

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 Option Agreement by and between the City of Huntsville and Sealy Property Development, 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 "Option Agreement to Lease Real Estate between the City of Huntsville, Alabama, and Sealy Property Development, LLC," consisting of sixty-five (65) including Exhibits, 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

STATE OF ALABAMA )

COUNTY OF MADISON )

**OPTION AGREEMENT TO LEASE REAL ESTATE  
BETWEEN THE CITY OF HUNTSVILLE, ALABAMA AND  
SEALY PROPERTY DEVELOPMENT, LLC**

**OPTION AGREEMENT TO LEASE REAL ESTATE**

THIS OPTION AGREEMENT TO LEASE REAL ESTATE (this "Agreement") is made the \_\_\_\_ day of December, 2013 (the "Effective Date") by and between the City of Huntsville, Alabama, a municipal corporation in the State of Alabama, hereinafter referred to as the "City" and Sealy Property Development, LLC, an Alabama limited liability company, hereinafter referred to as "Sealy".

**RECITALS**

WHEREAS, the City owns a certain parcel of land, (hereinafter referred to as the "Property"), which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, the parties desire to execute this Agreement, granting Sealy the sole and exclusive option to lease and develop the Property, pursuant to the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the parties' mutual promises, conditions and provisions, the parties hereto agree as follows:

**WITNESSETH:**

1. **Option.** City hereby grants Sealy the exclusive option (hereinafter the "Option") to lease the Property for a term of fifty (50) years at a rental rate of ONE HUNDRED DOLLARS (\$100.00) per year. In the event that Sealy exercise the Option, then Sealy agrees to utilize and develop the Property as set forth in that certain Development Agreement, the form of which Development Agreement is attached hereto as Exhibit "B" (the "Development Agreement").
2. **Consideration.** As good and valuable consideration for this Agreement, Sealy shall deliver to the City concurrently with the execution of this instrument by both parties a check for Ten Thousand Dollars (\$10,000.00) in immediately available funds as consideration for this Option. City shall unconditionally and irrevocably be entitled to retain such sum of \$10,000.00 in any and all events and regardless of whether Sealy exercises the Option or not.

- 3. Option Period.** The term (the "Option Period") of this exclusive Option shall begin on the Effective Date and shall expire if Sealy does not exercise it on or before the close of business on the day that is one year from the Effective Date, unless the parties agree by written modification to this Agreement to extend the expiration date.
- 4. Exercise of the Option.** The Option may be exercised at any time prior to the expiration of the Option Period by Sealy providing written notice thereof to the City signed by Sealy, and hand delivered or mailed by certified mail, return receipt requested, to City at the address set forth in Section 10. If Sealy does not timely exercise the Option prior to the expiration of the Option Period, the Option shall immediately terminate and be of no further force or effect. The consideration paid for the Option shall be retained by the City, and neither party shall have any further rights or claims against each other.
- 5. Execution of Ground Lease and Other Agreements.** Upon the exercise of the Option, City and Sealy shall promptly execute (a) the Development Agreement, (b) that certain Ground Lease Agreement, the form of which Ground Lease Agreement is attached hereto as Exhibit "C" (the "Ground Lease Agreement"), and (c) any other agreements necessary to formalize the development of the Property. As provided in the Ground Lease, Sealy will have the right to extend the initial 50-year lease term for two renewal year periods (each a "Renewal Term"). The first Renewal Term shall be for 25 years and the second Renewal Term shall be for 24 years. For the first Renewal Term, the rental will be \$10,000 per calendar month or \$120,000 per year. For the second Renewal Term, the annual rental will be the then current fair market rental value of the land, valued as undeveloped land and as determined by an appraisal by an appraiser mutually acceptable to Sealy and City. In addition, as provided in the Ground Lease, at any time during the term, Sealy will have the right to purchase the Property based its then current fair market value of the land, valued as undeveloped land, and as determined by an appraisal by an appraiser mutually acceptable to Sealy and City. If in connection with the exercise of a renewal option or a purchase option, Sealy and City cannot agree on an appraiser, then each shall have an appraisal completed and the annual rental or option price, as appropriate, will be the average of the two appraisals. Upon the execution of the Ground Lease Agreement, Sealy shall deliver to the City a check for \$100.00 for the initial rental period.
- 6. Exceptions to Sealy's Proposal.** As described in the Development Agreement, the development plan for the Property will be similar to the development set forth in Sealy's proposal as identified in Section 7. of this Agreement except with regards to the following:

  - a. The City will not participate in the cost or work required for the utility relocations, extensions or additions;

- b. The City will not commit to waive zoning issues for the site, but may do so in its discretion to the extent allowed by law;
  - c. As a minimum, the Project must contain at least the following: (a) a multi-family apartment complex containing at least 120 residential units, (b) 20,000 square feet of retail space, (c) either an additional 50,000 square feet of office space or an additional 50 residential multi-family apartment units, and (d) 350 total parking spaces within the five level parking deck with at least 40 of those parking spaces designated as City Parking Spaces available to the City on a 24/7 basis.
  - d. As provided in the Development Agreement, the project minimums will not mandate any office space, but Sealy may include office space in its development plan in its discretion.
- 7. Documents Incorporated by Reference.** City of Huntsville RFP No. 95-2012-63-3 and Sealy Property Development, LLC RFP Proposal 95-2012-63-3 entitled OFFICE AND MIXED-USE COMPLEX HOLMES/JEFFERSON SITE DOWNTOWN HUNTSVILLE, ALABAMA are incorporated by reference and made a part of this Agreement. In the event of any conflict between the referenced RFP, Proposal or this Agreement, the terms and conditions of this Agreement shall take precedence.
- 8. No Representations or Warranties.** City makes no representations or warranties of any kind or nature to Sealy, including, but not limited to, any representations or warranties regarding the physical and/or environmental condition of the Property. Sealy shall lease the property "AS IS" and with all faults.
- 9. Governing Law.** This Agreement shall in all respects be governed and controlled by the laws of the State of Alabama. Venue to enforce all or any part of this Agreement shall be in the state and federal courts of Madison County, Alabama.
- 10. Notices.** All notices, statements, demands, consents and other communications ("Notices") required or permitted to be given by any party to another party pursuant to this Agreement or pursuant to any applicable law or requirement of public authority shall be properly given only if the Notice is: (a) made in writing (whether or not so stated elsewhere in this Agreement); (b) given by one of the methods prescribed in Section 10; and (c) sent to the party to which it is addressed at the address set forth below or at such other address as such party may hereafter specify by at least five (5) calendar days' prior written notice:

**If to the City:**

**City of Huntsville  
Attention: Mayor  
308 Fountain Circle  
P.O. Box 308  
Huntsville, Alabama 35804  
Fax: (256) 427-5121**

**With a copy to**

**City of Huntsville  
Attention: City Attorney  
308 Fountain Circle  
P.O. Box 308  
Huntsville, Alabama 35804**

**If to Developer:**

**Sealy Property Development, LLC  
500 Eustis Avenue  
Huntsville, AL 35801  
Attention: Mr. Charlie O. Sealy, III  
Facsimile: (256) 489-9121**

**With a copy to:**

**J. Marland Hayes  
Tanner & Guin, LLC  
2711 University Boulevard  
Tuscaloosa, AL 35401-1465  
Facsimile: (256) 633-0309**

Notices may be either: (a) delivered by hand; (b) delivered by a nationally recognized overnight courier which maintains evidence of receipt; or (c) sent by facsimile transmission with a confirmation copy delivered the following day by a nationally recognized overnight courier which maintains evidence of receipt. Notices shall be effective on the date of receipt. If any Notice is not received or cannot be delivered due to a change in address of the receiving party, of which notice was not properly given to the sending party, or due to a refusal to accept by the receiving party, such Notice shall be effective on the date delivery is attempted.

- 11. Assignment.** Sealy may assign its rights, title and interests under this Agreement to an affiliate of Sealy without the consent of City. Sealy will give City written notice of any such assignment at least 10 days in advance of such action. Otherwise, neither party may assign or transfer this Agreement or any right, interest, or obligation hereunder without the prior written consent of the other party.
- 12. Inspection.** During the Option Period, Sealy and its representatives, agents and designees shall have the right to enter the Property and to perform surveys, percolation tests, environmental studies, geotechnical studies, utility verification, and any other tests or studies, invasive and otherwise, that Sealy deems necessary

to determine whether the Property is suitable and satisfactory to Sealy. During the Option Period, the City will temporarily move or relocate vehicles and other items stored on the Property from time to time, as requested by Sealy in connection with its due diligence of the Property. In addition, during the Option Period, Sealy shall have the right to erect real estate signs on the Property, provided the area on one side of any such sign shall not exceed 40 square feet and not more than one such sign shall be erected for each 250 feet of frontage or fraction thereof.

- 13. Existing Reports.** City will provide Sealy a copy of any existing environmental surveys or geotechnical studies the City has in its possession and any written communication received by City pertaining to the Property from other governmental units.
- 14. No New Contracts.** During the Option Period, City shall not make or enter into any agreement for the use, occupancy, development or possession of all or any part of the Property without Sealy's prior written consent.
- 15. Negotiation of Documents.** To the extent that the form of any closing documents are not specified, the parties agree that they will in good faith negotiate all closing documents with the understanding that the closing documents will contain such provisions, representations, warranties and indemnifications as are customarily contained in documents designed to effect similar transactions consistent with the provisions of this Agreement.
- 16. Business Day.** In the event any time period specified in this Agreement expires on a Saturday, Sunday or banking holiday, then the time period so expiring shall be extended to expire on the next day that is not a Saturday, Sunday or banking holiday.
- 17. Acknowledgments.** Sealy acknowledges and agrees that City has not, by execution of this Agreement or otherwise, assigned or transferred to Sealy any right, interest or obligation in the subject property site other than the Option right as set forth herein. During the Option Period, the City acknowledges and assures Sealy that the rights, obligations, terms and conditions specified in this Agreement are fully vested in Sealy and may not be modified by City without Sealy's written consent.
- 18. Entire Agreement.** This Agreement constitutes the entire agreement between the parties and cannot be modified except by writing instrument duly executed by both parties. Neither the City nor Sealy has made any representations, promises or warranties not set forth herein. Any amendment to this Agreement, the form of the Development Agreement, or the form of the Ground Lease Agreement which relates to the term, permitted uses, density, height or size of the proposed buildings may

require a public hearing. Otherwise, any amendment to this Agreement or to the form of such other agreements may be executed without public hearing.

19. Approval. The City and Sealy hereby covenant that the execution of this Agreement has been duly approved and that the parties executing this Agreement are authorized to execute the same.

IN WITNESS WHEREOF, the parties have caused this Option to Lease Real Estate Agreement to be duly executed and delivered the day and year first above written.

**THE CITY OF HUNTSVILLE, ALABAMA**

By: \_\_\_\_\_  
Tommy Battle, Mayor

ATTEST:

\_\_\_\_\_  
Charles E. Hagood  
City Clerk-Treasurer

**SEALY PROPERTY DEVELOPMENT, LLC**

By: Charlie O. Sealy, III  
Charlie O. Sealy, III, Its Manager

STATE OF ALABAMA  
COUNTY OF MADISON

I, the undersigned, a Notary Public in and for the State of Alabama at Large, hereby certify that Tommy Battle, whose name as Mayor of the City of Huntsville, a municipal corporation under the laws of the State of Alabama, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

GIVEN under my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public  
My Commission  
Expires: \_\_\_\_\_

STATE OF ALABAMA  
COUNTY OF MADISON

I, the undersigned authority, a notary public in and for the State of Alabama at Large, hereby certify that Charlie O. Sealy, III, whose name as Manager of Sealy Property Development, LLC, a limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such representative and with full authority, executed the same voluntarily for and as the act of said company.

GIVEN under my hand and official seal this the 18 day of Dec, 2013.

Sheila R Vaughn  
Notary Public  
My Commission Expires: Dec 6, 2015



**JEFFERSON STREET PROPERTY SITE LEGAL DESCRIPTION**

All that part of Lots 8, 9, 10, 11, 12, 13, 20, 21, 27, 28, 29 and 30 of Block 301 of the Quigley Map of the City of Huntsville, Madison County, Alabama more particularly described as follows: Commencing at the Northeast corner of Lot 29 of the Quigley Map of the City of Huntsville being a 5/8" capped rebar found (G.W. JONES) on the Westerly margin of Jefferson Street, said point is also the True Point of Beginning:

thence from the True Point of Beginning and along the Westerly margin of Jefferson Street South 31 degrees 58 minutes 57 seconds East a distance of 129.28 feet to a point;

thence along a curve to the right having a radius of 30.00 feet and a chord bearing and distance of South 12 degrees 31 minutes 33 seconds West 42.06 feet to a point on the Northerly margin of Holmes Avenue;

thence along the Northerly margin of Holmes Avenue South 57 degrees 02 minutes 03 seconds West a distance of 249.68 feet to a point;

thence along a curve to the right having a radius of 25.00 feet and a chord bearing and distance of North 75 degrees 49 minutes 14 seconds West 36.65 feet to a point on the Easterly margin of Spragins Street;

thence along the Easterly margin of Spragins Street North 28 degrees 40 minutes 31 seconds West a distance of 137.88 feet to a pk nail found;

thence leaving the Easterly margin of Spragins Street North 57 degrees 52 minutes 53 seconds East a distance of 69.75 feet to a 1/2 inch rebar found, being the NW corner of Lot 29 of the Quigley Map of the City of Huntsville;

thence North 28 degrees 36 minutes 35 seconds West a distance of 121.33 feet to a 1/2 inch rebar found:

thence South 63 degrees 09 minutes 39 seconds West a distance of 69.69 feet to a hex head pipe found on the Easterly margin of Spragins Street;

thence along the Easterly margin of Spragins Street North 17 degrees 35 minutes 03 seconds West a distance of 155.49 feet to a capped rebar found (G.W. Jones);

thence leaving the Easterly margin of Spragins Street North 58 degrees 13 minutes 59 seconds East a distance of 120.29 feet to a 5/8 inch rebar found;

**thence North 58 degrees 04 minutes 07 seconds East a distance of 130.13 feet to an "X" in concrete found on the Westerly margin of Jefferson Street;**

**thence along the Northeast margin of Jefferson Street South 31 degrees 58 minutes 55 seconds East a distance of 278.09 feet to a capped rebar found being the True Point of Beginning and containing 2.70 acres or 117,633.43 square feet more or less.**



**Exhibit "B"**

**Form of Development Agreement**

**[attached]**

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**DEVELOPMENT AGREEMENT**

**by and among**

**THE CITY OF HUNTSVILLE**

**and**

**SEALY PROPERTY DEVELOPMENT, LLC**

**Dated: \_\_\_\_\_, 2014**

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## DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is made and entered into on and as of this \_\_\_\_\_ day of \_\_\_\_\_, 2014 (the "Effective Date"), by and among The City of Huntsville, a municipal corporation under the laws of the State of Alabama (the "City") and Sealy Property Development, LLC, an Alabama limited liability company ("Sealy Property"). Capitalized terms and phrases used herein without otherwise being defined have the meaning ascribed to such terms and phrase in Article I below.

