City of Louisville
COLORADO • SINCE 1878

CITY COUNCIL COMMUNICATION
AGENDA ITEM 4C

SUBJECT: APPROVAL OF ASSIGNMENT OF BUSINESS ASSISTANCE AGREEMENT FROM THE SIMON LLC TO NORA'S LLC

DATE: JULY 9, 2024

PRESENTED BY: AUSTIN BROWN, ECONOMIC VITALITY SPECIALIST

SUMMARY:
On May 17, 2022, the City administratively approved a Business Assistance Program (BAP) Agreement with The Simon LLC. Staff now requests City Council action to assign the original agreement to a newly formed business entity, Nora's LLC.

DISCUSSION:
The Simon LLC's BAP Agreement includes a 50% rebate of Building Permit Fees, Sign Permit Fees, and Construction Use Tax. The Agreement also includes a 50% rebate of Sales Use Tax over the first five years of operation. The Simon completed its interior tenant finish improvements at 957 Main Street in June 2023 and received $12,862.50 in total Building Permit Fee and Construction Use Tax Rebates.

The owners of Nora's informed staff that a different business entity (Nora's LLC) will be collecting and remitting sales tax for retail sales at the property. In consulting with the City Attorney, staff determined an Assignment and Assumption Agreement to the approved Business Assistance Agreement would best ensure all parties are properly noticed of related rights and obligations. The Simon LLC has received all rebates for building permit fees and will not be remitting any sales tax to the City. Assignment of the agreement to Nora's LLC will allow the new business entity to receive the remaining sales tax rebates.

Nora's LLC is the new proposed entity for the Business Assistance Agreement. Nora's is a Colorado Limited Liability Company that has been registered and is in good standing with the Colorado Secretary of State. The attached Assignment and Assumption Agreement *(Attachment #2)* does not change any other terms of the original Business Assistance Agreement.

FISCAL IMPACT:
There is no specific fiscal impact related to the assignment.

PROGRAM/SUB-PROGRAM IMPACT:
The recommended Business Assistance Agreement supports the Business Retention & Development sub-program objective to retain a diverse mix of businesses that provide good employment opportunities for Louisville residents.

RECOMMENDATION:
Staff recommends that Council approve the assignment of the Business Assistance Agreement from The Simon LLC to Nora's LLC.

ATTACHMENTS:
1. Business Assistance Program Agreement with The Simon LLC
2. Assignment of Business Assistance Agreement from the Simon LLC to Nora's LLC

STRATEGIC PLAN IMPACT:

☐	**Financial Stewardship & Asset Management**	☐	**Reliable Core Services**
☒	**Vibrant Economic Climate**	☐	**Quality Programs & Amenities**
☐	**Engaged Community**	☐	**Healthy Workforce**
☐	**Supportive Technology**	☐	**Collaborative Regional Partner**

BUSINESS ASSISTANCE AGREEMENT FOR THE SIMON LLC IN THE CITY OF LOUISVILLE

THIS AGREEMENT ("Agreement") is made and entered into as of the 17th day of MAY, 2022, between the CITY OF LOUISVILLE, a Colorado home rule municipal corporation (the "City"), and THE SIMON LLC (the "Company"), doing business as The Simon, a Colorado limited liability company.

WHEREAS, the City wishes to provide certain business assistance in connection with the Company's desire to open its combination event space and speakeasy bar concept in Louisville; and

WHEREAS, the Company seeks to occupy 8,204 square feet of vacant commercial space at 957 Main Street (the "Project Location"), which has not housed a Sales Tax generating use since the building was constructed; and

WHEREAS, the Company will bring new basic jobs to the City, as well as generate new Sales Tax revenue; and

WHEREAS, the City Manager finds the execution of this Agreement will serve to provide benefit and advance the public interest and welfare of the City and its citizens by securing this economic development project within the City.

