CITY OF MOUNTAIN BROOK, ALABAMA
RESOLUTION NO. 2014-170

WHEREAS, the City Council of the City of Mountain Brook, Alabama ("the City Council"), has been asked to consider and approve a development agreement ("Agreement") with Ajlouny Investments, LLC, an Alabama limited liability company (hereinafter referred to as "Ajlouny"), which Agreement is attached hereto as Exhibit A, made a part hereof, and incorporated herein by reference; and

WHEREAS, the City Clerk has published Legal Notice of Action Proposed to be Taken by the City of Mountain Brook, Alabama with regard to a 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), attached hereto as Exhibit B, was published in the Birmingham News, the newspaper having the largest circulation in the City of Mountain Brook, on December 7, 2014, 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 Development Agreement between the City of Mountain Brook and Ajlouny Investments, 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 a Development Agreement with Ajlouny, in substantial conformity with the Agreement attached hereto and made a part hereof as Exhibit A and deliver the Agreement set forth in this Resolution to the other parties to the Agreement 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 Agreement as necessary prior to such execution, provided that any such correction or revision shall not alter the material terms of the Agreement.

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 Agreement, and the execution of the Agreement approved in this Resolution serve valid and sufficient public

2014-170

purposes, notwithstanding any individual benefit accruing to Ajlouny Investments, LLC, or any other private entity or entities.

5. That the public benefits to the City of Mountain Brook resulting from the Agreement and transactions hereby approved include improvements to infrastructure, public roadways and sidewalks; 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; relocation of a community grocery store for the Crestline Village area; expansion and retention of commercial enterprises in the City; preservation of and improvement to the aesthetic quality of commercial development; the replacement of aging commercial structures; provision of a much needed parking solution for Crestline Village; improvements to traffic and pedestrian circulation in and around Vine Street; provision of a safe and effective pedestrian connection between Vine and Church Streets; and improvement of public facilities around the Property, all of which inure to the economic health and public welfare of the City.

6. That any exchange of consideration resulting from the Development Agreement herein approved was fully negotiated between the parties to it and the City Council specifically finds and concludes that such consideration, as applicable, is based upon and equal to the fair market value of the interests being acquired.

ADOPTED AND APPROVED this the 16th day of December, 2014.

Virginia Carruthers Smith, City Council President

Lawrence T. Oden, Mayor, City of Mountain Brook

Attest: _____
Steven Boone, City Clerk

DOCSBHM\2046524\2

EXHIBIT A

Tax Revenue Sharing and Incentive Agreement

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

TAX REVENUE SHARING AND INCENTIVE AGREEMENT

THIS TAX REVENUE SHARING AND INCENTIVE AGREEMENT ("Agreement") is hereby made and entered into on this the 16th day of December, 2014, by and between the **CITY OF MOUNTAIN BROOK, ALABAMA**, a municipal corporation organized and existing under the laws of the State of Alabama (the "City"), and **AJLOUNY INVESTMENTS, LLC**, an Alabama limited liability company (the "Owner").

RECITALS:

WHEREAS, the City supports and encourages economic development within the City in order to develop and maintain a strong local economy, increase employment opportunities, broaden the City's tax base and increase tax revenues in order to provide services to residents of the City and to improve the quality of life of its residents; and

WHEREAS, Owner plans to acquire six (6) lots ("Property") on Vine Street and Church Street in Crestline Village in the City of Mountain Brook, including 48 Vine Street, 50 Vine Street and 52 Vine Street (the "Grocery Store Lots"), 22 Vine Street (the "Parking Lot Parcel"); 39 Church Street (the "Church Street Access Parcel") and 55 Vine Street for the relocation of a civic club (the Pops Club) to a more appropriate location across the street with a remodeled facility (the "New Pop's Club Lot") all as shown on Exhibit A; and

WHEREAS, The Owner proposes to redevelop the Grocery Store Lots, the Parking Lot Parcel, the Church Street Access Parcel, as well as a City-owned lot located at 32 Vine Street ("City-owned Lot") for the construction of a Piggly Wiggly neighborhood grocery store (the "Piggly Wiggly"), public parking and an access from Church Street to the Grocery Store Lots, the Parking Lot Parcel and the City-owned Lot (the "Project"); and

WHEREAS, Owner's business operations in the City are expected to enhance the public benefit and welfare of the citizens of the City by, among other things: promotion of local economic and commercial development and the stimulation of the local economy; increasing employment opportunities and creating jobs in the City; and promoting the location of commercial enterprises in the City, inuring to the economic health of the City; and

WHEREAS, the public benefits sought and expected to be achieved by this Agreement include: improvements to infrastructure, public roadways and sidewalks, 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; relocation of a community grocery store for the Crestline Village

area, 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 commercial structures, provision of a much needed parking solution for Crestline Village, improvements to traffic and pedestrian circulation in and around Vine Street, provision of a safe and effective pedestrian connection between Vine and Church Streets and improvement of public facilities around the Property, all of which inure to the economic health and public welfare of the City; and

