

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: 15.q.

Meeting Type: Regular

Meeting Date: Jun 11, 2015

Action Requested By: Legal

Agenda Type: Resolution

Subject Matter:

Estoppel Certificate for Avenue Huntsville, LLLP.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Ground Landlord's Estoppel Certificate between the City of Huntsville and Avenue Huntsville, LLLP.

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

Item to be considered for: Action

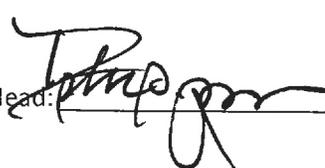
Unanimous Consent Required: No

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

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

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

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

Date: Jun 8, 2015

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 Landlord's Estoppel Certificate by and between the City of Huntsville and Avenue Huntsville, LLLP, 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 Landlord's Estoppel Certificate between the City of Huntsville and Avenue Huntsville, LLLP," consisting of forty-six(46) pages, including Exhibits, and the date of June 11, 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 11th day of June, 2015.

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

APPROVED this the 11th day of June, 2015.

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

GROUND LANDLORD'S  
ESTOPPEL CERTIFICATE

To: CB&T, a division of Synovus Bank  
its successors and/or assigns, as administrative agent  
for the Lenders described herein  
1148 Broadway  
Columbus, Georgia 31902

Re: Ground Lease Agreement between the City of Huntsville, Alabama ("Ground Lessor") and Avenue Huntsville, LLLP ("Tenant") dated as of January 22, 2015 (the "Ground Lease"), a memorandum of said Ground Lease being recorded in the records of the office of the Judge of Probate of Madison County, Alabama, pertaining to that certain real property and improvements located in Madison County, Alabama, more particularly described in Exhibit "A" attached hereto (the "Property")

Gentlemen:

You have advised us that CB&T, a division of Synovus Bank and IBERIABANK (together with their successors and assigns, "Lenders") are making a loan in the principal amount of up to \$27,460,000.00 to Tenant. The loan will be secured by, inter alia, a first priority Leasehold Mortgage and Security Agreement (such Leasehold Mortgage and Security Agreement, and any amendments and/or modifications thereof, the "Leasehold Mortgage") on the Tenant's interest in the Ground Lease and the improvements being constructed on the Property. In consideration of TEN AND NO/100 DOLLARS (\$10.00) in hand paid by Lenders to the undersigned and other good and valuable consideration, the receipt and sufficiency whereof the undersigned hereby acknowledge, and for the purpose of providing information to the Lenders and their respective successors and assigns, with the understanding that they will rely upon the information provided herein, the undersigned do hereby certify, covenant and agree as follows:

1. The Ground Lease is in full force and effect and a true and correct copy of the Ground Lease is attached hereto as Exhibit "B" hereof.
2. The Ground Lease has not been modified or amended in any respect. The term of the Ground Lease commenced on January 22, 2015 and the initial term of the Ground Lease will expire on January 22, 2065.
3. Tenant has paid all rent owing under the Ground Lease through January 22, 2065.

4. To the knowledge of the undersigned, there is and has been no uncured default in the performance of the Ground Lease by Ground Lessor or Tenant, nor has any event occurred or condition arisen, to the knowledge of Ground Lessor or Tenant, which, with the passage of time, or the giving of notice, or both, would constitute a default under or breach of the Ground Lease.

5. Ground Lessor hereby confirms that CB&T, a division of Synovus Bank, as administrative agent for the Lenders, is a "Recognized Leasehold Mortgagee" under the Ground Lease and shall be entitled to all of the rights of a "Leasehold Mortgagee" and a "Recognized Leasehold Mortgagee" enumerated under the Ground Lease. Ground Lessor acknowledges that the Lenders have requested copies of all notices given to Tenant under the Ground Lease, in accordance with and in satisfaction of the requirements of the Ground Lease, with the notice address for said notices to Lenders being provided in Exhibit "E" of the Ground Lease.

6. Ground Lessor and Tenant further acknowledge that each of the Lenders identified herein and the administrative agent for said Lenders as identified herein is a "Lender" for purposes of the Ground Lease and the documents, instruments and agreements entered into by Tenant in connection with the \$27,460,000.00 loan being made by the Lenders to Tenant secured by the Leasehold Mortgage described herein are "Loan Documents" as described in the Ground Lease.

7. This certification shall inure to the benefit of each Lender and their administrative agent and their respective successors and assigns, and all parties claiming by, through or under them, and a copy of this certification may be delivered to any such party.

[SIGNATURE PAGES FOLLOW]

Given, under seal, effective as of May 27, 2015.

TENANT:

AVENUE HUNTSVILLE, LLLP, an Alabama limited liability limited partnership

By: Avenue Huntsville GP, LLC, an Alabama limited liability company, its general partner

By: *Charlie O. Sealy, III*  
Charlie O. Sealy, III, as manager of Avenue Huntsville GP, LLC

(SEAL)

STATE OF ALABAMA .  
COUNTY OF Madison

I, the undersigned, a Notary Public in and for said County in said State, do hereby certify that Charlie O. Sealy, III, whose name as Manager of Avenue Huntsville GP, LLC, an Alabama limited liability company, whose name as general partner of Avenue Huntsville, LLLP, an Alabama limited liability limited partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he, as such manager and with full authority, executed the same voluntarily for and as the act of said Avenue Huntsville GP, LLC in such capacity on behalf of said Avenue Huntsville, LLLP.

Given under my hand and seal of office this 5<sup>th</sup> day of June, 2015.

[NOTARY SEAL]

*Cindy Brunette*  
Notary Public  
My Commission Expires:

County of Madison

Comm. Exp. \_\_\_\_\_

(Notarial Seal)

**MY COMMISSION  
EXPIRES 6-17-2017**

GROUND LESSOR:

CITY OF HUNTSVILLE, ALABAMA

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

Attest: \_\_\_\_\_  
Its: Clerk-Treasurer

(SEAL)

STATE OF ALABAMA  
COUNTY OF \_\_\_\_\_

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

Given under my hand and seal of office this \_\_\_\_ day of May, 2015.

[NOTARY SEAL]

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

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

Comm. Exp. \_\_\_\_\_

(Notarial Seal)

Exhibit "A"

Legal

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MADISON, STATE OF ALABAMA, AND IS DESCRIBED AS FOLLOWS:

All that certain lot or parcel of land situated in the County of Madison, State of Alabama, and being more particularly described as follows:

Lot 1 of The Avenue, as Resubdivision of Block 301 of the Quigley Map, a map or plat of which is recorded on January 28, 2015 as Instrument 20150128000045180 in the Probate Office of Madison County, Alabama, reference to which is made in aid of and as a part of this description, TOGETHER WITH a beneficial interest in that certain easement across Lot 2 of said plat, which easement is dated January 22, 2015 and recorded on *May 27, 2015* as Instrument 20150527000276720 in said Probate Office.

**20150527000276720**

20150527000276740 13/13 \$56.75  
Madison Cnty Judge of Probate, AL  
05/27/2015 09:24:58 AM FILED/CERT

Exhibit "B"  
Ground Lease

Adopted 1/22/2015

RESOLUTION NO. 15-57 \_\_\_\_\_

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 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 "Ground Lease Agreement between the City of Huntsville, and Avenue Huntsville, LLLP," consisting of thirty-seven (37) pages including Exhibits, and the date of January 22, 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 22nd day of January, 2015.

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

APPROVED this the 22nd day of January, 2015.

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

**GROUND LEASE AGREEMENT**

**BETWEEN**

**THE CITY OF HUNTSVILLE, ALABAMA**

**AND**

**AVENUE HUNTSVILLE, LLLP**

**GROUND LEASE AGREEMENT**

This GROUND LEASE AGREEMENT (hereinafter referred to as this "Lease") is made and entered into as of January 22, 2015 by and between the City of Huntsville, Alabama, a municipal corporation under the laws of the State of Alabama (hereinafter referred to as "City"), and Avenue Huntsville, LLLP, an Alabama limited liability limited partnership (hereinafter referred to as "Tenant").

