

Council member _____ introduced the following resolution, seconded by council member _____ after a public hearing thereon.



ECONOMIC DEVELOPMENT GRANT AGREEMENT

This **ECONOMIC DEVELOPMENT GRANT AGREEMENT** is made and entered as of _____ day of September 2023 between the **CITY OF ALABASTER, ALABAMA**, an Alabama municipal corporation (the "City"), and **PC SWEET HOME BAMA, LLC**, a Delaware limited liability company (the "Owner").

Recitals

- A. The Owner expects and intends to expand and increase the tax and revenue base of the City by development of the retail facilities described herein.
- B. The City has agreed to assist the Owner with a Grant as provided herein.
- C. The Owner has agreed to construct the Project within the Project Area as provided herein, together with all improvements, both public and private.
- D. Pursuant to the applicable laws of the State of Alabama referenced herein and for the purposes referenced herein, the City and the Owner have delivered this Agreement.

Agreement

NOW, THEREFORE, for and in consideration of the premises, and the mutual covenants and agreements herein contained, the City and the Owner hereby covenant and agree as follows:

ARTICLE 1

DEFINITIONS

For purposes of this Agreement the following terms shall have the following meanings:

"**City Sales and Use Tax**" for any Monthly Period shall mean collectively sales and use taxes levied by the City (commonly called Sales and Use taxes) during such Monthly Period which consist of a Sales and Use tax on persons engaged in retail sales (subject to exemption of certain property as provided by law). The City currently has a five percent (5%) Sales and Use Tax.

"**City Sales and Use Tax Proceeds**" for any Quarterly Period shall mean and include all proceeds and receipts of the City Sales and Use Tax from "Michael's", but shall not include any proceeds or receipts (i) from the levy by the City of privilege, license or excise taxes not described in the definition of City Sales and Use Tax, (ii) from the levy of privilege license or excise taxes of any kind, type or nature by taxing authorities other than the City, (iii) from the levy of any increase in the rate of the City Sales and Use Tax enacted after the date of this Agreement.

"**Commencement Date**" shall mean the date on which the "Michael's" opens for business to the public in the Project Area and has commenced the payment of rent and City Sales and Use Tax.

"**Owner**" shall mean PC Sweet Home Bama, LLC, and the successors and assigns thereof.

"**Enabling Law**" shall mean Section 94.01 of the Official Recompilation of the Constitution of

the Alabama 1901 and Section 11-47-2 of the CODE OF ALABAMA (1975) as amended in 2022.

“Grant” shall mean those payments made by the City to the Owner pursuant to this Agreement.

“Grant Schedule” shall mean the percentage of City Sales and Use Tax Proceeds used to determine the amount of the quarterly payment to Owner attached as **Exhibit “B”**.

“Michael’s” shall mean the national brand craft retail store within defined area as illustrated in Exhibit “A” Project Area.

“Monthly Period” shall mean a period of one calendar month, commencing on the first day of each month and ending on the last day of each month.

“Payment Date” shall mean the first business day of each quarter, beginning on the first business day after the quarter of the month which immediately follows the Commencement Date, pursuant to the following Schedule attached as **Exhibit “C”** All payments shall be made in arrears after the closing of the quarterly books.

“Project” shall mean the construction and reconstruction of the former Bed Bath and Beyond unit in the Project Area for the use and benefit of “Michael’s”, a craft store, repair of the culvert under the parking lot, update certain landscaping and ongoing cutting the grass and picking up the trash in the detention ponds.

“Project Area” shall mean the real property which is described in **Exhibit “A”**.

“Project City Grant Payments” shall mean an amount equal to two cents of the current 5 cents of sales and uses taxes collected by the City in from the “Michael’s” net of all costs incurred by the City to collect the City Sales and Use Tax Proceeds within the Project Area. Costs incurred by the City are limited solely to the actual costs of audit and collection of use and sale taxes from Michael’s.

“Project Real Property Investment” shall mean the cost paid by the Owner for the required improvements within the Project.

“Section 94.01” shall mean Section 94.01 of the Official Recompilation of the Constitution of Alabama of 1901, and commonly referred to as Amendment 772 to the Constitution of Alabama of 1901 as amended in 2022.

“Total City Grant Termination Date” shall mean the earlier of (i) 5 years from the first Payment Date, or (ii) the Payment Date on which the City shall have paid as Project City Grant Payments an aggregate amount equal to the Total City Grant Commitment, or (iii) Michael's failure to open for business to the public prior to October 31, 2025, if applicable, unless otherwise approved by the City.

