

RESOLUTION NO.: R-2009-080

Authorizing the Interim City Manager to execute an Estoppel Certificate and Subordination, Non-Disturbance and Attornment Agreement with BankMeridian, N.A. for the 10th floor of 1401 Main Street

ORIGINAL
STAMPED IN RED

BE IT RESOLVED by the Mayor and City Council this 21st day of October, 2009, that the Interim City Manager is authorized to execute the attached Estoppel Certificate and Subordination, Non-Disturbance and Attornment Agreement with BankMeridian, N.A. for the 10th floor of 1401 Main Street.

Requested by:

Executive Management & Leasing



Mayor

Approved by:



Interim City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 10/21/2009
Final Reading: 10/21/2009

ESTOPPEL CERTIFICATE

Tenant: **City of Columbia**
1401 Main Street, Suite 1000
Columbia, SC 29211

Landlord: MS Joint Venture
955 Resting Place Point
Chapin, SC 29036
Attention: Melinda G. Parrish

Lender: BankMeridian, N.A.
Attention: Brian R. Samson, Executive Vice President

Premises: 1401 Main Street
10th Floor
Columbia, SC

Lease: Lease Agreement dated **September 10, 2002** (together with any amendments) between Landlord and Tenant for space in the Premises.

AS A CONDITION OF A MORTGAGE LOAN ("LOAN") ISSUED ON SEPTEMBER 17, 2009 AND SECURED BY A LIEN ON THE PREMISES AND THE ASSIGNMENT OF THE CAPTIONED LEASE, AND UNDERSTANDING THAT LENDER IS RELYING ON THE REPRESENTATIONS AND WARRANTIES AND AGREEMENTS IN TAKING ACTION IN CONNECTION WITH THE LOAN ISSUED, TENANT MAKES THE FOLLOWING REPRESENTATIONS, WARRANTIES AND AGREEMENTS:

1. Tenant hereby certifies, as true and correct, the following representations and warranties:
 - (a) The lease and all amendments thereto (collectively referred to as the "Lease"), a copy of which is attached hereto as **Exhibit "A"**, is the true, correct and complete agreement between Landlord and Tenant with respect to the space described in the Lease. Other than as evidenced by any attached amendments, the lease has not been amended or modified and is in full force and effect.
 - (b) Tenant, and no other person or entity, is presently or, upon the commencement date of the Lease as provided in Section 1(g) below, will be occupying the entire space covered by the Lease for the purposes designated therein, and is fully obligated to perform, and is performing, all other obligations of Tenant under the Lease, all without right of counterclaim, offset, defense or otherwise, to the best of our knowledge. Tenant is currently paying **\$16,596.68** per month of its rental obligation and is scheduled to increase to **\$17,235.00** on **November 1, 2009**.
 - (c) All conditions precedent to Tenant's obligation to take possession of and occupy the space described in the Lease and to commence and continue the payment of rent and other charges under the Lease have been fulfilled.

(d) As of the date hereof, neither Landlord nor Tenant is in default under the terms and conditions of the Lease.

(e) Tenant has not prepaid any rent.

(f) Tenant has not received a notice that Landlord has made any other assignment, pledge or hypothecation of the Lease or of any sums due thereunder.

(g) The commencement date of the term of the Lease was **November 1, 2002**. The term of the Lease will expire on **October 31, 2015**, unless sooner terminated as provided in the Lease.

(h) Other than as attached hereto as part of **Exhibit "A"**, there are no side letters or other arrangements, whether or not constituting amendments to the Lease, for tenant inducements such as rebates of or reduction in the rental provided for in the Lease.

(i) Tenant has paid to Landlord as a security deposit the amount of \$ **N/A**.

2. Tenant agrees that without the written consent of Lender it will not (a) in any manner materially modify or alter the terms of the Lease or alter the financial obligations of the Lease; (b) pay the rent or any other sums becoming due under the terms of the Lease more than one (1) month in advance; or (c) accept any termination, merger or cancellation of the Lease or Landlord's waiver of, or release from the performance of any obligations or liabilities under the Lease. However, this provision shall not adversely affect Tenant's termination rights, as more specifically set forth in the Lease.

3. Should Lender advise Tenant that Landlord is in breach or default in the indebtedness to Lender and request that payment of all future rentals be made directly to Lender, Tenant agrees that it shall make all future rental payments under the Lease directly to Lender until instructed otherwise by Lender.

4. Tenant agrees that it will furnish to Lender at the address written above copies of all notices or communications sent to Landlord under the Lease. Said notice shall be sent registered or certified mail at the address shown above. Tenant agrees that in the event of any breach or default by the Landlord under the Lease, Tenant shall notify Lender in writing of such event.

5. Tenant agrees that, upon Lender's receipt of written notice as provided in Paragraph 4 above that Landlord is in breach or default under the terms of the Lease, Lender shall have the option within a reasonable time, but not less than the period of time given to Landlord under the Lease, to cure any default on the part of Landlord; and Tenant agrees not to take any action to terminate the Lease within such time period, and to accept the performance of Lender in lieu of the performance of Landlord.

6. Tenant understands and acknowledges that (a) Landlord shall execute or has executed an absolute assignment of the Lease and other leases in favor of Lender; (b) notwithstanding said assignment, all rental, additional rental and other payments due under the Lease shall continue to be paid in accordance with the terms of the Lease until and unless Tenant is notified to the contrary in writing by Lender; and (c) the interest of Landlord in the Lease shall be or has been assigned to Lender under the terms provided in said absolute assignment or the deed of trust securing the Loan, and Lender assumes no duty, liability

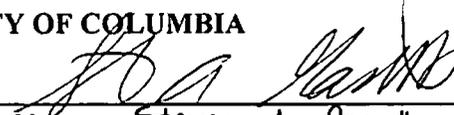
or obligation under the Lease, either by virtue of said absolute assignment, the exercise thereof or by any subsequent receipt or collection of rental, additional rental or any other sums due thereunder.

7. This certificate shall inure to the benefit of Lender, its successors and assigns, and shall be binding upon Tenant and Tenant's heirs, legal representatives, successors and assigns. This certificate shall not be deemed to alter or modify any of the terms and conditions of the Lease except to the extent specifically set forth herein.

EXECUTED this the 26th day of ~~September~~ ^{October}, 2009.

TENANT:

CITY OF COLUMBIA

By: 

Print Name: Steven A. Gant

Print Title: Interim City Manager

LANDLORD CERTIFICATION

Landlord hereby certifies that the true and correct lease with all amendments is attached hereto and the certifications set forth above are true as of the date hereof.

**MS Joint Venture,
a South Carolina general partnership**

By: _____

Melinda G. Parrish, Managing Partner and
Managing Member of Executive Committee

EXHIBIT A
[Attach Copy of Lease and All Amendments]

the landlord under the Lease with the same force and effect as if Bank or such third party were originally named therein as Landlord; provided, however, in no event shall the Bank or any such third party be:

(a) liable for damages for any act, omission, default, misrepresentation, or breach of warranty, of any previous landlord (including Landlord) or obligations accruing prior to the Bank's or such third party's actual ownership of the Premises;

(b) subject to any offset, defense, claim or counterclaim which Tenant might be entitled to assert against any previous landlord (including Landlord);

(c) bound by any payment of rent, additional rent or other payments, made by Tenant to any previous landlord (including Landlord) for more than one (1) month in advance;

(d) bound by any amendment, or modification of the Lease hereafter made, or consent by any previous landlord (including Landlord) under the Lease to any assignment or sublease hereafter granted, without the written consent of Bank; or

(e) liable for any deposit that Tenant may have given to any previous landlord (including Landlord) which has not, as such, been transferred to the Bank or such third party.

4. Agreements by Tenant. Tenant acknowledges and agrees as follows:

(a) From and after the date hereof, in the event of any act or omission by Landlord which would give Tenant the right, either immediately or after the lapse of time, to terminate the Lease or to claim a partial or total eviction, Tenant will not exercise any such right (i) until it has given written notice of such act or omission to the Bank; and (ii) until the same period of time as is given to Landlord under the Lease to cure such act or omission shall have elapsed following such giving of notice to Bank and following the time when Bank shall have become entitled under the Mortgage Instrument to remedy the same.

(b) In the event that Bank notifies Tenant of a default under the Mortgage Instrument and with written consent of Landlord demands that Tenant pay its rent and all other sums due under the Lease directly to Bank, Tenant shall honor such demand and pay the full amount of its rent and all other sums due under the Lease directly to Bank or as otherwise required pursuant to such notice beginning with the payment next due after such notice of default, without inquiry as to whether a default actually exists under the Mortgage Instrument and notwithstanding any contrary instructions of or demands from Landlord.

(c) Tenant shall send a copy of any notice or statement under the Lease to Bank at the same time such notice or statement is sent to Landlord if such notice or statement has a material impact on the economic terms, operating covenants or duration of the Lease.

5. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6. Governing Law. This Agreement shall be governed by and construed under the laws of the State of South Carolina.

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[SIGNATURE PAGES FOLLOW]

