

MEMORANDUM

COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT

TO: Thomas Thomas, City Manager

SUBJECT: Watchtower Plaza Redevelopment

DATE: 12/13/12

In continuing our efforts to redevelop Watchtower Plaza, the City has agreed to a purchase price with GNC, L.P. The entity is controlled by George and Nancy Coin and is the landlord to Hill and Valley. Hill and Valley must first waive its first right of refusal according to its lease terms before the transaction can be finalized with the city.

Recommendation:

Council authorize the purchase property owned by GNC, L.P. in the amount of \$1,500,000, subject to minor modification being implemented by the parties legal counsel prior to execution and authorize the City Manager to execute the contract documents at his discretion.

Submitted by: Jeffery A. Eder, Community and Economic Development Director

Approved: Thomas Thomas, City Manager

PURCHASE AGREEMENT FOR COMMERCIAL REAL ESTATE

This Purchase Agreement for Commercial Real Estate (“Agreement”) is entered into on this ____ day of December, 2012, between GNC, L.P. (“Seller”), and The City of Rock Island, Illinois (“Purchaser”). In consideration of the mutual covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

1. TERMS

Purchaser agrees to purchase from the Seller and the Seller agrees to sell to Purchaser the real estate and any improvement thereon, commonly known as: The Hill and Valley Bakery having an address of 3915 9th Street, Rock Island and legally known as: Parcel 5049 (to be supplied by Seller’s Attorney) situated in the County of Rock Island and the State of Illinois (the “subject property”), for the sum of \$1,500,000.00 to be paid as follows:

- A.) **Earnest money** of \$5,000.00 in the form of a check which shall be held in trust by Rock Island & Abstract is a part of the cash at closing. In the event any contingency is not met by the date contained in such contingency, the Seller recognizes the earnest money will be returned to the Purchaser and this Agreement shall be void.

- B.) **Cash Payment** of \$1,495,000.00 shall be paid at time of closing.

- C.) **Contingent Transaction.** This Agreement is subject to Seller obtaining from Hill and Valley, Inc., Tenant a waiver of their Right of First Offer and Right of First Refusal per their lease agreement.

2. EVIDENCE OF TITLE

Within a reasonable time, Seller shall deliver a Commitment of Title Insurance issued by a title insurance company regularly doing business in the County where the subject property is located, committing the company to issue an owner’s policy in the usual form insuring merchantable title to the property for an amount equal to the purchase price for Illinois. If title evidence discloses exceptions other than those permitted under the rules for examination for abstracts of title adopted by the local County Bar Association, Purchaser or Purchaser attorney shall give written notice of such exceptions to Seller within a reasonable time. Seller shall have a reasonable time to have such title exceptions removed, or any such exception which may be removed by the payment of money may be cured by deduction from the purchase price at the time of closing. If Seller is unable to cure such exception, Purchaser shall be entitled to a refund of the earnest money. The title to be conveyed shall be by Warranty Deed to Purchaser and free and clear of all liens and encumbrances not herein specifically waived or assumed by Purchaser.

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3. CONVEYANCE OF TITLE AND DOCUMENTS OF SALE

The parties agree to execute any transfer declarations or other documents required by the state, county or municipality in which the subject property is located, as well as any documents required by the title insurance company in order to issue title insurance.

4. POSSESSION AND CLOSING

Possession On Closing:

Seller shall deliver possession of the subject property to Purchaser concurrently with the closing of this transaction which shall be held on or before fourteen days after Purchaser’s removal of all contingencies.

5. PRORATIONS AND ADJUSTMENTS

The following items shall be prorated at closing as of the date of delivery of possession:

A. Prorations

- (1) Real estate taxes, based on the most recent tax information available, which, in the absence of fraud, shall be final;
- (2) Rent, if any, (with transfer in full of any security/damage deposit);
- (3) Interest on any assumed indebtedness;
- (4) Insurance premiums if policy assigned to Purchaser;
- (5) Other income and operation expenses, if any;
- (6) Special assessments, if any.

B. Adjustments

Utility charges shall be adjusted by the parties by appropriate meter readings at or about the time of delivery and surrender of possession.

6. ASSESSMENTS

Seller shall pay all special assessments, which are a lien on the subject property as of the date of closing. Seller acknowledges that prior to the execution of this Agreement Seller has no knowledge of or no notice has been received from any municipal authority concerning improvements which could result in a special assessment on the subject property. Tap on fees, if any, which exist for municipal services to the subject property shall be paid by Purchaser.

INITIAL:

7. CONDITION OF SUBJECT PROPERTY

The parties agree that the purchase price reflects the condition of the subject property and Purchaser acknowledges that the real estate and improvements thereof have been inspected, and Purchaser is acquainted with the condition thereof and accepts the same in (check one of the following):

“As Is” condition

Purchaser shall be permitted to make an inspection of the property prior to possession or closing, whichever is sooner, in order to determine whether any change in the condition of the property has occurred. Seller agrees to deliver the property in the same condition as exists as of the date of this Agreement.

8. FIXTURES AND PERSONAL PROPERTY

All personal property and fixtures presently installed or that integrally belongs to the subject property, whether attached or detached, including but not limited to brackets and fixtures, all carpeting, electric light fixtures, bathroom fixtures and accessories, telephone lines, storm doors, awnings, outside television equipment, window treatments, heating and cooling units and attached equipment and all shrubs and trees shall be left by Seller in or upon said subject property as they are as of the date of this Agreement, and shall be deemed a part of the subject property and title thereto shall pass to Purchaser at closing unless the Lease between Hill and Valley, Inc. dictates otherwise.

