

MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** (“MOU”) sets forth the principal terms of the proposed public-private partnership between **THE CITY OF GREENSBORO** (“City”) and **THE COMMUNITY FOUNDATION OF GREATER GREENSBORO** (“CFGG”) to design, finance, develop, construct and manage the operations and programs of the proposed **STEVEN B. TANGER CENTER FOR THE PERFORMING ARTS** (“Tanger Center”) and ensure long-term success of the Tanger Center as a top-quality performance venue.

A. Location of the Tanger Center

1. The City has purchased land on the City block in downtown Greensboro located between Elm Street, Lindsay Street, Davie Street and Bellemeade/Summit Avenue, which will be the location for the Tanger Center and the adjacent surface parking lot.
2. The City retains the right to sell any portion of that land that is not used for the Tanger Center, its entrance plazas, its driveways, or its loading docks. Should the City sell the land on which the Tanger Center surface parking is located, it shall replace that parking with an appropriate number of parking spaces in a parking facility adjacent to the Tanger Center to maintain commitments for specialized parking related to handicap parking, premium parking, parking commitments to major donors or other related parking needs.

B. Funding of the Design and Construction of the Tanger Center

1. CFGG has solicited pledges and received commitments and contributions by private donors (the “Private Donors” or “Donor Group”) for the Tanger Center. The Private Donors will provide \$35 million for the design and construction of the Tanger Center. Those funds will be secured through a bank financing commitment (the “Donor Loan Commitment”) and cash collections of written pledges and grant awards. Funds of up to \$5 million to pay pre-construction amounts due under the design contracts will be transferred to the City as those contract payments become due, subject to obtaining the Donor Loan Commitment and to the approvals described in Section D.4. After the City’s funds have been used to pay its portion of the construction costs, the remaining

funds will be transferred to the City as contract payments become due, subject to any required approvals described in Section D.4.

2. The City will provide \$30 million for the land, design and construction of the Tanger Center. The City's funding will be secured through one or more debt financings, and the debt will be serviced through a variety of user fees from city-owned parking, from facility fees, and from a portion of the existing hotel/motel tax. The City will pay its portion of the design and construction costs after the Donor Loan Commitment has been obtained and the funds to pay pre-construction amounts due under the design contracts have been transferred to the City as described in Section B.1.
3. Both the City and the CFGG on behalf of the Private Donors will have to obtain financing to cover their share of the design and construction costs for the Tanger Center. It is understood that both the City and the Private Donors may need to use a portion of the Tanger Center as collateral for that financing. It is agreed that the ownership of the Tanger Center will vest in the City once the financing repayment obligations of the Private Donors are satisfied, which is expected to occur no later than 10 years after the opening of the Tanger Center.

C. Naming Opportunities and Donor Benefits

1. The CFGG fundraising committee (the "Fundraising Committee") has the authority to designate naming rights in and around the Tanger Center to Private Donors in a manner that reflects the relative value of those naming opportunities.
2. The Fundraising Committee has the authority, in consultation with the Managing Director of the Tanger Center, to designate donor benefits, which benefits shall be honored by the City as manager and operator of the Tanger Center.
3. The Fundraising Committee has the right to approve all signage recognizing Private Donors, including signage for all rooms and building components named by Private Donors, the naming wall, and all other permanent recognition of Private Donors on, in or around the Tanger Center including the name of the street in front of the Tanger Center.
4. The Fundraising Committee has consulted with City representatives, including the Coliseum Director, on the existing naming rights and draft of the donor benefits for the Tanger Center, and will continue to do so.

5. The Fundraising Committee will work with the City to recognize the City of Greensboro's financial investment in the Tanger Center and honor the City's War Veterans by locating appropriate recognition for the City of Greensboro and the City's War Veterans in or around the Tanger Center.
6. Following the opening of the Tanger Center, the CFGG Fundraising Committee will become a fundraising committee of the Board, and the Board will assume the rights and obligations of the Fundraising Committee described in Sections C.1. – C.5.

