

RESOLUTION

To Authorize the Mayor to Sign an Amendment to the Project Agreement Between the City of Alexander City and Alex City Development, LLC.

THIS SECOND AMENDMENT TO PROJECT AGREEMENT (this "Amendment") is made effective as of October ____, 2023 by and between (i) CITY OF ALEXANDER CITY, ALABAMA (the "**City**"), and (ii) ALEX CITY DEVELOPMENT, LLC, an Alabama limited liability company (the "**Developer**). The City and the Developer are sometimes referred to herein as a "Party" and collectively as the "Parties."

WHEREAS, the Parties have entered into a certain Project Agreement dated as of June 8, 2021, as amended by that certain First Amendment to Project Agreement dated as of July 19, 2022 (as amended from time to time, the "Agreement") relating to the Property; and

WHEREAS, the City and the Developer desire to modify the terms and provisions of the Agreement on the terms and conditions more particularly set forth herein.

NOW, THEREFORE, BE IT RESOLVED, in consideration of the foregoing, the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby covenant and agree as follows:

1. Capitalized Terms. Any capitalized term used in this Amendment shall have the same meaning given to such terms in the Agreement unless otherwise specifically provided or unless the context indicates otherwise.
2. Conflict. In the event of any conflict or ambiguity between the terms of this Amendment and the terms of the Agreement, this Amendment shall control to the extent of such conflict or ambiguity.
3. Section 2.1(i). The following shall be added to the Agreement as Section 2.1(i):
 - i) If, due solely to the Alabama Department of Transportation

project with respect to US Highway 280 and Highway 63 (the "ALDOT Project"), a tenant in the Initial Phase, prior to the completion of the ALDOT Project, delays opening to the public within the Initial Phase (the portion of the Initial Phase to be leased to such tenant, an "Applicable Pre-Opening Portion") for business (the period of such delay being referred to herein as the "Delay Period"), such delay being documented by a writing from such tenant evidencing that the delay is a result solely of the ALDOT Project, then, as respect the Applicable Pre-Opening Portion, the obligations of Developer to commence and complete construction of the Applicable Pre-Opening Portion of the Project and/or fulfill its obligations under Section 2.1(g) above as respects the Applicable Pre-Opening Portion shall be extended, for each date of the Delay Period, but in no event for a period of time totaling more than 365 days. If a tenant that has opened for business to the public within the Project prior to completion of the ALDOT Project temporarily closes such portion before completion of the ALDOT Project (the "Applicable Post-Opening Portion") to the public for business (the period of such closure being referred to herein as the "Closure Period"), such temporary closure being documented by a writing from such tenant evidencing that such closure is solely a result of the ALDOT Project, then the Reimbursement Term as to such Applicable Post-Opening Portion shall be extended for each day of the Closure Period, but in no event for a period of time totaling more than 365 days. Copies of all notices from tenants of the Project delivered to the Developer and upon which the Developer seeks to assert its rights under the immediately preceding two sentences of this Section 2.1(i) shall be provided by the Developer to the City.

4. Section 2.2(c). Section 2.2(c) is hereby deleted in its entirety and replaced with the following:

- c) Developer hereby covenants and agrees to obtain a loan (the "Developer Loan"), the proceeds of such loan being used for the acquisition of the Project Site and for the development and construction of the Project, which Developer Loan shall:
 - i. be in the principal amount of not more than Seven Million Five Hundred Thousand and No/100 Dollars (\$7,500,000);
 - ii. have a final maturity date of not later than five (5) business days after the last Payment Date;
 - iii. have principal installments commencing no later than five (5) business days after the first Payment Date (the "Principal Commencement Date") and maturing on a monthly, semi-

monthly, or annual basis, with not less than \$596,000 of principal maturity during each year of the term of the Developer Loan beginning on the Principal Commencement Date and each year thereafter until the maturity of the Developer Loan; and

- iv. vest with the Developer the right to prepay, from time to time and at any time, principal due under the Developer Loan upon not less than ten (10) days prior to notice to the lender, at and for a price equal to the principal amount so prepaid plus interest to the date of prepayment (and for the avoidance of doubt, with no penalty or premium for any prepayment).

Any interest that accrues on the Developer Loan prior to the Reimbursement Term shall solely be borne by Developer and shall not be paid from any Incentive Payments.

5. Ratification. Except as expressly modified hereby, the Agreement shall remain unamended and in full force and effect and is hereby ratified and confirmed by the Parties hereto.

6. Counterparts. This Amendment may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile or photocopies of signatures may be accepted as originals.

7. Defined Terms. Terms not defined herein shall carry the definitions ascribed to such terms in the Agreement.

ADOPTED THIS 16TH DAY OF OCTOBER, 2023.

FOR PUBLIC RELEASE

By: Audrey "Buffy" Colvin, President
Alexander City Council

AUTHENTICATED THIS 16TH DAY OF OCTOBER, 2023.

