

**Memorandum  
Community and Economic Development**

**To:** Thomas Thomas, City Manager  
**Subject:** GTI early possession agreement  
**Date:** February 25, 2015



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The City of Rock Island and GTI are moving toward a formal closing as the contract requires. However, GTI wishes to start construction before the actual closing takes place. The attached agreement allows GTI to take possession before closing permitting construction to start as soon as possible. GTI has 6 months to get the new facility constructed and operational so it is critical for them to start construction as soon as possible. Inspections department is ready to issue a footings and foundation permit.

**RECOMMENDATION:**

The CED Department recommends that City Council authorize the City Manager to sign the early possession agreement with GTI Rock Island Partners, LLC, subject to minor modifications by legal counsel for each party prior to execution.

**Submitted by:** Jeffery A. Eder, Assistant City Manager / CED Director

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**Approved by:** Thomas Thomas, City Manager

## **AGREEMENT FOR EARLY POSSESSION**

SELLER: The City of Rock Island, Illinois, a municipal corporation  
PURCHASERS: GTI Rock Island Partners, LLC, an Illinois limited liability company  
PREMISES: 10.19 +/- Acres USF-Holland Business Park  
SHORT LEGAL: See Attached Exhibit A  
CONTRACT DATE: August 1, 2014  
POSSESSION DATE: At Closing  
CLOSING DATE: TBD  
ESCROWEE: Meridian Title Company

WHEREAS, the parties have heretofore entered into a Real Estate Purchase Agreement ("Contract") as of the Contract Date regarding the premises, and

WHEREAS, the Purchasers desire to take possession of the premises prior to the Closing Date specified in the Contract.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. The earnest money of FIVE THOUSAND DOLLARS (\$5,000.00) already in the possession of the Escrowee shall become a nonrefundable deposit to secure their obligation hereunder (but to be applied against the purchase price upon closing).
2. It is hereby understood that this Agreement is for the convenience of the Purchasers and does not constitute a lease or tenancy.
3. Purchasers shall obtain a Liability Insurance Policy in the sum of ONE MILLION DOLLARS (\$1,000,000.00) indicating themselves as the insured, and indicating the Seller as an "Additional Insured" and will delivery proof of same to Seller's attorney prior to taking possession of the premises. Purchasers shall keep the liability policy in effect until the date of closing. Any proceeds payable by virtue of any claim made shall be payable to the Seller.
4. By executing this Agreement and accepting possession hereunder, Purchasers acknowledge that they have inspected the premises and find same to be in satisfactory and acceptable condition in satisfaction of the Contract, and that they accept the premises "AS IS". Purchasers further expressly waive any and all claims of any kind or nature relating to the condition of the premises under the terms and provisions of the Contract.
5. Purchasers acknowledge receipt of satisfactory evidence of title in conformity with the Contract and waive all objections to title other than any existing lien of the mortgage, state and federal tax liens and taxes to be paid off or prorated at closing.

6. Purchasers acknowledge that the entire risk of loss of damage or destruction to the premises shall transfer to them upon acceptance of the premises hereunder, regardless of the cause of any damage or destruction to said premises.

7. Time shall be of the essence of this Agreement.

8. In the event that the Purchasers do not close on or before the Closing Date, they shall voluntarily surrender possession of the premises to the Seller. In the event that said Contract does not close and Purchasers fail to surrender possession as agreed, then commencing on the Closing Date, Purchasers shall be liable to Seller in the sum of ONE THOUSAND DOLLARS (\$1,000.00) per day for each day of their possession from the Closing Date, to the date that possession is actually recovered by Seller.

9. Purchasers shall keep the premises in good repair and shall not commit waste during their possession thereof.

10. In the event that an action is brought by the Seller for breach of contract or for recovery of possession of the premises, the Purchasers shall also be liable to Seller for all damages sustained to the premises and any costs and attorney fees associated with recovery of the premises.

11. In the event that the Purchasers default under the Contract or this Agreement for Early Possession, Purchasers shall pay all of the Seller's attorney's fees and costs actually incurred in:

- A. Enforcing the terms and conditions of the Contract and this Agreement for Possession,
- B. Recovering possession of the premises, or
- C. Defending any action brought by Purchasers against Seller.

