

## **SECOND AMENDMENT TO GLENWOOD COMMONS**

### **REDEVELOPMENT AGREEMENT**

THIS SECOND AMENDMENT TO GLENWOOD COMMONS REDEVELOPMENT AGREEMENT (the "Second Amendment") is made and entered into as of this \_\_\_\_ day of February, 2015 (the "Effective Date"), by and between the City of Overland Park, Kansas (the "City") and Wichita/Metcalf, LLC, a Kansas limited liability company ("Developer").

A. Reference is hereby made to that certain Glenwood Commons Redevelopment Agreement dated as of October 1, 2012 between the City and Developer (the "Original Agreement"), as amended by that certain First Amendment dated as of October 20, 2014 (the "First Amendment"). Collectively, the Original Agreement and the First Amendment shall be referred to hereunder as the "Redevelopment Agreement". Capitalized terms used but not defined in this Second Amendment shall have the respective meanings set forth in the Redevelopment Agreement.

B. Developer is the owner of certain real property which is located in the City and is generally located on the Southwest corner of 91<sup>st</sup> Street and Metcalf Avenue, which, is legally described on **Exhibit A** attached to the Redevelopment Agreement and generally depicted on **Exhibit B** attached thereto (the "Project Site"). Developer is in the process of redeveloping the Project Site by constructing certain new retail facilities and other improvements on the Project Site, including without limitation, the development and construction of four (4) new retail buildings consisting of approximately 31,500 gross square feet of Improvements to be used for a table-service restaurant, a fast-food restaurant and other businesses conducting retail sales, all as more particularly set forth in Section 2.01 of the Redevelopment Agreement (the "Project").

C. Among other things, Section 2.05 of the Original Agreement required Developer to construct the Project based upon the schedule set out and contained within **Exhibit H** attached thereto - the Performance Milestones, including a deadline of "Summer, 2014" to complete Building A and the Decorative Site Amenities. In Section 2.05, the parties further agreed that in the event that Developer shall fail to meet any of the Performance Milestones set forth in **Exhibit H**, then the City may require Developer to appear before the City to show cause why Developer failed to comply with the Performance Milestones.

D. In accordance with said Section 2.05, on August 20, 2014, Developer did appear before the City's Finance and Economic Development Committee ("FAED") and showed cause as to why Developer would not complete Building A and the Decorative Site Amenities by the end of Summer, 2014 as required by Section 2.05 and **Exhibit H** to the Original Agreement, and on October 20, 2014, the governing body of the City accepted the recommendations of FAED to extend the deadline to complete Building A and the Decorative Site Amenities to December 31, 2014, which extension, along with certain other agreements, was memorialized in the First Amendment.

E. In accordance with said Section 2.05, on January 21, 2015, Developer did again appear before the City's FAED Committee and showed cause as to why Developer did not complete Building A and the Decorative Site Amenities by December 31, 2014 as required by Section 2.05 and **Exhibit H (Amended – 2014)** to the Redevelopment Agreement, and on **February \_\_\_\_, 2015**, the governing body of the City accepted the recommendations of FAED to extend the deadline to complete Building A and the Decorative Site Amenities to July 1, 2015, which extension is hereby memorialized in this Second Amendment.

F. The parties now hereby agree to further amend, revise and replace **Exhibit H (Amended – 2014)** with a new Performance Milestone for completion of the Building A and the Decorative Site Amenities.

G. The parties also agree in this Second Amendment to make certain other modifications to the Redevelopment Agreement to include reduction of the CID Cap and other related matters, all as more particularly set forth below.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree that the Redevelopment Agreement is hereby modified and amended as follows:

1. **Amended Performance Milestones:** The parties hereby agree that the Performance Milestones attached to the Redevelopment Agreement as **Exhibit H (Amended – 2014)** shall be deleted and replaced with the revised Performance Milestones attached to this Second Amendment as **Exhibit H (Amended – 2015)**.

2. **Modification of CID Cap:** The parties hereby agree that the first sentence of Section 3.04(b) shall be deleted in its entirety and replaced with the following:

"In addition to the 50/50 Limitation, the CID Sales Tax available to Developer for reimbursement of Eligible Expenses shall in no event exceed One Million Nine Hundred Fifty Thousand Dollars (\$1,950,000)(the "**CID Cap**"), which CID Cap may be subject to reduction pursuant to the terms of Section 2.05 hereof."

