Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 11/2/2023 **File ID:** TMP-3524

Department: Urban Development

Subject: **Type of Action:** Approval/Action

Resolution authorizing the Mayor to execute a Second Amended and Restated Development Agreement, and related documents attached thereto, between the City of Huntsville, Alabama and Rocket Development Partners, L.L.C., and Front Row Huntsville Owner, L.L.C., respecting a mixed-use redevelopment project in the City.

Resolution No.

Finance Information:

Account Number: N/A
City Cost Amount: N/A
Total Cost: N/A

Special Circumstances:

Grant Funded: N/A
Grant Title - CFDA or granting Agency: N/A
Resolution #: N/A

Location: (list below)

Address: N/A
District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:
N/A

RESOLUTION NO. 23-

WHEREAS, the City, Rocket Development Partners, LLC, a New York limited liability company ("Original Developer"), and Huntsville Phase I QOZB LLC, a Delaware limited liability company, heretofore entered into that certain Amended and Restated Development Agreement dated July 28, 2022, as amended by that certain First Amendment to Amended and Restated Development Agreement dated January 24, 2023 (collectively, the "First Restated Development Agreement") with respect to the development of a major mixed-use project on various parcels of real property in the City located in and around the area of the former Coca-Cola bottling site located at 514 Clinton Avenue West, Huntsville, Alabama (the "Development Site"); and

WHEREAS, the Original Developer has informed the City that it has been unable to cause development of the project as set forth and described in the First Restated Development Agreement, and that modifications and changes are needed to the nature, size, scope and timing of the development of the project on the Development Site; and

WHEREAS, due to the foregoing the parties have determined it necessary to terminate the First Restated Development Agreement and enter into the Second Amended and Restated Development Agreement hereinafter defined and authorized (the "Second Amended and Restated Development Agreement") to redefine the nature, size, scope, and timing of the development of the "Project" (as such term defined in the Second Amended and Restated Development Agreement) on the Development Site and to modify the obligations of the City and the developer entities respecting the Project; and

WHEREAS, under the Second Amended and Restated Development Agreement, upon the occurrence of certain conditions precedent the City may lease certain real property for the development of a city parking lot, and lease spaces in a parking garage, if built, as part of an optional second phase of the Project, all as more particularly described and set forth in the Second Amended and Restated Development Agreement, in which case the City would enter into a City Lot Agreement (as hereinafter defined) and a Garage Parking Agreement (as hereinafter defined), respectively;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Huntsville, Alabama (the "Council"), that the Council hereby authorizes and approves the Second Amended and Restated Development Agreement by and among the City, the Original Developer, and Front Row Huntsville Owner, LLC, a Delaware limited liability company ("Front Row"), and that the Mayor be, and he is hereby, authorized to execute, by and on behalf of the City, the said Second Amended and Restated Development Agreement in substantially the form attached hereto as Exhibit 1 and identified as "Second Amended and Restated Development Agreement", with such changes thereto as shall be approved by the Mayor (the "Second Amended and Restated Development Agreement"); and

FURTHER RESOLVED, by the Council that the Council hereby (i) authorizes and approves the Garage Parking Agreement between the City and Front Row, and that the Mayor be, and he is hereby, authorized to execute, by and on behalf of the City, the said Garage Parking

Agreement in substantially the form attached as Exhibit L to the Second Amended and Restated Development Agreement, with such changes thereto as shall be approved by the Mayor (the "Garage Parking Agreement"), and (ii) authorizes and approves the Parking Agreement (City Lot) between the City and Front Row, and that the Mayor be, and he is hereby, authorized to execute, by and on behalf of the City, the said Parking Agreement (City Lot) in substantially the form attached as Exhibit M to the Second Amended and Restated Development Agreement, with such changes thereto as shall be approved by the Mayor (the "City Lot Agreement"); and

FURTHER RESOLVED, by the Council that the Council hereby authorizes and approves the Consent to Collateral Assignment of Development Agreement and Estoppel, and that the Mayor be, and he is hereby, authorized to execute, by and on behalf of the City, the said Consent to Collateral Assignment of Development Agreement and Estoppel in substantially the form attached as Exhibit J to the Second Amended and Restated Development Agreement, with such changes thereto as shall be approved by the Mayor (the "Consent to Collateral Assignment"); and

FURTHER RESOLVED, by the Council that the Council hereby authorizes and approves, and that the Mayor be, and he is hereby, authorized to execute, by and on behalf of the City, all agreements or other instruments, the forms of which are attached as exhibits to or included with the Second Amended and Restated Development Agreement, along with such notices, certificates, instruments, amendments, agreements, and other documents as shall be necessary or desirable in connection with the transactions contemplated by, or in furtherance of, the Second Amended and Restated Development Agreement, the Garage Parking Agreement, the City Lot Agreement, or the Consent to Collateral Assignment (collectively, the "Project Agreements"); and

FURTHER RESOLVED, by the Council that the City Clerk be, and she is hereby, authorized to seal and attest the Project Agreements, or any of them, and such notices, certificates, instruments, amendments, agreements and other documents as shall be necessary or desirable in connection with the transactions contemplated by, or in furtherance of, the Project Agreements.

ADOPTED this the 2nd day of November, 2023

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

APPROVED this the 2nd day of November, 2023

____
Mayor of the City of
Huntsville, Alabama

Exhibit 1

Form of Second Amended and Restated Development Agreement

SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT

by and among

CITY OF HUNTSVILLE,

ROCKET DEVELOPMENT PARTNERS, LLC,
a New York limited liability company,

HUNTSVILLE PHASE I QOZB LLC,
a Delaware limited liability company,

and

FRONT ROW HUNTSVILLE OWNER, LLC,
a Delaware limited liability company

Dated: November 2, 2023

SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT

This Second Amended and Restated Development Agreement (this "Agreement") is made and entered into on and as of this 2nd day of November, 2023 (the "Effective Date"), by and among the City of Huntsville, a municipal corporation under the laws of the State of Alabama (the "City"), Rocket Development Partners, LLC, a New York limited liability company ("Rocket"), Huntsville Phase I QOZB LLC, a Delaware limited liability company ("QOZB" and together with Rocket, "Original Developer") and Front Row Huntsville Owner, LLC, a Delaware limited liability company ("Property Owner") (the City and Property Owner are hereinafter referred to individually as a "Party" and collectively as the "Parties;" Original Developer joins in the execution of this Agreement solely for purposes of Section 3.1and Section 8.13 below).

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WHEREAS, the City and Original Developer executed that certain Amended and Restated Development Agreement dated July 28, 2022, as amended by that certain First Amendment to Amended and Restated Development Agreement dated January 24, 2023 (collectively, as amended, the "First Restated Development Agreement") with respect to the Project (as hereinafter defined);

WHEREAS, from and after the Effective Date, the term "Developer" as such term is used in this Agreement shall mean Property Owner;

WHEREAS, the Parties now desire to amend and restate the First Amended Development Agreement in its entirety as follows, in accordance with the terms herein;

WHEREAS, Developer has acquired various parcels of real property within the City located in and around the area of the former Coca-Cola bottling site located at 514 Clinton Avenue West, Huntsville, Alabama, as more particularly described on Exhibit A hereto (the "Development Area") for development of a mixed-use project to consist of some or all of the following components (individually, a "Component" and collectively, the "Components"): (i) two (2) multi-family housing facilities containing, in the aggregate, a minimum of 500 units ("Building 1" and "Building 2" respectively), containing approximately 565 parking spaces (in the aggregate) within Building 1 and/or Building 2 (the "Housing Parking Spaces"), with a publicly accessible pedestrian plaza transecting the Development Area between Building 1 and Building 2 (the "Mews" and, together with Building 1, Building 2 and the Housing Parking Spaces, collectively, the "Housing Development"); (ii) a minimum of 36,000 square feet of retail and restaurant space (the "Retail Facilities"); (iii) a minimum of 35,000 square feet of Class A office space (the "Office Facilities"); (iv) a hotel with a minimum of 100 hotel rooms (the "Hotel"); (v) a multi-level parking garage containing approximately 540 structured parking spaces in the aggregate (the "Parking Garage") and (vi) one (1) or more surface parking lots, containing a minimum of 245 parking spaces in the aggregate (the "Developer Parking Lot" or "Developer Parking Lots", and, together with the Housing Parking Spaces, collectively, the "Developer Parking Facilities" and, together with the Parking Garage, the "Parking Facilities"). The Housing Development, the Retail Facilities, the Office Facilities, the Hotel, the Parking Garage and the City Lot (as hereinafter defined) are

hereinafter collectively referred to as the "Project", all as more particularly set out on Exhibit B-1 and Exhibit B-2 attached hereto; and

WHEREAS, the Project may be developed in two (2) phases (each a "Phase"), with "Phase I" consisting of the Housing Development (including the Mews), the Retail Facilities, the Office Facilities, the Developer Parking Lots, and, to the extent the City Lot Option (hereinafter defined) is exercised by Developer pursuant to the City Lot Agreement (hereinafter defined), the City Lot (hereinafter defined), and "Phase II," if determined to be pursued by the Developer as herein set forth, consisting of the Hotel and the Parking Garage, all as more particularly set out on Exhibit B and Exhibit C attached hereto; and

WHEREAS, the total parking capacity of the Parking Facilities will contain up to 1,350 parking spaces in the aggregate, composed of approximately 565 parking spaces within Building 1 and Building 2, a minimum of 245 parking spaces within the Developer Parking Lots, and, if and to the extent the Parking Garage is constructed, approximately 540 parking spaces within the Parking Garage and; and

WHEREAS, the Parties acknowledge and agree that Developer is not obligated to construct Phase II or any portion thereof, and that the City is not obligated to enter into the Parking Garage Agreement (hereinafter defined) or to have any obligations referable to Phase II, unless the Phase II Conditions Precedent (hereinafter defined) as more particularly set forth herein;

WHEREAS, Developer and the City have determined that certain public infrastructure improvements are necessary within and around the Development Area to help alleviate and facilitate public flow and safety, which improvements include the rehabilitation of the public sidewalks/streetscapes along Clinton Avenue, Monroe Street and Holmes Avenue; construction of a new public two-lane connector road between Clinton Avenue and Holmes Avenue, including construction of sidewalks/streetscapes; construction of a new public two-lane connector road bisecting the Development Area from Pinhook Creek to Monroe Street, including construction of sidewalks/streetscapes; the revitalization of Pinhook Creek; the construction of a riverwalk along the east bank of Pinhook Creek; the expansion of public open space for the enjoyment of the general public; and the other public improvements more particularly described in Article IV of this Agreement and on Exhibit D hereto (collectively, the "Public Infrastructure Improvements");

WHEREAS, the Development Area is situated in an area highly suited for commercial, retail and related economic development, and the City presently lacks public parking facilities to service existing parking demand, including, without limitation, demand for parking incident to events at the Von Braun Center ("VBC") and other entertainment venues in the vicinity, as well as anticipated parking needs of the public around the Development Area, though adequate funding for the same is not included in the City's near or long term capital plans;

WHEREAS, it is estimated that the Parking Garage, if so built, and the parking made available under the City Lot Agreement, if so built, would (if constructed within the time parameters set forth in this Agreement) service a material portion of the public parking demand in the vicinity of the Development Area over the near and reasonably foreseeable future, and Developer has offered to lease to the City land within the Development Area (the "City Lot"") to be used as a City-managed surface parking lot for public use for a term of five (5) years at the rate

of $1.00 per square foot per year (the "City Lot Fee"), all as more particularly described and set forth herein and in the City Lot Agreement;

WHEREAS, the City has determined that it can help satisfy the public parking needs described above on a more efficient and less costly basis by leasing parking spaces within the Parking Garage (if Phase II is pursued and the Developer timely delivers the Phase II Certificate and the Parking Garage Agreement becomes operative) and land for the City Lot from Developer at the rates described in the Parking Agreements (hereinafter defined), as opposed to financing, designing, constructing, operating, insuring and maintaining a separate parking facility directly; and, further, that as anticipated development in the vicinity of the Development Area occurs, the cost and difficulty of providing sufficient public parking are likely to increase;

WHEREAS, the City has determined that if Developer builds the Hotel, there will be additional demand for parking in and around the Development Area, over and above the demand that will be existent prior to the construction of the Hotel, and the City has determined that it can satisfy these additional public parking needs on a more efficient and less costly basis by leasing spaces in the Parking Garage (if such Parking Garage is in fact built by Developer) from Developer at the rates described in the Parking Garage Agreement (as hereinafter defined) versus financing, designing, constructing, operating, insuring and maintaining a separate parking facility directly, and, further, that as anticipated development in the vicinity of the Development Area occurs, the cost and difficulty of providing sufficient public parking are likely to increase;

WHEREAS, if the Parking Garage is developed by Developer (the Parties acknowledging that certain conditions precedent exist to any obligation of the Developer to so provide the Parking Garage and to any obligation of the City under the Parking Garage Agreement or otherwise respecting Phase II or any infrastructure or capital improvements in connection therewith), the City will make payments to Developer for the use of spaces located within the Parking Garage, as provided and more particularly set forth and described in the Parking Garage Agreement;

WHEREAS, the Developer will develop, operate and maintain the Developer Parking;

WHEREAS, if Developer elects to construct the Parking Garage, Developer will develop, operate and maintain the Parking Garage and the City will make payments to the Developer for the use of spaces located within the Parking Garage and the land for the City Lot, as provided herein and in the Parking Agreements; and

WHEREAS, Developer may form an association among the owners of the Housing Development, the Retail Facilities, the Office Facilities, and the Hotel (if applicable) or a portion thereof, so that the costs of operation and maintenance of the Parking Garage are allocated among all users of the Parking Garage, excluding the City; however, if the Parking Garage is built by Developer, nothing shall relieve or otherwise limit the obligation of Developer to perform all operation, maintenance and similar obligations incident to the Parking Garage as described herein and in the Parking Garage Agreement;

WHEREAS, the City has further determined that the Development Area is situated in an area important for economic development and that the various Components of the Project will inure to the benefit of the City and its citizens by, among other things, (i) fostering expanded use

of the VBC as a venue for regional and national conferences and events, (ii) expanding the tax base of the City by attracting to the Development Area the above stated general commercial and residential activity and developments, (iii) expanding employment opportunities within and surrounding the Development Area, and (iv) enhancing the overall quality of life for the citizens of the City within and surrounding the Development Area; and

WHEREAS, the Parties acknowledge it is in their best interest and to their mutual benefit to work together towards the development of the various Components of Project elected to be built by Developer and the leasing or licensing of spaces within the Parking Garage by the City as outlined above, per the terms and conditions stated herein.

NOW THEREFORE, in consideration of the premises, the mutual covenants of the Parties herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree that the foregoing recitals or "Whereas" clauses, including all exhibits hereto, are hereby incorporated and made a part of this Agreement and hereby further agree as follows:

ARTICLE I
DEVELOPMENT OF THE PROJECT

1.1 General.

(a) Developer hereby covenants and agrees to construct and develop Phase I and agrees with the City that Phase I shall consist of (i) the Housing Development, which shall contain at least 500 multi-family units and the Mews, with each of Building 1 and Building 2 containing at least 200 multi-family units, (ii) the Retail Facilities, which shall contain at least 36,000 square feet of retail and/or restaurant space, (iii) the Office Facilities, which shall contain at least 35,000 square feet of Class A office space, (iv) the Housing Parking Spaces and the Developer Parking Lots, which will serve as parking facilities for the Housing Development, the Office Facilities and the Retail Facilities and will contain at least 810 spaces in the aggregate (with the Housing Parking Spaces to contain approximately 565 parking spaces and the Developer Parking Lots to contain approximately 245 parking spaces), and (vi) the Mews, as configured and as set forth on Exhibit G attached hereto. Notwithstanding anything contained in this Agreement to the contrary, the parties acknowledge and agree that, except as set forth in Section 1.2(b) below, Developer shall have no obligation to construct Phase II or any portion thereof.

(b) The Developer shall have no obligation to construct and develop Phase II, or to otherwise locate Phase II, or any portion thereof, within the Development Area, unless within five (5) years of the Effective Date (the "Phase II Certificate Deadline"), the Developer shall have delivered a written instrument to the City on letterhead of Developer, the form of which is attached as Exhibit K hereto (the "Phase II Certificate"), that Developer has determined in its sole discretion to construct and develop Phase II on the Development Site. Developer agrees to Complete Construction of the Components of Phase II within three (3) years of the date of the Phase II Certificate (the "Phase II Completion Deadline"). For the avoidance of doubt, the Developer acknowledges that, if the Developer fails to Complete Construction of the Components of Phase II on or before the Phase II Completion Deadline, the City shall have no obligations as set forth in this Agreement and the Parking Agreements for Phase II, to the extent such obligations are

expressly conditioned upon satisfaction of the Second Condition Precedent and completion of the Phase II components. For further clarification and the avoidance of doubt, Developer is under no obligation to Complete Construction of the Components of Phase II if the City fails to make timely payment of any of the installment of the Parking Fee pursuant to the terms of the Parking Garage Agreement and further, the Developer's time to Complete Construction of the Components of Phase II shall be tolled during any such delay in payment by the City.

(c) Phase II, if determined by the Developer to be constructed and developed as set forth in Section 1.1(b) of this Agreement, shall contain the Hotel and the Parking Garage. The Hotel shall contain at least 100 overnight rooms, along with associated parking in support of the Hotel, and shall be of convention-type quality or a boutique-style hotel. The construction and development of the Hotel may be accomplished by way of the sale or lease of land within the Development Area to a third-party hotel developer or a joint venture with a third-party hotel developer approved by the City in accordance with the provisions of Section 5.2 hereof, whereby such third-party hotel developer will be required to execute the Assumption Agreement set forth in Section 5.2 hereof pursuant to which it will assume the obligations of Developer hereunder to construct and develop the Hotel and the Parking Garage in Phase II and to comply with the relevant provisions of this Agreement applicable to the Hotel and the Parking Garage (including the provisions of this Section 1.1(c) as respects the number of overnight rooms and quality and style of the Hotel and Parking Garage). Upon such assumption, Developer will be relieved of its obligations hereunder to construct and develop the Hotel and Parking Garage.

It is contemplated that (i) Phase I will be generally configured as set forth on Exhibit B-1 and (ii) Phase II, if the applicable conditions set forth in Section 1.1(b) are satisfied, will be generally configured as set forth on Exhibit B-2. Provided that the requirements set forth in paragraph (a) of this Section 1.1 are satisfied, Developer may reconfigure the layout, location and configuration of the Components of Phase I of the Project (though in no event may Developer change the Components themselves or the minimum square footage amounts or minimum parking space amounts, as the case may be, for each Component); provided, that any such reconfiguration does not necessitate the City spending or incurring more than 110% of the cost of building and/or installing the Public Infrastructure Improvements in accordance with the configuration set forth on Exhibit D attached hereto. Developer agrees that Phase I of the Project shall be constructed in compliance with the Architectural Design Guidelines set forth on Exhibit H attached hereto.

(d) Developer covenants and agrees to Commence Construction (hereinafter defined) of Phase I on or before the dates set out on the construction schedule attached hereto as Exhibit E (the "Construction Schedule") (all such deadlines as shown on the Construction Schedule are hereinafter referred to individually as a "Commencement Deadline" and collectively as the "Commencement Deadlines").

(e) Developer covenants and agrees to have Completed Construction (hereinafter defined) of Phase I on or before the dates set out on the Construction Schedule (all such deadlines as shown on the Construction Schedule are hereinafter referred to individually as a "Completion Deadline" and collectively as the "Completion Deadlines").

(f) Each of the Commencement Deadlines, the Completion Deadlines, and the Phase II Completion Deadline are subject to extension due to a Delay Event as set forth in paragraph (g) of this Section 1.1.

(g) Furthermore, the Mayor of the City and the Director of Urban & Economic Development of the City, either one of whom alone may act, are each hereby authorized to agree to any extension(s) of the deadlines contemplated in paragraphs (b) or (d) of this Section 1.1.

(h) If, due to the occurrence of a condemnation or of a Force Majeure Event (collectively a "**Delay Event**") Developer is not able to Commence Construction of a particular Component of the Project by the applicable Commencement Deadline, or to Complete Construction of a particular Component of the Project by the applicable Completion Deadline, then (subject to the provisions of (ii) in this Section 1.1(h)) for each day of the Delay Event each said deadline shall be extended by one (1) day to address such condition before Developer shall be considered to have failed to satisfy such deadline; provided (i) within fifteen (15) days of the start of the Delay Event the Developer is claiming, the Developer shall have provided written notice to the City containing: (1) a description of the Delay Event; (2) an explanation of how the Developer anticipates such event will affect the Developer's ability to timely perform its construction obligations under this Agreement; (3) the actions the Developer plans to undertake to address the conditions caused by the Delay Event; and (4) an estimate of how long the Developer anticipates the Delay Event will delay its ability to Commence Construction or to Complete Construction, as the case may be, of the applicable Component of the Project; and (ii) in no event shall the applicable Commencement Deadline or Completion Deadline be extended by more than 180 days due to any Delay Event or series of Delay Events.

