

City of Dade City

AGENDA MEMO

To: Honorable Mayor and Members of the City Commission
From: William C. Poe, Jr., City Manager
Subject: Sale of the McIntosh Building located at 37745 Church Avenue.
Date: August 18, 2009

It is requested that the City Commission consider the following information and recommendations:

BACKGROUND:

JDR Investments, Inc. has submitted a contract for the purchase of the American Legion/McIntosh Building located at 37745 Church Avenue.

ISSUES:

Currently the City has ownership of the McIntosh Building, which is utilized as a rental facility. Rental hours of the facility have fallen from 266.5 in FY 07-08 to 67.5 in FY 08-09; representing nearly a 75% drop. The current rental rate is \$50.00 an hour. I believe rentals have dropped due to the economic climate. Even if zero rentals occur within a certain month, there are still expenses associated with the building, such as electric and upkeep of the grounds. Those costs can run in the range of \$875 per month. Please find a breakdown of the rental hours and average costs attached. With that being said, there are several other rental facilities within Dade City: The Hornbuckle Room, The Woman's Club, the Armory, and the Garden Club. Furthermore, the proposed design of the new City Hall will include a Commission Chamber that can double as a meeting area (rental) for area organizations.

Attached is a copy of the contract from JDR Investments, Inc. offering \$105,000 for the property. Included in the contract is a 60 day due diligence period from the date of the contract for the buyer. If the contract is approved, language will be added that the American Legion group will be allowed to continue to meet in the McIntosh Building or have a comparable space provided for them.

With this contract, the City has not conducted an appraisal of the property. The contract price is based on the assessed value as set by the Pasco County Property Appraisers office.

The sale of the property will allow for the proceeds to go towards replenishing funds used for the design of the new city hall, special one time project, or placed in the bank for a

future rainy day. Also, the property if sold will go on the tax rolls, thus increasing the tax base.

It is unknown to me at this time, the proposed use of the property.

ALTERNATIVES:

1. Approve the contract.
2. Deny the contract.
3. Amend the contract, thus directing staff to negotiate further with JDR Investments, Inc. and gain approval from The American Legion.

RECOMMENDATION:

Amend the contract as Commission sees fit and direct staff to discuss with The American Legion and negotiate with JDR Investments, Inc.

FUNDING:

There is no required funding required of the City.

American Legion Hall

Rentals

Rental Amounts			Monthly Avg
FY 06-07	FY 07-08	FY 08-09	
\$ 6,779.38	\$ 8,003.75	\$ 3,699.38	
Avg / mo			
\$ 564.95	\$ 666.98	\$ 308.28	
Total			
			\$ 385.05

Rental Hours		
FY 06-07	FY 07-08	FY 08-09
286.75	266.50	67.50

Utilities

Propane

fy 06-07	\$ 166.03			
fy 07/08	466.82			
fy 08/09	670.44	Total	yearly avg	
		1303.29	\$ 325.82	\$ 27.15

Electric

fy 06-07	fy 07/08	fy 08/09	Total	
\$ 435.75	\$ 329.50	\$ 312.82	\$ 1,078.07	\$ 359.36

Sewer/Water

fy 06-07	fy 07/08	fy 08/09	Total	
\$ 56.29	\$ 53.94	\$ 30.07	\$ 140.29	\$ 46.76

Insurance

Total Insurance / Year \$ 2,111.00

\$ 175.92

Maintenance

Grounds Maintenance

Yearly Avg
\$ 495.00 \$ 41.25

Facilities Maint

Avg Man cost/ man
hrs / mo hr
15 \$ 15.00 \$ 225.00

Cost / month
\$ 875.44

Avg
Monthly
Rental
\$ 385.05

CONTRACT FOR SALE AND PURCHASE OF REAL ESTATE

This Contract ("Contract") is made and entered into by and between JDR INVESTMENTS, INC., a Florida corporation, ("Buyer"); and THE CITY OF DADE CITY, a Florida municipality ("Seller"), and is effective as of the date executed by the last of the Buyer and Seller (the "Effective Date").

