

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: 15.y.

Meeting Type: Regular

Meeting Date: Feb 12, 2015

Action Requested By: Legal

Agenda Type: Resolution

Subject Matter:

Ground Lease with CRS City Centre, LLC.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Ground Lease between the City of Huntsville, Alabama, and CRS City Centre, 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.

Old Holiday Inn and Hilton Hotel site.

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

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: \_\_\_\_\_

Date: \_\_\_\_\_

RESOLUTION NO. 15-\_\_\_\_\_

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 Ground Lease by and between the City of Huntsville and CRS City Centre, 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 "Ground Lease between the City of Huntsville and CRS City Centre, LLC," consisting of \_\_\_\_\_ ( ) pages and the date of February 12, 2015, 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 February, 2015.

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

APPROVED this the 12th day of February, 2015.

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

STATE OF ALABAMA )

MADISON COUNTY )

## GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (this "Lease") is made and entered into on this 12<sup>th</sup> day of February, 2015, by and between CITY OF HUNTSVILLE, ALABAMA, an Alabama municipal corporation (the "Lessor"), and CITY CENTRE, LLC, an Alabama limited liability company (the "Lessee"). As used herein, "Execution Date" shall mean the later of (i) the date this Lease is approved by Lessor's City Council or (ii) execution and delivery of a fully-signed Lease to both parties.

### RECITALS

A. Lessor and Lessee have entered into the Development Agreement dated of even date herewith (the "Development Agreement") in connection with the construction of a mixed-use development consisting of, at a minimum, (a) a hotel not to exceed 150 hotel rooms with a flag brand reasonably acceptable to Lessor, (b) a multi-family apartment facility not to exceed 230 units, (c) an office space component with a minimum of 40,000 square feet, and (d) a retail component with a minimum of 28,000 square feet (collectively, the "Development") on that certain real property owned by Lessor consisting of approximately 6.8 acres situated in Huntsville, Madison County, Alabama, as more particularly depicted on Exhibit A attached hereto and made a part hereof and legally described on Exhibit A-1 attached hereto and made a part hereof (the "Premises").

B. Lessee has requested that the Lessor lease to the Lessee the Premises, on which the Lessee intends to construct the Development, for the Term hereinafter described.

C. Lessor has deemed it necessary, desirable and in the public interest that the Premises be leased to the Lessee on the terms and conditions specified herein.

D. Pursuant to the Development Agreement, the parties have established certain rights, obligations, responsibilities and duties respecting the ownership, operation, maintenance and use of the Development.

E. This Lease is being entered into pursuant to the provisions of the Development Agreement and shall be interpreted in a manner consistent with the provisions thereof. Capitalized terms used herein without definition shall have the meanings set forth in the Development Agreement.

NOW, THEREFORE, it is hereby agreed as follows:

1. Premises; Term. Lessor does hereby demise and lease unto Lessee the Premises TO HAVE AND TO HOLD the Premises exclusively to Lessee for the period of

ninety-nine (99) years, commencing on the Commencement Date (as defined below) and extending for ninety-nine (99) years thereafter (the "Term").

2. Use. During the Term of this Lease, the Premises shall initially be used solely for the construction and operation of the Development pursuant to the Development Plans (as defined in Section 3(d) below) as reasonably approved in writing by Lessor pursuant to Section 3(d) of this Lease. Lessee shall not use, or permit any person to use the Premises or any part thereof for any of the prohibited uses listed on Exhibit E attached hereto and made a part hereof, and Lessee shall at all times during the Term of this Lease comply with and cause all persons using or occupying any part of the Premises to comply with all laws, ordinances, and regulations from time to time applicable thereto and all operations thereon.

3. Inspection Period; Development Plans.

(a) Lessee shall have ninety (90) days from the Execution Date (the "Inspection Period") as a due diligence period, during which time Lessee shall be permitted to conduct all inspections and investigations necessary in order to determine if the Premises are acceptable to the Lessee. Lessee, its employees, agents or designees shall further have the right of ingress and egress over and through the Premises during normal business hours for the purpose of inspection, appraising, soil and environmental testing, testing for the drainage, surveying, preparing engineering or architectural drawings, and any other activities reasonably necessary to assess the Premises.

(b) Prior to the end of the Inspection Period, Lessee shall provide an ALTA survey of the Premises to Lessor at Lessee's expense, which survey shall include a topographic survey.

(c) Prior to the end of the Inspection Period, Lessor shall have a Phase I Environmental Site Assessment ("Phase I ESA") and an Asbestos Abatement Survey of the Premises issued to Lessee and shall deliver copies thereof to Lessee. If the Phase I ESA recommends that a Phase II Environmental Site Assessment ("Phase II ESA") be performed, then Lessor shall order such Phase II ESA and, if necessary, the Inspection Period shall be extended day-for-day until the results thereof have been delivered to Lessor and Lessee.

(d) Prior to the end of the Inspection Period, Lessee shall develop a mutually agreeable development plan for the Development that is subject to written approval by the Mayor of the City of Huntsville, acting on behalf of Lessor. Within seventy-five (75) days after the Execution Date, Lessee shall submit its proposed construction plans, initially anticipated tenant mix and detailed construction schedule (collectively, the "Development Plans") to Lessor for review and approval. The Development Plans shall include the full and detailed architectural and engineering plans and specifications covering the Development. The Development Plans shall be subject to the approval of the Mayor and all local governmental authorities requiring approval of the work and/or the Development Plans and shall comply with all applicable codes and regulations. With fifteen (15) days of Lessor's receipt of the complete Development Plans, Lessor shall provide any changes or modifications to Lessee. Lessee shall then, within ten (10) days after receipt of such changes or modifications, resubmit its revised, proposed Development Plans to Lessor. Lessor and Lessee shall continue to review, revise and resubmit the

Development Plans within said periods of time until such Development Plans are approved in writing by the Mayor of the City of Huntsville, acting on behalf of Lessor.

(e) Lessee shall indemnify and hold Lessor harmless from any and all claims, losses or damages incurred in connection with Lessee's inspections of the Premises during the Inspection Period, except for claims, losses or damages arising from the negligence or willful acts of Lessor or its agents, invitees, employees or contractors and the discovery of pre-existing conditions.

(f) In the event Lessee determines, for any reason whatsoever, that the Premises are not acceptable to Lessee, Lessee may terminate this Lease prior to the end of the Inspection Period, by providing written notice of such termination to Lessor. If Lessee so terminates this Lease, all obligations of Lessor and Lessee hereunder shall immediately cease. The "Effective Date" shall be the day immediately following the last day of the Inspection Period. The parties shall execute a document promptly after the Effective Date specifying the Effective Date.

4. Earnest Money. Within five (5) days following the execution of this Lease, Lessee shall deliver to Land Title of Alabama (the "Escrow Agent") the amount of \$20,000.00 (the "Earnest Money"), which Earnest Money shall be applicable to the Base Rent first coming due under this Lease or shall be refunded to Lessee if Lessee elects to terminate this Lease on or before the expiration of the Inspection Period.

5. Rental. Lessee hereby covenants and agrees to pay to Lessor as rent for the Premises (the "Base Rent"), the following:

(a) Commencing on the Commencement Date, the sum of One Hundred Forty-Four Thousand and No/100 Dollars (\$144,000.00) per annum, payable at the rate of Twelve Thousand and No/100 Dollars (\$12,000.00) per month, for each year of the Term. As used herein, "Commencement Date" shall mean the earlier to occur of (i) the issuance of a certificate of occupancy for the first building constructed on the Premises or (ii) twelve (12) months following the Delivery Date (as defined in Section 18 below). The parties shall execute a document promptly after the Commencement Date specifying the Commencement Date.

(b) It is agreed by Lessor and Lessee that the Base Rent shall be paid in monthly installments, in advance, on the first day of each and every month during the Term of this Lease.

6. Taxes and Assessments.

(a) In addition to the Base Rent, from and after the Delivery Date, Lessee agrees to pay and discharge all taxes, assessments, rates, charges for revenue, imposts, and all levies general and special, ordinary and extraordinary, of any name, nature and kind whatsoever, which may be fixed, charged, levied, assessed or otherwise imposed upon the Premises or upon any or all buildings or improvements thereon, before same become delinquent, and upon demand of Lessor, the Lessee shall provide evidence showing the payment thereof.

(b) It is understood and agreed, however, that Lessee may, if in good faith it believes any such tax, assessment, lien or charge which it is obligated by the terms of this Lease to pay is invalid, excessive, or unenforceable, in whole or in part, protest against and contest the validity, amount and enforceability thereof. In such case Lessee may, before the date of delinquency of any such tax, assessment, lien or charge, take appropriate action to protest and object thereto, and if such protest and objection be overruled or denied, Lessee may contest or review such denial or ruling by legal proceedings or in such other manner as Lessee deems suitable, which proceeding if instituted shall be conducted solely at Lessee's own expense and free of expense to Lessor. If any such taxes, assessments or charges shall, as a result of such proceedings or otherwise, be reduced, cancelled, set aside or to any extent discharged, the Lessee shall pay the amount that shall be finally assessed or imposed against the Premises, or be adjudicated to be due and payable on any such disputed or contested items. In respect to any such tax, assessment or charge which shall be the subject of a contest under and pursuant to this section, the non-payment thereof shall not be regarded as a breach of any covenant of this Lease so long as Lessee shall comply with the terms of this section. Lessee, in all events, however, shall pay any such charges if payment be required in order to prevent the divesting of Lessor's title or other interest in the Premises.

(c) Taxes assessed during the Term of this Lease, but payable in whole or in installments after the termination of this Lease, and assessments which are covered by bond, shall be adjusted and prorated, and Lessor shall pay the prorated share thereof for the period subsequent to the Term and Lessee shall pay the prorated share thereof for the Term of this Lease.