**WITNESSETH THAT:**

WHEREAS, City is the owner of The Avenue, a Re-Subdivision of Block 301 of the Quigley Map, a map or plat of which is recorded in the Probate Judge's Office of Madison County, Alabama in Instrument Number \_\_\_\_\_ ("Avenue Subdivision"), which subdivision consists of two lots; and

WHEREAS, the City has been involved in planning for the development of certain areas of downtown Huntsville including, without limitation, Lot 1 of Avenue Subdivision (hereinafter referred to as the "Property"); and

WHEREAS, the Property is located in an area of the City, which the City deems an important location for planned, mixed-use urban development consisting of multi-family housing, commercial and retail enterprises, restaurants, and other businesses and establishments if developed and improved in accordance with elevated standards typical of successful urban redevelopment observed in other areas; and

WHEREAS, cities throughout the United States have adopted codes and undertaken other procedures that go beyond conventional zoning controls in order to advance land development regulatory mechanisms that place primary emphasis on the physical form of the built environment with the goal of producing a special type of place within the urban environment, which codes are based on the scale, character, intensity and form of development rather than solely on differences in land use; and

WHEREAS, absent adequate enabling laws in the State of Alabama, the City desires to achieve similar goals with respect to certain urban settings within its jurisdiction through agreements with developers that impose requirements for construction and development of facilities in accordance with higher standards of construction and design that cannot be achieved through zoning and other regulatory actions by the City; and

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

WHEREAS, City selected Tenant's predecessor in interest to develop the Property; and

WHEREAS, City granted Tenant an option to lease the Property and Tenant has exercised such option right; and

WHEREAS, City desires to lease the Property to Tenant and Tenant desires to lease the Property from City; and

  
\_\_\_\_\_  
President of the City Council of the  
City of Huntsville, Alabama  
Date: 1/22/2015

WHEREAS, City will construct and maintain a surface parking lot (the "Surface Parking Lot") on Lot 2 of Avenue Subdivision (the "Surface Parking Lot Area"); and

WHEREAS, City and Tenant entered into that certain Project Agreement dated \_\_\_\_\_, 2015 (the "Project Agreement"); and

WHEREAS, pursuant to the Project Agreement, Tenant will construct a mixed-use development on the Property as generally depicted or described on Exhibit "A" attached hereto and incorporated herein by this reference (along with various related amenities and improvements, the "Project" and collectively with the Property, the "Premises"); and

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

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

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements herein set forth by each party to be kept and performed, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged by each party hereto, City and Tenant do hereby mutually covenant and agree as follows:

City does hereby let, subject only to the encumbrances (collectively, the "Permitted Encumbrances") enumerated in Exhibit "B", attached hereto and incorporated herein by this reference, unto Tenant and Tenant does hereby take and lease from City the Property, together with all appurtenances, rights, and privileges benefiting, belonging or pertaining thereto and the easements referenced in Section 21. TO HAVE AND TO HOLD such property for a term of years set forth herein unless this Lease shall be sooner terminated as hereinafter provided. This Lease and all rights of the parties hereunder are expressly subject to the provisions as hereinafter set forth, all of which the parties hereto respectively agree to keep, abide by and perform during the term hereof.

1. Term. The term (the "Initial Term") of the leasehold estate of the Tenant in the Property created hereunder shall commence as of [January \_\_, 2015] (the "Commencement Date") and expire at 12:00 Midnight on [January \_\_, 2065], unless otherwise extended or sooner expired or terminated in accordance with this Lease or by operation of law. The date on which the term hereof ends by termination or expiration of this Lease shall be referred to herein as the "Termination Date." This Lease is subject to termination, extension and other terms as provided herein. Tenant shall have the option to renew this Lease for two additional renewal terms (each a "Renewal Term") on the same terms and conditions provided for herein, except for any adjustment in the amount of Base Rent (hereinafter defined) payable by Tenant. The first Renewal Term shall be for 25 years and the second Renewal Term shall be for 24 years. Tenant shall give notice (a "Termination Notice") of its intention not to renew this Lease within ninety 90 days of the end of the Initial Term or the first Renewal Term, as the case may be. As used herein, "Term" means collectively the Initial Term and, to the extent Tenant does not give City such a Termination

Notice, each Renewal Term. If Tenant does not send a Termination Notice, the Lease shall automatically renew for each Renewal Term.

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

(a) during the Initial Term, the sum of \$100.00 per year payable annually in advance and no later than February 1, 2015 for the first year and on or before January 1 of each calendar year thereafter during the Initial Term;

(b) during the first Renewal Term, the sum of \$120,000.00 per year, payable in monthly installments of \$10,000.00 each in advance on the first day of each month during the first Renewal Term; and

(c) during the second Renewal Term, an amount equal to the greater of the sum of \$120,000.00 per year or the then current fair annual market rental value of the Property, valued as undeveloped land and as determined by an appraisal by an appraiser mutually acceptable to Tenant and City, and payable in equal monthly installments in advance on the first day of each month during the second Renewal Term.

If Tenant and City cannot agree on an appraiser with respect to the determination of the amount of Base Rent due during the second Renewal Term, then each shall have an appraisal completed and the annual rental will be the average of the two appraisals. Payment of all rent and all other sums due to City under this Lease shall be made payable to City and delivered to City at the address shown in Section 16 of this Lease or at such other place as City may notify Tenant from time to time. Tenant may prepay all or any portion of the Base Rent at any time during the Term.

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

4. Quiet Enjoyment. City represents and warrants that, except for the Permitted Encumbrances, it owns fee simple, marketable title to the Property. City further covenants and agrees that, throughout the Term, as long as it pays the rents and performs the other covenants and obligations set forth herein, Tenant may peaceably and quietly enjoy the Property subject, however, to the Permitted Encumbrances.

5. Subordination.

(a) By Tenant as to Property. Tenant's rights, as well as the rights of any sublessee, any mortgagee, architect, independent contractor, assignee, sub-contractor, prime or general contractor, mechanic, laborer, materialman or other lien or claim holder, shall always be and remain subordinate, inferior, and junior to City's title, interest and estate in the Property.

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

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

6. In no event will City be held liable as or deemed a guarantor or otherwise responsible for the payment of the Loan or any other financing required for the design, acquisition and construction of the Project.

7. Title to the Improvements; Rights to Improvements upon Termination. Title to all improvements made, erected, constructed, installed or placed upon or constructed on the Property shall be and remain in Tenant until expiration or earlier termination of this Lease. Tenant alone shall be entitled to claim depreciation on the Project for all taxation purposes during the Term. If requested by Lender or the title company insuring any Loan, Tenant and City shall enter into a "declaration of severance" or the like, in recordable form, expressly severing title to the land from title to the improvements on the Property. Any and all rights, title and interest of City, if any, in and to any Project improvements constructed on the Property, shall be and hereby are made subordinate and subject to the lien of any Leasehold Mortgage. During the term of this Lease and the Loan, City agrees not to encumber the fee interest of the Property with any liens securing any indebtedness or otherwise encumber the fee interest of the Property in any manner that unreasonably interferes with the rights, interest or use of the Premises by Tenant or any sub-lessee of Tenant and provided that any such encumbrance placed on the Property (other than Permitted Encumbrances) shall be junior and subordinate to this Lease, unless consented to in writing by Tenant and each Leasehold Mortgagee, which consent will not be unreasonably withheld, conditioned or delayed. Upon the expiration of the term of this Lease, or upon the prior termination of this Lease from any cause, all rights, title and interests of Tenant and all persons whomsoever claiming by, through or under Tenant shall immediately cease and terminate, and all of the buildings, structures, improvements on the Property, including the Project, shall thence forward constitute and belong to and be the absolute property of City, without further act or conveyance, and without liability to make such compensation to Tenant; provided, however, that the right of any residential, retail or commercial tenant of the Project shall not be disturbed by such termination for the remainder of the term of any such retail or commercial tenant lease so long as such tenant is not in default under its lease and such tenant shall pay the rent due under its lease and otherwise observes and performs all of its obligations under its lease.

## 8. Assignments of Lease.

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

8.2 Condominium Declaration. In conjunction with the development of the Project or the closing of a Loan, Tenant may, at its sole cost and expense, need to effect a condominium structure with regard to the Project. City agrees to reasonably cooperate with any condominium declaration of the Premises, which cooperation may, if in each instance approved by City, include the assignment of this Lease as to a portion of the Property or the execution of a separate ground lease agreement with Tenant or Tenant's designee for a portion of the Property upon the same terms, covenants and conditions contained in this Lease; provided further, that any such assignee or designee is subject to the prior written approval of City, which shall not be unreasonably withheld, conditioned or delayed.

8.4 City Consent. Except for (a) a Leasehold Mortgage and collateral assignments associated with any Loan as described in Section 9 or (b) as otherwise provided in this Lease, Tenant may not assign or transfer this Lease or any interest herein or any right or privilege appurtenant hereto, unless the written consent of City is first obtained, such consent not to be unreasonably withheld, conditioned or delayed. Any assignment or transfer for which consent is required but which is nevertheless made without such written consent shall be voidable by City. City agrees that it will grant its consent to an assignment or transfer so long as the City, in its reasonable determination, which determination will not be unreasonably withheld, conditioned or delayed, is satisfied that the proposed assignee/transferee has the experience, expertise, capability and qualifications to operate and manage the Project and the proposed assignee/transferee assumes the obligations of the Tenant under this Lease in writing.

9. Rights of Lender. Notwithstanding anything contained herein to the contrary, the City hereby consents to Tenant's execution and delivery of the Leasehold Mortgage (as defined above in the recitals) encumbering, inter alia, all or any part of the Tenant's interest in this Lease and/or the Project to the Lender (in such capacity, each holder or holders of the beneficial interest under Leasehold Mortgage and any successors, assigns and designees of the foregoing, are referred to herein as the "Leasehold Mortgagee). The City and Tenant further agree as follows:

(a) Tenant shall use its best efforts to cause each Leasehold Mortgagee to provide the City with concurrent written notice of any event of default given by such Leasehold Mortgagee to Tenant under such Leasehold Mortgage, but the failure of any Leasehold Mortgagee to give such notice shall not affect the rights of Tenant or such Leasehold Mortgagee under this Lease. The City agrees, simultaneously with the giving of each notice by the City hereunder, to give a duplicate copy of such notice to any Recognized Leasehold Mortgagee [as defined in Section 9(i)] at the address that such Recognized Leasehold Mortgagee has provided to the City pursuant to section 9(i).

(b) Each Recognized Leasehold Mortgagee will have the same period afforded the Tenant under this Lease after receipt of notice of a default, for remedying any default or causing the same to be remedied plus an additional sixty (60) days (but in no event less than sixty (60)

days from delivery of notice of such default to such Recognized Leasehold Mortgagee) and the City agrees to accept such performance on the part of such holder as though the same had been done or performed by Tenant; provided, however, if such default is not reasonably susceptible to being cured within said stated cure period, as long as such cure is being diligently pursued, such cure period shall be extended for a period of time reasonably necessary to effectuate such cure. No notice of default to Tenant shall be effective as to any Recognized Leasehold Mortgagee unless such Recognized Leasehold Mortgagee has been given a copy of such notice of default at the address that the Recognized Leasehold Mortgagee has provided the City pursuant section 9(i) and any such notice to be given to any such Recognized Leasehold Mortgagee shall be given in the same manner as if it was a notice under Section 16 hereof. Nothing herein shall be construed to obligate any Recognized Leasehold Mortgagee to cure any default by Tenant. The City and Tenant shall provide Recognized Leasehold Mortgagee access to the Premises for purposes of effectuating any cure such Recognized Leasehold Mortgagee has decided to undertake and the City will accept any such cure, and with respect to any default that requires access to the Premises to effectuate a cure, the cure period for said Recognized Leasehold Mortgagee shall be stayed during any period while such Recognized Leasehold Mortgagee is denied such access.

(c) The City agrees that it will take no action to effect a termination of the Lease by reason of the occurrence of any Default if within the notice and cure period provided in subsection (b) above such Recognized Leasehold Mortgagee commences foreclosure proceedings and diligently pursues same to completion, or otherwise acts to acquire Tenant's interest under this Lease with diligence and without unreasonable delay; provided, however, that such Leasehold Mortgagee shall not be required to continue such possession or to continue such foreclosure proceedings if the default shall be cured by Tenant and the City has accepted such cure. Notwithstanding any time limitation herein, the Recognized Leasehold Mortgagee shall have such additional time as shall be required to initiate and complete foreclosure proceedings so long as it is acting diligently (subject to any injunction or stay). Such period for completion shall be extended to the extent such proceedings are prohibited or stayed. Following the conclusion of such foreclosure or other acquisition of the Tenant's interest in this Lease by assignment in lieu of foreclosure, such acquiring party shall have a reasonable amount of time to cure any Defaults that existed under the Lease prior to such foreclosure or acquisition that are continuing, however, any such Leasehold Mortgagee or acquiring party shall not be obligated or required to cure a monetary Default by Tenant, a Default of Tenant that is uniquely specific to Tenant (such as bankruptcy), or a Default that is otherwise by its nature not capable of being cured by the Leasehold Mortgagee or such acquiring party, and the City waives any such specific or non-curable Default. A Leasehold Mortgagee that forecloses, or otherwise acquires Tenant's interest under this Lease, and its subsequent assignees or any party acquiring at a foreclosure sale, shall only be liable for acts or omissions under the Lease taking place during the period in which the Leasehold Mortgagee or assignee or acquiring party, as applicable, had record title to the leasehold estate in the Premises, and each such Leasehold Mortgagee and assignee shall be automatically released from any and all liability under this Lease at such time as it no longer possesses such record title to the leasehold estate in the Premises. The liability of the Leasehold Mortgagee or assignee, as applicable, to the City or any successor landlord under this Lease shall be limited to the value of their respective interests in the leasehold estate in the Property and this Lease.

(d) Leasehold Mortgagee may become the legal owner and holder of this Lease by foreclosure of a Leasehold Mortgage or as a result of the assignment of this Lease in lieu of foreclosure.

(e) This Lease shall not be amended or modified or surrendered to the City or canceled by Tenant and/or the City, nor shall the City accept a surrender of this Lease (other than pursuant to its right to terminate following the occurrence of a Default that is not cured or waived as provided herein) without the prior written consent of any holder of the first priority Recognized Leasehold Mortgage. With respect to any amendment or modification of the Lease, the consent of any Recognized Leasehold Mortgagee may not be unreasonably withheld as long as such amendment does not (i) increase the rent or other monetary obligations of the Tenant under this Lease, (ii) does not shorten the term of this Lease, (iii) does not adversely affect the rights of such Leasehold Mortgagee under this Lease, and (iv) does not affect the value of, or such Leasehold Mortgagee's lien on, all or any of the Property or this Lease.