1. Sale of Property. Seller agrees to sell and convey to Buyer and Buyer agrees to purchase and acquire from Seller upon the terms and conditions set forth herein the property located at 37745 Church Avenue, Dade City, Pasco County, Florida, more particularly described on Exhibit "A" hereto (the "Property").
2. Purchase Price and Deposit. The total purchase price shall be \$105,000.00, which shall be paid as follows:
 - (a) A \$5,000.00 initial deposit due on the Effective Date to be held by the "Escrow Agent," Meridian Title Company, Inc., located at 37837 Meridian Avenue, Suite 100, Dade City, Florida.
 - (b) Balance to be paid in cash at closing.
 - (c) Escrow Agent will hold and disburse the Deposit in accordance with the terms and conditions of this Contract.
3. Apportionments, Adjustments and Incidental Costs. The costs incidental to this transaction shall be borne as follows:
 - (a) Seller shall pay:
 - (1) Any fees associated with the release of Seller's mortgage at Closing, if any, including, but not limited to, any payoff fees, express mail, and recording fees.
 - (2) For documentary stamps required upon recording the deed.
 - (3) For a preliminary title report and the premium for any title insurance owner's policy and endorsements.
 - (b) Buyer shall pay:
 - (1) For documentary stamps required upon recording any new mortgage or this Contract.
 - (2) Intangible tax.
 - (3) Recording fees for the deed (exclusive of documentary stamps) and any new mortgage or this Contract.
 - (4) For preparation of Closing documents.

- (c) Any other unnamed Closing costs shall be borne by the Buyer.
 - (d) In the event any Closing costs are paid by the party not identified in this paragraph as being responsible for those costs, the payment of those Closing costs will result in an adjustment to the balance remaining on the Purchase Price in favor of the paying party.
 - (e) Each party shall be responsible for the payment of its own counsel fees and other costs and expenses in connection with the transaction.
 - (f) The provisions of this Paragraph 3 shall survive Closing.
4. Closing. This transaction shall be closed (the "Closing") within 90 days of the Effective Date at a time and place mutually agreed between Buyer and Seller.
5. Due Diligence Examination. This Contract is expressly conditioned upon Buyer's determination that the real property is a suitable investment for Buyer's business; such determination to be made in Buyer's sole and absolute discretion. Buyer may terminate this Contract for any reason whatsoever during the period of this Due Diligence Examination, at which time Buyer is entitled to return of its Deposit. The following detail Buyer's and Seller's rights and responsibilities as part of the Due Diligence Examination:
- (a) For sixty (60) days from and after the date of this Contract, Buyer shall have the right to make tests and studies as to the adaptability of the property for Buyer's intended use. Such tests and studies shall be made in good faith and may include, but not necessarily be limited to: building inspections, test borings, surveys, and the analysis of the availability of water, storm and sanitary sewers. All such tests and studies are to be made at Buyer's sole expense, and Buyer shall be liable for any physical damage to the property or improvements erected on or off the property caused by such tests and studies, and Buyer agrees to indemnify Seller for any such physical damage. Buyer will give all such tests to Seller, should Buyer not close.
 - (b) Seller agrees to permit Buyer or Buyer's representative(s) to enter the property for the purpose of making the tests and studies heretofore referred to, and to permit Buyer or Buyer's representative(s) to conduct any such tests or studies. Buyer shall indemnify and hold Seller harmless from any damages or costs arising out of such entry. In the event a closing does not occur, Buyer agrees to restore the property to its original condition prior to entry by Buyer, insofar as such restoration is not barred by impossibility. Notwithstanding anything herein to the contrary, in the event this transaction does not close, then this provision will survive the termination of this Contract.
 - (c) If the Buyer determines, in its sole and absolute discretion, that the property is not suitable for Buyer's business, Buyer shall so notify Seller in writing, delivered to Seller no later than the close of regular business sixty (60) days from the Effective Date (or if that day is not a regular business day, the next regular business day thereafter), and the Contract shall wholly cease without further act or deed and neither party shall have any further claim against the other except the Buyer's deposit shall be returned to Buyer.