(d) In the event Lessee fails to pay taxes, assessments, rates, charges for revenue, imposts and levies as provided hereinabove, Lessor shall have the option to pay such taxes, and any sums so expended shall become due as additional rental with interest on said sum at the rate of six percent (6%) per annum until paid.

7. Covenants by Lessor. Lessor hereby covenants and agrees with Lessee that:

(a) Peaceful Possession: Commencing on the Delivery Date (as defined in Section 18 below), Lessee, as long as it pays the rents and performs the covenants and obligations herein contained on its part to be paid and performed, may lawfully, quietly and peaceably occupy and enjoy the Premises during the Term.

(b) Warranty of Title: Lessor warrants and represents that it is the owner in fee simple of the Premises, that it has good, marketable and insurable title thereto, and has the right to make this Lease for the Term and on the conditions herein set forth.

(c) No Legal Proceedings: Lessor warrants and represents that there are no suits or legal proceedings of any kind pending or threatened against Lessor or the Premises that would adversely affect the Premises in any court or before or by any federal, state, county or municipal department, commission, board, bureau or agency or other governmental instrumentality. This includes, without limitation, any condemnation or eminent domain proceedings. Lessee acknowledges that the Lessor is studying and evaluating changes or

proposed changes in traffic patterns and the management of traffic flow in the area surrounding the Premises, and Lessor agrees to take such steps as are necessary to deliver the Premises as depicted on Exhibit A, including without limitation to use its commercially reasonable efforts to cause the modification of the existing right-of-way.

(d) Due Authorization: Lessor warrants and represents that all actions required to authorize the execution and performance of this Lease by Lessor have been taken, and this Lease constitutes a valid and binding agreement, enforceable against Lessor. No person or entity has any right or option to lease, occupy or acquire the Land.

(e) No Violations: Lessor warrants and represents that, to the best of Lessor's knowledge, there is no existing violation of any ordinance, code, law, rule, requirement or regulation applicable to the Premises.

(f) Lease Recognition Agreement: Within thirty (30) days following Lessor's receipt of written request from Lessee, Lessor will enter into a Lease Recognition Agreement in a form reasonably acceptable to Lessor with (i) any retail tenant leasing a minimum of 5,000 square feet in the Development or a national or regional tenant who requests the same, (ii) any tenant leasing the hotel portion of the Development, or (iii) any multi-family apartment master landlord leasing the entire multi-family apartment portion of the Development.

(g) Zoning: To the extent required, Lessor shall use its commercially reasonable efforts to take such actions commencing upon the Execution Date to cause the Premises to be zoned or rezoned for development, use and operation of the Development set forth in the Development Plans.

(h) Incentives: Lessor agrees not to grant any incentives to any other hotel developer that would develop a boutique-style hotel (by way of example, but no means limitation, Canopy by Hilton, AC Marriott, , Loft, or Indigo) in that portion of the Huntsville, Alabama central business district that is contiguous to the Von Braun Civic Center that would involve a capital expenditure into such project for parking or related infrastructure. Lessor would not be prohibited from agreeing to perform offsite work including streetscape improvements in connection with any such project. Lessor's agreement set forth herein shall expire upon the earlier to occur of (i) one hundred twenty (120) days following Lessor's delivery of the Option Property to Lessee, or (ii) the issuance of a certificate of occupancy for the hotel on the Premises.

8. Covenants By Lessee. Lessee hereby covenants and agrees with the Lessor that:

(a) Construction of the Development. The Lessee shall construct the Development on the Premises in compliance with the Development Agreement and the plans and specifications approved by Lessor following the construction and development schedule set forth on Exhibit B attached hereto. Lessee shall not construct any improvements on the Premises, or make any alterations to the Development, without the prior written approval of Lessor.

(b) **Rent:** Lessee shall pay all sums of money agreed to be paid to Lessor as rent or otherwise at the times and in the amount and in the manner as hereinabove provided, and will faithfully and promptly perform each and every one of the covenants herein contained and provided to be kept and performed by it.

(c) **Utilities:** From and after the Delivery Date, Lessee shall pay all utility charges used on or arising from the operation of the Premises, including, but not limited to, all charges for gas, electricity, water, garbage and trash collection, and sewerage, during the Term of this Lease.

(d) **Upkeep:** Lessee will keep the interior and exterior of all buildings erected on the Premises in good, clean and sanitary condition, and shall make all repairs, ordinary as well as extraordinary, structural or otherwise, necessary to keep same in good condition, reasonable wear and tear and damage by fire or other unavoidable casualty only excepted, and at the termination of this Lease, by expiration of time or otherwise, will deliver the Premises and the improvements thereon to Lessor in good condition, reasonable wear and tear and damage by fire or other unavoidable casualties excepted. In the event said building or improvements are damaged or destroyed the same shall be replaced or rebuilt from the proceeds of the insurance as provided in Section 10 hereof.

(e) **Waste:** Lessee will not commit or suffer any waste of the Premises and will not use, or permit any part of the Premises to be used, for any illegal or immoral purpose, or in such way as to constitute a public nuisance, and it will, at its own expense, observe and comply with all laws, ordinances, and regulations of all duly constituted governmental authorities relating to the Premises or any improvements thereon.

(f) **Surrender:** Upon the expiration of the Term by expiration of time or otherwise, Lessee will quietly yield, surrender and deliver up possession of the Premises to Lessor.

9. **Environmental Indemnification and Compliance.** Lessee shall defend, indemnify, and hold Lessor (and its directors, officers, employees and agents) harmless from and against and shall pay and reimburse Lessor for any and all losses, damages, liabilities, claims, causes of action, deficiencies, penalties, fines, and fees (including reasonable attorneys' fees) asserted against Lessor resulting from liabilities arising from the presence of Hazardous or Toxic materials at or upon the Premises due to the negligent or willful act or omission of Lessee, its employees, agents or contractors. The terms "Hazardous" and "Toxic" means any substance or material defined as "hazardous" or "toxic" under any Environmental Law, defined below. Nothing contained in this section shall be construed as an obligation on the part of Lessee to indemnify Lessor against, or to release Lessor from liability for, any environmental claim or liability resulting from misconduct or negligence by Lessor (and its agents), or which exists or arises as a result of activities of parties other than Lessee, its agents or contractors upon the Premises prior to the Delivery Date. "Environmental Law" means any federal, state or local statute, law, ordinance, treaty, convention, regulation, rule, code, order or other requirement or rule of law, now or hereafter in effect and as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment,

relating to the pollution, conservation, or protection of the environment or health, safety or natural resources.

10. Insurance. Prior to the commencement of any construction of the initial improvements, Lessee or its general contractor shall obtain public liability insurance, all risk builder's risk insurance and workmen's compensation insurance to cover every contractor to be employed and shall deliver duplicate originals of all certificates of such to Lessor naming Lessor as additional insured on the public liability and builder's risk insurance coverages. Lessee, at all times during the term of this Lease, and at its expense, will procure, maintain and keep in force, commercial general liability insurance for claims for bodily or personal injury, death or property damage, occurring in or about the Premises, with limits of not less than \$5,000,000.00 combined single limit, which may be a combination of primary and umbrella liability coverage. Lessee will have Lessor named as an additional insured thereunder. Lessee shall at all times during the term hereof, at its own expense, keep in full force and effect all risk, fire and extended coverage insurance with companies reasonably acceptable to Lessor (which acceptance shall not be unreasonably withheld) in amounts equal to not less than the full replacement cost of the buildings including all alterations, additions and improvements. Certificates of such insurance will be delivered to Lessor. The policy or policies of insurance will be issued by a company or companies licensed in the State wherein the Premises are situated and will not be canceled without the insurance company first giving Lessor written notice thereof, at least thirty (30) days before any such cancellation shall become effective.

11. Indemnity.

(a) The Lessee shall be in exclusive control and possession of the Development and Premises during the Term, and the Lessor shall not be liable for any damage or destruction to any property, or injury or death to any person happening on, in or about the Development or the Premises during the Term. The Lessee releases the Lessor (and its agents) from and shall indemnify and hold the Lessor (and its agents) harmless against, any and all claims and liabilities of any character or nature whatsoever asserted by or on behalf of any person, firm, corporation, or governmental authority arising out of, resulting from, or in any way connected with the Development or the Premises during the Term, including, without limiting the generality of the foregoing: obligations for the payment of any costs of the Development, any improvements, any destruction of or damage to property or any injury to or death of any person or persons caused by or related to the Development or the Premises, any claims relating to the acquisition, construction, and installation of the Development, the leasing of the Premises to the Lessee, and the condition, use, possession, or management of the Development during the Term, and, further, the Lessee will also pay or reimburse all legal or other expenses reasonably incurred by the Lessor (and its employees and agents) in connection with the investigation or defense of any action or proceeding, whether or not resulting in liability, with respect to any claim, liability or loss in respect of which indemnity may be sought against the Lessee under the provisions of this section.

(b) Notwithstanding the above, nothing contained in this section shall be construed to require the Lessee to indemnify the Lessor or its agents, against, or to release the Lessor or its agents from liability for, any claim or liability resulting from (i) the inaccuracy of any representation or warranties of the Lessor contained herein; (ii) the willful misconduct or

negligence of the Lessor or its agents, employees or contractors; or (iii) any claim based on any act or omission prior to the date of this Lease which was not caused by the Lessee or its agents or contractors.

(c) The Lessor releases the Lessee (and its agents) from any and all claims and liabilities of any character or nature whatsoever asserted by or on behalf of any person, firm, corporation, or governmental authority resulting from the willful misconduct or negligence of Lessor or its agents, employees or contractors.

(d) The obligations of the Lessee under this section and any other obligation of the Lessee to indemnify and hold the Lessor harmless shall survive any termination or expiration of this Lease.

