

RESOLUTION R-15-23

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN ACCESS AGREEMENT GIVING GLADSTONE CAP, LLC TEMPORARY ACCESS TO CERTAIN CITY PROPERTY.

WHEREAS, Gladstone Cap, LLC has entered into a Development Agreement with the City which has not yet closed to develop the Northland Innovation Center; and

WHEREAS, Gladstone Cap, LLC is contractually obligated to deliver the premises to a tenant for completion of tenant improvements by April 1, 2016 and in its estimation it needs immediate access to the property to begin the activity described in the proposed Access Agreement in order to meet its obligation; and

WHEREAS, the proposed Access Agreement includes adequate provisions to protect the City if the Development Agreement should not close pursuant to its terms; and

WHEREAS, it is in the best interests of the City to allow access in order to successfully develop 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 Access Agreement and to take such other action as may be necessary to effectuate the intent of said Agreement.

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



Mayor Bill Garnos

ATTEST:



Ruth Bocchino, City Clerk

ACCESS AGREEMENT

THIS ACCESS AGREEMENT (this "Agreement"), is made as of April __, 2015, by and between the CITY OF GLADSTONE, MISSOURI, a third class city organized and existing under the laws of the State of Missouri (the "City") and GLADSTONE CAP, LLC, a Missouri limited liability company (the "Developer") (the City and Developer are each a "Party" or collectively the "Parties").

RECITALS:

A. City and Developer entered into a Development Agreement dated the 14TH day of October, 2014 (the "Development Agreement") the purpose of which was to grant certain development rights with respect to the development in two phases of the Northland Innovation Center project within the corporate limits of the City, as more specifically described in such Development Agreement;

B. The Development Agreement provided for Conditions Precedent to Performance for Closing, which have not yet been totally satisfied;

C. City owns the land located in the City of Gladstone, Clay County, Missouri, described in the Development Agreement (the "Property").

D. The Parties have agreed to provide Developer with the right to enter upon the Property to conduct due diligence and inspect the Property pursuant to the terms and conditions of the Development Agreement and to commence a portion of the construction of the Project. For purposes of this Agreement, the term "Construction" shall include surveying, mobilization, demolition, erosion control, mass grading, site preparation, excavation, dirt removal, installation of utilities and general site stormwater control.

E. The Parties desire to enter in this Agreement to clarify the rights and obligations of the Parties to permit Developer to commence a portion of the work for the Project.

F. Unless otherwise stated, capitalized terms used on the Development Agreement shall have the same meaning in this Agreement.

AGREEMENT:

For and in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developer hereby agree as follows:

1. Grant of Access. City grants to Developer and to Developer's employees, agents, representatives and contractors (collectively, "Developer's Agents"), a non-exclusive, temporary, revocable license to enter upon the Property for the sole purpose of continuing physical and environmental inspections of the Property and commencing a portion of the Construction of the Project.

2. Activities. The access granted hereunder is intended to convey and grant to Developer a temporary license and right to enter the Property to conduct the activities stated herein. Developer shall be responsible for, and shall bear the full cost and expense of, any such activities. Developer and Developer's Agents shall enter and occupy the Property at their own risk, and City shall not assume or bear any risk, liability, responsibility or duty of care as to Developer or Developer's Agents while on the Property.

3. Insurance. Developer and all of Developer's Agents entering on the Property shall carry not less than Two Million Dollars (\$2,000,000.00) commercial general liability insurance (on an occurrence basis) insuring all activity and conduct of Developer and Developer's Agents while exercising the right of access provided for in this Agreement and naming City an additional insured. Developer hereby represents and warrants that it carries not less than Two Million Dollars (\$2,000,000.00) commercial general liability insurance with contractual liability endorsement which insures Developer's indemnity obligations hereunder.

4. Permits. No work will proceed unless all applicable permits, contractor licensing, bonding and insurance are in place as may be required by applicable laws and the Development Agreement.

5. Indemnification. Developer agrees to indemnify, defend and hold City free and harmless from any loss, injury, damage, claim, lien, cost or expense (including reasonable attorneys' fees and costs) arising out of a breach of this Agreement by Developer or Developer's Agents, or otherwise resulting from or related to the exercise by Developer or any Developer's Agent of the rights granted herein. The provisions of this Section 4 shall survive any termination of this Agreement.

6. Restoration. In the event the Project is abandoned before Closing, Developer shall restore or cause its contractors to restore the Property to its original condition to the extent practicable to do so within ninety (90) days following the abandonment. Developer shall be liable to the City for any and all damages, including reasonable attorney fees, caused by Developer's failure to restore the Property as required herein.

7. Sources of Funds and Payment. Developer shall timely pay or cause to be paid its general contractor, subcontractors, suppliers, labor and materialmen from its funds.

8. Notice. Except as otherwise provided herein, any notice required or permitted to be given hereunder shall be given in the manner and to the persons provided in the Development Agreement.

9. Liens. Developer shall keep the Property free from, and shall immediately cause the discharge of, any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Developer or Developer's Agents with respect to any inspection or testing of the Property. The provisions of this Section 8 shall survive any termination of this Agreement.

10. Assignment. This Agreement shall not be assigned by Developer, and any attempted assignment by Developer shall be void.

11. Termination. Unless terminated either by agreement of the parties, this Agreement and the rights granted herein shall terminate upon the earlier of: (a) termination of the Development Agreement, (b) the Closing (in which case the Development Agreement shall control), (c) following ten (10) days advance written notice of termination given by City for any reason whatsoever or June 1, 2015. Immediately upon any such termination and the expiration of any notice period, Developer's license and rights of access granted hereunder shall cease. Any agreement to indemnify shall survive the termination of this Agreement.

12. Miscellaneous. If any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstances shall to any extent be deemed invalid or unenforceable under applicable law, then the remainder hereof and the application of such a term, covenant, or condition to the person, entity or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and the application of such a term, covenant, or condition to the person, entity or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby. The rights and privileges granted herein shall accrue to the benefit of each of the parties hereto.

13. Governing Law. This Agreement shall be governed by the laws of the State of Missouri. In the event of any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs.

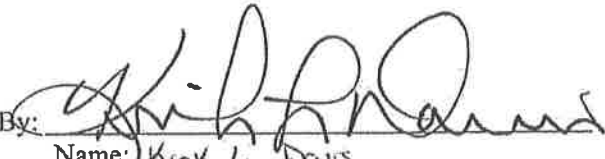
14. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or PDF by electronic mail shall be as effective as delivery of an original executed counterpart of this Agreement.

15. No Amendments. Except as expressly stated herein, there is no intention to modify or amend the Development Agreement in any way.

IN WITNESS WHEREOF, City and Developer have caused this Agreement to be executed by their duly authorized representative as of the date first written above.


CITY:

CITY OF GLADSTONE, MISSOURI

By: 
Name: Kirk L. Davis
Title: City Manager

DEVELOPER:

GLADSTONE CAP, LLC

By: 
Name: Richard Bair
Title: member