### WITNESSETH THAT:

WHEREAS, Sealy Property has agreed to ground lease the Development Area from the City for the purpose of constructing, developing, owning, operating, and leasing the Project; and

WHEREAS, Sealy Property has agreed to be responsible for constructing and operating of the City Parking Spaces, and the City will bear none of such costs; and

WHEREAS, as part of its consideration for use of the City Parking Spaces and to induce Sealy Property to undertake the Project, the City has agreed to be responsible for certain related costs consisting of, among others, certain improvements to the roads, utility services and other infrastructure of and surrounding the Development Area as hereinafter described and which such construction will be of direct benefit to the City and its citizens; and

WHEREAS, the City has determined that the Development Area is situated in an area important for urban redevelopment, and that development of the Project by Developer will inure to the benefit of the City and its citizens by, among other things, (i) expanding the tax base of the City by attracting to the Development Area general commercial activity and development, (ii) attracting to downtown Huntsville individuals who desire to live in an urban setting, (iii) facilitating the development of other portions of downtown Huntsville located in the vicinity of the Development Area, and (iv) enhancing the overall quality of life for the citizens of the City,

NOW THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

### ARTICLE I DEFINITIONS

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

"**Affiliate**" means any Person directly or indirectly Controlling, Controlled by or under Common Control with the Developer.

"**Alabama Immigration Law**" means Act No. 2011-535, Section 31-13-1 through 31-13-30 Code of Alabama 1975, as amended, known as the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, as the same may be amended.

"**Authorizing Resolution**" means the resolution adopted by the City Council on or about \_\_\_\_\_, 2013 authorizing and approving the Option Agreement and this Agreement.

**“City Application Fees”** means standard, usual and customary fees levied or assessed by the City to review and process applications for City Approvals.

**“City Approvals”** means standard, usual and customary permits or approvals required under City Regulations in order to develop, use and operate the Project.

**“City Council”** means the City Council of the City or its designee.

**“City Development Fees”** means fees or assessments, other than City Application Fees, charged or required by the City in connection with any City Approval: (a) to defray, offset or otherwise cover the cost of public services, improvements or facilities; or (b) that are imposed for a public purpose.

**“City Parking Spaces”** means the parking spaces located within the parking facilities on the Development Area constructed by Developer, which are set aside for use by the City as more particularly provided in Section 4.2.

**“City Provided Amenities”** means the roads, sidewalks, landscaping, utility services and other infrastructure of and surrounding the Development Area more particularly described on Exhibit “A” attached hereto.

**“City Regulations”** means the Zoning Ordinance and all other ordinances, resolutions, codes, rules, regulations and policies of the City in effect as of the time in question.

**“Common Control”** means that two Persons are both controlled by the same other Person.

**“Construction Codes and Standards”** means the City Regulations pertaining to or imposing life safety, fire protection, mechanical, electrical and/or building integrity requirements with respect to the design and construction of buildings and improvements, including the then current applicable building codes.

**“Control”** means the ownership (direct or indirect) by one Person of an interest in the profits and capital and the right to manage and control the day to day affairs of another Person. The term “Control” includes any grammatical variation thereof, including “Controlled” and “Controlling”.

**“Developer”** means Sealy Property or its Permitted Transferees and **“Developers”** means Sealy Property together with its Permitted Transferees.

**“Development Area”** means the approximately 2.60 acres of real property located in downtown Huntsville more particularly described on Exhibit “B” attached hereto, on which the Project will be constructed.

**“Exaction”** means with respect to the Project, (a) an exaction (other than City Development Fees) or reservation requirement; (b) a requirement for the dedication of any portion of the property included in the Project to the City or any agency thereof (c) an obligation for on-site or off-site improvements or construction of public improvements; (d) an obligation to provide services; or (e) the requirement to dedicate any easements, rights or privileges with respect to the

Project or any portion thereof to the City or any agency thereof. For purposes hereof, Exactions include mitigation measures imposed or adopted by the City.

**“Force Majeure”** means and includes any and all causes which could not have been foreseen or are beyond the control of a party and which are not the result of such party’s fault, negligence, or deliberate act. Such causes include but are not restricted to, acts of the public enemy, acts of any government in either its sovereign or proprietary capacity (other than acts taken by the City in accordance with this Agreement), fires, floods, hurricanes, epidemics, quarantine restrictions, freight embargoes, or unusually severe weather (not including normal seasonal inclement weather).

**“Governmental Agencies”** means all governmental or quasi-governmental agencies (such as public utilities) having jurisdiction over, or the authority to regulate development of, the Project. As used in this Agreement, the term “Governmental Agencies” does not include the City or any of the departments of the City.

**“Governmental Agency Approvals”** means all permits and approvals required by Governmental Agencies under Governmental Agency Regulations for construction, development, operation, use or occupancy of the Project.

**“Governmental Agency Regulations”** means the Laws, ordinances, resolutions, codes, rules, regulations and official policies of Governmental Agencies in effect as of the time in question.

**“Ground Lease Agreement”** means the Ground Lease Agreement dated contemporaneously herewith between the City and Developer or Developer’s designee(s) with respect to the ground lease of the Development Area.

**“Laws”** means the Constitution and laws of the State of Alabama, the Constitution of the United States, and any federal, state, county or City ordinances, codes, statutes, regulations, or executive mandates, and any court decision, State or federal, with respect thereto.

**“Mortgage”** means:

(a) a mortgage or deed of trust, or other transaction, in which the Developer conveys or pledges as security its interest in the Project or any portion thereof, or any interest therein, or any buildings or improvements thereon for the purpose of (i) financing the acquisition of the subject property or the development of its portion of the Project, or any portion thereof, (ii) refinancing any of the foregoing, or (iii) obtaining financing proceeds by encumbering its portion of the Project or a portion thereof; or

(b) a sale and leaseback arrangement, in which the Developer sells and leases back concurrently therewith its interest in its portion of the Project, or a portion thereof, or interest therein, or improvements thereon for the purpose of (i) financing the acquisition of the subject property, or the development of its portion of the Project, or any portion thereof, (ii) refinancing any of the foregoing, or (iii) obtaining financing proceeds by encumbering its portion of the Project or a portion thereof

**“Mortgagee”** means: (a) the holder of the beneficial interest under a Mortgage; (b) the lessor under a sale and leaseback Mortgage; and (c) any successors, assigns and designees of the foregoing.

**“Official Records”** shall mean the Office of the Judge of Probate of Madison County, Alabama.

**“Option Agreement”** means that certain Option Agreement to Lease Real Estate dated \_\_\_\_\_, 2013 between the City and Sealy Property.

**“Parties”** collectively means the City and the Developer.

**“Permitted Transferee”** means a Transferee who has complied in all respects with the provisions of Article VII of this Agreement.

**“Person”** means an individual, partnership, firm, association, corporation, trust, governmental agency, administrative tribunal or other form of business or legal entity.

**“Planning Commission”** means the Planning Commission of the City.

**“Project”** means the mixed-use development project meeting the Project Minimums to be constructed on the Development Area by Developer.

**“Project Minimums”** means the Project must contain at least the following: (a) a multi-family apartment complex containing at least 120 residential units, (b) 20,000 square feet of retail space, (c) either and additional 50,000 square feet of office space or an additional 50 residential multi-family apartment units, and (d )350 total parking spaces within the five level parking deck with at least 40 of those parking spaces designated as City Parking Spaces available to the City on a 24/7 basis.

**“Site Plan”** means the conceptual site plan for each component of the Project attached to this Agreement as Exhibit “C”.

**“Site Work”** means the work necessary or desirable to perform all required clearing and grubbing, utility installation and earthwork, and to level and grade property within and around the Development Area to cause the provision of necessary utilities to the Project, including, but not limited to, (i) stripping topsoil, necessary cut and fill and earthwork compaction, (ii) construction of temporary drainage ditches, culverts and structures, including pipes, and other on-site and off-site facilities for storm water management required to facilitate mass grading; (iii) construction of control mechanisms for erosion control to include necessary retention ponds; (iv) site preparation engineering and management of the site preparation contractor; (v) fencing around and within the Development Area; (vi) lime stabilizing the building pads; and (vii) electric, gas, water and other public utility improvements necessary for the implementation and operation of the Project.

**“State”** means the State of Alabama and any department or agency acting on behalf of the State.

**“Technical City Permits”** collectively means any of the following technical permits issued by the City or any office, board, commission, department, division or agency of the City in connection with any building or improvement in the Project: (a) demolition, excavation and

grading permits; (b) foundation permits; (c) permits for the installation of underground lines and facilities for Utilities; and (d) any other similar permits. "Technical City Permits" specifically excludes building permits from the City for the construction of particular buildings or improvements.

"Term" means the term of this Agreement, as determined pursuant to Article VI hereof, unless sooner Terminated as provided in this Agreement.

"Terminate" means the expiration of the Term of this Agreement, or any termination of this Agreement by any party entitled to do so by the express provisions of this Agreement. The term "Terminate" includes any grammatical variant thereof, including "Termination" or "Terminated".

"Transfer" means the sale, assignment (as collateral or otherwise), encumbrance, transfer or hypothecation by the Developer of any of its or their rights, duties or obligations under this Agreement, which may be made only in accordance with the terms, standards and conditions of Article VII of this Agreement. Transfers do not include (a) a dedication of any portion of the Development Area to the City or a Governmental Agency; (b) any other leases, subleases, licenses and operating agreements entered into in the ordinary course of business by Developer with tenants of the Project for occupancy of space in any buildings or improvements (together with any appurtenant tenant rights and controls customarily included in such leases or subleases), and any assignment or transfer of any such lease, sublease, license or operating agreement by either party thereto; or (c) a collateral assignment of a Developer's rights under this Agreement to a Mortgagee providing financing with respect to the Project.

"Transferee" means the Person to whom a Transfer is proposed in accordance with Article VII of this Agreement.

"Zoning Ordinance" means The Zoning Ordinance of the City of Huntsville, Alabama.

1.2 Certain Other Terms. Certain other terms shall have the meanings set forth for each such term in this Agreement.

## ARTICLE II PRELIMINARY MATTERS

2.1 General. In consideration of, and in reliance on, the covenants and commitments of the parties contained in this Agreement the City is unconditionally obligated to complete the construction of the City Provided Amenities, and the Developer is unconditionally obligated to complete the construction, leasing and operation of the Project.

2.2 Certain Financing Matters. The Developer hereby agrees to cooperate with the City, and to provide any and all documents and information, as may be reasonably required to enable the City to obtain funding for the City Provided Amenities.

2.3 Access. The City recognizes that Developer will need access to certain portions of City property for reasonable staging needs in connection with the construction of the Project, and the City and Developer shall work together in good faith to identify suitable sites and access for such activities to occur.

2.4 Designation of Coordinators. The parties agree that it is in the best interests of the City and the Developer for the development, design, construction, equipping and start-up of the Project to proceed in an expeditious manner and that time is of the essence. Accordingly, in order for the Project to commence as soon as possible after the Effective Date and to proceed in an orderly and expeditious manner, each of the City and the Developer agree to designate one or more project coordinators to monitor and coordinate the acquisition, design, permitting, and construction of the Project in accordance with this Agreement.

2.5 Undertakings after the Effective Date. The parties acknowledge that certain matters relating to the Project have not been completed prior to the Effective Date. Accordingly, the Developer and the City will coordinate to the extent possible and cooperate with each other in connection with the finalization of the Plans and Specifications as promptly as possible after the Effective Date.

### ARTICLE III REPRESENTATIONS AND WARRANTIES

#### 3.1 Representations and Warranties of the City.

(a) The execution and delivery of this Agreement by the City have been duly authorized by the City Council of the City pursuant to the Authorizing Resolution, a true and correct copy of which shall be attached hereto as Exhibit "D".

(b) Pursuant to the Authorizing Resolution the City has all right, power and authority to enter into the transactions contemplated by this Agreement and to perform its obligations hereunder.

(c) This Agreement and the other contracts and agreements heretofore executed by the City in connection with the transactions contemplated herein constitute the valid and binding obligations of the City, enforceable against it in accordance with their respective terms.