“Total City Grant Commitment” shall mean an amount paid to the Owner for improvements in the Project Area, not to exceed **\$850,000.00**, without interest, pursuant to the schedule as set forth in **Exhibits B** and **C**.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

The City hereby represents and warrants as follows:

- (1) The Grant shall be paid to the Owner in accordance with the terms hereof.
- (2) The issuance of the Grant for the purposes set forth in this Agreement will result in direct financial benefits to the City.
- (3) Pursuant to Section 5.01(1), the obligation of the City for the payment of any amounts under this Agreement is payable solely from and shall not exceed the Project City Grant Payments. The City shall never be obligated to pay any amounts under this Grant Agreement which shall be more than the Project City Grant Payments received by the City during the term of this Agreement.

ARTICLE 3

DURATION OF AGREEMENT

The obligations of the City and the Owner hereunder shall arise on its execution as required by law and the acquisition by the Owner of the Project property and shall continue until the Termination Date.

ARTICLE 4

OBLIGATIONS OF THE OWNER SECTION

4.01 Description of Obligations

- (1) The Owner hereby agrees to observe and perform all agreements thereof under this Agreement duly and punctually.
- (2) The Owner hereby agrees to do the following to facilitate the Project:
 - (a) Provide for the buildout of the former Bed, Bath and Beyond space for a new Michael's arts and crafts store. Prior to receiving incentives, the Michael's store shall be open and producing sales tax.
 - (b) Within eight (8) months after the date of the full execution of this Agreement, the Owner will have begun work shoring the culvert under the parking lot. In addition, Owner will reseal and restripe the parking lots under its control in 2024 for the Ross Lot (depicted on Exhibit A-and in 2025 for the Amstar Lot (depicted on Exhibit A).
 - (c) Owner shall maintain three detention ponds adjacent to and serving the shopping center; provided, however, that this maintenance shall only include cutting back grass/weeds (anticipated during growing season-May-October) and removal of trash and debris, as needed.
 - (d) Provide preventive maintenance to the shopping center buildings, ground signage including pressure washing, resealing and repainting on or before December 31, 2025.
 - (e) Participate in a one-time 50/50 cost split with the city to relandscape and spruce up Colonial Promenade Parkway (the "Promenade Improvements"). This will include removal of invasive plant materials at the shopping center entrance at Highway 31 and removal, as allowed, of fencing and invasive plant material running parallel to I 65 along Colonial Promenade Parkway. This shall also include installation of attractive, low-maintenance plantings (or possibly hardscapes, natural-looking artificial turf) in areas of the Colonial Promenade Parkway median that are difficult

to regularly maintain. The city and owner (and/or owner representative) shall meet with the selected landscaping company in the next three months to identify areas that need to be addressed. Both parties shall jointly determine a plan of action needed and direct the landscaping company to execute the plan; provided, however, that Owner shall have no obligation to contribution more than \$35,000 towards the cost of any such Promenade Improvements.

(f) Should the work described above not be commenced within 30 months of the execution of this Agreement, absent extensions approved by the City in writing, this remainder of this Agreement shall be terminated, and no further payments will be due thereon. Upon request, Owner shall provide City with documentation reasonably requested to evidence payment of the work described herein.

SECTION 5

AGREEMENTS AND OBLIGATIONS OF THE CITY SECTION

5.01 Nature, Amount and Duration of Obligation of City.

(1) The City hereby agrees to pay as a grant to the Owner in arrears two cents of the five cents per dollar of City sales and uses taxes paid by Michael's in the Project Area as set forth in Exhibit B. .

(2) The City hereby agrees to pay to the Owner in arrears on each Payment Date during the Term the Sales and Use Tax portion of the Project City Grant Payments determined by the City to be due and payable on such Payment Date.

(3) The obligation of the City for the payment of the Project City Grant Payments:

(a) is a limited obligation payable solely from the City Sales and Use Tax Proceeds generated from "Michael's";

(b) shall never constitute a general obligation, or a charge against the general credit or taxing powers of the City within the meaning of any constitutional provision or statutory limitation whatsoever.

(c) shall commence on the first Payment Date after the Commencement Date.

(4) The maximum amount of the Project City Grant Payments the City shall pay under this Agreement shall be limited to and shall not exceed the Total City Grant Commitment.

(5) The City shall have no obligation to pay any amount under this Agreement from and after the Termination Date.

