

**VILLAGE OF MT. ZION
MACON COUNTY, ILLINOIS**

Ordinance No.
2022-5

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF A BUSINESS DISTRICT AGREEMENT
BY AND BETWEEN THE VILLAGE OF MT. ZION, MACON COUNTY, ILLINOIS
AND AL APARTMENTS, INC. AND AFRIM ALIU

CERTIFICATE

State of Illinois)
)
)
County of Macon)

I, Dawn Reynolds, duly appointed Village Clerk of the Village of Mt. Zion, Macon County, State of Illinois, and as such, custodian of all Village records, do hereby certify that the attached Ordinance No. 2022-5, is a true and correct copy of AN APPROVED ORDINANCE OF THE VILLAGE OF MT. ZION, MACON COUNTY, ILLINOIS that was adopted by the Mt. Zion Village Board on March 21, 2022.

In witness whereof, I hereby set my hand and affix the seal of the Village of Mt. Zion on this 21st day of March, 2022.

Seal



Dawn Reynolds, Village Clerk

VILLAGE OF MT. ZION, ILLINOIS

ORDINANCE NO. 2022-5

MT. ZION BUSINESS DEVELOPMENT DISTRICT

**AN ORDINANCE APPROVING AND AUTHORIZING
THE EXECUTION OF A BUSINESS DISTRICT AGREEMENT**

by and between

THE VILLAGE OF MT. ZION, MACON COUNTY, ILLINOIS

and

AL APARTMENTS, INC.

and

AFRIM ALIU

**ADOPTED BY THE VILLAGE PRESIDENT AND BOARD OF TRUSTEES
OF THE VILLAGE OF MT. ZION, MACON COUNTY, ILLINOIS
ON THE 21ST DAY OF MARCH, 2022.**

VILLAGE OF MT. ZION, ILLINOIS: ORDINANCE NO. 2022-5

MT. ZION BUSINESS DEVELOPMENT DISTRICT

AN ORDINANCE APPROVING AND AUTHORIZING
THE EXECUTION OF A BUSINESS DISTRICT AGREEMENT

by and between

THE VILLAGE OF MT. ZION

and

AL APARTMENTS, INC. AND AFRIM ALIU

The Village President and Board of Trustees of the Village of Mt. Zion, Macon County, Illinois (the "Village"), have determined that this Business District Agreement is in the best interest of the citizens of the Village of Mt. Zion.

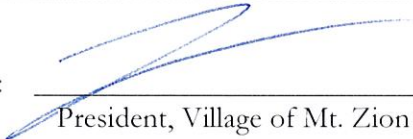
THEREFORE, be it ordained by the Village President and Board of Trustees of Mt. Zion, Illinois, in the County of Macon, as follows:

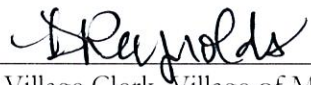
1. The Business District Agreement with AL Apartments, Inc., and Afrim Aliu (collectively, the "Developer") attached hereto as *Exhibit A* is hereby approved.
2. The Village President is hereby authorized and directed to enter into and execute on behalf of the Village said Business District Agreement and the Village Clerk of the Village of Mt. Zion is hereby authorized and directed to attest such execution.
3. The Business District Agreement shall be effective the date of its approval on the 21st day of March, 2022.
4. This Ordinance shall be in full force and effect from and after its passage and approval as required by law.

[the remainder of this page is intentionally blank]

PASSED APPROVED AND ADOPTED by the Village President and Board of Trustees of the Village of Mt. Zion this 21st day of March, 2022.

PRESIDENT AND TRUSTEES	AYE VOTE	NAY VOTE	ABSTAIN	ABSENT
Ellen Ritchie	X			
Mike Mose				X
Chris Siudyla	X			
Donna Scales	X			
Wendy Kernan	X			
Kevin Fritzsche	X			
Lucas Williams, President				

APPROVED:  _____, Date 3 / 21 / 2022
 President, Village of Mt. Zion

ATTEST:  _____, Date: 3 / 21 / 2022
 Village Clerk, Village of Mt. Zion

Attachment: **EXHIBIT A.** Business District Agreement by and between the Village of Mt. Zion and AL Apartments, Inc., and Afrim Aliu.

