

**CITY OF MOUNTAIN BROOK, ALABAMA**  
**RESOLUTION NO. 2013- 122**

WHEREAS, the City Council of the City of Mountain Brook, Alabama ("the City Council") has been asked to consider and approve a First Amendment to Development Agreement ("First Amendment") with Evson, Inc., an Alabama corporation, and Daniel Realty Company, LLC, an Alabama limited liability company (hereinafter collectively referred to as the "Company"), which First Amendment is attached hereto as Exhibit A, made a part hereof, and incorporated herein by reference; and

WHEREAS, the First Amendment amends the Development Agreement ("Development Agreement") between the City and Company entered into on July 30, 2012, which Development Agreement is attached hereto as Exhibit B; and

WHEREAS, the City Council, on August 12, 2013, authorized and directed the City Clerk to publish Legal Notice of Action Proposed to be Taken by the City of Mountain Brook, Alabama with regard to an amendment to the Development Agreement, pursuant to and in conformity with Amendment 772 to the Constitution of Alabama (1901) (Article 94.01 of the Recompiled Constitution of Alabama); and

WHEREAS, such Notice, attached hereto as Exhibit C, was published in the Birmingham News, the newspaper having the largest circulation in the City of Mountain Brook, on August 18, 2013, which publication was at least seven days prior to the date of the meeting at which this Resolution is being considered; and

WHEREAS, such Notice further invited members of the public to attend the meeting and submit comments regarding the actions the City Council is considering with respect to the transactions and agreements described in the Notice; and

WHEREAS, the City Council, at its meeting on the present date, offered members of the public the opportunity to comment on the matters set forth in the Notice, and those comments have been considered by the City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK, ALABAMA, as follows:

1. That the First Amendment to Development Agreement between City of Mountain Brook, Evson, Inc., and Daniel Realty Company, LLC, which is attached hereto and incorporated herein, shall be and is hereby approved.
2. That the Mayor of the City of Mountain Brook shall be and hereby is authorized to execute and enter into the First Amendment attached hereto and made a part

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hereof as Exhibit A, and deliver the First Amendment set forth in this Resolution to the other parties to the First Amendment or to their representatives.

3. That the Mayor shall further be authorized to make such corrections or revisions to the text or form of the First Amendment as necessary prior to such execution, provided that any such correction or revision shall not alter the material terms of the First Amendment.

4. That, after due consideration, the City Council finds and determines that the expenditure of public funds for the purposes and in the manner specified in the Development Agreement as amended by the First Amendment, and the execution of the First Amendment approved in this Resolution serve valid and sufficient public purposes, notwithstanding any individual benefit accruing to Evson, Inc., Daniel Realty Company, LLC, or any other private entity or entities.

5. That the public benefits to the City of Mountain Brook resulting from the First Amendment, the Development Agreement as amended thereby, and transactions herein approved include improvements to infrastructure, drainage, and public roadways; promotion of local, economic and commercial development and the stimulation of the local economy; revitalization of a significant portion of Mountain Brook Village; increasing employment opportunities in the City; increasing the City's tax base by attracting high quality tenants; promoting the location, expansion, and retention of commercial enterprises in Mountain Brook Village; preserving and improving the aesthetic quality of commercial development in Mountain Brook Village; expansion of and enhancement to the public street network used by its residents; installation of road improvements designed to improve traffic flow and increase safety; extension of sidewalks and pedestrian ways throughout the property and improved connections thereof; construction of stormwater improvements; development of usable green space; addition of public parking; and the generation of significant revenues for the City and for its public schools; all of which inure to the economic health and public benefit of the City.

ADOPTED AND APPROVED this the 26 day of August, 2013.

  
\_\_\_\_\_  
Virginia C. Smith, City Council President

  
\_\_\_\_\_  
Lawrence T. Oden, Mayor, City of Mountain Brook

ATTEST :

  
\_\_\_\_\_  
Steven Boone, City Clerk

**EXHIBIT A**

**TO**

**RESOLUTION TO CONSIDER AND APPROVE**

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

**FIRST AMENDMENT TO  
DEVELOPMENT AGREEMENT  
BETWEEN CITY OF MOUNTAIN BROOK  
and EVSON, INC. and DANIEL REALTY COMPANY, LLC**

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This First Amendment to Development Agreement ("First Amendment") is hereby made and entered into on this 26<sup>th</sup> day of August, 2013 amending the original Development Agreement dated July 30, 2012 ("Development Agreement") between the **CITY OF MOUNTAIN BROOK, ALABAMA** (hereinafter, the "City"), a municipal corporation organized and existing under the laws of the State of Alabama, whose notice address is 56 Church Street, Mountain Brook, AL 35213 and **EVSON, INC.** ("Evson"), an Alabama corporation, registered to do business in Alabama and **DANIEL REALTY COMPANY, LLC** ("Daniel"), an Alabama limited liability company, registered to do business in Alabama (hereinafter, collectively referred to as "COMPANY"), whose notice address is 3660 Grandview Parkway, Suite 100 Birmingham, AL 35243. All of the capitalized terms in the Development Agreement are incorporated herein by reference.

**RECITALS**

**WHEREAS**, the City and COMPANY entered into the Development Agreement on July 30, 2012; and

**WHEREAS**, due to changes in the Project, the COMPANY submitted amendments to the PUD to the City on June 14, 2013 and August 1, 2013 (collectively, the "PUD Amendments" and individually, a "PUD Amendment"); and

**WHEREAS**, due to changes in the Project, as more fully reflected in the PUD Amendments, the City and the COMPANY desire to amend the Development Agreement to more accurately reflect the agreement of the parties and further desire to memorialize the terms, conditions, and mutual obligations that comprise this First Amendment.

**NOW, THEREFORE**, for good and valuable consideration and the mutual promises and covenants set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The last two sentences of Section 2.1 are deleted in their entirety and the following is substituted in lieu thereof:

"More particularly, the Project shall be designed, constructed and developed in accordance with the plans, specifications, drawings, and undertakings contained in the PUD Application which was approved by the City Council in Ordinance Number 1871, the PUD Amendments which were approved by the City Council in Ordinance Numbers 1871 and 1893 (collectively, the "Amended PUD Application") and the commitments and representations made by the COMPANY at the meeting of the City Council on August 26, 2013, as reflected in the City's minutes in conjunction therewith. The Amended PUD Application and related materials are incorporated herein by reference and are hereinafter collectively described and referred to herein as the "Project Plans."

2. Section 4.6 is amended by deleting the first four lines and substituting the following in lieu thereof:

"(a) Unless otherwise agreed in writing by the parties, the City shall pay to the COMPANY, from and after the commencement of any retail sales from business operating in either the Grocery Commercial Phase, the Retail Phase or the Inn Phase ("Sales Tax Payment Commencement Date"), an amount equal to ninety percent (90%) of any Net Municipal Sales Tax Revenue. . ."

3. Exhibit B is hereby amended by deleting item "G. Parking Structure" in its entirety.

4. The following is added as a new Section 4.11.

"4.11 Delayed Payment. Notwithstanding anything herein to the contrary, in the event the City exercises its remedies to cure a default by the COMPANY in the section in the Amended PUD Application labeled "Interim Construction Phase," the City will retain, for its own account and not pay to the COMPANY all Incentive Payments otherwise due and owing COMPANY in an amount equal to the reasonable costs and expenses incurred by the City to perform the Road and Demolition Work ("City's Expenses"). Once the City has retained the Incentive Payments for its own account equal to the City's Expenses, then the City will promptly commence the payment of all Incentive Payments to the COMPANY."

5. Except as expressly amended or changed in this Amendment, all other terms and provisions of the Development Agreement remain in full force and effect.

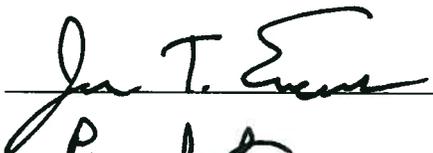
IN WITNESS WHEREOF, each party has caused this First Amendment to be duly executed.

