

**CITY COUNCIL AGENDA ITEM COVER MEMO**

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

Meeting Type: Regular

Meeting Date: Jun 12, 2014

Action Requested By: Urban Development

Agenda Type: Resolution

**Subject Matter:**

City of Huntsville and Attitude, LLC.

**Exact Wording for the Agenda:**

Resolution authorizing the Mayor to execute a development agreement between the City of Huntsville and Attitude, LLC.

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

Item to be considered for: Action

Unanimous Consent Required: \_\_\_\_\_

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

Associated Cost: \_\_\_\_\_

Budgeted Item: \_\_\_\_\_

MAYOR RECOMMENDS OR CONCURS: \_\_\_\_\_

Department Head: Sham Davis

Date: 6-11-14

## ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Urban Development Council Meeting Date: 6/12/2014

Department Contact: Shane Davis Phone # 5310

Contract or Agreement: Development Agreement between the City of Huntsville and Attitude, LLC.

Document Name: Development Agreement between the City of Huntsville and Attitude, LLC.

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

Account Number:

### Procurement Agreements

**Not Applicable**

**Not Applicable**

### Grant-Funded Agreements

**Select...**

**Grant Name:**

Department	Signature	Date
1) Originating	<i>Shane Davis</i>	<i>6-11-14</i>
2) Legal	<i>[Signature]</i>	<i>6-11-14</i>
3) Finance		
4) Originating	<i>Shane Davis</i>	<i>6-11-14</i>
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

**RESOLUTION NO. 14-\_\_\_\_\_**

**BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, that the Mayor be, and hereby authorized to enter into a Development Agreement between the City of Huntsville and Attitude, LLC on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement, with such changes as the Mayor may approve, is substantially in words and figures similar to that certain document attached hereto and identified as "Development Agreement between the City of Huntsville and Attitude, LLC," consisting of Nine (9) pages, and the date of June 12<sup>th</sup>, 2014, 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 12th day of June, 2014.

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

**APPROVED** this the 12th day of June, 2014.

\_\_\_\_\_  
Mayor of the City of  
Huntsville, Alabama

AGREEMENT FOR DEVELOPMENT

This **AGREEMENT FOR DEVELOPMENT** (this “Agreement”) is made and entered into on this 12<sup>th</sup> day of June, 2014, by and between **ATTITUDE, LLC, an Alabama limited liability company** (“Attitude”) and the **CITY OF HUNTSVILLE, ALABAMA, a municipal corporation within the State of Alabama** (“COH” or the “City”).

RECITALS:

A. Attitude is the owner of a portion of an approximately 36 acre site located at and around the northwest intersection of Interstate 565 and Research Park Boulevard within the City (the “Project Site”), on which an approximately 300,000 square foot development to be known as “Parkside Town Centre” is being constructed and developed and will consist of various commercial, retail and related enterprises; and

B. Approximately 14 acres (such acreage, the “Cabela’s Tract”) of the Project Site is to be transferred and conveyed by Attitude to Cabela’s Wholesale, Inc. (“Cabela’s Wholesale”, and any affiliates thereof, “Cabela’s”), pursuant to that certain Real Estate Purchase and Sale Agreement between such parties (the “Cabela’s/Attitude Agreement”), providing for completion of certain work by Attitude (the “Development Requirements”) and thereafter, for the construction and development of an approximately 80,000 square foot Cabela’s Next Generation Prototype Store (the “Cabela’s Store”); which such store shall serve as the anchor store for Parkside Town Centre; and

C. The Project Site is located in an area of the City that is highly important for planned commercial and retail development, and the City has determined that demand currently exists in such area for Parkside Town Centre and for additional retail, commercial and related enterprises, the development of which would inure to the benefit of the City and its citizens by (i) promoting, improving and expanding commercial and retail development within the City, (ii) expanding the tax base of the City by attracting major commercial and retail enterprises to the City, (iii) facilitating the development of other portions of the City located in the vicinity of the Project Site, (iv) expanding employment opportunities within the City, and (v) enhancing the overall quality of life for the citizens of the City; and

