

**FIRST AMENDMENT
TO
ECONOMIC DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO THE ECONOMIC DEVELOPMENT AGREEMENT (this "First 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** ("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

WHEREAS, the Agreement provided for, among other things, the provision of a Development Grant in an amount equal to Eligible Expenses not to exceed TWO MILLION DOLLARS available for disbursement within thirty calendar days after the date that transfer of the Property to the Developer is complete; and

WHEREAS, Developer requests that a disbursement of the Development Grant in an amount equal to the Purchase Price of the Property, which is an Eligible Expense, be paid prior to the date that transfer of the Property to the Developer is complete; and

WHEREAS, the Agreement contained an incorrect legal description of the Property; and

WHEREAS, the parties desire to correct the Agreement by replacing the incorrect legal description of the Property with the correct legal description of the Property; and

WHEREAS, Section 7.7 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 First Amendment and not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

SECTION 2. Amendment to Agreement. Article IV is hereby amended by deleting the current language and in its place inserting the following new language:

**ARTICLE IV
ECONOMIC DEVELOPMENT INCENTIVES**

4.1 Development Grant. Subject to the terms and conditions of this Agreement, within thirty (30) calendar days after the date that transfer of the Property to the Developer is complete or as otherwise provided herein, the City shall make available to the Developer a Development Grant in an amount equal to the Eligible Expenses (the "**Development Grant**"), up to a total disbursement of two million dollars (\$2,000,000.00) (the "**Cap**"), for the purpose of offsetting actual development costs associated with the Property Improvements.

4.1.1 Eligible Expenses.

- a. The expenses which shall be included in the calculation of the Development Grant shall be the following fees or costs incurred for the acquisition and development of the Property Improvements by the Developer (the "**Eligible Expenses**"):
 1. All required inspection, permitting, impact and development fees paid to the City;
 2. All soft costs, including, without limitation, market studies, architecture, engineering, surveying, permits, inspection fees, insurance and surety bonds;
 3. All hard costs including, without limitation, general contractor or project management fees, labor, materials, construction, fixtures, furniture, equipment, and installation; and
 4. The Purchase Price; provided however, that the amount of the Purchase Price may be paid as a disbursement of the Development Grant against the Cap prior to the date that transfer of the Property to the Developer is complete.
- b. Developer must pay all required development fees for the Property Improvements, including but not limited to, impact fees and building permit-related fees, and obtain all permits required by the City Code of Ordinances for the Property Improvements.

4.1.2. Development Grant Disbursement. Except as provided in subsection 4.1.3 below, the Development Grant shall be disbursed to Developer monthly based on Eligible Expenses paid by the Developer upon approval by the City of a Developer-prepared draw request, which approval shall not be unreasonably withheld.

- a. Monthly draw requests shall include the following:
 1. original invoices;

2. verification of payment to contractors and subcontractors;
 3. lien releases, if applicable;
 4. copies of all City inspection approvals, if applicable; and
 5. any additional documents needed for verification of Eligible Expenses, as reasonably requested by the City.
- b. Failure to submit all documentation required by the City in the monthly draw requests may delay disbursement of the Development Grant or, subject to applicable notice and cure periods, cause a breach of this Agreement.
 - c. In no circumstances shall the Developer's cumulative draw requests total more than 90% of the Development Grant until the final draw request. The final draw request may not be submitted until the Developer reaches Substantial Completion.
 - d. In no circumstances shall the total disbursement by the City under the Development Grant exceed the Cap.

4.1.3. Development Grant Disbursement Equal to the Purchase Price. A Development Grant disbursement equal to the Purchase Price may be disbursed to Developer, or upon written request by the Developer to the title company, on the day of closing on the Property.

SECTION 3. Amendment to Agreement. The legal description provided in the Agreement is hereby amended by deleting the current language and in its place inserting the following new language:

Being Lot 3, Block A of Wayne Ferguson Plaza Addition, an Addition to the City of Lewisville, Texas, according to the Plat recorded in cc# 2015-438, Real Property Records, Denton County, Texas.

In addition, any exhibit in the Agreement which provides for a legal description is hereby amended by deleting said exhibit and in its place inserting a revised exhibit, attached hereto as Revised Exhibit "A".

SECTION 4. Amendments and Waivers. This First 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 First 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 First Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

SECTION 6. Successors and Assigns. This First 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 First 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 First Amendment, all other terms and provisions of the Agreement shall remain in full force and effect, and as applicable, shall apply to this First Amendment. In the event of any conflict or inconsistency between this First Amendment and the Agreement, the terms and provisions of this First Amendment shall govern and prevail to the extent necessary to resolve such conflict or inconsistency.

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

SIGNATURE PAGE FOLLOWS

DATED this the 12th day of July, 2021.

CITY OF LEWISVILLE, TEXAS


Donna Barron, City Manager

ATTEST:


Julie Worster, City Secretary

APPROVED AS TO FORM:


Lizbeth Plaster, City Attorney

DECK ON MAIN, LLC


Donny Churchman, Managing Member

EXHIBIT "A"

Being Lot 3, Block A of Wayne Ferguson Plaza Addition, an Addition to the City of Lewisville, Texas, according to the Plat recorded in cc# 2015-438, Real Property Records, Denton County, Texas.