CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number_____

Meeting Type: Regular

Meeting Date: 9/27/2012

Action Requested By:
Legal

Agenda Item Type
Resolution

Subject Matter:

Councill Court Property

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute an Amendment to the Parking Garage Lease Agreement (Retail Component)between the City of Huntsville and Twickenham Square Ventures, LLC, adopted and approved by Resolution No. 12-639 on July 26, 2012.

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.

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head:

Date: 9-27-12

revised 3/12/2012

RESOLUTION NO. 12-____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to execute an Amendment to the Parking Garage Lease Agreement by and between the City of Huntsville and Twickenham Square Venture, LLC, 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 certain document attached hereto and identified as "AMENDMENT TO THE PARKING GARAGE LEASE AGREEMENT BETWEEN THE CITY OF HUNTSVILLE AND TWICKENHAM SQUARE VENTURE, LLC (RETAIL COMPONENT)," consisting of Forty-three (43) pages including Exhibits A through E, and the date of September 27, 2012 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

BE IT FURTHER RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor, the City Clerk-Treasurer, and all other officers of the City of Huntsville, are hereby authorized and directed to execute, seal, attest, and deliver such other agreements, documents, certificates, instruments, notices and directions, and to take such other actions, on behalf of the City of Huntsville, as may be necessary or desirable to consummate the transactions set forth in the Amendment to the Parking Garage Lease Agreement between the City of Huntsville and Twickenham Square Venture, LLC.

ADOPTED this the 27th day of September, 2012.

_____
President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 27th day of September, 2012.

_____
Mayor of the City of
Huntsville, Alabama

CITY PARKING GARAGE LEASE AGREEMENT
(RETAIL COMPONENT)

THIS CITY PARKING GARAGE LEASE AGREEMENT (RETAIL COMPONENT) (this "Lease") is made and entered this _____ day of _____, 2012, by and between **THE CITY OF HUNTSVILLE,** an Alabama municipal corporation, as lessor ("City") and **TWICKENHAM SQUARE VENTURE, LLC,** a Delaware limited liability company, as lessee ("Lessee").

W I T N E S S E T H:

WHEREAS, pursuant to an Amended and Restated Development Agreement dated as of July 26, 2012 (the "Development Agreement") among City, Lessee, and Gallatin Street Partners, LLC ("Gallatin Street Partners"), Lessee and Gallatin Street Partners have agreed to construct the Development Project hereafter described in an area important to the City for planned urban redevelopment; and

WHEREAS, as required by the Development Agreement, Lessee and Gallatin Street Partners (or one or more of them): (i) have agreed to contribute $1,400,000 toward the initial construction costs of public improvements related to the Development Project and the City Parking Garage hereafter described; (ii) have agreed to construct certain private and public improvements on real property located adjacent to the City Parking Garage; (iii) have agreed to construct, at their sole costs, the Development Project which will result in increased sales and property tax revenues to the City, will boost property values in the vicinity of the Development Project, will lead to additional economic activity in the area of the City surrounding the Development Project, and will provide new jobs for full or part-time employees of the Development Project; and (iv) have agreed to construct and develop certain portions of the Development Project in accordance with heightened designed standards that go beyond what the City could impose through zoning and other regulatory controls; and

WHEREAS, as contemplated in the Development Agreement, the City has agreed to construct a three-level parking garage containing approximately 664 parking spaces on the City Parking Garage Property hereafter described; and

WHEREAS, the City intends to enter into a lease of even date herewith (the "Health Care Authority Lease") with the Health Care Authority of the City of Huntsville, Alabama (the "Health Care Authority"), which contemplates the construction of an additional level (the "Fourth Level") within, and to serve as the top floor of, the City Parking Garage containing approximately 249 - 259 spaces, of which 209 spaces (the "Health Care Authority Reserved Spaces") would be used exclusively by employees of the Health Care Authority or as otherwise determined by the Health Care Authority and the City, with the remaining 40-50 spaces to be available for use by the general public on a first-come, first-served basis or as otherwise determined by the City; and

WHEREAS, as contemplated in the Development Agreement, Lessee and Gallatin Street Partners have agreed to enter into agreements under which each of the parties to such

_____
President of the City Council of the
City of Huntsville, Alabama
Date:_____

agreements, other than the City, shall pay, or cause to be paid, their pro rata share of all costs of operation and maintenance of the City Parking Garage (less and except the Fourth Level, if constructed) as set forth herein by the payment of Rent and Additional Rent, such that the City will not be required to bear any of such costs;

NOW, THEREFORE, in consideration of the foregoing and in further consideration of the payment of General Expense Rent, Additional Services Rent, Capital Reserve Contributions, and other Additional Rent hereafter provided, the performance of all the terms, covenants, agreements, and conditions of this Lease by Lessee, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Lessee hereby desire to enter into this Lease pursuant to which the City will lease unto Lessee, and the Lessee will lease from City, the Designated Parking Spaces (as defined herein), and will obtain a non-exclusive prepaid license to use the Undesignated Parking Spaces (as defined herein), within the City Parking Garage on the terms and conditions set forth herein.

ARTICLE I
DEFINED TERMS

1.1 Definitions. Each reference in this Lease to any of the following terms shall have the meaning set forth below for each such term:

"Additional Rent" has the meaning set forth in Section 4.8.

"Additional Services Rent" has the meaning set forth in Section 4.3.

"Applicable Share" means 39.45%, which represents the percentage shown under the column entitled "Rent Percentages (Spaces Converted to Pct.), as Adjusted" on Exhibit A hereto applicable to the Retail Component.

"Approved Parking Consultant" shall mean a licensed professional parking consultant or structural engineer selected by the City and reasonably acceptable to the Lessee.

"Capital Repair Items" means repairs of a capital nature that are intended to improve or extend the normal economic life of the City Parking Garage.

"Capital Reserve" has the meaning set forth in Section 7.2.

"Capital Reserve Contributions" shall mean an annual contribution to be made to the Capital Reserve by Lessee as set forth in Section 4.4 hereof.

"City Parking Garage" means the parking garage containing spaces to accommodate approximately 664 vehicles, a bus-stop, and, if the Health Care Authority Lease goes into effect, the Fourth Level, all located on the City Parking Garage Property.

"City Parking Garage Property" means Lots 4-A and 4-C, according to the Twickenham Square Subdivision Plat.

"City Tax Revenues" means the aggregate amount of tax revenues actually collected by the City from: (i) ad valorem taxes levied by the City (presently levied by the City at an aggregate rate of 19.5 mills), (ii) liquor and lodging taxes levied by the City, and (iii) sales and use taxes levied by the City.

"City Work" has the meaning set forth in Section 6.1.

"Commencement Date" means the later of August 31, 2013, or the date on which possession of the Premises is delivered to Lessee as specified in Section 6.2.

"CPI" means the All Items Consumer Price Index for All Urban Consumers, published from time to time by the U.S. Bureau of Labor Statistics.

"Default" means the occurrence or existence of any event which, but for the giving of notice or expiration of time or both, would constitute an Event of Default.

"Designated Parking Spaces" means, generally, all of the spaces identified under the column entitled "Designated Parking Spaces" on Exhibit A hereto and aggregating 276, and, as to Lessee, the parking spaces under said column allocated to the Retail Component and aggregating 131 on Exhibit A hereto.

"Development Project" means, collectively, the Retail Component, the Multifamily Component, the Project A Component, and the Project B Component.

"Effective Date" means the date first set forth on the initial page of this Lease.

"Extension Term" has the meaning set forth in Section 3.2.

"Extraordinary Capital Costs Contribution" has the meaning set forth in Section 4.5.

"Extraordinary Capital Repairs" has the meaning set forth in Section 4.5.

"Fourth Level" shall have the meaning given to such term in the recitals hereof.

"FTA" means the United Stated Department of Transportation, Federal Transit Administration.

"General Expense Rent" has the meaning set forth in Section 4.2.

"General Expense Rent Adjustment Date" means each anniversary of the Commencement Date.

"Health Care Authority" shall have the meaning given to such term in the recitals hereof.

"Health Care Authority Lease" shall have the meaning given to such term in the recitals hereof.

"Health Care Authority Reserved Spaces" shall have the meaning given to such term in the recitals hereof.

"Initial Term" has the meaning set forth in Section 3.1.

"Lease Term" and **"Lease Year"** shall have the meaning set forth in Section 3.2.

"Leases" means, collectively, this Lease and the Related Leases.

"Lessee Parties" means, collectively, the officers, employees, contractors, tenants, customers, invitees, guests and visitors of Lessee and the officers, employees, contractors, customers, invitees, guests, and visitors of Lessee's tenants.

"Lessee Responsible Parking Spaces" means 273 (as shown on Exhibit A hereto under the column entitled "Rent Percentages Converted to Equivalent # of Lessee Parking Spaces, as Adjusted" and allocated to the Retail Component), which represents the number of parking spaces in the City Parking Garage for which Rent will be paid by Lessee as set forth in Article IV hereof.

"Lessees" means, collectively, Lessee and Related Lessees.

"Mortgagee" has the meanings set forth in Section 16.1

"Multifamily Component" means the multifamily apartment or condominium complex of not less than 180 units to be located on Lot 5 according to the Twickenham Square Subdivision Plat.

"Parking Allocation" means the number of Designated Parking Spaces in the City Parking Garage allocated to the Retail Component, the Multifamily Component, the Project A Component, and the Project B Component, as set forth in Exhibit "A" attached hereto. Exhibit "A" also sets forth the Applicable Shares, stated as a percentage, of the Lessee and each of the Related Lessees.

"Parking Garage Retail Space Agreement" mean that certain Parking Garage Retail Space Agreement of even date herewith between Lessee and the City with respect to the Parking Garage Retail Space.

"Parking Garage Retail Space" means the retail space contained within the footprint of the City Parking Garage conveyed to Lessee by the City, subject to a reservation of air rights, pursuant to the Parking Garage Retail Space Agreement.

"Parking Plan" means the Parking Plan attached hereto as Exhibit "B" and made a part hereof. The Parking Plan indicates the current location of the Designated Parking Spaces within the City Parking Garage allocated to the Lessee and the Related Lessees pursuant to the Parking Allocation as of the Effective Date.

"Permitted Use" has the meaning set forth in Section 5.1.

"Person" means a natural person, partnership, firm, association, corporation, trust, governmental agency, municipal corporation, public corporation, administrative tribunal or other form of business or legal entity.

"Premises" means the Designated Parking Spaces allocated to Lessee pursuant to the Parking Allocation and the Parking Plan.

"Project A Component" means an approximately 91,000 square foot office building to be located on Lot 1 according to the Twickenham Square Subdivision Plat.

"Project B Component" means a proposed hotel of approximately 101 rooms that is proposed to be located on Lot 2 according to the Twickenham Square Subdivision Plat.

"Refurbishment Contribution" has the meanings set forth in Section 7.3.

"Refurbishment Repairs" has the meanings set forth in Section 7.3.

"Retail Component" means, collectively, the retail stores, restaurants or other retail or commercial users, including, without limitation, a Publix grocery store, to be located on Lot 6, Lot 3, and a portion of Lot 5, according to the Twickenham Square Subdivision Plat, or within the Parking Garage Retail Space.

"Related Leases" means, collectively, the following leases, each dated of even date herewith, between the City, as the lessor, and the following entities, as lessees, with respect to the remaining components of the Development Project:

- City Parking Garage Lease Agreement (Multifamily Component) with Twickenham Square Venture, LLC, pursuant to which, among other things, Twickenham Square Venture, LLC has leased Designated Parking Spaces for the benefit of the Multifamily Component as per the Parking Allocation.

