

RESOLUTION 2021-05-17-02

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Shelby Cnty Judge of Probate, AL
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Authorizing an Amendment to Development Agreement between the City of
Pelham and HCI Oak Mountain, LLC

and

Authorizing an Amendment to Special Economic Incentive Agreement between
the City of Pelham and HCI Oak Mountain, LLC

WHEREAS, HCI Oak Mountain, LLC (the "Company") and the City have entered that certain Development Agreement dated August 9, 2019 (the "Base Development Agreement") respecting the development of a mixed-use project within the City to the south of Amphitheater Road across from the Pelham Civic Center and the Oak Mountain Amphitheater (the "Project"); and

WHEREAS, the development plan for the Project contained in the Base Development Agreement, which was preliminary at the time of its execution, has been updated and refined by the Company in light of increased site development costs and current market conditions, including, without limitation, the adverse impacts of the COVID19 pandemic on the restaurant and retail sectors; and

WHEREAS, a related entity of the Company has acquired an approximately 3.13 acre parcel of land ("Parcel E") contiguous to the original site for the Project, which is intended to become part of the overall development plan and site for the Project and results in the site for the Project being expanded to forty (40) acres; and

WHEREAS, the Company and the City desire to amend the Base Development Agreement to reflect the updated development plan, which shall include Parcel E as part of the Project site, and to make certain other changes as hereinafter set forth and described in the form of Amendment to Base Development Agreement hereinafter authorized; and

WHEREAS, the City and the Company are parties to that certain Special Economic Incentive Agreement dated August 9, 2019 (the "Base Incentive Agreement") respecting the Project, under and pursuant to which the City has agreed to make payments to the Company, from certain limited sources derived from the operation of the Project, up to \$2,670,000; and

WHEREAS, the City has heretofore signed and delivered, pursuant to the Base Incentive Agreement, its Limited Obligation Economic Development Revenue Warrant (The Canopy), in the principal amount of up to \$2,670,000 (the "Original Canopy Project Warrant"); and

WHEREAS, the City has determined it necessary to amend the Base Incentive Agreement to (i) increase from \$2,670,000 to \$3,420,000 the maximum amount of payments from the City to the Company, (ii) authorize its Limited Obligation Economic Development Revenue Warrant (The Canopy), in the principal amount of up to \$3,420,000 (the "Replacement Canopy Project Warrant") and in the form set forth as Exhibit G to the Amendment to Base Incentive Agreement herein authorized, in replacement of the Original Canopy Project Warrant, and (iii) align the terms of the Base Incentive Agreement with those of the Base Development Agreement, as amended by the Base Development Agreement Amendment, all pursuant to and in accordance with the Amendment to Base Incentive Agreement hereinafter authorized; and

WHEREAS, the Pelham City Council has determined it is necessary, wise and in the public interest to facilitate development of the Project by approving the changes requested by the Company as set forth in the Base Development Agreement Amendment and in the Base Incentive Agreement Amendment, and to issue the Replacement Canopy Project Warrant in exchange for the Original Canopy Project Warrant, and, further, that it serves a public purpose for the City to enter into and deliver the said amendments and instruments in order to memorialize the same;

NOW, THEREFORE, BE IT RESOLVED by the Pelham City Council to declare that the Mayor be and he is hereby authorized to execute on behalf of the City (i) an Amendment to Base Development Agreement between the City and the Company, the form of which said amendment is attached hereto, with such changes thereto as the Mayor shall deem necessary or desirable (the "Amendment to Base Development Amendment"), and (ii) an Amendment to Base Incentive Agreement between the City and the Company, the form of which said amendment is attached hereto, with such changes thereto as the Mayor shall deem necessary or desirable (the "Amendment to Base Incentive Amendment"), an executed copy of the Amendment to Base Development Agreement and of the Amendment to Base Incentive Agreement being permanently kept on file in the Office of the City Clerk/Treasurer of the City; and

BE IT FURTHER RESOLVED by the Pelham City Council to declare that the Mayor be and he is hereby authorized to execute on behalf of the City the Replacement Canopy Project Warrant, in the form set forth in the Amendment to Base Incentive Agreement and with such changes thereto as the Mayor shall deem necessary or desirable, and the City Clerk/Treasurer is hereby authorized to attest the said Replacement Canopy Project Warrant and to register the same as a limited obligation claim against the City, an executed copy of which shall be permanently kept on file in the Office of the City Clerk/Treasurer of the City; and

BE IT FURTHER RESOLVED by the Pelham City Council that each of the Mayor and the City Clerk/Treasurer is hereby authorized to deliver the executed Replacement Canopy Project Warrant to the Company in exchange for the Original Canopy Project Warrant, and to take such other actions, and execute such other instruments, agreements, notices, certificates, or other documents as shall be necessary or desirable in connection with the issuance of the Replacement Canopy Project Warrant and the transactions authorized or contemplated in the Replacement Canopy Project Warrant, the Amendment to Base Incentive Agreement or the Amendment to Base Development Agreement; and


BE IT FURTHER RESOLVED by the Pelham City Council that the City's obligations under and in furtherance of the Base Development Agreement, as amended by the Amendment to Base Development Agreement (together, the "Development Agreement"), under and in furtherance of the Base Incentive Agreement, as amended by the Amendment to Base Incentive Agreement (together, the "Incentive Agreement"), and under and in furtherance of the Replacement Canopy Project Warrant, and the transactions described in each of the foregoing, are being undertaken pursuant to the authority of Amendment 772 to the Constitution of Alabama of 1901, as amended, recodified as Section 94.01 of the Official Recompilation of the Constitution of Alabama of 1901 ("Amendment 772"), that such obligations are being undertaken by the City in furtherance of any power or authority authorized in Amendment 772, and that the Pelham City Council has determined that the expenditure of public funds for the purpose specified in the Development Agreement and the Incentive Agreement and the

transactions therein contemplated or described will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities; and

BE IT FURTHER RESOLVED each of the Amendment to Base Development Agreement, the Amendment to Base Incentive Agreement, and the Replacement Canopy Project Warrant shall become a permanent part of this resolution.

THEREUPON David Coram, a council member moved that all rules which would prevent the immediate consideration of **RESOLUTION 2021-05-17-02**, hereupon attached, be suspended and immediate consideration given to passage of said Resolution. Said motion was seconded by Rick Wash, a council member, and passed unanimously by roll call vote.

The vote on said motion was as follows:


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Maurice Mercer Council President	<u>Yes</u>
David Coram Council Member	<u>Yes</u>
Larry Palmer Council Member	<u>Yes</u>
Rick Wash Council Member	<u>Yes</u>
Mildred Lanier Council Member	<u>Yes</u>

All rules which would prevent the immediate consideration of **RESOLUTION 2021-05-17-02** be suspended and immediate consideration given passed unanimously by roll call vote.

THEREUPON David Coram, a council member moved and Rick Wash, a council member seconded the motion that **RESOLUTION 2021-05-17-02** be given vote. The roll call vote on said motion was as follows:

Maurice Mercer Council President	<u>Yes</u>
David Coram Council Member	<u>Yes</u>
Larry Palmer Council Member	<u>Yes</u>



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Rick Wash
Council Member

Yes

Mildred Lanier
Council Member

Yes

RESOLUTION 2021-05-17-02 passed by majority roll call vote of all members of the Council and the Council President declared the same passed.

ADOPTED and approved this 6th day of July 2021.