(6) The City agrees to participate with Owner in a one-time 50/50 cost split to relandscape and spruce up Colonial Promenade Parkway. This will include removal of invasive plant materials at the shopping center entrance at Highway 31 and removal, as allowed, of fencing and invasive plant material running parallel to I 65 along Colonial Promenade Parkway. This shall also include installation of attractive, low-maintenance plantings (or possibly hardscapes, natural-looking artificial turf) in areas of the Colonial Promenade Parkway median that are difficult to regularly maintain. The City and Owner (and/or owner representative) shall meet with the selected landscaping company in the next three months to identify areas that need to be addressed. Both parties shall jointly determine a plan of action needed and direct the landscaping company to execute the plan

5.02 Determination and Payment of Project City Grant Payments.

(1) On each Payment Date the City shall:

(i) determine the Project City Grant Payments (if any) to be made for the prior

quarterly period (provided that the initial Project City Sales and Use Tax Payment shall be calculated for the period between the Commencement Date and the initial Payment Date); and

(ii) pay to the Owner, such amount of Project City Grant Payments as determined under Section 5.02(1)(i).

(2) The City will permit any attorneys, accountants or other agents or representatives designated by the Owner to (i) have access to and visit and inspect any of the accounting systems, books of account, and financial records and properties of the City which pertain to the City Sales and Use Tax Proceeds and the determination of Project City Grant Payments, (ii) examine and make abstracts from any such accounting systems, books and records, and (iii) discuss the affairs, finances and accounts of the City pertaining to the City Sales and Use Tax Proceeds and the determination of Project City Grant Payments, with its officers, employees or agents, all at reasonable business times and upon reasonable notice; provided, however, that nothing in this section shall permit inspection of City tax records relating to any taxes other than the City Sales and Use Tax Proceeds with respect to taxpayers located within the Project Area.

(3) The review and analysis of 5.02(2) will be contingent upon compliance with the Alabama Taxpayer Bill of Rights provisions, penalties, and enforcement thereof. At no time will nonpublic confidential information be provided to any entity unless otherwise specified in accordance with law.

5.03 The Grant.

(1) The obligation of the City to pay the Project City Grant Payments hereunder shall be evidenced by a single limited obligation Grant solely from, and secured on an equal and proportionate basis by a pledge of, so much of the City Sales and Use Tax Proceeds as shall be necessary to pay the Project City Grant Payments (the "**Grant**") as set forth in **Exhibit B**.

(2) The Grant shall bear no interest, shall be issued in an aggregate principal amount not exceeding the Total City Grant Commitment and subject to all the terms and conditions hereof, and shall be dated the date of delivery, and shall mature on the Termination Date.

(3) The Grant shall be duly executed, sealed, and attested by the City, and shall be registered by the City as a conditional claim against so much of the City Sales and Use Tax Proceeds as shall be necessary to pay the Project City Grant Payments with respect to such Grant and the Grant fund established therefor as therein provided.

(4) The Grant shall be registered and transferred as provided therein.

5.04 Special Agreements of the City.

(1) All proceedings of the governing body of the City heretofore had and taken, and all resolutions and orders adopted pursuant thereto with respect to the levy and collection of the City Sales and Use Tax, are hereby ratified and confirmed in all respects from and after the effective date thereof.

(2) The City covenants and agrees:

(i) The City shall, if this Agreement and the Grant shall be outstanding, continue to levy and to provide for the assessment and collection of the Sales and Use taxes which provide the City Sales and Use Tax Proceeds at rates not less than those in effect on the date of this Agreement.

(ii) The City shall not apply any of the City Sales and Use Tax Proceeds which are allocable to or included as part of Project City Grant Payments for the payment of any governmental expenses of operating the City other than costs of collection of such taxes, as herein provided.

5.05 Special Agreements of the Owner.

- (1) Since this development utilized public funds set aside as a grant for purposes contained herein, certain protections must be in place to provide assurance to the public its' funds are utilized properly by terms contained herein within the "Grant" parameters. The Owner agrees to take all effort necessary to attain and continue full occupancy of this Project.

