

**RESOLUTION NO. R-16-33**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF GLADSTONE, MISSOURI, AND CLEMONS REAL ESTATE, LLC, 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 70<sup>TH</sup> 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 has determined Clemons Real Estate, LLC, meets the qualifications required to represent the City in our broker needs; and

**WHEREAS**, Clemons Real Estate, LLC, will provide broker services through at least May 31, 2017, 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**, the City Manager of the City of Gladstone, Missouri is hereby authorized to negotiate and execute an agreement with Clemons Real Estate LLC 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 23RD DAY OF MAY 2016.**

  
Jean B. Moore, Mayor

ATTEST:

  
Ruth E. Bocchino, City Clerk



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

7010 North Holmes  
GLADSTONE, MISSOURI 64118-2646

816-436-2200  
816-436-2228 FAX

## MEMORANDUM

**TO:** Scott Wingerson, City Manager

**FROM:** Melinda Mehaffy, Economic Development Administrator *mm*

**DATE:** May 18, 2016

**SUBJECT:** Leasing Agent, The Heights Commercial Space

The City is committed to assisting in the leasing of 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 the past, the City has utilized leasing services from brokers in the metropolitan area to assist with the leasing of city-owned commercial property. City staff is recommending that the city enter into an agreement with Clemons Real Estate for a one year commercial leasing listing agreement for The Heights at Linden Square commercial space.

Leasing will be handled by Sheryl Vickers and Audrey Navarro of Clemons Real Estate. Sheryl is a veteran of retail brokerage and development with experience on both the tenant representation and mixed use development side of the equation for 20 years. Audrey Navarro spent 12 years with Kessginer/Hunter & Co. and has represented numerous ownership groups and national tenants including Crown Center Redevelopment Corporation.

Clemons Real Estate has provided a marketing plan and is ready to begin the marketing process immediately.

R-16-33

Clemons Real Estate  
3543 Broadway BLVD KCMO 64111  
(774)-4250 Main Office  
www.clemonsrealestate.com



### COMMERCIAL LEASING LISTING AGREEMENT

1. **City of Gladstone** ("Owner/Landlord/Seller") hereby grants to Clemons Real Estate, LLC ("Broker") the exclusive right to Sell or Lease the real property (the "Property") described below for a period commencing on **June 1, 2016** and ending on **May 31, 2017 (the "Term")**.

**Property: 505 NE 70<sup>th</sup> Street, Gladstone, Clay County, Missouri 64118**

**Description: 10,000± SF divisible by 1,500 SF bays of Commercial Space at The Heights of Linden Square**

*References to the Property shall be understood to include portions of the Property.*

#### **Terms & Conditions of a Lease: \$16.00-\$20.00 PSFNNN**

2. Owner agrees to pay Broker a commission in accordance with Broker's Schedule of Lease Commissions (the "Schedule"), a copy of which is executed by Owner, attached hereto and hereby made a part hereof. Commission shall be earned for services rendered if, during the Term, the Property is leased to a Tenant procured by Broker, Owner or anyone else.
3. Owner further agrees to pay Broker the commission if, within one hundred twenty (120) calendar days after the expiration or termination of the Term, the Property is leased to, or Owner enters into a contract of lease of the Property with, or negotiations continue, resume or commence and thereafter continue leading to a lease of the Property to any person or entity (including his/her/its successors, assigns or affiliates) with whom Broker has negotiated (either directly or through another broker or agent) or to whom the Property has been submitted prior to the expiration or termination of the Term. Broker is authorized to continue negotiations with such persons or entities. Broker agrees to submit a list of such persons or entities to Owner no later than fifteen (15) calendar days following the expiration or termination of the Term, provided, however, that if a written offer has been submitted then it shall not be necessary to include the offeror's name on the list.
4. Broker agrees to a) perform the terms of this Agreement, exercise reasonable skill and care for Owner, and promote the interests of the Owner with the utmost good faith, loyalty and fidelity; b) seek a price and terms acceptable to Owner; c) Present all written offers, counter offers and back up offers in a timely manner; d) disclose all material facts actually known by Broker about Tenant; e) comply with all applicable federal, state, and local laws, rules and regulations, ordinances; f) account in a timely manner for all money and property received.
5. Lease Commissions shall be due and payable hereunder upon Lease Execution.
6. Broker is exclusively authorized to advertise the Property for Lease. Owner acknowledges that Broker is a full service brokerage firm and that in some cases it may represent prospective tenants.
7. Owner agrees to cooperate with Broker in bringing about a lease of the Property and to refer immediately to Broker all inquiries of anyone interested in the Property. All negotiations are to be through Broker. Owner and its counsel will be responsible for determining the legal sufficiency of any lease agreement or other documents relating to any transaction contemplated by this Agreement.



