

RESOLUTION

THIS PROJECT AGREEMENT (this "Agreement") is hereby made and entered into on this the 21st day of August, 2023, by and between the **CITY OF ALEXANDER CITY, ALABAMA**, an Alabama municipal corporation under the laws of the State of Alabama (the "City"), and **JCUP HOTELS, LLC** ("Developer").

RECITALS:

WHEREAS, the city supports and encourages economic development within the city in order to develop a solid and diverse local economy, to increase employment opportunities in the city, to broaden the City's tax base, to increase revenues and to provide necessary and improved services to the citizens of the city, thereby improving the quality of life of its citizens; and

WHEREAS, Amendment No. 739 to the Constitution of Alabama (1901) (Section 94.01(a)(3) of the Recompiled Constitution of Alabama and hereinafter referred to as "Amendment No. 739"), authorizes the City to lend its credit to or grant public funds and things of value in aid of or to any business entity for the purpose of promoting the economic and industrial development of the City. **The city has held a public hearing on the 21st day of August, 2023 regarding the Project and the Incentives to be granted by the city, as required by Amendment No. 739; and**

WHEREAS, The Developer has approached the City with plans to acquire a franchise of a national hotel chain and construct a seventy-five (75) room hotel including amenities on a site of approximately 4.9 acres (Project Site) now owned by the City. (See survey plat attached hereto); and

WHEREAS, The Developer has represented to the City that the hotel will be a franchise agreement with a certain nationally known hotel brand and that the name shall be confirmed to the City following approval of this Agreement. At such time the City is permitted to reveal such hotel chain's name ("the identified hotel chain") at all times **during the process of completing the terms of this Agreement; and**

WHEREAS, Developer has informed and represented to the City that Developer cannot cause the Project to be developed without the City Assistance herein set forth and described, and the City has agreed to provide financial assistance for development and completion of the Project in the form of the City Assistance, all as further specified, as set forth and described in this Agreement; and

WHEREAS, the City finds that it is necessary, proper and in the public interest, in accordance with Amendment No. 739, that the City should enter this Agreement with Developer pursuant to which Developer will undertake the Project and the City will provide certain incentives in the form of the City Assistance in connection with the Project, and that providing the City Assistance in accordance with the terms and conditions of this Agreement will promote the economic development of the City and, accordingly, is for a public purpose and is authorized by, consistent with, and in furtherance of the objectives of Amendment No. 739; and

WHEREAS, the City does hereby ascertain, determine, declare and find that development and implementation of the Project with the City Assistance is in the best interest of the City and will serve a public purpose and further enhance the public benefit and welfare by, among other things: promoting local economic development and stimulating the local economy, and employment opportunities in the City, increasing the City's tax base, resulting in additional tax revenues for the City, promoting the development of new business enterprises and retail business in the City, and the productive re-use of vacant and under-utilized property, all of which inure to the economic health of the City and constitute important public benefits to the City and its citizens.

AGREEMENT

NOW, THEREFORE, upon and in consideration for the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

- 1.1 "Capital Costs" shall mean Developer's capital costs and expenses incurred in connection with the acquisition of the Project Site and the development of the Project.
- 1.2 "City" means the City of Alexander City, Alabama.
- 1.3 "City Assistance" shall have the meaning set forth in Section 2.2(a) below.
- 1.4 "Completion Date" shall have the meaning set forth in Section 2.2(b)(i) below.
- 1.5 "Developer" means JCUP Hotels, LLC, or any entity owned by JCUP Hotels, LLC for the purposes of construction and operation of the Project.
- 1.6 "Effective Date" shall have the meaning set forth in Section 3.1 below.
- 1.7 "Fiscal Year" means the applicable fiscal year of the city. The City's fiscal year is October 1 of one calendar year through September 30 of the immediately succeeding calendar year.

- 1.8 "Force Majeure" shall have the meaning set forth in Section 2.1 below.
- 1.9 "Indemnified Parties" means the City, its elected and appointed officials, officers, employees and agents.
- 1.10 "Incentive means conveyance of the city of a parcel of land, approximately 4.9 acres as described in Exhibit A attached hereto.
- 1.11 "Legal Proceeding" means an action, litigation, arbitration, administrative proceeding, claim and other legal or equitable proceeding of any kind.
- 1.12 "Project" shall have the meaning set forth in the Recitals above.
- 1.13 "Project Site" shall have the meaning set forth in the Recitals above.