(i) As used in this Agreement, (i) "Commence Construction", "Commenced Construction" or "Commencing Construction", as respects any Component of the Project, shall be deemed to have occurred at such time as Developer has caused to be poured and completed the foundation and the horizontal portion of all footings of such Component; (ii) "Force Majeure Event" means and includes acts of the public enemy, acts of any government in either its sovereign or proprietary capacity (other than acts taken by the City in accordance with this Agreement), fires, floods, hurricanes, tornados and other acts of God, epidemics, quarantine restrictions, supply chain issues, freight embargoes, or unusually severe weather (not including normal seasonal inclement weather); and (iii) "Complete Construction", "Completed Construction" or "Completion of Construction", as respects any Component of the Project, shall mean that Developer has substantially completed such Component and has obtained a certificate of occupancy for such Component.

(j) The City covenants and agrees that the certificate of occupancy for any Component within the Project shall be issued in accordance with the customary rules and procedures generally applicable to similar construction projects within the City and, unless allowed by such customary rules and procedures, shall not be subject to or conditioned upon the construction and completion of another Component of the Project.

(k) Provided that the requirements set forth in paragraphs (a), (b) and (c) of this Section 1.1 are satisfied, nothing in this Agreement shall restrict Developer from combining the Phases or Components of the Project into mixed-use buildings and thereby satisfy the applicable Conditions

Precedent set forth in Article IV.

1.2 Parking Facilities.

(a) The Parking Garage (if required to build pursuant to this Agreement due to Developer's timely delivery of the Phase II Certificate), shall consist of at least 540 structured parking spaces and shall be constructed in accordance with all applicable City standards and shall contain such other features as more particularly described in the Parking Garage Agreement. The City shall have the right to review and approve (such approval not to be unreasonably withheld, conditioned or delayed) the plans and specifications for construction of the Parking Garage prior to Developer undertaking any site work or other work incident to site preparation for the Parking Garage. Once the plans and specifications for the Parking Garage are approved by the City, Developer shall not make any changes to the plans and specifications thereof without the prior written consent of the City, such consent to not be unreasonably withheld, delayed or denied. The Mayor of the City and the Director of Urban & Economic Development of the City, either one of whom alone may act, are each hereby authorized to approve the plans for the Parking Garage and any changes thereto by and on behalf of the City.

(b) Except as specifically provided herein or in the Parking Garage Agreement, the Parking Garage, if and to the extent built by Developer (without any obligation to do so), shall be designed, developed, constructed, maintained, repaired, insured and operated at the sole cost and expense of Developer.

(c) Developer shall construct the Housing Development Parking Facilities consisting of at least 565 spaces and the Developer Parking Lot consisting of at least 245 spaces. The total Developer Parking Facilities for the Phase I Component shall consist of at least 810 parking spaces in the aggregate.

(d) The design, development, construction, maintenance, repair, insurance and operation of the City Lot shall be the sole cost and expense of the City.

1.3 Project Coordinators. To the extent being built, the City and Developer shall each designate one (1) or more project coordinators to monitor and coordinate the design, permitting and construction of the Parking Garage and the City Lot.

1.4 Approvals. The City agrees to use commercially reasonable efforts to facilitate the processing of City approvals for the construction and development of each Phase of the Project, it being the understanding of the Parties hereto that nothing in this Section 1.4 or elsewhere in this Agreement is, or shall be deemed to be, an agreement of the City to waive any City approvals required for the Project.

1.5 Construction Activities. 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 Developer's development plan or any plans and specifications for the Project or any Component thereof shall not be deemed an approval or waiver

of any compliance by Developer or such development plan or such plans and specifications with all Applicable Laws.

1.6 Ownership of Development Area. As of the date hereof, Developer has acquired fee simple title to the Development Area. Developer covenants and agrees that with respect to the portion of the Development Area on which Phase I is to be constructed (the "Phase I Land"), all improvements thereon shall be owned solely and exclusively by and in the name of Developer or an entity that would be a permitted assignee of Developer's interest in this Agreement as described in Section 5.2 continuously and without interruption until such time as Developer shall have caused Completion of Construction of Phase I. The parties acknowledge that if Developer elects in its sole discretion to issue the Phase II Certificate (thereby evidencing Developer's determination and agreement to build and construct the Hotel and the Parking Garage) and Completes Construction of the Hotel and the Parking Garage, the Parking Garage may be in the name of the association as described in Section 5.2. Notwithstanding the foregoing or anything in this Agreement to the contrary, nothing contained herein shall prohibit Developer from: (a) establishing one (1) or more condominium regimes upon the Development Area; (b) selling all or any part of Phase I of the Project upon Completion of Construction and satisfaction of Developer's obligations hereunder with respect to all Components of Phase I; (c) subdividing the Development Area; (d) selling any portion of the Development Area other than the Phase I Land (in which case, to the extent this Agreement and the Parking Agreement and/or the City Lot Agreement are in effect, the Parties agree to modify this Agreement in order to remove the provisions relating to the applicable Parking Agreement(s) to the extent such portion of the Development Area is so being sold); (e) establishing a ground lease and leasehold structure for the express purpose of (i) capitalizing the Project and/or (ii) involving the Downtown Redevelopment Authority in the Project (as contemplated by Section 4.7 of this Agreement) so long as the Components of the Project, as described in Section 1.1, are not altered, modified or changed; provided, that no such sale, ground lease or leasehold structure shall relieve Developer of any obligations hereunder with respect to the remainder of the Project; and/or (f) encumbering the Development Area with any mortgage delivered to any lender ("Lender") providing financing for the Project or applicable Components thereof; provided however, that in no event shall the City be obligated or otherwise requested (i) to subordinate the Parking Agreements or the City Lot to any such Mortgage, or (ii) to permit any Lender or any transferee of any Lender to terminate or otherwise limit or restrict the rights of the City under the Parking Agreements, whether expressly, by implication or operation of law, beyond the rights of the landlord under the Parking Agreements.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of the City.

(a) The City is a municipal corporation under the laws of the State of Alabama, and the execution, delivery and performance of this Agreement have been authorized by the governing body of the City.

(b) Neither the execution and delivery of this Agreement, nor the performance hereof, by the City requires any consent of, filing with or approval of, or notice to, or hearing with, any person or entity, and any governmental or quasi-governmental authority, whether domestic or

foreign, which has not been obtained.

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

(d) There is not now pending nor, to the knowledge of the City, threatened, any litigation affecting the City which questions (i) the validity of the City, (ii) the officers of the City or the manner in which any were appointed or elected to such positions, or (iii) the subject matter of this Agreement.

2.2 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 Delaware, 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 or other owner of Developer, as well as any other affiliate of Developer, or any governmental or quasi-governmental authority (whether domestic or foreign), which has not been obtained.

(c) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by Developer, to the knowledge of Developer, violates, constitutes a default under or a breach of (i) Developer's charter, articles of incorporation, bylaws, limited liability company agreement, operating agreement or other organizational documents, as appropriate, (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, rule, 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 (i) the validity or organization of Developer, (ii) the officers of Developer or the manner in which any were appointed or elected to such positions, or (iii) the subject matter of this Agreement.

(e) Except as otherwise allowed in Section 1.6, Developer and/or its affiliates are, or will be, the owner and holder of fee simple title to the Development Area.

ARTICLE III
PARKING AGREEMENTS

3.1 General. The Parties hereby agree that (i) that certain Amended and Restated Parking Agreement dated July 28, 2022 among Original Developer and City, as amended by First Amendment to Amended and Restated Parking Agreement dated January 24, 2023 among Original Developer and City and (ii) that certain Parking Agreement (Surface Parking Lot) dated as of June

10, 2021 among Original Developer and City are hereby terminated and are of no further force and effect. If, and only if, the Second Condition Precedent is satisfied, Developer will lease to the City, and the City will lease from Developer, at least 400 structured parking spaces within the Parking Garage (collectively, the "City Garage Spaces") pursuant to the terms and conditions set forth in a Parking Garage Agreement (the "Parking Garage Agreement") to be entered into by City and Developer, substantially in the form attached hereto as Exhibit L. Anything in this Agreement to the contrary notwithstanding, whether express or implied, Developer shall have no obligation to construct or develop the Parking Garage, and the City shall have no obligation to enter into the Parking Garage Agreement, unless the Second Condition Precedent is satisfied. In addition, pursuant to that certain Parking Agreement (City Lot) being entered into between Developer and the City substantially in the form of attached hereto as Exhibit M (the "City Lot Agreement"), Developer has an option to lease to the City (the "City Lot Option") the real property described in the City Lot Agreement to be used by the City for public surface parking spaces on the terms and conditions set forth in the City Lot Agreement (the Parking Garage Agreement and the City Lot Agreement are hereinafter collectively referred to as the "Parking Agreements").

ARTICLE IV
PUBLIC INFRASTRUCTURE IMPROVEMENTS

4.1 Definitions. The following definitions shall be applicable to this Article IV:

"Clinton Streetscape" means public sidewalk and streetscape infrastructure improvements, including, but not limited to, on-street parking on Clinton Avenue.

"First Condition Precedent" means Developer having Commenced Construction of the Housing Development and the Retail Facilities and the Office Facilities.

"Holmes Streetscape" means public sidewalk and streetscape infrastructure improvements, including, but not limited to, on-street parking on Holmes Avenue.

"Monroe Streetscape" means public sidewalk and streetscape infrastructure improvements, including, but not limited to, on-street parking on Monroe Street.

"New Roads" means two (2) new two-lane connector roads, the first between Clinton Avenue and Holmes Avenue, including horizontal curbside parking and public sidewalks and Streetscapes, and the second bisecting the Development Area from Pinhook Creek to Monroe Street, including horizontal curbside parking and public sidewalks and Streetscapes. "New Roads" include (i) base level, (ii) asphalt paving, (iii) curbs and gutters, (iv) storm drainage infrastructure, including stormwater quality infrastructure (if recommended by the civil engineer retained by the City for the Project), and (v) pedestrian crossing modifications and related infrastructure.

"Pollard Vacation" means vacation of Pollard Street and Pollard Circle and abandonment of any public utility easements located in or adjacent thereto, as provided in Section 4.4(e).

"Riverwalk" means completion of the revitalization of Pinhook Creek along the western boundary of the Project, including construction of a "Riverwalk" promenade along the eastern boundary of the creek and immediately adjacent to the New Roads, in accordance with the Riverwalk Plans and Specifications.

"Riverwalk Plans and Specifications" means the plans and specifications as laid out in the BUILD/RAISE Grant submitted by the City to the United States Department of Transportation in 2020 and the Riverwalk design guidelines included herein as Exhibit F.

"Second Condition Precedent" means (i) Completion of Construction of Phase I has occurred, **and** (ii) within at least eighteen (18) months of delivering the Phase II Certificate, Developer has Commenced Construction of both the Hotel and the Parking Garage.

"Sewer Installation" means the installation of municipal waste and/or overflow sewers below the surface of the New Roads as designed by the civil engineer retained by the City for the Project.

"Streetscape(s)" means the area from the back of the curb to the edge of the public right-of-way and will include: (i) sidewalks, (ii) landscaping, (iii) hardscapes, (iv) irrigation systems; and (v) hardware.

"Utility Delivery" means the public utility improvements to areas of the Development Area (or within the distance of certain areas of the Development Area) mutually agreeable to Developer and the City, necessary for delivery of public utilities to the Components that Developer is obligated hereunder to build, in stages, as provided in Section 4.3, such public utilities consisting of and including solely of capital improvements for: (i) street lighting, and (ii) water, gas, electric and sanitary sewer service.

"Utility Pole Relocation" means relocation of existing utility poles and electrical wires located at the western edge of the Development Area to a location outside the Development Area.

4.2 General. Upon Developer's timely satisfaction of the First Condition Precedent and any further Conditions Precedent (as defined in Section 4.3 below), and conditioned upon timely delivery of the Phase II Certificate respecting any of the following that are incident to Phase II, the City agrees to cause each of the following Public Infrastructure Improvements to be made, whose construction shall be commenced and be timely completed in accordance with Section 4.4, the Construction Schedule and the other provisions of this Agreement:

(a) public sidewalk and Streetscape infrastructure improvements, including, but not limited to, the Clinton Streetscape, the Monroe Streetscape and the Holmes Streetscape;

(b) the New Roads;

(c) the Riverwalk;

(d) the Utility Pole Relocation;

(e) the Sewer Installation; and

(f) Utility Delivery.

4.3 Conditions Precedent. The City's obligation to commence and complete the various components of Public Infrastructure Improvements is conditioned upon (i) Developer being in

compliance with its obligations under this Agreement, and (ii) satisfaction of the following conditions precedent (each, a "Condition Precedent" and collectively, the "Conditions Precedent"):

(a) [Intentionally Deleted];

(b) Upon satisfaction of the First Condition Precedent, the City shall commence and complete the Clinton Streetscape, the Monroe Streetscape, the New Roads, Sewer Installation and Utility Delivery, each in accordance with the applicable provisions and conditions precedent set forth in Section 4.4; provided that the City's obligation to start any work on Utility Delivery for each of Building 1 and Building 2 shall commence for such building only after Developer has Commenced Construction of such building and has submitted reasonable evidence to the City[1] demonstrating satisfaction of the same. For clarity, Utility Delivery for Building 1 will not commence until Developer has Commenced Construction of Building 1 and submitted reasonable evidence to the City demonstrating satisfaction of the same, and Utility Delivery for Building 2 will not commence until Developer has Commenced Construction of Building 2 and submitted reasonable evidence to the City demonstrating satisfaction of the same;

(c) Upon Developer's timely satisfaction of the Second Condition Precedent, the City shall commence work and complete on Utility Delivery for the Hotel and for the Parking Garage in accordance with the applicable provisions of Section 4.4;

(d) Upon Developer's timely satisfaction of the Second Condition Precedent, the City shall commence and complete the Holmes Streetscape in accordance with the applicable provisions of Section 4.4;

(e) Upon Developer having (i) timely Completed Construction of each Component of Phase I, (ii) timely delivered the Phase II Certificate to the City, and (iii) timely Completed Construction of each Component of Phase II, the City shall (1) commence and complete the Utility Pole Relocation in accordance with the applicable provisions of Section 4.4, and (2) commence and complete the Riverwalk in accordance with the applicable provisions of Section 4.4. For the avoidance of doubt, if the Developer does not elect to construct and develop Phase II, or if the Developer elects to construct and develop Phase II but fails to Complete Construction of Phase II by the Phase II Completion Deadline, then the City may, but shall have no obligation under this Agreement to, develop, construct or otherwise deliver or perform the Riverwalk or the Utility Pole Relocation.

4.4 Plans and Specifications; Construction.

(a) Upon Developer's timely satisfaction of the First Condition Precedent and having completed mass grading of the Development Area, the City shall cause to be prepared on a timely basis, not to exceed three (3) months, at its sole cost and expense, plans, bid quantities and specifications for the Clinton Streetscape, the Monroe Streetscape and the New Roads. The Parties will mutually and reasonably agree upon the design components for the Clinton Streetscape, the

[1] City agrees that photographs of the foundation/footings and a certification from Developer shall be reasonable evidence that Developer has Commenced Construction.

Monroe Streetscape and the Streetscapes for the New Roads;

(b) Upon Developer having timely satisfied the First Condition Precedent and having completed mass grading of the Development Area, the City shall cause to be prepared on a timely basis not to exceed three (3) months, at City's sole cost and expense, plans, bid quantities and specifications for (1) Utility Delivery for the Housing Development, (2) Utility Delivery for the Office Facilities, and (3) Utility Delivery for the Retail Facilities;

(c) Upon satisfaction of the Second Condition Precedent, the City shall cause to be prepared on a timely basis not to exceed three (3) months, at City's sole cost and expense, plans, bid quantities and specifications for Utility Delivery for the Hotel and the Parking Garage;

(d) Upon satisfaction of the Second Condition Precedent, the City shall cause to be prepared on a timely basis not to exceed three (3) months, at City's sole cost and expense, plans, bid quantities and specifications for the Holmes Streetscape; and

(e) The Parties acknowledge that the Riverwalk Plans and Specifications have been completed and are approved by the Parties As set forth in Section 4.3(e). Upon Developer having (i) timely Completed Construction of each Component of Phase I and (ii) timely Completed Construction of Phase II, the City will work in good faith (i) to commence construction of the Riverwalk in accordance with the Riverwalk Plans and Specifications within sixty (60) days after Developer has timely satisfied the foregoing conditions, and (ii) to complete the Riverwalk within twenty-four (24) months after commencement thereof.

(f) Regarding the Streetscapes, the plans for a particular Streetscape shall include, at a minimum, features such as lampposts, trees and sidewalks that are consistent with Developer's design plans for the Project and the Mews (the "Preliminary Streetscapes Plans and Specifications"). The City shall submit Preliminary Streetscapes Plans and Specifications for review by Developer within two (2) months of Developer having satisfied the applicable Condition Precedent to ensure a coordinated effort for safe public access to the Development Area and surrounding public venues. If the Preliminary Streetscapes Plans and Specifications are not acceptable to Developer, Developer shall notify the City in writing (an "Objection Notice") of those matters or items that are in conflict with the Project's overall concept and the ability of the proposed improvements to provide adequate public access to the Project within twenty (20) days of Developer's receipt of the Preliminary Streetscapes Plans and Specifications. Within a reasonable time after delivery of the Objection Notice, Developer shall revise and modify the Preliminary Streetscapes Plans and Specifications, at the sole cost and expense of Developer, and then submit the same to the City for approval. Developer and the City shall continue the forgoing process until such time as mutually agreeable, definitive plans and specifications for the Streetscapes (the "Streetscapes Plans and Specifications") are agreed upon between the Parties. The Parties shall work in good faith to cause the Streetscapes Plans and Specifications to be completed by no later than three (3) months after completion of the applicable Condition Precedent.

The City will work in good faith to commence construction of each Streetscape within sixty (60) days after the completion of the applicable conditions as hereinabove set forth, and to complete such Streetscape within twelve (12) months after commencement of construction thereof.

(g) Regarding the New Roads, the City shall cause to be prepared, at its sole cost and expense, plans, bid quantities and specifications for construction of the New Roads ("New Roads Plans and Specifications"). The New Roads Plans and Specifications shall be consistent with two-lane thoroughfares in Downtown Huntsville and shall incorporate curbside parking as and where appropriate.

The City will work in good faith (i) to cause the New Roads Plans and Specifications to be completed by no later than three (3) months after Developer has timely satisfied the First Condition Precedent and having completed mass grading of the Development Area, (ii) to commence construction of the New Roads within sixty (60) days after the New Road Plans and Specifications are completed, and (iii) to complete the New Roads within twelve (12) months after commencement of construction thereof.

(h) The City has vacated the public rights of way located in the Development Area known as Pollard Circle as of the date hereof and the City shall also cause Huntsville Utilities to vacate any public utility easements located in or adjacent to said rights no later than May 1, 2024. The parties agree to work together to take all actions necessary to cause such vacations to occur. Developer agrees to provide any required utility and drainage easement(s) necessary for the removal/relocation of any existing public utility infrastructure at no cost to the City or Huntsville Utilities. The Developer shall not perform any demolition of any existing public utility infrastructure in the Development Area without the prior written consent of the City and Huntsville Utilities.

(i) Within sixty (60) days of Developer having timely satisfied the First Condition Precedent, the City shall instruct and shall cause Huntsville Utilities to start the performance of the Utility Delivery work (including the relocation of existing utilities necessary, with exception of the Utility Pole Relocation) respecting gas, electric and water service for the Housing Development, the Retail Facilities and the Office Facilities, and the City shall start the performance of the Utility Delivery work respecting sewer service for the Housing Development, the Retail Facilities and the Office Facilities. For clarity, once Developer has Commenced Construction for Building 1, the City shall instruct Huntsville Utilities to commence work on Utility Delivery respecting gas, electric and water service for Building 1 (and the City shall commence work on Utility Delivery respecting sewer service for Building 1), and once Developer has Commenced Construction of Building 2, the City shall instruct Huntsville Utilities to commence work on Utility Delivery respecting gas, electric and water service for Building 2 (and the City shall commence work on Utility Delivery respecting sewer service for Building 2). All cost and expense associated with the installation of the Utility Delivery shall be borne by Huntsville Utilities or the City.

(j) Within sixty (60) days after the Second Condition Precedent is satisfied, the City shall instruct and, at its sole cost and expense, shall cause Huntsville Utilities to commence work on Utility Delivery respecting gas, electric and water service for the Components included in Phase II, and the City shall commence work on Utility Delivery respecting sewer service for the Components included in Phase II. Within sixty (60) days after Developer having (i) timely Completed Construction of each Component of Phase I, (ii) timely delivered the Phase II Certificate to the City, and (iii) timely Completed Construction of Phase II, the City shall commence and complete the Utility Pole Relocation

(k) The Parties confirm and acknowledge that Phase II (i.e. the Hotel and the Parking Garage Components of Phase II) is an elective and optional portion of the Project by Developer, that Phase II is not required or mandated hereunder to be constructed by Developer, that Phase II shall only be required to be built by Developer if the Phase II Conditions Precedent are satisfied and that the City shall have no obligations under this Agreement whatsoever respecting Utility Delivery and the other Public Infrastructure Improvements for Phase II, or any Components thereof, unless the Phase II Conditions Precedent are satisfied and no Event of Default has occurred that is continuing.

