

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 12/19/2013

Action Requested By:
Parking

Agenda Item Type
Resolution

Subject Matter:

Parking Lease agreement with City

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Parking Lease Agreement between the City of Huntsville and Broadway Westside Square, LLC.

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

Item to be considered for: Action

Unanimous Consent Required: No

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

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: _____

Date: 12/18/2013

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 a Parking Lease by and between the City of Huntsville and Broadway Westside Square, 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 "Parking Lease Agreement between the City of Huntsville and Broadway Westside Square, LLC," consisting of six (6) pages and the date of December 19, 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 19th day of December, 2013.

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

APPROVED this the 19th day of December, 2013.

Mayor of the City of
Huntsville, Alabama

THIS INSTRUMENT PREPARED BY:
Daniel M. Wilson, Esq.
Maynard, Cooper & Gale, P.C.

**PARKING LEASE BETWEEN THE
CITY OF HUNTSVILLE, ALABAMA
AND BROADWAY WESTSIDE
SQUARE, LLC**

655 Gallatin Street
Huntsville, Alabama 35801
(256) 551-0171

STATE OF ALABAMA)
 :
COUNTY OF MADISON)

PARKING LEASE

THIS PARKING LEASE (this "Lease") is made and entered into effective as of the 1st day of January, 2014, by and between **THE CITY OF HUNTSVILLE**, a municipal corporation existing under the laws of the State of Alabama (hereinafter referred to as "Lessor" or the "City") and **BROADWAY WESTSIDE SQUARE, LLC**, an Alabama limited liability company (hereinafter referred to as "Lessee").

WITNESSETH:

1. **Lease of Parking Spaces.** Lessor does hereby lease and rent unto Lessee and Lessee does hereby take as tenant under this Lease up to twenty (20) parking spaces as determined by Lessee from time to time (the "Parking Spaces") in the City parking garage located at Madison Street and Fountain Row, Huntsville, in Madison County, Alabama (the "Parking Garage"), to be used by the Lessee only for vehicular parking and related pedestrian traffic and for no other object or purpose. Lessee may in its discretion from time to time lease less than 20 spaces by notifying Lessor of its intention to lease fewer spaces and in such event shall only pay monthly rent for the number of Parking Spaces elected by Lessee. Notwithstanding anything contained herein to the contrary, for the Lease Term, the City agrees that three (3) of such Parking Spaces shall be reserved for exclusive use by Lessee (the "Reserved Spaces"), and the location of the Reserved Spaces shall be mutually agreed upon by the parties hereto. The City agrees to put up signage for the Reserved Spaces indicating that they are reserved for Lessee's use.

2. **Term.** The term of this Lease (the "Lease Term") shall be for fifteen (15) years and five (5) months beginning on January 1, 2014 (the "Commencement Date") and ending on May 30, 2030. Lessee shall have one (1) option to extend the Lease Term for an additional five (5) years, on the same terms and conditions set out herein. Lessee may exercise said option to extend by providing ninety (90) days written notice to Lessor before expiration of the then current Lease Term.

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

3. **Rent.** Throughout the Lease Term, Lessee agrees to pay Lessor monthly, in advance, as rent for each Parking Space, the then standard monthly rental rate charged by Lessor to the general public for a space in the Parking Garage (the “Standard Rate”); provided, however, that during the first three (3) years of the Lease Term (the “Incentive Period”) the monthly rent shall be one half (1/2) of the Standard Rate. All rental due hereunder shall be paid on or before the fifth (5th) day of each calendar month of the Lease Term, commencing on January 5, 2014. Rent for any partial month shall be prorated.

4. **Sub-Lease and Assignment.** During the Incentive Period, Lessee shall not assign or sublease the Parking Spaces without the prior written consent of Lessor in its discretion. After the Incentive Period, Lessee shall have the right to sublet the Parking Spaces or any part thereof, or to transfer or assign this Lease, in whole or in part, to any third party without the written consent of Lessor, provided that (i) each such assignee agrees to be bound by the terms of this Lease with respect to any Parking Spaces so assigned or subleased, and (ii) such assignee or sublessee is also the assignee or sublessee of the lease agreement between Lessee and Big Spring Partners, Inc. for the building located at 216 West Side Square, Huntsville, Alabama. Any other assignment or sublease of this Lease without the City’s prior written consent in its discretion shall be void.

5. **Remedies.** In the event Lessee violates any of the terms, conditions, or covenants hereof, Lessor may, after giving Lessee thirty (30) days written notice and opportunity to cure the same, 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, Lessor may terminate this Lease by providing written notice to Lessee of its intention to do so and pursue any legal claim it may have against Lessee for any amounts due hereunder. If Lessor 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 Lessor 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 the same and pursue an action against Lessor for specific performance (it being the understanding of the parties hereto that the obligations of the Lessor 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. All obligations of Lessor hereunder will be construed as covenants, not conditions.

