

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Feb 25, 2016

Action Requested By: Administration

Agenda Type: Resolution

Subject Matter:

Development Agreement between the City of Huntsville and Clinton Row Partners, LLC, for property located on the first floor of the Clinton Street Parking Garage.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Development Agreement between the City of Huntsville, Alabama, and Clinton Row Partners, LLC, for the development of retail spaces within a portion of the first floor of the Clinton Street Parking Garage.

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

Item to be considered for: Action

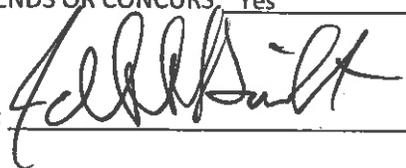
Unanimous Consent Required: No

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: _____

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Administration

Council Meeting Date: 2/25/2016

Department Contact: John Hamilton

Phone # 427-5000

Contract or Agreement: Development Agreement for Clinton Row

Document Name: Development Agreement for Clinton Row

City Obligation Amount: \$ 200,000.00

Total Project Budget:

Uncommitted Account Balance:

Account Number:

Procurement Agreements

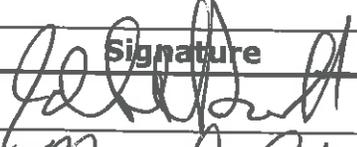
Not Applicable

Not Applicable

Grant-Funded Agreements

Not Applicable

Grant Name:

Department	Signature	Date
1) Originating		
2) Legal	<u>Mary C. Cotes</u>	<u>2-25-2016</u>
3) Finance		<u>2-25-16</u>
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 16-_____

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 Development Agreement by and between the City of Huntsville, Alabama, and Clinton Row Partners, LLC, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Development Agreement between the City of Huntsville, Alabama, and Clinton Row Partners, LLC," consisting of twenty-seven (27) pages including Exhibits, and the date of February 25, 2016, 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 25th day of February, 2016.

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

APPROVED this the 25th day of February, 2016.

Mayor of the City of
Huntsville, Alabama

DEVELOPMENT AGREEMENT

by and between

THE CITY OF HUNTSVILLE

and

CLINTON ROW PARTNERS, LLC

Dated: February 25, 2016

DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is made and entered into on and as of this 25th day of February, 2016 (the "Effective Date"), by and between the City of Huntsville, a municipal corporation under the laws of the State of Alabama (the "City"), and Clinton Row Partners, LLC, an Alabama limited liability company ("Developer"). The City and Developer are collectively referred to herein from time to time as the "Parties" and, individually, as a "Party".

WITNESSETH

WHEREAS, the City is in the process of revitalizing and enhancing its downtown commercial and business area, including, among other things, facilitating housing, retail, commercial, and entertainment developments within the downtown core of the City (the "Huntsville Downtown Revitalization Effort"); and

WHEREAS, as part of the Huntsville Downtown Revitalization Effort the City has determined that additional retail, entertainment or other commercial improvements are necessary; and

WHEREAS, the City owns that certain parcel of real property aggregating approximately 1.12 acres located in downtown Huntsville along Clinton Avenue W. to the north and Jefferson Street N. to the west, as more particularly described in Exhibit A attached hereto (the "Parking Garage Site"), which contains thereon a five level public parking garage known as "Central City Parking Garage" (the "Parking Garage"); and

WHEREAS, Developer has approached the City with plans to lease from the City a portion of the Parking Garage Site fronting Clinton Avenue W. and aggregating approximately 7,000 square feet, as more particularly depicted in Exhibit B attached hereto (the "Retail Land"), upon which Developer plans to design, develop, construct, install, own, operate, and lease no less than five bays (each, a "Retail Bay" and, collectively, the "Retail Improvements"); and

WHEREAS, Developer intends to locate retail enterprises within the Retail Improvements which the City believes will further the mission of the Huntsville Downtown Revitalization Effort by attracting to the downtown core people desiring to shop, eat and entertain; and, further, that such enterprises will expand and enhance the mixture of businesses presently located within the vicinity of the Parking Garage Site; and

WHEREAS, in connection with the operation of the Retail Improvements, the City will be required to lease to Developer certain air space at and below the underside of the structure of the portion of the Parking Garage's second floor that is above the ground level of the Retail Land and certain other air space abutting the exterior of the back wall of each Retail Bay sufficient to allow Developer to mount a HVAC unit, as more particularly depicted in Exhibit C attached hereto (collectively, the "Retail Air Space", and together with the Retail Land, the "Retail Premises"); and

WHEREAS, the Parking Garage was constructed over 30 years ago, and its outdated facade relative to the surrounding area requires renovation and updating in order to further promote and encourage the Huntsville Downtown Revitalization Effort; and

WHEREAS, the City is willing to (i) incur up to \$200,000 to construct certain improvements to the north-facing facade of the Parking Garage and the sidewalk in front of the Parking Garage visible from, contiguous to, and parallel with Clinton Avenue W. (hereinafter defined as the "Facade/Sidewalk Improvements"), (ii) repair or replace the existing generator serving the Parking Garage to a same commercial standard used for developments of a similar nature and, if Developer determines in its sole discretion that such generator should be relocated, use funds provided by Developer to relocate the same (the "Generator Improvements"), and (iii) install in the Parking Garage outside the Retail Premises voluntary lateral force resisting system alterations in the form of X-bracing in such manner and such capacity as to improve and extend the structural integrity of the Parking Garage as determined by the City in its sole discretion (the "X-Bracing Improvements" and, together with the Facade/Sidewalk Improvements and the Generator Improvements, the "Public Improvements"), and (iv) enter into a Ground Lease Agreement with Developer, the form of which is attached as Exhibit D hereto (the "Ground Lease"), under which the City will lease the Retail Premises to Developer for the rental amount and other consideration as more particularly described therein; and

