

CITY COUNCIL AGENDA ITEM COVER MEMO

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

Meeting Type: Regular

Meeting Date: Apr 14, 2016

Action Requested By: Administration

Agenda Type: Resolution

Subject Matter:

Consent to the assignment of the Development Agreement for Clinton Row.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute the Consent of the City to Assignment of Development Agreement between the City of Huntsville and Clinton Row Partners, LLC.

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

Item to be considered for: Action

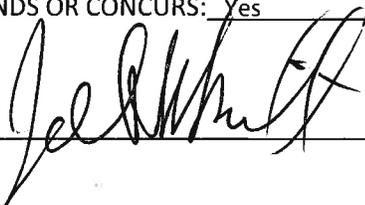
Unanimous Consent Required: No

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

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: 4/14/2016

Department Contact: John Hamilton

Phone # 427-5000

Contract or Agreement: Consent to Assignment with Clinton Row Partners

Document Name: Consent to Assignment with Clinton Row Partners

City Obligation Amount:

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	<i>John Hamilton</i>	<i>4/11/2016</i>
2) Legal	<i>Mary C Cates</i>	<i>April 11, 2016</i>
3) Finance		
4) Originating	<i>John Hamilton</i>	<i>4/11/16</i>
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 is hereby authorized to execute a "Consent of the City to Assignment of Development Agreement," on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said document is substantially in words and figures similar to that certain document attached hereto and identified as a "Consent of the City to Assignment of Development Agreement between the City of Huntsville and Clinton Row Partners, LLC " consisting of Six (6) pages including Exhibit A, and the date of April 14, 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.

**BE IT FURTHER RESOLVED** that the Mayor is hereby authorized and directed, along with the City-Clerk Treasurer, to execute such other documents or certificates as may be necessary in order to carry out the transaction contemplated by the Development Agreement and Ground Lease as approved on February 25, 2016, between the City of Huntsville and Clinton Row Partners, LLC.

**ADOPTED** this the 14th day of April, 2016.

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

**ADOPTED** this the 14th day of April, 2016.

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

**CONSENT OF THE CITY TO ASSIGNMENT OF DEVELOPMENT AGREEMENT**

WHEREAS, the undersigned, **THE CITY OF HUNTSVILLE**, a municipal corporation under the laws of the State of Alabama (the “**City**”), is party to that certain Development Agreement dated February 25, 2016, with **CLINTON ROW PARTNERS, LLC** (the “**Developer**”) (said Development Agreement dated February 25, 2016, the “**Development Agreement**”); and

WHEREAS, pursuant to Section 6.2 of the Development Agreement, the Developer is not permitted to assign or otherwise transfer its rights or obligations under the Development Agreement without the prior written consent of the City; and

WHEREAS, the Developer has determined to obtain a loan in the amount of up to and including \$1,034,375 (the “**Loan**”) from Renasant Bank (“**Lender**”) in order to finance the costs of the Retail Improvements, and, acting pursuant to the terms of Section 6.2 of the Development Agreement, has requested the City to consent to the assignment of the Development Agreement to the Lender in connection with the Loan.

NOW, THEREFORE, the City does hereby:

(a) consent to and acquiesce in the assignment by the Developer of its rights and obligations under the Development Agreement to the Lender pursuant to the Assignment of Development Agreement between Developer and Lender, a copy of the form of which is attached as Exhibit A hereto (the “**Assignment Agreement**”); and

(b) acknowledge and agree that, if a default or an event of default by Developer occurs under the Loan Agreement (as defined in the Assignment Agreement), the Mortgage (as defined in the Assignment Agreement) or the Assignment Agreement and in the further event that Lender elects to assert its rights under Section 6 of the Assignment Agreement: (i) the Lender shall have the right, but not the obligation, to enforce Borrower’s rights under the Development Agreement; and (ii) the City will not charge any additional cost or require the performance of any additional obligations by Lender beyond Borrower’s obligations in the Development Agreement;

provided; nothing in this Consent shall give or be interpreted to give the Lender any rights or benefits under the Development Agreement beyond those of the Developer thereunder.

This Consent shall not inure to or otherwise benefit any third party except the successors and permitted assigns of Lender.