4.5 Bidding of Infrastructure Improvements.

(a) Within respect to the various components of the Public Infrastructure Improvements, within five (5) business days of the completion of the plans and specifications for such component, the City shall begin the "bidding process" and solicit bids from qualified contractors pursuant to Title 39 of the Code of Alabama 1975, as amended, for construction of the applicable component of the Public Infrastructure Improvements.

(b) Such bid package (the "Bidding Process Commencement Documents") shall (i) be issued for a unit price contract; (ii) contain a completion date reasonably acceptable to the City and Developer ("Completion Date"); and (iii) contain customary penalties for failure of the contractor to meet such Completion Date. The City, with reasonable and necessary coordination and cooperation from Developer, which Developer hereby covenants and agrees to provide, shall manage the bidding process with the intention that the bidding process shall be concluded and contracts for construction of the Public Infrastructure Improvements shall be ready to be executed by City and the selected bidder not more than sixty (60) days following the date the City has completed the Bidding Process Commencement Documents. The City shall not be obligated to award a bid until all items related to the Bidding Process Commencement Documents have been completed.

(c) The City shall have the power to select and award the bids for construction of the Public Infrastructure Improvements in the City's sole discretion pursuant to Title 39 of the Code of Alabama 1975, as amended.

(d) The City shall pay all costs incurred by the City in constructing the Public Infrastructure Improvements.

(e) The City shall be responsible for timely constructing, installing, operating and maintaining all Public Infrastructure Improvements.

4.6 Rights of Way and Easements. Developer agrees to grant and convey to the City, at no cost to the City or to Huntsville Utilities, as the case may be, any rights of way and/or easements (including, but not limited to, access easements, utility easements and temporary construction easements) over, through and/or under the Development Area that may be necessary or useful for the City to complete or cause the completion of Utility Delivery and the other Public Infrastructure Improvements.

4.7 Downtown Redevelopment Authority. If requested by Developer, the City agrees to support the Developer's application to the City of Huntsville Downtown Redevelopment

Authority (the "DRA") to cause any eligible Component of the Project to be constructed through involvement of the DRA, under and pursuant to documentation between Developer and the DRA customarily used by the DRA for similar projects that will result in the exemption of applicable sales tax for materials used in such Component; provided that Developer shall be responsible for all construction costs relating thereto and nothing contained herein shall impose any financial obligation on the DRA.

4.8 Quigley Entertainment District. By applicable resolution, the City has expanded the Quigley Entertainment District so that the Development Area has been included within the Quigley Entertainment District boundaries and all the benefits associated with the Quigley Entertainment Districted are afforded to the owners, residents, tenants and visitors of the Development Area and the Project.

ARTICLE V
TERM AND TERMINATION; ASSIGNMENT

5.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue in effect until the obligations of the Parties required under this Agreement have been fully performed and discharged with respect to each Phase of the Project, or such earlier time as this Agreement is terminated by all Parties in accordance with the terms hereof.

5.2 Restrictions on Assignment; Conditions Precedent. Except as otherwise expressly set forth herein, Developer shall have the right, in whole or in part, to assign, or otherwise transfer this Agreement, provided each of the following conditions precedent have been satisfied:

(a) Developer shall be in compliance with all of its obligations hereunder as of the effective date of the proposed assignment or transfer, and

(b) The proposed assignee or transferee shall be subject to the City's prior approval, such approval to be given by the Mayor of the City or the Director of Urban & Economic Development of the City, either one of whom alone may act, each being hereby authorized to act by and on behalf of the City for purposes of such approval; provided, (i) such approval shall not be unreasonably withheld, conditioned, or delayed, and (ii) the proposed use of the Development Area or portion thereof by the assignee or transferee is consistent with the development plan and the development goals of this Agreement.. Notwithstanding the foregoing or anything else contained in this Agreement, the City's consent shall be given if (1) (i) the proposed assignee or transferee is a direct or indirect wholly-owned subsidiary or affiliate of Developer, or an entity controlled by Developer, or (ii) the assignee is experienced in the construction of developments similar to the applicable Component of the Project, and has demonstrated to the reasonable satisfaction of the City the ability to complete and manage such developments, and has a net worth equal to or greater than Developer or (iii) the transfer is in connection with a foreclosure, deed in lieu of foreclosure or other method whereby a Lender (or any parent, affiliate, subsidiary, designee or nominee of such Lender, as may be applicable) acquires title to the Development Area or a portion thereof or in connection with a foreclosure sale whereby a purchaser acquires title to the Development Area or a portion thereof and no such approval shall be required for any transfer from a Lender (or any parent, affiliate, subsidiary, designee or nominee of such Lender), and (2)

such assignee assumes in writing all of Developer's obligations hereunder prior to the effective date of the proposed assignment or transfer, and Developer shall have delivered to the City an assignment and assumption agreement ("Assumption Agreement") executed and acknowledged by the assignee or transferee, including provisions regarding: (a) the rights and interest proposed to be assigned or transferred to the proposed assignee or transferee; (b) the obligations of Developer under this Agreement that the proposed assignee or transferee will assume; and (c) the acknowledgment that such assignee or transferee has reviewed and agrees to be bound by this Agreement. The Assumption Agreement shall also include the name, form of entity and address of the proposed assignee or transferee, and shall provide that the assignee or transferee assumes the obligations to be assumed by the assignee or transferee in connection with the proposed transfer.

Notwithstanding anything herein to the contrary, Developer may collaterally assign Developer's interest in this Agreement to secure any loan provided by a Lender, without having to obtain the consent of the City, provided that simultaneously with the closing of the transaction whereby the Lender obtains such collateral assignment, Developer and City shall execute and deliver to the Lender a Collateral Assignment of Development Agreement substantially in the form attached hereto as Exhibit J (the "Collateral Assignment"). The Collateral Assignment shall include language requiring the Lender (and any purchaser that acquires the Project from Lender after foreclosure or deed in lieu of foreclosure) to assume in writing all obligations of Developer under this Agreement on and after the date Lender or such other purchaser acquires Developer's interest in the Project. The Developer and City shall deliver a new Collateral Assignment to any new Lender or assignee of Lender's rights to such loan.

Further, notwithstanding anything herein to the contrary, Developer may form a condominium or owner's association among the owners of the Housing Development, the Retail Facilities, the Office Facilities, and the Hotel (if and to the extent the same is constructed), so that the costs of operation and maintenance of the Parking Facilities are allocated among all users of the Parking Facilities, excluding the City.

All other purported assignments, transfers, encumbrances or hypothecations of this Agreement or any of the rights or obligations hereunder in violation of this Section 5.2 above shall be null and void and of no force or effect.

ARTICLE VI
EVENTS OF DEFAULT AND REMEDIES

6.1 Event of Default by the 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 affected 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 sixty (60) days; or

(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 thirty (30) calendar days after written notice thereof from Developer, unless (A) Developer shall agree in writing to an extension of such period prior to its expiration, or (B) during such thirty (30) day period or any extension thereof, the City has commenced and is diligently pursuing appropriate corrective action.

(b) If a City Event of Default exists, the sole and exclusive remedies of the Developer shall be seeking specific performance or mandamus. The Developer hereby waives and shall not be entitled to any other damages whatsoever including, without limitation, special, punitive, incidental or consequential damages, whether arising at law or in equity.

(c) If a City Event of Default exists, any of Developer's Construction Commencement or Construction Completion dates subsequent to said City Event of Default, shall be tolled on a day for day basis until such City Event of Default has been cured.

6.2 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 affected 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, Developer is dissolved or liquidated, or the filing by Developer of a voluntary petition in bankruptcy, or Developer 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 sixty (60) days; or

(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 thirty (30) calendar 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, or (B) during such thirty (30) day period or any extension thereof, Developer has commenced and is diligently pursuing appropriate

corrective action.

(b) 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. City hereby waives and shall not be entitled to and special, punitive, incidental or consequential damages, whether arising at law or in equity.

6.3 Remedies Subject to Applicable Law. All rights, remedies and powers provided in this Article VI 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 VI 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 VII
NOTICES

7.1 Delivery of Notices. All notices, statements, demands, consents and other communications ("Notices") required or permitted to be given by either Party to the other 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 7.2; 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 five (5) calendar days' prior written notice:

If to the City:

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

If to Developer:

c/o Essex Capital
445 Park Avenue
New York, NY 10022
Facsimile: (212) 888-0220
Email: mbr@essexcapital.com

c/o Silverstein Properties, LLC

7 World Trade Center
250 Greenwich Street, 38th Floor
New York, New York 10007
Attn: Chief Executive Officer and General Counsel
Email: mburger@silvprop.com and
npazich@silvprop.com

with copies to:

Duane Morris, LLP
Attention: Brad A. Molotsky, Esquire
1940 E. Route 70
Cherry Hill, NJ 08003
Email: bamolotsky@duanemorris.com

Adler & Stachenfeld LLP
555 Madison Avenue, 6th Floor
New York, New York 10022
Attn: Terri L. Adler, Esq. and File Manager
File No.: 4213.0008
Email: tadler@adstach.com

7.2 Methods of Delivery. 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 (or electronic mail if to Developer) 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.

ARTICLE VIII
MISCELLANEOUS

8.1 Negation of Partnership. The Parties specifically acknowledge that neither of the Parties is acting as the agent of the other 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 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 assignee or transferee pursuant to Section 5.2; and nothing in this Agreement shall limit or waive any rights either of the Parties may have or acquire against any third person with respect to the terms, covenants or conditions of this Agreement.

8.2 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any of the real property described or referred to herein, or any buildings or improvements constructed thereon, to the general public, for the general public, or for any public

use or purpose whatsoever.

8.3 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.

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

8.5 Amendment. Except as expressly provided in this Agreement, this Agreement may be modified or amended only by a written instrument, executed by Developer and City.

8.6 Entire Agreement. This written 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.

8.7 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.

8.8 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.

8.9 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.

8.10 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.

8.11 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.

8.12 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 waiver or limit the need for such consent in any other or subsequent instance.

8.13 Assignment and Assumption. Original Developer hereby sells, assigns, conveys, transfers and sets over to Developer all of Original Developer's interests, rights, obligations and liabilities in and to this Agreement and Developer hereby accepts assignment of this Agreement and assumes and agrees to observe and perform all of the duties, obligations, terms, provisions and covenants of this Agreement. Original Developer is executing this Agreement for the sole purpose of effectuating the assignment of its interest in this Agreement and the termination of the agreements described in Section 3.1 hereof. In no event shall Original Developer have any rights or obligations under this Agreement from and after the Effective Date.

8.14 Amendment and Restatement. This Agreement is an amendment and restatement, in its entirety, of the First Restated Development Agreement, and all references to the First Restated Development Agreement shall be deemed to be references to this Agreement.

8.15 Estoppel Certificate. The Developer and City shall each, without charge, at any time and from time to time hereafter within a reasonable period of time after written request of the other, certify by written instrument duly executed and acknowledged to the Lender (i) as to whether this Development Agreement or the Parking Agreements have been supplemented or amended, and if so, providing a copy of such supplement or amendment; and (ii) as to the validity and force and effect of this Development Agreement and the Parking Agreements and whether, to the actual knowledge of such Party, an event of default exists thereunder.

8.16 Memorandum of Agreement. Developer and City shall execute, for purposes of recordation in the appropriate real property records, a memorandum of this Agreement in the form attached hereto as Exhibit M.

[SIGNATURE PAGE FOLLOWS]

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

CITY OF HUNTSVILLE

By:______________________________
Mayor

ROCKET DEVELOPMENT PARTNERS LLC, a New York limited liability company

By: ______________________________

Name:_____________________________

Its: ______________________________

HUNTSVILLE PHASE I QOZB LLC
a Delaware limited liability company

By: ______________________________

Name:_____________________________

Its: ______________________________

FRONT ROW HUNTSVILLE OWNER, LLC
a Delaware limited liability company

By: ______________________________

Name:_____________________________

Its Authorized Signatory

EXHIBIT A

DEVELOPMENT AREA

EXHIBIT B-1

LOCATION OF PHASE I PROJECT IMPROVEMENTS

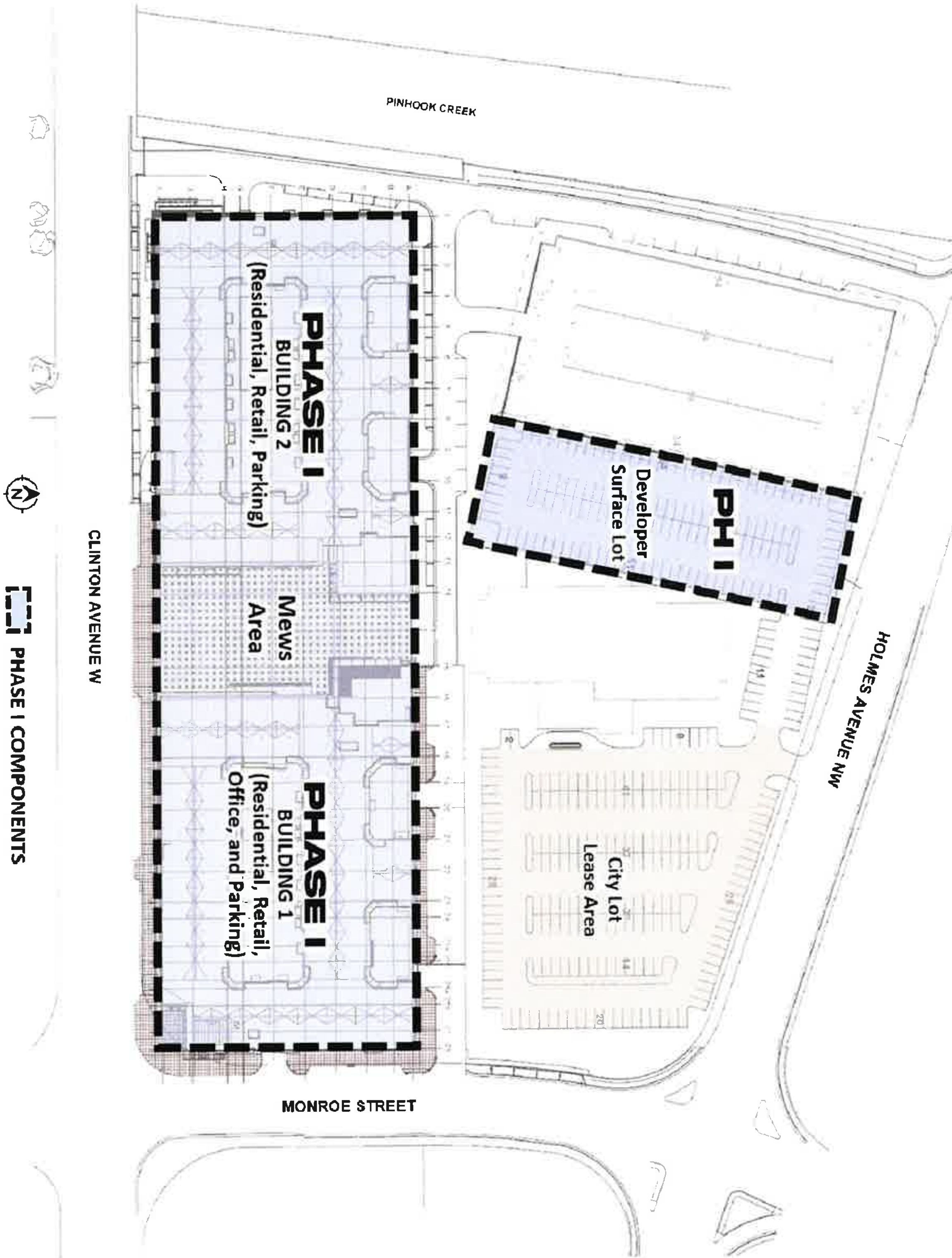


EXHIBIT B-2

LOCATION OF PHASE II PROJECT IMPROVEMENTS

EXHIBIT C

PHASE I AND PHASE II OF THE PROJECT

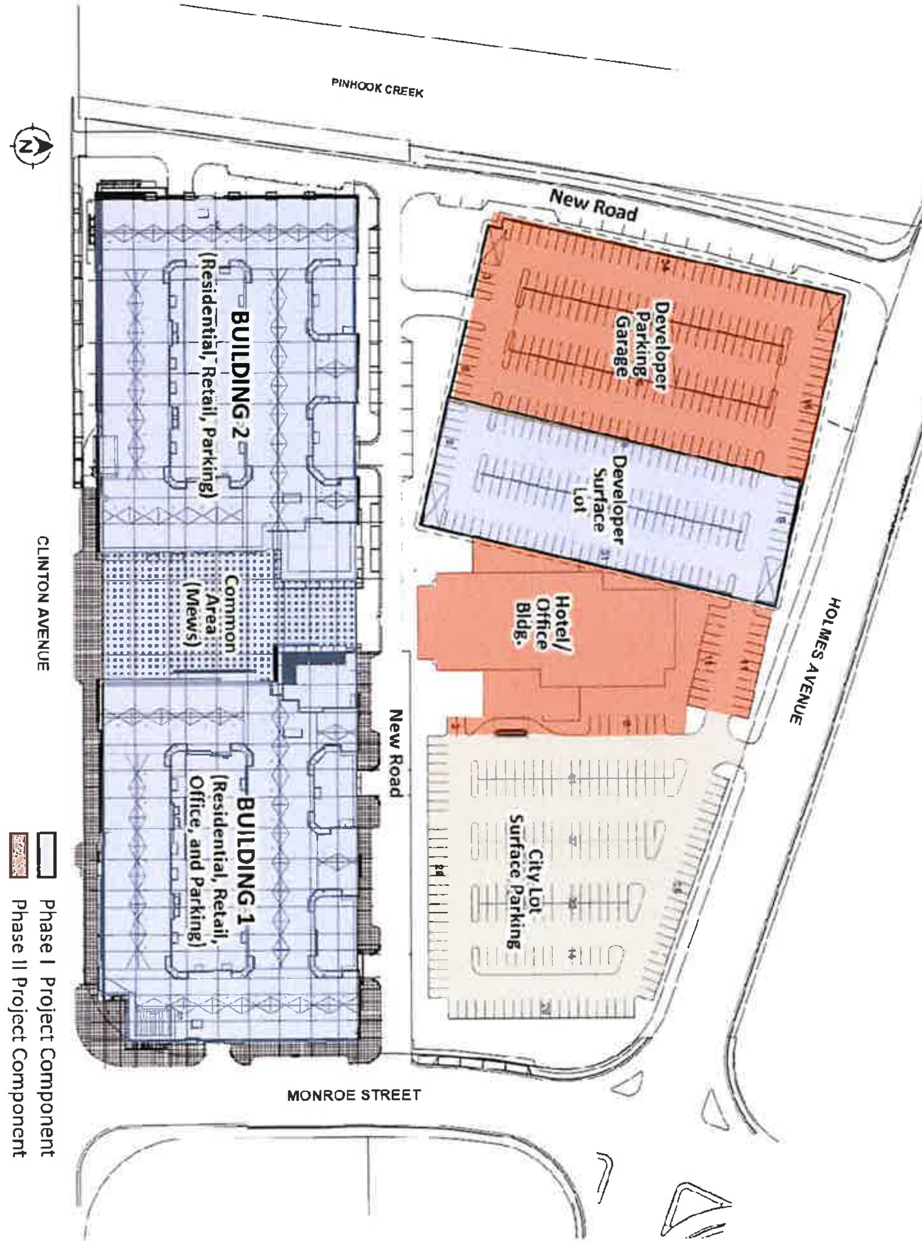
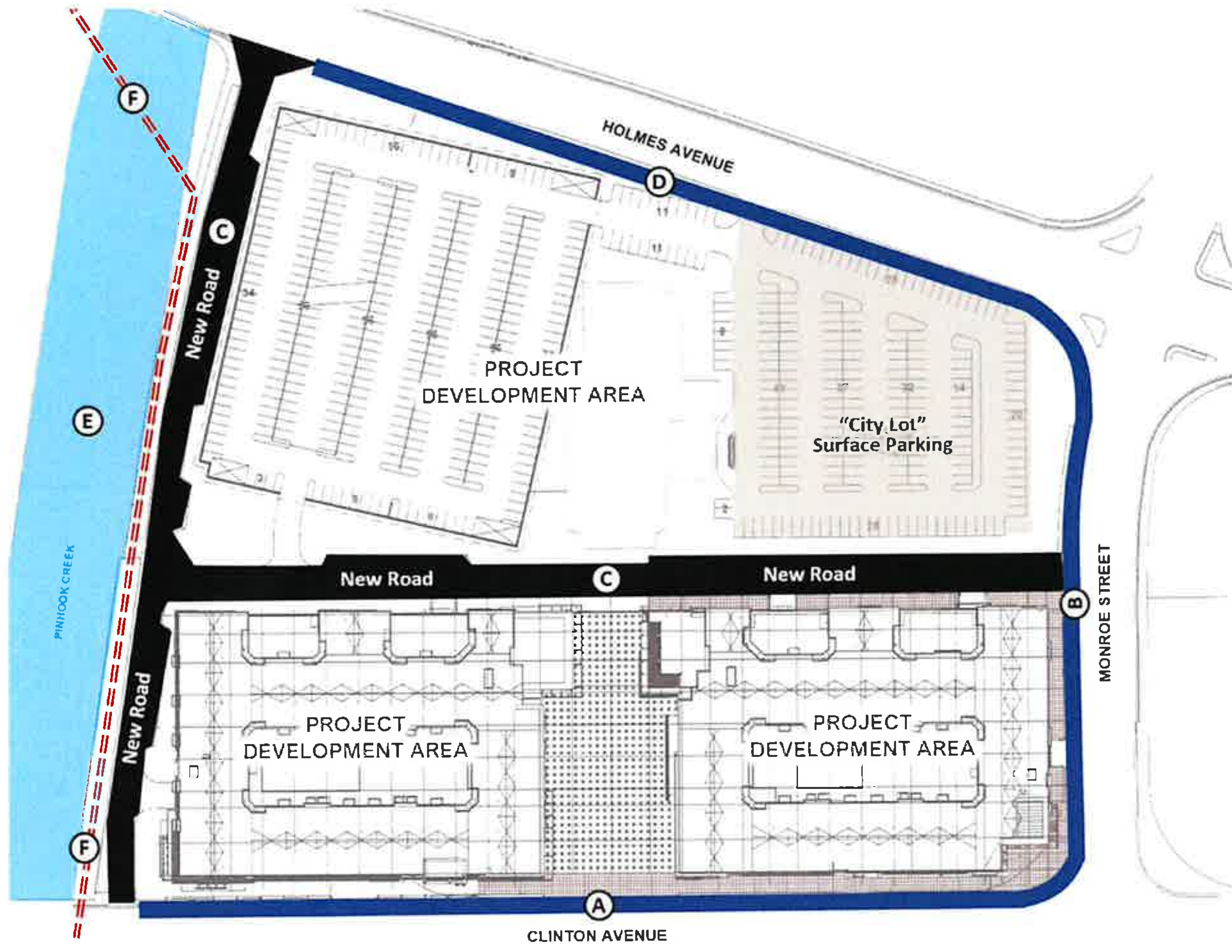


