

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 11/21/2013

Action Requested By:
Legal

Agenda Item Type
Resolution

Subject Matter:

Agreement between the City and Cityscapes, LLC.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute and agreement between the City of Huntsville and Cityscapes, LLC, for parking modifications and easement for real property at Clinton Avenue and Monroe Street.

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: Yes

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: _____

Date: _____

RESOLUTION NO. 13. _____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an Agreement by and between the City of Huntsville and Cityscapes, 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 "Agreement between the City of Huntsville and Cityscapes, LLC, for Parking Modifications and Easement for Real Property at Clinton Avenue and Monroe Street," consisting of six (6) pages including Exhibits A, B and C, and the date of November 21, 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 document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 21st day of November, 2013.

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

APPROVED this the 21st day of November, 2013.

Mayor of the City of
Huntsville, Alabama

STATE OF ALABAMA)
MADISON COUNTY)

**AGREEMENT BETWEEN THE
CITY OF HUNTSVILLE, AL AND
CITYSCAPES, LLC FOR
PARKING MODIFICATIONS AND EASEMENT
FOR REAL PROPERTY AT CLINTON AVENUE
AND MONROE STREET**

AGREEMENT

THIS AGREEMENT is made and entered into on this the ____ day of _____, 2013, by and between the City of Huntsville, Alabama (hereinafter the "City") and CityScapes, LLC, an Alabama limited liability company (hereinafter "CityScapes, LLC");

WITNESSETH:

WHEREAS, the City acknowledges it has sole and exclusive authority over the obligations and responsibilities concerning the covenants and conditions that apply to that certain parcel of real property located at the corner of Clinton Avenue and Monroe Street in Huntsville, Alabama and more particularly described in Exhibit A, which is attached hereto and by this reference incorporated herein, and hereinafter referred to as the "Subject Property". The City further acknowledges that it was assigned said authority pursuant to the adoption of Resolution No. 82-482, on November 23, 1982, by the City Council of the City of Huntsville, Alabama. Said Resolution assigned the City the obligations previously lying with the Housing Authority of the City of Huntsville, Alabama, concerning the Urban Renewal Plan dated September 11, 1967, and approved by way of the adoption of Resolution No. 67-231 by the City Council of the City of Huntsville, Alabama, and all subsequently adopted revisions thereto; and

WHEREAS, the Subject Property was a part of a larger parcel (hereinafter referred to as the "Undivided Parcel") conveyed to Jerome Averbush by way of that certain warranty deed (hereinafter the "Conveyance Deed") from the City on or about September 24, 1985, and recorded in Book 0659, Page 1185, in the Office of the Judge of Probate, Madison County, Alabama; and

WHEREAS, the Conveyance Deed includes a number of restrictive provisions and is accompanied by that certain Parking Agreement (hereinafter "Parking Agreement") by and between the City and Jerome Averbush and recorded in Book 0659, Page 1195, in the Office of the Judge of Probate, Madison County Alabama; and

WHEREAS, the Conveyance Deed was subject to those certain restrictive provisions contained in the said deed and the Parking Agreement; and

WHEREAS, the Parking Agreement, in contemplating parking spaces necessary to service prospective patrons of the Undivided Parcel, designates 675 parking spaces to be made available in exchange for specified terms of use; and

WHEREAS, Jerome Averbush did divide the Undivided Parcel by way of separate conveyances; and

WHEREAS, CityScapes, LLC acquired title to the Subject Property from Jerome Averbush, as evidenced by that certain deed recorded in Book 1005, Page 516, in the Office of the Judge of Probate, Madison County, Alabama, said parcel being the Subject Property, which is located on the west side of the Undivided Parcel and illustrated by hatch marks on Exhibit B, which is attached hereto and by this reference incorporated herein; and

WHEREAS, the parties hereto wish to amend the number of parking spaces made available to CityScapes LLC under the terms of the Parking Agreement to be no fewer than 375 parking spaces; and

WHEREAS, the parties desire that there be 300 parking spaces available for CityScapes LLC's use between the hours of 7AM and 6PM, Monday through Friday, together with no fewer than 75 parking spaces located in or near the northwest corner of the Parking Facility (as designated by the Parking Agreement and described herein below); and