WHEREAS, the City has determined that the design, development, construction, installation, ownership, operation, and leasing of the Retail Improvements by Developer would be in the best interest of the City and its citizens by: (i) furthering the continued success of the Huntsville Downtown Revitalization Effort, (ii) expanding the tax base of the City, (iii) increasing the number of jobs within the City, (iv) enhancing the overall quality of life for the citizens of the City, and (v) enhancing the condition and aesthetic appeal of the Parking Garage.

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

ARTICLE I REPRESENTATIONS AND WARRANTIES

1.1 Representations and Warranties of City. (a) The City, by action of the City Council, has duly authorized the execution, delivery and performance of this Agreement.

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

(c) There is not now pending nor, to the knowledge of the City, threatened, any litigation affecting the City which questions (i) the validity or organization of the City, (ii)

the members, titles or positions of the members of the City Council or the manner in which the officers of the City are selected, or (iii) the subject matter of this Agreement.

1.2 Representations and Warranties of Developer. (a) Developer is duly organized and validly existing as a limited liability company under the laws of the State of Alabama and has duly authorized its execution, delivery and performance of this Agreement.

(b) Neither the execution and delivery of this Agreement, nor the performance hereof, by Developer requires any consent of, filing with or approval of, or notice to, or hearing with any person or entity (including, but not limited to, any governmental or quasi-governmental entity), except for such consents, filings, notices and hearings described herein, or already held or maintained.

(c) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by Developer, violates, constitutes a default under or a breach of (i) Developer's certificate of incorporation or other organizational documents of Developer, (ii) any agreement, instrument, contract, mortgage or indenture to which Developer is a party or to which Developer or its assets are subject, or (iii) any judgment, decree, order, ordinance, regulation, consent or resolution applicable to Developer or any of its assets.

(d) There is not now pending nor, to the knowledge of Developer, threatened, any litigation affecting Developer which questions the validity or organization of Developer, or any of the representations and warranties of Developer contained herein.

ARTICLE II RETAIL IMPROVEMENTS

2.1 Retail Improvements Plan. Developer hereby covenants and agrees to design, develop, and construct the Retail Improvements substantially in accordance with plans and specifications prepared by Developer and to be approved by the Mayor or Director of Urban Development of the City, acting on behalf of the City, a copy of which is set forth on Exhibit E hereto (the "Retail Improvements Plan"). The Parties agree that the Retail Improvements Plan shall not be amended, supplemented, modified or otherwise changed in any material way except pursuant to a written instrument executed by Developer and by the Mayor or Director of Urban Development of the City, acting on behalf of the City.

2.2 Delivery of Retail Premises. Under the Ground Lease, the City shall grant to Developer an irrevocable license to occupy the Retail Premises solely for the purpose of constructing the Retail Improvements (the "License"). As provided in the Ground Lease, the period of the License (the "License Period") shall commence not later than 30 days after the date of execution and delivery by the Parties of the Ground Lease (such commencement date hereinafter referred to as the "Retail Premises Delivery Date") and shall expire upon the earlier to occur of (i) the issuance of a final certificate of occupancy for the Retail Improvements or (ii) 9 months after the Retail Premises Delivery Date (such expiration date hereinafter referred to as the "Completion of Construction Target Date"). The Retail Premises shall be made available to Developer under the License on an as-is basis such that the City shall be under no obligation to

make any modifications, alterations or other changes to the Retail Premises prior to making it available to Developer for construction of the Retail Improvements.

2.3 Construction of Retail Improvements. (a) Developer agrees to diligently prosecute the development and construction of the Retail Improvements by Commencing Construction of the Retail Improvements by not later than 30 days after the Retail Premises Delivery Date, and by Completing Construction of the Retail Improvements by not later than the Completion of Construction Target Date.

(b) As used in this Agreement:

(i) “Commencement of Construction” shall be deemed to have occurred at such time as Developer has caused to be poured and completed the foundation and all footings for the Retail Improvements.

(ii) “Completion of Construction” shall be deemed to have occurred at such time as a final certificate of occupancy has been delivered for the Retail Improvements.

(c) Developer shall cause all construction activities to be conducted in such manner as to assure that there is no interference with the ongoing operation, use, access, or maintenance of the Parking Garage. Developer shall coordinate with the Director of the General Services Department and the Director of Parking and Public Transit before making any modifications, incidental or otherwise, to the Parking Garage.

(d) The Retail Improvements shall be designed, developed, installed and constructed so as to be operationally independent of the Parking Garage, and shall not interfere or negatively affect the structural integrity of the Parking Garage in any way. Developer shall design, develop, install, and construct the Retail Improvements in such a manner that the Retail Improvements contain protective roofing and drainage components to prevent water, moisture, and drainage within the Parking Garage from penetrating or otherwise impacting the Retail Improvements, and such that the condition and operation of the Parking Garage do not in any manner impact adversely the physical integrity or operations of the Retail Improvements. Developer understands, acknowledges and agrees that the City shall have no liability of any kind whatsoever to Developer arising out of any damage or loss incurred by Developer due to the physical integrity or operations of the Parking Garage or the Retail Improvements. Without limiting the generality of the foregoing, the City shall have no liability to Developer due to any failure of the waterproofing measures used on the Retail Improvements, and that Developer assumes all responsibility with respect thereto. Developer, on behalf of itself and all of its assigns, licensees, agents, contractors, or tenants, hereby releases the City from any and all liability arising out of, and hereby agrees not to assert any claim against the City on account of or relating in any way to, the condition or operation of the Parking Garage or any leaks or moisture penetration into the Retail Improvements.

