

STATE OF TEXAS)
)
COUNTY OF TRAVIS) **FIRST AMENDMENT TO CHAPTER 380 AGREEMENT
PROJECT – THE LEXINGTON at WEST BOYCE**

THIS FIRST AMENDMENT TO CHAPTER 380 AGREEMENT, PROJECT-THE LEXINGTON AT WEST BOYCE (the, “Amendment”) made and entered into as of the ____ day of _____, 20____, by and between the **CITY OF MANOR, TEXAS** (the, “City”) and **DAVIS CAPITAL INVESTMENTS, LLC** (the, “Company”).

RECITALS

WHEREAS, the City and Company entered into that certain Chapter 380 Agreement, Project-the Lexington at West Boyce, effective April 5, 2023 (the, “Agreement”); and

WHEREAS, the Company has requested an extension of certain deadlines within the Agreement due to delays in obtaining inspections, the shipment of required materials, and other items outside of the Company’s control; and

WHEREAS, the City has agree to provide the extensions as related herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency thereof is hereby acknowledged the City and Company agree as follows:

1. Amendment of Article I(U).

Article I(U) of the Agreement is hereby deleted in its entirety and replaced with the following:

U. **“Threshold Documentation”** is defined as copies of the following documents: (1) proof of compliance with Section IV.A(1); (2) proof that the COMPANY has employed the number of FTE’s required by this Agreement; (3) proof that \$3,700,000.00 in Real Property Improvements were constructed on the Property; (4) proof that the Certificate of Occupancy for the Facility and documentation acceptable to the CITY demonstrating that the Facility was installed and completed on the Property, but not later than June 30, 2025; (5) the COMPANY has employed the number of FTE’s required by this Agreement; and (6) the 380 Grant Certification described in Section VI.A. The CITY may request additional records to support the information shown in the Threshold Documentation or compliance with this Agreement.

2. Amendment of Article IV(A)(1)(b).

Article IV(A)(1)(b) is hereby deleted in its entirety and replaced with the following:

b. The COMPANY completes and obtains a Certificate of Occupancy for the Facility not later than June 30th, 2025.

3. Amendment of Article XXII(B).

Article XXII(B)l is hereby deleted in its entirety and replaced with the following:

Termination.

During the term of this Agreement, should the COMPANY commit a breach of this Agreement according to the Sections VII.A(1) or (2), the CITY may terminate this Agreement, subject to Section VII.B. In addition, the CITY may terminate the Agreement in the event that the COMPANY fails to obtain a Certificate of Occupancy for the Project by June 30, 2025, by giving thirty (30) days' written notice to the COMPANY.

4. Except as expressly amended hereby, the Agreement and all rights and obligations created thereby or thereunder are in all respects ratified and confirmed and remain in full force and effect. Where any section, subsection or clause of the Agreement is modified or deleted by this Amendment, any unaltered provision of such section, subsection or clause of the Agreement shall remain in full force and effect. However, where any provision of this Amendment conflicts or is inconsistent with the Agreement, the provisions of this Amendment shall control.

5. This Amendment (i) shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Travis County, Texas; (ii) constitutes a covenant that runs with the Property and shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns; (iii) may be modified or amended only in writing by each Party hereto; and (iv) embodies the entire Amendment and understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements relating to such subject matter. Venue shall lie exclusively in Travis County, Texas.

6. Neither the City's, nor Owner's, nor Company's execution of this Amendment shall (a) constitute a waiver of any of its rights and remedies under the Agreement or at law with respect to the other Party's obligations under the Agreement or (b) be construed as a bar to any subsequent enforcement of any of its rights or remedies against the other Party.

7. The signatories to this Amendment warrant that each has the authority to enter into this Amendment on behalf of the organization for which such signatory has executed this Amendment.

8. This Amendment has been jointly negotiated by the Parties and shall not be construed against a Party because that Party may have primarily assumed responsibility for the drafting of this Amendment.

9. This Amendment, together with any exhibits attached hereto, and the Agreement, as amended by this Amendment, constitute the entire agreement between the Parties with respect to the subject matter stated therein, supersedes all prior agreements relating to such subject matter. The Parties hereto agree and understand that no oral agreements or understandings shall be binding unless reduced to a writing which is signed by the Parties and dated subsequent to the date hereof. The Parties hereto agree and understand that this Amendment shall be binding on them, their personal representatives, heirs, successors and assigns.

10. If any provision of this Amendment shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable, unless enforcement of this Amendment as so invalidated would be unreasonable or grossly inequitable under the circumstances or would frustrate the purpose of this Amendment.

11. This Amendment may be executed in multiple counterparts, each of which will be deemed original, and all of which will constitute one and the same agreement. Each such executed copy shall have the full force and effect of an original executed instrument.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date above written.

DAVIS CAPITAL INVESTMENTS, LLC

BY: _____
Eric Davis, Manager

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Eric Davis, known to me (or proved to me on the oath of _____ or through _____ (*description of identity card or other document*)) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **Davis Capital Investments, LLC**, a Texas corporation such entity duly authorized to do business in the State of Texas, and as the _____ thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of March, 2023.

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

MY COMMISSION EXPIRES:

NOTARY'S PRINTED NAME

[SIGNATURE PAGE FOLLOWS]

THE CITY OF MANOR, TEXAS
a Texas municipal corporation

BY: _____
Dr. Christopher Harvey, Mayor

ATTEST:

BY: _____
Lluvia T. Almaraz, City Secretary

THE STATE OF TEXAS
COUNTY OF TRAVIS

Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Dr. Christopher Harvey known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the CITY OF MANOR, TEXAS, a municipal corporation of Travis and Travis Counties, Texas, and as the Mayor thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____
20____.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

Notary's Printed Name

My Commission Expires:
