

AN ORDINANCE APPROVING SECOND AMENDMENT TO MASTER DEVELOPMENT AGREEMENT BETWEEN THE CITY OF NORTH KANSAS CITY, MISSOURI AND NORTH KANSAS CITY DESTINATION DEVELOPERS, LLC REGARDING THE ARMOUR ROAD REDEVELOPMENT AREA.

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**WHEREAS**, the City of North Kansas City, Missouri (the “City”) is a body corporate, a third class city and political subdivision of the State of Missouri, duly created, organized and validly existing under and by virtue of the Constitution and laws of the State of Missouri; and

**WHEREAS**, by the passage of Ordinance No. 8820 on May 17, 2016, the City authorized and approved a certain Master Development Agreement (the “Development Agreement”) between the City and North Kansas City Destination Developers, LLC (the “Developer”) affecting, in part, certain real property identified as the Armour Road Redevelopment Area; and

**WHEREAS**, the City subsequently approved the First Amendment to Master Development Agreement (the “First Amendment”) by passage of Ordinance No. 8975 on April 4, 2017; and

**WHEREAS**, the Development Agreement included as part of Developer’s Phase I development obligations the development of a grocery store. Developer has been unable to identify a grocery store component developer for the Project. The Developer and the City desire to modify the grocery store requirement in connection with the issuance of bonds for the Project’s financing; and

**WHEREAS**, the parties have agreed to amend the Development Agreement with respect to the grocery store requirement, as well as to certain other items set forth in the Second Amendment.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH KANSAS CITY, MISSOURI, AS FOLLOWS:**

**Section 1.** Approving Second Amendment to Master Development Agreement. The City Council does hereby find and determine that it is in the best interest of the City and its citizens to approve the Second Amendment to Master Development Agreement (the “Second Amendment”) affecting property within the Armour Road Redevelopment Area. A copy of the Second Amendment is attached hereto, marked “Exhibit 1” and is incorporated herein by reference. The Mayor, City Clerk and City Counselor are hereby authorized and directed to execute the Second Amendment on behalf of the City. The provisions of the Second Amendment are hereby approved by the City Council of the City of North Kansas City, Missouri.

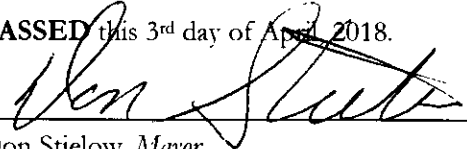
**Section 2.** Further Authority. The City shall, and the mayor, city clerk, legal counsel, city officials and employees of the City are hereby authorized and directed to take such further action, and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

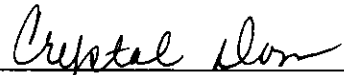
**Section 3.** Severability. The sections, paragraphs, sentences, clauses, and phrases of this Ordinance shall be severable. In the event that any such section, paragraph, sentence, clause, or phrase of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of this Ordinance are

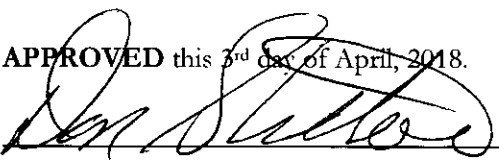
so essential to and inseparably connected with and dependent upon the void portion that it cannot be presumed that the City has enacted the valid portions without the void ones, or unless the court finds that the valid portions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

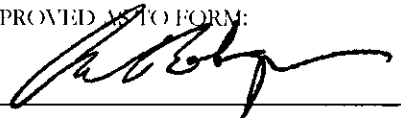
**Section 4.** Governing Law. This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.


**Section 5.** Effective Date. This Ordinance shall be in full force and effect, after compliance with all governing laws, rules, and regulations, upon passage by the City Council and approval by the Mayor.

PASSED this 3<sup>rd</sup> day of April, 2018.  
  
\_\_\_\_\_  
Don Stielow, Mayor

ATTEST:  
  
\_\_\_\_\_  
Crystal Doss, City Clerk

APPROVED this 3<sup>rd</sup> day of April, 2018.  
  
\_\_\_\_\_  
Don Stielow, Mayor

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
Anthony W. Bologna, City Attorney

  
\_\_\_\_\_  
Thomas E. Barzic, Jr., City Counselor

**EXHIBIT "1"**

## SECOND AMENDMENT TO MASTER DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO MASTER DEVELOPMENT AGREEMENT (this "Amendment") is entered into this 4<sup>th</sup> day of April, 2018, by and between the **CITY OF NORTH KANSAS CITY, MISSOURI**, a municipal corporation duly organized under the laws of the State of Missouri (the "City"), and **NORTH KANSAS CITY DESTINATION DEVELOPERS, LLC**, a Missouri limited liability company (the "Developer"), with Developer and the City each referred to herein as a "Party" and collectively the "Parties."

WHEREAS, the Parties entered into a certain Master Development Agreement dated as of May 17, 2016, as amended by that certain First Amendment to Master Development Agreement dated April 4, 2017 (as amended, the "Development Agreement"), which memorialized certain rights and obligations of each Party in relation to the development of a mixed use development in the City limits, more particularly described therein and referenced herein as the "Project".

WHEREAS, capitalized terms not otherwise defined or redefined herein shall have the same meaning as provided in the Development Agreement.

WHEREAS, the Development Agreement included as part of Developer's Phase I development obligations the development of a grocery store. Developer has been unable to identify a grocery store component developer for the Project. The Parties desire to modify the grocery store requirement in connection with the issuance of bonds for the Project's financing.

WHEREAS, coordination with Component Developers has revealed logistical problems with the timing imposed by the Development Agreement on the delivery of certain financial documents by the Component Developers, which timing and requirements the Parties desire to modify accordingly.

WHEREAS, the Development Agreement prohibits the use of Project property for billboards, but the Parties have come to mutual agreement that the installation of a limited number of billboards is acceptable and desire to modify the Development Agreement accordingly, along with certain other modifications.

NOW THEREFORE, for mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Grocery Store Requirement.
  - a. Section 1.01 of the Development Agreement is hereby revised so that the Section referenced in the definitions of "Grocery" and "Grocery Site" shall be "Section 3.04".
  - b. Section 3.02(E) of the Development Agreement is hereby replaced in its entirety by the words "Intentionally deleted."
  - c. Section 3.04 is hereby replaced in its entirety by the following:
 

3.04 Scope of Project – Phase II. The work to be undertaken in the second phase of the Project ("Phase II") shall include the following: a grocery store of at least 35,000 square feet (the "Grocery") on that portion of the Property identified as Lot 5, North Kansas City Destination Development Second Plat (as

it may hereafter be amended) (the "Grocery Site"). retail, restaurant, recreational, office, hospitality, multifamily or other commercial, recreational or residential uses, excluding single family residential. At the sole and absolute discretion of the City, the size of the Grocery may be reduced below 35,000 square feet.

- d. The first sentence of Section 3.06(A) is hereby replaced in its entirety by the following:

On or before September 30, 2018, Developer shall enter into a Component Development Agreement with a Component Developer for each of the Hotel and Apartment Project Components.

- e. Section 3.09 is hereby amended to relabel the existing paragraph comprising said Section as Section 3.09(A), and to delete the reference to "Grocery" therein. Section 3.09 is hereby further amended to add the following subsections:

B. The parcel of land identified as Lot 5, North Kansas City Destination Development Second Plat (as it may hereafter be amended) is reserved for development of the Grocery. In the event that the Developer has not identified a Component Developer for such lot by January 1, 2019, then the City shall have the right to terminate the Developer's rights and obligations to develop the Grocery upon notice to the Developer and to work separately from the Developer to identify a developer (the "Grocery Developer") of such lot for development of the Grocery and subsequently transfer such lot to the Grocery Developer for development of the Grocery; provided, however, if City elects to reduce the size of the Grocery below 35,000 square feet, then:

- i. City shall give Developer notice of such election and for a term of six (6) months following such notice Developer shall have right to develop the reduced-size Grocery. Upon expiration of the six (6) month term, at its election, the City shall have a term of six (6) months to identify a Grocery Developer for such lot for development of the reduced-size Grocery and subsequently transfer such lot to the Grocery Developer for development of the reduced-size Grocery; and
- ii. Developer shall have the right to develop the portion of Lot 5 not required by City Ordinance for the reduced-size Grocery. Any such development of Lot 5 by the Developer shall occur pursuant to the terms of Section 3.09(A), provided that the Developer and the City mutually agree in their respective sole and absolute discretion on the type of development to be built.

