

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 (“City”) and ZMIC Entertainment LLC (“Company”) (collectively, “Parties”).

W I T N E S S E T H:

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code (the “Statute”), the City adopted an Economic Incentive Policy for making economic development incentives and grants on June 7, 2021 (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 and economic base of the Lewisville area to the long-term interest and benefit of the City, in accordance with the Statute, the City desires to enter into this Agreement; and

WHEREAS, the Company is proposing to lease thirty thousand, nine hundred and twenty-five square feet (30,925 sf) of the second floor above Zion Market, located at 2405 S Stemmons Fwy, Lewisville, Texas, as further shown in Attachment “A”, attached hereto and made a part hereof (“Premises”); and

WHEREAS, the Company desires to invest a minimum of three million dollars (\$3,000,000.00) in Capital Investment (hereinafter defined) and to develop the Premises into a unique sports “Eatertainment Venue” (hereinafter defined), with a guest experience that involves food and/or beverage dining before, after, or during other on-site entertainment activities; and

WHEREAS, the Company desires to operate an Eatertainment Venue for a minimum of five (5) years with annual taxable sales of at least ten million dollars (\$10,000,000.00); and

WHEREAS, the City desires to provide, pursuant to the Statute, an incentive to the Company for developing the Premises in a manner that is beneficial to the City and its residents; and

WHEREAS, the City finds that the administration of an economic development agreement to provide incentives to the Company in return for the development and ongoing operation of the

Premises as an Eatertainment Venue would promote local economic development and stimulate business and commercial activity within the municipality and would directly establish a public purpose, in accordance with the purposes stated and in compliance with the intent of the Statute, the Policy Statement and similar guidelines and criteria adopted by the City and all applicable law; and

WHEREAS, the City has determined that this Agreement contains sufficient controls to ensure that the above-mentioned public purpose is 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 hereto do mutually agree as follows:

ARTICLE I TERM

1.1 This Agreement shall be effective upon execution by both Parties (“Effective Date”) and shall continue through the date of the final Tax Grant disbursement due under this Agreement, unless terminated earlier in accordance with this Agreement (the “Term”).

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.

“Building Permit Fee Grant” shall have the meaning set forth in Article IV of this Agreement.

“Business Personal Property Improvements” shall mean tangible personal property, other than inventory or supplies, that is classified by the Denton Central Appraisal District as business personal property, that is newly purchased and added to the Real Property Improvements by the Company subsequent to the Effective Date, including, but not limited to, equipment, furniture and fixtures.

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

“City Manager” means the chief executive officer of the City appointed by the City Council or his/her designee.

“City Mixed Beverage Tax Receipts” means the City’s portion of the Mixed Beverage Tax (hereinafter defined) annually received from the State of Texas and designated to the City’s general fund from the collection of Mixed Beverage Tax (hereinafter defined) from any mixed beverage permittee, which is attributable to mixed beverages sold at the Premises.

“Capital Investment” means the amount of money invested by the Company in the Improvements (hereinafter defined), prior to the Company achieving Substantial Completion (hereinafter defined).

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

“Entertainment Venue” means a guest experience that involves food and/or beverage dining before, after, or during other on-site entertainment activities.

“Effective Date” has the meaning set forth in Article I of this Agreement.

“Event of Bankruptcy” means that the Company becomes insolvent or bankrupt, has a receiver or trustee appointed for any part of its Premises, makes an assignment for the benefit of its creditors, or any proceeding is commenced either by the Company or against it under any bankruptcy or insolvency laws, which proceeding is not dismissed within sixty (60) days.

“Force Majeure” means any contingency or cause beyond the reasonable control of the Company, created by acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, fire, explosion, flood, strikes, 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), provided, however, that (a) the event giving rise to Force Majeure was not caused by the act or omission of the Company and makes the performance of any obligation created under this Agreement illegal or impossible; and (b) the Company gives reasonable notice of the event giving rise to Force Majeure and exercises all reasonable diligence to remove the cause of Force Majeure.

“Full-Time Employee” shall mean any individual employed on a full-time basis by the Company whose assigned work location is on the Premises.

“Grant Year” shall mean each consecutive twelve (12) month period during the Term, beginning on the date of Substantial Completion (hereinafter defined), for a total of five (5) Grant Years, subject to the further provisions of this Agreement.

“Improvements” means the Real Property Improvements and Business Personal Property Improvements.

“Local Sales Tax Receipts” means the Sales and Use Tax (hereinafter defined) annually received from the State of Texas and designated to the City’s general fund from the collection of Sales and Use Tax (hereinafter defined) from the Premises as a result of the sale of Taxable Items (hereinafter defined) consummated on the Premises.