EXHIBIT A

BUSINESS DISTRICT AGREEMENT

by and between

THE VILLAGE OF MT. ZION

and

AL APARTMENTS, INC.

and

AFRIM ALIU

BUSINESS DISTRICT AGREEMENT

by and between

VILLAGE OF MT. ZION

and

AL APARTMENTS, INC.

and

AFRIM ALIU

MARCH 21, 2022

BUSINESS DISTRICT AGREEMENT
by and between
VILLAGE OF MT. ZION
and
AL APARTMENTS, INC. AND AFRIM ALIU

THIS AGREEMENT (including Exhibits, hereinafter referred to as the “Agreement”) is entered into this 21st day of March, 2022 by the **Village of Mt. Zion** (the “Village”), an Illinois Municipal Corporation, Macon County, Illinois, and **AL Apartments, Inc.**, an Illinois Corporation and Afrim Aliu (collectively, the “Developer”). Hereinafter, collectively, the Village and the Developer may, for convenience, be referred to as the “Parties”.

PREAMBLE

WHEREAS, the Village has the authority to promote the health, safety, and welfare of the Village and its citizens and to encourage development, job creation, and/or the full utilization of real estate; and

WHEREAS, pursuant to the Illinois Business District Development and Redevelopment Law (65 ILCS 5/11-74.3-1 *et seq.*), as amended (the “Act”), the Village adopted the Mt. Zion Business Development District on September 14, 2020 (the “Business District”); and

WHEREAS, pursuant to the Act, the Village has the authority to incur eligible business district project costs and may enter into agreements with developers to reimburse them for their eligible business district project costs; and

WHEREAS, pursuant to Illinois Statute 65 ILCS 5/8-1-2.5, the Village has the authority to appropriate and expend funds for economic development purposes; and

WHEREAS, the Developer owns property located at 910 N. State Highway 121, Mt. Zion, Illinois (the “Property”) which is located in the Business District and is in need of development and/or redevelopment, and is proceeding with plans to renovate and rehabilitate the building located thereon for operation of a restaurant (the “Project”) based, in part, on incentives made available by the Village; and

WHEREAS, the Developer’s proposed Project is consistent with the land uses of the Village as adopted; and

WHEREAS, the Developer requested that incentives for the development be provided by the Village pursuant to the Program, and that such incentives include the reimbursement of a portion of the Village's share of Business District Sales Tax Revenue generated by the Project; and

WHEREAS, the Village has determined that this Project requires the incentives requested and that said Project will promote the health, safety and welfare of the Village and its citizens by attracting private investment to redevelop under-utilized property and to provide employment for its citizens and generally to enhance the economy of the Village; and

WHEREAS, in consideration of the execution of this Agreement and in reliance thereon, the

Developer is prepared to develop said property; and

WHEREAS, the Village is entering into this Agreement to induce the Developer to develop the Property for operation of a restaurant located thereon.

AGREEMENTS

NOW, THEREFORE, for good and valuable consideration, the receipt of which is acknowledged, the Parties agree as follows:

A. PRELIMINARY STATEMENTS

1. The Parties agree that the matters set forth in the recitals above are true and correct and form a part of this Agreement and are to be construed as binding statements of this Agreement.
2. Any terms which are not defined in this Agreement shall have the same meaning as they do in the Act, unless indicated to the contrary.
3. All of the terms and provisions of the Village's Business Development District Reimbursement Program are incorporated herein and apply to this Agreement. To the extent any of the provisions of the Program conflict with the provisions set forth in this Agreement, this Agreement shall control with respect to the conflicting provisions.
4. For the purpose of this Agreement, "**Business District Sales Tax Revenues**" shall be defined as the rate of tax charged by the Village pursuant to the Business District Development and Redevelopment Act (65 ILCS 5/11-74.3-1 *et seq.*) (which is currently One Percent (1%) of all retail sales). For the purpose of this Agreement, Business District Sales Tax Revenues shall exclude the Village's base municipal rate (which is currently One Percent (1%) of all retail sales) of Retailer's Occupation Tax (35 ILCS 120/1 *et seq.*), Service Occupation Tax (35 ILCS 115/1 *et seq.*), Use Tax (35 ILCS 105/1 *et seq.*) and Service Use Tax (35 ILCS 110/1 *et seq.*), and any other future enacted increases or add-ons to municipal sales taxes.
5. For the purpose of this Agreement, "**Reimbursement Obligation Period**" shall be defined as the period beginning on the first date the Developer's Project is complete and open to the public for business and ending upon the current expiration of the BDD.
6. The Developer agrees to complete the Project on or before July 31, 2022 subject to exception of Force Majeure (defined below). For the purpose of this Agreement, the Developer's Project will be deemed complete when the rehabilitation of the restaurant located on the property is complete and the restaurant is open for business to the public.
7. Each of the Parties represents that it has taken all actions necessary to authorize its representatives to execute this Agreement.