WHEREAS, Amendment No. 772 to the Constitution of Alabama (1901) (Section 94.01(a)(3) of the Recompiled Constitution of Alabama, hereinafter referred to as "Amendment No. 772"), authorizes the City to lend its credit to or grant public funds and things of value in aid of or to any corporation or other business entity for the purpose of promoting the economic development of the City; and

WHEREAS, the City finds that it is necessary, proper and in the public interest, in accordance with Amendment No. 772, that the City provide certain incentives to Owner in connection with the Project, and that providing such financial assistance is a public purpose consistent with and in furtherance of the objectives of Amendment No. 772; and

WHEREAS, the parties hereto are desirous of having such incentives set forth in a valid, binding, and enforceable agreement to set forth the framework for establishing a working partnership among the City and Owner.

AGREEMENT

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

ARTICLE I
DEFINITIONS

1.1 "Baseline Tax Revenue" means municipal property taxes and municipal sales taxes collected by the City for the Fiscal Year 2013-2014 from the Grocery Store Lots as described on Exhibit B.

1.2 "Church Street Access Parcel" means the Property located at 39 Church Street, as more particularly described on Exhibit C.

1.3 "City" shall refer to the City of Mountain Brook, Alabama.

1.4 "City Assistance" shall have the meaning set forth in Section 3.1 below.

1.5 " City-owned Lot " means the property located on Vine Street owned by the City of Mountain Brook, as more particularly described on Exhibit D.

1.6 "Effective Date" shall have the meaning set forth in Section 5.1 below.

1.7 "Fiscal Year" means October 1 through September 30 of the following year.

1.8 "Fiscal Quarter" means the applicable three month period of the City's Fiscal Year. The City's Fiscal Quarters are October 1 through December 31, January 1 through March 31, April 1 through June 30 and July 1 through September 30.

1.9 "Indemnified Parties" means the City, its elected and appointed officials, officers, employees and agents.

1.10 "Net Municipal Sales Tax Revenue" means that amount of sales tax revenue collected by the City and generated by retail sales from the Project in excess of the Baseline Tax Revenue.

1.11 "Owner" shall refer to Ajlouny Investments, LLC.

1.12 "Parking Lot Parcel" means the property located at 22 Vine Street, as more particularly described on Exhibit E.

1.13 "Payment Date" means the day which is sixty (60) days following the completion of each Fiscal Quarter.

1.14 "Project" means the development of the Grocery Store Lots, the Parking Lot Parcel, the Church Street Access Parcel, as well as the City-owned Lot for the construction of the Piggly Wiggly, public parking and an access from Church Street to the Grocery Store Lots, the Parking Lot Parcel and the City-owned Lot.

1.15 "Taxed Sales" means the sales generated from the Project that are taxable by the City and for which tax payment is actually made from Owner to the City.

1.16 "Term" means the period commencing on the Effective Date and terminating on the earlier of (i) the date the Sales Tax Incentive Payments paid to Owner reaches four million and no/100 dollars ($4,000,000.00) or (ii) twenty (20) years.

1.17 "Sales Commencement Date" means the first date upon which operations and the generation of retail sales on the Project occurs.

1.18 "Sales Tax Incentive Payments" means the payments to be made as provided in Section 3.1(b) below.

1.19 "Sales Tax Revenue" means the revenue from general sales tax levied by the City and paid to the City with regard to retail sales at the Piggly Wiggly.

ARTICLE II
DESIGN AND CONSTRUCTION OF THE PROJECT

2.1 Design and Construction Relating to the Project.

Subject to the provisions hereinafter set forth, Owner 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, public utility infrastructure, landscaping, and associated improvements within the right-of-way of Vine Street and the Public Alley) related to the Project. In connection therewith, Owner shall secure any and all required governmental or regulatory approval and permits required for the Project and related improvements, including any such separate approval 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 substantial conformity with the plans, specifications, drawings, and undertakings attached collectively hereto as Exhibit F, which are incorporated herein by reference and which are hereinafter collectively described and referred to herein as the "Project Plans." The Project Plans may be modified by mutual agreement of the parties to incorporate or provide access to parking areas on adjacent properties, to reflect architectural changes along Vine Street resulting from relocation of the service area to the alley or otherwise deemed necessary by the parties, such that the general character and nature of the plans are not compromised.

2.2 Construction and Conveyance of Parking and Access Facilities.

As part of the Project, Owner shall improve and construct parking facilities and improvements ("Parking Improvements") on the City Parcel, the Church Street Access Parcel and the Parking Lot Parcel. The Parking Improvements shall substantially conform to the plans described and depicted on Exhibit F hereto, as may be modified by mutual agreement of the parties to incorporate or provide access to parking areas on adjacent properties. The Parking Lot Parcel and the Church Street Access Parcel will be conveyed to the City either prior to, or in conjunction with the Lump Sum Payment by the City to Owner described in Article III of this Agreement. The Parking Improvements on the City Parcel, the Church Street Access Parcel and the Parking Lot Parcel will be available both to the general public and to patrons of the Project. City will enter into an agreement with Owner which will afford Owner the non-exclusive right to utilize the City Parcel, the Church Street Access Parcel and the Parking Lot Parcel for parking and access purposes in conjunction with the Project. Such agreement may be recorded by either party.

