

RESOLUTION NO. R-16-77

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A REAL ESTATE CONTRACT TO PURCHASE PROPERTY LOCATED AT 6901 NORTH OAK TRAFFICWAY.

WHEREAS, the City was presented with the opportunity to purchase a parcel of land located within the Downtown Master Plan at 6901 North Oak Trafficway; and

WHEREAS, the acquisition of real estate within the Downtown Village Center has been identified in the Comprehensive Plan and by the City Council as instrumental to the continued economic development of Gladstone; and

WHEREAS, the purchase of this parcel is consistent with City Council goals and could be a catalyst for greater private and public development within this vital economic center; and

WHEREAS, the City Council has determined that the purchase price is fair and reasonable and that the purchase of this real estate is in the best interest of the City and its citizens.

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

THAT, the City Council of Gladstone hereby authorizes the purchase of and the execution of a Real Estate Contract for the purchase of the following described parcel of land:

Lots 8 & 9, Block 25, Linden, a subdivision in Gladstone, Clay County, Missouri

FURTHER THAT, the City Manager is hereby authorized to execute the Real Estate Contract and to comply with the terms of said Real Estate Contract to purchase the parcel and he is further authorized to take such measure in the City's best interest as necessary to carry out the intent of this Resolution including any amendments to the contract or execution of any other such instruments as necessary to close the purchase.

INTRODUCED, READ, PASSED, SIGNED AND MADE EFFECTIVE BY THE CITY COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, THIS 12th DAY OF DECEMBER 2016.


Jean B. Moore, Mayor

ATTEST:


Ruth E. Bocchino, City Clerk



Department of General Administration
Memorandum SCW16-38

DATE: DECEMBER 5, 2016

TO: JEAN MOORE, MAYOR
R. D. MALLAMS, MAYOR PRO TEM
CAROL SUTER, COUNCILMEMBER
BRIAN HILL, COUNCILMAN
BILL GARNOS, COUNCILMAN

FROM: SCOTT WINGERSON, CITY MANAGER *Scott*

RE: 6901 N. OAK TRAFFICWAY

Please find attached a Resolution authorizing the City Manager to enter into a Real Estate Contract for the purchase of 6901 N. Oak Trafficway.

This property is generally located at the northeast corner of N. Oak and N.E. 69th Street. The property contains a commercial building and the primary characteristic of the parcel is a retaining wall on the east side. Santa Fe Glass is the current occupant and will be moving to another Gladstone location in very late December or in January of 2017. Closing of the transaction will not occur until the occupant has relocated the business. After closing, staff suggests taking bids for the building to be removed, then offering the property for development consistent with the Downtown Master Plan.

Please contact me at your convenience with any questions or concerns you may have.

REAL ESTATE CONTRACT

THIS INDENTURE, made as of the 22ND day of November, 2016, by and between M & G Enterprises, L.L.C. (hereinafter referred to as "SELLER"), and the City of Gladstone, Missouri (hereinafter referred to as "BUYER").

SECTION I

PROPERTY TO BE SOLD

SELLER agrees to sell to BUYER and BUYER agrees to purchase from SELLER, subject to the terms and conditions set forth in this Contract that certain real property (hereinafter referred to as the "Property") located at 6901 North Oak, Gladstone, Clay County, Missouri 64118, more particularly described as follows:

Lots 8 & 9, Block 25, Linden, a subdivision of land in Gladstone, Clay County, Missouri.

Personal property included in this sale is as follows: All items which cannot be removed from the Property without substantially damaging those items or the real estate to which those items are attached and gas or electric heaters and furnaces, ventilating systems, central air conditioning systems, keys to locks, attached television and radio antennae, lighting equipment and fixtures, heating equipment and fixtures, plumbing equipment and fixtures, attached mirrors, linoleum, tile, carpeting, window and porch shades, venetian blinds, storm windows and doors, screens, curtains and draperies but excluding window coverings in the building's office.

SECTION II

PURCHASE PRICE AND TERMS

The total purchase price for the property shall be Six Hundred Eighty Thousand and 00/100 Dollars (\$680,000.00), payable as follows:

- (a) Twenty Five Thousand and 00/100 Dollars (\$25,000.00) as the Earnest Money paid at the time of the signing of this Contract, and deposited with Stewart Title, 100 N.W. Englewood Road, Gladstone, MO 64118 (hereinafter referred to as the Title Company); and
- (b) The balance, plus or minus closing adjustments, in cash or certified funds, at Closing.

