

RESOLUTION NUMBER 237

WHEREAS, The City of St. Louis and Gasconade Enterprises, L.L.C. entered into a Lease Agreement for land and mooring privileges authorized by Ordinance 64474, and approved on October 21, 1998; and

WHEREAS, Gasconade Enterprises, L.L.C. is desirous of refinancing the leasehold improvements with Pulaski Bank; and

WHEREAS, as a condition of such refinancing, the Lender requires the execution of a document entitled, "Consent Agreement," by the City of St. Louis as the Landlord; and

WHEREAS, a copy of the proposed Consent Agreement is attached hereto and incorporated by reference herein as Exhibit 1; and

WHEREAS, a copy of the Lease Agreement is available for inspection in the Register's Office; and

WHEREAS, The city Counselor's Office has reviewed the Consent Agreement and has approved its legal form; and

WHEREAS, the Port Commission of the City of St. Louis has approved Resolution No. 09-PT-36 at its November 10, 2009 Port Commission meeting approving the execution of the aforementioned Consent Agreement; and

WHEREAS, additionally the Board of Public Service has approved the execution of the aforementioned Consent Agreement at its November 17, 2009 meeting; and

WHEREAS, Ordinance 63687, approved March 20, 1996, mandates that such agreements must be approved by the Board of Aldermen of the City of St. Louis; and

WHEREAS, this honorable Board wishes to express its approval of the execution of the aforementioned Consent Agreement.

NOW THEREFORE BE IT RESOLVED that this honorable Board of Aldermen hereby endorses and approves the execution of said aforementioned Consent Agreement.

Introduced on the 4th day of December, 2009, by:

Honorable Kenneth Ortmann, Alderman 9th Ward

Adopted this the 4th day of December, 2009, as attested by:

David W. Sweeney
Clerk, Board of Aldermen

Lewis E. Reed
President, Board of Aldermen

EXHIBIT 1

CONSENT AGREEMENT

THIS CONSENT AGREEMENT (“*Agreement*”) is executed as of _____, 2009, by **THE CITY OF ST. LOUIS**, a municipal corporation (“*Landlord*”), and **GASCONADE ENTERPRISES, L.L.C.**, a Missouri limited liability company (“*Tenant*”), in favor of **PULASKI BANK**, a federal savings bank, and its participants, transferees, wholly-owned subsidiaries, successors and assigns (collectively, “*Secured Party*”).

RECITALS

A. Landlord has leased to Tenant the real property described on Exhibit A attached hereto (hereinafter referred to along with all improvements located on said property, whether now or hereafter existing (the “*Property*”) pursuant to that certain Lease Agreement, dated as of December 23, 1998, between Landlord and Tenant and recorded in Book 1467, at Page 0412 in the Recorder’s office for the City of St. Louis, Missouri (as the same has been or may be amended, restated, extended, renewed, replaced or otherwise modified from time to time, the “*Lease*”).

B. Tenant has requested that Secured Party provide certain a loan to Tenant (the “*Loan*”). The Loan is to be secured by a certain Commercial Leasehold Deed of Trust (the “*Deed of Trust*”) dated of even date herewith, covering, among other things, Tenant’s leasehold interest in the Property. The Deed of Trust and the other documents evidencing or securing the Loan are collectively called the “*Loan Documents*”.

C. Secured Party is willing to fund the Loan only if Secured Party receives certain agreements and assurances from Landlord and Tenant.

AGREEMENT

In consideration of the foregoing, the mutual agreements below and other sufficient consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree in favor of Secured Party as follows:

1. Subordination of Liens.

1.1. Landlord hereby subordinates to Secured Party all liens and rights (statutory, possessory, consensual or otherwise, whether granted pursuant to the terms of the Lease or otherwise and whether now existing or hereafter arising, including but not limited to rights of levy or distraint for rent), if any, that Landlord may have on or in any property of any type or nature, real, personal, tangible, or intangible (including all additions and accessions thereto, replacements and substitutions therefor and proceeds [including, without limitation, insurance proceeds] thereof) of Tenant and anything that becomes (or is held for the purpose of being) affixed to or installed in any of the foregoing, and all products, income and profits of or from the foregoing (collectively, the “*Collateral*”). Notwithstanding the foregoing, nothing contained herein (i) will be construed to prohibit Landlord from filing suit against Tenant, obtaining judgment against Tenant, and exercising on any such judgment, in accordance with applicable law, or (ii) will be construed as a waiver of any right of Landlord to proceed against Tenant in accordance with subclause (i) above, under, or with respect to, any unsecured claim of Landlord against Tenant.

