

ORDINANCE NO. 2014-10

**ORDINANCE AUTHORIZING THE LEASE OF CERTAIN REAL PROPERTY  
TO THE INNSBROOKE HOMEOWNERS' ASSOCIATION, INC.**

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WHEREAS, the City Council desires to lease certain municipal property located at the corner of Innsbrooke Parkway and Highway 75 to the Innsbrooke Homeowners' Association, Inc. ("IHA");

WHEREAS, this real property is not needed for any public or municipal purposes by the City;

WHEREAS, the City Council finds that the consideration paid by the IHA is reasonable and adequate;

WHEREAS the lease of said real estate will serve the best interests the City; and

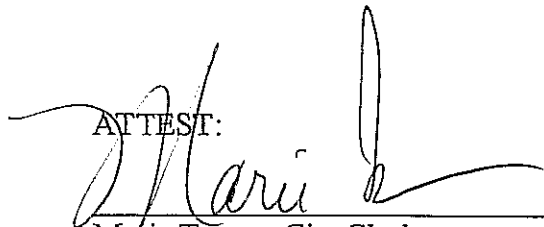
THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, while in regular session on March 20, 2014, at 7:00 p.m., as follows:

1. The Mayor is authorized to cause the real property described in Exhibit A (the "Property") to be leased to IHA via a written lease agreement in substantially the same form as Exhibit A hereto.

ADOPTED AND APPROVED THIS THE 20<sup>th</sup> DAY OF March, 2014.

  
HOYT SANDERS, MAYOR

ATTEST:

  
Marie Turner, City Clerk

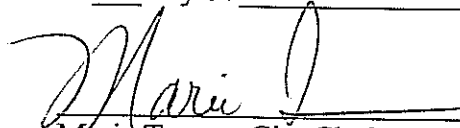
**CERTIFICATION OF CITY CLERK**

STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, Marie Turner, City Clerk of the City of Pinson, Alabama, do hereby certify that the above and foregoing is a true and correct copy of an Ordinance duly adopted by the City Council of the City of Pinson, Alabama, on the 20<sup>th</sup> day of March, 2014.

The above and foregoing ordinance was published on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by posting copies thereof in three public places within the City of Pinson, one of which was the post office or the Mayor's office in the City of Pinson.

Witness my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2014.

  
\_\_\_\_\_  
Marie Turner, City Clerk

STATE OF ALABAMA  
JEFFERSON COUNTY

**LEASE BY AND BETWEEN THE CITY OF PINSON  
AND INNSBROOKE HOMEOWNERS' ASSOCIATION, INC.**

This Lease, made and entered on this the \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the City of Pinson, Alabama, a municipal corporation (hereinafter referred to as the "Lessor" Or "City"), and Innsbrooke Homewoners' Association, Inc., an Alabama non-profit corporation (hereinafter referred to as "Lessee").

**WITNESSETH:**

1. **THE LETTING** - The Lessor, for and in consideration of the covenants, conditions and terms of this Agreement, does hereby demise, let and lease unto Lessee, and Lessee does hereby lease from Lessor, certain real property in the City of Pinson, Alabama more particularly described on ***Exhibit 1*** attached hereto and incorporated herein by reference, together with all improvements, rights-of-ways, licenses and other rights appurtenant thereto (the "Property"), for and during the Term (as hereinafter defined) unless sooner terminated or extended as hereinafter provided. Lessor does hereby covenant to keep Lessee in quiet possession of the Property during the Term, subject, nevertheless, to the terms of this Lease and to any mortgage or agreements to which this Lease is or shall become subordinated.

2. **TERM OF LEASE** - The term of this Lease (the "Term") shall commence on \_\_\_\_\_ and extend for a period of ten (10) years ending on the \_\_\_\_ day of \_\_\_\_\_, unless sooner terminated pursuant to the provisions hereunder.

3. **USE OF PROPERTY** - The Lessee covenants and agrees that the Property shall be used as an attractive entryway for guests and visitors of the Innsbrooke Subdivision. Lessee shall keep and maintain the Property in a neat and orderly fashion. Lessee shall at all times shall fully and promptly comply with all laws, ordinances, orders and regulations of any lawful governmental authority having jurisdiction over the Property.

4. **CONDITION OF THE PROPERTY.** The Property is leased to Lessee subject to existing easements, if any, and all laws, ordinances, orders and regulations of any lawful governmental authority having jurisdiction over the Property. Lessee accepts the Property "WHERE IS, AS IS" in its present condition on the date of execution of this Lease. Lessor has made no representation or warranty as to the condition of the Property or its suitability for any particular purpose. Lessor shall not be responsible for any latent defect or change of condition in the Property. Lessee acknowledges that Lessee is familiar with the Property and is aware of all conditions and defects, latent or otherwise, existing on the Property and is solely responsible for same in all respects. Lessee acknowledges and agrees that the Property has access to a public road.

5. MAINTENANCE AND REPAIRS. Lessor shall not be obligated or required to make any repairs or do any work on or about the Property or any part thereof; however, Lessor reserves the right to enter upon the Property and to make such repairs and to do such work on or about the Property as Lessor may deem necessary or proper.

6. ALTERATIONS AND IMPROVEMENTS. Lessee may make, at its expense, additions, improvements, modifications, and alterations to the Property (including but not limited to the construction and placement of a welcome sign/structure and landscaping used to identify the Innsbrooke Subdivision, as well as to welcome visitors, homeowners, and guests). However, the placement, construction, and/or use of any such alterations and/or improvements must first be approved by the Lessor (through the Mayor, or his designee), who may withhold or remove his approval for any reason, including but not limited to a reason based on the location, condition, and appearance of the alteration and/or improvement. Lessee must maintain any alterations and improvements in a clean, neat, and orderly manner.

Lessee may remove the alterations and/or improvements at or prior to the conclusion of the Term, provided that all terms and conditions of this Lease have been complied with by Lessee and that the Property is restored to substantially the same condition as it existed immediately prior to the execution of this Lease. In the event Lessee does not desire to remove the alterations and/or improvements upon the expiration of the Term, Lessee shall notify Lessor in writing not less than thirty (30) days prior to the expiration of the Term. If, within fifteen (15) days after the giving of such notice, Lessor shall nonetheless demand that Lessee to remove the alterations and/or improvements, then Lessee shall, at its own expense and before the expiration of the term of this Lease, remove the same. Otherwise, the alterations and/or improvements shall become the property of Lessor, who may remove them at the expense of the Lessee.

7. CARE OF PREMISES. Lessee shall not permit or cause any act or deed to be performed or any practice to be adopted or followed in or about the Property which shall cause or be likely to cause injury or damage to any person or to the Property or the improvements thereon. Lessee does hereby agree to permit no waste of the Property, but on the contrary to take good care of same, and upon termination of this Lease to surrender possession of same without notice.

8. ENTRY BY LESSOR. Lessor and/or its agents and representatives may enter the Property at all reasonable times for the purpose of (i) inspection thereof; (ii) making repairs or replacements to the Property; and (iii) exhibiting the Property to prospective lessees, purchasers or other persons.

9. THE RENTAL – As consideration for the lease of the Property and the Lessor's promises hereunder, the Lessee shall:

- (a) pay to the Lessor annual rent in the sum of \$1.00 Dollar (\$1.00) per year; and

- (b) keep the Property in good, neat, attractive and orderly condition, with all vegetation trimmed and cut, and any litter and trash removed.

10. HOLD HARMLESS CLAUSE - Lessee agrees to hold harmless Lessor, its agents, representatives, officials and employees, from any claim or any liability of whatsoever nature growing out of or arising from any actions or omissions of any of Lessee's agents or employees, or of any of Lessee's operations, on or about the Property or related to this Lease. This Section 10 shall survive the termination of this Lease.

11. RELEASE OF LIABILITY - Lessee shall occupy the Property at its own risk, and hereby releases the Lessor and its officers, elected officials, employees, agents, servants, guests, invitees and representatives to the fullest extent permitted by law, from all claims of every kind resulting in loss of life, personal or bodily injury or property damage related to the Property. This Section 11 shall survive the termination of this Lease.

12. UTILITIES - At all times during the term of this Lease, the Lessee shall promptly pay any and all charges for water, sewer, electricity, telephone, or any other public utility services used or consumed by Lessee on the Property.

13. NOTICE

- (a) All written notices required to be given to Lessor hereunder shall be sent to Lessor at \_\_\_\_\_, Pinson, AL \_\_\_\_\_, or to such other address as Lessor may direct from time to time by written notice forwarded to Lessee by Lessor. All written notices required to be given to Lessee hereunder shall be sent to Lessee at \_\_\_\_\_, Pinson, Alabama \_\_\_\_\_, or to such address as Lessee may direct Lessor by written notice.
- (b) For purposes of the day to day administration of this Lease, Lessor's point of contact for Lessee shall be \_\_\_\_\_, representative of Lessee, at \_\_\_\_\_ (phone) and \_\_\_\_\_ (fax).
- (c) For purposes of the day to day administration of this Lease, Lessee's point of contact for Lessor shall be \_\_\_\_\_.

14. ELECTION TO TERMINATE - Notwithstanding any other provision contained in this Lease, the Lessor or Lessee may elect to terminate this Lease by giving the other party sixty (60) days notice in writing of its election to terminate said Lease.

15. LESSEE'S DEFAULT. Upon the happening of any event of default, Lessor may terminate this Agreement on ten (10) days written notice to Lessee, and shall have the right to such other, further, and different remedies as may be permissible by law

or equity. The event of default referred to herein shall be the violation of any material term, condition, representation, warranty or covenant on the part of Lessee herein contained, or a failure to remedy the same, or to commence with reasonable dispatch to remedy the same within five (5) days after written notice thereof is given to Lessee by Lessor, and to diligently prosecute the curing of same until completion.

16. LESSOR'S DEFAULT. Upon the happening of the event of default, Lessee shall have, as its sole and exclusive remedy, the right to terminate this Agreement on fifteen (15) days written notice to Lessor. The event of default referred to herein shall be the violation of any material term, condition, representation, warranty or covenant on the part of Lessor herein contained, or a failure to remedy the same, or to commence with reasonable dispatch to remedy the same within thirty (30) days after written notice thereof is given to Lessor by Lessee, and to diligently prosecute the curing of same until completion.

17. ASSIGNMENT OR SUBLETTING. Lessee shall not assign this Lease in whole or in part or sublet all or any part of the Property, nor permit other persons to occupy the Property or any part thereof, nor grant any license or concession for all or any of the Property, without the written consent of Lessor. Any consent by Lessor to an assignment or subletting of this Lease shall not constitute a waiver of the necessity of such consent for subsequent assignments or subletting and any proposed assignee or subtenant of Lessee shall assume the obligations hereunder and deliver to Lessor an assumption agreement in a form satisfactory to Lessor on the effective date of transfer.

18. WAIVER. The failure of Lessor or Lessee 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.

19. BINDING EFFECT. The agreements, covenants, conditions and terms contained in this Lease shall bind and inure to the benefit of Lessor and Lessee and their respective successors and permitted assigns.

20. ENTIRE AGREEMENT. This Lease contains the entire agreement between the parties hereto, and neither party is bound by any representation or agreements of any kind except as herein contained, and no amendments hereto shall be considered as effective unless and until the same shall be reduced to writing and executed by all the parties hereto.

21. CONSTRUCTION. The captions or headings in this Lease are provided for convenience only and shall not affect its construction or interpretation. All words used in this Lease shall be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms. The terms "herein", "hereof", "hereto" or "hereunder" or similar terms shall be deemed to refer to this Lease as a whole and not to a particular

paragraph or section. The recitals and exhibit attached hereto shall be considered a part of this Lease.

22. SEVERABILITY. If any provision of this Lease is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Lease shall remain in full force and effect. Any provision of this Lease held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

23. COUNTERPARTS. This Lease may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Lease and all of which, when taken together, shall be deemed to constitute one and the same instrument.

24. FORCE MAJEUR. The parties hereto shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond such party's control which shall include without limitation, civil commotion, war, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, fire and other casualty, inability to obtain any material services or financing or through acts of God.

IN WITNESS WHEREOF, Lessor and Lessee have executed and delivered this Lease through their respective duly authorized representatives as of the date first above written.

LESSEE

INNSBROOKE HOMEOWNERS  
ASSOCIATION, INC.

BY: Deb Montgomery  
ITS: President

STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Deb Montgomery, whose name as President of Innsbrooke Homewoners' Association, Inc., a nonprofit corporation organized under the laws of the State of Alabama, is signed to the foregoing Lease, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Lease, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Witness my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES: \_\_\_\_\_

LESSOR

LESSOR CITY OF PINSON, ALABAMA

ATTEST:

BY:

Mari  
ITS CITY CLERK

BY:

Steph  
ITS MAYOR

STATE OF ALABAMA )  
JEFFERSON COUNTY )

~~My~~ I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that ~~Sander~~ whose name as Mayor of the City of Pinson, Alabama, a municipal corporation organized under the laws of the State of Alabama, is signed to the foregoing Lease, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Lease, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Witness my hand and official seal this ~~20th~~ day of ~~March~~ 2014.

Mari D. Turn  
NOTARY PUBLIC

MY COMMISSION EXPIRES: 12/5/15