(f) In the event of the termination of this Lease prior to its stated expiration date by reason of a rejection of the Lease by Tenant or the City in a proceeding under the U.S. Bankruptcy Code, the City shall give each Recognized Leasehold Mortgagee notice of the termination, which notice shall include a statement of all amounts due under the Lease at termination and any other defaults then existing under the Lease. Effective as of the date of termination of the Lease, or at the request of any Recognized Leasehold Mortgagee that has foreclosed upon, or is in the process of foreclosing upon its Leasehold Mortgage, the City agrees that it will enter into a new lease of the Premises with such Recognized Leasehold Mortgagee, at the request of such Recognized Leasehold Mortgagee, or with an entity formed by or on behalf of such Recognized Leasehold Mortgagee, for a period equal to the remainder of the Term effective as of the date of such termination, at the same rent, monetary obligations and substantially upon the covenants, agreements, terms, provisions and limitations contained herein, provided (i) such Recognized Leasehold Mortgagee makes written request upon the City for such new lease within sixty (60) days from the date of receipt of notice of such termination, (ii) such Recognized Leasehold Mortgagee pays or causes to be paid to the City at the time of the execution and delivery of such new lease any and all unpaid rents which would at the time of the execution and delivery thereof be due under this Lease but for such termination. If the City receives more than one written request for a new lease in accordance with the provisions of this section 9(f) then such new lease shall be entered into pursuant to the request of the Recognized Leasehold Mortgagee whose mortgage shall be most senior. Any new lease made pursuant to this section 9(f) shall be and remain an encumbrance on the fee title to the Property having the same priority thereon as this Lease, and shall without implied limitation be and remain prior to any mortgage or any lien, charge or encumbrance of the fee of the Property created by the City. It is expressly agreed that the rights of any Recognized Leasehold Mortgagee to a new lease under this subpart (f) shall survive the termination of this Lease.

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

Mortgage and/or other Loan Documents without City consent and without affecting the Lender's or any Leasehold Mortgagee's rights under this Lease.

(h) The purchaser at a foreclosure sale under the Leasehold Mortgage, or any person accepting an assignment of Tenant's interest herein in lieu of foreclosure, shall become the tenant hereunder and thereupon shall be entitled to all of the leasehold estate created by this Lease. Recognized Leasehold Mortgagees shall have the right to assume this Lease as tenant in its own name or in the name of a nominee upon foreclosure or assignment in lieu of foreclosure. No foreclosure by a Leasehold Mortgagee or assignment in lieu thereof will require the City's further consent nor constitute a default under this Lease, and following any such foreclosure or assignment in lieu of foreclosure, the City consent to any assignment of this Lease subsequent to any such foreclosure or assignment in lieu of foreclosure will not be unreasonably withheld, conditioned or delayed (and in any event if consent to a proposed assignment is requested of the City in writing, and the City does not respond to such request within thirty (30) days of delivery of said request to the City, such consent shall be deemed to have been given by the City and such assignment and assignee approved by the City). Upon completion of the foreclosure or assignment in lieu of foreclosure, the City will recognize the transferee as the tenant under this Lease. Notwithstanding anything to the contrary contained in this Lease, it is specifically understood and agreed that no Leasehold Mortgagee or any party acquiring the Tenant's interest in this Lease through foreclosure or assignment in lieu of foreclosure shall be:

- (1) liable for any act, omission, negligence or default of any prior Tenant (including, without limitation, Avenue Huntsville, LLLP) as lessee under this Lease; or
- (2) subject to any claims or defenses which the lessor under the Lease might have against any prior Tenant (including, without limitation, Avenue Huntsville, LLLP) as the lessee under this Lease.

Additionally, any Leasehold Mortgagee or any acquiring party at or following a foreclosure sale or through an assignment in lieu of foreclosure that succeeds to the Tenant's interest under this Lease shall not be liable under this Lease beyond its interest in the Premises.

(i) The foregoing provisions of this Section 9 shall apply to any "Recognized Leasehold Mortgagee". A Leasehold Mortgagee shall be a "Recognized Leasehold Mortgagee" for all purposes of this Lease when such Leasehold Mortgagee has given written notice to the City at the address and in the manner provided in Section 16, and such notice (A) makes reference to this Lease, (B) states that such Leasehold Mortgagee is the holder of a mortgage or leasehold mortgage encumbering the Tenant's right, title and interest in this Lease and recorded (or to be recorded) in the official records of Madison County, Alabama, (C) states such Leasehold Mortgagee is to be a "Recognized Leasehold Mortgagee" under this Lease and (D) states the name of such Leasehold Mortgagee and the address of such Leasehold Mortgagee to which notices to such Leasehold Mortgagee are to be mailed by the City. Notwithstanding the foregoing, the City hereby irrevocably confirms that the Leasehold Mortgagee identified on Exhibit E hereof has complied with all requirements of initial notice to the City under this or any other provision of this Lease, and that the notice address of such Leasehold Mortgagee is as stated on Exhibit E hereof and such Leasehold Mortgagee is entitled to all the benefit of this Section 9. Any Leasehold Mortgagee complying with the notice provision of this section 9(i) or listed on Exhibit E hereof is a "Recognized Leasehold Mortgagee". For avoidance of doubt, if there are conflicting rights or

interests of multiple Recognized Leasehold Mortgagees, the Recognized Leasehold Mortgagee holding the most senior Leasehold Mortgage in priority shall control.

(j) Prior to revoking the Easement or Tenant's rights thereunder, City shall give each Recognized Leasehold Mortgagee written notice of such intent to revoke and a reasonable opportunity for such Recognized Leasehold Mortgagee to cure such matter that gave rise to the City's right to revoke.

(k) In the event of any conflict between this Section 9 and any other provisions of this Lease, the provisions of this Section 9 shall control.

#### 10. Insurance.

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

10.2 Property and Liability Insurance. Following construction and during the remainder of the Term, Tenant shall: (a) keep all buildings, improvements, fixtures, equipment and personal property comprising part of the Project immediately from and after the completion of each of them, insured against loss or damage by fire or by any other cause now or hereafter embraced by such "extended coverage" as is or then shall be commonly included in policies insuring similar buildings and building equipment against loss by fire and other casualties, and boiler and machinery insurance coverage, in an amount not less than one hundred percent (100%) of replacement cost and (b) maintain such other insurance with respect to the Property and the Project against such additional risks which at that time are commonly insured against in the case of comparable premises and buildings of similar location, due regard being, or to be, given to the height and type of building, its construction, use and occupancy. In no event shall the amount of insurance required to be maintained by Tenant under this Section be less than that required by Lender. Except as provided below in the event Tenant terminates this Lease, insurance proceeds (net of any costs or expense incurred by such Lender in collecting such proceeds) shall be payable as provided in the applicable Leasehold Mortgage or other Loan Documents. In the event of substantial damage or destruction by fire or other casualty (i) which damage is such that the reconstruction of economically viable improvements is not practicable, either because (a) the insurance proceeds, together with such funds of Tenant as are demonstrably available for the purpose of paying for repair and restoration, are not sufficient to repair such loss or damage, or (b) such repair or restoration cannot be carried out in accordance with applicable law, such as then-current building or zoning law, or (c) any Leasehold Mortgagee with the right to control the disbursement of such has refused, in its commercially reasonable discretion, to release such insurance proceeds to Tenant for restoration or repair, or (ii) which damage occurs during the last five (5) years of the Term, then the Tenant, subject to the approval of all Recognized Leasehold Mortgagees shall have the right to terminate this Lease upon thirty (30) days' notice to the City. If Tenant does not so terminate this Lease, then Tenant shall provide or cause to be provided reasonably sufficient funds which will substantially effect such repair or restoration. If the Tenant does elect to terminate this Lease, a reasonably sufficient amount of such insurance proceeds shall

first be directed and utilized to demolish all or such portions of the damaged Project as is reasonably necessary to leave the Property in a sightly condition and in compliance with applicable zoning regulations or municipal ordinances, prior to application or other direction of such insurance proceeds by Leasehold Mortgagee.

10.3 Insurers. All insurance provided for in this Section 10 shall be effected under valid and enforceable policies issued by insurers of recognized responsibility which are licensed to do business in the State of Alabama and are rated at least Best level A- or the equivalent by national rating organizations.

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

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

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

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

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

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

First an amount equal the portion of the principal balance and accrued interest on and all other sums owing under or secured by the Leasehold Mortgage, if any, shall be distributed directly to the applicable Leasehold Mortgagee.

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

14. Estoppel Certificates. City and Tenant will each execute as may be appropriate, acknowledge and deliver to the other promptly upon request, a separate certificate certifying as to the following, to the extent same is true and correct:

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

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

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

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

14.5 Identification of Lender. Tenant shall acknowledge identity of the Lender designated in writing by Tenant to City from time to time; that such Lender's loan documents are the Loan Documents described herein; and that such Lender is the Lender described herein, and the City shall confirm the identity of each Leasehold Mortgagee who has met the requirement of being a Recognized Leasehold Mortgagee hereunder.