EXHIBIT D

PUBLIC INFRASTRUCTURE IMPROVEMENTS[2]



Public Infrastructure Improvement	Condition Precedent
A. Clinton Avenue Streetscape	First Condition Precedent
B. Monroe Avenue Streetscape	First Condition Precedent
C. New Public Roads	First Condition Precedent
D. Holmes Avenue Streetscape	Second Condition Precedent
E. Riverwalk Improvements	Completion of Phase I and Phase II Components
F. Utility Pole Relocation	Completion of Phase I and Phase II Components

[2] Subject to Developer's right to reconfigure the site, one or more of the Public Infrastructure Improvements may be reconfigured and/or relocated within the Development Area and provided further that the City approves any such reconfiguration or relocation, such approval not to be unreasonably withheld. The parties acknowledge that the Parking Garage and the Hotel are optional components of the Project as set forth in this Development Agreement.

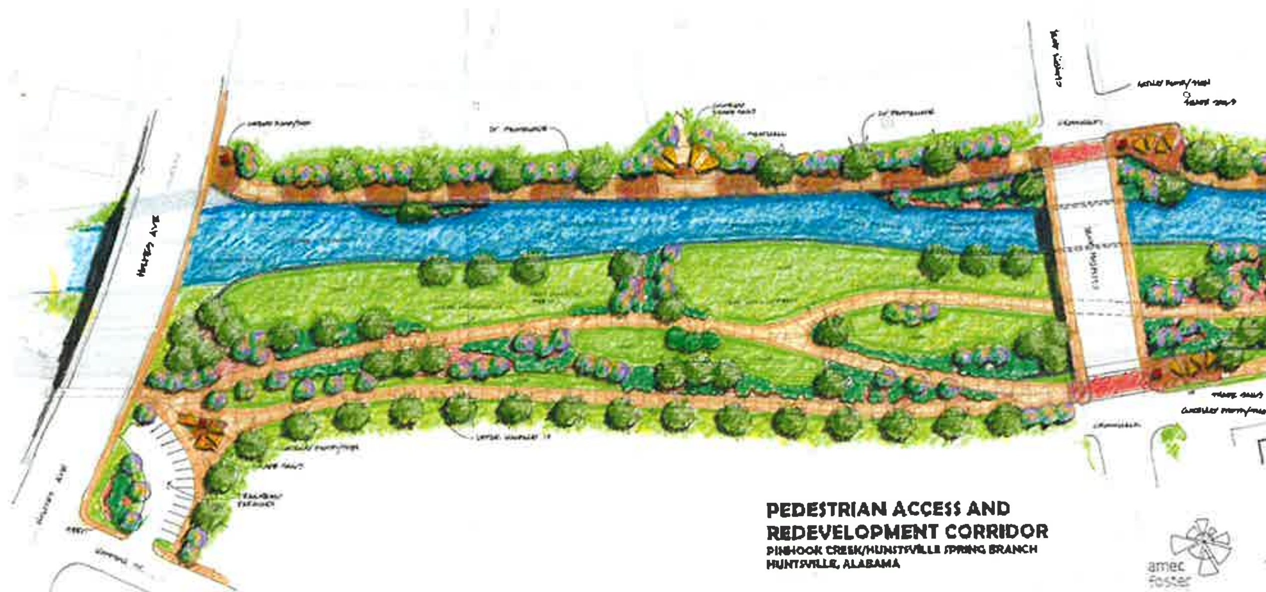
EXHIBIT E

PROJECT CONSTRUCTION SCHEDULE

Phase	Commence Construction No Later than	Construction Completion
Phase I	May 1, 2024	48 Months After Commencement
Phase II**	Nov 1, 2029	36 Months After Commencement

EXHIBIT F

RIVERWALK ARCHITECTURAL DESIGN GUIDELINES



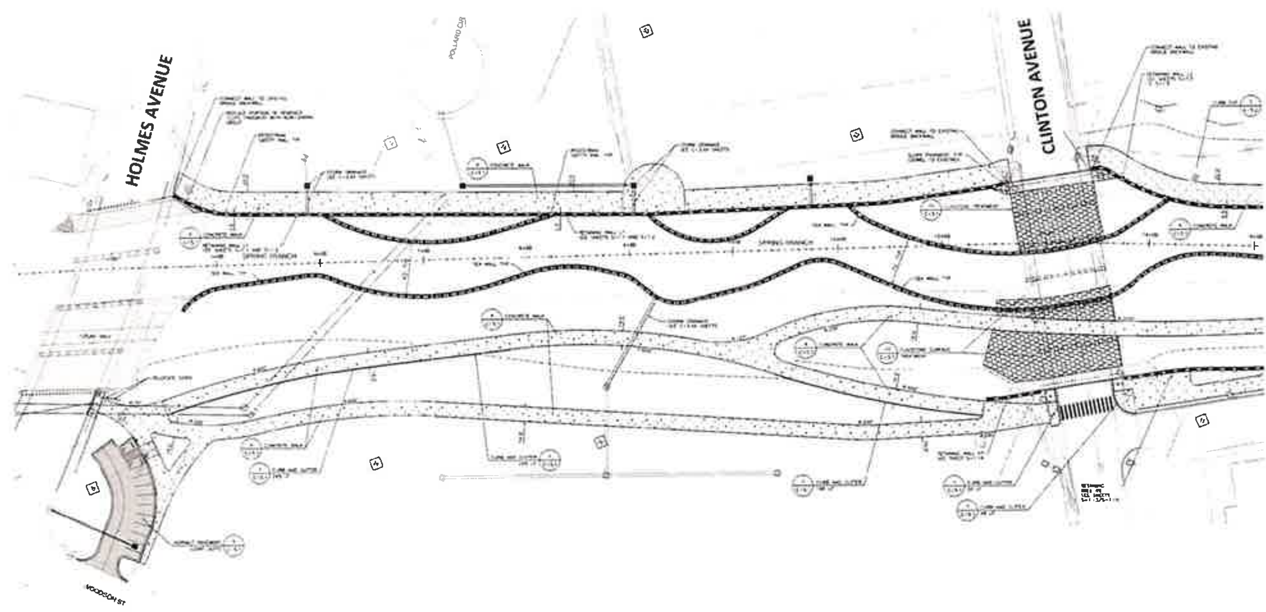
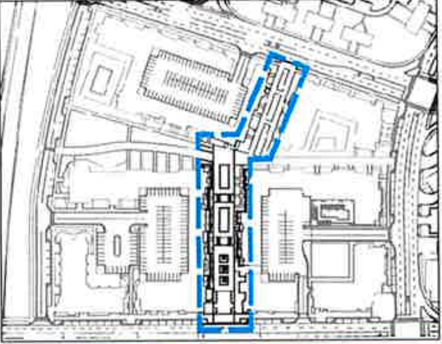


EXHIBIT G

PRELIMINARY MEWS DESIGN GUIDELINES



CHARACTER

This central pedestrian corridor includes public gathering spaces adjacent to retail store frontage Elegant materiality and water features are intended to activate this high functioning retail hub. A variety of seating options and public art are intended to provide a unique character to enhance the space's identity as a pedestrian passage and destination

ZONE - CENTRAL MUSE

EXHIBIT H

ARCHITECTURAL DESIGN GUIDELINES

See attached.

HUNTSVILLE, ALABAMA | MAY 2021

Conceptual Rendering

Architectural Design Guidelines for the Redevelopment of the Former Coca-Cola Site

Table of Contents

Architectural Design Principles

Section 1.1 - Design Principles Overview page 3

Section 1.2 - Architectural Character by Building Type page 4

Section 1.3 - Massing and Composition page 8

Section 1.4 - Exterior Building Materials page 15

Design Principles Overview

The proposed project will incorporate buildings and spaces that are rich in architectural elements, but still strongly focused on the cultural influences and traditions of the area. The design of each building will be intentionally specific and individual but keep with the overall scope of the project and will have a common character and scale specifically tailored to the lives of the community. Because of this, inspiration for the architecture will come from the region itself, as well as other landmark environments: natural elements will be incorporated into the design of the facades and placement of buildings.

The mandate to create efficient urban spaces that fit with the fabric of the community means that a large part of the design inspiration will come directly from the buildings already in the Huntsville region. Reenvisioned mercantile workspaces incorporating clean lines and large paned windows, neighborhoods with well-proportioned homes, simple warehouses housing stores, and flexible manufactured buildings are all elements that both celebrate the culture of the area while welcoming in new business and systems.

Conceptutal Rendering

Architectural Character by Building Type

Multi-Family Residential: Apartments/Lofts

Huntsville's architectural traditions for multi-family residences dictate the design of simple buildings with vertically aligned windows and doors. Sun shading in the form of brise soleil, shutters, canopies, balconies, and deep overhangs will be prominent along the exteriors, as well as a principal entrance along the primary street-facing façade. A secondary access to the building may be included on the side or rear elevations, or via an exterior stair from the ground floor.

Projecting balconies add visual variety to the streetscape

Elevate first floor units above the ground

Variation in roof height helps to break down the horizontal building mass

Residential / Retail (Mixed Use)

The massing of these five to six story buildings can be either of a unified form or individualized units but should exhibit simple fenestrations with contrasting color or material used as a secondary massing element. Included in each unit should be an architectural element such as a balcony, bay window, terrace, and/or porch with special attention being paid to the alignment of these elements relative to the surrounding units; similar facades are coplanar whereas alternative designs should be offset. The ground floor is meant to be an immersive and transparent pedestrian experience, so the design should have distinctive ground floor openings that reflect the individual character and operation of each business. This can also be done through signage, color use, and façade setback and particulation. Ground floors will also ideally have glazing in at least half of the perimeter façade areas facing a primary street or plaza address.

The following images are representative of the intended design character for Attached Residential / Retail(Mixed Use) buildings at the proposed complex.

Restaurants and cafes activate the street with outdoor dining

The storefront bay structure is expressed in the upper stories as well in some instances

Individualized signage and sidewalk treatment add variation to the street

Upper stories should exhibit simple building massing and window patterns

Conceptual Rendering

Office & Research

The scale and simplistic design of Huntsville's many old warehouses and factories is the primary inspiration for office buildings within this project. Large scale transparency across the exterior façade is an important element and can be achieved through punched openings or vertically articulated bays. Exterior expression of various vertical circulation components such as elevators and stairways are also featured, with primary entrances facing the street, and service areas being screened off and separated. Sustainable design elements (think brise soleil components, deep canopies, operable windows, air exchange devices, and solar panels) are encouraged, as are terraces and rooftop gardens. Distinct building forms that suit the primary massing of the overall building are used to designate specialized areas.

Vertical circulation may be expressed on the exterior

Conceptual Rendering

Large glazed openings allow in plenty of natural light to improve the well-being of workers

Parking Structures (Future Phases)

Parking structures should be built to maximize transparency by using either large loft style openings or smaller punched openings to create vertically articulated bays in a composed pattern. Openings may be screened, glazed, or open to the outside. Incorporating landscape terraces, green walls, sun shading devices, awnings, shutters, or trellis structures are all encouraged. **Ground floors should be active and include a primary street access with** a central lobby space for safe pedestrian use, as well as garage entrances that are within the standard bay width of the building. Having the vehicular entrance adjacent to the active ground floor uses is encouraged. An integral component of the building includes the mounted lighting on both the ceiling and roof deck, with the ceiling lighting being concealed from street view.

Trellis structures

Screenings

Openings to the outside

Central lobby spaces to access garage

Massing , Composition, and Articulation

Block Length and Building Massing

A. Block and Building Length
Massing should be composed of simple forms that reflect a percentage of block coverage consistent with the requirements of the project scope.

B. Massing and Height
Once composed, building masses can range between 1 and 6 stories. Special roof elements or roof top signage may project beyond the roofline of the building.

C. Massing Additions
Additive elements may be composed of materials or compositional arrangements that create a contrast to the basic building articulation, including special elements or landmark features that add vibrance to streetscapes.

Necessary percentage of block frontage helps to inform building massing — Conceptual Rendering

Arrangement of windows and doors follows the bay pattern

Mixture of materials breaks the streetscape down to human scale — Conceptual Rendering

Building Articulation and Composition for 4-6 Stories

A. Horizontal Articulation
Horizontal articulation may define a base, middle, and top for each facade for buildings 4-6 stories. This can be accomplished with changes in window composition, changes in materials, cornice/roof details, or string courses. Buildings over three stories should have some sort of expressed base at a minimum.

B. Vertical Articulation, Composition and Structural Bays
All facades should also have vertical articulation that creates a series of "bays" where windows, balconies and entrances are organized. Distinguish these divisions by changes in plane, architectural detailing, height, fenestration types, or facade composition. Material and color changes should be used minimally as a way to create special elements or articulation massing additions and breaks. Long building elevations over 175 feet should be subdivided into individual and distinct building expressions.

An arrangement of vertically oriented bays

The horizontal articulation of the building is emphasized with the window patterns

Fenestration and Bay Articulation

A. Architectural Vocabulary and Fenestration Patterns
Fenestration patterns are the system of window openings in a structure. These patterns are often informed by the structural system and the look that the designer wants to convey with the structure. Masonry walls lend themselves to punched openings, whereas skeletal wall systems will often use a system of piers and spandrels.

B. Fenestration
Ground floors should be articulated with commercial storefronts and window patterns that differentiate it from the massing above. Emphasize building entries with architectural elements that can be clearly identified from the pedestrian realm. Provide vertically proportioned windows in a wide variety of types including groups of tall windows to maximize glazing area.

C. Special Elements
Further articulation of the facades can be achieved with additional approved design elements.

Window placement of punched openings and skeletal systems

Additive elements include the large black bay element on this building

Large retail window bays maximize visibility and ease of flow between interior and exterior

Additive elements and signage help mark important corners and entrances

Entry awning provides shade and covered seating area

Shading and screening devices improve indoor environment and add architectural interest

Loggias provide shade relief and enhance the pedestrian experience

Roof Forms

Depending on the style of the building, both flat and pitched roofs are permissible in the proposed project. Building style should be expressed through the projection of a vertical parapet wall, or a thin horizontal overhang.

A. Flat roofs should be covered with an impervious membrane and have minimal slope to allow for drainage.

B. Flat roofs should include a parapet. Vary parapet height to create tower forms or hierarchy among different facade bays.

C. Flat roofs present opportunities for additional habitable outdoor terrace space. Habitable roof terraces with shade protection are encouraged on all building types. Green roofs are also strongly encouraged where appropriate.

D. Pitched roofs should have overhangs constructed to minimize the depth of the exposed fascia.

E. Depth of projecting overhangs must be appropriately scaled to the size and style of the building.

A thin projecting overhang to create a pedestrian walkway

A projecting overhang as the roof form for a larger mixed-use building

Pitched roof forms that connect to an industrial past

A rooftop amenity under shade on a mixed-use building

Habitable outdoor space and roof pergola with architectural detailing

Doors and Windows

The windows and doors within building facades help convey a human scale to the pedestrian. Windows can be single punched openings to emphasize the solidity of brick, or can be ganged or in window walls and multi-unit assemblies to show lightness.

A. Double-hung, casement, hopper, awning, and picture windows are permitted.

B. Transom windows are encouraged and if used must align above windows or doors.

C. Colored windows, bay windows, and other ways of emphasizing window patterns are encouraged.

D. Large window assemblies work well, especially for secondary massing elements when attached to primarily solid forms.

E. Glass should be selected to provide maximum visibility. Mirrored or heavily tined glass is discouraged.

F. Continuous glazing should be used minimally on smaller building types.

Bay windows emphasizing large expanses of glass address the street

Storefronts and Building Entries

The storefronts and entries into buildings in proposed project present the strongest connection between the building and the public realm. Entrances should provide a semi-private zone near the front entry door which separates the building from the street. Storefronts should maximize visibility from the street into the lobby or retail space.

A. Residential Building Entries

1. Residential building entries should create privacy through a change in floor level or screening through landscaping, fencing, etc.

2. The scale can vary from a small stoop or at-grade paved area, to a large covered porch or raised landscape terrace.

3. A covered area should be provided at the front door.

4. Corners should create opportunities for wrapping porches or terraces around the unit and for side-street entrances.

B. Commercial Building Entries

1. Commercial storefronts should clearly identify entries on large building facades.

2. Overhangs, awnings, canopies, or other methods of providing a covered area at the doors are encouraged to provide protection from the elements for pedestrians.

3. Minimise direct entryway door swings into the public walkways. Recess where possible or create flanking bay shopfront windows on either side that protect pedestrians from door swings.

4. Visibility to retail or lobby space should be maximized. Transparent glass must be used at retail storefronts or entrance lobbies.

5. Material and color of entrance assemblies should be coordinated with the design of the building.

6. Storefronts can be recessed or projected from the front of the building to create a diverse pedestrian streetscape.

Exterior Building Materials

The materials used should be of high quality and reflect an emphasis on regional materials and construction. While each building may have an individual, specific design, the intent is to ensure a consistent vocabulary of timeless materials throughout the proposed project.

A. Cladding and Trim

1. Brick, painted brick, painted CMU, (subject to approval)
2. Three-coat cementitious stucco, smooth sand finish
3. Cast stone
4. Precast concrete/concrete
5. Stone
6. Glass fiber reinforced concrete panels
7. Metal panels and metal cladding, (subject to approval)
8. Painted or stained wood or fiber cement (smooth finish) in clapboard, lap, board and batten, and trim to be used as a secondary or accent application. FiberCement siding (subject to approval)
9. Additional materials may be used as approved

B. Roofing

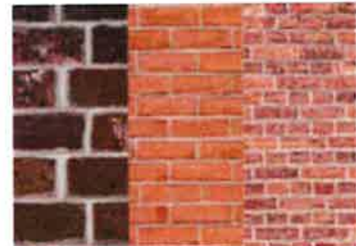
1. Flat roofing systems
2. Standing seam metal, corrugated or 5V crimp galvanized or galvalume metal
3. Metal shingle or asphalt composition shingle (residential only)
4. Slate or manufactured slate
5. Additional materials may be used as approved

C. Curtain Walls

1. Aluminum framing system with:
    a. Clear glazing
    b. Spandrel glass
    c. Metal panels

D. Windows

1. Wood, metal-clad wood, or vinyl-clad wood frames (extruded vinyl frames not permitted)
2. Metal window systems
3. Coated steel window systems
4. Clear glazing with "E" coating
5. Spandrel glass
6. Window muntins must project beyond the glazing surface.