D. Design and Construction of the Tanger Center

1. The City will serve as project manager to oversee the design and construction of the Tanger Center. The Private Donors will have meaningful participation in the design process, as outlined below. A minimum goal of 20% of the eligible construction and supplier contracts is anticipated for M/WBE contractor and subcontractor participation.
2. CFGG shall create a committee (the "Donor Building Committee") that will work with the City representatives on the design and construction of the Tanger Center. The Donor Building Committee will work in close coordination with the City's Design and Construction Team toward the common goal of building a top-quality performance center on time and on budget.
3. The Donor Building Committee shall be timely invited to meet on a regular basis with the team of architects, theater consultants, acousticians, construction manager and other consultants (the City's "Design and Construction Team") put together by the City to design and construct the Tanger Center. The Donor Building Committee shall have two representatives who attend weekly meetings with the City's Design and Construction Team throughout the course of the design and construction of the project.
4. The Donor Building Committee shall have approval rights over the design contracts, the final design of the Tanger Center, the construction budget, and all material changes made during the course of construction to the previously approved final design and/or construction budget. The Donor Building Committee will not unreasonably withhold approval and will be cognizant of budget and timeline constraints.

E. Governance of the Tanger Center

1. The parties to this Agreement will jointly create a non-governmental, nonprofit entity (the "Nonprofit"), which, through its Board of Directors, will have overall responsibility for overseeing the success of the Tanger Center. To the extent the functioning of the Nonprofit is not compromised, the annual budgets and audited financial statements of the Nonprofit and the minutes of meetings of the Board shall be available to the public. Subject to the provisions of NCGS Chapter 132, all emails to and from City representatives shall be considered a public record.
2. The Nonprofit's Board of Directors (the "Board") will have a total of 13 members as follows:
 - a. Four representatives from the City, including the Mayor, the City Manager and two additional City Council Members;
 - b. Four representatives of the Private Donors;
 - c. Five at-large members, who will be selected jointly by the City representatives and the Private Donors representatives and will be residents of the City unless otherwise mutually agreed;
 - d. Board members shall serve a three-year term, and shall serve no more than two terms consecutively. The term limit shall not apply to the Tanger Center's name donor or his designee or to certain other representatives of the Private Donors, to be detailed in the bylaws of the Nonprofit. The term limit shall not prevent a Board member who has served two consecutive terms on the Board from serving as Board chair, as detailed below. The City representatives serve as ex officio voting members, with terms ending if they leave elected or appointed office;
 - e. In selecting Board members, every effort will be made to select Board members who have expertise in a variety of areas necessary to form a high-quality Board with competencies in business, finance, marketing, fundraising, law, and the arts. Every effort will be made to create a Board that reflects the diversity of our community;
 - f. The Board Chair shall be elected by the Board from among the Private Donor members and the at-large members, and may be a Board member who has served two consecutive terms on the Board. The Board Chair shall serve a three year term, with a maximum of two consecutive terms as Board Chair.

3. The mission of the Nonprofit will be to oversee the successful operation and maintenance of the Tanger Center as a top-quality performance venue. The specific responsibilities of the Board are as follows:

- a. To set guidelines and procedures for the successful operation of the Tanger Center;
- b. To set guidelines for hosting community-based programming and activities at the Tanger Center that are consistent with the City Council's existing commitment to support such programming and activities at War Memorial Auditorium;
- c. To review the annual budget as presented by the Managing Director of the Tanger Center, and recommend approval or revisions to the City Manager, for final approval by the City Council;
- d. To review the annual operations of the Tanger Center including budget achievement, maintenance of the facility, capital improvements, balance of programming, promotional activities, adherence to goals, guidelines and procedures, and VIP/Private Donor/audience services. Such review shall result in an annual report to the City Manager, and may include recommendations for improvements, revisions or changes if applicable;
- e. To set goals for and implement fundraising events and campaigns, if needed for specific programming, programming enhancement, special events, extraordinary maintenance or renovation needs or additions to the facility;
- f. To set goals for pursuing Tanger Center partnerships with K-12 and higher education organizations in order to create educational and workforce development opportunities for students in our community.