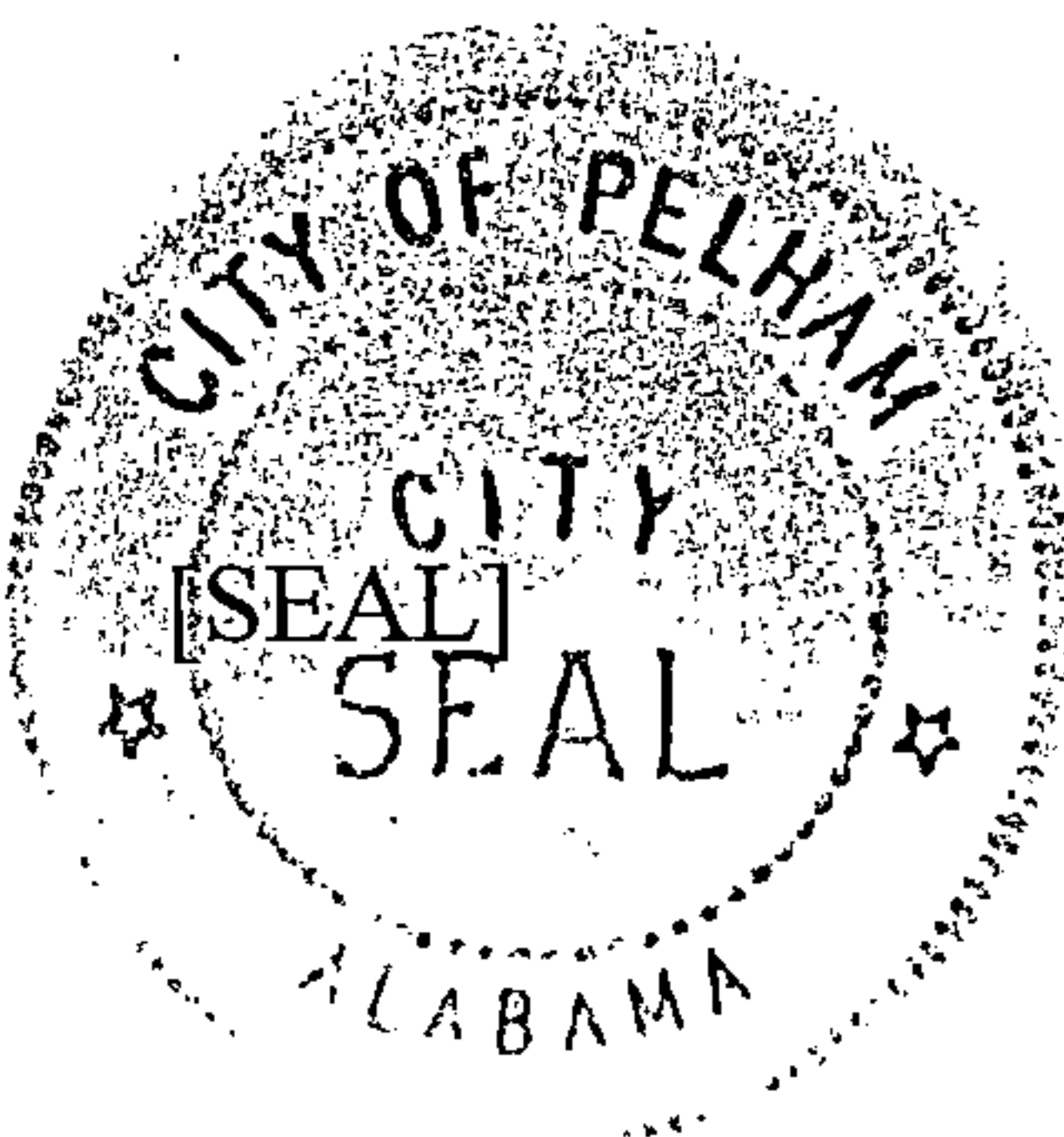
Maurice Mercer, Council President

David Coram, Council Member

Larry Palmer, Council Member

Rick Wash, Council Member

Mildred Lanier, Council Member

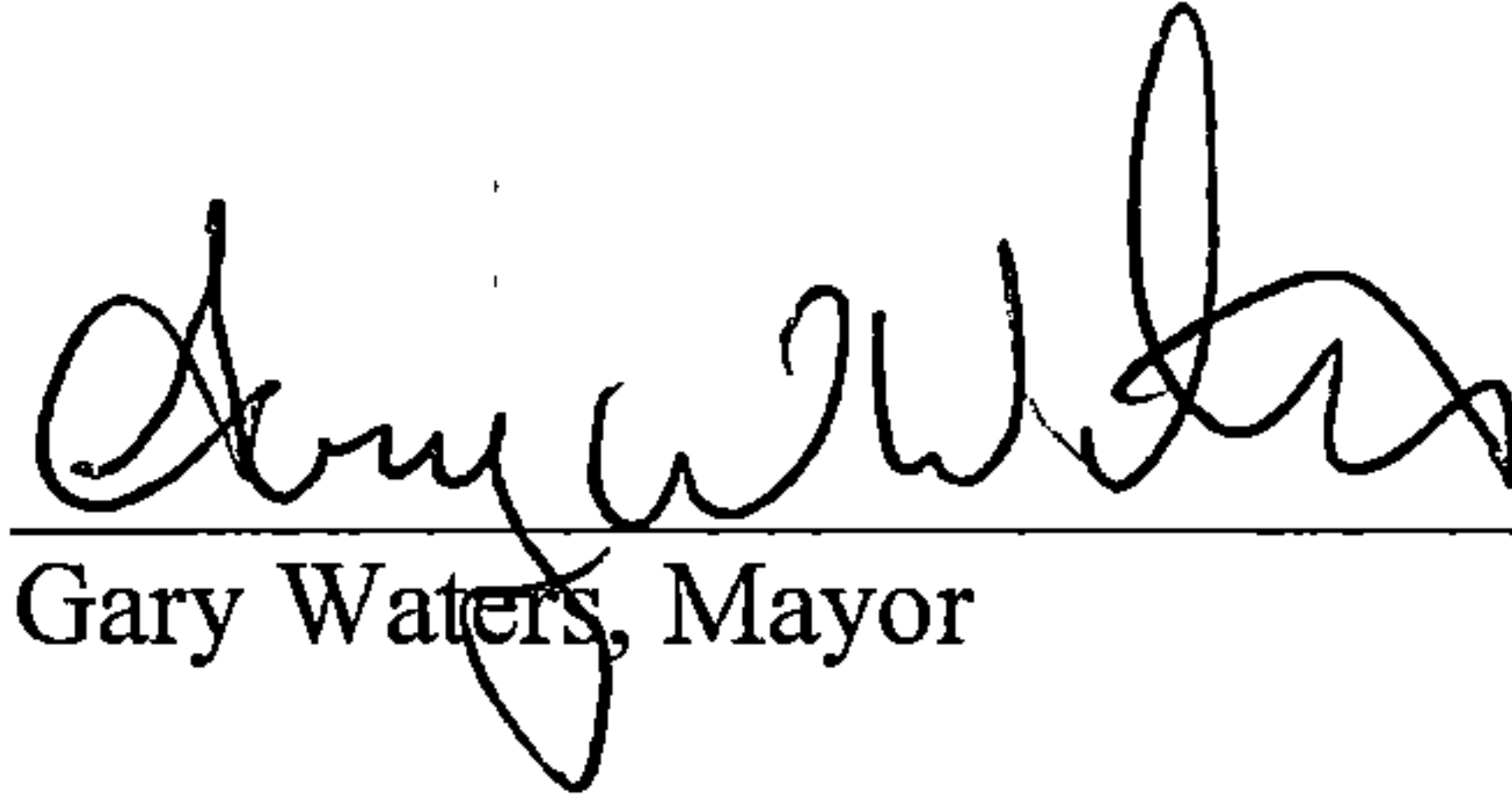


ATTEST:

APPROVED:



Tom Seale, MMC, City Clerk/Treasurer



Gary Waters, Mayor

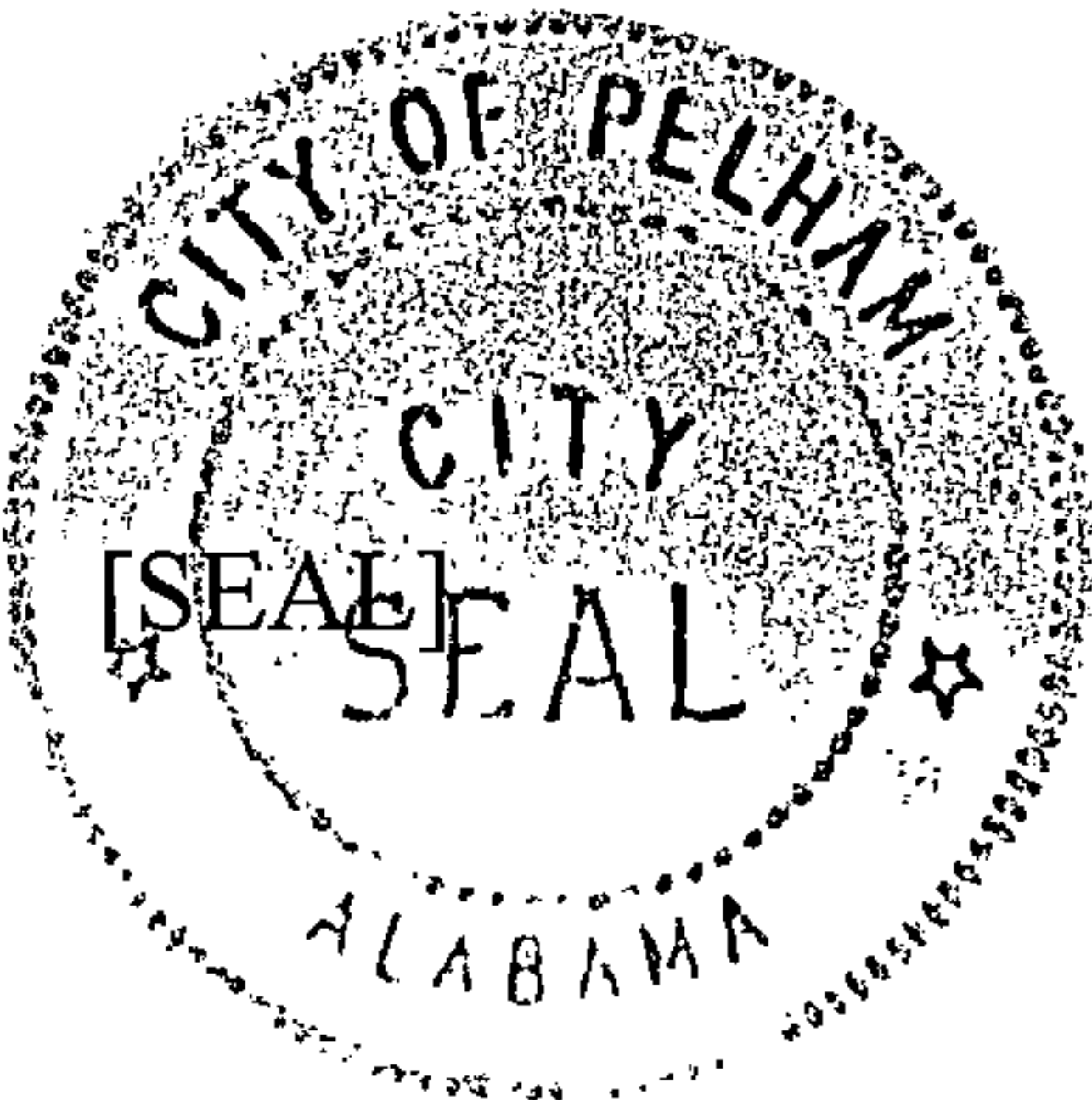
7/6/2021
Date

I, the undersigned City Clerk/Treasurer of the City of Pelham, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the City Council of the City named herein, at a regular meeting of such Council held on the 6th day of July, 2021 and that such Resolution is on file in the office of the City Clerk/Treasurer and that no action has been taken to rescind or modify said Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this 6th day of July, 2021.



Tom Seale, MMC, City Clerk/Treasurer



AMENDMENT TO DEVELOPMENT AGREEMENT THE CANOPY

THIS AMENDMENT TO DEVELOPMENT AGREEMENT (this “**Amendment**”) is hereby made and entered into on this the 6th day of July, 2021, by and between the **CITY OF PELHAM, ALABAMA**, a municipal corporation under the laws of the State of Alabama (the “**City**”), and **HCI OAK MOUNTAIN, LLC**, an Alabama limited liability company (the “**Developer**”).

RECITALS:

WHEREAS, the City and Developer are parties to that certain Development Agreement dated August 9, 2019 (the “**Development Agreement**”) and that certain Special Economic Incentive Agreement dated August 9, 2019 (the “**Incentive Agreement**”) with respect to the Developer’s development of a mixed-use development within the corporate limits of the City to the south of Amphitheater Road across from the Pelham Civic Center and the Oak Mountain Amphitheater, such real estate being more particularly described in the Development Agreement as the “Project Site”; *capitalized terms used herein without definition shall have the meanings set forth in the Incentive Agreement*; and

WHEREAS, the Development Plan, which was preliminary at the time of execution of the Development Agreement, has been updated and refined in light of increased site development costs and current market conditions, including, without limitation, the adverse impacts of the COVID19 pandemic on the restaurant and retail sectors; and

WHEREAS, a related entity of Developer has acquired approximately 3.13 acres of land contiguous to the Project Site (the “**Additional Land**”) which is intended to become part of the overall Development Plan and which results in the Project Site consisting of forty (40) acres and as such, the Project satisfies the minimum acreage requirements for a Planned Unit Development (PUD) designation under the City’s Zoning Ordinance; and

WHEREAS, Developer will act as master developer for the Additional Land on behalf of its related entity and desires to include the Additional Land as part of the Project Site subject to the Development Agreement; and

WHEREAS, Developer and City desire to amend the Development Agreement in order to reflect the updated Development Plan, which shall include the Additional Land as part of the Development, and to make certain other changes as hereinafter set forth.

NOW, THEREFORE, in consideration of the Recitals, Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Project Site.** Exhibit A attached to the Development Agreement is hereby deleted in its entirety and **Revised Exhibit A** attached hereto is inserted in lieu thereof. All references in the Development Agreement to the term “Project Site” shall mean the property depicted on **Revised Exhibit A**.

2. **Development Plan.** Exhibit B attached to the Development Agreement is hereby deleted in its entirety and Revised Exhibit B attached hereto is inserted in lieu thereof. All references in the Development Agreement to the term "Development Plan" shall mean the revised Development Plan attached as Revised Exhibit B. Furthermore, all references in the Development Agreement to utility improvements are hereby amended to comply the revised Development Plan attached as Revised Exhibit B, which reflects the most updated master utility plan. Such revised Development Plan includes Parcel E as part of the Project Site and reflects the following five (5) parcels planned for the following uses:

- *Parcel A:* approximately 10,000 square feet of commercial, retail and/or restaurant space;
- *Parcel B:* an approximately 100 to 130 door hotel;
- *Parcel C:* (i) a "Class A" multifamily community with not more than 250 units which will include approximately 12,000 square feet of commercial, retail and/or restaurant space on the bottom floor of the apartment buildings; and (ii) approximately 14 acres of trails/park/natural areas;
- *Parcel D:* approximately 8,000 square of commercial and/or retail space; and
- *Parcel E:* between approximately 3,000 and 10,000 square feet of commercial and/or retail space. Parcel E will not be part of the proposed future entertainment district or the Cooperative District that are described in the Development Agreement.

The retail component of the Revised Development Plan will continue to be geared toward businesses for the outdoor and nature enthusiasts and specifically the patrons of the Oak Mountain State Park, which may include shops such as a bicycle sales and repairs, an outdoor wear and outfitter store, and restaurants and eateries.

3. **Developer's Work.**

(a) Section 1.1(a) is hereby modified and amended to delete the parenthetical reading "*(including, without limitation, mass grading, utility installation, and storm water detention facilities)*" and inserting in lieu thereof "*(including, without limitation, mass grading, retaining walls, utility installation, roads, curbs, gutters, and storm water detention facilities, achieved directly or indirectly through Developer or related entities)*."

