CA083449

SHELBY COUNTY BOARD OF COMMISSIONERS

AGENDA ROUTE SHEET

Referred to Commission Committee (name) Budget And Finance

For Commission Action on (date) 4/14/08

DESCRIPTION OF ITEM:

Resolution approving an addendum to lease agreement in the amount of $95,400.00 with Finard Properties, LLC for the Midtown Branch location of the Shelby County Clerk's Office, having a street address of 3468 Plaza Avenue, #201, Memphis, Tennessee, 38111.

CHECK ALL THAT APPLY BELOW:

_____ This Action does NOT require expenditure of funds.

___X___ This Item requires/approves expenditure of funds as follows (complete all that apply):

County General Funds: $_____: County CIP Funds: $_____

State Grant Funds: $_____: State Gas Tax Funds: $_____

Federal Grant Funds: $_____

Other funds (Specify source and amount): $_____

Other pass-thru funds (Specify source and amount): $ _____

Originating Department: _Shelby County Clerk

APPROVAL:

	(Type your name & phone #.)	(Initials)	(Date)
Dept. Head:			
ElectedOfficial:	Debbie Stamson 545-3750	DS	3/31/08
Division Director:			
CIP-A&F Director			
FinanceDept:	Mike Swift	MAS	4/1/08
CountyAttorney:	Fred G. Jones Jr 545-4611		4-1-08
CAO/Mayor:	**James F. Huntzicker 545-4514**		4-2-08

SUMMARY

I. Description of Item

Resolution approving an addendum to lease agreement in the amount of $95,400 with finard properties, llc for the Midtown Branch location of the Shelby County Clerk's Office, having a street address of 3468 Plaza Avenue, #201, Memphis, Tennessee 38111.

II. Source and Amount of Funding

Budget line item: 040-800601-6798 - $95,400.00

III. Contract Items

A. Type of Contract – Lease for five (5) years

B. Terms –

$1,000 per month through June 30, 2008;
$1,350 per month July 1, 2008 – June 30, 2009;
$1,650 per month July 1, 2009 – June 30, 2013.

IV. Additional Information Relevant to Approval of this Item

The Administration recommends approval of this Resolution.

This contract shall be subject to and contingent upon adoption of the operating budget in the next five (5) years.

CONTRACT NO. CA 033449

Smw

CONTRACT AND ENCUMBRANCE INFORMATION SHEET
AN ORIGINAL AND 1 COPY OF THIS FORM MUST BE SUBMITTED

THIS SHEET MUST BE COMPLETED, SIGNED BY THE DEPARTMENT HEAD AND DIVISION DIRECTOR AND ATTACHED TO ALL CONTRACT AND RESOLUTION PACKETS BEFORE ANY ACTION WILL BE TAKEN.

1. Department Requesting Services: County Clerk
2. Preparer's Name, Telephone #, and E-Mail Address:
   Dianne Merchant, 545-4247,dianne.merchant@shelbycountytn.gov
3. DESCRIPTION OF ITEM TO BE PURCHASED, BUILT, OR SERVICE TO BE PROVIDED:
   LEASE PAYMENTS FOR MIDTOWN BRANCH OFFICE
4. NAME, ADDRESS, VENDOR NUMBER, AND EOC NUMBER OF VENDOR/CONSULTANT/AGENCY WITH WHICH SHELBY COUNTY WILL BE CONTRACTING:
   Finard Poplar Realty, 68 South Prescott Street,Suite 301,
   Memphis, TN, 38111,

   VENDOR NO. 33322

   EOC NO.
5. COST OF ITEM OR SERVICE REQUESTED: $95,400.00
6. TERM OF PROPOSED CONTRACT/AGREEMENT: Five (5) years Lease
7. FUND, ORG, AND ACCOUNT NUMBER (13 DIGITS) **FOR MULTIPLE ACCOUNTS, PLEASE SPECIFY DOLLAR AMOUNT FOR EACH**
   040-800601-6780
8. COMMODITY CODE:
9. VENDOR/CONSULTANT/AGENCY SELECTED BY (CHECK ONE):
   PLEASE ATTACH APPROVAL DOCUMENTS
   a. ☐ Bid/RFP Process - # & Date
   b. ☐ Emergency/Sole Source
10. LOSB/MBE INFORMATION: Please check the appropriate description
   ☐ MBE (MINORITY OWNED BUSINESS ENTERPRISE)
      ☐ MALE ☐ FEMALE
   ☐ WBE (WOMEN OWNED BUSINESS ENTERPRISE)
   ☐ LOSB (LOCALLY OWNED SMALL BUSINESS)
      ANNUAL SALES DOES NOT EXCEED $3 MILLION
   ☐ N/A
11. SPECIAL INSRUCTIONS (ROUTING, FUNDING, BUDGET TRANSFER IN PROCESS)

RECEIVED
2008 MAR 25 AM 9:31
CONTRACTS/ADMINISTRATION

REVIEWED AND APPROVED BY:

Debbie Hampson
ELECTED OFFICIAL

DEPARTMENT HEAD DATE

DIVISION DIRECTOR DATE

ITEM #_____ PREPARED BY: Charles Nichols

APPROVED BY: _____

RESOLUTION APPROVING AN ADDENDUM TO LEASE AGREEMENT IN THE AMOUNT OF $95,400 WITH FINARD PROPERTIES, LLC FOR THE MIDTOWN BRANCH LOCATION OF THE SHELBY COUNTY CLERK'S OFFICE, HAVING A STREET ADDRESS OF 3468 PLAZA AVENUE, #201, MEMPHIS, TENNESSEE 38111. RESOLUTION SPONSORED BY COMMISSIONER JOYCE AVERY.

WHEREAS, The Shelby County Clerk is in need of office space for its satellite office; and

WHEREAS, Finard Properties LLC has space available at the location of 3468 Plaza Avenue,#201, Memphis, Tennessee 38111; and

WHEREAS, Shelby County Government is desirous of entering in a five (5) year lease agreement with Finard Properties LLC for said space; and

WHEREAS, the cost of the lease of said office space for the five (5) year period beginning July 1, 2008 through June 30, 2013 is a total of $95,400.00; and

WHEREAS, Funds will be budgeted for each lease year contingent upon the approval of funds for the appropriate years' Operating Budget by the Board of County Commissioners.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE that the lease agreement with Finard Properties LLC in the amount of $95,400.00 for the lease of office space for the Shelby County Clerk's Office for a period of five (5) years is hereby approved.

BE IT FURTHER RESOLVED, That the County Mayor is hereby authorized to execute the aforementioned lease agreement on behalf of Shelby County Government, an executed copy of which is to be placed on file in the Contract Administration Department.

BE IT FURTHER RESOLVED, That the continuation of this lease agreement is approved subject to the conditions of the lease agreement and the appropriation of funds for future years by the Board of County Commissioners in its Operating Budget.

BE IT FURTHER RESOLVED, That the County Mayor and the Director of Administration and Finance are authorized to issue their warrant or warrants subject to this Resolution and to take proper credit in their accounting therefor.

_____

A C Wharton, Jr. County Mayor

Date: _____

ATTEST:_____

Clerk of County Commission

ADOPTED _____

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE ("First Amendment") is made and entered into as of _____ __, 2008 (the Effective Date as defined in Article IV, paragraph 4 below), by and between FINARD POPLAR REALTY LIMITED PARTNERSHIP, a Massachusetts limited partnership, qualified to transact business in the State of Tennessee ("Landlord"), and SHELBY COUNTY GOVERNMENT, DEBBIE STAMSON, SHELBY COUNTY CLERK (formerly Shelby County Government, Jayne S. Creson, Shelby County Clerk, "Tenant").

RECITALS:

A. Landlord is the owner of certain real property in Memphis, Shelby County, Tennessee, known as Poplar Plaza Shopping Center (the "Shopping Center").

B. Pursuant to that certain Shopping Center Lease dated September 30, 2002, by and between Landlord and Tenant (the "Lease"), Tenant has heretofore leased certain premises in the Shopping Center, containing approximately 971 square feet of Floor Area, being a part of Space E-4 as described in or shown upon **Exhibit A** attached to the Lease, and having a street address of 62 S. Prescott Street, Suite 3, Memphis, TN 38111 (the "Existing Premises").

C. Landlord and Tenant have agreed to the relocation of the Premises within the Shopping Center and to make certain other modifications to the terms and provisions of the Lease, all as more particularly hereinafter set forth.

D. All capitalized terms used in this First Amendment, unless otherwise expressly defined (or redefined) herein, shall have the meanings ascribed to them in the Lease.

NOW, THEREFORE, in consideration of the premises, of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and of the undertakings and agreements hereinafter set forth, the parties agree as follows:

ARTICLE I

Definitions

As used in this First Amendment the following terms have the following meanings:

(a) "Date of Delivery of the New Premises": The date upon which Landlord delivers possession of the New Premises to Tenant with Landlord's Relocation Work substantially completed.

(a) AExisting Premises@: The Existing Premises as described in Recital B above.

(b) ALandlord's Relocation Work@: The construction of all those certain improvements to the New Premises as set forth, described and identified on **Exhibit B** attached hereto as the Landlord's Relocation Work.

(c) ANew Premises@: That certain premises in the Shopping Center, containing approximately 1576 square feet of Floor Area, being a part of Space A-4 as described in or shown upon **Exhibit A** attached to the Lease, and having a street address of 3468 Plaza Avenue, #201, Memphis, Tennessee 38111.

(d) ARelocation Period@: That period of time commencing with the Date of Delivery of the New Premises, and ending ten (10) working days thereafter.

(e) ARelocation Rent Commencement Date@: The same date as the Date of Delivery of the New Premises.

(g) ARelocation Term Commencement Date@: July 1, 2008.

ARTICLE II

Supplemental Provisions

1. Landlord's Relocation Work. Landlord agrees, at its expense and prior to delivery of possession of the New Premises to Tenant, to substantially complete that certain work ("Landlord's Work") in and to the New Premises as set forth, described and identified on **Exhibit B** attached hereto as the Landlord's Relocation Work. All of Landlord's Relocation Work shall be constructed in a good and workmanlike manner, in accordance with the requirements of presently existing and applicable building codes, ordinances and regulations. Tenant shall inspect Landlord's Relocation Work upon delivery of possession of the New Premises to Tenant and in the event Tenant fails to notify Landlord within ten (10) days after such date of delivery of possession that any item or items are incomplete or do not conform to Landlord's foregoing undertaking (specifying such items and/or non-conformity in reasonable detail), then Landlord's Relocation Work (or such part as to which Tenant has not given Landlord notice as aforesaid) shall thereafter conclusively be deemed to have been delivered to Tenant in completed condition as required by this paragraph.

2. Continuing Obligations During Relocation Period. During the Relocation Period Landlord and Tenant shall each continue to perform their respective obligations, and to be bound by each and every term, provision, undertaking and agreement as set forth and provided in the Lease, except that so long as Tenant surrenders possession of the Existing Premises to Landlord on or before the end of the Relocation Period, Tenant shall not be obligated for the payment of rentals and other charges due from Tenant with respect to the Existing Premises (as now provided in the Lease) from and after the Relocation Rent Commencement Date.

3. Surrender of Existing Premises. On or before the end of the Relocation Period, Tenant shall surrender possession of the Existing Premises to Landlord in the condition required by Section 9.00(g) of the Lease, as if the term of the Lease had then ended with respect to the Existing Premises. In the event Tenant fails to surrender possession of the Existing Premises to Landlord (as aforesaid) on or before the end of the Relocation Period, Tenant shall be liable for, and shall pay to Landlord, holdover and other charges with respect to the Existing Premises as provided for in Section 2.03 of the Lease.

4. Termination of Obligations as to Existing Premises. Tenant's obligations for Minimum Annual Rental and other charges (other than holdover rent and charges, if any, as provided for in paragraph 3 above) with respect to the Existing Premises shall terminate as of the Relocation Rent Commencement Date, and the same shall be determined and paid by Tenant as of such date utilizing appropriate prorations with respect thereto, as if the term of the Lease had then ended with respect to the Existing Premises. Tenant's obligations as to Tenant's use and occupancy of the Existing Premises and the repair and maintenance thereof, as provided in Sections 3.00, 7.00, 7.01, 7.02, 8.01, and 9.00 of the Lease and all other obligations of Tenant with respect to the Existing Premises (except those which have then accrued and remain unsatisfied and those which would otherwise survive the expiration of the term of the Lease, as to the Existing Premises) shall terminate as of the date upon which Tenant surrenders possession of the Existing Premises to Landlord in the condition required by Section 9.00(g) of the Lease as hereinabove provided.

5. Commencement of Obligations as to New Premises. All of Tenant's undertakings and obligations with respect to the New Premises as set forth in the Lease (as amended herein), other than Tenant's obligations to pay rent and other charges with respect to the New Premises and the obligation to operate a going business therein, shall be effective from and after the Date of Delivery of the New Premises. Tenant's obligation to pay rent and other charges with respect to the New Premises and to operate a going business therein shall commence as of the Relocation Rent Commencement Date. From and after the Date of Delivery of the New Premises, all references in the Lease to the Premises shall be deemed to include the New Premises.

6. Governing Terms. The parties intend that the provisions of this First Amendment reflect and effect the relocation of the Tenant's business in the Shopping Center from the Existing Premises to the New Premises, upon the terms and conditions herein set forth. In the event of any conflict between any provision of the Lease and this First Amendment, the provision of this First Amendment shall govern to the extent necessary to carry out the intentions of the parties, as aforesaid.

ARTICLE III

Amendment of Lease Provisions

1. Section 1.04. Lease Term. The Lease Term provided for in Sections 1.04 and 2.00 of the Lease, is extended so as to expire on June 30, 2013.

2. Section 1.05. Option Term. Section 1.05 of the Lease is hereby deleted. Tenant has no further right or option to extend the term of the Lease.

3. Section 1.07. Minimum Annual Rental. Section 1.07 of the Lease is amended so as to provide that commencing on the Relocation Rent Commencement Date and for the balance of the Lease Term, Minimum Annual Rental shall be payable at the following specified rates:

> $12,000.00 per annum ($1,000.00 per month) for the period from upon the Relocation Rent Commencement Date through June 30, 2008;
>
> $16,200.00 per annum ($1,350.00 per month) for the period from July 1, 2008 through June 30, 2009;
>
> $19,800.00 per annum ($1,650.00 per month) for the period from July 1, 2009 through June 30, 2013.

4. Section 1.12. Premises. Subject to the provisions of Article II, paragraphs 4 and 5 hereof, effective upon Date of Delivery of the New Premises, Section 1.12 is amended to provide as follows:

> That certain storeroom or space situated in the Shopping Center, containing approximately 1576 square feet of Floor Area, being a part of Space A-4 as described in or shown upon **Exhibit A** attached hereto, and having a street address of 3468 Plaza Avenue, #201, Memphis, Tennessee 38111.

5. Section 1.13. Floor Area. Section 1.13 is amended by deleting the figure "971," and substituting the figure "1576" in lieu thereof.

6. Section 1.14. Address for Notices. Section 1.14 is amended by substituting the following as the address for notices to Landlord:

To Landlord: Finard Poplar Realty Limited Partnership
c/o Finard Properties LLC
68 South Prescott Street, Suite 301

Memphis, TN 38111
Attention: Steven T. Brommer, Director of
Acquisitions and Leasing
Facsimile No. (901) 458-7668

With copy to: James C. Warner, Esq.
6410 Poplar Avenue, Suite 1000
Memphis, TN 38119
Facsimile No. (901) 527-3746

7. Utility Charges. The following Section 5.03 is hereby added to the Lease, effective as of the Date of Delivery of the New Premises:

5.03 Utility Charge

Electricity, gas and water utilities provided by Memphis Light, Gas & Water Division ("MLGW ") are not separately metered to the Premises, and it is anticipated that such utilities will not be separately metered during the term of this Lease. Landlord shall pay MLGW for such utilities used by Tenant in the Premises and Tenant shall reimburse Landlord for the same, as herein provided. Unless and until such utilities are separately metered to the Premises, Tenant shall pay to Landlord monthly, as Tenant=s agreed share of the charges for such utilities and the various fees billed by MLGW, the sum of $200.00 per month (the "Utility Charge "); provided, however, that in the event that any of the MLGW rates for such utilities and/or any of the various fees billed by MLGW increase from those being charged or billed by MLGW at the Effective Date of the First Amendment to this Lease, Landlord may, after giving Tenant fifteen (15) days prior notice of the same, increase the monthly Utility Charge proportionately. The Utility Charge shall be payable monthly in advance on the same day and in the same manner as provided in Section 4.00 with respect to payments of Minimum Annual Rental. Tenant shall pay all charges for telephone, telecommunications and any utilities provided other than by MLGW directly to the provider(s) of the same. If utilities services, or any of them, are subsequently separately metered to the Premises, Tenant shall thereupon cause the supplier of such services to transfer the account(s) for such services to the name and responsibility of Tenant, and thereafter bill the charges for such services directly to Tenant. Tenant shall then pay all such charges directly to the supplier of such services, and shall thereafter be relieved of its obligation to pay the Utility Charge (or the portion thereof allocable to the metered service, if less than all services are metered).

ARTICLE IV

General Provisions

1. Lease in Full Force And Effect. In all other respects and except as herein expressly modified, the Lease shall remain unmodified and in full force and effect in accordance with all of its terms, provisions, undertakings, and obligations.

2. Entire Agreement. This First Amendment constitutes the entire agreement between the parties with respect to the matters set forth herein, and may not be altered, varied, or modified in any way, by any prior, contemporaneous, or subsequent agreement, except by an instrument in writing making specific reference to this First Amendment and executed by all of the parties hereto.

3. Successors And Assigns. This First Amendment shall be binding upon and inure to the benefit of the parties hereto, their legal representatives, heirs, administrators, executors, successors and (if and when assigned in accordance with the provisions of the Lease) assigns.

4. No Offer. It is agreed that Landlord shall not be deemed, by preparing and furnishing any unsigned (or partially signed) form of this First Amendment to Tenant, or otherwise, to have made any offer or agreement with Tenant with respect to the matters set forth herein, and this First Amendment shall become binding upon Landlord only at such time as it has been fully executed by Landlord and Tenant, and a fully executed copy hereof has been delivered to Landlord. The date of the last execution, acknowledgment and delivery of this First Amendment by Landlord or Tenant (as the case may be) shall be entered in the opening paragraph of this First Amendment by Landlord, and such date shall be deemed the "Effective Date" of this First Amendment for all purposes.

5. Counterpart Execution. This First Amendment may be executed in multiple counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

IN WITNESS WHEREOF, this First Amendment has been duly executed and delivered by the parties hereto, as of the day and year first above written.

[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

T:\WarnerJ\FINARD\LEASES\POPLAR\Shelby Cty Clk Amd1.doc

Landlord's Signature and Acknowledgment Page

First Amendment to Lease
Finard Poplar Realty Limited Partnership - Landlord
Shelby County Government, Debbie Stamson, Shelby County Clerk - Tenant
3468 Plaza Avenue #201, Memphis, Tennessee 38111 - Premises
Poplar Plaza Shopping Center

FINARD POPLAR REALTY LIMITED PARTNERSHIP, a Massachusetts limited partnership

By: WGFTN CORPORATION, its General Partner

By: _____
Todd B. Finard, Vice President

Landlord

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

Before me, the undersigned Notary Public in the county and state aforesaid, personally appeared Todd B. Finard, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the Vice President of WGFTN Corporation, a Massachusetts corporation, the general partner of FINARD POPLAR REALTY LIMITED PARTNERSHIP, a Massachusetts limited partnership, the within named bargainor, and that he as such officer of WGFTN Corporation, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer, and that WGFTN Corporation, as such general partner, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained by signing its name as the general partner of such Limited Partnership.

WITNESS my hand and official seal at office this 13th day of March, 2008.

Marilyn Rosby
NOTARY PUBLIC

My commission expires:
March 9, 2012

(Notary Seal)

Tenant's Signature and Acknowledgment Page

First Amendment to Lease
Finard Poplar Realty Limited Partnership - Landlord
Shelby County Government, Debbie Stamson, Shelby County Clerk - Tenant
3468 Plaza Avenue #201, Memphis, Tennessee 38111 - Premises
Poplar Plaza Shopping Center

SHELBY COUNTY GOVERNMENT

By: Debbie Stamson
Debbie Stamson, Shelby County Clerk

By: _____
A C Wharton, Jr., Mayor

Tenant

STATE OF TENNESSEE
COUNTY OF SHELBY

Personally appeared before me, a Notary Public in and for said state and county, duly commissioned and qualified, DEBBIE STAMSON, SHELBY COUNTY CLERK, the within named bargainor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that she executed the within instrument for the purposes therein contained.

WITNESS my hand and official seal at office this ___ day of _____, 2008.

_____
NOTARY PUBLIC

My commission expires: (Notary Seal)
_____

STATE OF TENNESSEE
COUNTY OF SHELBY

Personally appeared before me, a Notary Public in and for said state and county, duly commissioned and qualified, A C WHARTON, JR., MAYOR, the within named bargainor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the within instrument for the purposes therein contained.

WITNESS my hand and official seal at office this ___ day of _____, 2008.

_____
NOTARY PUBLIC

My commission expires: (Notary Seal)
_____

APPROVED AS TO FORM
AND LEGALITY:

Contract Administration/
Assistant County Attorney

EXHIBIT B

Landlord's Relocation Work

Landlord: _____
Tenant: _____