ARTICLE II PROJECT DEVELOPMENT AND INCENTIVES

2.1 Development Plan & Requirements

- a) The City agrees that, in the event the current zoning of the Project Site is not sufficient to allow the Project, it will work in good faith to adopt such zoning changes, variances or conditional use exceptions as the City and the Developer may deem reasonably necessary for the Project. The Developer and the City agree to work together jointly to develop amendments to the City's zoning ordinance, as may be necessary for the city zoning of the Project Site. The City agrees to furnish to the Developer upon request, copies of any municipal zoning ordinance or any special exception use ordinances applicable to the Project Site.
- b) The City agrees that it will seek and obtain approval and recordation of any combination/subdivision plat as the Developer may deem reasonably necessary for its intended development of the Project Site pursuant to the Development Plan; provided in no event shall any such commitment (or similar commitment under this Agreement) commit the City to approve and record the same if not prepared, submitted and otherwise applied for in accordance with applicable laws, standards, resolutions, ordinances, codes, and regulations.
- c) The City agrees to work in good faith with Developer regarding the approval of signage for the Project Site **which** shall comply with Article IV Section 7 of the Alexander City Zoning Ordinance, 2016. (the Signage Ordinance).

- d) Developer commits to undertake the Project in accordance with the requirements of this Agreement and all applicable laws, standards, resolutions, ordinances, Zoning Ordinance 2016, codes and regulations, including Article V, Section 20, Central Alabama Business Park District (CAB). The Project Site will be developed pursuant to a development plan to be provided to the City for review and approval prior to the commencement of construction of the Project (the "Development Plan"). The Development Plan shall include, without limitation, all construction phases for the Project, a detailed site plan, a schematic design for all interior and exterior construction, preliminary plans and drawings, landscaping plans, elevations, any other materials required to adequately describe the character and scale of the Project relative to its surroundings, and all other plans and drawings necessary for a schematic plan of the Project. Design work for the Project shall include all work through preparation of plans and specifications and construction documents. The design work for the Project shall be performed by Developer at its sole expense. Developer agrees to obtain all necessary approvals and permits for the Project. City agrees to expeditiously review and approve the Development Plan to obtain land disturbance permits, building permits and certificates of occupancy for the Project in the ordinary course. The Developer hereby covenants and agrees to construct and develop, or cause to be constructed and developed, the Project Site in accordance with the Development Plan.
- e) In connection with its obligation to undertake the Project, Developer has represented to the City that it has obtained, or will use good faith efforts to obtain, sufficient financial resources to complete the Project.
- f) In the event Developer has not obtained a certificate for occupancy and opened the same to the public for business on or before two (2) years from the Effective Date which is the date of the last party to sign this Agreement, then the City shall have the option to terminate this Agreement prior to Developer obtaining a certificate of occupancy for the Project and opening the same to the public for business, upon which termination the City shall have the option to take back the 4.9 acres and all improvements thereon. The City upon good cause shown may extend the completion date by two (2) six (6) month periods.
- g) The obligations of Developer to commence and complete construction of the Project and/or fulfil its obligations under Section 2.1(f) above shall be extended, for each day of the Force Majeure event, but in no event for a period of time that, in the aggregate (whether due to one or more than one Force Majeure Event), totals not more than 120 days, if Developer's performance is delayed or prevented by Force Majeure; provided, that Developer provides written notice (the "Force Majeure

Notice") to the City of the occurrence of an event of Force Majeure that prevents such commencement or completion of construction within ten (10) days following the occurrence of the Force Majeure event giving rise to the delay, which such notice shall include (1) a description of the Force Majeure event, (2) an explanation of how Developer anticipates such Force Majeure event will affect its ability to timely commence or complete construction of the Project, (3) the actions Developer plans to undertake in order to address the conditions caused by the Force Majeure event, and (4) an estimate of how long Developer anticipates the Force Majeure event will delay its ability to commence and/or complete construction. The term "Force Majeure" as used in this Agreement means act of God (but not including normal seasonal inclement weather) or the public enemy, strikes, lockout, work slowdowns or stoppages or other labor disputes, insurrections, riots or other civil disturbances, orders of the government of the United States of America or of the State of Alabama or of any of the departments, agencies, political subdivision or officials of the United States of America or the State of Alabama, or orders of any other civil or military authority, or partial or entire failure of public utilities, financial crises, pandemics, or any other condition or event beyond the reasonable control of Developer (excluding unfavorable economic conditions). Developer will, to the extent that it may lawfully do so, use its best efforts to remedy, alleviate or circumvent any cause or causes preventing it from performing its agreements and covenants hereunder.