#### 3.2 Representations and Warranties of Developer.

(a) The execution and delivery of this Agreement by the Developer has been duly authorized by all necessary action on the part of the Developer members and managers.

(b) The Developer has all necessary power and authority to enter into the transactions contemplated by this Agreement and to perform its obligations hereunder.

(c) This Agreement and the other contracts and agreements heretofore executed by the Developer in connection with the transactions contemplated herein constitute the valid and binding obligations of the Developer, enforceable against it in accordance with their respective terms.

(d) By the dates required in order to commence construction of the Project by the dates contemplated under this Agreement, the Developer will possess all licenses, certificates, and permits that are required to construct, own, operate, use and maintain the

Development Area in the manner contemplated herein, and all such licenses, certificates, and permits will be in full force and effect.

(e) In accordance with applicable provisions of the Alabama Immigration Law, the Developer hereby represents and warrants that (i) it has not knowingly employed, hired for employment, or continued to employ, any unauthorized alien, (ii) it is enrolled in the federal E-Verify Program and will remain so enrolled and participate in the federal E-Verify Program throughout the performance of its obligations under this Agreement and through completion of the Project, (iii) it shall verify every employee that is required to be verified according to the applicable federal rules and regulations, (iv) it shall assure that every subcontractor complies with the applicable provisions of the Alabama Immigration Law, and (v) it shall maintain records according to all applicable federal and state immigration laws and regulations, including, without limitation, the Alabama Immigration Law. In furtherance, and not in limitation, of the foregoing, the Developer has completed, executed and delivered to the City, on or prior to the Effective Date, a duly sworn affidavit signed before a notary, in substantially the form set forth as Exhibit "E" attached hereto or in the form published by the Secretary of State of the State of Alabama.

#### ARTICLE IV PROJECT

##### 4.1 Development of the Project.

(a) The Developer hereby agrees, with and for the benefit of the City, as follows:

(i) As of the Effective Date, the Developer will consummate the transactions contemplated in the Ground Lease Agreement and acquire leasehold title to the Development Area; and

(ii) The Developer will develop the Project in accordance with the terms and conditions of this Agreement and plans and specifications for the Project.

(b) The City acknowledges that uncertainties associated with market and economic conditions and other factors may alter the scope of the Project. The City acknowledges that the Developer may need to modify the Project and that any such modification will be subject to the approval of the City's Planning Department, such approval not being unreasonably withheld ; provided, that:

(i) The Project will meet the Project Minimums; and

(ii) Subject to the foregoing, and to delays caused by Force Majeure, construction of the Project must commence within six (6) months after the Effective Date and be completed no later than eighteen (18) months after the commencement of construction. The City's Planning Department may extend the required completion date if it determines, in its discretion, that the Developer is making reasonable progress on the Project in light of all relevant circumstances.

(c) The City acknowledges and agrees that the Developer may develop the Project utilizing a condominium or similar structure. The City agrees to cooperate with the Developer in implementing such condominium or similar structure.

(d) The Developer agrees to use all commercially reasonable efforts to complete the construction and development of the Project as promptly as possible within eighteen (18) months following the commencement of construction and to comply with all Laws, including, without limitation, the Alabama Immigration Law, and all City Regulations applicable to the construction, development, and operation of the Development Area and the Project.

4.2 City Parking Spaces. Within the parking facilities constructed by the Developer in the Project, the Developer agrees to include the City Parking Spaces, in the manner set forth below:

(a) The number of City Parking Spaces shall meet at least the number of parking spaces required by the Project Minimums. Developer shall cooperate with the City on its parking needs and will strive to furnish additional parking spaces as needed by the City, including up to thirty (30) additional spaces (for a total of seventy (70) spaces) at no cost to the City based on peak hour availability if additional spaces are built or otherwise become available.

(b) The City shall not be required to fund any portion of these construction and development costs of the City Parking Spaces. The Developer shall be solely responsible for the payment of any and all costs of constructing and equipping the City Parking Spaces.

(c) The City Parking Spaces shall be a privately owned and operated and the City shall have no liability with respect thereto, nor any obligation to manage, control or operate the City Parking Spaces as a public facility. In furtherance, and not in limitation, of the foregoing, the Developer hereby agrees, with and for the benefit of the City, that upon completion of its construction, the City Parking Spaces will be operated by, and all costs and liabilities arising or otherwise related to the operation of the City Parking Spaces will be borne by the Developer.

(d) The City Parking Spaces will be available for the exclusive use of the City seven (7) days a week on a twenty-four (24) hour basis.

(e) The vehicles parked by City designees in the City Parking Spaces must fit into standard size parking spaces and such vehicles must meet the clearance requirements of the Project parking structure.

(f) The City covenants and agrees not to place, store or use any toxic or hazardous substances or materials in the City Parking Spaces.

(g) The City agrees that its designees using the City Parking Spaces shall abide by Project parking rules adopted by the Developer. To the extent applicable to the City Parking Spaces and the City's access to the City Parking Spaces, such rules shall be developed in coordination with the City's Parking Director. These parking rules shall be provided to the City or posted by the Developer from time to time regarding noise, vehicle emissions, and other rules based on commercially acceptable standards for residential and

retail parking facilities. Vehicles or their owners that violate such parking rules may be denied access to the City Parking Spaces by the Developer.

(h) The Developer and the City shall jointly determine the location of the City Parking Spaces with the goal being to locate the spaces such that the best interests of both parties are addressed.

(i) The Developer may restrict access to the City Parking Spaces, in which case, the Developer, solely at its own cost and expense, will provide the City with appropriate access control to use during the Designated Hours.

(j) The City will not be allowed to use the Development Area for parking while Project construction is occurring or the Project is otherwise being developed.

(k) The City's rights to use the City Parking Spaces shall continue in full force and effect in the event that the Developer exercises its option to purchase the Land as provided in the Ground Lease Agreement. The City's right to use the parking spaces shall continue for as long as the Project parking facilities remain in use as a parking structure.

4.3 Street Closures/Relocations. The City acknowledges and agrees that in the course of construction of the Project, (it will be necessary to periodically close portions or all of certain streets, lanes, sidewalks and other rights of way to accommodate the construction of certain other public infrastructure improvements and private development. The City acknowledges and agrees that it will cooperate with Developer from time to time in closing such streets, lanes, sidewalks and other rights of way as necessary that are adjacent to the Development Area.

4.4 Surface Parking Agreements. Once the Project is completed, the City covenants and agrees that it will coordinate with the Developer when determining the best way to regulate parking adjacent to the project.

## ARTICLE V ARCHITECTURE, ENGINEERING AND DESIGN REVIEW PROCESS GOVERNING THE PROJECT

5.1 Site Plan. The parties acknowledge and agree that the Project involves the development of buildings and improvements on the Development Area, in accordance with the terms of this Agreement, as the same may be modified from time to time in accordance with the terms hereof. The Site Plan is a conceptual site plan for all aspects of the Project. The parties acknowledge and agree that the Site Plan is conceptual in nature only and that the Developer shall have the right to change and modify the Site Plan in the exercise of its business judgment, including, without limitation, making changes to the type, phasing, location, and square footage of any of the buildings and improvements depicted on the Site Plan and their respective uses, so long as (a) the Project, as so modified, complies with all applicable City Regulations (or any variances and special exceptions hereafter proposed by the Developer and approved by the City) and other Laws and (b) the Project, as so modified, will meet the Project Minimums, unless the prior written consent of the City is obtained.

5.2 Certain Matters Relating to Zoning and City Regulations. Except as otherwise specifically provided in Section 5.3 of this Agreement:

(a) Provided that construction of the Project is commenced within the time period(s) required under this Agreement, then during the period of three (3) years after the Effective Date: (i) the regulations and standards in the Zoning Ordinance that are applicable to the Project as of the Effective Date shall be deemed vested on behalf of the Developer; and (ii) the City shall not impose on or apply to the overall design, development or construction of the Project or, any City Regulations other than Construction Codes and Standards adopted or modified by the City after the Effective Date (whether by action of the Planning Commission or the City Council, or by initiative, referendum, ordinance, resolution, rule, regulation, standard, directive, condition, or other measure) which would:

(i) be inconsistent or in conflict with the intent, purposes, terms, standards or conditions of this Agreement;

(ii) change or modify the provisions of the City Regulations in effect on the Effective Date governing the permitted uses of the Development Area, the density or intensity of use of the Development Area, the maximum height, bulk, or size of proposed buildings and improvements in the Project, the minimum setbacks for any buildings and improvements in the Project and the parking requirements for the Project;

(iii) increase the cost of development of the Project;

(iv) other than to a de minimus extent, change, modify or delay, or interfere with, the timing, phasing, or rate of development of the Project; or

(v) interfere with or diminish the ability of a party to perform its obligations under this Agreement, or expand, enlarge or accelerate the Developer's obligations under this Agreement.

(b) Nothing in this Agreement is intended, should be construed or shall operate to preclude or otherwise impair the rights of the Developer from applying to the City's Board of Zoning Adjustment for a variance or exception under the Zoning Ordinance with respect to any proposed buildings and improvements in its respective portion of the Project (collectively, the "Variances") in accordance with the procedures applicable to Variances under the City Regulations then in effect. The City shall process, review and approve or disapprove any application for a Variance filed by the Developer in accordance with such City Regulations.

### 5.3 Exceptions. Notwithstanding any other provision of Section 5.2 to the contrary:

(a) The City shall have the right to apply to the Project, or any portion thereof, at any time, as a ministerial act, the Construction Codes and Standards in effect at the time of the requirement of any City Approval hereunder; provided that such Construction Codes and Standards are uniformly applied by the City to comparable construction activity on a City-wide basis.

(b) The Developer shall pay City Application Fees chargeable in accordance with the City's Master Fee Schedule that are in effect at the time the relevant application for a City Approval is made, provided that such City Application Fees are uniformly imposed by the City at similar stages of project development on all similar applications for development in the City.

5.4 Project Approvals. As soon as practicable following the delivery to the City of final plans and specifications for the construction projects included in the Project, the City will prepare and provide to each of the Developer a list of all City Approvals that shall be required for the development, construction, use and occupancy of the Project (collectively, the "Project Approvals").

5.5 No Project Exactions. No Exactions shall be imposed by the City on the Project, or on any application made by the Developer for any City Approval, or in enacting any City Approval, or in connection with the development, construction, use or occupancy of the Project, other than the City's sewer access fee that is uniformly imposed by the City on all similar applications for development in the City.

5.6 City Development Fees. Within 45 days after the Effective Date, the City will prepare and provide to each of the Developer a list of all City Development Fees that, based on the present design of the Project and the Site Plan as existing on the Effective Date, will be required for the development, construction, use and occupancy of the Project (collectively, the "Required Project Fees").

5.7 LC&E Approval. If the City is required to obtain a Location, Character & Extent Approval ("LC&E Approval") from the Planning Commission for the location, character and extent the modifications to be made to any street and any other proposed public improvements to be located on the Development Area. The City shall submit the application for the LC&E Approval to the Planning Commission together with a plot map showing the proposed location of the public improvements and such other materials or information required to be submitted in connection with the application under the City Regulations. If the Planning Commission reasonably determines not to approve the LC&E Approval, it shall advise the Developer of the revisions that would be required to obtain such approval and such Developer shall have the right, in addition to any other rights under this Agreement, to modify and resubmit a revised application and supporting materials for the LC&E Approval in accordance with this Section 5.7.

5.8 Design Criteria. Notwithstanding any provision to the contrary contained in this Agreement, in any Exhibit or Schedule attached hereto, or in any other document submitted by the Developer to the City in connection with the transactions contemplated by this Agreement, the Developer hereby agrees that its Project, and all components thereof, shall be constructed in compliance with the design criteria contained in this Section 5.8, as follows. Modifications and/or variations from these criteria may be allowed upon review and written approval by the Manager of Planning Administration for the City of Huntsville, in her sole discretion.

(a) The front façade of, and principal entrances to, each new building shall be oriented toward a public street. If that is not possible due to the function of the use, front facades and the principal entrance shall be oriented toward a permanent pedestrian access easement which will be open for public pedestrian use. All facades oriented along public streets shall be designed to encourage pedestrian activity.

(b) Where sidewalks are less than fifteen (15) feet in width, doorways shall be recessed into the building interior or set back from the sidewalk to a depth sufficient to

separate sidewalk traffic from outwardly opening doors, to create focal interest, and to punctuate the street wall.

(c) Construction shall utilize approved materials for the exterior cladding of all visible wall surfaces. Approved natural materials include, but are not limited to, brick, stone, concrete stucco, terra cotta, precast concrete and glass. Exterior Insulation and Finish System may be used on floors above the first level if articulated and detailed to add visual interest similar to the use of these materials in the adjacent medical district. High-end architectural metal fabrications and cementitious siding (both lap and board and batten) may be used if detailed and arranged to add to the building concept and for miscellaneous details (e.g., canopies, copings, fasciae, soffets, etc.). If cementitious siding is used, it shall not be the predominant wall material and must be used with other approved materials in proportion. Other synthetic and imitation material, as well as metal, aluminum (pre-engineered metal building siding), vinyl and plastic materials are not acceptable.

(d) To create an animated streetscape, at least fifty percent (50%) of the street level/street facing walls of commercial buildings shall be openings, including windows and doorways. An unbroken expanse of solid or blank wall shall not exceed twenty (20) linear feet. Devices suitable to break such a wall span include street art, fountains, plazas, trees and other landscaping, pedestrian furniture and the introduction of variety in materials, texture, color and/or pattern of wall materials.