FOR PUBLIC RELEASE

By: Stephanie J. Southerland
City Clerk

APPROVED
Curtis "Woody" Baird

FOR PUBLIC RELEASE

By: Curtis "Woody" Baird
Mayor

Yeas: Hardy, Colvin, E. Brown

Nays: Keel, Tapley

SECOND AMENDMENT TO PROJECT AGREEMENT

THIS SECOND AMENDMENT TO PROJECT AGREEMENT (this “Amendment”) is made effective as of October 17, 2023 by and between (i) CITY OF ALEXANDER CITY, ALABAMA (the “City”), and (ii) ALEX CITY DEVELOPMENT, LLC, an Alabama limited liability company (the “Developer”). The City and the Developer are sometimes referred to herein as a “Party” and collectively as the “Parties.”

WHEREAS, the Parties have entered into a certain Project Agreement dated as of June 8, 2021, as amended by that certain First Amendment to Project Agreement dated as of July 19, 2022 (as amended from time to time, the “Agreement”) relating to the Property; and

WHEREAS, the City and the Developer desire to modify the terms and provisions of the Agreement on the terms and conditions more particularly set forth herein.

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1. **Capitalized Terms**. Any capitalized term used in this Amendment shall have the same meaning given to such terms in the Agreement unless otherwise specifically provided or unless the context indicates otherwise.

2. **Conflict**. In the event of any conflict or ambiguity between the terms of this Amendment and the terms of the Agreement, this Amendment shall control to the extent of such conflict or ambiguity.

3. **Section 2.1(i)**. The following shall be added to the Agreement as Section 2.1(i):

- i) If, due solely to the Alabama Department of Transportation project with respect to US Highway 280 and Highway 63 (the “ALDOT Project”), a tenant in the Initial Phase, prior to the completion of the ALDOT Project, delays opening to the public within the Initial Phase (the portion of the Initial Phase to be leased to such tenant, an “Applicable Pre-Opening Portion”) for business (the period of such delay being referred to herein as the “Delay Period”), such delay being documented by a writing from such tenant evidencing that the delay is a result solely of the ALDOT Project, then, as respect the Applicable Pre-Opening Portion, the obligations of Developer to commence and complete construction of the Applicable Pre-Opening Portion of the Project and/or fulfill its obligations under Section 2.1(g) above as respects the Applicable Pre-Opening Portion of shall be extended, for each date of the Delay Period, but in no event for a period of time totaling more than 365 days. If a tenant that has opened for business to the public within the Project prior to completion of the ALDOT Project temporarily closes such

portion before completion of the ALDOT Project (the “Applicable Post-Opening Portion”) to the public for business (the period of such closure being referred to herein as the “Closure Period”), such temporary closure being documented by a writing from such tenant evidencing that such closure is solely a result of the ALDOT Project, then the Reimbursement Term as to such Applicable Post-Opening Portion shall be extended for each day of the Closure Period, but in no event for a period of time totaling more than 365 days. Copies of all notices from tenants of the Project delivered to the Developer and upon which the Developer seeks to assert its rights under the immediately preceding two sentences of this Section 2.1(i) shall be provided by the Developer to the City.

4. Section 2.2(c). Section 2.2(c) is hereby deleted in its entirety and replaced with the following:

c) Developer hereby covenants and agrees to obtain a loan (the “Developer Loan”), the proceeds of such loan being used for the acquisition of the Project Site and for the development and construction of the Project, which Developer Loan shall:

- i. be in the principal amount of not more than Seven Million Five Hundred Thousand and No/100 Dollars (\$7,500,000);
- ii. have a final maturity date of not later than five (5) business days after the last Payment Date;
- iii. have principal installments commencing no later than five (5) business days after the first Payment Date (the “Principal Commencement Date”) and maturing on a monthly, semi-monthly, or annual basis, with not less than \$596,000 of principal maturity during each year of the term of the Developer Loan beginning on the Principal Commencement Date and each year thereafter until the maturity of the Developer Loan; and
- iv. vest with the Developer the right to prepay, from time to time and at any time, principal due under the Developer Loan upon not less than ten (10) days prior to notice to the lender, at and for a price equal to the principal amount so prepaid plus interest to the date of prepayment (and for the avoidance of doubt, with no penalty or premium for any prepayment).

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7. Defined Terms. Terms not defined herein shall carry the definitions ascribed to such terms in the Agreement.

[Signature pages follows this page]



IN WITNESS WHEREOF, the Parties have signed, sealed, and delivered this Amendment all as of the set forth on the following signature pages.

CITY:

CITY OF ALEXANDER CITY,
ALABAMA, a municipal corporation under
the laws of the State of Alabama

FOR PUBLIC RELEASE

Name: Curtis W. Baird
Its: Mayor

DEVELOPER:

ALEX CITY DEVELOPMENT, LLC,
an Alabama limited liability company

FOR PUBLIC RELEASE

Name: Richard S. Langhorne
Its: Manager