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

15. Default by Tenant. A "Default" by Tenant shall occur hereunder if either a Rent Default or an Other Default shall occur hereunder. A "Rent Default" shall occur hereunder if Tenant shall fail to make any payment of rent when due and such failure shall continue for thirty (30) days after notice of such failure from City to Tenant. An "Other Default" shall occur if Tenant shall fail to comply with or perform or observe any material term, covenant, condition or agreement to be complied with or performed or observed on the part of Tenant, other than the payment of rent, and such failure shall continue for sixty (60) days after notice thereof from City to Tenant; provided that there shall be no Other Default if, within sixty (60) days after receipt by Tenant of such written notice, Tenant promptly institutes or initiates steps to effectuate compliance with this Lease or if Tenant proceeds diligently and continuously to effect such compliance with this Lease until the same be completed, and the same shall be completed within a period of not more than one hundred eighty (180) days from the date Tenant received written notice of such Other Default from the City. In the event Tenant has not cured a Rent Default within the specified

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

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

If to City:

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

With a copy to the attention  
of

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

If to Tenant:

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

With a copy to:

J. Marland Hayes  
J. Marland Hayes, LLC  
P. O. Box 1346  
505 Energy Center Blvd., Suite 604 (35473)  
Northport, AL 35476  
Facsimile: (205) 764-9216

If to Lender:

CB&T, a division of Synovus Bank, as  
administrative agent for itself and certain other  
lender(s)  
P.O. Box 120  
1148 Broadway  
Columbus, Georgia 31902  
Attention: Keith Beckham (CB&T Bank Middle  
Georgia)  
Facsimile: 478-971-7016

With a copy to:

CB&T Bank of Middle Georgia, a division of  
Synovus Bank  
871 Warren Drive (31088)  
P.O. Box 2107  
Warner Robins, Georgia 31099  
Attention: Keith Beckham  
Facsimile: 478-971-7016

With a copy to:

Synovus Bank – Syndications  
3280 Peachtree Street, NE.  
Bldg. 100, 5th Floor  
Atlanta, Georgia 30305  
Attn: Monica Cochran - Syndications  
Facsimile: 888-856-2456

With a copy to:

Maynard, Cooper & Gale, P.C.  
655 Gallatin Street  
Huntsville, Alabama 35801  
Attention: Kevin Gray  
Facsimile: (256) 512-0119

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

17. Submission of Matters to City for Approval. Any matter which must be submitted to and consented to or approved in writing by City or any matter which must be submitted to City which may become effective if not denied by City, as required under this Lease, shall be submitted to City by hand, by overnight delivery, or mailed by United States certified or registered mail return receipt requested, to the address of City designated for the giving of notice to City under Section 16 of this Lease and shall either be approved or rejected by the City within 60 days after receipt unless a shorter period of time is expressly stated elsewhere in this Lease. If City should fail so to approve or reject within such within 60-day period as provided for herein, City's approval shall be assumed to have been unconditionally granted and Tenant shall have the right to proceed on such matter so submitted. City shall inform Tenant in writing of its rejection or approval of such submitted matter by United States certified or registered mail, return receipt requested, to the address of Tenant designated for the giving of notice to Tenant under Section 16 of this Lease. Any review by City of any matter submitted to City is for City's own convenience and purpose only. By undertaking such review, City does not obtain or have any liability to Tenant or any other person, including, without limitation, the insurers and Lenders of Tenant.

18. Holding Over. Tenant and all persons whomsoever claiming by, through or under Tenant shall not use or remain in possession of the Premises after the termination of this Lease; *provided, however,* that the right of any residential, retail or commercial tenant of the Project shall not be disturbed by such termination for the remainder of the term of its lease so long as such tenant is not in default under its lease and such tenant shall pay the rent due under its lease and otherwise observes and performs all of its obligations under its lease. Except as provided in the preceding sentence, any holding over, or continued use or occupancy by Tenant or and any person whomsoever claiming by, through or under Tenant after the termination of this Lease, without the written consent of City, shall not constitute a tenant-at-will interest in behalf of Tenant, but Tenant or such other person shall become a tenant-at-sufferance.

19. Indemnity. Tenant shall indemnify and hold City free and harmless from all demands, claims, liabilities, damages, suits, costs, or expenses arising out of any failure of Tenant to comply with and perform the requirements and provisions of this Lease. Tenant further agrees to indemnify and hold City free and harmless from and against any and all claims, demands, damages, costs, liability, and expenses, including, but not limited to, reasonable attorneys' fees, arising from the conduct or management of Tenant's business in the Premises. If City becomes aware of any fact or alleged claim that could result in any liability, damage, loss, expense, or cost covered by Tenant's indemnity, and if City desires to hold Tenant responsible therefor, City shall promptly notify Tenant in writing in accordance herewith of such facts or alleged claim and state in such notice the measures which City proposes to take to resist or dispose of such claim, including the proposed payment thereof. Unless Tenant shall notify City within 15 days after receipt thereof that Tenant will take over the defense of such claim, City may at its option proceed to resist or otherwise dispose of such claim. Tenant shall be entitled to designate an attorney to defend any such claim or asserted liability provided, however, that such attorney shall consult with the attorney for City and keep such attorney advised of all material developments relating thereto.

20. Option to Purchase.

20.1 Option Price. As used herein "Option Price" means the sum of (a) the then current fair market value of the Property, valued as undeveloped land, and as determined by an appraisal by an appraiser mutually acceptable to Tenant and City, minus (b) the Tenant Credit

(defined below). If Tenant and City cannot agree on an appraiser, then each shall have an appraisal completed and the Option Price will be the average of the two appraisals. As used herein, the term "Tenant Credit" means the amount of \$550,000.00. Tenant may, from time to time, advise the City that Tenant desires to determine the then Option Price. Tenant will pay for the cost of the appraisals.

20.2 General. Tenant shall have, and is hereby granted, the option to purchase the Property at any time during the Term. To exercise such option, Tenant shall: (a) give written notice to City within one hundred twenty (120) days of a determination of the Option Price, (b) specify therein the proposed date of purchase, which shall be not less than 15 nor more than 90 days after the date such notice is mailed, (c) on the date of purchase, pay to City the Option Price.

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

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

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

21. Surface Parking Lot Area; Parking Regulation. Contemporaneously with the execution of this Lease, City shall execute and deliver to Tenant an easement with regard to the Surface Parking Lot Area in the form attached hereto as Exhibit "D", which easement shall be recorded by Tenant, at Tenant's expense, in the Office of Probate Judge for Madison County, Alabama. Further, City covenants and agrees that it will coordinate with Tenant when determining the best way to regulate any other public parking adjacent to the Property; provided however, that the final determination is the City's to make through its Director of Parking and Public Transit.

22. Maintenance of Facilities. Tenant shall maintain in good condition and repair all parking facilities, roadways, curbs, gutters, sidewalks, landscaping, signage, retaining walls, planters, railings, lighting, ramps, steps, pavers, hardscape, structures and other improvements located on the Property. City shall maintain in good condition and repair all parking lots or

facilities, roadways, curbs, gutters, sidewalks, landscaping, signage, retaining walls, planters, railings, lighting, ramps, steps, pavers, hardscape, structures and other improvements located on the Surface Parking Lot Area.

23. Miscellaneous.

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

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

23.3 Third Party Beneficiaries. The parties acknowledge and agree that Lender and its respective successors and assigns shall be deemed third party beneficiaries for purposes of Sections 7, 9, 10.2, 14, 15, 16, 20.3, 23.11 and 23.15 of this Lease.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23.15 No Merger. So long as any Leasehold Mortgage is in existence, unless Lender shall have otherwise agreed in writing, the fee title to the Property and the leasehold created hereby shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold by Tenant or a third party, by purchase or otherwise.

