

RESOLUTION R-15-22

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A FIRST AMENDMENT TO DEVELOPMENT AGREEMENT WITH GLADSTONE CAP, LLC.

WHEREAS, on October 1, 2014, the Gladstone City Council passed Resolution No. R-14-73 authorizing the City Manager to execute a Development Agreement with Gladstone Cap, LLC to develop the Northland Innovation Center and on October 14, 2014 the City Manager executed the Development Agreement; and

WHEREAS, the parties to the Agreement have diligently and dutifully worked toward closing the Agreement within the time deadlines provided but now anticipate needing additional time to complete this complicated process; and

WHEREAS, the city staff and Gladstone Cap, LLC have worked out an amendment to the Agreement which would change the following provisions:

1. Section 3.02(a) to extend closing of the leasehold interest in Phase 1 from February 1, 2015 to June 1, 2015;
2. Section 3.02(b) to extend the deadline for the developer obtaining 25,000 square feet of net leasable area in Phase 2 in order to close Phase 2 on June 1, 2015 from January 1, 2015 to May 15, 2015;
3. Section 4.02(c) to change the automatic termination date for Phase 1 from May 1, 2015 to June 1, 2015; and
4. Adding a new Section 13.16 granting the Gladstone City Manager authority to extend the above referenced deadlines for a period of up to fourteen (14) days without the necessity of any action by the City Council.

WHEREAS, these proposed changes are in the best interest of the City and will promote the successful development of the Northland Innovation Center.

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 is hereby authorized and directed to execute the proposed First Amendment to Development Agreement and to take such other action as may be necessary to effectuate the intent of this Resolution.

INTROCUDED, READ, PASSED AND ADOPTED BY THE COUNCIL OF THE CITY
OF GLADSTONE, MISSOURI THIS 21st DAY OF APRIL, 2015.



Mayor Bill Garnos

ATTEST:



Ruth Bocchino, City Clerk

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT ("*First Amendment*") is made and entered into as of this 21 day of APRIL, 2015, 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 **GLADSTONE CAP, LLC** (the "*Developer*"), a Missouri limited liability company. (All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Development Agreement defined below).

RECITALS

A. The City and the Developer entered into a Development Agreement, dated October 14, 2014 (the "*Development Agreement*"), relating to the development of the Northland Innovation Center.

B. The City and the Developer desire to enter into this First Amendment in order to modify the Development Agreement as provided herein.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual promises contained herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Section 3.02 of the Development Agreement is hereby deleted in its entirety and replaced with the following:

Section 3.02. Closing Date.

(a) The Closing Date on the transfer of the leasehold interest in the Phase 1 Property shall be on or before June 1, 2015, upon satisfaction of the Conditions of Performance and upon four (4) business days prior written notice from the Developer to the City, or upon such later date as may be agreed to by the Developer and the City; provided, however such date shall be subject to extension due to Excusable Delay.

(b) In the event the Developer is able to produce executed leases for at least 25,000 square feet of net leasable area in Phase 2 on or before May 15, 2015, the Closing Date on the transfer of the leasehold interest in the Phase 2 Property shall be on or before June 1, 2015, upon satisfaction of the Conditions of Performance and upon four (4) business days prior written notice from the Developer to the City, or upon such later date as may be agreed to by the Developer and the City; provided, however such date shall be subject to extension due to Excusable Delay.

(c) In the event the Developer is not able to produce executed leases for at least 25,000 square feet of net leasable area in Phase 2 on or before May 15, 2015, the Closing Date on the transfer of the leasehold interest in the Phase 2 Property shall be not later than ninety (90) days following the date on which the Developer is able to produce executed leases for at least 25,000 square feet of net leasable area in Phase 2, upon satisfaction of the Conditions of Performance and upon four (4) business days prior written notice from the Developer to the City, or upon such later date as may be agreed to by the Developer and the City; provided, however such date shall be subject to extension due to Excusable Delay.

(d) In the event the Closing Date for the Phase 2 Property occurs subsequent to the Closing Date for the Phase 1 property, as contemplated by subsection (c) above, then the Developer and the City will negotiate in good faith a written lease agreement under which (i) the City will lease to the Developer the Phase 2 Property for the purpose of constructing parking

sufficient to service the Phase 1 Property, (ii) the City, and any third party which may be authorized by the City to develop the Phase 2 Property in the event this Agreement is terminated with respect to Phase 2 pursuant to Section 4.02(d) hereof, will have the non-exclusive use, at no cost to end-users, of the parking facilities or structures built by the Developer on the Phase 1 Property, and (iii) the City or a third party developer of the Phase 2 Property in the event this Agreement is terminated with respect to Phase 2 pursuant to Section 4.02(d) hereof may enter onto the surface parking area located on Phase 1 for the purpose of constructing a parking deck for use by Phase 1 and Phase 2 tenants so long as parking sufficient to service the Phase 1 Property is provided on a temporary basis during the construction of such parking deck. If the transfer of the leasehold interest to the Developer on the Phase 2 Property occurs after the Closing Date of the Phase 1 Property, then on or before the Closing Date of the Phase 2 Property the City will deliver to the Developer a termination of the lease agreement required by this subsection (d). The parties understand and agree that the final form of lease agreement is subject to the approval of the Developer and of the City Council of the City in its legislative discretion.

Section 2. Section 4.02 of the Development Agreement is hereby deleted in its entirety and replaced with the following:

Section 4.02. Termination.