(e) Windows located in street level walls, with the exception of stained glass windows, shall be transparent.

(f) All power, communication and other wiring shall be located underground.

(g) All exterior mechanical equipment, trash facilities, and loading areas shall be adequately screened as well as practicable, so as not to be visible from any street or by pedestrians, nor allow any unpleasant odor or any unsanitary or unsightly condition perceptible from any other part of the Project. The City acknowledges that it may not be practicable to completely hide such mechanical equipment, trash facilities, and loading areas.

(h) To create appropriate massing, construction within the site shall consist of structures which are a minimum of five stories or fifty-five feet in height.

**5.9 Review and Processing of Project Approvals.** With the exception of the LC&E Approval by the Planning Commission under Section 5.7, and any subdivision modifications by the Planning Commission, and public hearing related to those purposes, if any, all other City Approvals required for the construction and development of the Project or any buildings and improvements therein which comply with the requirements of the City Regulations: (a) shall be issued over-the counter by the director of the other applicable City departments having responsibility for the issuance of such City Approvals; and (b) shall not require the approval of the Planning Commission, City Council or any other City board or commission; and (c) shall not require a public hearing. The City Approvals covered under this Section 5.9 include but are not limited to, Technical City Permits, building permits and certificates of occupancy and completion. The City shall cooperate with the Developer in an effort to facilitate prompt and timely review and processing of all applications for City Approvals, including the timely

processing and checking of all maps, plans, permits, building plans and specifications and other plans relating to development of the Project filed by the Developer.

5.10 Project Signage. The Developer may provide, at its sole cost and expense, signage for the Project that is permitted in the City Regulations.

5.11 Governmental Agency Approvals. The Developer shall apply for and pursue all required Governmental Agency Approvals from Governmental Agencies which are required during the course of design, development, construction, use or occupancy of the Project, as applicable. The Developer shall take such reasonable steps as are necessary to obtain all such Governmental Agency Approvals and shall bear all costs and expenses for obtaining such Governmental Agency Approvals. When and if obtained, copies of all such Governmental Agency Approvals shall be submitted to the City promptly after a Developer's receipt of a written request therefore from the City. The Developer shall comply with, and shall cause its portion of the Project to comply with, all Governmental Agency Regulations and Laws related to the development, use and operation of the Project.

5.11 Effect of Termination. Termination of this Agreement in accordance with its terms shall not: (a) alter, impair or otherwise affect any City Approvals for the Project that were issued by the City prior to the date of Termination; or (b) prevent, impair or delay the Developer from (i) commencing, performing or completing the construction of any buildings or improvements in its portion of the Project or (ii) obtaining any certificates or occupancy or similar approvals from the City for the use and occupancy of completed buildings or improvements in the Project, that were authorized pursuant to City Approvals for such construction issued by the City prior to the date of Termination. Nothing herein shall preclude the City, in its discretion, from taking any action authorized by Laws or City Regulations to prevent, stop or correct any violation of Laws or City Regulations occurring before, during or after construction of the buildings and improvements in the Project by the Developer.

## ARTICLE VI TERM AND TERMINATION

6.1 Term. This Agreement, upon its execution and delivery by all parties thereto, shall become effective on the Effective Date and shall continue in effect until (a) completion of the development of the Project, or (b) if sooner, upon the Termination of this Agreement by one or more of the parties in accordance with its terms.

6.2 Termination. This Agreement may be Terminated by the unanimous written consent of the parties to this Agreement, at any time prior to completion of the development of the Project. Anything in this Agreement to the contrary notwithstanding, the Mayor shall be authorized to determine, on behalf of the City, whether to exercise any right of the City to Terminate this Agreement.

6.3 Effect of Termination. Upon any Termination of this Agreement in accordance with its terms, all obligations of the parties hereunder will terminate, except that (a) any obligations expressly stated herein to survive Termination of this Agreement shall remain in full force and effect, and (b) any obligations arising prior to the date of such Termination, including

without limitation, any payment obligations of the parties hereunder shall survive such Termination and shall be fulfilled by the party obligated thereunder.

## ARTICLE VII ASSIGNMENT AND TRANSFER

**7.1 Restrictions on Assignment; Conditions Precedent.** Except as otherwise expressly set forth in this Article VII, the Developer shall not have any right to Transfer its rights or obligations under this Agreement, and any Transfer of this Agreement or any of the rights or obligations hereunder in violation of this Article VII shall be void. Notwithstanding the foregoing, and to the extent, permitted herein, the Developer may effect a Transfer of its rights under this Agreement upon the satisfaction of each of the following conditions precedent:

(a) The Developer shall be in compliance with all of its obligations hereunder as of the effective date of the proposed assignment.

(b) Prior to the effective date of the proposed Transfer, the Developer and proposed Transferee have delivered to the City an executed and acknowledged assignment and assumption agreement ("Assumption Agreement") in recordable form. Such Assumption Agreement shall include provisions regarding: (a) the rights and interest proposed to be Transferred to the proposed Transferee; (b) the obligations of the Developer under this Agreement that the proposed Transferee will assume; and (c) the proposed Transferee's acknowledgment that such Transferee has reviewed and agrees to be bound by this Agreement. The Assumption Agreement shall also include the name, form of entity, and address of the proposed Transferee, and shall provide that the Transferee assumes the obligations of the Developer to be assumed by the Transferee in connection with the proposed Transfer. The Assumption Agreement shall be recorded in the Official Records concurrently with the consummation of the Transfer.

**7.2 Transfer to Affiliate.** A Developer may Transfer all of its rights, duties and obligations under this Agreement to an Affiliate of such Developer; provided, that (i) the Developer shall provide at least five (5) Business Days advance Notice of such Transfer to the City, and (ii) unless the City agrees in writing to the contrary, no such Transfer shall, or shall be deemed to, release the Developer from its obligations hereunder and the Developer shall be jointly and severally responsible for the satisfaction of its remaining obligations hereunder. Such Affiliate shall become a Permitted Transferee upon: (a) delivery to the City of an Assumption Agreement pursuant to Section 7.1 hereof assuming, from and after the date such Affiliate acquires its interest, the applicable rights, duties and obligations of the Developer under this Agreement, and (b) unless the prior written consent of the City to the contrary is first obtained, the Developer acknowledges in writing its continued responsibility for the full and timely performance of all of its obligations hereunder by such Affiliate.

**7.3 Consent of City Required.** Unless the proposed Transferee is an Affiliate of the Developer and the parties comply with Section 7.2 hereof, the Developer may Transfer all or any portion of its rights or obligations under this Agreement to any Person only with the prior written consent of the City, which shall not be unreasonably withheld, conditioned or delayed; provided, that the prior consent of the City shall not be required for (a) the granting of a Mortgage on or with respect to the Development Area in order to finance the costs of the Project, (b) the collateral assignment of the Developer's rights under this Agreement in order to finance such Project costs,

(c) sales of an outparcel to a bank or other commercial entity, or (d) any leases, subleases, licenses and operating agreements entered into in the ordinary course of business by Developer with tenants of the Project for occupancy of space in any buildings or improvements (together with any appurtenant tenant rights and controls customarily included in such leases or subleases), and any assignment or transfer of any such lease, sublease, license or operating agreement by either party thereto.

ARTICLE VIII  
NOTICES

8.1 Delivery of Notices. All notices, statements, demands, consents and other communications ("Notices") required or permitted to be given by any party to another party pursuant to this Agreement or pursuant to any applicable law or requirement of public authority shall be properly given only if the Notice is: (a) made in writing (whether or not so stated elsewhere in this Agreement); (b) given by one of the methods prescribed in Section 8.2; and (c) sent to the party to which it is addressed at the address set forth below or at such other address as such party may hereafter specify by at least five (5) calendar days' prior written notice:

If to the City:

City of Huntsville  
Attention: Mayor  
308 Fountain Circle  
P.O. Box 308  
Huntsville, Alabama 35804  
Fax: (256) 427-5121

With a copy to the attention of

City of Huntsville  
Attention: City Attorney  
308 Fountain Circle  
P.O. Box 308  
Huntsville, Alabama 35804

If to Developer:

Sealy Property Development, LLC  
500 Eustis Avenue  
Huntsville, AL 35801  
Attention: Mr. Charlie O. Sealy, III  
Facsimile: (256) 489-9121

With a copy to:

J. Marland Hayes  
Tanner & Guin, LLC  
2711 University Boulevard  
Tuscaloosa, AL 35401-1465  
Facsimile: (256) 633-0309

8.2 Methods of Delivery. Notices may be either: (a) delivered by hand; (b) delivered by a nationally recognized overnight courier which maintains evidence of receipt; or (c) sent by facsimile transmission with a confirmation copy delivered the following day by a nationally recognized overnight courier which maintains evidence of

receipt. Notices shall be effective on the date of receipt. If any Notice is not received or cannot be delivered due to a change in address of the receiving party, of which notice was not properly given to the sending party, or due to a refusal to accept by the receiving party, such Notice shall be effective on the date delivery is attempted.

## ARTICLE IX MISCELLANEOUS

9.1 **Negation of Partnership.** The parties specifically acknowledge that none of the parties is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership or joint venture between or among any two or more of the parties, or cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended and shall not be construed to create any third party beneficiary rights in any Person who is not a party or a Permitted Transferee; and nothing in this Agreement shall limit or waive any rights any one or more of the parties may have or acquire against any third Person with respect to the terms, covenants or conditions of this Agreement.

9.2 **Approvals.** Unless otherwise provided in this Agreement, whenever approval, consent, satisfaction, or decision (herein collectively referred to as an "**Approval**"), is required of a party pursuant to this Agreement, it shall not be unreasonably withheld or delayed. If a party shall disapprove, the reasons therefore shall be stated in reasonable detail in writing. Approval by a party to or of any act or request by the other party shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests. Whenever, under this Agreement, the term "approve" (or any grammatical variant thereof, such as "approved" or "approval") is used in connection with the right, power or duty of the City, or any representative board, commission, committee or official of the City, to act in connection with any City Approval, such Approval shall be deemed conclusively given if (a) in writing and (b) the approval is made by the Mayor.

9.3 **Not A Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any of the real property described or referred to herein, or any buildings or improvements constructed thereon, to the general public, for the general public, or for any public use or purpose whatsoever.

9.4 **Severability.** Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any Person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other Person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

9.5 **Exhibits.** The Exhibits, to which reference is made herein, are deemed incorporated into this Agreement in their entirety by reference thereto.

9.6 **Amendment.** Except as expressly provided in this Agreement, this Agreement may be modified or amended only by a written instrument, executed by each of the parties to this Agreement.

9.7 Entire Agreement. This written Agreement and the Exhibits hereto, contain all the representations and the entire agreement among the parties with respect to the subject matter hereof Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits hereto. Neither the conduct nor actions of the parties, nor the course of dealing or other custom or practice between or among the parties or any of them, shall constitute a waiver or modification of any term or provision of this Agreement. This Agreement may be modified or amended only in the manner specified in this Agreement.

9.8 Construction of Agreement. All of the provisions of this Agreement have been negotiated at arm's-length between the parties and after advice by counsel and other representatives chosen by each party, and the parties are fully informed with respect thereto. Therefore, this Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provisions hereof, or by reason of the status of either party. The provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions hereof, in order to achieve the objectives and purpose of the parties hereunder. The captions preceding the text of each Article and Section are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

9.9 Further Assurances; Covenant to Sign Documents. Each party shall take all actions and do all things, and execute, with acknowledgment or affidavit if required, any and all documents and writings, which may be necessary or proper to achieve the purposes and objectives of this Agreement.

9.10 Governing Law. This Agreement, and the rights and obligations of the parties, shall be governed by and interpreted in accordance with the laws of the State of Alabama.

9.9 Counterpart Execution. For convenience, this Agreement may be executed by the parties in multiple counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same Agreement.

9.12 Liabilities of the City. The Developer understands, acknowledges and agrees that the obligations of the City as set forth herein are limited by 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. Anything in this Agreement to the contrary notwithstanding, whether express or implied, in the event the City Provided Amenities, or any portion thereof, is not constructed or otherwise operational by any estimated dates of completion, or is designed or constructed in a manner not suitable to the Developer, the sole and exclusive remedy of the Developer shall be specific performance, and the Developer shall not be entitled to any other damages whatsoever, including, without limitation, incidental or consequential damages, whether arising at law or in equity.

9.13 Construction of the Project. Except as expressly set forth in Article V, all construction activities regarding any portion of the Project shall be conducted in compliance with all applicable Laws, ordinances, rules and regulations of any governmental authority having jurisdiction thereof, including, without limitation, the Alabama Immigration Law, any and all federal Laws, and all applicable licenses, permits, building codes, restrictive covenants, zoning and subdivision ordinances and flood, disaster and environmental protection laws.

The Developer shall cause any architect, general contractor, subcontractor or other business performing any work in connection with the construction of the Project to obtain all necessary permits, licenses and approvals to construct the same, and to comply with all applicable Laws to the same extent as those imposed upon the Developer in accordance with this Section 9.13. It is understood and acknowledged that the City will not waive any City Application Fees, City Development Fees, or any other fees, access fees, or related expenses for any permits, licenses or approvals that must be obtained from the City or any other governmental authority in connection with the construction or operation of the Project.

9.14 Maintenance of the Parking Facilities. The Developer shall assure at all times that the Project parking facilities are maintained in good condition and repair. Such parking facilities shall be maintained by the Developer in accordance with generally accepted standards in the parking industry for the life of the Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed and delivered on its behalf by its duly authorized officer, on and as of the Effective Date.