23.16 Liabilities of City. Tenant understands, acknowledges and agrees that the obligations of the City as set forth herein are limited by the limitations imposed on public bodies, municipalities and public corporations by the Constitution of the State of Alabama and laws affecting the use and maintenance of public property. Anything in this Lease to the contrary notwithstanding, whether express or implied, in the event of a default by City hereunder, the sole

and exclusive remedy of Tenant shall be specific performance, and Tenant shall not be entitled to any other damages whatsoever, including, without limitation, incidental or consequential damages, whether arising at law or in equity.

**[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]**

**[SIGNATURE PAGES START ON FOLLOWING PAGE]**

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

CITY:

CITY OF HUNTSVILLE, ALABAMA

By: Tommy Battle  
Its: Mayor

ATTEST:

By: Charles E. Hagood  
Its: Clerk-Treasurer

STATE OF ALABAMA

MADISON COUNTY

§  
§ ss.  
§

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

Given under my hand on this the 20<sup>th</sup> day of January, 2015.

Richard Sear  
Notary Public  
My Commission Expires: 8-1-2016

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

TENANT:

Avenue Huntsville, LLLP

By: Avenue Huntsville GP, LLC  
Its General Partner

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

STATE OF ALABAMA           §  
                                          § ss.  
MADISON COUNTY           §

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

Given under my hand on this the 22<sup>nd</sup> day of January, 2015.

Jane S. Lassitt  
Notary Public  
My Commission Expires: 8/19/2015

**List of Exhibits**

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

**EXHIBIT "B"-Permitted Encumbrances**

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

**EXHIBIT "D"-Form of Easement with regard to Surface Parking Lot Area**

**EXHIBIT "E"-Identification of initial Leasehold Mortgagee**

**Exhibit "A"**

**Project Description**

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

**Permitted Encumbrances**

- (1) Utility easements serving the Property of record in the Probate Office for Madison County, Alabama.
- (2) Rights of way serving the Property of record in the Probate Office for Madison County, Alabama.
- (3) Rights of the City to the City Parking Spaces, as defined and described in the Project Agreement.
- (4) Liens or encumbrances that the Tenant created or the creation or suffering of which the Tenant consented, provided, however, to be valid, such consent by Tenant is subject to the approval of any Leasehold Mortgagee holding a Leasehold Mortgage at the time of such consent.
- (5) The restrictive covenants numbered 2 and 3 appearing on page 2 of the instrument recorded in Deed Book 505, Page 726 in the Probate Office of Madison County, Alabama.
- (6) The restrictive covenants numbered 2 and 3 appearing on page 2 of the instrument recorded in Deed Book 552, Page 49 in the Probate Office of Madison County, Alabama.

Form of Memorandum of Lease

STATE OF ALABAMA     §  
                                  § ss.  
MADISON COUNTY     §

**MEMORANDUM OF GROUND LEASE**

This memorandum of ground lease agreement ("Memorandum of Lease") is dated effective as of January 22, 2015 between the City of Huntsville, Alabama, a municipal corporation under the laws of the State of Alabama (hereinafter referred to as "City"), and Avenue Huntsville, LLLP, an Alabama limited liability limited partnership (hereinafter referred to as "Tenant").

WITNESSETH THAT:

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

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

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

1. **NAMES OF THE LANDLORD AND TENANT:** The name of the landlord under the Ground Lease Agreement is the City of Huntsville and the name of the tenant under the Ground Lease Agreement is Avenue Huntsville, LLLP.
2. **TERM:** The initial term of the Ground Lease Agreement ends at 12:00 Midnight on January 21, 2065.
3. **OPTIONS TO RENEW.** Tenant shall have the option to renew the term of the Ground Lease Agreement for two additional renewal periods, with the first renewal period being for a term 25 years and the second renewal period being for a term of 24 years.
4. **LEGAL DESCRIPTION:** The legal description of the leased premises Lot 1 of Avenue Subdivision, a map or plat of which is recorded in the Probate Judge's Office of Madison County, Alabama in Plat Book \_\_\_\_, Page \_\_\_\_\_.

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

CITY:

CITY OF HUNTSVILLE, ALABAMA

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

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

ATTEST:

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

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

STATE OF ALABAMA           §  
                                          § ss.

MADISON COUNTY           §

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

Given under my hand on this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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

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

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

TENANT:

Avenue Huntsville, LLLP

By: Avenue Huntsville GP, LLC  
Its General Partner

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

STATE OF ALABAMA           §  
                                          § ss.  
MADISON COUNTY           §

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

Given under my hand on this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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

Form of Easement with regard to Surface Parking Lot Area

Grantee's Name: Avenue Huntsville, LLLP  
Grantee's Mailing Address: 500 Eustis Avenue  
Huntsville, AL 35801  
Attention: Mr. Charlie O. Sealy, III

STATE OF ALABAMA           §  
                                          § ss.  
MADISON COUNTY           §

**EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT (this "Agreement") is entered into and executed effective as of January 22, 2015 by the City of Huntsville, a municipal corporation under the laws of the State of Alabama (hereinafter referred to as "City"), and Avenue Huntsville, LLLP, an Alabama limited liability limited partnership ("Project Owner"), (collectively, "Parties").

WITNESSETH THAT

WHEREAS, City and Project Owner have entered into that certain Ground Lease Agreement dated as [January \_\_, 2015] (the "Lease"), for the lease by City, as landlord, to Project Owner, as tenant, of certain real property (the "Leased Property") more particularly described as Lot 1 of Avenue Subdivision, as that term is defined herein below; and

WHEREAS, Project Owner will construct a mixed-use development project (the "Project") on the Leased Property; and

WHEREAS, City is also the owner of certain real property more particularly described as Lot 2 of Avenue Subdivision (the "Surface Parking Lot Area"), which is located adjacent to the Leased Property; and

WHEREAS, City will construct and maintain a surface parking lot (the "Surface Parking Lot") on the Surface Parking Lot Area; and

WHEREAS, pursuant to the Lease, City agreed to provide certain easements to Project Owner.

NOW, THEREFORE, in consideration of the premises, which premises are hereby made a part of this Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

1. **Additional Definitions.** In addition to the terms defined in the above-stated premises and defined throughout the remainder of this Agreement, the following capitalized words, terms, and phrases, when used in this Agreement, shall have the following meanings:

*Avenue Subdivision* means The Avenue, a Resubdivision of Block 301 of the Quigley map, a map or plat of which is recorded in the Probate Judge's Office of Madison County, Alabama in Instrument Number \_\_\_\_\_.

*City* means and refers to the City of Huntsville, Alabama, and where necessary for the purposes of the administration and enforcement of this Agreement shall include the City's delegated authorities or representatives authorized to perform as contemplated. Where reference is made in this Agreement to a particular City title, the reference shall include the subsequent changes to the title, present and future title holders, or those otherwise delegated to perform the responsibilities or duties, in whole or part, of the title.

*City Improvements* means and refers to collectively those improvements and appurtenances of the City's that are within, over, under or upon the Surface Parking Lot Area, including the Surface Parking Lot.

*Conjunctions.* In a provision involving two or more items, conditions, provisions or events, which items, conditions, provisions or events are connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows:

- (1) "And" indicates that all the connected terms, conditions, provisions or events apply.
- (2) "Or" indicates that the connected terms, conditions, provisions or events apply singly or in any combination.
- (3) "Either . . . or" indicates that the connected terms, conditions, provisions or events apply singly but not in combination.

*Easement* means and refers to collectively the Temporary Construction Easement, Utilities Easement, Continuing Access Easement, and Gas Utilities Access Easement, granted in this Agreement inclusive of all rights and privileges granted in connection therewith.

*Including or include* does not limit a term to a specified example.

*Project Owner* means Avenue Huntsville, LLLP, an Alabama limited liability limited partnership, or the lawful successor, transferee, or assignee thereof.