“Minimum Employment Condition” shall have the meaning given in Section 5.4 of this Agreement.

“Minimum Taxable Sales Condition” shall have the meaning given in Section 5.3 of this Agreement.

“Mixed Beverage Tax” means the tax imposed by Chapter 183 of the Texas Tax Code, as amended.

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

“Real Property Improvements” shall mean all improvements, as classified by the Denton Central Appraisal District, that are located on the Premises by Company following the execution of this Agreement.

“Required Use” shall have the meaning given in Article V of this Agreement.

“Sales And Use Tax” means all of the sales and use tax imposed by the City pursuant to Chapter 321 of the Texas Tax Code, as amended, on the sale of Taxable Items, hereinafter defined, consummated on the Premises.

“Substantial Completion” means the issuance of the final certificate of occupancy for the Premises.

“Tax Certificate” means a certificate from the Texas Comptroller of Public Accounts or other statement in a form reasonably acceptable to the City setting forth the following: (1) the collection of the Sales and Use Taxes received by the City on the sale of Taxable Items (hereinafter defined) consummated on the Premises for the applicable period which are to be used to determine the Local Sales Tax Receipts; (2) the collection of Mixed Beverage Taxes received by the City on the sale of mixed beverages consummated on the Premises for the applicable period which are used to determine the City Mixed Beverage Tax Receipts; and (3) any such supporting documentation as the City may reasonably request.

“Tax Grant” has the meaning set forth in Article IV of this Agreement.

“Taxable Items” has the same meaning assigned by Chapter 151, Texas Tax Code, as amended.

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

ARTICLE III GENERAL PROVISIONS

3.1 The Company shall complete the installation of Improvements on the Premises at a minimum Capital Investment of three million dollars (\$3,000,000.00) and achieve Substantial Completion by December 31, 2021.

3.1.1 In the event of Force Majeure or if the City Manager determines that the Company has made substantial progress toward Substantial Completion, the City Manager may, at her sole discretion, grant additional time.

3.1.2 This Agreement shall automatically terminate if the Company fails to achieve Substantial Completion by December 31, 2021 or within such additional time as may be granted by the City Manager under section 3.1.1, above.

3.2 During the Term of this Agreement, the Company shall be subject to all applicable City taxation not specifically abated or exempted, including but not limited to, sales tax and ad valorem taxation on land, inventory and supplies. The Company shall timely pay all applicable taxes in accordance with state and local regulations.

ARTICLE IV ECONOMIC DEVELOPMENT INCENTIVES

4.1 Tax 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 Grant Year in an amount equal to the percentage set forth below of Local Sales Tax Receipts and City Mixed Beverage Tax Receipts (“Tax Grant”):

<u>Grant Year</u>	<u>Percentage of Tax Grant Available</u>
1	100%
2	100%
3	100%
4	75%
5	75%

4.1.1 The Tax Grant shall only be available if the Minimum Taxable Sales Condition, as set forth in section 5.3, and Minimum Employment Condition, as set forth in

section 5.4, have each been met during the preceding Grant Year, along with all other terms and conditions of this Agreement. Failure to meet the Minimum Taxable Sales Condition or Minimum Employment Condition during the preceding Grant Year shall result in the loss of the Tax Grant for that Grant Year, but shall not constitute a breach of this Agreement nor adversely affect the Company's right to the Tax Grant for any subsequent Grant Year in which the Minimum Taxable Sales condition and Minimum Employment Condition are satisfied.

4.1.2 The City agrees that, subject to the satisfaction of the terms and conditions of this Agreement, the Tax Grant will be paid to the Company on an annual basis on or before the thirtieth (30th) day following the completion of each Grant Year; provided, however, that on or before the end of each Grant Year, the Company submits all of the following: (1) a Tax Certificate with any supporting documentation, as requested by the City, needed to verify the amount of Sales and Use Taxes and the Mixed Beverage Taxes that were paid to the City relevant to the computation of the Tax Grant amount; (2) its Annual Compliance Report shown on Attachment "B"; (3) a letter of request for payment; and (4) any other documentation or information required by this Agreement. **Failure to timely submit the above-listed items may delay or void payment of the Tax Grant at the City's discretion.**

4.1.3 In the event the State of Texas determines that the City erroneously received the Local Sales Tax Receipts and/or City Mixed Beverage Tax Receipts, or that the amount of Sales and Use Tax and/or Mixed Beverage Tax paid by the State of Texas to the City exceeds the correct amount of Sales and Use Tax and/or Mixed Beverage Tax applicable to this Agreement, the Company shall within thirty (30) days after receipt of notification thereof from the City specifying the amount by which such amount exceeded the amount to which the Company was entitled pursuant to such State of Texas determination, pay such amount to the City. As a condition precedent to payment of such refund, the City shall provide the Company with a copy of such determination by the State of Texas. The provisions of this Section 4.1.3 shall survive termination of this Agreement.

