

**THIRD AMENDMENT
TO
ECONOMIC DEVELOPMENT AGREEMENT**

THIS THIRD AMENDMENT TO THE ECONOMIC DEVELOPMENT AGREEMENT (this “Third Amendment”) is entered into by and between the **CITY OF LEWISVILLE**, a home rule city and municipal corporation principally situated in Denton County, Texas, duly acting by and through its City Manager (the “City”), and **DECK ON MAIN, LLC**, a Texas limited liability company (“Developer”).

W I T N E S S E T H

WHEREAS, the City and Developer entered into an Economic Development Agreement (the “Agreement”) dated May 12, 2021, affecting certain premises at 191 W. Main Street, Lewisville, Texas (the “Property”), and amended the Agreement through a First Amendment to Economic Development Agreement dated July 12, 2021 and ratified by the Lewisville City Council on July 19, 2021, and through a Second Amendment to Economic Development Agreement dated February 21, 2023; and

WHEREAS, the Developer and the City wish to allow the City Manager to have authority to extend the deadline for Developer to execute the lease required hereunder for a certain period; and

WHEREAS, the Developer and the City wish to authorize the City to, at its sole discretion, and at any time and for any amount of time, assume responsibility for certain duties and responsibilities regarding the Public Restrooms which are otherwise assigned to the Developer, and to reduce required payments to the Developer accordingly; and

WHEREAS, the Developer and the City wish to make certain modifications to the Lease, including allowing additional time to execute the Lease following substantial completion and establishing a new methodology for calculating rent on a yearly basis; and

WHEREAS, Section 7.6 of the Agreement allows for the modification thereof if signed by the parties.

NOW, THEREFORE, the premises being as stated above, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the City and Developer as follows:

SECTION 1. Definitions. Capitalized terms used in this Third Amendment and not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

SECTION 2. Amendment to Agreement. Section 2.1 of the Agreement is hereby amended to add the following term:

“Actual Costs” has the meaning set forth in Section 5.4.3 of this Agreement.

SECTION 3. Amendment to Agreement. Section 5.4 of the Agreement is hereby amended by deleting the current language in its entirety, including all subsections, and in its place inserting the following new language:

5.4 Lease of Public Restrooms. Within sixty (60) days following Substantial Completion, Developer shall enter into a lease agreement to lease the Public Restrooms to the City for a term of twenty-five (25) years (the “Lease”). Additional time to enter into a lease agreement as set forth herein may be granted by the City Manager, in her sole and absolute discretion, for a period or periods not to exceed a total of twelve (12) months after the deadline set forth in this section. Upon execution, the Lease shall be attached to this Agreement as **Attachment “F”**. The Lease shall be negotiated by the Parties and shall include the following:

5.4.1 Lease Renewals. The Lease (**Attachment “F”**) shall include the following two renewal options: (1) the City shall have an option to renew the Lease (**Attachment “F”**) with the same terms and conditions for an additional twenty-five (25) year term (“First Renewal Option”); and (2) the Parties shall have a second option to renew the Lease (**Attachment “F”**) on the same terms and conditions for an additional twenty-five (25) year term upon the expiration of the First Renewal Option.

5.4.2 Access and Maintenance. The Lease (**Attachment “F”**) shall provide, among other provisions, for the following:

- a. During the term of the Lease (**Attachment “F”**), the Public Restrooms shall be accessible to the public seven (7) days a week, three hundred and sixty-five (365) days a year, during park hours for Wayne Ferguson Plaza or during any City-permitted special event in Old Town; provided however, the Public Restrooms may be closed for normal maintenance or repair.
- b. Written approval from the City, which shall not be unreasonably withheld, must be obtained before the Public Restrooms may be closed for non-standard maintenance, upgrades, or major repairs.
- c. Developer shall maintain the Public Restrooms during the term of the Lease (**Attachment “F”**), except as set forth in subsection d., below.
- d. The City may, at its sole discretion, at any time and for any period of time, assume responsibility for operations, maintenance, management, insurance, and/or taxes for the Public Restrooms.

