

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: \_\_\_\_\_

Meeting Type: Regular

Meeting Date: May 12, 2016

Action Requested By: Urban Development

Agenda Type: Resolution

Subject Matter:

Agreement between the City of Huntsville and GB Bradford Creek, L.L.C.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Development Agreement between the City of Huntsville and GB Bradford Creek LLC

**Note: If amendment, Please state title and number of the original**

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

A development agreement between the City of Huntsville and GB Bradford Creek, L.L.C. for certain public roadway improvements consisting of turn lane improvements on County Line Road and the installation of a traffic signal at the intersection of County Line Road and the Bradford Creek Center necessary for proper public traffic flow and safety. Account Numbers: TBD

Associated Cost: \_\_\_\_\_

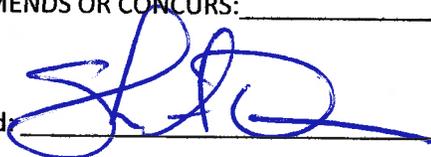
Budgeted Item: \_\_\_\_\_

MAYOR RECOMMENDS OR CONCURS: \_\_\_\_\_

Department Head: \_\_\_\_\_

Date: 5/12/16

*pink*



**ROUTING SLIP  
CONTRACTS AND AGREEMENTS**

Originating Department: Urban Development

Council Meeting Date: **5/12/2016**

Department Contact: **Lameka Carter**

Phone # **256-427-5304**

Contract or Agreement: **Development Agreement**

Document Name: **GB Bradford Creek Development Agreement**

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

Account Number:

**Procurement Agreements**

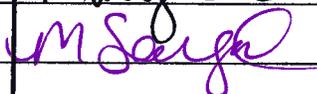
Not Applicable

Not Applicable

**Grant-Funded Agreements**

Not Applicable

Grant Name:

Department	Signature	Date
1) Originating		5/11/16
2) Legal	Mary C. Carter	5/11/16
3) Finance		5-11-16
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

**RESOLUTION NO. 16-\_\_\_\_\_**

**BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized, to enter into a development agreement between the City of Huntsville and GB Bradford Creek, L.L.C., on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that document attached hereto and identified as "Development Agreement between the City of Huntsville and GB Bradford Creek, L.L.C." consisting of a total of thirteen (13) pages plus five (5) additional pages consisting of Exhibits "A", "B", and "C", and the date of May 12, 2016, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

**ADOPTED** this the 12th day of May, 2016.

\_\_\_\_\_  
President of the City Council of  
the City of Huntsville, Alabama

**APPROVED** this the 12th day of May, 2016.

\_\_\_\_\_  
Mayor of the City of Huntsville,  
Alabama

DEVELOPMENT AGREEMENT BETWEEN  
THE CITY OF HUNTSVILLE AND  
GB BRADFORD CREEK, L.L.C.

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**DEVELOPMENT AGREEMENT**

**by and between**

**THE CITY OF HUNTSVILLE**

**and**

**GB BRADFORD CREEK, LLC**

**Dated: May 12, 2016**

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\_\_\_\_\_  
**President of the City Council of the City  
of Huntsville, AL**  
Date: May 12, 2016

## DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is made and entered into on and as of this 12th day of May, 2016 (the "Effective Date"), by and between the City of Huntsville, a municipal corporation under the laws of the State of Alabama (the "City"), and GB Bradford Creek, LLC, a Florida limited liability company (the "Developer"). The City and the Developer are collectively referred to herein from time to time as the "Parties" and, individually, as a "Party".

### WITNESSETH

WHEREAS, the Developer presently has an option to acquire certain parcels of real property aggregating approximately 24.09 acres located in the City at the southeast quadrant of U.S. Highway 72 and County Line Road, as more particularly described on Exhibit A attached hereto (the "Project Site"); and

WHEREAS, the Developer has informed the City it plans to develop upon the Project Site a commercial retail project consisting of a grocery store aggregating not less than 120,000 net square feet (the "Grocery Store") to be operated and occupied by The Kroger Co. and not less than 10,000 square feet of commercial and retail improvements (the "Additional Commercial Facilities" and, together with the Grocery Store, the "Project"); and

WHEREAS, due to its proposed configuration, the Project will require certain public roadway improvements consisting of turn lane improvements on County Line Road and the installation of a traffic signal at the intersection of County Line Road and the Bradford Creek Center necessary for proper public traffic flow and safety (collectively, the "Public Roadway Improvements"), all as depicted on Exhibit B hereto and as more particularly described herein; and