Brick

Metal Roofing

Curtain Wall Systems

Stucco and Cut Stone

Metal Windows System

Exterior Building Materials

E. Columns and Piers

1. Concrete
2. Precast
3. Glass fiber reinforced concrete
4. Metal
5. Brick
6. Wood

F. Balconies

1. Concrete with:
    a. Metal railing
    b. Glass railing
    c. Wood railing
2. Steel with:
    a. Metal railing
    b. Glass railing
    c. Wood railing
3. Wood with:
    a. Metal railing
    b. Glass railing
    c. Wood railing
    d. Structure wrapped with sheet metal cladding

G. Soffits

1. Stucco
2. Metal
3. Fiber Cement
4. Concrete

H. Awnings

1. Canvas
2. Metal
3. Glass

Wood / Composite Cladding

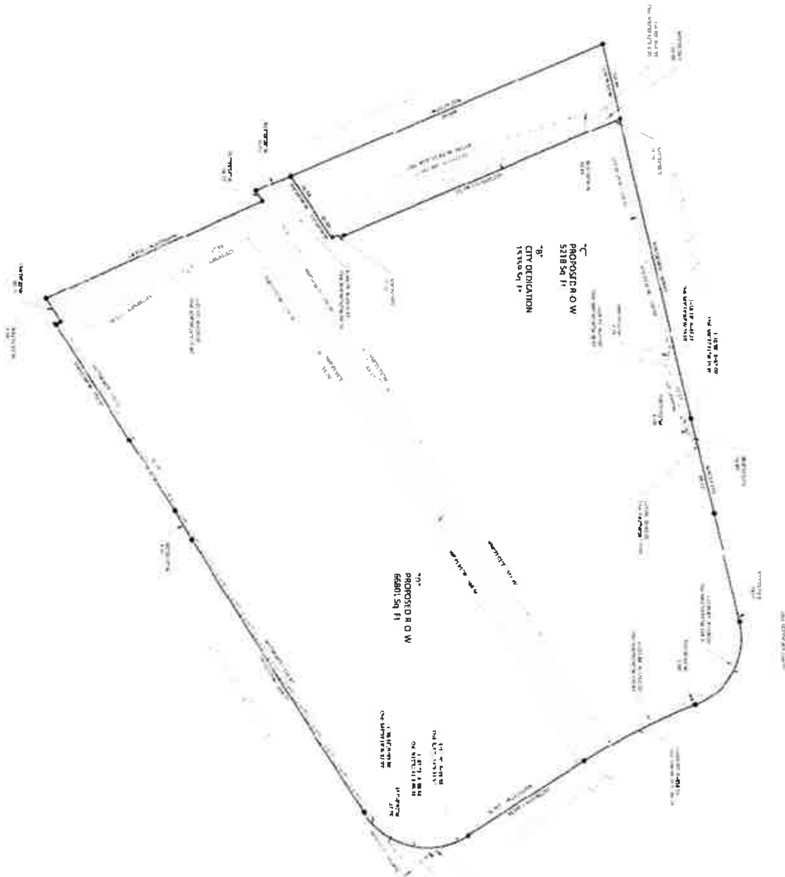
Metal Balcony

Metal Panel

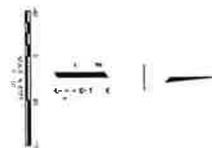
Glass Curtain Wall

Concrete

EXHIBIT I
CITY PARCEL



SUMMARY OF LAND AREAS TO BE EXCHANGED			
FROM CITY OF HUNTSVILLE		TO CITY OF HUNTSVILLE	
PARCEL NAME	AREA (SF)	PARCEL NAME	AREA (SF)
A	1058	C	5218
B	15359	D	66801
TOTAL	16417	TOTAL	72019



DESCRIPTION SKETCH FOR:
THE VORFA GROUP
SEC. 35 & 36, T-3-S, R-1-W
CITY OF HUNTSVILLE, MADISON COUNTY, ALABAMA

CROY

EXHIBIT J
FORM OF COLLATERAL ASSIGNMENT

COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT

This COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT dated as of [________________ __,] 2023 (the "Assignment"), is executed by FRONT ROW HUNTSVILLE OWNER, LLC, a Delaware limited liability company ("Assignor"), having an address at [___], to and for the benefit of BANCO INBURSA, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO INBURSA, an entity formed under the laws of the United Mexican States ("Assignee"), having a place of business at Paseo de las Palmas 736, Col. Lomas de Chapultepec, México, D.F., México, 11000, as lender party to that certain Loan Agreement of even date herewith by and among Assignor (in such capacity, "Borrower") and Assignee (in such capacity, "Lender") (each as amended, restated or modified from time to time, collectively, the "Loan Agreement").

RECITALS:

A. Assignor is the owner of the fee interest in certain real estate situated in Huntsville, Alabama, legally described on Exhibit A attached hereto and by this reference made a part hereof (the "Premises").

B. Assignor has entered into that certain Second Amended and Restated Development Agreement dated as of [_________] (the "Development Agreement") with the City of Huntsville, a municipal corporation under the laws of the State of Alabama (the "City"), a true, correct and complete copy of which Assignor represents and warrants is attached hereto as Exhibit B, pursuant to which Assignor and the City agreed to work together towards the development of the various Components (as defined in the Development Agreement) of the Project thereunder.

C. Lender has agreed to make a loan (the "Loan") to Borrower in the maximum amount of up to [ONE HUNDRED MILLION AND NO/100 DOLLARS ($100,000,000.00)]. The Loan is evidenced by that certain promissory note dated as of the date hereof (together with any extensions, renewals, replacements, modifications and amendments thereof, hereinafter referred to, as the "Note"), executed by Borrower, each made payable to the order of Lender. The Note is secured by, among other things, that certain [Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing] (as it may be amended, modified, and/or supplemented from time to time, the "Mortgage"), executed by Assignor in favor of Assignee, which grant to Assignee liens on the Premises and to be recorded in the land records of Huntsville County, Alabama. Assignor has also executed certain other instruments and agreements as additional security for repayment of the Loan (as may be amended, modified, and/or supplemented from time to time, collectively, the "Loan Documents").

D. Lender requires, as a condition precedent to their making the Loan, that the indebtedness evidenced by the Note and the lien and security interests created by the Mortgage and the other Loan Documents (collectively, the "Senior Liens") be paramount and prior to any and all obligations, expenses and indebtedness owing to the City which arise from the Development Agreement (collectively, the "Junior Liabilities") and any and all existing liens and security interests or future rights to liens and security interests of the City or anyone claiming by, through or under the City which arise from the Junior Liabilities (collectively, the "Junior Liens").

E. As additional security for the Note, Lender has also required an assignment of the interest of Assignor in, to and under the Development Agreement.

F. Assignor is willing to transfer, assign and convey its rights, privileges, powers and interest in, to and under the Development Agreement to Assignee, subject to the terms and conditions herein contained.

G. Capitalized terms used herein which are not otherwise specifically defined shall have the same meaning herein as in the Loan Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby agrees as follows:

AGREEMENTS:

1. Assignment. As additional collateral security for the Loan, Assignor hereby conditionally transfers, sets over and assigns to Assignee all of Assignor's right, title and interest in and to the Development Agreement, said transfer and assignment to automatically become a present, unconditional assignment, at Assignee's option, following the occurrence and during the continuance of an Event of Default by Assignor under the Note, the Loan Agreement, the Mortgage, or any of the other Loan Documents. Assignee hereby grants Assignor the right to continue to receive the benefits of, and exercise the rights under, the Development Agreement, in each case pursuant to and in accordance with the terms of the Loan Documents; provided, however, following the occurrence and during the continuance of an Event of Default, such rights may be revoked at any time at the option of Assignee, fully intending that during the existence and continuance of a Default, Assignee, its successors and assigns, shall have the rights and powers and be entitled to the benefits thereunder to the same degree and extent as though the Development Agreement had been made between Assignee and the City. In addition, upon Assignor's payment in full of the Obligations in accordance with the Loan Documents, this Assignment shall automatically terminate and be of no further force and effect.

2. Exercise of Assignee's Remedies. Although it is the intention of the parties that the assignment hereunder is a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Assignee shall not exercise any of the rights and powers conferred upon it herein until and unless there shall exist a Default. During the existence of a Default, Assignee shall have the right (but not the obligation) to assume all obligations of Assignor under the Development Agreement. Nothing herein contained shall be deemed to affect or impair any rights which Assignee may have under the Note, the Mortgage or the other Loan Documents.

3. Assignee's Right to Cure. In the event of a default by Assignor beyond all applicable notice and cure periods set forth in the Development Agreement or the occurrence and continuance of a Default under the Mortgage or the other Loan Documents, Assignee shall have the right, upon written notice to Assignor and the City to cure any default and take any action under the Development Agreement to preserve the same. Assignor hereby grants to Assignee the right of access to the Premises for this purpose, if such action is reasonably necessary. Such action by Assignee shall not be deemed an election by Assignee as provided in Section 2 hereof. Assignor hereby authorizes the City to accept the performance of Assignee in such event. Any advances made by Assignee to cure a default hereunder shall bear interest at the Default Rate under the Note and shall be secured by the Mortgage and the other Loan Documents.

4. Representations and Warranties of Assignor. Assignor hereby represents and warrants, as of the date hereof, to Assignee that (a) it has not executed any prior assignment of its rights in the Development Agreement, nor has it performed any acts or executed any other instrument which might prevent Assignee from operating under any of the terms and conditions of this Assignment, (b) it has not executed or granted any modification of the Development Agreement, either orally or in writing, (c) the Development Agreement is in full force and effect and constitutes a valid and legally enforceable (subject to Debtor Relief Laws and general equitable principles) obligation of the parties thereto, (d) as of the date hereof, there are no defaults under the Development Agreement, and (e) any sums due and payable to the City by Assignor under the Development Agreement as of the date hereof have been paid in full.

5. Other Agreements. Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Development Agreement by reason of this Assignment, until its election as provided in Section 2 hereof, and that this Assignment or Assignee's performance hereunder shall not release Assignor of any liability under the Development Agreement.

6. Covenants of Assignor. Assignor agrees not to do, or suffer to be done, any of the following acts without the Assignee's prior written consent not to be unreasonably withheld, conditioned or delayed: (a) cancel, terminate or surrender the Development Agreement, except in the event of a default by the City beyond all applicable notice and cure periods set forth in the Development Agreement; (b) forgive any obligation thereunder; (c) materially modify the Development Agreement; (d) except in connection with this Assignment and as otherwise contemplated by the Loan Documents, assign Assignor's interest in the Development Agreement or any portion thereof; or (e) fail to perform any obligation of Assignor pursuant to the Development Agreement, which failure would constitute a default under the Development Agreement and which failure shall continue beyond any applicable cure period provided under the Development Agreement. Any of said acts, if done or suffered to be done without Assignee's prior written consent, shall constitute a Default if any such act continues unremedied for a period of ten (10) Business Days after written notice thereof.

7. Election of Remedies. The provisions set forth in this Assignment shall be deemed a special remedy given to Assignee, and shall not be deemed exclusive of any of the remedies granted in the Note or the Loan Documents but shall be deemed an additional remedy and shall be cumulative with the remedies therein and elsewhere granted Assignee, all of which remedies shall be enforceable concurrently or successively. No exercise by Assignee of any of its rights hereunder shall cure, waive or affect any default hereunder or any Default under the Mortgage or the other Loan Documents. No inaction or partial exercise of rights by Assignee shall be construed as a waiver of any of its rights and remedies, and no waiver by Assignee of any such rights and remedies shall be construed as a waiver by Assignee of any of its other rights and remedies.

8. Notices. All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by email or telecopy, as follows:

If to Assignor:

[c/o Silverstein Properties Inc.
7 World Trade Center
250 Greenwich Street, 38th Floor
New York, New York 10007
Attention: General Counsel
Email Address: NPazich@Silvprop.com

With a copy to:

c/o Silverstein Properties Inc.
7 World Trade Center
250 Greenwich Street, 38th Floor
New York, New York 10007
Attn: Brian Collins
Email: bcollins@silvprop.com

And a copy to:

Adler & Stachenfeld LLP
555 Madison Avenue, 6th Floor
New York, NY 10022
Attention: Terri L. Adler, Esq. And File Manager
File No.: 4213.0001
Email: tadler@adstach.com]

If to Assignee:

Banco Inbursa, S.A.
Institución de Banca Múltiple, Grupo Financiero Inbursa
Paseo de las Palmas 736
Col. Lomas de Chapultepec
México, D.F., México, 11000
Attention: Enrique Eduardo Morelos Zaragoza Borbolla
Email: emorelosz@inbursa.com

With a copy to:

Cleary Gottleib Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006
Attention: Daniel C. Reynolds, Esq.
Email: Dreynolds@cgsh.com

If to the City:

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

With a copy to:

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

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other parties hereto. All notices sent pursuant to the terms of this Section shall be deemed received (i) if

hand delivered, then on the date of delivery, (ii) if sent by overnight courier service, then on the next Business Day immediately following the day sent, or (iii) if sent by certified or registered mail, then on the earlier of the third Business Day following the day sent or when actually received. Except as otherwise specifically required herein, no notice of the exercise of any right or option granted to Assignee herein is required to be given.

9. Power of Attorney. So long as the Obligations remain outstanding, Assignor hereby irrevocably appoints Assignee as Assignor's attorney-in-fact to exercise any or all of Assignor's rights in, to, and under the Development Agreement as provided herein, to give appropriate receipts, releases, and satisfactions on behalf of Assignor in connection with the City's performance under the Development Agreement, and to do any or all other acts, in Assignor's name or in Assignee's own name, that Assignor could do under the Development Agreement with the same force and effect as if this Assignment had not been made. This power of attorney is coupled with an interest and can not be revoked, modified or amended without the written consent of Assignee. Notwithstanding the foregoing, Assignee agrees that it shall not exercise its rights under this Section 9 except during the continuance of a Default under the Mortgage or the other Loan Documents.

10. Successors and Assigns. Subject to the terms and conditions of the Loan Agreement, all the covenants and agreements on the part of Assignee and Assignor contained herein shall inure to the benefit of and bind their successors and assigns, respectively, including any purchaser at a foreclosure sale other than Assignee.

11. Counterparts; Facsimile Signatures. This Assignment may be executed in any number of counterparts, all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Receipt of an executed signature page to this Assignment by facsimile or other electronic transmission shall constitute effective delivery thereof.

12. City Reliance.

(a) The Assignee hereby agrees that, until such time as Assignee delivers to the City, and the City receives from Assignee a notice described in pagragraph (b) below, neither the Assignee, nor any representative or agent thereof, shall deliver any notice, directive, writing, or other communication of any form whatsoever to the City purporting to invoke or exercise any rights or benefits of the Assignor under the Development Agreement, other than as set forth in Section 3 of this Assignment. If upon the occurrence and during the continuance of an Event of Default (as the same shall be determined by the Assignee) the Assignee elects to invoke its rights set forth in Section 1 of this Assigment as respects the exercise of rights or benefits under the Development Agreement, then the Assignee shall deliver notice of the same to the City.

(b) Assignor agrees that the City shall have the right to rely upon any notice from Assignee (i) stating or otherwise indicating that a Default has occurred and that Assignee is exercising the rights of Assignor under the Development Agreement or (ii) providing instructions or directions with respect to the Development Agreement, in each case without any obligation of the City to inquire as to the actual existence of a Default and notwithstanding any notice from or claim of Assignor to the contrary. Upon receipt of any such notice, City may deal with Assignee as if Assignee was the "Developer" under the Development Agreement, and Assignor waives and relinquishes any claims against City arising from City's reliance on such notice.

(c) Assignor and Assignee agree that the City shall be entitled to rely, and shall be fully protected in relying, exclusively upon any notice, direction, or instruction reasonably believed by the City to be genuine and correct and to have been signed, sent, or made by Assignee.

(d) Assignor and Assignee agree that the City is an intended third party beneficiary of this Section 12.

[Signature Page Follows]

IN WITNESS WHEREOF, Assignor has caused this Collateral Assignment of Development Agreement to be executed as of the day and year first above written.

FRONT ROW HUNTSVILLE OWNER, LLC, a Delaware limited liability company

By: ______________________________
Name:
Title:

CONSENT TO COLLATERAL ASSIGNMENT
OF DEVELOPMENT AGREEMENT AND ESTOPPEL

This CONSENT TO COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT AND ESTOPPEL dated as of _______________, 2023 (the "Consent"), is executed by CITY OF HUNTSVILLE, a municipal corporation under the laws of the State of Alabama (the "City"), to and for the benefit of BANCO INBURSA, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO INBURSA, an entity formed under the laws of the United Mexican States ("Assignee"), as lender party to that certain Loan Agreement of even date herewith by and among FRONT ROW HUNTSVILLE OWNER, LLC, a Delaware limited liability company (the "Assignor") and Assignee (each as amended, restated or modified from time to time, collectively, the "Loan Agreement").

RECITALS:

A. Assignor is the owner of certain real estate situated in Hunstville, Alabama, legally described on Exhibit A attached hereto and by this reference made a part hereof (the "Premises").

B. Assignor and the City have entered into that certain Second Amended and Restated Development Agreement dated as of [_________] (the "Development Agreement"), a true, correct and complete copy of which Assignor represents and warrants is attached hereto as Exhibit B, pursuant to which Assignor and the City have agree to work together towards the development of the various Components of the Project thereunder.

C. In connection with, and as collateral for, certain loans (collectively, the "Loan") from the Assignee to Assignor, Assignee has required a collateral assignment of the interest of Assignor in, to and under the Development Agreement under and pursuant to that certain Collateral Assignment of Development Agreement dated as of even date herewith, executed by and between Assignor and Assignee (the "Assignment").

D. The City acknowledges that the execution and delivery of this Consent is required by Lender prior to making any disbursements of the Loan and, without the execution and delivery of this Consent, Assignee will not make the Loan.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City hereby agrees as follows:

AGREEMENTS:

1. Capitalized words and phrases not otherwise defined herein shall have the meanings assigned to such terms in the Assignment.

2. The City hereby consents to the foregoing Assignment by Assignor of all of Assignor's right, title and interest in and to the Development Agreement. The City agrees that, if Assignee delivers written notice to the City that Assignee is exercising its rights under the Assignment and has assumed in writing all obligations of the Assignor under the Development Agreement, which such notice shall include evidence and supporting documentation of such assumption by Assignee) (the "Assignee Assumption Notice"), (a) the City will continue at Assignee's direction to perform its obligations under the Development Agreement; provided that (i) Assignee cures any existing Assignor defaults caused by Assignor's failure to comply with, or to cause compliance with, any of Sections 1.1, 1.2, 1.5. 3.1, 4.6 and 8.8 of the Development

Agreement ("Curable Defaults") within the same period of time as, with respect to any Curable Default, is given to Assignor under the Development Agreement to cure such Curable Default, with such time period commencing upon Assignee sending the Assignee Assumption Notice; provided that if the Curable Default cannot reasonably be cured within such period or if such cure requires Assignee to complete a foreclosure, receivership, or equivalent proceeding and obtain possession of the Premises, then Assignee shall have an additional 45 days (such period afforded to Assignee to cure the Curable Default, as extended by this Section 2, if applicable, the "Cure Period"); provided further that the City shall not be obligated to continue to perform its obligations under the Development Agreement unless and until any such Curable Defaults are completely cured, and an additional amount of time equal to the period (x) commencing on the date the Assignor sends the Assignee Assumption Notice and (y) ending on the date such Curable Default applicable thereto is completely cured (if multiple defaults existed at the time of the Assignee Assumption Notice, the date that the last applicable Curable Default is cured) shall be added to any timeframe or deadline for the City to perform its obligations under the Development Agreement, and (ii) Assignee performs or causes to be performed the obligations of Assignor in accordance with the Development Agreement from and after the date such notice is given, irrespective of any contrary instructions, direction or requests from Assignor, and (b) provided that Assignee cures any Curable Defaults within the Cure Period, the City will perform its obligations under the Development Agreement for Assignee notwithstanding any counterclaim, right of set-off, defense or like right of the City against Assignor or Assignor's default under or breach of the Development Agreement (other than Curable Defaults) and Assignee shall not be liable for any act or omission of Assignor, provided that the City shall retain its rights and remedies against Assignor as set forth in the Development Agreement.

3. Notwithstanding anything to the contrary contained herein, unless and until Assignee delivers the Assignee Assumption Notice to the City as set forth in item 1. above, Assignee shall not be obligated to perform or discharge any of Assignor's obligations, duties or liabilities under the Development Agreement.

4. The City has not assigned its interest in the Development Agreement and has no notice of any prior assignment, hypothecation or pledge of Assignor's interest under the Development Agreement.

