

RESOLUTION NO. 276-16

**RESOLUTION AUTHORIZING DISCLOSURE OF INFORMATION RELATING TO THE PURCHASE OF REAL PROPERTY LOCATED AT 608 AVENUE A**

**WHEREAS**, on October 11, 2016, the City of Opelika, Alabama, purchased the real property and building located at 608 Avenue A, Opelika, Alabama, from My Second Home, LLC; and

**WHEREAS**, the purchase of real property is subject to public disclosure under §9-15-100 of the *Code of Alabama*; and

**WHEREAS**, the City Council of the City of Opelika, Alabama, desires to comply with the requirements of §9-15-100, *Code of Alabama* with respect to the acquisition by purchase of the real property located at 608 Avenue A.

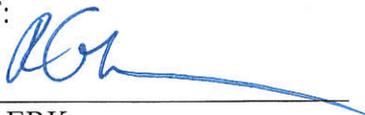
**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Opelika, Alabama, as follows:

1. That the Disclosure of Information form, a copy of which is attached hereto as Exhibit "A", is hereby approved by the City Council.
2. That a copy of said Disclosure shall be attached to the minutes of this meeting of the City Council and shall be published on the City's website.

**ADOPTED AND APPROVED** this the 18<sup>th</sup> day of October, 2016.

  
\_\_\_\_\_  
PRESIDENT OF THE CITY COUNCIL OF THE  
CITY OF OPELIKA, ALABAMA

ATTEST:

  
\_\_\_\_\_  
CITY CLERK

## EXHIBIT "A"

### DISCLOSURE OF INFORMATION RELATING TO PURCHASE OF REAL PROPERTY LOCATED AT 608 AVENUE A, OPELIKA, ALABAMA

The following information is published in compliance with Alabama Code §9-15-100, "Disclosure of Information Concerning Purchase of Real Property".

1. Name and Address of Seller: My Second Home, LLC, 608 Avenue A, Opelika, Alabama 36801
2. Name and Address of Purchaser: City of Opelika, Alabama, 204 S. 7<sup>th</sup> Street, Opelika, AL 36801
3. Property Location: 608 Avenue A, Opelika, Alabama
4. Legal Description: Lots One-B (#1-B) and Two-A (#2-A), Block 14, Grant Lands, Totten's Official Real Estate Map of the City of Opelika, according to and as shown by map or plat of record in Town Plat Book 2, at Page 9, in the Office of the Judge of Probate of Lee County, Alabama. LESS AND EXCEPT: Part of Lot 2-A, Block 14, Grant Lands, Totten's Official Real Estate Map of the City of Opelika, 1930, according to and as shown by map or plat of record in Town Plat Book 2, at Page 9, in the Office of the Judge of Probate of Lee County, Alabama, and being more particularly described as follows: Commence at the point in the City of Opelika, Lee County, Alabama, where the Southwest margin of South Sixth Street intersects the Northwest margin of Avenue A, then run South 45 deg. 00 min. 00 sec. West along said margin of Avenue A, 133.33 feet to the point of beginning of the parcel to be described herein; from said point of beginning, thence continue South 45 deg. 00 min. 00 sec. West along said margin, 44.50 feet; thence run North 45 deg. 00 min. 00 sec. West, 150.00 feet; thence run North 45 deg. 00 min. 00 sec. East, 44.50 feet; thence run South 45 deg. 00 min. 00 sec. East, 150.00 feet to the point of beginning.  
Tax Map Parcel Number: 43-10-03-07-4-002-076.000
5. Contract Sales Price: \$420,000
6. Date of Sale: October 11, 2016
7. Contract Information: Copy of the Real Estate Sales Agreement is attached hereto.
8. Appraisals: None
9. Valuation: The purchase price was negotiated administratively by the Mayor and the City Administrator. The purchase price was approved by the City Council. The purchase price was calculated at price of \$77.18 per usable square foot of office space (5400 square feet), which is the reasonable market value for top tier commercial property in downtown Opelika.

10. Source of Funds Used in the Purchase of the Property: The purchase price was paid from the City of Opelika General Fund, which is supported by various taxes and license fees.

Questions concerning this purchase may be submitted in writing to Mr. Joel Motley, City Administrator, at the following address:

Joel Motley  
City Administrator  
City of Opelika  
P.O. Box 390  
Opelika, AL 36803

**REAL ESTATE SALES AGREEMENT  
(WITH LEASE BACK PROVISIONS)**

**BETWEEN**

**MY SECOND HOME, LLC (“SELLER”)**

**AND**

**THE CITY OF OPELIKA, ALABAMA (“PURCHASER”)**

STATE OF ALABAMA     )  
                                      :  
COUNTY OF LEE         )         **REAL ESTATE SALES AGREEMENT**

THIS AGREEMENT made and entered into this the 4<sup>th</sup> day of October, 2016 by and between **MY SECOND HOME, LLC**, an Alabama limited liability company, having address at 608 Avenue A, Opelika, Alabama (hereinafter referred to as “**SELLER**”): and the **CITY OF OPELIKA, ALABAMA**, a municipal corporation, having address at 204 South 7<sup>th</sup> Street, Opelika, Alabama (hereinafter referred to as “**PURCHASER**”).

**WITNESSETH:**

In consideration of the mutual covenants contained herein, **SELLER** and **PURCHASER** agree as follows:

1. **PURCHASE OF PROPERTY.** **SELLER** hereby agrees to sell and convey unto **PURCHASER**, and **PURCHASER** hereby agrees to purchase from **SELLER**, subject to the conditions hereinafter set forth, the following described real property located at 608 Avenue A in the City of Opelika, Alabama (hereinafter called “**PROPERTY**”), described as follows:

Lots One-B (#1-B and Two-A (#2-A), Block 14, Grant Lands, Totten’s Official Real Estate Map of the City of Opelika, according to and as shown by map or plat of record in Town Plat Book 2, at Page 9, in the Office of the Judge of Probate of Lee County, Alabama. LESS AND EXCEPT: Part of Lot 2-A, Block 14, Grant Lands, Totten’s Official Real Estate Map of the City of Opelika, 1930, according to and as shown by map or plat of record in Town Plat Book 2, at Page 9, in the Office of the Judge of Probate of Lee County, Alabama, and being more particularly described as follows: Commence at the point in the City of Opelika, Lee County, Alabama, where the Southwest margin of South Sixth Street intersects the Northwest margin of Avenue A, then run South 45 deg. 00 min. 00 sec. West along said margin of Avenue A, 133.33 feet to the point of beginning of the parcel to be described herein; from said point of beginning, thence continue South 45 deg. 00 min. 00 sec. West along said margin, 44.50 feet; thence run North 45 deg. 00 min. 00 sec. West, 150.00 feet; thence run North 45 deg. 00 min.

00 sec. East, 44.50 feet; thence run South 45 deg. 00 min. 00 sec. East, 150.00 feet to the point of beginning.

The conveyance by **SELLER** to **PURCHASER** of the **PROPERTY** shall include **SELLER'S** right, title and interest, if any, in and to the following:

- A. All tracts, lots or parcels identified in the legal description, together with all parking lots, or other facilities used in connection with the **PROPERTY**.
- B. All rights, privileges and easements pertinent to the **PROPERTY**, including, without limitation, all **SELLER'S** right, title and interest, if any, in and to all minerals, oils, gas or other hydrocarbon substances and all **SELLER'S** right, title and interest in and to all roads, easements, rights-of-way and alleys adjoining or servicing the **PROPERTY**.
- C. All improvements and fixtures located on the **PROPERTY**, without limitation, the building and other improvements erected or existing thereon; all fixtures attached to or located on the **PROPERTY** or used in connection with the operation or occupation of the **PROPERTY**, such as heating and air conditioning systems, plumbing systems and fixtures, light fixtures and all facilities used to provide any utility ventilation, garbage disposal or other services on the **PROPERTY**.
- D. All trees, shrubbery and vegetation located on the **PROPERTY**.
- E. All built-in bookcases and the storage shelving in the basement., except the white cabinets in the six (6) back offices.
- F. Built-in appliances.

Notwithstanding the foregoing, the conveyance by **SELLER** to **PURCHASER** of the **PROPERTY** shall specifically exclude the following (collectively "excluded items"):

- A. Any tangible personal property that is located in or used in connection with the **PROPERTY**
- B. **SELLER'S** artwork.
- C. All trade equipment, furniture, furnishings, supplies, records, documents and other items of removable personal property relating to the operation of the **SELLER'S** business, including, without

limitation, telecommunication equipment, security systems, computers, computer terminals and office equipment.

- D. **SELLER'S** unattached cabinets, bookcases and shelving, including the white cabinets in the six (6) back offices (except the storage shelving in the basement).

2. **PURCHASE PRICE.** The purchase price for the PROPERTY shall be \$420,000.00, payable in full at the time of closing.

3. **LEASE AGREEMENT.** Commencing on the Closing Date, **PURCHASER**, as Landlord, shall lease to Jeffery A. Hilyer, as Tenant, the PROPERTY described in Section 1 pursuant to a lease agreement (the "Lease Agreement") substantially in the form attached as Exhibit "A" hereto. The Lease Agreement shall have a term of four (4) months expiring on February 11, 2017.

4. **CLOSING:** Subject to the terms and provisions of this Contract, the "Closing" will be held at City Hall, or at such other place as is mutually agreeable to the **SELLER** and the **PURCHASER** on a date to be designated by the **PURCHASER** within seven (7) days after the date hereof. At Closing and upon the payment of the entire purchase price as recited in this Contract, the **SELLER** shall execute and deliver to **PURCHASER** a good and sufficient warranty deed conveying to the **PURCHASER** good and marketable title to the PROPERTY, subject only to:

- (a) All easements, restrictions, reservations, covenants, conditions and rights-of-way as shown on the public records in the Office of the Judge of Probate of Lee County, Alabama, or which may be evidenced by possession, use or survey.
- (b) All zoning ordinances and subdivision regulations of the City of Opelika.

In the event title to the PROPERTY is found to be defective and is not good and merchantable,

then upon notification thereof by **PURCHASER** to **SELLER**, **SELLER** shall have a reasonable time to correct the defects; but if such defects are not corrected within a reasonable period of time, then all rights and obligations arising hereunder shall terminate.

At closing, **PURCHASER** shall deliver to **SELLER** a check in the amount of the purchase price. The cost of preparing, executing and acknowledging any deeds or other instruments required to convey good and merchantable title to **PURCHASER** in the manner described in this Contract shall be paid by the **SELLER**. Prior to closing, the **SELLER** shall pay the current year's property (ad valorem) taxes which become due and payable on October 1, 2016 and shall provide proof of payment to the **PURCHASER** at closing. There shall be no proration of 2016-2017 property taxes and the **PURCHASER** shall be responsible for the payment of all property taxes on the real estate and the building located on the PROPERTY when they become due on October 1, 2017. The **SELLER** shall be responsible for the payment of all ad valorem taxes on the trade equipment, furniture, furnishings and removable personal property used in connection with the operation of the **SELLER'S** business. All other costs and expenses of closing shall borne by the **PURCHASER**.

5. **RISK OF LOSS**: **SELLER** shall bear the risk of all loss or damage to the premises from all causes until the closing date. If, prior to the closing date, all or part of the premises are damaged by fire or some other cause of whatsoever nature, **SELLER** shall promptly give **PURCHASER** written notice of such damage. After notice of such damage, **PURCHASER** shall have the option to require **SELLER** (1) to convey the premises, on the closing date, in its damaged condition, or (2) **PURCHASER** may, at its option, terminate the contract by written notice to the **SELLER**.

6. **PROPERTY "As Is"**: PURCHASER has heretofore inspected the PROPERTY and is acquainted with the condition of the PROPERTY and the improvements thereon.

PURCHASER agrees to take the PROPERTY "as is", in its present condition, subject to reasonable use, wear and tear. Until closing, SELLER agrees to maintain PROPERTY in its present condition, reasonable wear and tear excepted. The provisions of this Section shall survive closing and shall survive the expiration or earlier termination of this Agreement.

7. **DISCLAIMER**: PURCHASER acknowledges and agrees that SELLER does not make, and specifically negates and disclaims any representations, warranties (other than the warranty of title as set out in the deed), promises, covenants or guarantees of any kind or character whatsoever, whether expressed or implied, oral or written, past, present or future, of, as to, concerning or with respect to the nature, quality or condition of the PROPERTY, including, without limitation, the soil, geography and habitability or merchantability of any building situated on the PROPERTY. PURCHASER acknowledges and agrees that to the maximum extent permitted by law, the sale of the PROPERTY is provided for herein is made on an "AS-IS" condition and basis with all faults. All provisions of this Section shall survive closing or the expiration or earlier termination of this Agreement without closing as applicable.

8. **POSSESSION**: SELLER shall deliver to PURCHASER possession of the PROPERTY at the termination of the Lease Agreement pursuant to Section 3, except that Jeffery A. Hilyer, as Tenant, shall continue to have the right of possession to the basement storage room until April 30, 2017. All of SELLER's and Tenant's personal property, shall be removed from the Property at the expiration of the Lease excepted the Tenant's boxes and personal property in the basement storage room which shall be removed no later than April 30, 2017. Tenant shall

surrender to the **PURCHASER** (Landlord) all keys to the Property at the termination of the Lease.

9. **BROKERS**. Each party represents to the other that it has not dealt with any real estate broker or agent or finder in connection with this Agreement. The parties agree to indemnify and hold one another harmless based upon their actions and dealings of any claims or causes of any actions concerning any brokerage or finders' fees or commissions

10. **SELLER'S REPRESENTATIONS**. **SELLER** represents to **PURCHASER**, which representations shall be true, correct and complete as of the closing date hereunder, and which shall survive closing, as follows:

- A. **SELLER** is, and at closing shall be, an Alabama domestic limited liability company, duly organized and validly existing, with full power and authority to conduct its business affairs in the state where the **PROPERTY** is located.
- B. The execution, delivery and performance of this Agreement by **SELLER** in accordance with its terms do not violate **SELLER'S** Articles of Organization, operating agreements, or any contract, agreement, commitment, order, judgment or decree to which **SELLER** is a party or by which it is bound.
- C. The execution, delivery and performance of this Agreement and the performance of the **SELLER** of its obligations hereunder have been duly authorized by all required action of **SELLER** and the members and/or officers of **SELLER** in full compliance of **SELLER'S** Articles of Organization and operating agreements. The person executing this Agreement on behalf of **SELLER** is duly authorized to do so.
- E. The **SELLER** has the right, power and authority to make and perform its obligations under this Agreement, and this Agreement is a valid and binding obligation of **SELLER** and enforceable against **SELLER** in accordance with its terms.

11. **DEFAULT**. In the event of a default by **SELLER** or **PURCHASER**, the non-defaulting party may state its or his intention to comply with the contract and seek specific

performance of this contract or bring suit for damages.

12. **LEGAL FEES.** Each party agrees to pay its own legal fees for closing this transaction.

13. **SURVIVAL OF TERMS.** The **SELLER'S** covenants and representations shall survive the closing and shall not be merged in the deed delivered by **SELLER**.

14. **BINDING EFFECT.** This Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

15. **ENTIRE AGREEMENT.** This Contract embodies the entire agreement between the parties hereto and there are no oral or parole agreements existing between the **SELLER** and the **PURCHASER** relating to the subject matter which is not expressly set forth herein and covered hereby.

16. **TIME OF ESSENCE.** Time is of the essence of this Contract.

17. **CONSTRUCTION.** This Agreement shall be governed and construed in accordance with the State of Alabama.

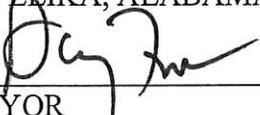
18. **COUNTERPARTS.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument. The date of this Agreement shall be the date of **PURCHASER'S** execution hereof.

**IN WITNESS WHEREOF**, the parties hereto, intending to be legally bound, have hereunto set their hands and seals on the day and date first above written.

MY SECOND HOME, LLC--SELLER

By:   
JEFFERY A. HILYER,  
ITS MANAGING MEMBER

CITY OF OPELIKA, ALABAMA--PURCHASER

By:   
ITS MAYOR

ATTEST:   
CITY CLERK 10-5-16

**EXHIBIT "A"**

STATE OF ALABAMA     )  
                                  :     LEASE AGREEMENT  
COUNTY OF LEE         )

THIS LEASE AGREEMENT is made and entered into this the 4<sup>th</sup> day of October, 2016 at Opelika, Alabama, by and between the **City of Opelika, Alabama**, a municipal corporation, hereinafter referred to as "**LANDLORD**", and **Jeffery A. Hilyer**, hereinafter referred to as "**TENANT**".

In consideration of the mutual covenants contained herein, **LANDLORD** and **TENANT** agree as follows:

**1. Defined terms.** The following terms shall have the meaning set forth when used in this Agreement:

- A. "Closing Date" shall have the meaning given to such term in paragraph 4 of the Real Estate Sales Agreement dated as of October 4, 2016 between the Tenant, as Seller, and the Landlord, as Purchaser, relating to the property located at 608 Avenue A, Opelika, Alabama.
- B. "Landlord" shall mean the City of Opelika, Alabama.
- C. "Lease" shall mean this Lease Agreement.
- D. "Leased Premises" shall mean the property located at 608 Avenue A, Opelika, Alabama, as more particularly described in Section 1 of the Real Estate Sales Agreement.
- E. "REAL ESTATE SALES AGREEMENT" shall mean the agreement dated as of October 4, 2016 between the **TENANT**, as Seller, and the **LANDLORD**, as Purchaser, relating to the property located at 608 Avenue A, Opelika, Alabama.

F. "Tenant" shall mean My Second Home, LLC.

G. "Term" shall mean the term of this Lease Agreement commencing on the Closing Date and ending on February 11, 2017.

**2. Property leased.** LANDLORD hereby leases to TENANT and TENANT hereby leases from LANDLORD for the term and subject to the terms, covenants and conditions set forth in this Lease, the property located at 608 Avenue A, Opelika, Alabama, said premises being hereinafter referred to as the "Leased Premises".

**3. Term.** The term of this Lease (the "Term") shall be four (4) months commencing on the Closing Date and ending on February 11, 2017.

**4. Rent.** TENANT agrees to pay LANDLORD rent for the term of this Lease in the sum of twenty thousand dollars (\$20,000.00), payable in four (4) consecutive equal monthly installments of \$5,000.00, in advance on the 11<sup>th</sup> day of each calendar month commencing on October 11, 2016. TENANT's obligation to pay rent will continue up to the expiration of this Lease and will survive any earlier termination of this Lease. In the event any installment of rent is not paid within ten (10) days after it becomes due, a late fee of five percent (5%) of the past due rental shall also become immediately due and payable. Rental payments shall be made to the City of Opelika.

**5. Condition of Premises.** TENANT accepts the Leased Premises in its present, "AS IS" condition. LANDLORD shall not be obligated to perform any work, or make any improvements or alterations to the Leased Premises. TENANT, during the term of this Lease, shall keep the Leased Premises in clean condition, free of debris and trash.

**6. Use.** The Leased Premises shall be used by the TENANT solely for an office to conduct an accounting and law practice and for no other use whatsoever.

**7. Compliance with Laws.** TENANT shall comply with all laws, orders and regulations of Federal, State, County and Municipal authorities as to its use of the Leased Premises. TENANT shall not do, or permit to be done, any act within or upon the Leased Premises which invalidates any fire insurance policies covering the building or property therein.

**8. Utilities.** TENANT agrees to pay all bills for utilities related to the TENANT's business. The responsibility for payment for utilities shall include but not be limited to electricity, telephone, Internet, water, sewage and all other utilities consumed in or at the Leased Premises.

**9. Repair and Maintenance.** The TENANT shall not permit any waste to the Leased Premises and shall at all times maintain the interior, non-structural portions of the Leased Premises in good condition and repair and shall keep the Leased Premises reasonably free from dirt or all other refuse matter. The LANDLORD agrees to maintain and repair the roof, the exterior walls, the exterior structural portions of the building and the parking area on the land. The TENANT shall be responsible for the repair and maintenance of the HVAC, electrical and plumbing systems during the term of the Lease. The TENANT shall keep all glass, including that in doors, windows and fixtures, clean and in good condition, and shall replace glass which may be damaged or broken with glass of the same quality. The TENANT shall also maintain the grounds outside the building.

**10. Insurance.** LANDLORD agrees to procure and keep in force during the term of this Agreement, fire and extended coverage, insurance on the building and LANDLORD's property. LANDLORD's insurance coverage shall not be required to cover any of

TENANT's personal property and TENANT shall not have any claim against any of the proceeds of LANDLORD's coverage.

TENANT agrees to provide and keep in full force general comprehensive commercial liability insurance with limits of not less than one million dollars (\$1,000,000.00) for injury or death to any one person and one million dollars (\$1,000,000.00) for any one accident to protect the TENANT and LANDLORD from general liability claims arising from TENANT's usage of the Leased Premises. The policy shall name the LANDLORD as an additional insured thereon. TENANT shall furnish LANDLORD with a certificate of insurance, in a form satisfactory to LANDLORD, evidencing such coverage.

**11. Loss, Damage.** LANDLORD shall not be liable for any loss, damage or expense to any person or property of TENANT or to the personal property of the TENANT's employees or invitees. LANDLORD shall also not be liable for any theft of TENANT's property, nor for injury or damage to persons or property resulting from any cause whatsoever, unless due to the willful acts or gross negligence of LANDLORD, its agents, servants and/or employees.

**12. Indemnification.** TENANT agrees to indemnify and hold LANDLORD harmless from and against any and all liability for any injury to or death of any person or persons or any damage to property, or in any way arising out of or connected with the use or occupancy of the Leased Premises, or in any way arising out of the activities of the TENANT, its employees, guests, and invitees in the premises, and from all costs, expenses and liabilities, including, but not limited to, court costs and reasonable

attorney's fees incurred by the **LANDLORD** in connection therewith, excepting, however, liability caused by the **LANDLORD'S** gross negligence.

**13. Smoking.** No smoking is allowed on the Leased Premises. This rule will be strictly adhered to.

**14. Alcoholic Beverages.** Alcoholic beverages are prohibited on the Leased Premises. This rule will be strictly adhered to.

**15. Care of Leased Premises.** **TENANT** agrees to use due care in the use of the Leased Premises and further agrees that it will not commit waste thereon. **TENANT**, at **TENANT'S** sole cost and expense, shall keep the Leased Premises, including the parking areas, in safe, neat and sanitary conditions, free of pests and vermin.

**16. Remedies for Default.** If **TENANT** shall fail to pay rent when due, shall default in any other provision of this Lease, or shall abandon the Leased Premises, **LANDLORD**, in addition to all other remedies provided either at law or in equity, may reenter and take possession of the Leased Premises and remove all persons and property therefrom, without being deemed guilty of any manner of trespass.

All rights and remedies of **LANDLORD** under this Lease shall be cumulative and none shall exclude any other right or remedy at law. Such rights and remedies may be exercised and enforced concurrently and whenever and as often as occasion therefor arises.

**17. Attorney's Fees.** **LANDLORD** shall be entitled to recover reasonable attorney's fees and costs in connection with any action or proceeding to enforce this Lease or otherwise secure any rights due it under this Lease or as may be accorded by law.

**18. Relationship of LANDLORD and TENANT.** The execution of this Lease or the performance of any act pursuant to the provisions thereof shall not be deemed or construed to have the effect of creating between **LANDLORD** and **TENANT** the relationship of principle or agent, or of partnership, or of joint venture, and the relationship between them shall only be that of **LANDLORD** and **TENANT**.

**19. Assignment.** **TENANT** shall not assign, transfer or encumber this Lease and shall not sublease the Leased Premises or any part thereof or allow any person to be in possession thereof without the prior written consent of **LANDLORD**, in each and every instance.

**20. LANDLORD's Right of Entry.** **LANDLORD** or **LANDLORD's** agent may enter at reasonable hours to inspect the Leased Premises, and to do anything **LANDLORD** may be required to do hereunder.

**21. Alterations.** **TENANT** may not make any material or structural alterations or additions in or to the Leased Premises without the prior written consent of **LANDLORD**.

**22. Toxic or Hazardous Materials.** **TENANT** shall not store, use or dispose of any toxic or hazardous materials in or about the Leased Premises without the prior written consent of **LANDLORD**.

**23. Notices.** All notices required to be given to **LANDLORD** hereunder, shall be delivered to the City of Opelika, 204 Seventh Street South, Opelika, Alabama 36801, or such other address as **LANDLORD** may direct by written notice forwarded to **TENANT** by certified mail. All notices required to be given **TENANT** shall be delivered to P.O. Box 30, Opelika, Alabama, or such address as **TENANT** may direct by written notice forwarded to **LANDLORD** by certified mail.

**24. Waiver.** The failure of the **LANDLORD** to insist upon strict performance of any of the covenants or conditions of this Lease or to exercise any option herein conferred in any one or more instances shall not be construed as a waiver or relinquishment of any such covenants, conditions or options, but the same shall be and remain in full force and effect. The receipt by the **LANDLORD** of partial rent, after the **TENANT's** default of any covenant hereof, shall not be deemed to constitute a cure of any such default unless expressed in writing and signed by the **LANDLORD**.

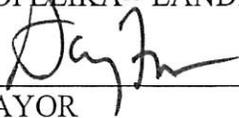
**25. Entire Agreement.** This Lease constitutes the entire agreement between the parties hereto, and any change or modification to this Lease shall be in writing and signed by the parties hereto.

**26. Counterparts.** This Lease may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same instrument.

**27. Binding Effect.** The provisions of this Lease shall be binding upon and shall inure to the benefit of the parties and their respective successors, legal representatives, heirs and assigns.

IN WITNESS WHEREOF, **LANDLORD** and **TENANT** have respectively caused this Lease to be executed by their duly authorized representatives as of the day and year first above written.

CITY OF OPELIKA-- LANDLORD

BY:   
ITS MAYOR

ATTEST:

  
\_\_\_\_\_  
CITY CLERK 10-5-16

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JEFFERY A. HILYER--TENANT