12. Assignment, Subletting or Licensing. Lessee shall not assign this Lease or the leasehold interest created hereby, without the prior written consent of the Lessor, which consent will not be unreasonably withheld, conditioned or delayed. After construction of the Development is complete, Lessor agrees that it will grant its consent to an assignment or transfer so long as the Lessor, in its reasonable discretion and determination is satisfied that the proposed assignee/transferee has the financial condition, experience, expertise, capability and qualifications to operate and manage the Development and the proposed assignee/transferee assumes the obligations of the Lessee under this Lease in writing. Lessee shall have the right to sublet the Premises at all times without the prior consent of Lessor.

13. Net Lease. In addition to payment of all rents, taxes, assessments and governmental impositions, as herein provided, Lessee shall pay all operating costs and expenses, it being the intent of this Lease that Lessor is to receive the rental above specified as net and clear of all costs and charges arising from or relating to the Premises and that Lessee is to pay all charges and expenses of every nature that may be imposed or incurred through the operation of the Premises and its appurtenances in any manner during the Term of this Lease.

14. Lessor Default or Breach. Lessor will be in default under this Lease if Lessor fails to perform any obligation under this Lease or the Development Agreement within thirty (30) days after receipt of written notice from Lessee specifying the nature of the default [or such longer period as may be required in order to effect the cure, provided Lessor commences the cure within the thirty (30) day period and diligently prosecutes the cure to completion] or if Lessor breaches, in any material respect, any of the representations or warranties given in this Lease. Lessee understands, acknowledges and agrees that the obligations of the Lessor 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 Lease to the contrary notwithstanding, whether express or implied, in the event of a default by Lessor hereunder, the sole and exclusive remedy of Lessee shall be specific performance, and Lessee shall not be entitled to any other damages whatsoever, including, without limitation, incidental or consequential damages, whether arising at law or in equity.

15. Lessee Default or Breach. It is agreed by and between the parties hereto that: (i) if Lessee shall fail to make any payment of rents or taxes, assessments, insurance

premiums, water rates, or any other sum herein stipulated and agreed to be paid or kept, at the time same is required to be paid under the provisions of this Lease, or (ii) if Lessee shall fail to keep and perform any other covenant, condition or agreement, herein provided on the part of Lessee to be performed; then, and in such case, the Lessor may serve upon Lessee written notice of such default; and if such default shall then continue without being wholly remedied for a period of fifteen (15) days after the service of such notice, or in the event of a breach other than the payment of money, Lessee shall not have commenced the remedying of such default within the thirty (30) day period subsequent to written notice and shall not diligently prosecute compliance to final termination, then it shall and may be lawful for Lessor, upon written notice to Lessee, to exercise any remedies available for such default at law or in equity; provided, however, that Lessor shall not declare said Term ended or re-enter and re-possess the Premises and the building and improvements situated thereon, or any part thereof, either with or without process of law, unless a court of competent jurisdiction renders a final, non-appealable judgment in favor of Lessor with respect to such default and Lessee fails to cure such default within fifteen (15) days following the entry of such judgment. Lessee does in such event, hereby waive any demand for possession of the Premises, and any and all buildings and improvements then situated thereon, and Lessee covenants and agrees, upon the termination of the Term at the election of Lessor, or in any other way, to immediately surrender and deliver up the Premises and property peaceably to Lessor, or the agents or attorneys of Lessor, immediately upon the termination of the Term, and this Lease shall become void and of no further effect, and Lessor may hold and retain the Premises and all buildings and improvements thereon as of its first or former estate, and this Lease shall be forfeited to the Lessor, and Lessor may bring suit for and collect all of the past-due rents, taxes and assessments.

16. Waiver. No waiver by the Lessor or Lessee of any default or breach of any covenant, condition, or stipulation herein contained shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition or stipulation hereof.

17. Successors and Assigns. The words "Lessor" and "Lessee" as hereinabove used in this Lease shall mean Lessor and Lessee as mentioned herein, and also, where not inhibited by the context of this agreement, shall mean their respective successors and assigns.

18. Lessor's Work.

(a) Lessor shall perform Lessor's On-site Work (as defined below) and deliver the Premises to Lessee within ninety (90) days following the expiration of the Inspection Period (the "Delivery Date"). As a condition of the Delivery Date, Lessor shall, at its sole cost and expense, be responsible for the demolition and removal of any and all existing structures, improvements, footings, foundations and construction debris from the Premises ("Lessor's On-site Work") on or before said Delivery Date. As part of Lessor's On-site Work, Lessor shall cause the existing utilities lines to be cut and capped at the property line of the Premises, but existing utility lines within the Premises may be abandoned rather than removed. Following the delivery of the Premises by Lessor in the condition described herein, Lessee shall be responsible, at Lessee's expense, for any grading and/or compaction work deemed necessary by Lessee to cause the Premises to be in a "pad ready" condition for construction and to construct the Development.

(b) Lessor shall also install or cause to be installed, at its sole cost and expense, the following off-site improvements (collectively, "Lessor's Offsite Work"): 1) on or before the Delivery Date, Lessor shall make all utilities available to the property line of the Premises as determined by Lessor, which may be in their existing location to the extent such utilities are already available at the property line, including electricity, gas, water, sanitary sewer; (2) on or before twelve (12) months after the Execution Date, Lessor shall construct all streetscape and hardscape features along the perimeter of the Premises and along all public roadways bordering the Premises including but not limited to the installation of sidewalks, irrigation, landscaping, hardscapes, civic art, decorative lighting and related improvements, all as determined by Lessor in its reasonable discretion after consultation with Lessee during the design process. Lessor will use commercially reasonable efforts to coordinate with Lessee to accelerate such portions of Lessor's Offsite Work to the extent necessary for the opening of businesses to the public upon construction of such building on the Premises. Lessee shall complete connection of the Lessee's buildings to all utilities at Lessee's expense and shall be responsible for all utility work within the Premises.

19. Bankruptcy or Insolvency. Lessor reserves the right to terminate this Lease by written notice to Lessee upon the occurrence of any one or more of the following contingencies: (a) the filing of a petition by or against the then Lessee or its assignee for adjudication as a bankrupt under the United States Bankruptcy Act, as now or hereafter amended or supplemented, or for arrangement within the meaning of Chapter XI of said Bankruptcy Act, or the filing of any petition by or against the then Lessee under any future bankruptcy act for the same or similar relief; (b) the commencement of any action or proceeding for the appointment of a receiver or trustee of the property of the then Lessee; (c) the taking possession of the property of the then Lessee or its assignee by any governmental officer or agency pursuant to statutory authority; (d) the making by the then Lessee of an assignment for the benefit of creditors; (e) the taking from the then Lessee of the term hereby leased, or the seizure or levy thereon under judgment, decree, attachment, execution or other judicial proceedings; provided, that if either (a), (b), (c) or (e) shall be involuntary on the part of the then Lessee, the event in question shall not give Lessor any right to terminate this Lease if the event be removed by the Lessee within ninety (90) days.

20. Notice. All notices, requests, demands or other communications required or permitted under this Lease shall be in writing and delivered either: (i) personally; (ii) by certified or registered mail, return receipt requested, postage prepaid; (iii) by a recognized overnight courier service (such as Fed Ex); or (iv) by facsimile transmission made during normal business hours with a copy to follow by registered or certified mail, return receipt requested, postage prepaid or by overnight courier service, addressed as follows:

If to Lessor:	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  
Fax: (256) 427-5121

With a copy to:

S. Roderick Kanter, Esq.  
Bradley Arant Boult Cummings LLP  
One Federal Place  
1819 5<sup>th</sup> Avenue North  
Birmingham, AL 35203  
Phone: 205-521-8517  
Fax: 205-488-6517

If to Lessee:

City Centre, LLC  
4245 Balmoral Drive, Suite 204  
Huntsville, AL 35801  
Attention: Mr. Remy Gross, III  
Phone: 256-319-3502  
Fax: 855-335-9636

With a copy to:

Mr. Rece E. Morgan  
Central Realty  
400 East Stone Avenue  
Greenville, SC 29601  
Phone: 864-250-9475  
Fax: 864-679-4264

All notices given in accordance with the terms hereof shall be deemed received on the next business day if sent by overnight courier, on the same day if sent by facsimile before 5 P.M. (Central Standard Time) on a business day, on the third (3<sup>rd</sup>) business day following deposit with the United States Mail as a registered or certified matter with postage prepaid, or when delivered personally or otherwise received. Either party hereto may change the address for receiving notices, requests, demands or other communication by notice sent in accordance with the terms of this Section 20.

21. Waiver of Subrogation. All insurance policies carried by either party covering the Premises, including but not limited to contents, fire and casualty insurance, shall expressly waive any right on the part of the insurer against the other party. The parties agree that their policies will include such waiver clause or endorsement so long as the same shall be

obtainable without extra cost, or if extra cost shall be charged therefor, so long as the other party pays such extra cost. If extra cost shall be chargeable therefor, each party shall advise the other thereof and of the amount of the extra cost, and the other party, at its election, may pay the same, but shall not be obligated so to do.

22. Eminent Domain.

(a) Lessor will notify Lessee in writing within thirty (30) days of Lessor's receipt of notice of any planned Taking (as defined below) of the Premises. If the whole of the Premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain or by private purchase in lieu thereof (a "Taking"), then this Lease shall automatically terminate as of the date that possession has been taken. If only a part of the Premises shall be so taken (or so purchased), Lessee shall have the right, but not the obligation, to terminate this Lease by giving written notice of termination to Lessor on or prior to the date one hundred and eighty (180) days after the date of such taking (or purchase), and upon the giving of such a notice of termination the term of this Lease shall expire and come to an end on the last day of the calendar month in which such notice shall be given, with the same force and effect as if said day had been originally fixed herein as the expiration date of the Term of this Lease, or any renewals or extensions thereof. In the event the Lease shall terminate or shall be terminated, the rental shall, if and when necessary, be adjusted to the day of the taking (or purchase) and neither party shall have any further rights or liabilities hereunder.