(e) Developer shall cause all construction activities to be conducted in compliance with all applicable laws, ordinances, rules and regulations of any governmental

authority, including, without limitation, all applicable licenses, permits, building codes, restrictive covenants, zoning and subdivision ordinances and flood, disaster and environmental protection laws (“Applicable Laws”). It is expressly understood, acknowledged and agreed that approval by the City of the Retail Improvements Plan as herein provided shall not be deemed an approval or waiver of any compliance by Developer or the Retail Improvements with any Applicable Laws.

(f) Developer shall cause all agreements between it and any architect, contractor, subcontractor or other business performing any work in connection with the Retail Improvements or the Retail Premises to require such architect, contractor, subcontractor or other business to obtain all necessary permits, licenses and approvals for such work. It is understood and acknowledged that the City will not waive or otherwise permit the waiver of any taxes, fees or related expenses, or fees for any permits, licenses or approvals that must be obtained from the City or any other governmental authority in connection with the Retail Improvements or the Retail Premises that otherwise would be applicable.

(g) The City hereby grants to Developer, its contractors, and subcontractors an irrevocable license during the License Period to occupy that certain portion of the first floor of the Parking Garage depicted in Exhibit F attached hereto solely for the purpose of staging materials and equipment used in connection with the construction of the Retail Improvements.

(h) Developer shall detach and provide to City, at Developer’s sole cost and expense, any and all light fixtures attached to the underside of the structure of the portion of the Parking Garage’s second floor that is above the ground level of the Retail Land.

2.4 Maintenance of Retail Improvements. All maintenance of the Retail Improvements shall be the responsibility of Developer, its assigns, licensees, agents, contractors, or tenants.

2.5 Utilities; Utility License; Taxes. (a) Developer shall cooperate with the General Services Department of the City to design and construct, at Developer’s sole cost and expense, access of all electric, water, sewer, gas, garbage and other utilities for the Retail Improvements (collectively, the “Utilities”). Developer shall cooperate with the General Services Department of the City and providers of the Utilities to cause the Utilities to be separately metered from utilities serving the Parking Garage and/or the Parking Garage Site.

(b) Developer hereby agrees to relocate the electrical utility facilities serving the Retail Improvements, at Developer’s sole cost and expense, if the relocation thereof is necessary for the City to perform any improvements or maintenance to the Parking Garage during the License Period or the term of the Ground Lease; provided, however that in no event shall Developer be required to relocate such electrical utility facilities at Developer’s sole cost and expense more than twice during the License Period and the term of the Ground Lease.

(c) As the owner and operator of the Retail Improvements, Developer shall be responsible for all charges for the Utilities, occupancy tax, municipal license and permit fees, ad valorem taxes or any other taxes, charges, and assessments which may hereinafter be imposed by the City or any other governmental authority.

2.6 Insurance. Developer shall insure the Retail Improvements, naming the City as an additional insured, in accordance with the requirements therefor contained in the Ground Lease.

2.7 Parking Garage and Retail Improvements Casualty Event. (a) Upon the occurrence of a Parking Garage and Retail Improvements Casualty Event (hereinafter defined), the City shall have the right, but shall be under no obligation, to rebuild, reconstruct, reconfigure, repair or otherwise restore the Parking Garage. If the City determines in its sole discretion not to rebuild, reconstruct, repair or otherwise restore the Parking Garage following a Parking Garage and Retail Improvements Casualty Event, the City shall notify Developer of the same, and upon Developer's receipt of such notice the Ground Lease shall immediately terminate and be of no further force or effect (notwithstanding any provisions to the contrary contained in the Ground Lease). If the City elects in its sole discretion to rebuild, reconstruct, reconfigure, repair or otherwise restore the Parking Garage following a Parking Garage and Retail Improvements Casualty Event, it shall deliver written notice of the same to Developer, and Developer shall have a reasonable period of time not to exceed 30 days thereafter to notify the City in writing that Developer has elected to reconstruct the Retail Improvements (the "Developer Reconstruction Notice"). If Developer does not deliver a Developer Reconstruction Notice within said 30-day period, the Ground Lease shall immediately terminate and be of no further force or effect. If Developer delivers to the City a Developer Reconstruction Notice within said 30-day period, the Ground Lease shall continue to remain in effect while Developer and the City shall work in good faith to negotiate and produce a new development agreement and ground lease (the "New Development Agreement and Ground Lease") to cover the period of time from the Parking Garage Casualty Event to the 40th anniversary of the initial effective date of the Ground Lease and containing substantially the same terms of this Agreement and the Ground Lease; provided, Developer and City shall have no obligation to negotiate or produce a New Development Agreement and Ground Lease if they are unable to agree to the terms of such instruments within 210 days following receipt by the City of Developer Reconstruction Notice. Following the close of such 210-day period, the Ground Lease shall immediately terminate and be of no further force or effect.