D. In connection with Parkside Town Centre and other retail and commercial developments anticipated by the City to locate around the Project Site in the near and distant future, the City has acquired certain real property and is to acquire certain additional property to increase the size and capacity of that certain public retention lake known as “Lake 5” (“Lake 5”) located near the Project Site; and

E. In addition to the expansion of Lake 5 as aforesaid, certain public roadway, storm water drainage, water retention, utility and other public infrastructure improvements within the public rights-of-way are necessary and desirable to facilitate safe and efficient public access and use respecting Parkside Town Centre and, further, to facilitate additional commercial and retail development within and around the vicinity of the Project Site, all as more particularly described herein; and

F. In acquiring certain real property for public roadways in and around the Project Site, COH has created a “hardship” for certain existing businesses located along what will become known as “Cabela Drive”, and a potential “hardship” for certain other additional retail developments to be fronting such roadway; and

G. This Agreement is intended to address certain responsibilities of the parties hereto incident to the development of the Cabela’s Store and Parkside Town Centre.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the premises and of the mutual agreements, provisions, conditions and terms set forth herein and other good and valuable consideration, the receipt and sufficiency of which are all hereby expressly acknowledged by the parties, and intending to be legally bound, Attitude and COH hereby covenant and agree as follows:

1. COH shall be responsible for the following:

a. The following public infrastructure work to be performed within the public rights-of-way and on public property owned by COH in and around the Project Site:

(i) Relocate as necessary certain existing sewer lines to provide sufficient space and capacity for the Cabela’s Store and other retail development within Parkside Town Centre.

(ii) Construct and develop the expansion of Lake 5 to handle anticipated drainage requirements caused by development of the Cabela’s Store and other improvements within Parkside Town Centre and Cummings Research Park.

(iii) As necessary, relocate utility lines and, in connection therewith, restore any real property covered thereby that is disturbed during such process so as to enable drainage on such land to return to conditions prior to such utility work.

(iv) Construct, develop and maintain the following public roadway improvements in accordance with COH requirements for public roadways:

- (1) Installation of turning lane off of and onto Governors Drive West.
- (2) Acquire and widen the access road (an existing condominium easement) to three (3) lanes.
- (3) Installation of extension of road to the Cabela’s Tract.

(v) Install all traffic signalization, traffic signage and street lights on the public roadways described in item (iv) of this Section 1(a).

(vi) Relocate, to the extent required, those public utilities, fiberoptic and cable television lines existing within current public rights-of-way or public easements within the COH work.

(vii) Provide all landscaping, pedestrian walkways, irrigation and lightning services associated with the public roadway improvements described in item (iv) of this Section 1(a) and for any public roadways dedicated to and accepted by the City in connection with this Agreement following dedication and acceptance as aforesaid.

(viii) Accept and maintain to Research Park public road standards that certain roadway to be known as "Cabela Drive" once dedicated for public use, provided, however, that the same is first constructed and developed in accordance with COH requirements for public roadways by COH.

(ix) Upon the dedication by Attitude at no cost to COH or Huntsville Utilities of additional easement area of up to 30 feet to Huntsville Utilities, to the extent such easement area is requested by COH, relocate the gas lines located along a portion of the southern boundary of the Project Site (exclusive of the Cabela's Tract) so that such gas lines are contained within the 30-foot utility and drainage easement existing in such area.

(x) Vacate or cause to be vacated the existing 50-foot gas line easement which crosses the southern side of the Project Site (exclusive of the Cabela's Tract) from west to east.

(xi) Install standard public street signage at the Old Madison Pike and Governors West intersection noting the location of Cabela Drive.