CITY OF HUNTSVILLE

By: \_\_\_\_\_  
Mayor

ATTEST:

By \_\_\_\_\_

Its \_\_\_\_\_

SEALY PROPERTY DEVELOPMENT, LLC

By: \_\_\_\_\_  
Charlie O. Sealy, III  
Its Manager

*[Signature Page to Development Agreement]*

## EXHIBIT A

### CITY PROVIDED AMENITIES

- (a) Extension of Meridian Street between Jefferson Street and Spragins Avenue, as shown in the Site Plan and as follows:
1. Street design including curb cuts, on-street parking, and sidewalks to be coordinated with the Developer and acceptable to the Developer.
  2. The City to bear the cost of this road extension (including design and construction).
  3. This road to become public ROW. It is anticipated it will be a 40' to 50' ROW to be coordinated with the Developer's plans for the Project.
  4. The timing of the construction of the road extension to be coordinated with the construction of the Project and agreed to by the Developer so as not to adversely impact the Developer's construction schedule for the Project.
- (b) Installation of sidewalk and street-scaping around perimeter of the Development Area adjacent to roadways, as follows:
1. Jefferson Street, Meridian Street and Holmes Avenue improvements to be consistent in design, materials, and construction with newly installed improvements along Washington Street.
  2. The City to bear this cost, both design and construction.
  3. Spragins Street to also be performed by City (design can be to a lower degree than the other streets).
  4. These improvements are to be public and maintained by the City.
  5. The City to perform this work from curb to physical structures/improvements up to a maximum of 10 feet inside the property line of the Development Area.
  6. The City to re-do any curb or ROW as necessary.
  7. The Developer and the City to coordinate efforts in terms of grades, design, *etc.*
  8. The timing of the construction of the sidewalks and streetscaping to be coordinated with the construction of the Project and agreed to by the Developer so as not to adversely impact the Developer's construction schedule for the Project.
  9. Access and ability to get CO's for the Project will not be hindered or withheld due to the construction of the sidewalks and streetscaping.
- (c) Street-scaping, landscaping, lighting, grading, drainage, and concrete forming, placing, and finishing of open space Plaza area generally depicted on Site Plan.
- (d) The City to provide sanitary sewer to the site in locations and of capacities as required by the Developer.
- (e) The City to improve off-site drainage as needed for the development.
- a. The Developer's engineer and the City's engineer will coordinate to agree upon needs.
  - b. The City will then provide any improvements as necessary up to the Development Area, and in a location acceptable to the Developer.

EXHIBIT "B"

DEVELOPMENT AREA

[attached]

**JEFFERSON STREET PROPERTY SITE LEGAL DESCRIPTION**

All that part of Lots 8, 9, 10, 11, 12, 13, 20, 21, 27, 28, 29 and 30 of Block 301 of the Quigley Map of the City of Huntsville, Madison County, Alabama more particularly described as follows: Commencing at the Northeast corner of Lot 29 of the Quigley Map of the City of Huntsville being a 5/8" capped rebar found (G. W. JONES) on the Westerly margin of Jefferson Street, said point is also the True Point of Beginning:

thence from the True Point of Beginning and along the Westerly margin of Jefferson Street South 31 degrees 58 minutes 57 seconds East a distance of 129.28 feet to a point;

thence along a curve to the right having a radius of 30.00 feet and a chord bearing and distance of South 12 degrees 31 minutes 33 seconds West 42.06 feet to a point on the Northerly margin of Holmes Avenue;

thence along the Northerly margin of Holmes Avenue South 57 degrees 02 minutes 03 seconds West a distance of 249.68 feet to a point;

thence along a curve to the right having a radius of 25.00 feet and a chord bearing and distance of North 75 degrees 49 minutes 14 seconds West 36.65 feet to a point on the Easterly margin of Spragins Street;

thence along the Easterly margin of Spragins Street North 28 degrees 40 minutes 31 seconds West a distance of 137.88 feet to a pk nail found;

thence leaving the Easterly margin of Spragins Street North 57 degrees 52 minutes 53 seconds East a distance of 69.75 feet to a 1/2 inch rebar found, being the NW corner of Lot 29 of the Quigley Map of the City of Huntsville;

thence North 28 degrees 36 minutes 35 seconds West a distance of 121.33 feet to a 1/2 inch rebar found:

thence South 63 degrees 09 minutes 39 seconds West a distance of 69.69 feet to a hex head pipe found on the Easterly margin of Spragins Street;

thence along the Easterly margin of Spragins Street North 17 degrees 35 minutes 03 seconds West a distance of 155.49 feet to a capped rebar found (G.W. Jones);

thence leaving the Easterly margin of Spragins Street North 58 degrees 13 minutes 59 seconds East a distance of 120.29 feet to a 5/8 inch rebar found;

thence North 58 degrees 04 minutes 07 seconds East a distance of 130.13 feet to an "X" in concrete found on the Westerly margin of Jefferson Street;

thence along the Northeast margin of Jefferson Street South 31 degrees 58 minutes 55 seconds East a distance of 278.09 feet to a capped rebar found being the True Point of Beginning and containing 2.70 acres or 117,633.43 square feet more or less.

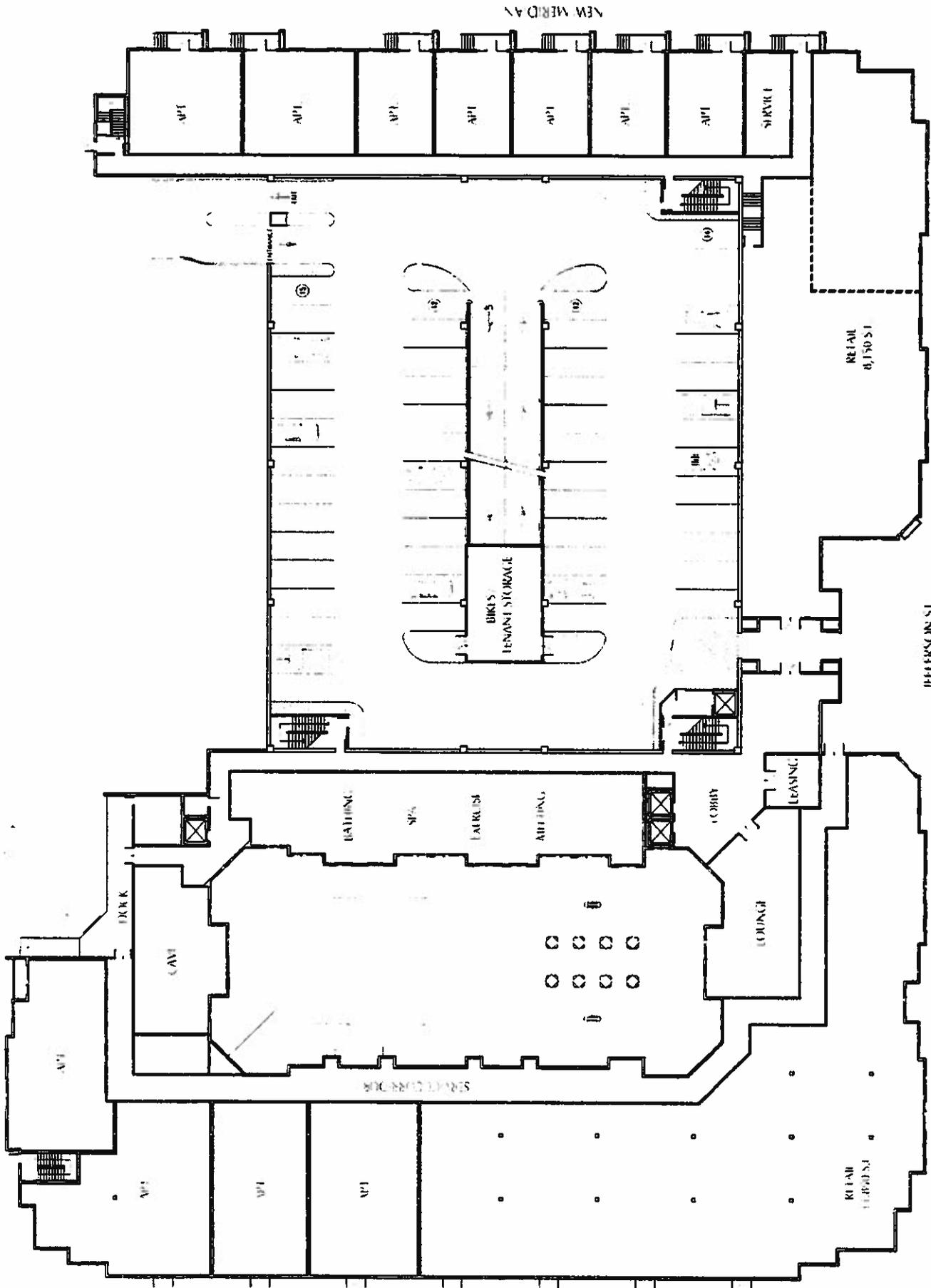
EXHIBIT "C"

SITE PLAN

[attached]

# Exhibit "C"

SPRACINS ST



NEW MERIDIAN

JEFFERSON ST

GROUND FLOOR PLAN / SITE PLAN



## CITY PROVIDED AMENITIES

- (a) Extension of Meridian Street between Jefferson Street and Spragins Avenue, as shown in the Site Plan and as follows:
  - 1. Street design including curb cuts, on-street parking, and sidewalks to be coordinated with the Developer and acceptable to the Developer.
  - 2. The City to bear the cost of this road extension (including design and construction).
  - 3. This road to become public ROW. It is anticipated it will be a 40' to 50' ROW to be coordinated with the Developer's plans for the Project.
  - 4. The timing of the construction of the road extension to be coordinated with the construction of the Project and agreed to by the Developer so as not to adversely impact the Developer's construction schedule for the Project.
  
- (b) Installation of sidewalk and street-scaping around perimeter of the Development Area adjacent to roadways, as follows:
  - 1. Jefferson Street, Meridian Street and Holmes Avenue improvements to be consistent in design, materials, and construction with newly installed improvements along Washington Street.
  - 2. The City to bear this cost, both design and construction.
  - 3. Spragins Street to also be performed by City (design can be to a lower degree than the other streets).
  - 4. These improvements are to be public and maintained by the City.
  - 5. The City to perform this work from curb to physical structures/improvements up to a maximum of 10 feet inside the property line of the Development Area.
  - 6. The City to re-do any curb or ROW as necessary.
  - 7. The Developer and the City to coordinate efforts in terms of grades, design, *etc.*
  - 8. The timing of the construction of the sidewalks and streetscaping to be coordinated with the construction of the Project and agreed to by the Developer so as not to adversely impact the Developer's construction schedule for the Project.
  - 9. Access and ability to get CO's for the Project will not be hindered or withheld due to the construction of the sidewalks and streetscaping.
  
- (c) Street-scaping, landscaping, lighting, grading, drainage, and concrete forming, placing, and finishing of open space Plaza area generally depicted on Site Plan.
  
- (d) The City to provide sanitary sewer to the site in locations and of capacities as required by the Developer.
  
- (e) The City to improve off-site drainage as needed for the development.
  - a. The Developer's engineer and the City's engineer will coordinate to agree upon needs.
  - b. The City will then provide any improvements as necessary up to the Development Area, and in a location acceptable to the Developer.

**EXHIBIT D**

**AUTHORIZING RESOLUTION**

**[to be attached]**

EXHIBIT E

FORMS OF ALABAMA IMMIGRATION LAW AFFIDAVITS

FORM FOR SECTIONS 9(a) and (b) BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT; CODE OF ALABAMA, SECTIONS 31-13-9(a) and (b) AFFIDAVIT FOR BUSINESS ENTITY/EMPLOYER /CONTRACTOR

(To be completed as a condition for the award of any contract, grant, or incentive by the State of Alabama, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees)

State of \_\_\_\_\_  
County of \_\_\_\_\_

Before me, a notary public, personally appeared \_\_\_\_\_ (print name) who, being duly sworn, says as follows:

As a condition for the award of any contract, grant, or incentive by the State of Alabama, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees, I hereby attest that in my capacity as \_\_\_\_\_ (state position) for \_\_\_\_\_ (state business entity/employer/contractor name) that said business entity/employer/contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien.

I further attest that said business entity/employer/contractor is enrolled in the E-Verify program. (ATTACH DOCUMENTATION ESTABLISHING THAT BUSINESS ENTITY/EMPLOYER/CONTRACTOR IS ENROLLED IN THE E-VERIFY PROGRAM)

\_\_\_\_\_  
Signature of Affiant  
Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

I certify that the affiant is known (or made known) to me to be the identical party he or she claims to be.

\_\_\_\_\_  
Signature and Seal of Notary Public

**Author:** Jean Brown

**Statutory Authority:** Code of Alabama, sections 31-13-9(a) and (b); Section 31-13-9(h).

**History:** New Rule: Filed December 12, 2011; effective December 12, 2011

**820-4-1-.02ER Contents of Acceptable Affidavit Form For Administering Code of Alabama, Section 31-13-9(c).**

FORM FOR SECTION 9(c) BEASON- HAMMON ALABAMA TAXPAYER AND  
CITIZEN PROTECTION ACT; CODE OF ALABAMA, SECTION 31-13-9(c)

**AFFIDAVIT FOR SUBCONTRACTOR**

(To be completed as a condition for performing work on a project paid for by contract, grant, or  
incentive by the State of Alabama, any political subdivision thereof, or any state-funded entity)

State of \_\_\_\_\_  
County of \_\_\_\_\_

Before me, a notary public, personally

Appeared \_\_\_\_\_ (print name) who, being duly sworn, says  
as follows:

As a condition for being a subcontractor on a project paid for by contract, grant, or incentive  
by the State of Alabama, any political subdivision thereof, or any state-funded entity, I  
hereby attest that in my capacity as \_\_\_\_\_ (state position) for  
\_\_\_\_\_ (state subcontractor name), said  
subcontractor shall not knowingly employ, hire for employment, or continue to employ an  
unauthorized alien.