2.3 Right of Way Improvements.

As part of the Project, Owner will design and construct the Right of Way Improvements described in the Project Plans.

ARTICLE III
INCENTIVE

3.1 City Assistance.

(a) Lump Sum Payment. In consideration and as an inducement for Owner's agreement to construct and complete the works, infrastructure and improvements described above and to develop the Property for use and operation as a community grocery store, the City hereby agrees to pay to Owner, within thirty (30) days of the commencement of operations and the generation of retail sales from the Project by Owner, a lump sum payment in the amount of one million two hundred thousand and no/100 ($1,200,000.00), provided that Owner is in material compliance with the terms and conditions of this Agreement. At the time of such payment, Owner will convey to City by Statutory Warranty Deed, all right, title and interest in the Parking Lot Parcel and the Church Street Access Parcel, free of all loans, mortgages, liens and encumbrances if the Parking Lot Parcel and/or the Church Street Access Parcel have not been so conveyed to City prior to that time.

(b) Sales Tax Incentive Payments. The City agrees to provide Sales Tax Incentive Payments to Owner as provided in this Section.

(i) From and after the commencement of operations and the generation of retail sales from the Project by Owner ("Sales Commencement Date"), the City shall pay to the Owner, an amount equal to (i) seventy five percent (75%) of any Net Municipal Sales Tax Revenue collected by the City for the period beginning with the Sales Commencement Date and ending five (5) years from the Sales Commencement Date (the "Initial Sales Tax Term") and (ii) fifty percent (50%) of any Net Municipal Sales Tax Revenue collected by the City for the period beginning with the end of the Initial Sales Tax Term, and continuing for the remainder of the Term.

(ii) From and after the Sales Commencement Date, the City will pay the Sales Tax Incentive Payments to Owner as follows: beginning on or before the first Payment Date after the Sales Commencement Date, the City will pay Owner the Sales Tax Incentive Payments from the Net Municipal Sales Tax Revenue generated in the preceding Fiscal Quarter and continuing with respect to each Fiscal Quarter during the Term of this Agreement. For example, if the Sales Commencement Date occurs on September 15, 2015, then the first Payment Date under this Agreement will be sixty (60) days after September 30, 2015, and on such Payment Date the City shall pay Owner that portion of the Sales Tax Incentive Payments attributable to Net Taxed Sales generated from September 15, 2015 to September 30, 2015.

(iii) Owner understands that the timely submission of sales tax returns and payment of such taxes shall be a condition precedent to the City's obligation to make

payments of the Sales Tax Incentive Payments. The City shall verify the amount of the Sales Tax Revenue for the preceding Fiscal Quarter before payment of the quarterly Sales Tax Incentive Payments to Owner and with such payment will provide to Owner a written summary of the amounts of Sales Tax Revenue received by the City.

(iv) Owner acknowledges and agrees that the Sales Tax Incentive Payments shall be paid to Owner solely from Sales Tax Revenue and that the City's obligation to make such payments is not a general obligation of the City, but is limited to such funds as are available from the Sales Tax Revenue. In the event that no Taxed Sales are generated during any Fiscal Quarter during the Term (such that the City would receive no Sales Tax Revenue), neither Owner nor its designees, successors or assigns, if any, shall have any general or other recourse against the City for the payment of Sales Tax Incentive Payments. No interest, carrying charge or finance charge of any kind shall accrue or be added to the principal amount due Owner by the City hereunder.

(v) The Sales Tax Incentive Payments shall be remitted to Owner until the sum of four million and no/100 dollars ($4,000,000.00) shall have been paid in full or until the end of the Term, whichever occurs first.

(c) Property Tax Abatement. City shall contemporaneously approve a municipal ad valorem tax abatement for a period not to exceed fifteen (15) years, as authorized by applicable statute, with approval of said abatement to be endorsed by City Council resolution in substantial conformity with Exhibit G hereto. The abatement authorized by such resolution shall only be remitted for any tax year in which the Taxed Sales exceed the threshold revenue amounts set forth in the resolution.

3.2 Audit.

All pertinent books, accounts, or other records accumulated by Owner in connection with sales on the Project shall be available to representatives of the City for inspection and audit and shall be retained for three (3) years from the termination of this Agreement. If any audit, claim or litigation is initiated concerning this Agreement before the expiration of the three (3) year period, Owner shall retain the records until the resolution of all litigation, claims, or audits involving such records. The City's right to audit pursuant to this Section 3.2 shall survive the termination of this Agreement.

