

April 24, 2023

STATE OF ALABAMA,
LIMESTONE COUNTY,
CITY OF ATHENS.

The City Council of the City of Athens, Alabama met in regular session at the Athens Municipal Building, 200 Hobbs Street West, Athens, Alabama, on April 24, 2023 at 4:30 p.m. The meeting was called to order by Councilman Harold Wales, President of the City Council. Upon roll call, the following were found to be present: Councilmembers Chris Seibert, Harold Wales, James E. Lucas, Dana Henry and Wayne Harper. Annette Barnes-Threet, City Clerk, was present and recorded the minutes of the meeting. Harold Wales offered the invocation. Mayor Marks was joined by Blake Cannon, son of Billy and Monique Cannon and President of his 2nd Grade class, in leading the Pledge of Allegiance. The Chairperson stated that a quorum was present and that the meeting was open for transaction of business.

The Chairperson stated that the Minutes of the April 10, 2023 City Council Meeting had been submitted for approval. Councilman Seibert moved that the reading of the Minutes be suspended and that the Minutes be approved as recorded. The motion was seconded by Councilman Lucas and was unanimously carried. The Chairperson stated that the Minutes of the April 10, 2023 City Council Work Session Meeting had been submitted for approval. Councilman Seibert moved that the reading of the Minutes be suspended and that the Minutes be approved as recorded. The motion was seconded by Councilman Lucas and was unanimously approved.

Mayor Marks presented a proclamation recognizing May 7 – 13, 2023 as National Travel & Tourism Week and also presented a proclamation declaring April 30 – May 6, 2023 as Small Business Week. The Mayor announced that Celebrity Waiters will be on Tuesday, April 25th at Applebee's and that it will benefit Relay for Life. Mayor Marks also announced that Senior Fun Fest will be held on May 4th at the Athens Activities Center.

Councilman Lucas commended KALB for the job they do in helping to keep Athens and Limestone County beautiful and litter-free. Mr. Lucas encouraged the citizens to do their part as well.

PUBLIC HEARING RELATING TO THE ZONING APPROVAL FOR THE SALE OF ALCOHOL IN THE CITY OF ATHENS BY STUDIO 16 CIGAR LOUNGE, 112 NORTH MARION STREET, ATHENS, AL, 35611

Wayne Kuykendall, 309 S. Clinton Street, Athens, spoke in opposition of the proposed approval. Mr. Kuykendall stated that he attends Marion Street Church of Christ and that the church opposes the application. He is concerned for the children of their church, stating that the church has about fifty children and that the proposed cigar lounge would only be about six doors down from the church. He noted that the church's children would have to pass the establishment when attending services. Mr. Kuykendall listed several statistics concerning the consumption of alcohol and stated that his opposition is based on religious beliefs. He stated that the church was opposed to the establishment, based on its religious beliefs. He also expressed additional concerns due to the harmful combination of both the alcohol and cigar smoking.

Jerry Sandlin, 15154 Pike Road, Athens, spoke in opposition of the proposed approval. Mr. Sandlin stated that his opposition is similar to Mr. Kuykendall's and also gave several additional statistics regarding the negative consequences of alcohol consumption. Mr. Sandlin expressed his concern in regards to the sale of alcohol being so close to Marion Street Church of Christ.

Kelly Range, 303 Brookwood Drive, Athens, addressed the City Council concerning the public hearing and stated that the people deserve a choice. Mr. Range noted that he appreciates what the churches are trying to do but that people need to be able to choose for themselves.

Bobby Bullington, 25113 Kingston Drive, Athens, spoke in opposition of the proposed approval. Mr. Bullington also attends Marion Street Church of Christ and stated that he does not want their church members (including the many teens and young children at their church) to have to walk by the establishment to attend church.

The public hearing was closed.

PUBLIC HEARING RELATING TO A PROPOSED ORDINANCE TO ZONE AND REZONE +/-190 ACRES (GEORGE L. BRALY, CAROL B. CARTER, AND CELIA B. WILLIAMSON) TO EST (ESTATE RESIDENTIAL AND AGRICULTURAL DISTRICT) TO INCLUDE ALL TRACTS DESCRIBED WITHIN THIS ORDINANCE, ENCOMPASSING RECENTLY ANNEXED PORTIONS OF THE PROPERTY, AS WELL AS AREAS TO BE REZONED FROM B-2 (GENERAL BUSINESS DISTRICT) TO EST (ESTATE RESIDENTIAL AND AGRICULTURAL DISTRICT), LOCATED NEAR HUNTSVILLE BROWNSFERRY ROAD AND INTERSTATE-65

Erin Tidwell, City Planner, presented the City Council with information regarding the zone and rezone.

The public hearing was closed.

Councilman Harper introduced the following ordinance:

AN ORDINANCE TO ZONE AND REZONE +/- 190 ACRES (GEORGE L. BRALY, CAROL B. CARTER, AND CELIA B. WILLIAMSON), TO EST (ESTATE RESIDENTIAL AND AGRICULTURE DISTRICT) TO INCLUDE ALL TRACTS DESCRIBED WITHIN THIS ORDINANCE, ENCOMPASSING RECENTLY ANNEXED PORTIONS OF THE PROPERTY, AS WELL AS AREAS TO BE REZONED FROM B-2 (GENERAL BUSINESS DISTRICT) TO EST (ESTATE RESIDENTIAL AND AGRICULTURE DISTRICT), LOCATED NEAR HUNTSVILLE-BROWNSFERRY ROAD AND INTERSTATE-65 (PARCEL #S: 44-16-02-03-0-000-007.000, 44-16-02-03-0-000-007.001, AND 44-16-02-10-0-001.000), WITHIN THE CORPORATE LIMITS OF THE CITY OF ATHENS.

STATE OF ALABAMA
LIMESTONE COUNTY,
CITY OF ATHENS

ORDINANCE NUMBER 2023 - 2263

WHEREAS, the Planning Commission of the City of Athens, Alabama, has made a recommendation to the City Council of the City of Athens, Alabama, that hereinafter described areas should for the previously zoned portions of the property to be rezoned from B-2 (General Business District) to EST (Estate Residential and Agriculture District), and for the previously unincorporated portions of the property to be zoned EST (Estate Residential and Agriculture District).