**CITY OF MOUNTAIN BROOK,  
an Alabama Municipal Corporation**

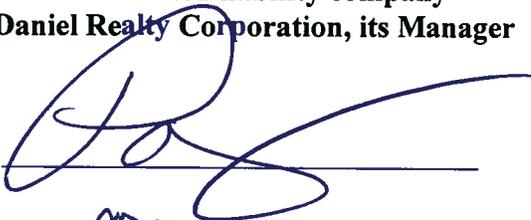
By:   
\_\_\_\_\_

Its: Mayor  
\_\_\_\_\_

**EVSON, INC., an Alabama corporation**

By:   
Its: President

**DANIEL REALTY COMPANY, LLC,  
an Alabama limited liability company  
by Daniel Realty Corporation, its Manager**

By:   
Its: CEO

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Lawrence T. Oden, whose name as Mayor of the City of Mountain Brook, a Municipal Corporation in the State of Alabama, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

GIVEN under my hand and seal, this 26 day of August, 2013.

Steven R. Boone

Notary Public

My Commission Expires: 4/17/2017

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that John T. Evans, whose name as President of Evson, Inc., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

GIVEN under my hand and seal, this 28 day of August, 2013.

Steven R. Boone

Notary Public

My Commission Expires: 4/17/2017

STATE OF ALABAMA    )

JEFFERSON COUNTY    )

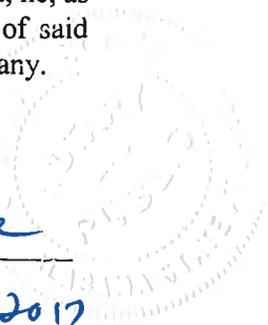
I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Pat Henry, whose name as Chief Executive Officer of Daniel Realty Corporation, a corporation, the Manager of Daniel Realty Company, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Daniel Realty Corporation, acting in its capacity as Manager of said limited liability company.

GIVEN under my hand and seal, this 26<sup>th</sup> day of August, 2013.

Stewart A. Boone

Notary Public

My Commission Expires: 4/17/2017



**EXHIBIT B**

**TO**

**RESOLUTION TO CONSIDER AND APPROVE**

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

**DEVELOPMENT AGREEMENT  
BETWEEN CITY OF MOUNTAIN BROOK  
and EVSON, INC. and DANIEL REALTY COMPANY, LLC**

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This Development Agreement ("Agreement") is hereby made and entered into on the 30th day of July, 2012 ("Effective Date"), between the **CITY OF MOUNTAIN BROOK, ALABAMA** (hereinafter, the "City"), a municipal corporation organized and existing under the laws of the State of Alabama, whose notice address is 56 Church Street, Mountain Brook, AL 35213 and **EVSON, INC.** ("Evson"), an Alabama corporation, registered to do business in Alabama and **DANIEL REALTY COMPANY, LLC** ("Daniel"), an Alabama limited liability company, registered to do business in Alabama (hereinafter, collectively referred to as "COMPANY"), whose notice address is 3660 Grandview Parkway, Suite 100 Birmingham, AL 35243.

**EXHIBIT A**

**RECITALS**

**WHEREAS**, the City desires to support and encourage economic development within the City in order to develop and maintain a strong local economy, increase employment opportunities, promote replacement of aging commercial structures, broaden the City's tax base and increase revenues in order to provide necessary services to the residents of the City, thus improving the quality of life for its residents; and

**WHEREAS**, Evson owns certain real property identified on Exhibit "A" (hereinafter referred to as the "Property") consisting of approximately 28 acres that is located within the corporate limits of the City; and

**WHEREAS**, the COMPANY intends to develop the Property for residential, retail and

commercial development in accordance with plans, specifications, and undertakings approved by the City under applicable city ordinances and regulations, as more fully set forth in 2.1 below (said development being hereinafter referred to as "the Project"); and

**WHEREAS**, the Project, when completed, is expected to generate annual taxable sales in excess of approximately \$65,000,000 and the creation of new jobs within the City; and

**WHEREAS**, to complete the Project, the COMPANY is scheduled to construct and install significant and needed public infrastructure improvements, including expansion and enhancement of the public street network in Mountain Brook Village, road improvements designed to improve traffic flow and eliminate safety hazards, extension of the pedestrian ways throughout the Property and to its north, construction of stormwater improvements to complement the City's stormwater mitigation project, development of usable green space, and increasing the parking inventory in Mountain Brook Village to support the Project; and

**WHEREAS**, the COMPANY is scheduled to complete such infrastructure improvements in connection with its development and completion of the Project, all in accordance with plans and specifications approved by the City under applicable City ordinances and regulations and pursuant to the terms of this Agreement; and

**WHEREAS**, the COMPANY intends to invest or cause to be invested approximately One Hundred Twenty Million Dollars (\$120,000,000.00) in the development and completion of the Project, which will include the development and completion of major infrastructure improvements, as more particularly described in the Project Plans and on the list set forth on Exhibit "B" to this Agreement; and

**WHEREAS**, Amendment No. 772 of the Constitution of Alabama (1901) (Section 94.01(a)(3) of the Recompiled Constitution of Alabama and hereinafter referred to as "Amendment No. 772"), authorizes the City to enter into agreements for the purpose of promoting economic development within the City; and

**WHEREAS**, the City finds and determines that the Project and the infrastructure improvements which will be constructed in connection therewith, are of significant value to the City and that their completion is in the best interest of the City and the public and will promote the economic development of the City; and

**WHEREAS**, the City further finds and determines that completion of the Project will be of significant economic benefit to the City and its Board of Education through the generation of new and additional school taxes, sales taxes, lodging taxes, business license fees, permit fees and ad valorem property taxes; and

**WHEREAS**, following careful consideration and review, the City has determined that completion of the Project in accordance with said plans, specifications, and undertakings and with the terms of this Agreement are in the best interest of the City, as the Project will result in, among other things, an expansion and enhancement of the City's economic and tax base, an increase in employment opportunities, a redevelopment of outdated commercial property within the City which will attract new businesses to the City, and replacement of outdated residential units with new housing units; and

**WHEREAS**, the City has determined that entering into this Agreement will result in significant benefits to the public, and that the provisions hereof serve a valid and sufficient public purpose; and

**WHEREAS**, the City and the COMPANY desire to memorialize the terms, conditions, and mutual obligations that comprise this Agreement.

**NOW, THEREFORE**, for good and valuable consideration and the mutual promises and covenants set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

- 1.1 "Approved Assignee" shall have the meaning set forth in 6.8 below.
- 1.2 "Approved Assignment" shall have the meaning set forth in 6.8 below.
- 1.3 "Baseline Property Tax Revenue" means the taxes assessed and collected by the City from Municipal Property Taxes as of October 1, 2011 and described on Exhibit "D" attached hereto and made a part hereof, which tax revenue as of October 1, 2011 is warranted by the City as the true and correct tax revenue received by the City as reflected on their books and records.
- 1.4 "Baseline Sales Tax Revenue" means the sales tax revenue collected by the City from all sales activities on the Property for the 12-month period ending on December 31, 2011 and described on Exhibit "D" attached hereto and made a part hereof, which tax revenue as of December 31, 2011 is warranted by the City as the true and correct tax revenue received by the City as reflected on their books and records.
- 1.5 "City" shall refer to the City of Mountain Brook, Alabama.
- 1.6 "Culver Road Improvements" shall have the meaning set forth in 3.2(b) below.