ARTICLE IV
USE AND OWNERSHIP OF PROPERTY

4.1 Use of Project.

The parties acknowledge that the City's participation in this Agreement has been secured on the basis of a commitment that the sole tenant on this property will be a business entity the principals of which own and/or operate other established and successful grocery stores either in the City of Mountain Brook or elsewhere in the Birmingham area under the "Piggly Wiggly" trade name (hereinafter referred to as "the Piggly Wiggly Ownership Group") and on the basis of assurances that a community grocery store will be built and operated on the Property under lease with Owner, its successors or assigns, for a term of not less than twenty (20) years following issuance of a certificate of occupancy and other permits and approvals required to commence business operations. The City's participation in this Agreement is also predicated on the material understanding and assumption that the grocery store contemplated for the project site will be designed, operated, and maintained so as to equal or exceed the standards of quality, variety, and service that the Piggly Wiggly ownership group has heretofore established for the Piggly Wiggly grocery store formerly located in the Crestline Village commercial district of Mountain Brook and the Piggly Wiggly store located at River Run. Accordingly, the City reserves the right to cancel this Agreement and to terminate its obligations hereunder in the event (i) the grocery store contemplated for the property has not commenced business operations within six (6) months from the date of issuance of a certificate of occupancy by the City, (ii) the grocery store contemplated for the project site ceases operation prior to the end of the twenty-year term referred to hereinabove; or (iii) any substantial change in circumstances or conditions affecting or involving the Project that materially and adversely affect the terms, conditions, premises upon which this Agreement is based. The City agrees to provide Owner with 60 days' prior written notice and the opportunity to cure the matter, including the opportunity to address the matter before at least one meeting of the city council for the City, before any such termination becomes effective. Notwithstanding the foregoing, the City shall not have the right to terminate this Agreement in the event of a change in ownership among the Piggly Wiggly Ownership Group so long as one of the current principals, his heirs or personal representatives, retains a majority ownership interest. Nothing herein shall require that the community grocery store to always operate under the name "Piggly Wiggly", but the store must be a community grocery store with product offerings substantially similar to the "Piggly Wiggly" formerly located in the Crestline Village commercial district of Mountain Brook and the Piggly Wiggly store located at River Run.

4.2 Termination by City.

The City reserves the right to cancel this Agreement and to terminate its obligations hereunder in the event that Owner sells, assigns, leases, conveys, or otherwise disposes of the Property, the project site, or any portion thereof (except to all or any portion of the current Piggly Wiggly Ownership Group), without first notifying the Mountain Brook City Council in writing of its intention to enter into such transaction at least ninety (90) days in advance of the proposed effective date thereof. Upon receipt of said notice, the City Council shall have forty-five (45) days within which to inform Owner in writing of its approval or disapproval of said proposed transaction. Any disapproval by the City shall be accompanied by an explanation of the reasons therefor. In the event the City does not inform Owner of its disapproval within the time specified herein, the proposed transaction shall be deemed approved.

4.3 Option to Purchase.

(a) In addition to the foregoing, if the Property ceases to be used as a community grocery store, whether during the Term or thereafter, City shall be provided with an option to purchase the Property and all improvements remaining thereupon (the "Option"). In the event that it is no longer feasible for grocery operations on the Property to continue, written notice shall be provided to City immediately but no later than fourteen (14) days after determination of such. City shall have one hundred eighty (180) days from the date of notice by owner, its agent or assign, (the "Option Period") to exercise its option to purchase the Property. If City exercises such option, the Purchase price shall be the fair market value of the Property (and improvements) less, in the event that such Option is exercised during the Term, 80% of any City Assistance provided in the form of Sales Tax Incentive Payments and Property Tax Abatement, but excluding the Lump Sum Payment, paid by City to Owner under this Agreement. Fair market value shall be determined by a qualified appraiser agreed upon by the parties. The Property shall not be used for any use other than a community retail grocery store until such option has been offered to City and the Option Period has expired.

(b) Owner agrees to execute and deliver to City an agreement granting the Option in such form as is acceptable to City ("Option Agreement"). Owner acknowledges and understands that the Option Agreement shall be recorded by City and further agrees to provide notice of same to the Piggly Wiggly Ownership Group and to all persons or entities who may acquire any interest whatsoever in the Property or in the Project. Such notice will clearly state that the Property may only be used as a community grocery store pursuant to the Agreement and that the Property shall not be used for any other purpose until such time as the City's Option on the Property expires. Such notice shall further either include a copy of the executed Option Agreement itself or a reference to the Book and Page where recorded in the office of the Judge of Probate of Jefferson County, Alabama.

(c) The Option shall survive the Term of this Agreement and shall be effective for a period of twenty (20) years.

