

Council Member \_\_\_\_\_ made a motion to suspend the rules to allow for immediate consideration of the resolution \_\_\_\_\_, which was seconded by Council Member \_\_\_\_\_ and unanimously approved by all members present by roll call vote. Council Member \_\_\_\_\_ introduced the following Resolution and made motion for its adoption, which was seconded by Council Member \_\_\_\_\_.



### **RESOLUTION 032025-D**

**BE IT RESOLVED** by the Mayor and City Council (the "Council") of the **CITY OF ALABASTER, ALABAMA** (the "City" or "Alabaster"), as follows:

#### **Section 1. Findings.**

**WHEREAS**, the City of Alabaster, Alabama (the "City"), has determined that the economic development of the City and the welfare of its residents will be served by supporting commercial development projects that enhance the City's tax revenue base and generate employment opportunities; and

**WHEREAS**, Southern Brew Corp., a Delaware corporation (the "Developer"), has acquired property within the City for the purpose of developing a retail facility, including the establishment of a "Seven Brew Drive Thru Coffee" location and adjacent retail space (the "Project"); and

**WHEREAS**, the Developer has projected that the Project will generate substantial economic benefits, including increased taxable retail sales and new employment opportunities within the City; and

**WHEREAS**, in furtherance of the City's economic development objectives, the Developer has requested financial assistance from the City to offset a portion of the costs associated with site acquisition and improvements; and

**WHEREAS**, the City has determined that it is in the best interest of the City and its residents to enter into an Economic Development Grant Agreement (the "Agreement") with the Developer, providing for an incentive grant based on a percentage of sales tax proceeds generated within the Project area, subject to specified terms and conditions; and

**WHEREAS**, pursuant to Amendment 772 to the Constitution of Alabama of 1901, as codified in Section 94.01 of the Constitution of Alabama, and Section 11-47-2 of the Code of Alabama (1975), the City is authorized to grant public funds and things of value in aid of or to private business enterprises for the purpose of promoting local economic development, provided certain conditions are met; and

**WHEREAS**, the Agreement outlines the terms under which the Developer will receive financial incentives, including the schedule and amount of grant payments, compliance obligations, and performance benchmarks that must be met to continue receiving City support; and

**WHEREAS**, the Council finds that entering into the Agreement with the Developer will enhance the City's economic growth, support commercial activity, and generate tax revenue, all while ensuring public accountability and adherence to performance requirements;

**WHEREAS**, the Developer projects that upon completion and full occupancy, the Project will generate approximately \$2,000,000 of taxable retail sales annually and new part-time and full-time jobs in the City;

**WHEREAS**, the Developer has requested that the City provide certain financial and non-financial incentives to the Developer to assist the Developer in acquiring, constructing and developing the Project and to help offset a portion of the Developer's costs in acquiring and undertaking the extensive site preparation, public infrastructure and public roadway costs attendant to the Project Site;

**WHEREAS**, the City expects the Project to substantially expand and enhance the prosperity, contentment, and general welfare of the City and its residents by (i) aiding in the elimination and remediation of blight and similar elements resulting from underuse of the Project Area; (ii) promoting enhancement and adaptive reuse of a high-visibility area of the City; (iii) bringing substantial commercial activity to an under developed area and fostering the use and development of underutilized commercial properties around the site of the Project, (iv) helping improve the appearance and vibrancy of undeveloped areas of the City; (v) expanding commercial and retail activity within the City through the addition of a new destination commercial attraction, (vi) facilitating the growth and development of commercial sites and developments around the Project Site, (vii) supporting and expanding industrial and economic development within the City, and (viii) expanding jobs and employment opportunities within the City;

**WHEREAS**, the City has determined that the development of the Project in accordance with the Design Standards (thereby preventing the proliferation of unplanned economic developments that could be detrimental to the sustained economic health and well-being of the City) will create additional jobs and advance the economic base of the City and the prosperity and welfare of the citizens and taxpayers of the City; and, further, will serve as an economic stimulus by attracting additional businesses, development and investment to the areas within and immediately surrounded by the Project Site within the City;