(b) In the event of such a taking (or such purchase) whereby this Lease shall terminate or shall be terminated under the provisions of sub-paragraph (a) of this said section, then the parties hereto agree to cooperate in applying for and in prosecuting any claim for such taking, and further agree that the aggregate award, net after deducting all expenses and costs, including attorneys' fees, incurred in connection herewith, payable to both Lessor and Lessee, shall be apportioned between Lessor and Lessee, but if they cannot agree upon such apportionment, then the same shall be made by the arbitration of three (3) persons who will be either qualified real estate appraisers or persons conversant with real estate values, to whom such dispute shall be referred. One of such persons will be nominated by Lessor, one will be nominated by Lessee, and the third will be appointed by writing under the hand of the two so nominated before the arbitration is proceeded with, and the decision of any two of the three arbitrators shall be binding; and, if either Lessor or Lessee shall refuse or neglect to appoint an arbitrator after the other shall have appointed an arbitrator, then the party so appointing an arbitrator shall notify the other party that he must appoint an arbitrator within ten (10) days after the receipt of such notice, and if after the expiration of the ten day period from the date of the mailing of said letter, all such letters to be mailed by registered mail, postage prepaid, return receipt requested, the other party still has not appointed an arbitrator, the party so appointing an arbitrator must again notify the other party that he still remains in default through his failure to so appoint an arbitrator, and after a five (5) day period from the date of the mailing of said letter, and upon such other party's failure again to so appoint an arbitrator, then upon such failure the party making the request and who shall have himself appointed an arbitrator, may appoint another arbitrator to act on behalf of the party so failing to appoint. The arbitrator so appointed may then proceed and act in all respects as if he were appointed by the person so failing to make such appointment. The determination to be rendered by the arbitrators will be made within ten (10) days after their selection, but in no event later than ten (10) days prior to the date each

option to extend shall become effective, and the decision of said arbitrators shall be final and binding upon Lessor and Lessee for the purpose of computing said annual rents, except in no event shall said annual rents be less than the annual rents for the then existing term of this Lease. Lessor and Lessee agree that the fees of said arbitrators shall be assessed equally against Lessee and Lessor; PROVIDED HOWEVER, that if two arbitrators should be appointed and then fail to agree upon the selection of a third arbitrator within ten (10) days after the selection of the last of the two arbitrators, then Lessor and Lessee shall each appoint a different arbitrator and the above process shall be repeated until three (3) arbitrators are appointed. To be eligible for appointment to the panel, a person must be a disinterested individual whose place of business is in Madison County, Alabama, and also be conversant with real estate values. Any decision rendered by the arbitrators shall be reduced to writing, and copies furnished to Lessor and Lessee who shall affix copies to this Lease, and thereafter the decision of the arbitrators shall become a binding part of the Lease itself.

If only a part of the Premises shall be so taken (or so purchased) so that the provisions of sub-paragraph (a) hereof do not apply, the rights, duties and obligations of Lessor and Lessee in the Premises shall be determined, if they cannot agree, by the arbitration of three (3) persons to be nominated and appointed as hereinbefore provided, to whom such determination shall be referred, who shall have full power and authority to make any determination which they shall deem just and equitable, taking into consideration the quantity and value of the land taken, the extent of the injury thereby caused to the buildings, the cost of restoring the buildings and the value of the buildings if restored, the period of the unexpired term of this Lease, and all other facts and circumstances which the arbitrators shall deem material, including full power and authority to determine, among other things, as they shall deem just and equitable, any one or more of the following matters, viz: that the damages awarded shall be apportioned between Lessor and Lessee in the proportion in which the appraised value of their respective estates bear to each other, or to the value of the property as a whole; that the whole or any part of the rent shall be abated from the time of taking thenceforth, or for a lesser time; that the Lease shall be otherwise modified; and to award and direct specific performance of any one or more of the said, or other, matters which they shall determine, to the end that the rights, duties and obligations of the parties shall be justly and equitably and finally determined upon all the facts and circumstances as they shall then exist; PROVIDED, HOWEVER, notwithstanding anything to the contrary herein contained, if any part of the Premises shall be so taken (or so purchased), and this Lease shall not be terminated under the provisions of sub-paragraph (a) of this section, then Lessee, at its own expense, shall make all repairs to the affected buildings and improvements on the Premises to the extent necessary to restore the same to a complete architectural unit.

23. Covenants To Run with Land. It is hereby covenanted and agreed between the parties hereto that all covenants, conditions, agreements and undertakings in this Lease contained shall extend and inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the respective parties hereto, the same as if they were in every case named and expressed and the same shall be construed as covenants running with the land. All terms and words used in this Lease, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this Lease or any paragraph or clause herein may require, the same as if such words had been

fully and properly written in the required number and gender. Where the words "lease term" are used herein, they shall be deemed to include not only the Initial Term of this Lease, but also any Extension Terms hereunder.

24. Title to Buildings. Title to any building erected on the Premises at any time by Lessee, until the expiration or sooner termination of this Lease, or any extensions hereof, shall remain in Lessee, and Lessee alone shall be entitled to claim any and all depreciation in connection with its federal or state income tax returns.

25. All Inclusive Nature of Agreement. This Lease and the Development Agreement embody the entire contract of the parties hereto with respect to the demise of the Premises, and this Lease shall not be altered, changed or modified in any respect, except by an instrument of equal dignity to this instrument.

26. Recording. On the Effective Date, Lessor and Lessee shall execute and record a Memorandum of Lease, which shall make reference to the terms hereof. Lessee shall bear the expense of all recording tax associated with the recordation of any such Memorandum of Lease.

27. Brokers. Lessor and Lessee each hereby represent and warrant to the other party that it has not utilized the services of any real estate broker or agent in connection with this Lease.

28. Intentionally Omitted.

29. Governing Law. This Lease is governed by, and must be interpreted under, the laws of the State of Alabama. Any suit arising from or relating to this Lease must be brought in Madison County, Alabama. Lessor and Lessee waive the right to bring suit elsewhere.

30. Business Days. In the event any period of time provided for in this Lease ends on a day other than a business day on which banks are generally open for a full day for business, such ending date shall automatically be extended to the next business day.

31. Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed an original and taken together shall constitute one and the same document. This Lease may be executed and delivered by facsimile or electronic signature with the same force and effect as of original signature pages have been delivered to each of the parties hereto.

32. Leasehold Mortgages.

(a) Lessee may encumber Lessee's leasehold estate by a mortgage, deed to secure debt or similar financing instrument (being a "Leasehold Mortgage" and the holder being a "Leasehold Mortgagee"). A Leasehold Mortgage will not constitute an assignment or transfer of this Lease, nor will the Leasehold Mortgagee be deemed an assignee of this Lease. Lessee will also have the right to obtain financing by a "sale and leaseback" transaction (i.e., an

assignment of Lessee's leasehold estate under this Lease simultaneously with a sublease of all of the Premises to Lessee).

(b) With respect to any Leasehold Mortgagee as to which Lessor has been given notice, the following will apply notwithstanding any other provision of this Lease to the contrary:

(i) No voluntary termination by Lessee of this Lease will be effective unless consented to in writing by the Leasehold Mortgagee. Any material amendment or material modification of this Lease or the exercise by Lessee of any option to terminate this Lease without the written consent of the Leasehold Mortgagee will be voidable as against the Leasehold Mortgagee at its option. If any Leasehold Mortgagee fails to respond within thirty (30) days after receipt of written request for consent, the Leasehold Mortgagee will be deemed to have granted its consent to such request provided that the notice clearly states, in all capital letters, "FAILURE TO RESPOND IN 30 DAYS WILL BE DEEMED CONSENT."

(ii) Lessor will deliver any and all notices of default or notices regarding amendments to the Lease given to Lessee simultaneously to any Leasehold Mortgagee at the address provided to Lessor by Lessee.

(iii) A Leasehold Mortgagee will have, in addition to Lessee's cure period, an additional ten (10) business days to cure monetary defaults and an additional thirty (30) days to cure non-monetary defaults. Lessor will accept performance of any and all of Lessee's obligations under this Lease from any Leasehold Mortgagee.

(iv) If it is necessary for a Leasehold Mortgagee to obtain possession of the Premises to effect a cure, then Lessor will not commence any proceeding or action to terminate this Lease if (a) the Leasehold Mortgagee informs Lessor within the cure period that the Leasehold Mortgagee has taken steps to foreclose its Leasehold Mortgage or (as applicable) to cancel its sublease or other financing arrangement as necessary to obtain possession of the Premises, (b) the rent is paid and all other provisions and requirements of this Lease which are capable of being observed and performed without obtaining possession of the Premises are observed and performed, and (c) the Leasehold Mortgagee is diligently prosecuting the foreclosure or cancellation.

(v) If Lessor terminates this Lease due to any default by Lessee, Lessor will enter into a new lease with any Leasehold Mortgagee (or its nominee, subject to the provisions of Section 12) for the remainder of the Term of this Lease, and on the then remaining terms and provisions of this Lease, provided the Leasehold Mortgagee must make written request for the new lease no later than sixty (60) days after the date of the termination of this Lease, and the request must be accompanied by payment to Lessor of all sums due to Lessor under this Lease.

(vi) No Leasehold Mortgagee will become liable under this Lease unless and until it becomes the owner of the leasehold estate. Any assignment of this Lease by a Leasehold Mortgagee, its nominee, or by any owner of the leasehold estate whose interest is acquired by, through or under any Leasehold Mortgage, will release the assignor from liability under this Lease arising from and after the date of such assignment (provided that its assignee assumes this Lease in writing).