2. Mortgage; Assignment; Insurance; Condemnation.

2.1. Landlord hereby consents to the Deed of Trust. In the event that Secured Party forecloses on the Deed of Trust or obtains Tenant's rights under the Lease by assignment in lieu of a foreclosure (collectively, a "Foreclosure"), then following such Foreclosure, the Lease shall continue as a direct lease agreement between Landlord and Secured Party on the same terms and conditions and for the balance of the term of the Lease (including any extensions or renewals thereof). After a Foreclosure, or after Landlord and Secured Party enter into a new lease pursuant to Section 3.6 below, Secured Party may either assign the Lease to any transferee third party (which will assume the Lease) or sublease the Property to any subtenant; provided Landlord, through its Board of Public Service, Port Commission and its Board of Aldermen, consents to any such assignment or sublease, which consent shall not be unreasonably withheld.

2.2. No mortgage upon Landlord's interest in the Property may be superior in right to the Lease, or to the Deed of Trust.

2.3. Secured Party is to be the named insured on any insurance policies regarding the Property. In the event of a total condemnation, all proceeds will be paid to Secured Party, to be applied in accordance with the terms of the Loan Documents. Any excess proceeds remaining after the Loan is paid in full shall be paid to Landlord. All condemnation awards are subject to Secured Party's approval, and Secured Party will be permitted to participate in all condemnation proceedings. For the purpose of this Section 2.3, any action taken by Landlord pursuant to Sections 9 or 10 of the Standard Provisions section of the Lease shall be deemed a "condemnation."

3. Foreclosure; Actions of Secured Party; Cure. In connection with the Collateral, Landlord and Tenant hereby agree in favor of Secured Party as follows:

3.1. After the occurrence of an Event of Default (as such term is defined in the Deed of Trust), Secured Party may, without being deemed to have assumed any obligations under the Lease, go onto the Property for the purpose of exercising its rights hereunder and under the Loan Documents, including, without limitation, foreclosing the Deed of Trust, and removing or taking possession of the Collateral regardless of the nature of the Collateral or its relationship to the Property.

3.2. Landlord agrees that it will rely on a certificate from Secured Party that Event of Default exists.

3.3. Secured Party is at all times (whether or not an Event of Default has occurred) permitted to go onto the Property to inspect the Collateral.

3.4. Landlord agrees not to interfere with or hinder Secured Party in the exercise of any rights granted to Secured Party under the Loan Documents, or otherwise permitted by law, including, without limitation, taking any action contemplated by this Section 3. Secured Party agrees to repair any damage to the Property which is caused by the removal of Collateral or the inspection of the Property.

3.5. Landlord will give written notice to Secured Party of the occurrence of any default or event of default by Tenant under the Lease at the same time Landlord gives such notice to Tenant and Secured Party will have the right, but not the obligation, to cure any such default within ninety (90) days after its receipt of such notice; provided, however, that such ninety (90) day period shall be extended for so long as Secured Party is either (i) diligently attempting to cure such default or (ii) diligently attempting to foreclose upon the Deed of Trust. Landlord agrees that it shall not exercise any of its rights or remedies as a result of any breach or default by Tenant under the Lease unless Landlord has complied with this Section 3.5.

3.6. In the event of any termination of the Lease (including, without limitation, any termination pursuant to the Federal Bankruptcy Code), (a) Secured Party shall have the right to request that Landlord enter into a new lease agreement with Secured Party within forty-five (45) days after the

date on which Secured Party receives written notice of the termination of the Lease, and (b) Landlord and Secured Party shall enter into such new lease agreement on the same terms and conditions as the Lease, as modified by this Agreement, within thirty (30) days after Landlord receives Secured Party's request. Such new lease shall be for the then-remaining term of the Lease.