**WHEREAS**, Amendment No. 772 to the Constitution of Alabama of 1901, now codified as Section 94.01 of the Constitution of Alabama ("Amendment No. 772") authorizes the City to grant public funds and things of value in aid of or to private business enterprises for the purpose of promoting the economic development of the City after compliance with certain conditions set forth in Amendment No. 772;

**Section 2. Authorization of Development Agreement. Approval of Agreement:** The City Council hereby approves and authorizes the execution of the Economic Development Grant Agreement with Southern Brew Corp. in substantially the form attached hereto as Exhibit A, with such modifications as the Mayor shall deem necessary or appropriate to effectuate the intent of this Resolution.

**Section 3. Authorization to Execute Documents:** The Mayor and the City Clerk are hereby authorized and directed to execute, seal, and deliver the Agreement and such other documents as may be necessary to fulfill the terms of the Agreement, including but not

limited to amendments, notices, certifications, and related instruments required to implement the City's obligations under the Agreement.

**Section 4. Compliance and Oversight:** The Developer shall be subject to all compliance provisions set forth in the Agreement, including but not limited to, maintaining the required level of commercial activity, generating sales tax revenue consistent with projections, and ensuring ongoing operational viability. The City reserves the right to audit sales tax records related to the Project Area, subject to applicable laws, to verify compliance.

**Section 5. Grant Payment Structure:** The grant payments shall be calculated based on a percentage of actual City sales tax proceeds derived from the Project Area, following the schedule set forth in Exhibit B. Payments shall be made quarterly in arrears, subject to the Developer meeting the defined performance metrics.

**Section 6. Termination and Recapture:** The City shall have the right to terminate the Agreement and require repayment of a portion of grant funds in the event of non-compliance by the Developer, as detailed in the Agreement. Specifically, if the Developer fails to achieve the minimum sales revenue targets, the Developer shall be required to reimburse a pro-rata share of grant funds received during the preceding four quarters.

**Section 7. Public Purpose and Determination:** The City Council finds that the Agreement serves a valid public purpose, consistent with Amendment 772, by fostering economic development, increasing the City's tax base, and creating employment opportunities.

**Section 8. Effective Date:** This Resolution shall become effective immediately upon adoption.

	Y / N		Y / N
Sophie Martin	_____	Jamie Cole	_____
Rick Ellis	_____	Zach Zahariadis	_____
Stacy Rakestraw	_____	Kerri Pate	_____
Greg Farrell	_____		

**PASSED, ADOPTED, AND APPROVED THIS 20TH DAY OF MARCH, 2025.**

ATTEST:

CITY OF ALABASTER

\_\_\_\_\_  
J. Mark Frey, City Clerk

\_\_\_\_\_  
Sophie Martin, Council President

APPROVED

\_\_\_\_\_  
Scott Brakefield, Mayor

**APPENDIX I**  
**FORM OF DEVELOPMENT AGREEMENT**

**ECONOMIC DEVELOPMENT GRANT AGREEMENT**

This ECONOMIC DEVELOPMENT GRANT AGREEMENT is made and entered as of \_\_\_th day of March 2025 between the CITY OF ALABASTER, ALABAMA, an Alabama municipal corporation (the "City"), and SOUTHERN BREW CORP. a Delaware corporation (the "Developer").

**Recitals**

- A. The Developer 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 Developer with a Grant as provided herein.
- C. The Developer 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 Developer 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 Developer hereby covenant and agree as follows:

**ARTICLE 1**

**DEFINITIONS**

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

"**City Sales Tax**" for any Monthly Period shall mean collectively sales and use taxes levied by the City (commonly called sales taxes) during such Monthly Period which consist of (i) a sales tax on persons engaged in the business of selling at retail any tangible personal property within the City (subject to exemption of certain property as provided by law) or in the business of conducting places of amusement or entertainment within the City, generally measured by the gross sales or receipts of such businesses and (ii) a use tax on the storage, use or other consumption of tangible personal property (subject to exemptions of certain property as provided by law) within the City, generally measured by the sales price of such property. The City currently has a four percent (4%) sales and use tax. However, for purposes of this Agreement, specifically excluded from this definition is the sales tax designated for the Education Fund, as such is set out in this Agreement. Therefore, the City Sales Tax for purposes of this Grant

is deemed to be at three percent (3%).