NOW THEREFORE, in consideration of the mutual promises set forth below, the City and Company agree as follows:

1. Building Permit Fee Rebates. The City shall rebate to the Company 50% of the building related permit fees for the Project, required under Louisville Municipal Code, section 15.04.050 and section 108.2 of the International Building Code as adopted by the City, for the period from execution of this Agreement and ending August 1, 2022.

2. Sign Permit Fee Rebates. The City shall rebate to the Company 50% of the sign related permit fees for the Project, required under the City of Louisville Sign Code, adopted by Ordinance 1779, Series 2019, and codified as Appendix B to Chapter 17 of the City Code, and as may be amended from time to time, for the period from execution of this agreement and ending September 30, 2024. For purposes of this Section, "sign related permit fees" include sign permit fees, in-house sign plan review, and the use tax assessed on the valuation of signs installed as part of the Project.

3. Use Tax Rebate-Construction. The City shall rebate to the Company 50% of the Construction Use Tax on the construction materials for the Project, required under Louisville Municipal Code, section 3.20.300, excluding all revenues from the Open Space Tax, Historic Preservation Tax, and

Recreation Center Tax for the Project, for the period from execution of this Agreement and ending August 1, 2023.

4. Sales Tax Rebates. The City shall rebate to the Company 50% of the Sales Tax revenues derived from the imposition of the City's 3.0% General Sales Tax (excluding the City's .375% Open Space Tax, the .125% Historic Preservation Tax, the .15% Recreation Center Tax, and any new sales taxes) that is actually collected by the City and attributable solely to new retail sales generated by operation of the Project and occurring at the Project location. The rebates apply to the first five (5) years of its operation commencing on the first day of the month following the day the Company begins retail sales to the public from the Project Location ("the Commencement Date"). The five-year rebate period shall commence upon and run continuously from the Commencement Date.

5. Payment of Rebates; Cap; Inspection. The maximum amount of the rebates payable pursuant to Sections 1, 2 and 3 above shall in no event exceed the lesser of (i) the calculation of 50% of the fees or taxes described in Sections 1, 2 and 3 paid to the City, or fifteen thousand dollars ($15,000). The maximum amount of the rebates payable pursuant to Section 4 above shall in no event exceed the calculation of 50% of the taxes described in Section 4 above; provided, further that the total maximum amount of rebates payable pursuant to Section 4 shall in no event exceed thirty-four thousand nine hundred ninety-nine dollars ($34,999). Sales Tax rebates pursuant to Section 4 shall terminate when the Company has received from the City the last rebate payment under this Agreement for five-year rebate period or when the Company has received $34,999 in rebate payments, whichever first occurs. The building permit fee, sign permit fee, and construction use tax rebates in Sections 1, 2 and 3 pertaining to each phase of the Project shall be paid by the City to Company within 120 days following issuance of the certificate of occupancy or final inspection for the applicable portion of the Project work, as reasonably determined by the City, subject to Sections 6, 7 and 8 below. The Sales Tax rebate provided for in Section 4 above shall be paid by the City to Company in annual installments, on or before March 31 of the following year. At the end of each month, on or before the 20th of the following month, the Company shall be responsible to remit to the City its total monthly Sales/Use Tax payment on the appropriate Sales/Use Tax return form. All rebate payments will be remitted by the City to the Company at the address set forth in Section 9.

6. No Interest; Inspection and Disclosure of Records. No interest shall be paid on any amounts subject to rebate under this Agreement. Each party and its agents shall have the right to inspect and audit the applicable records of the other party to verify the amount of any payment under this Agreement, and each party shall cooperate and take such actions as may be necessary to allow such inspections and audits. The Company acknowledges that implementation of this Agreement requires calculations based on the

amount of taxes collected and paid by the Company with respect to the term of this Agreement and issuance of rebate payment checks in amounts determined pursuant to this Agreement, and that the amounts of the rebate payment checks will be public information. The Company, for itself, its successors, assigns, and affiliated entities, hereby releases and agrees to hold harmless the City and its officers and employees from any and all liability, claims, demands, and expenses in any manner connected with any dissemination of information necessary for or generated in connection with the implementation of rebate provisions of this Agreement.

