

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:

Ratification Agreement with 305 Church St. SW Holdings, LLC.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Ratification Agreement between the City of Huntsville and 305 Church St. SW Holdings, 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-_____

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 Ratification Agreement by and between the City of Huntsville and 305 Church St. SW Holdings, 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 "Ratification Agreement between the City of Huntsville and 305 Church St. SW Holdings, LLC," consisting of twelve (12) 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

THIS INSTRUMENT WAS PREPARED BY:

Leslie Caren Sharpe, Esq.
Maynard, Cooper & Gale, P.C.
Huntsville, Alabama 35801
(256) 551-0171

STATE OF ALABAMA)
 :
MADISON COUNTY)

RATIFICATION AGREEMENT

This Ratification Agreement is made effective as of April _____, 2013, by and between **305 CHURCH ST. SW HOLDINGS, LLC**, a Maryland limited liability company (hereinafter, "**305 Church**") and **THE CITY OF HUNTSVILLE**, a municipal corporation existing under the laws of the State of Alabama (hereinafter, the "**City**").

RECITALS:

A. **WHEREAS**, pursuant to that certain Assignment of Ground Lease (the "**Assignment**") entered into January 14, 1999, recorded in Book 945, Page 0086 in the Office of the Judge of Probate of Madison County, Alabama (the "**Probate Office**") **INKANA GROUP, LLC** ("**Inkana**") assigned to **THE HUNTSVILLE DOWNTOWN REDEVELOPMENT AUTHORITY** (the "**Authority**"), a public corporation existing under the laws of the State of Alabama (hereinafter, the "**Authority**"). All of its right, title and interest under that certain Ground Lease dated September 10, 1998, by and between Inkana and the City. This Assignment was for the purpose of facilitating the financing and construction of an office building and parking deck at the northeast corner of the intersection of Gallatin Street and Williams Avenue, Huntsville, Alabama, such real property more particularly described in the Ground Lease (the "**Project**");

B. **WHEREAS**, on or about March 18, 1999, the Authority, the City and Inkana entered into a Purchase and Sale Agreement (the "**Sale Agreement**") whereby upon the construction of the Project and payment by the City of the Purchase Price in the Sale Agreement to Inkana through construction draw payments approved by the Authority's project representative, David Wall, the Authority would convey the parking garage component of the Project to the City;

C. **WHEREAS**, on or about April 1, 1999, the Authority entered into a Lease Agreement (the "**Lease**") with Inkana to lease back to Inkana the leasehold interest under the Assignment and to finance the cost of the proposed Project on the leasehold interest through the issuance of bonds;

D. **WHEREAS**, the Project was completed and the City paid the Purchase Price under the Sale Agreement through making the required construction draw requests. Thus, pursuant to the terms of the Sale Agreement, the Authority conveyed all its interest, right, and

title in the garage parking deck components of the Project to the City pursuant to that certain Quitclaim Deed dated May 20, 2004, recorded as Instrument No. 20040601000118010;

E. **WHEREAS**, 305 Church succeeded to the interest of Inkana pursuant to that certain Mortgage Foreclosure Deed dated September 23, 2010, recorded as Instrument Number 20100923000543110 in Office of the Judge of Probate of Madison County, Alabama;

F. **WHEREAS**, the City and 305 Church desire to record a certain document which was executed by the parties hereto in connection with the Project, but which was not recorded within one (1) year of its execution;

G. **WHEREAS**, the City and 305 Church have executed this Ratification Agreement for the purpose of ratifying the execution and the recordation of, and for the purpose of ratifying and renewing the terms and provisions of, and confirming their obligations under that certain Amendment No. 3 to Parking Space Lease dated as of August 11, 2011, by and between The City of Huntsville and 305 Church St. SW Holdings, LLC (the "**Third Amendment**") approved by City Council Resolution 11-585 dated August 11, 2011, attached hereto as **Exhibit A**;

This Ratification Agreement and the Third Amendment and all other documents evidencing, securing, relating to, or executed or delivered in connection with the Project, are referred to herein collectively as the "**Documents**".