WHEREAS, the City and CityScapes, LLC have agreed to release certain restrictive provisions contained in the Conveyance Deed and amend certain terms of the Parking Agreement; and

WHEREAS, the City wishes to give CityScapes, LLC the ability to construct and maintain a walkway to provide for direct pedestrian access between any improvements constructed on the Subject Property and the Parking Facility which is owned by the City and located adjacent to southerly side of the Subject Property (herein the "Parking Facility"); and

WHEREAS, the City is utilizing a driveway area on the Subject Property that connects Clinton Avenue to the Parking Facility. CityScapes, LLC desires to reduce the width of this driveway area to a width which would accommodate two lanes of traffic and utilize the balance for its development.

NOW, THEREFORE, in consideration of the premises and of the mutual terms and conditions herein contained, the parties hereto do agree as follows:

1. The City does hereby release CityScapes, LLC from the restrictive provision enumerated in the Conveyance Deed requiring that the Subject Property "... be used exclusively for a convention-style hotel of not less than three hundred (300) rooms".

2. The City does hereby acknowledge that such release permits CityScapes, LLC to construct anything permitted by applicable City Zoning Regulations, Classification C-3, for, including but not limited to, office and/or bank buildings. Upon CityScapes LLC's conveyance of the Subject Property to a third party a five (5) year improvement period shall commence (the "Improvement Period"). If at the expiration of the Improvement Period the third party has not satisfied the following two requirements, then any of the below described 375 parking spaces not leased by the third party at that time shall revert back to the City. If, however, on or before the expiration of the Improvement Period the third party has (a) completed ninety (90%) percent of a building on the Subject Property that has at least 60,000 square feet (90% complete as confirmed by third party's lender), and (b) been issued a permit for a second building on the Subject Property, then the third party shall have the right to reserve all 375 parking spaces for an additional 24 months following the expiration of the Improvement Period (the "Extended Improvement Period"). At the expiration of the Extended Improvement Period the third party's exclusive option to lease all of the below described 375 parking spaces shall expire and those parking spaces released at that time shall revert to the City.

3. CityScapes, LLC does hereby release the City from the requirements contained in the Parking Agreement, requiring the City construct a Vehicular Access Ramp, Hotel Bridge and Civic Center Walkway, which were intended to service the contemplated hotel on the Subject Property. The City and CityScapes, LLC, do each agree and covenant to amend Section 5 of the Parking Agreement to provide that the City shall make available to CityScapes, LLC, 300 parking spaces in the Parking Facility between the hours of 7AM and 6PM, Monday through Friday. Said section is further amended to allocate an additional 75 parking spaces to CityScapes, LLC, which shall be located in or near the northwest corner of the Parking Facility and available 24-hours a day, seven (7) days a week. Specifically, the said 75 parking spaces shall be those spaces designated within the gray box on Exhibit C, which is attached hereto and by this reference incorporated herein. Cityscapes, LLC shall be solely responsible for paying for all costs associated with adding any controlled access features that the parties mutually agree are necessary. If there shall come a time when the 75 designated parking spaces are no longer available at the location designated by Exhibit C due to the City's decision to modify the garage in connection with another development or construction project or due to other needs of the City, the City shall work with CityScapes, LLC to provide a near-by location within the Parking Facility for 24-hour parking with a minimum of 75 parking spaces for the sole use of CityScapes, LLC, with controlled access. In this event, any cost of relocation of controlled access features shall be split by the City and CityScapes, LLC. Furthermore, the parties hereto agree that CityScapes, LLC shall have the ability to reserve all above-referenced parking spaces on a

monthly basis, and at the monthly rate of the average of the monthly parking fee for all City garages. However, CityScapes, LLC has the right to reserve the parking spaces on a monthly as-needed basis, and pay only for those parking spaces it actually reserves.