**EXHIBIT A**

- 1.7 "Dedicated Public Infrastructure" shall mean all roads, grading, utilities, drainage, culverts, sidewalks, and other improvements necessary to provide infrastructure to support the Project which will be dedicated and/or transferred or conveyed to the City and which are more particularly set forth on Exhibit "C" and "C1" attached hereto and made a part hereof.
- 1.8 "Draw Period" means within fifteen (15) days after March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup> and December 31<sup>st</sup>, as described in 3.2.
- 1.9 "Fiscal Year" shall have the meaning in 4.6(b).
- 1.10 "Grocery/Commercial Phase" shall have the meaning set forth in the PUD Application.
- 1.11 "Incentive Payments" shall have the meaning set forth in 4.1 below.
- 1.12 "Inn Phase" shall have the meaning set forth in the PUD Application.
- 1.13 "Jemison Lane Improvements" shall have the meaning set forth in 3.2(c) below.
- 1.14 "Lane Parke Infrastructure Improvements" shall mean all roads, grading, utilities, drainage, culverts, sidewalks, parks, greenways and other improvements necessary to provide infrastructure to support the Project, which are more particularly set forth on Exhibit "B" attached hereto and made a part hereof.
- 1.15 "Lane Park Road Improvements" shall have the meaning set forth in 3.2(a) below.
- 1.16 "Lender" shall have the meaning set forth in 6.9 below.
- 1.17 "Lodging Tax Incentive Payment" shall have the meaning set forth in 4.7 below.
- 1.18 "Monthly Baseline Sales Tax Revenue" means an amount equal to 1/12<sup>th</sup> of the Baseline Sales Tax Revenue, as shown on Exhibit "D".

- 1.19 "Monthly Sales Tax Revenue" means an amount equal to the sales tax revenue collected by the City from all sales activity on the Property in any month following the Project Opening.
- 1.20 "Municipal Property Taxes" shall mean the general fund municipal ad valorem tax for the City of Mountain Brook which is currently 26.1 mills.
- 1.21 "Net Municipal Sales Tax Revenue" means that amount of sales tax revenue collected by the City and generated by retail sales from any activity on the Property in excess of the Baseline Sales Tax Revenue.
- 1.22 "Net Property Ad Valorem Tax Revenue" shall have the meaning set forth in 4.8 below.
- 1.23 "Net Tax Revenue" shall have the meaning set forth in 4.2 below.
- 1.24 "Permitted Assignee" shall have the meaning set forth in 6.8 below.
- 1.25 "Permitted Assignment" shall have the meaning set forth in 6.8 below.
- 1.26 "Phase" shall have the meaning set forth in the PUD Application.
- 1.27 "Project" shall have the meaning set forth in the Recitals.
- 1.28 "Project Opening" means the opening for business of any Phase of the Project, other than the Residential Phase.
- 1.29 "Project Plans" shall have the meaning set forth in 2.1 below.
- 1.30 "Property Tax Incentive Payment" shall have the meaning set forth in 4.8 below.
- 1.31 "Property Tax Incentive Payment Date" shall have the meaning set forth in 4.8 below.
- 1.32 "Public Road Payment Protocol" shall have the meaning set forth in 3.2(a) below.

- 1.33 "PUD Application" shall have the meaning set forth in 2.1 below.
- 1.34 "Residential Phase" shall have the meaning set forth in the PUD Application.
- 1.35 "Retail Phase" shall have the meaning set forth in the PUD Application.
- 1.36 "Retainage" shall have the meaning set forth in 3.2(a) below.
- 1.37 "Roadway Improvements" shall have the meaning set forth in 3.1 below.
- 1.38 "Road Improvement Payment Commencement Date" shall have the meaning set forth in 3.1 below.
- 1.39 "Roadway Improvement Costs" shall have the meaning set forth in 3.1 below.
- 1.40 "Sales Tax Incentive Payment" shall have the meaning set forth in 4.6(a).
- 1.41 "Sales Tax Payment Commencement Date" shall have the meaning set forth in 4.6(a).

**ARTICLE II**

**DESIGN AND CONSTRUCTION OF LANE PARKE**

**2.1 Design and Construction Relating to the Project.** Subject to the provisions hereinafter set forth, the COMPANY shall, at its cost, be responsible for undertaking and completing architectural, engineering, and other design work (including preparation of detailed plans, specifications, and drawings related to the Project, the Lane Parke Infrastructure Improvements, landscaping, and associated improvements), as well as construction of the Project, its Lane Parke Infrastructure Improvements, and off-site improvements necessitated by the Project, including but not limited to construction of public roads, stormwater infrastructure, installation of sidewalks, curb and gutter, landscaping, parks, parking, and other improvements shown in or on the Project Plans (as defined below). In connection therewith, the COMPANY

shall secure any and all required governmental or regulatory approval and permits required for the Project and related improvements, including any such separate approvals that may be required by the City, and nothing herein shall be construed as a waiver of such requirements. More particularly, the Project shall be designed, constructed, and developed in accordance with the plans, specifications, drawings, and undertakings contained in that certain application for a PUD filed with the City on April 20, 2012 ("PUD Application") and approved by City Council Ordinance Number 1871. The approved PUD Application and related materials are incorporated herein by reference and are hereinafter collectively described and referred to herein as the "Project Plans."

**2.2 Construction and Conveyance of Storm Water Drainage Infrastructure.** As a part of and in conjunction with the construction of the Project, the COMPANY shall, at its cost, design, construct, and install a stormwater drainage system in accordance with the Project Plans. The drainage system shall be designed, constructed, and installed so that it may be integrated into the public drainage system of the City. Upon completion of the stormwater drainage system, the COMPANY agrees to transfer or convey to the City by deed or other appropriate means all right, title, and interest in and to portions of the drainage system, including the easement or right-of-way containing said system and improvements or infrastructure that are a part thereof that are part of the Dedicated Public Infrastructure and outlined on Exhibit "C" and "C1".

**2.3 Roadway Improvements.**

(a) Pursuant to the terms and provisions contained in the Project Plan and as part of and in conjunction with the construction of the Project, the COMPANY will construct Public and Private Roads, as identified in the Project Plans.

(b) It is understood and agreed all the roads identified as Public Roads in the duly approved Project Plans and any easements or rights-of-way associated therewith are to be constructed as public roads in accordance with City standards and transferred or dedicated to the City upon final completion thereof. The COMPANY and the City acknowledge that the secondary roads and other access corridors serving parts of the Project are proposed to be private roads, and are so identified in the Project Plans.

**2.4 Dedicated Public Infrastructure.** After the construction of the Dedicated Public Infrastructure is completed in accordance with ordinances, laws, rules, and regulations of the City, as well as, to the extent applicable, other applicable jurisdictions, the COMPANY agrees to transfer or convey to the City, by deed, easement or such other appropriate means, all of its right, title and interest in and to the Dedicated Public Infrastructure within a reasonable time after request by the City. From and after the date of the conveyance to the City of the Dedicated Public Infrastructure, the City agrees to accept such dedication and conveyance and to assume responsibility and control for the maintenance, repair and proper functioning of the Dedicated Public Infrastructure but may defer such acceptance and assumption until after the completion of the Grocery/Commercial Phase and the Retail Phase. The City may request the conveyance of the Dedicated Public Infrastructure in one or more conveyances.

**ARTICLE III**

**PAYMENT OF ROADWAY IMPROVEMENT COSTS**

**3.1 Roadway Improvement Costs.** The City agrees to pay to the COMPANY Four Million Dollars (\$4,000,000.00) ("Roadway Improvement Costs") as the Purchase Price for improvements to or construction of Lane Park Road, Culver Road and Jemison Lane ("Roadway Improvements"). The Roadway Improvements are described in the Project Plans. The Roadway

Improvement Costs will be paid for each of the three separate roadway projects in the amounts designated in 3.2(a), (b) and (c). The Roadway Improvement Costs include, among other items, payment for all site demolition costs, certain Lane Parke Infrastructure Improvements and Dedicated Public Infrastructure which are part of the Roadway Improvements but the payments do not include work related to the installation of utilities. The Roadway Improvement Costs will be paid in the manner and on the terms and provisions below when at least twenty-five per cent (25%) of the shell building construction and related site work for either the Grocery/Commercial Phase or the Retail Phase is completed, as submitted by the COMPANY, verified by the COMPANY's architect or engineer of record, and confirmed by the City ("Road Improvement Payment Commencement Date").

