

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A FIRST AMENDED AND RESTATED SALES TAX REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF GLADSTONE, MISSOURI AND NORTHLAND RESTAURANT ASSOCIATES, INCORPORATED.**

**WHEREAS**, on December 18, 2017 the City Council of the City of Gladstone, Missouri (the "City") duly passed Ordinance No. 4.407 authorizing the City Manager to execute a Sales Tax Reimbursement Agreement between the City and Northland Restaurant Associates, Inc. ("Summit"); and

**WHEREAS**, the appropriate representatives of the parties did properly execute and deliver to the other the aforementioned Sales Tax Reimbursement Agreement; and

**WHEREAS**, after execution and delivery of the Sales Tax Reimbursement Agreement certain and additional circumstances have arisen which necessitate the execution of a First Amended and Restated Sales Tax Reimbursement Agreement to further clarify and outline the duties and obligations of the hereto in respect to the construction of the Project; and

**WHEREAS**, the City currently leases the retail portion of the Heights at Linden Square under a Retail/Commercial Lease Agreement by and between F&C Gladstone Owner, LLC, wherein the City has agreed to pay rent and undertake other obligations for the term of twenty-two (22) years; and

**WHEREAS**, pursuant to Section 7.1 of the Retail/Commercial Lease Agreement (the "Lease") dated December 18, 2017, Summit has agreed to lease the entirety of the retail portion of the Heights at Linden Square from the City for the purpose of locating a restaurant, bar, and grill serving American style food and beverages at the Heights at Linden Square; and

**WHEREAS**, Summit proposes to (i) cause a restaurant, bar and grill within the Project Area to be designed and constructed, and (ii) operate such restaurant, bar and grill;

**WHEREAS**, Summit anticipates that when operational, the Project will provide significant economic benefits to the City by (1) adding approximately thirty-five (35) new employees in the first year of operation; (2) expanding the City's tax base and increasing private capital investment; (3) generating additional retail sales within the City; (4) providing employment opportunities for members of the community; and (5) promoting the economic development of the City by providing a viable anchor tenant to the City's downtown area; and

**WHEREAS**, the cost of the Project makes the Project economically undesirable without the economic development incentives provided herein; and

**WHEREAS**, in order to provide public assistance necessary to offset the economic undesirability of the Project, Summit has requested reimbursement for certain costs pursuant to the increased revenue from the City Sales Tax generated by retail sales associated with the Project within the Project Area; and

**WHEREAS**, reimbursement by the City serves the public purpose of enabling Summit to proceed with the Project, thereby increasing the economic development in the Project Area and the City as a whole, providing employment opportunities for members of the community, and increasing the City's tax base; and

**WHEREAS**, the City and Summit are authorized to enter into this Agreement pursuant to provisions of Section 70.210 et seq., RSMo.

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

Section 1. That the City Manager is hereby authorized to execute on behalf of the City the First Amended and Restated Sales Tax Reimbursement Agreement by and between the City and Northland Restaurant Associates, Inc., substantially in the form attached hereto as Exhibit A.

Section 2. That the City Manager, City Clerk, and such other official of the City may execute any other additional documents or take such other actions as necessary, incidental or expedient to carry out the intent of this Ordinance approved, and the authority granted herein.

Section 3. The Mayor is authorized to sign this ordinance approving it on behalf of the City.

Section 4. The City Clerk is hereby directed to attest to the Mayor's signature.

**INTRODUCED, READ, PASSED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF GLADSTONE, MISSOURI THIS 29TH DAY OF MAY 2018.**



Mayor Bill Garnos

ATTEST:



Ruth E. Bocchino, City Clerk

First Reading: May 29, 2018

Second Reading: May 29, 2018



## *Request for Council Action*

RES ☐ # City Clerk Only

BILL ☒ # 18-21

ORD # 4.427

Date: 5/22/2018

Department: General Administration

Meeting Date Requested: 05/29/18

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

Subject: An Ordinance authorizing the City Manager to execute a First Amended and Restated Sales Tax Reimbursement Agreement between the City of Gladstone, Missouri and Northland Restaurant Associates, Incorporated.

Background: The City has received bids for the construction of retail space at 501 NE 70<sup>th</sup> Street. The architects estimate was approximately \$175/sf. The lowest bid received is \$207/sf. The project has been value engineered and rent credits applied, bringing the effective cost to approximately \$200/sf.

The City previously approved an agreement that provides the reimbursement of 1% sales tax coming from the project. The proposed first amendment is designed to compensate the City for these increased costs. Simply stated, the reimbursement will begin when the increased costs are absorbed or at the end of 5 years.

Budget Discussion: Funds are budgeted in the amount of \$0 from the      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

Bob Baer  
Assistant City Manager

PC  
City Attorney

SW  
City Manager

R-1821  
4.427

**FIRST AMENDED AND RESTATED  
SALES TAX REIMBURSEMENT AGREEMENT  
BY AND BETWEEN  
THE CITY OF GLADSTONE, MISSOURI AND  
NORTHLAND RESTAURANT ASSOCIATES, INC.**

This First Amended and Restated Sales Tax Reimbursement Agreement (the "Agreement") by and between the City of Gladstone, Missouri (the "City"), a third-class city organized and existing under the laws of the State of Missouri and Northland Restaurant Associates, Inc. ("Summit"), a corporation organized and existing under the laws of the State of Missouri. The City and Summit may be referred to herein individually as "Party" and collectively as the "Parties".

**WHEREAS**, on December 18, 2017 the City Council of the City duly passed Ordinance No. 4.407 authorizing the City Manager to execute a Sales Tax Reimbursement Agreement between the City and Summit; and

**WHEREAS**, the appropriate representatives of the Parties did properly execute and deliver to the other Party the aforementioned Sales Tax Reimbursement Agreement; and

**WHEREAS**, after execution and delivery of the Sales Tax Reimbursement Agreement certain and additional circumstances have arisen which necessitate the execution of this Agreement to further clarify and outline the duties and obligations of the Parties hereto in respect to the construction of the Project, hereinafter defined; and

**WHEREAS**, the City, as tenant, currently leases the retail portion of the Heights at Linden Square under a Retail/Commercial Lease Agreement with F&C Gladstone Owner, LLC, as landlord, wherein the City has agreed to pay rent and undertake other obligations for the term of twenty-two (22) years; and

**WHEREAS**, pursuant to Section 7.1 of that certain Retail/Commercial Lease Agreement (the "Lease") dated December 18, 2017, by and between City and Summit, Summit has agreed to lease the entirety of the retail portion of the Heights at Linden Square from the City for the purpose of locating a restaurant, bar, and grill serving American style food and beverages at the Heights at Linden Square, more fully described in **Exhibit A** and **Exhibit B** attached hereto and incorporated herein (the "Project Area"); and

**WHEREAS**, Summit proposes to (i) cause a restaurant, bar and grill within the Project Area to be designed and constructed, and (ii) operate such restaurant, bar and grill;

**WHEREAS**, the design and construction will include facility upgrades, new furniture, fixtures, and equipment, for a total capital investment of approximately Two Million and 00/100 Dollars (\$2,000,000.00) and Summit intends to operate a Summit Bar and Grill in the Project Area (the "Project"); and

**WHEREAS**, Summit anticipates that when operational, the Project will provide significant economic benefits to the City by (1) adding approximately thirty-five (35) new employees in the first year of operation; (2) expanding the City's tax base and increasing private capital investment;(3)

generating additional retail sales within the City; (4) providing employment opportunities for members of the community; and (5) promoting the economic development of the City by providing a viable anchor tenant to the City's downtown area; and

**WHEREAS**, the cost of the Project makes the Project economically undesirable without the economic development incentives provided herein; and

**WHEREAS**, in order to provide public assistance necessary to offset the economic undesirability of the Project, Summit has requested reimbursement for certain costs pursuant to the increased revenue from the City Sales Tax generated by retail sales associated with the Project within the Project Area; and

**WHEREAS**, reimbursement by the City serves the public purpose of enabling Summit to proceed with the Project, thereby increasing the economic development in the Project Area and the City as a whole, providing employment opportunities for members of the community, and increasing the City's tax base; and

**WHEREAS**, the City and Summit desire to enter into this Agreement for the Project to provide the terms and conditions for reimbursement of the Project Costs (defined hereinafter); and

**WHEREAS**, the City and Summit are authorized to enter into this Agreement pursuant to provisions of Section 70.210 *et seq.*, RSMo.

**NOW, THEREFORE**, to improve, maintain and revitalize the commercial activity of the City, by assuring opportunities for development and attracting sound and stable economic growth, to promote the public interest by increasing the economic development of the City, enhancing the City's tax base, and providing employment opportunities to members of the community and to induce Summit to undertake the Project in consideration of the premises and mutual covenants and agreement herein set forth, the City and Summit do hereby covenant and agree as follows:

**Section 1.** The representations, covenants and recitations set forth in the foregoing recitals and exhibits attached to this Agreement are material to this Agreement and hereby incorporated into and made part of this Agreement as though fully set forth in this Section, and the appropriate exhibits are incorporated into each Section of this Agreement that makes reference to an exhibit.

**Section 2.** Summit hereby agrees:

- a. *Operation of Business.* To open a restaurant, bar, grill and lounge serving American inspired food and beverages within twelve (12) months from December 18, 2017, subject to Excusable Delays as defined hereinafter. Summit shall use its reasonable best effort to operate a restaurant, bar, grill, and lounge serving American inspired food and beverages that generates City Sales Tax, as defined hereafter, at the Project Area for a period of not less than ten (10) years after the effective date of this Agreement subject to the Lease by and between the parties remaining in effect.
- b. *Employment at the Business.* Subject to Excusable Delays and market conditions, that it shall employ thirty-five (35) people during its first year of operation and each year thereafter.

**Section 3.** The City hereby agrees to reimburse Summit for a portion of the cost of the Project from City Sales Tax (defined hereinafter) resulting from the operation of the business in the Project Area, (1) after

the City has recouped any Additional City Build Out Expense (defined hereinafter) or five (5) years have passed since the Commencement Date, whichever comes first and (2) once the City Sales Tax resulting from the business exceeds the City Sales Tax Base (defined hereinafter). For clarity, the City shall not retain the City Sales Tax Base, the parties agree that the City Sales Tax Base is to act as a threshold amount where once met Summit shall receive the full City Sales Tax, including the amount considered the City Sales Tax Base, generated by Summit in the Project Area. The City agrees that the requirement that the City Sales Tax resulting from the operation of the business in the Project Area must exceed the City Sales Base prior to the City reimbursing Summit shall not be in effect until January 1, 2019.

**Section 4.** For purposes of calculating reimbursement payments by the City to Summit, the following terms shall have the following meanings:

- a. "Additional City Build Out Expense" means any amount over One Million Seven Hundred Thousand and 00/100 Dollars (\$1,700,000.00) expended by the City relating to the design, engineering, and construction of the Project.
- b. "Annual Calculation Period" means each successive twelve (12) month period; the first Annual Calculation Period begins on the Commencement Date.
- c. "City Sales Tax Base" means the first \$10,000.00 of City Sales Tax generated by Summit within the Project Area. The City Sales Tax Base is to act as a threshold amount, where once met, Summit shall receive the full City Sales Tax generated in the Project Area by Summit.
- d. "City Sales Tax" means the one-cent general operating sales tax imposed by the City as of the effective date of this Agreement pursuant to Section 94.500, RSMo. Any increase in the City Sales Tax approved by the voters of the City will not be subject to reimbursement under this Agreement.
- e. "Commencement Date" means the first day of the month following the day Summit begins operating a sales tax generating business in the Project Area.
- f. "Reimbursable Project Costs" means the Seven Hundred Thousand Dollars (\$700,000) associated with the design, engineering, and construction of the Project, any costs associated with the purchase of furniture, fixtures, and equipment necessary for the Project, any cost incurred by the parties in preparation and drafting of this Agreement or other documents associated with the project or in the design, engineering, rehabilitation, or construction of the Project or any other costs deemed by the parties to be a Reimbursable Project Cost, including, without limitation, Summit's payment of Base Rent and Additional Rent as Tenant pursuant to the terms of the Lease by and between the parties and any of the foregoing items, whether or not initially paid for from the Tenant Improvement Allowance as set forth in the Lease.

**Section 5.** As an inducement to locate the business in the City, and attracting sound and stable economic growth, to promote the public interest by increasing the economic development of the City, enhancing the City's tax base, and providing employment opportunities to members of the community, the City agrees to reimburse to Summit the City Sales Tax generated within the Project Area once (1) the City has recouped any Additional City Build Out Expense, if any, or the passage of five (5) years after the Commencement Date, whichever comes first and (2) the City Sales Tax generated in the Project Area exceeds the City Sales Tax Base. The overall sales tax reimbursement to Summit from the City Sales Tax under this Agreement shall not exceed Seven Hundred Thousand and 00/100 Dollars (\$700,000.00) or ten (10) years after the Commencement Date, whichever comes first. At the end of an Annual Calculation Period, the City

will determine the amount of its reimbursement payment to Summit equal to the "Annual Sales" times "City Sales Tax (1%)".

The value of any Annual Reimbursement Payment shall not exceed the amount of City Sales Tax revenues actually collected in the Project Area during the Annual Calculation Period.

**Section 6.** At the time of each filing by Summit of a reporting form with the Missouri Department of Revenue with respect to retail sales activity after opening the Summit Bar and Grill, Summit shall cause a copy of such form to be filed with a City official designated by the City Manager (the "City Official"). Summit shall make available to the City, Summit's monthly sales tax reports and proofs of payment of sales tax and reasonable access to Summit's tax and financial records for the Summit Bar and Grill located in the Project Area, limited however, to tax and financial records which relate to the computation and/or allocation of gross receipts for the Summit Bar and Grill located in the Project Area, at reasonable times and places, which the City hereby agrees to hold in strictest confidence except as is reasonably necessary to enforce the terms of this Agreement, including preparation of any City Budget. The City may disclose information relating to proof of payment to the extent that it is legally required to be disclosed. The City shall notify Summit within a reasonable time prior to disclosure and allow Summit a reasonable opportunity to seek appropriate protective measures (subject to the disclosure Requirements of Chapter 610 RSMo). Summit also agrees, upon the request of the City, to furnish such consents or waivers as may be required by the Missouri Department of Revenue to allow the Missouri Department of Revenue to furnish to the City sales tax information concerning the Summit Bar and Grill located in the Project Area. If the City has good cause to believe that Summit has under-reported gross receipts, then in such case, the City may retain an independent auditor, at the City's sole cost and expense, to verify the sales at the Summit Bar and Grill located in the Project Area. In the event that such independent auditor determines that there is a discrepancy in gross sales of more than four percent (4%), then all direct and reasonable costs and expense incurred by the City to retain the independent auditor to conduct the sales tax audit shall be promptly reimbursed to the City by Summit. In the event such independent auditor fails to substantiate a discrepancy in gross sales of more than four percent (4%), then all direct and reasonable costs and expenses incurred by Summit in the investigation shall be promptly reimbursed to Summit by the City. Quarterly, to the extent permitted by the law, the City shall provide Summit with sufficient information to verify the amount of sales tax collected by the State of Missouri and attributable to sales by the Summit Bar and Grill located in the Project Area. If Summit has good cause to believe that the City has under-reported sales tax revenues collected by the City and attributable to sales by Summit, then, in such case, Summit may retain an independent auditor, at Summit's sole cost and expense, to verify such sales tax revenues so collected. In the event that such independent auditor determines that there is a discrepancy in sales tax revenues reported with respect to gross sales, of more than four percent (4%), then all direct and reasonable costs and expenses incurred by Summit to retain the independent auditor to conduct the sales tax audit shall be promptly reimbursed to Summit by the City. In the event that such independent auditor fails to substantiate a discrepancy in sales tax revenues reported with respect to gross sales, of more than four percent (4%), then all direct and reasonable costs and expense incurred by the City in the investigation shall be promptly reimbursed to the City by Summit.

**Section 7.** Summit and the City agree to cooperate and to take all additional reasonable actions necessary to ensure accurate calculation of the City Sales Tax paid by Summit. To assist the City, Summit shall supply or cause to be supplied to the City appropriate authorizations of the Missouri Department of Revenue to provide such information.

**Section 8.** The City is obligated only to make the reimbursement payments set forth in Section 5, as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year. If no funds are appropriated or otherwise legally available to make the required payments during the next occurring fiscal year (an "Event of Nonappropriation"), this Agreement will terminate at the end of

the then current fiscal year. The City's obligation hereunder shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the City nor shall anything contained herein constitute a pledge of the general credit, tax revenues, fund or moneys of the City.

**Section 9.** The obligations of the City to make the payments hereunder constitute a current expense of the City, are from year to year and do not constitute a mandatory payment obligation of the City in any fiscal year beyond the then current fiscal year of the City. The City's obligation hereunder shall not in any way be construed to be a debt of the City in contravention of any applicable constitution or statutory limitation or requirement concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of the City.

**Section 10.** The City reasonably believes that legally available funds in an amount sufficient to make all payments during each term of this Agreement can be obtained. Notwithstanding the foregoing, the decision whether or not to budget or appropriate funds or to extend this Agreement for any subsequent fiscal year is solely within the discretion of the then current governing body of the City.

**Section 11.** The liability of the City to make any reimbursement payments under this Agreement is expressly conditioned on Summit's material compliance with each and every material covenant of this Agreement, including, without limitation, causing the Project to be constructed and opening and operating a Summit Bar and Grill in the Project Area.

**Section 12.** Both Summit and the City agree that this Agreement will result in substantially increased utilization of the Project Area to the benefit of both the City and Summit. Both parties agree that upon payment of the Reimbursable Project Costs, unless otherwise provided in writing between the parties, there will be no further extension or amendment of this Agreement. The City acknowledges that the economic incentive provided to Summit hereunder is a material inducement to Summit in improving and operating a Summit Bar and Grill in the Project Area.

**Section 13.** It is understood that this Agreement shall be effective as of the date the Agreement is fully executed after the City Council adopts an ordinance authorizing the execution of this Agreement and shall remain in full force and effect thereafter until all the terms hereof expire, are satisfied or settled by both parties or otherwise adjudicated. The delivery to Summit of a fully executed ordinance approving this Agreement is the City's representation that the Agreement has been duly approved and is enforceable against the City in accordance with the terms herein contained. Summit understands and agrees that the provisions of this Agreement shall be a matter of public record, as shall any payments to Summit pursuant to this Agreement.

**Section 14.** During the term of this Agreement, Summit warrants that all on-site and off-site improvement expense related to the Project shall be the responsibility of Summit and the City shall have no financial responsibility for such expenses.

**Section 15.** In addition to the acts and deeds recited herein and contemplated to be performed by the Parties, each Party agrees to perform such acts as may be reasonable necessary to consummate the terms of this Agreement.



**Section 16.** As consideration for the execution of this Agreement by the City, Summit hereby waives and releases forever any recourse under and upon any obligation, covenants or agreements of this Agreement, or for any claim based thereon or otherwise in respect thereof, against the City's corporate officials, its officers, City attorneys and employees in any amount, and no liability, right or claim, at law or in equity, shall attach to or shall be incurred by the City's corporate officials, its officers, City attorneys and employees on account of this Agreement.

**Section 17.** Any notices required in this Agreement shall be effective when in writing in three (3) days after mailing by certified mail, return receipt requested, or on the next business day by delivering the same in person or to an officer of such party or by prepared telegram or private overnight courier, when appropriate, addressed to the party so notified.

All notices to the City to be sent to:  
City of Gladstone, Missouri  
Attn: City Manager  
7010 N. Holmes  
Gladstone, MO 64118

All notices to Summit to be sent to:  
Northland Restaurant Associates, Inc.  
Attn: Andy Lock and Domhnall Molloy  
123 SE 3rd Street  
Lee's Summit, MO 64063

With a copy to:  
Seigfreid Bingham, P.C.  
2323 Grand Boulevard, Suite 1000  
Kansas City, MO 64108  
Attn: Mark H. Gilgus

**Section 18.** The Agreement shall be binding upon and inure to the respective legal representative, successors, and assigns of the Parties.

**Section 19.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Missouri and the Parties covenant that venue shall be exclusively in the Clay County Circuit Court.

**Section 20.** Upon a breach of this Agreement, either of the parties, by an action or proceedings, at law or in equity, may secure the specific performance of the covenants and Agreements herein contained; however, the City's right to specific performance shall not include the right to require that the business remain open.

**Section 21.** If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision.

**Section 22.** This Agreement shall terminate ten (10) years from the Commencement Date of this Agreement.

**Section 23.** The parties understand and agree that Summit shall not be deemed to be in default of this Agreement because of delays or temporary inability to commence, complete or proceed with the Project due in whole or in part to causes beyond the reasonable control or without the material fault of Summit, which are caused by the action or inaction of any governmental body, including, but not limited to, failure to approve complete applications for permits that comply with all applicable laws and regulations, acts of war or civil insurrection, or any natural occurrence, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, labor disputes, governmental restrictions or priorities, embargoes, litigation, tornadoes, or periods of inclement weather such as days of rain (collectively "Excusable Delays"). The time of performance hereunder shall be extended for the period of any delay or delays caused or resulting from any of the foregoing causes, which approval shall not be arbitrarily or unreasonably withheld.

**[Signature Page Follows.]**

IN WITNESS WHEREOF, the undersigned have executed or caused this Agreement to be executed and delivered as of the date(s) indicated below their respective signatures.

DATED 6<sup>th</sup> day of June, 2018.

WITNESS:

Ruth E. Bocchino

**CITY: City of Gladstone, Missouri**

By: Scott Wingerson  
Scott Wingerson, City Manager

WITNESS:

Gregory J. ...

**SUMMIT: Northland Restaurant Associates,  
Inc., a Missouri corporation**

By: Domhnall Thomas Molloy  
Domhnall Thomas Molloy, President

ATTEST:

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

**Exhibit A**

Approximately 9,465 square feet of retail space in the building commonly known as The Heights at Linden Square Retail in Gladstone, Missouri, being shown and outlined as the lower left portion of the Heights at Linden Square described in **Exhibit B** attached hereto.

Exhibit B

