SYRACUSE CITY

Syracuse City Special RDA Agenda
April 9, 2013 – immediately following the Regular City Council Meeting, which begins at 7:00 p.m.
City Council Conference Room
Municipal Building, 1979 W. 1900 S.

1. Meeting called to order
2. Developers requested amendments to contract for expansion of the Syracuse Family Fun Center.
3. Adjourn

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In compliance with the Americans Disabilities Act, persons needing auxiliary communicative aids and services for this meeting should contact the City Offices at 801-825-1477 at least 48 hours in advance of the meeting.

CERTIFICATE OF POSTING

The undersigned, duly appointed City Recorder, does hereby certify that the above notice and agenda was posted within the Syracuse City limits on this 8th day of April, 2013 at Syracuse City Hall on the City Hall Notice Board and at http://www.syracuseut.com/. A copy was also provided to the Standard-Examiner on April 4, 2013.

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CASSIE Z. BROWN, CMC
SYRACUSE CITY RECORDER
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RDA AGENDA

April 9, 2013

Agenda Item **#2** Developers requested amendments to contract for expansion of the Syracuse Family Fun Center.

Factual Summation

- The following information was provided by City Attorney Carlson in an email to the Mayor and various members of City staff. Any questions regarding this item can be directed towards him.

Ed Gertge's attorney has proposed ten changes to the Development Agreement. They are attached, but below is a summary:

1. ***Change the obligation and calculation of "Increased assessed value***." Ed's attorney doesn't want to obligate the Fun Center to the increased assessed value and changed the term "agrees" to a much softer "assumes." He also wants the increased assessed value to be determined based not only on the Fun Center, but all of Developer's properties, including restaurants, businesses, vacant lots, and future development on vacant lots.
2. ***Eliminate June 1 deadline to obtain permits.*** Ed's attorney has replaced the deadline of obtaining permits by June 1 and instead commits to obtain them "in the normal course of business."
3. ***Limit Agency's authority to object to Developer's protest of assessment.*** If Ed wants to protest the assessment, the Agency will be precluded from objecting to his protest to the county as long as Ed's requested assessment is at or above the estimated level under the agreement.
4. ***Developer will not provide any pricing or payment benefit to Syracuse High, the Parks and Rec Department, or the school district.*** The current agreement drafts says that the Fun Center will "reasonably cooperate" with these entities. Ed's attorney would add language to exclude pricing or payment agreements from the understanding of "reasonably cooperate."
5. ***December 31 construction deadline eliminated.*** Ed's attorney changed the completion by December 31 to "substantial completion." He also added

language that the Fun Center must have that $96,000 next year, so "substantial completion" must be liberally construed in favor of the Fun Center.

6. ***Agency needs Fun Center Permission to pay less if it must pay less.*** The current agreement indicates that the Agency can only pay what it obtains, so if other obligations prevent it from paying the full amount owed to Developer, the difference can be compensated for in future years. Ed's attorney has changed this to require the Agency to obtain Developer permission to pay less in such a scenario, to pay no less than 75% of what the Fun Center would receive, to fully compensate the Fun Center in the next fiscal year, and to not underpay the Fun Center for two years after a year it has other obligations preventing full payment.
7. ***Developer to seek payment from other government agencies.*** Ed's attorney added language allowing the Fun Center to go after other government agencies (read the City) for payment under the agreement.
8. ***Public Monies sections eliminated.*** The sections identifying the rebate as public money have been deleted.
9. ***Give lender an interest under the agreement.*** Ed's attorney added the lender as a party that can seek remedy under this agreement.
10. ***Added several "Force Majeure" events to excuse Developer's performance under the agreement.*** A force majeure is often referred to as an Act of God that prevents one party from completing their obligations under the agreement. The three that have been added by Ed's attorney are "harsh weather," "frost," and "snow."

I don't have much concern with changes numbered as three or eight. The other eight changes are very problematic from my perspective and I advise against accepting them. Please let me know if you want this added to tomorrow's work session agenda. If the RDA is to accept any of these changes, an RDA meeting must be noticed.

AMENDED AGREEMENT FOR THE EXPANSION OF THE SYRACUSE FAMILY FUN CENTER

This Amended Agreement for the Development of the Syracuse Family Fun Center site (this "Amended Agreement") is made and entered into as of this _____ day of _____, 2013 (the "Effective Date"), by and among SYRACUSE FAMILY FUN CENTER, a limited liability company (the "Developer"), and the REDEVELOPMENT AGENCY OF SYRACUSE CITY, a body corporate and politic of the State of Utah (the "Agency").

The Developer and the Agency are sometimes referred to individually in this Amended Agreement as a "Party" and collectively as the "Parties."