ARTICLE V
MISCELLANEOUS

5.1 Effective Date.

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

5.2 Public Purpose.

The City does hereby ascertain, determine, declare and find that the development of a community grocery store on the Property with the aid of the incentives described herein to

Owner on a limited basis in the form of City Assistance is in the best interest of the City and will serve a public purpose and further enhance the public benefit and welfare by, among other things: improvements to infrastructure, public roadways and sidewalks, 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; relocation of a community grocery store for the Crestline Village area, 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 commercial structures, provision of a much needed parking solution for Crestline Village, improvements to traffic and pedestrian circulation in and around Vine Street, provision of a safe and effective pedestrian connection between Vine and Church Streets and improvement of public facilities around the Property, all of which inure to the economic health and public welfare of the City and its citizens.

5.3 Indemnity.

Owner shall release, save, hold harmless and indemnify the Indemnified Parties from and against any and all claims arising from or in any way connected with the Project and, without limitation of the foregoing, arising from Owner's breach or default in the performance of any obligation herein, or arising from or in connection with any activity of Owner's agents, contractors or employees in connection with the Property and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action against the Indemnified Parties, or any of them individually, by reason of any such claim; provided, that Owner's preceding release, hold harmless and indemnity agreement shall exclude and not extend to claims relating to the City's breach or alleged breach of its obligations under this Agreement or intentional misconduct of the City, its agents, employees or independent contractors. In connection with this clause, Owner, upon written request by the City, shall defend the same at Owner's expense by counsel reasonably satisfactory to the City.

5.4 Assignment.

Owner may not assign or transfer this Agreement or any interest herein or any part hereof to another entity without the written consent of the City, provided this Agreement may assigned by Owner to any lender of Owner providing financing for the Project.

5.5 Default and Termination.

(a) Upon the occurrence of an event of default by Owner that is not cured within thirty (30) days after written notice from the City, the City may, in its discretion, pursue any one or more of the following remedies:

(i) seek and obtain injunctive relief or declaratory relief to the extent that the City may be entitled such relief; or

(ii) terminate this Agreement.

(b) Upon the occurrence of an event of default by the City which is not cured within sixty (60) days after written notice from Owner, the Owner may, in its discretion, pursue any one or more of the following remedies:

(i) seek and obtain injunctive relief, declaratory relief, or damages in the amount of the unpaid obligations of the City, if any; or

(ii) terminate this Agreement.

(c) For the purposes of this Agreement, an event of default shall include, without limitation, in addition to a failure to abide by the terms and conditions of this Agreement, Owner's failure to operate a community grocery store on the Property.

5.6 Governing Law.

This Agreement, all rights of the parties hereunder, and all disputes which may arise hereunder shall be subject to and governed in accordance with the laws of the State of Alabama. By executing this Agreement, the parties hereto do hereby consent to the jurisdiction and venue of the courts of Jefferson County, Alabama with respect to any matter arising hereunder.

5.7 Severability.

In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

5.8 Notices.

All communications and notices expressly provided herein shall be sent, by first class mail, postage prepaid, by facsimile, or by a nationally recognized overnight courier for delivery on the following business day, as follows:

To the City: Sam Gaston, City Manager
City of Mountain Brook
56 Church Street
Mountain Brook, Alabama 35213

with a copy to:

Whit Colvin
Bishop, Colvin, Johnson & Kent, LLC
1910 First Avenue North
Birmingham, Alabama 35203

To Owner: Ajlouny Investments, LLC
c/o Bruce Downs, CPA
3349 Independence Drive, Suite 100
Birmingham, Alabama 35209

with a copy to:

Joseph T. Ritchey
Sirote & Permutt, PC
2311 Highland Avenue South
Birmingham, Alabama 35205

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

5.9 Cost and Expense.

Each party agrees to pay its own costs incurred in connection with the negotiation and preparation of this Agreement.

5.10 Press Releases.

The Owner hereby agrees to cooperate fully with the City in connection with the preparation and release of all press releases and publications concerning the Project that are in any way connected with this Agreement.

5.11 Section Titles and Headings.

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

5.12 Representations and Warranties.

(a) Owner makes the following representations and warranties as the basis for its undertakings pursuant to this Agreement:

(i) Owner is a duly organized and existing Alabama limited liability company, is in good standing under the laws of the State of Alabama, and has the power to enter

into and to perform and observe the agreements and covenants on its part contained in this Agreement.

(ii) The execution and delivery of this Agreement on the part of Owner's undersigned officer have been duly authorized by Owner.

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

(iv) The execution and performance of this Agreement by Owner do not constitute and will not result in the breach or violation of any contract, lease, mortgage, bond, indenture, franchise, permit or agreement of any nature to which Owner is a party.

(v) The representations, warranties and covenants made by Owner herein shall survive the performance of any obligations to which such representations, warranties and covenants relate.

(b) The City makes the following representations and warranties as the basis for its undertakings pursuant to this Agreement:

(i) The City is a duly organized and validly existing Alabama municipal corporation and is vested generally with the authority generally provided to municipalities pursuant to Amendment No. 772.