(b) Anything in this Section 2.7 to the contrary notwithstanding, Developer shall have a period of 30 days following a Parking Garage and Retail Improvements Casualty Event to elect to terminate the Ground Lease.

(c) As used herein, "Parking Garage and Retail Improvements Casualty Event" shall mean an event whereby each of the Parking Garage and Retail Improvements are destroyed or materially damaged in whole or part by fire, windstorm, flooding or any other cause whatsoever.

2.8 Parking Garage Casualty Event. (a) Upon the occurrence of a Parking Garage Casualty Event (hereinafter defined), the City shall have the right, but be under no obligation, to rebuild, reconstruct, repair, reconfigure or otherwise restore the Parking Garage. If the City determines in its sole discretion not to rebuild, reconstruct, repair, reconfigure or otherwise restore the Parking Garage following a Parking Garage Casualty Event, the City shall, on or within 90 days of the occurrence of such Parking Garage Casualty Event, notify Developer of the same (the "Election Not to Reconstruct"), and at all times thereafter the City shall have the right to demolish and remove all then remaining portions of the Parking Garage, including, without limitation, those remaining portions of the Parking Garage located immediately over and around

the Retail Premises. The City shall also have the right in its sole discretion to construct and develop any improvements around and over the Retail Premises and elsewhere upon the Parking Garage Site. The City shall be obligated to pay Developer for all physical damage to the Retail Improvements caused by (i) debris from any unrepaired portions of the Parking Garage, or (ii) the City or its agents or contractors in constructing improvements over or around the Retail Improvements following a Parking Garage Casualty Event. Notwithstanding the foregoing, or any other provision of this Agreement to the contrary, in the event that the City (i) delivers the Election Not to Reconstruct to Developer within 90 days of the occurrence of a Parking Garage Casualty Event or (ii) fails to commence reconstruction of the Parking Garage by failing to mobilize the Parking Garage for demolition and site preparation within 270 days of the occurrence of a Parking Garage Casualty Event, and/or fails to prosecute such reconstruction activities with reasonable diligence until completion (each a “Failure to Reconstruct Trigger”), then Developer may cause the City to purchase the Retail Improvements by delivering written notice of such election to the City (the “Reconstruction Put Option”). If Developer elects to exercise the Reconstruction Put Option during the first twenty (20) years of the term of the Ground Lease, the purchase price for the Retail Improvements shall be the actual construction costs of the Retail Improvements as agreed to by the Parties on the Completion of Construction Target Date (the “Initial Construction Cost”). If Developer elects to exercise the Reconstruction Put Option during the final twenty (20) years of the term of the Ground Lease, the purchase price of the Retail Improvements shall be the Initial Construction Cost depreciated at the rate of five percent (5%) per annum from the twenty-first (21st) anniversary of the Completion of Construction Target Date.

(b) Anything in this Section 2.8 to the contrary notwithstanding, Developer shall have a period of 30 days following a Parking Garage Casualty Event to elect to terminate the Ground Lease.

(c) As used herein, “Parking Garage Casualty Event” shall mean an event whereby the Parking Garage, but not the Retail Improvements, is destroyed or materially damaged in whole or part by fire, windstorm, flooding or any other cause whatsoever.

2.9 Retail Improvements Casualty Event. (a) Upon the occurrence of a Retail Improvements Casualty Event (hereinafter defined), Developer shall have the right, but be under no obligation, to rebuild, reconstruct, repair, reconfigure or otherwise restore the Retail Improvements. Developer shall have a period of 90 days following a Retail Improvements Casualty Event to notify the City of its decision to rebuild, reconstruct, repair, reconfigure or otherwise restore the Retail Improvements (also, a “Developer Reconstruction Notice”). If Developer does not deliver a Developer Reconstruction Notice within said 90-day period, then either (i) Developer shall immediately remit to the City an amount equal to the cost, as determined in the sole discretion of the City, for the City to remove any and all debris from the Retail Premises and restore the Retail Premises back to the same condition as it existed as of the Retail Premises Delivery Date (such amount, the “Ground Lease Cancellation Fee”) and the Ground Lease shall terminate, or (ii) the Ground Lease shall remain in effect, and the City shall have the right to remove any and all debris from the Retail Premises, and to make any improvements that in the sole discretion of the City are necessary or desirable to correct any safety or aesthetic issues caused by the damaged Retail Premises (the costs of all such activities, the “Retail Improvements Remediation Amount”). Developer shall have the right at any time

during the remaining term of the Ground Lease to reimburse the City the Retail Improvements Remediation Amount and either, (A) reconstruct the Retail Improvements within the Retail Premises, or (B) pay the City the Ground Lease Cancellation Fee and cause the Ground Lease to be terminated.

(b) As used herein, “Retail Improvements Casualty Event” shall mean an event whereby the Retail Improvements, but not the Parking Garage, are destroyed or materially damaged in whole or part by fire, windstorm, flooding or any other cause whatsoever.

2.10 Indemnity. Developer shall indemnify and hold harmless the City from and against any and all claims arising from Developer’s negligence or willful misconduct in the operation or use of the Retail Improvements, or arising from any negligence or willful misconduct of any of the tenants of the Retail Improvements, and from and against all costs, attorney’s fees, expenses and liabilities reasonably incurred in the defense of any such claim or any action or proceeding brought thereon (provided, however, that Developer shall have no obligation to indemnify, defend or hold harmless the City to the extent such claims are caused by the negligence or willful misconduct of the City, its officers, agents, employees or contractors); and in case any action or proceeding be brought against the City by reason of any such claim, Developer upon notice from the City shall defend the same at Developer’s expense by counsel chosen by Developer, unless the City shall have a reasonable objection to same. The provisions of this Section 2.10 shall survive the termination of this Agreement.

