

RESOLUTION NO. R-18-67

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROPOSED LEASE AGREEMENT WITH iWerx, LLC, TO OPERATE iWerx DESIGN, AN ARTISTIC COOPERATIVE INCUBATOR THAT SUPPORTS LOCAL ART AND ARTISANS, LOCATED AT 7022 NORTH LOCUST, GLADSTONE, MISSOURI, 64118.

WHEREAS, the City of Gladstone owns the real property, legally described as LINDEN PZT LTS 2-4 BLK 10 BEG 30S OF SE COR LT 3 W118.1 N120 E118.1 S120 TO POB, Clay County, Missouri, more commonly known as 7022 North Locust, Gladstone, Missouri; and

WHEREAS, the above described land lies within the Downtown Village Center which the City of Gladstone is developing for public purposes to enrich and enhance the quality of life in Gladstone; and

WHEREAS, iWerx, LLC submitted a proposal and has negotiated a proposed lease agreement with City staff for the operation of a cooperative artistic incubator, consisting of approximately 7,000 square feet for a term no longer than five (5) years from the commencement date, with reasonable market rent rates, and such other terms as more particularly set forth in the proposed lease document.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, AS FOLLOWS:

THAT, the City Manager of the City of Gladstone, Missouri, is hereby authorized to enter into the proposed lease agreement with iWerx, LLC, on the terms and conditions described herein and as more particularly set forth in the lease document and to take any other such measures as may be required to ensure the opening of iWerx Design.

INTRODUCED, READ, PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF GLADSTONE, MISSOURI THIS 12TH DAY OF NOVEMBER 2018.



Mayor Bill Garnos

ATTEST:



Ruth Bocchino, City Clerk



Request for Council Action

RES # R-18-67

BILL # City Clerk Only

ORD # City Clerk Only

Date: 11/8/2018

Department: General Administration

Meeting Date Requested: 11/12/2018

Public Hearing: Yes Date: [Click here to enter a date.](#)

Subject: Lease Agreement with iWerx, LLC for the property located at 7022 North Locust, Gladstone, MO 64118

Background: The property located at 7022 North Locust, Gladstone, MO 64118 and owned by the City of Gladstone is available for lease. The proposed lease agreement negotiated with iWerx, LLC will allow the opening of iWerx Design, an artistic cooperative incubator that supports local art and artisans. The attached Resolution, if approved by the City Council, allows the City Manager to enter into a lease agreement with iWerx, LLC for a term of five (5) years.

Budget Discussion: Funds are budgeted in the amount of \$0 from N/A fund. Ongoing costs are estimated to be \$ 0 annually. Previous years' funding was \$0

Public/Board/Staff Input: N/A

Provide Original Contracts, Leases, Agreements, etc. to: City Clerk and Vendor

Bob Baer
Assistant City Manager

PD
City Attorney

SW
City Manager

R-18-67

COMMERCIAL LEASE

This Commercial Lease (the "Lease"), made between the City of Gladstone, Missouri, a municipal corporation of the third class organized under the laws of the State of Missouri, having its principal office at 7010 N. Holmes Street, Gladstone, Missouri, (the "City"), and iWerx, LLC of 1520 CASH ST., NORTH KANSAS CITY Missouri, ("iWerx"). The City and iWerx may be referred to herein individually as "Party" or collectively as the "Parties".

WITNESSETH:

WHEREAS, the City is owner of certain property located at 7022 N Locust Street, Gladstone, MO 64118 (the "Property"); and

WHEREAS, iWerx desires to lease said property, including the building and parking lot situated thereon for the purpose of operating iWerx Design, an artistic cooperative incubator that supports local art and artisans; and

WHEREAS, the City and iWerx desire to enter into this Lease to set forth the duties and obligations of the Parties as they relate to iWerx's occupation of the Property.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the City and iWerx do hereby represent, covenant and agree as follows:

**ARTICLE I
DEMISE, RENT, & TERM**

Section 1.1. Demise, Rent, & Term The City hereby leases to iWerx the Property, for the term of five (5) years from the 1st day of JANUARY, 2018, to the 31st day of DEC, 2023, at an annual rental of Zero Dollars (\$0) per square foot the first year, \$2.00 per square foot or Five Hundred Eighty Three Dollars (\$583) per month for the second year, and \$3.00 per square foot or Eight Hundred Seventy Five Dollars (\$875) per month for years three through five, payable at the office of the City referenced above on the first day of each month, the first payment to be made on the 1st day of JANUARY, 2019. 2020. Run

Section 1.2. Option to Purchase the Property. iWerx shall have during the term of this Lease and six months thereafter, the option to purchase the Property at the price of One Hundred Fifty Thousand Dollars (\$150,000), which the parties recognize is fair, reasonable, and just compensation for the Property. iWerx shall have the ability to exercise said option to purchase the property at any time during the term of the Lease or six months thereafter upon providing written notice to the City of said desire to exercise the option to purchase. Following receipt of the aforementioned notice, the parties shall execute an additional agreement setting forth the duties and obligations or the parties regarding the purchase of the Property including, but not limited to, inspection periods and closing dates. Run

ARTICLE II
iWerx's COVENANTS

iWerx agrees as part of the consideration regarding the demise of the Property by the City to iWerx under this Lease as follows.

Section 2.1. *To Pay Rent.* That iWerx will pay the rent at the times and in the manner aforesaid.

Section 2.2. *To Insure Against Fire.* That iWerx, will during the term, insure and keep insured in the name of the City the property from loss or damage by fire in at least the sum of four hundred thousand dollars (\$400,000) in insurance companies to be approved by the City, and that iWerx will pay all the premiums necessary for those purposes when said premium becomes due, and will promptly deliver to the City the policies of insurance: Provided, that if iWerx shall at any time fail to insure or keep insured as aforesaid, the City may do all things necessary to effect or maintain such insurance, and any moneys expended by it for that purpose shall be repayable by the iWerx on request by the City. In case the Property or any part thereof shall at any time during the term be destroyed or damaged by fire or other unavoidable casualty so as to be unfit for occupancy and use, and so that the Property and the building thereon cannot be rebuilt or restored by the City within one hundred twenty (120) days thereafter, then this Lease shall terminate; but if the Property can be rebuilt or restored within one hundred twenty (120) days, the City will, at its own expense and with due diligence, so rebuild or restore the Property, and a just and proportionate part of the rents hereby reserved shall be paid by the iWerx until the Property shall have been so rebuilt or restored.

Section 2.3. *To Pay Utilities.* That iWerx will promptly pay all gas, electric light, and water rates or charges which may become payable during the continuance of the Lease for gas, electric light, water, and any other utility or service used on the Property.

Section 2.4. *To Keep in Repair.* That iWerx will keep all the Property, including the plumbing, electrical, and all other systems in the building and parking lot currently on the Property, in such repair as the same are at the commencement of the Lease or may be put in during the continuance thereof, reasonable wear and tear and damage by fire or other unavoidable casualty only excepted.

Section 2.5. *Not to Injure or Overload.* That iWerx will not injure, overload, or deface or suffer to be injured, overloaded, or defaced the Property or any part thereof.

Section 2.6. *To Indemnify Against Accidents and Negligence—Snow and Ice.* That iWerx will save harmless and indemnify the City from and against all loss, liability, or expense that may be incurred by reason of any accident with the machinery, hatchways, elevator, gas or water or other pipes, or from any damage, neglect, or misadventure arising from or in any way growing out of the use, misuse, or abuse of the city water, or from the bursting of any pipes, or from any neglect in the maintenance of the Property, or in not removing snow and ice from the sidewalks or from the roof of the building.

Section 2.7. *Not to Suffer Unlawful Use, or to Endanger Insurance* That iWerx will not make or suffer any unlawful, improper, or offensive use of the Property, or any use or occupancy thereof contrary to

any law of the state or any ordinance of the City now or hereafter made, or which shall be injurious to any person or property, or which shall be liable to endanger or affect any insurance on the building or to increase the premium thereof.

Section 2.8. *To Permit City to Enter.* That the City at all reasonable times may enter to view the Property and to make repairs which the City may see fit to make, or to show the Property to persons who may wish.

Section 2.9. *To Yield up Property.* That at the expiration of the term of the Lease, iWerx will, subject to any potential sale of the Property pursuant to **Section 1.2** peaceably yield up to the City the Property and all erections and additions made upon the same, in good repair in all respects, reasonable use and wear and damage by fire and other unavoidable casualties excepted, as the same now are or may be put in by the City.

Section 2.10. *Property and Persons on Property at iWerx's Risk.* That all property of any kind that may be on the Property during the continuance of the Lease shall be at the sole risk of the iWerx, and that the City shall not be liable to the iWerx or any other person for any injury, loss, or damage to property or to any person on the Property.

Section 2.11. *Assent Not Waiver of Future Breach of Covenants.* That no assent, express or implied, by the City to any breach of any of the iWerx's covenants, shall be deemed to be a waiver of any succeeding breach of the same covenant.

Section 2.12. *Hazardous Materials.* iWerx shall not cause or permit the Property of iWerx to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable federal, state and local laws or regulations, nor shall iWerx cause or permit, as a result of any intentional or unintentional act or omission of iWerx or any tenant or subtenant, a release of Hazardous Materials onto the Property of iWerx. iWerx shall comply with and ensure compliance by all tenants and subtenants with all applicable federal, state and local laws, ordinances, rules and regulations, wherever and by whomever triggered, and shall obtain and comply with, and ensure that all tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. iWerx shall (a) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, from or affecting the Property of iWerx (i) in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, (ii) to the satisfaction of the City, and (iii) in accordance with the orders and directives of all federal, state and local governmental authorities, and (b) defend, indemnify and hold harmless the City from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to, (i) the presence, disposal, release or threatened release of any Hazardous Materials which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, and/or (iii) any violation of laws, orders, regulations, requirements or demands of governmental authorities, which are based upon or in any way related to any such Hazardous Materials including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. For purposes of

this paragraph, "Hazardous Materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and amended (42 U.S.C. Sections 9601, et. seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et. seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule or regulation.

Section 2.13. *Minimum Investment.* iWerx shall, at a minimum, invest One Hundred Thousand Dollars (\$100,000) into the Property as tenant finish to create a small roughly finished retail showroom, member studios, and workshop space. Nothing in this section shall be seen as limiting iWerx's investment into the property, subject to the approval of the City. iWerx shall provide to the City, for the City consent, any plans or construction drawings concerning iWerx's investment in and modification of the Property. The City's consent under this section shall not be unreasonably withheld. The minimum investment set forth in this section shall be done at any time during/ over the term of the Lease.

Section 2.14. *Selection Committee.* iWerx shall establish a selection committee for the selection of members to join the to be formed artistic cooperative operated by iWerx on the Property. The City Council shall appoint one member to the aforementioned 5 person selection committee.

Section 2.15. *To Collect Sales Tax.* iWerx shall ensure that all retail sales made at the Property shall be subject to the applicable sales tax, and that iWerx, or the subtenant responsible for the retail sales, collect said applicable sales tax and remit the sales tax in accordance with applicable law.

ARTICLE III CITY'S COVENANT

Section 3.1 *Quiet Enjoyment.* The City represents and warrants that it has full right and authority to enter into this Lease and that iWerx, while paying the rental and performing its other covenants and agreements contained in this Lease, shall peaceably and quietly have, hold and enjoy the Property for the term as set forth in **Section 1.1** without hindrance or molestation from the City subject to the terms and provisions of this Lease. The City shall not be liable for any interference or disturbance by other tenants or third persons, nor shall iWerx be released from any of the obligations of this Lease because of such interference or disturbance.

ARTICLE IV DEFAULT BY iWerx

Section 4.1. If iWerx defaults in the payment of rent and remains in default for ten (10) days after a notice to pay is delivered to iWerx or if iWerx defaults with respect to any other covenant and remains in default for thirty (30) days after a notice to cure default is delivered to iWerx or fails to take reasonable steps to cure the default if such takes longer than 30 days; then City, at its sole option, may elect to do any of the following:

- (a) demand that iWerx vacate the Property, with which demand iWerx shall promptly comply; and if iWerx fails to promptly vacate, City may reenter the Property, with or without court order,

change the locks and take other steps to exclude iWerx from the Property;
(b) relet the Property as an agent for iWerx; or
(c) terminate the Lease by delivering or mailing to iWerx an express notice of Lease termination, it being agreed that nothing less than an express notice of termination will terminate this Lease.

Section 4.2. If City reenters the Property pursuant to Paragraph 4(a) above, or if iWerx vacates the Property and delivers proper notice of such to City, then City, without terminating this Lease, agrees to make reasonable efforts to mitigate iWerx's damages by obtaining another tenant.

ARTICLE V ATTORNEY'S FEES

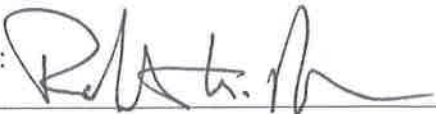
Section 5.1. In the event either of the parties is required to bring any action at law or in equity against the other party to enforce any terms of this Lease, the losing party hereby agrees to pay the prevailing party's reasonable attorney fees (including appellate fees), as they may be set by the court in which the original action was brought. If the City is awarded attorney fees pursuant to this paragraph, such fees shall be considered additional rent.

[**signature page to follow**]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in their respective corporate names by their duly authorized officers, all as of the date first above written.

Dated: Oct 30, 2018

.....
iWerx

By: 

Title: PARTNER


Dated: 11/13, 2018

.....
City of Gladstone, Missouri

By: 

Title: City Manager

ATTEST:


Ruth E. Bocchino
City Clerk, City of Gladstone, MO