2. **Temporary Construction Easement.** Subject to the terms and conditions of this Agreement, City hereby grants to Project Owner, its successors and assigns, a temporary, non-exclusive construction easement (the "Construction Easement"), appurtenant to the Leased Property, on, under, over, across, and through the Surface Parking Lot Area for the development and construction of the Project, together with all the rights and privileges necessary or convenient for the full enjoyment or use thereof, including the following:

- (a) the right to lay down, store or otherwise locate materials or building components on the Surface Parking Lot Area of such size and character as the Project Owner may elect;

- (b) the right of access on, over, across, and through the Surface Parking Lot Area for all forms of pedestrian and vehicular ingress, egress, and access between the Leased Property and the public rights-of-way abutting the Surface Parking Lot Area;
- (c) the right to enter on and use the Surface Parking Lot Area with construction equipment necessary or convenient to construction of the Project, and
- (d) the right to temporarily store earth on the Surface Parking Lot Area.

3. **Utilities Easement.** Subject to the terms and conditions of this Agreement, City hereby grants unto Project Owner, its successors and assigns, non-exclusive and continuous private electric, sanitary sewer, and storm drainage utilities easements (collectively, the "Utilities Easement") appurtenant to the Leased Property on, over, across, under and through that portion of the Surface Parking Lot Area more particularly described in the attached Exhibit "A-1" ("Utilities Easement Area"), for the purpose allowing the Project Owner and the respective utilities to lay, construct, install, repair, maintain, operate, use, remove, and replace buried, underground sanitary sewer, storm drainage, and electrical lines and pipes, together with (a) all connections and other appurtenances necessary, convenient or useful in the construction, use, maintenance or operation of such electrical, sanitary sewer, and storm drainage lines and pipes, (b) non-exclusive vehicular or pedestrian ingress and egress on, over, across, along and through the Surface Parking Lot Area in order to access the Utilities Easement Area, and (c) all other rights and privileges necessary or convenient for the full enjoyment or use thereof. Such lines and pipes shall be located in substantially the location shown on the map attached hereto as Exhibit "A-2", or such other location as may be approved by the City Engineer, or his/her designee.

4. **Continuing Access Easement.** Subject to the terms and conditions of this Agreement, City hereby grants unto Project Owner, its successors and assigns, and their respective tenants and invitees, a non-exclusive and continuous access easement (the "Access Easement") appurtenant to the Leased Property on, over, across, along and through the Surface Parking Lot Area, for the purpose of vehicular and pedestrian ingress to and egress from the Leased Property and the public rights-of-way abutting the Surface Parking Lot Area, together with all the rights and privileges necessary or convenient for the full enjoyment or use thereof.

5. **Gas Utilities Access Easement.** Subject to the terms and conditions of this Agreement, City hereby grants unto Project Owner, its successors and assigns, a non-exclusive and continuous access easement (the "Gas Utilities Access Easement") appurtenant to the Leased Property on, over, across, along and through the Surface Parking Lot Area, for the purpose of allowing the Project Owner and the gas utility that has facilities located, or to be located, on the Leased Property to use the Surface Parking Lot Area for the sole purpose of vehicular or pedestrian ingress to and egress from the Leased Property and the public rights-of-way abutting the Surface Parking Lot Area in order to install, maintain, or repair the gas facilities located on the Leased Property, together with all the rights and privileges necessary or convenient for the full enjoyment or use thereof.

6. **Terms and Conditions.** The Easement is subject to the following terms and conditions.

(a) City agrees that it will not construct or maintain any permanent walls, fences or barriers on the Surface Parking Lot Area, or any portion thereof, which it, in its commercially reasonable discretion, believes will permanently prevent or unreasonably impair the use or exercise of the Easement granted herein. Notwithstanding anything to the contrary in this Agreement, City may:

(1) Install traffic controls that it deems necessary or appropriate in order to guide and control the orderly flow of traffic on, over, along, across, and through the Surface Parking Lot Area, including preventing cut-through traffic to and from the adjacent public rights-of-way;

(2) Temporarily close, block, or otherwise prevent or impair the access to or use of the Surface Parking Lot Area, at any time and from time to time, in order to perform or have performed any or all work, including construction, repair, maintenance, paving, and re-paving, related to the City Improvements; provided, however, City agrees that it will use reasonable efforts to coordinate such activities with the Project Owner; and

(3) Require Project Owner, at its sole cost and expense, to promptly protect, support, temporarily disconnect, relocate in, or remove (collectively "Relocation"), or cause the Relocation of all or any electrical, sanitary sewer, or storm drainage facilities located in the Utilities Easement whenever required by the City upon reasonable notice applicable to the conditions warranting such action and as then reasonably determined by the City Engineer, or his/her designee, by reason of a public work or public project of the City, or other public purpose. If the City requires any such facilities to be relocated, the City shall provide an alternative location or locations to Project Owner for said facilities on the Surface Parking Lot Area or other City-owned land adjacent thereto, if any, excluding the public rights-of-way, unless the City Engineer, in his/her sole discretion, allows the location of such facility in public rights of way.

(b) In the exercise of the Easement, the Project Owner shall not do or allow or cause any act to be done, including by its tenants and their invitees or those otherwise using the Surface Parking Lot Area pursuant to this Agreement, which would unreasonably interfere with, impair, or burden the Surface Parking Lot Area, including the use of the City Improvements.

(c) The Project Owner shall notify the City's Director of Parking and Public Transit (hereinafter referred to as "Director") in advance of any and all activities that will be done or performed under the Easement that may reasonably be expected to interfere with, prevent, or impair the use or operation of the City Improvements, or cause damage thereto, and the Director may, at his/her sole discretion, attach reasonable condition(s) to such activity.

(d) Upon completion of any and all work performed in connection with the Easement, as contemplated hereunder, or in the event this Agreement or the Easement granted hereunder terminates or is revoked, or in the event of damage to or destruction of the Surface Parking Lot Area or the City Improvements, occasioned by, arising out of, or resulting from, the exercise of

the Easement by Project Owner, its tenants, invitees, agents, and contractors and those otherwise using the Surface Parking Lot Area pursuant to this Agreement, Project Owner shall restore the Surface Parking Lot Area or the City Improvements, as the case may be, to substantially the same condition as existed prior to such damage or destruction. Such restoration includes, to the extent reasonably necessary, replacing the base of the Surface Parking Lot, repaving and re-stripping the Surface Parking Lot, restoring sidewalks and retaining walls, and otherwise repairing or replacing any and all damaged or destroyed property of the City, all to substantially same condition as existed prior to such damage or destruction. All restoration work shall be performed to the specifications and instructions of the City's engineer ("City Engineer") and shall be subject to his/her inspection and approval, which approval will not be unreasonably conditioned, withheld or delayed. Failure to complete the restoration to the reasonable satisfaction of the City Engineer within the reasonable timeframe specified by the City Engineer shall cause Project Owner to be in default of this Agreement and the City shall, in addition to any other available remedies in law or equity, have the option of performing or having performed the work and invoicing the Project Owner for all costs, including labor and materials, which invoice shall be paid within 30 days from mailing, or revoking this Agreement and the Easement granted hereunder; provided, however, the revocation of this Agreement and the Easement granted hereunder shall be subject to the notice and cure provisions of the Lease, including without limitation, notice and cure periods afforded any Leasehold Mortgagee under the Lease.

(e) In the exercise of the Easement, Project Owner shall keep all and any construction areas safe and all excavation work shall be secured off and protected.

(f) In regards to the Utilities Easement, all electrical, sanitary sewer, and storm drainage lines, pipes, and other facilities including connections and other appurtenances necessary, convenient or useful in the construction, use, maintenance or operation of such electrical, sanitary sewer, and storm drainage lines and pipes shall be installed and maintained underground at appropriate depths dictated by applicable engineering or other governing standards.