WHEREAS, the City is willing to design, develop, and construct the Public Roadway Improvements, all as more particularly set forth and described herein, to facilitate necessary, safe and efficient transportation by the public; and

WHEREAS, the Project Site is situated in and around an area highly suited for important urban expansion, redevelopment and renewal, and contains key parcels along U.S. Highway 72 that are integral to the City's ongoing efforts to facilitate redevelopment and improved commercial and retail improvements within the City; and

WHEREAS, cities throughout the United States have adopted codes and undertaken other procedures that go beyond conventional measures in order to advance land development regulatory mechanisms that place primary emphasis on the physical form of the built environment with the goal of producing a special type of place within the urban environment, which codes are based on the scale, character, intensity and form of development rather than solely on differences in land use; and

WHEREAS, absent adequate enabling laws in the State of Alabama, the City desires to achieve similar goals with respect to major land development within its jurisdiction through

agreements with developers that promote construction of commercial and retail structures in accordance with higher standards of construction and development than can be achieved through traditional regulatory actions by the City; and

WHEREAS, the construction and development of the various components of the Project in accordance with heightened design and development standards will result in a substantial economic benefit to the City by expanding the tax base of the City, increasing the number of jobs within the City, and enhancing the overall quality of life for the citizens of the City, and will further help prevent the proliferation of unplanned developments that are detrimental to the sustained economic health and well-being of the City; and

WHEREAS, the Developer has agreed to design, permit, construct and acquire (or cause to be designed, permitted, constructed and acquired) the various components of the Project in accordance with heightened requirements as approved by the City, as more particularly described and set forth herein; and

WHEREAS, the City has determined that the Project is situated in an area important for economic development, and that the Project will inure to the benefit of the City and its citizens by, among other things, (i) expanding the tax base of the City by attracting to the Project general commercial activity and development, (ii) enabling the local area to better retain, attract, and locate other commercial enterprises, (iii) expanding employment opportunities within and surrounding the Project Site, and (iv) enhancing the overall quality of life for the citizens of the City.

NOW THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

## ARTICLE I REPRESENTATIONS AND WARRANTIES

1.1 Representations and Warranties of the City. (a) The City, by action of the City Council, has duly authorized the execution, delivery and performance of this Agreement.

(b) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by the City, violates, constitutes a default under or a breach of (i) any agreement, instrument, contract, mortgage, ordinance, resolution or indenture to which the City is a party or to which the City or its assets or properties are subject or (ii) any law, judgment, decree, order, ordinance, rule, regulation, consent or resolution applicable to the City or any of its assets or properties.

(c) There is not now pending nor, to the knowledge of the City, threatened, any litigation affecting the City which questions (i) the validity or organization of the City, (ii) the members, titles or positions of the members of the City Council or the manner in which the officers of the City are selected, or (iii) the subject matter of this Agreement.

1.2 Representations and Warranties of Developer. (a) The Developer is duly organized and validly existing as a limited liability company under the laws of the State of Florida and has duly authorized its execution, delivery and performance of this Agreement.

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

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

(d) There is not now pending nor, to the knowledge of the Developer, threatened, any litigation affecting the Developer which questions the validity or organization of the Developer, or any of the representations and warranties of the Developer contained herein.

## ARTICLE II PUBLIC ROADWAY IMPROVEMENTS

2.1 General. The City hereby covenants and agrees to design, develop, and construct at its cost the Public Roadway Improvements as set forth and described in this Agreement and on the condition that the Developer perform its obligations under this Agreement including, without limitation, acquiring the Project Site and designing, permitting, developing, constructing, leasing and opening to the general public the Project upon the Project Site and as further set forth in Section 3.2 hereof.

2.2 Designation of Coordinators. Each of the City and the Developer agree to designate one or more project coordinators to monitor and coordinate the acquisition, design, permitting, and construction of the Public Roadway Improvements in accordance with this Agreement.

2.3 Public Roadway Improvements Plans and Specifications. (a) The City shall submit plans and specifications for the Public Roadway Improvements (the "Public Roadway Improvements Plans and Specifications") to the Developer within sixty (60) days after the Developer shall have provided notice and evidence reasonably satisfactory to the City evidencing that: (i) the Developer has acquired fee simple title to the Project Site and (ii) the Developer or its general contractor has received a building and grading permit for the pad of the Grocery Store with a minimum of 120,000 square feet of space. The City and the Developer shall work diligently and in good faith to agree upon the Public Roadway Improvements Plans and Specifications within ten (10) days of the Developer's receipt thereof from the City.