NOW, THEREFORE, for and in consideration of the premises and for other good and valuable consideration, 305 Church and the City, do hereby state and agree as follows:

All of the terms and provisions contained in the Documents are hereby ratified and confirmed and are incorporated herein by reference in the same manner and to the same extent as if all of such terms and provisions were expressly set forth herein; nothing contained in this Ratification Agreement shall be deemed, construed or implied to alter, modify or amend in any manner whatsoever any of the terms or provisions contained in the Documents.

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

[Signature page to follow.]

[Signature page of Ratification Agreement.]

IN WITNESS WHEREOF, the parties hereto have caused this Ratification Agreement to be executed as of the day and year first above written.

305 CHURCH ST. SW HOLDINGS, LLC,
a Maryland limited liability company

By: U.S. Bank National Association, as Trustee
for the Registered Holders of ML-CFC
Commercial Mortgage Trust 2007-5,
Commercial Mortgage Pass-Through
Certificates, Series 2007-5 (the "Trust"), its
Sole Member/Manager

By: CWCcapital Asset Management LLC, a
Massachusetts limited liability company,
solely in its capacity as Special Servicer to
the Trust

By: _____
Name: _____
Title: _____

THE CITY OF HUNTSVILLE

By: _____
Tommy Battle
Its: Mayor

ATTEST:

By: _____
Its: Clerk-Treasurer

STATE OF ALABAMA)
:
COUNTY OF MADISON)

I, the undersigned Notary Public, in and for said County in said State, hereby certify that, _____, whose name as _____ of CWCapital Asset Management LLC, a Massachusetts limited liability company, solely in its capacity as Special Servicer to U.S. Bank National Association, as Trustee for the Registered Holders of ML-CFC Commercial Mortgage Trust 2007-5, Commercial Mortgage Pass-Through Certificates, Series 2007-5, Sole Member/Manager of 305 CHURCH ST. SW HOLDINGS, LLC, 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 this the _____ day of _____, 2013.

[NOTARIAL SEAL]

Notary Public
My commission expires: _____

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 name 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, he, as such officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

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

[NOTARIAL SEAL]

Notary Public
My commission expires: _____

STATE OF ALABAMA)
 :
COUNTY OF MADISON)

I, the undersigned Notary Public, in and for said County in said State, hereby certify that _____, whose name 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 officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

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

[NOTARIAL SEAL]

Notary Public
My commission expires: _____

EXHIBIT "A"

AMENDMENT NO. 3 TO PARKING SPACE LEASE

[SEE ATTACHED]

Adopted 8-11-11

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

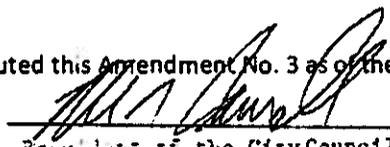
WHEREAS the parties mutually agree that the rate should temporarily revert back to the original \$65.00 per parking space per month until such time as the City next increases its rates for other parking garage spaces owned by the Lessor in accordance with City ordinance;

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: _____

its:

By: Wood
its: Wood, Senior Vice President
CW 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.

[NOTARIAL SEAL]

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

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. Bee
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 Geoff 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)

I, the undersigned Notary Public in and for said County in said State, hereby certify that Geoff 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, 2016

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 8/11/2011

Action Requested By:
Parking

Agenda Item Type
Resolution

Subject Matter:

Amendment 3 to Parking Lease agreement

Exact Wording for the Agenda:

Amendment 3 to Parking Lease agreement with 305 Church St. S.W. Holdings, LLC as described in Resolutions No. 99-287, 99-1074, 01-719, and 10-763

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.

This resolution will set the monthly parking rate for space rented by S.W. Holdings LLC in the Colonial Plaza Garage at \$65.00 per month.

Associated Cost:

Budgeted Item: No

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: 

Date: 8/2/2011

revised 4/13/2011

**ROUTING SLIP
CONTRACTS AND AGREEMENTS**

Originating Department: Legal

Council Meeting Date: 4/25/2013

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Ratification Agreement

Document Name: Ratification Agreement between the City and 305 Church St. SW Holdings, LLC

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

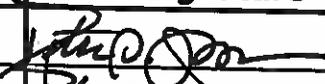
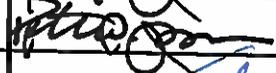
Account Number:

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 		4/18/13
4) Originating		4-18-13
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		