(g) The Project Owner, for itself and its successors and assigns, agrees: (1) that the City, its successors and assigns, and its elected and appointed officials, officers, employees, agents, contractors, and subcontractors shall have no liability for any reason whatsoever to the Project Owner, its successors and assigns, arising from this Agreement and Easement, *provided, however*, that the foregoing shall not be construed to prevent the Project Owner from enforcing this Agreement against the City according to its terms; (2) that Project Owner, its successors and assigns, shall bear full responsibility for the use and enjoyment of the burdened property by the Project Owner, its successors and assigns, Project Owner's tenants and invitees, and others using the Easement pursuant to this Agreement, and (3) that Project Owner, its successors and assigns, shall and do hereby agree to indemnify and hold harmless the City, including its elected and appointed officials, officers, employees, agents, contractors, and subcontractors, from and against any and all claims, actions, judgments, damages, fines, costs, liabilities, interest or losses (including reasonable attorney's fees and expenses and court costs and fees), together with all costs and expenses of any kind or nature, which arise directly or indirectly out of this Agreement and from Project Owner's exercise of the Easement, including Project Owner's intentional or negligent acts or failure to act, either sole or concurrent, with respect to the use, occupancy or possession of the burdened property, (including the intentional or negligent acts or failures to act,

either sole or concurrent, of the Project Owner's employees, agents, contractors, subcontractors, tenants, subtenants, invitees, licensees, transferees, successors or assigns, or those otherwise using the Surface Parking Lot Area as contemplated under Subsection 8(g)). This paragraph shall survive the termination of this Agreement whether by revocation or otherwise. Nothing contained in this Agreement shall be construed as a waiver of any immunity or statutory protection of the City and no third party may expand any recovery against the City due to the Project Owner's duty of indemnification. Project Owner, its successors and assigns, shall obtain and maintain in full force and effect insurance coverage, written on an occurrence basis, adequate to cover its obligations under this Agreement and shall name the City, its elected and appointed officials, officers, employees, agents, contractors, and subcontractors, as additional insured thereunder.

## 7. Term.

(a) *Temporary Construction Easement.* The Temporary Construction Easement shall continue until the earlier of the completion of construction of the Project or 30 months from the date hereof, provided that in the event a replacement lease is entered into pursuant to Subsection 9(f) of the Lease before completion of construction of the Project, the City agrees to grant a temporary construction easement to the replacement lessee on the same terms and conditions of this Agreement unless the City and the replacement lessee agree otherwise.

(b) *Other easements.* The Utilities Easement, Access Easement and Gas Utilities Easement shall continue as perpetual easements appurtenant to the Leased Property; *provided, however,* notwithstanding anything to the contrary in this Agreement, unless the Project Owner purchases the Leased Property pursuant to the option in the Lease, the City shall have the right and hereby reserves the right to terminate the Utilities Easement, Access Easement or Gas Utilities Easement by the adoption of a resolution of its City Council, which shall be recorded in the Records of the Probate Judge of Madison County, Alabama, in the event the Utilities Easement, Access Easement or Gas Utilities Easement is no longer necessary for the operation of the improvements on the Leased Property after the expiration or earlier termination of the Lease and any replacement lease that may be entered into pursuant to Subsection 9(f) of the Lease.

## 8. Miscellaneous.

(a) *Rights and remedies not waived.* The rights and remedies of the City shall be cumulative and in addition to any other rights and remedies provided by law or equity. A waiver of a breach or violation of any provision of this Agreement shall not constitute a waiver of any other breach or violation.

(b) *Interpretation; jurisdiction; venue.* This Agreement shall be construed, controlled, enforced, governed and interpreted in accordance with its plain meaning in accordance with the internal laws of the State of Alabama, without regard to principles of conflicts of laws. For any action concerning this Agreement (1) jurisdiction shall be in the appropriate state or federal courts sitting in Alabama and (2) venue (i) in Alabama state courts shall be in Madison County, Alabama and (ii) in Alabama federal courts shall be in the United States District Court for the Northern District of Alabama, Northeastern Division.

(c) *Captions.* The paragraph and subparagraph captions contained in this Agreement are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

(d) *Entire agreement.* This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, or representations of or between the parties hereto regarding the subject matter hereof.

(e) *Amendment.* This Agreement may be amended or modified only by a written instrument executed by both parties.

(f) *Binding effect.* This Agreement shall be binding upon and for the benefit of each of the parties hereto and their respective successors and assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable.

(g) *Conditional users.* The Project Owner, its successors and assigns, shall have the right to allow others to use the Surface Parking Lot Area, provided, however, that such use must be necessary and incidental to the use and enjoyment of the Easement and for no other purpose and that such use shall be consistent with and subject to all provisions of this Agreement.

(h) *Exhibits.* All exhibits attached to this Agreement are incorporated herein by reference as if fully set forth herein.

**TO HAVE AND TO HOLD**, unto Project Owner, its successors and assigns, pursuant to the terms set forth in Section 7 of this Agreement.

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

[SIGNATURE PAGES FOLLOWS]

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

**CITY OF HUNTSVILLE, ALABAMA**

By: \_\_\_\_\_  
Tommy Battle  
Its Mayor

ATTEST:

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

STATE OF ALABAMA           §  
                                          § ss.  
MADISON COUNTY           §

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

Given under my hand on this the \_\_\_\_ day of \_\_\_\_\_, 2015.

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

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

**AVENUE HUNTSVILLE, LLLP**

By: Avenue Huntsville GP, LLC  
Its General Partner

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

STATE OF ALABAMA           §  
                                          § ss.  
MADISON COUNTY           §

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

Given under my hand on this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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

This Document Prepared By:  
J. Marland Hayes  
J. Marland Hayes, LLC  
P.O. Box 1346  
505 Energy Center Blvd., Suite 604 (35473)  
Northport, AL 35476  
(205) 764-9179  
(205) 764-9216 (fax)

**EXHIBIT "D"**

**Form of Easement with regard to Surface Parking Lot Area**

**List of Exhibits**

- |               |                                                                                      |
|---------------|--------------------------------------------------------------------------------------|
| Exhibit "A-1" | Utilities Easement Area                                                              |
| Exhibit "A-2" | Map Depicting Location of Electric, Sanitary Sewer,<br>and Storm Drainage Facilities |

**Identification of Initial Leasehold Mortgagee**

CB&T, a division of Synovus Bank,  
as administrative agent for itself and certain other lender(s)

Address: P.O. Box 120  
1148 Broadway  
Columbus, Georgia 31902  
Attention: Keith Beckham (CB&T Bank Middle Georgia)  
Facsimile: 478-971-7016

With a copy to: CB&T Bank of Middle Georgia,  
a division of Synovus Bank  
871 Warren Drive (31088)  
P.O. Box 2107  
Warner Robins, Georgia 31099  
Attention: Keith Beckham  
Facsimile: 478-971-7016

With a copy to: Synovus Bank – Syndications  
3280 Peachtree Street, NE.  
Bldg. 100, 5th Floor  
Atlanta, Georgia 30305  
Attn: Monica Cochran - Syndications  
Facsimile: 888-856-2456

With a copy to: Maynard, Cooper & Gale, P.C.  
655 Gallatin Street  
Huntsville, Alabama 35801  
Attention: Kevin Gray  
Facsimile: 256-512-0119

**ROUTING SLIP  
CONTRACTS AND AGREEMENTS**

Originating Department: Legal

Council Meeting Date: 6/11/2015

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Ground Landlord's Estoppel Certificate

Document Name: Ground Landlord's Estoppel Certificate with Avenue Huntsville, LLLP

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

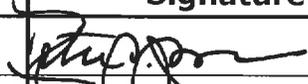
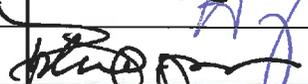
Account Number:

**Procurement Agreements**

<b>Not Applicable</b>	<b>Not Applicable</b>
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**Grant-Funded Agreements**

<b>Not Applicable</b>	<b>Grant Name:</b> <input style="width: 60%;" type="text"/>
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Department	Signature	Date
1) Originating		6-8-15
2) Legal		6-8-15
3) Finance		6/8
4) Originating		6-8-15
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		