C. In the event that the City (i) has not selected a Grocery Developer or (ii) reduced the size of the Grocery below 35,000 square feet as provided in Section 3.09(B) by June 1, 2019, then the parcel identified as Lot 5, North Kansas City Destination Development Second Plat (as it may hereafter be amended) may be developed by the Developer pursuant to the terms of Section 3.09(A), provided that the Developer and the City mutually agree on

the type of development to be built on the parcel identified as Lot 5, North Kansas City Destination Development Second Plat (as it may hereafter be amended).

2. Permitting Requirements. The first two sentences of Section 3.06(C)(ii) are hereby replaced by the following sentences:

That before closing and commencement of construction of any portion of the Project Component, the Component Developer and City shall, at Component Developer's or Developer's expense, complete plan revisions and approval such that permits required by the City, and any other governmental agency having jurisdiction, to commence initial work on the component site (e.g. grading, footings, foundations, etc.) can be issued to Component Developer (or its contractors) immediately after closing. Thereafter, all remaining permits and approvals shall be obtained by the Component Developer, and may be obtained in phases corresponding to particular stages of development.

3. Component Financing Documents.

a. Section 3.06(C)(iii)(2) is hereby replaced in its entirety by the following:

2. A construction loan commitment letter that contains only customary and reasonable closing conditions in form and content reasonably acceptable to the City (the City's approval of which may be conditioned on the loan's closing simultaneously with the land transfer closing), Component Developer equity, and all other applicable sources of financing the provider of which is obligated to provide, each in amounts that in the aggregate meet or exceed the GMP. The provision to provide a construction loan commitment shall not relieve the Component Developer of the requirement to provide the construction loan documents for review pursuant to Section 3.06(C)(iii)(6);

b. Section 3.06(C)(iii)(3) is hereby replaced in its entirety by the following:

3. A letter from an insurer committing to issue at closing a payment and performance bond in an amount equal to the GMP in form and content reasonably acceptable to the City, and evidence of issuance at or before closing in form and content reasonably acceptable to the City;

c. Section 3.06(C)(iii)(4) is hereby replaced in its entirety by the following:

4. A letter from an insurer in form and content reasonably acceptable to the City committing to issue at closing policies for liability, casualty, workers compensation, and other insurance in types and amounts obtained on similar projects in the Kansas City metropolitan area, and evidence of issuance at or before closing;

4. [Reserved]

5. Financial Consultant. "Ameritas Investment Corp." in Sections 5.02 and 5.04 of the Development Agreement is hereby replaced with "George K. Baum & Company".

6. Billboard. Item 7 (“Commercial Billboards”) is hereby deleted from Exhibit F of the Development Agreement.

7. No Modification. Except as specifically modified by this Amendment, each and every other term and condition of the Development Agreement shall remain unchanged and in full force and effect without modification.

8. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute one and the same instrument. Each Party may rely upon electronic mail counterparts of this Amendment signed by the other Party with the same effect as if such Party had received an original counterpart signed by such other Party.

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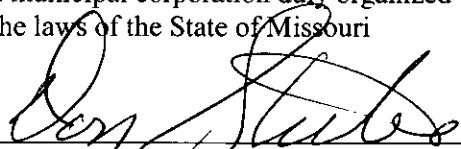
IN WITNESS WHEREOF, the City and the Developer have duly executed this Amendment pursuant to all requisite authorizations as of the date first above written.



