



# Huntsville, Alabama

308 Fountain Circle  
Huntsville, AL 35801

## Cover Memo

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**Meeting Type:** City Council Regular Meeting **Meeting Date:** 10/26/2023

**File ID:** TMP-3523

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**Department:** Urban Development

**Subject:**

**Type of Action:** Approval/Action

Resolution approving a form of Lease Agreement between the City of Huntsville, Alabama and Parkway Vesta, LLC, under which the City would lease parking spaces from Parkway Vesta, L.L.C.

Resolution No.

**Finance Information:**

**Account Number:** NA

**City Cost Amount:** NA

**Total Cost:** NA

**Special Circumstances:**

**Grant Funded:** NA

**Grant Title - CFDA or granting Agency:** NA

**Resolution #:** NA

**Location: (list below)**

**Address:** NA

**District:** District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

**Additional Comments:**

NA

## RESOLUTION NO. 23-\_\_

**WHEREAS**, the City of Huntsville (the “City”) has entered into a Development Agreement dated September 15, 2023 (the “Development Agreement”) between the City and Parkway Vesta, LLC, an Alabama limited liability company (the “Company”), in connection with the construction and development on approximately 18 acres located along South Memorial Parkway adjacent to the Joe Davis Stadium redevelopment and John Hunt Park (the “Development Area”) of a multi-phase development, the first phase of which to include at least 50,000 square feet of retail improvements, at least 12,000 square feet of class A office space improvements, and a multi-level structured parking facility containing approximately 415 (though in no event less than 400) parking spaces (the “Parking Facility”); and

**WHEREAS**, substantial public parking will be required within and around the Development Area to accommodate the parking needs of visitors to the redeveloped Joe Davis Stadium and John Hunt Park, as well as patrons of the commercial and other developments anticipated outside the Development Area; and

**WHEREAS**, funding for additional public parking outside the Development Area is not included in the City’s near or long term capital plans, and the City has determined that it would be wise and in the public interest to lease parking within the Parking Facility over a long term to accommodate its anticipated public parking needs in the area; and

**WHEREAS**, pursuant to the terms of the Development Agreement, the City and the Company will enter into a Parking Lease Agreement (hereinafter defined) under which the Company will lease to the City three hundred (300) parking spaces within the Parking Facility (the “City Parking Spaces”) for a period of thirty (30) years; and

**WHEREAS**, the City has determined that it will be economically advantageous to lease the City Parking Spaces for the rental set forth in the Parking Lease Agreement and the other agreements therein contained by the City, as compared to the cost (including financing costs) of constructing, developing, insuring, repairing, and maintaining a three hundred (300) space parking facility to serve parking needs in the area for a thirty (30) year period;

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Huntsville, Alabama (the “Council”), that the Council hereby authorizes and approves a Parking Lease Agreement in substantially the form attached as Exhibit A hereto, with such changes as shall be deemed necessary or desirable by the Mayor (the “Parking Lease Agreement”), along with such notices, certificates, instruments, agreements, amendments, and other documents as shall be necessary or desirable in connection with the transactions contemplated by, or in furtherance of, the Paring Lease Agreement; and

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

**ADOPTED** this the 26th day of October, 2023

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

**APPROVED** this the 26th day of October, 2023

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Mayor of the City of  
Huntsville, Alabama

STATE OF ALABAMA     )  
  )  
MADISON COUNTY     )

## LEASE AGREEMENT

THIS **LEASE AGREEMENT** (this "Lease") is made as of this 26th day of October, 2023 (this "Effective Date"), by and between **PARKWAY VESTA, LLC**, an Alabama limited liability company, including its successors and permitted assigns ("Landlord"), and the **CITY OF HUNTSVILLE**, a municipal corporation under the laws of the State of Alabama ("Tenant"). The Landlord and the Tenant are herein from time to time referred to collectively as the "Parties" and each, individually, from time to time, as a "Party".

### RECITALS:

Landlord and Tenant have entered into that certain Development Agreement made and entered into on and as of September 15, 2023 (the "Development Agreement"), relating to the planned development of certain land in the City of Huntsville as a mixed-use commercial project, developed in a series of phases (defined in the Development Agreement and referred to herein the "Projects") containing, among other things, a multi-level public parking garage containing not less than four hundred (400) parking spaces (the "Parking Facility"). The Parking Facility will be constructed by Landlord on the land identified as "Parking Deck" on Exhibit A attached hereto and incorporated herein (the "Land") pursuant to the Development Agreement and the parking spaces therein hereinafter defined as the "Tenant Parking Spaces" are leased to Tenant pursuant to the terms of this Lease. Capitalized terms used herein but not defined herein shall have the meanings given to such terms in the Development Agreement.