**IN WITNESS WHEREOF**, the City has caused this Consent to be duly executed and delivered to Lender as of the 14th day of April, 2016.

**CITY:**

**THE CITY OF HUNTSVILLE**, a municipal corporation under the laws of the State of Alabama

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

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

ATTEST:

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

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

STATE OF ALABAMA     )

COUNTY OF MADISON    )

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

Give under my hand and official seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

[NOTARY SEAL]

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

## Exhibit A

### Assignment Agreement

#### ASSIGNMENT OF DEVELOPMENT AGREEMENT

THIS ASSIGNMENT is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 2016, between CLINTON ROW PARTNERS, LLC, an Alabama limited liability company (hereinafter called "Borrower") in favor of RENASANT BANK, a Mississippi banking corporation (hereinafter called "Lender").

#### W I T N E S S E T H:

FOR VALUE RECEIVED, Borrower hereby sells, grants, transfers, assigns, conveys and sets over unto Lender all of the rights, title, interest, powers, privileges, benefits and options accruing to Borrower in, to and under that certain Development Agreement (the "Agreement") between Borrower and the City of Huntsville, a municipal corporation under the laws of the State of Alabama (the "City") dated February 25, 2016, for the construction of certain improvements to the parking garage located on Clinton Avenue West in Huntsville, Alabama, on the real property described on Exhibit A, attached hereto and incorporated herein by reference, which real property is hereinafter called the "Property."

#### A G R E E M E N T

1. **Purpose of Assignment.** This assignment is made for the purpose of providing security for: (i) payment and performance of the Loan, as such term is defined in that certain Future Advance Leasehold Mortgage, Assignment of Rents and Leases and Security Agreement dated as of the date hereof, from Borrower, as mortgagor to Lender as mortgagee and recorded in the Office of the Judge of Probate in Madison County, Alabama, covering the premises described therein including, *inter alia*, the Property, hereinafter called the "Mortgage;" (ii) the full and complete satisfaction and performance of each and every duty and obligation of Borrower contained in this assignment; and (iii) the full and complete satisfaction and performance of each and every duty and obligation of Borrower contained in that certain Loan Agreement for Construction and Term Financing of even date herewith, between Borrower and Lender, hereinafter called the "Loan Agreement."

2. **Representation and Warranties of Borrower.** Borrower represents and warrants that: (i) Borrower is the true and lawful owner of the Agreement, and has made no assignment of the Agreement to any person or entity other than Lender; (ii) there has been no default by Borrower under the Agreement and no default by any of the other parties to the Agreement; and (iii) the Agreement is in full force and effect and is the valid and legally binding obligation of the parties thereto, enforceable in accordance with its terms.

3. **Covenants of Borrower.** Borrower shall: (i) perform each and every of its duties and obligations under the Agreement, and observe, satisfy and comply with each and every term, covenant, condition, agreement, requirement, restriction and provision of the Agreement; (ii) give prompt notice to Lender of any claim of or notice of default under the Agreement given to or by Borrower, together with a copy of any such notice or claim if the same is in writing; (iii) at the sole cost and expense of Borrower, enforce the full and complete performance of each and every duty and obligation of the Agreement to be performed by the other parties thereto; and (iv) appear in and defend any action arising out of, or in any manner connected with, the Agreement or the duties, obligations, liabilities and responsibilities of Borrower or any guarantor or surety thereunder or with respect thereto.

4. **Scope of Assignment.** The rights assigned by this assignment include, but are not limited to, all of Borrower's right, power, privilege and option to: (i) modify or amend the Agreement; (ii) terminate the Agreement; and (iii) waive or release the performance or satisfaction of any duty or obligation under the Agreement.

5. **Events of Default.** The occurrence of any of the following events shall constitute an event of default under this assignment:

(i) Any failure by Borrower fully and completely to perform any of the duties or obligations of Borrower under this assignment, or any failure by Borrower fully and completely to observe, satisfy and comply with, or any breach or violation by Borrower in any respect of, any term, covenant, condition, agreement, requirement, restriction or provision of this assignment;

(ii) Should any representation or warranty of Borrower contained in this assignment be untrue or misleading in any respect; or

(iii) Should a default or an event of default occur under the Loan Agreement, the Mortgage, or the Agreement.

Upon the occurrence of an event of default, Borrower shall be in default under this assignment.