9. CONSTRUCTION LIEN

Seller warrants that all work and labor performed and all materials and improvements furnished to the property have been, or will be, paid in full and all releases incident thereto obtained at closing.

10. DEFAULT

If Purchaser fails to make any payment or to perform any obligation imposed upon Purchaser by this Agreement, Seller may serve written notice of default upon Purchaser and if such specified default is not corrected within ten (10) days thereafter, Seller, subject to the terms of any listing agreement, may accept the earnest money and any additional down payment as damages or may pursue any available legal remedy including specific performance.

In the event Seller fails to perform any obligation imposed upon Seller by this Agreement, Purchaser may serve written notice of default upon Seller and if such default is not corrected within ten (10) days thereafter, earnest money and any additional down payment deposit shall be refunded to Purchaser without prejudicing the Purchaser’s right to any available legal remedy including specific performance. In the event of default, the defaulting party shall be liable to the other party for reasonable attorney fees, expenses incurred by reason of default, and the real estate brokerage fee.

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11. CASUALTY CLAUSE

Seller shall bear the risk of loss and damage to the subject property prior to closing or possession, whichever first occurs. In the event all or a material part of the subject property is damaged or destroyed prior to closing or possession, whichever first occurs, this contract shall terminate and be of no further force and effect, unless the subject property can be restored to its present condition on or before the closing date. Seller shall keep adequate insurance, including fire and other extended coverage, on improvements on the subject property until title has passed to Purchaser or possession is delivered to Purchaser, whichever first occurs. Purchaser shall be responsible for insurance coverage upon taking title to or possession of the subject property, whichever occurs first.

12. EXPENSES OF TRANSFER

A. Seller shall pay:

- (1) Cost of owner's title policy or continued abstract of title.
- (2) Revenue stamps and recording of any releases.

B. Purchaser shall pay:

- (1) Recording fee for deed and mortgage
- (2) Cost of Purchaser's mortgage title insurance policy as required by mortgage.
- (3) Broker's Commission.

13. REPRESENTATIONS OF SELLER – HAZARDOUS WASTE

Seller hereby represents to Purchaser that, to the best of Seller's knowledge, the subject property is not contaminated with, nor threatened with contamination from outside sources by, any chemical, material or substance to which exposure is prohibited, limited or regulated by any federal, state, county, local or regional authority or which is known to pose a hazard to health and safety and that Seller has not used the subject property as a landfill or dumpsite, or for storage of hazardous substances, or has not otherwise done anything to contaminate the subject property with hazardous wastes or substances. Seller warrants that the subject property is not subject to any local, state or federal judicial or administrative action, investigation or order, as the case may be, regarding wells or underground storage tanks, solid waste disposal sites, or hazardous wastes or substances.

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At Purchaser's cost, Purchaser shall be permitted to conduct any environmental tests it deems necessary for the purpose of discovering the existence of any hazardous waste or substances. Should such environmental testing reveal the presence of any hazardous wastes or substances, Purchaser may, at its option, terminate this Agreement and any earnest money paid shall be returned to Purchaser. Notwithstanding the above, the parties may agree by amendment and modification of this Agreement, to terms necessary to remedy any environmental condition discovered and then proceed with performance of this Agreement. Purchaser agrees, at its cost and without undue delay, to restore the subject property to its original condition should it proceed with the environmental testing contemplated herein.

14. LEASES

As of the date of this Agreement, the subject property is subject to the Hill and Valley, Inc. Lease dated August 10, 2005.

Prior to closing, Seller shall not enter into any new leases or agree to extend any existing leases without Purchaser's prior written consent.

15. NOTICES

All notices required hereunder shall be in writing and shall be served upon the parties at the addresses designated herein by personal service, certified mail (return receipt requested), or Federal Express or other overnight mail.

Seller:
George & Nancy Coin
6211 Utica Ridge Road
Suite 204
Davenport, IA 52807

Copy to:
William J. Snyder
Snyder, Park & Nelson, P.C.
1600 4th Avenue #400
Rock Island, IL 61201

Purchaser:
The City of Rock Island
Attn. Thomas Thomas, City Manager
1528 Third Avenue
Rock Island, IL 61201

Copy to:
The City of Rock Island
Attn. Ted Kutsunis
1528 Third Avenue
Rock Island, IL 61201

16. GENERAL CONDITIONS

This Agreement shall be binding upon the parties and their successors and assigns. Time is of the essence of this Agreement. This Agreement shall be governed by and enforced in accordance with the laws of the state in which the subject property is located. This Agreement contains the entire agreement of the parties and no representations, warranties, or agreements have been made by either party as set forth herein. No modification, waiver, or amendment of

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the Agreement shall be effective unless made in writing and signed by the parties. All representations, warranties and covenants made by the parties shall survive closing. Paragraph headings are for the convenience of reference and shall not limit or affect the meaning of the Agreement.

17. RIDERS

This Agreement is subject to the following riders: Attachment "A" The Lease Agreement & Exhibit "A" The Parcel

18. LEGAL ASSISTANCE

The Seller and Purchaser are aware that when fully executed, this is a legally binding agreement for the sale and purchase of real estate and that in order to protect their respective interests, Seller and Purchaser are advised to consult legal counsel before this Agreement is signed.

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Exhibit "A"
The Parcel
(highlighted in red color)



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