SECTION III

SURVEY

BUYER may obtain, at BUYER'S expense, a survey of the Property. BUYER'S obligation to close shall be contingent upon BUYER'S acceptance and approval of the condition of the survey, which approval must be given on or before the 30th day prior to closing or either party may, by written notice, terminate this Contract. SELLER will provide BUYER with a boundary and topographic survey dated October 12, 2015 prepared for the SELLER.

SECTION IV

CLOSING

The closing of this transaction (the "CLOSING") shall occur at the offices of Stewart Title, 100 N.W. Englewood Road, Gladstone, MO 64118 at 10:00 a.m. on December 30, 2016, unless extended by written agreement of the parties, Provided, However, SELLER may, upon

seven

(7) days prior written notice, require a closing date no earlier than the forty fifth (45th) day after the Effective Date.

At closing, SELLER shall execute a Special Warranty Deed to the property in recordable form so as to vest in BUYER a marketable fee simple title thereto and a closing statement in form and content satisfactory to BUYER.

Absolute and unqualified possession shall be delivered to BUYER at the time of closing, together with keys to the premises.

SECTION V

ASSESSMENT AND TAXES

SELLER shall pay all taxes, general and special, and all assessments that are a lien on the Property and can be paid as of the date of this Contract, except that all general, state, county, school and municipal taxes (exclusive of rebates, penalties or interest) payable during the calendar year in which the Deed is delivered shall be prorated between SELLER and BUYER as of the date of closing.

In the event that Property is subject to any benefit assessments, public water supply district assessments, or other special assessments, SELLER will pay all assessments actually due on or before the date of closing and BUYER shall pay all installments of such assessments accruing after CLOSING. In the event that the actual tax bill for the year 2016 exceeds the amount prorated at CLOSING, the parties agree to adjust the tax proration according to the actual amount billed.

SECTION VI
INSPECTIONS

SELLER shall grant BUYER reasonable access to the Property until thirty (30) days after the Effective Date, for the purpose of inspecting the physical condition of the Property. BUYER'S inspection rights shall include performing soil tests, mechanical, termite and septic inspections, environmental tests or audits, availability of utilities, and such other inspections as BUYER may desire. If BUYER determines that the physical condition of the Property is not suitable for BUYER, BUYER shall provide written notice to SELLER on or before the 30th day after the Effective Date, that this Contract is terminated. In the absence of such termination notice, this inspection condition shall be deemed satisfied, and BUYER shall be deemed to be thoroughly acquainted and satisfied with the physical condition of the Property.

SELLER warrants to BUYER that after BUYER'S inspections are complete, SELLER will continuously maintain the Property in at least as good condition as it existed as of the inspection date until the time of closing. The BUYER shall have the right to reinspect the Property within ten (10) days prior to Closing and if there has been any material change in conditions since BUYER's inspections, BUYER may terminate this Contract and receive BUYER's earnest money.

BUYER acknowledges that BUYER has carefully investigated and inspected the Property and will have ample future opportunity to investigate and inspect the Property. If BUYER proceeds with Closing, BUYER shall accept the Property in the physical condition existing as of the date of Closing, AS IS, WHERE IS AND WITH ALL FAULTS. BUYER acknowledges that it has no recourse whatsoever against SELLER in the event of discovery of

any defects of any kind, latent or patent. BUYER acknowledges and agrees SELLER has not made nor hereby makes, and that BUYER is not relying on, any representation, warranty or covenant of any kind or character whatsoever, whether expressed or implied, with respect to the physical condition, use or usefulness of the Property, or any improvements thereon, or with respect to the availability of utilities or access to public roads.

SELLER HEREBY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF CONDITION, MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR WITH RESPECT TO THE VALUE, PROFITABILITY OR MARKETABILITY OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AND SELLER HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY WITH REGARD TO COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING, BUT NOT LIMITED TO, THOSE PERTAINING TO THE HANDLING, GENERATING, TREATING, STORING OR DISPOSING OF ANY HAZARDOUS WASTE OR SUBSTANCE.

Except as otherwise provided herein to the contrary, BUYER irrevocably and unconditionally waives, terminates and forever releases SELLER, SELLER'S affiliates and SELLER'S agents, representatives, successors and assigns from any and all claims, demands, causes of action nor rights arising out of or resulting from the condition of the Property.