(xii) With respect to public utilities to service the Cabela's Store only, extend public utility laterals from the current and proposed COH backbone to within five (5) feet inside of the property line of the Cabela's Tract in locations and having capacities acceptable to Cabela's Wholesale.

b. Perform the necessary excavation and fill of areas of Lake 5 as part of COH plan to expand Lake 5.

c. Install a box culvert or other bridging over the spillway area of Lake 5 to allow reasonable access to and thru the natural area buffer described in subparagraph d immediately below for pedestrian and vehicular traffic and any required use agreement to connect that natural area buffer to Cabela Drive.

d. Create a natural area buffer near the southwest corner of Lake 5 (approximately ½- acre) and a public sidewalk connecting the natural area buffer to Old Madison Pike road.

e. Leave as a natural area buffer the real property fronting Quality Circle (approximately 3 ½-acres) and the public road to Quality Circle west of the Parkside Town Centre development.

f. COH shall work in good faith with the existing and future businesses described in Recital F of this Agreement in their efforts to mitigate the “hardship” therein described.

2. Attitude shall be responsible for the following:

a. Using its best efforts to build and lease at least 65,000 square feet of retail space, with one up to 5,000 square foot national or regional chain “sit-down” restaurant, on the Project Site (excluding the portion thereof representing the Cabela’s Tract) or selling its remaining approximate 13.5+- acres (such acreage representing the Project Site less the Cabela’s Tract) to a regional or national retail developer for such development and otherwise complying with all of its obligations in the Cabela’s/Attitude Agreement.

b. All work required as Development Requirements which are not a part of COH’s requirements described in Section 1 of this Agreement.

c. Installation of a monument/pedestal sign at the entrance to the Parkside Town Centre development.

d. Coordinating with COH to resubdivide that portion of Attitude’s lands and COH’s lands acquired or being acquired to meet COH subdivision requirements.

e. Conveying to COH by separate contract the real property necessary for the public roadways and natural area buffers required by this Agreement.

f. Providing to COH, area within ¼- mile for soil excavated for the expansion of Lake 5 which is not needed by COH (up to 60,000 yards).

g. Reimbursing COH up to \$1,900,000 for any and all costs incurred by COH in the performance of its obligations under Section 1 of this Agreement in the event (i) Cabela’s does not construct and develop the Cabela’s Store on the Cabela’s Tract by February 28, 2015, or (ii) the Cabela’s Store is not open to the public for business by December 31, 2015.

3. All obligations and work to be performed by COH hereunder shall be completed by February 28, 2015. All obligations and work to be performed by Attitude hereunder (“Attitude Work”) shall be completed by August 30, 2014; provided, that with respect to Attitude Work that is also specifically required to be performed by Attitude under the Cabela’s/Attitude Agreement, the deadline for performance of the same shall be the deadline set forth in the Cabela’s/Attitude Agreement, but in no event beyond February 28, 2015.

4. Except as set forth in the immediately succeeding sentence, in the event of a default hereunder by any party hereto, the non-defaulting party shall have available to it all rights and remedies, both legal and equitable, provided by law (including without limitation specific

performance or mandamus); provided, however, the non-defaulting party shall not be entitled to any punitive, incidental or consequential damages, whether arising at law, in equity or otherwise. The foregoing notwithstanding, in the event (i) COH is negligent or untimely in the performance of its obligations hereunder for reasons other than those due to force majeure or acts of God, (ii) such negligence or untimely performance by COH is the cause for Attitude being in default of its obligations under the Cabela's/Attitude Agreement, and (iii) Cabela's enforces and collects from Attitude liquidated damages (set at \$10,000 per day) pursuant to Section 6(f) of the Cabela's/Attitude Agreement (the amount of such damages so collected, the "Liquidated Damages Collection Amount") due to the said default by Attitude, COH shall be obligated to reimburse Attitude amounts reasonably found to be owed by Attitude to Cabela's respecting the Liquidated Damages Collection Amount, along with that portion of reasonable attorneys fees incurred by Attitude in defending against the imposition or collection of the Liquidated Damages Collection Amount referable to the Attitude defaults due to the negligence or untimely performance of COH; provided, however, COH shall have first received 30 days' written notice from Attitude of COH's actual or anticipatory negligence or default, and shall have been permitted five (5) days from the date of the default to correct and cure the same. COH shall have the right to assume the defense at its expense of any claim from Cabela's that could trigger liability from COH to Attitude pursuant to this Section 4.

