

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the City of Lewisville, Texas, a home rule municipality duly acting by and through its City Manager, (hereinafter called "City"), and TW Realty Advisors, Inc. (hereinafter called "the Company"), and both entities collectively referred to as Parties in this Agreement ("Parties").

WITNESSETH:

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code (hereinafter referred to as "Statute"), the City adopted an Economic Incentive Policy for making economic development incentives and grants on May 20, 2019 (hereinafter referred to as "the Policy Statement"); and

WHEREAS, the Policy Statement constitutes appropriate guidelines and criteria governing economic development agreements to be entered into by the City as contemplated by the Statute; and

WHEREAS, in order to maintain and/or enhance the commercial economic and employment base of the Lewisville area to the long-term interest and benefit of the City, in accordance with said Statute, the City desires to enter into this Agreement; and

WHEREAS, on the 5th day of August 2019, the City Council of the City of Lewisville, Texas, authorized this Agreement pursuant to Chapter 380 of the Texas Local Government Code ("Chapter 380"); and

WHEREAS, the Company currently owns property at 2505 S. Stemmons Freeway ("Premises") (more fully described in Attachment "A", attached hereto and made a part hereof) that is the subject of this Agreement; and

WHEREAS, the Company agrees that a minimum of FIFTEEN MILLION, TWO-HUNDRED AND FIFTY THOUSAND DOLLARS (\$15,250,000.00) shall be invested in Property Improvements (hereinafter defined) and Business Personal Property (hereinafter defined); and

WHEREAS, the City desires to provide, pursuant to Chapter 380, incentives to the Company to develop the Premises; and

WHEREAS, the Company agrees to develop the Premises and repurpose one hundred forty-four thousand, five hundred and sixty-eight (144,568) square feet of the building into a two-story marketplace, which may include both restaurant and retail uses, with new independent tenants and Zion Market as the grocery anchor; and



WHEREAS, the Company agrees that a minimum of EIGHTEEN MILLION, NINE HUNDRED THOUSAND DOLLARS (\$18,900,000.00) in annual taxable sales at the Premises shall be maintained throughout the Term (hereinafter defined) of this Agreement; and

WHEREAS, the City finds that the administration of an economic development agreement to provide incentives to the Company, in return for developing the Premises would promote local economic development and stimulate business and commercial activity within the municipality and would directly establish a public purpose, and;

WHEREAS, the City has determined that this Agreement contains sufficient controls to ensure that the above-mentioned public purposes are carried out in all transactions involving the use of public funds and resources in the establishment and administration of the Agreement.

NOW, THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the Parties do mutually agree as follows:

ARTICLE I TERM

1.1 This Agreement shall be effective on the date that this Agreement is executed by the Parties (“Effective Date”) and shall continue until December 30, 2027, as provided herein, unless sooner terminated in accordance with this Agreement or renewed in writing by both Parties.

ARTICLE II DEFINITIONS

2.1 Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“**Agreement**” has the meaning set forth in the introductory paragraph of this Agreement.

“**Annual Grant**” has the meaning set forth in section 4.1 of this Agreement.

“**Annual Grant Year**” means each consecutive twelve (12) month period, during the Term, beginning one calendar year from the date of Zion Market Substantial Completion (hereinafter defined). The first Annual Grant Year shall begin on a date certain in 2020, and the last Annual Grant Year shall begin on a date certain in 2022, for a total of three (3) Annual Grant Years, subject to the further provisions of this Agreement.

“**BPP Grant Year**” means a period, during the Term, beginning January 1 of the calendar year through and including the following December 31 of the calendar year, beginning in the year 2023. The first BPP Grant Year shall begin on January 1, 2023, and the last BPP Grant Year shall begin on January 1, 2027, for a total of five (5) BPP Grant Years, subject to the further provisions of this Agreement.

“**BPP Tax Grant**” has the meaning set forth in section 4.2 of this Agreement.

“**Business Personal Property**” means tangible personal property, equipment and fixtures, other than inventory or supplies, that is classified by the Denton Central Appraisal District as business personal property, that is added to the Premises.

“**City**” has the meaning set forth in the introductory paragraph of this Agreement.

“**Company**” has the meaning set forth in the introductory paragraph of this Agreement.