(b) Once the Public Roadway Improvements Plans and Specifications have been finalized and agreed to in writing by the Parties, the Public Roadway Improvements Plans

and Specifications shall not be changed except for changes approved in writing by the Developer and the Director of Urban Development, acting on behalf of the City.

2.4 Public Roadway Improvements. (a) Within fifteen (15) days after the Public Roadway Improvements Plans and Specifications have been fully designed and approved by the Parties as described in Section 2.3 hereof, the City shall prepare the invitations for bids and related documentation (referred to herein from time to time, collectively, as the “Public Roadway Improvements IFBs” and, individually, as a “Public Roadway Improvements IFB”) the City deems necessary for bidding of the Public Roadway Improvements, which such Public Roadway Improvements IFBs shall be subject to the reasonable approval of the Developer. A Public Roadway Improvements IFB shall be deemed approved by the Developer unless the Developer provides a written notice of appeal to the City within five (5) days of receipt of such Public Roadway Improvements IFB.

(b) Within fifteen (15) days (or such longer period as shall be agreed to in writing by the Developer and the City, with the Mayor or Director of Urban Planning acting on behalf of the City) following approval by the Developer and the City of the Public Roadway Improvements IFBs as described in Section 2.4(a) hereof, the City shall prepare and submit such Public Roadway Improvements IFBs for bidding, and the City agrees to cause the response deadline for such bidding process to be thirty (30) days from the date the Public Roadway Improvements IFBs are issued, and the award time for the prevailing bids to be not more than thirty (30) days from the response deadline (such periods collectively, the “Public Roadway Improvements Bid Period”). The Parties hereto agree that neither the Developer nor any Person directly or indirectly Controlling, Controlled by or under Common Control with the Developer may submit a response to any Public Roadway Improvements IFB. As used in this Agreement, (i) “Control” means the ownership (direct or indirect) by one Person of an interest in the profits and capital and the right to manage and control the day to day affairs of another Person and, further, includes any grammatical variation thereof, including “Controlled” and “Controlling”, (ii) “Common Control” means that two Persons are both controlled by the same other Person, and (iii) “Person” means an individual, partnership, firm, association, corporation, trust, governmental agency, administrative tribunal or other form of business or legal entity.

(c) No later than the fifteenth (15th) day after the expiration of the Public Roadway Improvements Bid Period, the City shall issue a notice to proceed to the winning responders to the Public Roadway Improvements IFBs.

(d) The City agrees to complete the Public Roadway Improvements within one hundred twenty (120) days following the issuance of a notice to proceed to the winning responders to the Public Roadway Improvements IFBs.

### ARTICLE III DEVELOPMENT PLAN; CONSTRUCTION OF PROJECT

3.1 Development Plan. The Developer hereby covenants and agrees to design, develop, construct, and install the Project substantially in accordance with the heightened design and development standards, plans and specifications prepared by the Developer and to be approved by the Mayor or Director of Urban Development of the City, acting on behalf of the

City, and which are set out in Exhibit C hereto (the “Development Plan”). The Parties agree that the Development Plan shall not be amended, supplemented, modified or otherwise changed in any material way except pursuant to a written instrument executed by the Developer and by the Mayor or Director of Urban Development of the City, acting on behalf of the City.

3.2 Construction of Project. (a) The Developer hereby covenants and agrees to use all commercially reasonable efforts to commence and complete the development of the Project as promptly as possible following the Effective Date. Completion of the Project shall require the following:

(i) Construction of the Grocery Store with a minimum of 120,000 square feet of space, which such Grocery Store must open to the public for business on or before December 31, 2017; and

(ii) Construction of the Additional Commercial Facilities with a minimum of 10,000 square feet of retail space in the aggregate, as evidenced by the issuance of certificates of occupancy delivered to the Developer on or before December 31, 2017.

(b) The Project shall be completed in accordance with the requirements of Section 3.2(a) on or before December 31, 2017. The Developer shall be responsible for all costs of Project construction and for payment of its own fees with respect to the construction and development of the Project.

(c) The Developer shall cause all construction activities to be conducted in compliance with all applicable laws, ordinances, rules and regulations of any governmental authority, including, without limitation, all applicable licenses, permits, building codes, restrictive covenants, zoning and subdivision ordinances and flood, disaster and environmental protection laws (“Applicable Laws”). It is expressly understood, acknowledged and agreed that approval by the City of the Development Plan as herein provided shall not be deemed an approval or waiver of any compliance by the Developer or the Project with any Applicable Laws.