RECITALS

A. In furtherance of the objectives of the Community Development and Renewal Agencies Act, Utah Code Ann. § 17C-3-101, et. seq. (the "Act"), the Agency has undertaken the creation of a redevelopment project area for the development of a certain geographic area known as the "Town Center Project Area" (the "Project Area"), located in Syracuse, Utah; and

B. The Agency has approved and the City Council of the City has adopted a redevelopment plan which is attached hereto as Exhibit A (the "Redevelopment Plan") providing for the development of real property located in the Project Area and the future use of such land; and

C. The Developer desires to expand the Syracuse Family Fun Center ("Expansion") by adding 80,000 square feet ("sf") of recreational space as follows:

1. 24,000 sf aquatic center; and
2. 56,000 sf of additional activities, including:

a. 28,000 sf of Go-Karts and race track (adult and kiddie-kart size); and

b. 28,000 sf with a combination of activities such as:

i. Bounce toys;
ii. Bowling;

iii. Batting cages; and
iv. Locker rooms; and

D. The Agency believes that the expansion of the Syracuse Family Fun Center is in the vital and best interests of the Agency, and in the best interests of the health, safety, and welfare of community residents, and in accord with the public purposes and provisions of the applicable laws of the State of Utah (the "State") and requirements under which the Project Area and its development is undertaken and is being assisted by the Agency; and

E. On August 30, 2012 the parties entered into an Agreement, attached hereto as Exhibit B, which included a construction deadline of May 31, 2013, however as of the date of this Amended Agreement construction has not begun and a new agreement is necessary to fulfill the objectives of both parties; and

F. On the basis of the foregoing and the undertakings of the Developer pursuant to this Amended Agreement, and to enable the Agency to achieve the objectives of the Redevelopment Plan, the Agency is willing, in the manner set forth herein, to assist the Developer in the expansion of the Syracuse Family Fun Center for the purpose of accomplishing the provisions of the Redevelopment Plan, and the provisions of this Agreement;

NOW THEREFORE, in consideration of the covenants and agreements set forth in this Amended Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree mutually agree to relieve each other of all obligations incurred under the Agreement entered into on August 30, 2012, and instead enter this Amended Agreement:

ARTICLE I: DEVELOPER'S OBLIGATIONS

Section 1.1 The Developer hereby agrees to the following:

A. Development of Facilities. The Developer shall construct, and maintain the following facilities for a minimum useful life of twenty [20] years at the Syracuse Family Fun Center site:

i. *Aquatic Center*. A 24,000 square foot Aquatic Center will be constructed substantially in accordance with the zoning, subdivision, development, growth management, transportation, environmental, open space, and other land use plans, policies, processes, ordinances, and regulations in existence and effective on the date of final approval of this Amended Agreement, and applying the terms and conditions of this Amended Agreement.

ii. *Additional Facilities*. An additional 56,000 square feet of space for additional recreational activities, to include but not be limited to: A go-kart race track 28,000 sf in size; bounce toys; bowling alley; batting cages; and locker room facilities for the aquatic center. Such expansion shall be constructed substantially in accordance with the zoning, subdivision, development, growth management, transportation, environmental, open space, and other land use plans, policies, processes, ordinances, and regulations in existence and effective on the date of final approval of this Amended Agreement, and applying the terms and conditions of this Amended Agreement.

iii. *Infrastructure/On-site Improvements.* The Developer shall construct and develop, in accordance with all applicable city standards, all on-site improvements, including but not limited to, storm water detention facilities, drainage facilities, sidewalks, curb and gutter, roads both ingress and egress as required to access the Syracuse Family Fun Center, landscaping, trails, water systems, sanitary sewer, street lighting, fencing and/or walls, flood control and other improvements required by Syracuse as part of the Site Plan and subdivision approval process. All required onsite improvements shall be completed prior to the date the City issues an
occupancy permit (the "Operational Date").

B. Increase Assessed Value. The Developer ~~agrees~~ assumes Expansion will increase value of the property of Syracuse Family Fun Center by no less than six million dollars ($6,000,000) as assessed by the Davis County Assessor's Office on January 1, 2014 compared to the January 2013 assessment by said office. For purposes of this paragraph, and the intended or expected increased in assessed value, "Expansion" will include all Developer's properties near the Syracuse Family Fun Center, including all restaurants, businesses, and vacant lots in the vicinity of the Syracuse Family Fun Center. If the total assessed value of the Syracuse Family Fun Center project, and the expansion of that center, does not increase by $6,000,000, then the Agency will include the increased value of Developer's other property, including future development of vacant lots, for purposes of evaluating the increased assessed value.

C. Payment of Fees. The parties anticipate that Expansion will require Developer to pay Syracuse City and other agencies approximately two hundred eight thousand one hundred nineteen dollars and forty cents ($208,119.40) in building permit fees, site plan review fees, impact fees, and development fees ("Anticipated Fees"), attached hereto as Exhibit C. Developer shall~~, on or before June 1, 2013,~~ pay the Anticipated Fees and all other fees assessed by Syracuse City, which are required to begin construction of Expansion, in the normal course of business, which is anticipated to be when Developer obtains the building permit. In the event the Anticipated Fees are not paid in full prior to the first payment of the Property Tax Rebate (as defined herein), the Agency may deduct all unpaid Anticipated Fees from the first payment of Property Tax Rebate and directly pay Syracuse City the Anticipated Fees up to the full value of the first payment of the Property Tax Rebate. In such event, the Agency shall provide Developer with an itemized list of all Anticipated Fees to Syracuse City which have been paid.