B. INCENTIVES

In consideration for the Developer completing its Project, the Village agrees to extend to the

Developer the following incentives to assist the Developer's Project:

1. Upon timely completion of the Project, the Village shall reimburse the Developer for its Business District Eligible Project Costs incurred with respect to the Project **Fifty Percent (50%)** of the annual Business District Sales Tax Revenues generated by the Project located on the Property for the term of the Reimbursement Obligation Period, or until the Developer has received an amount not to exceed **Three Hundred Thirteen Thousand Dollars (\$313,000.00)** of its Business District Eligible Project as verified pursuant to Section E below, whichever occurs first.
2. In the event any of the following occur, any further reimbursements otherwise owed the Developer hereunder shall cease and this Agreement shall automatically terminate:
 - a. The restaurant located on the Property ceases operation for a period of greater than sixty (60) days.
 - b. The Developer files for bankruptcy or otherwise becomes insolvent.
 - c. Dissolution of the Developer's Corporation.
 - d. The Developer sells or otherwise conveys the Property.
 - e. The Property becomes the subject of foreclosure proceedings.
 - f. Any other default under this Agreement.

C. LIMITATION OF INCENTIVES TO DEVELOPER

1. The Developer shall be reimbursed by the Village, subject to the limitations of *Section B* above, from the Business District Sales Tax Revenues generated by the Project on the Property, but only for the term of the Reimbursement Obligation Period, or until the Developer has been reimbursed an amount not to exceed \$313,000.00 of the Business District Eligible Project Costs which have been verified pursuant to Section E below, whichever occurs first.

D. OBLIGATIONS AND RESPONSIBILITIES OF DEVELOPER

- 1) The Developer shall complete the Project located on the Property. Failure of the Developer to timely complete such the Project as set forth herein will result in the denial of the reimbursements to be made hereunder.
- 2) The failure of the Developer to provide any information reasonably required herein after notice from the Village, and the continued failure to provide such information within 30 days to the Village after such notice shall be considered a material breach of this Agreement and shall be cause for the Village to deny payments hereunder to the Developer, which payments are conditional upon receipt of the forgoing information.
- 3) The Developer agrees to execute any and all documents necessary to effectuate the provisions of this Agreement.

E. PAYMENT OF ELIGIBLE PROJECT COSTS

- 1) In order to receive the incentives set forth in *Section B* above, the Developer must submit documentation evidencing all Business District Eligible Project Costs incurred by it with respect to the Project on or before July 31, 2022. Satisfactory evidence of such costs shall include verified bills or statements of suppliers, contractors, or professionals together with mechanic's lien waivers (whether partial or full) from each of the parties entitled to payment with respect to work done for the Project. Any costs submitted after July 31, 2022 will not be eligible for reimbursement.
- 2) All the documentation set forth in paragraph 1 above shall be submitted to the Village's BDD Administrator, The Economic Development Group, 1701 Clearwater Ave., Bloomington, Illinois, 61704, and is subject to the Administrator's approval of said Business District Eligible Project Costs.
- 3) If any costs which are submitted by the Developer are disapproved by the Administrator, the reasons for disallowance will be set forth in writing and the Developer may resubmit the costs with such additional information as may be required and the same procedures set forth herein shall apply to such re-submittals.
- 4) All Business District Eligible Project Costs which have been approved shall then be paid pursuant to the terms set forth in Section B above.

F. LIMITED OBLIGATION OF VILLAGE

The Village's obligation hereunder to reimburse the Developer as stated herein, is a limited obligation. Said obligation does not now and shall never constitute an indebtedness of the Village within the meaning of any State of Illinois constitutional or statutory provision and shall not constitute or give rise to a pecuniary liability of the Village or a charge or lien against any Village fund nor obligate the Village to utilize its taxing authority to fulfill the terms of this Agreement.