I further attest that said subcontractor is enrolled in the E-Verify program prior to  
performing any work on the project. (ATTACH DOCUMENTATION ESTABLISHING  
THAT SUBCONTRACTOR IS ENROLLED IN THE E-VERIFY PROGRAM)

\_\_\_\_\_  
Signature of Affiant  
Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2\_\_\_\_\_.

I certify that the affiant is known (or made known) to me to be the identical party he or she  
claims to be.

\_\_\_\_\_  
Signature and Seal of Notary Public

**Author:** Jean Brown

**Statutory Authority:** Code of Alabama, sections 31-13-9(c); Section 31-13-9(h).

**History: New Rule:** Filed December 12, 2011; effective: December 12, 2011

**820-4-1-.03ER Contents of Acceptable Affidavit Form For Administering  
Code of Alabama, Section 31-13-9(d).**

FORM FOR SECTION 9(d) BEASON-HAMMON ALABAMA TAXPAYER AND  
CITIZEN PROTECTION ACT; CODE OF ALABAMA, SECTION 31-13-9(d)  
AFFIDAVIT OF DIRECT SUBCONTRACTOR TO BE GIVEN TO CONTRACTOR  
State of \_\_\_\_\_

County of \_\_\_\_\_

Before me, a notary public, personally appeared \_\_\_\_\_ (print  
name) who, being duly sworn, says as follows:

I hereby attest that as \_\_\_\_\_ (state position) for  
the direct subcontractor \_\_\_\_\_ (state business  
entity/employer/subcontractor name) for \_\_\_\_\_ (state business  
entity/employer/contractor name) said direct subcontractor has not knowingly employed,  
hired for employment, or continued to employ an unauthorized alien. I further attest that I  
have verified each of the above-named direct subcontractor's employee's eligibility for  
employment. I further attest that I have in good faith complied with Code of Alabama,  
Section 31-13-9(c)\*

\_\_\_\_\_  
Signature of Affiant

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

I certify that the affiant is known (or made known) to me to be the identical party he or she  
claims to be.

\_\_\_\_\_  
Signature and Seal of Notary

Public

\*Code of Alabama, Section 31-13-9(c) provides: "No subcontractor on a project paid for by  
contract, grant, or incentive by the state [of Alabama], any political subdivision thereof, or any  
state-funded entity shall knowingly employ, hire for employment, or continue to employ an  
unauthorized alien and shall attest to such by sworn affidavit signed before a notary. The  
subcontractor shall also enroll in the E-Verify program prior to performing any work on the  
project and shall attach to the sworn affidavit documentation establishing that the subcontractor  
is enrolled in the E-Verify program."

**Author:** Jean Brown

**Statutory Authority:** Code of Alabama, section 31-13-9(d); Section 31-13-9(h).

**History: New Rule:** Filed December 12, 2011; effective December 12, 2011.



**Exhibit "C"**

**Form of Ground Lease Agreement**

**[attached]**

**GROUND LEASE AGREEMENT**

**BETWEEN**

**THE CITY OF HUNTSVILLE**

**AND**

\_\_\_\_\_, LLC

## **GROUND LEASE AGREEMENT**

This GROUND LEASE AGREEMENT (hereinafter referred to as this "Lease") is made and entered into as of \_\_\_\_\_, 2014 by and between the CITY OF HUNTSVILLE, a municipal corporation under the laws of the State of Alabama (hereinafter referred to as "City"), and \_\_\_\_\_, a(n) \_\_\_\_\_ (hereinafter referred to as "Tenant").

### **WITNESSETH THAT:**

WHEREAS, City is the owner of an approximately 2.6 acre parcel of property (the "Property"), which property is more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, City published a request for proposal 95-2012-63-3 (the "RFP"), pursuant to which City requested the submission of proposals for the development of the Property; and

WHEREAS, Sealy Property Development, LLC (collectively with its permitted assigns, referred to herein as "Developer") submitted a response to the RFP, in which Developer proposed to construct a mixed-use development on the Property as generally depicted or described on Exhibit "B" attached hereto and incorporated herein by this reference (along with various related amenities and improvements, the "Project" and collectively with the Property, the "Premises"); and

WHEREAS, City selected Developer to develop the Property and City and Developer entered into that certain Development Agreement dated \_\_\_\_\_, 2014 (the "Development Agreement") pursuant to which, among other things, City agreed to enter into this Lease with Developer or its designee; and

WHEREAS, Developer formed Tenant to develop, hold and own the Project; and

WHEREAS, Tenant will procure funds to pay for the development, construction, operation, maintenance and replacement of the Project from time to time, in part, by procuring one or more loans (collectively, all such loans, as extended, renewed, and increased from time to time, are referred to herein the "Loan") from one or more lenders selected by Tenant (collectively, all such lenders and any other holder of the Loan and any collateral agent therefor are referred to herein as the "Lender"); and

WHEREAS, in connection, with the Loan, Tenant will grant Lender one or more mortgages (collectively, the "Leasehold Mortgage" and collectively with all the other loan documents entered into by Tenant or Developer in connection with the Loan, the "Loan Documents") on Tenant's leasehold interest created by this Lease and in the Project,

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements herein set forth by each party to be kept and performed, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly

acknowledged by each party hereto, City and Tenant do hereby mutually covenant and agree as follows:

City does hereby let, subject only to the encumbrances (collectively, the "Permitted Encumbrances") enumerated in Exhibit "C", attached hereto and incorporated herein by this reference, unto Tenant and Tenant does hereby take and lease from City the Property, together with all appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto. TO HAVE AND TO HOLD such property for a term of years set forth herein unless this Lease shall be sooner terminated as hereinafter provided. This Lease and all rights of the parties hereunder are expressly subject to the provisions as hereinafter set forth, all of which the parties hereto respectively agree to keep, abide by and perform during the term hereof.

**1. Term.** The term (the "Initial Term") of the leasehold estate of the Tenant in the Property created hereunder shall commence as of \_\_\_\_\_, 2014 (the "Commencement Date") and expire at 12:00 Midnight on \_\_\_\_\_, 2064, unless otherwise extended or sooner expired or terminated in accordance with this Lease or by operation of law. The date on which the term hereof ends by termination or expiration of this Lease shall be referred to herein as the "Termination Date." This Lease is subject to termination, extension and other terms as provided herein. Tenant shall have the option to renew this Lease for two additional renewal terms (each a "Renewal Term") on the same terms and conditions provided for herein, except for any adjustment in the amount of Base Rent (hereinafter defined) payable by Tenant. The first Renewal Term shall be for 25 years and the second Renewal Term shall be for 24 years. Tenant shall give notice (the "Renewal Notice") of its intention to renew the Lease within 30 days of the end of the Initial Term or the first Renewal Term, as the case may be. As used herein, "Term" means collectively the Initial Term and, to the extent Tenant exercises its renewal options, each Renewal Term.

**2. Rent/Consideration.** As rent and consideration to City for the lease of the Property, Tenant shall pay City the Base Rent. As used herein, "Base Rent" shall mean:

(a) during the Initial Term, the sum of \$100.00 per year payable annually in advance of each year during the Initial Term;

(b) during the first Renewal Term, the sum of \$120,000 per year, payable in monthly installments of \$10,000 each in advance on the first day of each month during the first Renewal Term; and

(c) during the second Renewal Term, an amount equal to the then current fair annual market rental value of the Property, valued as undeveloped land and as determined by an appraisal by an appraiser mutually acceptable to Tenant and City, and payable in equal monthly installments in advance on the first day of each month during the second Renewal Term.

If Tenant and City cannot agree on an appraiser with respect to the determination of the amount of Base Rent due during the second Renewal Term, then each shall have an appraisal completed

and the annual rental will be the average of the two appraisals. Payment of all rent and all other sums due to City under this Lease shall be made payable to City and delivered to City at the address shown in Section 16 of this Lease or at such other place as City may notify Tenant from time to time.

3. Payment of Taxes/Compliance with Laws. Tenant shall pay all taxes, assessments, license fees, excises, imposts, fees and charges of every sort, nature and kind whether imposed on the Premises or the interest of the Tenant therein (hereinafter referred to singularly and collectively as "Tax") and shall conform to, obey and comply in all material respects with all present and future laws, ordinances and regulations of all legally constituted authorities which are applicable to the Premises, this Lease, the use of the Premises or any repair, replacement, demolition, renovation, construction, restoration or excavation being done on or to the Premises. Tenant, in its own name and at its sole cost and expense, shall have the right to contest the validity of, applicability of, or compliance with any Tax, law, ordinance, rule, regulation, assessment or requirement and City may not declare a Default under Section 15 or otherwise under this Lease during the pendency of any such contest.

4. Quiet Enjoyment. City represents and warrants that, except for the Permitted Encumbrances, it owns fee simple, marketable title to the Property. City further covenants and agrees that, throughout the Term, Tenant may peaceably and quietly enjoy the Property subject, however, to the Permitted Encumbrances.

5. Subordination.

(a) By Tenant as to Property. Tenant's rights, as well as the rights of any sublessee, any mortgagee, architect, independent contractor, assignee, sub-contractor, prime or general contractor, mechanic, laborer, materialman or other lien or claim holder, shall always be and remain subordinate, inferior, and junior to City's title, interest and estate in the Property. Tenant shall discharge any lien, encumbrance or charge levied on account of any mechanic's, laborer's, or materialmen's lien, or any security agreement, conditional bill of sale, title retention agreement, chattel mortgage, or otherwise ("Lien"), which might or does constitute a lien, encumbrance or charge upon the Property, or any part thereof, having a priority or preference over or ranking on a parity with the estate, rights or interest of City in the Property or any part thereof. Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of City, express or implied, by inference or otherwise, to the filing of any Lien against the Property by any contractor, subcontractor, laborer, materialman, architect, engineer, or other Person for the performance of any labor or the furnishing of any materials or services for or in connection with the Property or any part thereof.

(b) By City as to Project. Notwithstanding anything else contained herein, City agrees that its interest in and to the rents, revenues, issues and profits relating to the operation of the Project, as well as any and all rights to any and all contracts, agreements and other instruments in connection with the design, acquisition, construction, equipping, installation and operation of the Project shall be junior and subordinate to the interest of the Tenant and the holder of any Leasehold Mortgage in any such collateral as granted or provided in any of the

Loan Documents (collectively, the "Collateral"). So long as any of the indebtedness created, evidenced or secured by any of the Loan Documents remains outstanding and unpaid, the City shall not exercise any rights or remedies with respect to the Collateral, without obtaining in each instance the prior written consent of the Tenant and the holder of any Leasehold Mortgage.

6. Loan Documents Controlling. In the event of any inconsistency between the provisions of this Lease and the Loan Documents as to Tenant's obligations related to the operation of the Project, the Loan Documents shall control; *provided, however*, that in no event will City be held liable as or deemed a guarantor or otherwise responsible for the payment of the Loan or any other financing required for the design, acquisition and construction of the Project; and *further provided, however*, that the Tenant's rights, as well as the rights of anyone else, including, but not limited to, any mortgagee, architect, independent contractor, assignee, sublessee, sub-contractor, prime or general contractor, mechanic, laborer, materialman or other lien or claim holder, shall always be and remain subordinate, inferior and junior to City's title, interest and estate in the Property.

7. Title to the Improvements; Rights to Improvements upon Termination. Title to all improvements made, erected, constructed, installed or placed upon the constructed on the Property shall be and remain in Tenant until expiration or earlier termination of this Lease. Tenant alone shall be entitled to claim depreciation on the Project for all taxation purposes during the Term. If requested by Lender or the title company insuring any Loan, Tenant and City shall enter into a "declaration of severance" or the like, in recordable form, expressly severing title to the land from title to the improvements on the Property. Any all rights, title and interest of City, if any, in and to any Project improvements constructed on the Property, shall be and hereby are made subordinate and subject to the lien of any Leasehold Mortgage. Upon the expiration of the term of this Lease, or upon the prior termination of this Lease from any cause, all rights, title and interests of Tenant and all persons whomsoever claiming by, through or under Tenant shall immediately cease and terminate, and all of the buildings, structures, improvements on the Property, including the Project, shall thence forward constitute and belong to and be the absolute property of City, without further act or conveyance, and without liability to make such compensation to Tenant.

#### 8. Assignments of Lease.

8.1 Resident, Office and Commercial Leases. Upon construction, the Project buildings will be leased to multiple third parties. Any other provisions of this Lease to the contrary notwithstanding, without the consent or approval of City, Tenant shall have the right in the ordinary course of business to enter into rental, use or lease agreements with residents, businesses and other tenants of the Project.

8.2 Subdivision or Condominium Declaration. In conjunction with the development of the Project or the closing of a Loan, Tenant may need to subdivide the Property or effect a condominium structure with regard to the Project. City agrees to cooperate with any such subdivision of the Property or condominium declaration of the Premises, which cooperation may include the assignment of this Lease as to a portion of the Property or the execution of a

separate ground lease agreement with Tenant or Tenant's designee for a portion of the Property upon the same terms, covenants and conditions contained in this Lease.

8.3 Lender Request. As may be provided in the Loan Documents, City agrees that Lender may have the right from time to time to designate an assignee of Tenant without the consent of City.