ARTICLE 6

EVENTS OF DEFAULT AND REMEDIES SECTION

6.01 Events of Default

Any one or more of the following shall constitute an event of default by the City or the Owner hereunder (an "**Event of Default**") under this Agreement (whatever the reason for such event and whether it shall be voluntary or involuntary or be affected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in the performance, or breach, of any covenant or warranty of the City in this Agreement, and the continuance of such default or breach for a period of 30 days after there has been given, by registered or certified mail, to the City by the Owner a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "notice of default" hereunder, provided that if such default is of a kind which cannot reasonably be cured within such thirty-day period, the City shall have a reasonable period of time within which to cure such default, provided that it begins to cure the default promptly after its receipt of such written notice and proceeds in good faith, and with due diligence, to cure such default; or

(b) default in the performance, or breach, of any covenant or warranty of the Owner in this Agreement, and the continuance of such default or breach for a period of 30 days after there has been given, by registered or certified mail, to the Owner by the City a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "notice of default" hereunder, provided that if such default is of a kind which cannot reasonably be cured within such thirty-day period, the Owner shall have a reasonable period of time within which to cure such default, provided that it begins to cure the default promptly after its receipt of such written notice and proceeds in good faith, and with due diligence, to cure such default.

6.02 Remedies

Each party hereto may, and each third-party beneficiary hereof may (subject to Section 6.03), proceed to protect its rights and interests by suit in equity, action at law or other appropriate proceedings, whether for the specific performance of any covenant or agreement of any other party herein contained or in aid of the exercise of any power or remedy available at law or in equity.

6.03 Remedies Subject to Applicable Law

All rights, remedies and powers provided by this Agreement may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that the same will not render this Agreement invalid or unenforceable.

ARTICLE 7

PROVISIONS OF GENERAL APPLICATION SECTION

7.01 Enforceability

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

7.02 Prior Agreements Cancelled

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

7.03 Counterparts

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

7.04 Binding Effect; Governing Law

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

(b) This Agreement shall be governed exclusively by the laws of the State of Alabama.

7.05 Notices

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

If to the City:	Attn: Mayor and/or City Administrator 1953 Municipal Way Alabaster, AL 35007
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If to the Owner:	PC Sweet Home Bama, LLC 1301 Riverplace Blvd, Ste 1600 Jacksonville, FL 33207
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(b) Any such notice or other document shall be deemed to be received as of the date delivered, if delivered personally, or as of three (3) days after the date deposited in the mail, if mailed, or the next business day, if sent by overnight courier. Any such notice or other document delivered by mail must be sent with the return receipt required.

7.06 Delegation and Assignment of this Agreement

(a) The City shall have no authority or power to, and shall not, delegate to any person the duty or obligation to observe or perform any agreement or obligation of the City hereunder. Nothing in this section, however, shall prevent the City from engaging appropriate consultants, experts, agents or outside representatives to perform the City's obligations under this Economic Development Grant Agreement on behalf of the City.

(b) The City shall not have any authority or power to, and shall not, assign to any person any right of the City hereunder or any interest of the City herein.

(c) The Owner may assign the Grant payments as collateral for outstanding obligations and loans on the Project by filing with the City Administrator a properly executed collateral assignment that adequately informs the City of the assignment of the rights to payment of the Grant. Owner may not assign any of its obligations under this Agreement.

7.07 Amendments

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

[Remainder of this page intentionally blank.]

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

CITY

CITY OF ALABASTER, ALABAMA

SEAL

By: _____
Mayor

ATTEST: _____
City Clerk

OWNER

**PC SWEET HOME BAMA, LLC, a
Delaware limited liability company**

By: _____
Its: _____

EXHIBIT B

Schedule of Determination of Incentive Payments

Years	Quarters	Actual Receipt^^
1	1-4^	Two of five cents sales and use taxes from Michael's
2	5-8	Two of five cents sales and use taxes from Michael's
3	9-12	Two of five cents sales and use taxes from Michael's
4	13-16	Two of five cents sales and use taxes from Michael's
5	17-20	Two of five cents sales and use taxes from Michael's

^ Quarters are the three-month quarterly cycles beginning with October 1 of each year. However, the first quarter for purposes of this Schedule of Payments, and number of each quarter thereafter, shall be the city's quarter, or portion thereof, in which the Commencement Date occurs and "Michael's" shall first open for business and commence paying rent and sales and use tax.

EXHIBIT C

SCHEDULE OF GRANT PAYMENTS

All payments made in arrears after the closing of the quarterly books

Payment Due Date	Payment Period	Tax Collected from the Project
October 1	Previous Third Quarter	Previous April, May and June
January 2	Previous Fourth Quarter	Previous July, August, September
April 1	Previous First Quarter	Previous October, November, December
July 1	Previous Second Quarter	Previous January, February, and March