

RESOLUTION NO. R-19-16

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROPOSED LEASE AGREEMENT WITH PIECE 18 LLC (STONE CANYON PIZZA) TO OPERATE A RESTAURANT AT 504 NORTHEAST 70TH STREET, SUITE A, GLADSTONE, MISSOURI, 64118.

WHEREAS, the City of Gladstone owns a former United States Postal Office building, Gladstone 18, located on real property described as all of lots 4, 5, 6 and 7, Block 23, Linden addition to the City of Gladstone, Clay County, Missouri, more commonly known as 504 Northeast 70th Street, Gladstone, Missouri; and

WHEREAS, the above described land lies within the Downtown Village Center which the City of Gladstone is developing for public purposes to enrich and enhance the quality of life in Gladstone; and

WHEREAS, Stone Canyon Pizza submitted a proposal and has negotiated a proposed lease agreement with City staff for the operation of a restaurant consisting of approximately ±4,000 square feet for a term of five (5) years from the commencement date, with reasonable market rent rates, and such other terms as more particularly set forth in the proposed lease document.

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 enter into the proposed agreement with Piece 18 LLC (Stone Canyon Pizza), on the terms and conditions described herein and as more particularly set forth in the lease document and to take any other such measures as may be required to ensure the opening of the new restaurant.

INTRODUCED, READ, PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF GLADSTONE, MISSOURI THIS 25TH DAY OF MARCH 2019.



Mayor Bill Garnos

ATTEST:



Ruth Bocchino, City Clerk



Request for Council Action

RES ☒ # R-19-16

BILL ☐ # City Clerk Only

ORD # City Clerk Only

Date: 3/18/2019

Department: General Administration

Meeting Date Requested: 3/25/2019

Public Hearing: Yes ☐ Date: [Click here to enter a date.](#)

Subject: Stone Canyon Pizza Lease Agreement

Background: Stone Canyon Pizza submitted a proposal and has negotiated a proposed lease agreement and option to purchase with City staff for the operation of a restaurant consisting of approximately ±4,000 square feet for a term of five (5) years from the commencement date, with reasonable market rent rates, and such other terms as more particularly set forth in the proposed lease document. This Resolution authorizes the City Manager to enter into the proposed agreement with Piece 18 LLC (Stone Canyon Pizza), on the terms and conditions described herein and as more particularly set forth in the lease document and to take any other such measures as may be required to ensure the opening of the new restaurant.

Budget Discussion: Funds are budgeted in the amount of \$ 75,000 from the CERF Fund. Ongoing costs are estimated to be \$ 0 annually. Previous years' funding was \$0

Public/Board/Staff Input: Staff recommends approval of the proposed Resolution

Provide Original Contracts, Leases, Agreements, etc. to: City Clerk and Vendor

Bob Baer
Department Director/Administrator

PC
City Attorney

SW
City Manager

COMMERCIAL LEASE

This Commercial Lease (the "**Lease**"), made between the City of Gladstone, Missouri, a municipal corporation of the third class organized under the laws of the State of Missouri, having its principal office at 7010 N. Holmes Street, Gladstone, Missouri, (the "**City**"), and Piece18 LLC, a Missouri limited liability company ("**Stone Canyon**"). The City and Stone Canyon may be referred to herein individually as "**Party**" or collectively as the "**Parties**".

WITNESSETH:

WHEREAS, the City is owner of approximately Four Thousand (4,000) square feet of commercial space and associated parking and real property located at 504 NE 70th St, Gladstone, MO 64118 (the "**Property**"), and more fully described in **Exhibit A** attached hereto and incorporated herein by reference; and

WHEREAS, Stone Canyon desires to lease said property, including the building and parking lot situated thereon for the purpose of operating a restaurant serving predominately pizza and other similar food items; and

WHEREAS, the City and Stone Canyon desire to enter into this Lease to set forth the duties and obligations of the Parties as they relate to Stone Canyon's occupation of the Property.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the City and Stone Canyon do hereby represent, covenant and agree as follows:

ARTICLE I DEMISE, RENT, & TERM

Section 1.1. Demise, Rent, & Term The City hereby leases to Stone Canyon the Property, for the term of five (5) years from the 1st day of April, 2019, to the 1st day of April, 2024, ("**Initial Term**") a rental amount of Zero Dollars (\$0) per square foot for the first six months following Stone Canyon's opening to the public for business and Eight Dollars (\$8) a square foot per annum for the remaining period of the Initial Term payable at the office of the City referenced above on the first day of each month, the first payment to be made on the 1st day of November, 2019. Stone Canyon is further granted the ability to renew this Lease for two (2) five (5) year terms ("**Renewal Term**"). Rent for the first Renewal Term shall be Ten Dollars (\$10) a square foot per annum payable in the same manner as rent during the Initial Term. Rent for the second Renewal Term shall be Twelve Dollars (\$12) per square foot per annum payable in the same manner as rent during the Initial Term. Should Stone Canyon desire to exercise its right to renew the Lease for any of the Renewal Terms, Stone Canyon shall provide the City sixty (60) day advanced, written notice.

Section 1.2. Additional Charges. Stone Canyon agrees to keep the parking lot and landscaped common areas clean and be responsible for its own trash disposal, as such, Stone Canyon shall not pay any additional rent to maintain the common areas of the Property, as Stone Canyon shall provide those duties as stated in Section 2.4 below.

Section 1.3. *Option to Purchase the Property.* Stone Canyon shall have during the Initial Term, and any Renewal Terms, of this Lease and six months thereafter, the option to purchase the entirety of the building and property located at 504 NE 70th St, Gladstone, MO 64118 (“**18 Gladstone**”) at the price of Five Hundred Twenty-Five Thousand Dollars (\$525,000), plus the cost of any additional improvements to the Property as set forth and calculated per **Section 3.2**, which the parties recognize is fair, reasonable, and just compensation for 18 Gladstone. Stone Canyon shall have the ability to exercise said option to purchase 18 Gladstone at any time during the Initial Term or any of the Renewal Terms of the Lease or six months thereafter upon providing written notice to the City of said desire to exercise the option to purchase. Following receipt of the aforementioned notice, the parties shall execute an additional agreement setting forth the duties and obligations of the parties regarding the purchase of 18 Gladstone including, but not limited to, inspection periods and closing dates. Should Stone Canyon exercise its option to purchase the Property, Stone Canyon agrees to fulfill the lease terms already in place for the existing tenant in Suite B

ARTICLE II STONE CANYON’S COVENANTS

Stone Canyon agrees as part of the consideration regarding the demise of the Property by the City to Stone Canyon under this Lease as follows.

Section 2.1. *To Pay Rent.* That Stone Canyon will pay the rent at the times and in the manner aforesaid.

Section 2.2. *To Insure Against Fire.* That Stone Canyon, will during the term, insure and keep insured in the name of the City the property from loss or damage by fire in at least the sum of four hundred thousand dollars (\$400,000) in insurance companies to be approved by the City, and that Stone Canyon will pay all the premiums necessary for those purposes when said premium becomes due, and will promptly deliver to the City the policies of insurance: Provided, that if Stone Canyon shall at any time fail to insure or keep insured as aforesaid, the City may do all things necessary to effect or maintain such insurance, and any moneys expended by it for that purpose shall be repayable by the Stone Canyon on request by the City. In case the Property or any part thereof shall at any time during the term be destroyed or damaged by fire or other unavoidable casualty so as to be unfit for occupancy and use, and so that the Property and the building thereon cannot be rebuilt or restored by the City within one hundred eighty (180) days thereafter, then this Lease shall terminate; but if the Property can be rebuilt or restored within one hundred eighty (180) days, the City will, at its own expense and with due diligence, so rebuild or restore the Property, and a just and proportionate part of the rents hereby reserved shall be paid by Stone Canyon until the Property shall have been so rebuilt or restored. If the Property is destroyed by an “act of god” then during any rebuilding or restoration period, Stone Canyon shall not be liable for rent. In the event of any such damage to the Property, rent shall abate in proportion to the area so damaged until such time as such area is fully restored.