### WITNESSETH:

NOW, THEREFORE, for and in consideration of the rent payable hereunder, the mutual terms and conditions set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## ARTICLE I LEASE OF PARKING FACILITY

1.1 Lease. (a) Landlord hereby leases to Tenant and Tenant leases from Landlord for the term hereof, at the rental, and upon all of the conditions set forth herein, a total of three hundred (300) of the parking spaces in the Parking Facility situated on the Land, with all such three hundred (300) parking spaces initially located within the Parking Facility as shall be shown

within the Plans hereinafter defined (such three hundred parking spaces, collectively, the "Tenant Parking Spaces"). This Lease shall be binding and effective on the parties hereto commencing on the date of execution hereof and shall continue in effect until the expiration of the term of this Lease or such earlier time as this Lease is terminated in accordance with the terms hereof.

(b) During the course of this Lease the Landlord shall have the right, from time to time and upon written notice delivered to the City, delivered at least forty-five (45) days prior to the effective date of the proposed change (a "Tenant Parking Space Change in Location Notice"), to move the location of Tenant Parking Spaces within the Parking Facility so long as (i) the Landlord clearly describes and identifies within the Tenant Parking Space Change in Location Notice the proposed new location of the Tenant Parking Spaces within the Parking Facility, (ii) as to any floor or level of the Parking Facility, the Tenant Parking Spaces on such floor or level shall be contiguous with one another, and (iii) the Tenant Parking Space Change in Location Notice clearly identifies the effective date of proposed change in location of Tenant Parking Spaces.

(c) Landlord covenants and agrees not to change or relocate Tenant Parking Spaces more than one (1) time in any calendar year, except under extraordinary circumstances in which case such extraordinary circumstance shall be described in reasonable detail within the Tenant Parking Space Change in Location Notice.

## 1.2 Construction By Landlord.

(a) Landlord shall construct the Parking Facility substantially in accordance with the plans and specifications that are approved by Tenant prior to any physical work commencing as respects the construction of the Parking Facility as an open air precast deck (the "Plans"), which such prior approval shall not be unreasonably withheld, conditioned or delayed. The Mayor of the City and the Director of Urban and Economic Development of the City, or either of them, are hereby authorized to grant such approval of the Plans by and on behalf of the City. The Plans shall require not less than four hundred (400) total parking spaces within the Parking Facility and, further, shall show the location of each of the Tenant Parking Spaces. The Plans, once approved by the City as aforesaid, shall not be altered or amended without the prior written approval of Tenant which such approval shall not be unreasonably withheld, conditioned or delayed. The Landlord shall cause all construction activities with respect to the Parking Facility 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"). The Landlord understands, acknowledges and agrees that approval by the City of the Plans as herein provided shall not be deemed an approval or waiver of any compliance by the Landlord or the Parking Facility with any Applicable Laws.

(b) During construction, Tenant may enter the Parking Facility at Tenant's sole risk during normal business hours for the purpose of inspecting the construction work and shall give Landlord notice of any contended variances of work from the requirements of this Lease or from the terms of the Plans. Tenant shall use commercially reasonable efforts to not

interfere with the performance of the work by Landlord, Landlord's contractors, subcontractors, independent contractors, agents, and employees during any such inspection.

## **ARTICLE II TERM AND USE**

2.1 Term. The term of this Lease shall commence on the Effective Date and shall be in effect at all times continually thereafter through and including the twenty-fifth (25<sup>th</sup>) anniversary of the Phase I Completion Date, as defined in the Development Agreement.

2.2 Use.

(a) Tenant shall have the exclusive use of the Tenant Parking Spaces for motor vehicle parking twenty-four hours a day, seven days a week, together with the non-exclusive right to use (in addition to the ingress and egress right of Section 2.2(b)) all of the ingress/egress drives, entryways and exit ways and related facilities necessary or convenient to obtain access to, and the ability to use, the Tenant Parking Spaces, whether located within the Parking Facility, elsewhere on the Land; provided, Landlord shall have the right to reasonably restrict use of certain Tenant Parking Spaces as necessary for maintenance, repair, cleaning, and refurbishment of the Parking Facility. Tenant shall have peaceful possession and occupancy and quiet enjoyment of the Tenant Parking Spaces, without molestation, hindrance or disturbance by Landlord or any affiliate, transferee, assignee, successor or other similar entity, and Landlord acknowledges that Landlord shall have no rights, uses, preferences or any other privileges with respect to the Tenant Parking Spaces.

(b) Landlord hereby grants to Tenant, its employees, agents and independent contractors, and to Tenant's customers and/or invitees, a nonexclusive right for the duration of the term of this Lease of ingress and egress over all real property upon which the Tenant Parking Spaces are located and from the Parking Facility to the extent necessary for the use, operation and maintenance of the Tenant Parking Spaces, with Landlord responsible for the maintenance and repair of the areas covered by such rights of ingress and egress; provided, however, Tenant shall be responsible for the repair and maintenance of such areas due to the negligence of Tenant, Tenant's agents, employees, independent contractors, contractors and subcontractors.

(c) Tenant shall have sole discretion respecting the availability and use of the Tenant Parking Spaces and may permit any public person or other licensees or sublessees of Tenant to use the Tenant Parking Spaces in the sole discretion of Tenant.

(d) Landlord (1) shall clearly mark (or permit the Tenant to clearly mark), whether by signage or painting of spaces, the Tenant Parking Spaces that are to be made available to members of the general public, and (2) shall prohibit any tenants of the multi-family components of the Phase I Project, the hotel components of the Phase II Project, or other elements of the Phase I Project, Phase II Project and the Phase III Project from parking in any of the Tenant Parking Spaces, unless otherwise permitted by the Tenant (such permission to be evidenced by written instrument signed by the Tenant). Anything in the foregoing to the contrary notwithstanding, Tenant (1) shall be entitled to post outside and inside the Parking Facility

reasonable signage respecting the availability and use of the Tenant Parking Spaces and related information, and (2) shall be permitted to clearly mark, whether by paint or other reasonable methods, the Tenant Parking Spaces.

(e) Notwithstanding the provisions of this Section 2.2, Landlord and Tenant agree that Landlord shall have the right to control access at and within the Parking Facility to parking spaces within the Parking Facility other than the Tenant Parking Spaces, and the Landlord shall have sole discretion respecting the availability and use of all parking spaces other than the Tenant Parking Spaces within the Parking Facility.

2.3 Charges. During such times as Landlord shall be in default of its obligations hereunder, and such default has not been cured by Landlord or its affiliates after reasonable notice from the City and opportunity to cure (the time for which cure in no event shall exceed ninety (90) days from the date of notice) Landlord shall be required to remit and pay to the Tenant, upon written demand by Tenant, an amount as shall represent the Landlord Pro Rata Payment Obligation. As used herein, as of any date of calculation, "Landlord Pro Rata Payment Obligation" shall mean an amount as shall equal the amount of Rent theretofore paid by Tenant times a quotient, the numerator of which shall be the number of months remaining through the end of the then-scheduled term of this Lease, and the denominator of which shall be three hundred (300).

### **ARTICLE III RENT**

3.1 Tenant shall pay to Landlord as rent for the Tenant Parking Spaces the following amounts ("Rent"):

(a) At such time as Landlord has (w) provided evidence reasonably satisfactory to Tenant that Landlord has acquired fee simple title to the Land subject only to ad valorem property taxes for the current tax year and such other matters of record approved in writing by Tenant, which approval shall not be unreasonably withheld, conditioned, or delayed and which approval right shall apply only to matters of record materially affecting Tenant's use and enjoyment of the Tenant Parking Spaces or the security afforded Tenant under the Mortgage, (x) recorded on the Development Area the Tenant Parking Spaces Covenant (as hereinafter defined), (y) executed and delivered the Mortgage, as defined in the Development Agreement, to the City and (z) Commenced Construction, as defined in the Development Agreement, of the Phase I Project, Tenant shall pay the first installment of rent to Landlord in the amount of \$1,250,000 (the "First Rental Installment") on a date that is not later than thirty (30) days following such date as all four (4) of the conditions set forth in foregoing subclauses (w) through (z) have been satisfied (such date, the "First Rental Installment Date"). In the event the Phase I Completion Date has not occurred by the Phase I Completion Deadline (as defined in the Development Agreement), the full amount of the First Rental Installment that was actually paid to Landlord shall be returned promptly by Landlord to Tenant in immediately available funds, and upon receipt of said sum each of Landlord and Tenant shall have the right to terminate this Lease. Upon receipt by Tenant of the full amount of the First Rental Installment as set forth in the immediately preceding sentence, the Mortgage shall be terminated and Tenant shall consent to the removal of the Tenant Parking Spaces Covenant. The requirement of Landlord to return

the First Rental Installment to Tenant as herein described shall survive the expiration or termination of this Lease. As used in this Section 3.1(a), the term "Tenant Parking Spaces Covenant" shall mean a covenant in favor of the City of Huntsville, Alabama, in form and substance reasonably acceptable to the Tenant and the Landlord, to the effect that the Development Area (as defined in the Development Agreement) shall include a parking facility or other parking area upon which not less than three hundred (300) parking spaces shall be made available to the Tenant for the rental set forth in this Lease.

(b) The second installment of Rent shall be an amount equal to \$1,250,000 and shall be due on the Phase I Completion Date, but only if the Phase I Completion Date occurs on or before the Phase I Completion Deadline.

(c) All subsequent installments of Rent shall come due on such dates, and be in such amounts, as follows:

Rent Due Date	Amount
First anniversary of the Phase I Completion Date	\$1,000,000
Second anniversary of the Phase I Completion Date	\$1,000,000
Third anniversary of the Phase I Completion Date	\$1,000,000
Fourth anniversary of the Phase I Completion Date	\$1,000,000
Fifth anniversary of the Phase I Completion Date	\$1,000,000
Sixth anniversary of the Phase I Completion Date	\$1,000,000
Seventh anniversary of the Phase I Completion Date	\$1,000,000
Eighth anniversary of the Phase I Completion Date	\$1,000,000
Ninth and each subsequent annual anniversary of the Phase I Completion Date through the term of this Lease	\$10.00

(d) For the avoidance of doubt, anything herein to the contrary notwithstanding, whether express or implied, Tenant shall have no obligation to make any payment of Rent described in Section 3.1(c) if Landlord has not Completed Construction of the Phase I Project by the Phase I Completion Deadline, as such deadline may be extended pursuant to the terms of the Development Agreement.

(e) If any installment of Rent shall come due during a period of time when the Parking Facility has been damaged such that the Tenant Parking Spaces are not fully usable or are destroyed (each such period, a "Non-Use Period"), the obligation of Tenant to pay an installment of Rent that comes due during the then-effective term of this Lease shall be suspended as of the date of such damage or destruction and up until the date that the Parking Facility has been completely restored and re-built and the Tenant Parking Spaces are fully available and usable for their originally intended use by Tenant, and the amount of time of the



Non-Use Period shall be added to the then remaining term of this Lease (anything in this Lease to the contrary notwithstanding).

## **ARTICLE IV CONDITION**

4.1 Landlord's Obligations. (a) Landlord shall keep the Parking Facility and every part thereof in good order, condition and repair, including structural and non-structural components (whether or not such portion of the Parking Facility requiring repair or the means of repairing the same are reasonably or readily accessible to Landlord, and whether or not the need for such repairs occurs as a result of Tenant's use, the elements or the age of such portion of the Parking Facility) including, without limiting the generality of the foregoing, all fixtures, striping, parking surfaces (including without limitation repairing cracks in asphalt or concrete), plumbing, ventilating, electrical, lighting facilities and equipment within the Parking Facility, access and egress areas, fixtures, elevators, walls, ceilings and sidewalks and drive aisles adjacent to the Parking Facility.

(b) Landlord shall assume and be responsible for the full and timely payment of any and all costs of operating, maintaining, securing, insuring, repairing, refurbishing, rebuilding, restoring, and cleaning the Parking Facility, as well as all costs of utilities and all taxes on the Parking Facility. Landlord shall assure that the Parking Facility is neat and clean at all times.

(c) Landlord shall maintain and operate the Parking Facility in a commercially reasonable manner consistent, as of any time of determination, with the standards of operation and maintenance by Tenant of parking garages owned and operated by Tenant.

(d) Landlord shall not make any material modifications or alterations to the Parking Facility or to the walkways, sidewalks, entrances or exits contiguous to or serving the Parking Facility without the prior written consent of Tenant, which consent shall not be unreasonably withheld, conditioned or delayed.

4.2 Tenant's Obligations. Tenant shall have no obligation to maintain, repair, refurbish, re-build, restore or clean the Parking Facility. It is the understanding of Landlord and Tenant that the only payment or performance obligation of Tenant hereunder is to pay Rent. In the event a cost, expense or obligation arises respecting the operation, maintenance, upkeep or existence of the Parking Facility that is not addressed herein, the same shall become the obligation and responsibility of Landlord.

4.3 Obligation to Rebuild. In the event the Parking Facility is damaged or destroyed partially or totally from any cause whatsoever, Landlord shall repair, restore and rebuild such damaged or destroyed property to its condition existing immediately prior to such damage or destruction at Landlord's own expense, and this Lease shall remain in full force and effect. Such repair, restoration and rebuilding shall be commenced within a reasonable time after such damage or destruction has occurred and shall be diligently pursued to completion; provided, however, if the Parking Facility cannot be restored to a tenantable condition within one-hundred eighty (180) days from the date of such damage or destruction in Landlord's reasonable

determination, or if sufficient insurance proceeds are not remitted to Landlord for such repair, rebuild, or restoration, then Landlord may elect to remit and pay to Tenant the Landlord Pro Rata Payment Obligation, and upon receipt by Tenant of the full amount of the Landlord Pro Rata Payment Obligation then Landlord may terminate this Lease upon written notice to Tenant within thirty (30) days of such payment, in which case the obligations of Landlord and Tenant, and the obligations of Tenant to Landlord, under this Lease shall cease.

## **ARTICLE V TAXES AND UTILITIES**

### **5.1     Real Property Taxes.**

(a)     Real Property Taxes. Landlord shall pay all real property taxes applicable to the Parking Facility during the term of this Lease. All such payments shall be made at least ten (10) days prior to the delinquency date of such payment. If Landlord shall fail to pay any such taxes, Tenant shall have the right to pay the same in which case Landlord shall repay such amount to Tenant promptly upon demand.

(b)     Definition of "Real Property" Tax. As used herein, the term real property tax shall include any form of assessment, license fee, commercial rental tax levy, penalty, or tax (other than inheritance, income or estate taxes), now or hereafter imposed on the Parking Facility by any authority having the direct or indirect power to tax.

5.2     Utilities. Landlord shall pay when due all charges for all water, gas, heat, light, power, telephone and other utilities and services supplied to the Parking Facility, together with any taxes thereon.

## **ARTICLE VI INSURANCE**

6.1     Insurance. Landlord shall carry special form property and casualty insurance with respect to the Parking Facility in the amount of the full insurable value of the Parking Facility on a replacement cost basis and otherwise acceptable to Tenant and commercial general liability insurance reasonably acceptable to Tenant. Tenant shall be named an additional insured under such commercial general liability insurance. Landlord shall also deliver to Tenant prior to payment of the First Rental Installment, a standard form certificate of insurance evidencing the insurance required by this article and, not less than 30 days prior to the expiration of each policy year during the term of this Lease, Landlord shall deliver to Tenant a standard form certificate of insurance evidencing the insurance required by this article for the immediately succeeding policy year.

## **ARTICLE VII DEFAULTS AND REMEDIES**

7.1     Default by Tenant. The Tenant shall be in default hereunder upon (i) as respects payment of Rent, failure by Tenant to make any payment of Rent hereunder, up to and including the Eighth anniversary of the Phase I Completion Date, as and when due, within ten (10) days of

written notice from Landlord of such failure, or (ii) failure by Tenant to cure non-compliance by Tenant with any other covenant of Tenant under this Lease, where such failure shall continue for a period of ninety (90) days after written notice thereof from Landlord to Tenant (a "Tenant Default").

7.2 Tenant Default Remedies. In the event of a Tenant Default as set forth in Section 7.1 hereof, Landlord may at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such Tenant Default:

(a) Terminate Tenant's right to possession of the Tenant Parking Spaces by any lawful means, until such default is cured by Tenant, and if such default is not cured within one (1) year of its occurrence, this Lease may be terminated, at the election of and upon written notice from Landlord, in which case Tenant shall immediately surrender possession of the Tenant Parking Spaces to Landlord;

(b) Maintain Tenant's right to possession of the Tenant Parking Spaces in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Tenant Parking Spaces. In such event Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover Rent as it becomes due hereunder; and/or

(c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the State of Alabama; provided, however, in no event shall Landlord be entitled to (and Landlord hereby waives any claim or right thereto) any punitive, incidental, consequential, or other damages, whether arising at law, in equity, or otherwise.

7.3 Default by Landlord. Any failure by Landlord to perform any obligations required of Landlord hereunder within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord, specifying wherein Landlord has failed to perform such obligations shall constitute a default and breach of this Lease by Landlord (a "Landlord Default"); provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for such performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion promptly as possible.

7.4 Landlord Default Remedies. In the event of any Landlord Default as set forth in Section 7.3 hereof, Tenant may at any time thereafter, with or without notice or demand and without limiting Tenant in the exercise of any right or remedy which Tenant may have by reason of such Landlord Default:

(a) Elect to suspend payments of Rent hereunder until such time as the default has been cured;

(b) If the Landlord Default is with respect to the obligation of Landlord to provide the Tenant Parking Spaces then, after reasonable notice to Landlord and reasonable opportunity for Landlord to cure (which such opportunity to cure shall, in no event, be for a

period of longer than ninety (90) days from the date of Tenant's notice to Landlord), then the Tenant shall have the right to terminate this Lease and Landlord shall be required to remit and pay Tenant the Landlord Pro Rata Payment Obligation;

(c) If such default is one that involves failure by Landlord to properly insure, maintain, repair, or upkeep the Parking Facility, undertake such actions (and charge Landlord for the costs actually incurred by Tenant) as set forth and described in Section 8.14 hereof; and/or

(d) Elect to pursue any other remedy now or hereafter available to Tenant under the laws or judicial decisions of the State of Alabama; provided, however, in no event shall Tenant be entitled to (and Tenant hereby waives any claim or right thereto) any punitive, incidental, consequential, or other damages, whether arising at law, in equity, or otherwise.

## **ARTICLE VIII GENERAL PROVISIONS**

8.1 Subordination. (a) Except as set forth in paragraph (b) immediately below, this Lease and the rights of Tenant hereunder at all times shall be superior to (and not subordinate to) any mortgage, assignment, pledge, transfer, hypothecation or the like by Landlord of this Lease or the rights of Landlord hereunder or any sale, conveyance, transfer, mortgage or encumbrance of the Parking Facility or the Land by Landlord.

(b) Upon the written request of Landlord, Tenant shall execute a written agreement wherein Tenant agrees that this Lease shall be subordinate to any mortgage granted by Landlord with respect to the Parking Facility necessary to obtain financing to construct and develop the Parking Facility (a "Permitted Mortgage"); provided, such agreement (i) shall be signed by Landlord, Tenant and the mortgagee, (ii) shall contain customary non-disturbance language acceptable to Tenant to the effect that so long as a Tenant Default has not occurred and is not continuing, Tenant may quietly and peacefully enjoy the Tenant Parking Spaces subject to the other terms of this Lease, and (iii) shall provide that in the event of the exercise of the power of sale under any Permitted Mortgage, so long as a Tenant Default has not occurred and is not continuing, the possession and quiet enjoyment of the Tenant Parking Spaces by Tenant shall not be disturbed in any manner whatsoever.

8.2 Severability. The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

8.3 OSHA Compliance. Landlord assumes all responsibility regarding the Occupational Safety Health Act or the legal use or adaptability of the Parking Facility and the compliance thereof to all applicable laws and regulations enforced during the term of this Lease.

8.4 Notices. Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery, by certified mail, return receipt requested, or by recognized overnight delivery service and shall be deemed sufficiently given if addressed to Tenant or to Landlord at the following address:

If to Tenant:

City of Huntsville

Attention: Mayor  
308 Fountain Circle  
Huntsville, Alabama 35804

With a copy to the attention of: City of Huntsville  
Attention: City Attorney  
308 Fountain Circle  
Huntsville, Alabama 35804

If to Landlord: Parkway Vesta, LLC  
Attention: Dr. Rao Thotakura  
1518 Petersburg Drive  
Huntsville, Alabama 35801

with a copy to: Butler Snow LLP  
Attention: Leslie Sharpe  
200 West Side Square, Suite 100  
Huntsville, Alabama 35801

Either party may by written notice to the other specify a different address for notice purposes.

8.5 Waivers. No waiver by either Party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by the other Party of the same or any other provision. The acceptance of Rent hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision hereof, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent. The failure of Landlord to insist any time upon the performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in this Lease shall not be constituted as a waiver or a relinquishment thereof for the future.

8.6 Delay or Omission No Waiver. No delay or omission of either Party to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by this Lease to such Party may be exercised from time to time and as often as may be deemed expedient by the Parties. Without limiting the foregoing, no waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

8.7 Recording/Short Form Lease. As a condition to the effectiveness of this Lease, promptly upon request by Tenant, Landlord shall acknowledge and deliver to Tenant a short form memorandum of this Lease for recording purposes. The cost of such recording shall be paid by Landlord.

8.8 Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

8.9 Covenants and Conditions. Each provision, term, covenant, and condition of this Lease made by or pertaining to Tenant shall be deemed both a covenant and a condition.

8.10 Binding Effect; Governing Law; Counterparts. This Lease shall bind the Parties and their successors and permitted assigns. This Lease shall be governed by the laws of the State of Alabama. This Lease may be executed in one or more counterparts, each of which shall be deemed an original and taken together shall constitute one and the same document.

8.11 Certain Representations and Warranties by Landlord. Landlord hereby represents and warrants to Tenant that Landlord is the true and lawful owner of, and has sole legal title and interest in and to, that portion of the Development Area upon which the Parking Facility is intended to and will be constructed, and that Landlord has good right and full power to lease the Tenant Parking Spaces to Tenant and to provide and ensure Tenant's peaceful and quiet enjoyment of the Tenant Parking Spaces and the Parking Facility.

8.12 Landlord's Access. Landlord and Landlord's agents shall have the right to enter the Parking Facility at reasonable times for the purposes of inspecting the same, and making such alterations, repairs, improvements or additions to the Parking Facility as Landlord may deem necessary or desirable.

8.13 Signs. Landlord shall not place any sign on the exterior of the Parking Facility without Tenant's prior written consent, which such consent shall not be unreasonably withheld, conditioned or delayed. The Mayor of the City and the Director of Urban and Economic Development of the City, or either of them, are hereby authorized to provide such consent by and on behalf of the City.

8.14 Performance by Tenant of Defaults by Landlord. If Landlord shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Parking Facility or the Land; in the payment of any utility charge, whether public or private; in the payment of any insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Lease, then Tenant, at its option, may perform or observe the same, and all payments made therefor or costs paid or incurred by Tenant in connection therewith, shall be owed by Landlord to Tenant hereunder, and Landlord shall immediately repay the same to Tenant with interest thereon at a rate equal to 4% above the Prime Rate as reported in The Wall Street Journal or, if such publication is no available or does not report the Prime Rate, as reported by the main depository institution for Tenant. Tenant is hereby empowered to enter and to authorize others to enter upon the Parking Facility or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Landlord.

8.15 Towing By Tenant. The Parties hereby agree that if Tenant elects for vehicles parked in Tenant Parking Spaces in violation of the Development Agreement or this Lease to be towed, then Tenant shall be responsible for any and all such towing and the costs thereof.

8.16 No Third Parties Benefitted. This Lease is made and entered into for the sole protection and benefit of Landlord and Tenant and their successors and assigns. No trust fund is

created by this Lease and no other persons or entities will have any right of action under this Lease or any right to any of the funds, provisions, terms, or other benefits due hereunder.

8.17 Captions; Conflicts with Development Agreement. The captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Lease nor the intent of any provision thereof. Upon any conflict with the terms of this Lease and the terms of the Development Agreement, the terms of this Lease shall control.

[Signatures on the following page]

IN WITNESS WHEREOF, the Parties have caused this Lease to be duly executed and to be dated the day and year first above written.

**PARKWAY VESTA, LLC**, an Alabama  
limited liability company

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

Name: \_\_\_\_\_

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

**CITY OF HUNTSVILLE**

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

Mayor



# EXHIBIT A DESCRIPTION OF LAND