(ii) The execution and delivery of this Agreement on the part of the City have been duly authorized by the City.

(iii) The representations, warranties and covenants made by the City herein shall survive the performance of any obligations to which such representations, warranties and covenants relate.

(iv) Notwithstanding the foregoing representations and warranties, Owner has performed its own investigation as to the legal authority of the City to perform its obligations under this Agreement and the procedure by which this Agreement is authorized by the City. In the event the City is adjudicated by a court of competent jurisdiction to lack the power or authority to enter into this Agreement or to perform its obligations hereunder, or, if the power of municipalities generally under Amendment 772 is restricted by way of judicial opinion or legislative act, the City shall not be liable to Owner for any City Assistance otherwise owed to Owner.

5.13 Relationship of Parties.

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

5.14 Compliance with Laws.

(a) Owner shall comply, and shall cause its officers, agents, employees and contractors to comply, with all applicable federal, state and local statutes, regulations, rules, ordinances and other laws applicable to the Project.

5.15 Binding Effect.

This Agreement and all terms, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of Owner and its successors and assigns and shall be binding upon and shall inure to the benefit of the City and its successors and assigns.

5.16 Entire Agreement; Amendment.

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

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

OWNER:

WITNESS:

AJLOUNY INVESTMENTS, LLC

_____

By: _____
Naseem M. Ajlouny, Member

CITY:

WITNESS:

CITY OF MOUNTAIN BROOK, ALABAMA

_____
Lawrence T. Oden, Mayor

By: _____
Virginia C. Smith, Council President

EXHIBIT A

Map of Property

LOT 7A
55 VINE ST.
VINE STREET
DEXTER AVENUE
LOT 28A
48 VINE ST.
LOT 27
50 VINE ST
LOT 26
52 VINE ST
CITY OF
MOUNTAIN
BROOK
OWNED
LOT
LOT 25 & 24A
32 VINE ST.
LOT 23A
22 VINE ST.
BOARD
OF EDUCATION
PEACHTREE ALLEY
LOT 13
39 CHURCH
STREET
REGIONS
BANK
CHURCH STREET

EXHIBIT B

Baseline Tax Revenue – $15,249.00

EXHIBIT C

Legal Description of Church Street Access Parcel

Lot 13, Block 25, according to the Survey of Crestline Heights, as recorded in Map Book 7, page 16, in the Probate Office of Jefferson County, Alabama, Birmingham Division.

EXHIBIT D

Description of City-Owned Lot

Lot 24A, according to a Resurvey of Lots 19 through 24, Block 25, Crestline Heights, as recorded in Map Book 232, page 31, in the Probate Office of Jefferson County, Alabama, Birmingham Division,

and

Lot 25, Block 25, according to the Survey of Crestline Heights, as recorded in Map Book 7, page 16, in the Probate Office of Jefferson County, Alabama, Birmingham Division.