4. No Assumption by Secured Party. Notwithstanding anything contained herein to the contrary, Landlord and Tenant agree that (i) Secured Party has not assumed any duty, liability or obligation of Tenant under the Lease, and (ii) any payment or act done by Secured Party to cure any default by, Tenant under the Lease, or any action to renew or extend the Lease, or Secured Party's exercise of its other rights under Section 3, will not constitute an assumption by Secured Party of the Lease or any obligation of Tenant. In addition, in the event Secured Party acquires Tenant's interest in the Property, Secured Party shall not be (a) liable or responsible for any prior act or omission of Tenant; (b) subject to any claims or defenses which Landlord might have against Tenant; (c) liable or responsible for any default by Tenant under the Lease or obligated to cure any prior default by Tenant under the Lease; (d) liable or responsible for any agreement of Tenant to indemnify or defend Landlord, or to reimburse Landlord for any sums expended by Landlord; or (e) bound by any amendment to the Lease not approved by Secured Party in writing. In addition, in the event of a Foreclosure, Secured Party shall not be responsible or liable for any of the matters which are described in Sections 3, 4 and 5 of the Standard Provisions section of the Lease or for any other violations of applicable environmental laws, codes or ordinances to the extent such matters or violations arose or occurred prior to the date of the Foreclosure or were existing as of the date of the Foreclosure. Without limitation of the foregoing, Secured Party shall not be obligated to indemnify Landlord pursuant to Section 5 of the Standard Provisions section of the Lease for any release or discharge of any hazardous materials on or from the Property if such hazardous materials are present on the Property as of the date of a Foreclosure.

5. Certifications. Landlord certifies to Secured Party that (i) Landlord is the sole owner of the premises leased pursuant to the Lease, (ii) Tenant has complied with all of its construction obligations under the Lease, (iii) a copy of the Lease (including all amendments, restatements, extensions, renewals, replacements or modifications thereof) is attached hereto as Exhibit B, (iv) the Lease is in full force and effect and neither Landlord nor to Landlord's knowledge, Tenant, is in default in any respect under the Lease, and (v) Landlord currently has no interest, right, title or claim to any of the Collateral or any of Tenant's or other personal property located on the Property. Upon the reasonable request of Secured Party or Tenant, Landlord agrees to certify that the Lease is in effect and Tenant is in good standing, and confirm the date of commencement of the Lease and the date of termination of the Lease.

6. Consent. Landlord hereby consents to the terms of the Deed of Trust, and agrees that at Secured Party's discretion, the Deed of Trust and/or this Agreement may be recorded by Secured Party in the real estate records where the Property is located. Landlord hereby acknowledges and agrees that Lessee's grant of the Deed of Trust will not be deemed to violate any of the terms of the Lease or cause a default thereunder.

7. Notices. All notices and other communications required or permitted hereunder are to be in writing, and will be deemed to have been given or made when delivered in person to the persons below or four (4) days after deposited in the United States mail, first class postage prepaid, or, in the case of overnight courier services, one (1) business day after delivered to the overnight courier service, or in the case of telecopy notice, when sent, verification received, in each case addressed as set forth below, or at such other address as may be designated by notice to the other in accordance with the terms of this Section 7:

If to Landlord: The City of St. Louis
Room 212 City Hall
1200 Market Street
St. Louis, Missouri 63103
Attn.: Comptroller

with a copy to: The Port Authority of the City of St. Louis
1015 Locust Street, Suite 1200
St. Louis, Missouri 63101
Attn.: Nick Nichols

and to: The City of St. Louis
Room 314 City Hall, Legal Department
1200 Market Street
St. Louis, Missouri 63103
Attn.: City Counselor

If to Tenant: Gasconade Enterprises, L.L.C.
1441 Hampton Avenue
St. Louis, Missouri 63139
Attn.: Glen T. Slay

If to Secured Party: Pulaski Bank
900 Olive St.
St. Louis, Missouri 63101
Attn: Paul Grosse

with a copy to: Armstrong Teasdale LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102
Attn: Robert C. Graham, III

8. Miscellaneous. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by all parties hereto. This Agreement continues in force until (i) all of the obligations of Tenant to Secured Party are paid and satisfied in full and all financing arrangements between Secured Party and Tenant have been terminated, or (ii) the expiration or termination of the Lease, in accordance with the terms of the Lease and this Agreement. In the event of any conflict between the terms of this Agreement and the terms of the Lease, the terms of this Agreement shall control and govern. For the purpose of this Agreement, the term "Secured Party" shall be deemed to include any person or entity who acquires Tenant's interest under the Lease as a result of a Foreclosure.