### **3.2 Roadway Improvements.**

**(a) Lane Park Road Improvements.** The City will pay the COMPANY the sum of One Million Dollars (\$1,000,000.00) for the completion of Roadway Improvements to Lane Park Road ("Lane Park Road Improvements"), as more fully set forth in the Project Plans. The City will pay COMPANY for the Lane Park Road Improvements at each Draw Period an amount equal to the percentage of work that has been properly completed, as certified in the manner below, multiplied by One Million Dollars (\$1,000,000.00) less the Retainage (as defined below). The COMPANY will notify the City when construction commences. Once construction commences, and following the Road Improvement Payment Commencement Date, the City will pay the COMPANY at each Draw Period following delivery by the COMPANY to the City of a written certification from the COMPANY and the general contractor performing the Lane Park Road Improvements certifying both that the work has been performed in accordance with the Project Plans and the percentage of the work that has been properly completed. From each progress

payment, the City will be entitled to retain five percent (5%) to serve as a retainage ("Retainage"). The Retainage will be paid to the COMPANY, along with the balance of the One Million Dollars (\$1,000,000.00) that is outstanding at the time of the final payment for the completion of the Lane Park Road Improvements ("Public Road Payment Protocol").

(b) **Culver Road Improvements.** The City will pay the COMPANY the sum of Five Hundred Thousand Dollars (\$500,000.00) for completion of Roadway Improvements to Culver Road ("Culver Road Improvements"), as more fully set forth in the Project Plans. The City will pay the COMPANY for the Culver Road Improvements at each Draw Period an amount equal to the percentage of work that has been properly completed, as certified in the manner above, multiplied by Five Hundred Thousand Dollars (\$500,000.00) less the Retainage. The COMPANY will notify the City when construction commences. Once construction commences, and following the Road Improvement Payment Commencement Date, the City will pay the COMPANY for the Culver Road Improvements in accordance with, and in the same manner as they pay the COMPANY for the Lane Park Road Improvements utilizing the Public Road Payment Protocol for the Culver Road Improvements.

(c) **Jemison Lane Improvements.** The City will pay the COMPANY the sum of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) for the construction and full completion of Jemison Lane, as more fully set forth in the Project Plans ("Jemison Lane Improvements"). City will pay the COMPANY for the Jemison Lane Improvements at each Draw Period an amount equal to the percentage of work that has been properly completed, as certified in the manner above, multiplied by Two Million Five Hundred Thousand Dollars (\$2,500,000.00) less the Retainage. The COMPANY will notify the City when construction commences. Once construction commences, and following the Road Improvement Payment Commencement Date, the City will

pay the COMPANY for the Jemison Lane Improvements in accordance with, and in the same manner as they pay the COMPANY for the Lane Park Road Improvements utilizing the Public Road Payment Protocol for the Jemison Lane Improvements.

**3.3 Inspection of Records.** Upon request from the City, the City shall be provided, to the extent expressly under the control and direction of the COMPANY, reasonable access to appropriate and necessary records of the COMPANY, its designee, or other persons, firms, or entities directly related to the Public Road Project.

**3.4 Roadway Improvements.** The City agrees that the Roadway Improvements described in 3.2(a), (b), and (c) above contain a portion of the Lane Parke Infrastructure Improvements and the Dedicated Public Infrastructure, and that the fair and reasonable value of the above referenced Roadway Improvements is in excess of Four Million Dollars (\$4,000,000.00). The purchase price for the completion of each designated component of the Roadway Improvements shall be payable in accordance with and subject to the terms, conditions, and limitations set forth in subparagraphs 3.2(a) through (c) above. All conveyances of the Roadway Improvements to the City shall be by appropriate deed, easement, or such other instrument as may be reasonably required by the City.

**3.5 Maintenance and Repair.** The City will be obligated to repair and/or maintain the Public Roads (as defined in the Project Plans) located within the City of Mountain Brook which have been dedicated to and accepted by the City and which include the Roadway Improvements, as well as the Dedicated Public Infrastructure, to the extent located in the City. The COMPANY assumes the responsibility to repair and/or maintain the landscaping along the roadways within the Project, whether public or private, to repair and maintain Private Roadways, as defined in the Project Plans, or any other roadways which are not dedicated to and accepted by the City.

## ARTICLE IV

### ADDITIONAL INCENTIVES

**4.1 Terms and Conditions.** In addition to the payment for the Roadway Improvements provided for in Article III of this Agreement and as further inducement to the COMPANY for completion of the Lane Parke Infrastructure Improvements, the City shall pay the COMPANY an amount not to exceed the amount of Ten Million Dollars (\$10,000,000.00) in consideration for and as an inducement for the COMPANY's agreement to undertake the Lane Parke Infrastructure Improvements and the redevelopment of the Property in accordance with the Project Plans and with the conditions set forth herein (the "Incentive Payments").

**4.2 Calculation of the Incentive Payments.** The amount of the Incentive Payments to be paid to the COMPANY by the City shall be calculated based upon Net Tax Revenue generated from the Project, if any. For the purposes of this Agreement, "Net Tax Revenue" includes revenue collections by the City from: (i) municipal sales taxes arising from or generated by sales activities within the Project, (ii) lodging taxes generated within the Project, and (iii) municipal property taxes generated from the Property, less the baseline amounts of those respective taxes currently collected by the City, defined in 4.6 and 4.8 below and reflected on Exhibit "D". The amount of the Incentive Payments will be calculated in the manner and on the terms set forth herein.

**4.3 Permit Fees.** The City will receive and retain all permit fees generated from the construction of the Project and all such revenue and fees will be excluded from the calculation of Net Tax Revenue.

**4.4 Construction Sales Tax Fees.** The City will receive and retain all sales tax generated from the construction of the Project and all such revenue will be excluded from the calculation of Net Tax Revenue.

**4.5 School Taxes.** The levied educational ad valorem tax and any municipal ad valorem taxes which are expressly dedicated to the Mountain Brook City Schools or to providing public educational services ("School Taxes") will not be utilized in the calculation of the Municipal Property Taxes and Net Property Ad Valorem Tax Revenue. The Mountain Brook City Board of Education shall receive and retain one-hundred percent (100%) of the School Taxes generated by the Project.

**4.6 Sales Tax Revenue.**

(a) Unless otherwise agreed in writing by the parties, the City shall pay to the COMPANY, from and after the commencement of any retail sales from businesses operating in either the Grocery/Commercial Phase or the Retail Phase ("Sales Tax Payment Commencement Date"), an amount equal to ninety percent (90%) of any Net Municipal Sales Tax Revenue collected by the City until the COMPANY receives One Million and no/100 Dollars (1,000,000.00) in any Fiscal Year (as defined below) and an amount equal to seventy-five per cent (75%) of any Net Municipal Sales Tax Revenue collected by the City from and after the point the COMPANY has received One Million Dollars (\$1,000,000.00) in any Fiscal Year ("Sales Tax Incentive Payment"). The Sales Tax Incentive Payment will be paid in the manner outlined in (b) below.

(b) The Sales Tax Incentive Payment will be paid by the City on a monthly basis, with the first payment to occur by the 15<sup>th</sup> of the month after the first full month following the

Sales Tax Payment Commencement Date, with each subsequent payment to occur on the 15<sup>th</sup> of each month thereafter. The Sales Tax Incentive Payment will be calculated by subtracting the Monthly Baseline Sales Tax Revenue from the Monthly Sales Tax Revenue and multiplying that sum (i) by ninety percent (90%) until the COMPANY receives up to One Million and no/100 Dollars (\$1,000,000.00) of Sales Tax Incentive Payments in any Fiscal Year and (ii) multiplying that sum by seventy-five per cent (75%) from and after the receipt by the COMPANY of One Million and no/100 Dollars (\$1,000,000.00) of Sales Tax Incentive Payments. Within 30 days after the end of the first 12 full months of payment of the Sales Tax Incentive Payment, and for each 12 months thereafter ("Fiscal Year"), the City and the COMPANY will calculate the exact amount of Net Municipal Sales Tax Revenues collected by the City for said Fiscal Year and, within 15 days thereafter, City will pay the COMPANY any shortfall in the payment of the Sales Tax Incentive Payment for such Fiscal Year, or conversely, the COMPANY will remit any excess payments it may have received during the Fiscal Year to the City.