(d) The Developer shall cause all agreements between it and any architect, contractor, subcontractor or other business performing any work in connection with the Project to require such architect, contractor, subcontractor or other business to obtain all necessary permits, licenses and approvals for such work. It is understood and acknowledged that the City will not waive or otherwise permit the waiver of any taxes, fees or related expenses, or fees for any permits, licenses or approvals that must be obtained from the City or any other governmental authority in connection with the Project that otherwise would be applicable.

#### ARTICLE IV OTHER AGREEMENTS AMONG PARTIES

4.1 Rezoning. The City, through its Department of Urban Development, agrees to work in good faith with the Developer in seeking the appropriate zoning classification of the

Project Site to the extent rezoning is needed in order to accomplish the Project, though in no event shall the City's obligation under this Section 4.1 require the City to spend money or otherwise incur any cost or expense.

4.2 Approvals. The City agrees to use reasonable good faith efforts to facilitate the processing of City approvals for the construction and development of the Project, it being the understanding of the Parties that nothing in this Section 4.2 or elsewhere in this Agreement is, or shall be deemed to be, an agreement of the City to waive any City approvals required for the Project.

ARTICLE V  
EVENTS OF DEFAULT AND REMEDIES

5.1 Events of Default by City. (a) Any one or more of the following shall constitute an event of default under this Agreement by the City (herein called a "City Event of Default") (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):

(i) the dissolution or liquidation of the City, or the filing by the City of a voluntary petition in bankruptcy, or the City's seeking of or consenting to or acquiescing in the appointment of a receiver of all or substantially all of its property, or the adjudication of the City as a bankrupt, or any assignment by the City for the benefit of its creditors, or the entry by the City into an agreement of composition with its creditors, or if a petition or answer is filed by the City proposing the adjudication of the City as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within sixty (60) days; or

(ii) failure by the City to perform or observe any of its agreements or covenants contained in this Agreement, which failure shall have continued for a period of thirty (30) days after written notice thereof from the Developer, unless (A) the Developer shall agree in writing to an extension of such period prior to its expiration, or (B) during such thirty (30) day period or any extension thereof, the City has commenced and is diligently pursuing appropriate corrective action, or (C) the City is by reason of Force Majeure at the time prevented from performing or observing the agreement or covenant with respect to which the City is delinquent.

(b) If a City Event of Default exists, the Developer shall have available to it all rights and remedies, both legal and equitable, provided by law (including without limitation

specific performance and mandamus); provided, however, the Developer shall not be entitled to punitive, incidental, consequential or similar damages, whether arising at law or in equity.

5.2 Events of Default by Developer. (a) Any one or more of the following shall constitute an event of default under this Agreement by the Developer (herein called a "Developer Event of Default") (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):

(i) at any time prior to the completion by the Developer of its obligations hereunder, the dissolution or liquidation of the Developer, or the filing by the Developer of a voluntary petition in bankruptcy, or the Developer's seeking of or consenting to or acquiescing in the appointment of a receiver of all or substantially all of its property, or the adjudication of the Developer as a bankrupt, or any assignment by the Developer for the benefit of its creditors, or the entry by the Developer into an agreement of composition with its creditors, or if a petition or answer is filed by the Developer proposing the adjudication of the Developer as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within sixty (60) days;

(ii) failure by the Developer to perform or observe any of its agreements or covenants contained in this Agreement, which failure shall have continued for a period of thirty (30) days after written notice thereof from the City, unless (A) the City shall agree in writing to an extension of such period prior to its expiration, or (B) during such thirty (30) day period or any extension thereof, the Developer has commenced and is diligently pursuing appropriate corrective action, or (C) the Developer is by reason of Force Majeure at the time prevented from performing or observing the agreement or covenant with respect to which it is delinquent.

(b) If a Developer Event of Default exists, the City shall have available to it all rights and remedies, both legal and equitable, provided by law (including without limitation specific performance and mandamus); provided, however, the City shall not be entitled to punitive, incidental, consequential or similar damages, whether arising at law or in equity.

5.3 Remedies Subject to Applicable Law. All rights, remedies and powers provided in this Article V 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 V 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.



or (c) sent by facsimile transmission with a confirmation copy delivered the following day by a nationally recognized overnight courier which maintains evidence of receipt, except in the case of notice delivered by option (c) in the preceding sentence, notice shall be effective on the date of receipt of the copy delivered by nationally recognized overnight courier. Notices shall be effective on the date of receipt. If any Notice is not received or cannot be delivered due to a change in address of the receiving Party, of which notice was not properly given to the sending Party, or due to a refusal to accept by the receiving Party, such Notice shall be effective on the date delivery is attempted.