(vii) If there are two (2) or more Leasehold Mortgages, the holder of the Leasehold Mortgage recorded prior in time will be first vested with the rights under this Section 32. All of the provisions contained in this Lease with respect to Leasehold Mortgages and the rights of Leasehold Mortgagees will survive the termination of this Lease for any periods of time as is expressly provided for in this Lease as necessary to effectuate the rights granted to all Leasehold Mortgagees by the provisions of this Lease.

(viii) Nothing contained in this Lease will require any Leasehold Mortgagee or its nominee to cure any default by Lessee.

33. Force Majeure. If Lessor or Lessee is delayed, hindered or prevented from the performance of any act required under this Lease (other than the payment of any and all rent due under this Lease) by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, terrorist acts, public health concerns not in the control of Lessee that materially interfere with Lessee's operations at the Premises, insurrection, the act, failure to act or default of the other party, war or any reason beyond their control, then performance of the act will be excused for the period of the delay and the period for the performance of any such act will be extended for a period equivalent to the period of such delay. Lack of funds will not be a basis for avoidance or delay of any obligation under this Lease.

34. Estoppel Certificates. Either party will, without charge, within thirty (30) days after written request of the other, deliver an estoppel certificate in the form attached as Exhibit C or a commercially reasonable variation thereof. Any such certificate may be relied upon by the party requesting it and any other person, firm or corporation to whom the same is certified, and the contents of the certificate will be binding on the party executing the certificate.

35. Non-Disturbance. Notwithstanding the foregoing, Lessee's obligation to subordinate or attorn this Lease to any future mortgage or ground lease or attorn to any ground lessor or mortgagee shall be expressly conditioned upon Lessee receiving a commercially reasonable non-disturbance agreement in form and substance reasonably satisfactory to Lessee, which shall provide that the holder of such mortgage or such ground lessor shall not disturb this Lease or Lessee's rights hereunder so long as Lessee is not in default hereunder past the expiration of any applicable notice and cure periods.

36. Phase II Option. Lessor hereby grants to Lessee the exclusive and irrevocable right and option (the "Option") to lease or purchase that certain tract of land containing approximately 2.6 acres and labeled on Exhibit D as the "Option Property" and

legally described on Exhibit D-1 attached hereto and by this reference made a part hereof. This Option is subject to Lessor's relocation of the existing aquatic center at Lessor's expense from the Option Property (the "Relocation") to a nearby location acceptable to Lessor (the "Replacement Property").

(a) Term of Option. The term of the Option (the "Option Term") shall commence on the Effective Date, and shall expire on the earlier of (a) the second (2<sup>nd</sup>) anniversary of the date of the issuance of certificate of occupancy for the first building in the Premises; or (b) June 1, 2018.

(b) City Approval. Lessor covenants and agrees that, on or before ninety (90) days following the Execution Date (the "Relocation Approval Date"), Lessor shall use good faith efforts to pursue Lessor's City Council and any other necessary governmental agency to approve the Relocation, including the funding thereof and time periods for the commencement of the Relocation and delivery of the Option Property to Lessee (the "City Approval"). Upon obtaining the City Approval, Lessor shall provide a letter to Lessee confirming the date of the Relocation. In the event that such Relocation has not been so approved on or before the Relocation Approval Date, then Lessee will determine if it still wishes to proceed with the Development by delivering written notice to Lessor on or before the expiration of the Inspection Period. In the event Lessee elects to so terminate the Lease, Escrow Agent shall promptly return the Earnest Money to Lessee.

(c) Exercise of Option. Lessee may exercise the Option at any time during the Option Term by delivering written notice to Lessor of such exercise prior to the expiration of the Option Term and by delivering to the Escrow Agent an additional earnest money deposit in the amount of \$60,000.00 (the "Option Earnest Money"). The Option Earnest Money shall be applied to the annual rent owed for the Option Property for the first (1<sup>st</sup>) year of the term of the lease of the Option Property or the purchase price for the Option Property, as appropriate. Within thirty (30) days following Lessee's exercise of the Option to purchase the Option Property, Lessor and Lessee will enter into a separate purchase and sale agreement (the "Purchase and Sale Agreement") reflecting a purchase price of One Million and No/100 Dollars (\$1,000,000.00) and containing other terms reasonably acceptable to Lessor and Lessee, which shall include a repurchase option in favor of the Lessor (the "Repurchase Option"), and a right of first refusal in favor of the Lessor (the "ROFR"). The Repurchase Option and ROFR shall be recorded with the deed conveying the Option Property to Lessee in the records of the Probate Judge of Madison County, Alabama.

The Repurchase Option shall provide that, in the event that Lessee has not commenced construction of a hotel on the Option Property within twenty-four (24) months from the date of closing on the purchase and sale of the Option Property from Lessor to Lessee, then Lessor shall have the ongoing right to repurchase the Option Property in exchange for a purchase price in the amount of \$1,000,000 at any time prior to Lessee's commencement of construction of the hotel on the Option Property. Lessee agrees that once Lessee commences construction of such hotel on the Option Property, Lessee agrees to diligently prosecute the same to completion.

The ROFR shall provide that, in the event Lessee desires to sell the Option Property prior to the commencement of construction of a hotel on the Option Property pursuant

to an offer received by Lessee, Lessor shall first have the right of first refusal to repurchase the Option Property in exchange for the purchase price in the amount of \$1,000,000. The ROFR shall provide that Lessor shall have thirty (30) days from the date of notice from Lessee with the triggering offer in which to notify Lessee that Lessor has elected to exercise the ROFR. In such event, the parties shall work in good faith and diligently to agree upon the terms of a purchase and sale agreement for the sale of the Option Property from Lessee to Lessor within thirty (30) days following Lessor's election to purchase the Option Property pursuant to the terms set forth in the offer received by Lessee.

Within thirty (30) days following Lessee's exercise of the Option to lease the Option Property, Lessor and Lessee will enter into a separate ground lease for the Option Property, with terms substantially the same as those contained in this Lease (the "Option Property Lease"). The Option Property Lease shall provide that commencing on the Option Property Commencement Date, Lessor shall pay to Lessee \$60,000 per year each year during the Option Property Lease Term, provided that the first year's rent shall be paid from the Option Earnest Money. As used herein, "Option Property Commencement Date" shall mean the earlier to occur of (i) the issuance of a certificate of occupancy for the first building constructed on the Option Property or (ii) twelve (12) months following the completion of Lessor's Option Property Work (as defined below) and delivery of the Option Property to Lessee. The term of the Option Property Lease shall be the difference between ninety-nine (99) years and the amount of time elapsed since the Commencement Date of this Lease, commencing on the Rent Commencement Date for the Option Property.

(d) Lessor's Responsibility with Option Property. As of the Execution Date, the Option Property consists of (i) the Scruggs Center Community Center improvements located on that portion of the Option Property depicted on Exhibit D attached hereto (the "Community Center Property"), and (ii) the Aquatic Center improvements located on that portion of the Option Property depicted on Exhibit D attached hereto (the "Aquatics Center Property").

(1) Provided that (A) City Approval occurs on or before the Relocation Approval Date, and, (B) as a result thereof, Lessee exercises its option on or before June 1, 2015, then Lessor shall use commercially reasonable efforts, at its sole cost and expense, to demolish and remove any and all existing structures, improvements, utilities lines, footings, foundations and construction debris from the Community Center Property (the "Lessor's Community Center Property Work") on or before September 1, 2015; provided, however, in the event Lessee's notice to Lessor exercising its option is issued on or before June 1, 2015, and pursuant to which Lessee agrees to assume responsibility, at its sole cost and expense, for the Lessor's Community Center Property Work (excluding any asbestos removal, which shall continue to be Lessor's responsibility), then Lessor shall deliver possession of the Community Center Property to Lessee on or before August 1, 2015.

(2) Provided that City Approval occurs, then Lessor shall use commercially reasonable efforts, at its sole cost and expense, to demolish and remove any and all existing structures, improvements, utilities lines, footings, foundations and construction debris from the Aquatics Center Property (the

**“Lessor’s Aquatic Center Property Work”) on or before December 31, 2016, which such date shall be extended as long as reasonably necessary for Lessor to complete Lessor’s Aquatic Center Property Work so long as Lessor is proceeding diligently and in good faith to perform the Relocation. The parties acknowledge that no closure or demolition of existing structures or facilities on the Aquatics Center Property shall commence until Lessor has constructed replacement facilities on an alternate site.**

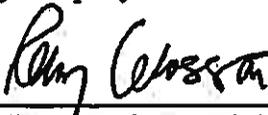
(e) In the event Lessee exercises the Option prior to the Relocation, the Lessor and Lessee shall enter into a sublease (in the event the Lease Option is exercised) or a lease (in the event the Purchase Option is exercised) to provide that Lessor shall maintain possession of the Aquatic Center Property in exchange for \$1.00 per year rental payable from Lessor to Lessee until such time as the Relocation is complete. The terms of such lease or sublease, as applicable, shall be negotiated by the parties in good faith prior to the closing on the Option and shall provide, among other things, (i) for sufficient easements, parking and other rights necessary or desirable by Lessor for the operations of the Aquatics Center Property, and (ii) that Lessee’s construction and operations of its improvements on the Community Center Property do not interfere with the operations of the Aquatics Center Property. In the event the parties do not agree upon the terms of such lease or sublease, as applicable, then the Option shall be deemed not exercised under the terms of this Lease.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective duly authorized representatives on the day and year first above written.