G. LIMITED LIABILITY OF VILLAGE TO OTHERS FOR DEVELOPER'S EXPENSES

There shall be no obligation by the Village to make any payments to any person other than the Developer, nor shall the Village be obligated to make payments to any contractor, subcontractor, mechanic or materialman providing services or materials to the Developer for the Project.

H. DEFAULT; CURE; REMEDIES

In the event of a default under this Agreement by any Party hereto (the "Defaulting Party"), which default is not cured within the cure period provided for below, then the other Party (the "Non-defaulting Party") shall have an action for damages, or in the event damages would not fairly compensate the Non-defaulting Party's for the Defaulting Party's breach of this Agreement, the Non-defaulting Party shall have such other equity rights and remedies as are available to them at law or in equity. Any damages payable by the Village hereunder shall be limited to the Municipal Sales Tax Revenues payable under the terms of this Agreement.

In the event a Defaulting Party shall fail to perform a monetary covenant which it is required to perform under this Agreement, it shall not be deemed to be in default under this Agreement unless

it shall have failed to perform such monetary covenant within thirty (30) days of its receipt of a notice from a Non-defaulting Party specifying that it has failed to perform such monetary covenant. In the event a Defaulting Party fails to perform any non-monetary covenant as and when it is required to under this Agreement, it shall not be deemed to be in default if it shall have cured such default within thirty (30) days of its receipt of a notice from a Non-defaulting Party specifying the nature of the default, provided, however, with respect to those non-monetary defaults which are not capable of being cured within such thirty (30) day period, it shall not be deemed to be in default if it commences curing within such thirty (30) days period, and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

I. TIME; FORCE MAJEURE

For this Agreement, time is of the essence. The Developer agrees to complete the Project on or before July 31, 2022, subject to extension due to Force Majeure (defined below). Failure to do so shall be cause for the Village to declare the Developer in default and unilaterally terminate the Agreement after notice and the opportunity to cure as provided in Section II. However, the Developer and the Village shall not be deemed in default with respect to any obligations of this Agreement on its part to be performed if the Developer or the Village fails to timely perform the same and such failure is due in whole, or in part, to any strike, lock-out, labor trouble (whether legal or illegal), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruptions of power, restrictive governmental laws and regulations, condemnation, riots, insurrections, war, fuel shortages, accidents, casualties, Acts of God or any other cause beyond the reasonable control of the Developer or the Village.

J. ASSIGNMENT

The rights (including, but not limited to, the right to payments contemplated by *Section B* of this Agreement) and obligations (or either of them) of the Developer under this Agreement shall not be assignable.

K. WAIVER

Any Party to this Agreement may elect to waive any remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless the Party waiving such right of remedy does so in writing. No such waiver shall obligate such Party to waive any right of remedy hereunder or shall be deemed to constitute a waiver of other rights and remedies provided said Party pursuant to this Agreement.

L. SEVERABILITY

If any section, subsection, term or provision of this Agreement or the application thereof to any Party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of said section, subsection, term or provision of this Agreement or the application of same to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

M. NOTICES

All notices, demands, requests, consents, approvals or other instruments required or permitted by this Agreement shall be in writing and shall be executed by the Party or an officer, agent or attorney of the Party, and shall be deemed to have been effective as of (i) the date of actual delivery, if delivered personally, or (ii) as of the third (3rd) day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid or (iii) the next business day if sent overnight delivery using a nationally recognized delivery service, addressed as follows:

To Developer:

Al. Apartments, Inc.
Attn: Afrim Aliu
910 N. State Hwy 121
Mt. Zion, IL 62549
Phone: (630) 615-1750

To Village:

Village Clerk
Village of Mt. Zion
1400 Mt. Zion Parkway
Mt. Zion, IL 62549

With Copy to:

Jacob & Klein, Ltd.
The Economic Development Group, Ltd.
1701 Clearwater Avenue
Bloomington, Illinois 61704

N. SUCCESSORS IN INTEREST

Subject to the provisions of *Section I* above, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

O. NO JOINT VENTURE, AGENCY, OR PARTNERSHIP CREATED

Neither anything in this Agreement nor any acts of the Parties to this Agreement shall be construed by the Parties or any third person to create the relationship of a partnership, agency, or joint venture between or among such Parties.