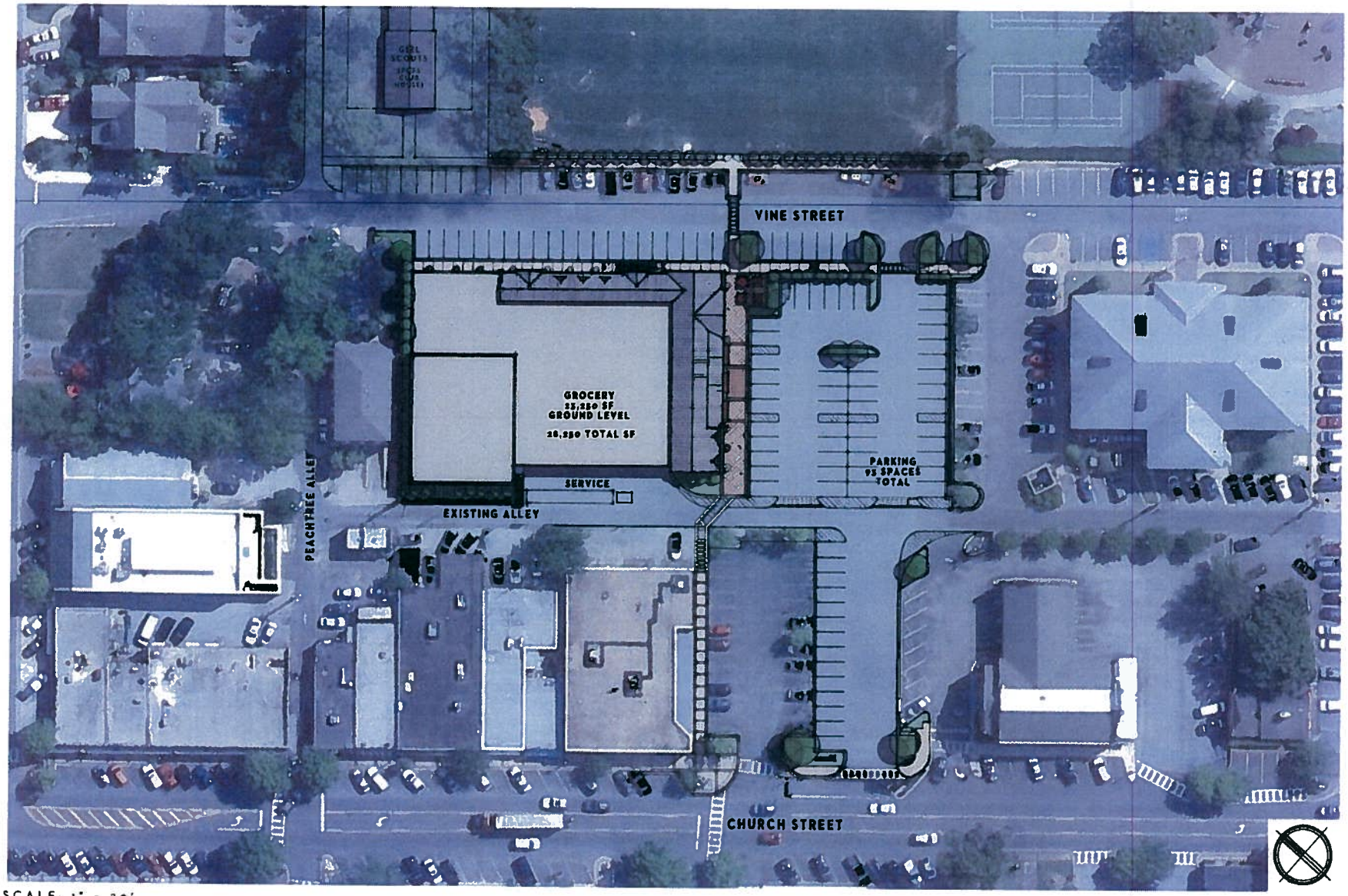
EXHIBIT E

Legal Description of Parking Lot Parcel

Lot 23A, according to a Resurvey of Lots 19 through 24, Block 25, Crestline Heights, as recorded in Map Book 232, page 31, in the Probate Office of Jefferson County, Alabama, Birmingham Division.

EXHIBIT F

Project Plans



SCALE: 1" = 20'

PIGGLY WIGGLY

CRESTLINE VILLAGE - MOUNTAIN BROOK, AL

GOODWYN | MILLS | CAWOOD

PRELIMINARY SITE PLAN

CRESTLINE PIGGLY WIGGLY

MOUNTAIN BROOK, AL

EXHIBIT G

Property Tax Abatement Resolution

RESOLUTION NO. 2014-171

WHEREAS, the Alabama legislature has authorized Class 6 cities such as the City of Mountain Brook to abate certain taxes including municipal ad valorem taxes (Acts 98-318 and 2000-573);

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the following tax abatements in accordance with the Acts above:

Business Name	Property Description	Property Tax (Mills) Municipal
Ajlouny Investments, LLC	See Exhibit 1, attached.	26.1

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook, Alabama that the ad valorem tax abatement specified above shall be effective for a fifteen (15) year period as provided by law; provided, however, that the tax abatement granted hereby shall only be remitted for any tax year in which the total taxable sales (i.e., sales that are subject to municipal sales taxes) for the preceding fiscal year (beginning October 1 and ending the following September 30) collected from the operation of a community grocery store on the Property more particularly described on Exhibit 1 hereto, equal or exceed the sales amounts set forth on Exhibit 2, which is attached hereto and made a part hereof; further provided that the abatement hereby granted shall become effective with the tax year beginning on October 1, 2015 and ending on September 30, 2016, such that the initial abatement remittance due hereunder (if any) shall be payable to taxpayer within thirty (30) days after confirmation of minimum sales for the preceding fiscal year and receipt of the tax proceeds by the City from the Jefferson County Tax Assessor. In the event a certificate of occupancy has not been issued for any business or commercial operation on the project site by October 1, 2016, the taxable sales minimum required hereby as a condition of taxpayer's eligibility for the abatement shall be reduced by prorating said sum according to the number of days remaining in the 2016-2017 fiscal year following issuance of a certificate of occupancy for the community grocery store to be located on the Property.

ADOPTED: This 16th day of December, 2014.

Virginia C. Smith

Virginia C. Smith

DOCSBHM\2046555\2

APPROVED: This 16th day of December, 2014.

Lawrence T. Oden, Mayor

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on December 16th, 2014 as same appears in the minutes or record of said meeting.

Steven Boone, City Clerk

DOCSBHM\2046555\2

Exhibit 1

DESCRIPTION OF AJLOUNY PROPERTY

Lots 26 and 27, Block 25, according to the Survey of Crestline Heights, as recorded in Map Book 7, page 16, in the Probate Office of Jefferson County, Alabama, Birmingham Division.