Section 2.3. *To Pay Utilities.* That Stone Canyon will promptly pay all gas, electric light, and water rates or charges which may become payable during the continuance of the Lease for gas, electric light, water, and any other utility or service used on the Property.

Section 2.4. *To Keep in Repair.* That Stone Canyon will maintain, repair and replace the interior of the Property, and shall maintain the landscaping and remove the snow, ice and debris from the parking lot and maintain the parking lot striping, all in such condition as the same are at the commencement of the

Lease or may be put in during the continuance thereof, reasonable wear and tear and damage by fire or other unavoidable casualty only excepted; provided however, Stone Canyon shall be responsible for roof, windows, underground or in wall plumbing and electrical or walls if such damage results from Stone Canyon's misuse. Stone Canyon shall pay the alarm monitoring fee associated with the fire and intrusion alarm system for the Property. Stone Canyon shall contract for the quarterly maintenance of the HVAC system which exclusively services the Property. The City shall be responsible for maintenance, repair and replacement of all other items of the Property and the building in which the Property is located and the surrounding area, which are not the responsibility of Stone Canyon, including but not limited to roof, structure, foundation, exterior walls, slab floor, windows, doors, gutters, underground or in wall plumbing and plumbing, electrical, and the parking lot (excluding those items for which Stone Canyon is responsible).

Section 2.5. *Not to Injure or Overload.* That Stone Canyon will not injure, overload, or deface or suffer to be injured, overloaded, or defaced the Property or any part thereof.

Section 2.6. *To Indemnify Against Accidents and Negligence—Snow and Ice.* That Stone Canyon will save harmless and indemnify the City from and against all loss, liability, or expense that may be incurred by reason of any accident with the machinery, hatchways, elevator, gas or water or other pipes, or from any damage, neglect, or misadventure arising from or in any way growing out of the use, misuse, or abuse of the city water, or from the bursting of any pipes, or from any neglect in the maintenance of the Property, or in not removing snow and ice from the sidewalks. **Section 2.7. *Not to Suffer Unlawful Use, or to Endanger Insurance*** That Stone Canyon will not make or suffer any unlawful, improper, or offensive use of the Property, or any use or occupancy thereof contrary to any law of the state or any ordinance of the City now or hereafter made, or which shall be injurious to any person or property, or which shall be liable to endanger or affect any insurance on the building or to increase the premium thereof.

Section 2.8. *To Permit City to Enter.* That the City at all reasonable times, after providing Stone Canyon with 24 hours prior written notice, may enter to view the Property and to make repairs which the City may see fit to make, or within the last four months of the then existing term, so long as the option to renew has not been exercised, to show the Property, to persons who may wish.

Section 2.9. *To Yield up Property.* That at the expiration of the term of the Lease, Stone Canyon will, subject to any potential sale of the Property pursuant to **Section 1.3** peaceably yield up to the City the Property and all erections and additions made upon the same, in good repair in all respects, reasonable use and wear and damage by fire and other unavoidable casualties excepted, as the same now are or may be put in by the City.

Section 2.10. *Property and Persons on Property at Stone Canyon's Risk.* That all property of any kind that may be on the Property during the continuance of the Lease shall be at the sole risk of the Stone Canyon, and that the City shall not be liable to the Stone Canyon or any other person for any injury, loss, or damage to property or to any person on the Property.

Section 2.11. *Assent Not Waiver of Future Breach of Covenants.* That no assent, express or implied, by the City to any breach of any of the Stone Canyon's covenants, shall be deemed to be a waiver of any

succeeding breach of the same covenant.

Section 2.12. Hazardous Materials. Stone Canyon shall not cause or permit the Property of Stone Canyon to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable federal, state and local laws or regulations, nor shall Stone Canyon cause or permit, as a result of any intentional or unintentional act or omission of Stone Canyon or subtenant, a release of Hazardous Materials onto the Property of Stone Canyon. Stone Canyon shall comply with and ensure compliance by all subtenants with all applicable federal, state and local laws, ordinances, rules and regulations, wherever and by whomever triggered, and shall obtain and comply with, and ensure that all subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. In the event of a breach by Stone Canyon of this Section, then Stone Canyon shall (a) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, from or affecting the Property of Stone Canyon (i) in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, (ii) to the satisfaction of the City, and (iii) in accordance with the orders and directives of all federal, state and local governmental authorities, and (b) defend, indemnify and hold harmless the City from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to, (i) the presence, disposal, release or threatened release of any Hazardous Materials by Stone Canyon which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials caused by Stone Canyon, and/or (iii) Stone Canyon's violation of laws, orders, regulations, requirements or demands of governmental authorities, which are based upon or in any way related to any such Hazardous Materials including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. For purposes of this paragraph, "Hazardous Materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and amended (42 U.S.C. Sections 9601, et. seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et. seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule or regulation.

Section 2.13. To Collect Sales Tax. Stone Canyon shall ensure that all retail sales made at the Property shall be subject to the applicable sales tax, and that Stone Canyon, or the subtenant responsible for the retail sales, collect said applicable sales tax and remit the sales tax in accordance with applicable law.

Section 2.14. Insure the Property. Stone Canyon shall procure and maintain throughout the term of this Lease a policy or policies of liability insurance and renters or contents insurance at its sole cost and expense, insuring both the City and Stone Canyon against all claims, demands, or actions arising out of or in connection with Stone Canyon's use or occupancy of the Property including Plate Glass Insurance, or by the condition of the Property, the limits of such policy or policies to be in an amount not less than the limit on liability pursuant to Section 537.610, RSMo for all claims arising out of a single accident or occurrence and \$1,000,000 for any one person in a single accident or occurrence in respect of injuries to or death of any one person, and to be written by insurance companies reasonably satisfactory to the City. The insurance policy described in the preceding sentence shall contain the following endorsements: (1)

personal injury as well as bodily injury; (2) cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage; (3) broad form property damage liability; and (4) the City shall be listed as an additional insured. Stone Canyon shall obtain a written obligation on the part of each insurance company to notify the City at least ten (10) days prior to cancellation or expiration of such insurance. Such policies or duly executed certificate of insurance shall be promptly delivered to the City and renewals thereof as required shall be delivered to the City at least thirty (30) days prior to the expiration of the respective policy terms. Stone Canyon's failure to comply with the foregoing requirements relating to insurance shall constitute an event of default hereunder. In addition to the remedies provided in **Article IV** of this Lease, the City may, but is not obligated to obtain such insurance and Stone Canyon shall pay to the City upon demand as Additional Rental the premium cost thereof plus interest at the rate of seven percent (7%) per annum from the date of payment by the City until repaid by Stone Canyon.

Section 2.15. Assignment and Subletting. Stone Canyon shall not assign or sublease its interest in the Lease without the advanced, written consent of the City, which shall not be unreasonably withheld.

Section 2.16. Sales Termination Right. Stone Canyon shall have the right to terminate the Lease by providing written notice to the City within 90-days after the end of any consecutive 12-month period during which Stone Canyon's net sales are less than One Million Dollars (\$1,000,000).

ARTICLE III CITY'S COVENANT

Section 3.1 Quiet Enjoyment. The City represents and warrants that it has full right and authority to enter into this Lease and that Stone Canyon, while paying the rental and performing its other covenants and agreements contained in this Lease, shall peaceably and quietly have, hold and enjoy the Property for the term as set forth in **Section 1.1** without hindrance or molestation from the City subject to the terms and provisions of this Lease. The City shall not be liable for any interference or disturbance by other tenants or third persons, nor shall Stone Canyon be released from any of the obligations of this Lease because of such interference or disturbance.

