

**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 **MUSIC CITY ESTATE 2405, LLC** (the “Company”) (collectively, the “Parties”).

W I T N E S S E T H

WHEREAS, the City and TW Realty Advisors, Inc. entered into an Economic Development Agreement (the “Agreement”) dated August 5, 2019, affecting certain premises at 2405 S. Stemmons Freeway, Lewisville, Texas as illustrated in Attachment “A” to the Agreement (the “Premises”); and

WHEREAS, the Agreement provided for, among other things, the development of the Premises as a two-story marketplace to include both restaurant and retail uses, with Zion Market as the grocery anchor; and

WHEREAS, TW Realty Advisors, Inc. requested that all of its rights and obligations under the Agreement be assigned to and assumed by the Company; and

WHEREAS, the City, TW Realty Advisors, Inc. and the Company entered into a three-party Assignment and Assumption of Economic Development Agreement by which the Company assumed all of TW Realty Advisors’ rights and obligations in, under and to the Agreement (the “Assignment and Assumption Agreement”); and

WHEREAS, the Assignment and Assumption Agreement identifies the Company’s name as “2401 South Stemmons LLC”; and

WHEREAS, the Parties confirm that Music City Estate 2405, LLC is the Company’s current legal name, has been the Company’s legal name since June 1, 2019, and was the Company’s legal name at the time of the execution of the Assignment and Assumption Agreement; and

WHEREAS, the Parties agree that, notwithstanding any misnomer due to unilateral mistake by Company, the Parties to this First Amendment are the parties to the Agreement, and intended to enter into and did enter into the Assignment and Assumption Agreement; and

WHEREAS, in order to clarify the requirements and conditions of the Agreement, the Parties desire to amend certain provisions thereof to remove a condition inadvertently placed on the Annual Grant; and

WHEREAS, Section 7.5 of the Agreement allows for the modification thereof if signed by the parties or their authorized agents.

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 the Company 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. Amendments to the Agreement.

(a) The definitions of “Annual Grant Year” and “Minimum Taxable Sales” in section 2.1 are amended to read as follows:

“Annual Grant Year” means each consecutive twelve (12) month period, during the Term, beginning upon 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.

“Minimum Taxable Sales” has the meaning set forth in section 5.2.1 of this Agreement.

(b) Section 4.2.2 is amended to read as follows:

4.2.2 The BPP Tax Grant shall only be available if the Minimum Taxable Sales condition, set forth in section 5.2.1, has been met for the consecutive twelve (12) month period prior to the applicable BPP Grant Year, in addition to any other requirements outlined herein. 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.

(c) Article V is amended to read as follows:

**ARTICLE V
AGREEMENT CONDITIONS**

5.1 The Company’s eligibility to receive any of the economic development incentives provided for in this Agreement (except the Festival Grant) is contingent upon its satisfaction of the following conditions, in addition to the specific conditions (if any) which 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 Community Financial Support. In each year that the BPP Tax Grant is disbursed, the Company shall provide financial support to 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>Annual BPP Tax Grant Value Paid by the City to the Company</u>	<u>Annual 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 In addition to the eligibility requirements outlined in section 5.1, above, the Company's eligibility to receive the BPP Tax Grant in any BPP Grant Year during the Term is also contingent upon its satisfaction of the following condition, in addition to the specific conditions (if any) which apply to the BPP Tax Grant:

5.2.1 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").

5.3 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.

SECTION 3. 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 4. 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 5. 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 6. 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 7. 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 8. Effective Date. The effective date of this First Amendment shall be the date of execution of this First Amendment.

SECTION 9. Authorization. This First Amendment was authorized by action of the City Council of the City of Lewisville, authorizing the City Manager to execute the First Amendment on behalf of the City.

SIGNATURE PAGE FOLLOWS

DATED this the ____ day of _____, 2024.

CITY OF LEWISVILLE, TEXAS

Claire Powell, City Manager

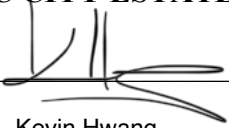
ATTEST:

Thomas Harris III, City Secretary

APPROVED AS TO FORM:

Lizbeth Plaster, City Attorney

MUSIC CITY ESTATE 2405, LLC

By:  _____

Name: Kevin Hwang

Title: PM