

STATE OF NORTH CAROLINA  
COUNTY OF CABARRUS

ECONOMIC DEVELOPMENT  
GRANT AGREEMENT  
(Simon Property Group/Merlin  
Entertainments)

THIS ECONOMIC DEVELOPMENT GRANT AGREEMENT (the “Agreement”) is made and entered as of the \_\_\_\_ day of \_\_\_\_\_, 2013, by and between CABARRUS COUNTY, a body politic and political subdivision of the State of North Carolina (“County”), and SIMON PROPERTY GROUP (“Simon”).

### RECITALS

1. Simon is considering upfitting and constructing a 30,000 square foot aquarium facility for Merlin Entertainments in the County (the “Facility”) at an estimated cost of Ten Million Dollars (\$10,000,000.00) (the “New Investment”), creating potential new jobs within the County.

2. On October 28, 2008 as modified on September 21, 2009, the County had previously adopted an Industrial Development Grant Program (the “Program”), a copy of which is attached as Exhibit A and incorporated by reference, the public purpose of which is to encourage economic growth and development within the County.

3. Cabarrus Economic Development, Inc. (the “EDC”) has reviewed the Simon application for inclusion in the Program.

4. Simon determined that the location of its Facility on its existing real property at Concord Mills Mall in Concord, North Carolina (the “Site”) in the County is a suitable location for the placement of the Facility and the New Investment.

5. To induce Simon to make the New Investment by constructing the Facility at the Site and to assist Simon in that activity, the County has offered incentives to Simon essentially consistent with the Program.

In consideration of the mutual promises set forth in this Agreement and other good and valuable considerations, the receipt and sufficiency of which are acknowledged by the parties, the County and Simon agree as follows:

### COVENANTS, TERMS and CONDITIONS

1. Incentive Grants. Pursuant to the Program, the County shall, in accordance with and as provided by this Agreement, pay to Simon an incentive grant (the “Grants”) in an amount equal to 85 percent of the increase in property tax paid by Simon upon the actual assessed ad valorem tax value increase occasioned by construction of the Facility at the Site. The County shall pay Grants to Simon as follows:

(a) For a period of four (4) consecutive years, the County shall make a Grant to Simon based upon the increased ad valorem tax value of the New Investment in the Facility at the Site.

(b) At no time shall the aggregate amount of the Grants paid to Simon exceed \$238,000.00 pursuant to this Agreement.

(c) Simon may elect the initial year in which the Grants identified in Paragraphs 1(a) shall commence and shall so notify the County in writing; provided that the initial grant year shall commence no later than twelve (12) months after the qualifying equipment or construction has been released from an in-process stage to a fully-operational stage.

The process of assessment of the tax value of the New Investment, the calculation of the Grant amounts and the payment of the Grants are more particularly described in the Program, which provisions are part of this Agreement, except as specifically modified by this Agreement. The County hereby confirms that it has approved the application of the Program to the Facility and has authorized the Grants and other terms of this Agreement. The County and Simon further confirm that this Agreement constitutes the “formal agreement” required under the Program and that the terms of this Agreement and those contained in the attached description of the Program shall govern the application of the Program to the Facility. Simon agrees to forward to the EDC and the County Manager, at the time it makes its annual property tax payments, a copy of the property tax payment receipt, which must be requested from the Tax Collector and the Cabarrus County Tax Assessor’s statement (the “Assessor’s Statement”) of the valuation of the New Investment made in the Facility. The Assessor’s Statement may be issued only after:

(a) Simon has completed the Assessor’s questionnaire and other substantiating corroborating documentation identified in the Program to the satisfaction of the Assessor; and

(b) The Assessor has had the reasonable opportunity to review, evaluate and verify a value for the New Investment.

The County agrees that the Grant payments to be made to Simon during the respective term will be made within thirty (30) days after payment by Simon of all property taxes due to the County and the delivery of the Assessor’s Statement.

2. State and Town Incentives. The County agrees to assist Simon in obtaining any incentives, grants and programs that may be or become available from the State of North Carolina and/or the City of Concord; however, the County shall not be responsible for obtaining or paying any State or City incentives to Simon, except as otherwise provided by law.