(b) Section 1.1(b) is hereby modified and amended to delete the second sentence which reads, "*The City shall have the option, upon written notice to Developer, to terminate this Agreement and the Incentive Agreement in the event the Developer's Work has not been commenced within one (1) year from the Effective Date*" and to insert the following in lieu thereof: "*The City shall have the option, upon written notice to Developer, to terminate this Agreement and the Incentive Agreement in the event the Developer's Work has not been commenced within two (2) year from the Effective Date.*"

4. **Amendments to City's Obligations.** Certain of the City's obligations as set forth in Section 1.2 of the Development Agreement are amended as follows:

(a) The City hereby agrees to construct the Off-Site Trail or Greenway as identified on the revised Development Plan attached as **Revised Exhibit B** in connection with the City's widening of Amphitheater Road. Such Off-Site Trail or Greenway shall be in lieu of the On-Site Trail contemplated in the original Development Plan. Accordingly, (A) Section 1.1(g) of the Development Agreement is hereby deleted in its entirety and (B) Sections 1.2(c)(A), (B), (C) of the Development Agreement are hereby deleted in their entirety and the following is inserted lieu thereof:

(A) In order to promote and continue the planned trail activities already undertaken by the City and other governing jurisdictions on Bishop's Creek and Oak Mountain State Park Road, the City covenants and agrees, at its own expense, (i) to construct an off-site trail (the "Off-Site Trail") and to connect the same to Oak Mountain State Park Road as depicted on the revised Development Plan attached hereto as Revised Exhibit B. The Off-Site Trail will be constructed in connection with the City's widening of Amphitheater Road. In addition, in order to promote pedestrian traffic between the existing and the proposed development contemplated hereby, and in furtherance of the establishment of a potential future entertainment district, the City covenants and agrees, at its own expense, to construct a signalized crosswalk (that is, pavement markings and pedestrian crossing signs with integrated flashing lights) in the approximate location shown on the Development Plan attached hereto as Revised Exhibit B as the "Signalized Crosswalk" (the "Signalized Crosswalk"). The City will use its reasonable good faith efforts to complete construction of the Off-Site Trail, the widening of Amphitheater Road, and the installation of the Signalized Crosswalk by no later than April 30, 2023; provided, Developer hereby covenants and agrees to provide the City such real property rights as shall be reasonably requested by the City and reasonably determined by the City, subject to reasonable approval rights by Developer, as necessary or desirable for the City to perform such obligations.

(B) [Intentionally Deleted].

(C) [Intentionally Deleted].

(b) Section 1.2(c)(E) is hereby deleted in its entirety and the following inserted in lieu thereof:

(E) The City covenants and agrees to move forward with its plans to upgrade the Pelham Civic Complex & ice Area (the "Civic Center") as contemplated by the Development Agreement and to use reasonable efforts to complete the same no later than April 30, 2023.

5. **Cooperative District; Fee and Billboard Sales.** The Developer understands, acknowledges and agrees that a typographical error was made in Section 1.3 of the Development Agreement in referring to the provisions of Alabama law under which the Cooperative District is to be formed, and that the reference in said section to "Chapter 99A" is hereby revised, amended and replaced with "Chapter 99B." The City acknowledges that the Fee shall not be levied and charged respecting sales of advertising space on any advertising billboard or billboards located within the Development. The City and the Developer further acknowledge and agree that tax revenues generated from advertising on any Billboards are not included within the meaning of "City Sales Tax" as used in the Development Agreement as amended hereby.

6. **Incentive Agreement.** Contemporaneously herewith, Developer and City have entered into that certain Amendment to Special Economic Incentive Agreement. All references in the Development Agreement to the Incentive Agreement shall mean the Incentive Agreement, as amendment by said Amendment to Incentive Agreement.

7. **Effective Date.** All references in the Development Agreement to the "Effective Date" shall henceforth mean the date that this Amendment is duly executed by Developer and the City (the "**Amendment Effective Date**") and all dates which were tied to the original Effective Date shall mean the Amendment Effective Date. Without limitation on the foregoing, the Developer's obligation set forth in Section 1.1(b) of the Development Agreement to commence construction of the Developer's Work within six (6) months of the Effective Date shall henceforth mean within six (6) months of the Amendment Effective Date. The City hereby waives its right under Section 1.1(b) of the Development Agreement to terminate the Development Agreement due to the fact that Developer's licensed contractor did not mobilize on the Project Site by August 9, 2020; however, the City reserves the right to terminate the Development Agreement and the Incentive Agreement in the event that the Developer's Work has not commenced (meaning that Developer's licensed contractor has not mobilized on the Project Site), within one (1) year from the Amendment Effective Date. Likewise, all obligations of the City under the Development Agreement which were tied to the Effective Date shall mean (unless otherwise expressly amended in this Amendment) the Amendment Effective Date. For example, the City's obligation to complete the Signalized Crosswalk within eighteen (18) months after the Effective Date shall henceforth mean within eighteen (18) months after the Amendment Effective Date.

8. **Ratification.** Except as modified hereby, all terms and conditions of the Development Agreement are hereby ratified and affirmed in full.

9. **Binding Effect.** This Amendment and all terms, provisions and obligations 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.

[REMAINDER OF PAGE INTENTIONALLY DELETED – SIGNATURE PAGES FOLLOW]

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

HCI OAK MOUNTAIN, LLC,
an Alabama limited liability company

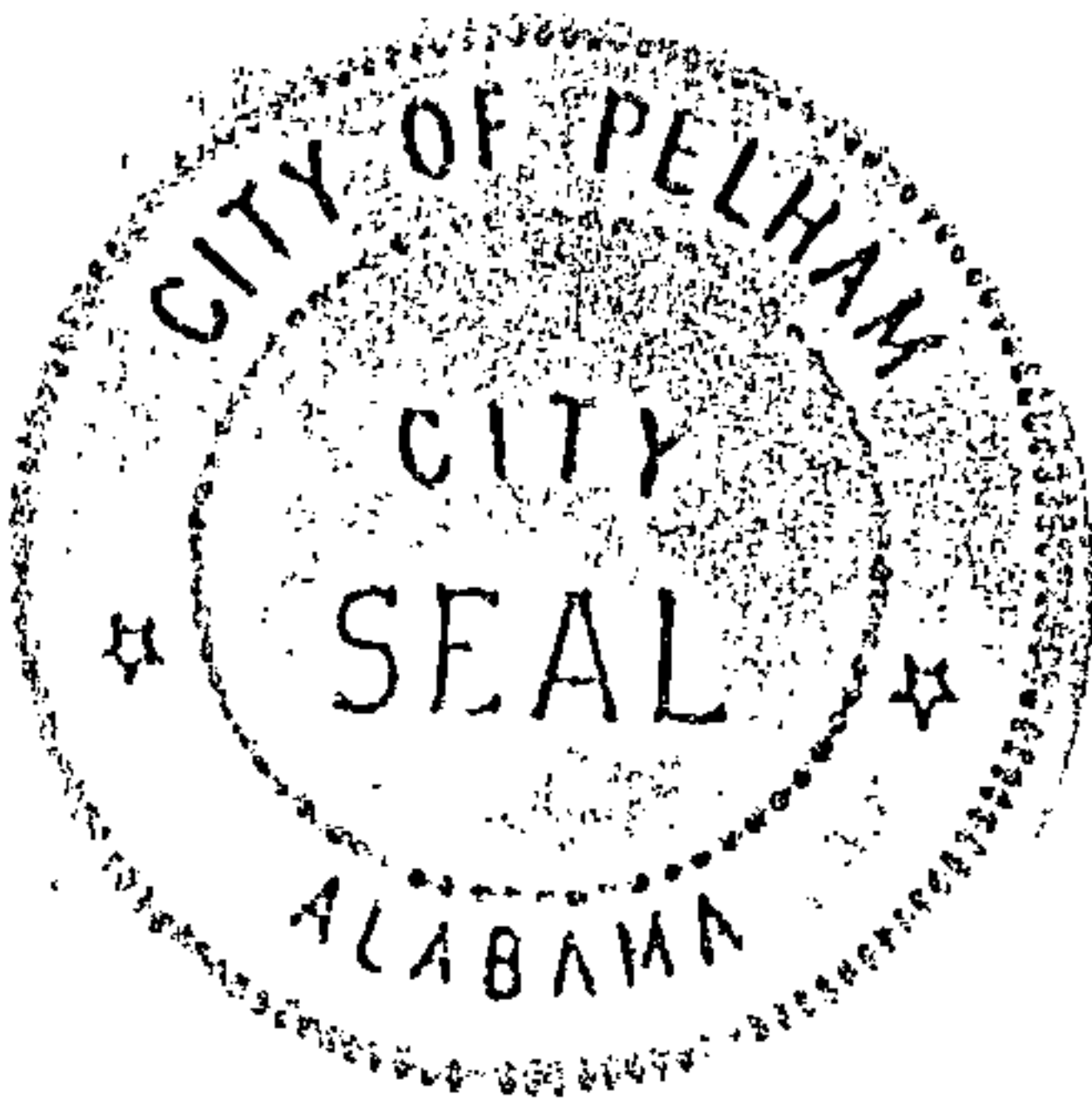
By: [Signature]
Name: W. Jordy Henson
Its: Managing Member

ATTEST:

CITY OF PELHAM, ALABAMA

By: [Signature]
Name: Tom Seale
Its: City Clerk/Treasurer

By: [Signature]
Gary W. Waters, Mayor
Date: July 6, 2021



REVISED EXHIBIT A

Legal Description

DESCRIPTION (OVERALL TRACT)

COMMENCE AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 20 SOUTH, RANGE 2 WEST, SHELBY COUNTY, ALABAMA; THENCE RUN SOUTH 00 DEGREES 17 MINUTES 39 SECONDS EAST ALONG THE WEST LINE OF SAID QUARTER- QUARTER SECTION FOR 347.77 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT OF WAY LINE OF AMPHITHEATER ROAD AND THE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED; THENCE RUN ALONG SAID RIGHT OF WAY THE FOLLOWING COURSES; THENCE RUN SOUTH 00 DEGREES 17 MINUTES 39 SECONDS EAST FOR 93.16 FEET; THENCE RUN SOUTH 52 DEGREES 50 MINUTES 22 SECONDS WEST FOR 832.00 FEET; THENCE LEAVING SAID ROAD RIGHT OF WAY RUN SOUTH 37 DEGREES 09 MINUTES 44 SECONDS EAST FOR 274.12 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT OF WAY LINE OF OAK MOUNTAIN DRIVE; THENCE RUN ALONG SAID RIGHT OF WAY THE FOLLOWING COURSES; THENCE RUN SOUTH 48 DEGREES 38 MINUTES 54 SECONDS WEST FOR 45.66 FEET TO A CURVE TO THE RIGHT, HAVING A RADIUS OF 1885.86 FEET, A CHORD BEARING OF SOUTH 51 DEGREES 21 MINUTES 12 SECONDS WEST, AND A CHORD LENGTH OF 178.00 FEET; THENCE RUN ALONG SAID ARC FOR 178.07 FEET; THENCE RUN SOUTH 55 DEGREES 42 MINUTES 51 SECONDS WEST FOR 108.64 FEET TO A NON TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 1885.86 FEET, A CHORD BEARING OF SOUTH 57 DEGREES 36 MINUTES 57 SECONDS WEST, AND A CHORD LENGTH OF 17.46 FEET; THENCE RUN ALONG SAID ARC FOR 17.46 FEET; THENCE RUN SOUTH 57 DEGREES 52 MINUTES 52 SECONDS WEST FOR 252.49 FEET; THENCE LEAVING SAID ROAD RIGHT OF WAY RUN SOUTH 33 DEGREES 07 MINUTES 06 SECONDS EAST FOR 338.17 FEET; THENCE RUN NORTH 77 DEGREES 57 MINUTES 26 SECONDS EAST FOR 342.03 FEET; THENCE RUN NORTH 53 DEGREES 38 MINUTES 49 SECONDS EAST FOR 60.00 FEET; THENCE RUN NORTH 38 DEGREES 33 MINUTES 15 SECONDS EAST FOR 985.67 FEET; THENCE RUN NORTH 61 DEGREES 13 MINUTES 14 SECONDS EAST FOR 156.71 FEET; THENCE RUN SOUTH 87 DEGREES 36 MINUTES 23 SECONDS EAST FOR 284.92 FEET; THENCE RUN SOUTH 88 DEGREES 50 MINUTES 02 SECONDS EAST FOR 276.10 FEET; THENCE RUN NORTH 01 DEGREES 09 MINUTES 59 SECONDS EAST FOR 276.12 FEET; THENCE RUN SOUTH 88 DEGREES 50 MINUTES 10 SECONDS EAST FOR 438.62 FEET TO A POINT ON THE EAST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6 ; THENCE RUN NORTH 00 DEGREES 11 MINUTES 30 SECONDS WEST FOR 400.40 FEET; THENCE RUN NORTH 86 DEGREES 47 MINUTES 14 SECONDS EAST FOR 657.11 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 65; THENCE RUN ALONG SAID ROAD RIGHT OF WAY THE FOLLOWING COURSES; NORTH 24 DEGREES 24 MINUTES 28 SECONDS EAST FOR 128.98 FEET; THENCE RUN NORTH 29 DEGREES 13 MINUTES 36 SECONDS WEST FOR 122.81 FEET; THENCE RUN NORTH 62 DEGREES 37 MINUTES 00 SECONDS WEST FOR

209.41 FEET; THENCE RUN NORTH 24 DEGREES 48 MINUTES 50 SECONDS EAST FOR 5.91 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF AMPHITHEATER ROAD; THENCE RUN ALONG SAID ROAD RIGHT OF WAY THE FOLLOWING DESCRIBED COURSES; THENCE RUN ALONG A NON TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 634.30 FEET, A CHORD BEARING OF NORTH 73 DEGREES 55 MINUTES 20 SECONDS WEST, AND A CHORD LENGTH OF 146.92 FEET; THENCE RUN ALONG SAID ARC FOR 147.25 FEET; THENCE RUN NORTH 78 DEGREES 19 MINUTES 35 SECONDS WEST FOR 27.93 FEET; TO A CURVE TO THE LEFT, HAVING A RADIUS OF 634.30 FEET, A CHORD BEARING OF SOUTH 71 DEGREES 40 MINUTES 50 SECONDS WEST, AND A CHORD LENGTH OF 634.16 FEET; THENCE RUN ALONG SAID ARC FOR 664.08 FEET; THENCE RUN SOUTH 41 DEGREES 41 MINUTES 16 SECONDS WEST FOR 69.95 FEET; THENCE RUN SOUTH 42 DEGREES 07 MINUTES 46 SECONDS WEST FOR 50.26 FEET; TO A NON TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 527.00 FEET, A CHORD BEARING OF SOUTH 66 DEGREES 44 MINUTES 29 SECONDS WEST, AND A CHORD LENGTH OF 435.79 FEET; THENCE RUN ALONG SAID ARC FOR 449.27 FEET; THENCE RUN NORTH 88 DEGREES 50 MINUTES 10 SECONDS WEST FOR 187.88 FEET TO A CURVE TO THE LEFT, HAVING A RADIUS OF 545.25 FEET, A CHORD BEARING OF SOUTH 80 DEGREES 46 MINUTES 32 SECONDS WEST, AND A CHORD LENGTH OF 196.68 FEET; THENCE RUN ALONG SAID ARC FOR 197.76 FEET; THENCE RUN SOUTH 70 DEGREES 23 MINUTES 06 SECONDS WEST FOR 106.58 FEET; THENCE RUN SOUTH 70 DEGREES 21 MINUTES 19 SECONDS WEST FOR 17.75 FEET; THENCE RUN SOUTH 52 DEGREES 06 MINUTES 49 SECONDS WEST FOR 63.16 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINING 1,745,134.88 SQ. FT. OR 40.06 ACRES MORE OR LESS.

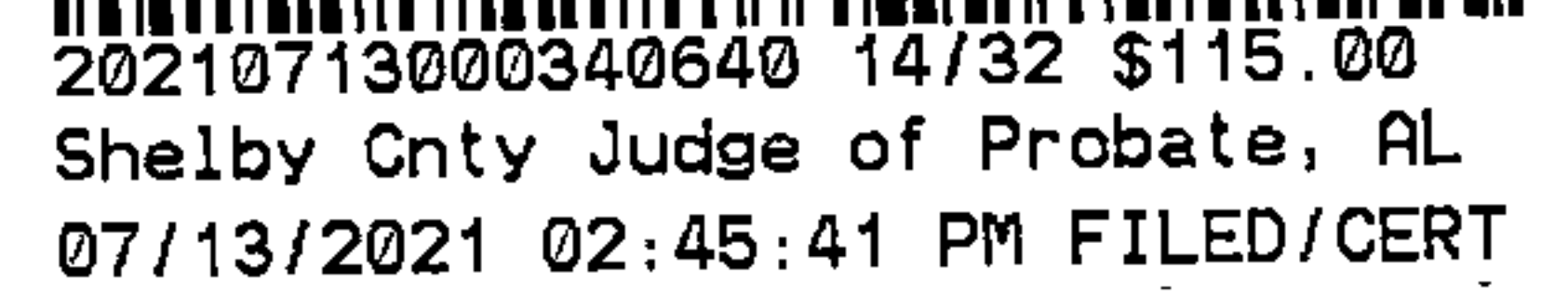


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REVISED EXHIBIT B

Development Plan

SEE ATTACHED



Amendment to Development Agreement (The Canopy) –Exhibit B

**AMENDMENT TO SPECIAL ECONOMIC INCENTIVE AGREEMENT
THE CANOPY**

THIS AMENDMENT TO SPECIAL ECONOMIC INCENTIVE AGREEMENT (this “**Amendment**”) is hereby made and entered into on this the 6th day of July, 2021, by and between the **CITY OF PELHAM, ALABAMA**, a municipal corporation under the laws of the State of Alabama (the “**City**”), and **HCI OAK MOUNTAIN, LLC**, an Alabama limited liability company (the “**Developer**”).