4. City Council approval is required for:

- a. Approval of this MOU;
- b. Selection of the Tanger Center construction manager and the terms of the construction manager contract and/or bids for the same;
- c. Construction and professional services contracts for the Tanger Center for amounts in excess of \$300,000, consistent with existing City Manager approval policies;
- d. The annual budget for the Tanger Center and the annual capital improvements budget described in Section F.5.;

- e. Nothing herein is intended to supersede City Council authority designated by state law. Any approval rights not stated herein that rest with the City Council under state or local law, guidelines or policy are assumed to rest with City Council unless City Council designates that authority to the Board.

F. Operations of the Tanger Center

1. The Tanger Center will replace War Memorial Auditorium, which will cease operations as a performance venue prior to the opening of the Tanger Center.
2. The Managing Director of the Greensboro Coliseum Complex will be the initial Managing Director of the Tanger Center. The Managing Director of the Tanger Center will work in coordination with the Greensboro Coliseum staff to coordinate programming, take advantage of economies of scale and use the expertise of the Coliseum staff. Should the City Manager decide to change the Managing Director of the Tanger Center, or to separate the management of the Tanger Center from the Coliseum, or at such time as the City Manager is required to select a successor to the Managing Director of the Tanger Center, the Board will have active participation in the selection process.
3. The Managing Director of the Tanger Center will manage the Tanger Center's operations, including but not limited to facility maintenance, facility parking, event booking, facility scheduling and ticket sales and VIP/Private Donor/audience services. The Tanger Center shall be operated in accordance with the highest quality standards, including management of the operations, selection of programming, security, maintenance and repairs, with the goal of providing a top-quality experience for audience members and our community.
4. As the manager and operator of the Tanger Center, the City will retain all revenue generated by the Tanger Center (including any programming sponsorship revenue) and will be responsible for all expenses incurred in operating the Tanger Center, except as otherwise provided in this section. The City shall impose a surcharge (or comparable ticket pricing mechanism) that results in net proceeds to the City of \$1.00 per ticket on all tickets sold for events at the Tanger Center. The proceeds of the surcharge shall be used to create an Arts Stabilization Fund to be allocated annually by ArtsGreensboro (formerly known as the United Arts Council) to exclusively provide direct financial assistance to local arts organizations.
5. Beginning with the fifth full year of operations of the Tanger Center, the Managing Director of the Tanger Center shall annually prepare a capital

improvements budget for the Tanger Center, to be funded from proceeds of the hotel/motel tax. The Board shall review the proposed annual capital improvements budget and recommend approval or revisions to the City Manager, for final approval by the City Council.

G. Miscellaneous

1. The City Manager is authorized by the City to negotiate and execute definitive documentation as required related to the design, construction and management of the Tanger Center, subject to the approval rights of the Donor Building Committee described in Section D.4.
2. CFGG and its legal counsel will file articles of incorporation for the Nonprofit with the Secretary of State of North Carolina and will prepare the initial draft of the corporate bylaws, in conformance with the provisions of this MOU, for review and approval by the Board. CFGG may subsequently assign all or a portion of its rights and obligations under this MOU to the Nonprofit, subject to approval by the Board.
3. The parties to this MOU will bear their own respective expenses incurred in connection with the negotiation, preparation, execution, delivery, and performance of this MOU and the consummation of the transactions it contemplates. This includes, without limitation, all fees and expenses of agents, representatives, legal counsel, accountants and financing providers.
4. It is the intent of the parties to this MOU that the Tanger Center be used as a performing arts center for its useful life. If the City no longer desires to own the Tanger Center, the building ownership will be transferred to the Nonprofit, subject to approval by the Board. If the Nonprofit is not still in existence, then ownership of the building will be transferred to the CFGG, subject to approval by the CFGG board of directors. If the City no longer desires to manage and operate the Tanger Center as a performing arts center, the Nonprofit shall have the right to contract with third parties to provide operational management services for the Tanger Center, If the Nonprofit is not still in existence, then such right shall be held by the CFGG, subject to approval by the CFGG board of directors.
5. This MOU shall be binding on the undersigned parties (or their assigns) and remain in force for a term of 50 years, commencing on the date set forth below, unless otherwise agreed in writing by the undersigned parties (or their assigns).