5. COH and Attitude will work together in good faith and to the extent permitted by law in the renaming and replatting of the condominium known as "Research Center of Research Park A Condominium".

6. Each party covenants, represents and warrants to the other that it has complete and unrestricted authority, power and right to enter into, execute and deliver this Agreement.

7. This Agreement is made in, and shall be construed, enforced, governed and interpreted in accordance with its plain meaning in accordance with the internal laws of the State of Alabama without regard to principals of conflicts of law.

8. If, for any reason or no reason, any agreement(s), provision(s), and/or term(s) of this Agreement (whether material to the bargain of COH and Attitude or not) should be declared illegal, null and void, unconstitutional and/or unenforceable, in whole or in part, by any court of competent jurisdiction, the offending portion of this Agreement shall be deemed severed here from as though the same was never a part hereof; provided, however, the remainder of this Agreement shall not be impaired and shall remain in full force and effect according to its remaining agreements, provisions, conditions and terms.

9. COH's and Attitude's respective successors and assigns shall be fully bound by this Agreement and each and every agreement, provision, condition and term hereof just as they are bound. Each and every agreement, provision, condition and term of this Agreement inures, and shall inure, to the benefit of COH and Attitude and of their respective successors and assigns. The representations, warranties and/or indemnities contained herein shall survive the expiration or termination of this Agreement, the discharge of all other obligations owed by the parties to each other, and any transfer of title to the Property by any party.

10. Neither this Agreement, nor any agreement, provision, condition or term hereof, shall be amended, changed or modified in any respect, nor may any estoppel, novation or waiver regarding the same be effectuated, except by a written agreement executed by the COH and Attitude embodying their complete and full agreement and understanding as to such amendment, change, modification, novation or waiver.

11. This Agreement may be executed in two or more counterparts, each of which shall constitute but one and the same agreement.

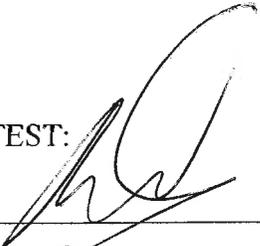
12. Nothing contained in this Agreement shall constitute or be construed to be a partnership or joint venture among the parties and their respective permitted successors or assigns.

13. The parties hereto agree that Cabela's shall be a third party beneficiary of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

ATTITUDE, LLC, an Alabama limited liability company

By:   
James B. Packard, Manager

ATTEST:   
By: \_\_\_\_\_  
Title:       

CITY OF HUNTSVILLE, ALABAMA

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

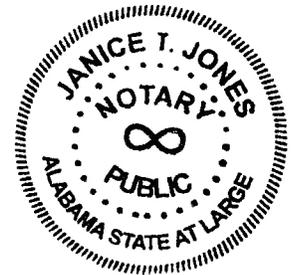
ATTEST:  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF ALABAMA     )  
  :  
COUNTY OF MADISON    )

I, the undersigned, a Notary Public in and for said county and in said state, hereby certify that, **JAMES B. PACKARD**, whose name as Manager of **ATTITUDE, LLC, an Alabama limited liability company** is signed to the foregoing Agreement for Development, and who is known to me, acknowledged before me on this day that being informed of the contents of the Agreement for Development, he, as such Manager, and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal this the 12<sup>th</sup> day of June, 2014.

Janice T. Jones  
Notary Public  
My Commission Expires: 4-18-16



STATE OF ALABAMA     )

:

COUNTY OF MADISON    )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **TOMMY BATTLE**, whose name as Mayor of the **CITY OF HUNTSVILLE, ALABAMA**, a municipal corporation under the laws of the State of Alabama, is signed to the foregoing Agreement for Development, and who is known to me, acknowledged before me on this day that being informed of the contents of the said agreement, it, as such officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation on the day the same bears date.

Given under my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

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