9. Counterparts; Facsimile Signatures. This Agreement may be executed in any number of counterparts which together constitute one instrument. Signatures to this Agreement may be given by facsimile or other electronic transmission, and such signatures are fully binding on the party sending the same.

10. Successor and Assigns. This Agreement (including, without limitation, all notice requirements and rights to cure) inures to the benefit of and is enforceable by Secured Party and its respective successors, transferees and assignees against Landlord and Landlord's successors, transferees, and assignees, including, without limitation any financial institution subsequently providing financing to Tenant, any person purchasing all or substantially all of the assets or stock of Tenant, or to the extent not included in the foregoing, any person purchasing the assets or stock of Tenant from Secured Party in a foreclosure or similar proceeding, or consensual transaction.

11. Recordation. Secured Party shall be entitled to record this Agreement.

Acknowledgment. The Port Commission of the City of St. Louis, the Board of Public Service of the City of St. Louis and the Board of Aldermen of the City of St. Louis each hereby gives their written consent to the Deed of Trust as described in the foregoing Consent.

Signature Page Follows

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first above written.

PORT COMMISSION OF THE CITY OF ST. LOUIS

By: _____
Print Name: _____
Title: _____

BOARD OF PUBLIC SERVICE OF THE CITY OF ST. LOUIS

By: _____
Print Name: _____
Title: _____

BOARD OF ALDERMEN OF THE CITY OF ST. LOUIS

By: _____
Print Name: _____
Title: _____

GASCONADE ENTERPRISES, L.L.C.

By: _____
Print Name: _____
Title: _____

PUALSKI BANK

By: _____
Paul Grosse, Regional President

STATE OF MISSOURI)
)SS.
CITY OF ST. LOUIS)

On this ____ day of _____, 2009, before me appeared _____, to me personally known, who, by me being duly sworn did say that s/he is _____ of The Port Commission of the City of St. Louis, Missouri, and said _____ acknowledged that s/he executed the same in behalf of said Port Commission, and said _____ acknowledged said instrument to be the free act and deed of said Port Commission.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the county or city and state aforesaid, the day and year last above written.

Notary Public

My Term Expires: _____

STATE OF MISSOURI)
)SS.
CITY OF ST. LOUIS)

On this ____ day of _____, 2009, before me appeared _____, to me personally known, who, by me being duly sworn did say that s/he is _____ of The Board of Public Service of the City of St. Louis, Missouri, and said _____ acknowledged that s/he executed the same in behalf of said Board of Public Service, and said _____ acknowledged said instrument to be the free act and deed of said Board of Public Service.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the county or city and state aforesaid, the day and year last above written.

Notary Public

My Term Expires: _____

STATE OF MISSOURI)
)SS.
CITY OF ST. LOUIS)

On this ____ day of _____, 2009, before me appeared _____, to me personally known, who, by me being duly sworn did say that s/he is the clerk of The Board of Alderman the City of St. Louis, Missouri, and said clerk acknowledged that s/he executed the same in behalf of said City of St. Louis, Missouri by authority of its Charter, and said clerk acknowledged said instrument to be the free act and deed of said City of St. Louis, Missouri.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the county or city and state aforesaid, the day and year last above written.

Notary Public

My Term Expires: _____

STATE OF MISSOURI)
)SS.
CITY OF ST. LOUIS)

On this ____ day of _____, 2009, before me appeared _____, to me personally known, who, by me being duly sworn did say that he is _____ of Gasconade Enterprises, L.L.C., a Missouri limited liability company, and said _____ acknowledged that he executed the same in behalf of said limited liability company, and said _____ acknowledged said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the county or city and state aforesaid, the day and year last above written.