4.1.4 In the event the Company files an amended Sales and Use Tax return and/or Mixed Beverage Tax return, or report with the State of Texas, or if additional Sales and Use Tax and/or Mixed Beverage Tax is due and owing, as determined or approved by the

State of Texas, affecting the Local Sales Tax Receipts and/or City Mixed Beverage Tax Receipts, the City shall pay to the Company any underpayment, provided the City has received the respective Local Sales Tax Receipts and/or City Mixed Beverage Tax Receipts attributed to such adjustment. As a condition precedent to payment of such adjustment, the Company shall provide the City with a copy of any amended Sales and Use Tax report or return and/or Mixed Beverage Tax report or return, any relevant receipts, or any relevant direct payment and self-assessment returns.

4.1.5 Under no circumstances shall the City be obligated to pay the Tax Grant unless the City has received the information required under Section 4.1.2, above. Tax Grant disbursements by the City shall be based on actual Sales and Use Tax and Mixed Beverage Tax receipts disbursed to the City by the State of Texas.

4.2 Building Permit Fee Grant. Subject to the terms and conditions of this Agreement, the City agrees to provide an economic development grant in an amount equal to one hundred percent (100%) of the total fees paid by the Company to the City on the Premises at the time of issuance of the building permit, excluding capital recovery fees ("Building Permit Fee Grant").

4.2.1 Notwithstanding any fee grant, the Company must obtain all permits required by City ordinance.

4.2.2 Subject to the terms and conditions of this Agreement, the Building Permit Fee Grant shall be disbursed to the Company within thirty (30) days of receipt of the following documentation, which shall be submitted to the City no later than 90 days following the date of Substantial Completion: (1) proof of payment of building permit fees, (2) a copy of the Certificate of Occupancy issued by the City, and (3) a letter of request for payment addressed to the Director of Economic Development. **Failure to timely submit the above-listed items may delay or void payment of the Building Permit Fee Grant at the City's discretion.**

ARTICLE V AGREEMENT CONDITIONS

5.1 Required Use Condition. During the Term of this Agreement following Substantial Completion and continuing thereafter until expiration of this Agreement or earlier termination of same, the Company agrees to fully occupy the Premises and operate an Eatertainment Venue on

the Premises (the “Required Use”).

5.1.1 No portion of the Premises shall be used for any purpose other than the Required Use.

5.1.2 The Company shall not allow the Required Use to cease on the Premises during the Term of this Agreement except that one (1) interruption of operations for reasonable business purposes may be permitted during this Term of this Agreement; provided, however, that the resulting interruption does not exceed ninety (90) days.

5.2 Minimum Investment Condition. To be eligible for any grant under this Agreement, the Company must make, by December 31, 2021, or within such additional time as may be granted by the City Manager, a total Capital Investment of no less than three million dollars (\$3,000,000.00) on the Premises.

5.3 Minimum Taxable Sales Condition. During each Grant Year, the total minimum taxable sales on and attributed to the Premises shall be ten million dollars (\$10,000,000.00) (“Minimum Taxable Sales”).

5.4 Minimum Employment Condition. To be eligible for the Tax Grant, at all times during the Term of this Agreement following a date four (4) weeks subsequent to the date of Substantial Completion, the Company shall employ a minimum of forty (40) Full-Time Employees (“Minimum Employment Condition”).

5.5 Annual Compliance Certification. No later than the thirtieth (30th) day of each Grant Year, the Company must certify annually to the City as to its attainment of the stated performance measures described herein by submitting an annual compliance report (Attachment “B”) and appropriate support documentation as requested by the City.