8. Owner represents that it is the owner of the Property and that, except as may be set forth in an addendum attached hereto, no person or entity who has an ownership interest in the Property is a foreign person as defined in the Foreign Investment in Real Property Tax Act (commonly known as "FIRPTA").
9. If earnest money or rent deposits made by a prospective purchaser or tenant are forfeited, Broker shall be entitled to one-half (½) thereof, but not to exceed the total amount of the anticipated commission.
10. Broker is authorized to co-operate with other licensed real estate brokers and share commissions, regardless of whether said brokers represent prospective tenants or act as Broker's subagents.
11. The parties agree to attempt to resolve any dispute, claim or controversy arising out of or relating to this Agreement by non-binding mediation, which shall be conducted under any procedure upon which the parties may agree. The parties further agree that their respective good faith participation in mediation is a condition precedent to pursuing any other available legal or equitable remedy, including litigation, arbitration or other dispute resolution procedures. Either party may commence the mediation process by providing to the other party written notice, setting forth the subject of the dispute, claim or controversy and the relief requested. Within ten (10) days after the receipt of the foregoing notice, the other party shall deliver a written response to the initiating party's notice. The initial mediation session shall be held within thirty (30) days after the initial notice. The parties agree to share equally the costs and expenses of the mediation (which shall not include the expenses incurred by each party for its own legal representation in connection with the mediation). The parties further acknowledge and agree that mediation proceedings are settlement negotiations, and that, to the extent allowed by applicable law, all offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties or their agents shall be confidential and inadmissible in any arbitration or other legal proceeding involving the parties; provided, however, that evidence which is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. The provisions of this section may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including reasonable attorneys' fees, to be paid by the party against whom enforcement is ordered.
12. This Agreement constitutes the entire agreement between Owner and Broker and supersedes all prior discussions, negotiations and agreements, whether oral or written. No amendment, alteration, cancellation or withdrawal of this Agreement shall be valid or binding unless made in writing and signed by both Owner and Broker. This Agreement shall be binding upon, and shall benefit, the heirs, successors and assignees of the parties. In the event any clause, provision, paragraph or term of this Agreement shall be deemed to be unenforceable or void based on any controlling state or federal law, the remaining provisions hereof, and each part, shall remain unaffected and shall continue in full force and effect.
13. The parties hereto agree to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, property or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment In Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.
14. Pursuant to Section 285.530(1), RSMo., by its sworn affidavit in substantially the form attached hereto as Appendix A and incorporated herein, the Contractor hereby affirms its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the professional services. Furthermore, the Contractor affirms that it does not knowingly employ any person who is an unauthorized alien in connection with the professional services.



15. OWNER understands and agrees the BROKER can show the property and obtain offers from all prospective tenants, including or tenants with whom the BROKER has a brokerage relationship. BROKER shall notify the OWNER of his/her intention to represent neither but to assist both (Transaction Broker in Kansas and Missouri), or designate an agent for the tenant and another to represent the OWNER (Designated Agency in both Kansas and Missouri).