**"City Sales Tax Proceeds"** for any Quarterly Period shall mean and include all proceeds and receipts of the City Sales Tax from the "Project Area", 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 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 Tax enacted after the date of this Agreement.

**"Commencement Date"** shall mean the date on which any retail store opens for business to the public in the Project Area.

**"Developer"** shall mean Southern Brew Corp., and the successors and assigns thereof.

**"Education Fund"** shall mean that portion of City sales and use taxes designated by administrative ordinance 14-006 for the use and benefit of the Alabaster City Schools, and shall be excluded from the calculations of amounts due under this Agreement the rate of which is one percent (1%) per dollar of sales or use.

**"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).

**"Grant"** shall mean those payments made by the City to the Developer pursuant to this Agreement, not to exceed \$87,710.00 in the aggregate.

**"Grant Schedule"** shall mean the percentage of City Sales Tax Proceeds used to determine the amount of the quarterly payment to Developer attached as Exhibit "B".

**"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 of the third quarter 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 retail facilities acquired or constructed in the Project Area for the use and benefit of "Seven Brew Drive Thru Coffee" and adjacent retail space.

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

**"Project City Grant Payments"** shall mean an amount equal to the percentage set forth

in the Grant Schedule multiplied by the City Sales Tax Proceeds actually received by the City from the “Project Area” during the Quarterly Period for which such amount is determined to be due, net of all costs incurred by the City to collect the City Sales Tax Proceeds within the Project Area. Costs incurred by the City is limited solely to the actual costs of audit and collection of use and sale taxes from the “Project Area”.

“**Project Real Property Investment**” shall mean the cost paid by the Developer for the acquisition of title to the real property within the Project Area.

“**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.

“**Total City Grant Termination Date**” shall mean the earlier of (i) five (5) years from the Commencement Date, whether temporary or permanent, for a retail store which permits the opening to the public and use of the store as a retail facility, (whether or not the aggregate Project City Grant Payments at that time have equaled the Total City Grant Commitment), 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) Developer's failure to open a store for business to the public prior to March 31, 2026, unless otherwise approved by the City.

“**Total City Grant Commitment**” shall mean an amount paid to the Developer of 1/2 of the cost of the ALDOT property used for improvements in the Project Area, not to exceed **\$87,710.00**, without interest, pursuant to the schedule as set forth in **Exhibits B and C**.

“**Retail store**” shall mean a any restaurant within the defined area as illustrated in the Exhibit “A” Project Area.

## ARTICLE 2

### REPRESENTATIONS AND WARRANTIES

The City hereby represents and warrants as follows:

- (1) The Grant shall be paid to the Developer, upon condition that this Agreement is enforceable against the City 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 in excess of the Project City Grant Payments actually

received by the City during the term of this Agreement.

### **ARTICLE 3**

#### **DURATION OF AGREEMENT**

The obligations of the City and the Developer hereunder shall arise on its execution as required by law and the acquisition by the Developer of the Project property, and shall continue until the earlier of (i) the Termination Date, or (ii) the date it is invalidated in a Court of law.

### **ARTICLE 4**

#### **OBLIGATIONS OF THE DEVELOPER**

##### **4.01 Description of Obligations**

(1) The Developer hereby agrees to duly and punctually observe and perform all agreements thereof under this Agreement.

(2) The Developer hereby agrees to do the following to facilitate the construction of the Project:

(a) Within eight (8) months after the date of the full execution of this Agreement, the Developer will have either started site work or received a written commitment from a “Seven Brew Drive Thru Coffee” retail store to lease and operate a store in the Project Area.

(b) Within eight (8) months after the date of the full execution of this Agreement, obtain all necessary approvals for re- subdivisions, right of way dedications, variances, and permits from all federal, state, and local authorities.

