

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 1/9/2014

Action Requested By:
Administration

Agenda Item Type
Resolution

Subject Matter:

Rescission Agreement with Big Spring Partners, Inc., for Holiday Inn.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Rescission Agreement between the City of Huntsville and Big Spring Partners, Inc.

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.

[Empty box for providing details on why the action is required, recommended, and what Council action will provide, allow, and accomplish, along with any other helpful information.]

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: _____

Date:

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Administration

Council Meeting Date: 1/9/2014

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Rescission Agreement

Document Name: Rescission Agreement with Big Spring Partners, Inc.

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

Account Number:

Procurement Agreements

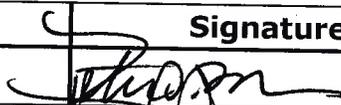
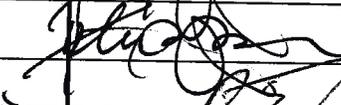
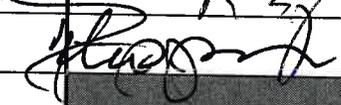
Not Applicable

Not Applicable

Grant-Funded Agreements

Not Applicable

Grant Name:

Department	Signature	Date
1) Originating		1-7-14
2) Legal		1-7-14
3) Finance		1/7/14
4) Originating		1-7-14
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 14-_____

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 Lease Termination Agreement by and between the City of Huntsville and Big Spring Partners, Inc., 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 "Lease Termination Agreement between the City of Huntsville and Big Spring Partners, Inc.," consisting of thirty-five (35) pages, and the date of January 9, 2014, 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 9th day of January, 2014.

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

APPROVED this the 9th day of January, 2014.

Mayor of the City of
Huntsville, Alabama

LEASE TERMINATION AGREEMENT
BETWEEN THE CITY OF HUNTSVILLE
AND BIG SPRING PARTNERS, INC.

STATE OF ALABAMA)
)
COUNTY OF MADISON)

LEASE TERMINATION AGREEMENT

This Lease Termination Agreement is made and entered into on the 9th day of January, 2014, by and between the City of Huntsville, a municipal corporation in the State of Alabama, hereinafter referred to as the "City" and Big Spring Partners, Inc., an Alabama non-profit corporation, hereinafter referred to as "BSP".

WHEREAS, the City and BSP entered into a Lease Agreement on June 23, 2005, which was adopted and approved by the City Council of the City of Huntsville pursuant to Resolution No. 05-450, a copy of which is attached hereto and incorporated herein by reference as Exhibit "A"; and

WHEREAS, the parties entered into Modification No. 1 to the said Lease Agreement on August 26, 2010, which was adopted and approved by the City Council of the City of Huntsville pursuant to Resolution No. 10-660, a copy of which is attached hereto and incorporated herein by reference as Exhibit "B"; and

WHEREAS, pursuant to the said Lease Agreement, BSP leased from the City certain real property and improvements (hereinafter referred to as the "Leased Premises") for a term of ten (10) years; and

WHEREAS, the improvements on the Leased Premises include a structure utilized as a hotel (hereinafter referred to as the "Hotel"); and

WHEREAS, the said Lease Agreement contemplated BSP operating the Hotel on the Leased Premises; and

WHEREAS, the parties mutually desire that BSP cease operating the Hotel on the Leased Premises; and

WHEREAS, the parties now desire to terminate the said Lease Agreement, as modified, pursuant to the terms and conditions set forth herein;

President of the City Council of the
City of Huntsville, Alabama
Date; 01/09/2014

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Termination. The parties to this Agreement hereby individually and jointly agree that that certain Lease Agreement executed on June 23, 2005 and modified on August 26, 2010 (hereinafter referred to as the "Lease Agreement") shall be terminated as of the Effective Date as set forth in Section Four herein.

2. BSP's Obligations. As conditions precedent to the termination of the Lease Agreement, BSP shall complete the following obligations as set forth below:

a) Enter into a valid written Agreement with National Content Liquidators, Inc. ("NCL") for the sale of the furniture, fixtures and equipment owned by BSP and located inside the Hotel. The said agreement shall provide for NCL to conduct a public sale at the Hotel for the said furniture, fixtures and equipment and retain all sale proceeds. The said agreement shall further provide that NCL pay BSP a fixed price of Three Hundred Fifteen Thousand Dollars (\$315,000.00), \$10,000.00 of which shall be due and payable to BSP upon execution of the agreement, \$295,000.00 of which shall be due and payable to BSP on December 30, 2013 and \$10,000 due and payable upon completion of the public sale and no later than February 1, 2014.

b) Enter into a valid written Agreement with Huntsville Management, LLC ("Huntsville Management") for Huntsville Management to accept the sum of Two Hundred Seventy-Two Thousand Five Hundred Dollars in full satisfaction of all debt owed by BSP to Huntsville Management for providing management services for the Hotel. The said agreement shall further provide that BSP shall pay Huntsville Management the sum of \$95,000.00 on or before January 2, 2014 and that BSP shall remit the remaining \$177,500.00 on or before January 2, 2016, with no interest or finance charges added.

c) Pay to Huntsville Management the sum of Ninety-five Thousand Dollars (\$95,000.00) due and payable pursuant to the agreement required by Section 2(b) on or before January 2, 2014.

d) Enter into a valid agreement with IHG Franchising, LLC ("IHG") for IHG to accept the sum of Four Hundred Sixty Thousand Five Hundred Twenty-five and 73/100 Dollars (\$460,525.73) as full and final satisfaction of all amounts owed by BSP to IGH pursuant to the hotel franchising agreement(s) between BSP and IHG. The said agreement shall further provide that BSP shall pay IHG the sum of \$200,000.00 on or before January 3, 2014 and that

BSP will remit to IHG all remaining cash on hand after it winds down its business operations, and that the City will remit the amount remaining pursuant to the said agreement on or before April 15, 2014, with no interest or finance charges added. BSP estimates that it will complete the winding down of its business operations by March 1, 2014 and that it will have approximately \$85,000 cash on hand at the time.

(e) BSP will provide the City a record of the cash receipts and disbursements related to the operation of the Hotel from October 1, 2013 through the date at which all cash is disbursed by BSP, not later than fifteen (15) days after such final disbursement,

3. City's Obligations. The City shall be responsible for the following obligations:

a) Pay to BSP the sum of One Hundred Seventy-seven Thousand Five Hundred Dollars (\$177,500.00) not later than January 2, 2016, pursuant to the agreement more fully described in Section 2(b) herein.

b) Pay the amount due from BSP to IHG pursuant to the agreement described in Section 2(d) herein on or before April 15, 2014.

4. Effective Date. The Effective Date of this Agreement is January 31, 2014 or the date of completion of the conditions precedent set forth in Section Two herein, whichever occurs later.

5. City Not Liable for BSP's General Indebtedness. This agreement shall not create any liability on the part of the City for any debt or obligation of BSP except as specifically set forth in Sections Two and Three herein.

6. No Privity of Contract with Third Parties. Nothing contained in this Agreement shall create, or be interpreted to create, privity or any other contractual agreement between the City and person or entity other than BSP.

7. Choice of Law. This agreement shall be governed by the laws of the State of Alabama. Venue of any action to enforce the terms of this agreement shall be in the Circuit Court of Madison County, Alabama or the United States District Court for the Northern District of Alabama, Northeastern Division.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

BIG SPRING PARTNERS, INC.

Attest:

By: _____

Its: _____

CITY OF HUNTSVILLE

a municipal corporation
in the State of Alabama

Attest:

Charles E. Hagood

Its: Clerk-Treasurer

By: _____

Tommy Battle

Its: Mayor

RESOLUTION NO. 05- 450

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 Real Estate Sales Contract by and between the City of Huntsville and Big Spring Partners, Inc., 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 "Lease Agreement between the City of Huntsville and Big Spring Partners, Inc.," consisting of eighteen (18) pages and Exhibits A through E, and the date of June 23, 2005, 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 June, 2005.

Bill Kling Pro-tem
President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 23rd day of June, 2005.

Luetta Spencer
Mayor of the City of
Huntsville, Alabama

STATE OF ALABAMA)
)
MADISON COUNTY)

LEASE AGREEMENT

RECITALS

WHEREAS, the City of Huntsville, a municipal corporation, ("City") has requested Big Spring Partners, Inc. ("Big Spring") to assist the City in its long range economic development plans with respect to the downtown property known as the Hilton hotel site.

WHEREAS, the City and Big Spring have cooperated and negotiated the part gift and sale of the downtown property to Big Spring.

WHEREAS, the City has asked Big Spring to participate in the operation of the property and to insulate the City from management liability in connection with the property.

WHEREAS, in connection with the contemplated transaction, Big Spring will convey the property to the City and the City will lease the property back to Big Spring pursuant to the terms of this Lease. This transaction will assist the City in operating, maintaining and keeping the property economically viable while the City's long range development plan evolves.

NOW THEREFORE, PREMISES CONSIDERED,

THIS LEASE AGREEMENT (the "Lease") is by and between the CITY OF HUNTSVILLE ALABAMA, A MUNICIPAL CORPORATION, its successors and assigns (hereinafter collectively referred to as "Landlord") and BIG SPRING PARTNERS, INC., an Alabama non-profit corporation, its successors and assigns ("Tenant"), and is made as of this _____ day of _____, 2005, which said date is the date on which the last party to execute this Lease has executed the same (the "Effective Date").

1. **LEASE PREMISES.** Subject to the terms and conditions hereinafter set forth, Landlord hereby leases to Tenant the real property and improvements consisting of the hotel and all improvements ("Improvements") located in the City of Huntsville, County of Madison, State of Alabama, which parcel is more particularly described on Exhibit "A" attached hereto, together with all of the rights, privileges, easements, hereditaments and appurtenances pertaining thereto, and all rights, titles and interests of Landlord in and to all sewage treatment, water, and other utility capacities, if any, to serve the above described property. All of the foregoing rights, properties, Improvements and interests are herein referred to as the "Premises". A plat of the development is attached hereto as Exhibit "B".

Bill Kling Pro-tem
President of the City Council
of the City Of Huntsville, AL
Date: June 23, 2005

2. TERM.

(a) Primary Term. The term of this Lease and the payment of rent hereunder shall commence on the ___ day of _____, 2005 (the "Lease Commencement Date"), and shall continue for ten (10) years thereafter (the "Primary Term"), unless extended pursuant to paragraph 6 below. If the Commencement Date of this lease shall be a day other than the first day of a calendar month, then the term of this Lease shall be deemed extended by the number of days between the Commencement Date of this Lease and the first day of the first calendar month following the Commencement Date of this Lease, so that the term of this Lease shall expire ten (10) years after such first day of the first calendar month following the Commencement Date of this Lease. In such case, the Tenant shall pay pro rata rent, in advance, for the period from the Commencement Date of this Lease to the first day of the following calendar month. On and after the first day of such calendar month, the Tenant shall pay the rent as provided in this Lease.

(b) Landlords Right To Terminate Lease Prior to the Completion of the Primary Term and any extension thereof.

Notwithstanding anything herein to the contrary, the Landlord reserves the right to terminate the Lease, for any reason or for no reason at all, on a date ("Termination Date") prior to the completion of the Primary Term and any extension thereof ("Early Termination"). The Landlord's right to terminate the Lease shall be subject to the Landlord's compliance with the following requirements:

(i) The Landlord shall give Tenant at least ninety (90) days notice in writing (an "Early Termination Notice"). An Early Termination Notice may only be given by the Landlord on the thirtieth (30th) day of any month throughout the Primary Term, and any extension thereof, and if the Early Termination Notice is given on a date other than the thirtieth (30th) day of a month, the Early Termination Notice shall only take effect and run from the thirtieth (30th) day of the next month. For the avoidance of doubt, should the Tenant vacate the Premises prior to the expiry of the Early Termination Notice, the Tenant shall still be liable to pay the Rent and all other amounts due and owing up to the expiry of the Early Termination Notice; and

(ii) In the event of an Early Termination hereunder, and subject to the following limitation, Landlord shall pay in full the loan principal and interest for any commercial loan Tenant is indebted in connection with the Tenant's operation and business on the Premises ("Big Spring Loan"). The Big Spring Loan includes any and all loan amendments, restatements, renewals and extensions thereof, however described. The Landlord's obligation to pay in full the Big Spring Loan shall in no event exceed the lesser of (a) the original principal amount of Two Million Four Hundred Thousand Dollars or (b) its amortized principal balance pursuant to the amortization schedule attached hereto as Exhibit "E". Provided, in no event, shall the Big Spring Loan exceed the principal amount of Two Million Four Hundred Thousand Dollars unless expressly approved by resolution of the City of Huntsville's City Council; and

(iii) If an Early Termination occurs during the Primary Term of the Lease, upon such termination, Landlord shall pay to Tenant on or before the Termination Date a one-time termination fee in the amount of \$50,000.00 (Fifty Thousand Dollars).

Within 30 days after the date of Landlord's Early Termination Notice, Tenant agrees to provide Landlord a Bank payoff letter stating the amount of the Bank's payoff amount.

3. RENT.

a) Monthly Rent. Tenant shall pay the following monthly rental ("Monthly Rental") for each month commencing with the Lease Commencement Date during the Primary Term of this Lease:

<u>Years</u>	<u>Monthly Rental</u>	<u>Annual Rental</u>
1 - 10	\$21,666.66	\$260,000.00

All Monthly Rental payments shall be paid in advance on the first day of each month.

b) Deferral of Rent. Notwithstanding anything contained in this Lease to the contrary, Tenant shall have the right, at any time and from time to time during the Lease Term, to defer one or more Monthly Rental payments ("Deferred Rent Payments") hereunder, so long as each such deferral complies with the requirements of this Paragraph 3. Each deferral of a Monthly Rental payment shall be for a period from the original due date of such Monthly Rental payment to the date eight years from the Effective Date of this Lease ("Deferral Period"), and shall bear interest at the rate of six percent (6%) simple interest per annum during the Deferral Period or until the date of prepayment, if sooner. Tenant may prepay any Deferred Rent Payment at any time without penalty by designating Tenant's payment as a pre-payment of a specific Deferred Rent Payment. Deferred Rent Payments need not relate to consecutive months during the term of this Lease, and Tenant may defer any Monthly Rental payment so long as, at the time Tenant gives its Notice to Defer Rent (as defined below in Paragraph 3(d)) with respect to such Monthly Rental payment, less than twenty-four (24) Monthly Rental payments are then being deferred under the provisions of this Paragraph 3(b).

c) Other Deferred Rent Terms and Conditions. All deferred rent and interest thereon must be paid in full before any Incentive Fees are paid to any party under the Hotel Management Agreement. Incentive Fees shall have the same meaning as ascribed in that certain Hotel Management Agreement dated _____, 2005 between Huntsville Management, LLC, as "Operator", and Big Spring Partners, Inc., as "Owner". If Tenant elects to prepay any Deferred Rent Payments, it shall prepay first the Deferred Rent Payment which was earliest deferred. Tenant further agrees that no payments due under this Lease, however described, other than Monthly Rental payments, shall be subject to this Rent Deferral provision. If, during the Deferral Period, the Tenant is in Default under this Lease, and such Default is not cured within the time permitted for cure hereunder, then in such event, with no further action required of Landlord, all outstanding Deferred Rent and interest thereon shall be deemed accelerated and due and payable

in full. In any event, all Deferred Rent and interest thereon must be paid in full on or before the end of the Lease Term.

(d) Notice to Defer Rent. Tenant shall notify Landlord of its intent to defer a Monthly Rental Payment ("Notice to Defer Rent") under this Paragraph 3 not less than 10 days prior to the date on which the Monthly Rental Payment in question originally comes due. Such Notice to Defer Rent shall be in writing and shall (i) contain the Tenant's promise to repay the Deferred Rent in accord with this Paragraph 3 and (ii) be executed by Tenant's Chairman, or other duly authorized officer, and witnessed.

(e) Early Termination Payment of Deferred Rent. Notwithstanding anything herein to the contrary, in the event there is an Early Termination of the Lease as set forth in Paragraph 2 above, the unpaid outstanding Deferred Rent together with interest thereon shall be paid from any available Required Reserves as defined in the Management Agreement. Such payment of Deferred Rent and interest from the available Required Reserves shall be deemed payment and satisfaction in full of all Deferred Rent and interest due Landlord.

4. OWNERSHIP OF LAND AND IMPROVEMENTS. Landlord and Tenant agree that during the term of this Lease the ownership of the land and Improvements thereto shall remain the property of the Landlord. Provided, to the extent applicable to the Premises, Landlord shall pay all ad valorem real estate taxes.

5. PAYMENT OF RENT. All Monthly Rental, additional rent and other payments shall be paid by Tenant to Landlord at the address set forth in Paragraph 29 below, or at such other place as may from time to time be designated by Landlord in writing.

6. OPTION TO EXTEND. The Tenant shall not, at any time, have an option to extend this Lease without the written consent of the Landlord, which consent shall be in the Landlord's sole discretion.

7. OPERATIONS AND ENVIRONMENTAL MATTERS.

(a) Use of Premises; Compliance With Environmental Laws. Tenant or any permitted sub-tenant may use the Premises for the sole purpose of conducting the operations and business of a hotel.

Tenant agrees, at Tenant's sole cost and expense, to comply with all legal requirements (including all laws, codes, ordinances, decrees, rules, regulations, permits and other requirements of all federal, state and local governments, agencies and offering) relating to Tenant and Tenant's use of the Premises. Tenant shall at all times and in all respects comply with all local, state and federal laws, ordinances, regulations and orders (collectively, "Environmental Laws") relating to environmental protection.

(b) Substances Handling. Tenant shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for Tenant's use of the Premises, including, without limitation, discharge of (appropriately treated) materials or wastes into or through any sanitary sewer serving

the Premises. Upon expiration or earlier termination of the term of this Lease, Tenant shall cause any Hazardous substances which have been placed or located on the Premises by Tenant to be removed from the Premises, and to be transported for use, storage or disposal in accordance and compliance with all applicable Environmental Laws.

(c) Definition of Hazardous Substances. As used in this Lease, the term "Hazardous Substance or Substances" means any hazardous or toxic substances, materials or wastes, including, but not limited to, those substances, materials and wastes which are or become regulated under any applicable local, state or federal law.

(d) Indemnification. Tenant shall indemnify, defend (by counsel reasonably acceptable to Landlord), protect and hold harmless Landlord, and each of Landlord's respective officers, employees, agents, successors and assigns from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses (including, without limitation, diminution in the value of the Landlord's real property adjacent to the Premises, damages for the loss or restriction on the use of the rentable and usable space or of any amenity of the Landlord's real property adjacent to the Premises), costs or expenses (including reasonable attorneys' fees, consultant fees and expert fees) for the death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by: (i) any discharge or actual release by Tenant in or from the Premises of any Hazardous Substances or the use, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Substances in, on, under, about or from the Premises by Tenant; and/or (ii) Tenant's failure to comply with any Environmental Law.

8. CONDITION OF THE PREMISES. Except otherwise specifically set forth herein, Tenant hereby agrees that the Premises are being leased by the Landlord to the Tenant on an "AS IS, WHERE IS", BASIS ONLY, WITHOUT REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, AS TO THE CONDITION, FITNESS, SUITABILITY, MERCHANTABILITY OR HABITABILITY THEREOF, OR AS TO USE FOR A PARTICULAR PURPOSE OR COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS, and for purposes of evaluating the aspects of the Premises not warranted by Landlord, Tenant is relying solely upon its right to inspect the Premises.

9. ESTOPPEL CERTIFICATE. From time to time during the term of this Lease, upon written request of the other party, each party shall execute and deliver to the other an estoppel certificate substantially in the form attached hereto as Exhibit "C". Said certificate may include a recital by the party executing and delivering such certificate of any uncured defaults in the performance of the other.

10. ENTRY ONTO PREMISES. In order to expedite the commencement of Tenant's use of the premises, Tenant may enter upon the Premises prior to the Lease Commencement Date. Tenant hereby agrees to indemnify and hold Landlord harmless of and from any and all claims, demands, liens and damages which arise or are sustained by Landlord as a result of such entries by Tenant, its employees, agents, representatives, contractors or subcontractors.

Tenant hereby grants to Landlord, its agents and representatives, the right to enter and inspect Premises at reasonable times and with prior reasonable notice, it being understood that Landlord has no duty to inspect and will not incur any liability or obligation with respect to any state of facts which are or might have been discovered by reason of such inspection. Landlord shall not interfere with Tenant's business during such inspections.

11. PERSONAL PROPERTY TAXES. Tenant shall pay, before delinquency, all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation, including, but not limited to, the furniture, fixtures, equipment and other personal property of Tenant at any time situated on or installed in the Premises by Tenant. Tenant shall have the right to contest any assessment of personal property taxes and to withhold payment pending any such contest; provided, however, that Tenant shall indemnify and hold Landlord harmless from any cost, loss, liability and expense (including reasonable attorneys' fees) which Landlord may suffer by reason of such contest by Tenant.

Notwithstanding any other provision in this Lease to the contrary, if at any time the Premises, the Improvements or any part thereof should become subject to forfeiture, or the Landlord shall become subject to liability arising from the nonpayment of the foregoing, Tenant will promptly pay the same or deposit with Landlord such collateral and/or provide Landlord such other assurances as may be required by Landlord, in its reasonable discretion, to protect the Premises and the Landlord from liability or forfeiture by reason of nonpayment.

12. SIGNS. Subject to regulatory authority, Tenant shall have the right to construct and install signs on the Premises as required under the hotel franchise agreement, subject to applicable local ordinances. Failure to obtain such approvals from the required regulatory agencies shall not in any way affect the enforceability or conditions of this Lease.

13. QUIET POSSESSION. So long as Tenant observes and performs all the terms of this Agreement, Landlord agrees that Tenant shall have the quiet enjoyment of the Premises during the term of this Lease, and Landlord will defend, at its sole cost, Tenant's possession and quiet enjoyment of the Premises against the claims of any person claiming by, through or under Landlord.

14. INDEMNITY. Tenant shall indemnify and hold Landlord harmless from and against any and all claims arising from: (i) Tenant's use of the Premises or the conduct of its business; (ii) any act or omission which is done, permitted or suffered by Tenant in the Premises or about the Premises so long as the person responsible for such act or omission is an agent, employee, contractor or representative of tenant acting within the scope of their employment; or (iii) any breach or default in the performance of any obligation of Tenant under the terms of this Lease, which indemnity shall include reasonable court costs and attorneys' fees; provided, however, that the foregoing shall not extend to any claim to the extent it arises out of the act or omissions of Landlord, its employees, agents, contractors, invitees or others acting by or through Landlord. In any action or proceeding brought against Landlord by reason of any claim indemnified hereunder, Tenant shall assume the defense at Tenant's expense, with counsel reasonably acceptable to Landlord, and Tenant shall have the right to control the defense thereof and to determine the settlement or compromise of any such action or proceeding.

15. INSURANCE GENERAL LIABILITY AND PROPERTY DAMAGE. Tenant shall at all times during the term hereof and at its own cost and expense, procure and continue in force personal injury and property damage and comprehensive general liability insurance, with insurers licensed to do business in the State of Alabama and reasonably acceptable to Landlord, each naming Landlord as an additional insured in connection with the use, operation, repair or condition of the Premises, in an amount of not less than the limits and coverages as set forth on the attached Exhibit "F". Tenant shall provide to Landlord a certificate of insurance reflecting such coverage.

16. INSURANCE - ALL RISK COVERAGE AND BUSINESS INTERRUPTION. Tenant shall procure and maintain at all times during the term hereof, at its sole cost and expense: (i) replacement cost (to the extent of at least ninety percent (90%) of such replacement costs) "All Risk" coverage insurance on any Improvements; and (ii) appropriate workmen's compensation insurance, all with premiums paid in advance, with standard exceptions, in reasonable amounts and with such companies as shall be reasonably approved by Landlord, naming Landlord as an additional insured.

All insurance maintained by Tenant shall (a) include a waiver of subrogation by the insurer against an insured, (b) provide that coverage may not be canceled without prior written notice to Landlord, and (c) be issued by companies and in forms reasonably satisfactory to Landlord.

17. REPAIRS AND MAINTENANCE. Tenant shall maintain any Improvements in safe, good order, condition and repair, reasonable wear and tear excepted and will make all necessary or appropriate repairs or replacements promptly and at Tenant's expense. Landlord will not be required to maintain, alter, repair, rebuild or replace all or any part of the Improvements in any way.

18. TENANT ALTERATIONS.

(a) Permitted Alterations. Subject to Tenant's obtaining all required governmental permits, Tenant may construct certain alterations, including paving and landscaping, and any alterations thereto or to the Premises ("Alterations"). The Alterations shall be made in accordance with plans and specifications prepared by Tenant, subject to Landlord's prior approval of all plans and specifications, which consent shall not be unreasonably withheld or delayed. In the event Landlord has not responded to such specifications within twenty (20) calendar days after its receipt of same from Tenant, Landlord's consent to such specifications shall be deemed to have been given. Tenant shall construct the Alterations in substantial compliance with the plans and specifications approved by Landlord.

(b) General. All work with respect to any alterations, additions and changes to the Premises shall be done in a good and workmanlike manner. Any such changes and alterations shall be performed in accordance with the laws and ordinances relating thereto. At the termination of this Lease, Tenant shall, at Landlord's option, deliver the Premises to Landlord with the Alterations located thereon in good repair and condition, ordinary wear and tear excepted. In the event of a fire or casualty affecting the Alterations, the proceeds of the

insurance to be carried by the Tenant, pursuant to the provisions of this Lease, shall be used by Tenant to restore the Alterations to the same condition, or better if Tenant desires, in which they existed prior to such fire or casualty.

19. LIENS.

(a) Tenant will not directly or indirectly create or permit to be created or to remain any lien, encumbrance or claim affecting Landlord's fee interest in the underlying real estate or the Landlord's interest under this Agreement, and further Tenant agrees that it will pay or cause to be paid all costs for work done by it or caused to be done by it on the Premises, and will keep the Premises free and clear of all mechanics' liens on account of work done by Tenant or persons claiming under it. Tenant shall, however, be permitted to assign as collateral its leasehold estate and subject its assets constituting personal property and located on the Premises to the liens of its creditors through the filing of Uniform Commercial Code financing statements or otherwise, and Landlord agrees to execute such estoppel letters and waivers as are necessary to acknowledge the liens of Tenant's creditors in and to Tenant's assets. Tenant acknowledges that it has no authority from Landlord to subject Landlord's fee estate to any lien, whether voluntary or involuntary, and that no mechanic, laborer or materialman claiming by, through or under Tenant shall ever be entitled to a lien on any estate other than Tenant's leasehold estate. Tenant is not the agent of Landlord for any purpose and no one is entitled to rely upon any representation to the contrary.

(b) Subordination of Landlord's Lien. Subject to paragraph 19(a) above, Landlord agrees, upon written notice by Tenant from time to time, to subordinate its Landlord's lien to Wachovia Bank, its successors and assigns with respect to its approximately \$2.4 Million loan made to Tenant contemporaneously with the execution of this Lease, and to any third party lender providing financing to Tenant in connection with the acquisition of or refinancing of Tenant's furniture, fixtures, equipment, inventory, or other assets, together with any extensions or renewals of such financing or refinancing."

20. DESTRUCTION BY FIRE OR CASUALTY.

(a) Damage During Term. Subject to either Paragraphs 22(b) or 22(c) below, if at any time the Premises, or any part thereof, shall be damaged or destroyed by fire or other casualty of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, the Tenant shall (i) if the damage is in excess of \$30,000.00, promptly give Landlord written notice of the nature and extent of the casualty and (ii) repair, alter, restore, replace or rebuild the same ("Work"). The Work shall be done in conformity with the provisions of Paragraph 19 hereof, except Landlord's consent shall not be necessary to restore the Premises to its original condition. All insurance money paid on account of such damage or destruction under the policies of insurance provided for in Paragraph 17 hereof shall be available for the payment of the cost of the Work, and any additional funds necessary will be provided by Tenant, unless such damage or destruction is caused by Landlord, its employees, representatives, agents or contractors, in which event Landlord shall be responsible for payment of additional funds to complete the restoration. Under no circumstances shall the Landlord be obligated to make any payment, disbursement or contribution towards the cost of the Work, except as otherwise provided herein. In no event shall

the Tenant be entitled to any abatement, allowance, reduction or suspension of rent because part or all of the Premises shall be untenable owing to the partial or total destruction thereof, and no such damage or destruction shall affect in any way the obligation of the Tenant to pay the rentals, additional rent and other charges herein reserved or required to be paid, nor release the Tenant of or from any obligation imposed upon the Tenant under this Lease, except to the extent expressly provided under this paragraph.

(b) Damage Near End of Term. If any Improvements are destroyed or damaged during the last two (2) years of the term of this Lease (including within such term the period of any extended term for which Tenant exercises or has already exercised its option under Paragraph 8 hereof), and the area rendered untenable thereby exceeds thirty percent (30%) of the gross floor space of the Improvements, Tenant may, at its option, so long as Tenant is not in default hereunder, cancel and terminate this Lease by giving written notice to Landlord of its election to do so within ninety (90) days after the date of occurrence of such damage. If Tenant cancels this Lease in accordance with the foregoing provision, then the insurance proceeds attributable to the destruction of or damage to the Improvements (but not any of Tenant's assets constituting personal property, furniture, equipment or removable trade fixtures) shall be paid to Landlord, and this Lease shall terminate upon receipt of such proceeds by Landlord. In all other instances, Tenant shall be obligated to repair and restore the Improvements as hereinbefore provided in accordance with Paragraph 20 above, without abatement or reduction of rent, additional rent or charges.

(c) If at any time the Premises, or any part thereof, are destroyed or damaged the Landlord reserves the right to cancel and terminate this Lease in the event the Big Spring Loan principal balance is less than the insurance money paid on account of such damage or destruction under the policies of insurance provided for in paragraph 17 hereof.

21. DEFAULTS BY TENANT AND LANDLORD'S REMEDIES.

(a) Events of Default. The occurrence of any one or more of the following events shall constitute an event of default ("Event of Default") and breach of this Lease by Tenant.

(i) Any failure by Tenant to pay Monthly Rental or pay additional rent, Deferred Rent or to make any other payment required to be made by Tenant hereunder, where such failure continues for thirty (30) days after receipt of written notice thereof by Tenant from Landlord, and if such notice is required more than once during any calendar six-month period, Tenant shall, in addition to the Monthly Rentals, additional rental or other payment required, pay a two percent (2%) late charge on the payment due.

(ii) A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such period, Tenant shall not be deemed to be in default if Tenant shall, within such period, commence such cure and thereafter diligently prosecute the same to completion.

(iii) Tenant shall file a petition or be adjudged bankrupt or insolvent under any applicable federal or state bankruptcy or insolvency law or admit that it cannot meet its financial obligations as they become due, or a receiver or trustee shall be appointed for all or substantially all of the assets of Tenant, or Tenant shall make a transfer in fraud of creditors or shall make an assignment for the benefit of creditors.

(iv) Tenant shall fail to operate the Leased Premises for a period of ninety (90) days or more, except during periods of repair or renovation of the Leased Premises, in which event Tenant shall be entitled to a reasonable period of time to complete such repairs or renovations.

(b) Remedies. All of the following remedies are subject to the limitations of Paragraph 30 EXCULPATION AND COVENANT NOT TO SUE below. Upon the occurrence of any Event of Default set forth in this Lease, Landlord shall have the option to pursue any one or more of the remedies set forth herein without any further notice or demand: (i) Landlord may enter upon and take possession of the Premises, by picking or changing locks if necessary, and lock out, expel or remove Tenant and any other person who may be occupying all or any part of the Premises without being liable for any claim for damages, and relet the Premises on behalf of Tenant and receive directly the rent by reason of the reletting, and Tenant agrees to pay Landlord on demand any deficiency that may arise by reason of any reletting of the Premises; (ii) Landlord may fulfill Tenant's obligations under the terms of this Lease and, if necessary, enter upon the Premises, without being liable for any claim for damages; (iii) Landlord may terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to surrender the Premises, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises, by picking or changing locks if necessary, and lock out, expel or remove Tenant and any other person who may be occupying all or any part of the Premises without being liable for any claim for damages. Landlord shall terminate this Lease only in writing by mailing or delivering to Tenant notice of such termination.

22. OWNERSHIP OF PERSONAL PROPERTY.

(a) Notwithstanding anything contained herein to the contrary, Landlord recognizes and agrees that the furniture, trade fixtures, personal property, signs and equipment located on the Premises will be the property of Tenant and are not to automatically become the property of Landlord upon termination of this Lease. Except as provided below in 26(b), such furniture, trade fixtures, personal property, signs and equipment shall remain the property of Tenant and shall be removed by Tenant at the termination of this Lease. During the term of this Lease, Tenant alone shall be able to claim depreciation any tax credits for taxation purposes (or to permit its sub-tenants the right to such benefits) on any Improvements, any changes, additions and alterations therein and thereto and any renewals and replacements thereof.

(b) Purchase Option for Furniture Fixtures and Equipment. Notwithstanding anything herein to the contrary, subject to the following, upon the earlier of the Early Termination of the Lease, the expiration of the Primary Term, or extension thereof, Landlord shall have the exclusive right, in its sole discretion, to purchase all or a portion of the FFE. In

such event of termination, Tenant agrees to provide Landlord the following information within 30 (thirty) days prior to or the Landlord's written request, whichever occurs first:

- i. A statement of the list of Furniture Fixtures and Equipment (FFE) and
- ii. The fair market value and Book Value of the FFE as shown on the Tenant's books and records kept in accord with sound accounting practices.

(c) Purchase Price. The purchase price of the FFE shall be the greater of its fair market value or its book value. Within 15 days after receiving Tenants list and price of FFE, Landlord will provide Tenant a list of the FFE it elects to purchase. Within 15 days after receiving Landlords list of FFE to be purchased, Tenant shall remove any remaining FFE from the Premises.

23. SURRENDER OF PREMISES. Upon the termination of this Lease, whether by lapse of time or otherwise, Tenant shall surrender the Premises to Landlord, together with all replacements thereto, free and clear of all encumbrance and lien, however described, in broom clean, good condition, ordinary wear and tear excepted, repairing all damage resulting from removal of Tenant's property; provided, however, that Tenant shall not remove any fixtures, alterations or improvements, any changes, additions or alterations therein or thereto or any renewals or replacements thereof unless so directed by Landlord. If Tenant holds over and refuses to surrender the Premises, Landlord may treat Tenant as a tenant at sufferance, and Tenant shall continue to pay the Monthly Rental provided herein during said period.

24. ASSIGNMENT AND SUBLETTING.

(a) Except as set forth in paragraph 28(c) below, Tenant shall not assign or in any manner transfer this Lease or any estate or interest therein, or sublet the Premises or any part thereof, or grant any license, concession or other right of occupancy of any portion of the Premises without the prior written consent of Landlord. Consent by Landlord to one or more assignments or sublettings shall not operate as a waiver of Landlord's rights as to any subsequent assignments and sublettings.

(b) The Landlord shall have the right at any time and from time to time to transfer and assign all or any portion of the Landlord's interest in the Land, the Improvements, and this Agreement without the approval of Tenant, written or otherwise, and upon the Landlord's complete transfer of its interest in the Land, the Improvements, and this Agreement, and such transferee(s) and Assignee(s) agree to perform the Landlord's obligations under this Agreement, Landlord shall have no further liability to Tenant hereunder.

(c) Provided, however, Tenant shall have the absolute right to assign, sublet or otherwise transfer its interest in this Lease to the lenders of Tenant and a subsidiary of Tenant without Landlord's approval, written or otherwise. Furthermore, Tenant shall have the absolute to assign as collateral its leasehold estate as set forth in 21(a) above.

25. NOTICES. Any notice, demand or declaration required or which may be given pursuant to this Lease, shall be in writing and shall either be served personally, by facsimile, sent

by registered or certified mail, return receipt requested, with postage prepaid and addressed as follows:

To Landlord: CITY CLERK TREASURER
City of Huntsville
Huntsville, Alabama

With copies to: City Attorney of the City of
Huntsville Alabama
308 Fountain Circle
Huntsville, Alabama

To Tenant: Chairman
Big Spring Partners, Inc.
307 Franklin Street S.E.
Huntsville, Alabama

With copies to: Huntsville Management, LLC
4030 Johns Creek Parkway
Suwanee, Georgia 30024
Attn Robert W. Ray and Duane L. Hoover

Either Landlord or Tenant may, by like notice at any time and from time to time, designate a different address at which notice shall be sent. Such notices, demands or declarations shall be deemed sufficiently served or given for all purposes hereunder unless otherwise specified in this Lease, either: (i) if personally served, upon such service; or (ii) if mailed, three (3) business days after the time of mailing; or on the date of receipt shown on the return receipt, whichever is first; or (iii) if by receipted overnight delivery, on the day of receipt.

26. NON-MERGER. There shall be no merger of this Lease, nor of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease or the leasehold estate created by this Lease or any interest in this Lease or said leasehold estate may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate in the Premises or any interest in such fee estate, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Premises and all persons having an interest in this Lease or in the estate of Landlord, and Tenant shall join in a written instrument affecting such merger and shall duly record the same.

27. MISCELLANEOUS.

(a) Waiver. One or more waivers of a breach of any covenant, term or condition of this Lease by either party shall not be construed by the other party as a waiver of a different or subsequent breach of the same covenant, term or condition. The consent or approval of either party to or of any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any other subsequent similar act.

(b) No Partnership. Nothing herein contained, either in the method of computing rent or otherwise, shall create between the parties hereto, or be relied upon by others as creating, any relationship of partnership, association, joint venture or otherwise. The sole relationship of the parties hereto shall be that of Landlord and Tenant.

(c) Choice of Law. The laws of the State of Alabama shall govern the validity, performance and enforcement of this Lease. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Madison County, Alabama.

(d) Attorneys' Fees. In the event that at any time during the term of this Lease either Landlord or Tenant shall institute any action or proceeding against the other relating to the provisions of this Lease, or any default thereunder, then, and in that event, the unsuccessful party in such action or proceeding agrees to reimburse the successful party therein for the reasonable attorneys' fees and disbursements incurred therein by the successful party.

(e) Successors and Assigns. Except as otherwise expressly provided herein, the terms and agreements as contained in this Lease shall apply to, run in favor of, and shall be binding upon and inure to the benefit of the parties hereto, and also their respective heirs, executors, administrators, personal representatives and assigns and successors in interest.

(f) Entire Agreement. It is understood that there are no oral agreements or representations between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, agreements or representations and understandings, if any, between the parties hereto with respect to the subject matter thereof. There are no other representations or warranties between the parties and all reliance with respect to representations is solely upon the representations and agreements contained in this document.

(g) Headings. The paragraph titles herein are for convenience only and do not in any way define, limit or construe the contents of such paragraphs.

(h) Severability. It is agreed that if any provision of this Lease shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provisions of this Lease and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of this Lease is capable of two constructions, one of which would render the provision valid, then the provision shall have the meaning which renders it valid.

(i) Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other similar causes beyond the reasonable control of the party obligated to perform, but specifically excluding financial incapability, shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

(j) Memorandum of Lease. If either party requests, both parties shall execute and acknowledge a memorandum of this Lease proposed by Tenant in recordable form, which memorandum may be recorded by Tenant in the Deed Records of the County of the Premises. The requesting party shall be responsible for all costs incurred in connection with recording of the memorandum.

(k) Brokers. Each party represents to the other and indemnifies the other from any related claims that no real estate brokerage commissions or finder's fee is payable by either party with respect to this Lease.

(l) Landlord Encumbering Fee; Nondisturbance; Leasehold Mortgage. In the event Landlord mortgages or otherwise creates any security interest or other liens or encumbrances upon or affecting the fee interest in the Premises, or any Improvements, or any part thereof, at any time from time to time, upon request, Tenant shall subordinate this Lease to any such mortgage or security interest, provided that the holder thereof and Tenant execute a nondisturbance and attornment agreement, to the effect that Tenant's rights under this lease shall not be disturbed so long as Tenant is not in default hereunder and Tenant agrees to attorn to any purchaser of the Premises through a foreclosure sale, transfer by deed in lieu of foreclosure or other similar sale. Provided, any such nondisturbance and attornment agreement shall be subject to the terms of Tenant's lender financing.

28. UTILITIES. Tenant shall be responsible for obtaining all permits, consents, agreements, and undertakings as shall be necessary to obtain electric, telephone, gas, water, sanitary sewer, storm sewer, trash collection and garbage collection utility services to the Premises. Landlord's obligations with respect thereto shall include only the obligation to insure that the said utilities are brought to the property line of the Premises and Tenant shall be responsible for bringing utility service from that point to the structure to be constructed by Tenant. Tenant shall pay for all "turn-on fees" designed to pay for the time and expense to program, turn on, or to connect public utility services to a building or structure. Tenant shall be responsible for all charges attributable to metering for the utilities and for all refundable deposits required to be deposited in connection with said service. Tenant shall pay all utility charges, including charges for water, sewer, electricity, refuse collection, and other similar charges relating to the use, operation and maintenance of the Premises or the Improvements.

29. PRELIMINARY NEGOTIATIONS. The submission of this lease form by Landlord for examination does not constitute an offer to lease or a reservation of an option to lease. In addition, Landlord and Tenant acknowledge that neither of them shall be bound by the representations, promises or preliminary negotiations with respect to the Demised Premises made by their respective employees or agents. It is their intention that neither party shall be legally bound in any way until this Lease has been fully executed by both Landlord and Tenant.

30. EXCULPATION AND COVENANT NOT TO SUE.

(a) Exculpation and Covenant Not to Sue. Landlord acknowledges and agrees, for itself and its successors and assigns, that no director, officer, employee or agent of Tenant, and their respective heirs, executors, personal representatives, successors and assigns,

shall ever be personally liable for any of the terms, covenants or obligations in this Agreement, and Landlord shall not seek to enforce or collect by suit, civil action or other proceedings any of the Lease terms, covenants or obligations from or against any of the Tenant's directors and officers, employees or agents or their respective heirs, executors, personal representatives, successors and assigns. No property or assets, however described, of the Tenant's directors, officers, employees or agents, or their respective heirs, executors, personal representatives, successors and assigns, whether owned now or in the future, shall be subject to levy, execution or other enforcement procedures for the satisfaction of any obligation due Landlord or its successors or assigns. This paragraph shall be broadly construed in favor of the Tenant's directors, officers, employees and agents, and their respective heirs, executors, personal representatives, successors and assigns intending that each such person shall be and remain an express third-party beneficiary of this provision.

Nothing set forth in this Paragraph 30 shall be construed to release Tenant from the Lease terms, covenants and obligations as set forth in this Lease. Provided, however, Tenant's monetary liability shall be limited to the following:

THE LIABILITY OF THE TENANT FOR THE PAYMENT OF ANY MONIES THAT MAY COME DUE UNDER THIS LEASE IS LIMITED SOLELY TO THE ASSETS OF TENANT RELATED TO THE PREMISES AND RELATED IMPROVEMENTS AND PERSONAL PROPERTY, AND ALL AVAILABLE MONIES TO BE RECEIVED BY THE TENANT FROM A MANAGEMENT AGREEMENT DATED _____, 2005 BY AND BETWEEN TENANT, AS OWNER AND HUNTSVILLE MANAGEMENT ASSOCIATES, LLC, OPERATOR, ITS SUCCESSORS AND ASSIGNS.

Notwithstanding any provision hereof or of the Hotel Management Agreement (as defined herein) to the contrary, including any exculpation provision hereof or thereof, Landlord and Tenant hereby agree, that for the express benefit of Huntsville Management, LLC, and its members and managers, Duane L. Hoover, Robert W. Ray and Drada P. Hoover, and their respective heirs, executors, personal representatives, successors and assigns, and intending that each such person shall be and remain an express third-party beneficiary of this provision, in the event this Lease or that certain Hotel Management Agreement (the "Hotel Management Agreement") of even date herewith between Tenant (as "Owner") and Huntsville Management, LLC (as "Operator") is terminated, or materially adversely modified, without the consent of Operator, for any reason prior to the expiration of the original term hereof or thereof, other than termination of the Hotel Management Agreement by Big Spring Partners, Inc. pursuant to Section 8.1(c) of the Hotel Management Agreement following a breach of such agreement by Huntsville Management, LLC, Landlord shall pay in full the Big Spring Loan (as defined in Section 8.1(a) of the Hotel Management Agreement), subject only to the monetary limitations set forth in the second sentence of Section 8.1(a) of the Hotel Management Agreement.

31. THIRD PARTY BENEFICIARY: Except for the provisions hereof benefiting the Operator and its affiliates, including, without limitation, the provisions of Section 30(b) above, nothing, contained in this Lease shall be construed so as to confer upon any other party the rights of a third party beneficiary.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the latter date indicated below.

LANDLORD:

CITY OF HUNTSVILLE, A MUNICIPAL CORPORATION

By: *Loretta Spencer*
LORETTA SPENCER, Mayor

Dated: June 23, 2005

TENANT:

BIG SPRING PARTNERS, INC.

By _____
Its: Chairman

Dated: _____

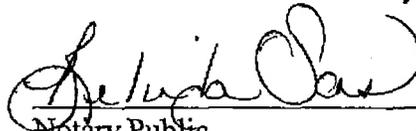
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STATE OF ALABAMA

MADISON COUNTY

I, the undersigned Notary Public in and for said county in said state, hereby certify that Loretta Spencer, Mayor of the CITY OF HUNTSVILLE, a municipal corporation, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me that, being fully informed of the contents of said instrument, she, as such officer and with full authority, executed the same voluntarily on the day the same bears date for and as the act of said corporation.

GIVEN under my hand and official seal this 23rd day of June, 2005.



Notary Public
My Commission Expires: 8/3/08

STATE OF ALABAMA

MADISON COUNTY

I, the undersigned Notary Public in and for said county in said state, hereby certify that David Johnston, Chairman of the Big Spring Partners, Inc. an Alabama non-profit corporation, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me that, being fully informed of the contents of said instrument, he, as such chairman and with full authority, executed the same voluntarily on the day the same bears date for and as the act of said corporation.

GIVEN under my hand and official seal this ____ day of _____, 2005.

Notary Public
My Commission Expires:

**EXHIBIT A
LEGAL DESCRIPTION**

All of Tract I and Tract II that was conveyed by the Trustees of HUNTSVILLE INDUSTRIAL ASSOCIATES to HJH ASSOCIATES OF ALABAMA as recorded in Deed Book 627, Page 575 in the Office of the Judge of the Probate Court of Madison County, Alabama, and also all of Tract 1 and Tract 4 that was conveyed by THE CITY OF HUNTSVILLE to HJH ASSOCIATES OF ALABAMA as recorded in Document Number 20040519000082080 in the Office of the Judge of the Probate Court of Madison County, Alabama, LESS AND EXCEPT, Tract 2 and Tract 3 that was conveyed by HJH ASSOCIATES OF ALABAMA to THE CITY OF HUNTSVILLE as recorded in Document Number 20040519000082090 in the Office of the Judge of the Probate Court of Madison County, Alabama and particularly described as:

Beginning at a 5/8 inch capped rebar set and stamped "G.W. Jones & Sons C.E., Inc. CA-00020E" on the westerly right-of-way line of Lowe Avenue at the northeast corner of Block 22 of Urban Renewal Project ALA. R-32, Big Spring Area, Huntsville, Alabama as recorded in Plat Book 8, Page 22 in the Office of the Judge of the Probate Court of Madison County, Alabama and on the easterly boundary of the above said Tract I; thence southeasterly a distance of 160.90 feet along the easterly boundary of the above said Tract I and along the westerly right-of-way line of Lowe Avenue and a curve to the left that has a radius of 327.70 feet and a chord bearing S70°44'40"E a distance of 159.29 feet to a 5/8 inch capped rebar set and stamped "G.W. Jones & Sons C.E., Inc. CA-00020E"; thence S03°31'00"E a distance of 7.30 feet to a 5/8 inch capped rebar set and stamped "G.W. Jones & Sons C.E., Inc. CA-00020E" on the north margin of Peter Fagan Creek and at the southeastmost corner of the above said Tract I; thence S88°36'00"W along the north margin of Peter Fagan Creek a distance of 182.20 feet to a 5/8 inch capped rebar set and stamped "G.W. Jones & Sons C.E., Inc. CA-00020E"; thence N80°09'39"W along the north margin of Peter Fagan Creek a distance of 125.76 feet to a 5/8 inch capped rebar set and stamped "G.W. Jones & Sons C.E., Inc. CA-00020E"; thence N73°55'00"W along the north margin of Peter Fagan Creek a distance of 66.91 feet to a 5/8 inch capped rebar set and stamped "G.W. Jones & Sons C.E., Inc. CA-00020E"; thence N64°48'00"W along the north margin of Peter Fagan Creek a distance of 95.00 feet to a 5/8 inch capped rebar set and stamped "G.W. Jones & Sons C.E., Inc. CA-00020E"; thence N56°13'00"W along the north margin of Peter Fagan Creek a distance of 151.09 feet to a P-K nail found; thence N54°19'00"W along the north margin of Peter Fagan Creek a distance of 93.82 feet to a 5/8 inch capped rebar set and stamped "G.W. Jones & Sons C.E., Inc. CA-00020E"; thence S35°38'22"W across Peter Fagan Creek a distance of 65.01 feet to a 5/8 inch capped rebar set and stamped "G.W. Jones & Sons C.E., Inc. CA-00020E" at the northeast corner of the above said Tract II; thence S26°37'51"W along the easterly boundary of the above said Tract II a distance of 82.00 feet to a 5/8 inch capped rebar set and stamped "G.W. Jones & Sons C.E., Inc. CA-00020E"; thence N65°57'07"W along the southerly boundary of the above said Tract II a distance of 180.00 feet to a 5/8 inch capped rebar set and stamped "G.W. Jones & Sons C.E., Inc. CA-00020E"; thence N79°49'28"W along the southerly boundary of the above said Tract II a distance of 114.98 feet to a 5/8 inch capped rebar set and stamped "G.W. Jones & Sons C.E., Inc. CA-00020E" on the new easterly right-of-way line of Monroe Street; thence N19°24'53"E along the new easterly right-of-way line of Monroe Street a distance of 122.77 feet to a 5/8 inch capped rebar set and stamped "G.W. Jones & Sons C.E., Inc. CA-00020E" and the beginning of a curve to the left; thence northeasterly a distance of 115.62 feet along the new easterly right-of-way line of Monroe Street and said curve to the left that has a radius of 288.00 feet and a chord bearing N07°54'49"E a distance of 114.85 feet to a 5/8 inch capped

rebar set and stamped "G.W. Jones & Sons C.E., Inc. CA-00020E"; thence N03°35'14"W along the new easterly right-of-way line of Monroe Street a distance of 49.28 feet to a 5/8 inch capped rebar set and stamped "G.W. Jones & Sons C.E., Inc. CA-00020E" and the beginning of a curve to the right; thence northeasterly a distance of 125.59 feet along the new easterly right-of-way line of Monroe Street and said curve to the right that has a radius of 184.00 feet and a chord bearing N15°58'00"E a distance of 123.17 feet to a 5/8 inch capped rebar set and stamped "G.W. Jones & Sons C.E., Inc. CA-00020E" and the beginning of another curve to the right; thence northeasterly a distance of 64.12 feet along the new easterly right-of-way line of Monroe Street and the new southerly right-of-way line of Williams Avenue and along said curve to the right that has a radius of 44.00 feet and a chord bearing N77°16'11"E a distance of 58.60 feet to a 5/8 inch capped rebar set and stamped "G.W. Jones & Sons C.E., Inc. CA-00020E" and the beginning of a curve to the left; thence southeasterly a distance of 140.97 feet along the new southerly right-of-way line of Williams Avenue and said curve to the left that has a radius of 345.00 feet and a chord bearing S72°41'14"E a distance of 139.99 feet to a 5/8 inch capped rebar set and stamped "G.W. Jones & Sons C.E., Inc. CA-00020E" at the intersection of the new southerly right-of-way line of Williams Avenue and the old southerly right-of-way line of Williams Avenue and on the northerly boundary of the above said Tract I and the beginning of another curve to the left; thence northeasterly a distance of 117.48 feet along the southerly right-of-way line of Williams Avenue and the northerly boundary of the above said Tract I and said curve to the left that has a radius of 827.77 feet and a chord bearing N84°28'46"E a distance of 117.38 feet to a 5/8 inch capped rebar set and stamped "G.W. Jones & Sons C.E., Inc. CA-00020E" and the beginning of a curve to the right; thence southeasterly a distance of 281.10 feet along the southerly right-of-way line of Williams Avenue and the westerly right-of-way line of Lowe Avenue and the northerly and easterly boundary of the above said Tract I and said curve to the right that has a radius of 219.65 feet and a chord bearing S57°34'00"E a distance of 262.31 feet to a 5/8 inch capped rebar set and stamped "G.W. Jones & Sons C.E., Inc. CA-00020E"; thence S21°02'00"E along the westerly right-of-way line of Lowe Avenue and the easterly boundary of the above said Tract I a distance of 113.00 feet to a 5/8 inch capped rebar set and stamped "G.W. Jones & Sons C.E., Inc. CA-00020E" and the beginning of a curve to the left; thence a distance of 317.33 feet along the westerly right-of-way line of Lowe Avenue and the easterly boundary of the above said Tract I and said curve to the left that has a radius of 548.47 feet and a chord bearing S37°36'00"E a distance of 312.92 feet to a 5/8 inch capped rebar set and stamped "G.W. Jones & Sons C.E., Inc. CA-00020E"; thence S54°56'00"E along the westerly right-of-way line of Lowe Avenue and the easterly boundary of the above said Tract I a distance of 14.07 feet to the point of beginning containing 6.59 acres, more or less.

AND SUBJECT TO any recorded or unrecorded easements, servitudes or rights-of-way.

EXHIBIT "B"

[Development Plat]

(COPIES PROVIDED IN THE ORIGINAL)

EXHIBIT "C"

ESTOPPEL CERTIFICATE

Gentlemen:

The undersigned, as [Landlord] [Tenant] under that certain Lease dated _____, 200____, by and between _____ as Landlord, and _____ as Tenant, hereby certify that Tenant has entered into occupancy of the premises described in said Lease on _____, 200____; that said Lease is in full force and effect and has not been modified, supplemented or amended in any way [except by instrument dated _____, 200____]; that the rental is _____ Dollars (\$_____) per month, no part of which has been paid in advance, except for rental for the current month; that there are no deposits or impound accounts held by Landlord in Tenant's account; and that except as set forth below, the undersigned has no knowledge of any default under or breach of the terms of this Lease by [Landlord] [Tenant]. Defaults: _____

Yours very truly,

By: _____

Name: _____

Title: _____

EXHIBIT "D"

SIGNAGE CRITERIA

Tenant will comply with the Building Code and other requirements of the City of Huntsville as they pertain to signs erected on the Premises.

EXHIBIT E
AMORTIZATION SCHEDULE

06/08/2005 11:52 7704974675
 JUN-08-05 11:56 FROM:PM RALEIGH
 Wachovia Corp. of
 NC32HA
 Post Office Box 3008
 150 Fayetteville Street Mall, Suite 500
 Raleigh, NC 27602

SOUTHERN STATES MGMT
 10-9188917498

PAGE 02/04
 PAGE 2/4



June 8, 2005

WACHOVIA

Mr. Bob Ray
 4030 Johns Creek Parkway
 Suwanee, Ga. 30024

Re: Proposed amortization schedule for Big Spring Partners, Inc.

Dear Bob:

As we discussed today please find the proposed amortization for the Big Spring Partners loan. In our loan proposal we had discussed 6 months interest only followed by 78 monthly payments of principal plus interest. As presently proposed the interest rate will float with Libor but for purposes of this amortization schedule I used 6.5% fixed. As the basis of the amortization is principle plus interest the only effect interest rate changes will have is on the cumulative interest paid for the life of the loan.

Pmt #	Beginning Balance	Interest Due	Principal Payment	Total Payment Due	Ending Principal Balance	Cumulative Int Paid
1	2,400,000.00	13,000.00	0.00	13,000.00	2,400,000.00	13,000.00
2	2,400,000.00	13,000.00	0.00	13,000.00	2,400,000.00	26,000.00
3	2,400,000.00	13,000.00	0.00	13,000.00	2,400,000.00	39,000.00
4	2,400,000.00	13,000.00	0.00	13,000.00	2,400,000.00	52,000.00
5	2,400,000.00	13,000.00	0.00	13,000.00	2,400,000.00	65,000.00
6	2,400,000.00	13,000.00	0.00	13,000.00	2,400,000.00	78,000.00
7	2,400,000.00	13,000.00	28,571.43	41,571.43	2,371,428.57	91,000.00
8	2,371,428.57	12,845.24	28,571.43	41,416.67	2,342,857.14	103,845.24
9	2,342,857.14	12,690.48	28,571.43	41,261.91	2,314,285.71	116,535.71
10	2,314,285.71	12,535.71	28,571.43	41,107.14	2,285,714.28	129,071.43
11	2,285,714.28	12,380.95	28,571.43	40,952.38	2,257,142.85	141,452.38
12	2,257,142.85	12,226.19	28,571.43	40,797.62	2,228,571.42	153,678.57
13	2,228,571.42	12,071.43	28,571.43	40,642.86	2,199,999.99	165,750.00
14	2,199,999.99	11,916.67	28,571.43	40,488.10	2,171,428.56	177,666.67
15	2,171,428.56	11,761.90	28,571.43	40,333.33	2,142,857.13	189,428.57
16	2,142,857.13	11,607.14	28,571.43	40,178.57	2,114,285.70	201,035.71
17	2,114,285.70	11,452.38	28,571.43	40,023.81	2,085,714.27	212,488.09
18	2,085,714.27	11,297.62	28,571.43	39,869.05	2,057,142.84	223,785.71
19	2,057,142.84	11,142.86	28,571.43	39,714.29	2,028,571.41	234,928.57
20	2,028,571.41	10,988.10	28,571.43	39,559.53	1,999,999.98	245,916.67
21	1,999,999.98	10,833.33	28,571.43	39,404.76	1,971,428.55	256,750.00
22	1,971,428.55	10,678.57	28,571.43	39,250.00	1,942,857.12	267,428.57
23	1,942,857.12	10,523.81	28,571.43	39,095.24	1,914,285.69	277,952.38

Bo rower name
 Commitment Letter
 Date
 Page 2

24	1,914,285.69	10,369.06	28,571.43	38,940.48	1,885,714.25	288,321.43
25	1,885,714.26	10,214.29	28,571.43	38,785.72	1,857,142.83	298,535.71
26	1,857,142.83	10,059.52	28,571.43	38,630.95	1,828,671.40	308,596.24
27	1,828,671.40	9,904.76	28,571.43	38,476.19	1,799,999.97	318,500.00
28	1,799,999.97	9,750.00	28,571.43	38,321.43	1,771,428.54	328,250.00
29	1,771,428.54	9,595.24	28,571.43	38,166.67	1,742,857.11	337,845.24
30	1,742,857.11	9,440.48	28,571.43	38,011.91	1,714,285.68	347,285.71
31	1,714,285.68	9,285.71	28,571.43	37,857.14	1,685,714.25	356,571.43
32	1,685,714.25	9,130.95	28,571.43	37,702.38	1,657,142.82	365,702.38
33	1,657,142.82	8,976.19	28,571.43	37,547.62	1,628,571.39	374,678.57
34	1,628,571.39	8,821.43	28,571.43	37,392.86	1,599,999.98	383,500.00
35	1,599,999.98	8,666.67	28,571.43	37,238.10	1,571,428.53	392,188.66
36	1,571,428.53	8,511.90	28,571.43	37,083.33	1,542,857.10	400,678.57
37	1,542,857.10	8,357.14	28,571.43	36,928.57	1,514,285.67	409,036.71
38	1,514,285.67	8,202.38	28,571.43	36,773.81	1,485,714.24	417,238.09
39	1,485,714.24	8,047.62	28,571.43	36,619.05	1,457,142.81	425,285.71
40	1,457,142.81	7,892.86	28,571.43	36,464.29	1,428,571.38	433,178.57
41	1,428,571.38	7,738.09	28,571.43	36,309.52	1,399,999.95	440,918.66
42	1,399,999.95	7,583.33	28,571.43	36,154.76	1,371,428.52	448,500.00
43	1,371,428.52	7,428.57	28,571.43	36,000.00	1,342,857.09	455,928.57
44	1,342,857.09	7,273.81	28,571.43	35,845.24	1,314,285.66	463,202.38
45	1,314,285.66	7,119.05	28,571.43	35,690.48	1,285,714.23	470,321.42
46	1,285,714.23	6,964.29	28,571.43	35,535.72	1,257,142.80	477,285.71
47	1,257,142.80	6,809.52	28,571.43	35,380.95	1,228,571.37	484,096.23
48	1,228,571.37	6,654.76	28,571.43	35,226.19	1,199,999.94	490,749.99
49	1,199,999.94	6,500.00	28,571.43	35,071.43	1,171,428.51	497,249.99
50	1,171,428.51	6,345.24	28,571.43	34,916.67	1,142,857.08	503,595.23
51	1,142,857.08	6,190.48	28,571.43	34,761.91	1,114,285.65	509,785.71
52	1,114,285.65	6,035.71	28,571.43	34,607.14	1,085,714.22	515,821.42
53	1,085,714.22	5,880.95	28,571.43	34,452.38	1,057,142.79	521,702.37
54	1,057,142.79	5,726.19	28,571.43	34,297.62	1,028,571.36	527,428.56
55	1,028,571.36	5,571.43	28,571.43	34,142.86	999,999.93	532,999.99
56	999,999.93	5,416.67	28,571.43	33,988.10	971,428.50	538,416.66
57	971,428.50	5,261.90	28,571.43	33,833.33	942,857.07	543,678.56
58	942,857.07	5,107.14	28,571.43	33,678.57	914,285.64	548,785.70
59	914,285.64	4,952.38	28,571.43	33,523.81	885,714.21	553,738.08
60	885,714.21	4,797.62	28,571.43	33,369.05	857,142.78	558,535.70
61	857,142.78	4,642.86	28,571.43	33,214.29	828,571.35	563,178.56
62	828,571.35	4,488.09	28,571.43	33,059.52	799,999.92	567,666.65
63	799,999.92	4,333.33	28,571.43	32,904.76	771,428.49	571,999.99
64	771,428.49	4,178.57	28,571.43	32,750.00	742,857.06	576,178.56
65	742,857.06	4,023.81	28,571.43	32,595.24	714,285.63	580,202.37
66	714,285.63	3,869.05	28,571.43	32,440.48	685,714.20	584,071.41
67	685,714.20	3,714.29	28,571.43	32,285.72	657,142.77	587,785.70
68	657,142.77	3,559.52	28,571.43	32,130.95	628,571.34	591,345.22
69	628,571.34	3,404.76	28,571.43	31,976.19	599,999.91	594,749.98
70	599,999.91	3,250.00	28,571.43	31,821.43	571,428.48	597,999.98
71	571,428.48	3,095.24	28,571.43	31,666.67	542,857.05	601,095.22

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BCTOWER NAME
Commitment Letter
Date
Page 3

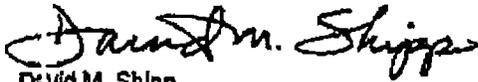
SOUTHERN STATES MGMT
ID: 9199917458

PAGE 04/04
PAGE 4/4

72	542,857.05	2,940.48	28,571.43	31,511.91	514,285.62	604,035.70
73	514,285.82	2,785.71	28,571.43	31,357.14	485,714.19	608,821.41
74	485,714.19	2,630.95	28,571.43	31,202.38	457,142.76	609,452.38
75	457,142.76	2,476.19	28,571.43	31,047.62	428,571.33	611,928.55
76	428,571.33	2,321.43	28,571.43	30,892.86	399,999.90	614,249.98
77	399,999.90	2,166.67	28,571.43	30,738.10	371,428.47	616,416.65
78	371,428.47	2,011.90	28,571.43	30,583.33	342,857.04	618,428.55
79	342,857.04	1,857.14	28,571.43	30,428.57	314,285.61	620,285.69
80	314,285.61	1,702.38	28,571.43	30,273.81	285,714.18	621,888.07
81	285,714.18	1,547.62	28,571.43	30,119.05	257,142.75	623,535.69
82	257,142.75	1,392.86	28,571.43	29,964.29	228,571.32	624,928.55
83	228,571.32	1,238.09	28,571.43	29,809.52	199,999.89	626,168.64
84	199,999.89	1,083.33	28,571.43	29,654.76	171,428.46	627,249.98

Exc, please call should you have any questions.

Sincerely,



David M. Shipp
Senior Vice President

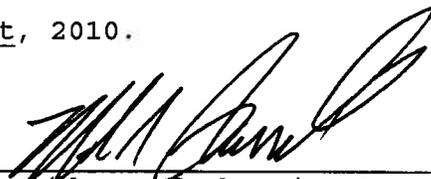
EXHIBIT F

INSURANCE CERTIFICATE OF COVERAGES
(TO BE PROVIDED AFTER LEASE EXECUTION)

RESOLUTION NO. 10- 660

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 Modification No. 1 to the Agreement between the City of Huntsville and Big Spring Partners, Inc., 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 "Modification No. 1 to the Agreement between the City of Huntsville and Big Spring Partners, Inc., dated June 23, 2005, as adopted by the City Council of the City of Huntsville by Resolution No. 05-460," consisting of two (2) pages and the date of August 26, 2010, 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 26th day of August, 2010.



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

APPROVED this the 26th day of August, 2010.



Mayor of the City of
Huntsville, Alabama

STATE OF ALABAMA)
)
COUNTY OF MADISON)
)
Modification No. 1 to the Agreement
between the City of Huntsville and
Big Spring Partners, Inc. dated
June 23, 2005 as adopted by the City
Council of the City of Huntsville by
Resolution No.05-450

MODIFICATION No. 1

THIS MODIFICATION TO AN AGREEMENT is entered into on this the 26th day of August, 2010 by and between the City of Huntsville, Alabama (“City”) and Big Spring Partners, Inc. (“Big Spring”).

WITNESSETH

WHEREAS, Big Spring and the City entered into an agreement on June 23, 2005, as authorized by Resolution No. 05-450 of the Huntsville City Council; and

WHEREAS, the agreement provided for Big Spring to convey a property known as the Hilton hotel site to the City and for the City to lease said property back to Big Spring; and

WHEREAS, said transactions assisted the City in operating, maintaining and keeping the said property economically viable while the City’s long range development plan evolves; and

WHEREAS, the agreement allowed Big Spring to defer up to twenty-four (24) monthly rental payments; and

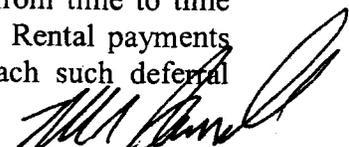
WHEREAS, due to current economic conditions, Big Spring desires to defer up to thirty-six (36) monthly rental payments in order to continue its operation and maintenance of the said property; and

WHEREAS, it is in the best interest of the City and Big Spring for Big Spring to continue its operation and maintenance of the property;

NOW THEREFORE, in consideration of the mutual covenants set forth herein, Big Spring and the City agree to the following modification to the Agreement:

1. Amend paragraph 3(b) of the original Agreement to read as follows:

Deferral of Rent. Notwithstanding anything contained in this Lease to the contrary, Tenant shall have the right at any time and from time to time during the Lease Term, to defer one or more Monthly Rental payments (“Deferred Rent Payments”) hereunder, so long as each such deferral



President of the City Council of the
City of Huntsville, Alabama
Date: 8/26/10

complies with the requirements of this Paragraph 3. Each deferral of a Monthly Rental payment shall be for a period from the original due date of such Monthly Rental payment to the date eight years from the Effective Date of this Lease ("Deferral Period"), and shall bear interest at the rate of six percent (6%) simple interest per annum during the Deferral Period or until the date of prepayment, if sooner. Tenant may prepay any Deferred Rent Payment at any time without penalty by designating Tenant's payment as a pre-payment of a specific Deferred Rent Payment. Deferred Rent Payments need not relate to consecutive months during the term of this Lease, and Tenant may defer any Monthly Rental payment so long as, at the time Tenant gives its Notice to Defer Rent (as defined below in Paragraph 3(d)) with respect to such Monthly Rental payment, less than thirty-six (36) Monthly Rental payments are then being deferred under the provisions of this Paragraph 3(b).

2. All other terms and conditions of the original Agreement remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this modification to this Agreement on the day and year first above written.

Big Spring Partners, Inc.

Attest: _____

By: _____
Its: _____

City of Huntsville, Alabama
A municipal corporation in the State
of Alabama

Attest: Charles E. Hagood
Charles E. Hagood
Clerk-Treasurer

By: Tommy Battle
Tommy Battle
Mayor