**LESSEE:**

**CITY CENTRE, LLC, an Alabama limited liability company**

By:  (SEAL)  
Remy F. Gross, III, its Manager

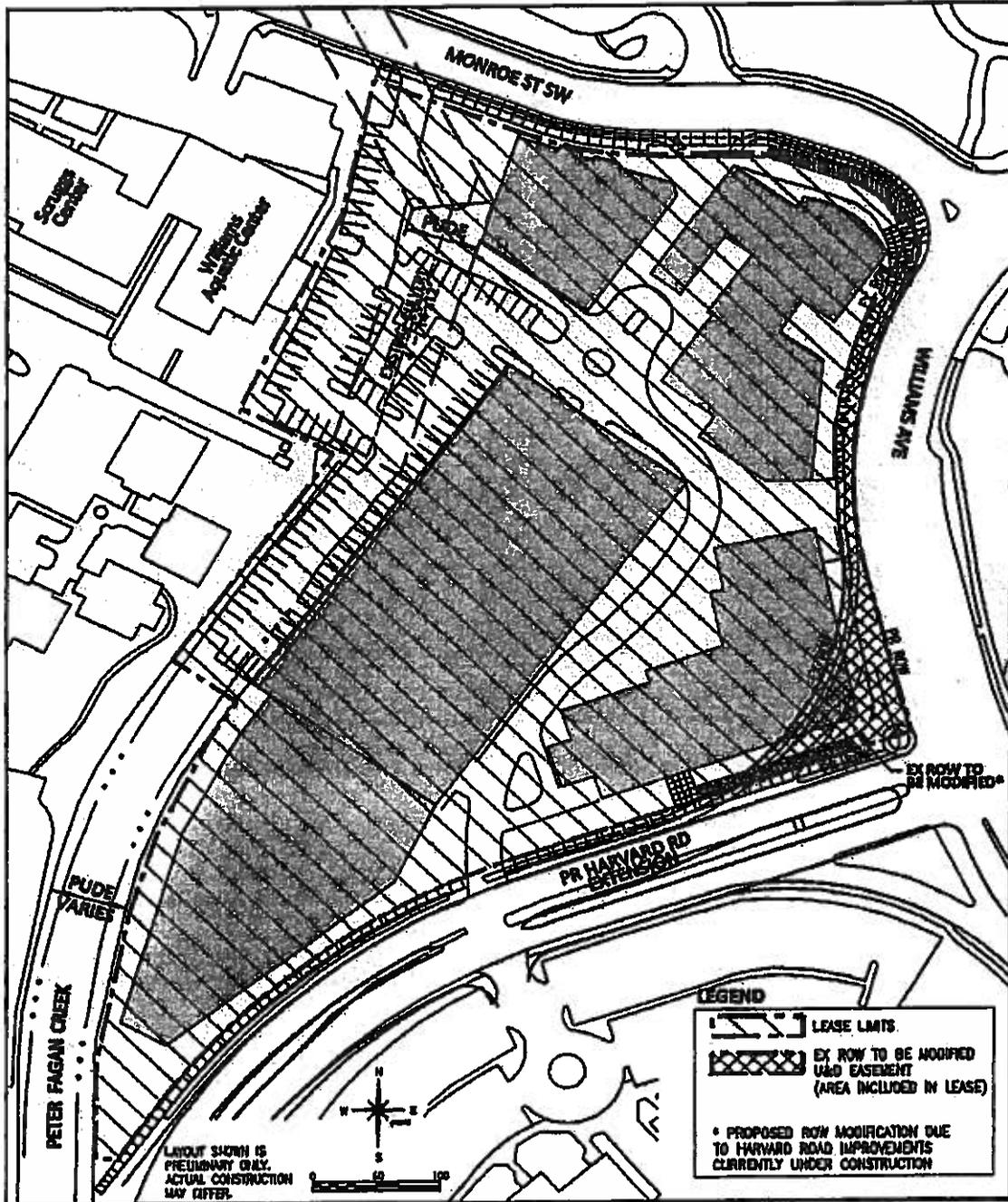
**LESSOR:**

**CITY OF HUNTSVILLE, ALABAMA, an Alabama municipal corporation**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
 Depiction of Premises