6.4 Negation of Partnership. The Parties specifically acknowledge that no Party is acting as the agent of the other Party in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership or joint venture between or among the Parties, or cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended and shall not be construed to create any third party beneficiary rights in any person who is not a Party or a permitted transferee pursuant to this Agreement; and nothing in this Agreement shall limit or waive any rights any one or more of the Parties may have or acquire against any third person with respect to the terms, covenants or conditions of this Agreement.

6.5 Exhibits. The Exhibits, to which reference is made herein, are deemed incorporated into this Agreement in their entirety by reference thereto.

6.6 Amendment. Except as expressly provided in this Agreement, this Agreement may be modified or amended only by a written instrument, executed by each of the Parties to this Agreement.

6.7 Assignment. The Developer shall not have the right to assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the City, and any purported assignment, transfer, encumbrance or hypothecation of this Agreement or any of the rights or obligations hereunder in violation of this Section 6.7 shall be null and void and of no force or effect. Notwithstanding the foregoing, the Developer shall have the right to assign this Agreement to any financially solvent entity Controlled by the Developer that agrees to assume assigned obligations of the Developer in and to the Project; and if so assigned, the Developer shall continue to be responsible for the performance of the obligations of the assignee under this Agreement unless specifically excused therefrom by the City, to be expressed in writing and signed by an authorized representative of the City.

6.8 Entire Agreement. This written Agreement and the exhibits hereto contain all the representations and the entire agreement among the Parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and exhibits hereto. Neither the conduct nor actions of the Parties, nor the course of dealing or other custom or practice between or among the Parties or any of them, shall constitute a waiver or modification of any term or provision of this Agreement.

6.9 Ambiguity. The terms, conditions and provisions of this Agreement were agreed to in arm's length negotiations in which each Party was represented by independent counsel of its own choosing. Accordingly, in the event of any ambiguity in this Agreement, such ambiguity shall not be resolved against any Party deemed the principal draftsman of this Agreement or the provision of this Agreement at issue.

6.10 Further Assurances; Covenant to Sign Documents. Each Party shall take all actions and do all things, and execute, with acknowledgment or affidavit if required, any and all documents and writings, which may be necessary or proper to achieve the purposes and objectives of this Agreement.

6.11 Governing Law. This Agreement, and the rights and obligations of the Parties, shall be governed by and interpreted in accordance with the laws of the State of Alabama.

6.12 Counterparts. For convenience, this Agreement may be executed by the Parties in multiple counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same Agreement.

6.13 Liabilities of the City. The Developer understands, acknowledges and agrees that the obligations of the City as set forth herein are limited by the limitations imposed on public bodies, municipalities and public corporations by the Constitution of the State of Alabama and under other applicable Alabama law. Anything in this Agreement to the contrary notwithstanding, whether express or implied, in the event the Public Roadway Improvements, or any portion thereof, is not constructed or otherwise operational by any estimated or intended deadlines, or is designed or constructed in a manner not suitable to the Developer, the sole and exclusive remedy of the Developer shall be specific performance, and the Developer shall not be entitled to any other damages whatsoever, including, without limitation, punitive, incidental or consequential damages, whether arising at law or in equity.

6.14 No Waiver. No consent or waiver, express or implied, by any Party hereto or to any breach or default by any other Party in the performance by such other Party of its obligations hereunder shall be valid unless in writing, and no such consent or waiver to or of one breach or default shall constitute a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such Party hereunder. Failure on the part of any Party to complain of any act or failure to act of any other Party or to declare such other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder. The granting of any consent or approval in any one instance by or on behalf of any Party hereto shall be construed to waive or limit the need for such consent in any other or subsequent instance.

6.15 No Representations or Warranties Concerning Public Roadway Improvements. The Developer acknowledges and agrees that the City makes no and disclaims any and all representations and warranties regarding the Public Roadway Improvements, including, without limitation, warranties (whether express or implied) regarding the design, construction, functionality, and suitability of the Public Roadway Improvements. The Developer further acknowledges and agrees that, pursuant to Article II hereof, it is obligated to review and approve the Plans and Specifications and IFBs regarding the Public Roadway Improvements and that

such review and approval shall forever estop the Developer from asserting liability of the City for any claimed representations or warranties regarding the Public Roadway Improvements.