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, as follows:

That all of the hereinafter described area or real estate is hereby zoned EST (Estate Residential and Agriculture District) in accordance with and defined by “The Zoning Ordinance of the City of Athens, Alabama,” and that the area which is zoned as aforesaid is situated in Athens, Limestone County, Alabama, and is more particularly described as follows:

Tract 1

A tract of land lying in the Southeast Quarter of the Northwest Quarter, the Southwest Quarter of the Northeast Quarter, and the Southeast Quarter of Section 3, Township 4 South, Range 4 West, Limestone County, Alabama, and described as follows: Beginning at the Southeast corner of Section 3, Township 4 South, Range 4 West, thence South 87 degrees 56 minutes west along the south boundary line of Section 3, a distance of 252.77 feet to the true point of beginning, said point being on the West R.O.W. line of Interstate 65; thence continuing along the same line a distance of 1077.23 feet to a point on the Southwest corner of the Southeast Quarter of the Southeast Quarter; thence North 2 degrees 00 minutes West a distance of 1323 feet to a point; thence South 87 degrees 56 minutes West a distance of 1330 feet to a point; thence North 2 degrees 00 minutes West a distance of 1323 feet to a point; thence South 88 degrees 24 minutes West a distance of 1336.5 feet to a point; thence North 2 degrees 00 minutes West a distance of 496 feet to a point; thence North 87 degrees 56 minutes East a distance of 2752.97 feet to a point; thence North 18 degrees 25 minutes West a distance of 2117.98 feet to a point; thence in a Southeasterly direction along the south right of way line of the Huntsville Brownsferry Road, a distance of 52.15 feet to a point on the West R.O.W. line of Interstate 65; thence South 18 degrees 25 minutes East along said R.O.W. line of Interstate 65 a distance of 5410.05 feet to the true point of beginning, and containing 117.67 acres, more or less.

Less and except the following, which was acquired by the State of Alabama for a roadway project:

A part of the W ¼ of the NE ¼, Section 3, T-4-S, R-4-W, identified as Tract No. 6 on Project No. NCPD1065(332) in Limestone County, Alabama and being more fully described as follows: Commencing at the Southwest Corner of the Northeast Quarter of the Northeast Quarter of Section 3, T-4-8, R-4-W. Thence running S 74°20'49.65" W, a distance of 108.48' to a point at Station 141+30 and 150' left of and at a right angle to the centerline of I-65 which lies on the property line of the property herein to be conveyed and being the Point of Beginning. Thence running S 15°41'35.83" E, along said property line, a distance of 530.08' to a point that intersects said property line and the proposed southernmost ROW line of I-65. Thence running S 74°17'46.99" W, along said ROW line, a distance of 50.00' to a point that intersects said ROW line and the present westernmost property line. Thence running N 15°41'35.98" W, along said property lines, a distance of 1833.64' to a point that intersects said property line and the present southernmost ROW line of CR-24. Thence running S 85°31'59.71" E, along said ROW line a distance of 53.26' to a point that intersects said ROW line and the present Westernmost ROW line of I-65. Thence running 15°41'35.83" E, along said ROW line a distance of 1285.19' to the Point of Beginning containing 2.09 acres, more or less.

Tract 2

The Southwest Quarter of the Southeast Quarter of Section 3, Township 4, South, Range 4 West

Tract 3

The Northeast Quarter of the Northeast Quarter of Section 10, Township 4, South, Range 4 West, lying on the west side of Interstate 65

ADOPTED and APPROVED this, the 24th day of April, 2023.

/s/ Harold Wales
PRESIDENT, CITY COUNCIL,
CITY OF ATHENS, ALABAMA

/s/ William R. Marks
MAYOR, CITY OF ATHENS, ALABAMA

ATTEST:

/s/ Annette Barnes
CITY CLERK, CITY OF ATHENS, ALABAMA

Councilmember Lucas moved that unanimous consent be given for immediate consideration of and action on said ordinance, which motion was seconded by Councilmember Seibert, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Lucas, Henry and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said ordinance had been unanimously carried. Councilmember Harper thereupon moved that the ordinance be finally adopted, which motion was seconded by Councilmember Henry and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Lucas, Henry and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said ordinance had been unanimously carried.

PUBLIC HEARING RELATING TO A PROPOSED ORDINANCE TO REZONE +/-19.85 ACRES (DIRT FOR SALE, LLC) FROM R-1-3 (HIGH DENSITY SINGLE FAMILY RESIDENTIAL DISTRICT) TO R-2 (MULTIPLE FAMILY RESIDENTIAL DISTRICT), LOCATED ON THE SOUTH SIDE OF US HIGHWAY 72, APPROXIMATELY 280' WEST OF MCCULLEY MILL ROAD AND TO ADOPT THE MASTER DEVELOPMENT PLAN

Erin Tidwell, City Planner, presented the City Council with information regarding the proposed rezone.

The public hearing was closed.

Councilman Lucas introduced the following ordinance:

AN ORDINANCE TO REZONE +/- 19.85 ACRES (DIRT FOR SALE, LLC) FROM R-1-3 (HIGH DENSITY SINGLE FAMILY RESIDENTIAL DISTRICT) TO R 2 (MULTIPLE-FAMILY RESIDENTIAL DISTRICT), LOCATED ON THE SOUTH SIDE OF US HIGHWAY 72, APPROXIMATELY 280' WEST OF MCCULLEY MILL ROAD (PARCEL # 44-09-04-20-0-001-013.004) AND TO ADOPT THE MASTER DEVELOPMENT PLAN WITHIN THE CORPORATE LIMITS OF THE CITY OF ATHENS, ALABAMA.

STATE OF ALABAMA
LIMESTONE COUNTY,
CITY OF ATHENS

ORDINANCE NUMBER 2023 – 2264

WHEREAS, the Planning Commission of the City of Athens, Alabama, has made a recommendation to the City Council of the City of Athens, Alabama, that hereinafter described areas should be rezoned from R-1-3 (High Density Single Family Residential District) to R 2 (Multiple-Family Residential District) and to adopt the accompanying Master Development Plan WITHIN THE CORPORATE LIMITS OF THE CITY OF ATHENS, ALABAMA.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, as follows:

1.) That all of the hereinafter described area or real estate is hereby zoned R 2 (Multiple-Family Residential District) in accordance with and defined by “The Zoning Ordinance of the City of Athens, Alabama,” and that the area which is zoned as aforesaid is situated in Athens, Limestone County, Alabama, and is more particularly described as follows:

A tract of land lying and being in Section 20, Township 3 South, Range 3 West of the Huntsville Meridian, said tract being a portion of tracts 3 and 4 of Highway 72 Development as shown on Plat Book H, page 428, recorded in the office of the Judge of Probate of Limestone County, Alabama and being more particularly described as follows:

Commencing at the northwest corner of tract 3 of Highway 72 Development Subdivision as shown on Plat Book H, page 428 recorded in the office of the Probate Judge of Limestone County; thence south 79 degrees 27 minutes 55 seconds east 147.58 feet to a #5 rebar with a cap stamped “Garver LLC CA 445” set at the point of beginning; thence south 79 degrees 26 minutes 33 seconds east a distance of 71.31 feet to a #5 rebar set; thence south 0 degrees 26 minutes 23 seconds east a distance of 290.23 feet to a #5 rebar set; thence south 79 degrees 23 minutes 43 seconds east a distance of 147.30 feet to a #5 rebar set; thence south 0 degrees 22 minutes 07 seconds east a distance of 149.73 feet to a #5 rebar found; thence north 89 degrees 50 minutes 22 seconds east a distance of 120.00 feet to a #5 rebar set; thence south 0 degrees 11 minutes 17 seconds east a distance of 460.32 feet to a #5 rebar set; thence south 0 degrees 35 minutes 20 seconds east a distance of 851.13 feet to a #5 rebar set; thence south 89 degrees 50 minutes 06 seconds west a distance of 578.38 feet to a #5 rebar set; thence north 0 degrees 25 minutes 13 seconds west a distance of 1538.18 feet to a #5 rebar set; thence south 79 degrees 27 minutes 55 seconds east a distance of 100.12 feet to a #5 rebar set; thence north 0 degrees 25 minutes 13 seconds west a distance of 10.04 feet to a #5 rebar set; thence south 79 degrees 23 minutes 43 seconds east a distance of 147.72 feet to a #5 rebar set; thence north 0 degrees 26 minutes 23 seconds west a distance of 290.17 feet to the point of beginning, containing 19.85 acres, more or less

Subject to restrictive covenants, rights of way, easements, and reservations of record that apply to the hereinabove described real property.