“**Effective Date**” means the date established in Article I of this Agreement.

“**Festival Grant**” has the meaning set forth in section 4.3 of this Agreement.

“**Force Majeure**” means any contingency or cause beyond the reasonable control of the Company, including without limitation, acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, governmental or de facto governmental action including, but not limited to, government actions pertaining to the determination of flood zones or FEMA actions (unless caused by acts or omissions of the Company), fire, explosion or flood, and strikes.

“**Marketplace Substantial Completion**” has the meaning set forth in section 3.1.2 of this Agreement.

“**Minimum Investment**” has the meaning set forth in section 5.1.3 of this Agreement.

“**Minimum Occupancy**” has the meaning set forth in section 5.1.2 of this Agreement.

“**Minimum Taxable Sales**” has the meaning set forth in section 5.1.4 of this Agreement.

“**Premises**” has the meaning set forth in the recitals of this Agreement.

“**Property Improvement(s)**” means all improvements fully described in Attachment “B”.

“**Required Use**” means use of the Property Improvements for the continuous operation of a marketplace, which may include restaurant and retail uses, on both the first and second floors of the Premises, subject to temporary cessations of such operations as a result of Force Majeure.

“**Term**” has the meaning set forth in Article I of this Agreement.

“**Zion Market Substantial Completion**” has the meaning set forth in Section 3.2.1 of this Agreement.

ARTICLE III GENERAL PROVISIONS

3.1 Commencement of Construction. As soon as practical after the Effective Date of this Agreement, the Company shall commence construction of the Property Improvements on the Premises in accordance with the City approved plans and in substantial conformance with Attachment “B”.

3.2 Completion of Construction.

3.2.1 The Company shall obtain a certificate of occupancy for the Property Improvements necessary for the operation of the Zion Market (“Zion Market Substantial Completion”) by December 31, 2019.

- (a) In the event of Force Majeure or if, in the reasonable opinion of the City Manager, the Company has made substantial progress toward Zion Market Substantial Completion or is diligently pursuing Zion Market Substantial Completion, the City Manager may grant additional time as may be required, in the sole and absolute discretion of the City Manager.
- (b) If Zion Market Substantial Completion is not achieved by December 31, 2019, this Agreement shall automatically terminate.

3.2.2 Certificates of occupancy for the remaining Property Improvements necessary for the operation of the marketplace at the Minimum Occupancy level (“Marketplace Substantial Completion”) shall be obtained within twelve (12) months of the Zion Market Substantial Completion.

- (a) In the event of Force Majeure or if, in the reasonable opinion of the City Manager, the Company has made substantial progress toward Marketplace Substantial Completion or is diligently pursuing Marketplace Substantial Completion, the City Manager may grant additional time as may be required, in the sole and absolute discretion of the City Manager.
- (b) If Marketplace Substantial Completion is not achieved within twelve (12) months of the Zion Market Substantial Completion date, this Agreement shall automatically terminate.

**ARTICLE IV
ECONOMIC DEVELOPMENT INCENTIVES**

4.1 Annual Grant. Subject to the continued satisfaction of the terms and conditions of this Agreement, the City agrees to provide to the Company an economic development grant, for each Annual Grant Year, if eligible, in an amount as set forth below (the “Annual Grant”).

<u>Annual Grant Year</u>	<u>Annual Grant Amount</u>
2020	\$200,000
2021	\$100,000
2022	\$100,000

4.1.1 The Annual Grant shall only be available if the Minimum Investment condition, as set forth in section 5.1.3, has been met. Failure to meet the Minimum Investment condition for an Annual Grant Year shall result in the loss of the Annual Grant for that Annual Grant Year but shall not adversely affect the Company’s right to



the Annual Grant for any other Annual Grant Year in which the Minimum Investment condition is satisfied.

4.1.2 The Annual Grant shall be paid on an annual basis. Each Annual Grant Year, prior to payment of such grant, the Company shall submit to the City, no later than thirty days after the beginning of the Annual Grant Year, a letter of request for payment. The Company agrees to make documentation available, upon written request by the City, to the City to evidence the satisfaction of the Minimum Investment condition, as set forth in section 5.1.3.