12. Purchasers hereby indemnify and hold Seller harmless as to any and all claims that may be brought against the Seller by any person or entity by virtue of the Purchasers' possession of the premises under this Agreement, including, but not limited to: attorney's fees, court costs, investigation and discovery expenses, judgments, legal interest, and the like.

13. Notwithstanding any provisions of the Contract, the date used for proration of real estate taxes shall be the date of possession.

14. In the event of a conflict between the terms and provisions of this Agreement and the Contract, the terms of this Agreement shall control.

15. In all other respects, the Contract dated as of the Contract Date, shall remain in full force and effect.

16. The Purchasers shall secure a bond Performance Bond in the amount of TWO MILLION DOLLARS (\$2,000,000.00) insuring the completion of the construction project naming The City of Rock Island, Illinois, a municipal corporation, as the insured party to ensure completion of the construction of the building at the aforementioned premises. All proceeds payable under said bond shall be payable to The City of Rock Island, Illinois, a municipal corporation.

17. The Purchasers shall provide a Financial Statement to the Seller showing its assets and liabilities (Balance Sheet) which shall be used by the Seller to determine if an early possession agreement should be entered into with the Purchasers.

### **HOLD HARMLESS AND INDEMNIFICATION**

1. GTI Rock Island Partners, LLC, an Illinois limited liability company, will hold The City of Rock Island, Illinois, its agents or employees harmless and indemnify them from any damages or any injury to person or property as a result of any negligent conduct by The City of Rock Island, Illinois, and/or its agents or employees or by GTI Rock Island Partners, LLC, or any of its agents, employees or assignees, in the performance of any services for the undersigned. Said Hold Harmless and Indemnification does not apply to any willful or wanton conduct of The City of Rock Island, Illinois, and/or its agents and/or employees in the performance of these services.

2. To defend The City of Rock Island, Illinois, or its agents and employees from any claims, suits or causes of action brought by any third parties alleging negligence by The City of Rock Island, Illinois, and/or its agents or employees in the performance of any services provided to the undersigned.

3. To waive any rights of subrogation for any damage or injury to person or property against The City of Rock Island, Illinois, and its agents or employees as a result of any negligent acts or omissions in the performance of services to the undersigned by The City of Rock Island, Illinois, and its agents or employees.

**SEVERABILITY CLAUSE**

If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

Sellers:

THE CITY OF ROCK ISLAND, ILLINOIS

BY: \_\_\_\_\_  
City Manager

ATTEST: \_\_\_\_\_  
City Clerk

Purchasers:

GTI ROCK ISLAND PARTNERS, LLC

BY: \_\_\_\_\_  
Managing Member

David G. Morrison, City Attorney  
1515 – 4<sup>th</sup> Avenue, Suite 301  
Rock Island, IL 61201  
Phone: (309) 786-3313  
Fax: (309) 786-7654

**EXHIBIT A**

Part of Lot 2 of USF – Holland Business Park, recorded as Document Number 98-30417 in the Rock Island County Recorder's Office, City of Rock Island, County of Rock Island, State of Illinois, described as follows: Commencing at the Southwest Corner of said Lot 2; THENCE North 2 degrees 00 Minutes 47 Seconds West along the East Right-of-Way Line of 51<sup>st</sup> Street West, a distance of 854.64 feet to the Point of Beginning; THENCE continuing North 2 degrees 00 Minutes 47 Seconds West along said East Right-of-Way Line, a distance of 30.01 feet to the Northwest Corner of said Lot 2; THENCE North 89 degrees 48 Minutes 27 Seconds East along the North Line of said Lot 2, a distance of 1240.69 feet to the Northeast Corner of said Lot 2; THENCE South 2 degrees 04 Minutes 14 Seconds East along the East Line of said Lot 2, a distance of 884.68 feet to the Southeast Corner of said Lot 2; THENCE South 89 degrees 48 Minutes 27 Seconds West along the South line of said Lot 2, a distance of 476.66 feet; THENCE North 2 degrees 00 Minutes 47 Seconds West, a distance of 854.64 feet; THENCE South 89 degrees 48 Minutes 27 Seconds West, a distance of 764.92 to the Point of Beginning, containing 10.19 acres, more or less.

For the purpose of this description the South Line of said Lot 2 has been assigned the bearing of North 89 Degrees 48 Minutes 27 Seconds East.