- City Parking Garage Lease Agreement (Project A Component) with Gallatin Street Partners, LLC pursuant to which, among other things, Gallatin Street Partners, LLC has leased Designated Parking Spaces for the benefit of the Project A Component as per the Parking Allocation.

- City Parking Garage Lease Agreement (Project B Component) with Gallatin Street Partners, LLC pursuant to which, among other things, Gallatin Street Partners, LLC has leased Designated Parking Spaces for the benefit of the Project B Component as per the Parking Allocation.

"Related Lessees" means the lessees under the Related Leases and their permitted successors and assigns.

"Rent" means, collectively, General Expense Rent, Additional Services Rent, Capital Reserve Contributions, and Extraordinary Capital Costs Contributions.

"Twickenham Square Subdivision Plat" means the Plat of Twickenham Square Subdivision Phase II, as recorded on September 5, 2012 in Document Number 20120905000567540 in the Office of the Judge of Probate of Madison County, Alabama, being a resubdivision of Lots 4 and 5 of Twickenham Square Subdivision, as recorded in Document Number 201204270000257150 in the Office of the Judge of Probate of Madison County (amended by that certain Surveyor's Affidavit, dated June 13, 2012, and recorded June 13, 2012, in Doc. #20120613000366350, Probate Records of Madison County, Alabama).

"Undesignated Parking Spaces" means those of the parking spaces within the City Parking Garage other than the Designated Parking Spaces and the Health Care Authority Reserved Spaces.

1.2 Certain Other Terms. Other capitalized terms used in this Lease, but not defined herein, have the meanings set forth for each such term in the Development Agreement.

ARTICLE II
PREMISES; USAGE OF CITY PARKING GARAGE

2.1 Lease of the Designated Parking Spaces. City does hereby lease and rent unto the Lessee and the Lessee does hereby take as Lessee under this Lease for the Lease Term, and upon all of the terms and conditions set forth herein, on an exclusive, reserved basis, the number of Designated Parking Spaces allocated to the Retail Component on Exhibit A hereto under the column entitled "Designated Parking Spaces" (such number being 131) and located within the City Parking Garage as set forth in the Parking Plan, to be used by the Lessee only for the Permitted Use. The City hereby agrees with Lessee that, throughout the Lease Term, upon the terms and conditions set forth herein, the City shall provide Lessee and the Lessee Parties with access to the City Parking Garage, as and to the extent contemplated herein.

2.2 Prepaid License to Use City Parking Garage; Undesignated Parking Spaces. In addition to the lease of the Designated Parking Spaces in the manner set forth in Section 2.1 hereof, the City hereby agrees that, throughout the Lease Term, upon the terms and conditions set forth herein, Lessee shall have, and is hereby granted, a non-exclusive prepaid license (with the right to sub-license to the Lessee Parties) to use the Undesignated Parking Spaces within the City Parking Garage on a first-come, first-served basis with the general public. The license hereby granted is intended to allow the Lessee Parties to park in the City Parking Garage to the same extent as members of the general public, on a first-come, first-served basis; except that, due to the City's use of exit technology and/or parking cards, tokens or similar access devices at the City Parking Garage as more particularly described in Section 2.5 hereof, the Lessee Parties will not be charged for parking in the City Parking Garage. Lessee and City agree that the City Parking Garage contains fifty (50) Undesignated Spaces that may from time to time be leased by the City. The City covenants and agrees that, so long as this Lease is in effect, (i) the City will not at any time have in effect leases for more than fifty (50) of the Undesignated Spaces, and (ii) with respect to any spaces so leased, the City will not issue more than 1 parking card or other access device per space so leased and will not allow such parking lessee or lessees to use more than fifty (50) Undesignated Spaces at any time.

2.3 Shared Use Parking Garage.

(a) City and Lessee acknowledge that the City Parking Garage (excluding the Fourth Level) has been developed based upon a "shared use parking concept," the principle of which is each land use in the vicinity of the City Parking Garage has a different use pattern during the daytime/nighttime. Based upon such shared use parking concept, the Lessee and the Related Lessees have been allocated a fixed number of Designated Parking Spaces under this Lease and the Related Leases in accordance with the Parking Allocation.

(b) City, with input from the Lessees, covenants and agrees to establish appropriate methods of parking access control, payment for public parking, and access to the Designated Parking Spaces and the Undesignated Parking Spaces from time to time so that the City Parking Garage operates as efficiently and effectively as practicable at all times and to attempt to provide Lessee reasonable access to the Designated Spaces allocated to it under this Lease and reasonable access to the Undesignated Spaces on the same basis as that of the general public.

(c) Furthermore, upon request of Lessee, the City will promptly provide enforcement against vehicles that are unlawfully parked in Lessee's Designated Parking Spaces, including towing and ticketing at the reasonable discretion of the City.

2.4 Designated Parking Spaces. (a) Lessee's Designated Parking Spaces will be located as shown on the Parking Plan or as the City and Lessee, in its sole and absolute discretion, may otherwise agree from time to time; however, (i) the parties hereto agree that it is their intention that the Lessee's Designated Parking Spaces will, to the maximum extent reasonably possible, be located on the first floor in a location that provides logical parking and pedestrian access ways to and from the Retail Component, (ii) in no event shall the City be requested to locate a Designated Space in a parking space that has already been deemed a Designated Space for another of the Lessees unless such other lessee has provided its prior written consent, and (iii) in no event shall the City be requested to locate a Designated Space in a Health Care Authority Reserved Space. At all times during the Lease Term, Lessee shall have the right to require that the City cause the Designated Parking Spaces to be painted and to erect such reasonable signage, as shall indicate to the public the use of such spaces for customers of the Retail Component. Furthermore, with respect to the Lessee's Designated Parking Spaces only, Lessee will have the right, at its sole cost, to engage courtesy personnel (though such personnel may not hold themselves out to be personnel or employees of the City, or to have enforcement authority on behalf of the City Parking Garage or any other Person) to educate the public as to appropriate parking areas in the City Parking Garage and to place non-adhesive paper flyers on the windshields of vehicles that are not lawfully parked within a Designated Space. Notwithstanding the foregoing, in no event shall any agent, employee or contractor of Lessee have any right or authority to make physical contact with any Person within the City Parking Garage, or to affix any item on, or tow or otherwise make contact with any vehicles located therein.

(b) The City will utilize technology in the operation of the City Parking Garage that enables Lessee Parties parking in Designated Spaces to exit the City Parking Garage without further payment, or shall provide parking cards, tokens or similar exit devices for Designated

Parking Spaces in such form as the Lessee and the City shall determine so that the Lessee Parties may obtain ingress and egress to the Designated Spaces.

2.5 Undesignated Parking Spaces. City will utilize technology in the operation of the City Parking Garage that enables Lessee Parties who have had their parking tickets validated by the appropriate clamshell validator (such validators to be procured at the cost and expense of Lessee and to be of the type identified by the City as working with the exit technology utilized by the City at the City Parking Garage) to exit the City Parking Garage without further payment, or shall provide parking cards, tokens or similar exit devices for Undesignated Parking Spaces in such form as the Lessee and the City shall determine so that the Lessee Parties may obtain ingress and egress to the City Parking Garage on a first-come, first-served basis to the same extent as members of the general public without further payment. Upon written request, the City shall issue a reasonable number of access cards (or similar devices) to those of the Lessee Parties that are employees of the commercial establishment(s) comprising the Retail Component that will allow such employees to exit the City Parking Deck without further payment; provided, however, the City shall be reimbursed by Lessee the actual cost of each card or access device so issued, or for any replacement cards or access devices.

2.6 Limitation on Amendments. The parties acknowledge that, pursuant to the Parking Allocation, each Related Lessee has been allocated a certain number of Designated Parking Spaces for use by such Related Lessee applicable to its respective component of the Development Project. The Lessee and the City hereby covenant and agree that in no event may the number of Designated Parking Spaces applicable to any Related Lessee be increased without (1) the recommendation of the Approved Parking Garage Consultant based upon a study of the operation of the City Parking Garage, and (2) the written approval of the City (in its absolute discretion) and Lessee (in its absolute discretion). In addition to, and not in limitation of, the foregoing, Lessee hereby agrees not to request that the City agree to any increase in the number of Designated Parking Spaces allocated to Lessee under the Parking Allocation without first obtaining, at Lessee's sole cost and expense, the affirmative recommendation of the Approved Parking Garage Consultant based upon a study of the operation of the City Parking Garage.

2.7 Reporting/Monitoring of Parking Allocation. (a) The parties hereto understand that Lessee and each of the Related Lessees shall from time to time require certain information relating to the actual usage of the portion of the City Parking Garage that is inside the access gates by Lessee Parties and the Lessee Parties of the Related Lessees. Accordingly, the City hereby agrees to obtain a license to enable Lessee to access the technology utilized at the portion of the City Parking Garage that is inside the access gates for the sole purpose of gathering data respecting the actual usage of the portion of the City Parking Garage that is inside the access gates (less and except the Health Care Authority Reserved Spaces unless the Health Care Authority provides prior written consent for such information to be accessed by Lessee) to the extent permitted by such technology; provided, (i) such license shall in no way permit Lessee to gain access to the name or any personal information respecting any particular parker within the City Parking Garage; (ii) such license shall not give Lessee access to information respecting any other City parking garage; and (iii) Lessee shall pay the full cost of the City to procure and

maintain such license. Lessee hereby consents to the provision by the City of such license right to the other Lessees under the Related Leases.

(b) City further covenants and agrees to utilize such additional technology within the portion of the City Parking Garage that is inside the access gates as may be reasonably requested by Lessee and all Related Lessees to enable them to evaluate the usage by each Related Lessee of the City Parking Garage (less and except the Health Care Authority Reserved Spaces unless the Health Care Authority provides prior written consent for such information to be accessed by Lessee), provided: (i) Lessee and/or the Related Lessees pay all costs of such technology; (ii) such technology does not impair or interfere with the City's operation of the City Parking Garage, or otherwise limit or alter the availability of the City Parking Garage to the general public, (iii) such technology does not permit Lessee or any Related Lessee to have access to personal information respecting any parker within the City Parking Garage, and (iv) the City shall have no obligation to monitor or report on the usage of parking spaces located outside of the access gates in the City Parking Garage.

ARTICLE III
TERM

3.1 Initial Term. Subject to and upon the terms and conditions set forth herein, this Lease shall continue in force for a term of seventy-five (75) years ("Initial Term") commencing on the Commencement Date. The Initial Term shall terminate on the last day of the month following the seventy-fifth (75th) anniversary of the Commencement Date. The parties shall, within ten (10) days after the Commencement Date, execute a Confirmation of Lease in the form of Exhibit "C" setting forth the Commencement Date.

3.2 Extension Term. Provided that no Event of Default (as hereinafter defined) by Lessee shall then have occurred and be continuing, Lessee shall have the option to extend the Lease Term for one (1) extension term of twenty-four (24) years or such lesser period of time as, when added to the Initial Term, shall equal 99 years from the execution date of this Lease (the "Extension Term") upon the terms and conditions as herein set forth. Lessee shall exercise its option to extend this Lease for the Extension Term by delivering written notice to City of its election to exercise such option not more than one hundred eighty (180), and at least one hundred twenty (120), days prior to the expiration of the Initial Term. The Extension Term shall be upon all of the terms and conditions contained in this Lease. As used herein "Lease Term" shall mean, collectively, the Initial Term and the Extension Term, and "Lease Year" shall mean each successive period of twelve (12) calendar months following the Commencement Date throughout the Lease Term. Notwithstanding anything contained herein to the contrary, Lessee shall not have the right to extend the Lease Term if as of the date of its notice purporting to exercise such extension option, or the final day of the Initial Term, an Event of Default has occurred which is continuing.