2.11 Exemption from City Liability. In addition to the other provisions contained herein relieving the City from responsibility with respect to the Retail Improvements, Developer hereby agrees that the City shall not be liable for injury to Developer’s business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Developer, Developer’s employees, tenants, customers, invitees, guests, contractors, visitors, or any other person in or about the Retail Improvements, nor shall the City be liable for injury to the person of Developer, Developer’s agents, employees, tenants, customers, invitees, guests, contractors, or visitors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wire, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, where the said damage or injury results from conditions arising upon the Retail Improvements or upon other portions of the Parking Garage and which are not the result of the actions of the City. In addition to, and not in limitation of, the foregoing, Developer hereby acknowledges and agrees, for itself and on behalf of its agents, employees, tenants, customers, invitees, guests, contractors, and visitors, that the use of the Parking Garage by any person is done at his, her or its own risk, and that the City shall not be responsible for any loss, damage or expense incurred by any user of the Parking Garage, including, without limitation, any loss or damage to any vehicle, or to any personal property contained within or on any such vehicle. The foregoing shall in no event, however, be deemed to constitute a release of the City from claims due to the actions, willful misconduct, or inaction of the City in violation of this Agreement.

2.12 Parking Garage to Remain Open. Developer acknowledges and agrees that the Parking Garage is a public benefit to the City and the Parking Garage is to remain open and accessible to the public during the License Period and the term of the Ground Lease unless otherwise determined by the Director of the General Services Department and the Director of

Parking and Public Transit. Developer agrees not to, and to cause the tenants (and their agents) of the Retail Improvements not to, interfere with the normal and regular operation and usage of the Parking Garage by the public during the License Period and the term of the Ground Lease. Any anticipated disruption as a result of construction or operation of the Parking Garage shall be coordinated with the Director of Parking and Public Transit.

2.13 Damage to Parking Garage. If, during the construction of the Retail Improvements, Developer, its contractors or its subcontractors damages or destroys all or any part of the Parking Garage outside the Retail Improvements, Developer shall promptly repair and restore the Parking Garage back to the same condition as it existed as of the Retail Premises Delivery Date at Developer's sole cost and expense.

ARTICLE III PUBLIC IMPROVEMENTS

3.1 General. The City hereby covenants and agrees to construct the Public Improvements as set forth and described in this Agreement and on the condition that Developer perform its obligations under this Agreement and deliver to the City evidence satisfactory to the City that Developer has obtained a binding agreement from a financial institution for a loan to cover the costs for Developer to complete construction of the Retail Improvements in the amount of not less than \$850,000, along with such other information as shall enable the City to verify that Developer has obtained the financing necessary to cover the costs for Developer to complete construction of the Retail Improvements.

3.2 Public Improvements Plan. The City shall use its commercially reasonable good faith efforts to construct the Public Improvements substantially in accordance with the plans and specifications for the Public Improvements to be prepared by the City and approved by Developer hereto (the "Public Improvements Plan"). The Parties agree that the Public Improvements Plan shall not be changed except for changes determined by the Director of Urban Development, acting on behalf of the City, as being necessary for public safety or otherwise required due to (i) increases in costs beyond the City's cost estimate to construct the Public Improvements or (ii) issues experienced during construction of the Public Improvements so that changes are reasonably necessary for the City to perform its obligations hereunder. Any other changes to the Public Improvements Plan shall be subject to written approval by Developer and the Director of Urban Development, acting on behalf of the City.

3.3 Costs of Public Improvements. (a) The City shall be responsible for paying the costs of up to \$200,000 (the "City Facade/Sidewalk Limit") to construct the Facade/Sidewalk Improvements and shall use its commercially reasonable good faith efforts to construct the Facade/Sidewalk Improvements by not later than October 1, 2016. As may be further described in the Public Improvements Plan, the Facade/Sidewalk Improvements may include decorative screening, paint, lighting fixtures, resurfacing, or other enhancements determined by the City in its sole discretion. Developer shall be responsible for paying all costs to construct and install the Facade/Sidewalk Improvements that exceed the City Facade/Sidewalk Limit (the amount of such excess, the "Facade/Sidewalk Improvements Overage"). In the event the cost of the Facade/Sidewalk Improvements exceeds the City Facade/Sidewalk Limit, the City shall submit to Developer such invoices and other information as shall be reasonably required by Developer

to demonstrate the amount of the Facade/Sidewalk Improvements Overage, which such amount shall be paid by Developer to the City within 30 days following such delivery.

(b) The City shall be responsible for paying all costs to repair or replace the generator serving the Parking Deck and Developer shall be responsible for paying all costs to relocate such generator should Developer determine in its sole discretion to relocate the same. Developer shall have a period of 30 days following the Effective Date to notify the City in writing of its decision to relocate the generator (the “Generator Relocation Notice”). If Developer determines to relocate the generator, Developer shall remit to the City along with the Generator Relocation Notice an amount equal to the difference between the cost to repair or replace the generator in its location as of the Effective Date and the cost to repair or replace the generator in the relocated location determined by Developer (the “Generator Relocation Initial Deposit”), which shall be held in a special account of the City and used to pay the costs to relocate the generator. In the event the cost to relocate the generator exceeds the Generator Relocation Initial Deposit (the amount of such excess, the “Generator Relocation Excess”), the City shall submit to Developer such invoices and other information as shall be reasonably required by Developer to demonstrate the amount of the Generator Relocation Excess, which such amount shall be paid by Developer to the City within 30 days following such delivery. The City shall use its commercially reasonable good faith efforts to construct the Generator Improvements by not later than November 1, 2016.

