Administrative Services written notice that the ANB Interest Modifications have been executed, before January 1, 2023 or such other date as the Director of Administrative Services may agree in writing ("ANB Interest Modifications Date").

6. This Amendment shall be effective ("Amendment Effective Date") as of December 1, 2022, provided the requirements of immediately preceding section 5 are satisfied.

7. Obligor(s) represents and warrants to City that no default has occurred under the Note, Agreement, or any conditions of the Award.

8. This Amendment shall be subject to written consent of the City pursuant to Section 17 of the Note, in form and content satisfactory to the Mayor or City Administrator.

9. Except as modified by this Amendment, all representations, warranties, terms and conditions of the Note, Agreement, or any other documents, instruments, or requirements connected with the Note, Agreement, Award or EDP, are ratified, affirmed and shall remain in full force and effect.

10. This Amendment may be executed in multiple counterparts, each and all of which shall constitute an original and one and the same instrument.

OBLIGOR(S):

CITY CENTRE MUSIC VENUE, LLC, a Nebraska
limited liability company

By: La Vista City Centre LLC, a Nebraska limited
liability company, Manager

By: _____
Christopher L. Erickson, Manager

DATE: _____

ASTRO THEATER, LLC, a Nebraska limited liability
company

By: _____
Jim Johnson, Manager

DATE: _____

CITY CONSENT

The undersigned, on behalf of the City, approves the PROMISSORY NOTE - ECONOMIC DEVELOPMENT PROGRAM AWARD AMENDMENT NO. 1 of City Centre Music Venue, LLC and Astro Theater, LLC, which AMENDMENT NO. 1 shall be incorporated into this CITY CONSENT by this reference.

CITY:

CITY OF LA VISTA, a Nebraska municipal corporation, City

By: _____
Douglas Kindig, Its Mayor

DATE: _____

ATTEST:

By: _____
Pamela A. Buethe, City Clerk, MMC

INTEREST AND PAYMENT SCHEDULE
(as amended by AMENDMENT NO. 1)

The Repayable Portion of the Award advanced and outstanding from time to time shall bear interest (computed on the basis of a 360-day year and actual days elapsed) at the Specified Interest Rate.

Effective on and after the Amendment Effective Date (as defined in Amendment No. 1 to the Note), the "Specified Interest Rate" shall mean:

- a. During the period from the Amendment Effective Date to September 1, 2023, a variable rate of interest per annum equal to the Term SOFR plus 5.00%, as adjusted on each SOFR Adjustment Date.

For purposes of this subsection "a," the following definitions apply:

- i. "SOFR Adjustment Date" means the first day of each calendar month.
- ii. "New York Banking Day" means any date (other than a Saturday or Sunday) on which commercial banks are open for business in New York, New York.
- iii. "SOFR" means the secured overnight financing rate which is published by the Board of Governors of the Federal Reserve System and available at www.newyorkfed.org.
- iv. "Term SOFR" means the one-month forward-looking term rate based on SOFR quoted by City from the Term SOFR Administrator's Website (or other commercially available source providing such quotations as may be selected by City from time to time), which shall be that one-month Term SOFR rate in effect two New York Banking Days prior to the SOFR Adjustment Date, adjusted for any reserve requirement and any subsequent costs arising from a change in government regulation, and reset monthly on each SOFR Adjustment Date; provided that if the Term SOFR rate is not published on such New York Banking Day due to a holiday or other circumstance that City deems in its sole discretion to be temporary, the applicable Term SOFR rate shall be the Term SOFR rate last published prior to such New York Banking Day. If City has determined in its sole discretion that (i) the administrator of Term SOFR, or any relevant agency or authority for such administrator of Term SOFR (or any substitute index which replaces Term SOFR (Term SOFR or such replacement, the "Benchmark")), has announced that such Benchmark will no longer be provided, (ii) any relevant agency or authority has announced that such Benchmark is no longer representative, or (iii) any similar circumstance exists such that such Benchmark has become permanently unavailable or ceased to exist, City will (x) replace such Benchmark with a replacement rate or (y) if any such circumstance applies to fewer than all tenors of such Benchmark used for determining an interest period hereunder, discontinue the availability of the affected interest periods. In connection with the selection and implementation of any such replacement rate, City may make any technical, administrative or operational changes that City decides may be appropriate to reflect the adoption and implementation of such replacement rate. City does not warrant or accept any responsibility for the administration or submission of, or any other matter related to, Term SOFR or with respect to any alternative or successor rate thereto, or replacement rate thereof, including without limitation whether any such alternative, successor or replacement rate will have the same value as, or be economically equivalent to, Term SOFR

- v. “Term SOFR Administrator’s Website” means the website or any successor source for Term SOFR identified by CME Group Benchmark Administration Ltd. (or a successor administrator of Term SOFR).
- b. From and after September 1, 2023 (“Rate Reset Date”) until the Due Date, the fixed per annum rate equal to the Three-Year Treasury Rate on September 1, 2023, as adjusted on the Three-Year Treasury Rate Adjustment Date, plus 4.25%.

For purposes of this subsection “b,” the following definitions apply:

- i. “Three-Year Treasury Rate” means the most recent rate per annum applicable to U.S. Treasury constant maturities 3-year as posted in the Federal Reserve Statistical Release H.15 (daily rates) at: www.federalreserve.gov/Releases/H15/Update/ (or if not posted on such website, as reported by any service selected by City).
- ii. “Three-Year Treasury Rate Adjustment Date” means March 1, 2027.

Before the Amendment Effective Date, “Specified Interest Rate” shall have the meaning set forth in Exhibit “2” of the Note as originally executed by Obligor(s) on August 30, 2021 and September 3, 2021.

Obligor(s) shall pay to the City interest only on the first day of each month, beginning October 1, 2021, on amounts advanced and outstanding from time to time on the Repayable Portion of the Award from the date of this Note to the earlier of (i) 12 months after the date of a certificate of occupancy for the project financed by this Note, or (ii) March 1, 2027 (such date being the "Amortization Commencement Date").

Commencing on the Amortization Commencement Date and continuing on the first day of each calendar month thereafter, aggregate level monthly installments of principal and interest shall be paid based on a 24 year amortization and 288 monthly payments of principal and interest. Notwithstanding the foregoing, a final installment representing the entire unpaid principal balance of the Repayable Portion of the Award, and all accrued and unpaid interest thereon and all fees and charges in connection therewith, shall be due and payable on the Due Date (August 31, 2029). On the Amortization Commencement Date and Rate Reset Date, an amortization schedule shall be prepared by the City and provided to Obligor(s).