2.) The Master Development Plan for Dirt for Sale, LLC is hereby adopted. (A copy of the same is on file in the Public Works Department, and will also be attached to the minutes of this meeting.)

ADOPTED and APPROVED this, the 24th day of April, 2023.

/s/ Harold Wales
PRESIDENT, CITY COUNCIL,

CITY OF ATHENS, ALABAMA

/s/ William R. Marks

MAYOR, CITY OF ATHENS, ALABAMA

ATTEST:

/s/ Annette Barnes

CITY CLERK, CITY OF ATHENS, ALABAMA

Councilmember Harper moved that unanimous consent be given for immediate consideration of and action on said ordinance, which motion was seconded by Councilmember Seibert, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Lucas, Henry and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said ordinance had been unanimously carried. Councilmember Lucas thereupon moved that the ordinance be finally adopted, which motion was seconded by Councilmember Henry and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Lucas, Henry and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said ordinance had been unanimously carried.

Steve Pearson, proprietor of Good Spirits Beverages and applicant for the Studio 16 Cigar Lounge, addressed the City Council regarding the proposed cigar lounge. Mr. Pearson stated that this establishment will not allow minors and will be very classy.

Councilwoman Henry introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to reappoint David Hunt to the Industrial Development Board for a six year term, expiring on May 6, 2029.

The motion was seconded by Councilman Harper and was unanimously carried.

Councilwoman Henry introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to approve the following applicant for a "Retail Beer & Wine Off Premises" alcohol license:

Business Name: Jay Dharati, Inc.
Dbas: Mid Pointe Chevron
Address: 24999 US Hwy 72
Athens, AL 35613

The motion was seconded by Councilman Harper and was unanimously carried.

Councilwoman Henry introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to approve the purchase of one (1) 60" Z930M Z Trak zero turn lawn mower from TriGreen Equipment in the amount not to exceed \$12,000 to be funded from the existing CPR capital account.

The motion was seconded by Councilman Harper and was unanimously carried.

Councilwoman Henry introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to approve the purchase of one (1) 72” Z950M Z Trak zero turn lawn mower from TriGreen Equipment in the amount not to exceed \$12000 to be funded from the existing CPR capital account.

The motion was seconded by Councilman Harper and was unanimously carried.

Councilwoman Henry introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to approve the payment of budgeted travel/education expenses for the specified Water Services employees in the total amount of \$3,409.46.

| | | |
|----------------------------------|---|------------|
| Virgil White (Water Services) | AL/MS Joint Water Conference Mobile, AL April 1-5, 2023 | \$1,361.45 |
| Roger Miller (Water Services) | AL/MS Joint Water Conference Mobile, AL April 1-5, 2023 | \$1,237.09 |
| David Watts (Water Services) | AL/MS Joint Water Conference Mobile, AL April 1-5, 2023 | \$ 810.92 |

The motion was seconded by Councilman Harper and was unanimously carried.

Councilwoman Henry introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to authorize the Public Works Department to purchase a Kubota Zero Turn Mower Z726XKW-3-60 from H & R Agri-Power in an amount not to exceed \$10, 723.72. This purchase shall be funded from the existing Sanitation Department Capital Account.

The motion was seconded by Councilman Harper and was unanimously carried.

Councilwoman Henry introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to authorize the Mayor to issue a purchase order to Tennessee River Rental to purchase a 16’ trailer in an amount not to exceed \$2800 and shall be funded from the existing Street Department Capital line item.

The motion was seconded by Councilman Harper and was unanimously carried.

Councilwoman Henry introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to authorize the Mayor to issue a purchase order to the Alabama Department of Transportation (ALDOT) to purchase a 2012 Sterling dump truck in the amount not to exceed \$47,000.00 and shall be funded from the existing Street Department Capital line item.

The motion was seconded by Councilman Harper and was unanimously carried.

Councilwoman Henry introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to authorize the Mayor to enter into an agreement with Tribble’s Land Clearing to asphalt seal City parking lots, behind U.G. White and Pecan Park. This shall be funded with a General Fund budget amendment to the Street Department Special Projects line item, not to exceed \$15,000.

The motion was seconded by Councilman Harper and was unanimously carried.

Councilwoman Henry introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to approve travel expenses for the following:

| | | |
|--------------------------|---|-----------|
| Councilman Chris Seibert | National League of Cities Conference March 25, 2023 – March 31, 2023 | \$1312.52 |
|--------------------------|---|-----------|

The motion was seconded by Councilman Harper and was unanimously carried.

Councilman Seibert made for “Introduction Only” the following resolution:

RESOLUTION NUMBER 2023 - _____

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to authorize the Mayor to enter into an agreement with Morell Engineering, Inc. for surveying services to identify ROW’s and deeds along the proposed Easy Street Art Trail. The project scope is to provide deeds and maps in CAD, and to survey and mark ROW limits within the proposed project area when requested. The budget is not to exceed \$12,500 and shall be funded from the City of Athens Capital Infrastructure Fund.

ADOPTED and APPROVED this, the _____ day of _____, 2023.

HAROLD WALES, CITY COUNCIL PRESIDENT

WILLIAM R. MARKS, MAYOR

ATTEST:

ANNETTE BARNES-THREET, CITY CLERK

CERTIFICATION OF CITY CLERK

STATE OF ALABAMA)
LIMESTONE COUNTY)

I, Annette Barnes, City Clerk of the City of Athens, Alabama, do hereby certify that the above and foregoing is a true and correct copy of a Resolution duly adopted by the City Council of the City of Athens, Alabama, on the ___ day of ____, 2023.

Witness my hand and seal of office this _____ day of _____, 2023.