4. The City does hereby give, grant, bargain and convey to CityScapes, LLC an easement to construct and maintain a covered pedestrian walkway to connect any improvements built on the Subject Property to the Parking Facility. The location shall be as agreed to by the City and CityScapes, LLC in a written modification to this Agreement and shall be constructed solely at the expense of CityScapes, LLC.

5. At its sole cost and expense, CityScapes, LLC may alter the driveway area between Clinton Avenue and the Parking Facility, so long as the driveway area remains a width necessary to accommodate two lanes of traffic and is no less than twenty-four (24) feet in width. If the driveway does not align with the current Clinton Street access of the Parking Facility, then CityScapes, LLC shall pay for any reasonable, necessary structural changes and the City will pay any cost incurred in moving its access facilities.

6. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

7. All terms and provisions of this Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors heirs, personal representatives, successors and assigns.

8. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, taken together by original or copy, shall constitute a complete instrument. Cityscapes, LLC shall assure that either the original or a copy bearing the appropriate original signature of its authorized representative is recorded with the Office of the Judge of Probate of Madison County, Alabama.

9. The parties hereto agree to continue to cooperate with each other to execute any further documentation necessary to complete or formalize the terms set out herein.

Executed effective this the ____ day of _____, 2013.

CITY OF HUNTSVILLE:

Printed Name: _____

Its: _____

ATTEST:

Printed Name: _____

Its: _____

CITYSCAPES, LLC, and Alabama limited liability company:

Printed Name: _____

Its: _____

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MADISON, STATE OF ALABAMA AND IS DESCRIBED AS FOLLOWS:

A tract of land within the corporate limits of the City of Huntsville described as being part of Lot 2-2 and part of the right-of-way for Monroe Street and part of the right-of-way for Clinton Avenue as shown on the "Subdivision Plat of Urban Renewal Project Ala. R-59, Parkview Area" as recorded in Plat Book 10, Page 41, Probate Records of Madison County, Alabama.

Particularly described as beginning at a point where the extended easterly margin of the 80.00 foot right-of-way for Monroe Street intersects the extended southerly margin of the right-of-way for Clinton Avenue; said point of true beginning is further described as being South 14 degrees 30 minutes West, 113.51 feet; and North 53 degrees 53 minutes East, 171.38 feet from the southeast corner of Block No. 292 according to the Quigley Map as of record in the Tax Assessor's Office, Madison County, Alabama.

Thence from the point of true beginning along the southerly margin of the right-of-way for Clinton Avenue, and the extension thereof, North 53 degrees 53 minutes East, 532.59 feet to the P.C. of a curve to the right; thence around said curve, having a radius of 50.00 feet with a chord bearing and distance of South 80 degrees 49 minutes East, 71.08 feet to the P.T. of said curve and also being a point on the Westerly margin of the 72.00 foot right-of-way for Church Street; thence along the margin of said right-of-way, South 35 degrees 31 minutes east, 131.16 feet to a point; thence South 53 degrees 53 minutes West, 564.10 feet to a point on the easterly margin of the 80.00 foot right-of-way for Monroe Street; thence along the easterly margin of said right-of-way and the extension thereof, North 41 degrees 30 minutes West, 182.48 feet to the point of true beginning and containing 103,661.94 square feet more or less; and,