Failure to notify Seller within the prescribed time period shall constitute a waiver of Buyer's right to terminate this Contract pursuant to this section. Placing in mail, certified mail, return receipt requested, at addresses shown in this Contract, shall constitute delivery.

6. Title Evidence.

- (a) No later than thirty (30) days prior to closing of this transaction, Seller shall, at its expense, deliver to Buyer a title insurance commitment ("Commitment") to be prepared by Meridian Title Company, Inc., as agents for Attorneys' Title Insurance Fund, together with a copy of the documents of record identified therein, agreeing to issue to Buyer, upon recording the deed, an owners' policy of title insurance in the full amount of the purchase price, insuring Buyer's title to the real property included in this sale (the "Real Property") subject to the following (the "Permitted Encumbrances"):
 - (1) The lien of taxes and assessments for the calendar year of the Closing of the subsequent years;
 - (2) Public utility easements;
 - (3) All zoning, site plans, and Development Orders affecting the property, and
 - (4) All matters shown on the Commitment and not timely objected to in Buyer's Title Notice (as hereinafter defined).
- (b) Buyer shall notify Seller in writing (the "Buyer's Title Notice") within 15 days after Buyer's receipt of the Commitment if the Commitment discloses any defects in the title to the Real Property (the "Title Defects"), other than the Permitted Encumbrances, which Buyer deems to be unacceptable. Any such defects appearing in the Commitment not noted by Buyer in the Buyer's Title Notice, or any defects noted in a Buyer's Title Notice not delivered within the time period specified above, shall be deemed to have been waived by Buyer.
- (c) Seller, at Seller's expense, shall provide a boundary survey of the subject real property to Buyer within 45 days after the Effective Date. Buyer or its counsel may provide written notice identifying any encroachments or any other title defects affecting the Property other than Permitted Encumbrances disclosed by said survey in Buyer's Title Notice. All such encroachments or defects so noted are to be regarded for all purposes under this Contract as title defects and, as such, are to be treated in the manner consistent with this Paragraph 6. Any such title defects shown on the survey and not noted in Buyer's Title Notice to Seller shall be deemed to have been waived by Buyer.
- (d) In the event the Commitment or Survey discloses any unacceptable title defect (other than the Permitted Encumbrances) and such defect is noted in the Buyer's Title Notice given by Buyer to Seller within the time period required hereunder, Seller shall within ten (10) days following the date Seller receives Buyer's Title Notice notify Buyer (the "Seller's Title Notice") of the Title Defects (referenced in Buyer's Title Notice or

among the requirements in Schedule B-Paragraph 1 of the Commitment) that Seller shall not undertake to cure. Unless Buyer notifies Seller of its election to terminate this Contract on or before five (5) days following the date Buyer receives Seller's Title Notice, then the Title Defects that Seller elects not to cure, as contained in Seller's Title Notice shall become additional Permitted Encumbrances.

- (e) With respect to the Title Defects listed in Buyer's Title Notice but not contained in Seller's Title Notice (the "Unpermitted Exceptions"), Seller shall make reasonable efforts to eliminate or modify the Unpermitted Exceptions. If Seller is not able to complete same prior to the Closing Date, then Seller may, but shall not be obligated to, extend the Closing Date by written notice to Buyer on or before the originally scheduled Closing Date to the earlier of ten (10) business days after Seller's elimination or modification, as applicable, of such Unpermitted Exceptions, or forty-five (45) days after said originally scheduled Closing Date (the "Cure Period"). In the event Seller is unable or unwilling to satisfy the Unpermitted Exceptions, Buyer shall, in its discretion and at its sole cost and expense, have the right but not the obligation to satisfy same. In the event neither party has satisfied the Unpermitted Exceptions on or before the Closing Date, Buyer's remedies shall be limited solely to either (i) accepting such title to the Real Property as Seller is willing and able to convey, without adjustment to or diminution of the Purchase Price, or (ii) terminating this Contract and receiving a return of the Deposit. If Seller elects to extend the Closing Date, the foregoing options shall not be available until the end of the Cure Period.