**4.7 Lodging Tax Revenue.** Unless otherwise agreed in writing by the parties, the City shall remit to the COMPANY by the 15<sup>th</sup> of each month after the substantial completion of all improvements within the Inn Phase in an amount equal to ninety percent (90%) of any municipal lodging tax revenue generated from lodging activity on the Property and collected by the City during the preceding month ("Lodging Tax Incentive Payment").

**4.8 City Property Tax Revenue.** Unless otherwise agreed in writing by the parties, the City shall pay to the COMPANY an amount equal to the Net Property Ad Valorem Tax Revenue for all Property in the Project (the "Property Tax Incentive Payment"). For purposes of this Agreement, "Net Property Ad Valorem Tax Revenue" means the amount by which the Municipal Property Taxes received by the City exceed the Baseline Property Tax Revenue.

Beginning with the tax year commencing on October 1, 2013, the COMPANY will earn and the City will accrue and escrow, if earned by the COMPANY, the Property Tax Incentive Payment after receipt of a certificate of occupancy for the Residential Phase but the City is not obligated to commence payment of the Property Tax Incentive Payment until the Sales Tax Payment Commencement Date. Within ten (10) days after the City receives notice from the COMPANY of the Sales Tax Payment Commencement Date, any and all escrowed funds will be paid to the COMPANY and thereafter the Property Tax Incentive Payment will be paid to the COMPANY on or before February 1 of each year ("Property Tax Incentive Payment Date"). In the event that the Sales Tax Payment Commencement Date does not occur by December 31, 2019, any sums placed in escrow pursuant to this subsection shall be released to the City for its use, and the COMPANY shall have no further right nor claim to those funds being held in escrow but this Agreement remains in force and effect on the terms herein.

**4.9 No Finance Charge or Interest.** Except as otherwise set forth herein, no interest, carrying charge, or finance charge of any kind shall accrue or be added to the principal amount due the COMPANY by the City under the terms of this Agreement.

**4.10 Suitable Fill Material.** As further inducement and to assist the City in the fulfillment of its obligations associated with the Agreement for Services Agreement ("Zoo Agreement") with the Birmingham Zoo, Inc., the City hereby grants the COMPANY the right, but not the obligation, to remove all or any part of the Materials (as defined in the Zoo Agreement") that is suitable as structural fill for the Project as determined by the COMPANY. On or before September 1, 2016, the COMPANY will notify the City, in writing, when the COMPANY no longer intends to remove any of the Materials. Except for the right to remove all or any part of the Materials granted herein to the COMPANY, the City and the COMPANY recognize that the

COMPANY is not a party to the Zoo Agreement. The COMPANY shall further be responsible for all activities related to removal and transportation of the Materials, including any damage to person or property resulting from those activities. The COMPANY shall further agree to execute an access agreement or other like instrument as may be requested by the Zoo as a condition of such removal activities.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

**5.1 Representations and Warranties of the City.** The City makes the following representations and warranties as the basis for its undertaking pursuant to this Agreement.

(a) The execution and delivery of this Agreement on its part has been authorized by a resolution duly adopted by its City Council and by all other necessary actions, including those in accordance with Amendment 772 of the Constitution of the State of Alabama.

(b) The City has the power and authority to enter into the transactions contemplated by this Agreement and to fulfill and carry out its obligations hereunder.

**5.2 Representations and Warranties of the COMPANY.** The COMPANY makes the following representations and warranties as the basis for its undertakings pursuant to this Agreement:

(a) Each entity comprising the COMPANY is organized, existing and in good standing under the laws of the State of Alabama and registered to conduct business in Alabama, has the power to enter into and to perform and observe the agreements and covenants on its part contained in this Agreement.

(b) The execution and delivery of this Agreement on the part of the COMPANY's

proper agent, officer, manager or general partner has been duly authorized.

## ARTICLE VI

### GENERAL PROVISIONS

**6.1 Duration.** Absent an early termination of this Agreement for reasons set forth herein, the covenants and obligations in this Agreement shall commence on the Effective Date and terminate on the earlier of (i) 20 years from the Project Opening, (ii) 25 years from the Effective Date or (iii) payment in full of all amounts pursuant to Articles III and IV of this Agreement whichever shall come first.

**6.2 Fees and Expenses.** Each party shall pay its own expenses in connection with negotiation, execution, and closing of this Agreement or any agreement or instrument contemplated herein. In connection with the conveyance of land hereunder or rights-of-way and other Dedicated Public Infrastructure, the COMPANY, at its sole expense, shall, if reasonably required, obtain a title insurance policy or binder and prepare a survey of the property to be conveyed. Except as expressly provided herein, any necessary deed or other instruments related to such public roads and rights-of-way shall be prepared by the COMPANY.

**6.3 Severability.** If any term or provision hereof shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement, provided each party receives substantial fulfillment of its benefits hereunder.

**6.4 Governing Law.** This Agreement shall be governed by the laws of the State of Alabama. Nothing in this Agreement shall be deemed or construed to relieve or exempt the COMPANY or its assigns from full compliance with any applicable ordinance or regulation adopted by the City, although the City agrees not to enact any ordinance or regulation which

limits or restricts the rights and obligations of each party under this Agreement.

**6.5 Entire Agreement.** This Agreement and the Exhibits that are attached hereto or incorporated herein by reference constitute the entire Agreement among the parties hereto pertaining to the subject matter hereof, supersede any and all prior or contemporaneous agreements or undertakings of the parties relating to the subject matter hereof, and may not be modified or amended except by a writing duly executed by the party against whom the modification or amendment is asserted.

**6.6 No Partnership or Joint Venture.** Nothing contained in this Agreement shall constitute or be construed to be a partnership or joint venture between the City and the COMPANY and their respective successors and assigns.

**6.7 Counterparts.** This Agreement may be executed in counterparts, each which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

**6.8 Assignment.** This Agreement, and all of the provisions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, This Agreement may be assigned by the COMPANY, without the consent of the City, if (i) it is in compliance with the terms of this Agreement at the time of the assignment and (ii) the assignment is executed either between the entities which comprise the COMPANY or any of its affiliates or subsidiaries, or to an entity which is owned in whole or in part by either or both Evson and/or Daniel, or to any third party who owns, along with Evson and/or Daniel or their affiliates, an equity interest in all or any portion of the Project, or once all the Phases of the Project are completed to any third party ("Permitted Assignment"). Except for a Permitted Assignment, any other assignment by the COMPANY, or its successors or assigns, must be

approved by the City Council of the City, which approval will not be unreasonably withheld, delayed or conditioned ("Approved Assignment"). In the event of a Permitted or Approved Assignment, the COMPANY will remain obligated under the terms of this Agreement, unless released by the City. The City will make payments under this Agreement to the COMPANY at the notice address contained in this Agreement, unless it receives a written notice signed by the COMPANY, or thereafter by any entity approved via a Permitted Assignment or Approved Assignment (such entity is referred to as a "Permitted Assignee" or "Approved Assignee") at least ten (10) days in advance of any payment designating a new entity and/or address to which payments hereunder should be made.

**6.9 Collateral Assignments.** Consent of the City shall not be required for any collateral assignments of the COMPANY's rights under this Agreement to a lender ("Lender") who provides financing for the Project to the COMPANY or to a Permitted Assignee or Approved Assignee. Such Lender will be deemed a Permitted Assignee. The COMPANY will provide written notice to the City of the name, address, and contact information of any Lender and copies of the Collateral Assignment documents executed with said Lender which provides financing for the Project. In the event of a Collateral Assignment, the COMPANY shall not be released from its obligations under this Agreement.

**6.10 Estoppel Certificates.** From time to time, upon request by any party, the party asked shall provide to the party making the request, an acknowledgment or certificate with respect to matters concerning this Agreement or the status of performance of the obligations of the parties hereunder, as may be reasonably requested.

**6.11 No Third-Party Beneficiaries.** Except as authorized herein, this Agreement is intended only for the benefit of the signing parties hereto, and neither this Agreement, nor any of

the rights, interest or obligations hereunder, is intended for the benefit of any other person or third party.