3. Validity of Incentives. As stated in the Program, no change in the Program after the date of this Agreement shall apply to the provisions of this Agreement or to the New Investment or the Facility (as it may be expanded or modified) unless otherwise agreed to in writing by the County and Simon. In the event one or more lawsuits or other proceedings are brought against the County or any County elected official challenging the legality of this Agreement or any provision, the County shall defend against any and all such lawsuits or other proceedings, including appealing any adverse judgment to the highest appellate court of the State of North Carolina. In the event that any of the incentives or other agreements of the County are determined to be invalid, the County agrees that it will, to the extent permitted by law, provide Simon with incentives of substantially equal value pursuant to one or more replacement incentive grant programs.

4. Noncompliance by Simon. Simon acknowledges that at any time during the period that a Grant is paid or is to be paid to Simon by County, if Simon and/or Merlin Entertainments has (a) failed to make the New Investment in the Facility, (b) fails to have a fully operational Facility for a period of ten (10) years or (c) fails to comply with any provision of this Agreement or any provision of the Program applicable to this Agreement, then Simon shall be in default of this Agreement. In any such event, the County may at its option terminate this Agreement and no further Grants shall be paid to Simon.

5. Miscellaneous.

a) Simon acknowledges and understands that all the provisions of the Program are considered enforceable parts of this Agreement and that it must comply with all such provisions in order to be eligible for and remain eligible for the Grants.

b) This Agreement and the Grants provided by it may not be assigned by Simon without the prior written consent of County.

c) Notices. All notices, certificates or other communications required by or made pursuant to this Agreement shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage prepaid or sent by facsimile (confirmed by the party providing notice) as follows:

The County: Michael K. Downs  
Cabarrus County  
County Manager  
65 Church Street, SE  
Post Office Box 707  
Concord, North Carolina 28026  
Facsimile Number: (704) 920-2820  
Telephone Number: (704) 920-2100

E-Mail: [mkdowns@CabarrusCounty.US](mailto:mkdowns@CabarrusCounty.US)

Copy to: Richard M. Koch  
County Attorney  
3220-201 Prosperity Church Road  
Charlotte, North Carolina 28269  
Facsimile Number: (704) 503-5707  
Telephone Number: (704) 503-5700  
E-Mail: [kochlaw@CTC.net](mailto:kochlaw@CTC.net)

Simon:  
Facsimile Number:  
Telephone:  
E-Mail:

The County or Simon may, by advance written notice, designate any further or different addresses to which notices, certificates, requests or other communications shall be sent.

(d) Binding Effect. This Agreement shall inure to the benefit of and is binding upon the County and Simon and their respective successors and assigns.

(e) Amendments, Changes and Modifications. Except as otherwise provided in this Agreement, this Agreement may not be amended, change, modified or altered except by written agreement signed by both parties.

(f) Severability. If any court or competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall no invalidate or render unenforceable any other provision of this Agreement.

(g) Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such fully-executed counterpart.

(h) Governing Law. This Agreement is governed by and shall be construed in accordance with the laws of the State of North Carolina, without regard to conflict of law principles.

(i) Captions. The captions or headings used throughout this Agreement are for convenience only and in no way define, or describe the scope or intent of any provision of this Agreement.

(j) Confidentiality. Simon and the County acknowledge that certain Exhibits to this Agreement, and/or other information provided by Simon and Merlin Entertainment pursuant to this Agreement, may contain their confidential information. Accordingly, the County will maintain such information in confidence, unless its release is consented to in writing by both Simon and Merlin Entertainment or required by law.

(k) Construction. The parties acknowledge and stipulate that this Agreement is the product of mutual negotiation and bargaining. As such, the doctrine of construction against the drafter shall have no application to this Agreement.

IN WITNESS, the parties have executed this Agreement as of the date first written above.

SIMON PROPERTY GROUP

By: \_\_\_\_\_  
\_\_\_\_\_ (Title)

CABARRUS COUNTY

By: \_\_\_\_\_  
Michael K. Downs, County Manager

Attest:  
By: \_\_\_\_\_  
Megan Smit, Clerk

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

\_\_\_\_\_  
Ann Wilson  
Finance Director