RECITALS:

WHEREAS, the City and Developer are parties to that certain Special Economic Incentive Agreement dated August 9, 2019 (the “**Incentive Agreement**”) and that certain Development Agreement (the “**Development Agreement**”), each with respect to the Developer’s development of a mixed-use development located within the corporate limits of the City to the south of Amphitheater Road across from the Pelham Civic Center and the Oak Mountain Amphitheater, such real estate being more particularly described in the Development Agreement as the “Project Site”; *capitalized terms used in this Amendment without definition shall have the meanings set forth in the in the Incentive Agreement*; and

WHEREAS, the City and Developer have entered into that certain Amendment to Development Agreement, dated of even date herewith (the “**Amendment to Development Agreement**”), pursuant to which the Development Components have been modified and amended in order to reflect the updated scope of the Developer’s Work, as well as certain other amendments;

WHEREAS, the parties desire to enter into this Amendment in order to align the Incentive Agreement with the changes set forth in the Amendment to Development Agreement.

NOW, THEREFORE, in consideration of the Recitals, Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Defined Terms.** The following Defined Terms from Section 1.01 of the Incentive Agreement are modified and amended to read as follows:

“**Development Agreement**” shall mean that certain Development Agreement dated August 9, 2019 between the City and the Developer, *as amended by Amendment to Development Agreement dated of even date herewith between the City and the Developer.*

“**City Increased Ad Valorem Tax Proceeds**” for each Project Year shall (a) mean the amount by which all proceeds and receipts of City Ad Valorem Tax for a Development Component for such Project Year exceed all proceeds and receipts of City Ad Valorem Tax for such Development Component for the *2021 tax year (the tax year ending September 30, 2021)* exceed all proceeds and receipts of City Ad Valorem Tax for such Development Component

in the tax year immediately preceding the Occupancy Date for such Development Component,¹ (b) not include any proceeds or receipts received by the City (i) from the levy by the City of ad valorem taxes not described in the definition of City Ad Valorem Tax or (ii) from the levy of ad valorem taxes of any kind, type or nature by taxing authorities other than the City, and (c) not include any City Ad Valorem Tax levied for, or committed to, educational purposes or for capital improvements for education.

“City Net Sales Tax Proceeds” for each Project Year shall (a) mean and include all proceeds and receipts of City Sales Tax from a Development Component, (b) not include any proceeds or receipts received by the City (i) from the levy by the City of privilege license or excise taxes not described in the definition of City Sales Tax or (ii) from the levy of privilege license or excise taxes of any kind, type or nature by taxing authorities other than the City, and (c) not include any privilege license or excise taxes levied for, or committed to, educational purposes or for capital improvements for education; provided, however, that any proceeds or receipts of City Sales Tax received by the City from businesses that relocate to the Project Site from existing locations within the corporate limits of the City shall only be included to the extent of the *increased* proceeds or receipts of City Sales Tax from such business over the average proceeds or receipts received from such business during the 5-year period immediately preceding the date of such relocation (*provided, however, that the highest and lowest number of proceeds or receipts in each of the 5-year period shall be excluded from the calculation in determining the average against which subsequent increases will be determined*).

“Development Components” shall mean, individually or collectively, as the context may require, each of Parcel A Development Component, Parcel B Development Component, Parcel C Development Component, Parcel D Development Component, and Parcel E Development Component, as each of such Development Components may be revised in accordance with a revised Development Plan as shall be approved by the City in accordance with the City’s standard approval processes. *[Deleted reference to Parcel F Development Component]*.

“Economic Incentive Payments” shall mean the following:

(a) fifty percent (50%) of City Net Sales Tax Proceeds actually received by the City from a Development Component during each Project Year for which Economic Incentive Payments are determined for such Development Component, beginning on the Occupancy Date for such Development Component

¹If a separate tax parcel has not been assigned to each Development Component for the 2021 tax year or any portion thereof, the calculation of taxes will be determined based upon the acreage within such Development Component on a prorata basis of the tax parcel from which such acreage is contained.

and ending on and including the fifteenth (15th) anniversary thereof, but not in any event extending beyond *December 31, 2040*;

(b) twenty percent (20%) of City Net Lodgings Tax Proceeds actually received by the City from a Development Component (excluding any Development Component containing a multi-family development) during each Project Year for which Economic Incentive Payments are determined for such Development Component, beginning on the Occupancy Date for such Development Component and ending on and including the fifteenth (15th) anniversary thereof, but not in any event extending beyond *December 31, 2040*; and

(c) fifty percent (50%) of City Increased Ad Valorem Tax Proceeds actually received by City from a Development Component (excluding any Development Component containing a multi-family development) during each Project Year for which such Economic Incentive Payments are determined beginning on the Occupancy Date for such Development Component and ending on and including the fifteenth (15th) anniversary thereof, but not in any event extending beyond *December 31, 2040*.

For the sake of clarity, it is intended that there will be staggered terms during which Economic Incentive Payments will be due, commencing on the respective Occupancy Date for the various Development Components, and continuing for 15 years thereafter, but not in any event extending beyond *December 31, 2040*.

“Project” shall mean a proposed mixed-use development within the City intended to contain the Development Components and shown on the Development Plan prepared by LBYD Engineers Project Number 102-18-025.006, a copy of which is attached as Schedule I.

“Total City Commitment” shall mean an amount equal to \$3,420,000.00 multiplied by the Actual Cost Reduction Fraction; provided, however, in no event shall the Total City Commitment exceed \$3,420,000.00.

2. **Assignment.** The last sentence of Section 7.05 is deleted in its entirety and the following is inserted in lieu thereof:

Furthermore, Developer may sell the Project (or any Development Component thereof) to a third party or contribute the Project (or any Development Component thereof) at any time during the term of this Agreement, and no such sale or contribution shall relieve the City of its obligations to make the payments required hereunder to Developer or its assigns, regardless of the fact that the Project (or a Development Component thereof) may be owned by another entity, unless Developer, at its sole option, assigns its rights (other than rights to payment of amounts owed by the City under this Agreement, which such rights may only be assigned to one assignee, and in that regard by virtue of the

transfer of the Warrant to such assignee) under this Agreement to such purchaser and advises the City in writing of such assignment as set forth in the preceding sentence. The Parties hereby further understand, acknowledge and agree, anything in the foregoing or otherwise in this agreement to the contrary notwithstanding, that under no circumstances and in no event shall the City be obligated to make any payments, including Economic Incentive Payments, to any person or entity other than the sole and singular holder of the Warrant and, further, upon any transfer or assignment of the Warrant, the Developer shall provide or cause to be provided specific instructions for the payment of amounts owed under this agreement and the Warrant to such holder.

3. **Exhibits.** Each of **Exhibits A, B, C, D, E, and G** attached to the Incentive Agreement are hereby deleted in its entirety and **Revised Exhibits A, B, C, D, E and G** attached hereto are inserted in lieu thereof. Exhibit F is deleted in its entirety.

4. **Ratification.** Except as modified hereby, all terms and conditions of the Development Agreement are hereby ratified and affirmed in full.

5. **Binding Effect.** This Amendment and all terms, provisions and obligations 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.