(c) The City shall be responsible for paying all costs to install the X-Bracing Improvements and shall use its commercially reasonable good faith efforts to install the X-Bracing Improvements by not later than the 10th anniversary of the Effective Date. The X-Bracing Improvements constitute public capital improvements solely to sustain the long-term structural integrity and viability of the Parking Garage.

3.4 No Representations or Warranties Concerning Public Improvements. Developer acknowledges and agrees that the City makes no and disclaims any and all representations and warranties regarding the Public Improvements, including, without limitation, warranties (whether express or implied) regarding the design, construction, functionality, and suitability of the Public Improvements.

ARTICLE IV GROUND LEASE

The form of the Ground Lease is attached as Exhibit D hereto. The Ground Lease shall be for such term and for such rental as set forth in the said form of Ground Lease. In the Ground Lease, the City shall grant Developer the License for the License Period.

ARTICLE V EVENTS OF DEFAULT AND REMEDIES

5.1 Events of Default by City. (a) Any one or more of the following shall constitute an event of default under this Agreement by the City (herein called a “City Event of Default”) (whatever the reason for such event and whether it shall be voluntary or involuntary or be

effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) the dissolution or liquidation of the City, or the filing by the City of a voluntary petition in bankruptcy, or the City's seeking of or consenting to or acquiescing in the appointment of a receiver of all or substantially all of its property, or the adjudication of the City as a bankrupt, or any assignment by the City for the benefit of its creditors, or the entry by the City into an agreement of composition with its creditors, or if a petition or answer is filed by the City proposing the adjudication of the City as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within 60 days;

(ii) failure by the City to perform or observe any of its agreements or covenants contained in this Agreement, which failure shall have continued for a period of 30 days after written notice thereof from Developer, unless (A) Developer shall agree in writing to an extension of such period prior to its expiration, (B) during such 30-day period or any extension thereof, the City has commenced and is diligently pursuing appropriate corrective action, or (C) the City is by reason of *force majeure* at the time prevented from performing or observing the agreement or covenant with respect to which the City is delinquent; or

(iii) a default, following expiration of any applicable cure period, by the City under the Ground Lease.

(b) If a City Event of Default exists, the sole and exclusive remedy of Developer shall be specific performance except with respect to any remedies of Developer under the Ground Lease upon a default thereunder by the City. Developer shall not be entitled to any other damages whatsoever, including, without limitation, punitive, incidental or consequential damages, whether arising at law or in equity.

5.2 Events of Default by Developer.

(a) Any one or more of the following shall constitute an event of default under this Agreement by Developer (herein called a "Developer Event of Default") (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) at any time prior to the completion by Developer of its obligations hereunder, the dissolution or liquidation of

Developer, or the filing by Developer of a voluntary petition in bankruptcy, or Developer's seeking of or consenting to or acquiescing in the appointment of a receiver of all or substantially all of its property, or the adjudication of Developer as a bankrupt, or any assignment by Developer for the benefit of its creditors, or the entry by Developer into an agreement of composition with its creditors, or if a petition or answer is filed by Developer proposing the adjudication of Developer as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within 60 days;

(ii) failure by Developer to perform or observe any of its agreements or covenants contained in this Agreement, which failure shall have continued for a period of 30 days after written notice thereof from the City, unless (A) the City shall agree in writing to an extension of such period prior to its expiration, (B) during such 30-day period or any extension thereof, Developer has commenced and is diligently pursuing appropriate corrective action, or (C) Developer is by reason of *force majeure* at the time prevented from performing or observing the agreement or covenant with respect to which Developer is delinquent; or

(iii) a default, following expiration of any applicable cure period, by Developer under the Ground Lease.

(b) In addition to any remedies of the City under the Ground Lease upon a default thereunder by Developer, if a Developer Event of Default exists, the City may proceed to protect its rights hereunder by suit in equity, action at law or other appropriate proceedings, including without limitation the specific performance of any covenant or agreement of Developer herein contained.

5.3 Remedies Subject to Applicable Law. All rights, remedies and powers provided in this Article V may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article V are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that the same will not render this Agreement invalid or unenforceable.

ARTICLE VI
MISCELLANEOUS

6.1 Term. Subject to and upon the terms and conditions set forth herein, this Agreement shall continue in force and effect at all times during the term of the Ground Lease.

6.2 Restrictions on Assignment. Developer shall not have the right to assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the City, and any purported assignment, transfer, encumbrance or hypothecation of this Agreement or any of the rights or obligations hereunder in violation of this Section 6.2 shall be null and void and of no force or effect.