7. Use of Funds; Future Fees. Funds rebated to the Company pursuant to this Agreement shall be used by the Company solely for obligations and/or improvements permitted under Louisville Municipal Code section 3.24.060 (as enacted by Ordinance No. 1507, Series 2007), which includes, but is not limited to, creation of new Sales Tax revenue and new basic jobs. The Building Permit Fee, Sign Permit Fee and Construction Use Tax rebates provided for under this Agreement are solely for construction activities and purchases for the Project during the periods stated in Sections 1-3, above. Any previous or subsequent purchases and construction activities shall be subject to payment without rebate of all applicable Building Permit Fees and Construction Use Taxes.

8. Effect of Change in Tax Rate. Any increase or decrease in the City General Sales, Construction Use, or Consumer Use Tax rate above or below the applicable tax rate on the date of execution of this Agreement shall not affect the rebate payments to be made pursuant to this Agreement; rather, the amount of the rebate payments will continue to be based upon the General Sales, Construction Use, or Consumer Use Tax rates applicable on the date of execution of this Agreement (excluding the City's 0.375% Open Space Tax, 0.125% Historic Preservation Tax, and 0.150% Recreation Center Tax). Any decrease in the City General Sales, Construction Use, or Consumer Use Tax rates shall cause the amount of the rebate payments made pursuant to this Agreement to be based on the applicable percentage of revenues actually received by the City from application of the tax rate affected (excluding said Open Space, Historic Preservation, Recreation Center, or future special Sales or Use taxes).

9. Entire Agreement; Notices. This instrument shall constitute the entire agreement between the City and the Company and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter. Contact information is as follows:

If to Company:
The Simon, LLC
Attn: Daniel Kelly
671 Amelia Lane

Lafayette, CO 80026
949-648-8997
dankelly7@yahoo.com

If to City:
Louisville City Hall
Attn: Economic Vitality
749 Main Street
Louisville, CO 80027
303.335.4531
mpierce@louisvilleco.gov

10. Termination. This Agreement shall terminate and become void and of no force or effect upon the City if, by August 1, 2023, the Company has not completed the Project as described in the Company's application for business assistance (as evidenced by a successful final inspection for the Project); or should fail to comply with any City code.

11. Business Termination. In the event the Company, and/or its successors and assigns, ceases business operations in the City within five (5) years after the Certificate of Occupancy has been issued by the City for the Project, then in such event the Company shall pay to the City a portion of the total amount of Building Permit Fees, Construction Use Taxes, and Sales Taxes which were due and payable by the Company to the City but were rebated by the City. For each full year that the Company, and/or its successors and assigns, cease operations at the Project Location, the City shall receive back 10% of the foregoing amounts.

12. Subordination. The City's obligations pursuant to this Agreement are subordinate to the City's obligations for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales and use tax revenues in excess of the sales and use tax revenues necessary to meet such existing or future bond indebtedness. The City shall meet its obligations under this Agreement only after the City has satisfied all other obligations with respect to the use of sales tax revenues for bond repayment purposes. For the purposes of this Agreement, the terms "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the City, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by sales and use tax revenues of the City.

13. Annual Appropriation. Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20 or any

other constitutional or statutory provision, and the City's obligations hereunder are expressly conditional upon annual appropriation by the City Council, in its sole discretion. Company understands and agrees that any decision of City Council to not appropriate funds for payment shall be without penalty or liability to the City and, further, shall not affect, impair, or invalidate any of the remaining terms or provisions of this Agreement.

14. Governing Law: Venue; Dispute Resolution. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. This Agreement shall be subject to, and construed in strict accordance with, the Louisville City Charter and the Louisville Municipal Code. Any action arising out of, in connection with, or relating to this Agreement shall be filed in the District Court of Boulder County of the State of Colorado and in no other court or jurisdiction. In the event of a dispute concerning any provision of this Agreement, the parties agree that prior to commencing any litigation, they shall first engage in good faith the services of a mutually acceptable, qualified, and experienced mediator, or panel of mediators for the purpose of resolving such dispute. In the event such dispute is not fully resolved by mediation or otherwise within 60 days of a request for mediation by either party, then either party, as their exclusive remedy, may commence binding arbitration regarding the dispute through Judicial Arbiter Group. Judgment on any arbitration award may be enforced in any court of competent jurisdiction.