City Clerk

Councilman Lucas introduced the following resolution:

RESOLUTION NUMBER 2023 - 1880

A RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT PROJECT RELATING TO NOON ATHENS P3, LLC

WHEREAS, Noon Athens P3, LLC, an Alabama limited liability company (the “Company”), intends to develop a proposed TJ Maxx, Ross Dress for Less, Rack Room Shoes, Ulta Beauty, and Five Below retail stores on certain property located on Highway 72 East near Interstate 65 (the “Project”);

WHEREAS, the City Council (the “Council”) of the City of Athens (the “City”) has determined that it is in the City’s best interest to provide economic development incentives to the Company in order to facilitate the development, construction and establishment of the Project, and that such expenditure will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to the Company or any other private entities;

WHEREAS, the Project is expected to result in the creation of more than 125 new jobs, and will generate annual taxable sales of roughly Twenty Million Dollars (\$20,000,000);

WHEREAS, the Council wishes to extend economic development incentives to the Project;

WHEREAS, the activities to be authorized by this resolution; the public benefits sought to be achieved thereby; and each individual, firm, corporation, and other business entity to whom or for whose benefit the City proposes to lend its credit or grant public funds or thing of value, have been described in reasonable detail and/or identified in a notice published in the *Athens News Courier* (which this City Council finds and determines is the newspaper having the largest circulation in the county or municipality), at least seven days prior to this meeting at least seven days prior to this meeting;

WHEREAS, such public notice is attached to this Resolution as Attachment A and incorporated hereto as if set forth fully herein;

WHEREAS, pursuant to an economic development project agreement, the City and the Company wish to memorialize the general terms of their agreement with respect to the development of the Project; and

WHEREAS, pursuant to such agreement, the City would pay the Company \$1,900,000 after the above-named five stores open for business at the project site, an additional \$1,900,000 when the stores had been open for 1 year, and an additional \$1,900,000 when the stores had been open for 2 years (for a total of \$5,700,000), all as described in more particularity in the Economic Development Project Agreement, among other things.

THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA on

April 24, 2023, at 4:30 p.m., as follows:

1. The Mayor of the City is hereby authorized and directed, in the name of and for account of the City, to enter into a contract between the City and the Company, in substantially the same form as is attached hereto (and entitled the “Amended Economic Development Project Agreement”) as Attachment B, with such non-substantive changes or additions thereto or deletions therefrom as the Mayor shall approve, which approval shall be conclusively evidenced by his execution of such instrument. The City Clerk of the City is hereby authorized and directed to affix the official seal of the City to such

instrument and to attest the same. (This agreement will completely replace and supersede the existing Economic Development Project Agreement between the City and the Company, dated June 30, 2022.)

2. It is hereby determined that the expenditures of public funds for the purposes specified in this resolution (and in Attachment B) will serve valid and sufficient public purposes, including (i) promoting, improving and expanding economic and commercial development/activity, (ii) increasing the number and diversity of employment opportunities for citizens of the City, and (iii) enhancing the overall quality of life for the citizens of the City, notwithstanding any incidental benefit accruing to any private entity or entities.

3. The Mayor is authorized to take actions and execute such other and further documents as may be necessary to effect and carry out the transactions contemplated by this Resolution and/or the agreement referenced herein, including but not limited to authorizing the issuance of warrants; the expenditure and use of municipal funds as set forth in those agreements; and approving and executing further agreement(s) that are consistent with and involved in carrying out the transactions contemplated by this Resolution.

ADOPTED this the 24th day of April, 2023.

/s/ Harold Wales
PRESIDENT, CITY COUNCIL,
CITY OF ATHENS, ALABAMA

ATTACHMENT A

NOTICE OF PROPOSED ACTION AT PUBLIC MEETING

Notice is hereby given that during a regular meeting, which will be open to the public and will be held on April 24, 2023, at 4:30 o'clock, P.M., Central Time, at the City Council Chambers in Athens City Hall, at 200 Hobbs Street W, Athens, Alabama 35611, the City Council for the City of Athens, Alabama will consider adopting a resolution in connection with an economic development project, described in reasonable detail herein.

The economic development project relates to Noon Athens P3, LLC (the "Company"), which intends to develop TJ Maxx, Ross Dress for Less, Rack Room Shoes, Ulta Beauty, and Five Below retail stores on certain property located on Highway 72 East near Interstate 65.

The City believes that the proposed economic development project will create new jobs in the City, will generate additional tax revenues for the City, will increase commerce in the City, and will generally promote the economic development of the City. It is anticipated that the project will result in the creation of more than 125 new jobs, and will generate annual taxable sales of roughly Twenty Million Dollars (\$20,000,000).

The City Council will consider the adoption of a resolution authorizing the City of Athens to enter into an Amended Economic Development Project Agreement with the Company. Through that agreement, the City would pay the Company \$1,900,000 after the five stores open for business at the project site, an additional \$1,900,000 when the stores had been open for 1 year, and an additional \$1,900,000 when the stores had been open for 2 years (for a total of \$5,700,000). The City's payment obligations would be conditioned upon the Company's opening and continued operation of the TJ Maxx, Ross Dress for Less, Rack Room Shoes, Ulta Beauty, and Five Below retail stores at the project site at the time of the payments, and the Company's provision of required documentation to the City, as described in more particularity in the agreement, among other things. The agreement also provides for: (a) allowances for temporary interruptions of business, (b) allowances for the

replacement of the above-named stores with other stores under certain circumstances, and delays in payments to the Company as a result thereof, and (c) a provision that the City has no payment obligation unless the opening date for all of the stores has occurred within four years of the agreement, among other provisions. In addition, through the agreement, the City will install certain traffic signalization improvements at the intersection of Kelli Drive and Highway 72 East.

The proposed agreement, if approved by the City Council, will completely replace and supersede the existing Economic Development Project Agreement between the City and the Company, dated June 30, 2022.

The assistance described herein will encourage economic development and will constitute an economic development project for the City. The City's granting of public funds or things of value as described herein will benefit the Company.

THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA

Publication in Athens News Courier: Saturday, April 15, 2023

ATTACHMENT B

AMENDED ECONOMIC DEVELOPMENT PROJECT AGREEMENT

This Amended Economic Development Project Agreement (this "**Agreement**") is entered into as of the ___ day of ___, 2023, by and among the **CITY OF ATHENS, ALABAMA**, an Alabama municipal corporation (the "**City**") and **NOON ATHENS P3, LLC**, an Alabama limited liability company (the "**Company**"). The City and the Company are sometimes referred to herein as the "**Parties**". This Agreement shall completely amend, replace and supersede the Economic Development Project Agreement (the "EDPA") entered into by and between those same parties, dated June 30, 2022, and the Parties shall have no further obligations to one another whatsoever arising from the EDPA.

RECITALS:

This Agreement relates to the following real property that is located in Athens, Alabama, and identified by the Limestone County Revenue Commissioner's office as of the date of this Agreement as Tax Parcel #10-05-15-1-000-001.000 (the "**Property**"). The Property is under contract by and will be owned by persons or entities operating in conjunction with, or under the control of, the Company.

The Company expects and intends to develop a commercial retail shopping center located on the Property. The commercial shopping center will contain roughly 73,000 square feet of retail tenant space, and one approximately 1.25 acre outparcel space. The following retail businesses will be established and operate in the commercial shopping center: TJ Maxx (at least 22,500 square feet), Ross Dress for Less (at least 17,000 square feet), Rack Room Shoes (at least 5,000 square feet), Ulta Beauty (at least 9,500 square feet) and Five Below (at least 9,300 square feet) (as further defined in Section 4(m) hereof, the "**Stores**"). The Company reasonably expects, based on the Company and its associates' experience in developing similar projects, and has represented to the City, that the operation of the commercial shopping center and the Stores at the Property (the "**Project**") will result in the creation of more than 125 new jobs, and is anticipated to generate annual taxable sales of roughly Twenty Million Dollars (\$20,000,000).