**EXHIBIT A - PHASE I DEVELOPMENT AREA**



## EXHIBIT A-1

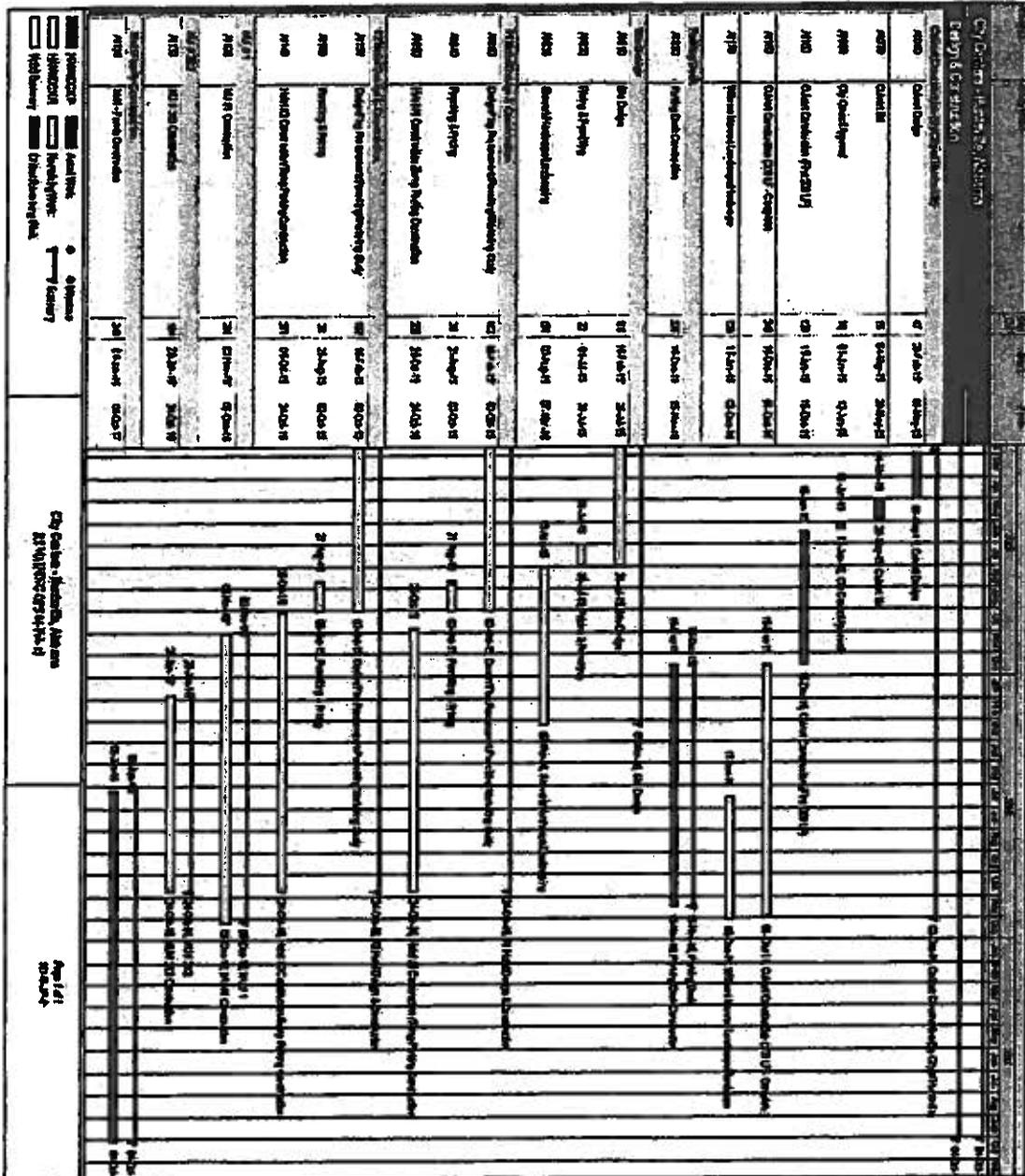
### Legal Description of the Premises

ALL THAT PART OF SECTION 1, TOWNSHIP 4 SOUTH RANGE 1 WEST IN THE CITY OF HUNTSVILLE, MADISON COUNTY, ALABAMA; PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF BLOCK 22, URBAN RENEWAL PROJECT ALA. R-32, BIG SPRING AREA IN HUNTSVILLE, ALABAMA, A PLAT OF WHICH IS RECORDED IN THE PROBATE OFFICE OF MADISON COUNTY, ALABAMA, PLAT BOOK 8 AT PAGE 22; THENCE RUN NORTH 80 DEGREES 47 MINUTES 34 SECONDS EAST FOR A DISTANCE OF 89.73 FEET TO THE POINT OF BEGINNING, SAID POINT LYING ON THE EASTERN RIGHT-OF-WAY MARGIN OF MONROE STREET IN HUNTSVILLE, ALABAMA; THENCE FROM THE POINT OF TRUE BEGINNING RUN ALONG THE SAID EASTERN MONROE STREET RIGHT-OF-WAY RUN ALONG A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 184.00 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 21 DEGREES 25 MINUTES 20 SECONDS EAST AND 144.05 FEET TO A POINT ON SAID EASTERN MONROE STREET RIGHT-OF-WAY; THENCE CONTINUE ALONG SAID EASTERN MONROE STREET RIGHT-OF-WAY AT THE INTERSECTION OF THE SOUTHERN WILLIAMS AVENUE RIGHT-OF-WAY ALONG A CURVE CONCAVE TO THE SOUTHEAST WITH A RADIUS OF 44.00 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 82 DEGREES 21 MINUTES 43 SECONDS EAST 54.10 FEET TO A POINT; THENCE CONTINUE ALONG SAID SOUTHERN WILLIAMS AVENUE RIGHT-OF-WAY MARGIN ALONG A CURVE CONCAVE TO THE NORTH WITH A RADIUS OF 330.00 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 82 DEGREES 19 MINUTES 10 SECONDS EAST AND 253.84 FEET TO A POINT; THENCE CONTINUE TO THE PROPOSED WESTERN RIGHT-OF-WAY MARGIN OF HARVARD ROAD EXTENSION NORTH 75 DEGREES 03 MINUTES 42 SECONDS EAST FOR A DISTANCE OF 117.52 FEET; THENCE CONTINUE ALONG SAID PROPOSED WESTERN RIGHT-OF-WAY MARGIN OF HARVARD ROAD EXTENSION SOUTH 18 DEGREES 50 MINUTES 27 SECONDS EAST FOR A DISTANCE OF 321.41 FEET TO A POINT; THENCE CONTINUE ALONG SAID PROPOSED WESTERN RIGHT-OF-WAY MARGIN OF HARVARD ROAD EXTENSION ALONG A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 572.00 FEET WITH A CHORD BEARING AND DISTANCE OF SOUTH 36 DEGREES 57 MINUTES 01 SECONDS EAST AND 355.59 FEET TO A POINT; THENCE CONTINUE ALONG PROPOSED WESTERN RIGHT-OF-WAY MARGIN OF HARVARD ROAD EXTENSION SOUTH 55 DEGREES 03 MINUTES 34 SECONDS EAST FOR A DISTANCE OF 64.21 FEET TO A POINT; THENCE LEAVING SAID PROPOSED WESTERN HARVARD ROAD RIGHT-OF-WAY CONTINUE SOUTH 00 DEGREES 41 MINUTES 21 SECONDS WEST FOR A DISTANCE OF 5.17 FEET TO A POINT ON THE NORTH SIDE OF PETER FAGAN CREEK; THENCE CONTINUE ALONG THE NORTH SIDE OF PETER FAGAN CREEK NORTH 89 DEGREES 18 MINUTES 39 SECONDS WEST FOR A DISTANCE OF 83.23 FEET TO A POINT; THENCE CONTINUE ALONG SAID NORTH SIDE OF PETER FAGAN CREEK NORTH 78 DEGREES 21 MINUTES 17 SECONDS WEST FOR A DISTANCE OF 125.97 FEET TO A POINT; THENCE CONTINUE ALONG SAID NORTH SIDE OF PETER FAGAN CREEK NORTH 71 DEGREES 53 MINUTES 16 SECONDS WEST FOR A DISTANCE OF 66.92 FEET TO A POINT; THENCE CONTINUE ALONG SAID NORTH SIDE OF PETER FAGAN CREEK NORTH 62 DEGREES 49 MINUTES 52 SECONDS WEST FOR A DISTANCE OF 94.95 FEET TO A POINT; THENCE CONTINUE ALONG SAID NORTH SIDE OF PETER FAGAN CREEK NORTH 54 DEGREES 13 MINUTES 57 SECONDS WEST FOR A DISTANCE OF 34.24 FEET TO A POINT; THENCE LEAVING SAID NORTH SIDE OF PETER FAGAN CREEK CONTINUE SOUTH 35 DEGREES 49 MINUTES 36 SECONDS WEST FOR A DISTANCE OF 61.92 FEET TO A POINT ON THE SOUTH SIDE OF PETER FAGAN CREEK; THENCE CONTINUE ALONG THE SOUTH SIDE OF PETER FAGAN CREEK NORTH 54 DEGREES 14 MINUTES 47 SECONDS WEST FOR A DISTANCE OF 212.68 FEET TO A POINT; THENCE LEAVING THE SOUTH SIDE OF PETER FAGAN CREEK CONTINUE SOUTH 28 DEGREES 32 MINUTES 54 SECONDS WEST FOR A DISTANCE OF 81.95 FEET TO A POINT; THENCE CONTINUE NORTH 64 DEGREES 00 MINUTES 22 SECONDS WEST FOR A DISTANCE OF 179.99 FEET TO A POINT; THENCE CONTINUE NORTH 77 DEGREES 47 MINUTES 41 SECONDS WEST FOR A DISTANCE OF 114.99 FEET TO A POINT ON THE EASTERN RIGHT-OF-WAY MARGIN OF MONROE STREET; THENCE CONTINUE ALONG SAID EASTERN RIGHT-OF-WAY MARGIN OF MONROE STREET NORTH 21 DEGREES 23 MINUTES 49 SECONDS WEST FOR A DISTANCE OF 122.83 FEET TO A POINT; THENCE CONTINUE ALONG SAID EASTERN RIGHT-OF-WAY MARGIN OF MONROE STREET ALONG A CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 288.00 FEET WITH A CHORD BEARING AND DISTANCE OF NORTH 09 DEGREES 53 MINUTES 45 SECONDS EAST AND 114.85 FEET TO A POINT; THENCE CONTINUE ALONG SAID EASTERN RIGHT-OF-WAY MARGIN OF MONROE STREET NORTH 01 DEGREES 36 MINUTES 18 SECONDS WEST FOR A DISTANCE OF 49.28 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED LEASE LINE, CONTAINING 6.83 ACRES MORE OR LESS.

# EXHIBIT B

## CONSTRUCTION AND DEVELOPMENT SCHEDULE



**EXHIBIT C**

**FORM OF ESTOPPEL CERTIFICATE**

Re: Ground Lease dated \_\_\_\_\_, 20\_\_ by and between **CITY OF HUNTSVILLE, ALABAMA**, an Alabama municipal corporation (hereinafter referred to as "Lessor"), and **CITY CENTRE, LLC**, an Alabama limited liability company (hereinafter referred to as "Lessee"), for premises comprised of approximately 6.8 acres located in Huntsville, Madison County, Alabama (the "Premises"), described on Exhibit A of the Memorandum of Lease dated \_\_\_\_\_ and recorded in Book \_\_\_\_\_, Pages \_\_\_\_\_, in \_\_\_\_\_, \_\_\_\_\_ (the "Lease").

**REPRESENTATIONS BY LESSEE AND LESSOR**

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Ladies and Gentlemen:

The undersigned [Lessor/Lessee] certifies to the best of its actual knowledge, as of \_\_\_\_\_, 20\_\_, the following:

1. The Lease is in full force and effect and has not been modified, amended, supplemented, or assigned, except as described above.
2. Annual Base Rent and other charges due Lessor under the Lease have been paid through [INSERT DATE THROUGH END OF MONTH] as set forth in the Lease, excepting only year-end reconciliations of amounts paid on account for the current accounting period. Lessee is currently paying monthly Base Rent in the amount of [INSERT MONTHLY AMOUNT] due and payable as set forth in the Lease. No rent has been paid more than one month in advance, except payments made on account of Lessee pursuant to the specific terms of the Lease.
3. [Lessee knows of no condition under the Lease which on the giving of notice or the passage of time or both would constitute a default under the Lease by Lessor and there are no claims, defenses or offsets which Lessee has against enforcement of the Lease by Lessor, except any credits or refunds due to Lessee resulting from the review or audit of any year end reconciliations.]

-or-

[Lessor knows of no condition under the Lease which on the giving of notice or the passage of time or both would constitute a default under the Lease by Lessee, and there are no claims, defenses or offsets which Lessor has against enforcement of the Lease by Lessee.]

4. The term of the Lease commenced on [INSERT DATE]; rent commenced on [INSERT DATE]; and the term expires on [INSERT DATE].

5. Lessee is in possession of the Premises. Lessee has not filed or had filed against it a petition for bankruptcy under the bankruptcy laws of the United States and is not subject to any reorganization, insolvency, or other like proceedings.
6. All statements contained in this Estoppel Certificate are based on the knowledge of the signing officers below, without investigation. Nothing contained in this Estoppel Certificate will constitute or be deemed to constitute an amendment, modification or waiver of any term or condition of the Lease or any right or remedy of Lessee under the Lease, or arising in connection with the Lease, including all appurtenant covenants, restrictions or easements of record. In the event of any conflict between the Lease and this Estoppel Certificate, the Lease will control.
7. All capitalized terms will have the meanings set forth in the Lease, except as otherwise specifically defined in this Estoppel Certificate.
8. This Estoppel Certificate will be of no force or effect until both parties receive a fully executed original counterpart of this Estoppel Certificate.
9. Lessor acknowledges that Lessee will have the right to provide a copy of this Estoppel Certificate to Lessee's prospective lender and such lender will have the right to rely on Lessee's and Lessor's representations in this Estoppel Certificate in connection with a lending transaction. Lessee and Lessor also have the right to rely on the representations in this Estoppel Certificate.

The undersigned have executed this Estoppel Certificate on this \_\_\_\_ day of \_\_\_\_, 20\_\_.