Section 3.2. City Improvements. The City agrees to pay up to Seventy Five Thousand Dollars (\$75,000) for improvements to the Property relating to leasehold improvements to the Property and for equipment ("Equipment") from TriMark/Hockenbergs Equipment and Supply Co., Inc. all at Stone Canyon's direction and request. The parties acknowledge that such items shall be invoiced to the City and the City shall pay the same, up to \$75,000 in total, within ten days of its receipt of the same. Regardless of whether or not the Equipment becomes attached to the Property or not, the Equipment shall be deemed fixtures of the Property and part of the Property. The option purchase price set forth in **Section 1.3** shall not be increased by the cost of the Equipment. This provision shall not be interpreted to require for the City to pay any additional monies or do any additional work to the Property beyond the payment of such \$75,000 as stated above. In addition to such \$75,000 covenant, should the City elect to do any additional improvements ("Additional Improvements") to the Property, which said improvements shall in no case exceed Ten Thousand Dollars (\$10,000), the cost for the Additional Improvements shall be added to the option purchase price set forth in **Section 1.3**. All penetrations of the roof and all flashing, patching, and repair of the roof shall be done by the City's roofing contractor at the City's expense. The Parties agree that outside of the leasehold improvements and equipment and the Additional Improvements described in this section, the Property shall be delivered to Stone Canyon "as is."

Section 3.3. *City Investment in Similar Restaurants.* The City shall not (i) allow, lease to, permit to use, or sell any property, which is owned or controlled, through lease or otherwise, by the City, to any other person or entity in connection with the operation of a business deriving more than 20% of its sales from pizza, or other cheese pie product resembling pizza, or whose name includes "pizza" (collectively "Pizza Competitor") within the downtown area of Gladstone, Missouri. In addition, the City shall not grant any government incentive or benefit, such as tax abatement, financing, variance or otherwise, to any Pizza Competitor, within the downtown area of Gladstone, Missouri.

ARTICLE IV DEFAULT BY STONE CANYON

Section 4.1. If Stone Canyon defaults in the payment of rent and remains in default for ten (10) days after a written notice to pay is delivered to Stone Canyon or if Stone Canyon defaults with respect to any other covenant and remains in default for thirty (30) days after a written notice to cure default is delivered to Stone Canyon or fails to take reasonable steps to cure the default if such takes longer than 30 days; then City, at its sole option, may elect to do any of the following:

- (a) demand that Stone Canyon vacate the Property, with which demand Stone Canyon shall promptly comply; and if Stone Canyon fails to promptly vacate, City may reenter the Property, with or without court order, change the locks and take other steps to exclude Stone Canyon from the Property;
- (b) relet the Property as an agent for Stone Canyon; or
- (c) terminate the Lease by delivering or mailing to Stone Canyon an express notice of Lease termination, it being agreed that nothing less than an express notice of termination will terminate this Lease.

Section 4.2. If City reenters the Property pursuant to Paragraph 4(a) above, or if Stone Canyon vacates the Property and delivers proper notice of such to City, then City, without terminating this Lease, agrees to make reasonable efforts to mitigate Stone Canyon's damages by obtaining another tenant.

ARTICLE V ATTORNEY'S FEES

Section 5.1. In the event either of the parties is required to bring any action at law or in equity against the other party to enforce any terms of this Lease, the losing party hereby agrees to pay the prevailing party's reasonable attorney fees (including appellate fees), as they may be set by the court in which the original action was brought. If the City is awarded attorney fees pursuant to this paragraph, such fees shall be considered additional rent.

[***signature page to follow***]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in their respective corporate names by their duly authorized officers, all as of the date first above written.

Dated: 3-20, 2019

Piece18 LLC

By: 
Kevin Heaton

Title: Member



Dated: 3/26/19, 2019

City of Gladstone, Missouri

By: 
Scott Wingerson

Title: City Manager

ATTEST:



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

EXHIBIT A

MAP OF THE PROPERTY