D. Payment of Ad Valorem Taxes and Supplemental Payments. The Developer shall pay all real and personal property taxes (the "ad valorem taxes") for the Syracuse Family Fun Center site based on the taxable value of the Syracuse Family Fun Center site (the "Assessed Taxable Value") for the time period of this Amended Agreement. Subject to the Developer's right to protest or appeal as provided below, for each tax increment year, all ad valorem taxes and assessments levied or imposed on the Syracuse Family Fun Center, any of the improvements, and any personal property on site shall be paid annually by the Developer or current owner before the delinquency date which is currently set by Utah Code §59-2-1331 as December 1. The Developer shall have the right to protest or appeal the amount of Assessed Taxable Value and taxes levied against the Syracuse Family Fun Center Property by the County Assessor, State Tax Commission or any lawful entity authorized by law to determine the ad valorem taxes against the Syracuse Family Fun Center site, the improvements, personal property on the Syracuse Family Fun Center site, or any portion thereof in the same manner as any other taxpayer as provided by law. The Developer shall, however, notify the Agency in writing within ten (10) calendar days of the Developer's or then current property owner's filing of any protest or appeal of such assessment determination or taxes and provide a copy to the Agency of any protest or appeal of such assessment and information submitted as part of the protest or appeal. In addition, the Developer shall give to the Agency written notice at least fifteen (15) calendar days prior to the time and date of such protest or appeal is to be heard. The Agency shall have the right, without objection by the Developer, to appear at the time and date of such protest or appeal and to present oral or written information or evidence in support of, or objection to the amount of assessment or taxes which should or should not be assessed against the real or personal property of the Syracuse Family Fun Center site. However, if the Assessed Taxable Value as requested by the Developer is at or above the level which is

contemplated or estimated in this Agreement, then the Agency shall not object to Developer's protest or appeal.

E. Developer hereby agrees to reasonably cooperate with Syracuse Parks and Recreation Department, Syracuse High School, and the Davis County School District to seek out and provide opportunities to residents and students for programs uniquely available to communities with swimming pools. For purposes of this paragraph, "reasonably cooperate" refers only to availability of the facilities and the schedules of activities. "Reasonably cooperate" does not contemplate pricing or payments to use the facilities.

ARTICLE II

AGENCY OBLIGATIONS AND UNDERTAKINGS

Section 2.1 Agency Rebate to Developer. The Agency has created the Project Area for improvements related to the Syracuse Town Center. In consideration of the Developer's performance of its obligations under this Amended Agreement, and subject to the conditions, terms and limitations set forth in this Amended Agreement, including those set forth in Article I, the Agency agrees to rebate to the Developer no more than two million one hundred thirty thousand dollars ($2,130,000) of the ad valorem taxes received by the Agency paid on the real property within the Tax Increment Collection Area (as defined in the Redevelopment Plan) (the "Property Tax Rebate"), to be distributed as indicated in the table below:

Fiscal Year July 1 Jun 30	Projected taxes received by Agency	% of tax increment received by Agency	Rebate amount to Developer
FY 2013	$266,454.47	80%	$300,000.00
FY 2014	$258,460.84	80%	$96,000.00
FY 2015	$320,739.01	80%	$168,000.00
FY 2016	$311,116.84	80%	$168,000.00
FY 2017	$301,783.34	80%	$168,000.00
FY 2018	$274,434.22	75%	$168,000.00
FY 2019	$266,201.20	75%	$168,000.00
FY 2020	$258,215.16	75%	$96,000.00
FY 2021	$250,458.71	75%	$90,000.00
FY 2022	$242,954.64	75%	$90,000.00
FY 2023	$219,954.94	70%	$84,000.00
FY 2024	$213,356.29	70%	$84,000.00
FY 2025	$206,955.60	70%	$72,000.00
FY 2026	$200,746.96	70%	$72,000.00
FY 2027	$194,724.53	70%	$60,000.00
FY 2028	$161,899.53	60%	$60,000.00
FY 2029	$157,042.55	60%	$60,000.00
FY 2030	$152,331.33	60%	$48,000.00
FY 2031	$147,761.33	60%	$48,000.00
FY 2032	$143,328.49	60%	$30,000.00
TOTAL	$4,548,929.91	N/A	$2,130, 000.00

A. Projected taxes received is an estimate. The projected taxes received is an estimate based on several assumptions, including but not limited to the following: Davis County will assess an increased value to the Syracuse Family Fun Center site, including the neighboring property owned by Developer, of at least six million dollars ($6,000,000.00) based on Expansion as defined in Section 1.1(B); the tax rates will stay the same over the next twenty years; and property values will depreciate at a rate of 5 percent per year. Several variables will affect the tax amount received by the Agency and, except for the rebate payment in Fiscal Year 2013, in no case shall the Agency provide a rebate payment to Developer greater than the amount the Agency receives for the project

area in any given fiscal year.