7. Seller's Closing Deliveries. At Closing (or such other times as may be specified below), Seller shall deliver or cause to be delivered to Buyer the following, in form and substance acceptable to Buyer:

- (a) Deed. Warranty Deed, executed by Seller, in recordable form conveying the Property to Buyer free and clear of all liens, claims and encumbrances except for the Permitted Encumbrances.
- (b) Closing Statement. A closing statement conforming to the proration and other relevant provisions of this Contract.
- (c) Title Policy. The Title Policy issued by the Title Company, dated as of the date of the recordation of the Warranty Deed in the amount of the Purchase Price.
- (d) Transfer Certificate. Transfer Certification confirming that Seller is a "United States Person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.
- (e) Resolution. A resolution by Seller authorizing the sale of the Property to Buyer.
- (f) Other. Such other documents and instruments as may reasonably be necessary or appropriate to consummate this transaction and to otherwise effect the agreements of the parties hereto.

8. Buyer's Closing Deliveries. At Closing (or such other times as may be specified below), Buyer shall deliver or caused to be delivered to Seller or Closing Agent the following, in form and substance acceptable to Seller:
 - (a) Closing Statement. A closing statement conforming to the proration and other relevant provisions of this Contract.
 - (b) Other. Such other documents and instruments as may reasonably be necessary or appropriate to consummate this transaction and to otherwise effect the agreements of the parties hereto.

9. Default.
 - (a) If Buyer defaults in the payment of the Purchase Price (including, but not limited to, any portion of the Deposit), or otherwise defaults in the performance of any of the terms, covenants, and conditions under this Contract on the part of Buyer to be performed, the Deposit shall forthwith be delivered by Escrow Agent to Seller as full and agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of Seller's claims against Buyer; whereupon Buyer and Seller shall be relieved, each as to the other, of all obligations hereunder. Notwithstanding the foregoing, any indemnification provisions or covenants on the part of Buyer under this Contract shall continue in full force and effect and shall not be affected or limited by Seller's said termination of this Contract.
 - (b) In the event of a wrongful failure or refusal by Seller to perform its obligations under this Contract, Buyer's sole remedies (Buyer hereby waiving all other remedies) shall be (i) an action to specifically enforce the terms of this Contract or (ii) the termination of this Contract by notifying Seller of such election in writing, whereupon Buyer shall be entitled to a refund of the Deposit then being held by Escrow Agent and the parties relieved of all further liability each to the other hereunder.

10. Real Estate Commission. There are no real estate brokers, agents or other parties entitled to brokerage or real estate commission relative to this transaction. Each party hereto represents and warrants to the other that it has not employed or retained any broker or finder in connection with the transaction contemplated by this Contract which would entitle such person to a fee or commission in connection with this transaction. Each party hereby agrees to indemnify and hold the other harmless from and against any loss, cost, claim, demand or expense (including attorneys' fees) which may be incurred or sustained by such other party by virtue of any claim for fee or commission made against it by any broker or other person claiming through the other party to this Contract, which indemnification and hold harmless agreement shall survive Closing or any termination of this Contract.

11. Assignment. Neither Buyer nor Seller shall have the right to assign this Contract or any of their rights hereunder to any person or entity, except upon the prior written consent of the other party.