[Signature page follows]

AGREED, this the 11th day of March, 2014.

CITY OF GREENSBORO

By: Nancy Vaughan
Nancy Vaughan, Mayor

By: Jim Westmoreland
Jim Westmoreland, City Manager

By: Betsey Richardson
Betsey Richardson, City Clerk

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

By: R. L. Lusk 3-11-14
Richard L. Lusk, City Finance Director

APPROVED AS TO FORM

By: Terry Wood
Terry Wood, City Attorney, *INTERIM*

COMMUNITY FOUNDATION OF GREATER GREENSBORO

By: H. Walker Sanders
H. Walker Sanders, President

[Signature page to MOU]



62-14 RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO ENTER INTO A MEMORANDUM OF UNDERSTANDING BETWEEN THE COMMUNITY FOUNDATION OF GREATER GREENSBORO AND THE CITY OF GREENSBORO REGARDING THE STEVEN B. TANGER CENTER FOR THE PERFORMING ARTS

WHEREAS, the City of Greensboro and the Community Foundation of Greater Greensboro have been working together to draft a Memorandum of Understanding for Council approval regarding the design, financing, development, construction, management, operations and programming of the Steven B. Tanger Performing Center for the Performing Arts;

WHEREAS, the City of Greensboro and the Community Foundation of Greater Greensboro have jointly decided to enter into a public-private partnership arrangement to help insure the successful development and operations of the Steven B. Tanger Center for the Performing Arts (with the City of Greensboro contributing \$30 million to advance the project and the Community Foundation of Greater Greensboro via private donors, contributing \$35 million to advance the project);

WHEREAS, the Memorandum of Understanding memorializes the following elements of the public-private partnership between the parties:

- Location of Tanger Center
- Funding of the Design and Construction of the Tanger Center
- Naming Opportunities and Donor Benefits
- Design and Construction of the Tanger Center
- Governance of the Tanger Center
- Operations of the Tanger Center
- Miscellaneous items defining other responsibilities of the public-private partnership;

WHEREAS, the overall goal of the MOU and the public-private partnership is to provide the City of Greensboro and our community with a state of the art performing arts facility that will provide a wide-array of diverse, top-quality, and community based programming opportunities;

WHEREAS, Council is being requested to consider approving the Memorandum of Understanding presented herewith this day and authorizing the Mayor and City Manager to enter into the agreement.

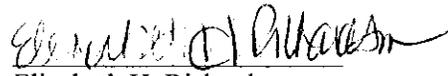
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREENSBORO:

That the Mayor and City Manager are hereby authorized to enter into the Memorandum of Understanding presented herewith this day between the Community Foundation of Greater Greensboro and the City of Greensboro regarding the Steven B. Tanger Center for the Performing Arts.

I, Elizabeth H. Richardson, City Clerk of the City of Greensboro do hereby certify the foregoing to be a true and exact copy of Resolution 62-14 adopted by the City Council of the City of Greensboro at its regular meeting held on the 4th day of March, 2014.

Witness my hand and corporate seal of the City of Greensboro, this the 14th day of March, 2014.

SEAL


Elizabeth H. Richardson
City Clerk