4.2 Business Personal Property Tax Grant. Subject to the continued satisfaction of the terms and conditions of this Agreement, the City agrees to provide to the Company, for each of the five (5) BPP Grant Years, if eligible, an economic development grant in an amount equal to the percentage set forth below of the business personal ad valorem property taxes owed and paid to the City on the Business Personal Property located at the Premises for each BPP Grant Year (“BPP Tax Grant”):

<u>BPP Grant Year</u>	<u>Percentage of BPP Tax Grant Available</u>
2023	50%
2024	50%
2025	50%
2026	50%
2027	50%

4.2.1 The City and the Company understand that the appraisal of the Business Personal Property will be determined by the Denton Central Appraisal District on an annual basis or as otherwise required by law. The Company agrees to allow reasonable access to the Premises as required by law so the Denton Central Appraisal District can make accurate appraisals of the Business Personal Property.

4.2.2 The BPP Tax Grant shall only be available if the Minimum Taxable Sales condition, set forth in section 5.1.4, has been met for the consecutive twelve (12) month period prior to the applicable BPP Grant Year. Failure to meet the Minimum Taxable Sales for the consecutive twelve (12) month period prior to the applicable BPP Grant Year shall result in the loss of the BPP Tax Grant for that BPP Grant Year but shall not adversely affect the Company’s right to the BPP Tax Grant for any other BPP Grant Year in which the Minimum Annual Taxable Sales condition has been met.

4.2.3 All applicable Business Personal Property taxes shall be paid in accordance with state and local regulations.

4.2.4 The Company shall be paid the Business Personal Property Tax Grant by the City in accordance with this Agreement on an annual basis. Each BPP Grant Year, prior to payment of the BPP Tax Grant, the Company shall submit to the City, no later than February 15 of each BPP Grant Year, all of the following: (i) proof of payment of the total paid tax liability for Business Personal Property at the Premises; (ii) an Annual Compliance Report shown in Attachment “C”; (iii) a letter of request for payment; and

(iv) any other documentation or information required by the City.

4.3 Festival Grant. Subject to the terms and conditions of this Agreement, the City agrees to provide to the Company a one-time economic development grant in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) to support a K-Pop Festival at the Music City Mall if the festival is held at the Music City Mall in Lewisville during the 2019 calendar year ("Festival Grant").

4.3.1 No later than sixty (60) days after the Effective Date, the Company shall submit to the City all of the following: (1) a special event permit for the 2019 K-Pop Festival; (2) proof of entertainment booking for the event, as reasonably confirmed at the City's sole discretion; (3) a letter of request for payment of 50% of the Festival Grant; and (4) any other documentation or information required by the City.

4.3.2 No later than sixty (60) days after the conclusion of the 2019 K-Pop Festival at the Music City Mall in Lewisville, the Company shall submit to the City all of the following: (1) a letter of request for payment for the remaining 50% of the Festival Grant; and (2) any other documentation or information required by the City.

4.3.3 If any requirement outlined in this Festival Grant section is not met by the Company, the Festival Grant funds shall not be disbursed, and any portion of the Festival Grant disbursed prior to the failure to meet these requirements shall be refunded to the City within thirty (30) days of written notice of such failure by the City. Failure to meet the requirements to receive this Festival Grant shall not constitute breach of this Agreement for purposes of termination of this Agreement.

ARTICLE V AGREEMENT CONDITIONS

5.1 The Company's eligibility to receive any of the economic development incentives provided for this Agreement (except the Festival Grant) is contingent upon its satisfaction of the following conditions (these conditions are in addition to the specific conditions (if any) that apply to a particular incentive):

5.1.1 Required Use Condition. During the Term of this Agreement following Zion Market Substantial Completion, the Premises shall not be used for any purpose other than the Required Use.

5.1.2 Minimum Occupancy Condition. During the Term of this Agreement following Marketplace Substantial Completion, the Company shall ensure that ninety percent (90%) of the first floor and sixty percent (60%) of the second floor of the Property Improvements remain occupied ("Minimum Occupancy").

5.1.3 Minimum Investment Condition. The total minimum investment in the Property Improvements and Business Personal Property on the Premises shall be FIFTEEN MILLION AND TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$15,250,000.00) ("Minimum Investment").