ARTICLE IV
RENTAL

4.1 Rental In consideration of this Lease, Lessee covenants and agrees to pay to City Rent comprised of General Expense Rent, Additional Services Rent, Capital Reserve Contributions, and Extraordinary Capital Costs Contributions, all as set forth in this Article IV.

4.2 General Expense Rent.

(a) Lessee covenants and agrees to pay to City "General Expense Rent" equal to $17.00 per Lessee Responsible Parking Space per calendar month; provided, (i) that at the end of each calendar year during which this Lease is in effect the City shall determine the amount, if any, by which the total actual utility cost of the City Parking Garage, less the actual utility cost of the Fourth Level, which shall be sub-metered (the "Utility Cost") for such calendar year exceeds the sum of $31,760 (any such excess, the "Utility Cost Excess"), and there shall be added to the General Expense Rent due during each month of the immediately succeeding calendar year such amount as shall equal the product of Utility Cost Excess multiplied by the Lessee's Applicable Share, divided by 12.

(b) General Expense Rent (other than that portion thereof constituting Utility Cost) shall be increased annually as of the General Expense Rent Adjustment Date by the annual average percentage change in CPI for the immediately preceding calendar year; provided, that in no event shall General Expense Rent be decreased below amount of General Expense Rent for the immediately preceding Lease Year.

(c) General Expense Rent shall be payable in advance on the Commencement Date and thereafter on or before the fifth (5th) day of each calendar month during the Lease Term. If the Commencement Date occurs on a date other than the first day of a month, General Expense Rent for such month shall be prorated on the basis of the actual days in such month.

4.3 Additional Services.

(a) To the extent additional services of the City are requested by Lessee in writing (for example, parking attendants or enforcement personnel), the cost of such additional services will be paid by the Lessee as Additional Rent under this Lease ("Additional Services Rent"). Additional Services Rent will be payable monthly to City in addition to General Expense Rent.

(b) If the City determines, in its reasonable discretion, that, in order to ensure the efficient and effective operation of the City Parking Garage in the manner contemplated in Section 2.3(b) hereof, the services of one or more parking attendants are required, then the City shall be entitled to charge, and Lessee hereby agrees to pay, Additional Rent in an amount equal to Lessee's Applicable Share of the City's actual expenses incurred in obtaining such services for the City Parking Garage, times 0.78. Additional Rent payable under this Section 4.3(b) shall commence on the first day of the calendar month immediately following the date on which the City provides written notice to Lessee of the hiring of the parking attendant(s) described in this Section. Notwithstanding the foregoing, Lessee shall not be responsible for paying or

reimbursing the City for any such costs that are attributable solely to the Health Care Authority Reserved Spaces.

(c) In addition to the foregoing, if the City determines, in its reasonable discretion, that other services beyond those contemplated in this Lease are reasonably required to effectively operate the City Parking Garage in accordance with the Operating Standard, then the City shall be entitled to charge, and Lessee hereby agrees to pay, Additional Rent in an amount equal to Lessee's Applicable Share of City's actual cost of such services incident only to the City Parking Garage, times 0.78, payable on a monthly basis; provided, that the City hereby agrees that Lessee's Rent payments under this Lease shall not be increased pursuant to this Section 4.3(c) by more than five percent (5%) in any single Lease Year. Notwithstanding the foregoing, Lessee shall not be responsible for paying or reimbursing the City for any such costs that are attributable solely to the Health Care Authority Reserved Spaces.

4.4 Capital Reserve Contributions.

(a) In addition to General Expense Rent and Additional Rent described in Section 4.3 hereof, Lessee shall pay its Applicable Share of $27,680.00[1] (the "Capital Reserve Contributions") on an annual basis as set forth in Section 4.4(b).

(b) Capital Reserve Contributions shall be payable to the City annually commencing on the first (1st) anniversary of the Commencement Date and on each successive anniversary thereafter during the Lease Term.

(c) Capital Reserve Contributions shall be increased as of the Capital Reserve Adjustment Date by the aggregate annual average percentage change in CPI for the five (5) year period immediately prior to such Capital Reserve Adjustment Date; provided, that in no event shall the Capital Reserve Contributions be reduced below the amount thereof as in effect as of the last day of the Lease Year immediately preceding the Capital Reserve Adjustment Date.

4.5 Extraordinary Capital Costs Contributions. If there shall occur unforeseen, extraordinary capital repairs (excluding latent defects or insurable events) (the "Extraordinary Capital Repairs") prior to the 50th Lease Year and if the Approved Parking Consultant recommends that such Extraordinary Capital Repairs should be undertaken in order to maintain the City Parking Garage in compliance with the Operating Standard, the City will cause such Extraordinary Capital Repairs to be made, initially at the City's cost. City will provide Lessee with an itemized statement of City's actual costs incurred in making the Extraordinary Capital Repairs (though the City shall subtract such costs incurred in the making of Extraordinary Capital Repairs to the Fourth Level), together with such supporting documentation as shall be reasonably required by Lessee. Upon presentation of such documented costs, Lessee will be obligated pay to City its Applicable Share of such documented costs in equal monthly

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[1] *Such number calculated by multiplying $40.00 times the total number of parking spaces in the City Parking Garage, excluding the Fourth Level.*

installments over the lesser of the remaining months in the Initial Term or 360 months, as Additional Rent hereunder, with interest thereon at six percent (6.0%) per annum.

4.6 Reserved.

4.7 Rent Charged for Parking. In addition to the foregoing, in the event Lessee attempts to impose charges or fees respecting use of the City Parking Garage to any tenant or other user within the Development Project, the amount of any such charges or fees in excess of the rent payable by Lessee pursuant to Article IV hereof shall be remitted to the City immediately and without demand by the City.

4.8 General Provisions.

(a) Rent and other sums to be paid by Lessee hereunder shall be payable in lawful money of the United States of America.

(b) All payments shall be made by Lessee to City without notice or demand, deduction or offset, except as otherwise expressly provided herein, at the address of City set forth below or at such other address as may be designated by City from time to time.

(c) All amounts payable by Lessee to City under the terms of this Lease other than the General Expense Rent are collectively called "Additional Rent."

ARTICLE V
PERMITTED USE

5.1 Use. The Premises shall be used by Lessee and Lessee Parties and occupied for operation of the City Parking Garage serving the Retail Component of the Development Project and the members of the general public (the "Permitted Use"). Any other use of the Premises by Lessee shall require the prior written approval, in each instance, of the City by the Mayor or the Director of Parking and Public Transit, such approval not to be unreasonably withheld, conditioned or delayed.

ARTICLE VI
CONSTRUCTION OF CITY PARKING GARAGE

6.1 City's Work. City will cause to be performed all work in connection with the construction of the City Parking Garage and will cause to be taken all steps necessary to deliver the Premises to Lessee in a fully completed condition ready for lawful use and occupancy ("turn key") for the Permitted Use, in accordance with the Plans and Specifications, the Development Agreement and this Lease (the "City Work"). The City will work in good faith towards a September 30, 2013 target completion date for the City Parking Garage. However, the City shall not be liable for the failure to deliver possession of the Premises, and the entering into of this Lease shall not be considered as a guarantee or assurance of possession until same is actually delivered. Notwithstanding the foregoing, (i) City will assign Lessees all liquidated damages under its construction contracts to the extent that the City Parking Garage is not timely

completed, and (ii) City will enforce all appropriate remedies against the contractor and design professional to the extent the City determines the City Parking Garage is not constructed in a workmanlike manner compliant with the approved Plans and Specifications and with all applicable building codes and regulations. City makes no representation or warranty as to the construction quality of the City Parking Garage, and makes no commitment as to the date the City Parking Garage will be completed.

6.2 Delivery of Possession. City shall give Lessee thirty (30) days' written notice in advance of the date on which the City Parking Garage is expected to be completed. Within five (5) days following the actual date on which the City Parking Garage is completed, City shall deliver possession of the Premises to Lessee. City shall use commercially reasonable efforts to cause to be completed all punchlist and other requirements included in City's Work, no later than thirty (30) days after delivering possession of the Premises to Lessee.

6.3 Completion Documents. Simultaneously with delivery of possession of the Premises to Lessee, City shall furnish Lessee a certificate of occupancy or any equivalent permit or certificate which may be required by any governmental authority having jurisdiction prior to commencement of business operations at or from the Premises (the "Completion Documents").

6.4 Lessee's Inspection. Lessee shall, on or before the Commencement Date, examine the Premises, and satisfy itself with the physical condition thereof. Lessee's taking possession of the Premises shall be conclusive evidence of receipt of them in good order and repair, except as otherwise specified, and Lessee agrees that no representation as to condition or repair has been made except as is contained in this Lease and that no promise to decorate, alter, or improve the Premises has been made except such as is contained in this Lease.

ARTICLE VII
MAINTENANCE AND REPAIRS; REFURBISHMENT

7.1 Operating Standard.

(a) At all times during the Lease Term, City shall maintain, repair, and generally operate the City Parking Garage in a manner consistent with other City of Huntsville public parking garages (the "Operating Standard") at the time of any date of determination, and otherwise in material compliance with the preventative maintenance schedule set forth on Exhibit "D" attached hereto.

(b) City shall at its cost be responsible for all operating expenses and maintenance of the Premises, including but not limited to, annual cost of operation of the Premises, maintenance wages, salaries, payroll taxes and insurance of any personnel employed by City, janitorial costs (including regular sweeping of the floors of the Premises), utilities, waste disposal, equipment and supplies relating to the operation and use of the Premises as a parking garage. All painting (including painting necessary to remove any graffiti of the walls and ceiling of the City Parking Garage) shall be performed by City at its expense. Regular cleaning and maintenance of garage premises stairwells, garage elevators and garage elevator lobbies shall be performed by City at its expense.

(c) Lessee shall permit no waste of the Premises nor allow the same to be done, but Lessee shall take good care of the same and Lessee is and shall be responsible and liable for any damage done to the Premises by Lessee or Lessee's officers, agents, employees, and contractors. City shall permit no waste of the Premises nor allow the same to be done, but City shall take good care of the same.

(d) Lessee shall on the termination of this Lease surrender to City the quiet and peaceable possession of the Premises in like good order as at the Commencement Date, normal wear and tear excepted, and shall not remove any item which has been affixed to the Premises.

7.2 Capital Reserve.

(a) City shall establish a capital repair reserve (the "Capital Reserve") to be used in connection with Capital Repair Items for those portions of the City Parking Garage other than the Fourth Level which will be funded from the Capital Reserve Contributions made by the Lessee under this Lease and from the Capital Reserve Contributions made by the Related Lessees under the Related Leases. The Capital Reserve shall be established and held by the City in a segregated account for the benefit of the City Parking Garage (other than the Fourth Level) and shall not be commingled with the general funds of the City.

(b) The City shall have the right to withdraw and use funds from the Capital Reserve to pay for Capital Repair Items or Refurbishment Repairs, as and to the extent that City has determined, in its reasonable discretion, that such Capital Repair Items or Refurbishment Repairs are necessary to maintain the those portions of the City Parking Garage other than the Fourth Level in compliance with the Operating Standard. To the extent that such repairs are in excess of $100,000, the City's determination shall be supported by a written recommendation from the Approved Parking Consultant that such repairs are necessary to maintain those portions of the City Parking Garage other than the Fourth Level in compliance with the Operating Standard.

7.3 Refurbishment Repairs.

(a) At any time after the 50th Lease Year, City shall have the right to obtain a report from the Approved Parking Consultant to determine the scope of rehabilitation, refurbishment, or replacement necessary to continue the efficient operation of the City Parking Garage in compliance with the Operating Standard (the "Refurbishment Repairs").

(b) City will be allowed to use the funds in Capital Reserve to fund the cost of the Refurbishment Repairs referable to any portions of the City Parking Garage other than the Fourth Level. If such Refurbishment Repairs are of a nature where it is difficult to determine if the Fourth Level should bear a portion of such costs (e.g., general structural repairs or other repairs not solely benefitting a specific level or group of specific levels of the City Parking Garage), the City will make a good faith and reasonable allocation of such costs to the Fourth Level. If the total funds contained in the Capital Reserve are not sufficient to pay the cost of constructing such Refurbishment Repairs, City will provide a written statement to Lessee setting forth the amount of the anticipated shortfall and the amount that will be due and payable by Lessee (such amount not to exceed Lessee's Applicable Share of the overall shortfall) (the "Refurbishment

Contribution"). Lessee will be required to pay its Refurbishment Contribution within ninety (90) days of City's written notice as Additional Rent under this Lease. To the extent Lessee fails to pay its Refurbishment Contribution within such ninety (90) days period, the same will constitute an Event of Default of the Lessee hereunder.

(c) Notwithstanding the foregoing, or any other provision contained in this Lease to the contrary, if Lessee timely pays its Refurbishment Contribution, but less than all of the Related Lessees pay their respective Applicable Share of the shortfall described above within ninety (90) days of City's written notice to such Related Lessees in accordance with the Related Leases, then the City's obligations under this Lease shall automatically, and without any further action on the part of any Person, be reduced and the City may provide a smaller scale parking garage or surface parking to Lessee hereunder and, so long as such smaller scale parking garage or surface parking provides Lessee with the same number of Designated Parking Spaces and provides additional (but in no event beyond 416) parking spaces (available on a first-come, first-served basis with the general public) to satisfy Lessee's average peak hour (peak hour being a period of time within any 24 hour day as determined by the City and the Lessee) usage of Undesignated Parking Spaces at the City Parking Garage for the immediately succeeding three years prior to the delivery of the report described in paragraph (a) of this Section 7.3, the City shall be deemed to have satisfied its obligations hereunder and Lessee's obligations hereunder shall continue unabated throughout the remainder of the Lease Term.

ARTICLE VIII
INSURANCE; INDEMNITY

8.1 City's Insurance Requirements.

(a) At all times during the Lease Term, City shall maintain, provide or cause to be provided, at its own expense, insurance against loss or damage to the City Parking Garage by fire, wind storm, hail and such other risks as are included in so called "all-risk extended coverage" endorsements, all written at replacement cost value (exclusive of the cost of foundations, excavations and footings), and with a replacement cost endorsement, naming the City as "loss payee." If required by Alabama law, in connection with the operation and maintenance of the City Parking Garage, City shall maintain and keep in full force or effect workers' compensation insurance to the extent required by Alabama law.

(b) City shall deliver to the Lessee copies of the policies of insurance required under Section 8.1(a) or certificates evidencing the existence and amounts of such insurance with loss payable clauses as required by this Article VIII and will list Lessee and Lessee's mortgage lender as additional insured as their interests may appear. No such policy shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days prior written notice to Lessee and Lessee's Mortgagee (as hereafter defined). City shall, at least thirty (30) days prior to the expiration of such policies, furnish Lessee and Lessee's Mortgagee with renewals or "binders" thereof. All insurers shall have a rating of [A-V] or better, and shall be qualified to do business and in good standing under the laws of the State of Alabama.

(c) If City at any time during the Lease Term fails to procure or maintain any insurance required hereunder or to pay the premiums therefor, Lessee shall have the right (but not the obligation), unless within ten (10) days after written notice City procures the same, to procure the same and to pay any and all premiums thereon, and any amounts paid by Lessee in connection with the acquisition of such insurance may be deducted from rent due hereunder.

8.2 Lessee's Insurance Requirement.

(a) Lessee shall, at Lessee's expense, obtain and keep in force during the Lease Term commercial general liability insurance against claims of personal injury or death and property damage caused by an occurrence upon, in or about the Premises, affording a minimum coverage of not less than $1,000,000 combined single limit and naming each of the City and the Huntsville Housing Authority as an "additional insured."

(b) Lessee shall deliver to the City copies of the policies of insurance required under Section 8.2(b) or certificates evidencing the existence and amounts of such insurance with additional insured clauses as required by this Article VIII. No such policy shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days prior written notice to City. Lessee shall, at least thirty (30) days prior to the expiration of such policies, furnish City with renewals or "binders" thereof. All insurers shall have a rating of [A-V] or better, and shall be qualified to do business and in good standing under the laws of the State of Alabama.

(c) If Lessee at any time during the Lease Term fails to procure or maintain any insurance required hereunder or to pay the premiums therefor, the City shall have the right (but not the obligation), unless within ten (10) days after written notice Lessee procures the same, to procure the same and to pay any and all premiums thereon, and any amounts paid by City in connection with the acquisition of insurance shall be due and payable by the Lessee to City within thirty (30) days after written demand to Lessee, and Lessee shall pay to City upon demand the full amount so paid and expended by Lessee. Failure to pay any amounts so due shall constitute an Event of Default by Lessee hereunder.

8.3 Waiver of Subrogation. Notwithstanding anything to the contrary contained in this Lease, City and Lessee each waive any and all rights to recover against the other, or against the officers, directors, shareholders, partners, joint venturers, employees, agents, customers, invitees or business visitors of such other party, for any loss or damage to such waiving party arising from any cause that is covered by any property insurance carried pursuant to this Lease, or any other property insurance actually carried by such party, **EVEN IF SUCH LOSS OR DAMAGE SHALL HAVE BEEN CAUSED BY THE FAULT OR NEGLIGENCE OF THE OTHER PARTY OR ANYONE FOR WHOM SUCH PARTY MAYBE RESPONSIBLE.** City and Lessee, from time to time, will request their respective insurers to issue appropriate waiver of subrogation rights endorsements to all property insurance policies carried in connection with the Premises or the contents of same.

8.4 Blanket Policies. Any insurance provided for in this Article VIII may be effected by a blanket policy or policies of insurance, or under so called "all-risk" or "multi peril" insurance policies, provided that the amount of the total insurance available with respect to the Premises shall provide coverage and indemnity at least equivalent to separate policies in the amounts herein required, and provided further that in other respects, any such policy or policies shall comply with the provisions of this Article. Any increased coverage provided by individual or blanket policies shall be satisfactory, provided the aggregate liability limits covering the Premises under such policies shall otherwise comply with the provisions of this Article.

8.5 Indemnity. Lessee shall indemnify and hold harmless City from and against any and all claims arising from the Lessee's negligence or willful misconduct in the operation or use of its Premises, or arising from any negligence or willful misconduct of any of the Lessee Parties from and against all costs, attorney's fees, expenses and liabilities reasonably incurred in the defense of any such claim or any action or proceeding bought thereon (provided, however, that Lessee shall have no obligation to indemnify, defend or hold harmless City to the extent such claims are caused by the negligence or willful misconduct of City, its officers, agents, employees or contractors); and in case any action or proceeding be brought against City by reason of any such claim, Lessee upon notice from City shall defend the same at Lessee's expense by counsel chosen by Lessee, unless City shall have a reasonable objection to same. Any of Lessee's indemnification obligations under this Lease shall also extend to the Federal Transit Administration (the "FTA") and Federal Department of Transportation (the "DOT") so long as the City Parking Garage is subject to any federal interest. City acknowledges and agrees that this indemnity shall be limited to claims against the Lessee and in no event shall the same extend to the individual members of Lessee or Lessee's Mortgagee. The provisions of this Section 8.5 shall survive the termination of this Lease.

8.6 Exemption from City Liability. Lessee hereby agrees that City shall not be liable for injury to Lessee's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Lessee, Lessee's employees, tenants, customers, invitees, guests, contractors, visitors, or any other person in or about the Premises, nor shall City be liable for injury to the person of Lessee, Lessee's agents, employees, tenants, customers, invitees, guests, contractors, or visitors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wire, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, where the said damage or injury results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part and which are not the result of the actions of the City. **In addition to, and not in limitation of, the foregoing, Lessee hereby acknowledges and agrees, for itself and on behalf of its agents, employees, tenants, customers, invitees, guests, contractors, and visitors, that the use of the City Parking Garage by any person is done at his, her or its own risk, and that the City shall not be responsible for any loss, damage or expense incurred by any user of the City Parking Garage, including, without limitation, any loss or damage to any vehicle, or to any personal property contained within or on any such vehicle. The foregoing shall in no event, however, be deemed to constitute a release of the City from claims due to the actions, willful misconduct, or inaction of the City in violation of this Lease.**

8.7 Damage, Destruction, Obligation To Rebuild, Rent Abatement. In the event of any damage or full or partial destruction or loss of the City Parking Garage, then, to the extent proceeds from insurance, less the amount of such proceeds the City is obligated to remit or to cause to be remitted to the Health Care Authority under the Health Care Authority Lease, cover the cost thereof, the City shall repair any damage or rebuild the City Parking Garage (less and except the Fourth Level) to its condition immediately prior to such damage or destruction. The City will commence such repair or rebuilding as promptly as practicable and will pursue such work to completion in good faith and with all due diligence. For any total loss or damage that exceeds fifty percent (50%) of the total area of the City Parking Garage, the Rent payable under Article IV shall abate until such damage has been repaired or reconstruction has been completed; provided, that nothing contained in this Section 8.7 shall, or shall be deemed to, modify or otherwise affect Lessee's obligations under Article VII. If such damage or destruction occurs during the final twelve (12) months of the then-current Lease Term, City may in its discretion elect not to rebuild, and in such event all insurance proceeds payable as a result of the loss shall be paid over to City, and upon such payment this Lease shall terminate and be of no force and effect.

ARTICLE IX
UTILITIES AND TAXES

9.1 Utilities, Taxes and Other. City will pay all utility charges for the Premises, and all sewer service charges, garbage collection fees, occupancy taxes and any and all other municipal license fees, or charges which may hereinafter be imposed by the county or municipality wherein the Premises is located. City shall pay all ad valorem taxes (if any) for the Premises.

ARTICLE X
CONSTRUCTION OF RETAIL COMPONENT

10.1 Construction of Retail Component. Lessee covenants and agrees to cause the Retail Component to be constructed by the second anniversary of the execution of this Lease.

10.2 Termination of Lease. (a) In the event Lessee has not completed construction of the Retail Component by the time set forth in Section 10.1 hereof, the City shall have the right to notify Lessee in writing of the same and (i) if Lessee fails to have completed construction of the Retail Component or to have Materially Commenced Construction within nine (9) months of such notice (the "Cure Period"), or (ii) if at any time after the close of the Cure Period, Lessee is not taking all commercially reasonable efforts to complete construction of the Retail Component as contemplated herein and in the Development Agreement, the City shall have the right to terminate this Lease. As used herein, "Materially Commenced Construction" shall mean (1) a building permit for the Retail Component shall have been obtained, and (2) the foundation for the Retail Component shall have been poured.

ARTICLE XI
COVENANT OF TITLE AND QUIET ENJOYMENT

11.1 Representations and Warranties on Execution of Lease. City hereby represents and warrants that: (i) City is the owner of the Premises and has the full right and power to make this Lease; (ii) on paying the Rent herein reserved and on performance of the terms and conditions of this Lease on the part of Lessee to be performed, Lessee shall peacefully and quietly enjoy the Premises and the other benefits afforded hereby at all times during the Lease Term and Lessee shall have uninterrupted access to the Premises at all times during the Lease Term to the same extent as the general public; and (iii) the Premises are now zoned for, and are free from all encumbrances which would materially interfere with, Lessee's use of the Premises for the Permitted Use.

11.2 [Reserved.]

ARTICLE XII
SUBLEASE AND ASSIGNMENT

12.1 Sublease and Assignment. Lessee shall not partially assign or transfer this Lease to any third party without City's prior written consent in City's discretion, and Lessee shall not assign or transfer this Lease in whole to any third party without City's prior written consent, which consent will not be unreasonably withheld, conditioned, or delayed; notwithstanding the foregoing, City's consent shall not be required for a transfer of this Lease to any purchaser of the Retail Component. To the extent that City fails to grant its approval within thirty (30) days after its receipt of a written request from Lessee, with submission of the required information on the proposed transferee, the City's consent shall be deemed approved. Lessee may assign this Lease and Lessee's interest herein to any lender as collateral for any leasehold mortgage on this Lease, without obtaining the consent of the City. Any transfer, assignment deed, or deed in lieu of foreclosure to any such lender made pursuant to such lender's rights under its collateral documents shall be a permitted transfer or assignment and will not require the consent of City.

12.2 Assignment by City. In the event of the transfer and assignment by City of its interest in this Lease to a person expressly assuming City's obligations under this Lease, City shall thereby be released from any further obligations hereunder, and Lessee agrees to look solely to such successor in interest of City for performance of such future obligations. Any security given by Lessee to secure performance of Lessee's obligations hereunder shall be assigned and transferred by City to such successor in interest and City shall thereby be discharged of any further obligation relating thereto.

ARTICLE XIII
DEFAULTS; REMEDIES

13.1 Lessee Event of Default. The occurrence of any of the following shall constitute an "Event of Default" by Lessee hereunder:

(a) Lessee shall fail to pay when due any installment of Rent or Additional Rent owing to City or any other obligation under this Lease involving the payment of money to City and such failure shall continue unremedied for a period of thirty (30) days after written notice of such failure is received by Lessee.

(b) Lessee shall fail to comply with any provision of this Lease, other than as described in subsection (a) above, and shall not cure such failure within sixty (60) days after receipt of written notice thereof from City (except that this 60-day period shall be extended for a reasonable period of time if the failure is not reasonably capable of cure within said 60-day period and Lessee promptly commences efforts to cure such failure and continues diligently thereafter all efforts necessary to cure such failure).

(c) Lessee shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.

(d) Lessee shall file a petition under any section or chapter of the federal Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, or Lessee shall be the subject of proceedings filed against Lessee under any such laws, and such proceedings are not discharged within sixty (60) days after commencement.

(e) A receiver or trustee shall be appointed for the Premises or for all or substantially all of the assets of Lessee and such receiver or trustee is not discharged within sixty (60) days following the date of appointment.

(f) Lessee's use of the Retail Component shall be changed without the prior written consent of the City prior to the earlier of (i) the seventh (7th) anniversary of the Commencement Date, or (ii) such time as Lessee, either independently or in connection with all Related Lessees, demonstrates to the reasonable satisfaction of the City that the City Tax Revenues generated by the construction and operation of the Development Project and collected by the City exceed the sum of $7,500,000.

13.2 Remedies. Upon the occurrence of any Event of Default, subject to the City's compliance with the provisions of Section 15.1, the City shall have the option to pursue anyone or more of the following remedies:

(a) Terminate this Lease by written notice to Lessee and enforce all of City's other rights and remedies under this Lease; or

(b) Terminate Lessee's rights respecting its Designated Parking Spaces and its rights to use the Undesignated Parking Spaces on a first-come, first-served basis without additional payment, in which case any Designated Parking Spaces allocated to Lessee will be converted to Undesignated Parking Spaces and any access equipment or rights, parking cards, tokens, or access equipment or licenses allocated to Lessee for Undesignated Parking Spaces will be deactivated and forfeited; or

(c) Seek equitable or injunctive relief designed to cure the event of default or enforce the obligation with respect to such default, with the unsuccessful party in any such litigation being liable for all of the successful party's litigation costs, expenses and reasonable attorney's fees (including without limitation, such costs, expenses and fees incurred for any appeals), all of which shall be included as part of any final judgment or decree with respect thereto; and/or

(d) Pursue any other remedy now or hereafter available to City under Alabama law.

13.3 City Event of Default. If City shall fail or refuse to perform or comply with any of its material obligations and covenants under this Lease, and shall continue in default for a period of thirty (30) days after Lessee has given City written notice of such default (specifying such default with particularity) and demand of performance, unless such default cannot reasonably be cured within thirty (30) days of written notice from Lessee, in which case a reasonable period of time shall be allowed for such cure, Lessee may, but shall not be obligated to, remedy same and pursue an action against City for specific performance (it being the understanding of the parties hereto that the obligations of the City hereunder are subject to the limitations imposed on public bodies, municipalities and public corporations by the Constitution of the State of Alabama and laws affecting the use and maintenance of public property; accordingly, Lessee shall not be entitled to any other damages whatsoever, including, without limitation, incidental or consequential damages, whether arising at law or in equity); however, it shall be the duty of Lessee in any event to use best efforts to mitigate Lessee's damages. Unless and until City fails to so cure any default after such notice, Lessee shall not have any remedy or cause of action by reason thereof. All obligations of City hereunder will be construed as covenants, not conditions. Any approval or consent of the City requested under this Lease pursuant to Sections 5.1, 13.1(f) or 2.6 shall be deemed granted if the City fails to respond otherwise within thirty (30) days of written request properly given.

ARTICLE XIV
RIGHT OF FIRST REFUSAL

14.1 Right of First Refusal. Throughout the Lease Term, City shall grant and Lessee shall have a right of first refusal in the event the City decides to sell the City Parking Garage, as and to the extent set forth in this Section 14.1; provided, however, that the right of first refusal shall not apply to any sale or transfer to another public authority, public corporation or other governmental entity or agency. Lessee shall have the right to match any bona fide purchase offer to the City for all or any part of the City Parking Garage. In the event City receives a bona fide written offer from a third party to purchase all or any part of the Parking Garage which City is willing to accept, City shall promptly deliver by hand or by certified or registered mail addressed to Lessee as provided herein and in the Related Leases, a copy of such offer, omitting the name of the proposed buyer, and Lessee may, within thirty (30) days after said copy is so mailed or delivered by hand, elect to purchase the Parking Garage on the same terms and conditions set forth in such offer. If Lessee shall not accept such offer in writing within the time herein specified, and thereafter the sale to said third party is consummated in accordance with the offer presented to Lessee, said right of first refusal shall be automatically and without notice extinguished, but all remaining terms, covenants and conditions of this Lease shall continue in effect, provided, however, that if, for any reason, the sale to said third party is not consummated, the first right of refusal shall be automatically and without notice restored as if said offer had never been made. If Lessee exercises this right of first refusal and accepts such offer, such written notice thereof to City shall create a binding purchase agreement between the parties upon the price, terms and conditions contained in the offer with respect to the Parking Garage or portion thereof covered by the offer.

14.2 Limitations on Right of First Refusal. Lessee hereby acknowledges that each of the Related Leases contains, and that the Health Care Authority Lease will contain, a right of first refusal granted to each of the Related Lessees thereunder and the Health Care Authority, that is identical to the terms set forth in Section 14.1. Notwithstanding the terms of Section 14.1 above, Lessee hereby acknowledges and agrees that, in the event that Lessee fails to exercise its right of first refusal in the manner and within the time period set forth in Section 14.1, the election of one or more of the Related Lessees or the Health Care Authority to exercise their respective rights of first refusal shall not constitute an offer giving rise to another right of first refusal on the part of Lessee. In addition to the foregoing, and not in limitation thereof, Lessee hereby agrees that, in the event that Lessee and one or more of the other Related Lessees exercise their respective rights of first refusal, Lessee's right to purchase the City Parking Garage on the terms and conditions contained in the offer received by the City, shall be limited to a right to purchase undivided interests in the property to be sold, jointly with the other Related Lessees who have timely exercised their respective rights of first refusal.

ARTICLE XV
MISCELLANEOUS

15.1 Mortgagee Provisions. If Lessee shall mortgage, pledge, collaterally assign or otherwise grant a security interest (the "Mortgage") its interest in and to this Lease to a Mortgagee (as hereafter defined), and if City is provided with a copy of such Mortgage and any related loan documents evidencing the indebtedness secured thereby that contain the definitions of the defined terms used therein by Lessee or such Mortgagee, together with a written statement confirming that such Mortgage is in full force and effect and encumbers the Lessee's interest in this Lease, then so long as the Mortgage shall remain unsatisfied, the following shall apply:

(a) City, upon serving Lessee with any notice of Default hereunder or under the provisions of, or with respect to, this Lease, shall also serve a copy of such notice upon the holder or holders of the Mortgage (such holder or holders, and its or their successors and assigns from time to time, each a "Mortgagee") (in the same manner as required by this Lease for notices to Lessee) at the address specified in the Mortgage, or at such other address as the Mortgagee shall designate in writing to City. No notice from City to Lessee shall be deemed to have been duly given unless and until a copy thereof has been so served.

(b) In the event that Lessee shall be in Default under this Lease, Mortgagee shall have the right, but not the obligation, to give written notice to the City within the existing cure periods set forth herein of its intention to, and thereafter remedy such Default, or cause the same to be remedied, within twenty (20) days after the expiration of all applicable grace or cure periods as provided in this Lease (or such additional period as may be necessary for Mortgagee to complete foreclosure in order for Mortgagee to complete cure), and City shall accept such performance by or at the instance of the Mortgagee as if the same had been made by Lessee.

(c) Lessee and City shall not enter into any agreement providing for the surrender, cancellation, amendment or modification of this Lease and City shall not accept a surrender of this Lease from Lessee, without the prior written consent of Mortgagee, and no such surrender,

cancellation, amendment or modification shall be binding on any Mortgagee who has not expressly consented to the same in writing.

15.2 Services. City shall in no event be liable for damages for stoppage of heat or electricity or water or for the machinery pertaining to the Premises breaking or getting out of order, or being out of repair provided, however, that nothing contained herein shall limit or reduce City's obligation to repair the Premises as provided in this Lease.

15.3 Right of Entry. City in person or by agent shall have the right at all reasonable times to enter the Premises and inspect the same.

15.4 Risk of Loss. All personal property placed in the Premises, or in the store rooms or in any other portion of said Premises or any place appurtenant thereto, shall be at the risk of Lessee, or the parties owning same, and neither City nor City's agents shall be liable for the loss of or damages to such property or for any act or negligence of any tenants or agents of tenants or occupants or of any other person whomsoever in or about the City Parking Garage, except for losses occurring as a result of the negligence or willful misconduct of City or City's agents.

15.5 Attorney's Fees and Waiver of Personal Property. In the event City employs an attorney to collect any rents or other charges due hereunder by Lessee, or to protect the interest of City under this Lease or in the Premises, or in the event Lessee violates any of the terms, conditions, or covenants on the part of the Lessee herein contained, the City shall be entitled to recover from Lessee, in addition to any damages awarded, the reasonable fees and expenses (including attorney's fees) incurred by the City provided that the City is the prevailing party in such action. Likewise, in the event Lessee employs an attorney to protect the interest of Lessee under this Lease or in the Premises, or in the event City violates any of the terms, conditions, or covenants on the part of the City herein contained, the Lessee shall be entitled to recover from City, in addition to any damages awarded, the reasonable fees and expenses (including attorney's fees) incurred by the Lessee provided that the Lessee is the prevailing party in such action..

15.6 No Implied Waiver. The failure of either party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Lease shall not be construed as a waiver or a relinquishment thereof for the future.

15.7 Partial Payment. No payment by Lessee or receipt by City of a lesser amount than the installments of Rent or Additional Rent due under this Lease shall be deemed to be other than payment on account of the earliest rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and City may accept such check or payment without prejudice to City's right to recover the balance of such rent or pursue any other remedy provided in this Lease.

15.8 Relationship of Parties. Nothing contained or implied in this Lease shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent, nor any other provisions

contained herein, nor any acts of the parties herein, shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Lessee.

15.9 Severability. The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

15.10 Time of Essence. Time is of the essence.

15.11 Incorporation of Development Agreement; Amendments. Except as contained in the Development Agreement, this Lease contains all agreements of the parties with respect to any matter relating to the Lessee's rights respecting certain portions of the Premises. This Lease may be modified in writing only, signed by the parties hereto. Except as otherwise stated in this Lease, Lessee hereby acknowledges that neither City nor any employees or agents of City has made any oral or written warranties or representations to Lessee relative to the condition or use by Lessee of said Premises and Lessee acknowledges that Lessee assumes all responsibility regarding the Occupational Safety Health Act, the legal use and adaptability of the Premises and the compliance thereof with all applicable laws and regulations in effect during the Lease Term except as otherwise specifically stated in this Lease. To the extent of any inconsistencies between this Lease and the Development Agreement, this Lease shall control.

15.12 Waivers. No waiver by either party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by either party of the same or any other provision. Either party's consent to or approval of, any act shall not be deemed to render unnecessary the obtaining of either party's consent to or approval of any subsequent act by the other party. The acceptance of rent hereunder by City shall not be a waiver of any preceding breach by Lessee of any provision hereof, other than the failure of Lessee to pay the particular rent to accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such rent.

15.13 Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or equity.

15.14 Covenants and Conditions. Each provision of this Lease performable by Lessee shall be deemed both a covenant and a condition.

15.15 Binding Effect; Choice of Law. This Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the State of Alabama.

15.16 Consents. Except as otherwise required herein, wherever in this Lease the consent of one party is required to an act of the other party such consent shall not be unreasonably withheld, conditioned or delayed.

15.17 Authority. Each of Lessee and the City hereby represents and warrants that it has the full right and authority to enter this Lease upon the terms and conditions herein set forth, and that upon Lessee paying the fees provided herein and observing and performing all of the

covenants, conditions and provisions on Lessee's part to be observed and performed hereunder, Lessee shall be entitled to the rights of Lessee herein set forth during the Lease Term hereof. The individuals executing this Lease have received authorization from the governing body of such party to execute this Lease and are legally capable of executing this Lease.

15.18 Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of said party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease, together with attorney's fees and expenses incurred by said party in obtaining such adjudication.

15.19 Compliance with Laws; Nuisance. In connection with Lessee's use of the Premises. Lessee shall comply with (i) all federal, state and municipal laws, including all laws, rules and regulations of the DOT or FTA, and including all zoning and land use laws and ordinances, rules and orders that apply to the Premises and (ii) any and all requirements of any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance covering the Premises. Lessee shall neither store, use or sell any article in or about the Premises, nor permit any act that would cause a cancellation of any policy upon the Premises. Lessee shall not occupy, suffer or permit the Premises or any part thereof to be used in any other way contrary to the law or the rules or regulations of any public authority. Any laws, regulations, rules or guidelines changed, amended or otherwise determined to be applicable by the federal government during the Lease Term shall be applicable to this Lease and Lessee agrees therewith. Lessee shall not commit, or suffer to be committed, any waste upon the Premises, or any public or private nuisance, or any other act or thing which may disturb the quiet enjoyment of any neighbors of the Premises. Lessee shall not conduct or permit to be conducted any sale by auction in, upon or on the Premises.

15.20 Memorandum of Lease. The parties hereto shall execute and acknowledge a memorandum of this Lease in the form attached as Exhibit "E," which shall be recorded in the real property records of the Office of the Judge of Probate of Madison County, Alabama. Lessee shall be responsible for all costs incurred in connection with the recording of such Memorandum.

15.21 Notices. Any notice to be given hereunder shall be deposited in the U.S. mail, duly registered or certified, with postage prepaid, and addressed as follows:

If to Lessee: Twickenham Square Venture, LLC
c/o Bristol Development Group
325 Seaboard Lane
Suite 190
Franklin, Tennessee 37067
Attn: Charles T. Carlisle
Facsimile: 615-627-9450

c/o PGM Properties, LLC
9019 Overlook Boulevard
Suite C-2
Brentwood, Tennessee 37027
Attn: John McReynolds
Facsimile: 615-370-8382

With a copy to: Burr & Forman LLP
420 North 20th Street
Suite 3400
Birmingham, AL 35203
Attn: Gail Livingston Mills, Esq.
Facsimile: 205-244-5681

If to City: City of Huntsville
308 Fountain Circle
Huntsville, Alabama 35801
Attention: City Attorney

or at such other address as either of the parties may hereafter designate in writing. Service of any such written notice shall be deemed complete five days after the mailing thereof, as hereinabove provided, or upon receipt, whichever is sooner.

15.22 Force Majeure. Notwithstanding anything in this Lease to the contrary, neither City nor Lessee shall be deemed in default with respect to the performance of any of the terms, covenants, and conditions of this Lease to be performed by them if any failure of its performance shall be due to Force Majeure (as such term is defined in the Development Agreement), and the time for performance by either party shall be extended by the period of delay resulting from or due to any of said causes.

IN WITNESS WHEREOF, City and Lessee have executed this Lease on the day and year first above written.

[The remainder of this page intentionally left blank.]

[Signature page to City Parking Garage Lease Agreement (Retail Component) for the City of Huntsville]

CITY:

ATTEST:

CITY OF HUNTSVILLE, an Alabama municipal corporation

By:_____
Clerk-Treasurer

By:_____
Tommy Battle
Mayor

STATE OF ALABAMA)
:
COUNTY OF MADISON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Tommy Battle and Charles E. Hagood, whose names as Mayor and Clerk-Treasurer, respectively, of the City of Huntsville, an Alabama municipal corporation, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this date, that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and official seal this the _____ day of _____, 2012.

[NOTARIAL SEAL]

_____
Notary Public
My Commission Expires:_____

[Signature page to City Parking Garage Lease Agreement (Retail Component) for Lessee]

Lessee:

TWICKENHAM SQUARE VENTURE, LLC

By: Bristol Twickenham Holdings, LLC,
Its Manager

By:_____
Charles Carlisle
Its Authorized Member

By: PM Twickenham Holdings, LLC,
Its Manager

By:_____
John McReynolds
Its Authorized Member

STATE OF ALABAMA)
:
COUNTY OF MADISON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of _____, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this date, that, being informed of the contents of the instrument, he executed the same voluntarily and with full authority as the act of said limited liability company, in its capacity as _____ of _____.

Given under my hand and official seal this the _____ day of _____, 2012.

[NOTARIAL SEAL]

_____
Notary Public
My Commission Expires:_____

EXHIBIT A

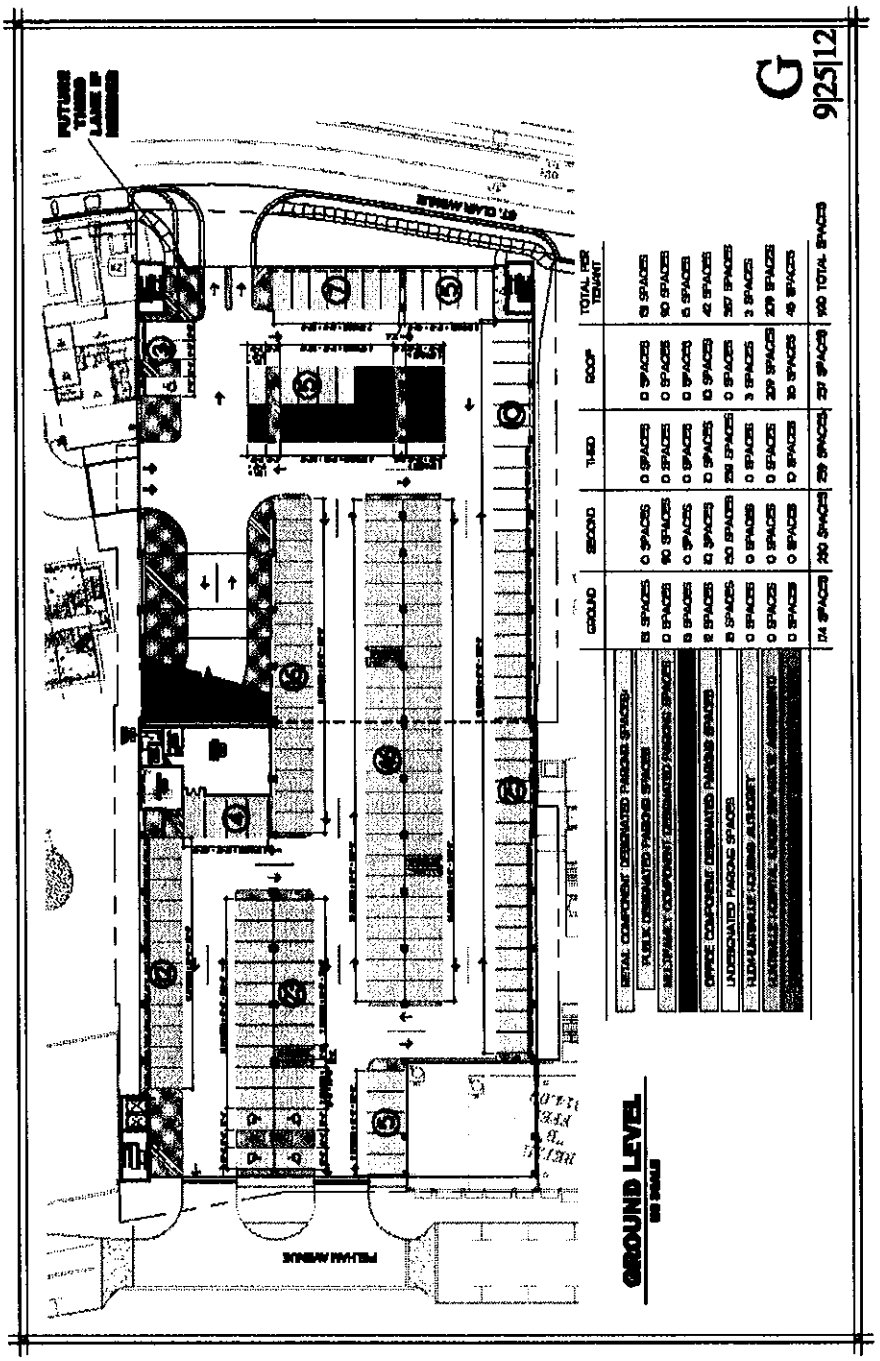
PARKING ALLOCATION

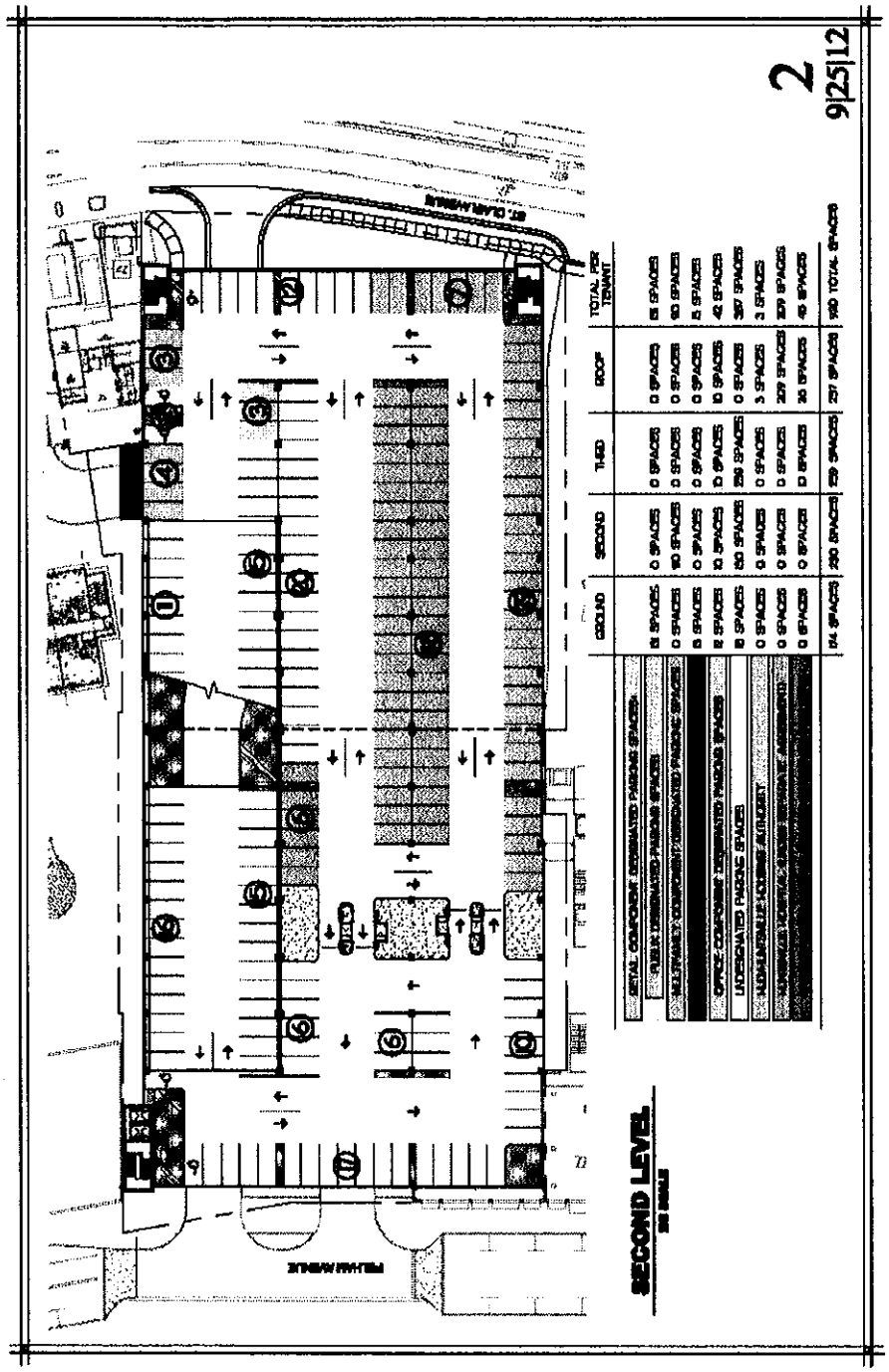
User	Designated Parking Spaces	Rent Percentages (Spaces Converted to Pct.), as Adjusted *	Rent Percentages Converted to Equivalent # of Lessee Parking Spaces, as Adjusted *
Retail Component	131	39.45%	273
Multifamily Component	90	9.75%	67
Project A Component	42	38.40%	266
Project B Component	13	12.40%	86
Total	276	100.00%	692

* Rent percentages have been adjusted by agreement among the Lessee and the Related Lessees.

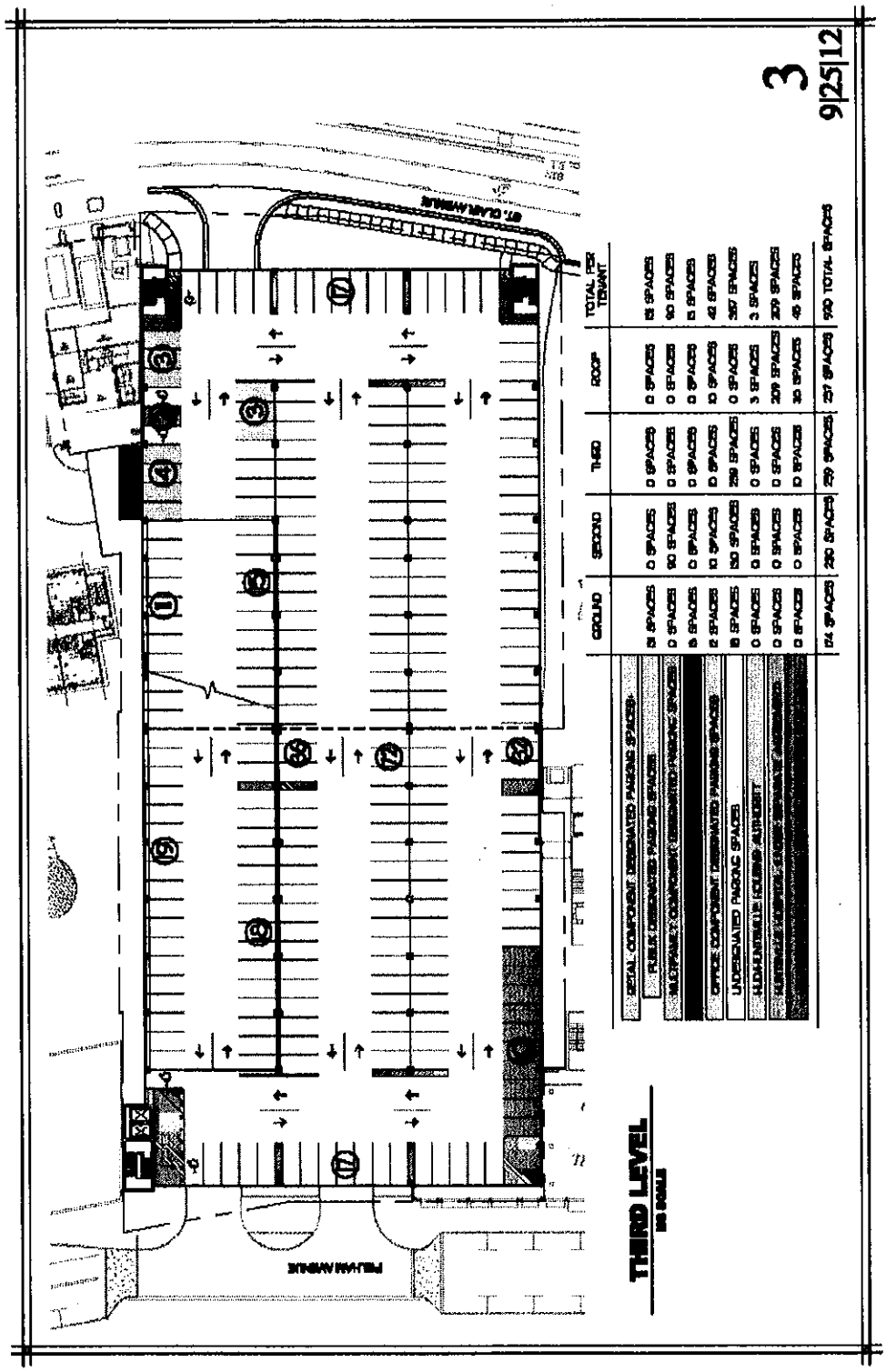
EXHIBIT B

PARKING PLAN

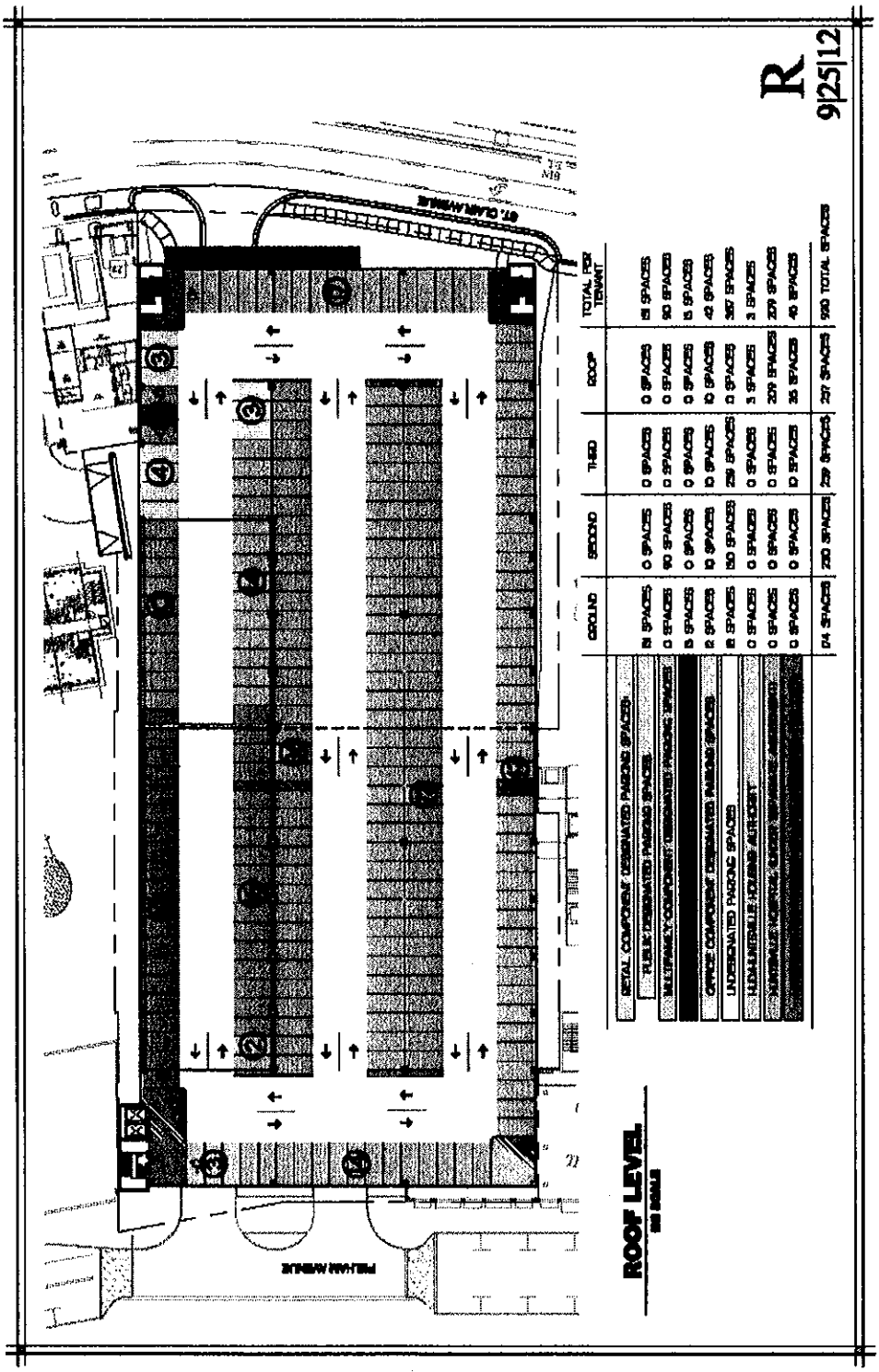




City Parking Garage Lease Agreement
(Retail Component)
Exhibit B-2



City Parking Garage Lease Agreement
(Retail Component)
Exhibit B-3



City Parking Garage Lease Agreement
(Retail Component)
Exhibit B-4

EXHIBIT C

CONFIRMATION OF LEASE

CONFIRMATION OF CITY PARKING GARAGE LEASE AGREEMENT (RETAIL COMPONENT)

THIS CONFIRMATION OF CITY PARKING GARAGE LEASE AGREEMENT (PROJECT B COMPONENT) (this "Confirmation") is made this ___ day of _____, 20__, by and between **THE CITY OF HUNTSVILLE,** an Alabama municipal corporation (the "City") and **TWICKENHAM SQUARE VENTURE, LLC,** a Delaware limited liability company ("Lessee").

WHEREAS, the City and Lessee have entered into that certain City Parking Garage Lease Agreement (Retail Component) dated _____ ___, 2012 (the "Lease");

WHEREAS, the Commencement Date, as described in the Lease, is dependent upon the occurrence of certain events; and

WHEREAS, those certain events have occurred and the City and Lessee now desire to specific the Commencement Date for purposes of establishing the term of the Lease.

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Lessee warrant and represent each to the other as follows:

1. The Commencement Date is _____.
2. The expiration of the initial seventy-five (75) term of the Lease is _____
3. As more particularly described in Section 3.2 of the Lease, Lessee has the option to extend the term of the Lease for one (1) twenty-four (24) term or such lesser period of time as, when added to the Initial Term, shall equal 99 years from the execution date of the Lease.
4. Lessee has been granted a right of first refusal to purchase the City Parking Garage, as more particularly provided in Sections 14.1 and 14.2 of the Lease.
5. The Lease is now in full force and effect and all terms and conditions of the Lease are ratified and confirmed.

[Signature Page Follows]

IN WITNESS WHEREOF, the City and Lessee have caused this Confirmation to be executed by their respective duly authorized representatives as of the date first above written.

CITY:

ATTEST:

CITY OF HUNTSVILLE, ALABAMA

By:_____
City Clerk

By:_____
Tommy Battle
Mayor

LESSEE:

TWICKENHAM SQUARE VENTURE, LLC
By: Bristol Twickenham Holdings, LLC,
Its Manager

By:_____
Charles Carlisle
Its Authorized Member

By: PM Twickenham Holdings, LLC,
Its Manager

By:_____
John McReynolds
Its Authorized Member

EXHIBIT D

PREVENTATIVE MAINTENANCE SCHEDULE

1. Maintenance and inspections –
Includes overall garage, bus shelter, all equipment and structural systems;

DAILY MAINTENANCE – Garage and Bus Shelter

1. Pick up/remove all loose debris;
2. Empty garbage receptacles;
3. Inspect all stairwell, interior, and perimeter lighting;
4. Walk stairwells and elevators to inspect for safety hazards;
5. Clear floor drains;
6. Remove graffiti at garage and Bus Shelter;
7. Inspect, clean and refill all restrooms as needed;
8. Inspect panic/safety button operation and camera operation every morning, if applicable;
9. Inspect operation of phone in elevator and exit lanes;

WEEKLY MAINTENANCE – Garage and Bus Shelter

1. Vacuum/sweep with Back Pack and Supervac;
2. Damp wipe all garbage receptacles;
3. Inspect and recharge/replace Fire Extinguishers for discharge/operational;
4. Wipe down and or dust all equipment;
5. Clean oil spots as needed;

QUARTERLY MAINTENANCE – Garage and Bus Shelter

1. Wash down of entire garage floors and walls;
2. Clean all handrails and other railing as applicable;
3. Inspect Emergency Lighting proper function, repair if necessary;
4. Clean all glass, windows, etc;
5. Conduct major wash down of complete garage to remove all contaminants;
6. Conduct back-up power system test (Generator) for 10 minutes to ensure proper operation;

ANNUAL MAINTENANCE – Garage and Bus Shelter

1. Formerly 'hot test' Emergency Generator and Switch Gear and repair as necessary;
2. Service and repair as needed Generator, or as specified for product if sooner than annually;
3. Conduct an Infrared test of all Electrical Panels and Gears and repair as necessary;
4. Service Emergency Lighting, or as specified for product if sooner than annually;
5. Service all Fire Extinguishers;
6. Inspect all structural systems as listed;
7. Conduct walk through of elevator for state compliance prior to official state inspection;
8. Elevator State Inspection;

PERIODIC CAPITAL MAINTENANCE – Garage and Bus Shelter

1. Repaint stall stripes and other pavement markings;
2. Repaint surfaces as needed, Approximately every 6 to 8 years;
3. Check caulking at joints for cracking every 5 years;

The following will be inspected and maintained per manufacturer's recommendations and repaired or replaced as needed;

A. EQUIPMENT –

Inspections at Garage and Bus Shelter

Inspect for proper function and corrosion control –

- Any equipment observed to have signs of corrosion should be cleaned and properly painted (if applicable) to maintain integrity of equipment

1. Inspect all access control equipment;
2. Inspect all trailblazer (directional) signs, ADA assist equipment;
3. Inspect all security systems;
4. Inspect all electrical equipment, including lights & emergency lights;
5. Inspect carbon monoxide monitors, if applicable;
6. Inspect fire protection systems, if applicable;
7. Inspect for floor & roof/ceiling damage;
8. Inspect AC/HVAC as applicable;

Lubricate and maintain all equipment as specified by manufacturer.

B. STRUCTURAL SYSTEM

Inspect structural elements of entire facility

1. Inspect top surfaces of all floors and bottoms of parking floors;
2. Inspect columns;
3. Inspect beams;
4. Inspect guardrails and handrails (to verify they are rigid and safe);
5. Inspect stairways;
6. Inspect walls;
7. Inspect connections and bearing pads in precast concrete system;
8. Inspect wheel stops;
9. Inspect for spalling (flaking) & cracking of concrete;
10. Inspect for cracking at concrete joints;
11. Inspect for rusting, paint scaling & cracks, especially at joints of steel structures;

Areas of deterioration, water leakage, or corrosion of exposed metals will be noted and repaired as necessary. If significant cracking, spalling or deterioration is found a qualified engineer experienced in parking structures will provide follow up inspection and consultation as to corrective actions necessary.

EXHIBIT E

MEMORANDUM OF LEASE

This instrument prepared by:

Jason Avery, Esq.
Bradley Arant Boult Cummings LLP
1819 Fifth Avenue North
Birmingham, Alabama 35203
Telephone (205) 521-8000

MEMORANDUM OF CITY PARKING GARAGE LEASE AGREEMENT (RETAIL COMPONENT)

This Memorandum of City Parking Garage Lease Agreement (Project B Component) (this "Memorandum") is entered into this __th day of _____, 2012, by and between **THE CITY OF HUNTSVILLE,** an Alabama municipal corporation (the "City"), and **TWICKENHAM SQUARE VENTURE, LLC,** a Delaware limited liability company ("Lessee").

Recitals

A. The City and Lessee have entered into that certain City Parking Garage Lease Agreement (Retail Component) (the "Lease") dated _____, 2012, pursuant to which the City has demised and let to Lessee the number of Designated Parking Spaces (such number being 131) allocated to the Retail Component on Appendix A attached hereto and made a part hereof (the "Premises"), to be located on real property more particularly described on Appendix B attached hereto and made a part hereof, located in Huntsville, Madison County, Alabama. Unless otherwise defined herein, capitalized terms shall have the meaning given to them in the Lease.

B. In addition to the Designated Parking Spaces, the City has agreed that Lessee shall have a non-exclusive prepaid license to use the Undesignated Parking Spaces within the City Parking Garage on a first-come, first served basis with the general public, as more particularly described in the Lease.

C. The City and Lessee desire to execute this Memorandum, which is to be recorded in the Public Records of Madison County, Alabama, in order that third parties may have notice of the estate of Lessee in the Premises and of the Lease.

Agreement

NOW, THEREFORE, in consideration of the rents and covenants provided for in the Lease to be paid and performed by Lessee, the City does hereby demise and let unto Lessee

the Premises on the terms, and subject to the conditions set forth in the Lease, among which are the following:

1. **TERM.** Subject to and upon the terms and conditions of the Lease, the Initial Term of the Lease shall be for a period of seventy-five (75) years, commencing on the Commencement Date.

2. **EXTENSION PERIOD**. As more particularly described in Section 3.2 of the Lease, Lessee has the option to extend the term of the Lease for one (1) twenty-four (24) term or such lesser period of time as, when added to the Initial Term, shall equal 99 years from the execution date of the Lease.

3. **RIGHT OF FIRST REFUSAL.** Lessee has been granted a right of first refusal to purchase the City Parking Garage, as more particularly provided in Sections 14.1 and 14.2 of the Lease.

4. **SUCCESSORS; ASSIGNS.** The terms, covenants and conditions contained in this Memorandum shall be binding upon, and shall inure to the benefit of, the parties hereto, their respective heirs, legal representatives, successors and assigns.

5. **INCORPORATION OF LEASE TERMS BY REFERENCE.** All of the terms, conditions, provisions and covenants of the Lease are incorporated in this Memorandum by reference as though written out at length herein. In the event of any inconsistency between the provisions of this Memorandum and those of the Lease, the provisions of the Lease shall control. Copies of the Lease are held by both the City and Lessee.

[Signature Pages Follow]

IN WITNESS WHEREOF, the City and Lessee have caused this Memorandum to be executed by their respective duly authorized representatives as of the date first above written.

CITY:

ATTEST:

CITY OF HUNTSVILLE, ALABAMA

By:_____
City Clerk

By:_____
Tommy Battle
Mayor

STATE OF ALABAMA)
:
COUNTY OF MADISON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Tommy Battle and Charles E. Hagood, whose names as Mayor and City Clerk, respectively, of The City of Huntsville, an Alabama municipal corporation, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this date, that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and official seal this the _____ day of _____, 2012.

[NOTARIAL SEAL]

_____
Notary Public
My Commission Expires:_____

LESSEE:

TWICKENHAM SQUARE VENTURE, LLC
By: Bristol Twickenham Holdings, LLC,
Its Manager

By:_____
Charles Carlisle
Its Authorized Member

By: PM Twickenham Holdings, LLC,
Its Manager

By:_____
John McReynolds
Its Authorized Member

STATE OF ALABAMA)
:
COUNTY OF MADISON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of _____, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this date, that, being informed of the contents of the instrument, he executed the same voluntarily and with full authority as the act of said limited liability company, in its capacity as _____ of _____.

Given under my hand and official seal this the _____ day of _____, 2012.

[NOTARIAL SEAL]

_____
Notary Public
My Commission Expires:_____

Appendix A
Parking Allocation

User	Designated Parking Spaces	Rent Percentages (Spaces Converted to Pct.), as Adjusted *	Rent Percentages Converted to Equivalent # of Lessee Parking Spaces, as Adjusted *
Retail Component	131	39.45%	273
Multifamily Component	90	9.75%	67
Project A Component	42	38.40%	266
Project B Component	13	12.40%	86
Total	276	100.00%	692

* Rent percentages have been adjusted by agreement among the Lessee and the Related Lessees.

Appendix B

[Legal Description]

LOTS 4-A AND 4-C OF TWICKENHAM SQUARE SUBDIVISION PHASE II, AS RECORDED SEPTEMBER 5, 2012 IN DOCUMENT #20120905000567540, IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY, ALABAMA, BEING A RESUBDIVISION OF LOTS 4 AND 5 OF TWICKENHAM SQUARE SUBDIVISION, AS RECORDED IN DOCUMENT NO. 20120427000257150, IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY, ALABAMA.

ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: Legal

Council Meeting Date: 9/27/2012

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Councill Court Development

Document Name: Amendment to Parking Garage Lease Retail Twickenham Square

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		9-27-12
2) Legal		9-27-12
3) Finance		
4) Originating		9-27-12
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

Revised 04/15/2011