The City has agreed, based upon the expectations set forth above and other benefits to the City, to assist the Company as provided herein. The Company has agreed to construct and establish the Project as provided herein. Pursuant to the applicable laws of the State of Alabama referenced herein and for the purposes referenced herein, the City and the Company have delivered this Agreement.

The City has approved the transaction contemplated hereby after notice to the public in accordance with the requirements of Amendment 772 to the Constitution of Alabama, codified as § 94.01 of the Constitution of Alabama.

NOW, THEREFORE, in consideration of the premises, the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Undertakings of the Company. The Company agrees, represents, and warrants:

(a) that it shall use its commercially reasonable efforts to develop and establish the Project such that the Project results in the creation of at least 125 new jobs, and generates annual taxable sales of roughly Twenty Million Dollars (\$20,000,000).

(b) that it shall cause any construction activities regarding the Project to be conducted in compliance with all applicable laws, ordinances, rules and regulations and approved variances of any governmental authority, including, without limitation, all applicable licenses, permits, building codes, restrictive covenants, zoning and subdivision ordinances and flood, disaster and environmental protection laws. The Company shall require any architect, general contractor, subcontractor or other business performing any work in connection with the Project to obtain all necessary permits, licenses and approvals to construct the same.

(c) that it shall be in material compliance with all applicable laws, ordinances, rules and regulations and approved variances of the City and, further, shall be current in payment of any and all taxes, fees, and other charges imposed by the City unless such payments are the subject of a bona fide dispute and are being challenged by the Company.

(d) that it is duly organized and validly existing as a limited liability under the laws of the State of Alabama and has duly authorized its execution, delivery and performance of this Agreement.

(e) that neither the execution and delivery of this Agreement, nor the performance hereof, by the Company requires any consent of, filing with or approval of, or notice to, or hearing with any person or entity (including, but not limited to, any governmental or quasi-governmental entity), except for such consents, filings, notices and hearings described herein, or already held or maintained.

(f) that neither the authorization, execution and delivery of, nor the performance of, this Agreement by the Company violates, constitutes a default under or a breach of (i) the Company's certificate of incorporation or other organizational documents of the Company, (ii) any agreement, instrument, contract, mortgage or indenture to which the Company is a party or to which the Company or its assets are subject, or (iii) any judgment, decree, order, ordinance, regulation, consent or resolution applicable to the Company or any of its assets.

(g) that there is not now pending nor, to the knowledge of the Company, threatened, any litigation affecting the Company which questions the validity or organization of the Company, or any of the representations and warranties of the Company contained herein.

Section 2. City's Incentive Payments.

(a) *Incentive Payments.* In consideration of the Company's agreements, warranties, and representations set forth in Section 1 of this Agreement, the City agrees that:

(i) Upon receipt of Documentation (as defined below) and confirmation by the Mayor of the City that all of the Stores have opened (and remain open as of the "Opening Date", defined below) for business to the general public at the Property (not including those interruptions that are deemed by the Mayor of the City, in his/her reasonable discretion, to be temporary interruptions of business due to fire, calamity, pandemic, natural disaster, or other act of God), the City shall pay to the Company the sum of One Million Nine Hundred Thousand and 00/100 Dollars (\$1,900,000.00). The date upon which all of the Stores open for business to the general public at the Property (which would be the date that the last of the Stores open, if the Stores do not all open on the same date) shall be referred to hereunder as the "**Opening Date**". The Company must send the Documentation to the City within thirty (30) days of the Opening Date.

(ii) Upon receipt of Documentation (as defined below) and confirmation by the Mayor of the City that all of the Stores have remained open and have continuously and regularly been doing business with the general public at the Property (not including those interruptions that are deemed by the Mayor of the City, in his/her reasonable discretion, to be temporary interruptions of business due to fire, calamity, pandemic, natural disaster, act of God or other circumstance beyond the reasonable control of the Company (collectively, "**Temporary Interruptions**")) for a period of 1 year (i.e., 365 days) since the Opening Date, the City shall pay to the Company an additional sum of

One Million Nine Hundred Thousand and 00/100 Dollars (\$1,900,000.00). The Company must send the Documentation to the City within 395 days (i.e., 1 year, plus thirty (30) days) of the Opening Date.

Notwithstanding the foregoing, should one or more Stores, other than for Temporary Interruptions, cease to be open and continuously and regularly doing business with the general public at the Property prior to the expiration of such 1-year period, then (1) the Company shall be entitled to replace the Store(s) with one or more substitute Stores pursuant to Section 4(m)(vi), below, (2) the Company shall be entitled to submit the Documentation to the City within thirty (30) days after the date on which each of the initial and substitute Stores has been open and doing business with the general public at the Property, continuously or not continuously, for a period of 1 year since the Opening Date (including any Temporary Interruptions), and (3) upon receipt of the Documentation and confirmation by the Mayor of the City that each of the initial and substitute Stores has been open and doing business with the general public at the Property for a period of 1 year since the Opening Date, the City shall pay to the Company an additional sum of One Million Nine Hundred Thousand and 00/100 Dollars (\$1,900,000.00). By way of example, if one (1) of the Stores ceases to be open and continuously and regularly doing business with the general public at the Property (other than for Temporary Interruptions) on the date that is ten (10) months from and after the Opening Date, and a substitute Store commences doing business with the general public at the Property on the date that is twelve (12) months from and after the Opening Date and is open and doing business with the general public at the Property continuously and regularly for two (2) additional months (including any Temporary Interruptions), then the Company shall be entitled to submit the Documentation within thirty (30) days from and after the expiration of such 2-month period.

(iii) Upon receipt of Documentation (as defined below) and confirmation by the Mayor of the City that all of the Stores have remained opened and have continuously and regularly been doing business to the general public at the Property (not including Temporary Interruptions) for a period of 2 years (i.e., 730 days) since the Opening Date, the City shall pay to the Company an additional sum of One Million Nine Hundred Thousand and 00/100 Dollars (\$1,900,000.00). The Company must send the Documentation to the City within 760 days (i.e., 2 years, plus thirty (30) days) of the Opening Date.

Notwithstanding the foregoing, should one or more Stores, other than for Temporary Interruptions, cease to be open and continuously and regularly doing business with the general public at the Property prior to the expiration of such 2-year period, then (1) the Company shall be entitled to replace the Store(s) with one or more substitute Stores pursuant to Section 4(m)(vi), below, (2) the Company shall be entitled to submit the Documentation to the City within thirty (30) days after the date on which each of the initial and substitute Stores has been open and doing business with the general public at the Property, continuously or not continuously, for a period of 2 years since the Opening Date (including any Temporary Interruptions), and (3) upon receipt of the Documentation and confirmation by the Mayor of the City that each of the initial and substitute Stores has been open and doing business with the general public at the Property for a period of 2 years since the Opening Date, the City shall pay to the Company an additional sum of One Million Nine Hundred Thousand and 00/100 Dollars (\$1,900,000.00). By way of example, if one (1) of the Stores ceases to be open and continuously and regularly doing business with the general public at the Property (other than for Temporary Interruptions) on the date that is twenty-two (22) months from and after the Opening Date, and a substitute Store commences doing business with the general public at the Property on the date that is twenty-four (24) months from and after the Opening Date and is open and doing business with the general public at the Property continuously and regularly for two (2) additional months (including any Temporary Interruptions), then the Company shall be entitled to submit the Documentation within thirty (30) days from and after the expiration of such 2-month period.