8.4 City Consent. Except as otherwise provided in this Lease, Tenant may not assign or transfer this Lease or any interest herein or any right or privilege appurtenant hereto, unless the written consent of City is first obtained, such consent not to be unreasonably withheld, conditioned or delayed. Any assignment or transfer for which consent is required but which is nevertheless made without such written consent shall be voidable by City. City agrees that it will grant its consent to an assignment so long as the proposed assignee has the experience, expertise, capability and qualifications to operate and manage the Project and the proposed assignee assumes the obligations of the Tenant under the Lease in writing.

9. Rights of Leasehold Mortgagee. Notwithstanding anything contained herein to the contrary, City hereby consents to Tenant's execution and delivery of the Leasehold Mortgage. City and Tenant further agree as follows:

(a) Tenant shall use its best efforts to cause Lender to provide City with concurrent notice of default by Tenant under the Leasehold Mortgage.

(b) In the case of any Default (defined in Section 15) by Tenant hereunder, City will take no action to remedy such Default without first giving to the Lender 60 days immediately following the period of time given the Tenant after notice to remedy or cause to be remedied the Default, within which either (1) to cure the Default or (2) to institute and diligently pursue foreclosure, or otherwise acquire Tenant's interest under this Lease in the case of a Default that may not be cured by the Lender; provided, however, that Lender shall not be required to continue such possession or such foreclosure proceedings if the Default that would have been the reason for serving such notice shall be cured.

(c) In case Tenant shall Default under any of the provisions of this Lease, Lender shall have the right, for a period of 60 days more than is given to Tenant to cure the Default or cause the same to be cured, and City shall accept such performance by or at the instance of Lender as though the same had been done or performed by Tenant.

(d) The Lender may become the legal owners and holders of this Lease by foreclosure of a Leasehold Mortgage or as a result of the assignment of this Lease in lieu of foreclosure.

(e) City shall not terminate or cancel this Lease or consent to or accept any cancellation, termination or surrender thereof, or amend or modify this Lease, without the prior written notice to Lender. Any such action without the requisite notice shall be void.

(f) If for any reason this Lease shall terminate prior to the expiration of the Term, other than a termination by reason of a permanent taking, City shall enter into a new lease for the Property with Lender, or any person, firm, corporation or entity designated by Lender, for the remainder of the Term, effective as of the date of such termination and upon the same terms, covenants and conditions contained in this Lease, provided that Lender make written request upon City within 60 days from the date the Lender receive written notice of such termination.

(g) In conjunction with the execution or subsequent modification, renewal or replacement of the Leasehold Mortgage, City shall consent to such reasonable modifications of this Lease as Lender may request, provided that such modifications: (1) do not change the rent or other payments required to be paid by Tenant hereunder, (2) do not impose upon City obligations which are substantially or practically more burdensome than the obligations contained in this Lease, and (3) do not require City to subordinate its fee interest to the Leasehold Mortgage.

(h) The lessee under a new lease for the Property entered into in accordance with Section 9.1(f) hereof, or the purchaser at a foreclosure sale under the Leasehold Mortgage, or any person accepting an assignment of Tenant's interest herein in lieu of foreclosure, shall become the tenant hereunder and thereupon shall be entitled to all of the leasehold estate and shall be required to perform all of the obligations hereunder of Tenant.

#### 10. Insurance.

10.1 Insurance During Construction. From the date on which construction of any improvements on the Property is commenced until the date of completion thereof, Tenant shall effect and maintain, at no cost to City, all-risk builder's risk and extended coverage insurance (completed value, non-reporting form) with respect to any improvements being constructed to one hundred percent (100%) of the insurable value thereof, such insurance to cover items of labor and materials connected therewith, whether in or adjacent thereto, materials and equipment in place or to be used as part of the permanent construction thereof.

10.2 Casualty and Liability Insurance. During the Term, Tenant shall: (a) keep all buildings, improvements, fixtures, equipment and personal property comprising part of the Project immediately from and after the completion of each of them, insured against loss or damage by fire or by any other cause now or hereafter embraced by such "extended coverage" as is or then shall be commonly included in policies insuring similar buildings and building equipment against loss by fire and other casualties, and boiler and machinery insurance coverage, in an amount not less than one hundred percent (100%) of replacement cost and (b) maintain such other insurance with respect to the Property and the Project against such additional risks which at that time are commonly insured against in the case of comparable premises and buildings of similar location, due regard being, or to be, given to the height and type of building, its construction, use and occupancy. In no event shall the amount of insurance required to be maintained by Tenant under this Section be less than that required by Lender.

10.3 Insurers. All insurance provided for in this Section 10 shall be effected under valid and enforceable policies issued by insurers of recognized responsibility which are licensed

to do business in the State of Alabama and are rated at least Best level A- or the equivalent by national rating organizations. If Tenant elects to self-insure any or all of the required coverage, said self insurance shall be subject to City's approval which approval shall not be unreasonably withheld, conditioned or delayed.

11. Access to Premises. City, its authorized representatives, agents, employees and attorneys may, but shall be under no duty to, enter the Premises at reasonable times and hours, subject to the rights of tenants in possession, if any, to inspect the Premises in order to determine whether Tenant and those holding under Tenant are complying with Tenant's undertakings, duties and obligations under this Lease and the Development Agreement. Such entry, inspection and repairs, additions, improvements, changes, or alterations as City may make of the Premises shall not constitute an eviction of Tenant or those holding under Tenant in whole or in part, and the rent shall in no way abate by reason of loss or interruption of the business of Tenant or otherwise while such work is being done. City agrees to employ its best efforts to minimize any interruption to the business operations of Tenant and those holding under Tenant resulting from City's (or its designated representatives') activities on the Premises. Nothing herein contained, however, shall be deemed or construed to impose upon City any obligation or liability whatsoever for care, supervision, repair, improvement, additions, improvement, change, or alteration to the Premises.

12. Recordation of Memorandum of Lease. City and Tenant shall execute, acknowledge and deliver a memorandum of lease, substantially in the form attached hereto as Exhibit "D" which may be recorded by Tenant, at Tenant's expense, in the Office of Probate Judge for Madison County, Alabama.

13. Condemnation. The term "condemnation" as used in this Lease means the taking or appropriation of property, or any interest therein, in exercise of the power or right of eminent domain or such taking for public or quasi-public use or any state of facts relating to the taking or appropriation of property which, without an actual taking or appropriation, shall result in direct or consequential damages to the Premises or the leasehold interest herein. Such term shall also be deemed to include to the extent not otherwise defined in this paragraph, a temporary taking of the Premises or any part thereof or the improvements thereon for a period of one year or more, and the taking of the leasehold interest created herein.

13.1 Total Condemnation. If all of the Premises (or such substantial portion thereof as shall, in Tenant's sole discretion, make it economically unfeasible to continue to operate the remaining portion for the purpose herein) is so condemned, this Lease shall terminate on the date title to the Premises vests in the condemnor.

13.2 Partial Condemnation. In the event of a taking of less than a total taking as provided in Section 13.1, this Lease shall terminate as to the condemned portion of the Premises on the date title to the condemned portion of the Premises vests in the condemnor. The provisions of this Lease shall remain in full force and effect as to the portion of the Premises not condemned.

**13.3 Division of Award.** Any condemnation proceeds shall be paid as follows and in the following order:

**First** Subject to the provisions of the Loan Documents, an amount equal the portion of the principal balance and accrued interest on and all other sums owing under the Leasehold Mortgage, if any, shall be distributed directly to the applicable leasehold mortgagee.

**Second** The balance, if any, shall be allocated between City and Tenant based upon the value of their relative interests in the Premises. The valuation of City's and Tenant's interests in the Premises and, therefore, in a condemnation award, shall be based upon appraisals consistent with the standards of the American Appraisal Institute.

**14. Estoppel Certificates.** City and Tenant will execute, acknowledge and deliver to the other promptly upon request, a certificate certifying as to the following:

**14.1 Validity of Lease.** That this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications) and the Term hereof;

**14.2 Payment of Rent.** The dates through which the rent under this Lease has been paid;

**14.3 Amount of Rent Due.** The amount of the rent then payable; and

**14.4 Defaults by Tenant.** That no notice has been given by City to Tenant of any Default under this Lease which has not been cured and to the best of its knowledge and belief no Default exists (or, if there has been any notice given or a Default exists, describing the same).

Certificates from City and Tenant pertaining to the same matters may be relied upon by any Lender or by any prospective assignee of an interest under this Lease permitted hereunder or by any prospective lessee or sublessee as to all or any portion of the Property permitted hereunder.

**15. Default by Tenant.** A "Default" by Tenant shall occur hereunder if either Rent Default or an Other Default shall occur hereunder. A "Rent Default" shall occur hereunder if Tenant shall fail make any payment of rent when due and such failure shall continue for 30 days after notice of such failure from City to Tenant. An "Other Default" shall occur if Tenant shall fail to comply with or perform or observe any material term, covenant, condition or agreement to be complied with or performed or observed on the part of Tenant, other than the payment of rent, and such failure shall continue for 60 days after notice thereof from City to Tenant; provided that there shall be no Other Default if, within 60 days after receipt by Tenant of such written notice, Tenant institutes or initiates steps to effectuate compliance with this Lease or if Tenant and proceeds diligently and continuously to effect such compliance with this Lease until the same be completed, and the same shall be completed within a period of not more than one year. In the event Tenant has not cured a Rent Default within the specified cure period listed above and

Lender has not cured the Rent Default within the specified cure period listed in Section 9, then City shall have the right to give Tenant written notice of City's intention to terminate this Lease. Unless the Rent Default is then cured within 30 days of the date of Tenant's receipt of the notice of intention to terminate, then, upon the expiration of such 30 days, this Lease shall terminate. Upon any such termination, Tenant's right, and the right of all those holding under Tenant, to possession of the Property shall cease; Tenant and all those holding under Tenant shall peaceably and quietly surrender the Premises to City; and all of the right, title and interest of Tenant hereunder, and the right, title and interest of all those holding under Tenant hereunder, shall expire. In the event Tenant has not cured an Other Default within the specified cure period listed above and Lender has not cured the Other Default within the specified cure period listed in Section 9, then City may, as its sole and exclusive remedy, at law or in equity, at its option either (A) compel Tenant to fulfill its obligations by a suit for specific performance, and, if City prevails in such suit, to recover all costs incidental to such suit, including reasonable attorneys' fees or (B) sue Tenant for damages to City resulting either directly or indirectly from Tenant's Other Default, and, if City prevails in such suit, to recover all costs incidental to such suit, including reasonable attorneys' fees. City may not terminate this Lease as a result of an Other Default.

16. Notices. Until a different address is given to the other party in writing, any notice hereunder shall be either: (a) delivered by hand; (b) delivered by a nationally recognized overnight courier which maintains evidence of receipt; or (c) sent by facsimile transmission with a confirmation copy delivered the following day by a nationally recognized overnight courier which maintains evidence of receipt, to the following address:

If to City:

City of Huntsville  
Attention: Mayor  
308 Fountain Circle  
P.O. Box 308  
Huntsville, Alabama 35804  
Fax: (256) 427-5121

With a copy to the attention of

City of Huntsville  
Attention: City Attorney  
308 Fountain Circle  
P.O. Box 308  
Huntsville, Alabama 35804

If to Tenant:

Sealy Property Development, LLC  
500 Eustis Avenue  
Huntsville, AL 35801  
Attention: Mr. Charlie O. Sealy, III  
Facsimile: (256) 489-9121

With a copy to:

J. Marland Hayes

Tanner & Guin, LLC  
2711 University Boulevard  
Tuscaloosa, AL 35401-1465  
Facsimile: (256) 633-0309

Notwithstanding anything contained in this Lease to the contrary, any notice required to be given by City or Tenant hereunder shall be deemed to have been given and shall be effective as of the date such notice is received or refused reflected on said notice. All notices, demands or requests made by either party to the other which are required or permitted by the provisions of this Lease shall be in writing.

17. Submission of Matters to City for Approval. Any matter which must be submitted to and consented to or approved in writing by City or any matter which must be submitted to City which may become effective if not denied by City, as required under this Lease, shall be submitted to City by hand, by overnight delivery, or mailed by United States certified or registered mail return receipt requested, to the address of City designated for the giving of notice to City under Section 16 of this Lease and shall either be approved or rejected by the City within 30 days after receipt unless a shorter period of time is expressly stated elsewhere in this Lease. If City should fail so to approve or reject within such within 30-day period as provided for herein, City's approval shall be assumed to have been unconditionally granted and Tenant shall have the right to proceed on such matter so submitted. City shall inform Tenant in writing of its rejection or approval of such submitted matter by United States certified or registered mail, return receipt requested, to the address of Tenant designated for the giving of notice to Tenant under Section 16 of this Lease. Any review by City of any matter submitted to City is for City's own convenience and purpose only. By undertaking such review, City does not obtain or have any liability to Tenant or any other person, including, without limitation, the insurers and lenders of Tenant.

18. Holding Over. Tenant and all persons whomsoever claiming by, through or under Tenant shall not use or remain in possession of the Premises after the termination of this Lease. Any holding over, or continued use or occupancy by Tenant or and any person whomsoever claiming by, through or under Tenant after the termination of this Lease, without the written consent of City, shall not constitute a tenant-at-will interest in behalf of Tenant, but Tenant or such other person shall become a tenant-at-sufferance.