6. **Remedies.** If Borrower shall be in default under this assignment, Lender may, at its sole discretion, proceed to perform any and all of the duties and obligations of Borrower under the Agreement, to exercise any and all of the rights and remedies of Borrower contained in the Agreement or otherwise available to Borrower at law or in equity, or to take any other action required or permitted under the Agreement, as fully as Borrower could itself, without regard for the adequacy of security for the Loan and with or without bringing any legal action or causing any receiver to be appointed. Borrower hereby specifically authorizes Lender, and hereby constitutes and appoints Lender as Borrower's agent and attorney-in-fact, in Borrower's name or in Lender's name, to do any of the foregoing. The foregoing power of attorney is coupled with an interest and cannot be revoked by insolvency, bankruptcy, death, dissolution or otherwise. The foregoing remedies are cumulative of and in addition to, and not restrictive of or in lieu of, the rights and remedies provided for or allowed by the Mortgage or the Loan Agreement, or provided for or allowed by law or in equity.

7. **Performance by Lender.** Should Borrower fail to perform any of its duties and obligations under the Agreement, Lender may, without obligation to do so and without releasing Borrower from its obligation to do so, perform such duties and obligations and, to the extent that Lender shall incur any costs or pay any monies in connection therewith (including, without limitation, any costs or expenses of litigation), such costs, expenses or payments shall be added to the Loan and shall bear interest from the date advanced incurred or paid at a rate which is two percent (2%) per annum in excess of the highest rate of interest then being charged with respect to any of the Loan until paid.

8. **Indemnity.** Lender shall have no obligation to perform or satisfy any duty or obligation of Borrower under the Agreement. Borrower shall and does hereby indemnify, defend and hold Lender harmless from, against and in respect of: (i) any and all actions, causes of action, suits, claims, demands, judgments, proceedings and investigations (or any appeal thereof or relative thereto or other review thereof), of any kind or nature whatsoever, arising out of, by reason of, as a result of or in connection with the Agreement, or this assignment; and (ii) any and all liabilities, damages, losses, costs, expenses (including counsel fees and expenses and disbursements of counsel), and amounts paid in compromise or settlement, suffered, incurred or sustained by Lender as a result of, by reason of or in connection with any of the matters covered by the immediately preceding clause (i).

9. **Parties.** The word "Borrower" as used herein shall include the legal representatives, successors and assigns of Borrower as if so specified at length throughout this assignment, and all the duties, obligations, liabilities and responsibilities of Borrower shall be binding upon and enforceable against the legal representatives, successors and assigns of Borrower. The word "Lender" as used herein shall include the transferees, successors, legal representatives and assigns of Lender as if so specified at length throughout this assignment, and all rights of Lender hereunder shall inure to the benefit of its transferees, legal representatives, successors and assigns.

10. **Governing Law.** This Agreement has been executed, or is subject to acceptance by Lender, in the State of Alabama, and shall be governed by, construed under the interpreted and enforced in accordance with the laws of the State of Alabama.

IN WITNESS WHEREOF, Borrower has caused this instrument to be executed effective as of the day and year first above written, even if actually executed on a different date as a matter of convenience only.

**BORROWER:**

**CLINTON ROW PARTNERS, LLC**, an Alabama limited liability company

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

STATE OF ALABAMA )

COUNTY OF MADISON )

I, the undersigned, a Notary Public in and for said County in said State, do hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of **CLINTON ROW PARTNERS, LLC**, an Alabama limited liability company, 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 said instrument, s/he, as such \_\_\_\_\_ and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the \_\_\_\_ day of \_\_\_\_\_, 2016.

[Notary Seal]

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

**EXHIBIT A**

**Description of Real Property**

*All of Clinton Row Partners, LLC's, right, title and interest under that certain Ground Lease between Clinton Row Partners, LLC, an Alabama limited liability company, as lessee, and the City of Huntsville, Alabama, an Alabama municipal corporation, as lessor, dated February 25, 2016, as evidenced by that certain Memorandum of Lease, dated \_\_\_\_\_, 2016, recorded as Instrument No. \_\_\_\_\_, in the Office of the Judge of Probate, Madison County, in connection with the following described property located in Madison County, Alabama, to-wit:*

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.