

**AN ORDINANCE APPROVING FIRST 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.**

**WHEREAS**, the City of North Kansas City, Missouri (the "City") is a third class city and political subdivision duly organized and validly existing under the Constitution and laws of the State of Missouri and is located in Clay County, 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 Development Agreement specified responsibilities with respect to: (a) the mass grading of the Spine Road under Sections 3.02 and 3.05 of the Development Agreement, (b) the cost of the Property to be paid by the Developer to the City at each closing contemplated under Section 3.08.I of the Development Agreement, and (c) payment by the City of certain costs for the Spine Road Contract pursuant to Section 3.05.C.ii of the Development Agreement; and

**WHEREAS**, the parties have agreed to amend the Development Agreement with respect to the Spine Road responsibilities and the cost of the Property as set forth in the First Amendment to Master Development Agreement.

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

**Section 1.** Approving First 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 First Amendment to Master Development Agreement (the "First Amendment") affecting property within the Armour Road Redevelopment Area. A copy of the First Amendment is attached hereto, marked Exhibit "1" and is incorporated herein by reference. The Mayor and City Clerk are hereby authorized and directed to execute the First Amendment on behalf of the City. The provisions of the First 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.

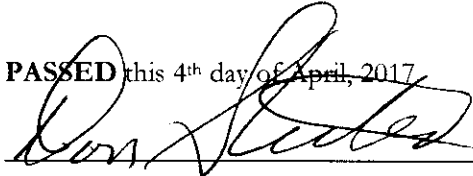
**Section 3.** Severability. The sections, paragraphs, sentences, clauses, and phrases of this Ordinance shall be severable. In the event that any such section, paragraph, sentence, clause, or phrase of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions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

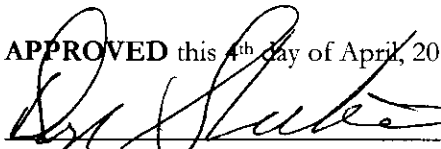
PASSED this 4<sup>th</sup> day of April, 2017.

  
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Don Stielow, Mayor

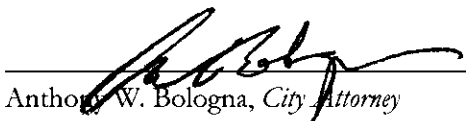
ATTEST:

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

APPROVED this 4<sup>th</sup> day of April, 2017.

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Anthony W. Bologna, City Attorney

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

**EXHIBIT "1"**

## FIRST AMENDMENT TO MASTER DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO MASTER DEVELOPMENT AGREEMENT (this "Amendment") is entered into this 4<sup>th</sup> day of April, 2017, 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 (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 specified responsibilities with respect to: (a) the mass grading of the Spine Road under Sections 3.02 and 3.05 of the Development Agreement, (b) the cost of the Property to be paid by Developer to City at each closing contemplated under Section 3.08.1 of the Development Agreement, and (c) payment by the City of certain costs for the Spine Road Contract pursuant to Section 3.05.C.ii of the Development Agreement.

AND WHEREAS, the parties have agreed to amend the Development Agreement with respect to the Spine Road responsibilities and the cost of the Property as set forth below.

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

1. Spine Road Contract. Section 3.05.C.i of the Development Agreement is hereby amended to add the following at the end of the last sentence of such subsection:

"The Spine Road Contract will be permitted to include, in addition to those matters set forth in Section 3.05.C of the Development Agreement, cost items to be paid by the City to the extent they are not wholly a Public Allocation cost as set forth on Exhibit E – Budget to the Spine Road Contract, as amended from time to time with the City's prior approval, for (i) mass site grading for a portion of the Project constituting 2,257,093 square feet and shown on the plat therefor titled North Kansas City Destination Development, a subdivision in the City of North Kansas City, Clay County, Missouri ("Recoverable Cost Property"), inclusive of the mass grading for the Spine Road, in an amount to be determined by engineers for the City and the Developer as provided in the Spine Road Contract and to be approved by City and Developer, (ii) seed, (iii) 10" PVC, (iv) 4' Diameter Concrete Manhole, and (v) Sanitary Bypass Pumping, (v) Mobilization, Project Administration, etc., (vi) Performance & Payment Bond, and (vii) Contingency; plus an additional interest cost payable to the City by the Developer, calculated at 0.80% per annum of the costs for the foregoing items (calculated on the basis of a 360-day year consisting of twelve 30-day months for the period from the date of payment to the Spine Road Contractor for the foregoing costs through the respective Property purchase date or dates (each a "Property Purchase Date") as consideration for the carry cost of such expenditure (collectively, "Recoverable Cost"). The Recoverable Cost will be allocated to the cost of each parcel of the Recoverable Cost Property conveyed to Developer (as a Project Component property or otherwise) and conveyed to any owner's or community association for the Project (as a common

area contribution or otherwise), in a prorated amount of the Recoverable Cost equal to the proportion that the square footage area of such conveyed parcel of the Recoverable Cost Property bears to the square footage area of the Recoverable Cost Property as set forth above, as more particularly set forth on Exhibit E – Budget to the Spine Road Contract, as amended from time to time with the City's prior approval (such prorated amount, in each such instance of conveyance, the "**Applicable Property Purchase Price**")."