**6.12 Public Purpose.** Pursuant to Amendment No. 772, the City does hereby ascertain, determine, declare and find that undertaking the grant of public funds, as described herein, is in the best interest of the City and will serve a public purpose and further enhance the public benefit and welfare by, among other things: promotion of local economic and commercial development and the stimulation of the local economy; increasing employment opportunities in the City; increasing the City's tax base, which will result in additional tax revenues for the City; promoting the location, relocation, expansion and retention of commercial enterprises in the City; and, preserving and improving the aesthetic quality of commercial development, inuring to the economic health of the City. The City finds that the above-cited items will serve valid and sufficient public purpose notwithstanding any incidental benefit accruing to the COMPANY or any other private entity or entities.

**6.13 Default.** Upon the occurrence of an event of default by a party, which is not cured within thirty (30) days after written notice, the non-defaulting party may, in its discretion, take and pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice expressly provided for in this Agreement:

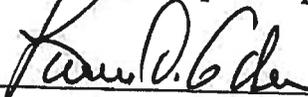
- (a) seek and obtain injunctive relief; or
- (b) terminate this Agreement prior to Closing; provided that the event of default occurred, and notice of the event of default is given, prior to the Closing; or
- (c) exercise any and all other remedies available at law or in equity.

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

ATTEST:

By:   
Its: City Manager

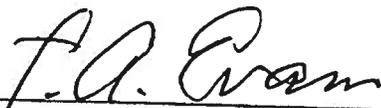
CITY OF MOUNTAIN BROOK,  
an Alabama Municipal Corporation

By:   
Its: Mayor

ATTEST:

By:   
Its: Vice-President

EVSON, INC., an Alabama corporation

By:   
Its: President

ATTEST:

By:   
Its: CEO

DANIEL REALTY COMPANY, LLC,  
an Alabama limited liability company  
by Daniel Realty Corporation, its Manager

By:   
Its: Senior Vice President

EXHIBIT A

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Lawrence T. Oden, whose name as Mayor of the City of Mountain Brook, a Municipal Corporation in the State of Alabama, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

GIVEN under my hand and seal, this 30th day of July, 2012.

Steven R. Boone  
Notary Public  
My Commission Expires: 4/12/2013

EXHIBIT A

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that F.A. Evans, whose name as President of Evson, Inc., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

GIVEN under my hand and seal, this 30th day of July, 2012.

Steven R. Boone  
Notary Public  
My Commission Expires: 4/12/2013

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that R. Scott Pulliam, whose name as Senior Vice President of Daniel Realty Corporation, a corporation, the Manager of Daniel Realty Company, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Daniel Realty Corporation, acting in its capacity as Manager of said limited liability company.

GIVEN under my hand and seal, this 30<sup>th</sup> day of July, 2012.

Steven L. Boone

Notary Public

My Commission Expires: 4/12/2013

EXHIBIT A

## EXHIBIT A

A parcel of land being situated in the Northeast quarter of the Northwest quarter and the Southeast quarter of the Northwest quarter of Section 8, Township 18 South, Range 2 West, more particularly described as follows:

Begin at the Southwest Corner of the Northeast Quarter of the Northwest Quarter of Section 8, Township 18 South, Range 2 West; also being the Point of Beginning; thence run Northerly along the West line of said Quarter - Quarter a distance of 665.12 feet; thence right  $91^{\circ}-08'-04''$  a distance of 1325.11 feet; thence right  $88^{\circ}-58'-55''$  a distance of 74.22 feet; thence right  $37^{\circ}-49'-05''$  a distance of 736.41 feet; thence right  $52^{\circ}-46'-30''$  a distance of 62.37 feet; thence right  $00^{\circ}-14'-22''$  a distance of 179.92 feet; thence left  $90^{\circ}-58'-32''$  a distance of 355.39 feet; thence right  $88^{\circ}-43'-29''$  a distance of 24.53 feet; thence left  $87^{\circ}-29'-35''$  a distance of 139.13 feet; thence right  $89^{\circ}-27'-49''$  a distance of 14.61 feet; thence left  $117^{\circ}-30'-00''$  a distance of 175.92 feet; thence right  $84^{\circ}-32'-17''$  a distance of 46.85 feet; thence tangent to a curve to the left having a radius of 1243.26 feet and a central angle of  $9^{\circ}-20'-05''$  along the curve an arc distance of 202.55 feet; thence right  $62^{\circ}-49'-52''$  from the tangent of said curve a distance of 329.33 feet; thence tangent to a curve to the left having a central angle of  $18^{\circ}-00'-50''$  and a radius of 66.12 feet an arc distance of 20.79 feet; thence left  $2^{\circ}-03'-01''$  to the tangent of a curve to the left having a central angle of  $34^{\circ}-34'-36''$  and a radius of 60.77 feet, an arc distance of 36.67 feet; thence continue from the tangent of said curve a distance of 45.64 feet; thence right  $90^{\circ}-00'-00''$  a distance of 119.49 feet; thence right  $33^{\circ}-25'-36''$  a distance of 245.11 feet; thence right  $0^{\circ}-00'-42''$  a distance of 377.82 feet to the Point of Beginning. Said Parcel contains 27.59 acres more or less.

EXHIBIT A

**EXHIBIT B**

**LANE PARKE INFRASTRUCTURE IMPROVEMENTS**

**A. Lane Park Road Improvements**

- a. Road Construction
- b. Road Striping
- c. Storm Sewer
- d. Electrical Duct Bank Relocation
- e. Curbing, Gutters & Street Parking
- f. Sidewalks, Landscape, Hardscape & Street Lights
- g. Permits & Fees
- h. Engineering, Design & Testing
- i. Contingency

**B. Culver Road Improvements**

- a. Road Construction
- b. Road Striping
- c. Storm Sewer
- d. Electrical Duct Bank and Street Lights
- e. Curbing, Gutters and Street Parking
- f. Sidewalks, Landscape & Hardscape
- g. Permits & Fees
- h. Engineering, Design & Testing
- i. Contingency

**C. Jemison Lane**

- a. Road Construction
- b. Sanitary Sewer
- c. Storm Sewer
- d. Water Line Extension
- e. Electrical Duct Bank and Street Lights
- f. Curbing, Gutters and Street Parking
- g. Sidewalks, Landscape & Hardscape
- h. Permits & Fees
- i. Engineering, Design & Testing
- j. Contingency

**D. Main Street**

- a. Road Construction
- b. Sanitary Sewer
- c. Storm Sewer
- d. Water Line Extension
- e. Electrical Duct Bank and Street Lights
- f. Curbing, Gutters and Street Parking
- g. Sidewalks, Landscape & Hardscape
- h. Permits & Fees
- i. Engineering, Design & Testing
- j. Contingency

EXHIBIT A

- E. Montevallo Road**
  - a. Electrical Duct Bank Relocation
  - b. Curbing, Gutters and Street Parking
  - c. Sidewalks, Landscape, Hardscape & Street Lights
  - d. Road Striping
  - e. Permits & Fees
  - f. Engineering, Design & Testing
  - g. Contingency

- F. Park Lane Court (North & South)**
  - a. Road Construction
  - b. Sanitary Sewer
  - c. Storm Sewer
  - d. Water Line Extension
  - e. Electrical Duct Bank and Street Lights
  - f. Curbing & Gutters
  - g. Permits & Fees
  - h. Engineering, Design & Testing
  - i. Contingency

- G. Parking Structure**
  - a. Deck Construction
  - b. Elevator & Stairs
  - c. Storm Sewer & Detention
  - d. Sidewalks, Landscape, & Hardscape
  - e. Permits & Fees
  - f. Engineering, Design & Testing
  - g. Contingency

- H. Zoo Branch Culvert / Watkins Brook Flood Management**
  - a. Remove & Replace Box Culvert
  - b. Permits & Fees
  - c. Engineering, Design & Testing
  - d. Contingency

- I. Village Green**
  - a. Landscaping & Irrigation
  - b. Hardscape & Lighting
  - c. Permits & Fees

- J. Woodlaud Park**
  - a. Landscaping & Irrigation
  - b. Hardscape & Lighting
  - c. Permits & Fees