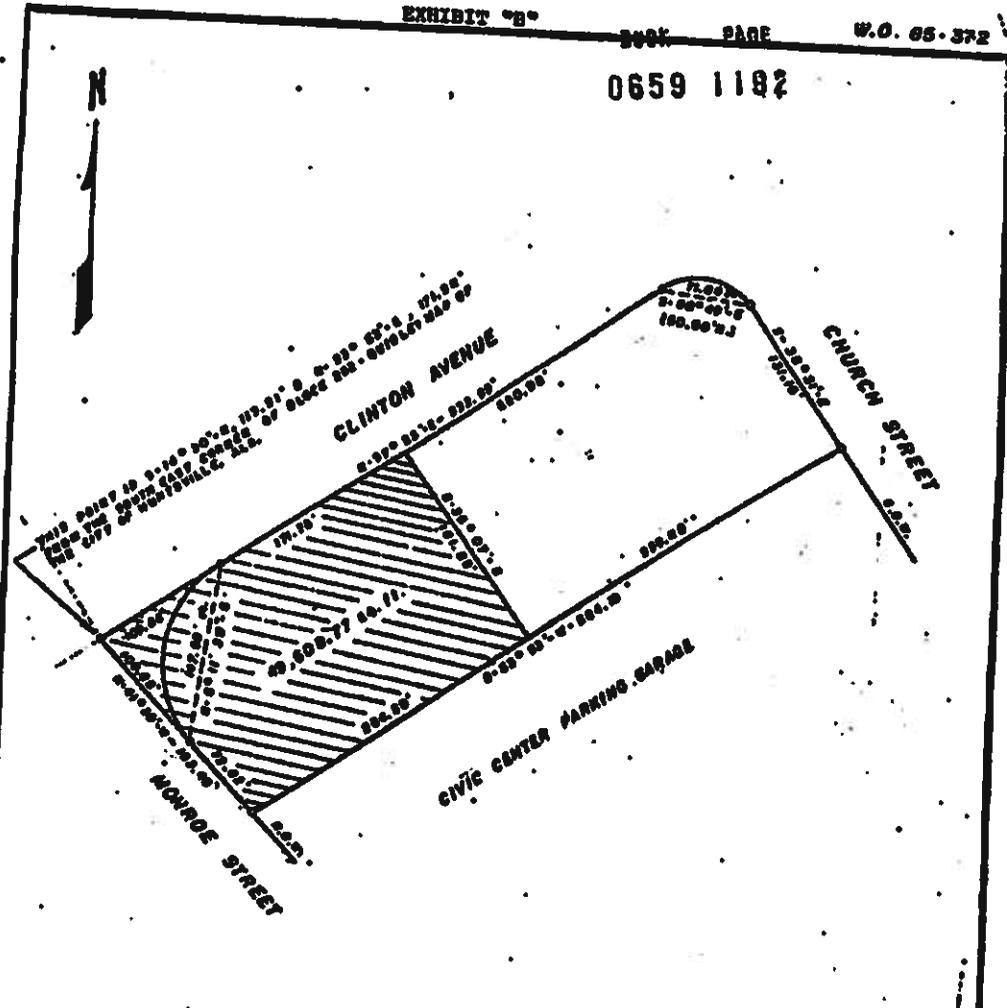
LESS AND EXCEPT: That certain parcel of land heretofore sold to FIRST ALABAMA BANK, a banking corporation, dated the 31st day of May, 1991, and recorded in the Office of the Judge of Probate of Madison County, Alabama, in Deed Book 772, Page 424.

FURTHER, LESS AND EXCEPT:

The Air Rights over and above the "existing City parking garage" ("The Existing Garage:") located on the real property adjacent to the aforesaid described property (herein called "The Existing Garage") that will support two additional levels of parking together with reasonable rights of ingress thereto and egress therefrom, together with a perpetual easement for access to and support of and for the superjacent structure to be erected thereon and for services, maintenance and replacement to the utilities required therefore, as described in a deed from the City of Huntsville dated September 24, 1985 and recorded in Deed Book 659, Page 1185, Probate Records of Madison County, Alabama which rights and easement were subsequently conveyed to Summit Development, LLC, an Alabama limited liability company as set out in Document No. 20040511000060110 in the Probate Records of Madison County, Alabama.

TOGETHER WITH those certain easements appurtenant to the aforesaid property, including but not limited to those certain nonexclusive easements more particularly described in Deed Book 659, Page 1193 and Deed Book 772, Page 424, and recorded in the Office of the Judge of Probate of Madison County, Alabama.