5.1.4 Minimum Taxable Sales Condition. During each year of the Term of this Agreement following Marketplace Substantial Completion, the total minimum taxable sales at the Premises shall be EIGHTEEN MILLION AND NINE HUNDRED THOUSAND DOLLARS (\$18,900,000.00) (“Minimum Taxable Sales”).

5.1.5 Community Financial Support. In each year that the BPP Grant is disbursed, the Company shall provide financial support a City-sponsored event or economic development activity, mutually agreed upon by both Parties, in an amount no less than the minimum amount indicated below:

<u>UAnnual BPP Tax Grant Value UPaid by the City to the Company</u>	<u>UAnnual Community Financial Support Paid by the Company to the City</u>
\$5,000 to \$10,000	\$1,000
\$10,001 to \$20,000	\$2,500
\$20,001 to \$50,000	\$5,000
\$50,001 to \$75,000	\$10,000
Greater than \$75,001	\$15,000

5.2 Certification. The Company must certify annually to the City, through the City’s Economic Development Agreement, as to its attainment of the above-stated conditions by submitting an Annual Compliance Report, as shown in Attachment “C” and appropriate supporting documentation, no later than February 15th of each year during the Term of this Agreement and continuing until the expiration of the Agreement.

ARTICLE VI TERMINATION

- 6.1 This Agreement may be terminated upon any one of the following:
- (a) by written agreement of the Parties; expiration of the Term;
 - (b) either the Company or the City if the other party breaches any material terms or conditions of this Agreement and such breach is not cured within sixty (60) days after written notice thereof (the “Cure Period”) or so long as the breaching party commences curative action within such 60-day period and diligently pursues such curative action to a satisfactory completion; unless otherwise provided for herein, such as, where a breach results in immediate termination;
 - (c) by City, if the Company suffers an Event of Bankruptcy;

- (d) by City, if any impositions owed to the City or the State of Texas by the Company shall remain delinquent after the Cure Period; and
- (e) by the Company upon sixty (60) days prior written notice to the City.

6.2 Refund of Grant. In the event the Agreement is terminated by the City pursuant to Section 6.1(b), (c), (d), or (e), the Company shall immediately pay the City, within sixty (60) days of notice from the City, an amount equal to a proportional amount of the grants received by the Company under this Agreement for the applicable tax year when the Agreement is terminated.

ARTICLE VII MISCELLANEOUS

7.1 The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement cannot be assigned by the Company unless written permission is first granted by the City, which consent shall not be unreasonably withheld, so long as the Company's assignee agrees to be bound by all terms and conditions of this Agreement. It is understood and agreed between the parties that the Company, in performing its obligations thereunder, is acting independently, and the City assumes no responsibility or liabilities in connection therewith to third parties; it is further understood and agreed between the Parties that the City, in performing its obligations hereunder, is acting independently, and the Company assumes no responsibilities in connection therewith to third parties.

7.2 The Company further agrees that the City, its agents and employees, shall have reasonable rights of access to the Premises to inspect the Premises in order to ensure that the construction of the Property Improvements to the Premises is in accordance with all applicable agreements with the City, including this Agreement, and all applicable state and local laws and regulations, as well as the continuing right, subject to the Company's reasonable security requirements, to inspect the Premises to ensure that the Premises are thereafter maintained, operated, and occupied in accordance with all applicable agreements with the City, provided that with respect to matters concerning this Agreement (i) the City must give the Company reasonable prior telephone or written notice of any such inspection, and (ii) a representative of the Company shall have the right to accompany the agent or employee of the City who is conducting such inspection. The City represents and warrants that the Premises does not include any property that is owned by a member of the City Council having responsibility for the approval of this Agreement.

7.3 Notices required to be given to any party to this Agreement shall be given personally or by certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and, if given by mail, shall be deemed delivered three (3) days after the date deposited in the United States' mail:

For City by notice to:

City of Lewisville
Attn: Economic Development Director
151 W. Church Street
P.O. Box 299002
Lewisville, Texas 75057

For the Company by notice to:

TW Realty Advisors, Inc
Attn: Richard Kang
2625 Old Denton Rd., Suite 500D
Carrollton, Texas 75007

Either Party may change the address to which notices are to be sent by giving the other Party written notice in the manner provided in this paragraph.