15. Legal Challenge; Escrow. The City shall have no obligation to make any rebate payment hereunder during the pendency of any legal challenge to this Agreement. The parties covenant that neither will initiate any legal challenge to the validity or enforceability of this Agreement, and the parties will cooperate in defending the validity or enforceability of this Agreement against any challenge by any third party. Any funds appropriated for payment under this Agreement shall be escrowed in a separate City account in the event there is a legal challenge to this Agreement.

16. Assignment. This Agreement is personal to the Company and the Company may not assign any of the obligations, benefits or provisions of the Agreement in whole or in any part without the express written authorization of the City Council of the City. Any purported assignment, transfer, pledge, or encumbrance made without such prior written authorization shall be void.

17. No Joint Venture. Nothing is this Agreement is intended or shall be construed to create a joint venture between the City and the Company and the City shall never be liable or responsible for any debt or obligation of Company.

This Agreement is enacted this 17th day of MAY, 2022.

THE SIMON LLC
a Colorado Limited Liability Company

By: Daniel J. Kelly
Daniel Kelly
CEO

CITY OF LOUISVILLE

Megan Davis
Interim City Manager

ATTEST:

Meredyth Muth, City Clerk

ASSIGNMENT OF BUSINESS ASSISTANCE AGREEMENT
FROM THE SIMON LLC TO NORA'S LLC

THIS ASSIGNMENT OF BUSINESS ASSISTANCE AGREEMENT is made and entered into this **9th day of July, 2024,** by and between the **City of Louisville,** a Colorado municipal corporation, **The Simon LLC**, a Colorado limited liability company, and **Nora's LLC**, a Colorado limited liability company.

WHEREAS, the City approved a Business Assistance Agreement dated May 17, 2022 with The Simon LLC (the "Agreement") in connection with The Simon LLC's event space and speakeasy bar at 957 Main Street; and

WHEREAS, The Simon LLC has transferred operation of the business to Nora's LLC and requests the Agreement be assigned to Nora's LLC; and

WHEREAS, paragraph 16 of the Agreement requires City consent for any assignment.

NOW, THEREFORE, in consideration of the recitals, promises, covenants and undertakings herein set forth, and other good and valuable consideration, which is hereby acknowledged and receipted for, the parties hereto agree as follows:

1. The Agreement is hereby assigned to Nora's LLC. All rights, duties, obligations and benefits of the Agreement are transferred to Nora's LLC as a result of such assignment. Nothing herein shall relieve The Simon LLC of any obligations or liabilities accruing under the Agreement prior to the effective date hereof.

2. Any and all rebate payments made by the City under the Agreement, whether made or accruing for periods before or after execution of this instrument, shall be made payable solely to Nora's LLC. The City shall have no obligation to make payment to any other party.

3. The addresses for notice set forth in Paragraph 9 of the Agreement are revised as follows:

If to the Company:
Nora's LLC
Attn: Daniel Kelly
957 Main Street
Louisville, CO 80027
949-648-8997
dankelly7@yahoo.com

If to the City:
City of Louisville

Attn: Economic Vitality
749 Main Street
Louisville, CO 80027
303-335-4529
ABrown@LouisvilleCO.gov

4. Except as set forth in this Assignment, the Agreement shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written above.

THE SIMON LLC	**NORA'S LLC**
By: ______________________________	By: ______________________________
Print:______________________________	Print: ______________________________
Title: ______________________________	Title: ______________________________

This Assignment and Assumption is hereby approved by the City of Louisville:

CITY OF LOUISVILLE,

By: ______________________________
Christopher M. Leh, Mayor

ATTEST:

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Meredyth Muth, City Clerk