6.3 Delivery of Notices. All notices, statements, demands, consents and other communications ("Notices") required or permitted to be given by any Party to another Party pursuant to this Agreement or pursuant to any applicable law or requirement of public authority shall be properly given only if the Notice is: (a) made in writing (whether or not so stated elsewhere in this Agreement); (b) given by one of the methods prescribed in Section 6.4; and (c) sent to the Party to which it is addressed at the address set forth below or at such other address as such Party may hereafter specify by at least 5 days' prior written notice:

If to the City:

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

With a copy to the attention of:

City of Huntsville
Attention: City Attorney
308 Fountain Circle
P.O. Box 308
Huntsville, Alabama 35804
Fax: (256) 427-5043

If to Developer:

c/o Crunkleton & Associates, LLC
Attention: Wesley B. Crunkleton
515 Fountain Row, Suite 1100
Huntsville, Alabama 35801
Fax: _____

with a copy to:

Lanier Ford Shaver & Payne, P.C.
Attention: W. Graham Burgess
P.O. Box 2087
Huntsville, Alabama 35804
Fax: (256) 533-9322

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

6.5 Negation of Partnership. The Parties specifically acknowledge that no Party is acting as the agent of the other Party in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership or joint venture between or among the Parties, or cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended and shall not be construed to create any third party beneficiary rights in any person who is not a party or a permitted transferee pursuant to this Agreement; and nothing in this Agreement shall limit or waive any rights any one or more of the Parties may have or acquire against any third person with respect to the terms, covenants or conditions of this Agreement.

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

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

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

6.9 Entire Agreement; Conflict with Ground Lease. (a) This Agreement and the exhibits hereto contain all the representations and the entire agreement among the Parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and exhibits hereto. Neither the conduct nor actions of the Parties, nor the course of dealing or other custom or practice between or among the Parties or any of them, shall constitute a waiver or modification of any term or provision of this Agreement.

(b) In the event of a conflict between this Agreement and the Ground Lease, the terms of this Agreement shall control.

6.10 Ambiguity. The terms, conditions and provisions of this Agreement were agreed to in arm's length negotiations in which each Party was represented by independent counsel of its

own choosing. Accordingly, in the event of any ambiguity in this Agreement, such ambiguity shall not be resolved against any Party deemed the principal draftsman of this Agreement or the provision of this Agreement at issue.

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

6.12 Governing Law. This Agreement, and the rights and obligations of the Parties, shall be governed by and interpreted in accordance with the laws of the State of Alabama. Any suit arising from or relating to this Agreement must be brought in Madison County, Alabama. The Parties waive the right to bring suit elsewhere.

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

6.14 Liabilities of the City. Developer understands, acknowledges and agrees that the obligations of the City as set forth herein are limited by the limitations imposed on public bodies, municipalities and public corporations by the Constitution of the State of Alabama and under other applicable Alabama law. Anything in this Agreement to the contrary notwithstanding, whether express or implied, in the event the Public Improvements are not constructed or otherwise operational by the Completion of Construction Target Date, or are constructed in a manner not suitable to Developer, the sole and exclusive remedy of Developer shall be specific performance, and Developer shall not be entitled to any other damages whatsoever, including, without limitation, punitive, incidental or consequential damages, whether arising at law or in equity.

6.15 No Waiver. No consent or waiver, express or implied, by any Party hereto or to any breach or default by any other Party in the performance by such other Party of its obligations hereunder shall be valid unless in writing, and no such consent or waiver to or of one breach or default shall constitute a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such Party hereunder. Failure on the part of any Party to complain of any act or failure to act of any other Party or to declare such other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder. The granting of any consent or approval in any one instance by or on behalf of any Party hereto shall be construed to waive or limit the need for such consent in any other or subsequent instance.

[Remainder of page intentionally left blank]

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

CITY OF HUNTSVILLE

By:

Mayor

CLINTON ROW PARTNERS, LLC, an
Alabama limited liability company

By:



Name:

Wesley Crunkleton

Its:

Managing Member

EXHIBIT A

PARKING GARAGE SITE

All that part of the Southwest Quarter of Section 36, Township 3 South, Range 1 West of the Huntsville Meridian, Madison County, Alabama, more particularly described as beginning at a point located at the NE corner of Parking Garage O; Said point is also described as being on the South margin of Clinton Ave E and on the West margin of Washington St SE; Thence from the Point of Beginning (N: 1540429.905 E: 430132.065), South 58 Degrees 6 Minutes 25 Seconds West a distance of 298.82 feet; Thence South 31 Degrees 53 Minutes 35 Seconds East a distance of 163.70 feet; Thence North 58 Degrees 6 Minutes 25 Seconds East a distance of 298.82 feet; Thence North 31 Degrees 53 Minutes 35 Seconds West a distance of 163.70 feet back to the Point of Beginning and containing 1.12 acres more or less.

EXHIBIT B

RETAIL LAND

All that part of the Southwest Quarter of Section 36, Township 3 South, Range 1 West of the Huntsville Meridian, Madison County, Alabama, more particularly described as commencing at a point located at the NE corner of Parking Garage O; Said point is also described as being on the South margin of Clinton Ave E and on the West margin of Washington St SE; Thence from the Point of Commencement (N: 1540429.905 E: 430132.065), South 58 Degrees 6 Minutes 25 Seconds West a distance of 19.85 feet to the Point of Beginning; Thence from the Point of Beginning, continue South 58 Degrees 6 Minutes 25 Seconds West a distance of 67.51 feet; Thence South 31 Degrees 53 Minutes 35 Seconds East a distance of 42.37 feet; Thence North 58 Degrees 6 Minutes 25 Seconds East a distance of 67.51 feet; Thence North 31 Degrees 53 Minutes 35 Seconds West a distance of 42.37 feet back to the Point of Beginning.