3. **Modification of Section 2.05 Penalties:** The parties hereby agree that the last sentence of Section 2.05 shall be deleted in its entirety and replaced with the following:

"In the event that Developer fails to construct the Decorative Site Amenities and Substantially Complete the building identified as "Building A" on **Exhibit G** attached hereto on or before July 1, 2015, then notwithstanding anything set forth in this Agreement to the contrary [including the August 1, 2015 Performance Milestone set forth on **Exhibit H (Amended – 2015)**], Developer hereby understands and agrees that the CID Cap set forth in Section 3.04(b) shall be reduced to One Million Nine Hundred Twenty Five Thousand Dollars (\$1,925,000). Further, in the event that Developer fails to Substantially

Complete the building identified as "Building B" on **Exhibit G** attached hereto on or before September 1, 2016, then notwithstanding anything set forth in this Agreement to the contrary [including **Exhibit H (Amended – 2015)**], Developer hereby understands and agrees that, in addition to the City's other remedies set forth in this Agreement, the CID Cap set forth in Section 3.04(b) shall be reduced by an additional Two Hundred Fifty Thousand Dollars (\$250,000)."

4. **Modification to Conditions Precedent to Reimbursements.** The parties hereby agree that Section 3.05(a)(i) shall be deleted in its entirety and replaced with the following:

"(i) Developer shall Substantially Complete the construction of that certain "corner building" identified as "Building A" and the Decorative Site Amenities on **Exhibit G** attached hereto;"

5. **Modification to Periodic Meetings with the City.** The parties hereby agree that the following shall be added to Section 6.09 of the Redevelopment Agreement:

"Until the completion of the Decorative Site Amenities and the Substantial Completion of the "corner building" identified as "Building A" on **Exhibit G** attached hereto, Developer hereby agrees to submit monthly reports regarding its progress of the construction activity on the Project Site to the City Manager's office on or before the 15<sup>th</sup> day of each month."

6. **Modification of Definition of Substantial Completion.** The parties hereby agree that the definition of "Substantial Completion" or "Substantially Completed" shall be deleted and replaced with the following:

"Substantially Completed" or "Substantial Completion" means the stage in the progress of improvements, or as to any particular portion thereof, when said construction is sufficiently complete so that the improvements or such particular portion can be occupied or utilized for its intended use, provided however that finished shell space which is suitable for future tenant improvements shall be considered substantial completion as long as a temporary certificate of occupancy has been issued for such space."

7. **Miscellaneous.** In connection with this Second Amendment, the parties hereby agree as follows:

(a) The parties hereby understand and agree that the Recitals set forth above are hereby incorporated as though more fully set forth herein.

(b) Except as specifically modified by this Second Amendment, the Redevelopment Agreement shall be and remain in full force and effect in accordance with the terms thereof.

(c) It is the intent of the parties that the provisions of the Redevelopment Agreement, as amended by this Second Amendment, shall be enforced to the fullest extent permitted by applicable law. To the extent that the

terms set forth in Redevelopment Agreement, as amended by this Second Amendment, or any word, phrase, clause or sentence is found to be illegal or unenforceable for any reason, such word, phrase, clause or sentence shall be modified deleted or interpreted in such a manner so as to afford the party for whose benefit it was intended the fullest benefit commensurate with making the Redevelopment Agreement as modified, enforceable and the balance of the Redevelopment Agreement shall not be affected thereby, the balance being construed as severable and independent.

(d) The parties hereto declare and represent that no promises, inducements or agreements not herein expressed have been made, that this Second Amendment contains the entire agreement between the parties hereto, and that the terms hereof are contractual and not mere recitals.

(e) This Second Amendment shall be binding upon and inure to the benefit of the parties hereto, and their successors and assigns.

(f) All remedies at law or in equity shall be made available for the enforcement of this Second Amendment.

(g) This Second Amendment may be executed in counterparts.

(h) This Second Amendment shall be construed in accordance with the laws of the State of Kansas.

**[Remainder of page intentionally left blank. Signature pages immediately follow.]**





**EXHIBIT H (Amended – 2015)**  
**PERFORMANCE MILESTONES**

<b>Completion of Building D:</b>	<b>Summer, 2014</b>
<b>Completion of Building A and Decorative Site Amenities:</b>	<b>July 1, 2015*</b>
<b>Completion of remainder of the Project:</b>	<b>Summer, 2015**</b>

\* Notwithstanding the July 1, 2015 Performance Milestone above, the parties hereby agree that Developer will not be in default unless it fails to complete Building A and the Decorative Site Amenities by August 1, 2015, but Developer will be subject to further reduction of the CID Cap as set forth in Section 2.05 (as amended by this Second Amendment) if it fails to complete these improvements by July 1, 2015. Also, for purposes hereof, "Completion of Building A" shall be deemed to Substantial Completion (as such definition is amended by Section 6 of this Second Amendment) of the building improvements, along with parking and infrastructure improvements in connection therewith.

\*\* Notwithstanding the "Completion of Remainder of Project" performance milestone set forth above, Developer shall not be required to commence construction of Building B or Building C until a tenant or tenants for such buildings are secured; provided however that Developer will be subject to further reduction of the CID Cap as set forth in Section 2.05 (as amended by this Second Amendment) if it fails to complete Building B by September 1, 2016.