EXHIBIT C

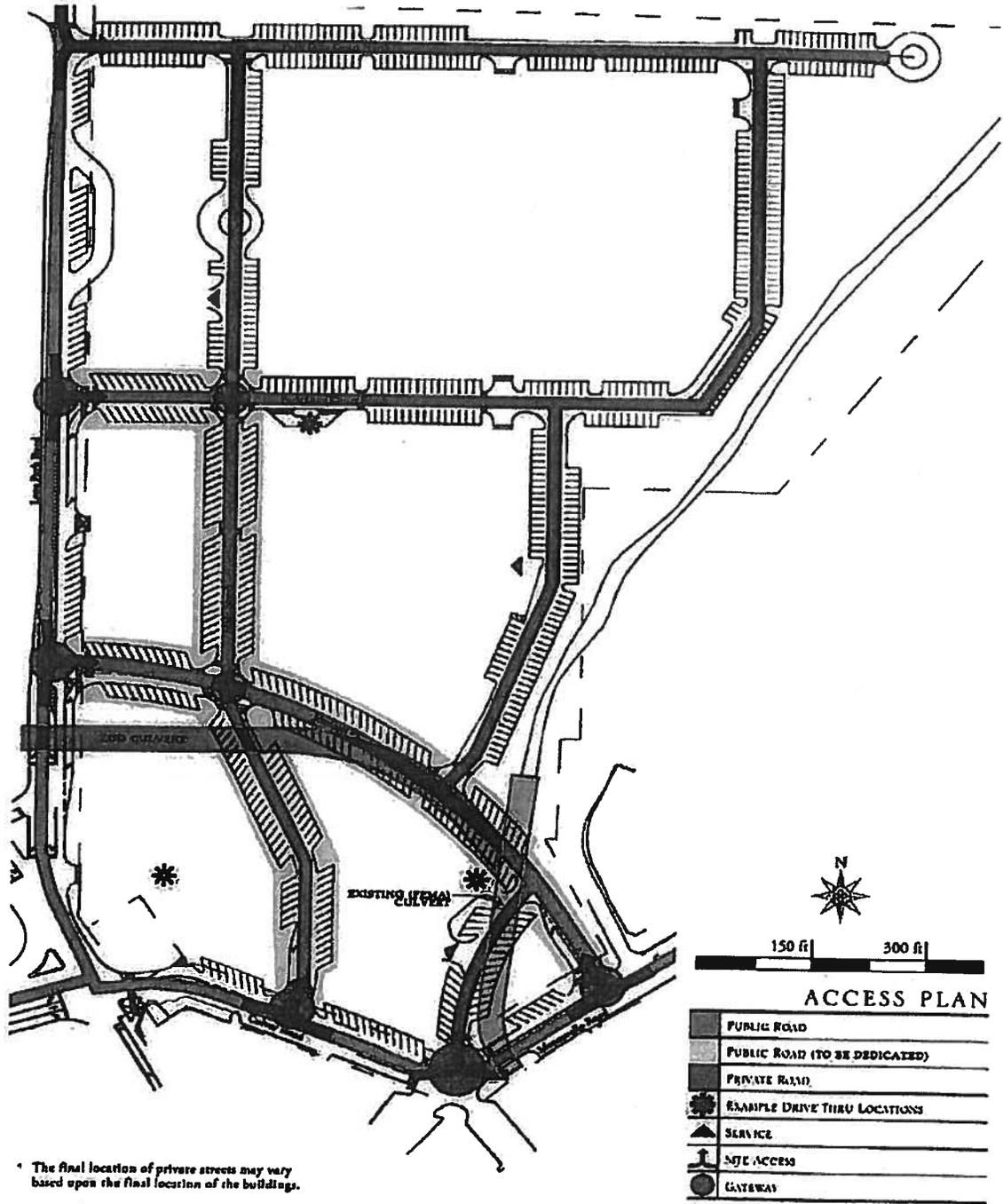


EXHIBIT A

\* The final location of private streets may vary based upon the final location of the buildings.



**EXHIBIT C1**

**DEDICATED PUBLIC INFRASTRUCTURE**

**Jemison Lane**, including all grading, utilities, drainage, culverts, sidewalks, and all other improvements in the right-of-way.

**Main Street**, including all grading, utilities, drainage, culverts, sidewalks, and all other improvements in the right-of-way.

**Zoo Branch Stormwater Culvert**, conveying off-site stormwater through the property.

**Existing (FEMA) Stormwater Culvert**, conveying off-site stormwater through the property.

**EXHIBIT A**

**Exhibit D  
 Baseline Revenues<sup>1</sup>**

Year	Baseline Property Tax Revenues	Baseline Sales Tax Revenues	Monthly Baseline Sales Tax Revenue	Baseline Lodging Tax Revenues
	Municipal Property Taxes			
2013	65,421	728,143	60,679	0
2014	65,421	728,143	60,679	0
2015	66,402	739,065	61,589	0
2016	67,398	750,151	62,513	0
2017	68,409	761,403	63,450	0
2018	69,435	772,824	64,402	0
2019	70,477	784,417	65,368	0
2020	71,534	796,183	66,349	0
2021	72,607	808,126	67,344	0
2022	73,696	820,248	68,354	0
2023	74,802	832,551	69,379	0
2024	75,924	845,040	70,420	0
2025	77,063	857,715	71,476	0
2026	78,219	870,581	72,548	0
2027	79,392	883,640	73,637	0
2028	80,583	896,894	74,741	0
2029	81,791	910,348	75,862	0
2030	83,018	924,003	77,000	0
2031	84,264	937,863	78,155	0
2032	85,528	951,931	79,328	0
2033	86,810	966,210	80,517	0
2034	88,113	980,703	81,725	0
2035	89,434	995,414	82,951	0
2036	90,776	1,010,345	84,195	0
2037	92,137	1,025,500	85,458	0

<sup>1</sup> These values are based on information provided by the City of Mountain Brook's finance director (Steve Boone), as defined in the agreement.

**EXHIBIT C**

**TO**

**RESOLUTION TO CONSIDER AND APPROVE**

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

**LEGAL NOTICE OF ACTION PROPOSED TO BE TAKEN BY  
THE CITY OF MOUNTAIN BROOK, ALABAMA WITH REGARD  
TO AN AMENDED DEVELOPMENT AGREEMENT**

Pursuant to Amendment No. 772 to the Constitution of Alabama (1901) (Section 94.01(a)(3) of the Recompiled Constitution of Alabama and hereinafter referred to as "Amendment No. 772"), the City of Mountain Brook, Alabama (the "City") gives notice that its City Council, as the governing body of the City, will consider at a public meeting to be held on August 26, 2013, beginning at 7:00 p.m. at Mountain Brook City Hall, City Council meeting room, 56 Church Street, Mountain Brook, Alabama, approving a resolution that authorizes the execution and delivery of a First Amendment to Development Agreement between the City and Evson, Inc., an Alabama corporation ("Evson"), and Daniel Realty Company, LLC, an Alabama Limited Liability Company ("Daniel").

**BACKGROUND**

Evson owns approximately 28 acres of property ("Property") located in Mountain Brook Village in the City of Mountain Brook, Alabama along and north of Montevallo, Culver and Cahaba Roads and along and east of Lane Park Road. Evson and Daniel, proposed to redevelop that Property for residential, retail and commercial development as provided for in a zoning application (as amended) filed by Evson and Daniel and approved by the City in Ordinance Numbers 1871 and 1885. Construction of the residential component is currently under way. The redevelopment will result in replacement of outdated commercial space and residential units, provide for public infrastructure enhancements, will improve roads in the area, upgrade the City's stormwater system, provide for usable green space, increase the City's public parking inventory and generate significant sales, lodging and property taxes for the City and its schools. The City originally considered and approved a Development Agreement with Evson and Daniel ("Development Agreement") on July 30, 2012, as set forth in Resolution No. 2012-116. Additional amendments to the Project Plans are proposed for consideration by the City on August 26, 2013, and those proposed amendments have made necessary the consideration of an amendment to the Development Agreement.