Also

All that part of the Southwest Quarter of Section 36, Township 3 South, Range 1 West of the Huntsville Meridian, Madison County, Alabama, more particularly described as commencing at a point located at the NE corner of Parking Garage O; Said point is also described as being on the South margin of Clinton Ave E and on the West margin of Washington St SE; Thence from the Point of Commencement (N: 1540429.905 E: 430132.065), South 58 Degrees 6 Minutes 25 Seconds West a distance of 177.26 feet to the Point of Beginning; Thence from the Point of Beginning, continue South 58 Degrees 6 Minutes 25 Seconds West a distance of 110.66 feet; Thence South 31 Degrees 53 Minutes 35 Seconds East a distance of 42.37 feet; Thence North 58 Degrees 6 Minutes 25 Seconds East a distance of 110.66 feet; Thence North 31 Degrees 53 Minutes 35 Seconds West a distance of 42.37 feet back to the Point of Beginning.

EXHIBIT C

HVAC UNITS LOCATION

[See attached]

WASHINGTON STREET

EXISTING THEATER BUILDING



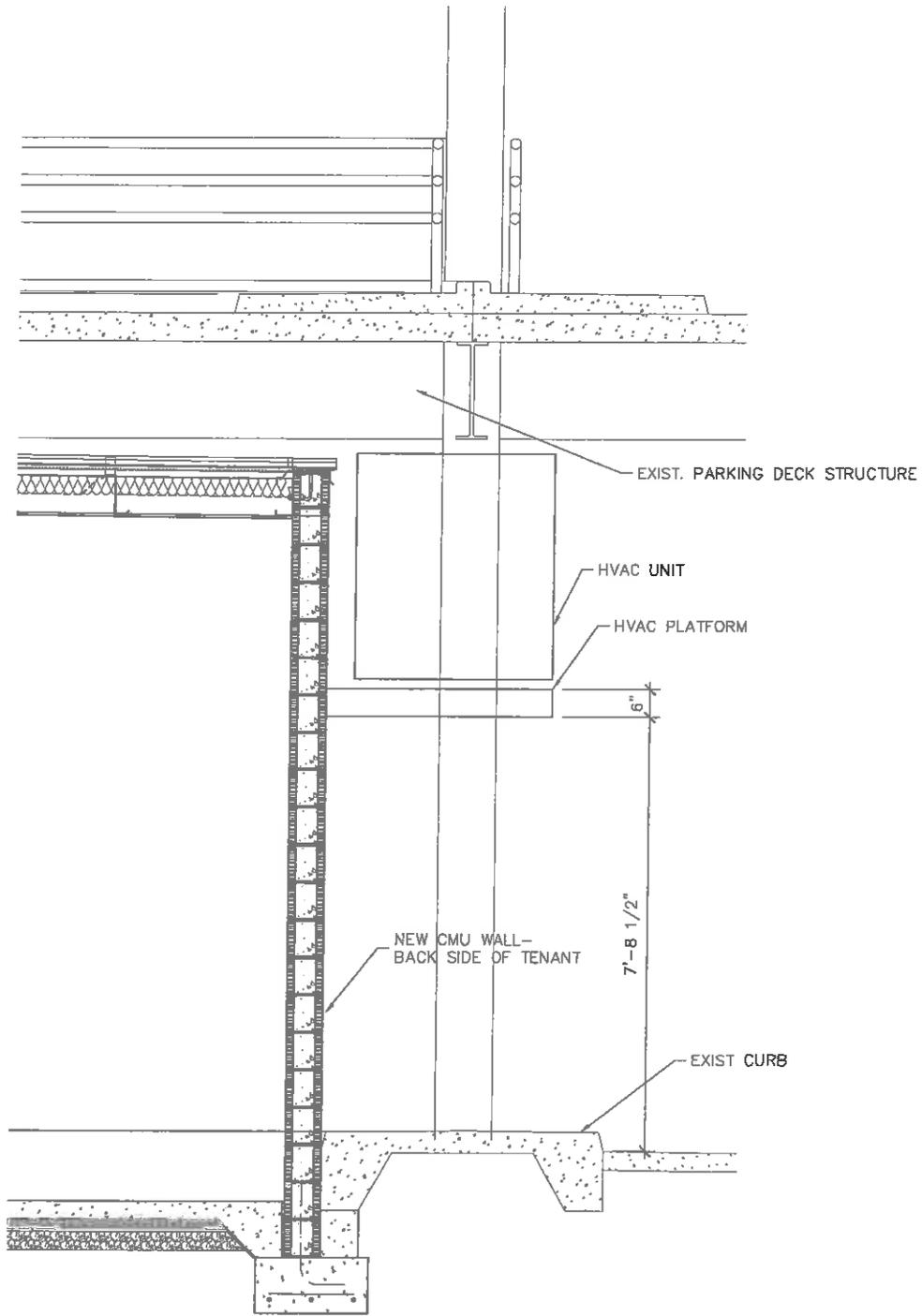
JEFFERSON STREET

GROUND FLOOR PLAN

SCALE 1/8" = 1'-0"

CLINTON AVENUE

HVAC units will be located off the ground on structural platforms.



1
 ADD1
CONCEPTUAL SECTION DIAGRAM
 HVAC DIAGRAM

SCALE: 3/4" = 1'-0"

EXHIBIT D
GROUND LEASE

[See attached]

EXHIBIT E
RETAIL IMPROVEMENTS PLAN

[See attached]

EXHIBIT F

CONSTRUCTION STAGING AREA

[See attached]