B. Rebate to Developer. In no case shall the rebate payments to Developer exceed the annual or total Syracuse Family Fun Center portions identified above, a maximum total sum of two million one hundred thirty thousand dollars ($2,130,000.00), regardless of the amount of taxes received by the Agency. In the event the increased assessment of the Syracuse Family Fun Center based on Expansion is less than six million dollars for fiscal year 2015, the total rebated funds to Developer shall be decreased. In the event the Agency receives less than the projected taxes for the project area as identified herein, the rebated funds to Developer shall be decreased. The decreased rebate amount shall be determined by the following equations.

a. In case of an assessed increased value based on Expansion of less than six million dollars, the proportion of the identified rebate amount shall be determined by dividing the product of three hundred fifty five thousandths and the increase in assessed value between Fiscal Years 2013 and 2015 by two million one hundred thirty thousand, or (Increase Assessed Value x .355)/2,130,000= proportion of total identified rebate which Developer shall receive. For example, if the assessed increased value based on Expansion is $5,000,000.00 then Developer would only receive a proportion of .8333 of the maximum possible rebate of $2,130,000.00, which is $1,775,000.00.

b. In case of the Agency receiving less than the projected taxes for the project area in any given year, the proportion of the identified rebate amount shall be determined by dividing the actual received taxes for the project area by the projected received taxes for the project area, or actual taxes received / projected taxes received = proportion of identified rebate which Developer shall receive.

C. Public Financing. The Agency, as an inducement to the Developer to expand the Syracuse Family Fun Center in accordance with this Amended Agreement, shall provide the Property Tax Rebate as described above. The Agency has determined that without public participation, land acquisition and public infrastructure costs create a significant barrier to attracting private capital and investment. Beginning in fiscal year 2015, the dollar amount rebated to Developer by the agency will be exclusively dependent upon the available tax increment provided to the Agency by the Project Area. At the time that the Developer has been rebated a total value of two million one hundred thirty thousand dollars ($2,130,000) or the appropriate proportion based on the calculations herein, all further rebates to Developer shall cease under this Amended Agreement.

D. Payments of Rebate in Fiscal Year 2013. The total costs related to the Syracuse Family Fun Center Expansion are estimated at five million dollars ($5,000,000.00). The Developer has provided verification that $5,000,000.00 of private financing has been secured, which is attached hereto as Exhibit D. Upon entry into this Amended Agreement by all parties, the Agency shall immediately pay Developer a onetime payment of one hundred thousand dollars ($100,000.00). The Agency shall also retain two hundred thousand dollars ($200,000.00) to be used by the Agency to pay the Anticipated Fees for Expansion to Syracuse City and other government agencies. If the total assessed fees exceed $200,000.00, Developer shall be responsible to pay all additional fees beyond that amount.

E. Payments of Rebate in Subsequent Years. For each fiscal year after Fiscal Year 2013, the Agency shall provide the rebate payment as calculated and described herein on or before April 1. The parties ~~agree~~ understand that for Fiscal Year 2014, the Agency's received tax increment will not include any increased value based on the Expansion. Accordingly, Developer's entitlement to a rebate payment in Fiscal Year 2014 shall depend exclusively on whether Developer's construction of Expansion is substantially completed ~~and occupancy is granted on or before~~ by December 31, 2013. If construction is substantially complete ~~and all certificates of occupancy required by law have been issued on or before~~by December 31, 2013, the Agency shall issue Developer a rebate payment of $96,000.00 for fiscal year 2014. If Developer has not substantially completed construction ~~or if all certificates of occupancy required by law have not been issued on or before~~by December 31, 2013, then the Agency is not obligated under this Amended Agreement to issue Developer any rebate payment for fiscal year 2014. Agency understands that the receipt of the $96,000 by Developer is essential for the operation of the Syracuse Family Fun Center expansion, and therefore if the Agency withholds the payment, the Developer will likely be unable to continue operation of the Expansion facilities. Accordingly, whether the construction is "substantially complete" for purposes of this paragraph will be liberally construed in favor of Developer. Rebate payments in subsequent years after fiscal year 2014 will be calculated according to subsection 2.1.B herein.

F. Issuance of Permits/Approval of Site Plan. The Agency will cooperate with the Developer, as requested in obtaining necessary approval of the Site Plan, zoning approval, and the issuance of building permits, and other planning requirements necessary for the Developer to construct the improvements outlined in this Amended Agreement, however all approval shall be in compliance with city, state, and federal law. The Agency reserves the right to review and approve the conceptual and final plan and drawings for the Syracuse Family Fun Center. The Agency agrees any approval required by the Agency shall not be unreasonably withheld, conditioned or delayed.