19. Indemnity. Tenant shall indemnify and hold City free and harmless from all demands, claims, liabilities, damages, suits, costs, or expenses arising out of any failure of Tenant to comply with and perform the requirements and provisions of this Lease. Tenant further agrees to indemnify and hold City free and harmless from and against any and all claims, demands, damages, costs, liability, and expenses, including, but not limited to, reasonable attorneys' fees, arising from the conduct or management of Tenant's business in the Premises. If City becomes aware of any fact or alleged claim that could result in any liability, damage, loss, expense, or cost covered by Tenant's indemnity, and if City desires to hold Tenant responsible therefor, City shall promptly notify Tenant in writing in accordance herewith of such facts or alleged claim and state in such notice the measures which City proposes to take to resist or dispose of such claim, including the proposed payment thereof. Unless Tenant shall notify City within 15 days after

receipt thereof that Tenant will take over the defense of such claim, City may at its option proceed to resist or otherwise dispose of such claim. Tenant shall be entitled to designate an attorney to defend any such claim or asserted liability provided, however, that such attorney shall consult with the attorney for City and keep such attorney advised of all material developments relating thereto.

## **20. Option to Purchase.**

20.1 **General.** Tenant shall have, and is hereby granted, the option to purchase the Property at any time during the Term. To exercise such option, Tenant shall: (a) give written notice to City, (b) specify therein the proposed date of purchase, which shall be not less than 15 nor more than 90 days after the date such notice is mailed, (c) on the date of purchase, pay to City the Option Price.

20.2 **Option Price.** As used herein "Option Price" means the then current fair market value of the Property, valued as undeveloped land, and as determined by an appraisal by an appraiser mutually acceptable to Tenant and City. If Tenant and City cannot agree on an appraiser, then each shall have an appraisal completed and the Option Price will be the average of the two appraisals.

20.3 **Closing and Title.** Whenever in this Section 20 reference is made to the "Closing," it shall mean a closing on the conveyance of the Property to Tenant to be held on the date selected by Tenant for Closing at the Mayor's office or such other location as the parties may mutually agree. At Closing, City shall deliver to Tenant a properly executed warranty deed to the Property conveying good and marketable, fee simple title to the Property, subject only to the Permitted Encumbrances and those liens or encumbrances, the creation or suffering of which Tenant consented (except for this Lease) and those liens or encumbrances resulting from the failure of Tenant to perform or observe any of the agreements or covenants on its part herein contained. In addition, at Closing, City shall deliver to Tenant properly executed bills of sale and other appropriate instruments to fully transfer and convey any rights or interest that City may have in and to the Project to Tenant, as Tenant shall reasonably request. At Closing, if Tenant is not otherwise already in possession of the Property, City shall place Tenant in quiet possession of the Property.

20.4 **Additional Assurances.** In addition to the documents otherwise required herein to be delivered at Closing, each of the parties shall deliver such other items, instruments, affidavits, or documents as counsel for the other parties may reasonably require to consummate the transactions contemplated herein and to proceed to an orderly and timely Closing.

20.5 **City's Parking Spaces.** The parties acknowledge that the City's right to park in the City Parking Spaces as agreed upon in the Development Agreement entered into by the Developer and the City on \_\_\_\_\_ 2014 shall continue so long as the parking facilities portion of the Project remains in use and neither assignment nor the purchase and sale of any portion of the Property shall change or alter the City's continued right to use the parking spaces.

## 21. Miscellaneous.

21.1 No Waiver of Rights. No failure of either party to exercise any power given it hereunder or to insist upon strict compliance by the other party with its undertakings, duties and obligations hereunder, and no custom or practice of the parties hereto at variance with the provisions hereof shall constitute a waiver of such party's right to demand exact compliance with the provisions contained in this Lease.

21.2 Rights are Cumulative. All rights, powers and privileges conferred herein upon both parties hereto shall be cumulative.

21.3 Third Party Beneficiaries. The parties acknowledge and agree that Lender and its respective successors and assigns shall be deemed third party beneficiaries hereunder.

21.4 Provisions are Binding Upon Assigns and are Real Covenants. Each of the provisions of this Lease shall apply to, extend to, be binding upon and inure to the benefit or detriment of not only the parties hereto, but also the legal representatives, successors and assigns of the parties, and shall be deemed and treated as real covenants running with the Property during the term of this Lease. Whenever a reference to a party or intended beneficiary hereto is made, such reference shall be deemed to include the legal representatives, successors and assigns of said party, the same as if in each case expressed.

21.5 Applicable Law. This Lease shall be governed, construed, performed and enforced in accordance with the laws of the State of Alabama.

21.6 All Genders and Numbers Included. Whenever the singular or plural number, or masculine, feminine, or neuter gender is used in this Lease, it shall equally apply to, extend to, and include the other.

21.7 Invalidity of Provision or Part Thereof. In the event any provision, or any portion of any provision of this Lease is held invalid, the other provisions of this Lease and the remaining portion of said provision, shall not be affected thereby and shall continue in full force and effect.

21.8 Time is of the Essence. All time limits stated in this Lease are of the essence.

21.9 Section Captions are to be Disregarded. The captions of the numbered sections of this Lease are for purposes of identification and convenience only and are to be completely disregarded in construing this Lease.

21.10 Representations and Warranties of City. City makes the following representations, warranties and findings:

(a) City is a municipal corporation under the laws of the State of Alabama and by proper action has duly authorized the execution, delivery and performance of this Lease.

(b) This Lease constitutes a legal, valid and binding obligation of City, enforceable against City in accordance with its terms. Neither the execution and delivery, nor the performance, of this Lease by City requires any consent of, filing with or approval of, or requires any notice to, or hearing with any person or entity (including, but not limited to, any governmental or quasi-governmental entity).

(c) Neither the authorization, execution and delivery of, nor the performance of, this Lease by City, to the knowledge of City, violates, constitutes a default under or a breach of (i) any agreement, instrument, contract, mortgage or indenture to which City is a party or to which City or its assets are subject; or (ii) any law, judgment, decree, order, ordinance, rule, regulation, consent or resolution applicable to City or any of its assets.

(d) There is not now pending or, to the knowledge of City, threatened any litigation affecting City which questions (i) the members, titles or positions of the members of the governing body or the manner in which the officers of the City are selected or (ii) the subject matter of this Lease.

21.11 Entire Agreement. The making, execution and delivery of this Lease by Tenant has not been induced by any representations, statements, covenants or warranties by City except for those contained in this Lease and the Development Agreement. This Lease together with the Development Agreement constitutes the full, complete and entire agreement between and among the parties hereto. No amendment of this Lease shall be binding unless such amendment shall be in writing, signed by both parties hereto and approved by the Lender.

21.12 No Partnership or Agency. Nothing in this Lease is intended, or shall in any way be construed, so as to create any form of partnership or agency relationship between City and Tenant. City and Tenant hereby expressly disclaim any intention of any kind to create any partnership or agency relationship between themselves. Nothing in this Lease shall be construed to make either party liable for any of the indebtedness of the other.

21.13 No Nuisance. Tenant shall use its best efforts not to use, or to suffer or to permit the Premises, or any part thereof to be used in any manner that would constitute a legal nuisance.

21.14 Counterparts. This Lease may be executed simultaneously in two or more counterparts, each of which shall be deemed original and all of which, when taken together, shall constitute one in the same document. The signature of any party to any counterpart shall be deemed a signature too, and may be appended to, any other counterpart.

IN WITNESS WHEREOF, City and Tenant have caused this Lease to be executed in their names and on their behalves by their duly authorized representatives effective as of the date first above written.

CITY:

CITY OF HUNTSVILLE

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

By \_\_\_\_\_

Its \_\_\_\_\_

STATE OF ALABAMA            §  
  § ss.  
MADISON COUNTY            §

I, the undersigned authority, a notary public in and for the State of Alabama at Large, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of the City of Huntsville, a municipal corporation under the laws of the State of Alabama, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand on this the \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

IN WITNESS WHEREOF, City and Tenant have caused this Lease to be executed in their names and on their behalves by their duly authorized representatives effective as of the date first above written.

TENANT:

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ALABAMA           §  
  § ss.  
MADISON COUNTY           §

I, the undersigned authority, a notary public in and for the State of Alabama at Large, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of \_\_\_\_\_, a limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such representative and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand on this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

## **List of Exhibits**

**EXHIBIT "A"-Property Description**

**EXHIBIT "B"-Project Depiction or Description**

**EXHIBIT "C"-Permitted Encumbrances**

**EXHIBIT "D"-Form of Memorandum of Lease**

**JEFFERSON STREET PROPERTY SITE LEGAL DESCRIPTION**

All that part of Lots 8, 9, 10, 11, 12, 13, 20, 21, 27, 28, 29 and 30 of Block 301 of the Quigley Map of the City of Huntsville, Madison County, Alabama more particularly described as follows: Commencing at the Northeast corner of Lot 29 of the Quigley Map of the City of Huntsville being a 5/8" capped rebar found (G.W. JONES) on the Westerly margin of Jefferson Street, said point is also the True Point of Beginning:

thence from the True Point of Beginning and along the Westerly margin of Jefferson Street South 31 degrees 58 minutes 57 seconds East a distance of 129.28 feet to a point;

thence along a curve to the right having a radius of 30.00 feet and a chord bearing and distance of South 12 degrees 31 minutes 33 seconds West 42.06 feet to a point on the Northerly margin of Holmes Avenue;

thence along the Northerly margin of Holmes Avenue South 57 degrees 02 minutes 03 seconds West a distance of 249.68 feet to a point;

thence along a curve to the right having a radius of 25.00 feet and a chord bearing and distance of North 75 degrees 49 minutes 14 seconds West 36.65 feet to a point on the Easterly margin of Spragins Street;

thence along the Easterly margin of Spragins Street North 28 degrees 40 minutes 31 seconds West a distance of 137.88 feet to a pk nail found;

thence leaving the Easterly margin of Spragins Street North 57 degrees 52 minutes 53 seconds East a distance of 69.75 feet to a 1/2 inch rebar found, being the NW corner of Lot 29 of the Quigley Map of the City of Huntsville;

thence North 28 degrees 36 minutes 35 seconds West a distance of 121.33 feet to a 1/2 inch rebar found:

thence South 63 degrees 09 minutes 39 seconds West a distance of 69.69 feet to a hex head pipe found on the Easterly margin of Spragins Street;

thence along the Easterly margin of Spragins Street North 17 degrees 35 minutes 03 seconds West a distance of 155.49 feet to a capped rebar found (G.W. Jones);

thence leaving the Easterly margin of Spragins Street North 58 degrees 13 minutes 59 seconds East a distance of 120.29 feet to a 5/8 inch rebar found;

thence North 58 degrees 04 minutes 07 seconds East a distance of 130.13 feet to an "X" in concrete found on the Westerly margin of Jefferson Street;

thence along the Northeast margin of Jefferson Street South 31 degrees 58 minutes 55 seconds East a distance of 278.09 feet to a capped rebar found being the True Point of Beginning and containing 2.70 acres or 117,633.43 square feet more or less.

**Project Description**

The Project is a mixed-use development consisting of: (a) a multi-family apartment complex containing at least 120 residential units, (b) 20,000 square feet of retail space, (c) either an additional 50,000 square feet of office space or an additional 50 residential multi-family apartment units, and (d) 350 total parking spaces within the five level parking deck. As described in and subject to the terms of the Development Agreement, the Developer may alter the Project description.

**Permitted Encumbrances**

1. Utility easements serving the Property of record in the Probate Office for Madison County, Alabama.
2. Rights of way serving the Property of record in the Probate Office for Madison County, Alabama.
3. Rights of the City to the City Parking Spaces, as defined and described in the Development Agreement.
4. Liens or encumbrances that either the Developer or Tenant created or the creation or suffering of which either the Developer or the Tenant consented.

Form of Memorandum of Lease

STATE OF ALABAMA                    §  
  § ss.  
MADISON COUNTY                    §

**MEMORANDUM OF GROUND LEASE**

THIS MEMORANDUM OF GROUND LEASE AGREEMENT ("Memorandum of Lease") is dated effective as of \_\_\_\_\_, 2014 between the CITY OF HUNTSVILLE, a municipal corporation under the laws of the State of Alabama (hereinafter referred to as "City"), and \_\_\_\_\_, a(n) \_\_\_\_\_ (hereinafter referred to as "Tenant").

WITNESSETH THAT:

WHEREAS, by instrument entitled "Ground Lease Agreement" and dated effective of even date herewith, the City and Tenant entered into a lease by which the City leased to Tenant certain real property located in Madison County, Alabama; and

WHEREAS, the City and Tenant desire to execute this Memorandum of Lease regarding such Ground Lease Agreement and to cause this Memorandum of Lease to be recorded in the Office of the Probate Judge for Madison County, Alabama,

NOW, THEREFORE, in consideration of the premises, the parties hereby state as follows:

1. **NAMES OF THE LANDLORD AND TENANT:** The name of the landlord under the Ground Lease Agreement is the City of Huntsville and the name of the tenant under the Ground Lease Agreement is \_\_\_\_\_.

2. **TERM:** The initial term of the Ground Lease Agreement ends at 12:00 Midnight on \_\_\_\_\_, 2064.

3. **OPTIONS TO RENEW.** Tenant shall have the option to renew the term of the Ground Lease Agreement for two additional renewal periods, with the first renewal period being for a term 25 years and the second renewal period being for a term of 24 years.

4. **LEGAL DESCRIPTION:** The legal description of the leased premises is as follows:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, City and Tenant have caused this Memorandum of Lease to be executed in their names and on their behalves by their duly authorized representatives effective as of the date first above written.

**CITY:**

**CITY OF HUNTSVILLE**

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

By \_\_\_\_\_

Its \_\_\_\_\_

**TENANT:**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

[INSERT NOTARY CLAUSES]