~~**TRANSACTION BROKER**— A Transaction Broker is a broker engaged not as a limited agent for the Buyer or the Seller, but to assist the Buyer, the Seller, or both without acting as the agent for either, or advocating the interest of any party to the transaction. (This most often occurs when your buyer's agent also has an agency agreement with the Seller whose property you wish to purchase). BROKER'S compensation under a Transaction Broker situation shall be governed by Paragraph 4 hereof. A separate Transaction Broker Addendum must be signed by the buyer prior to writing an offer to purchase. 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: presenting all offers and counteroffers in a timely manner regardless of whether the property is subject to a contract for sale or lease or a letter of intent unless otherwise provided in the agreement entered into with the party; Informing the parties 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; To disclose to each party to the transaction any adverse material facts of which the licensee has actual notice or knowledge; Assisting the parties in complying with the terms and conditions of any contract; 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 buyer is willing to pay more than the purchase price or lease rate offered for the property; That a seller is willing to accept less than the asking price or lease rate for the property; What the motivating factors are for any party buying, selling or leasing the property; That a seller or buyer will agree to financing terms other than those offered; 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. Section specifically and intentionally deleted by owner.~~

~~**DESIGNATED AGENCY**— Both Kansas and Missouri— This alternative to Transaction Broker in Kansas or Missouri provides that the BROKER may designate two separate salespeople, one to represent the BUYER and one the SELLER respectively. A designated agent is a real estate licensee affiliated with a broker who has been designated by the broker, or the broker's duly authorized representative, to act as the agent of a broker's buyer or seller client to the exclusion of all other affiliated licensees. Section specifically and intentionally deleted by Owner.~~

**For Designated Agency in Missouri:**

BROKER'S signature required: \_\_\_\_\_

Aaron Clemons

BROKER prohibits the Designated Broker and/or affiliated licensee from acting as a disclosed Dual Agent.

Missouri law presumes that, absent some other relationship being established, a licensee working with a buyer represents that buyer; and that, as a result, any licensee showing property may represent the buyer; and a

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licensee working with a buyer may be required to disclose to the buyer any information given to them by the seller.

Owner understands and agrees that as part of marketing the property, BROKER will be showing buyers or tenants properties other than OWNER'S and providing buyers with information on other properties in the area for lease. OWNER consents to the following relationships:

**BROKERAGE RELATIONSHIPS CONFIRMATION: [MUST BE COMPLETED PRIOR TO SIGNING]**

- ☒ Yes ☐ No SELLER/LANDLORD consents to Seller Agency.  
☒ Yes ☐ No SELLER/LANDLORD consents to a Transaction Broker and agrees, if applicable, to sign a Transaction Broker Addendum.  
☐ Yes ☒ No SELLER/LANDLORD consents to a Designated Agency relationship. (In Kansas, Supervising Broker acts as a Transaction Broker)  
☐ Yes ☒ No SELLER/LANDLORD consents to the appointment of a Designated Agent for a Buyer in sale of the SELLER'S/LANDLORD'S Property. (In Kansas, Supervising Broker acts as a Transaction Broker)  
☒ Yes ☐ No SELLER/LANDLORD consents to Sub agency.

BROKER will provide Owner with a written marketing update every 30 days.

Broker suggests Owner seek legal, tax and other professional advice relative to any real estate transaction. Broker makes no representation or warranty respecting the advisability of any transaction. Broker is not an expert in matters relating to law, tax, financing, surveying, structural or mechanical condition, hazardous material, engineering or other specialized topics. Owner is encouraged to seek expert help in such areas.

*Each signator to this Agreement represents and warrants that he or she has full authority to sign this Agreement on behalf of the party for whom he or she signs and that this Agreement binds such party.*

**Accepted:**

Clemons Real Estate, LLC

By: Aaron Clemons

Aaron Clemons  
Managing Broker

Agent: Agil Huss

Agent's Name

3543 Broadway  
Kansas City, MO 64111  
816.774.4250

Date: 8.24.16

**Accepted:**

City of Gladstone

By: Scott Wingerson

Scott Wingerson  
City Manager

7010 N. Holmes  
Gladstone, MO 64118  
816.423.4108

Email: \_\_\_\_\_

Date: 8/26/16



## SCHEDULE OF LEASE COMMISSIONS

**Property Location: 505 NE 70<sup>th</sup> Street, Gladstone, Missouri 64118**

### **A. LEASE TRANSACTIONS:**

**A retainer is required for the leasing commitment of \$2,500 for marketing the property, cold calling, and negotiating leases on behalf of the city. This retainer is to be deducted from commissions earned. Once deducted, commission shall be payable upon execution of lease, sublease, and renewal by Owner and a tenant, in accordance with the following rates:**

