

ORDINANCE NO.: 2009-056

Authorizing the Interim City Manager to execute a Lease Agreement between the City of Columbia and TN Development Corporation for lease of a portion of the second floor of the building located at 1225 Lady Street

ORIGINAL
STAMPED IN RED

BE IT RESOLVED by the Mayor and City Council this 3rd day of June, 2009, that the Interim City Manager is authorized to execute the attached Lease Agreement between the City of Columbia and TN Development Corporation for lease of an approximately one thousand six hundred ninety (1690) square feet portion of the second floor of the building located at 1225 Lady Street to TN Development Corporation.

Requested by:

MAYOR

Approved by:

Interim City Manager

Approved as to form:

City Attorney

ATTEST:

City Clerk

Introduced: 5/20/2009

Final Reading: 6/3/2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

LEASE AGREEMENT

This Lease Agreement made by and between the City of Columbia (“Landlord”) and TN Development Corp (“Tenant”).

Whereas, the City is the tenant in a lease with First Citizens Bank and Trust Company, Inc. (“First Citizens”) for the building located at 1225 Lady Street, Columbia, South Carolina; and,

Whereas, that lease permits the City to sublet some or all of that leased space with the written consent of First Citizens; and,

Whereas, the City desires to sublet a portion of that leased space to TN Development Corp and First Citizens has given its written consent to the subletting;

Now, therefore, in consideration of the mutual covenants and agreements herein contained, and of other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Landlord hereby demises and rents to Tenant and Tenant hereby leases from Landlord the premises described below upon the terms, covenants and conditions hereinafter contained.

1. **Leased Premises.** The leased premises (“Premises”) are a portion of the second floor of the building located at 1225 Lady Street, Columbia, South Carolina, with approximately One Thousand Six Hundred Ninety (1690) square feet and shown more clearly on the attached Exhibit A, which is incorporated herein by reference.

2. **Term.** This lease shall commence on September 1, 2007 and terminate at 11:59 p.m. on May 31, 2012.

3. **Rental Amount.** Tenant shall pay to Landlord, in advance, without demand, at such address as the Landlord may from time to time direct in writing to Tenant, monthly rent of One Thousand Seven Hundred Forty-six and 33/100 (\$1746.33) Dollars. Rent is due on the first day of the month and is past due after the tenth day of that month. Rent for a fractional month (if any) shall be apportioned on a per diem basis, calculated on the basis of a thirty day month.

4. **Use of Leased Premises.** Tenant agrees to use the leased premises for general office use and for no other purpose. Landlord may enforce this provision by cancellation of the lease, injunctive or other equitable relief, in addition to any other legal remedies available to Landlord.

5. **Common Areas.** Tenant and its officers, employees, agents and invitees shall have the non-exclusive right to use the common areas within the building, including but not limited to, stairways, elevators, public restrooms and other common facilities, subject to such reasonable rules and regulations as Landlord may from time to time impose.

6. **Utility Services.** Landlord shall pay for all water, electricity and other utilities consumed by Tenant on the premises during the term.

7. **Repairs and Maintenance.** Tenant accepts the Premises in their present condition as suited for their intended use. Tenant shall, at Tenant's sole expense, maintain the interior of the leased premises in good repair, reasonable wear and tear excepted, and Tenant shall at its own cost and expense make all necessary repairs to those improvements.

8. **Signs.** Tenant may erect and maintain suitable signs on the leased Premises. The signs shall be of a size, style and type and in such location as the Landlord may approve, which approval shall not be unreasonably withheld.

9. **New Construction and Alterations.** During the term, Tenant may, with Landlord's consent and the consent of First Citizens, which consent may not be unreasonably withheld, undertake construction of Tenant's improvements, and make alterations and take any other actions with respect to the improvements. Upon termination of this lease, Tenant shall remove such alterations, additions and improvements and restore the leased premises to their condition prior to alteration.

10. **Taxes.** Tenant shall have no obligation to pay real property taxes associated with the Premises.

11. **Subordination of Lease.** Tenant's rights under this lease shall remain subordinate to any bona fide mortgage which is now, or may hereafter be, placed on the Premises.

12. **Damage or Destruction by Fire or Other Casualty.** If the leased Premises are damaged or destroyed by fire, flood, tornado, hurricane, or by the elements, or through any casualty, or otherwise, after the commencement of the lease term, Tenant shall have the option to terminate the lease or for it to continue in full force and effect. If the Tenant does not terminate the lease, rent shall abate until the premises are restored to the condition that existed prior to the loss. Tenant shall have the right to declare the lease terminated at any time until the property has been restored to its previous condition.

13. **Default by Tenant.** If Tenant defaults in fulfilling any of the covenants in this lease, Landlord shall notify Tenant of the nature of the default. If such default is not remedied

within thirty (30) days following such notice, all of Tenant's rights under this lease shall terminate and Tenant shall immediately quit and surrender the premises to Landlord. If the nature of the default is such that it cannot reasonably be cured within thirty (30) days and work thereon has been commenced within that period and diligently prosecuted to completion, Tenant's rights under this lease shall not terminate as a result of such default.

If Tenant's rights under this lease are terminated due to default, Landlord may immediately, or at any time thereafter, re-enter the leased premises and remove all persons and all property by any suitable action or proceeding by law and enjoy the premises. Landlord may, at its option, repair, alter, remodel and/or change the character of the premises as it may deem fit and/or at any time re-let the leased premises or any part thereof. The exercise by Landlord of any right granted in the sentence immediately preceding shall not relieve Tenant from the obligation to fulfill all other covenants required by this lease, at the time and in the manner provided herein. Landlord shall have the obligation to make reasonable attempts to re-let the premises and to mitigate its damages from the default. Landlord's expenses incurred in connection with repairing, altering, or remodeling the premises and any other expenses incurred by it in connection with the re-letting of the leased premises (including but not limited to brokerage fees) if any, shall be Tenant's obligation.

In the event of a breach by Tenant of any of the covenants or provisions of this lease, in addition to the remedies provided above, Landlord shall have all other remedies available at law or in equity.

14. **Default by Landlord.** If Landlord defaults in fulfilling any of the covenants in this lease, Tenant shall notify Landlord of the nature of the default. If such default is not remedied within thirty (30) days following such notice, all of Landlord's rights under this lease shall terminate and Tenant may immediately quit and surrender the premises to Landlord. If the nature of the default is such that it cannot reasonably be cured within thirty (30) days and work thereon has been commenced within the period and diligently prosecuted to completion, Landlord's rights under this lease shall not terminate as a result of such default.

In the event of an uncured breach of any of the covenants or provisions hereof, Tenant shall have, in addition to the remedies above, the right to invoke any remedy available at law or in equity.

15. **Right of Entry by Landlord.** Tenant at any time during this lease term shall permit inspection of the Premises during reasonable business hours by Landlord or Landlord's agents or representatives for the purpose of ascertaining the condition of the Premises. Landlord may not, however, thereby unnecessarily interfere with the use of the Premises by Tenant.

16. **Surrender of Premises.** Tenant agrees to deliver all keys and surrender the Premises at the expiration, or sooner termination, of this lease, broom-clean in the same condition as when the Premises were delivered to the Tenant, ordinary wear, tear and damage by the elements excepted and Tenant shall remove all of its property. Tenant agrees to pay a reasonable cleaning charge when it is necessary for Landlord to restore or cause to be restored the Premises to the same condition as when they were delivered to Tenant.

17. **Holdover.** Should Tenant remain in possession of the Premises or any part thereof after the expiration of the term of this lease, such holding over shall, unless otherwise agreed in writing, constitute a month to month tenancy only, and Tenant shall pay as monthly rental two times the monthly rental assessed during the last month of the term of this agreement. Landlord or Tenant may terminate the month to month tenancy by providing the other with thirty (30) days prior written notice.

18. **Indemnity.** To the extent permitted by law, Tenant shall indemnify and hold harmless Landlord from and against any and all claims arising from Tenant's use of the Premises, or from any activity, work or things done, permitted or suffered by Tenant in or about the Premises or elsewhere and shall further indemnify and hold harmless Landlord from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this lease, or arising from any negligence of the Tenant, or of any of Tenant's agents, contractors, or employees, and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons, in, upon or about the Premises arising from any cause and Tenant hereby waives all claims in respect thereof against Landlord.

19. **Quiet Enjoyment.** Landlord covenants that Tenant, so long as Tenant is not in default, shall and may peaceably and quietly have, hold and enjoy said premises for and during the lease term.

20. **Notices.** Any notice, demand and/or request which under the terms of this lease or under any statute must or may be given or made by either of the parties to the other party shall be in writing and shall be given by registered or certified mail with return receipt requested, addressed to the party as follows:

Landlord: City Manager
City of Columbia
PO Box 147
Columbia, SC 29217

Tenant: President
TN Development Corp.

Either party may designate a different address for receipt of notices by written notification to the other party. Any notice under this lease shall be deemed to have been given at the time it is placed in the mail with sufficient postage prepaid.

21. **Relationship Between the Parties.** Nothing herein shall be deemed or construed as creating the relationship of principal and agent or partnership or joint venture between the parties; it being agreed and understood that the parties have no relationship other than that of landlord and tenant.

22. **Assignment or Subletting.** Tenant may not assign this lease or sublet the leased premises without the consent of Landlord.

23. **Entire Agreement.** The parties further agree that this written lease expresses the entire agreement between the parties and may not be changed orally, but only by an instrument in writing signed by the party against whom enforcement of such change is sought. All prior negotiations and representations of the parties are merged herein and are void and unenforceable unless contained in this agreement.

24. **Effective Date.** The effective date of this agreement shall be September 1, 2007. Notwithstanding the fact that this agreement is signed after that date, the parties acknowledge that Tenant did occupy the Premises on September 1, 2007 and that the parties have been governed by the terms of this agreement prior to its formalization.

25. **Captions.** The captions contained herein are for convenience and reference only and shall not be deemed as part of this lease or construed in any manner to limit or amplify the terms and provisions of this lease to which they relate.

WITNESSES:

Erika D. Salley
J. Donalds

LANDLORD: CITY OF COLUMBIA

By: [Signature]
Its Interim City Manager
Date: 6/9/09

WITNESSES:

TENANT: TN DEVELOPMENT CORP

By: _____
Its: _____
Date: _____