SECTION VII

REAL ESTATE FEES

BUYER and SELLER warrant that they have not dealt with any Realtors in connection with this transaction who may be entitled to a fee for services rendered. SELLER shall indemnify the BUYER from any and all liability, loss or damage, including reasonable attorneys' fees, either may suffer as a result of claims, demands, causes, or judgments against it arising from the sale of the premises to BUYER in violation of this provision of this Contract.

SECTION VIII

RISK OF LOSS

SELLER agrees to maintain adequate insurance coverage on the improvements through the closing date. If, before delivery of possession, any of the improvements on the Property or any personal property to be conveyed hereunder are destroyed or damaged by any casualty, SELLER may repair, replace or rebuild without notice, if the amount of damage is less than Fifty Thousand and 00/100 DOLLARS (\$50,000.00) and can be completed prior to Closing. Otherwise, SELLER shall notify BUYER, in writing, of such occurrence. Subsequent to the receipt of such notice, BUYER may elect to enforce the Contract without reduction of the purchase price in the Property's "AS IS" condition at said time and with full assignment of the proceeds of SELLER'S Fire and Extended Coverage Insurance, if any, or BUYER may cancel the Contract and be entitled to a refund of the earnest money deposit. BUYER shall notify SELLER in writing of BUYER'S election within Thirty (30) days of the receipt of the notice of casualty loss.

SECTION IX

NOTICES

All notices and demands shall be delivered in writing to SELLER and BUYER. A copy of all notices to be delivered to BUYER and SELLER shall be delivered simultaneously to SELLER'S attorney. All notices shall be considered delivered when delivered personally to the addressee shown or an officer thereof, or when deposited in the United States Mail, Certified Mail, Postage Prepaid, Return Receipt Requested, addressed as follows:

IF TO BUYER:

**City of Gladstone
ATTN: Scott Wingerson, City Manager
7010 North Holmes
Gladstone, MO 64118**

IF TO SELLER:

**M & G Enterprises, LLC
c/o Mike Hennessy
1504 N.W. 47th Terrace
Kansas City, MO 64116**

IF TO SELLER, A COPY TO:

**Michael P. Keleher
403 NW Englewood Road
Gladstone, MO 64118**

SECTION X

DEFAULT

If BUYER fails or refuses to comply with the conditions assumed herein or to perform all obligations hereunder, SELLER may, at SELLER's option:

- (a) Hold or retain the initial earnest money deposit and any additional funds paid or deposited by BUYER, as liquidated damages for breach of this Contract, and rescind and terminate the Contract, whereupon all rights and obligations hereunder shall cease and determine; or
- (b) Enforce this Contract by appropriate action, including an action for specific performance or for damages for breach, including reasonable attorney's fees, and retain all monies paid or deposited by BUYER, pending the determination of such action.

If SELLER fails or refuses to comply with the conditions assumed herein or to perform all obligations hereunder, BUYER may, at its option;

- (a) Receive the Earnest Money deposited hereunder and rescind and terminate the Contract, whereupon all rights and obligations shall cease and determine; or
- (b) Enforce this Contract by appropriate action, including an action for specific performance or for damages for breach, including reasonable attorneys' fees.

SECTION XI

INVALIDITY

If any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Contract shall be construed as if such provision had not been contained herein.

SECTION XII SOLE

AGREEMENT

This Contract shall constitute the sole agreement between the parties and supersedes any prior understandings or writings or oral agreements between the parties. This Contract cannot be modified or amended or any of the terms hereof waived, except by an agreement in writing which refers specifically to this Contract and is executed by both BUYER and SELLER.

SECTION XIII

CONTROLLING LAW

The interpretation, construction and performance of this Contract shall be governed by the laws of the State of Missouri, venue for any cause of action arising out of or in connection with this Contract shall be in Clay County, Missouri.

SECTION XIV

TIME OF THE ESSENCE

Time is of the essence of this Contract.

SECTION XV

MISCELLANEOUS PROVISIONS

1. **1031 Exchange.** Notwithstanding any terms in the Contract to the contrary, SELLER shall have the right to exchange under the provisions of Section 1031 of the Internal Revenue Code of 1986, as amended ("the Code"), and the Treasury Regulations thereunder.