Notary Public

My Term Expires: _____

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

On this ____ day of October, 2009, before me, a notary public in and for the County of St. Louis, State of Missouri, appeared Paul D. Grosse, to me personally known and who, being by me duly sworn, did state that he is a Regional President of Pulaski Bank, a federal savings bank, and that the said instrument was signed on behalf of said corporation, and said Paul D. Grosse acknowledged that he executed the same as his free act and deed on behalf of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires: _____

EXHIBIT A

The leasehold estate created by that certain Lease Agreement dated December 23, 1998 executed by and between the City of St Louis (as landlord) and Gasconade Enterprises, LLC (as tenant) recorded in Book 1467 page 0412.

A tract of land being part of Block 2671, 2709 and 2614, part of Wyandotte Street, 60 feet wide, as vacated by Ordinance No. 54162, and part of First Street in the City of St. Louis, Missouri and being more particularly described as follows

Beginning at a point, said point being located 27.63 feet Southeasterly and radial to the point of tangency on the Easterly line of Missouri Pacific Railroad right of way opposite Osceola Street, 60 feet wide, said radial line being South 43 degrees 48 minutes 44 seconds East; thence along a curve to the right for which the radius point bears South 45 degrees 47 minutes 28 seconds East 1,800.00 feet, an arc distance of 95.16 feet to a point on the Easterly prolongation of the Northerly line of Osceola Street, 60 feet wide, said point also being on the Southerly line of the property now or formerly conveyed to Land Realization Authority of St Louis recorded as daily No. 63 on 3/25/1974 of the St. Louis City Records; thence along said Easterly prolongation and the Southerly line of said Land Reutilization Authority tract South 80 degrees 40 minutes 56 seconds East 61.43 feet to the Southerly prolongation of the Westerly line of Piedmont Street, 120 feet wide; thence along said Southerly prolongation of the Westerly line and the Easterly line of said Land Reutilization Authority tract North 09 degrees 29 minutes 04 seconds East 76.39 feet to a point; thence departing said Easterly line North 48 degrees 27 minutes 52 seconds East 30.21 feet; thence North 45 degrees 50 minutes 08 seconds East 410.50 feet to a point of curvature to the left, said curve having a radius of 1,650.00 feet; thence along last said curve an arc distance of 178.61 feet to a point of tangency; thence North 39 degrees 38 minutes 54 seconds East 441.16 feet; thence North 20 degrees 33 minutes 14 seconds East 98.42 feet to a point of curvature to the right for which the radius point bears South 69 degrees 26 minutes 46 seconds East 468.28 feet; thence along last said curve an arc distance of 94.86 feet to a point of tangency; thence North 32 degrees 09 minutes 36 seconds East 124.34 feet; thence South 54 degrees 52 minutes 41 seconds East 18.63 feet to a point of curvature to the left for which the radius point bears South 54 degrees 52 minutes 41 seconds East 452.43 feet; thence along last said curve an arc distance of 346.58 feet to a point of tangency; thence South 08 degrees 46 minutes 08 seconds East 91.74 feet; thence South 46 degrees 32 minutes 50 seconds East 329.01 feet more or less to the edge of water of the Mississippi River, as established November 6, 1997, thence along last said edge of water the following courses and distances; thence South 39 degrees 06 minutes 41 seconds West 66.60 feet; thence South 40 degrees 12 minutes 50 seconds West 140.07 feet; thence South 39 degrees 27 minutes 26 seconds West 139.21 feet; thence South 46 degrees 19 minutes 22 seconds West 107.95 feet; thence South 39 degrees 35 minutes 33 seconds West 177.50 feet; thence South 43 degrees 49 minutes 40 seconds West 145.78 feet; thence South 44 degrees 43 minutes 04 seconds West 260.80 feet; thence South 41 degrees 55 minutes 31 seconds West 80.49 feet; thence South 37 degrees 59 minutes 54 seconds West 74.60 feet to a point on the Southeasterly prolongation of the centerline of former Wyandotte Street, 60 feet wide vacated by ordinance No. 54162; thence along last said prolongation line and last said centerline North 80 degrees 53 minutes 37 seconds West 613.53 feet; thence departing last said centerline North 35 degrees 01 minutes 52 seconds East 41.09 feet to a point of curvature to the right; said curve having a radius of 1,800.00 feet; thence along last curve an arc of 288.33 feet to a point of beginning.