#### **Leases**

Six percent (6%) of the total base rent for the first 120 months of the lease term, plus  
Three percent (3%) of the total base rental for the next 120 months of the lease term, plus

**EXCEPTIONS to these leases are prospects already in discussions: Pizza Shoppe, Massage & Bodyworks Collective, LLC and Tim Presko Insurance.**

The above rates are subject to the following provisions:

#### **1. *Month-to-Month Tenancy:***

The minimum commission for a month-to-month tenancy, tenancy at will, or any other tenancy which is not reduced to a written lease agreement between a tenant and Owner shall be equal to fifty percent (50%) the first month's base rental or \$1,500.00, whichever is greater. The commission shall be payable upon occupancy. In the event such a tenant subsequently executes a written lease with Owner, either directly or with the assistance of Broker or anyone else, within 24 months from the date of initial occupancy, then Broker shall receive a leasing commission with respect to such lease in accordance with the provisions of paragraph B above.

#### **2. *Option(s) or Right(s) of First Refusal to Renew, Extend Lease or Occupy Additional Space:***

If a lease for which a commission is payable hereunder contains (i) an option(s) or right(s) of first refusal to renew or extend, and a lease term(s) is renewed or extended whether strictly in accordance with the terms of such option(s) or right(s) or otherwise and/or (ii) an option(s) or right(s) of first refusal to expand, and a tenant occupies additional space whether strictly in accordance with the terms of such option(s) or right(s) or otherwise, then Owner shall pay a leasing commission in accordance with the provisions of this Schedule on the additional base rental to be paid, calculated at the commission rate applicable hereunder to the years of the lease in which the additional base rental is payable. Said commission shall be earned and payable at the time the extended term commences or the additional space is occupied, as applicable.

The provisions hereof are subject to the terms and provisions of any Exclusive Leasing Listing Agreement, Exclusive Subleasing Listing Agreement, Exclusive Representation Agreement or other agreement to which this Schedule may be attached and which is executed by the parties hereto.

In the event Owner fails to make payments within the time limits set forth herein, then from the date due until paid the delinquent amount shall bear interest at the maximum rate permitted in the state in which the office of the Broker executing this Schedule is located. If Broker is required to institute legal action against Owner relating to this Schedule or any agreement of which it is a part, Broker shall be entitled to reasonable attorneys' fees and costs.


Owner hereby acknowledges receipt of a copy of this Schedule and agrees that it shall be binding upon its heirs, successors and assignees. In the event Owner sells or otherwise disposes of its interest in the Property, Owner shall remain liable for payment of the commissions provided for in this Schedule and any agreement of which it is a part, including, without limitation, the commission obligations set forth in paragraphs 2, 3, and 5 of Section B, unless the purchaser or transferee

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assumes all of such obligations in writing. The term "Owner" as used herein shall be deemed to include the owner of the Property, a party under contract to acquire the Property, a tenant under a ground lease and a tenant of the Property wishing to affect a sublease, lease assignment, or lease cancellation. The term "tenant" as used herein shall be deemed to include any subtenant, or assignee of a tenant, and the term "lease" shall be deemed to include a sublease or lease assignment.

APPROVED this 26 day of August, 2016

 Owner  
City of Gladstone

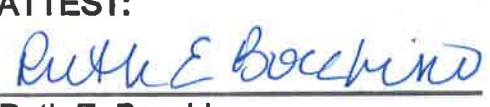
**Accepted:**

**Clemons Real Estate, LLC**  
**Licensed Real Estate Broker**

**By:**

  
**Aaron Clemons**  
**Managing Partner**

**ATTEST:**

 8/26/16  
**Ruth E. Bocchino**  
City Clerk, City of Gladstone, MO