BUYER agrees to cooperate with SELLER and to execute any other documents requested by SELLER with respect to any tax deferred exchange pursuant to the provisions of Section 1031 of the Internal Revenue Code and the Treasury Regulations thereunder, provided that (i) BUYER incurs no additional cost, expense, or delay attributable to the exchange, including reasonable attorneys' fees, deed excise taxes and recording fees; (ii) SELLER agrees to indemnify and hold the BUYER harmless from and against all liability arising out of its cooperation in effecting the exchange as requested by the SELLER; and (iii) BUYER shall have no personal liability with respect to the deferred exchange and shall not be required to purchase any replacement property (the "Replacement Property").

BUYER and SELLER acknowledge that BUYER shall not be deemed SELLER'S agent in connection with said exchange. BUYER and SELLER further acknowledge that all agreements in connection with performing the Exchange shall be prepared at SELLER'S expense by SELLER'S counsel; and that SELLER shall pay all expenses regarding such exchange.

SELLER shall have the right to transfer its interests under this Contract to a qualified intermediary (the "Intermediary") in accordance with the provisions of Section 1031 of the Code and Treasury Regulations thereunder, and, as a result of that transfer, the Intermediary will acquire an equitable interest in the title to the Property.

2. **Restrictive Covenant.** BUYER agrees to accept at Closing a Restrictive Covenant to be included in the Deed, prohibiting the conduct of glass sales or manufacturing business for a period of ten (10) years following the date of Closing.

SECTION XVI

MISCELLANEOUS

The titles or captions of sections and paragraphs in this Contract are provided for convenience of reference only. This Contract shall not be construed more strongly against SELLER or BUYER, regardless of who was more responsible for its preparation. No failure or delay on the part of SELLER or BUYER in exercising any right, power or remedy under this Contract shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies provided in this Contract are cumulative and are not exclusive of any remedies that may be available to SELLER or BUYER at law, in equity or otherwise. Words and phrases in this Contract shall be construed as in the singular or plural number and as masculine, feminine or neuter gender, according to the context. In the event any provision of this Contract is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Contract shall not be affected thereby and shall continue to be valid and enforceable. In the event any provision of this Contract is held to be invalid, illegal or unenforceable as written, but valid, legal and enforceable if modified, then such provision shall be deemed to be amended to such extent as shall be necessary for such provision to be valid, legal and enforceable, and it shall be enforced to that extent. Any finding of invalidity,

illegality or unenforceability in any jurisdiction shall not invalidate or render illegal or unenforceable such provision in any other jurisdiction.

SECTION XVIII

EFFECTIVE DATE

The Effective Date, as that date is used in this Contract, shall be the date of the last signature below.

SECTION XIX ENTIRE

AGREEMENT

This Contract contains the entire agreement between the parties, and no modifications of this Contract shall be binding upon the parties unless evidenced by an agreement in writing signed by SELLER and BUYER after the date hereof.

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

BUYER:

CITY OF GLADSTONE, MISSOURI

By:
Title:

Sethum 12/12/16
Date
City Manager

ATTEST:

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

SELLER:

M & G ENTERPRISES, L.L.C.



11-22-2016

By: J. Michael Hennessy, Manager

Date

R-16-77
11/22/16

**FIRST AMENDMENT TO
REAL ESTATE CONTRACT DATED NOVEMBER 22, 2016**

This First Amendment is made and entered into this 30th day of December, 2016, by and between **M & G Enterprises, L.L.C.** (hereinafter referred to as Seller), and **City of Gladstone, Missouri** (hereinafter referred to as Buyer).

WHEREAS, Seller and Buyer entered into a Real Estate Contract dated November 22, 2016 (hereinafter referred to as the Contract) that provided for the purchase and sale of real property commonly described as 6901 N. Oak Trafficway, Gladstone, Missouri, and

WHEREAS, the parties desire to extend the closing date.

NOW, THEREFORE, it is hereby stipulated and agreed as follows:

1. That the Contract described above shall be amended by changing the Closing Date set forth in Section IV of the Contract to on or before February 28, 2017.

2. This First Amendment may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument.


All other terms and conditions of the Contract are hereby ratified and confirmed.

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

SELLER:

M & G ENTERPRISES,

L.L.C.

By: 
J. Michael Hennessy,
Manager Date 12-21-2016

BUYER:

**CITY OF GLADSTONE,
MISSOURI**

By:  12-22-16

Manager Scott Wingerson, City
Date

EXHIBIT A