5.4.3 Rent. During the term of the Lease (**Attachment “F”**), the City shall pay rent on the Public Restrooms to the Developer annually as set forth herein.

a. Calculation of Rent. The amount of annual rent shall be calculated as follows:

1. First year of the Lease (**Attachment "F"**) term: the City shall pay the Developer \$24,000.00 within thirty (30) days following execution of the Lease (**Attachment "F"**). Within thirty (30) days of the first anniversary of the execution of the Lease (**Attachment "F"**), the Developer shall submit to the City documentation, including invoices, receipts, and any other documentation required by the City, showing the actual costs to the Developer of the operation, maintenance, management, insurance, and taxes for the Public Restrooms (the "Actual Costs") for the first year of the Lease. In the event that Actual Costs exceed \$24,000.00, the City shall pay, within thirty (30) days of receipt of the required documentation by the City, an amount equal to the difference between the \$24,000.00 initial rent payment and the Actual Costs as additional Rent for the first year of the Term. In the event that Actual Costs are less than \$24,000.00, the Developer shall rebate to the City, within thirty (30) days of receipt of the required documentation by the City, an amount equal to the difference between the \$24,000.00 initial rent payment and the Actual Costs.
2. All subsequent years during the Lease (**Attachment "F"**) term: Rent for all subsequent years during the term of the Lease (**Attachment "F"**) shall be in an amount equal to the total of the agreed-upon Actual Costs for the previous year. Each year of the Lease (**Attachment "F"**) term following the first year, within thirty (30) days of the anniversary of the execution of the Lease (**Attachment "F"**), the Developer shall submit to the City documentation, including invoices, receipts, and any other documentation required by the City, showing the Actual Costs for the previous year. The City shall pay such amount within thirty (30) days of the receipt of the required documentation by the City.
 - i. If Actual Costs for the upcoming year are anticipated to be significantly higher than the previous year's Actual Costs, the Developer may submit documentation of such anticipated additional expenses, and the City Manager may, in her sole and absolute discretion, agree to increase the rent payment up to that amount. In no event shall the

- same Actual Costs be included in more than one rent calculation.
- ii. If Actual Costs for the upcoming year are anticipated to be significantly lower than the previous year's Actual Costs, the City Manager may, in her sole and absolute discretion, authorize payment of rent in an amount less than the prior year's Actual Costs, with notice provided to the Developer.
 3. The City Manager shall determine, in her sole and absolute discretion, if the documentation provided by the Developer supports the Actual Costs shown. If there is a bona fide dispute between the Parties regarding the amount of the Actual Costs, the deadline for any payments by the City hereunder shall be tolled until the resolution of such dispute.

5.4.4 Lease of Property to a Third Party. If the Property is leased to a third party, Developer shall ensure that the lessee is bound by all the terms and conditions of the Lease (**Attachment “F”**).

5.4.5 Assignment of Lease. If the Property is sold, the Lease (**Attachment “F”**) shall be assigned by Developer to the new owner of the Property, and any assignee must agree to be bound by all the terms and conditions of the Lease (**Attachment “F”**).

SECTION 4. Amendments and Waivers. This Third Amendment may be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

SECTION 5. Severability. In case any one or more of the provisions contained in this Third Amendment shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof or any other provision of the Agreement, and this Third Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

SECTION 6. Successors and Assigns. This Third Amendment shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns.

SECTION 7. Counterparts. This Third Amendment may be executed in multiple counterparts, each of which shall constitute an original, but all of which in the aggregate shall constitute one agreement.

SECTION 8. Effect on Agreement; Integration. Except as specifically amended by this Third Amendment, all other terms and provisions of the Agreement shall remain in full force and effect, and as applicable, shall apply to this Third Amendment. In the event of any conflict or

inconsistency between this Third Amendment and the Agreement, the terms and provisions of this Third Amendment shall govern and prevail to the extent necessary to resolve such conflict or inconsistency.

SECTION 9. Effective Date. The effective date of this Third Amendment shall be the date of execution of this Third Amendment.

SIGNATURE PAGE FOLLOWS

CITY OF LEWISVILLE, TEXAS

Claire Powell, City Manager

Date

ATTEST:

Jennifer Malone-Ippolito, City Secretary

APPROVED AS TO FORM:

Lizbeth Plaster, City Attorney

DECK ON MAIN, LLC



Donny Churchman, Managing Member

01.12.2026

Date