[REMAINDER OF PAGE INTENTIONALLY DELETED – SIGNATURE PAGES FOLLOW]

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

HCI OAK MOUNTAIN, LLC,
an Alabama limited liability company

By: [Signature]
Name: W. Jordy Henson
Its: MANAGING MEMBER

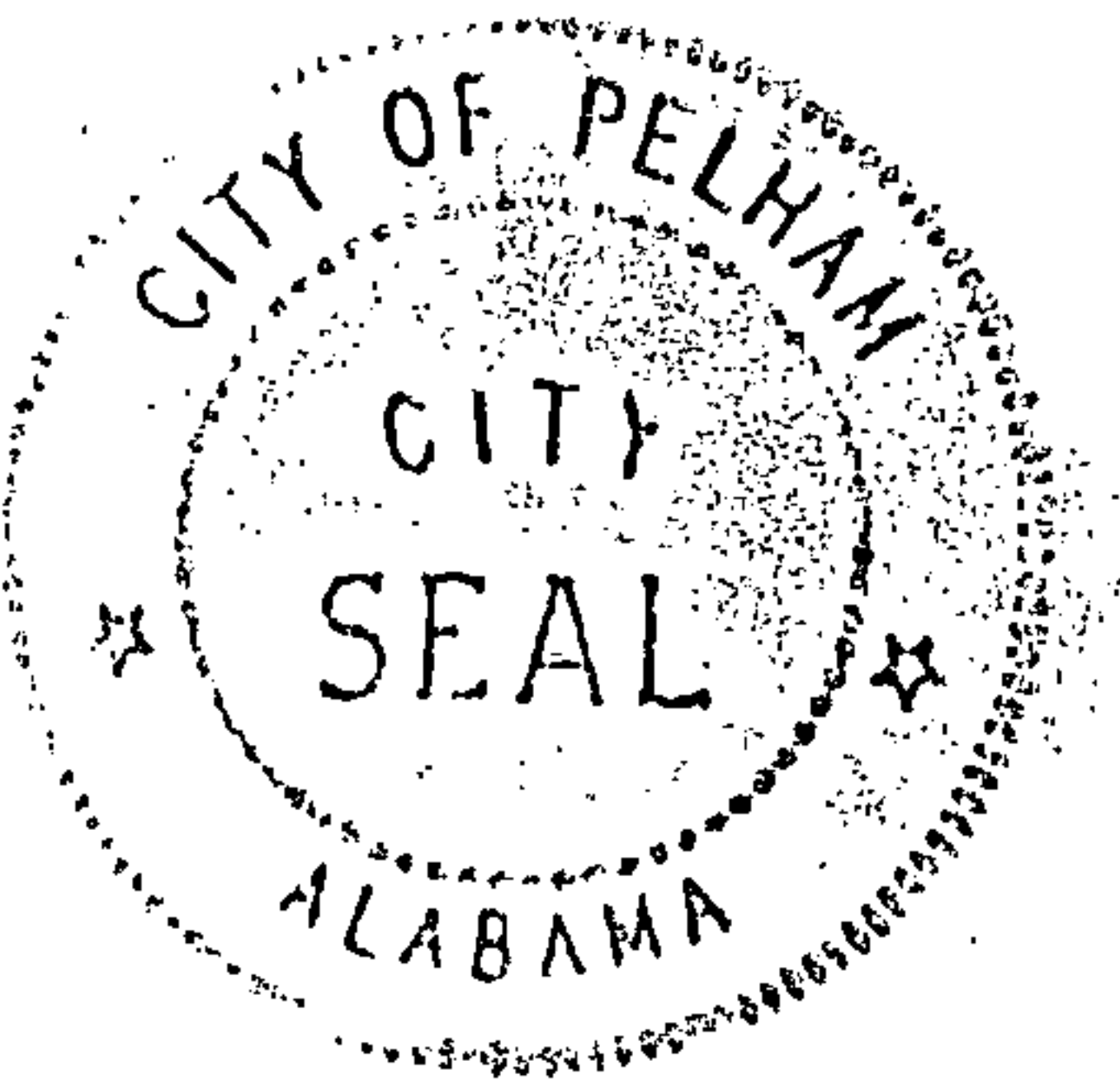
ATTEST:

CITY OF PELHAM, ALABAMA

By: [Signature]
Name: Tom Seale
Its: City Clerk/Treasurer

By: [Signature]
Gary W. Waters, Mayor

Date: July 6, 2021





20210713000340640 20/32 \$115.00
Shelby Cnty Judge of Probate, AL
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EXHIBIT A

Parcel A Development Component

Approximately 10,000 square feet of commercial, retail, and/or restaurant space.



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EXHIBIT B

Parcel B Development Component

An approximately 100 to 130 door hotel.




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EXHIBIT C

Parcel C Development Component

(i) A “Class A” multifamily community with not more than 250 units which will include approximately 12,000 square feet of commercial, retail and/or restaurant space on the bottom floor of the apartments buildings, as shown on the Development Plan; and (ii) approximately 18 acres of trails/parks/natural areas.

EXHIBIT D


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Parcel D Development Component

Approximately 8,000 square feet of commercial and/or retail space.

EXHIBIT E

Parcel E Development Component

Between approximately 3,000 and 10,000 square feet of commercial and/or retail space.


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EXHIBIT G

FORM OF WARRANT

This Warrant has not been registered (i) under the Securities Act of 1933, as amended, in reliance upon the exemption provided by Section 4(2) of said act, or (ii) under any state securities law, in reliance upon applicable exemptions, and may not be transferred without registration except pursuant to an exemption therefrom.

THIS WARRANT DOES NOT BEAR INTEREST

**UNITED STATES OF AMERICA
STATE OF ALABAMA**

**CITY OF PELHAM
LIMITED OBLIGATION ECONOMIC DEVELOPMENT REVENUE WARRANT
(THE CANOPY)**

No. R-1

DATED DATE:

MATURITY DATE:

July 6, , 20 21

Termination Date

The CITY OF PELHAM, a municipal corporation organized and existing under and by virtue of the laws of the State of Alabama (the "**City**"), for value received, hereby acknowledges itself indebted to

HCI OAK MOUNTAIN, LLC, an Alabama limited liability company ("**Developer**")

or registered assigns (collectively the "**Holder**") in a principal amount not exceeding

**THREE MILLION FOUR HUNDRED TWENTY THOUSAND DOLLARS
(\$3,420,000.00)**

as determined pursuant to the Incentive Agreement (as hereinafter defined), and hereby orders and directs the City Clerk/Treasurer of the City to pay to the Holder, solely from the Economic Incentive Payments deposited in the Warrant Fund hereinafter designated, said principal amount, without interest, on each Payment Date, until and including the Maturity Date specified above.

Authority for Issuance

This Warrant is issued pursuant to the authority of the Constitution and laws of the State of Alabama, including particularly and without limitation Amendment No. 772 of the Constitution of Alabama of 1901, as amended (collectively the "**Enabling Law**"), and that

certain Special Economic Incentive Agreement dated the above Dated Date (the “**Incentive Agreement**”) between the City and Developer.

Capitalized terms used hereinbefore and hereinafter without definition shall have the respective meanings assigned thereto in the Incentive Agreement.

Reference is made to the provisions of the Incentive Agreement, to and by which all of which provisions the Holder, by acceptance of this Warrant, assents and agrees to be bound.

Payment

Payment of this Warrant shall be made to or as directed by the Holder; provided the final payment of principal of this Warrant shall be made only upon presentation and surrender of this Warrant to the City for cancellation.

Each payment of principal made on this Warrant shall be reflected by the notations made by the City on its internal records (which may be kept by computer or by other means determined by the City) and the City is hereby authorized so to record thereon all such payments. All payments of principal on this Warrant and the aggregate unpaid principal amount of this Warrant reflected on the internal records of the City (whether by computer or otherwise) shall be rebuttably presumptive evidence of the principal amount of this Warrant outstanding and unpaid.

All payments of principal of this Warrant by the City shall be made at par in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts, and shall be valid and effectual to satisfy and discharge the liability of the City upon this Warrant to the extent of the amounts so paid.

The person in whose name this Warrant is registered shall be deemed and regarded as the absolute owner hereof for all purposes and payment of the principal of this Warrant shall be made only to or upon the order of the Holder hereof or its legal representative, and neither the City nor any agent of the City shall be affected by any notice to the contrary.

Security

This Warrant is a limited obligation of the City payable solely from the Economic Incentive Payments as provided in the Incentive Agreement.

The Economic Incentive Payments are hereby pledged to the payment, and for the benefit, of this Warrant, subject to (i) all prior pledges of the City Net Tax Proceeds for the benefit of long term indebtedness of the City and (ii) in accordance with Johnson v. Sheffield, 183 So. 265 (Ala. 1938), the law-imposed requirement that, if necessary, there must first be paid from all City Net Tax Proceeds (including without limitation the Economic Incentive Payments) the legitimate and necessary governmental expenses of operating the City.