Lot 28A, according to a Resurvey of Lots 28 and 29 Block 25, Crestline Heights, as recorded in Map Book 174, page 38 in the Probate Office of Jefferson County, Alabama.

Exhibit 2

Annual Sales Levels:

Year 1: $12,000,000
Year 2: $13,500,000
Year 3: $14,500,000
Year 4: $16,000,000
Year 5: $16,000,000
Year 6: $17,000,000
Years 7 to 15: $17,500,000

EXHIBIT B

Notice as Published

LEGAL NOTICE OF ACTION PROPOSED TO BE TAKEN BY THE CITY OF MOUNTAIN BROOK, ALABAMA WITH REGARD TO A 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 December 16, 2014, beginning at 5:30 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 Development Agreement (the "Agreement") by and between the City and Ajlouny Investments, LLC, an Alabama Limited Liability Company ("Ajlouny").

BACKGROUND

Ajlouny plans to acquire six (6) lots ("Property") on Vine Street and Church Street in Crestline Village in the City of Mountain Brook as shown on Exhibit A, including 22 Vine Street ("Parking Lot Parcel") and 39 Church Street ("Regions Access Parcel"). Ajlouny has proposed to redevelop that Property as well as a City-owned lot located at 32 Vine Street ("City-owned Lot") for the construction of a Piggly Wiggly neighborhood grocery store, public parking and an access from Church Street to the Property and the City-owned Lot.

The redevelopment will result in the replacement of outdated commercial space, relocation of a civic club (the Pops Club) to a more appropriate location across the street, the return to Crestline Village of the grocery store that, before its closing, served the community for decades, provision of a public parking solution for Crestline Village, provision of a safe pedestrian connection between Vine Street and Church Street, improvement of parking facilities, provide vehicular access from Church Street to the site, and generate significant sales and property taxes for the City and its schools.

SUMMARY OF TERMS OF THE AGREEMENT

In consideration for and as an inducement for the redevelopment of the Property, the City is considering the execution of a Development Agreement with Ajlouny whereby the City would reimburse Ajlouny for site improvements through reimbursements and the sharing of tax revenues resulting from the Development. In that Agreement, the City proposes to pay to Ajlouny $1,200,000.00 for improvements to parking areas, access roads, other public improvements and the conveyance of the Parking Lot Parcel and the Regions Access Parcel to the City. Such payment shall not be due from the City until after the improvements have been made by Ajlouny and a certificate of occupancy has been issued for the Piggly Wiggly grocery store to be constructed on the site. The Agreement further provides that the "Regions Access Parcel" and the "Parking Lot Parcel" parcels shall be made available for use by both patrons of Piggly Wiggly and the public after they are conveyed to the City.

In further consideration for and as an inducement for the redevelopment of the Property, the City further agrees to share sales tax revenues (to the extent they exceed revenues attributable to the Property prior to redevelopment) resulting from the redevelopment of the Property. The

sales tax revenues will be shared with Ajlouny by paying Ajlouny an amount equal to (i) 75% of the sales tax revenues for a period of five years from the date the retail sales of the Piggly Wiggly are commenced on the property and (ii) 50% of sales tax revenues after the original five year period. The term for sharing sales tax revenues shall be from the date retail sales attributable to the Piggly Wiggly commence on the Property until the earlier of the (i) date when sales tax revenues paid to Ajlouny reaches $4,000,000.00 or (ii) 20 years. The Agreement is also expected to provide for a property tax abatement on non-educational ad valorem taxes for the Property effective for any year that retail sales attributable to the Piggly Wiggly exceeds $17,500,000.00 for a term of 15 years. Any school taxes generated by the Property shall not be subject to the revenue sharing and the Mountain Brook City Board of Education will benefit from all increased taxes resulting from the development of the Property

While Ajlouny would receive certain benefits under the Agreement (summarized above), the City Council expects to determine at its public meeting that the expenditure of public funds in connection with the Agreement will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to Ajlouny or any other private business. The public benefits sought and expected to be achieved by the approval of the Agreement include: improvements to infrastructure, public roadways and sidewalks, 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; relocation of a community grocery store for the Crestline Village area, 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 commercial structures, provision of a much needed parking solution for Crestline Village, improvements to traffic and pedestrian circulation in and around Vine Street, provision of a safe and effective pedestrian connection between Vine and Church Streets and improvement of public facilities around the Property, all of which inure to the economic health and public welfare 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.

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

[DATE]

Exhibit A

LOT 7A
55 VINE ST.
VINE STREET
DEXTER AVENUE
LOT 28A
48 VINE ST.
LOT 27
50 VINE ST
LOT 26
52 VINE ST
CITY OF
MOUNTAIN
BROOK
OWNED
LOT
LOT 25 & 24A
32 VINE ST
LOT 23A
22 VINE ST.
BOARD
OF EDUCATION
PEACHTREE ALLEY
LOT 13
39 CHURCH
STREET
REGIONS
BANK
CHURCH STREET