

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 4/25/2013

Action Requested By:
Legal

Agenda Item Type
Resolution

Subject Matter:

Lessor's Estoppel Agreement

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Lessor's Estoppel Agreement between the City of Huntsville and Propst Broadway, LLC.

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

Item to be considered for: Action

Unanimous Consent Required: No

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

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: _____

Date: _____

RESOLUTION NO. 13-_____

WHEREAS, the City of Huntsville as "Lessor" entered into that certain Parking Space Lease by and between the City and Inkana Group, LLC, dated March 25, 1999, recorded as Instrument Number 20040601000117940, as amended by that certain Amendment to Parking Space Lease, dated December 15, 1999, recorded as Instrument Number 20040601000117950, as further amended by that certain Amendment No. 2 to Parking Space Lease, dated August 23, 2001, recorded as Instrument Number 20040601000117960, as assigned by that certain Assignment of Lease, dated May 20, 2004, recorded as Instrument Number 20040601000118020, as ratified by that certain Ratification Agreement, dated June 1, 2004, recorded as Instrument Number 20040601000117990, and as further amended by that certain Amendment No. 3 to Parking Space Lease between the City of Huntsville and 305 Church St. SW Holdings, LLC, dated August 11, 2011, all as recorded in the Office of the Judge of Probate of Madison County, Alabama (the "Parking Lease"); and

WHEREAS, it is the intent of the City Council of the City of Huntsville, to approve the Lessor Estoppel Certificate in substantially the form attached hereto as Exhibit A, and to consent to the assignment of the Parking Lease pursuant to that certain Purchase and Sale Agreement by and between 305 Church St. SW Holdings, LLC, a Maryland limited liability company, and Propst Broadway, LLC, an Alabama limited liability company.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a Lessor's Estoppel Agreement by and between the City of Huntsville and Propst Broadway, LLC, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Lessor's Estoppel Agreement between the City of Huntsville and Propst Broadway, LLC," consisting of thirty-nine (39) pages including Exhibit A, and the date of April 25, 2013, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 25th day of April, 2013.

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

APPROVED this the 25th day of April, 2013.

Mayor of the City of
Huntsville, Alabama

STATE OF ALABAMA)

COUNTY OF MADISON)

LESSOR'S ESTOPPEL CERTIFICATE

**TO: PROPST BROADWAY, LLC, an Alabama limited liability company
("Propst")**

RE: Parking Space Lease by and between the City of Huntsville ("Lessor") and Inkana Group, LLC, dated March 25, 1999, recorded as Instrument Number 20040601000117940, as amended by that certain Amendment to Parking Space Lease, dated December 15, 1999, recorded as Instrument Number 20040601000117950, as further amended by that certain Amendment No. 2 to Parking Space Lease, dated August 23, 2001, recorded as Instrument Number 20040601000117960, as assigned by that certain Assignment of Lease, dated May 20, 2004, recorded as Instrument Number 20040601000118020, and as ratified by that certain Ratification Agreement, dated June 1, 2004, recorded as Instrument Number 20040601000117990, as further amended by that certain Amendment No. 3 to Parking Space Lease, dated August 11, 2011, recorded as Instrument Number _____, all in the Office of the Judge of Probate of Madison County, Alabama (the "Parking Lease").

The undersigned Lessor certifies and represents to Propst that, as of this date, the following are true and correct:

1. Attached hereto as **Exhibit A** is a true, correct and complete copy of the Parking Lease and any and all amendments, supplements and assignments thereto. The Parking Lease is in full force and effect and contains the entire agreement between the Lessor and 305 Church St. SW Holdings, LLC (the "Lessee") under the Parking Lease with respect to the Property. The Parking Lease has not been modified, altered or amended except as set forth in **Exhibit A**.

2. The undersigned is the Lessor under the Parking Lease and has not assigned or conveyed, or agreed to assign or convey, all or any part of its interest in the Parking Lease or in the Premises.

3. There is and has been no uncured default in the performance of the Parking Lease by the Lessee, nor has any event occurred or condition arisen, to the knowledge of the Lessor, which, with the passage of time or the giving of notice or both, would constitute a default under or breach of the Parking Lease by the Lessee.

4. Rental and all other charges due under the Parking Lease have been fully paid through the date hereof.

5. The initial term of the Parking Lease runs through June 15, 2025, unless sooner terminated pursuant to the provisions of the Parking Lease, with five (5) options to renew for successive periods of ten (10) years each.

President of the City Council of the
City of Huntsville, Alabama
Date: _____

6. The Lessor hereby expressly consents to an assignment of the Parking Lease by Lessee and agrees that the Lessee's execution and delivery of such Assignment will not constitute a default under the Parking Lease.

7. The Lessor confirms there are no mortgages, hypothecations or pledges now encumbering the Lessor's fee interest in the Premises and that the Parking Lease shall remain superior to all fee mortgages hereafter encumbering the Lessor's fee interest in the Premises.

8. The undersigned acknowledges that Propst is relying upon this certificate and the covenants and representations contained herein in purchasing the commercial condominium units in the building known and commonly referred to as the BB&T Bank Building located at 305 Church Street, SW, Huntsville, Alabama, and the Lessor makes the above covenants and representations for the benefit and protection of Propst, its successors and assigns.

[Remainder of Page Intentionally Left Blank]

Dated: Effective April ____, 2013.

LESSOR:

THE CITY OF HUNTSVILLE, ALABAMA

By: _____
Tommy Battle
Its: Mayor

ATTEST

Print Name: Charles E. Hagood
Its: Clerk Treasurer

STATE OF ALABAMA)
 :
COUNTY OF MADISON)

Before me, the undersigned, a Notary Public, in and for said county, in said state, personally appeared **Tommy Battle**, as Mayor of **THE CITY OF HUNTSVILLE, ALABAMA**, whose name is signed to the foregoing instrument, and who is known to me, being first duly sworn, acknowledged before me on this day that, being informed of the contents of said Agreement, makes oath that he, as such official and with full authority, has read the foregoing instrument and knows the contents thereof, executed the same voluntarily for and as the act of said City of Huntsville on this date.

Given under my hand this the 25th day of April, 2013.

[NOTARIAL SEAL]

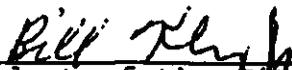
NOTARY PUBLIC
My Commission Expires: _____

EXHIBIT A
PARKING LEASE

RESOLUTION NO. 99- 287

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and she is hereby authorized to enter into a Parking Space Lease Agreement by and between the City of Huntsville and Inkana Group, L.L.C., on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Parking Space Lease Agreement between the City of Huntsville and Inkana Group, L.L.C.", consisting of thirteen (13) pages, and the date of March 25, 1999, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 25th day of March, 1999.



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

APPROVED this the 25th day of March, 1999.



Mayor of the City of
Huntsville, Alabama

PARKING SPACE LEASE
BETWEEN THE CITY OF
HUNTSVILLE AND
INKANA GROUP, L.L.C.

PARKING SPACE LEASE

STATE OF ALABAMA)
MADISON COUNTY)

THIS PARKING SPACE LEASE (this "Lease") is made and entered into effective as of the 25th day of March 1999, by and between THE CITY OF HUNTSVILLE, a municipal corporation existing under the laws of the State of Alabama (hereinafter referred to as "Lessor") and INKANA GROUP, L.L.C., an Alabama limited liability company (hereinafter referred to as "Lessee").

WITNESSETH:

1. **Lease of Parking Spaces.** The Lessor does hereby lease and rent unto the Lessee and the Lessee does hereby take as tenant under this Lease a minimum of 235 and a maximum of 257 parking spaces (at Lessee's option) in Units 2 and 3 (separately referred to herein as "Unit" and collectively as "Units") in the building known as Colonial Bank Plaza situated at the corner of Williams Avenue and Church Street, Huntsville, in Madison County, Alabama (the "Building"), together with the unimpeded, non-exclusive right of access thereto over the access area described in **Exhibit A** attached hereto (such spaces and related access rights hereinafter collectively referred to as the "Premises") to be used by the Lessee only for vehicular parking and related pedestrian traffic for no other different objects or purposes, for and during the term commencing on the date Lessor takes title to the Premises (the "Commencement Date") and ending on the earlier of (i) the end of the Initial Term pursuant to that certain Ground Lease between the Lessor and Lessee dated September 10, 1998, and recorded in Deed Book ____, Page ____, of the Probate Records of Madison County, Alabama, as amended by that certain Amendment to Ground Lease dated January 7, 1999, as approved by City of Huntsville Resolution No. 99-3, (collectively, the "Ground Lease"), or (ii) the date Lessor acquires title to



President of the City Council

the remainder of the Building (the "Initial Lease Term"). On or before the Commencement Date, Lessee shall notify Lessor in writing of the total number of parking spaces to be leased, subject to the minimum and maximum range set forth above.

1.1 Rent. Lessee agrees to pay the Lessor, on the first (1st) day of each calendar month of the lease term commencing on the Commencement Date, in advance, as rent for the Premises, the sum of **SIXTY FIVE DOLLARS (\$65.00)** per parking space per month throughout the Initial Lease Term. Rent for the first month shall be due on the seventh (7th) day after the Commencement Date. Beginning on the fifth (5th) anniversary of the Commencement Date and continuing throughout the remainder of the Initial Lease Term, the rental rate per parking space shall increase by an amount equal to the average dollar amount increase subsequent to the Commencement Date, if any, then applicable to other parking garage spaces owned by Lessor on such date.

1.2 Renewal. The Lessee shall have the option(s) to renew this Lease for additional terms (each such additional term hereinafter a "Renewal Period") equal in number and in duration to the renewal periods set forth in that certain Ground Lease between the Lessor and Lessee dated September 10, 1998, and recorded in Deed Book ____, Page ____, of the Probate Records of Madison County, Alabama, as amended by that certain Amendment to Ground Lease dated January 7, 1999, as approved by City of Huntsville Resolution No. 99-3, (collectively, the "Ground Lease"); provided, however, in order to exercise such option Lessee must notify Lessor in writing at least ninety (90) days prior to the end of the Lease Term of its election to exercise such option; and provided further that such option to renew shall exist only for so long as the Ground Lease remains in effect. If such option(s) is elected, the rent per parking space for each Renewal Period shall be an amount equal to the then-average rental rate that Lessor charges for each parking garage space (not including the Premises) then owned by the Lessor, irrespective of location (hereinafter, the "Renewal Rate"). After the Initial Lease Term, if Lessor shall be required to rehabilitate, refurbish or replace the Premises, Lessee shall pay monthly as rent for each parking space an amount equal to (i) the Renewal Rate, plus (ii) one-twelfth (1/12) of a capital component equal to the ratio of the parking spaces contained in the Premises divided by the total cost associated with all such rehabilitation, refurbishment or replacement, amortized over a twenty (20) year period at the lowest

prevailing interest rate then available to Lessor (using reasonable efforts), minus (iii) the amount, if any, of Lessor's then current monthly parking rate which comprises a capital component (i.e., reserve, replacement, rehabilitation, but not including operation or maintenance) (such amount is hereinafter referred to as the "Total Renewal Rent"). Notwithstanding the above, the Lessee shall not be required to pay rent for the subject parking spaces in an amount in excess of the amount the Lessee was paying during year twenty-five of the Lease plus any increase in rent as defined in paragraph 1.1 **Rent**. Lessee shall continue to pay the Total Renewal Rent until the earlier of (i) the termination of this Lease, (ii) twenty years from the beginning of the first Renewal Period, or (iii) the date the title to the remainder of the Building is acquired by Lessor (if at all). Except for the rent provisions as set forth in this Paragraph 1.2, all remaining provisions of this Lease shall continue throughout each Renewal Period.

2. **Possession.** Lessor shall not be liable for the failure to deliver possession of the Premises, other than to the extent of abatement of rent from the date of the commencement of this lease to the day possession is delivered to Lessee on the rental basis herein set forth, and the entering into of this Lease shall not be considered as a guarantee or assurance of possession until same is actually delivered. The Premises consist of Units 2 and 3 of Colonial Plaza Condominium. Lessee may occupy each Unit upon issuance of the Certificate of Occupancy for each such unit. In the event Lessor occupies less than both units, Lessee shall only pay rent for 118 parking spaces or the number of parking spaces actually occupied, whichever is greater; provided, however, that Lessee shall occupy and pay rent on all parking spaces subject to this Lease by no later than August 1, 2000. The foregoing notwithstanding, if some or all of the parking spaces in Units 2 and 3 are not available for occupancy as of August 1, 2000, through no fault of Lessor, then Lessee shall pay to Lessor rent for 235 spaces at \$65 per space per month, and the then highest prevailing rate for parking garage spaces in Lessor's facilities for each of Lessor's spaces which are not available for occupancy. Lessor shall have the right to use the Premises for parking or other purposes only after 6:00 p.m., Monday through Friday, all day Saturday, Sunday, and all federal or state holidays; provided, however, that such right shall be nonexclusive, Lessor acknowledging that tenants of Lessee may be using some of the Premises at the same time.

3. **Maintenance of Premises.** Lessor shall at its cost be responsible for all operating expenses and maintenance of the Premises, including but not limited to, annual cost of operation of the Premises, maintenance (except for the "Lessee Maintenance" defined herein), wages, salaries, payroll taxes and insurance of any personnel employed by Lessor, janitorial costs (including regular sweeping of the floors of the Premises), utilities, waste disposal, equipment and supplies relating to the operation and use of the Premises as a parking garage. All painting (including painting necessary to remove any graffiti not removed within the scope of the Lessee Maintenance) of the walls and ceiling of the Premises shall be performed by Lessor at its expense. Lessee shall pay the expense of (i) all of Lessee's maintenance and (ii) repairing all damage (including without limitation broken glass) to the Premises caused by Lessee or its employees, agents, invitees, customers or any occupant of or other persons whom Lessee permits to be in or about the Premises ("Lessee's Agents"). Lessee shall permit no waste of the Premises nor allow the same to be done, but Lessee shall take good care of the same and Lessee is and shall be responsible and liable for any damage done to the Premises, or the Building in which the same are located, by the Lessee or Lessee's Agents. Lessor shall be liable for all damage done to the Premises by Lessor, its employees, agents, invitees, customers or any occupant of or other persons whom Lessor permits to be in or about the Premises ("Lessor's Agents"). Lessee shall surrender to Lessor the quiet and peaceable possession of the Premises in like good order as at the commencement of the term, natural wear and tear excepted, and shall not remove any item which has been affixed to the Premises. As used herein, Lessee Maintenance shall mean the following:

1. Regular and routine daily cleaning and maintenance of stairwells, elevators and elevator lobbies, and
2. Four (4) washdowns of the floors of the Premises annually, at such times as requested by Lessor, but if not requested by Lessor, at such times as Lessee determines in its reasonable discretion. Such washdowns shall be done by pressure washing the concrete floor areas of the Premises in such a manner so that latent dirt can easily be removed from the concrete surface.
3. The cleaning of vertical and ceiling surfaces in the parking structure. This cleaning operation shall occur at not more than five (5) year intervals.
4. The annual cleaning of all glass walls and other regular maintenance as needed to glass walls.

4. Condition of Premises. Lessee shall, on or before the Commencement Date, examine the Premises, and satisfy itself with the physical condition thereof. Lessee's taking possession of the Premises shall be conclusive evidence of receipt of them in good order and repair, except as otherwise specified, and Lessee agrees that no representation as to condition or repair has been made except as is contained in this Lease and that no promise to decorate, alter, or improve the Premises has been made except such as is contained in this Lease.

5. Sub-Lease and Assignment. Lessee shall have the right or power to sublet the Premises or any part thereof, or to transfer or assign this Lease but only with the written consent of Lessor. Such consent shall not be unreasonably withheld. If subletting or assignment occurs then the Lessee (or the assignee in the case of assignment) shall be responsible for payments of rent to the Lessor; provided if the assignment is for the purpose of securing financing for the building, then the Lessee shall be responsible for payments of rent to the Lessor until such time as the assignee comes into possession of the building.

6. Breach, Abandonment, Forfeiture, Termination. In the event the Lessee vacates or abandons the Premises before the expiration of the term whether voluntarily or involuntarily, or violates any of the terms, conditions, or covenants hereof, the Lessor shall have the privilege, after expiration of thirty (30) days from the date Lessor provides written notice to Lessee of such violation, at Lessor's option, of (i) reentering and taking possession of the Premises and let same as agent of Lessee and apply the proceeds received from such letting towards the payment of the rent and/or other charges due by Lessee under this lease and such re-entry and re-letting shall not discharge Lessee from liability or rent nor from any other obligation of Lessee under the terms hereof, or (ii) at the option of the Lessor the rent for the entire term shall at once become due and payable and Lessor may proceed to collect the rent for the entire term as if by the terms of this lease the entire rent for the entire term should be made payable in advance; or (iii) Lessor may at his option, reenter the Premises and upon giving 24 hours' written notice to the Lessee annul and terminate this Lease. Such re-entry shall not bar the right of recovery of rent or damages for breach of covenants nor shall the receipt of rent after conditions broken be deemed a waiver of forfeiture. In order to entitle Lessor to re-enter it shall not be necessary to give notice of rent being due and unpaid or of other conditions broken or to make demand for rent, the execution of this

Lease signed by the parties hereto being sufficient notice of the rent being due and demand for the same, and it shall be so construed, any law, usage or custom to the contrary notwithstanding.

7. Damage, Destruction and Condemnation.

7.1 In the event the Premises are damaged or destroyed (partially or wholly) by fire, rain, wind, earthquake or other cause, the result of which is to cause a termination of the Ground Lease, then this Lease shall cease and terminate as of the date of such destruction. The rental shall then be accounted for between the Lessor and Lessee up to the time of such damage, taking or destruction of said premise, the Lessee paying up to said date and the Lessor refunding the rents collected beyond said date.

7.2 If the Premises are damaged by fire (through no fault of Lessee or Lessee's agents, employees, invitees or customers), rain or wind beyond the control of Lessee, the effect of which is to not terminate the Ground Lease, and which renders the Premises partially untenable or partially unfit for the use of purpose for which the same are hereby let, and are repairable within a reasonable time, then in that event this Lease shall remain in full force and effect, and the Lessor shall within a reasonable time restore the Premises to substantially the condition the same were in prior to said damages, and there shall be an abatement in rent in the proportion that the damaged portion of the Premises bears to the whole of the Premises.

8. **Services.** The Lessor shall in no event be liable for damages for stoppage of heat or electricity or water or for the machinery pertaining to the Premises breaking or getting out of order, or being out of repair.

9. **Right of Entry.** Lessor in person or by agent shall have the right at all reasonable times to enter the Premises and inspect the same.

10. **Risk of Loss.** All personal property placed in the Premises, or in the store rooms or in any other portion of said Premises or any place appurtenant thereto, shall be at the risk of Lessee, or the parties owning same, and neither Lessor

nor Lessor's Agents shall be liable for the loss of or damages to such property or for any act or negligence of any tenants or agents of tenants or occupants or of any other person whomsoever in or about the Building, except for losses occurring as a result of the negligence of Lessor or Lessor's Agents.

11. Attorney's Fees and Waiver of Personal Property. In the event either party employs an attorney to collect any rents or other charges due hereunder by Lessee, or to protect the interest of such party under this Lease or in the Premises, or in the event the other party violates any of the terms, conditions, or covenants on the part of the Lessee herein contained, the prevailing party shall be entitled to recover from the other party, in addition to any damages awarded, the reasonable fees and expenses (including attorney's fees) incurred by such prevailing party.

12. Utilities, Taxes and Other. The Lessor will pay all utility charges for the Premises, and all sewer service charges, occupancy taxes and any and all other municipal license fees, or charges which may hereinafter be imposed by the county or municipality wherein the Premises is located. Lessor shall pay all ad valorem taxes (if any) for the real property portion of the Premises. Lessee shall pay all ad valorem taxes on all personal property of Lessee located on the Premises. Said charges, fees, taxes, and any and all other municipal license fees or charges shall be paid by the Lessee as soon as such charges become due. Lessee shall be responsible for waste disposal/dumpster fees related to the "Premises." Lessor shall provide, at no additional charge, space for refuse containers.

13. Insurance.

13.1 Casualty Insurance. Lessor shall, at all times during the term of this Lease, maintain a policy or policies of insurance, issued by and binding upon some solvent insurance company, insuring the Premises against loss of damage by fire, for the full insurable value thereof, or, in the alternative, coinsuring for eighty percent (80%) of the replacement cost thereof, in each case, exclusive of excavation costs, foundation costs, pilings, underground conduits, and other similar underground items. Alternatively, Lessor may self-insure against such hazards. Lessee hereby agrees not to (i) use, or allow the use of, the Premises for any hazardous use, or (ii) allow, install, store or permit any hazardous or regulated materials on or in the Lease Premises without in each instance the Lessor's express written consent.

13.2. Liability Insurance. Lessee shall, at its own expense, maintain a policy or policies of commercial general liability insurance (on the most current ISO insurance form), fire legal liability insurance, and workmen's compensation and employer's liability insurance with respect to the respective activities of Lessee on the Premises with the premiums thereon fully paid on or before due date, issued by and binding upon some insurance company authorized to do business in Alabama and approved by Lessor, such insurance to contain such endorsements as Lessor may require and afford minimum protection of not less than \$1,000,000.00 combined single limit coverage for bodily injury, property damage or combination thereof, and shall name Lessor as an additional insured.

13.3 Insurance (General). All policies of insurance to be provided or obtained by Lessee under this Lease shall (i) name Lessor as an additional insured, and (ii) provide for notice to Lessor at least thirty (30) days before any material change in coverage or rate modification or cancellation or termination of said insurance. Lessee shall furnish Lessor with certificates of insurance evidencing Lessee's compliance with the provisions of this Section 13.3 prior to Lessee's occupancy of the Premises. All insurance provided by Lessee shall specifically provide that it is considered primary coverage, and any insurance provided by Lessor shall be excess and non-contributory.

14. No Implied Waiver. The failure of Lessor to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Lease shall not be construed as a waiver or a relinquishment thereof for the future.

15. Partial Payment. No payment by Lessee or receipt by Lessor of a lesser amount than the monthly installment of rent due under this Lease shall be deemed to be other than payment on account of the earliest rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such rent or pursue any other remedy provided in this Lease.

16. **Relationship of Parties.** Nothing contained or implied in this Lease shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent, nor any other provisions contained herein, nor any acts of the parties herein, shall be deemed to create any relationship between the parties hereto other than the relationship of Lessor and Lessee.

17. **Miscellaneous.**

17.1 **Severability.** If any term or provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

17.2 **Governing Law.** This Lease and the rights and obligations of the parties hereto are governed by the laws of the State of Alabama.

17.3 **Time of Performance.** Except as may be otherwise expressly provided herein, time is of the essence of this lease with respect to all required acts of Lessee.

17.4 **Transfers by Lessee.** Subject to the provisions of paragraph 5. herein, Lessee shall have the right to transfer and assign, in whole or in part, all its rights and obligations hereunder and the Premises referred to herein, and in such event and upon such transfer Lessee shall be released from any further obligations hereunder with regard to such rights and obligations so transferred or assigned, and Lessor agrees to look solely to such successor in interest of Lessee for the performance of such obligations.

17.5 **Section Headings.** The section or subsection headings are used for convenience of reference only and do not define, limit or extend the scope or intent of the sections or this Lease.

17.6 No Other Representations. Neither party has made any representations or promises, except as contained herein, or in some further writings, signed by the party making such representation or promise.

17.7 Successors and Assigns. Each provision hereof shall extend to and shall, as the case may require, bind and inure to the benefit of the Lessor and its successors and assigns, and of the Lessee, and its successors, assigns and sublessees.

17.8 Notices. Any notice provided for herein may be delivered, if by Lessee to Lessor, by mailing the same by Certified Mail to the Lessor at the address set forth herein, or by hand delivery in person, but such delivery must be acknowledged in writing by Lessor or Lessor's agent at time of such delivery; if by Lessor to Lessee, by serving on Lessee in person or by leaving said notice at or on the Premises or by mailing said notice to Lessee at the Premises by ordinary or Certified Mail; and Lessee hereby agrees that any notice addressed to him at the above address shall be legal notice the same as if personally served. All notices hereunder must be given in writing and notices not given in writing will be considered void and without effect.

17.8.1 The Lessee shall pay the rent and shall forward all notices to Lessor at the following address (or at such other place as Lessor may hereafter designate in writing):

City of Huntsville
308 Fountain Row
Huntsville, Alabama 35801
Attention: City Clerk-Treasurer

17.8.2 The Lessor shall forward all notices to Lessee at the following address (or at such other place as Lessee may hereafter designate in writing):

Inkana Group, L.L.C.
501 Madison Street
Huntsville, Alabama 35801

With a copy to:

Daniel M. Wilson, Esq
Balch & Bingham L.L.P
655 Gallatin Street
Huntsville, Alabama 35801

17.8.3 The use by the Lessee of the parking spaces ("Premises") which are the subject of this lease agreement shall be subject to the City of Huntsville's ordinances, resolutions, rules, and regulations. (as may be amended) which govern parking in City of Huntsville owned parking garages; provided however, that such ordinances, resolutions, rules and regulations do not either alter the number of spaces leased pursuant to this agreement or cause an increase in the rental payable hereunder according to the terms of this lease agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their signatures and seals, as of the day and year first above written.

ATTES:

LESSOR:

THE CITY OF HUNTSVILLE, a municipality existing under the laws of the State of Alabama

By: Charles E. Hagood
Charles E. Hagood, Clerk/Treasurer

By: Loretta Spencer
Loretta Spencer Mayor

WITNESS:

LESSEE:

INKANA GROUP, L.L.C., an Alabama limited liability company

Gladys Blackwell

By: Jyrone Samples
Its: Manager

This instrument prepared by:
Daniel M. Wilson, Esq.
BALCH & BINGHAM LLP
655 Gallatin Street
Huntsville, Alabama 35801
(256) 5551-0171

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Loretta Spencer and Charles E. Hagood, whose names as Mayor and City Clerk-Treasurer of The City of Huntsville, a municipal corporation, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their capacity as such officers, executed the same with full authority for and as the act of said corporation on the day the same bears day.

GIVEN under my hand and official seal this the 25th day of March, 1999.

Sheryl M. Hempel
Notary Public
My Commission Expires: 10-17-2000

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Slade Blackwell and Tyrone Samples, whose names as Manager and Manager of Inkana Group, L.L.C., an Alabama limited liability company, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their capacity as such officers, executed the same with full authority for and as the act of said limited liability company on the day the same bears day.

GIVEN under my hand and official seal this the 6th day of May, 1999.

John F. [Signature]
Notary Public
My Commission Expires: 7-8-2001

EXHIBIT A

ACCESS AREA

Throughout the term of this Lease, Lessee and Lessee's Agents shall have unimpeded, uninterrupted and continuous, non-exclusive access, except for reasonable security and access authorization measures to be employed by Lessor, including, but not limited to, the use of gated access controlled either electronically or by use of a parking attendant to the Premises over and across the following described real property owned by Lessor:

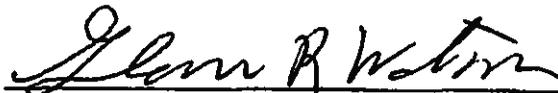
All that part of Block 8 of the recorded plat of Section "A", Subdivision Plat of Urban Renewal Project ALA R-32, Big Spring Area, Huntsville, Alabama as recorded in Plat Book 8, Pages 22, 23, 24 and 25 in the Office of the Judge of Probate Court of Madison County, Alabama and a part of the vacated alley which is ten (10) feet in width and which lies north of and contiguous to the north boundary of the above said Block 8 on the above said subdivision plat and particularly described as:

Commencing at a P-K nail set at the southeasterly corner of Block 8 of the above said subdivision plat and the intersection of the northerly right-of-way line of Williams Avenue and the westerly right-of-way line of Fountain Circle; thence N 33°44'09" W along the westerly right-of-way line of said Fountain Circle a distance of 173.54 feet to a 5/8 inch rebar set and stamped "G. W. Jones & Sons C. E. Inc. CA-00020E" and the point of beginning; thence S 57°33'00" W a distance of 176.84 feet; thence W 33°49'46" W a distance of 55.01 feet to the north boundary of that above said alley which is ten (10) feet in width a distance of 176.93 feet to the westerly right-of-way line of said Fountain Circle; thence S 33°44'09" E along the westerly right-of-way line of said Fountain Circle a distance of 55.01 feet to the point of beginning and containing 9728 square feet, more or less.

RESOLUTION NO. 99-1074

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and she is hereby authorized to enter into an Amendment to the Parking Space Lease Agreement by and between the City of Huntsville and Inkana Group, L.L.C., on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Amendment to the Parking Space Lease Agreement between the City of Huntsville and Inkana Group, L.L.C.". consisting of seven (7) pages, and the date of December 16, 1999. appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 16th day of December, 1999.



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

APPROVED this the 16th day of December, 1999.



Mayor of the City of
Huntsville, Alabama

**AMENDMENT TO PARKING SPACE LEASE
BETWEEN THE CITY OF HUNTSVILLE AND
INKANA GROUP, L.L.C.**

STATE OF ALABAMA)
)
MADISON COUNTY)

AMENDMENT TO PARKING SPACE LEASE

THIS AMENDMENT TO PARKING SPACE LEASE (this "Lease") is made and entered into effective as of the 16th day of December 1999, by and between **THE CITY OF HUNTSVILLE**, a municipal corporation existing under the laws of the State of Alabama (hereinafter referred to as "Lessor") and **INKANA GROUP, L.L.C.**, an Alabama limited liability company (hereinafter referred to as "Lessee"), and amends, as follows, that certain Ground Lease between the parties hereto dated March 25, 1999, as authorized by Resolution No. 99-287 of the Huntsville City Council.

1. Paragraph 1 is hereby amended to read as follows:

"1. **Lease of Parking Spaces.** The Lessor does hereby lease and rent unto the Lessee and the Lessee does hereby take as tenant under this Lease a minimum of 257 parking spaces in the ground floor parking unit (consisting of 32 parking spaces and the entrance way off of Williams Avenue), and Units 2 and 3 (separately referred to herein as "Unit" and collectively as "Units") in the Building known as Colonial Bank Plaza situated at the corner of Williams Avenue and Church Street, Huntsville, in Madison County, Alabama (the "Building"), together with the unimpeded, non-exclusive right of access thereto over the access area described in Exhibit A attached hereto (such spaces and related access rights hereinafter collectively referred to as the "Premises") to be used by the Lessee only for vehicular parking and related pedestrian traffic for no other different objects or



President of the City Council of
the City of Huntsville, Alabama
Date: December 16, 1999

purposes, for and during the term commencing on the date Lessor takes title to the Premises (the "**Commencement Date**") and ending on the earlier of (i) the end of the Initial Term pursuant to that certain Ground Lease between the Lessor and Lessee dated September 10, 1998, and recorded in Deed Book 945, Page 51, of the Probate Records of Madison County, Alabama, as amended by that certain Amendment to Ground Lease dated January 7, 1999, as approved by City of Huntsville Resolution No. 99-3, (collectively, the "**Ground Lease**"), or (ii) the date Lessor acquires title to the remainder of the Building (the "**Initial Lease Term**")."

2. Paragraph 2 is hereby amended to read as follows:

"**2. Possession.** Lessor shall not be liable for the failure to deliver possession of the Premises, other than to the extent of abatement of rent from the date of the commencement of this lease to the day possession is delivered to Lessee on the rental basis herein set forth, and the entering into of this Lease shall not be considered as a guarantee or assurance of possession until same is actually delivered. The Premises consist of the ground floor parking unit (consisting of 32 parking spaces and the entrance way into the premises from Williams Avenue), and Units 2 and 3 of Colonial Plaza Condominium. Lessee may occupy each Unit upon issuance of the Certificate of Occupancy for each such unit. Lessee shall pay rent on all parking spaces subject to this Lease on August 1, 2000.

The foregoing notwithstanding, if some or all of the parking spaces are not available for occupancy as of August 1, 2000, through no fault of Lessor, then Lessee shall pay to Lessor rent for 257 spaces at \$65 per space per month, and the then highest prevailing rate for parking garage spaces in Lessor's facilities for each of Lessor's spaces which are not available for occupancy. Lessor shall have the right to use the Premises for parking or other purposes only after 6:00 p.m., Monday through Friday, all day Saturday, Sunday, and all federal or state holidays; provided, however, that such right shall

be nonexclusive, Lessor acknowledging that tenants of Lessee may be using some of the Premises at the same time."

3. Paragraph 3 is hereby amended to read as follows:

"3. Maintenance of Premises. Lessor shall at its cost be responsible for all operating expenses and maintenance of Units 2 and 3 (consisting of floors 2, 3, 4, and 5 of the Building, but expressly excluding the ground floor parking spaces and ingress) of the Premises, including but not limited to, annual cost of operation of the Premises, maintenance (except for the "Lessee Maintenance" defined herein), wages, salaries, payroll taxes and insurance of any personnel employed by Lessor, janitorial costs (including regular sweeping of the floors of the Premises), utilities, waste disposal, equipment and supplies relating to the operation and use of the Premises as a parking garage. All painting (including painting necessary to remove any graffiti not removed within the scope of the Lessee Maintenance) of the walls and ceiling of Units 2 and 3 of the Premises shall be performed by Lessor at its expense. Lessee shall pay the expense of (i) all operating expenses and maintenance of the 32 parking spaces and ingress on the ground floor of the Building (as defined in the first sentence of this paragraph 3); (ii) all of Lessee's maintenance; and (iii) repairing all damage (including without limitation broken glass) to the Premises caused by Lessee or its employees, agents, invitees, customers or any occupant of or other persons whom Lessee permits to be in or about the Premises ("Lessee's Agents"). Lessee shall permit no waste of the Premises nor allow the same to be done, but Lessee shall take good care of the same and Lessee is and shall be responsible and liable for any damage done to the Premises, or the Building in which the same are located, by the Lessee or Lessee's Agents. At such times as Lessor exercises its right to use the ground floor parking spaces and ingress as authorized by this agreement, Lessor shall be responsible for the janitorial costs and waste disposal resulting from such use. Lessor shall be liable for all damage

done to the Premises by Lessor, its employees, agents, invitees, customers or any occupant of or other persons whom Lessor permits to be in or about the Premises ("Lessor's Agents"). Lessee shall surrender to Lessor the quiet and peaceable possession of the Premises in like good order as at the commencement of the term, natural wear and tear excepted, and shall not remove any item which has been affixed to the Premises. As used herein, Lessee Maintenance shall mean the following:

1. Regular and routine daily cleaning and maintenance of stairwells, elevators and elevator lobbies, and
2. Four (4) washdowns of the floors of the Premises annually, at such times as requested by Lessor, but if not requested by Lessor, at such times as Lessee determines in its reasonable discretion. Such washdowns shall be done by pressure washing the concrete floor areas of the Premises in such a manner so that latent dirt can easily be removed from the concrete surface.
3. The cleaning of vertical and ceiling surfaces in the parking structure. This cleaning operation shall occur at not more than five (5) year intervals.
4. Quarterly interior cleaning and annual exterior cleaning of all vision glass walls and other regular maintenance as needed to glass walls."

4. There is hereby added paragraph 18, which shall read as follows:

"18. The parties acknowledge and agree that in order for Lessor to fully perform its obligations under this agreement, Lessor shall be entitled to reasonable space in, and use of, one of the four inch conduits entering the main telephone room from Fountain Circle and the equipment room of the parking garage. Such use by Lessor shall not interfere with Lessee's use of the conduit."

5. Except as amended hereby, all remaining terms and conditions of the Parking Space Lease shall remain in full force and effect and shall be unchanged hereby.

6. Each party acknowledges and agrees that the Parking Space Lease is in full force and effect, and that as of the date hereof neither party is in default thereunder, and as of the date hereof neither party has any claim against the other arising out of or in connection with the Parking Space Lease or the failure of a party to perform any obligation it may have under the Parking Space Lease.

IN WITNESS WHEREOF, the parties hereto have hereunto set their signatures and seals, as of the day and year first above written.

ATTEST:

LESSOR: THE CITY OF HUNTSVILLE,
a municipality existing under the laws of
the State of Alabama

By: Charles E. Hagood
Charles E. Hagood, Clerk/Treasurer

By: Loretta Spencer
Loretta Spencer, Mayor

WITNESS:

LESSEE: INKANA GROUP, L.L.C.,
an Alabama limited liability company

By: _____

By: _____
Its: Manager

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Loretta Spencer and Charles E. Hagood, whose names as Mayor and City Clerk-Treasurer of The City of Huntsville, a municipal corporation, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their capacity as such officers, executed the same with full authority for and as the act of said corporation on the day the same bears day.

GIVEN under my hand and official seal this the 16th day of December, 1999.

Barbara A. Bell
Notary Public
My Commission Expires: 6-12-2002

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that _____ and _____, whose names as _____ and _____ of Inkana Group, L.L.C., an Alabama limited liability company, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their capacity as such officers, executed the same with full authority for and as the act of said limited liability company on the day the same bears day.

GIVEN under my hand and official seal this the _____ day of _____, 1999.

Notary Public
My Commission Expires: _____

EXHIBIT A

ACCESS AREA

Throughout the term of this Lease, Lessee and Lessee's Agents shall have unimpeded, uninterrupted and continuous, non-exclusive access, except for reasonable security and access authorization measures to be employed by Lessor, including, but not limited to, the use of gated access controlled either electronically or by use of a parking attendant to the Premises over and across the following described real property owned by Lessor:

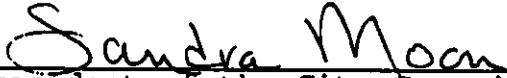
All that part of Block 8 of the recorded plat of Section "A", Subdivision Plat of Urban Renewal Project ALA R-32, Big Spring Area, Huntsville, Alabama as recorded in Plat Book 8, Pages 22, 23, 24 and 25 in the Office of the Judge of Probate Court of Madison County, Alabama and a part of the vacated alley which is ten (10) feet in width and which lies north of and contiguous to the north boundary of the above said Block 8 on the above said subdivision plat and particularly described as:

Commencing at a P-K nail set at the southeasterly corner of Block 8 of the above said subdivision plat and the intersection of the northerly right-of-way line of Williams Avenue and the westerly right-of-way line of Fountain Circle; thence N 33E44'09" W along the westerly right-of-way line of said Fountain Circle a distance of 173.54 feet to a 5/8 inch rebar set and stamped "G. W. Jones & Sons C. E. Inc. CA-00020E" and the point of beginning; thence S 57E33'00" W a distance of 176.84 feet; thence W 33E49'46" W a distance of 55.01 feet to the north boundary of that above said alley which is ten (10) feet in width a distance of 176.93 feet to the westerly right-of-way line of said Fountain Circle; thence S 33E44'09" E along the westerly right-of-way line of said Fountain Circle a distance of 55.01 feet to the point of beginning and containing 9728 square feet, more or less.

RESOLUTION NO. 01-719

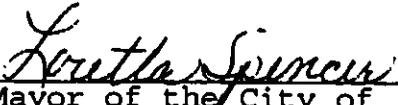
BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and she is hereby authorized to enter into an agreement with Inkana Group, L.L.C., on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Amendment No. 2 to Parking Space Lease Between the City of Huntsville and Inkana Group, L.L.C.", consisting of five (5) pages, and one (1) exhibit, and the date of August 23, 2001, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 23rd day of August, 2001.



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

APPROVED this the 23rd day of August, 2001.



Mayor of the City of
Huntsville, Alabama

AMENDMENT NO. 2 TO
PARKING SPACE LEASE
BETWEEN THE CITY OF
HUNTSVILLE AND
INKANA GROUP, L.L.C.

AMENDMENT NO. 2 TO
PARKING SPACE LEASE

STATE OF ALABAMA }
MADISON COUNTY }

THIS AMENDMENT TO PARKING SPACE LEASE (this "Lease") is made and entered into effective as of the 23rd day of August, 2001, by and between THE CITY OF HUNTSVILLE, a municipal corporation existing under the laws of the State of Alabama (hereinafter referred to as "Lessor") and INKANA GROUP, L.L.C., an Alabama limited liability company (hereinafter referred to as "Lessee"), and amends, as follows, that certain Parking Space Lease between the parties hereto dated March 25, 1999, as authorized by Resolution No. 99-287 of the Huntsville City Council, as previously amended on December 16, 1999 as authorized by Resclution No. 99-1074 of the Huntsville City Council.

WHEREAS, the City of Huntsville has a need for additional parking spaces for the use of the City; and

WHEREAS, the Inkana Group, L.L.C. does not need the full 257 parking spaces originally leased in the parking space lease as last amended on December 16, 1999 as referenced above.



President of the City Council of
the City of Huntsville, Alabama
Date: August 23, 2001

NOW THEREFORE, in consideration of the mutual benefits set forth above, the sufficiency of the good and valuable consideration of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree to reduce the number of parking spaces leased by the City of Huntsville to Inkana Group, L.L.C., by the number of thirty-two (32) spaces thereby reducing the number of leased spaces from two hundred fifty-seven (257) to two hundred twenty-five (225). Accordingly, the lease is amended as set forth below.

1. Paragraph 1 is hereby amended to read as follows:

"1. Lease of Parking Spaces. The Lessor does hereby lease and rent unto the Lessee and the Lessee does hereby take as tenant under this Lease a minimum of 225 parking spaces in the ground floor parking unit (consisting of 32 parking spaces and the entrance way off of Williams Avenue), and Units 2 and 3 (separately referred to herein as "Unit" and collectively as "Units") in the building known as Colonial Bank Plaza situated at the corner of Williams Avenue and Church Street, Huntsville, in Madison County, Alabama (the "Building"), together with the unimpeded, non-exclusive right of access thereto over the access area described in Exhibit A attached hereto (such spaces and related access rights hereinafter collectively referred to as the "Premises") to be used by the Lessee only for vehicular parking and related pedestrian traffic for no other different objects or purposes, for and during the term commencing on the date Lessor takes title to the Premises (the "Commencement Date") and ending on the earlier of (i) the end of the Initial Term pursuant to that certain Ground Lease between the Lessor and Lessee dated September 10, 1998, and recorded in Deed Book 945, Page 51, of the Probate Records of Madison County, Alabama, as amended by that certain Amendment to

Ground Lease dated January 7, 1999, as approved by City of Huntsville Resclution No. 99-3, and any subsequent amendments (collectively the "Ground Lease"), or (ii) the date Lessor acquires title to the remainder of the Building (the "Initial Lease Term")."

2. Paragraph 2 is hereby amended to read as follows:

"2. Possession Lessor shall not be liable for the failure to deliver possession of the Premises, other than to the extent of abatement of rent from the date of the commencement of this lease to the day possession is delivered to Lessee on the rental basis herein set forth, and the entering into of this Lease shall not be considered as a guarantee or assurance of possession until same is actually delivered. The Premises consist of the ground floor parking unit (consisting of 32 parking spaces and the entrance way into the premises from Williams Avenue), and Units 2 and 3 of Colonial Plaza Condominium. Lessee may occupy each Unit upon issuance of the Certificate of Occupancy for each such unit. Lessee shall only pay rent on all parking spaces subject to this Lease on August 1, 2000. The foregoing notwithstanding, if some or all of the parking spaces are not available for occupancy as of August 1, 2000, through no fault of Lessor, then Lessee shall pay to Lessor rent for all leased spaces at \$65 per space per month, and the then highest prevailing rate for parking garage spaces in Lessor's facilities for each of Lessor's spaces which are not available for occupancy. Lessor shall have the right to use the Premises for parking purposes only after 6:00 p.m., Monday through Friday, all day Saturday, Sunday and all federal or state holidays; provided, however that such right shall be nonexclusive, Lessor acknowledging that tenant; of Lessee may be using some of the Premises at the same time."

3. Except as amended hereby, all remaining terms and conditions of the Parking Space Lease, as previously amended, shall remain in full force and effect and shall be unchanged hereby.

4. Each party acknowledges and agrees that the Parking Space Lease is in full force and effect, and that as of the date hereof neither party is in default thereunder, and as of the date hereof neither party has any claim against the other arising out of or in connection with the Parking Space Lease or the failure of a party to perform any obligation it may have under the Parking Space Lease.

IN WITNESS WHEREOF, the parties hereto have hereunto set their signatures and seals, as of the day and year first above written.

ATTEST:

LESSOR:

THE CITY OF HUNTSVILLE, a
municipality existing under the
laws of the State of Alabama

By: Charles E. Hagood
Charles E. Hagood,
Clerk/Treasurer

By: Loretta Spencer
Loretta Spencer, Mayor

WITNESS:

LESSEE:

INKANA GROUP, L.L.C., an Alabama
limited liability company

By: _____

By: _____
Its: Manager

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Loretta Spencer and Charles E. Hagood, whose names as Mayor and City Clerk-Treasurer of The City of Huntsville, a municipal corporation, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their capacity as such officers, executed the same with full authority for and as the act of said corporation on the day the same bears day.

GIVEN under my hand and official seal this the 23rd day of August, 2001.

Barbara A. Bell
Notary Public
My Commission Expires: 6-12-2002

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that _____ and _____, whose names as _____ and _____ of Inkana Group, L.L.C., an Alabama limited liability company, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their capacity as such officers, executed the same with full authority for and as the act of said limited liability company on the day the same bears day.

GIVEN under my hand and official seal this the _____ day of _____, 2001.

Notary Public
My Commission Expires: _____

EXHIBIT A

ACCESS AREA

Throughout the term of this Lease, Lessee and Lessee's Agents shall have unimpeded, uninterrupted and continuous, non-exclusive access, except for reasonable security and access authorization measures to be employed by Lessor, including, but not limited to, the use of gated access controlled either electronically or by use of a parking attendant to the Premises over and across the following described real property owned by Lessor:

All that part of Block 8 of the recorded plat of Section "A", Subdivision Plat of Urban Renewal Project ALA R-32, Big Spring Area, Huntsville, Alabama as recorded in Plat Book 8, Pages 22, 23, 24 and 25 in the Office of the Judge of Probate Court of Madison County, Alabama and a part of the vacated alley which is ten (10) feet in width and which lies north of and contiguous to the north boundary of the above said Block 8 on the above said subdivision plat and particularly described as:

Commencing at a P-K nail set at the southeasterly corner of Block 3 of the above said subdivision plat and the intersection of the northerly right-of-way line of Williams Avenue and the westerly right-of-way line of Fountain Circle; thence N 33E44'09" W along the westerly right-of-way line of said Fountain Circle a distance of 173.54 feet to a 5/8 inch rebar set and stamped "G. W. Jones & Sons C. E. Inc. CA-00020E" and the point of beginning; thence S 57E33'00" W a distance of 176.84 feet; thence W 33E49'46" W a distance of 55.01 feet to the north boundary of that above said alley which is ten (10) feet in width a distance of 176.93 feet to the westerly right-of-way line of said Fountain Circle; thence S 33E44'09" E along the westerly right-of-way line of said Fountain Circle a distance of 55.01 feet to the point of beginning and containing 9728 square feet, more or less.

PLEASE RETURN TO
CITY CLERK TREASURER
P. O. BOX 308
HUNTSVILLE, ALABAMA 35894

RESOLUTION NO. 11-585

BE IT RESOLVED by the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an Agreement by and between the City of Huntsville and on behalf of the City of Huntsville, a municipal corporation and 305 Church St. SW Holdings, LLC. in the State of Alabama, which said agreement amends the existing agreement between the parties, and is substantially in words and figures similar to that certain document attached hereto and identified as "Amendment to the Agreement Between City of Huntsville and 305 Church St. SW Holdings, LLC." consisting of a total of four (4) pages, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 11th day of August, 2011.



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

APPROVED this the 11th day of August, 2011.



Mayor of the City of
Huntsville, Alabama

STATE OF ALABAMA)
)
MADISON COUNTY)

AMENDMENT No. 3 TO PARKING SPACE
LEASE BETWEEN THE CITY OF HUNTSVILLE
AND 305 CHURCH ST. SW HOLDINGS, LLC

AMENDMENT NO. 3 TO PARKING SPACE LEASE

THIS AMENDMENT TO PARKING SPACE LEASE (this "Lease") is made and entered into effective as of the 11th day of August, 2011, by and between the City of Huntsville, Alabama, a municipal corporation existing under the laws of the State of Alabama (hereinafter referred to as "Lessor") and 305 Church St. SW Holdings, LLC, a Maryland limited liability company (hereinafter referred to as "Lessee"), and amends as follows, that certain Parking Space Lease, for the property located at 305 Church Street known as the Colonial Bank Plaza, as previously amended and assigned, between the Lessor and the Lessee's predecessor in interest, as authorized by Resolutions Nos. 99-287, 99-1074, 01-719 and 10-763 of the Huntsville City Council.

WHEREAS the increases in the rental rate for the parking garage spaces referred to in Paragraph 1.1 Rent of the original parking lease agreement have escalated at a more accelerated pace than was the original intent of the parties, resulting in a higher than anticipated monthly rental rate per space; and

WHEREAS the parties mutually agree that the rate should temporarily revert back to the original \$65.00 per parking space per month until such time as the City next increases its rates for other parking garage spaces owned by the Lessor in accordance with City ordinance;

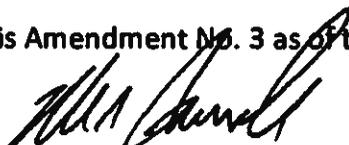
NOW THEREFORE, for good and valuable consideration and the parties do hereby agree as follows:

1. Effective the first month following the approval and execution of this amendment, the rate of \$65.00 per parking space per month shall be used for the rental rate payable to the Lessor in accordance with paragraph 1.1 of the parking space lease agreement.

2. This revised rate of \$65.00 shall be the established rental rate payable until such time as the City next increases its parking rental rates for other parking garage spaces owned by the Lessor in accordance with City ordinance providing for parking rental rate increases. At such time such increase occurs, the rental rate for this lease shall be increased by the methods set forth in paragraphs 1.1 and 1.2 of the original Lease Agreement.

All other terms and conditions remain unchanged.

IN WITNESS WHEREOF, the undersigned have executed this Amendment No. 3 as of the effective date stated above:



President of the City Council of
The City of Huntsville, Alabama
Date: 8/11/11

ATTEST:

THE CITY OF HUNTSVILLE

By: Charles E. Hagood
Charles E. Hagood
Its: Clerk-Treasurer

By: Tommy Battle
Tommy Battle
Its: Mayor

305 Church St. SW Holdings, LLC,
A Maryland limited liability company

By: U.S. Bank, N.A. as Trustee for the registered
Holders of ML-CFC Commercial Mortgage
Pass-Through Certificates, Series 2007-5
(the "Trust"), sole member

By: CW Capital solely in its capacity as Special
Servicer to the Trust

By: _____

By: Jeff Wood

Its: _____

Jeff Wood, Senior Vice President
CWC Capital Asset Management, LLC

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, the undersigned Notary Public in and for said County in said State, hereby certify that TOMMY BATTLE, whose named as Mayor of THE CITY OF HUNTSVILLE, an Alabama municipal corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, she, as such Mayor and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and official seal this 11th day of August, 2011.

Barbara R. Bell
NOTARY PUBLIC
My Commission Expires: 6-11-2014

[NOTARIAL SEAL]

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, the undersigned Notary Public in and for said County in said State, hereby certify that CHARLES HAGOOD, whose named as Clerk-Treasurer of THE CITY OF HUNTSVILLE, an Alabama municipal corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such Clerk-Treasurer and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and official seal this 11th day of August, 2011.

Barbara A. Bell
NOTARY PUBLIC
My Commission Expires: 6-11-2014

[NOTARIAL SEAL]

Maryland
STATE OF ~~ALABAMA~~)
Montgomery
COUNTY OF ~~MADISON~~)

I, the undersigned Notary Public in and for said County in said State, hereby certify that Groff Wood, whose named as a Sr. VP of 305 Church St. SW HOLDINGS, L.L.C., a Maryland limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 2nd day of September, 2011.

Sarah Nye
NOTARY PUBLIC
My Commission Expires: _____

[NOTARIAL SEAL]

SARAH ELIZABETH NYE
Notary Public-Maryland
Montgomery County
My Commission Expires
May 20, 2015

STATE OF ~~ALABAMA~~ ^{Maryland})

COUNTY OF Montgomery)

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Given under my hand and official seal this 2nd day of September, 2011.

Sarah Nye

NOTARY PUBLIC
My Commission Expires: _____

[NOTARIAL SEAL]

SARAH ELIZABETH NYE
Notary Public-Maryland
Montgomery County
My Commission Expires
May 20, 2015

**ROUTING SLIP
CONTRACTS AND AGREEMENTS**

Originating Department: Legal

Council Meeting Date: 4/25/2013

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Lessor's Estoppel Agreement

Document Name: Lessor's Estoppel Agreement between the City and Propst Broadway, LLC

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

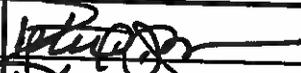
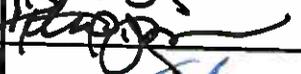
Account Number:

Procurement Agreements

Not Applicable	Not Applicable
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Grant-Funded Agreements

Not Applicable	Grant Name:
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Department	Signature	Date
1) Originating		4-18-13
2) Legal		4-18-13
3) Finance		4/19
4) Originating		4-18-13
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		