5.6 Employment of Undocumented Workers. During the term of this Agreement, the Company agrees not to knowingly employ any undocumented workers as defined in TEX. GOVT. CODE §2264.001. If convicted of a violation under 8 U.S.C. §1324a(f), the Company shall repay the amount of the grants and any other funds received by the Company from the City as of the date of such violation not later than one hundred and twenty (120) days after the date the Company is notified by the City of a violation of this section, plus interest from the date the grants were paid to the Company, at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by

Citibank, N.A. (or by any other New York money center bank selected by the City) as its prime or base commercial lending rate. The payment of interest shall be as if it had been accruing from the date the grants were paid to the Company until the date the grants are repaid to the City. Pursuant to Section 2264.101(c), TEX. GOV'T CODE, a business is not liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

ARTICLE VI TERMINATION

6.1 Termination. This Agreement may be terminated upon any one of the following:

6.1.1 By written agreement of the Parties;

6.1.2 Expiration of the Term;

6.1.3 By either Party in the event the other Party breaches any of the terms or conditions of this Agreement, and such breach is not cured within sixty (60) days after written notice thereof, unless another cure period is specified; except that the cure period is not applicable to any automatic termination event specifically provided for in this Agreement;

6.1.4 By City, if the Company suffers an Event of Bankruptcy;

6.1.5 By City, if any taxes, assessments or payments owed to the City or the State of Texas on the Premises become delinquent and are not cured within sixty (60) days after written notice thereof (provided, however the Company retains the right to timely and properly protest and contest any such taxes or assessments); and

6.1.6 By the City, within thirty (30) days of providing written notice, if the Company is convicted of a violation of 8 U.S.C. §132a(f) as determined by a court of competent jurisdiction or other competent authority; and

6.1.7 As otherwise stated within this Agreement.

6.2 Refund of Grants.

6.2.1. In the event the Agreement is terminated by the City pursuant to Sections 6.1.3, 6.1.4, 6.1.5, or 6.1.6 of this Article, the Company shall refund the City, within sixty (60) days of receiving written notice from the City, all grant funds received under this Agreement,.

6.2.2. In the event the Agreement is terminated by the City pursuant to Section 6.1.6, the Company shall, within one-hundred twenty (120) days after the date the Company is notified by the City of a violation, pay to the City the amounts specified in Section 5.6 of this Agreement.

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 without the consent of the City. It is understood and agreed between the Parties that the Parties, in performing their obligations thereunder, are acting independently, and neither Party assumes responsibility or liabilities in connection therewith to third parties.

7.2 It is understood and agreed between the Parties that the Company, in performing its obligations hereunder, 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.

7.3 The Company further agrees that the City and its agents and employees shall have reasonable rights of access to the Premises during the Term of this Agreement to inspect the Premises in order to ensure that the Premises and its occupancy is in accordance with this Agreement, and all applicable state and local laws and regulations, and to establish Substantial Completion of the Premises, as well as the continuing right, subject to the Company's reasonable security requirements, to inspect the Premises to ensure that the Premises is thereafter maintained, operated, and occupied in accordance with this Agreement; provided that with respect to access to the Premises under the terms of this Agreement, the City must give the Company reasonable prior telephone or written notice of any such inspection, and a representative of the Company shall have the right to accompany the agent or employee of the City who is conducting such inspection. The notice requirements and right to accompany shall not apply to inspections to ensure compliance

with applicable state and local laws and regulations, including any inspection necessary to issue required permits.

7.4 The City represents and warrants that the Premises does not include any Premises that is owned by a member of the City Council having responsibility for the approval of this Agreement.

7.5 Notices required to be given to either 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 the 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:

ZMIC Entertainment
Attn: William Chuong
2405 S. Stemmons Fwy Suite 200
Lewisville, Texas 75067

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.

7.6 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.

7.7 This Agreement may be modified only by a written instrument signed by both of the Parties or their duly authorized agents.

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

7.9 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), PREMISES 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 OR INTENTIONAL TORT OF THE COMPANY, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, OR 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.

7.10 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.

7.11 In case any one or more of the provisions contained in this Agreement 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, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

7.12 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.

7.13 Submitted herewith is a completed Form 1295 generated by the Texas Ethics Commission's (the "TEC") electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the "Form 1295"). The City hereby confirms receipt of the Form 1295 from the Company, and the City agrees to acknowledge such form with the TEC through its electronic filing application not later than the 30th day after the receipt of such form. The Parties understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Company; and, neither the City nor its consultants have verified such information.

7.14 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 _____ day of _____, 2021

CITY OF LEWISVILLE, TEXAS

Donna Barron, City Manager

ATTEST:

Julie Worster, City Secretary

APPROVED TO FORM:

Lizbeth Plaster, City Attorney

COMPANY:
ZMIC ENTERTAINMENT



William Chuong

Attachment "A" – Floor Plan



Attachment "B"
Annual Compliance Report

Company Name:

Company Address:

Has the Premises reached Substantial Completion? Yes No

Additional Information to be Attached:
Sales Tax Returns for the reporting year
Certificate of Occupancy for the Premises
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:

