

CITY COUNCIL AGENDA ITEM COVER MEMO

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

Meeting Type: Regular

Meeting Date: 4/25/2013

Action Requested By:  
Legal

Agenda Item Type  
Resolution

Subject Matter:

Lease Agreement for Pelham Avenue Air Rights

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Lease Agreement between the City of Huntsville and Twickenham Square Venuturs, LLC, for Pelham Avenue Air Space and Rights.

**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: 99.00

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

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

Date: \_\_\_\_\_

**ORDINANCE NO. 13-\_\_\_\_\_**

WHEREAS, TWICKENHAM SQUARE VENTURE, LLC, a Delaware limited liability company ("TSV"), desires to construct one or more canopies or awnings that will extend into the airspace over a portion of Pelham Avenue;

WHEREAS, to construct said canopies, TSV must obtain certain air space and rights above said portion of Pelham Avenue as more particularly described in the Lease Agreement attached hereto (the "Air Space and Rights");

WHEREAS, the City Council of the City of Huntsville finds: (1) that construction, operation, use, maintenance, repair and replacement of said canopies will benefit the City of Huntsville and the public, (2) that the Air Space and Rights are no longer needed for public or municipal purposes, and (3) that the retention of the Air Space and Rights will not benefit the City of Huntsville or the public.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby, authorized to enter into a lease agreement of said Air Space and Rights on behalf of the City of Huntsville, a municipal corporation within the State of Alabama, which said lease agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Lease Agreement Between the City of Huntsville and Twickenham Square Venture, LLC – Pelham Avenue Air Space and Rights," consisting of seven (7) pages, and the date of April 25, 2013, 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 Lease Agreement being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 25th day of April, 2013.

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

APPROVED this the 25th day of April, 2013.

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Mayor of the City of  
Huntsville, Alabama



trespass nor do any act on or about the Leased Premises or bring anything onto or into the Leased Premises which will in any way increase the rate of insurance on the Leased Premises nor damage or deface the Leased Premises.

3. **Term:** The term of this Lease is for ninety-nine (99) years commencing at 8:00 a.m. CST on the 1<sup>st</sup> day of May, 2013, and ending at 7:59 a.m. CST on the 1<sup>st</sup> day of May, 2112.

4. **Rent:** As monetary consideration of and for this Lease, Lessee has this day paid Lessor the sum of Ninety-nine and No/100 Dollars (\$99.00), the receipt and sufficiency of which are hereby expressly acknowledged by Lessor and by Lessee as a good, valuable and binding consideration of and for this Lease.

5. **Disclaimer of Liability and Indemnification:** Lessor shall not at any time be liable to Lessee or to any other person or entity for any loss, injury, death or damage regardless of the cause. Lessee shall defend, indemnify and hold harmless Lessor from and against any and all liability, loss or damage which Lessor may incur as a result of claims, demands, costs (including attorneys' fees) or judgments against it arising from Lessee's lease and use of the Leased Premises.

6. **Notices:** All notices or demands hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail return receipt requested, to the following addresses:

If to Lessor, to:           Office of the City Attorney  
                                  for the City of Huntsville, Alabama  
                                  Attention: City Attorney  
                                  308 Fountain Circle  
                                  Huntsville, AL 35801

If to Lessee, to:           Twickenham Square Venture, LLC  
                                  Attention: Charles T. Carlisle  
                                  325 Seaboard Lane, Suite 190  
                                  Franklin, TN 37067

7. **Legal Authority:** Lessor covenants, represents and warrants with and unto Lessee, its successors and assigns, that (i) Lessor has all necessary authority and power to enter into this Lease and to lease the Leased Premises, (ii) this Lease has been duly authorized and approved by Lessor in accordance with applicable law as evidenced by Ordinance No. 13-\_\_\_\_\_ of the City Council of the City of Huntsville, Alabama, and (iii) the Leased Premises are surplus and not needed for public or municipal purposes. Lessor acknowledges that Lessee, for Lessee and for Lessee's successors and assigns, is detrimentally relying upon Lessor's foregoing covenants, representations and warranties (1) in entering into this Lease and (2) in constructing, using and maintaining substantial costly and valuable improvements within the Leased Premises. Lessee represents that it has all necessary authority and power to enter into this Lease.

8. **Access to Canopies:** The proposed Canopies shall be designed and constructed in a manner which will permit access to the Canopies for the purpose of inspection, maintenance and reconstruction when necessary.

9. **Abandonment or Nonuse: Termination:** In the event of (a) Lessee's abandonment of the Leased Premises, or (b) Lessee's non-use of the Leased Premises for the Canopies for a period of in excess of twelve (12) consecutive months, Lessor shall have the right to terminate this Lease. Upon termination of this Lease by Lessor due to Lessee's abandonment or specified period of non-use of the Leased Premises, Lessee shall remove the Canopies completely from the Leased Premises at Lessee's sole expense. If Lessee fails to so remove the Canopies from the Leased Premises within a reasonable period of time following such termination due to abandonment or specified period of nonuse, Lessor may cause the Canopies to be removed from the Leased Premises and bill the costs of such removal to Lessee.

10. **Maintenance by Lessee:** The Canopies to occupy the airspace will be maintained so as to assure that the structures and the area within the public right-of-way boundaries will be kept in good condition, both as to safety and appearance, and that such maintenance will be accomplished in a manner so as to cause no unreasonable interference with use of the public right-of-way. In the event Lessee fails in its maintenance obligations, Lessor shall have the right to enter the premises to perform such work, and bill the Lessee and Lessee shall promptly reimburse Lessor for the costs incurred.

11. **Recordation:** Lessee may, at its cost and expense, cause the original of this Lease to be filed for record, recorded, and indexed under Lessor's and Lessee's names in the real estate records in the Office of the Judge of Probate of Madison County, Alabama.

12. **Assignment and Subletting:** Lessee shall not, by operation of law or otherwise, assign this Lease in whole or part, or sublet the Leased Premises, without the prior consent of Lessor's City Council in each instance, except in connection with the sale, merger, reorganization or reincorporation of Lessee.

13. **Electrical Power and Other Necessary Utilities:** Lessee shall be responsible for obtaining and maintaining any utility service to the Leased Premises that it desires.

14. **General Provisions:** This Lease, along with all exhibits and attachments or other documents affixed hereto or referred to herein (including, without limitation, the legal description of the Leased Premises), embodies the entire agreement, intent and understanding of Lessor and Lessee as to the transaction contemplated and evidenced hereby and merges herein all prior and contemporaneous agreements, covenants, discussions, representations, statements and understandings heretofore made between Lessor and Lessee as to such transaction, whether written, oral or both. Any agreements, covenants, representations, statements or understandings by and between Lessor and Lessee as to such transaction not contained herein are and shall be null and void, unenforceable and of no force and effect. Neither this Lease nor any covenant, provision or term hereof, shall be amended, changed or modified in any respect, nor may any novation or waiver regarding the same be effectuated, without Lessor and Lessee first executing a writing, in equal

dignity to this Lease, embodying their complete and full agreement and understanding as to such amendment, change, modification, novation or waiver. This Lease and all of its covenants, provisions and terms, are to be construed, controlled, enforced, governed and interpreted in accordance with its plain meaning by and under the laws of the United States of America and of the State of Alabama. As this Lease has been drafted jointly by Lessor and Lessee, after extensive consultation with their respective counsel, no presumption against the draftsmen of this Lease shall be indulged in the construction and/or interpretation hereof. Lessor's and Lessee's respective successors and assigns shall be fully bound by this Lease and each and every covenant, provision and term hereof just as they are bound. Each and every covenant, provision and term of this Lease inures, and shall inure, to the benefit of Lessor and Lessee and their respective successors and assigns.

IN WITNESS WHEREOF, Lessor and Lessee have caused these presents to be executed by their respective duly authorized officers as of the \_\_\_ day of April, 2013.

THE CITY OF HUNTSVILLE, ALABAMA  
a municipal corporation within the  
State of Alabama, Lessor

ATTEST:

By: \_\_\_\_\_  
Charles E. Hagood,  
As its City Clerk-Treasurer

By: \_\_\_\_\_  
Thomas M. Battle, Jr.,  
As its Mayor

TWICKENHAM SQUARE VENTURE, LLC,  
a Delaware limited liability company, Lessee

By: Twickenham Square Partners, LLC,  
an Alabama limited liability company,  
Its Authorized Member

ATTEST:  
By:   
\_\_\_\_\_  
David M. Hanchrow  
As its: member

By:   
\_\_\_\_\_  
Charles T. Carlisle  
As its Manager

THIS INSTRUMENT WAS JOINTLY PREPARED BY: (1) J. CLARK PENDERGRASS, OF LANIER FORD SHAVER & PAYNE P.C., ATTORNEYS-AT-LAW, 2101 WEST CLINTON AVENUE, SUITE 102, HUNTSVILLE, ALABAMA 35805, TELEPHONE NUMBER: (256) 535-1100 AND (2) PETER S. JOFFRION, CITY ATTORNEY FOR THE CITY OF HUNTSVILLE, ALABAMA, POST OFFICE BOX 308, HUNTSVILLE, ALABAMA 35804, TELEPHONE NUMBER: (256) 427-5026.

STATE OF ALABAMA )  
 )  
COUNTY OF MADISON )

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

GIVEN under my hand and official seal on this the 25th day of April, A.D., 2013.

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Notary Public  
State of Alabama  
County of Madison [SEAL]

STATE OF TENNESSEE )  
 )  
COUNTY OF WILLIAMSON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Charles T. Carlisle and DAVID M. HANCHROW, whose names as Manager and Member, respectively, of Twickenham Square Partners, LLC, an Alabama limited liability company, the authorized Member of Twickenham Square Venture, LLC, a Delaware limited liability company, are signed to the foregoing Lease Agreement, and who are known to me, acknowledged before me on this day that, being informed of the contents of the foregoing Lease Agreement, they, as such officers and with full authority, executed the same voluntarily for and as the act of Twickenham Square Venture, LLC, a Delaware limited liability company, as of the day the same bears date.

GIVEN under my hand and official seal on this the 22nd day of April, A.D., 2013.

My Commission Expires:  
2/23/2015

Sarah Jane M. Kiser  
\_\_\_\_\_  
Notary Public  
State of Tennessee  
County of Williamson [SEAL]



**EXHIBIT "A"**

**RETAIL A "AIR SPACE AND RIGHTS"**

ALL AIR SPACE AND RIGHTS LOCATED WITHIN THAT CERTAIN AREA (A) THE LOWER PLANE EXTERIOR BOUNDARY OF WHICH IS DESCRIBED AS AN ELEVATION OF 625.250 FEET, AND THE UPPER HORIZONTAL PLANE EXTERIOR BOUNDARY OF WHICH IS DESCRIBED AS AN ELEVATION OF 627.25 FEET, BOTH ABOVE MEAN SEA LEVEL, BASED ON AN ELEVATION OF 666.57 FEET PUBLISHED FOR THE NATIONAL COASTAL AND GEODETIC BENCH MARK PID EF0606, STAMPED B 315 1949 THAT IS ON NATIONAL GEODETIC VERTICAL DATUM 1988, AND (B) THE VERTICAL PLANE EXTERIOR BOUNDARIES OF WHICH ARE DESCRIBED AS THE VERTICAL PLANES EXTENDED UPWARD FROM THE SURFACE OF THE GROUND OF THE EXTERNAL BOUNDARIES OF THE FOLLOWING DESCRIBED TRACT OR PARCEL OF REAL PROPERTY:

ALL THAT PART OF SECTION 1, TOWNSHIP 4 SOUTH, RANGE 1 WEST, CITY OF HUNTSVILLE, MADISON COUNTY, ALABAMA AND LYING IN THE EXISTING RIGHTS-OF-WAY OF PELHAM AVENUE, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 1/2 INCH IRON PIN MARKING THE SOUTHEAST CORNER OF LOT 6 OF TWICKENHAM SQUARE SUBDIVISION AS RECORDED IN DOCUMENT NUMBER 2012042700257150 AS RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY ALABAMA; THENCE ALONG THE NORTH RIGHT-OF-WAY MARGIN OF PELHAM AVENUE (50 FOOT RIGHT-OF-WAY) SOUTH 69 DEGREES 47 MINUTES 48 SECONDS WEST FOR A DISTANCE OF 31.82 FEET TO THE POINT-OF-BEGINNING; THENCE LEAVING SAID MARGIN SOUTH 20 DEGREES 12 MINUTES 12 SECONDS EAST FOR A DISTANCE OF 5.00 FEET TO A POINT; THENCE SOUTH 69 DEGREES 47 MINUTES 48 SECONDS WEST FOR A DISTANCE OF 94.68 FEET TO A POINT; THENCE NORTH 20 DEGREES 12 MINUTES 12 SECONDS WEST FOR A DISTANCE OF 5.00 FEET TO A POINT ON SAID MARGIN; THENCE ALONG SAID MARGIN NORTH 69 DEGREES 47 MINUTES 48 SECONDS EAST FOR A DISTANCE OF 94.68 FEET TO THE POINT-OF-BEGINNING

