

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: 10/09/2014

Action Requested By: Legal

Agenda Type: Resolution

Subject Matter:

Revocable License Agreement

Exact Wording for the Agenda:

Revocable License Agreement between the City of Huntsville and JJ Huntsville, Downtown, LLC

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

Item to be considered for: Action

Unanimous Consent Required: No

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

[Empty box for providing details on why the action is required, recommended, and what council action will provide, allow, and accomplish, along with any other helpful information.]

Associated Cost: 0

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: No

Department Head 

Date: 10-8-14

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal Council Meeting Date: 10/9/2014

Department Contact: 5026 Phone # Cissy Cates

Contract or Agreement: Agreement

Document Name: Revocable License Agreement between COH & JJHD

City Obligation Amount: 0

Total Project Budget: 0

Uncommitted Account Balance: 0

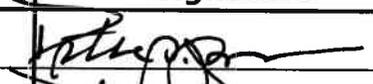
Account Number: 0

Procurement Agreements

<u>Select...</u>	<u>Select...</u>
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Grant-Funded Agreements

<u>Select...</u>	Grant Name: <input style="width: 90%;" type="text"/>
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Department	Signature	Date
1) Originating		10-8-14
2) Legal		10-8-14
3) Finance 		10/8
4) Originating		10-8-14
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. _____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a Revocable License Agreement 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 "**Revocable License Agreement between the City of Huntsville, Alabama and JJ Huntsville, Downtown, LLC,**" consisting of five (5) pages, and the date of _____, 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 _____ day of _____, 2014.

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

APPROVED this the _____ day of _____, 2014.

Mayor of the City of
Huntsville, Alabama

**Revocable License Agreement between the City of
Huntsville, Alabama and JJ Huntsville,
Downtown, LLC**

REVOCABLE LICENSE AGREEMENT

This Revocable License Agreement ("License") is made and entered into on the 9th day of October, 2014, by and between the City of Huntsville, a municipal corporation in the state of Alabama, hereinafter referred to as "City," and JJ Huntsville, Downtown, LLC, hereinafter referred to as "JJHD".

WITNESSETH:

WHEREAS, Jeff Benton Properties, LLC ("JBP") is the owner of 125 North Side Square in the city of Huntsville, Alabama ("JBP premises"); and

WHEREAS, JJHD is a tenant of all or a portion of the JBP premises ("JJHD premises") with an initial lease term of seven (7) years commencing 120 days following premises lease execution on March 10, 2014, and three (3) extended terms of five (5) years each at JJHD's option ("JBP/JJHD lease term"); and

WHEREAS, JJHD is in the process of opening or has opened a restaurant at the JBP premises and in connection therewith desires to affix an attached accessory sign to the exterior portion of the southeast corner of the building at 125 North Side Square which would extend over the public sidewalk immediately over the JBP premises and as an attached accessory adjacent to the southeast corner; and

WHEREAS, the Zoning Ordinance for the City of Huntsville, Alabama allows attached accessory signs in the zoning district in question to project 16 inches from the building and the Board of Zoning Adjustment of the City of Huntsville, Alabama granted a variance for the proposed sign in order to allow it to project an additional 33 inches from the corner of the building subject to the applicant's obtaining from the City a right to use the public air space above the public sidewalk; and

WHEREAS, JBP has consented to the installation of the proposed sign; and

WHEREAS, the City is desirous of granting to JJHD a revocable license to occupy the air space above the public sidewalk for its sign, which space the City is not currently using or in need of, subject to the terms and conditions of this License.

NOW, THEREFORE in consideration of the mutual benefits and premises contained herein, the City and JJHD agree as follows:

1. Subject to the terms and conditions hereinafter set forth, JJHD is hereby granted a revocable license to occupy the air space above the public sidewalk adjacent to 125 North Side Square in order to install and maintain said attached accessory sign, at a location commencing at

least 8 feet above ground level and for no other purpose. Such right includes the temporary right to use the public sidewalk adjacent to the building for the installation, periodic maintenance, and removal of the sign. All cost, expense, and risk associated with the installation, maintenance, and removal of the sign and the use of City property shall be that of JJHD's, including without limitation the cost of utilities associated with the illumination of the sign, which utilities JJHD shall be solely responsible for obtaining. In no event shall the City, its present and future officials, officers, employees, agents, contractors, and subcontractors incur any costs whatsoever associated with the sign or be liable to JJHD for any damage to or destruction of the sign regardless of the cause.

2. All notices or demands pursuant to this License shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested to the following addresses:

If to the City, to: Director of Urban Development
 City of Huntsville
 308 Fountain Circle
 Huntsville, AL 35801

If to JJHD, to: JJ Huntsville, Downtown LLC
 Attn: Timothy Woodard
 5686 LANGHOLM
 Cape Girardeau, MO 63701

With Copy to:
Legacy Law LLC
Attn: Marcia St. Louis
PO Box 12123
Huntsville, AL 35815

All notices or demands shall be deemed effective, if personally delivered, upon delivery, and if mailed, certified mail, three (3) days after mailing. Nothing herein shall prevent the parties from effecting personal delivery via e-mail.

3. Unless revoked or terminated sooner, as hereinafter provided, the term of this License shall be for a period commencing on the date written above and ending October 31, 2036. JJHD shall pay to the City a non-refundable license fee of \$100.00 at the beginning of the term.

4. Under this License JJHD understands and agrees that it acquires no vested right to the use of City property or any portion thereof, including without limitation the public sidewalk and the air space above the sidewalk. The City, through its Director of Urban Development, her successor or their respective designee or designees (hereinafter "Director"), may, at any time, terminate this License and revoke all rights granted hereunder, by notifying JJHD of same. JJHD may, at any time, terminate this License by notifying the Director of its intent to do so. Notwithstanding anything contained to the contrary in this License, in the event JJHD's lease of

the JBP premises terminates, expires, or is revoked, then this License shall automatically be revoked without the need for further action by the City.

5. JJHD shall, at its sole cost and expense, install and maintain the proposed sign, including without limitation its components, in good condition, order, and repair, and in a safe and presentable manner free from graffiti. Damage to the sign shall be repaired as soon as practicable. Maintenance to the sign, including its components, shall include but not necessarily be limited to routine maintenance such as regular cleaning and minor repairs, and to non-routine maintenance such as major repairs or reconstruction. JJHD, or those otherwise performing on its behalf, shall not damage or deface public property nor interfere with the general operation and use of City property, including without limitation public streets and sidewalks and other improvements such as landscaping and irrigation systems. JJHD shall promptly remove or correct, to the satisfaction of the Director, any obstruction, damage, or defect in any City property including without limitation the right-of-way caused by JJHD, or those otherwise performing on its behalf.

6. JJHD agrees to comply with all federal, state, and local ordinances, laws, rules, and regulations applicable to the installation and maintenance of the sign and the rights granted hereunder, including without limitation the use of City property, as such may be from time to time amended, and shall not use City property in an unlawful manner. JJHD shall be responsible for obtaining all required licenses and permits in connection with the sign including without limitation building and electrical permitting.

7. Proposed schedules for the installation, non-routine maintenance, and removal the sign, including without limitation components thereof, shall be submitted to the Director for her prior approval. The Director may approve the schedule, or provide an alternate schedule for the proposed activity where she finds that the proposed schedule would likely interfere with City activities or projects, City permitted or licensed activities, special events, utilities projects, or other such use of City property (hereinafter referred to collectively as "protected activities"). The Director may at any time and from time to time require JJHD to stop any work being performed on City property in regard to its sign where she finds that such activity is interfering with protected activities or has the likelihood of posing a risk to the public health, safety, or welfare. The Director shall have the right to inspect the installation at any time and from time to time and order remediation where she determines that City property has been damaged or defaced by the installation.

8. JJHD hereby agrees to indemnify and hold harmless and does indemnify and hold harmless the City, its present and future officials, officers, employees, agents, contractors, and subcontractors from and against any and all claims, actions, judgments, damages of any kind or nature, fines, costs, liabilities, interest, or losses (including reasonable attorneys' fees and expenses and court costs and fees, through appeal), together with all costs and expenses of any kind or nature, which arise directly or indirectly from JJHD's exercise of the rights granted by this License including but not limited to JJHD's intentional or negligent acts or failures to act, either sole or concurrent, with respect to all or any of its obligations, performances, or other actions contemplated in this License (including but not limited to the intentional or negligent acts

or failures to act, either sole or concurrent, of JJHD's employees, agents, contractors, subcontractors, and volunteers).

Nothing contained in this paragraph 8 shall be construed as a waiver of any immunity of statutory protection of the City and no third party may expand any recovery against the City due to JJHD's duty of indemnification.

This paragraph shall survive the expiration, revocation, or termination of this License.

9. Upon expiration, revocation, or the termination of this License, JJHD shall, at its sole cost, expense, and risk, within 30 days of the removal order of the Director, remove the sign and restore the City property to the condition it was in immediately prior to the installation of the sign, as determined by the Director. Failing therein, JJHD shall pay to the City as liquidated damages \$100.00 for each day that JJHD does not comply with the removal order.

10. Subject to the consent of the City, which shall not be unreasonably withheld, this License and the rights and obligations of JJHD hereunder may be assigned or transferred to any person or entity that succeeds to the leasehold estate of JJHD under its lease with JBP. Any assignee or transferee shall continue to be subject to all of the provisions of this License.

11. JJHD shall maintain insurance coverage throughout the term of this License and shall include the licensed area, including without limitation the public sidewalk and space occupied by the sign in the premises on its insurance policy and shall name the City as additional insured.

12. Failure of the City to insist on strict performance of any of the conditions, covenants, terms, or provisions of this License or to exercise any of its rights hereunder shall not waive such rights, but the City shall have the right to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity.

13. This License shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors and assigns.

14. Any and all disputes arising out of this License shall be governed, construed, and enforced in accordance with the laws of the State of Alabama. All actions related to the validity, construction, interpretation, and enforcement of this License shall be instituted and litigated in the courts of Alabama. JJHD submits to the jurisdiction of the courts of Alabama located in Madison County, Alabama.

15. This License contains the sole and entire agreement of the parties with respect to matters contemplated hereunder, and no representations, inducement, promise, or agreement, oral or written, between JJHD and the City and not incorporated herein shall be of any force or effect. Any amendment to this License shall be in writing and executed by JJHD and the City.

16. If any term of this License is found to be void or invalid, such invalidity shall not affect the remaining terms of this License.

IN WITNESS WHEREOF the parties have entered into this License on the date first above written.

[SIGNATURES ON NEXT PAGE]

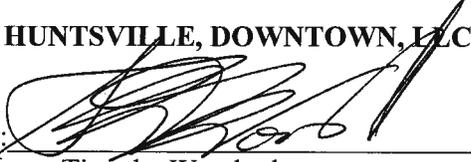
THE CITY OF HUNTSVILLE, ALABAMA

By: _____
Tommy Battle, Mayor

ATTEST:

Charles E. Hagood
City Clerk-Treasurer

JJ HUNTSVILLE, DOWNTOWN, LLC

By: 
Timothy Woodard
Its: _____
Manger

ATTEST:

Kelly Faircloth