5. No changes or modifications shall be made to the Development Agreement, nor shall the Development Agreement be surrendered or cancelled by agreement between Assignor and the City, except pursuant to any termination rights specifically set forth in the Development Agreement, without the prior written consent of Assignee, such consent not to be unreasonably withheld, delayed or conditioned.

6. Assignee neither assumes nor has any obligations to the City to exercise its rights under the Assignment or to declare a Default, but that the option to exercise such rights or declare a Default rests in the sole and absolute discretion of Assignee.

7. As of the date hereof, the City represents that, to it's actual knowledge, it has no counterclaim, right of set-off, defense or like right against Assignor and that the City has been paid all amounts due under the Development Agreement.

8. The statements herein made shall be binding upon the City, its successors and assigns, and shall inure to the benefit of Assignee and the benefit of Assignee's successors and permitted assigns.

9. Each entity, person and/or officer executing this certification is duly empowered to do so on behalf of the City.

[Signature Page Follows]

IN WITNESS WHEREOF, the City has caused this Consent of Collateral Assignment of Development Agreement and Estoppel to be executed as of the day and year first above written.

CITY OF HUNTSVILLE

By:____________________________
Name: ______________________
Title: Mayor

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

EXHIBIT B

COPY OF DEVELOPMENT AGREEMENT

[TO BE ATTACHED BY DEVELOPER]

EXHIBIT K
FORM OF PHASE II CERTIFICATE

[to be inserted on letterhead of Developer]

City of Huntsville
308 Fountain Circle SW
Huntsville, Alabama 35801
Attn: Mayor

The undersigned, as a duly authorized representative of __________, acting by and on behalf of Front Row Huntsville Owner, LLC (the "Developer"), does hereby declare and certify to the City of Huntsville, Alabama (the "City"), under and pursuant to the terms of that certain Second Amended and Restated development Agreement dated ___________, ____, 2023 (the "Development Agreement") by and among the Developer, the City and Rocket Development Partners, LLC, that Developer hereby elects and determines to construct and develop Phase II (consisting of the Hotel and the Parking Garage) of the Project. Capitalized terms used and not otherwise defined herein shall have the meaning given to them in the Development Agreement.

DATED this ____ day of _____, 202___.

Front Row Huntsville Owner, LLC

By:_____________________

Its: Authorized Signatory

EXHIBIT L
FORM OF PARKING GARAGE AGREEMENT

GARAGE PARKING AGREEMENT

This **GARAGE PARKING AGREEMENT** (this "**Agreement**") is made and entered into on the ____ day of ________, 202__ (the "**Effective Date**"), between **FRONT ROW HUNTSVILLE OWNER, LLC**, a Delaware limited liability company (together with any permitted successors and assigns, "**Developer**"), and the **CITY OF HUNTSVILLE**, a municipal corporation under the laws of the State of Alabama ("**City**").

RECITALS

A. Developer, Rocket Development Partners, LLC a New York limited liability company (the "**Original Developer**") and City have entered into that certain Second Amended and Restated Development Agreement, dated as ________ __, 2023 (the "**Development Agreement**"), relating to Developer's construction and development of a mixed-use project on certain real property located within the City at 512 Clinton Avenue. This Agreement constitutes the "Parking Garage Agreement" as defined in the Development Agreement. *Any capitalized term used but not otherwise defined herein shall have the meaning attributed to such term in the Development Agreement.*

B. As set forth in the Development Agreement, City has determined that there is a need for additional public parking to satisfy the demand for public parking in the vicinity of the Development Area.

C. Pursuant to the Development Agreement, Developer, or one of Developer's affiliates is (i) required to develop Phase I of Project and (ii) has the right, in its sole and absolute discretion, but not the obligation, to construct Phase II of the Project, including the Parking Garage forming a part of Phase II of the Project.

D. If Developer (i) Completes Construction of all Components of Phase I, (ii) delivers the Phase II Certificate (as defined in the Development Agreement) to the City **and** (iii) Commences Construction of the Phase II Components (collectively, the "**Parking Garage Condition**"), (i) Developer will be deemed to have leased to City, and City will be deemed to have leased from Developer an aggregate of 400 parking spaces within the Parking Garage, and (ii) Developer will be obligated for all obligations of Developer set forth in this Agreement and City will be obligated for all obligations of City set forth in this Agreement.

E. The parties acknowledge and agree that this Agreement is only operative if and to the extent the Parking Garage Condition has occurred, but Developer is under no obligation to construct Phase II of the Project, or any part thereof, including the Parking Garage as part of the Project unless and until the Parking Garage Condition has occurred.

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:

AGREEMENT

1. Agreement. The parties acknowledge and agree that Developer is not obligated to construct Phase II of the Project or any part thereof, including the Parking Garage. If and to the extent the Parking Garage Condition has been satisfied:

(a) Subject to the terms of this Agreement, Developer shall be deemed to have leased unto City and the City shall be deemed to have leased from Developer, an aggregate of 400 parking spaces within the Parking Garage, which is currently anticipated to constitute all of the parking spaces located on floors 2, 3 and 4 of the Parking Garage (collectively, the "**City Garage Spaces**"), as depicted on Exhibit A hereto. The lease of the City Garage Spaces to City shall include the non-exclusive right to use all associated ingress/egress drives, entryways and exit-ways and related facilities necessary or convenient for the use of the City Garage Spaces (the City Garage Spaces and such rights with respect to ingress/egress drives, entryways and exit-ways and related facilities being referred to collectively as the "**Premises**"), and Developer does hereby grant to City, its employees, agents and independent contractors, and to the customers, invitees, guests, contractors, and visitors of the Project, a nonexclusive right for the duration of the term of this Agreement of ingress and egress over all property owned by Developer where the City Garage Spaces are located and to and from the Parking Garage if and to the extent specifically necessary to enter the Parking Garage and for the use of the City Garage Spaces.

(b) The City shall have exclusive use of the City Parking Spaces for vehicle parking twenty-four hours a day, seven days a week (subject to the use restrictions set forth herein); provided, Developer shall have the right to reasonably restrict use of the City Parking Spaces as necessary for maintenance, repair and refurbishment of the Parking Garage (as set forth herein).

(c) Developer hereby represents and warrants to City that (i) upon the Commencement Date (defined below), Developer will be the true and lawful owner of, and have sole legal title and interest in and to, the Parking Garage (including the site or sites on which the Parking Garage will be located), (ii) Developer has good right and full power and authority to lease the City Garage Spaces to City, and (iii) Developer will maintain City's peaceful and quiet enjoyment of the City Garage Spaces in accordance with the terms of this Agreement. City represents and warrants that (i) it has the power and authority to enter into this Agreement and the transaction contemplated herein, (ii) the signer of this Agreement on behalf of the City has the authority to execute and bind the City to this Agreement, and (iii) all appropriate public hearings have occurred, if necessary, to enable City to execute and perform this Agreement.

(d) The City shall be permitted to use reasonable signage and other reasonable marking to identify to the public the City Garage Spaces leased by the City hereunder.

2. Term.

The term of the lease of the City Garage Spaces to City pursuant to this Agreement shall commence on such date as (1) a certificate of occupancy permit has been delivered for the Parking Garage, (2) the City Garage Spaces have been clearly identified and located in areas of the Parking Garage on floors 2, 3 and 4 to the reasonable satisfaction of City, and (3) the City has been given access to the City Garage Spaces (the "**Commencement Date**"), and shall end on the date that is forty (40) years after the Commencement Date (the "**Term**"). The Developer shall give the City full access to the City Garage Spaces promptly upon Completion of Construction of the Parking

Garage. Upon request by either party, the parties agree to memorialize the Commencement Date and the Term of this Agreement pursuant to the Commencement Certificate in the form attached hereto as Exhibit B hereto.

3. Consideration. This Agreement is made for and in consideration of City's agreement to pay the Developer the sum of One Hundred Dollars ($100.00) good and valuable consideration and, if specifically requested in writing by Developer, to reimburse Developer for a portion of the cost of constructing the Parking Garage (the "**Construction Cost Reimbursements**" or the "**Parking Fee**"), as follows:

(i) At such time as Developer shall have achieved the Second Condition Precedent and provided that no Developer event of default (as defined in Section 10(b)) shall have occurred and be continuing, City shall pay the first installment of the Construction Cost Reimbursements to Developer in the amount of $3,000,000.

(ii) At such time as: (A) Developer has Completed Construction of the Phase II Components one or before the Phase II Completion Deadline and provided that no Developer event of default (as defined in Section 10(b)) shall have occurred and be continuing, and (B) the City Garage Spaces have been identified as provided in this Agreement and made available for use by the City, and provided that no Developer event of default (as defined in Section 10(b)) shall have occurred and be continuing, City shall pay the second installment of the Construction Cost Reimbursements to Developer in the amount of $3,500,000.

(iii) Upon the first anniversary of the date on which Developer has Completed Construction of the Phase II Components one or before the Phase II Completion Deadline and provided that no Developer event of default (as defined in Section 10(b)) shall have occurred and be continuing, City shall pay the third installment of the Construction Cost Reimbursements to Developer in the amount of $5,500,000.

(iv) If, following the satisfaction of the Parking Garage Condition, Developer has not Completed Construction of the Phase II Components one or before the Phase II Completion Deadline (subject to such extension of the Phase II Completion Deadline due to a Delay Event as set forth in the Development Agreement) and the City has paid to City the first installment of the Construction Cost Reimbursements as set forth in the aforesaid clause (i), Developer shall pay City a sum equal $1,500,000.00 (the "**Developer Reimbursement Amount**"). The Developer Reimbursement Amount shall be paid promptly and in immediately available funds (and in no event shall such funds be commingled with any other funds of the City). In the event Developer has Completed Construction of the Parking Garage on or before twenty-four (24) months following satisfaction of the Parking Garage Condition, City shall pay Developer such Developer Reimbursement Amount and shall remain obligated for the additional funds referenced in (ii) and (iii) above. In the event that Developer has not Completed Construction of the Parking Garage on before thirty-six (36) months following satisfaction of the Parking Garage Condition, then the City shall have the right to terminate this Lease and receive reimbursement of an additional $1,500,000.00 from the Developer (the "**Additional**

Reimbursement Amount"). The Additional Reimbursement Amount shall be paid promptly and in immediately available funds.

(v) The Construction Cost Reimbursements shall be the total amount owed by City under this Agreement for the lease to City of the City Garage Spaces for the full Term of this Agreement. Without limiting the generality of the foregoing, in no event shall City owe more than $12,000,000 in Construction Cost Reimbursements for the reimbursement of construction costs incurred by Developer and the lease to City of the City Garage Spaces for the Term of this Agreement.

(vi) If Developer is in default of its obligations under this Agreement (subject to any applicable cure periods) such that City does not have free and full use of the City Garage Spaces during a portion of the term of this Agreement (other than temporary cessations in use as needed for repair and maintenance or due to casualty or condemnation), then Developer shall owe City (regardless of the availability or unavailability of insurance proceeds) a payment equal to the Pro Rata Amount for such period and only for such specific parking spaces that City does not have free and full use. As used in this Agreement, the term "Pro-Rata Amount" shall mean the product of (A) the total Construction Cost Reimbursements paid by the City, multiplied by (B) a fraction, (I) the numerator of which is the total number of days during which all or a portion of the Parking Spaces are not available for use by the City, and (II) the denominator of which is the total number of days in the Term of this Agreement; provided however, that if the Parking Spaces are not available for use by the City for a period in excess of thirty (30) days, then the numerator of the forgoing fraction shall be the number of days remaining in the Term of this Agreement as of the first day such Parking Spaces become unavailable, and the denominator shall remain the total number of days in the Term of this Agreement.

(vii) Without altering the obligations of the City to pay the Parking Fee as set forth in Section 3 above, it is the intention of the Developer to treat the payments of the Parking Fee from the City to Developer as annual lease payments pursuant to a 40 year lease for U.S. federal income tax purposes. However, nothing in this Agreement shall be deemed to be an agreement by the City to treat the payments of the Parking Fee as anything other than payments of rent in accordance with its normal accounting practices.

4. Use. The City Garage Spaces shall be used by City for vehicular short term parking by City, its employees, agents and independent contractors, and by the customers, invitees, guests, contractors, and visitors of the Parking Garage and the City and for no other purposes without the prior written consent of Developer, in its sole discretion, provided that in no event shall the City Parking Spaces be used by any Restricted Vehicles (as set forth below) on a long term basis nor shall it be used to park or store public vehicles such as utility or emergency vehicles on a long-term basis, or for the storage of any City property, container storage, parts storage, equipment, scrap or vehicles, and no vehicle repair or maintenance shall be permitted in the Parking Garage. All use of the City Garage Spaces shall be in a lawful and orderly manner, and City shall comply with all present and future laws and ordinances of governmental authorities having jurisdiction pertaining to the operation and safety of the City Garage Spaces and with the reasonable rules, regulations and requirements of Developer applied in a consistent manner to all

users of the Parking Garage. The City acknowledges and agrees that maintenance vehicles, trash and refuse vehicles, buses, recreational vehicles, trucks and fire or ambulance vehicles and 18-wheel vehicles (the "**Restricted Vehicles**") shall not be permitted in the City Garage Spaces on a long-term basis. As used in this Section 4, the term "long term basis" shall mean a period of time in excess of thirty (30) consecutive days.

5. Signage and Control Measures. City shall have the right to require that Developer cause to be painted or erected such standard, reasonable signage concerning the use of the City Garage Spaces or implementation of other suitable control measures as designated by the City of Huntsville Director of Parking and Public Transit (or the successor officer to such position). Notwithstanding the foregoing, all signage shall be subject to Developer's reasonable review and approval. No personnel, employees, agents, contractors or others acting by, on behalf or with permission of Developer may hold themselves out to be personnel or employees of City, or to have enforcement authority respecting use of the City Garage Spaces. Enforcement against any vehicles illegally or inappropriately parked within any of the City Garage Spaces shall be the sole authority of City and City's duly authorized enforcement officials or agents; provided, however, if the City fails to enforce this Agreement as required hereunder, after fifteen (15) days prior written notice to City of such a breach with no reaction by City of such breach, Developer may remove such vehicle via a towing service and the City shall be responsible for reimbursing the Developer for the reasonable cost thereof. City shall be entitled to post outside and within the Parking Garage reasonable signage, subject to Developer's reasonable review and approval, respecting the availability and use of the City Garage Spaces and related information.

6. Maintenance of Parking Garage. During the term of this Agreement, Developer shall be solely responsible for the operation and all maintenance and repairs to the Parking Garage and all other aspects of the Parking Garage, unless such repairs are due solely to the acts or omissions of City, its agents, employees, guests or invitees. Developer shall keep the Parking Garage free and clear of any and all trash, rubbish and debris, and shall operate and maintain the Parking Garage (including access to and from, and use of, the City Garage Spaces) in a commercially reasonable manner consistent, as of any time of determination, with the then-in-effect standards of operation and maintenance by City of parking decks/facilities owned and operated by City. If and to the extent the City Garage Spaces necessitate excessive cleaning, maintenance or repair due to City's use or its customers' use, Developer shall have the right to advise City of such excessive use and charge City for such excessive clean up and repair.

7. Insurance.

(a) Developer shall maintain the following coverages in the following amounts:

(i) Commercial General Liability Insurance (or its equivalent) covering the insured against claims of bodily injury, personal injury and property damage arising out of ownership, operation or use by Developer of the Parking Facility for limits of liability not less than One Million and No/100 Dollars ($1,000,000.00) combined single limit per occurrence and Two Million and No/100 Dollars ($2,000,000.00) combined single limit annual aggregate, One Million and No/100 Dollars ($1,000,000.00) of which may be carried in an umbrella.

(ii) During the period of construction, builder's risk insurance and upon Completion of Construction, hazard and fire coverage up to the replacement value of the Parking Garage.

(b) All liability insurance shall (i) name City as an additional insured, as its interest may appear; (ii) specifically cover the liability assumed by Developer under this Agreement, including, but not limited to, Developer's indemnity obligations under this Agreement; (iii) be issued by an insurance company having a rating of not less than A-IX in Best's Insurance Guide or that is otherwise acceptable to City and licensed to do business in the State of Alabama; (iv) be primary insurance as to all claims thereunder and provide that any insurance carried by City shall be excess and non-contributing with any insurance requirement of Developer; and (v) provide that said insurance shall not be canceled, expire or coverage reduced unless thirty (30) days' prior notice shall have been given to City. The insurance policies required under paragraph 7(a) shall contain (i) with respect to builder's risk and hazard and fire insurance policies, a standing extended coverage endorsement, with loss payable to Developer, and (ii) an endorsement showing City as an additional named insured with respect to liability policies.

(c) Developer shall deliver a copy of each paid-up policy (authenticated by the insurer) or other evidence of insurance reasonably satisfactory to City, evidencing the existence and amount of each insurance policy required hereunder on or before the Commencement Date of this Agreement. Developer shall furnish City with renewals or "binders" of each policy at least thirty (30) days prior to the expiration thereof. Developer agrees that, if Developer does not obtain and maintain such insurance, City may (but shall not be required to) after five (5) days' notice to Developer during which time Developer does not supply City evidence of the required insurance, procure said insurance on Developer's behalf and charge Developer the premiums therefor, payable upon demand.

(d) City shall maintain insurance with respect to the Premises in amounts and with coverage consistent with the insurance maintained on other parking spaces owned or leased by the City in structure parking facilities. Developer acknowledges that City self-insures its parking facilities and will self-insure the City Garage Spaces.

Anything in this Agreement to the contrary notwithstanding, Developer and City each hereby waives any and all rights of recovery, claim, action or cause of action against the other for any loss or damage to any property of Developer or City, arising from any cause that: (a) would be insured against under the terms of any property insurance required to be carried hereunder; or (b) is insured against under the terms of any property insurance actually carried, regardless of whether the same is required hereunder. The foregoing waiver shall apply regardless of the cause or origin of such claim, including but not limited to the negligence of a party, or such party's agents, officers, employees or contractors. The foregoing waiver shall not apply if it would have the effect, but only to the extent of such effect, of invalidating any insurance coverage of Developer or City. The foregoing waiver shall also apply to any deductible, as if the same were a part of the insurance recovery.

8. <u>Indemnity; Expenses</u>.

(a) Subject to the provisions of paragraph 8(d) below, Developer shall indemnify, defend and save City harmless from all claims, actions, damages, liability and expenses (including reasonable attorneys' fees and court costs) resulting from the ownership, operation or use by Developer of the Parking Garage unless occasioned wholly or contributorily by any act or omission of City, or any employees, agents, contractors, servants, licensees, invitees and guests of City.

(b) City shall use the City Garage Spaces at its own risk, and Developer shall not be liable to City for any loss or damage to any of City's property, or to any of City's agents', servants', contractors', employees', licensees', invitees' or guests' property located on or within the City Garage Spaces if such loss or damage is caused wholly by any act or omission of City, or any employees, agents, contractors, servants, licensees, invitees and guests of City.

(c) The terms of this Section 8 shall survive the expiration or any earlier termination of this Agreement.

(d) The parties acknowledge and agree that neither party shall have any obligation under this Section 8 (or any other obligation under this Agreement) prior to satisfaction of the Parking Garage Condition.

9. Assignment. So long as City is not in default hereunder, City may, without obtaining any approval or consent of Developer, but only after notice and confirmation to Developer that the City shall continue to be financially responsible for all performance of its transferee, that in its sole and absolute discretion, pledge, hypothecate, assign, transfer or encumber this Agreement and its interest in the City Garage Spaces and sublease the City Garage Spaces and all rights of ingress and egress appurtenant thereto as provided herein. Developer may assign and transfer this Agreement to any permitted assignee of Developer's interest in the Development Agreement; provided the provisions of Section 5.2 of the Development Agreement shall apply but with this Agreement substituted for the Development Agreement.

Notwithstanding anything herein to the contrary, Developer may collaterally assign Developer's interest in this Agreement to secure any loan provided by a Lender, without having to obtain the consent of the City. Simultaneously with the closing of the transaction whereby the Lender obtains such collateral assignment (or at such other time as shall be required by such Lender), Developer and City shall execute and deliver to the Lender a Collateral Assignment of Parking Garage Agreement substantially in the form of the Collateral Assignment attached to the Development Agreement as Exhibit C (the "Collateral Assignment"). The Collateral Assignment shall include language requiring the Lender (and any purchaser that acquires the Project from Lender after foreclosure or deed in lieu of foreclosure) to assume in writing all obligations of Developer under this Agreement on and after the date Lender or such other purchaser acquires Developer's interest in the Project. The Developer and City shall deliver a new Collateral Assignment to any new Lender or assignee of Lender's rights to such loan.