6. **Damage, Destruction, Condemnation and Relocation.**

(a) In the event the Parking Spaces are condemned (partially or wholly), or damaged or destroyed (partially or wholly) by fire, rain, wind or other cause, such that the Parking Spaces cannot be restored to a tenantable condition within one hundred eighty (180) days from the date of such damage, destruction or condemnation, in either party’s reasonable discretion, then either

party may terminate this Lease with written notice to the other party within thirty (30) days of such damage, destruction or condemnation, with no further obligation hereunder from the date of such destruction. The rental shall then be accounted for between Lessor and Lessee up to the time of such damage, condemnation or destruction of the Parking Spaces; Lessee paying up to said date and Lessor refunding the rents collected beyond said date. In the event of a public taking, Lessee shall be entitled to recover from the condemning authority all losses relating to the termination of this Lease, including without limitation the loss of lease value, together with any and all other damages or claims available to it; provided, however, that nothing contained herein shall allow Lessee to make any claim for damages against Lessor as a result of any such taking. Lessor agrees that throughout the Lease Term it will take no action to condemn or take for public purposes Lessee's interest in the Parking Spaces. In the event neither party elects to terminate this Lease as provided herein, or the Parking Spaces are condemned, damaged or destroyed such that the Parking Spaces can be restored to a tenantable condition within one hundred eighty (180) days, this Lease shall remain in full force and effect and Lessor shall, at Lessor's expense, within a reasonable time restore the Parking Spaces to substantially the same condition as they were prior to said damage.

(b) In the event the City decides to relocate, rebuild or refurbish the Parking Garage, resulting in either temporary or permanent loss of the availability of the Parking Spaces, Lessor shall provide alternate parking reasonably acceptable to Lessee in another City parking garage, at the same rent and on the same terms (including the Reserved Spaces) as provided herein; provided, however that in such event, Lessee shall have the right, in its sole discretion, to (i) terminate this Lease instead of accepting alternate parking, or (ii) reduce the number of Parking Spaces hereunder.

7. **Risk of Loss.** All personal property placed in the Parking Spaces or any place appurtenant thereto, shall be at the risk of Lessee, or the parties owning the same, and neither Lessor nor Lessor's Agents shall be liable for the loss of or damage 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 Parking Garage, except for losses occurring as a result of the negligence or wilful misconduct of Lessor or Lessor's Agents.

8. **Utilities, Taxes and Other.** The Lessor will pay all utility charges and all ad valorem taxes (if any) for the Parking Garage.

9. **No Implied Waiver.** The failure of Lessor 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.

10. **Partial Payment.** No payment by Lessee or receipt by Lessor of a lesser amount than the monthly installment of 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 Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such rent or pursue any other remedy provided in this Lease.

11. **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 Lessor and Lessee.

12. **Miscellaneous.**

(a) **Severability.** If any term or provision of this Lease, or the application thereof to any person or circumstance shall to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

(b) **Governing Law.** This Lease and the rights and obligations of the parties hereto are governed by the laws of the State of Alabama.

(c) **Time of Performance.** Except as may be otherwise expressly provided herein, time is of the essence in performance of this Lease.

(d) **Section Headings.** The section or subsection headings are used for convenience of reference only and do not define, limit or extend the scope or intent of the sections or this Lease.

(e) **No Other Representations.** Neither party has made any representations or promises, except as contained herein, or in some further writings, signed by the party making such representation or promise.

(f) **Successors and Assigns.** Each provision hereof shall extend to and shall, as the case may require, bind and inure to the benefit of the Lessor and its successors and assigns, and of the Lessee, and its successors, assigns and sublessees.

(g) **Notices.** Any notice provided for herein may be delivered by mailing the same by Certified Mail at the address set forth herein, or by hand delivery in person, but such hand delivery must be acknowledged in writing by the addressee thereof or such addressee's agent at the time of such delivery. All notices hereunder must be given in writing and notices not given in writing will be considered void and without effect. Lessee shall pay the rent and shall forward all notices to Lessor at the following address (or at such other place as Lessor may hereafter designate in writing):

City of Huntsville
308 Fountain Row
Huntsville, Alabama 35801
Attention: City Attorney

The Lessor shall forward all notices to Lessee at the following address (or at such other place as Lessee may hereafter designate in writing):

Broadway Westside Square, LLC
216 West Side Square
Huntsville, Alabama 35201
Attn: Bob Broadway

With a copy to:

Daniel M. Wilson, Esq.
Maynard, Cooper & Gale, P.C.
655 Gallatin Street
Huntsville, Alabama 35801

(h) Counterpart Execution. The parties may execute this Lease in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering this Lease in the presence of the other parties to this Lease.

IN WITNESS WHEREOF, the parties hereto have hereunto set their signatures and seals, as of the day and year first above written.

LESSOR:

THE CITY OF HUNTSVILLE, a municipality existing under the laws of the State of Alabama

By: _____
Tommy Battle, Mayor

ATTEST:

By: _____
Charles E. Hagood, Clerk/Treasurer

LESSEE:

BROADWAY WESTSIDE SQUARE, LLC, an Alabama limited liability company

By: _____
Bob Broadway, Manager

**ROUTING SLIP
CONTRACTS AND AGREEMENTS**

Originating Department: **Parking**

Council Meeting Date: **12/19/2013**

Department Contact: **Tommy Brown**

Phone #

Contract or Agreement: **Parking Lease Agreement**

Document Name: **Parking Lease Agreement with Broadway Westside Square**

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

Account Number:

Procurement Agreements

Not Applicable	Not Applicable
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Grant-Funded Agreements

Not Applicable	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)		