12. Financing Contingency. This Contract is contingent upon approval of financing to Buyer. Buyer shall make diligent efforts to secure financing prior to Closing. For the purposes of this Contract, financing is to be demonstrated by a conditional loan commitment letter, which states that Buyer is creditworthy, has been approved and that the lender shall make the loan in a timely manner at the Closing on specified customary conditions. Buyer is responsible to resolve all conditions included in the loan commitment by the date set for Closing. In the event Buyer is unable to secure financing after diligent efforts, Buyer's deposit shall be returned to Buyer, and this Contract shall terminate.
13. Fire or Other Casualty. Except as herein provided, damage to the Property by fire or other casualty between the date hereof and the date of Closing shall not impair the obligations of either party under this Contract. In the event that the Property is damaged by fire or other casualty the net proceeds of any insurance collected prior to Closing will be paid or credited to Buyer at Closing and all unpaid claims and rights in connection therewith will be assigned to Buyer at Closing and, as between Seller and Buyer, Buyer shall be responsible for the making of any repairs which Buyer elects to have made. The amount of any unpaid claims will not, however, be credited to the Purchase Price. Notwithstanding the foregoing, in the event of a loss valued at more than thirty percent (30%) of the Purchase Price, Buyer may, at Buyer's exclusive discretion and within 10 days following such loss, terminate this Contract by notice to Seller, in which event the Deposit shall be returned to Buyer without any further right or remedy in favor of either party against the other.
14. Survival. All covenants, terms, provisions, representations and warranties set forth in this Contract, except as specifically provided otherwise herein, shall at the Closing be merged into the Deed.
15. Notices. All notices, offers, acceptances, rejections, consents, requests, and other communications hereunder shall be in writing and shall be deemed to have been given (i) when delivered in person, or (ii) when sent by telecopier (with receipt confirmed), or (iii) when sent by first class certified or registered mail, postage prepaid, return receipt requested, or (iv) on receipt after being sent by express mail or a reputable delivery servicing guaranteeing overnight delivery; provided that in the case of notice given by the methods described in (i) or (ii) above, a copy is immediately mailed by first class registered or certified mail, postage prepaid, return receipt requested, in each case addressed as follows:

If to Seller:

City of Dade City
Attn: City Attorney
P.O. Box 1355
Dade City, Florida 33526

If to Buyer:

JDR Investments, Inc.
Attn: James E. Guedry
15000 Citrus Country Drive
Dade City, Florida 33523

with a copy to:

P. Hutchison Brock, II, Esquire
Johnson, Auvil & Brock, P.A.
Post Office Box 2337
Dade City, Florida 33526

16. Governing Law and Jurisdiction. This Contract shall be deemed to be governed by, construed, and enforced in accordance with the laws of the State of Florida.
17. Modification Must Be In Writing. No modification or termination of this Contract shall be valid unless executed in writing and signed by the applicable duly authorized representatives of Seller and Buyer.
18. Counterparts. This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.
19. Waiver. The waiver of one or more defaults by any party to this Contract shall not be deemed a waiver of any subsequent default of that provision of the Contract, or of a default under any other provision of this Contract.
20. Merger Clause. This Contract (including the Exhibits attached hereto which are by this reference made a part hereof) contains the entire agreement between the parties and all understandings and agreements heretofore had between the parties hereto are merged into this Contract.

Contract for Purchase and Sale
McIntosh Building

IN WITNESS WHEREOF, the said Parties have hereunto set their hands and seals, this _____ day of _____, 2009.

Signed, Sealed and Delivered
in the Presence of:

"SELLER"

CITY OF DADE CITY, a Florida municipality

By: _____

Printed: _____

Its: _____

Printed: _____

Signed, Sealed and Delivered
in the Presence of:

"BUYER"

JDR INVESTMENTS, INC., a Florida
corporation

By: _____

Printed: _____

Its: _____

Printed: _____

EXHIBIT "A"

Legal Description

Lots F, G, H, and I of Block 1; the North 20 feet of Lots H and I of Block 2; and former street lying between said lots; Grady's Addition as per map or plat thereof recorded in the Public Records of Pasco County, Florida;

TOGETHER WITH the North 20 feet of Lots F and G of Block 2; and former street lying North thereof; Grady's Addition as per map or plat thereof recorded in the Public Records of Pasco County, Florida.

Parcel ID 27-24-21-0160-00100-00F0

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