10. Events of Default and Remedies.

(a) Events of Default by City. Any one or more of the following shall constitute an event of default under this Agreement by City:

(i) Failure by City to pay any amount due hereunder within ten (10) days of the date such amount is due and payable;

(ii) Default by City under the Development Agreement and the failure to cure same within any applicable cure period;

(iii) Default by City under this Agreement, other than as described in item (i) above, and City shall not cure such failure within 30 days after receipt of written notice thereof from Developer (except that this 30-day period shall be extended for a reasonable period of time not to exceed 120 days if the failure is not reasonably capable of cure within said 30-day period, and City promptly commences efforts to cure such failure and continues diligently thereafter all efforts necessary to cure such failure); or

(iv) If a petition in bankruptcy is filed by or against City, or a receiver or other trustee of any of the property of City is appointed, or if City files a petition or an answer seeking reorganization under any of the provisions of the bankruptcy law or of any other law, state or federal, or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or admitting the material allegations of a petition filed against it in any proceeding under such law, or if City enters into or consents to an arrangement with creditors or makes an assignment for the benefit of creditors, or is adjudicated insolvent by any state or federal court of competent jurisdiction, or if an order, judgment or decree shall be entered without the application, approval, or consent of City by any court of competent jurisdiction approving a petition seeking reorganization of City of all or a substantial part of the properties or assets of City, or appointing or ordering a receiver, trustee or liquidation of City; provided, however, that City shall have sixty (60) days to have dismissed of record any involuntary petition filed against it.

(b) Remedies of Developer. If City is in default beyond any applicable cure period, Developer may terminate this Agreement, seek recovery for all costs and expenses incurred by Developer as a result of such breach, seek all unpaid costs and expenses due from City hereunder. Upon Developer's termination of this Agreement, City shall at once surrender possession of and all rights to the City Parking Spaces (including any and all improvements made by the City) to Developer, and Developer may immediately, and without further notice, or at any time thereafter, reenter the City Parking Spaces and remove all persons and all or any property therefrom, by any suitable action or proceeding at law.

(c) Events of Default by Developer. Any one or more of the following shall constitute an event of default under this Agreement by Developer:

(i) Default by Developer under the Development Agreement and the failure to cure same within any applicable cure period;

(ii) Default by Developer under this Agreement and Developer shall not cure such failure within 30 days after receipt of written notice thereof from City (except that this 30-day period shall be extended for a reasonable period of time not to exceed 120 days if the failure is not reasonably capable of cure within said 30-day period, and

Developer promptly commences efforts to cure such failure and continues diligently thereafter all efforts necessary to cure such failure); or

(iii) If a petition in bankruptcy is filed by or against Developer, or a receiver or other trustee of any of the property of Developer is appointed, or if Developer files a petition or an answer seeking reorganization under any of the provisions of the bankruptcy law or of any other law, state or federal, or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or admitting the material allegations of a petition filed against it in any proceeding under such law, or if Developer enters into or consents to an arrangement with creditors or makes an assignment for the benefit of creditors, or is adjudicated insolvent by any state or federal court of competent jurisdiction, or if an order, judgment or decree shall be entered without the application, approval, or consent of Developer by any court of competent jurisdiction approving a petition seeking reorganization of Developer of all or a substantial part of the properties or assets of Developer, or appointing or ordering a receiver, trustee or liquidation of Developer; provided, however, that Developer shall have sixty (60) days to have dismissed of record any involuntary petition filed against it.

(d) Remedies of City. If Developer is in default beyond any applicable cure period, 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, but only to the extent specific performance is an available remedy for such default under the laws of the State of Alabama..

(e) No Special Damages. Neither City nor Developer shall be entitled to any incidental, consequential or punitive damages, whether arising at law, in equity or otherwise, such damages being specifically waived by both parties hereunder.

11. Casualty. If the Parking Garage or any part thereof shall be damaged by fire or other casualty, Developer shall (i) give prompt written notice to City and (ii) subject to the terms of any third party loan documents and lender's consent, commence and proceed with reasonable diligence to restore (or cause to be restored) the Parking Garage to substantially the same condition in which they were immediately prior to the happening of the casualty; provided, however, that if (A) such restoration cannot, with reasonable diligence, be completed within two hundred seventy (270) days from the date of such fire or other casualty or (B) sufficient insurance proceeds are not available to restore the Parking Garage, then this Agreement shall automatically terminate. Upon any such termination of this Agreement during the Initial Term, available insurance proceeds, if any, shall be paid to City to reimburse City the Pro-Rata Amount of the total Construction Cost Reimbursements determined as set forth in Section 3(vi), but to the extent insurance proceeds are not sufficient to pay in full the Pro-Rata Amount, Developer shall be obligated to pay the shortfall. The aforesaid reimbursement requirement shall only be applicable if (i) the Developer has elected to build the Parking Garage, (ii) the Developer requests in writing that the City reimburse Developer for such $12,000,000 in costs in the manner and at the times required under this Agreement, and (iii) City has actually paid such costs, or the portion of such costs payable to Developer at such time, to Developer. The parties acknowledge and agree that if such casualty event does not impact the City Garage Spaces then this Agreement shall remain in full force and effect.

12. Notices. Any notice provided herein shall be deemed to be effective upon delivery (or refusal of delivery or return as unfound), if sent by hand delivery or by a nationally recognized overnight courier or by facsimile transmission (or electronic mail if to Developer) with a confirmation copy delivered the following day by a nationally-recognized overnight courier, in all events addressed as follows.

To City:

City of Huntsville
Attention: Mayor
308 Fountain Circle
Post Office Box 308
Huntsville, Alabama 35804
Facsimile: (256) 427-5121

With a copy to the attention of:

City of Huntsville
308 Fountain Circle
Post Office Box 308
Huntsville, Alabama 35804
Attention: City Attorney
Facsimile: (256) 427-5043

To Developer:

Front Row Huntsville Owner, LLC
c/o Essex Capital
445 Park Avenue
New York, NY 10022
Attention: Mitchell Rutter
Facsimile: (212) 888-0220
Email: mbr@essexcapital.com

c/o Silverstein Properties, LLC
7 World Trade Center
250 Greenwich Street, 38th Floor
New York, New York 10007
Attention : Chief Executive Officer and General Counsel
Email: mburger@silvprop.com and
npazich@silvprop.com

With copies to:

Duane Morris, LLP
1040 E. Route 70
Cherry Hill, NJ 08003
Attention: Brad A. Molotsky, Esquire
Email: bamolotsky@duanemorris.com

Adler & Stachenfeld LLP
555 Madison Avenue, 6th Floor
New York, New York 10022
Attn: Terri L. Adler, Esq. and File Manager
File No.: 4213.0008
Email: tadler@adstach.com

13. Surrender. At the expiration or earlier termination of this Agreement, for any reason, City shall remove its goods, all vehicles, signage and effects, repair any damage caused by such removal and peaceably yield up the City Garage Spaces.

14. Holdover. If City remains in possession of or exercises control over the City Garage Spaces after the expiration or earlier termination of this Agreement, City's use and occupancy of the City Garage Spaces shall be that of a tenancy at will and City shall be required to pay Developer a two hundred percent (200%) of a reasonable daily parking rate as is market in the Huntsville area for each such Parking Space provided under this Agreement. City's occupancy during any holdover period shall otherwise be subject to the provisions of this Agreement (unless clearly inapplicable). No holdover or payment by City after the expiration or earlier termination of this Agreement shall operate to extend the Term or prevent Developer from immediate recovery of possession of the City Garage Spaces by lawful proceedings. Any provision in this Agreement to the contrary notwithstanding, any holdover by City shall constitute a default on the part of City under this Agreement entitling Developer to exercise, without obligation to provide City any notice or cure period, its right to remove City from the City Garage Spaces.

15. No Waiver of Rights. No failure of either party to exercise any right hereunder, or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's rights to demand exact compliance with the terms hereof.

16. Governing Law. The laws of the State of Alabama shall govern the validity, performance and enforcement of this Agreement.

17. No Partnership or Joint Venture. Nothing contained in this Agreement shall constitute or be construed to be a partnership or joint venture between Developer and City and their respective permitted successors and assigns.

18. No Third-Party Beneficiaries. This Agreement is intended only for the benefit of Developer and City, and neither this Agreement, nor any of the rights, interests or obligations hereunder, is intended for the benefit of any other person or third-party.

19. Entire Agreement. This Agreement and the Development Agreement set forth the entire agreement between the parties. Any prior or contemporaneous conversations or writings are merged in this Agreement and the Development Agreement. If any inconsistency exists or arises between the terms of this Agreement and the terms of the Development Agreement, the terms of this Agreement shall prevail. No provision hereof can be waived or amended except

by a writing signed by the party against whom enforcement of such waiver or amendment is sought.

20. Memorandum of Agreement. Upon request by either Developer or City, the parties shall, at the requesting party's sole cost and expense, record a memorandum of this Agreement in the real estate records of the Office of the Judge of Probate of Madison County, Alabama.

21. Termination of Development Agreement. If the Development Agreement is terminated prior to the occurrence of the Parking Garage Condition, this Agreement shall terminate automatically.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Developer and City have executed this Agreement as of the date first written above.

ATTEST:

By:______________________________

Title:_____________________________

Date signed:

____

CITY:

CITY OF HUNTSVILLE
an Alabama municipal corporation

By:_________________________________
Name: Tommy Battle
Title: Mayor

DEVELOPER:

FRONT ROW HUNTSVILLE OWNER, LLC, a Delaware limited liability company

By:_________________________________
Name:_______________________________
Title: Authorized Signatory

Date signed:

____

EXHIBIT A

PARKING GARAGE LOCATION

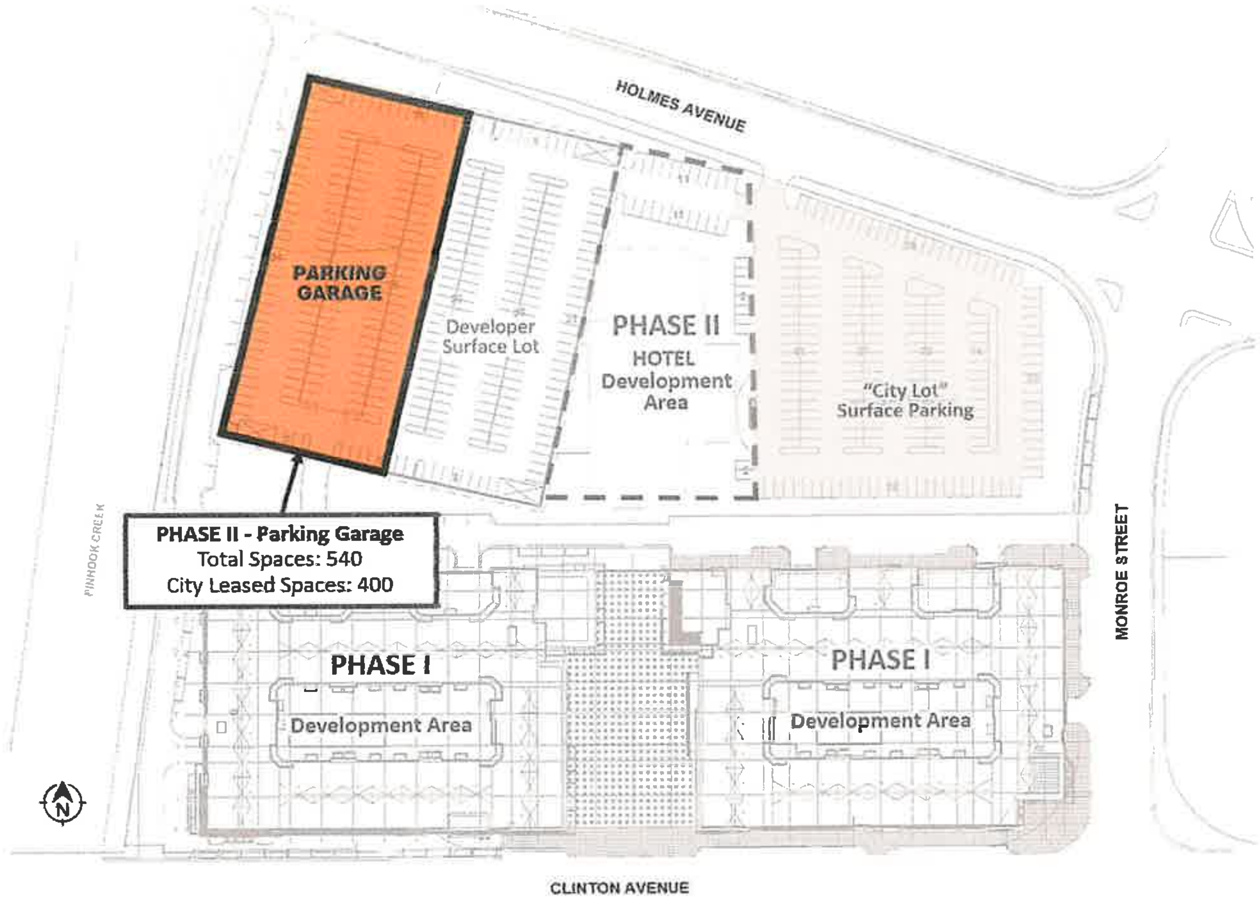


EXHIBIT B

COMMENCEMENT CERTIFICATE

_______________, 20__

City of Huntsville
308 Fountain Circle
Huntsville, Alabama 35801

Re: Garage Parking Agreement (the "**Agreement**") dated the _____ day of _________, 202_, between the CITY OF HUNTSVILLE, an Alabama municipal corporation ("**City**"), and FRONT ROW HUNTSVILLE OWNER, LLC, a Delaware limited liability company ("**Developer**"). Capitalized terms used herein but not defined shall be given the meanings assigned to them in the Agreement.

Ladies and Gentlemen:

Developer and City agree as follows:

1. Commencement Date. The Commencement Date of the Agreement is __________, 20____.

2. Expiration Date. The expiration date of the Agreement is ______________, 20_____.

3. Ratification. Developer and City each hereby ratifies and confirms its obligations under the Agreement and represents and warrants to the other party that (a) the Agreement is and remains in good standing and in full force and effect, and (b) to such party's knowledge, such party has no claims, counterclaims, set-offs or defenses against the other party arising out of the Agreement or in any way relating thereto [except as set forth on Schedule I attached hereto][1].

4. Binding Effect; Governing Law. Except as modified hereby, the Agreement shall remain in full effect and this letter shall be binding upon Developer and City and their respective successors and assigns. If any inconsistency exists or arises between the terms of this letter and the terms of the Agreement, the terms of this letter shall prevail. This letter shall be governed by the laws of the State of Alabama.

[1] NTD: Schedule of disclosures to be added if necessary.

Please indicate your agreement to the above matters by signing this letter in the space indicated below and returning an executed original to us.

ATTEST:

By:______________________________

Title:____________________________

Date signed:

____

CITY:

CITY OF HUNTSVILLE,
an Alabama municipal corporation

By:__________________________________
Name: Tommy Battle
Title: Mayor

DEVELOPER:

FRONT ROW HUNTSVILLE, LLC,
a Delaware limited liability company

By: _________________________________
Name:
Title: Authorized Signatory

Date signed:

____

EXHIBIT M
FORM OF CITY LOT AGREEMENT

PARKING AGREEMENT (CITY LOT)

This **PARKING AGREEMENT (CITY LOT)** (this "**Agreement**") is made and entered into on the ____ day of ________, 2023 (the "**Effective Date**") between **FRONT ROW HUNTSVILLE OWNER, LLC**, a Delaware limited liability company ("**Developer**"), and the **CITY OF HUNTSVILLE**, a municipal corporation under the laws of the State of Alabama ("**City**").

RECITALS

A. Developer, Rocket Development Partners, LLC, a New York limited liability company ("Original Developer") and City have entered into that certain Second Amended and Restated Development Agreement, dated as of ________, 2023 (the "**Development Agreement**"), relating to Developer's construction and development of a mixed-use project on certain real property located within the City at 512 Clinton Avenue. This Agreement constitutes the "City Lot Agreement" as defined in the Development Agreement. *Any capitalized term used but not otherwise defined herein shall have the meaning attributed to such term in the Development Agreement.*

B. As set forth in the Development Agreement, City has determined that there is a need for additional public parking to satisfy the demand for public parking in the vicinity of the Development Area.

C. Pursuant to the Development Agreement, Developer and City are entering into this Agreement pursuant to which Developer, at its option, shall have the unilateral right to lease to City a parcel of land located within the Development Area to be used by City as public surface parking spaces (the "**City Lot**" as more fully defined below).

D. The parties acknowledge and agree that this Agreement is only operative if conditions set forth in Section 1 below are satisfied.

NOW THEREFORE, in consideration of the premises, the mutual promises, covenants and agreements set forth herein and in the Development Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENT

1. Agreement. The parties acknowledge and agree that Developer is not obligated to lease the City Lot to the City as part of the Project and that that this Agreement is only operative if one of the following conditions is satisfied: (i) if Developer delivers an Election Notice (as hereinafter defined) to the City within twenty-four (24) months of the Effective Date, the Developer will be deemed to have leased the City Lot (herein defined) to the City and the City shall be deemed to have leased the City Lot from Developer and all obligations of Developer and City hereunder shall commence upon delivery of such Election Notice; or (ii) if Developer delivers an Election Notice to the City after twenty-four (24) months of the Effective Date, this Agreement shall not become operative unless the City elects in writing for this Agreement to become operative. Provided that one of the foregoing conditions is satisfied:

(a) Subject to the terms of this Agreement, Developer shall be deemed to lease unto City, and the City shall be deemed to lease from Developer, that certain parcel of real property located in Huntsville, Madison County, Alabama and more particularly described on Exhibit A attached hereto (such parcel, together with such rights with respect to ingress/egress drives, entryways and exit-ways and related facilities described in this Section 1 being referred to collectively as the "**City Lot**"). The lease of the City Lot to City shall include the non-exclusive right to use all associated ingress/egress drives, entryways and exit-ways and related facilities necessary or convenient for the use of the City Lot, and Developer does hereby grant to City, its employees, agents and independent contractors, and to City's customers and/or invitees, a nonexclusive right for the duration of the term of this Agreement of ingress and egress such over ingress/egress drives, entryways and exit-ways and related facilities to the extent necessary or convenient for the use, operation and maintenance of the City Lot. If City determines that, for the benefit of public parking, there is a need to expand the City Lot, the Parties agree to amend this Agreement so long as Developer agrees to lease additional land to City for such expansion.

(b) Upon the Commencement Date, as hereinafter defined, the City will fine grade the City Lot and bear all other costs to construct a surface parking lot on the City Lot (the "**Construction Costs**") shall be borne exclusively by the City. The City covenants and agrees, at its sole cost and expense to design, develop, and construct a public surface parking lot upon the graded City Lot and thereafter to maintain, repair, insure and generally operate the City Lot at its sole cost and expense in a manner consistent with other City of Huntsville public surface parking lots. Without limitation on the foregoing, the City will be responsible for the payment of any real estate taxes due and owing on the City Lot.

(c) During the term of this Agreement, once the City has constructed certain City Lot improvements on the City Lot, including, but not limited to, appropriate signage, striping, lighting, gating and fencing (in accordance with the City's standard requirements for public City parking lots), the City shall have the exclusive use of the City Lot for vehicle parking twenty-four hours a day, seven days a week (subject to the use restrictions set forth herein).

(d) City may, subject to the restrictions set forth in Section 4 below, permit any person(s) to use the City Lot in the sole discretion of City provided that such person(s) use the City Lot only for short term parking.

(e) Developer hereby represents and warrants to City that Developer is the true and lawful owner of and has sole legal title and interest in and to, the City Lot, has good right and full power and authority to lease the City Lot to City, and will maintain City's peaceful and quiet enjoyment of the City Lot in accordance with the terms of this Agreement. City represents and warrants that is has the power and authority to enter into this transaction, that the signer of this Agreement on behalf of the City has the authority to execute and bind the City to this Agreement, and that all appropriate public hearings have occurred, if necessary, to enable City to execute and perform this Agreement.

(f) Developer hereby represents and warrants to the City that the Development Area (including the City Lot) has been enrolled in the Voluntary Clean-Up Program administered by the Alabama Department of Revenue Management ("**ADEM**") and Developer has obtained a Letter of Concurrence dated January 13, 2022 from ADEM (the "Letter of Concurrence"). As

required by the Letter of Concurrence, an Environmental Covenant has been duly recorded in the Office of the Judge of Probate of Jefferson County, Alabama. Developer shall be responsible for any environmental hazards or conditions that may exist as of the date of this Agreement which are not specifically identified in, and addressed by, the Letter of Concurrence. Developer shall comply with all of its obligations under the Letter of Concurrence. The City shall have no liability or obligation with respect to any environmental hazards or conditions that may exist as of the date of this Agreement, including, without limitation, those specifically identified in the Letter of Concurrence.