(b) Documentation. As used herein "**Documentation**" shall mean: (i) a schedule showing the date that each of the Stores opened for regular business with the general public at the Property; (ii) a statement that all of the Stores have remained open and have continuously and regularly been doing business with the general public at the Property since and from the time of each of their openings through the date of the Documentation (not including those interruptions that the Company suggests were temporary interruptions of business due to fire, calamity, pandemic, natural disaster, other act of God, or substitution by a different Store as permitted by Section 4(m)(vi) (which will be described fully)); (iii) a certificate of the president or vice president of the Company as to the accuracy of such schedule and statement; and (iv) if requested by the City, such additional documentation as shall reasonably be required to demonstrate compliance with the requirements of this Section.

(c) *Payment Manner and Method.* Each payment required by subsection (a) of this Section 2 shall be paid by check or draft by the City to the Company not later than thirty (30) days following the City's receipt of the Documentation.

(d) *Termination of City's Obligations.* The obligations of the City to make any payments to the Company pursuant to this Section 2 shall terminate unless the Opening Date shall have occurred on or before the date which is four (4) years following the date of this Agreement.

(e) *No City Obligation upon Certain Events.* The City shall have no obligation to make any payment pursuant to this Section 2 if it determines, in its reasonable discretion, that the Company has breached or violated any of the Company's agreements, representations, or warranties that are set forth in Section 1 of this Agreement; if any of the information in the Documentation is incorrect such that the requirements of Section 2(a) have not been satisfied; or if any of the other requirements of Section 2(a) have not been satisfied.

(f) *Limitation on City's Payment.* The City shall not be required to pay the Company more than a cumulative total of Five Million Seven Hundred Thousand and 00/100 Dollars (\$5,700,000.00) pursuant to this Agreement.

(g) *Expense Reimbursement Obligations.* The Company agrees to pay any actually incurred out-of-pocket expenses incident to the negotiation, drafting and approval of this Agreement, including but not limited to the fees and disbursements of legal counsel for the City related to the same. The Company agrees that if the Company has not paid the same to the City prior to the City's payment to the Company under Section 2(a)(i), the City may pay such expenses by a deduction or set-off from such payment. Notwithstanding the foregoing, the Company's maximum exposure on these actually incurred out-of-pocket expenses shall be capped at \$15,000.00.

(h) *Notice and Right to Cure Certain Breaches.* In the event that the City determines that it is not obligated to make any payment contemplated under Section 2(a) of this Agreement due to (i) a breach or violation of any of the Company's agreements, representations, or warranties that are set forth in Section 1 of this Agreement, or (ii) a breach or violation due to the Company's failure to timely send the Documentation to the City as required in Section 2(a) of this Agreement, (each, a "**Certain Company Breach**"), the City shall promptly thereafter notify the Company in writing of the City's determination, which notice shall describe in reasonable detail each Certain Company Breach. The Company shall have sixty (60) days from and after delivery of the City's notification to cure each Certain Company Breach (the "**Cure Period**"). If each Certain Company Breach is cured within the Cure Period, then the City will be obligated to make the payment and such payment will be made within thirty (30) days after the cure is completed (assuming that the City is otherwise obligated to do so hereunder).

Section 3. Highway 72 / Kelli Drive Signalization Project

(a) *City Design and Construction of Signalization Project.* The City will cause the construction of a public works project which adds improved traffic signalization at the intersection of Highway 72 and Kelli Drive (the "**Signalization Project**"). The Signalization Project will include signal modifications to convert the signalization at the intersection of Highway 72 and Kelli Drive to a full 8-phase with prot/perm for all 4 approaches to the intersection. The items included in the Signalization Project are as follows, to the extent that the City reasonably determines such items are necessary for the Signalization Project:

Signal Controller and Heads

- Signal controller cabinet modifications (adding 2 phases)
- Removal of 4 signal heads and existing wiring for side streets
- Install of 2 new 3-section heads and 2 new 5-section heads (including backplates) plus new wiring for side streets

Wavetronix

- Add 2 new Wavetronix devices to achieve detection of side streets as separate phases (or modify existing devices to do the same, if possible)
- Programming of new detection zones

Signal Timings Adjustments

- Install and fine tune signal coordination timings for US 72 at Kelli Drive

The Signalization Project will be designed by the City in a form and manner that satisfies all applicable standards and objectives of the City, with the cost of the Signalization Project borne by the City.

(b) *City Consultation with Company.* The City agrees to consult in good faith with the Company, from time to time, concerning the design, cost, progression and schedule of the Signalization Project. The Company recognizes that while the City cannot warrant or promise any date of completion of the Signalization Project, the City will, commencing upon the execution of this Agreement by the parties, work diligently and in good faith in an effort to cause the Signalization Project to be completed on a reasonable timeline that is acceptable to the Company.

(c) *Suspension or Termination of Signalization Project.* If the City, in its reasonable discretion, concludes that (1) significant work on the Project has been suspended for a period of at least six (6) months, (2) the Project has been cancelled, or (3) the Project has been altered such that it does not include a TJ Maxx location or an Ulta Beauty location, then the City may, from time to time, delay, suspend or terminate its obligations under this Section 3 by providing notice of the same to the Company.

Section 4. Miscellaneous.

(a) *Severability.* The provisions of this Agreement shall be severable. In the event any provision this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining provisions hereof or thereof.

(b) *Prior Agreements.* This Agreement shall completely and fully supersede all other prior agreements, both written and oral, among the parties hereto relating to the matters contained herein, and none of the parties hereto shall hereafter have any rights under any of such prior agreements but shall look to this Agreement for definition and determination of all of their respective rights, liabilities and responsibilities relating to the matters contained herein.

(c) *Counterparts.* This Agreement may be executed in counterparts, each of which shall constitute but one and the same agreement.

(d) *Binding Effect.* This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns except as otherwise provided herein.

(e) *Governing Law.* This Agreement shall be governed exclusively by the laws of the State of Alabama, without regard to its conflict of laws provisions.