(c) Developer shall construct and reconstruct all public improvements, roadways and rights of ways disturbed, modified, or otherwise encroached, to standards in force and in place by the ordinances and regulations of the City.

(d) Should development not happen within the included timelines; extensions or alterations must be approved by the City to avoid any default herein.

### **SECTION 5**

#### **AGREEMENTS AND OBLIGATIONS OF THE CITY**

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Development Grant Agreement

Southern Brew Corp.

**5.01 Nature, Amount and Duration of Obligation of City.**

(1) The City hereby agrees to pay to the Developer in arrears on each Payment Date during the Term the Project City Grant Payments determined by the City to be due and payable on such Payment Date. 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 Tax Proceeds generated from “Project Area”;

(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.

(2) 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.

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

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

(ii) pay to the Developer, 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 Developer 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 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 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 Tax Proceeds with respect to the retail stores 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 non-public confidential information be provided to any entity unless otherwise specified in accordance of 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 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 mature after three (3) years from the Commencement Date or when the total amount is reached, whichever comes first.

(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 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 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, as long as 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 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 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 Developer.**

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 Developer agrees to take all effort necessary to attain and continue full occupancy of this development. In the event that these retail stores, if during business license renewals, after the first year of occupancy from the time the first certificate of occupancy is issued, is not able to generate sales equal to 55% of the estimated \$2,000,000.00 in annual sales, as calculated on the business license renewals required therein, the Developer will be obligated to pay back some of the Grant payments received. The Developer will receive, via certified mail at the address contained herein or assigned, a Notice of Operating Violation as soon as the violation is reasonably known by the City revenue department of the Operating Violation. The Developer must within 90 days provide the City with a plan to get the annual sales of "Seven Brew Drive Thru Coffee" above the stated threshold. If, after 270 days from the date of the Notice of Operating Violation the Developer has not cured the Operating Violation the Developer will be obligated to pay back 75% of 'grant payments' received for the most recent four (4) quarters and the Grant will be terminated unless otherwise agreed to by grantor and grantee. For purposes of cure, monthly gross sales reports for the Project Area must meet or exceed \$91,666,66.00per month, exclusive of the opening month, or any month the business is closed due to circumstances beyond the Developer's control. It is the intent of this section to encourage the Developer to continue use(s) described herein and sales tax volumes of same.

## 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 Developer hereunder (an "**Event of Default**") under this Agreement (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected 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 or confirmed email address, to the clerk of the City by the Developer 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 Developer 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, or confirmed e-mail address, to the Developer 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 Developer 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, 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 of 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**



authorized, executed and delivered by each party hereto.

**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 Developer has executed this Agreement under seal, and the parties have caused this Agreement to be dated the date and year first above written.

**CITY OF ALABASTER, ALABAMA**

SEAL

\_\_\_\_\_  
By: Scott Brakefield, Its Mayor

ATTEST: \_\_\_\_\_  
By. J. Mark Frey, Its City Clerk

**Southern Brew Corp.**

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

**EXHIBIT A**

**Description of Project Area**

Lot 1, according to the Map of Tacala Alabaster Subdivision, a Resurvey of Lot 2 of Alex Commercial Complex and unplatted land, as recorded in Map Book 59, Page 64, in the Probate Office of Shelby County, Alabama.

**EXHIBIT B**

**Schedule of Determination of Incentive Payments**

Years	Quarters	Percentage of Actual Receipt <sup>^^</sup>	Estimated City Project Tax Revenue Received per Year*	Estimated Total of Grant Payments per Year**
1	1-4 <sup>^</sup>	80%	\$80,000	\$64,000.00
2	5-8	50%	\$80,000	\$14,710.00
3	9-12	50%	\$80,000	\$9,000.00
			<b>\$xxxxxx0</b>	<b>\$87,710.00</b>

<sup>^</sup> 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 any retail store shall first open for business.

\* Estimates are used for illustrative purposes only and is exclusive of 1 cent educational tax.

\*\* The maximum amount of incentive payments the Developer will receive under this Agreement during the agreement is \$87,710.00.

**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