SAID PARCEL CONTAINING 473 SQUARE FEET, MORE OR LESS

**PUBLIX "AIR SPACE AND RIGHTS"**

ALL AIR SPACE AND RIGHTS LOCATED WITHIN THAT CERTAIN AREA (A) THE LOWER PLANE EXTERIOR BOUNDARY OF WHICH IS DESCRIBED AS AN ELEVATION OF 626.50 FEET, AND THE UPPER HORIZONTAL PLANE EXTERIOR BOUNDARY OF WHICH IS DESCRIBED AS AN ELEVATION OF 631.50 FEET, BOTH

ABOVE MEAN SEA LEVEL, BASED ON AN ELEVATION OF 666.57 FEET PUBLISHED FOR THE NATIONAL COASTAL AND GEODETIC BENCH MARK PID EF0606, STAMPED B 315 1949 THAT IS ON NATIONAL GEODETIC VERTICAL DATUM 1988, AND (B) THE VERTICAL PLANE EXTERIOR BOUNDARIES OF WHICH ARE DESCRIBED AS THE VERTICAL PLANES EXTENDED UPWARD FROM THE SURFACE OF THE GROUND OF THE EXTERNAL BOUNDARIES OF THE FOLLOWING DESCRIBED TRACT OR PARCEL OF REAL PROPERTY:

ALL THAT PART OF SECTION 1, TOWNSHIP 4 SOUTH, RANGE 1 WEST, CITY OF HUNTSVILLE, MADISON COUNTY, ALABAMA AND LYING IN THE EXISTING RIGHTS-OF-WAY OF PELHAM AVENUE, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 1/2 INCH IRON PIN MARKING THE SOUTHEAST CORNER OF LOT 6 OF TWICKENHAM SQUARE SUBDIVISION AS RECORDED IN DOCUMENT NUMBER 2012042700257150 AS RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY ALABAMA; THENCE ALONG THE NORTH RIGHT-OF-WAY MARGIN OF PELHAM AVENUE (50 FOOT RIGHT-OF-WAY) SOUTH 69 DEGREES 47 MINUTES 48 SECONDS WEST FOR A DISTANCE OF 129.72 FEET TO THE POINT-OF-BEGINNING; THENCE LEAVING SAID MARGIN SOUTH 9 DEGREES 48 MINUTES 11 SECONDS EAST FOR A DISTANCE OF 11.61 FEET TO A POINT; THENCE SOUTH 80 DEGREES 11 MINUTES 49 SECONDS WEST FOR A DISTANCE OF 34.53 FEET TO A POINT; THENCE NORTH 20 DEGREES 12 MINUTES 12 SECONDS WEST FOR A DISTANCE OF 5.19 FEET TO A POINT ON SAID MARGIN; THENCE ALONG SAID MARGIN NORTH 69 DEGREES 47 MINUTES 48 SECONDS EAST FOR A DISTANCE OF 36.06 FEET TO THE POINT-OF-BEGINNING

SAID PARCEL CONTAINING 294 SQUARE FEET, MORE OR LESS

**ROUTING SLIP  
CONTRACTS AND AGREEMENTS**

Originating Department: Legal

Council Meeting Date: 4/25/2013

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Lease for Pelham Avenue Air Rights

Document Name: Lease Agreement with Twickenham Square Venture

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance: 99.00

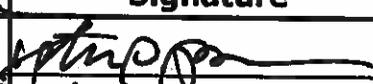
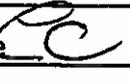
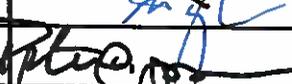
Account Number: 01-0000-3077-0000

**Procurement Agreements**

|                       |                       |
|-----------------------|-----------------------|
| <u>Not Applicable</u> | <u>Not Applicable</u> |
|-----------------------|-----------------------|

**Grant-Funded Agreements**

|                       |             |
|-----------------------|-------------|
| <u>Not Applicable</u> | Grant Name: |
|-----------------------|-------------|

| Department   | Signature   | Date           |
|--|---|----------------|
| 1) Originating   |  | <u>4-18-13</u> |
| 2) Legal   |  | <u>4-18-13</u> |
| 3) Finance  |  | <u>4/19/13</u> |
| 4) Originating   |  | <u>4-18-13</u> |
| 5) Copy Distribution   |   |                |
| a. Mayor's office<br>(1 copies)  |   |                |
| b. Clerk-Treasurer<br>(Original & 2 copies)  |   |                |
|  |   |                |