0659 1182



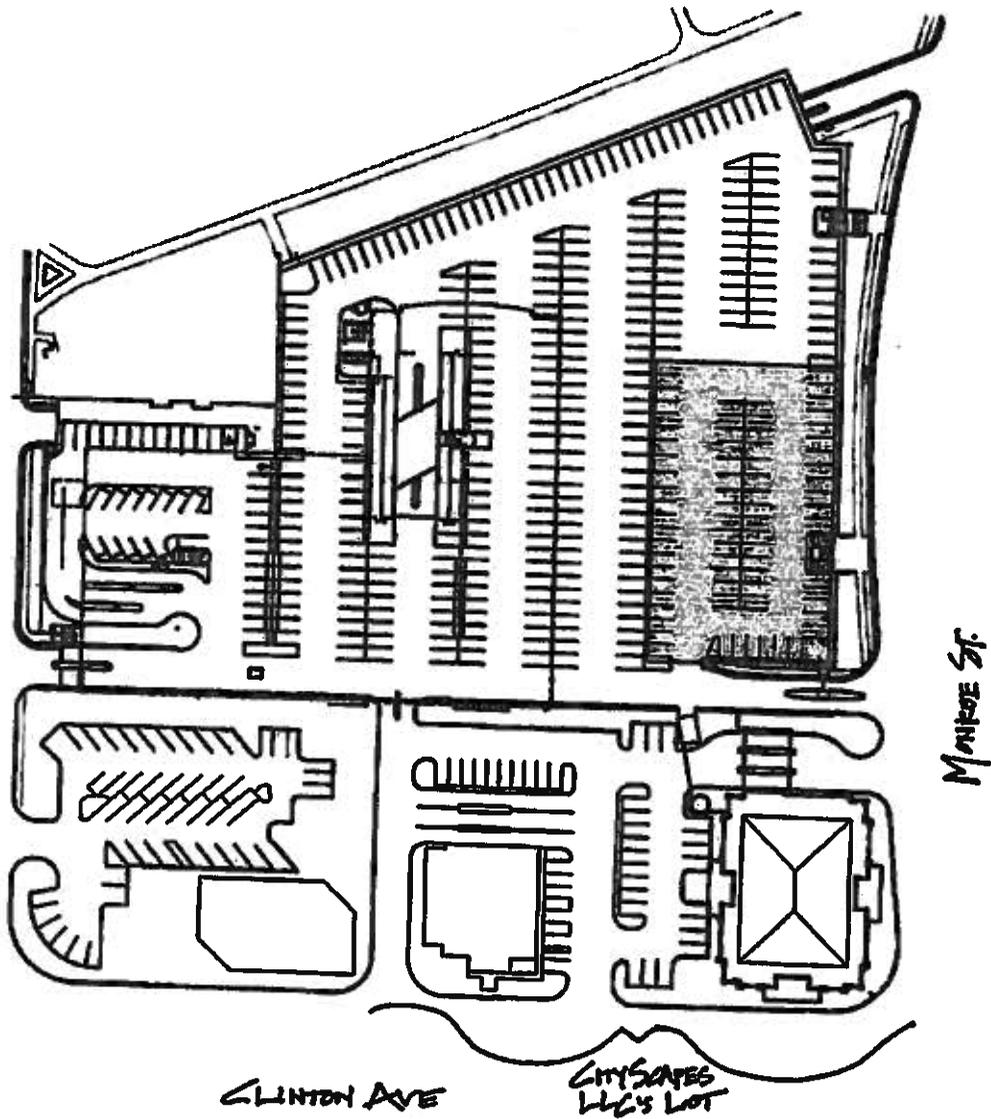
STATE OF ALABAMA MADISON COUNTY PROBATE OFFICE

I hereby certify that the foregoing instrument was filed for record in the office on 9-25-85 at 10:28 o'clock A.M. and duly recorded.

Deed Tax 40259 Mortgage Tax _____ FRANK H. RIDDICK, Judge of Probate.

CREIGHT ENGINEERING CO. HUNTSVILLE, ALABAMA

EXHIBIT "C"



**ROUTING SLIP
CONTRACTS AND AGREEMENTS**

Originating Department: Legal

Council Meeting Date: 11/21/2013

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Agreement with Cityscapes, LLC

Document Name: Agreement between the City and Cityscapes, LLC

City Obligation Amount: _____

Total Project Budget: _____

Uncommitted Account Balance: _____

Account Number: _____

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name: _____
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Department	Signature	Date
1) Originating		
2) Legal		
3) Finance		
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		