**SUMMARY OF TERMS OF THE  
FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

In consideration and as an inducement for the redevelopment of the Property, the City is considering the execution of a First Amendment to Development Agreement with Evson and Daniel ("First Amendment") which incorporates the original terms of the Development Agreement and contains modifications to the Development Agreement, described as follows:

1. Section 2.1 of the Development Agreement requires that the Project be designed, constructed, and developed in accordance with the Project Plans. That Section has been updated to include and incorporate amendments to the PUD Plan as part of the Project Plans.

2. Section 4.6 has been updated to clarify that Retail Sales from businesses operating in the Inn Phase will be included in the calculation of revenues from which the Sales Tax Incentive Payment to Evson and Daniel is made.

3. Reference to the "Parking Structure" in Exhibit B has been removed.

4. A new Section 4.11 is being added. That Section provides for recovery from Incentive Payments of expenses incurred by the City in the event the City undertakes certain demolition activities with respect to the Interim Phase.

All other terms and provisions of the original Development Agreement approved on July 30, 2012 are reaffirmed by the First Amendment and shall remain in full force and effect.

Copies of a map of the Property, the First Amendment, the original Development Agreement, and the PUD Amendments referred to herein are available for copying and inspection in the office of the City Manager at Mountain Brook City Hall.

While Daniel and Evson would receive certain benefits under the Development Agreement and the First Amendment, the City Council expects to determine at its public meeting that the expenditure of public funds in connection with the Development Agreement (as amended by the First Amendment) will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to Daniel and Evson or any other private business. The public benefits sought and expected to be achieved by the approval of the Development Agreement (as amended by the First Amendment) include: improvements to infrastructure, drainage and public roadways; promotion of local economic and commercial development and the stimulation of the local economy; increase of employment opportunities in the City; increase of the City's tax base, which will result in significant additional tax revenues for the City; a significant increase in tax revenues for the schools operating in the City; promotion of the location, relocation, expansion and retention of commercial enterprises in the City; preservation of and improvement to the aesthetic quality of commercial development; and the replacement of aging residential structures, all of which inure to the economic health of the City.

### INVITATION TO ATTEND AND COMMENT

All members of the public are invited to attend the meeting described above or to submit written opinions or comments regarding the proposed action to the City Council prior to the meeting.

August 15, 2013  
*Birmingham News*

To be published on Sunday, August 18, 2013

s/ Steve Boone, City Clerk  
City of Mountain Brook, Alabama

**LEGAL NOTICE OF ACTION PROPOSED TO BE TAKEN BY THE CITY OF MOUNTAIN BROOK, ALABAMA WITH REGARD TO AN AMENDED DEVELOPMENT AGREEMENT**

Pursuant to Amendment No. 772, to the Constitution of Alabama (1901) (Section 94.01(a)(3) of the Repealed Constitution of Alabama and hereinafter referred to as "Amendment No. 772"), the City of Mountain Brook, Alabama (the "City") gives notice that its City Council, as the governing body of the City, will consider, at a public meeting to be held on August 28, 2013, beginning at 7:00 p.m. at Mountain Brook City Hall, City Council meeting room, 58 Church Street, Mountain Brook, Alabama, approving a resolution that authorizes the execution and delivery of a First Amendment to Development Agreement between the City and Evson, Inc., an Alabama corporation ("Evson"), and Daniel Reaky Company, LLC, an Alabama Limited Liability Company ("Daniel").

**BACKGROUND**

Evson owns approximately 28 acres of property ("Property") located in Mountain Brook Village in the City of Mountain Brook, Alabama along and north of Montevallo, Culver and Cahaba Roads and along and east of Lane Park Road. Evson and Daniel proposed to redevelop that Property for residential, retail and commercial development as provided for in a zoning application (as amended) filed by Evson and Daniel and approved by the City in Ordinance Numbers 1871 and 1885. Construction of the residential component is currently under way. The redevelopment will result in replacement of outdated commercial space and residential units, provide for public infrastructure enhancements, will improve roads in the area, upgrade the City's stormwater system, provide for usable green space, increase the City's public parking inventory and generate significant sales, lodging and property taxes for the City and its schools. The City originally considered and approved a Development Agreement with Evson and Daniel ("Development Agreement") on July 30, 2012, as set forth in Resolution No. 2012.116. Additional amendments to the Project Plans are proposed for consideration by the City on August 28, 2013, and those proposed amendments have made necessary the consideration of an amendment to the Development Agreement.

**SUMMARY OF TERMS OF THE FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

In consideration and as an inducement for the redevelopment of the Property, the City is considering the execution of a First Amendment to Development Agreement with Evson and Daniel ("First Amendment") which incorporates the original terms of the Development Agreement and contains modifications to the Development Agreement described as follows:

1. Section 2.1 of the Development Agreement requires that the Project be designed, constructed and developed in accordance with the Project Plans. That Section has been updated to include and incorporate amendments to the PUD Plan as part of the Project Plans.
2. Section 4.8 has been updated to clarify that Retail Sales from businesses operating in the Inn Phase will be included in the calculation of revenues from which the Sales Tax Incentive Payment to Evson and Daniel is made.
3. Reference to the "Parking Structures" in Exhibit B has been removed.
4. A new Section 4.11 is being added. That Section provides for recovery from Incentive Payments of expenses incurred by the City in the event the City undertakes certain demolition activities with respect to the Interim Phase.

All other terms and provisions of the original Development Agreement approved on July 30, 2012 are reaffirmed by the First Amendment and shall remain in full force and effect.

Copies of a map of the Property, the First Amendment, the original Development Agreement, and the PUD Amendments referred to herein are available for copying and inspection in the office of the City Manager at Mountain Brook City Hall.

Evson and Daniel would receive certain benefits under the Development Agreement and the First Amendment. The City Council expects to determine at its public meeting that the expenditure of public funds in connection with the Development Agreement (as amended by the First Amendment) will serve a valid and sufficient public purpose notwithstanding any incidental benefits accruing to Daniel and Evson or any other private business. The public benefits sought and expected to be achieved by the approval of the Development Agreement (as amended by the First Amendment) include: improvements to infrastructure, drainage and public roadways; promotion of local economic and commercial development and the stimulation of the local economy; increase of employment opportunities in the City; increase of the City's tax base, which will result in significant additional tax revenues for the City; a significant increase in tax revenues for the schools operating in the City; promotion of the local economy; expansion and retention of commercial enterprises in the City; preservation of and improvement to the aesthetic quality of commercial development; and the replacement of aging residential structures, all of which inure to the economic health of the City.

**INVITATION TO ATTEND AND COMMENT**

All members of the public are invited to attend the meeting described above or to submit written opinions or comments regarding the proposed action to the City Council prior to the meeting.

August 15, 2013  
 s/Steve Boone, City Clerk  
 City of Mountain Brook, Alabama  
 Birmingham News August 18, 2013

**LEGAL AFFIDAVIT OF PUBLICATION  
 ADVANCE MEDIA GROUP  
 PUBLISHERS OF  
 THE BIRMINGHAM NEWS**

On this 19th day of August  
 A.D. Two Thousand, and Thirteen, Vickie Webb  
 declares that she is an Accounting Clerk of "The  
 Birmingham News" published in the City of  
 Birmingham, in the County of Jefferson, in the State  
 of Alabama, and that the advertisement, a true copy of  
 which is herewith attached, appeared in "The  
 Birmingham News" on the following dates:

August 18, 2013

Vickie Webb  
 Signed- Vickie Webb

*The charges by this Newspaper for legal notices do not exceed the lowest classified rate paid by commercial customers for an advertisement of similar size and frequency in the same newspaper in which public notices appear. There is no agreement between the Newspaper and the officers or attorneys charged with the duty of placing legal advertising notices whereby any advantage, gain or profit accrues to said officers or attorneys.*

State of Alabama  
 County of Jefferson  
 On Aug 19, 2013, Vickie Webb

personally appeared before me, who is personally known  
 to me to be the signer of the above document, and she  
 acknowledged that she signed it.

Nancy S. Bridgman

NANCY S BRIDGMAN  
 NOTARY PUBLIC  
 STATE OF ALABAMA  
 MY COMMISSION EXPIRES DEC. 22, 2014