G. Sole Source of Agency's Funding. The Developer understands and agrees that the only source of monies available to the Agency to pay its obligations hereunder are tax increment monies actually received by the Agency from the Town Center Project Area based upon the value of the improvements to be constructed by the Developer. Only available tax increment monies from the Project Area, less any negative tax increment from the Project Area deducted by the County Assessor's office, will be available to the Agency to meet said obligations. In the event the Agency, in good faith, incurs other obligations or dedicates funds for projects outside this Amended Agreement and does not have funds to make the rebate payment through no fault of the Developer, the Agency may, with the approval of Developer, make a reduced rebate payment of no less than 75% of the total amount of the rebate owing to Developer. Agency agrees that any rebate amount not paid by the due date will be paid in full by the date of the next payment, and it will not make reduced payments for two consecutive years. Agency understands that the Developer's decision to proceed with the Expansion is based entirely upon the rebate payments, and any delay or failure of the Agency to make a rebate payment will likely result in Developer's inability to continue operations of the Syracuse Family Fun Center and related Expansion facilities. Therefore, time is of the essence for the payment of the rebate payments.~~will make up the deficiency between what was paid and what was calculated as owed to the developer in later years, until the deficiency has been paid in full.~~

ARTICLE III: CONSTRUCTION REQUIREMENTS

Section 3.1 Issuance of Permits. The Developer shall have the sole responsibility of obtaining all necessary permits and approvals to construct the improvements and shall make application for such permits and approvals directly to Syracuse City and other appropriate agencies and departments.

Section 3.2 Times for Construction. The Developer agrees that it shall promptly begin and diligently prosecute to completion the expansion of the Syracuse Family Fun Center and that such construction shall be completed no later than December 31, 2013 unless such date is extended by the Agency, or the Developer is unable to timely undertake or complete the Improvements because of any of the reasons set forth in the Amended Agreement herein. The Developer understands and agrees that time is of the essence of this Amended Agreement. Developer acknowledges and agrees that unless the Project is timely constructed and completed and becomes part of Davis County's final assessment tax roll on January 1, 2014, the available tax increment necessary to pay the Agency obligations will not materialize, and the Agency would be unable to receive and pay its obligations under this Amended Agreement.

Section 3.3 Access to Site. The completion of the Project and the work of the Developer shall be subject to inspection by representatives of the Agency. The Developer shall permit access to the Site by the Agency for purposes of inspection, and, to the extent necessary, to carry out the purposes of this and other sections or provisions of this Amended Agreement. Inspections shall be made during reasonable business hours upon three business days notice and shall be made in accordance with standard project safety guidelines.

ARTICLE IV: REMEDIES

Section 4.1 Default by Developer; No Construction. If the Developer defaults or breaches any of its obligations contained in this Amended Agreement and does not timely cure such default or breach as provided in this Amended Agreement after the expiration of all applicable notice and cure periods, then the Agency may terminate this Amended Agreement. The Agency may also seek repayment of any paid portion of the tax increment identified herein by all means available.

Section 4.2 General Remedies; Agency and Developer. Subject to the other provisions of this Article V, in the event of any default or breach of this Amended Agreement or any of its terms, covenants or conditions by any Party hereto, such Party shall, upon written notice from the other Party, proceed immediately to cure or remedy such default or breach, and in any event, do so within thirty (30) calendar days after receipt of such notice or if such default or failure is of a type that cannot reasonably be cured within such thirty (30) day period, within sixty (60) days provided that such cure is commenced within a thirty (30) day period and diligently pursue to completion, unless a longer period of time is agreed to by the Parties in writing. In case such action is not taken, or diligently pursued, or the default or breach shall not be cured or remedied within the time periods provided above, the aggrieved Party may institute such proceedings as may be necessary or desirable, at its option, to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the Party in default which is not cured within the time limits contained in this Amended Agreement, the non-defaulting Party may, at its option, take such action as allowed by law, in equity and/or provided for in this Amended Agreement. Any delay by a Party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Article shall not operate as a waiver of such rights.

Section 4.3 Extensions by Agency. The Agency may in writing extend the time for the Developer's performance of any term, covenant or condition of this Amended Agreement or permit the curing of any default upon such terms and conditions as may be mutually agreeable to the parties provided, however, that any such extension or permissive curing of any particular default shall not operate to release any of the Developer's obligations nor constitute a waiver of the Agency's rights with respect to any other term, covenant or condition of this Amended Agreement or any other default in, or breach of, this Amended Agreement.

Section 4.4 Remedies Cumulative/Non-Waiver. The rights and remedies of the Parties to this Amended Agreement, whether provided by law or by this Amended Agreement, shall be cumulative, and the exercise by any party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other Party, except as otherwise provided in Section 4.1. No waiver made by any Party with respect to the performance, or manner or time thereof, or any obligation of the other Party or any condition to its own obligation under this Amended Agreement shall be considered a waiver of any rights of the Party making the waiver with respect to the particular obligation of the other Party or condition to its own obligation beyond those expressly waived and to the extent thereof, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party.

ARTICLE V: MISCELLANEOUS PROVISIONS

Section 4.5 Government Records Access and Management Act. This Amended Agreement and all documents referenced in this Amended Agreement or made a part of hereof, including without limitation, all documents, evaluations or assessments provided by the Developer and/or relied upon by the Agency in entering into or performing this Amended Agreement, shall be subject to the provisions of the Utah Government Records Access and Management Act ("GRAMA").