- h) Developer hereby discharges the City of any responsibilities for any inadequacies in the Development Plan. Approval of the Development Plan by the City shall not be deemed to be an assumption of responsibility or liability by the City of any negligent act, or omission in the performance of Developer's design professional or in such design professional's preparation of the Development Plan. In this connection, Developer shall indemnify and hold harmless the City and all of its elected and appointed officials, officers, agents, servants and employees (collectively, the "Indemnified Parties") as provided in Section 3.3 below.
- i) Developer shall cause any architect, general contractor, subcontractor or other business performing any work in connection with the construction of the Project or any other improvements on the Project Site to obtain all necessary permits, licenses and approvals to construct the same. It is understood and acknowledged that the City will not waive any fees, access fees, or related expenses for any permits, licenses or approvals that must be obtained from the City or any other governmental authority in connection with design, development, construction, equipping or operation of the Project. The City's approval of the Development Plan shall not be deemed an approval or waiver of any compliance by

Developer, any person or entity involved in the design, development, equipping or construction of the Project, or of the Project, with any such applicable laws.

- j) The City shall be responsible for the relocation of the existing water line(s). If additional equipment is required to relocate the line(s), the Developer will reimburse the City for actual expenses of the equipment.
- k) A permanent easement must be executed between the City and Developer for all utility access to the Project Site.
- l) The Developer will be responsible for all costs associated with electrical services (including transformers) from the sectionalizing cabinet to the transformer and all secondary from the transformer to the building.
- m) The Developer shall pay all utility taps and fees (water, sewer and gas).

2.1 City Assistance

- a) In consideration for Developer's agreement to construct and develop the Project, the City hereby agrees to convey by Statutory Warranty Deed the Project Site consisting of approximately 4.9 acres as described in Attachment 1. If the Developer determines to use any portion of the 4.9 acres for purposes other than the Hotel Project, the City must approve such intended use and if approved, the parties shall enter into a Memorandum of Understanding setting out the terms of the usage and subsequently a Project Agreement approved by the City.
- b) The City shall request that the Lake Martin Area Economic Development Alliance assist the Purchaser/Developer with two (2) year's abatement of non-educational ad valorem tax.

**ARTICLE III
GENERAL TERMS**

3.1 Effective Date. This Agreement shall become effective on the date upon which it is executed by the last party to sign (the "Effective Date").

3.2 Public Purpose. The City does hereby ascertain, determine, declare and find that the development and implementation of the Project with the City Assistance is in the best interest of the City and will serve the public purposes set forth in the Recitals above.

3.3 Indemnity. Developer shall release, save, hold harmless and

indemnify the Indemnified Parties, and any of them, from and against any and all claims, loss, damage, liability or expense, on account of (i) damage to property and injuries, including death, to all persons arising from Developer's design or construction of the Project or (ii) arising from or in connection with any activity of Developer or any of Developer's agents, contractors or employees in connection with the Project and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action against the Released Parties, or any of them, by reason of any such claim, and Developer, upon notice from the City, shall, at its own expense, defend any suits or other proceedings brought against the Indemnified Parties, or any of them, in connection with (i) or (ii) above and shall pay all expenses and satisfy all judgments which may be incurred by or rendered against them or any of them in connection therewith. The foregoing indemnity obligation shall include, but is not limited to, indemnification of the Indemnified Parties, or any of them, against any claim for payment brought by any contractor, subcontractor, materialman, supplier, laborer, design professional or the like in connection with work, labor and/or materials supplied in connection with the Project and out of any defect, deficiency or negligence of the architect's or engineer's designs and specifications incorporated into any improvements constructed in accordance therewith. The foregoing indemnity obligation shall survive the expiration or earlier termination of this Agreement.

3.4 Assignment. Developer may not assign and/or transfer this Agreement, in whole or part, to any lender, as a part of any financing transaction, and/or to any subsequent Owner of the Project Site or any portion thereof without the written consent of the City, which shall not be unreasonably withheld.

3.5 Default and Termination.

- a) For purposes of this Agreement, an event of default shall be defined as:
- (i) Developer's breach or violation of any term or condition of this Agreement which is not cured within thirty (30) days after written notice from the City;
 - (ii) any material representation made by Developer in this Agreement, or in any certificate, notice, or request made by Developer in writing and delivered to the City pursuant to or in connection with this Agreement shall prove to be untrue or incorrect in any material respect as of the date made;
 - (iii) the entry of a decree or order for relief by a court having jurisdiction concerning Developer in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, trustee (or similar official) of Developer for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days;
 - (v) the commencement by Developer of a voluntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law; or
 - (vi) the consent by Developer to the appointment of or taking possession

E-Mail: Stephanie.Southerland@alexandercityal.gov

With a copy to:

Larkin Radney

Barnes & Radney, P.C.