7.4 No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved.

7.5 This Agreement may be modified or rescinded only by a writing signed by both of the Parties or their duly authorized agents.

7.6 Venue for any litigation arising from this Agreement shall lie in Denton County, Texas.

7.7 THE COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY THE COMPANY'S BREACH OF THIS AGREEMENT OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF THE COMPANY, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

7.8 This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which in the aggregate shall constitute one agreement.

7.9 If any provision contained in this Agreement is held to be invalid, illegal, or

unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof. In lieu of each invalid, illegal or unenforceable provision, there shall be added a new provision by agreement of the parties as similar in terms to such invalid, illegal or unenforceable provision as may be possible and yet be valid, legal and enforceable.

7.10 Whenever the context requires, all words herein shall be deemed to include the male, female, and neuter gender, singular words shall include the plural, and vice versa.

7.11 This Agreement was authorized by action of the City Council, authorizing the City Manager to execute the Agreement on behalf of the City.

DATED this the 5th day of August, 2019.

CITY OF LEWISVILLE, TEXAS

Donna Barron, City Manager

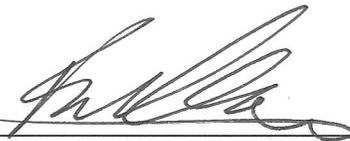
ATTEST:

Julie Worster, City Secretary

APPROVED TO FORM:

Lizbeth Plaster, City Attorney

TW REALTY ADVISORS INC.

By: _____




Name: Richard Kang

Title: Partner

A handwritten mark or signature in the bottom right corner of the page, consisting of a stylized, cursive-like scribble.