[SEAL]

**CITY OF NORTH KANSAS CITY,  
MISSOURI,**

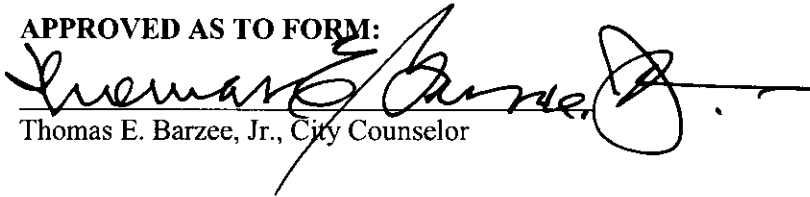
a municipal corporation duly organized under  
the laws of the State of Missouri

  
\_\_\_\_\_  
Don Stielow, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Crystal Doss, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Thomas E. Barzee, Jr., City Counselor



**DEVELOPER:**

**NORTH KANSAS CITY DESTINATION  
DEVELOPERS, LLC,**  
a Missouri limited liability company

By:  \_\_\_\_\_

Name: Rick Worner

Title: Manager

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# MEMORANDUM

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**TO:** Mayor and City Council

**FROM:** Eric Berlin, City Administrator

**DATE:** April 3, 2018

**RE:** Second Amendment to One North Master Development Agreement

The City's Master Development Agreement ("MDA") with the Master Developer of One North (the "Developer") currently provides that, as Phase I the One North project, on or before the first anniversary of the effective date of the Spine Road contract (April 5, 2018), the Developer shall enter into a Component Development Agreement with a Component Developer for each of the Hotel, Grocery and Apartment Project Components. The Developer has communicated to the City that he has thus far been unable to locate a viable, experienced candidate willing to develop and operate a grocery store on the site.

Under the provisions of the MDA, failure to meet the grocery store requirement in a timely manner could put the entire project into default, something that neither the City nor the Developer wants to happen. Accordingly, the City has been working on an MDA amendment that will remove the possibility of default.

The significant changes to the MDA amendment regarding the **grocery store requirement** are as follows:

- The scope of Phase I in the MDA currently requires the Developer to develop three main components in the first phase of the project: a hotel with at least 150 rooms and a conference center; an apartment complex with at least 200 market rate units; and a grocery store of at least 35,000 square feet.

The MDA would be amended to remove the grocery store from Phase I of the project to Phase II. The work in Phase II would be listed as including the following (only the grocery store is new):

- A grocery store of at least 35,000 square feet in the space originally slated for the grocery store. At the sole and absolute discretion of the City, the size of the Grocery could be reduced below 35,000 square feet.
  - Retail,
  - Restaurant,
  - Recreational,
  - Office,
  - Hospitality,
  - Multifamily or other commercial, recreational or residential uses, excluding single family residential.
- With regard to future development of a grocery store on the site, the MDA would be amended to provide that, if the City maintains its requirement that the grocery store be no less than 35,000 square feet:
    - In the event that the Developer has not identified a Component Developer for such lot by January 1, 2019, then the City would have the right to terminate the Developer's rights and obligations to develop the Grocery and to work separately from the Developer to identify a developer for the grocery.
    - In the event that the City has not selected a Grocery Developer by June 1, 2019, then the parcel identified for the grocery could be developed by the Developer for some other use, provided that the Developer and the City mutually agree on the type of development to be built on the parcel.
- If the City reduces its requirement that a grocery store be no less than 35,000 square feet, then:
    - the Developer shall be given six months to develop the reduced size grocery. If the Developer does not do so, then the City shall have six months to identify a Grocery Developer for a reduced size grocery.
    - If the City does not identify a Grocery Developer for a reduced size grocery, then the parcel identified for the grocery could be developed by the Developer for some other use, provided that the Developer and the City mutually agree on the type of development to be built on the parcel.

**Some additional changes to the MDA** have also been incorporated into the Second Amendment:

- The Developer would be given until September 30, 2018 to enter into a Component Development Agreement with a Component Developer for the Hotel and Apartment Project components.
- Changes proposed in Section 3.06(C) are intended to make it easier for the Developer to close on property transfers to Component Developers in a timely manner, while maintaining appropriate protections for the City related to governmental permits and approvals, assurance of adequate development financing, payment and performance bonds, and insurance.
- Commercial Billboards are removed as a listed land use restriction. On October 3, 2017, the City Council adopted an ordinance that permitted two billboards (one on Armour and one on I-29/35) in the development.

Staff recommends passing the ordinance amending the Master Development Agreement.