The Recoverable Cost shall not include any fill specification necessary for the construction of specific buildings that may later be built on Property parcels after such Property is transferred from the City to the Developer or any Component Developer. None of the following shall be part of the Spine Road Contract: (i) requirements for engineered fill, (ii) specific fill compaction requirements to support vertical construction or (iii) underlying soil excavation necessary to support vertical construction on the Recoverable Cost Property.

2. Closing. In consideration of the increase in cost to the City resulting from the inclusion of the Recoverable Cost work in the Spine Road Contract, Section 3.08.1.ii of the Development Agreement is hereby amended and restated in its entirety to read as follows:

"Upon the respective Property Purchase Date, Developer shall pay to the City the Applicable Property Purchase Price. If otherwise eligible under applicable Missouri law, the Applicable Property Purchase Price shall be an Eligible Cost."

3. Spine Road Payment Obligation. Section 3.05.C.ii of the Development is hereby deleted and replaced with the following subsections ii and iii:

ii. After the effective date of the Spine Road Contract, Developer will submit to City payment requests (each, a "**Payment Request**") for amounts due under the Spine Road Contract and work or obligations related thereto (collectively, the "**City Spine Road Payment Obligations**") within one (1) day of Developer's receipt of a payment request or invoice, from the Spine Road Contractor, the Engineer, and the individual or company selected by the City to supervise Spine Road construction (the "**Spine Road Supervisor**"), if any. Each Payment Request for any City Spine Road Payment Obligation (whether a Spine Road Contract cost or not) shall include such supporting documentation as is required for payment of project costs under the Spine Road Contract, the contract with the Engineer as approved by the City, and the contract with the Spine Road Supervisor, if any, as approved by the City, as applicable in each instance to the subject of each Payment Request.

iii. Following the City's timely receipt from Developer of the Payment Request, not later than the date such payments are due pursuant to the terms of the Spine Road Contract, the contract with the Engineer as approved by the City, and the contract with the Spine Road Supervisor, if any, as approved by the City, as each such contract is applicable to each Payment Request or portion thereof, and verification by City that the work identified in the Payment Request is complete, City shall pay to the Spine Road Contractor, the Engineer, or the Spine Road Supervisor, as applicable in each such instance, the amount of the verified Payment Request. City's obligations to make any payment pursuant to a Payment Request shall be subject to the dispute resolution provisions of the Spine Road Contract, the contract with the Engineer as approved by the City, and the contract with the Spine Road Supervisor, if any. In case of any dispute, undisputed amounts shall be paid by City as provided hereinabove and disputed amounts shall be paid by the City within three (3) business days of (a) resolution of such dispute or entry of a final order by a court with respect to such dispute and (b) receipt of such final order by City. Any and all references herein to "the court" or "a court" shall refer to a court of competent

jurisdiction having jurisdiction over the parties and money, papers and property involved herein or affected hereby.”

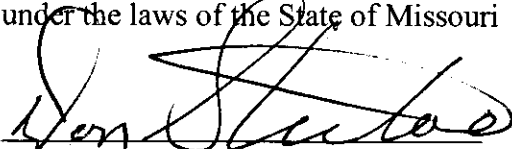
4. No Modification. Except as specifically modified by this Amendment, each and every other term and condition of the Development Agreement shall remain unchanged and in full force and effect without modification.

5. 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 facsimile or 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.

**CITY OF NORTH KANSAS CITY,  
MISSOURI,**  
a municipal corporation duly organized  
under the laws of the State of Missouri


  
Don Stielow, Mayor

[SEAL]

**ATTEST:**

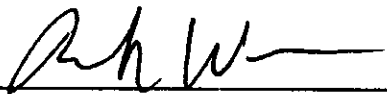
  
Crystal Doss, City Clerk

**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 4, 2017

**RE:** Approval of First Amendment to Master Development Agreement

Presented for Council consideration is a First Amendment to the City's Master Development Agreement (MDA) between the City and North Kansas City Destination Developers ("Developer"). There are two main components to the First Amendment.