(a) If the Developer elects in its sole discretion not to consummate the Closing of the transfer of the Phase 1 Property or the Phase 2 Property or to Commence Construction of the Project as a result of a failure to satisfy one or more of the Conditions of Performance set forth in **Section 4.01**, then the parties understand and agree that (i) the Developer may terminate this Agreement by written notice to the City, and (ii) notwithstanding anything set forth herein to the contrary, the City will be solely responsible for all of the City's costs and expenses incurred in connection with this Agreement and the Developer will be solely responsible for all of the Developer's costs and expenses incurred in connection with this Agreement, except that the City shall be entitled to retain and use any funds on deposit with the City pursuant to Section 11 of the Letter of Intent between the City and the Developer as approved by Resolution R-14-42.

(b) If the Developer elects in its sole discretion not to consummate the Closing of the transfer of the Phase 1 Property or to Commence Construction of the Phase 1 Project Improvements as provided in this Agreement, then the parties understand and agree that the City may terminate this Agreement by written notice to the Developer and notwithstanding anything set forth herein to the contrary, the City will be solely responsible for all of the City's costs and expenses incurred in connection with this Agreement and the Developer will be solely responsible for all of the Developer's costs and expenses incurred in connection with this Agreement, except that the City shall be entitled to retain and use any funds on deposit with the City pursuant to Section 11 of the Letter of Intent between the City and the Developer as approved by Resolution R-14-42.

(c) In the event the Closing of the Phase 1 Property has not been consummated on or before June 1, 2015, this Agreement shall automatically terminate without the necessity of notice of default in accordance with **Article XII**.

(d) In the event the Closing of the Phase 2 Property has not been consummated on or before the later of (i) the date of Completion of Construction of the Phase 1 Project Improvements or (ii) December 31, 2015, then this Agreement shall automatically terminate with respect to Phase 2 without the necessity of notice of default in accordance with **Article XII**.

Section 3. A new Section 13.16 is hereby added to the Development Agreement and shall read as follows:

Section 13.16. Extensions. The City Manager shall have the authority to extend the deadlines set forth in Sections 3.02 and 4.02 for a period of up to fourteen (14) days without the necessity of any action by the City Council. The City Manager may seek input from the City Council before granting any such approval.

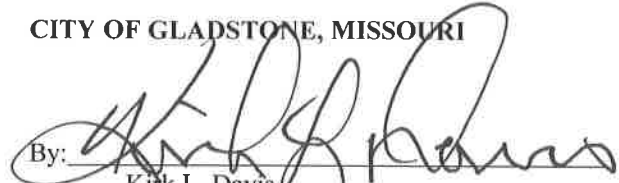
Section 4. The terms of the Development Agreement shall remain in full force and effect, except as modified herein.

Section 5. The parties hereto acknowledge and agree that this First Amendment may be executed in one or more original counterparts, each of which when taken together shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the Parties have executed this Development Agreement on the date first written above.

CITY OF GLADSTONE, MISSOURI

By: 
Kirk L. Davis
City Manager

[SEAL]

ATTEST:




Ruth Bocchino
City Clerk

ACKNOWLEDGMENT

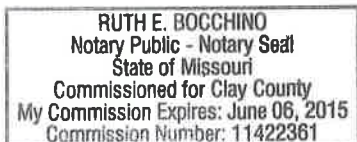
STATE OF MISSOURI)
) SS.
COUNTY OF CLAY)

BE IT REMEMBERED, that on this 23rd day of APRIL, 2015, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Kirk L. Davis, the City Manager for the City of Gladstone, Missouri, a City existing under and by virtue of the laws of the State of Missouri, who is personally known to me to be the same person who executed, as such official, the within instrument on behalf of and with the authority of said City, and such person duly acknowledged the execution of the same to be the free act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.


Notary Public

[SEAL]



GLADSTONE CAP, LLC

By: Daniel Carr
Name: Daniel Carr
Title: Member

ACKNOWLEDGMENT

STATE OF Missouri)
COUNTY OF Jackson) SS.

BE IT REMEMBERED, that on this 15th day of April, 2015, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Daniel Carr, Member of Gladstone Cap, LLC, a Missouri limited liability company, who is personally known to me to be the same person who executed the within instrument on behalf of said limited liability company, and such person duly acknowledged the execution of the same to be the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Kristi Stuedle
Notary Public

[SEAL]



KRISTI STUEDLE
My Commission Expires
November 4, 2017
Clay County
Commission #13473833

EXTENSION OF DEVELOPMENT AGREEMENT DEADLINES

1. The City of Gladstone, Missouri (the "City") and Gladstone Cap, LLC (the "Developer") entered into a Development Agreement, dated October 14, 2014 (the "Development Agreement"), relating to the development of the Northland Innovation Center.

2. The City and the Developer entered into a First Amendment to Development Agreement, dated April 21, 2015, 2015 (the "First Amendment").

3. The First Amendment added a new Section 13.16 to the Development Agreement which provides as follows:

Section 13.16. Extensions. The City Manager shall have the authority to extend the deadlines set forth in Sections 3.02 and 4.02 for a period of up to fourteen (14) days without the necessity of any action by the City Council. The City Manager may seek input from the City Council before granting any such approval.

4. The City Manager hereby extends the deadlines set forth in Sections 3.02 and 4.02 of the Development Agreement, as amended by the First Amendment, for a period of fourteen (14) days.

CITY OF GLADSTONE, MISSOURI

By: 
Kirk L. Davis
City Manager