Section 4.6 Party Representatives.

(a) The Agency hereby appoints the City Manager as the Agency representative to assist in the administrative management of this Amended Agreement and to coordinate performance of obligations by the Developer and the Agency under this Amended Agreement.

(b) The Developer hereby appoints Ed Gertge to act as its representative in connection with its performance of this Amended Agreement unless and until another representative is designated by written notice to the Agency. Said designated representative shall have the responsibility of working with the Agency to coordinate the performance of the Developer

and obligations under this Amended Agreement.

Section 4.7 Standard of Performance/Professionalism. The Developer acknowledges the standard of performance and professionalism required in the performance of its obligations under this Amended Agreement. The Developer agrees to perform its obligations under this Amended Agreement with the level of respect and deference to the community and its financial contribution. ~~The Developer further agrees that it will not accept any fee or financial remuneration from any person or entity other than the Agency for its performance under this Amended Agreement.~~ If Developer obtains additional funding from other agencies or entities, Developer will notify Agency. However, Developer will only accept funding from other agencies or entities if the receipt of such funding does not impede Developer from performing under this Agreement.

Section 4.8 Governmental Immunity. The Developer acknowledges that the Agency is a body Corporate and politic of the State of Utah, subject to the Utah Governmental Immunity Act, Utah Code Ann. Sections 63-30d101, et. seq. (the "Act"). The Developer further acknowledges and agrees that nothing contained in this Amended Agreement shall be construed in any way, to modify (whether to increase or decrease), the limits of liability set forth in that Act or the basis for liability as established in the Act. Neither the Act nor any other provision of this Agreement will preclude enforcement of this Agreement, or prevent Agency from performing its obligations under this Agreement.

Section 4.9 Indemnity. The Developer agrees to indemnify, hold harmless and defend the Agency, its officers, agents and employees from and against any and all losses, damages, injuries, liabilities, and claims, including claims for personal injury, death, or damage to personal property or profits and liens of workmen and material men (suppliers), however allegedly caused, resulting directly or indirectly from, or arising out of, the construction, development, operation or use of the Subject Property, breach of this Amended Agreement on the part of the Developer, or the negligent acts or omissions by the Developer or their agents, representatives, officers, employees or subcontractors in the performance of this Amended Agreement; provided, there is excluded from this Paragraph, and the Developer shall not be obligated to indemnify, hold harmless or defend the Agency against any losses, damages, injuries, liabilities, and claims arising from the negligence or willful misconduct of the Agency, or its officers, agents and employees.

Section 4.10 No Agency. No agent, employee or servant of the Developer or the Agency is or shall be deemed to be an employee, agent or servant of the other Party. None of the benefits provided by any Party or by the Developer to its employees, including but not limited to worker's compensation insurance, health insurance and unemployment insurance, are available to the employees, agents, contractors or servants of the other Party or the Developer. The Parties shall each be solely and entirely responsible for their

respective acts and for the acts of their respective agents, employees, contractors and servants throughout the term of this Amended Agreement. The Parties shall each make all commercially reasonable efforts to inform all persons and entities with whom they are involved in connection with this Amended Agreement to be aware that the Developer is an independent contractor.

Section 4.11 Ethical Standards. The Developer represents that they have not: (a) provided an illegal gift or payoff to any officer or employee of the Agency, or former officer or employee of the Agency, or to any relative or business entity of a officer or employee of the Agency, or relative or business entity of a former officer or employee of the Agency; (b) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards set forth in State statute; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, any officer or employee of the Agency or former officer or employee of the Agency to breach any of the ethical standards set forth in State statute or the City ordinances.

Section 4.12 No Officer or Employee Interest. It is understood and agreed that no officer or employee of the Agency has or shall have any pecuniary interest, direct or indirect, in this Amended Agreement or the proceeds resulting from the performance of this Amended Agreement. No officer, manager, employee or member of the Developer or any member of any of such persons' families shall serve on any City board or committee or hold any such position which either by rule, practice, or action nominates, recommends, or supervises the Developer's operations, or authorizes funding or payments to the Developer. If they currently hold such positions, they will disclose their affiliation with the developer, and will abstain from making any input, recommendation, or decision regarding the Developer.

~~Section 4.13 Public Funds and Public Monies.~~

~~(a) For purposes hereof, "Public Funds" and "Public Monies" mean monies, funds, and accounts, regardless of the source from which they are derived, that are owned, held, or administered by the state or any of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories, or other similar instrumentalities, or any county, city, school district, political subdivision, or other public body. The terms also include monies, funds or accounts that have been transferred by any of the aforementioned public entities to a private contract provider for public programs or services. At this time, the Developer does not anticipate providing public programs or services. Nevertheless, The Developer understands, acknowledges and agrees that said funds shall maintain the nature of Public Funds while in the Developer's possession.~~

Comment [JRB1]: The rebate payment does not have the character of public funds once it is received by the Developer. This Agreement should not be construed as imposing an obligation upon Developer for safeguarding public funds, so this provision should be removed to avoid ambiguity or uncertainty as to the character of the funds used by Developer.