2. Term.

(a) Subject to the terms of this Agreement, the initial lease term of this Agreement shall commence (1) on the date the Developer delivers the Election Notice to the City (if the Election Notice is delivered within twenty-four (24) months of the Effective Date), or (2) if the Election Notice is delivered after twenty-four (24) months of the Effective Date, the date the City elects in writing to lease the City Lot from the Developer (as applicable, the "**Commencement Date**") and shall expire on the date that is five (5) years after the Rent Commencement Date, as defined in Section 3 (the "**Initial Term**"). The Initial Term shall automatically, and without further action by either party, extend for four (4) additional extensions terms of five (5) years each with a rental increase of ten percent (10%) of the then expiring rent due hereunder for such extension period, all of which shall be subject to the terms and conditions set forth in this Agreement (all such extension terms, together with the Initial Term, being referred to in this Agreement as the "**Term**"), **provided however**, that City and the Developer shall each have the right to terminate this Agreement or reduce the size of the City Lot leased hereunder (in which case the Rent payable with respect to such portion of the City Lot so reduced shall be prorated based on the portion of the year that such portion of the City Lot was leased to City hereunder) at any time after the expiration of the Initial Term by providing ninety (90) days written notice of such termination to the other party hereto.

(b) At any time during the Initial Term, Developer shall have the right to terminate this Agreement as to all or a portion of the City Lot for any reason or no reason (the "**Developer's Early Termination Right**") if: (i) no event of default on the part of Developer exists and (ii) Developer has provided City written notice of the date on which this Agreement will terminate (the "**Early Termination Date**") at least ninety (90) day prior to the proposed Termination Date.

(c) Upon termination of all or a portion of this Lease pursuant to the exercise of the Developer's Early Termination Right, Developer will reimburse City a pro rata share of the total Construction Costs incurred by City (the "**Early Termination Fee**") calculated by pro rating the Construction Costs over the remainder of the Initial Term subsequent to the Early Termination Date (this calculation will be made utilizing the actual third party out of pocket Construction Costs, the Rent Commencement Date, the amount of space such termination relates to, and the Early Termination Date). Lease payments, as defined below, will not be considered in calculating the Early Termination Fee. By way of illustration, if the City's third party out of pocket Construction Costs are $2,000,000 and the Developer terminates this Agreement three (3) years after the Commencement Date (leaving 40% of the Initial Term remaining), and the termination covers 25% of the square footage of the City Lot, the Early Termination Fee would equal $200,000 (40%

of the Construction Costs as affecting 25% of the square footage of the City Lot equates to a 10% Early Termination Fee to the City). If the Early Termination Date occurs prior to the Rent Commencement Date and the termination covers 25% of the square footage of the City Lot, the Early Termination Fee shall equal 25% of any actually incurred and paid for out of pocket third party Construction Costs. The Early Termination Fee shall be paid to City within a reasonable time not to exceed 45 days after presentation by the City and reasonable approval by Developer of all actually incurred, third party out of pocket Construction Costs. City covenants and agrees to follow Alabama's competitive bid law in the procurement of design, materials and construction relating to the City Lot so that the cost of such Construction Costs is reasonable and market based given the scope of work entailed. In the event of any early termination of this Lease with respect to a portion of the City Lot, the Developer shall promptly reimburse the City the reasonable cost of all work to restore, alter and/or reconfigure the remainder of the City Lot, and any access thereto, which is necessitated by such partial termination.

3. Consideration. The City will pay Developer an annual rental fee (the "**Rent**") equal to one dollar ($1.00) per square foot of the City Lot, beginning on the date which is six (6) months after the Commencement Date (the "**Rent Commencement Date**"). Rent shall be payable annually in advance on the Rent Commencement Date and on each anniversary of the Rent Commencement Date during the Term. The Rent shall increase in each extension period by ten percent (10%) of the then expiring Rent from the prior period. Developer shall deliver to City an invoice for each installment of Rent at least sixty (60) days before, and no more than ninety days (90) before, the due date for such installment, but failure to provide such invoice shall in no event affect the City's obligation to pay Rent when and as due under this Agreement.

4. Use. The City Lot shall be used by City as a public short term vehicular parking by the City, its employees, agents, and the customers, invitees, guests, contractors, and visitors of the City Lot and for no other purposes without the prior written consent of Developer, in its sole discretion, provided that in no event shall the City Lot be used to park or store public vehicles such as utility or emergency vehicles on a long term basis, or for the storage of any City property, container storage, parts storage, equipment, scrap or vehicles, and no vehicle repair or maintenance shall be permitted in the City Lot. All use of the City Lot shall be in a lawful and orderly manner, and City shall comply with all present and future laws and ordinances of governmental authorities having jurisdiction pertaining to the operation and safety of the City Lot. City acknowledges that the development of the Project by Developer will be of a first class residential and mixed use product and the City covenants to use the City Lot to that which is in keeping with the nature of the first class development within the Development Area. As used in this this Section 4, the term "long term basis" shall mean a period of time in excess of thirty (30) consecutive days.

5. Signage and Control Measures. City shall cause to be painted or erected such reasonable signage concerning the use of the City Lot or implementation of other suitable control measures as designated by the City of Huntsville Director of Parking and Public Transit (or the successor officer to such position). No personnel, employees, agents, contractors or others acting by, on behalf or with permission of Developer may hold themselves out to be personnel or employees of City, or to have enforcement authority respecting use of the City Lot. Enforcement against any vehicles illegally or inappropriately parked within any portion of the City Lot shall be the sole authority of City and City's duly authorized enforcement officials or agents. City shall be

entitled to post outside and within the City Lot reasonable signage respecting the availability and use of the City Lot and related information.

6. Maintenance of City Lot. Without limitation on any other provision of this Agreement, during the term of this Agreement, City shall be solely responsible for the operation and all maintenance and repairs to the parking areas located on the City Lot and all other aspects of the City Lot and must maintain the City Lot in good working order.

7. Insurance.

(a) City shall maintain insurance with respect to the Parking Lot in amounts and with coverage consistent with the insurance maintained on other parking lots owned by the City. Developer acknowledges that City self-insures its parking facilities and will self-insure the Parking Lot.

(b) Anything in this Agreement to the contrary notwithstanding, Developer and City each hereby waives any and all rights of recovery, claim, action or cause of action against the other for any loss or damage to any property of Developer or City, arising from any cause that (i) would be insured against under the terms of any property insurance required to be carried hereunder; or (ii) is insured against under the terms of any property insurance actually carried, regardless of whether the same is required hereunder. The foregoing waiver shall apply regardless of the cause or origin of such claim, including but not limited to the negligence of a party, or such party's agents, officers, employees or contractors. The foregoing waiver shall not apply if it would have the effect, but only to the extent of such effect, of invalidating any insurance coverage of Developer or City. The foregoing waiver shall also apply to any deductible, as if the same were a part of the insurance recovery.

8. Indemnity; Expenses.

(a) Developer shall indemnify, defend and save City harmless from all claims, actions, damages, liability and expenses (including reasonable attorneys' fees and court costs) arising from the operation or use by Developer of the remainder of the Development Area outside the City Lot, provided, however, that Developer shall have no obligation to indemnify the City to the extent such claims, actions, damages, liability and expenses are occasioned wholly by any act or omission of City, its agents, servants, contractors, employees, licensees, invitees or guests.

(b) City shall use the City Lot at its own risk, and Developer shall not be liable to City for any loss or damage to any of City's property, or to any of City's agents', servants', contractors', employees', licensees', invitees' or guests' property located on or within the City Lot unless such loss or damage is caused wholly by any act or omission of Developer, its agents, servants, contractors, employees, licensees, invitees or guests (expressly excluding City, and its agents, servants, contractors, employees, licensees, invitees and guests).

(c) The terms of this Section 8 shall survive the expiration or any earlier termination of this Agreement.

(d) The parties acknowledge and agree that neither party shall have any obligation under this Section 8 (or any other obligation under this Agreement) prior to the Commencement Date.[1]

9. Assignment. So long as City is not in default hereunder, City may, without obtaining any approval or consent of Developer, in its sole and absolute discretion, pledge, hypothecate, assign, transfer or encumber this Agreement and its interest in the City Lot and sublease any portion of the City Lot and all rights of ingress and egress appurtenant thereto as provided herein; provided, however, City shall provide notice of any such action to Developer and City shall remain wholly responsible for all actions and non-actions of any such transferee. Developer may assign and transfer this Agreement to any permitted assignee of Developer's interest in the Development Agreement; provided the provisions of Section 5.2 of the Development Agreement shall apply but with this Agreement substituted for the Development Agreement.

Notwithstanding anything herein to the contrary, Developer may collaterally assign Developer's interest in this Agreement to secure any loan provided by a Lender, without having to obtain the consent of the City. Simultaneously with the closing of the transaction whereby the Lender obtains such collateral assignment (or at such other time as shall be required by such Lender), Developer and City shall execute and deliver to the Lender a Collateral Assignment of Parking Garage Agreement substantially in the form of the Collateral Assignment attached to the Development Agreement as Exhibit B (the "Collateral Assignment"). The Collateral Assignment shall include language requiring the Lender (and any purchaser that acquires the Project from Lender after foreclosure or deed in lieu of foreclosure) to assume in writing all obligations of Developer under this Agreement on and after the date Lender or such other purchaser acquires Developer's interest in the Project. The Developer and City shall deliver a new Collateral Assignment to any new Lender or assignee of Lender's rights to such loan.

10. Events of Default and Remedies.

(a) Events of Default by City. Any one or more of the following shall constitute an event of default by City under this Agreement:

(i) Failure by City to pay any amount due with respect to the Rent within ten (10) days of the date such amount is due and payable;

(ii) Default by City under the Development Agreement, if and to the extent the Parking Garage (as defined in the Development Agreement) is built, and, in each case, the failure to cure same within any applicable cure period;

(iii) Default by City under this Agreement, other than as described in item (i) above, and City shall not cure such failure within 30 days after receipt of written notice thereof from Developer (except that this 30-day period shall be extended for a reasonable period of time not to exceed 120 days if the failure is not reasonably capable of

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[1] Language required by Construction Lender.

cure within said 30-day period, and City promptly commences efforts to cure such failure and continues diligently thereafter all efforts necessary to cure such failure); or

(iv) If a petition in bankruptcy is filed by or against City, or a receiver or other trustee of any of the property of City is appointed, or if City files a petition or an answer seeking reorganization under any of the provisions of the bankruptcy law or of any other law, state or federal, or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or admitting the material allegations of a petition filed against it in any proceeding under such law, or if City enters into or consents to an arrangement with creditors or makes an assignment for the benefit of creditors, or is adjudicated insolvent by any state or federal court of competent jurisdiction, or if an order, judgment or decree shall be entered without the application, approval, or consent of City by any court of competent jurisdiction approving a petition seeking reorganization of City of all or a substantial part of the properties or assets of City, or appointing or ordering a receiver, trustee or liquidation of City; provided, however, that City shall have sixty (60) days to have dismissed of record any involuntary petition filed against it.

(b) Remedies of Developer. If City is in default beyond any applicable cure period, Developer may, as its sole and exclusive remedy, terminate this Agreement, seek all unpaid costs and expenses due from City hereunder, and in recognition of such City default, Developer will not be required to pay the Early Termination Fee. Upon Developer's termination of this Agreement, City shall at once surrender possession of and all rights to the City Lot (including any and all improvements made by the City) to Developer, and Developer may immediately, and without further notice, or at any time thereafter, reenter the City Lot and remove all persons and all or any property therefrom, by any suitable action or proceeding at law.

(c) Events of Default by Developer. Any one or more of the following shall constitute an event of default under this Agreement by Developer:

(i) Default by Developer under the Development Agreement and the failure to cure same within any applicable cure period;

(ii) Default by Developer under this Agreement and Developer shall not cure such failure within 30 days after receipt of written notice thereof from City (except that this 30-day period shall be extended for a reasonable period of time not to exceed 120 days if the failure is not reasonably capable of cure within said 30-day period, and Developer promptly commences efforts to cure such failure and continues diligently thereafter all efforts necessary to cure such failure); or

(iii) If a petition in bankruptcy is filed by or against Developer, or a receiver or other trustee of any of the property of Developer is appointed, or if Developer files a petition or an answer seeking reorganization under any of the provisions of the bankruptcy law or of any other law, state or federal, or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or admitting the material allegations of a petition filed against it in any proceeding under such law, or if Developer enters into or consents to an arrangement with creditors or makes

an assignment for the benefit of creditors, or is adjudicated insolvent by any state or federal court of competent jurisdiction, or if an order, judgment or decree shall be entered without the application, approval, or consent of Developer by any court of competent jurisdiction approving a petition seeking reorganization of Developer of all or a substantial part of the properties or assets of Developer, or appointing or ordering a receiver, trustee or liquidation of Developer; provided, however, that Developer shall have sixty (60) days to have dismissed of record any involuntary petition filed against it.

(d) Remedies of City. If Developer is in default beyond any applicable cure period, 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, but only to the extent specific performance is an available remedy for such default under the laws of the State of Alabama.

(e) No Special Damages. Neither City nor Developer shall be entitled to any incidental, consequential or punitive damages, whether arising at law, in equity or otherwise, such damages being specifically waived by both parties hereunder.

11. [reserved]

12. Notices. Any notice provided herein shall be deemed to be effective upon delivery (or refusal of delivery or return as unfound), if sent by hand delivery or by a nationally recognized overnight courier or by facsimile transmission (or electronic mail if to Developer) with a confirmation copy delivered the following day by a nationally-recognized overnight courier, in all events addressed as follows.

To City:

City of Huntsville
Attention: Mayor
308 Fountain Circle
Post Office Box 308
Huntsville, Alabama 35804
Facsimile: (256) 427-5121

With a copy to the attention of:

City of Huntsville
308 Fountain Circle
Post Office Box 308
Huntsville, Alabama 35804
Attention: City Attorney
Facsimile: (256) 427-5043

To Developer:

Front Row Huntsville Owner LLC
c/o Essex Capital
445 Park Avenue
New York, NY 10022

Attention: Mitchell Rutter
Facsimile: (212) 888-0220
Email: mbr@essexcapital.com

c/o Silverstein Properties, LLC
7 World Trade Center
250 Greenwich Street, 38th Floor
New York, New York 10007
Attention : Chief Executive Officer and General Counsel
Email: mburger@silvprop.com and
npazich@silvprop.com

With a copy to:

Duane Morris, LLP
1040 E. Route 70
Cherry Hill, NJ 08003
Attention: Brad A. Molotsky, Esq.
Facsimile: 609-280-7483
Email: bamolotsky@duanemorris.com

Adler & Stachenfeld LLP
555 Madison Avenue, 6th Floor
New York, New York 10022
Attn: Terri L. Adler, Esq. and File Manager
File No.: 4213.0008
Email: tadler@adstach.com

13. Surrender. At the expiration or earlier termination of this Agreement, for any reason, City shall remove its goods and effects (including any of the above ground improvements made by the City as required herein), repair any damage caused by such removal and peaceably surrender possession of the City Lot.

14. Holdover. If City remains in possession of or exercises control over the City Lot after the expiration or earlier termination of this Agreement, City's use and occupancy of the City Lot shall be that of a tenancy at will and City shall be responsible for Rent in the amount of two hundred percent (200%) of that which was due at the end of the prior Term. City's occupancy during any holdover period shall otherwise be subject to the provisions of this Agreement (unless clearly inapplicable). No holdover or payment by City after the expiration or earlier termination of this Agreement shall operate to extend the Term or prevent Developer from immediate recovery of possession of the City Lot by lawful proceedings. Any provision in this Agreement to the contrary notwithstanding, any holdover by City shall constitute a default on the part of City under this Agreement entitling Developer to exercise, without obligation to provide City any notice or cure period, its right to remove City from the City Lot.

15. No Waiver of Rights. No failure of either party to exercise any right hereunder, or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's rights to demand exact compliance with the terms hereof.

16. Governing Law. The laws of the State of Alabama shall govern the validity, performance and enforcement of this Agreement.

17. No Partnership or Joint Venture. Nothing contained in this Agreement shall constitute or be construed to be a partnership or joint venture between Developer and City and their respective permitted successors and assigns.

18. No Third-Party Beneficiaries. This Agreement is intended only for the benefit of Developer and City, and neither this Agreement, nor any of the rights, interests or obligations hereunder, is intended for the benefit of any other person or third-party.

19. Entire Agreement. This Agreement and the Development Agreement set forth the entire agreement between the parties. Any prior or contemporaneous conversations or writings are merged in this Agreement and the Development Agreement. If any inconsistency exists or arises between the terms of this Agreement and the terms of the Development Agreement, the terms of this Agreement shall prevail. No provision hereof can be waived or amended except by a writing signed by the party against whom enforcement of such waiver or amendment is sought.

20. Memorandum of Agreement. Upon request by either Developer or City, the parties shall, at the requesting party's sole cost and expense, record a memorandum of this Agreement in the real estate records of the Office of the Judge of Probate of Madison County, Alabama.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Developer and City have executed this Agreement as of the date first written above.

ATTEST:

By:____________________________

Title:___________________________

Date signed:

____

CITY:

CITY OF HUNTSVILLE
an Alabama municipal corporation

By:_________________________________
Name: Tommy Battle
Title: Mayor

DEVELOPER:

FRONT ROW HUNTSVILLE OWNER, LLC
a Delaware limited liability company

By:_________________________________
Name:
Title: Its Authorized Signatory

Date signed:

____

EXHIBIT A

City Lot

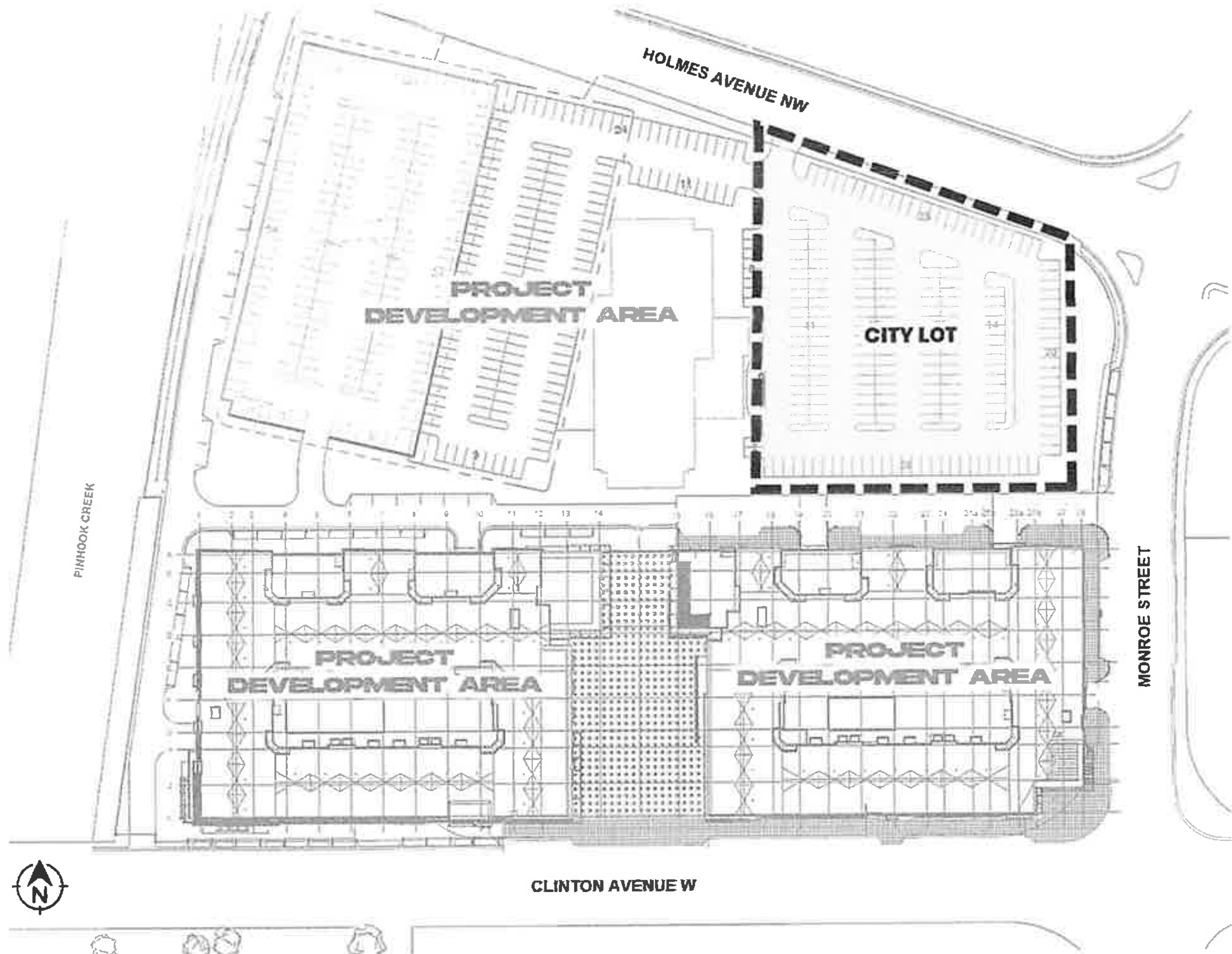

EXHIBIT B

FORM OF COLLATERAL ASSIGNMENT

Exhibit C

COLLATERAL ASSIGNMENT