**LESSEE: CITY CENTRE, LLC,**  
an Alabama limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

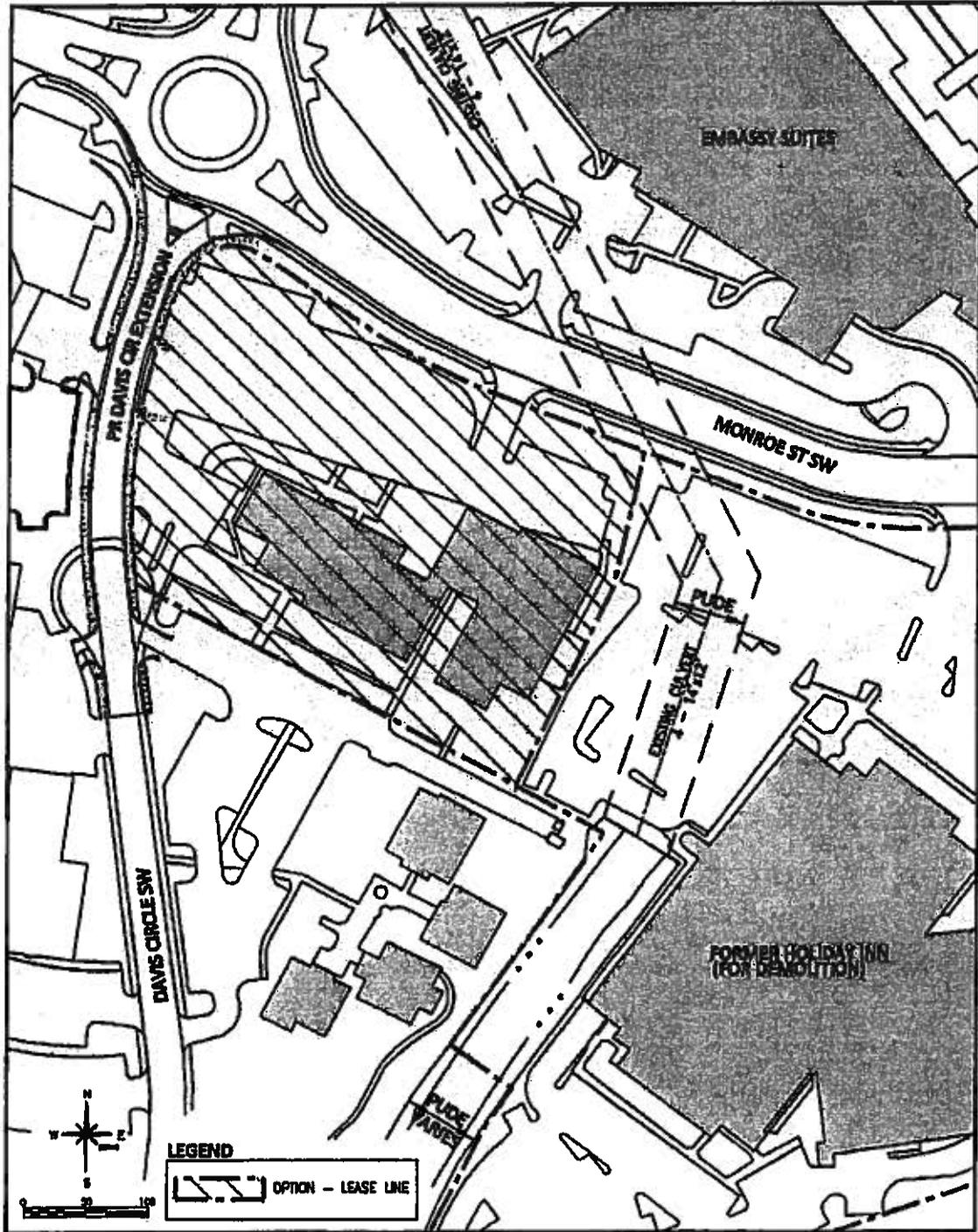
**LESSOR: CITY OF HUNTSVILLE, ALABAMA,**  
an Alabama municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT D**

**Depiction of Option Property**

**EXHIBIT B - PHASE II DEVELOPMENT AREA**



**EXHIBIT D-1**

**Legal Description of Option Property**

ALL THAT PART OF SECTION 1, TOWNSHIP 4 SOUTH RANGE 1 WEST IN THE CITY OF HUNTSVILLE, MADISON COUNTY, ALABAMA; PARTICULARLY DESCRIBED AS COMMENCING AT THE SOUTHWEST CORNER OF BLOCK 22, URBAN RENEWAL PROJECT ALA. R-32, BIG SPRING AREA IN HUNTSVILLE, ALABAMA, A PLAT OF WHICH IS RECORDED IN THE PROBATE OFFICE OF MADISON COUNTY, ALABAMA, PLAT BOOK 8 AT PAGE 22; THENCE RUN 10 DEGREES 08 MINUTES 20 SECONDS EAST FOR A DISTANCE OF 208.83 FEET TO THE POINT OF BEGINNING, SAID POINT LYING ON THE EASTERN RIGHT-OF-WAY MARGIN OF MONROE STREET IN HUNTSVILLE, ALABAMA;

THENCE FROM THE POINT OF TRUE BEGINNING RUN ALONG THE SAID EASTERN RIGHT-OF-WAY MARGIN OF MONROE STREET SOUTH 21 DEGREES 23 MINUTES 49 SECONDS WEST FOR A DISTANCE OF 126.96 FEET TO A POINT ON SAID EASTERN MONROE STREET RIGHT-OF-WAY;

THENCE CONTINUE ALONG SAID EASTERN MONROE STREET RIGHT-OF-WAY ALONG A CURVE CONCAVE TO THE NORTHEAST WITH A RADIUS OF 558.00 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 28 DEGREES 22 MINUTES 24 SECONDS WEST AND 135.55 FEET TO A POINT;

THENCE CONTINUE ALONG SAID EASTERN RIGHT-OF-WAY MARGIN OF MONROE STREET SOUTH 35 DEGREES 20 MINUTES 59 SECONDS WEST FOR A DISTANCE OF 74.56 FEET TO A POINT;

THENCE CONTINUE AROUND A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 57.19 FEET WITH A CHORD BEARING AND DISTANCE OF SOUTH 09 DEGREES 31 MINUTES 09 SECONDS EAST AND 75.86 FEET TO A POINT ON THE PROPOSED NORTH RIGHT-OF-WAY MARGIN OF THE DAVIS CIRCLE EXTENSION;

THENCE CONTINUE AROUND A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 480.00 FEET WITH A CHORD BEARING AND DISTANCE OF SOUTH 81 DEGREES 46 MINUTES 13 SECONDS EAST AND 251.63 FEET TO A POINT ON THE PROPOSED NORTH RIGHT-OF-WAY MARGIN OF THE DAVIS CIRCLE EXTENSION;

THENCE LEAVING SAID RIGHT-OF-WAY, CONTINUE NORTH 28 DEGREES 32 MINUTES 54 SECONDS EAST FOR A DISTANCE OF 348.22 FEET TO A POINT;

THENCE CONTINUE NORTH 64 DEGREES 00 MINUTES 22 SECONDS WEST FOR A DISTANCE OF 179.99 FEET TO A POINT; AND

THENCE CONTINUE NORTH 77 DEGREES 47 MINUTES 41 SECONDS WEST FOR A DISTANCE OF 114.99 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED OPTION LEASE LINE, CONTAINING 2.79 ACRES MORE OR LESS.

## **EXHIBIT "E"**

### **Prohibited Uses**

The Premises may not be used for any of the following prohibited uses (collectively, "Prohibited Uses"):

1. Any use which would ordinarily constitute a public or private nuisance;
2. Any use which produces noxious, toxic, caustic or corrosive fuel or gas;
3. Any use which produces fire, explosion or other damaging or dangerous hazard (including storage, display or sale of explosives or fireworks); provided, however, the foregoing shall not prohibit (i) the operation of a propane sales facility in accordance with applicable law or (ii) the sale of firearms, ammunition or other explosive materials sold by a national sporting goods store so long as the same are stored, handled and sold in compliance with all applicable governmental laws;
4. Central laundry or dry cleaning plant (other than a dry cleaning drop-off facility which does not use dry cleaning fluids or similar chemicals or substances on site in connection with the dry cleaning of clothes);
5. Any assembling, manufacturing, industrial, distilling (not to prohibit so-called micro-brewing of beer), refining, smelting, agricultural or mining operation;
6. Any store selling drug paraphernalia;
7. Adult bookstore or any other establishment selling, distributing or exhibiting pornographic, obscene and/or adult materials including without limitation: magazines, books, movies, videos and photographs; and live models or dancers; provided, however, the foregoing shall not prohibit the operation of a typical grocery or supermarket or a typical drug store;
8. Massage parlors (provided, however, that the following facilities shall be permitted: therapeutic massage, upscale day spa and other facilities that are typically found in mixed use centers of similar quality and tenant mix to the Development, such as, but not limited to, Massage Envy or Spa Sydell);
9. Tattoo parlor, Bingo parlors, Billiard parlors or pawn shop;
10. Any mortuary, funeral home, crematorium, cemetery or similar facility;
11. Any lounge, night club, discotheque, dance hall, or gentlemen's club;
12. Any flea market or second-hand thrift store;
13. Any carnival, amusement park or circus;

14. Any go-cart track;
15. Off-track betting sites or betting parlors;
16. Any business engaging in the sale of new or used mobile homes;
17. Any mobile home or trailer court, labor camp, or junk yard (except that this provision shall not prohibit the temporary use of construction trailers during any periods of construction, reconstruction or maintenance);
18. Any dumping of garbage or refuse, other than in enclosed receptacles or designated recycling facilities intended for such purpose;
19. Any auction operation or going out of business, relocation, bankruptcy or similar sales (unless pursuant to a court order);
20. Any church, synagogue, mosque or other place of worship;
21. Any deep discount retailer, such as Big Lots or Odd Lots, or dollar store such as Dollar General or Family Dollar; and
22. Any unlawful use.

**ROUTING SLIP  
CONTRACTS AND AGREEMENTS**

Originating Department: Legal

Council Meeting Date: 2/12/2015

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Ground Lease

Document Name: Ground Lease Agreement with CRS City Centre, LLC

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

Account Number:

**Procurement Agreements**

<u>Not Applicable</u>	<u>Not Applicable</u>
-----------------------	-----------------------

**Grant-Funded Agreements**

<u>Not Applicable</u>	Grant Name:
-----------------------	-------------

Department	Signature	Date
1) Originating	<i>Mary C. Cates</i>	2-12-2015
2) Legal	<i>Mary Cates</i>	2-12-2015
3) Finance		
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		