Attachment "A"
Premises

2405 S STEMMONS FWY TX 75067-8764
VISTA RIDGE MALL BLK A LOT 5

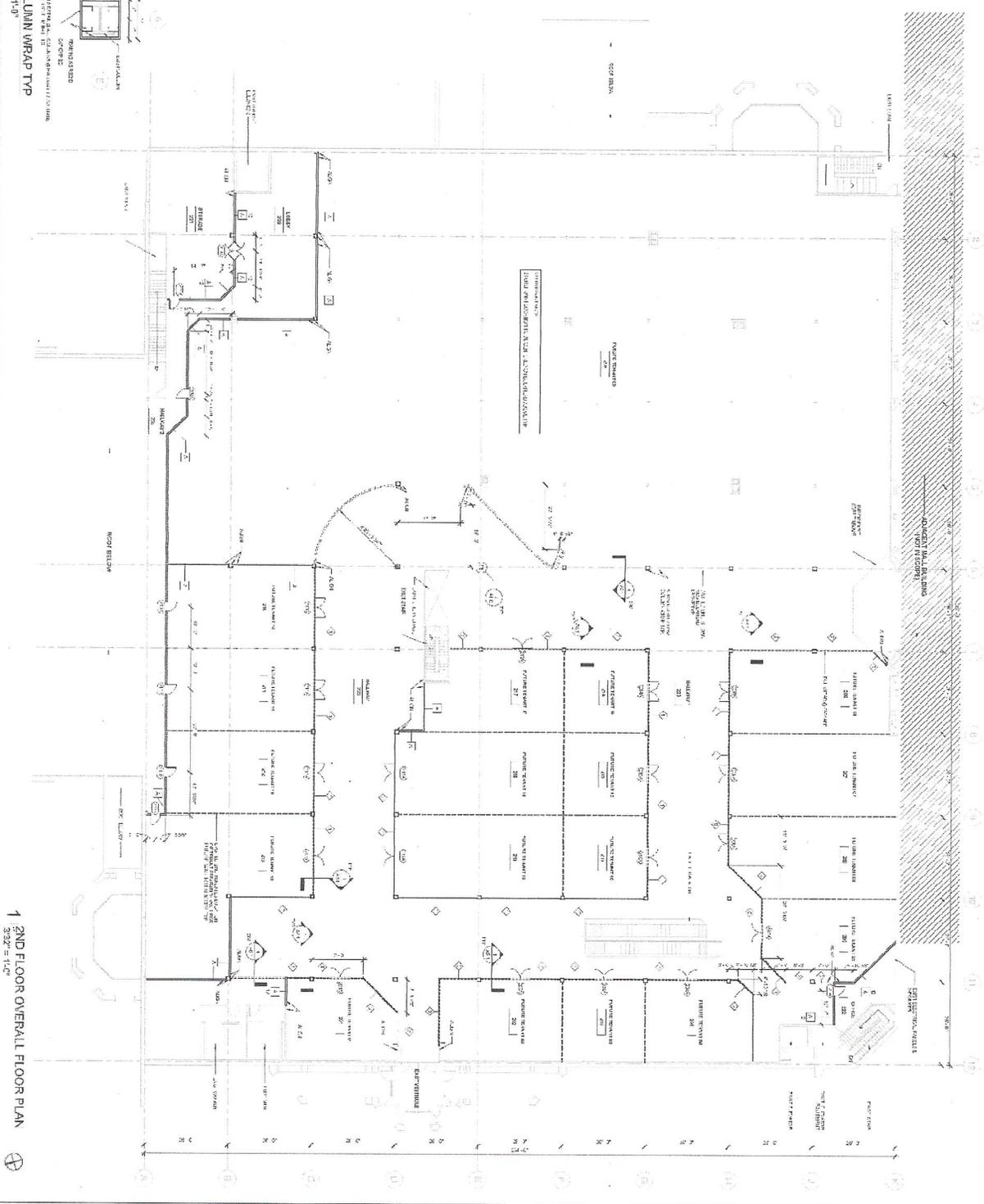


Attachment "B"
Property Improvements



1 | 1st FLOOR Marketing plan
1/16" = 1'-0"

2 COLUMN WRAP TYP
 1/4" = 1'-0"



1 2ND FLOOR OVERALL FLOOR PLAN
 3/32" = 1'-0"

A1.0

PROJECT
 2ND FLOOR
 OVERALL
 FLOOR PLAN



2ND FLOOR TYPICAL EXHIBIT "A" PROJECT FILE NO.
ZION MARKET 2ND FLOOR WHITE BOX
 2405 S. STEMMONS FWY
 LEWISVILLE, TX 75067

DATE: 07/20/2010
 BY: [Signature]



[Handwritten signature]

Northeast Facade



Northeast Facade



Southeast facade



A handwritten signature or set of initials in black ink, located in the bottom right corner of the page.

Attachment "C"
Annual Compliance Report

Company Name:

Company Address:

Capital Investment Value – 1st Year (documentation required):

Capital Investment Value – Reporting Year (documentation required):

Date of Completion Deadline:

Annual Incentive Value Paid by the City to the Company:

Donation Amount in Support of a City Sponsored Event or Program Annually:

Membership in the Lewisville Chamber of Commerce:

Please list the dollar amount for the following:

Current Year Appraised Real Property Value – Land	
Current Year Appraised Real Property Value – Improvements	
Current Year Appraised Business Personal Property Value – Machinery, Equipment and Other BPP	
Current Year Appraised Inventory Value	
Proportionate Share of Property Taxes paid by Company to Sublandlord – Real Property	
Property Taxes Paid – Business Personal Property	
Property Taxes Paid – Inventory Tax	

Attachment "C"
Annual Compliance Report (cont'd)

Please provide a copy of your Quarterly Payroll Report along with the following information:

	Part Time	Full Time
Total Current Employees at End of Reporting Period		
Number of New Employees Added During Reporting Period		

Annual Payroll During Reporting Period:

Average Salary During Reporting Period:

Has construction/installation of planned improvements commenced? Yes No

Has construction/installation of planned improvements been completed? Yes No

Construction Dollars Spent This Reporting Period:

Additional Information to be Attached:
Quarterly Payroll Report
Brief Narrative Highlighting the Progress of the project
If Applicable, a Statement Addressing any Failure to Meet Requirements of the Economic Development Agreement
Letter of Request re: the Economic Development Agreement grants plus supporting documents

I certify on behalf of the Company that, to the best of my knowledge, the information and attachments provided herein are true and accurate and in compliance with the terms of the Economic Development agreement with the City of Lewisville.

Name of Certifying Officer

Title

Signature of Certifying Officer

Date

Telephone:

Fax:

E-mail: