

RESOLUTION NO. R-14-16

A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT BETWEEN THE CITY OF GLADSTONE, MISSOURI, AND ZIMMER REAL ESTATE SERVICES, L.C., A MISSOURI LIMITED LIABILITY COMPANY, TO PROVIDE BROKER SERVICES FOR THE LEASING OF PROPERTY GENERALLY LOCATED AT THE HEIGHTS AT LINDEN SQUARE, NORTH LOCUST STREET AND NORTHEAST 70TH STREET, GLADSTONE MISSOURI.

WHEREAS, the Council of the City of Gladstone, Missouri, has leased 10,000 square feet of commercial space at The Heights at Linden Square; and

WHEREAS, the space will be made available for lease to commercial operations that benefit the community and Downtown Gladstone; and

WHEREAS, the Council wishes to lease the property to qualified commercial entities; and

WHEREAS, The City accepted Request for Qualifications for broker services, and Zimmer Real Estate Services, L.C. meets the qualifications required to represent the City in our broker needs; and

WHEREAS, Zimmer Real Estate will provide broker services through at least August 31, 2014 representing the City's interest in leasing the commercial space.


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

THAT, City Manager Kirk L. Davis is hereby authorized to execute the contract with Zimmer Real Estate Services L.C. to provide broker services for the leasing of commercial space at The Heights at Linden Square.

INTRODUCED, READ, PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, THIS 10TH DAY OF MARCH 2014.


Jean B. Moore, Mayor

ATTEST:


Cathy Swenson, City Clerk

14-16



P.O. Box 10719
GLADSTONE, MISSOURI 64188-0769

7010 North Holmes
GLADSTONE, MISSOURI 64118-2646

816-436-2200
816-436-2228 FAX

MEMORANDUM

TO: Kirk L. Davis, City Manager

FROM: Melinda Mehaffy, Economic Development Administrator *mm*

DATE: March 5, 2014

SUBJECT: Leasing Agent, The Heights Commercial Space

The City of Gladstone began working with Flaherty and Collins in October 2012 as they began investigating an opportunity for the development of luxury apartments in Gladstone. The Developers Agreement was ultimately approved in April 2013. A part of the agreement calls for 10,000 square feet of commercial space within the project at the city's request.

As Flaherty and Collins and the City moved toward finalizing The Heights the City committed to assisting in leasing the 10,000 square feet of commercial space. The executed developer's agreement requires the leasing of the commercial property by the City with subleasing rights.

In August 2013 the City published a Request For Qualifications for a commercial leasing broker for The Heights at Linden Square. It was and continues to be the city's objective to identify development opportunities, encourage the development of new commercial space and expand the variety of goods and services offered in the area. The RFQ is seeking a partner to assist the City in meeting these criteria as they relate to The Heights.

In addition to publishing the RFQ in the *Kansas City Star*, city staff invited more than 40 brokers and agents to propose on this project. Zimmer Real Estate was the sole respondent to the RFQ.

Zimmer Real Estate has represented the City in the recent lease of Gladstone 18, 504 NE 70th Street, to Snow & Co., a restaurant currently located in Kansas City's Crossroads. Joyce C. Murray, Zimmer Real Estate, has worked with the City of Gladstone for more than 10 years on a number of projects in the

Downtown development area and is intimately familiar with the Master Plan and development concept. Joyce represented the City in this transaction and Scott Bluhm of Zimmer Real Estate represented Snow & Co.

If selected, Zimmer Real Estate will act as the leasing agent for the City of Gladstone in leasing the 10,000 square feet of commercial space. The space will be used as retail or office space. The intent is to lease the space to boutique-style retail or commercial office space that will address the needs of The Heights residents and residents from the surrounding neighborhood.

The RFQ Scope of Services requires the firm selected to assist in developing a strategy for leasing the property, develop marketing materials for advertising the site for lease and the distribution of those materials for potential tenants. Additionally, they will participate in any site tours arranged by city staff and assist in analyzing offers from potential tenants. Staff is meeting with representatives of Zimmer Real Estate to develop a marketing plan that includes the use of Social Media as well as traditional marketing efforts.

The agreement with Zimmer Real Estate, if approved, will allow Zimmer Real Estate to act as the leasing agent at the site until August 31, 2014. The agreement may be renewed as necessary and deemed appropriate. This agreement may also be terminated with a 30 day written notice.

Staff will continue to work independently to market the location as a commercial space within Gladstone. This will include listing the site on LocationOne, our social media outlets and in marketing efforts we make independent of Zimmer Real Estate.

Marketing of the site will commence immediately, however we anticipate more interest in the project when the construction project is further along and individuals and businesses can more fully understand the scope and size of the project. Leasing dates for the property are dependent on the transfer of the space from Flaherty and Collins to the City of Gladstone. Staff will continue to work closely with Flaherty and Collins on the project.

Staff has met with representatives of Zimmer Real Estate and is currently working on a marketing plan that will allow the site to be part of a larger marketing effort for the entire downtown. There is value all of the components of our downtown being marketed at one site location. This will allow for a transition to marketing of events and lease space at the same site.

R-14-16
ORIGINAL

EXCLUSIVE AGENCY AGREEMENT

(Lease of Real Estate) AGREEMENT made as of Jan. 13 2014 between The City of Gladstone, hereinafter called "OWNER/LANDLORD," and Zimmer Real Estate Services, L.C., a Missouri Limited Liability Company, hereinafter called "BROKER."

WITNESSETH, that the parties hereto have agreed as follows:

1. OWNER/LANDLORD hereby appoints BROKER sole agent for, and gives to it the exclusive right to obtain a lease on the property of OWNER/LANDLORD located at The Heights at Linden Square, N. Locust & 70th Street, Gladstone, MO and containing ± 10,000 square feet of building area and/or NA acres/square feet of land, hereinafter called "the property."

2. The property shall be offered for lease at a rental of \$19.00 per square foot and on the following additional terms and conditions: **Retail basis; CAM charge \$_____.**

3. All leases are to be subject to the approval of OWNER/LANDLORD and are to be executed by OWNER/LANDLORD, OWNER/LANDLORD hereby covenanting that he/she/it has the contractual right to lease the property herein described.

4. OWNER/LANDLORD agrees, during the term of this Agreement, to refer to BROKER all offers and inquires with respect to said property, and BROKER agrees to diligently investigate and develop such offers or inquiries, and to canvas, solicit or otherwise employ its services to bring about the lease of the property. BROKER agrees to cooperate with other real estate brokers according to customary and ethical practice in the Kansas City area. All negotiations concerning the lease of the property shall be conducted by and through BROKER during the term of this Agreement. In endeavoring to obtain a Tenant for the subject property, BROKER will have the right to use all reasonable and recognized professional practices including, but not limited to, the association and cooperation with other licensed brokers and buyers' agents.

5. OWNER/LANDLORD represents, to the best of his/her/its knowledge:

(a) The property is free of hazardous or toxic materials, or potential environmental problems except N/A. OWNER/LANDLORD further agrees to assist in BROKER's attempts to define the property's environmental status, and to provide any reports available on environmental matters;

(b) **[applicable to property located wholly or partly within the City of Kansas City, Missouri]** (i) ~~the property is/is not located within a regulatory flood plain as defined in the official flood plain document established by Section 28-2, Code of Ordinances, Kansas City, Missouri, (ii) has/has not flooded in or since 1993, as the term "flooding" is defined in Section 50-109.5, Code of Ordinances, Kansas City, Missouri.~~

INTENTIONALLY DELETED

It is understood that BROKER shall make all such information available to prospective Tenants of the property.

6. OWNER/LANDLORD agrees to reimburse BROKER for its cost of installing signs, preparing and distributing an offering brochure and other marketing materials describing the property and calling attention to its availability for lease in an amount not to exceed N/A.

7. OWNER/LANDLORD agrees to pay to BROKER a brokerage fee for services if BROKER produces a Tenant ready, willing, and able to lease the property at the price and on the terms herein stated, or upon such other terms as may later be acceptable to OWNER/LANDLORD.

The above brokerage fee shall be calculated at (See attached Exhibit A) of the total aggregate rental (including allowances for taxes and insurance on the property if payable by the Tenant pursuant to the lease) payable by Tenant to OWNER/LANDLORD during the initial term of the lease.

The brokerage fee shall be payable by OWNER/LANDLORD to BROKER in cash fifty percent (50%) upon lease execution and fifty percent (50%) upon occupancy by Tenant. Compensation of any other real estate broker acting as a cooperating broker with BROKER shall be paid by BROKER from the brokerage fee received by BROKER from OWNER/LANDLORD pursuant to this Agreement.

~~The brokerage fee set forth herein shall be payable by OWNER/LANDLORD to BROKER if the property is sold, leased or otherwise conveyed directly or indirectly within ninety (90) calendar days, or exchanged directly or indirectly within one hundred eighty (180) calendar days after termination of this Agreement to any party to whom BROKER has submitted the property during the term of this Agreement and BROKER has notified OWNER/LANDLORD of said submittal in accordance with this Agreement. INTENTIONALLY DELETED~~

In the event that the lease contains options to extend the term for one or more periods following expirations of the original term, and if any of such options are exercised by the Tenant, BROKER shall receive, at the commencement of each option term, additional brokerage fee calculated on the extended term as set forth above.

8. BROKER shall have the right to erect a suitable sign on the property, calling attention to its availability for lease. BROKER shall have the right to show the property to prospective Tenants at reasonable business hours.

9. This Agreement shall become effective on the date hereof and shall remain in full force and effect until August 31, 2014. Within five (5) calendar days of the effective date of termination of this Agreement, BROKER shall notify OWNER/LANDLORD of any prospects for the property which OWNER/LANDLORD must recognize BROKER after termination of this agreement pursuant to Paragraph 7 hereof.

10. BROKER agrees to provide OWNER/LANDLORD with marketing reports detailing BROKER's efforts to lease the property each month this Agreement is in effect.

11. **BROKER AGREES TO:**

- (a) Perform the terms of this Contract, exercise reasonable skill and care for OWNER/LANDLORD, and promote the interests of OWNER/LANDLORD with the utmost good faith, loyalty and fidelity unless acting as a transaction broker, or as a disclosed dual agent (Missouri only).
- (b) Seek a price and terms acceptable to OWNER/LANDLORD.
- (c) Disclose to OWNER/LANDLORD all adverse material facts actually known (or should have known, in Missouri) by BROKER about Tenant.
- (d) Disclose to OWNER/LANDLORD any facts known by BROKER which are omitted from or contradict any information included in a written report prepared by a qualified third party.
- (e) Comply with all applicable federal, state, and local laws, rules and regulations, and ordinances, including fair housing and civil rights statutes and rules and regulations.
- (f) Keep all information about OWNER/LANDLORD confidential unless: disclosure is authorized under this Contract; disclosure is required by statute, rule or regulation; failure to disclose would constitute a fraudulent misrepresentation; or disclosure is necessary under Missouri law to defend the affiliated licensee against an action of wrongful conduct in an administrative or judicial proceeding or before a professional committee.
- (g) Disclose to any Tenant all adverse material facts actually known (or should have known, in Missouri) by BROKER including but not limited to environmental hazards affecting the Property, material defects in the physical condition of the Property or title thereto, and any material limitation on OWNER/LANDLORD's ability to perform under the terms of a sales Contract.
- (h) Account in a timely manner for all money and property received.

12. **BROKERAGE RELATIONSHIP DISCLOSURE.** OWNER/LANDLORD understands and agrees that BROKER can show the property and obtain offers from all prospective Tenants, including Tenants with whom BROKER has a brokerage relationship. BROKER shall notify OWNER/LANDLORD and Tenant of BROKER'S

intention to represent both of them (Disclosed Dual Agency is available only in Missouri), to represent neither but to assist both the Tenant and OWNER/LANDLORD (Transaction Brokerage is available in both Kansas and Missouri), or designate an agent for the Tenant and another to represent OWNER/LANDLORD (Designated Agency is available in both Kansas and Missouri). OWNER/LANDLORD also understands and agrees that as part of the marketing of the Property, BROKER will be showing Tenants properties other than the Property and providing Tenants with information on lease prices in the area. OWNER/LANDLORD understands that BROKER may show alternative properties not owned by OWNER/LANDLORD to prospects and may list competing properties for lease without breaching any duty or obligation to OWNER/LANDLORD.

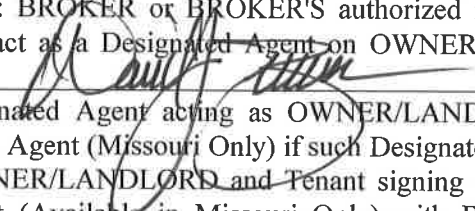
- **Transaction Broker.** (Kansas and Missouri). OWNER/LANDLORD acknowledges that BROKER may have Tenant clients who have retained BROKER to represent them in the leasing of property. If one of these clients becomes interested in leasing the Property, BROKER would be in the position of representing the Tenant and OWNER/LANDLORD in the same transaction. Unless designated agents have been appointed as provided below, this representation would constitute a dual agency (Missouri only). With the informed consent of both OWNER/LANDLORD and the Tenant, BROKER may act as a Transaction Broker. As a Transaction Broker, BROKER would assist the parties with the lease without being an agent or advocate for the interests of either party. A Transaction Broker has the duty to perform the terms of any written or oral agreement made with any party to the transaction; to exercise reasonable skill, care and diligence as a Transaction Broker, including but not limited to: keeping the parties fully informed regarding the transaction and suggesting that such parties obtain expert advice as to material matters about which the Transaction Broker knows but the specifics of which are beyond the expertise of such BROKER; accounting in a timely manner for all money and property received; disclosing to each party to the transaction any adverse material facts of which the Transaction Broker has actual notice or knowledge; and assisting the parties in complying with the terms and conditions of any lease. The parties to a transaction brokerage transaction shall not be liable for any acts of the Transaction Broker. The following information shall not be disclosed by a Transaction Broker without the informed consent of the party or parties disclosing such information to the BROKER: that a Tenant is willing to pay more than the Lease Price offered for the Property; what the motivating factors are for any party leasing the property; any confidential information about the other party, unless disclosure of such information is required by law, statute, rules or regulations or failure to disclose such information would constitute fraud or dishonest dealing. (A separate Transaction Broker Amendment must be signed by all parties when this arrangement is used.)

- **Disclosed Dual Agency.** (Missouri only). BROKER may have Tenant clients who have retained BROKER to represent them in connection with the leasing of property. The same is true if the listing agent is also the leasing agent. A Dual Agent shall be a limited agent for both the OWNER/LANDLORD and a Tenant and shall have the duties of an OWNER/LANDLORD'S or a Tenant's agent except that a Dual Agent may disclose any information to one client that the licensee gains from the other client if the information is material to the transaction unless it is confidential information that has not been made public or becomes public by the words or conduct of the client to whom the information pertains or by a source other than the licensee. A Dual Agent may not disclose, without the consent of the client to whom the information pertains: that a Tenant is willing to pay more than the Lease Price offered for the property. A Dual Agent shall not disclose to other client any confidential information about the other client unless the disclosure is required by statute, rule or regulation or failure to disclose the information would constitute a misrepresentation or unless disclosure is necessary to defend the affiliate licensee against an action of wrongful conduct in any administrative or judicial procedure or before a professional committee. A separate Disclosed Dual Agency Amendment must be signed by the OWNER/LANDLORD and the Tenant when this form of agency is used.

- **Designated Agency.** (Kansas and Missouri). A Designated Agent is a licensee affiliated with BROKER who has been designated by BROKER, or BROKER'S authorized representative, to act as the agent of a Tenant represented by BROKER or an OWNER/LANDLORD represented by BROKER to the exclusion of all other affiliated licensees of BROKER. The use of a Designated Agent is an alternative to Disclosed Dual Agency in Missouri or a Transaction Broker in Kansas or Missouri. A Designated Agent will perform all of the duties of an OWNER/LANDLORD's Agent.

If a Designated Agent is appointed to represent OWNER/LANDLORD, OWNER/LANDLORD understands and agrees that:

- (a) The Designated Agent will perform all of the duties of an OWNER/LANDLORD's Agent and will be OWNER/LANDLORD's legal agent to the exclusion of all other licensees affiliated with BROKER.
- (b) Another licensee with the BROKER may act as a Designated Agent for a Tenant in the lease of the Property.
- (c) The Supervising Broker (or Branch Broker, if applicable) will act as a Transaction Broker and will not advocate for the interests of either party and will not, without prior consent of both parties, disclose any information or personal confidences about a party which might place the other party at an advantage. The Supervising Broker (or Branch Broker, if applicable) may appoint an affiliated licensee to act in the transaction as a Transaction Broker.
- (d) If the Designated Agent for OWNER/LANDLORD is also the Designated Agent of a Tenant who is interested in leasing the Property, the Designated Agent cannot represent both OWNER/LANDLORD and Tenant. With the informed consent of both the OWNER/LANDLORD and Tenant, the Designated Agent may act as a Transaction Broker and assist the parties with the real estate transaction without being an agent or advocate for the interests of either party.
- (e) If a Tenant who is represented by a Designated Agent of BROKER wants to see a property which was personally listed by the Supervising Broker, the Supervising Broker, with the written consent of OWNER/LANDLORD, may specifically designate an affiliated licensee who will act as the Designated Agent for OWNER/LANDLORD.

Appointment of Designated Agent: BROKER or BROKER'S authorized representative hereby consents to the appointment of Joyce Murray to act as a Designated Agent on OWNER/LANDLORD's behalf. (BROKER'S signature required in Missouri)  OWNER/LANDLORD consents to the above-named Designated Agent acting as OWNER/LANDLORD's Designated Agent or as a Transaction Broker or Disclosed Dual Agent (Missouri Only) if such Designated Agent is also the Designated Agent for the Tenant, subject to both OWNER/LANDLORD and Tenant signing a Transaction Broker Amendment or Disclosed Dual Agency Amendment (Available in Missouri Only) with BROKER, which must be signed by OWNER/LANDLORD prior to signing the Contract and a Tenant prior to writing an offer to lease the Property.

13. **BROKERAGE RELATIONSHIPS CONFIRMATION:** Unless otherwise provided herein, the OWNER/LANDLORD authorizes the designated broker to cooperate with and compensate other brokers. OWNER/LANDLORD consents to the following (check applicable boxes):

- ☒ Yes ☐ No OWNER/LANDLORD consents to a Transaction Broker and agrees, if applicable, to sign a Transaction Broker Addendum.
- ☒ Yes ☐ No OWNER/LANDLORD consents to a Designated Agency relationship. (In Kansas, Supervising Broker acts as a Transaction Broker).
- ☒ Yes ☐ No OWNER/LANDLORD consents to the appointment of a Designated Agent for a Tenant in lease of the OWNER/LANDLORD's Property. (In Kansas, Supervising Broker acts as a Transaction Broker).
- ☐ Yes ☒ No OWNER/LANDLORD consents to a Dual Agent and agrees, if applicable, to sign a Disclosed Dual Agency Agreement. (Missouri Only).
- ☐ Yes ☒ No OWNER/LANDLORD consents to Sub agency.

14. **TERMINATION FOR CONVENIENCE.** Landlord may terminate this Agreement for convenience by giving written notice to Broker of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such Termination. If the Agreement is terminated by Landlord as provided in this section, Broker will be paid all fees due for the then current lease term. If the Agreement is terminated by Landlord as provided in this section Landlord agrees not to lease the property to the then current tenant at the time of termination until at least six months following the expiration of the then current term.

15. Notices to either party shall be made by certified or registered mail. Notices to OWNER/LANDLORD shall be given to Scott Wingerson & Melinda Mehaffy, Economic Development Dept., City of Gladstone, 7010 North Holmes, Gladstone, MO 64118. Notices to BROKER shall be given to P.O. Box 411299, Kansas City, MO 64141-1299; Attn: David J. Zimmer.

16. Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which together shall constitute one agreement. Signature pages to this Agreement transmitted by facsimile or by e-mail in portable document format will have the same legal effect as manually executed signature pages.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.


OWNER/LANDLORD

ZIMMER REAL ESTATE SERVICES, L.C.

By: Kirk L. Davis, City Manager
Print Name: Kirk L. Davis


By : 
Print Name: _____
ZRES Management, Inc. - Manager BROKER

EXHIBIT A

Commissions shall be paid as follows:

- | | |
|--|--|
| a) Lease Terms 1-5 Years 6% }
Lease Terms 6-10 Years 3% } | To be shared equally with co-brokers who represent Tenants |
|
 | |
| b) Lease Terms 1-5 Years 3% }
Lease Terms 6-10 Years 1.5% } | Lease in which City of Gladstone is the "procuring cause:
and there is no co-broker representing Tenant. |
|
 | |
| c) Lease Terms 1-5 Years 5%
Lease Terms 6-10 Years 2.5% | Leases in which Zimmer Real Estate Services the sole
procuring cause with no co-broker representing Tenant. |