This Warrant shall never constitute a charge against the general credit or taxing powers of the City within the meaning of any constitutional provision or statutory limitation whatsoever.

The City has established a special fund designated “Warrant Fund” (the “**Warrant Fund**”) for the payment of this Warrant and has obligateded itself to pay or cause to be paid into the Warrant Fund, solely from the Economic Incentive Payments, sums sufficient to provide for the payment of this Warrant.

Prepayment and Redemption

The City may, on any date, pay in advance the entire unpaid principal amount of this Warrant or any lesser portion or portions thereof by paying to the Holder the principal amount to be prepaid without premium or penalty.

Registration and Transfer

This Warrant is registered as to principal and interest in the name of the Holder on the book of registration maintained for that purpose by the City.

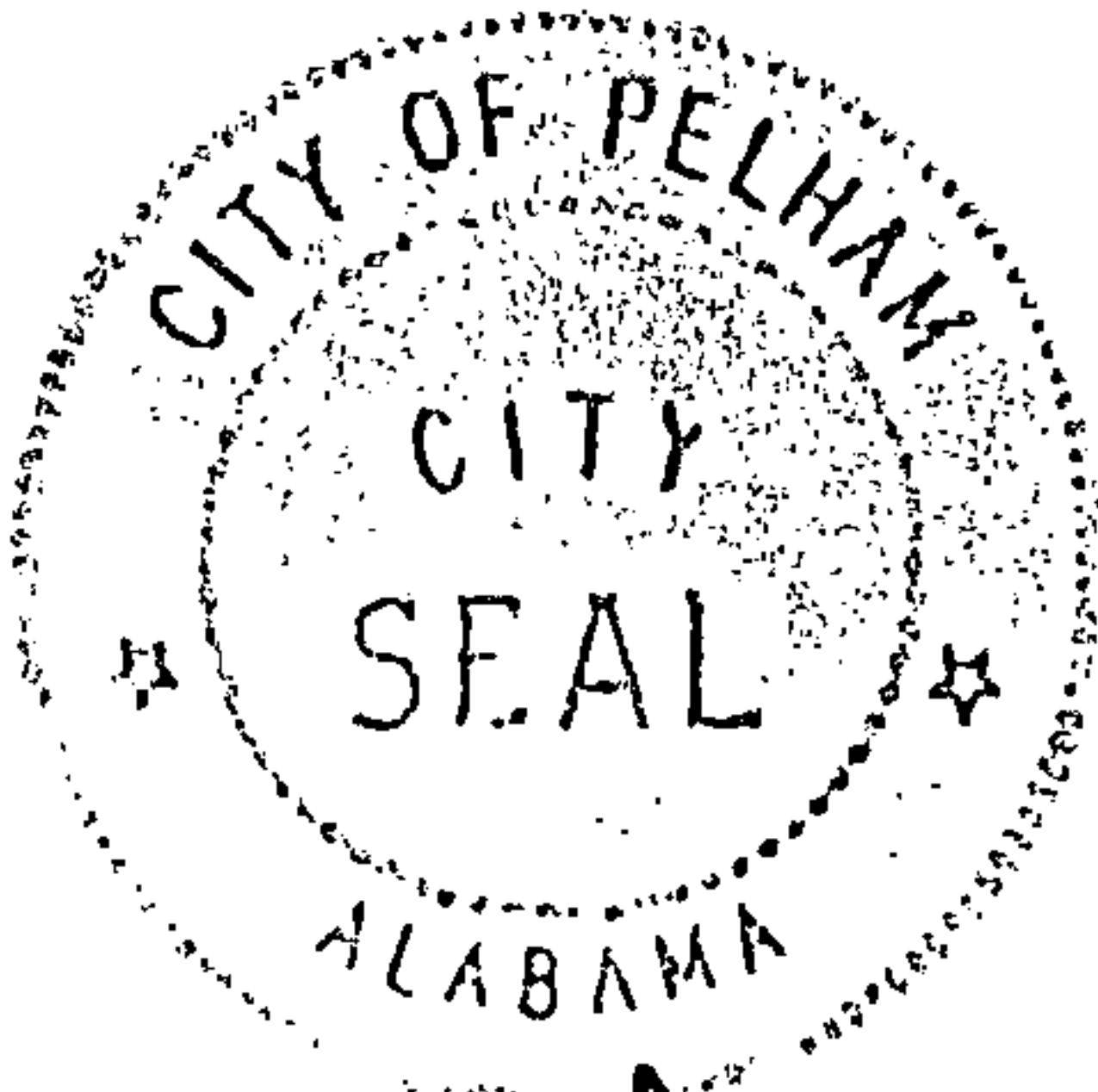
This Warrant may be transferred only upon written direction of the registered owner or its legal representative, addressed to the City, presentation of this Warrant to the City accompanied by a written instrument of transfer, satisfactory to the City, duly executed by the registered owner or its attorney duly authorized in writing, and compliance with Article 7(e) of the Incentive Agreement. Upon presentation of this Warrant to the City for transfer, the City shall record such transfer on said book of registration and shall endorse on the Registration of Ownership hereon the name of the transferee and the principal amount of this Warrant then outstanding. No charge shall be made for the privilege of transfer, but the registered owner of this Warrant requesting any such transfer shall pay any tax or other governmental charge required to be paid with respect thereto.

General

No covenant or agreement contained in this Warrant or in the Incentive Agreement shall be deemed to be a covenant or agreement of any officer, agent, employee, or member of the governing body of the City in the individual capacity thereof and none of such parties or persons nor any officer executing this Warrant shall be liable personally on this Warrant or be subject to any personal liability or accountability by reason of the issuance of this Warrant.

It is hereby recited, certified and declared that the indebtedness evidenced and ordered paid by this Warrant is lawfully due without condition, abatement or offset of any description, that this Warrant has been registered in the manner provided by law, that this Warrant represents a valid claim against the Warrant Fund, that all acts, conditions and things required by the Constitution and laws of the State of Alabama to happen, exist and be performed precedent to and in the execution, registration and issuance of this Warrant, the adoption of the resolution approving the Incentive Agreement, and the execution and delivery of the Incentive Agreement, have happened, do exist and have been performed in due time, form and manner as so required by law and that the principal amount of this Warrant, together with all other indebtedness of the City, are within every debt and other limit prescribed by the Constitution and laws of the State of Alabama.

IN WITNESS WHEREOF, the City, acting by and through the City Council of the City, as the governing body thereof, has caused this Warrant to be executed in its name and on its behalf by the Mayor of the City, has caused its corporate seal to be affixed hereto and the same attested by the City Clerk of the City, and has caused this Warrant to be dated the date and year first above written.



CITY OF PELHAM, ALABAMA

By: [Signature]
Mayor

SEAL

Attest: [Signature]

City Clerk

REGISTRATION CERTIFICATE

The undersigned hereby certifies that this Warrant has been duly registered as a conditional claim against the City of Pelham, in the State of Alabama, and the Warrant Fund referred to herein, and the Economic Incentive Payments pledged to the payment hereof.

[Signature]

City Clerk/Treasurer of the City of Pelham,
Alabama





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VALIDATION CERTIFICATE

Validated and confirmed by judgment of the Circuit Court of Shelby County, State of Alabama entered on the _____ day of _____, 2019.

Clerk of Circuit Court of Shelby County,
Alabama



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REGISTRATION OF OWNERSHIP

This Warrant is recorded and registered on the warrant register of the City of Pelham in the name of the last owner named below. The principal of this Warrant shall be payable only to or upon the order of such registered owner.

<u>Date of Registration</u>	<u>In Whose Name Registered</u>	<u>Principal Amount Outstanding</u>	<u>Signature of Authorized Office of Municipality</u>
Dated Date			



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ASSIGNMENT

For value received, _____ hereby sell(s), assign(s) and transfer(s)
unto _____ this warrant and hereby irrevocably constitute(s) and
appoint(s) _____ attorney to transfer this warrant on the
books of the within named Municipality with full power of substitution in the premises.\

Dated: _____

NOTE: The name signed to this assignment
must correspond with the name of the payee
written on the face of the within warrant in
all respects, without alteration, enlargement
or change whatsoever.

Signature Guaranteed:


(Bank or Trust Company)

By: _____
(Authorized Officer)

SCHEDULE I

**Development Plan
(Revised 1/19/2021)**

SEE ATTACHED


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