~~(b) Notwithstanding any term or provision of this Amended Agreement to the contrary, the Developer, as a recipient of Public Funds and Public Monies pursuant to this Amended Agreement and the other agreements related hereto, expressly understands that it and its officers, managers, members and employees are obligated to receive, keep safe, transfer, disburse and use these Public Funds and Public Monies solely as authorized by law and this Amended Agreement. The Developer understands that its officers, managers, members and employees may be criminally liable under Utah Code Ann. § 76-8-402, for misuse of Public Funds or Public Monies. The Developer expressly understands that the Agency shall monitor any expenditure by the Developer of Public Funds contemplated by this Amended Agreement and shall impose and enforce any and all such requirements in connection therewith as may be required by applicable law. The Developer further expressly understands that the Agency may withhold Public Funds or require repayment of Public Funds from the Developer for contract noncompliance, failure to comply with directives regarding the use of Public Funds, or for misuse of Public Funds or Public Monies.~~

Section 4.14 Compliance with Laws. Each Party agrees to comply with all federal, state and local laws, rules and regulations in the performance of its duties and obligations under this Amended Agreement. Any violation by any Party of applicable law shall constitute an event of default under this Amended Agreement and such defaulting Party shall be liable for and indemnify, hold harmless and defend the other Party from and against any and all liability arising out of or connected with the violation. The Developer is solely responsible, at its expense and cost, to acquire, maintain and renew during the term of this Amended Agreement, all necessary permits and licenses required for its lawful performance of its duties and obligations under this Amended Agreement. For purposes of this Amended Agreement, the term "applicable law" or any similar term shall not include an ordinance, resolution, regulation, rule or procedure adopted or enacted by the Agency after the satisfaction of the conditions set forth in Article III, above, which would prevent the Agency's performance of its obligations under this Amended Agreement.

Section 4.15 Non-Discrimination. The Developer, and all persons acting on its behalf, agree that they shall comply with all federal, state and City laws, rules and regulations governing discrimination and they shall not discriminate in the engagement or employment of any professional person or any other person qualified to perform the services required under this Amended Agreement.

Section 4.16 Labor Regulations and Requirements. The Developer agrees to comply with all applicable provisions of Title 34 of the Utah Code, and with all applicable federal, state and local labor laws. The Developer shall indemnify and hold the Agency harmless from and against any and all claims for liability arising out of any violation of this Paragraph or the laws referenced by the Developer, its agents or employees.

Section 4.17 Assignment. The Developer shall not assign or transfer its duties of performance nor its rights to compensation under this Amended Agreement, without the prior written approval of the Agency, which shall not be unreasonably withheld, conditioned or delayed. In addition, if the assignment or transfer of the rights under this Amended Agreement is to a person or entity which acquires substantially all of the assets of the Developer, the burden of proof shall be on the Agency to establish that its disapproval is reasonable. If the Agency withholds such approval, it shall specify in reasonable written detail the basis for the disapproval. The Agency reserves the right to assert any claim or defense it may have against the Developer and against any assignee or successor-in-interest of the Developer. Notwithstanding the foregoing, the surviving entity in any merger, consolidation or reorganization in which the Developer is a participant shall constitute a permitted assignment ("Permitted Assignment") and shall not require prior approval of the Agency. The Developer shall provide written notice of a Permitted Assignment promptly after the same occurs.

Section 4.18 Notices. All notices to be given under this Amended Agreement shall be made in writing and shall be deemed given upon personal or hand delivery, by confirmed facsimile transmission, by email, upon the next business day immediately following the day sent if sent by overnight express carrier, or upon the third business day following the day sent if sent postage prepaid by certified or registered mail, return receipt requested, to the Parties at the following addresses (or to such other address or addresses as shall be specified in any notice given):

AGENCY: Redevelopment Agency of Syracuse City
1979 West 1900 South
Syracuse, Utah 84075
Attention: City Manager
Fax: (801) 825-3001

DEVELOPER: Syracuse Family Fun Center, LLC.
1806 South 2000 West
Syracuse, Utah 84075
Attention: Ed Gertge
Fax: (801) 779-2693 with a simultaneous copy to: Justin Baer, Attorney for Developer,

136 East South Temple, Suite 1400
Salt Lake City, Utah 84111

Section 4.19 Time. The Parties agree that time is of the essence in the performance of this Amended Agreement and each and every term and provision hereof.

Section 4.20 Entire Agreement. The Agency and the Developer acknowledge and agree that this Amended Agreement, and each of the other agreements referred to in this Amended Agreement, constitutes the entire integrated understanding between the Agency and the Developer, and that there are no other terms, conditions, representations or understanding, whether written or oral, concerning the rights and obligations of the Parties to this Amended Agreement, except as set forth in this Amended Agreement. This Amended Agreement may not be enlarged, modified or altered, except in writing, signed by the parties.