6.16 Days. Unless otherwise specified herein, all references to days shall mean calendar days, and a day shall mean any day other than a Saturday, a Sunday or a day on which operations at city hall in the City are closed.

6.17 Force Majeure. As used herein, the term “Force Majeure” shall mean matters outside the control of the Developer (excluding unfavorable economic conditions), consisting of (a) either enacted federal or State of Alabama laws or severe weather conditions, in either case, that prevent the development of the Grocery Store, or (b) riots, strikes, acts of God, man-made or natural disasters, civil insurrection, or acts of terrorism.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed and delivered on its behalf by its duly authorized officer, on and as of the Effective Date.

CITY OF HUNTSVILLE

By:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Kenneth Benion  
Clerk-Treasurer

GB BRADFORD CREEK, LLC, a Florida  
limited liability company

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

WITNESS:

\_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION OF PROJECT SITE

STATE OF ALABAMA  
COUNTY OF MADISON

ALL THAT PART OF THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 3 SOUTH, RANGE 2 WEST OF THE HUNTSVILLE MERIDIAN, MADISON COUNTY, ALABAMA, BEING MORE PARTICULARLY DESCRIBED AS COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 30, THENCE SOUTH 88 DEGREES 51 MINUTES 26 SECONDS EAST, 52.70 FEET TO A POINT ON THE EAST RIGHT-OF-WAY OF COUNTY LINE ROAD, THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED;

THENCE FROM THE POINT OF BEGINNING AND ALONG THE SAID EAST RIGHT-OF-WAY, NORTH 01 DEGREES 34 MINUTES 04 SECONDS EAST, 470.52 FEET TO A POINT; THENCE CONTINUE ALONG THE SAID EAST RIGHT-OF-WAY, NORTH 01 DEGREES 12 MINUTES 35 SECONDS EAST, 616.45 FEET TO A POINT; THENCE LEAVING THE SAID EAST RIGHT-OF-WAY, SOUTH 84 DEGREES 17 MINUTES 02 SECONDS EAST, 141.93 FEET TO A POINT; THENCE SOUTH 88 DEGREES 46 MINUTES 59 SECONDS EAST, 40.31 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 15.00 FEET, A CHORD BEARING AND DISTANCE OF NORTH 46 DEGREES 13 MINUTES 23 SECONDS EAST 21.21 FEET TO A POINT; THENCE NORTH 01 DEGREES 13 MINUTES 46 SECONDS EAST, 164.35 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 369.94 FEET, A CHORD BEARING AND DISTANCE OF NORTH 07 DEGREES 46 MINUTES 59 SECONDS EAST, 84.44 FEET TO A POINT; THENCE NORTH 14 DEGREES 20 MINUTES 08 SECONDS EAST, 26.65 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY OF U.S. HIGHWAY NO. 72; THENCE ALONG THE SAID SOUTH RIGHT-OF-WAY, THE FOLLOWING BEARINGS AND DISTANCES: SOUTH 86 DEGREES 08 MINUTES 58 SECONDS EAST, 72.26 FEET; SOUTH 86 DEGREES 18 MINUTES 17 SECONDS EAST, 172.79 FEET; SOUTH 85 DEGREES 58 MINUTES 23 SECONDS EAST, 30.02 FEET; SOUTH 86 DEGREES 07 MINUTES 52 SECONDS EAST, 142.53 FEET; SOUTH 85 DEGREES 19 MINUTES 51 SECONDS EAST, 21.18 FEET; SOUTH 86 DEGREES 26 MINUTES 37 SECONDS EAST, 83.36 FEET; AND SOUTH 86 DEGREES 29 MINUTES 50 SECONDS EAST, 89.68 FEET; THENCE LEAVING THE SAID SOUTH RIGHT-OF-WAY, SOUTH 01 DEGREES 51 MINUTES 17 SECONDS WEST, 1336.93 FEET TO A POINT; THENCE NORTH 88 DEGREES 51 MINUTES 27 SECONDS WEST, 179.36 FEET TO A POINT; THENCE NORTH 88 DEGREES 51 MINUTES 26 SECONDS WEST, 632.30 FEET TO THE POINT OF BEGINNING AND CONTAINING 24.09 ACRES, MORE OR LESS

EXHIBIT B

DEPICTION OF PUBLIC ROADWAY IMPROVEMENTS

[See attached]



EXHIBIT C

DEVELOPMENT PLAN

[See attached]