P.O. Drawer 877

Alexander City, AL 35011-0877

Facsimile: (256) 329-8438

E-Mail: lradney@barnesandradney.com

To Developer: JCUP HOTELS, LLC
1698 Capstone Drive
Alexander City, AL 35010
Facsimile: _____
E-Mail: _____

or to such other address as the parties shall designate from time to time by written notice.

3.8 Cost and Expense. Each party agrees to pay its own costs incurred in connection with the negotiation and preparation of this Agreement. Developer acknowledges that it shall be responsible for all costs of developing the Project, including but not limited to, the cost of all improvements required to the Project Site in order to implement the Project and the cost of planning, developing and maintaining the Project Site, such as legal, engineering, architectural, construction and environmental services. Developer shall not hold itself out as an agent of the City and shall not make any representation or take any action which shall convey the impression to any contractor, subcontractor, laborer or supplier that the City has any obligation or responsibility for any payment to such contractor, subcontractor, laborer or supplier in connection with the Project.

3.9 Section Title and Headings. The section titles and headings are for convenience only and do not define, modify or limit any of the terms and provisions hereof.

3.10 Representations and Warranties of Developer. Developer makes the following representation and warranties as the basis for its undertakings pursuant to the Agreement.

- a) Developer is a duly organized and existing Alabama limited liability company, in good standing, and has the power to enter into and to perform and observe the agreements and covenants on its part contained in this Agreement. Developer will provide to the City a true and accurate roster of its members and the principals of any corporate members upon its execution of this Agreement.
- b) The Developer has the ability to secure financing sufficient to perform all covenants and obligations as set out in this Agreement.
- c) The execution and delivery of this Agreement on the part of Developer's undersigned officer have been duly authorized by a resolution duly adopted by

Developer's members and by all other necessary actions.

d) All actions and proceedings required to be taken by or on behalf of Developer to execute and deliver this Agreement, and to perform the covenants, obligations and agreements of Developer hereunder, have been duly taken.

e) There are no approvals, authorizations, consents or other actions by or filings with any person which are required to be obtained or completed by Developer in connection with the execution and delivery of this Agreement or in connection with any other action required to be taken by Developer hereunder. Developer is not and will not be required to give any notice to or obtain any consent from any person or entity in connection with the execution and delivery of this Agreement or the consummation or performance of any of the transactions contemplated hereby.

f) The execution and performance of this Agreement by Developer do not: (1) constitute and will not result in the breach or violation of any contract, lease, mortgage, bond, indenture, franchise, permit or agreement of any nature to which Developer is a party; (ii) contravene, conflict with, or result in a violation of, or give any governmental body or other person the right to challenge any of the transactions contemplated hereby or to exercise any remedy or obtain any relief under any legal requirement or any order to which Developer, or any of the assets owned or used by Developer may be subject; (iii) contravene, conflict with, or result in a violation or breach of any provision of, or give any person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, any contract, agreement, instrument or understanding by which Developer is bound; or (iv) result in the imposition or creation of any lien, security interest, or encumbrance upon or with respect to any of the assets owned or used by Developer.

g) Developer is not in default under, or in violation of, any law or regulation or under any order of any court, board, commission or agency whatsoever. Developer has received no notice of any pending or impending civil or criminal investigation, audit, proceeding, action, or litigation or any nature from any federal, state or local board, commission or agency.

h) There are no outstanding judgments, orders, writs, injunctions, or decrees of any government entity, no pending Legal Proceedings or material threats of Legal Proceedings, against or affecting Developer before or by any court, board, commission or agency whatsoever which would have a material effect on Developer's performance of its obligations under this Agreement.

i) Neither Developer nor its principals has experienced bankruptcy, insolvency or any other form of legal relief from claims of creditors.

j) Developer certifies that it has not employed or retained any company or person to solicit or secure its selection to enter into this Agreement or to obtain any contract or business of any nature from the City, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement or obtaining any contract or business of any nature from the City. For the breach or violation of this provision, the City shall have the right to terminate the Agreement without liability at its discretion.

The representation, warranties and covenants made by Developer herein shall survive the performance of any obligation to which such representation, warranties and covenants relate.