Section 4.21 Governing Law. It is understood and agreed by the Parties hereto that this Amended Agreement shall be governed by the laws of the State of Utah and the Ordinances of the City, both as to interpretation and performance. All actions, including but not limited to court proceedings, administrative proceedings, arbitration and mediation proceedings, shall be commenced, maintained, adjudicated and resolved within the jurisdiction of the State of Utah.

Section 4.22 Estoppel Certificate. Within ten (10) business days after written request of Developer or its lender Agency shall provide an estoppel certificate to Developer, a prospective purchaser or an existing prospective lender certifying that this Amended Agreement is in full force and effect, that no defaults exist (or specifying any defaults which do exist) and providing such other factual information pertaining to this Amended Agreement as Developer, such lender or a prospective purchaser of part or all of the Project may reasonably request. The Developer shall pay any actual, out-of-pocket reasonable attorney's fees incurred by the Agency in connection with the foregoing.

Section 4.23 Miscellaneous. In addition to the foregoing, the parties to this Amended Agreement agree as follows:

(a) No waiver of any of the provisions of this Amended Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed, in writing, by the party making the waiver.

(b) The recitals and the exhibits attached to this Amended Agreement shall be and hereby are incorporated in and an integral part of this Amended Agreement by this reference.

(c) This Amended Agreement shall be binding upon, and shall inure to the benefit of the parties to it and their respective successors and assigns.

(d) In the event that any provision of this Amended Agreement shall be held invalid and unenforceable, such provision shall be severable from, and such invalidity and unenforceability shall not be construed to have any effect on, the remaining provisions of this Amended Agreement.

(e) The Parties agree to use reasonable diligence to fulfill their respective obligations under this Amended Agreement at all times that this Amended Agreement is in effect.

(f) Nothing in this Amended Agreement is or shall be intended to provide or convey any actionable right or benefit to or upon any person or persons other than the Developer, its lender, and the Agency. Except as otherwise specifically provided in this Amended Agreement, each party shall bear its own costs and expenses (including legal and consulting fees) in connection with this Amended Agreement and the negotiation of all agreements, including without limitation the Amended Agreement, and preparation of documents contemplated by this Amended Agreement.

(g) All obligations of the Parties set forth in this Amended Agreement which are contemplated to be performed or satisfied after the Closing in accordance herewith shall survive the Closing and the delivery of any instrument of conveyance made in connection therewith.

(h) Except as otherwise provided in this Amended Agreement, whenever a period of time is in this Amended Agreement prescribed for action to be taken by a Party, said Party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to a Force Majeure Event; for purposes of this Amended Agreement, "Force Majeure Event" means any act or event, whether foreseen or unforeseen, that meets all three of the following tests:

(i) The act or event prevents a Party, in whole or in part, from:
(A) performing its obligations under this Amended Agreement or another specified agreement; or

(B) satisfying any conditions to the obligations under this Amended Agreement.
(ii) The act or event is beyond the reasonable control of and not primarily the fault of a Party.

(iii) A Party has been unable to avoid or overcome the act or event by the exercise of commercially reasonable due diligence.

(iv) In furtherance of such definition, and not in limitation of such definition, each of the following acts and events is deemed to be a Force Majeure Event: war, harsh weather (including, but not limited to, snow, frost, flood, lightning, drought, earthquake, fire, volcanic eruption, landslide, hurricane, cyclone, typhoon, tornado), explosion, civil disturbance, act of God or the public enemy, terrorist acts, military action, epidemic, famine or plague, shipwreck, action of a court or public authority, or strike, work-to-rule action, go-slow or similar labor difficulty, and such failure, standing alone, prevents Developer from fulfilling one or more of its obligations under this Amended Agreement. The foregoing list of Force Majeure Events is not exhaustive, and the principle of ejusdem generis is not to be applied in determining whether a particular act or event qualifies as a Force Majeure Event. Notwithstanding the foregoing, a Force Majeure Event shall not mean or include economic hardship, changes in market conditions, insufficiency of revenues or funds, or the financial condition of a Party, or the sale, transfer, liquidation, insolvency, failure, secession, disbandment, dissolution or termination of any person owning any interest in a Party.

IN WITNESS WHEREOF, the Parties have executed this Amended Agreement as of the day and year recited above.

DEVELOPER:

SYRACUSE FAMILY FUN CENTER LLC, a Utah limited liability company

By:

Name:

Title:

STATE OF UTAH)

) ss.

COUNTY OF DAVIS)

On _____, 2013, personally appeared before me _____, who being by me duly sworn did say that he is the _____ of SYRACUSE FAMILY FUN CENTER LLC, and that said instrument was signed on behalf of said limited liability company.

NOTARY PUBLIC

AGENCY:

REDEVELOPMENT AGENCY OF SYRACUSE CITY

By:

Name:

Title:

APPROVED AS TO LEGAL FORM:

By:

STATE OF UTAH)

) ss.

COUNTY OF DAVIS)

On _____, 2013, personally appeared before me _____, who being by me duly sworn did say that he is the _____ of the REDEVELOPMENT AGENCY OF SYRACUSE CITY, and that said instrument was signed on behalf of the Redevelopment Agency of Syracuse City, by authority of law.

NOTARY PUBLIC