P. SPECIFIC SALES TAX REIMBURSEMENT PROVISIONS

1. Payments to Developer. All reimbursements to the Developer for its Project costs to be made by the Village from Business District Sales Tax Revenues (as defined herein) pursuant to this Agreement shall be payable only from Business District Sales Tax Revenues that are generated by the business located on the Property. The Village may, in its sole discretion, elect to pay any Business District Sales Tax Revenues calculated to be paid under this Agreement from any other source of Village revenues, but shall not be obligated to do so. All Business District Sales Tax Revenues remitted pursuant to this Agreement are for the purpose of inducing the Developer to develop the Property and are not for any goods or services provided by the Developer. Funds which are available for reimbursement to the Developer for its Project costs as set forth herein shall be conditioned upon the following:

The Developer hereby agrees to cooperate (and shall use its best efforts to have any commercial tenant located on the Property cooperate) with the Village and complete and/or execute any forms or documents that are necessary for the Village and its consultants and its employees to calculate the sales tax revenue set forth in Section B above generated by any business located on the Property. The Developer, furthermore, hereby gives its consent to the Village to share such sales tax revenue information with any such consultants and/or employees as is necessary to administer and audit this Agreement. Any Business District Sales Tax Revenues generated by businesses located on the Property that are unable to be verified under this section shall not be used to calculate reimbursements owed to the Developer pursuant to *Section B* above.

- (c) Any payments determined to be due under Section B shall be reduced by the amount of any and all collection fees imposed upon the Village by the State of Illinois or the Illinois Department of Revenue for collection of the Municipal Sales Tax Revenues.

Q. ENTIRE AGREEMENT

The terms and conditions set forth in this Agreement and exhibits attached hereto supersede all prior oral and written understandings and constitute the entire agreement between the Village and the Developer with respect to the subject matter hereof.

R. WARRANTY OF SIGNATORIES

The signatories of Developer warrant full authority to both execute this Agreement and to bind the entity in which they are signing on behalf of.

S. TERM OF THE AGREEMENT

Notwithstanding anything in this Agreement to the contrary, this Agreement shall expire on upon the current expiration of the BDD, or upon the Developer receiving all the reimbursement provided for herein. The Agreement shall expire sooner upon default by the Developer of this Agreement after applicable notice and cure periods.

T. ILLINOIS PREVAILING WAGE ACT

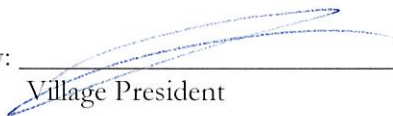
It is the understanding of the Parties that the position of the Illinois Department of Labor is that the Illinois Prevailing Wage Act does not apply to Sales Tax Reimbursements received by private developers as reimbursement for private redevelopment project costs. This position of the Department of Labor is stated as an answer to a FAQ on its website at: <http://www.illinois.gov/idol/FAQs/Pages/prevailing-wage-faq.aspx>. The Developer shall indemnify and hold harmless the Village, and all Village elected or appointed officials, officers, employees, agents, representatives, engineers, consultants and attorneys (collectively, the "indemnified Parties"), from any and all claims that may be asserted against the Indemnified Parties or one or more of them, in connection with the applicability, determination, and/or payments made under the Illinois Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*), the Illinois Procurement Code, and/or any similar State or Federal law or regulation. This obligation to indemnify and hold harmless obligates Developer to defend any such claim and/or action, pay any liabilities and/or penalties imposed, and pay all defense costs of Village, including but not limited to the reasonable

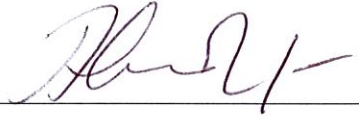
attorney fees of Village. Failure to comply with any of these requirements may cause all benefits hereunder to be terminated by the Village.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed by their duly authorized officers on the above date at the Village of Mt. Zion, Illinois.

VILLAGE OF MT. ZION, ILLINOIS


AL APARTMENTS, INC.

By: 
Village President

By: 

ATTEST:

Name: AFRIM ALIU


Village Clerk

Title: OWNER

AND

AFRIM ALIU

Afrim Aliu