3.11 Relationship and Parties. The City and Developer agree that nothing contained in this Agreement, or any act of Developer or the City, shall be deemed or construed by either of the parties hereto, or by third persons, to create any relationship of third party beneficiary hereof, or of principal and agent, or of a limited or a general partnership or of a joint venture or of any association or relationship between Developer and the City other than as independent contractors in a contract entered into at arm's length. Notwithstanding any of the provisions of this Agreement, it is agreed that the City has no investment or equity interest in the business of Developer, and shall not be liable for any debts of Developer, nor shall the City be deemed or construed to be a partner, joint venturer or otherwise interested in the assets of Developer, nor shall Developer at any time or times use the name or credit of the City in purchasing or attempting to purchase any equipment, supplies or other thing whatsoever.

3.12 Compliance with Laws.

- a) Developer shall comply, and shall cause its officers, agents, and employees to comply, with all applicable federal, state and local statutes, regulations, rules, ordinances and other laws, including, but not limited to, the Americans with Disabilities Act, which are applicable to the development of the Project.
- b) Developer shall not enter into, execute, or be a party to any covenant, agreement, lease, deed, assignment, conveyance, or any other written instrument, which restricts the lease, use or occupancy of the Project Site, or any part thereof, or any improvements placed thereon, upon the basis of race, ethnicity, color, religion, sex, national origin, age or handicapped status. Developer shall comply with all federal, state and local laws, in effect from time to time, prohibiting discrimination in employment.

3.13 Binding Effects. This Agreement and all terms, provisions and obligation set, forth herein shall be binding upon and shall inure to the benefit of Developer and its

successors and assigns and shall be binding upon and shall inure to the benefit of the City and its successors and assigns.

3.14 Governing Law. This Agreement, all rights of the parties hereunder, and all disputes which may arise hereunder shall be subject to and governed in accordance with the laws of the State of Alabama. By executing this Agreement, Developer consents to the jurisdiction and venue of the courts of Tallapoosa County, Alabama with respect to any matter arising hereunder.

3.15 Entire Agreement: Amendment. This Agreement constitutes one entire and complete agreement, and neither of the parties hereto shall have any rights arising from any separate component of this Agreement without complying in all respects with its duties and obligations under all parts and components hereof. This Agreement constitutes and includes all promises and representations, expressed or implied, made by the City and Developer. No stipulations, agreements or understandings of the parties hereto shall be valid or enforceable unless contained in this Agreement. No oral conditions, warranties or modifications hereto shall be valid between the parties. This Agreement may be amended only by a written instrument executed by both parties.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

ADOPTED THIS 21ST DAY OF AUGUST, 2023.

FOR PUBLIC RELEASE

By: Audrey "Buffy" Colvin, President

Alexander City Council

AUTHENTICATED THIS 21ST DAY OF AUGUST, 2023.

FOR PUBLIC RELEASE

By: Stephanie J. Southerland,

City Clerk

APPROVED:

FOR PUBLIC RELEASE

By: Curtis Woody Baird,

Mayor

Yeas: Hardy, Colvin, E. Brown, C. Brown, Keel

Nays: None

RESOLUTION BOOK 23-98

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed as of the date first above written.

DEVELOPER – JCUP HOTELS, LLC

By: _____
Name: Jay N. Patel
Its: Member

CITY OF ALEXANDER CITY, ALABAMA

ATTEST:

By: _____
Name: Curtis W. Baird
Its: Mayor

By: _____
City Clerk

STATE OF ALABAMA)
COUNTY OF TALLAPOOSA)

I, the undersigned authority, a Notary Public and for said County, in said State, hereby certify that Jay Patel, whose name as Member of JCUP HOTELS, LLC is signed to the foregoing Project Agreement and who is known to me, acknowledged before me, that, being informed of the contents of this Project Agreement, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal this the ____ day of _____, 2023.

NOTARY PUBLIC
My Commission Expires:_____

STATE OF ALABAMA)
COUNTY OF TALLAPOOSA)

I, the undersigned authority, a Notary Public and for said County, in said State, hereby certify that Curtis W. Baird, whose name as Mayor of the City of Alexander City, Alabama, a municipal corporation, is signed to the foregoing Project Agreement and who is known to me, acknowledged before me, that, being informed of the contents of this Project Agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation on the day the same bears date.

Given under my hand and official seal this the ____ day of _____, 2023.

NOTARY PUBLIC
My Commission Expires:_____