(f) *Notices.* All notices, demands, consents, certificates or other communications hereunder shall be in writing, shall be sufficiently given and shall be deemed given when delivered personally to the party or to an officer of the party to whom the same is directed, when mailed by registered or certified mail, postage prepaid, or when sent by overnight courier, addressed as follows:

If to the City:

City of Athens, Alabama
Attn: Mayor
PO Box 1089
Athens, AL 35612
Email: rmarks@athensal.us

City of Athens, Alabama
Attn: City Clerk
PO Box 1089
Athens, AL 35612
Email: abarnes@athensal.us

with a copy to:

Shane Black, Esq.
Hand Arendall Harrison Sale LLC

102 South Jefferson Street
Athens, AL 35611
Email: sblack@handfirm.com

If to the Company: Noon Athens P3, LLC
715 Market Street, Suite 203
Chattanooga, TN 37402
Attn: Kevin Jennings
Email: kevin.jennings@noonre.com

with a copy to: Noon Management, LLC
715 Market Street, Suite 203
Chattanooga, TN 37402
Attn: General Counsel
Email: chuck.fisher@noonmanagementllc.com and
zach.morris@noonmanagementllc.com

Any such notice or other document shall be deemed to be received as of the date delivered, if delivered personally, or as of three (3) days after the date deposited in the mail, if mailed, or the next business day, if sent by overnight courier. In addition to the chosen method of giving notice, such notice shall also be e-mailed to the address(es) shown above.

(g) *Assignment. None of the rights hereunder or the duties undertaken hereby may be assigned or delegated by any party hereto without the prior, written consent of the other parties. However, the Company may in its discretion without the consent of the other parties (i) assign its rights hereunder to a bank or other lending institution as a collateral assignment or pledge, (ii) assign its rights and delegate its duties to a third party in which the Company has an ownership interest or which is affiliated by common ownership with the Company.*

(h) *Electronic Signature. This Agreement and any additional amendments to this Agreement may be executed only by hand-signatures; however, such signatures may be transmitted by facsimile or email, and any such electronic transmissions of the signatures shall be deemed to constitute originals. In addition, either party may rely upon any electronic transmission of any document that is properly executed by the other party. The signature of any party thereon shall be considered for those purposes as an original signature, and the document transmitted shall be considered to have the same binding legal effect as an original signature on an original document. At the request of any party, a facsimile or scanned email document shall be re-executed by all parties in original form. No party may raise the use of a facsimile machine or scanned email, or the fact that any signature was transmitted through the use of a facsimile or scanned email as a defense to the enforcement of this Agreement.*

(i) *Amendment. This Agreement may be amended or supplemented only by an instrument in writing duly authorized, executed and delivered by each party hereto.*

(j) *Forum-Selection Clause; Waiver of Jury Trial. The Parties consent and submit to the jurisdiction of the state courts of Limestone County, Alabama and/or the United States District Court for the Northern District of Alabama, Northern Division, and expressly agree that the counties in which such courts are situated will be the exclusive venues for any suit, action or proceeding arising out of or related to this Agreement. In any legal proceeding arising from or related to the same, the Parties do hereby waive any right to a trial by jury.*

(k) *Delay Event; Time of the Essence. Notwithstanding the other timeframes set forth above, if a Delay Event occurs, the City's obligation to complete the Signalization Project will be extended for so long as such Delay Event occurs and is continuing, and for so long thereafter as the City continues to reasonably pursue completion of the Signalization Project. A "Delay Event" means any cause(s) or matter(s), whether of the kind herein enumerated or otherwise, and whether or not within the exclusive or partial control of the City, which the City could not reasonably foresee or expect at the time it entered into this Agreement, and which obstructs, impedes or interferes with the City's reasonable efforts relating to the construction of the Signalization Project. Such term includes, but is not limited to: (i) acts of God; (ii) strikes or lockouts; (iii) conditions arising from a change in governmental laws, orders, rules or regulations; (iv) acts of public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, tornados, hurricanes, floods, and/or washouts; (v) walkouts between the City, its engineers, general contractor and subcontractors engaged to perform work on*

the Signalization Project; (vi) any unforeseen soil or other natural conditions that delay or prevent construction of the Signalization Project; (vii) any unforeseen environmental hazards that delay or prevent construction of the Signalization Project; (viii) any governmental permitting or approval process (other than one within the exclusive control of the City) that delays or prevents construction of the Signalization Project; (ix) the inability of the City, its contractors, or its subcontractors to acquire, or the delays on the part of the same in acquiring, at reasonable costs, and after the exercise of due diligence, materials and supplies for the purpose of being used in connection with the Signalization Project; and/or (x) extreme inclement weather conditions that delay or prevent construction of the Signalization Project. Except as set forth above time shall be the essence with respect to each obligation of the parties hereunder. The City shall notify the Company within a reasonable time upon the occurrence of any Delay Event, including the estimated amount of the delay. The City shall use reasonable efforts to mitigate the effects of any Delay Event.

(l) *City's Design and Construction of Public Improvements.* In satisfying its obligations as set forth herein, the City retains its sole authority to design and construct public improvements and public roadways, and does not, through the operation of this Agreement, delegate, share, or require the approval of any other person or entity with respect to the same.

(m) *Stores.*

(i) As discussed above, TJ Maxx is one of the Stores. TJ Maxx refers to that certain commercial retail establishment operated by TJX Companies, Inc. under the "TJ Maxx" name brand, a leading off-price apparel and home fashions retailer in the United States, with more than 4,500 stores in nine countries, and to no other substitute, affiliate, or derivative.

(ii) As discussed above, Ross Dress for Less is one of the Stores. Ross Dress for Less refers to that certain commercial retail establishment operated by Ross Stores, Inc. under the "Ross Dress for Less" name brand, a leading off-price department store retailer, with more than 1,600 stores in the United States and US Territories, and to no other substitute, affiliate, or derivative thereof.

(iii) As discussed above, Rack Room Shoes is one of the Stores. Rack Room Shoes refers to that certain commercial retail establishment operated by Rack Room Shoes, Inc. under the "Rack Room Shoes" and "Off Broadway Shoe Warehouse" name brands, a leading family, with over 500 locations, and to no other substitute, affiliate, or derivative thereof.

(iv) As discussed above, Five Below is one of the Stores. Five Below refers to that certain commercial retail establishment operated by Five Below, Inc. under the "Five Below" name brand, a leading American value retailer, with over 1,100 locations in 40 states, and to no other substitute, affiliate, or derivative thereof.

(v) As discussed above, Ulta Beauty is one of the Stores. Ulta Beauty refers to that certain commercial retail establishment operated by Ulta Beauty, Inc. under the "Ulta Beauty" name brand, a leading American beauty and cosmetics retailer with over 1,300 locations, and to no other substitute, affiliate, or derivative thereof.

(vi) Upon the written request of the Company and the written approval of the Mayor, City Council President, and City Clerk/Treasurer of the City (collectively, the "**Approving Parties**"), the definition of "Stores" hereunder may be amended at any time so as to substitute a different commercial retail establishment(s) in the place of one or more of the commercial retail establishments that are named in this Agreement. Upon such request by the Company, the Mayor, the City Council President, and City Clerk/Treasurer of the City will determine, in their sole discretion, whether to issue such approval and in doing so, may consider the value of the brand of the different commercial retail establishment, the anticipated revenue stream to the City from the operations of the different commercial retail establishment, and such other considerations as they may determine appropriate. Notwithstanding the foregoing, in the event that an initial Store identified in Section 4(m)(i-v) hereof (i.e., Ulta Beauty, TJ Maxx, Ross Dress for Less, Rack Room Shoes, and Five Below) has opened for business but then ceased operations at the Project, then any of the commercial retail establishments listed in **Exhibit A** are deemed approved by the Approving Parties to be an acceptable replacement for that initial Store (and for elimination of doubt the approval process set forth above in this Section 4(m)(vi) shall not be required for any of those establishments as

substitutes for then-existing tenants of the Project) so long as the substitute commercial retail establishment(s) occupy(ies) at least seventy percent (70%) of the retail space that was occupied by the Store that it is replacing.

IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its name, under seal, and the same attested, all by officers thereof duly authorized thereunto, and the Company has executed this Agreement under seal, and the parties have caused this Agreement to be dated the date and year first above written.

/signature lines/

EXHIBIT A

*TJX concepts - Marshalls, HomeGoods, HomeSense and Sierra Trading Post
Burlington
PopShelf
PetSMART
Dick's Sporting Goods
Academy Sports
Designer Shoe Warehouse
Gap
Cost Plus World Market
Hobby Lobby
Michaels
Buy Buy Baby
Bed Bath & Beyond
Kirklands
Shoe Carnival
Sketchers
Shoe Department
Famous Footwear
Encore Shoes
Shoe Station
Best Buy
Electronics Express
Apple
Petco
Pet Supermarket
Ashley Furniture
Kohl's
Target
Nordstrom Rack
Ethan Allen
Target
Martin's Family Clothing*

Councilmember Seibert moved that unanimous consent be given for immediate consideration of and action on said resolution, which motion was seconded by Councilmember Henry, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Lucas, Henry and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said resolution had been unanimously carried. Councilmember Lucas thereupon moved that the resolution be finally adopted, which motion was seconded by Councilmember Seibert and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Lucas, and Henry; NAYS: Councilmember Harper. The President thereupon announced that the motion for the adoption of the said resolution had been unanimously carried.

Councilwoman Henry introduced the following ordinance:

ORDINANCE NUMBER 2023 - 2265

**AN ORDINANCE REGARDING THE SALE OF REAL PROPERTY LOCATED
ALONG CLYDE MABRY DRIVE (HAPPI PAPPI)**

WHEREAS, the City of Athens and Limestone County, Alabama jointly own real property situated along Clyde Mabry Drive, known as the “Athens and Limestone County Highway 31 Industrial Park”;

WHEREAS, in Ordinance No. 2022-2251, the City previously approved the sale of two (2) acres of land in the park to **TH Enterprise LLC** (d/b/a “Happi Pappi”), for its use as an industrial food preparation/ food storage facility (and related business offices);

WHEREAS, the City entered into an agreement with Happi Pappi for the sale of the 2 acres, but Happi Pappi has not yet completed the purchase and is presently conducting its due diligence related to the site;

WHEREAS, Happi Pappi has requested that it be able to purchase additional land for its operations, for a cumulative total of approximately 3.4 acres;

WHEREAS, the property that Happi Pappi seeks to purchase is described generally as follows: an area of real property within the “future development” section of the *Final Plat of Thirty-One Commercial Park Addition No. 2* , recorded at Plat Book H, Page 159 in the Office of the Judge of Probate of Limestone County, Alabama, that is bordered by Clyde Mabry Drive on the north, Lot 3 on the east, and the “future road” on the west, consisting of approximately 3.4 acres (the “Property”);

WHEREAS, the City Council finds that the purchase price for the Property (\$20,000 per acre) remains a fair, adequate and reasonable price, and that this Ordinance does not involve the lending of credit, granting of public funds or thing of value in aid of any private entity;

WHEREAS, the City Council finds that this Property is no longer needed for public or municipal purposes; and

WHEREAS, this Ordinance is authorized by Section 94.01 of the *Constitution of Alabama*, and other applicable law.

THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, while in session on April 24TH, 2023 at 4:30P.M., that Ordinance No. 2022-2251 is hereby amended so that the Mayor, on behalf of the City of Athens, is authorized to amend the City’s existing *Purchase and Sale Agreement* with Happi Pappi to sell the Property, consisting of approximately 3.4 acres and as defined/described in this Ordinance, on the same terms as stated in Ordinance No. 2022-2251. The Mayor is authorized to take the above action only if the Mayor determines that a

substantially similar resolution or other measure approving such sale has been adopted by the Limestone County Commission.

ADOPTED this the 24th day of April, 2023.

/s/ Harold Wales
PRESIDENT, CITY COUNCIL,
CITY OF ATHENS, ALABAMA

/s/ William R. Marks
MAYOR, CITY OF ATHENS, ALABAMA

ATTEST:

/s/ Annette Barnes
CITY CLERK, CITY OF ATHENS, ALABAMA

Councilmember Seibert moved that unanimous consent be given for immediate consideration of and action on said ordinance, which motion was seconded by Councilmember Harper, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Lucas, Henry and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said ordinance had been unanimously carried. Councilmember Henry thereupon moved that the ordinance be finally adopted, which motion was seconded by Councilmember Harper and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Lucas, Henry and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said ordinance had been unanimously carried.

Councilman Seibert introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, at its regular meeting on April 24, 2023, at 4:30PM to authorize the Mayor, for and on behalf of the City, to enter into an agreement with Reese Langley for lobbying services in the amount of \$2,000 per month, which could be terminated by the City at any time. The Mayor may join with the Limestone County Commission in retaining Reese Langley for such services.

Councilmember Henry moved that unanimous consent be given for immediate consideration of and action on said resolution, which motion was seconded by Councilmember Lucas, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Lucas, Henry and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said resolution had been unanimously carried. Councilmember Seibert thereupon moved that the resolution be finally adopted, which motion was seconded by Councilmember Harper and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Lucas, Henry and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said resolution had been unanimously carried.

Kennan Braden, 13373 Glendorch Lane, Athens, addressed the City Council regarding the cannabis ordinance that was passed in November, 2022. Mr. Braden asked the Council if any consideration had been taken to rescind the ordinance.

Billy Cannon, 2387 S. Hine Street, Athens, addressed the City Council and announced that Louis Haney, one of the oldest business owners in Athens, Haney Equipment, had passed away earlier that morning and asked for thoughts and prayers for his family.

Kelly Range, 303 Brookwood Drive, Athens, addressed the City Council regarding the cannabis ordinance and stated that the option should be up to the people. Mr. Range encouraged everyone to come out for Celebrity Waiters night at Applebee's.

Sharon Smith, 12767 Tallulah Drive, Madison, addressed the City Council regarding the new subdivision adjoining the Cloverleaf Drive Subdivision. Ms. Smith opposes the development and stated that it will depreciate the value of her step-father's property. Ms. Smith asked the City Council if there was something that can be done to stop the development.

Joe Teal, 2219 Diamond Pointe Dr, Athens, addressed the City Council regarding the cannabis ordinance and stated that he believes that the City Council acted prematurely.

Council President Wales stated that if he has two additional City Council members ask him to bring the cannabis ordinance back for another vote, he will add it to the agenda.

* * *

There being no further business to come before the meeting, Council President Wales duly and properly adjourned the meeting.

/s/ Harold Wales
PRESIDENT, CITY COUNCIL

ATTEST:

/s/ Annette Barnes
CITY CLERK