1. Grading of Parcels to Be Privately Owned and Other Recoverable Costs

The contract between the Developer and Clarkson Construction, on the City Council's agenda for approval on this date, includes amounts for which the City expects reimbursement in the future, as outlined below.

Under the MDA the financial responsibility for the site grading (as distinct from the grading required for construction of the Spine Road) is the responsibility of the Developer or the Component Developers. However, City staff and the Developer are in agreement that the best course of action for both time and financial reasons is to complete mass grading of the entire development site at the same time the Spine Road is constructed. This is recommended for the following reasons:

- a. The Developer cannot reasonably be expected to pay for the site grading prior the transfer of development sites by the City. It would be highly unusual for a developer to pay for site work prior to owning or controlling the property subject to such work. Developer has stated he is unable to front the cost of such work prior to having clear title to such property.
- b. Mobilizing twice to build the road and then later grade the site will increase costs. This is undesirable for both the City and the Developer.

- c. If the road is built without other site grading then the rest of the site will be subject to flooding and other drainage problems. This is undesirable for both the City and the Developer.
- d. If the road is built first and then the remainder of the site graded later (after each development parcel is transferred to Component Developers) the road may be damaged by such construction and cost of such grading will be increased.
- e. Later grading of the site may negatively impact the development schedule to detriment of both the Developer and the City.

Based on the above, it is recommended that the Spine Road contract should include full site grading. Such work is identified as "Bid Item 40" on the bid sheet provided by the Developer. Based on the quantity allocation of the work it is estimated that 75% of such cost (approximately \$1,840,000) will be paid by the City under this contract and then recovered from the Developer.

In addition to the grading discussed above, City staff and the Developer have agreed that certain other items in the contract involve in part work that will benefit privately owned parcels. A determination has been made as to what proportion of these items should be paid with public funds and what proportion should be paid by private parties. The line items for which the City will eventually receive reimbursement for the private allocation of these line items include the following:

<u>Item</u>	<u>Bid Total</u>	<u>Private Allocation</u>	<u>Public Allocation</u>
Grading	\$2,452,706	\$1,839,529 (75%)	\$613,177 (25%)
Seed	\$ 53,760	\$ 40,320 (75%)	\$ 13,440 (25%)
10" PVC	\$ 170,772	\$ 116,125 (68%)	\$ 54,647 (32%)
4' Dia. Concrete Manhole	\$ 70,411	\$ 42,246 (60%)	\$ 28,164 (40%)
Sanitary Bypass Pumping	\$ 17,122	\$ 13,698 (80%)	\$ 3,424 (20%)
Mobilization, Project Admin, etc.	\$ 649,890	\$ 175,004 (27%)	\$474,885 (73%)
Performance & Payment Bond	\$ 63,221	\$ 17,530 (28%)	\$ 45,691 (72%)
Contingency	\$ 400,650	<u>\$ 108,289 (27%)</u>	\$292,361 (73%)
		<b>\$2,352,742</b>	

As shown in the table above, the City can eventually expect to recover \$2,352,742 of the \$10,362,827 contract from private parties. The City will recover the private portion of the non-grading items as property is later transferred by the City upon the Closing of each Component Development Agreement, as outlined in the First Amendment.

Accordingly, before the Council on this Council agenda are amendments to the MDA agreed to by the Developer which:

- a. Allow the Spine Road contract to include full site grading.
  - b. Allocate grading and other Recoverable Costs to public and private responsibility.
  - c. Provide that the cost of ground at each Closing of a Component Development Agreement will be adjusted to allocate all Recoverable Costs.
  - d. Provide an interest carry cost for the City's cost of money for the Recoverable Costs. A one-year treasury rate of 0.80% is used. Simple interest will be paid by the Developer upon transfer date of each parcel from City to Developer.
  - e. Provide that the City will be reimbursed for its cost of construction oversight.
2. The First Amendment also amends a provision in the original MDA that required the City to escrow the entire amount of Clarkson Construction's contract with the Developer. Section 3.05.C.ii of the MDA currently provides:

"The City shall deposit into an escrow account with Thomson Affinity Title or other such title company licenses in the State of Missouri as designated by Developer and agreed to by the City, funds equal to the sum of (1) the cost of the Spine Road Contract, (2) the cost to prepare the Spine Road Plans, and (3) fees for any necessary third party general supervision of construction of the Spine Road. The Parties shall enter into a commercially reasonable escrow agreement with the Title Company so that such funds are only able to be used to pay costs described in this subsection."

The City and the Developer now agree that it is not necessary for the City to deposit the entire amount described above into an escrow account. Rather, the City will respond to individual pay requests submitted by the contractor by way of the Developer.

Staff recommends approval of the First Amendment to Master Development Agreement.