



**AMENDMENT TO THE
DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF MESA AND
NKS GROUP III LIMITED PARTNERSHIP
(INCORRECTLY IDENTIFIED AS NKS GROUP III, LLC IN THE DEVELOPMENT AGREEMENT)
(GATEWAY SUPER REGIONAL CENTER)**

This Amendment to the Development Agreement between the City of Mesa and NKS GROUP III Limited Partnership (incorrectly identified as NKS Group III, LLC in the Development Agreement) ("Amendment") is made and entered into by and between the City of Mesa, an Arizona municipal corporation ("City"), and NKS GROUP III Limited Partnership, an Arizona limited partnership ("Developer"). The City and Developer may be referred to in this Amendment collectively as the "Parties" or individually as a "Party."

RECITALS

- A. The City and NKS GROUP III Limited Partnership (incorrectly identified as NKS Group III, LLC in the Development Agreement) entered into that certain development agreement dated May 21, 2007, recorded on June 1, 2007, as Instrument No. 2007-0637500 in the Official Records of Maricopa County ("Development Agreement").
- B. The City and NKS GROUP III Limited Partnership desire to amend the Development Agreement deleting in its entirety Sections 3.1, 3.2, 3.3, 3.4, 3.5 and 3.6, except Section 3.6.3 as it pertains to the prohibited uses.

AGREEMENT

IN CONSIDERATION of the foregoing recitals and the mutual covenants, agreements, and conditions including good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged in this Amendment, the Parties agree as follows:

1. **Definitions.** All capitalized words and phrases used in this Amendment will have the same meanings as those set forth in the Development Agreement, unless a different definition is set forth in this Amendment.
2. **Amendment.** The Parties desire to delete in its entirety Sections 3.1, 3.2, 3.3, 3.4, 3.5 and 3.6, except Section 3.6.3, as it pertains to the prohibited uses.
3. **Severability.** In the event, any term or provision of this Amendment is held to be invalid or unenforceable, the validity of the other provisions will not be affected, and this Amendment will be construed and enforced as if it did not contain the particular term or provision that is deemed to be invalid or unenforceable.
4. **Governing Law, Venue, and Jurisdiction.** This Amendment and the Development Agreement will be governed by and construed or enforced in accordance with the laws of the State of Arizona. Any litigation which may arise in regard to this Amendment or the Development Agreement, the Parties will and do hereby submit solely to the exclusive jurisdiction of the Superior Court of Maricopa County, Arizona, and the Parties hereby agree that the proper venue will be solely in that Court. The Parties expressly waive any and all rights to seek removal of any litigation from the Superior Court of Maricopa County, Arizona.

5. **Statutory Notice Requirement.** The Parties acknowledge that this Amendment and the Development Agreement are subject to cancellation by the City pursuant to the provisions of A.R.S. § 38-511.
6. **Merger.** All other terms of the Development Agreement not in conflict with this Amendment will remain in full force and effect. In the event of a conflict between any term and provision of the Development Agreement and this Amendment, the terms and provisions of this Amendment will control.
7. **Ratification and Reaffirmation.** The Parties do hereby ratify, reaffirm, adopt, contract for, and agree to be or continue to be, as the case may be, bound by all of the terms and conditions of the Development Agreement. Except as modified in this Amendment, all of the terms and conditions of the Development Agreement are incorporated by reference herein as if set forth at length. It is acknowledged and agreed that the execution of this Amendment by the Parties is not intended to and will not constitute a release of the City and Contractor from any and all obligations or liabilities which they have to each other under and pursuant to the terms of the Amendment, and the City and Developer are not released from any such liabilities or obligations.

IN WITNESS, WHEREOF, the parties hereto have executed this Amendment as of the day last written.

DEVELOPER

NKS GROUP III LIMITED PARTNERSHIP,
an Arizona limited partnership

By: NKS Management, L.C., an Arizona limited
liability company

Its: General Partner

By: Nelson K. Stewart
Nelson K. Stewart, Sr., Manager

Date 8-31-17

STATE OF ARIZONA)
) §§
County of Maricopa)

The foregoing was executed before me on August 31, 2017, 2017, by Nelson K. Stewart, Sr., Manager of NKS Management, L.C., an Arizona limited liability company, General Partner of NKS Group III Limited Partnership, an Arizona limited partnership, on behalf of said partnership.

Agnes Goodwine
Notary Public

My Commission Expires:



CITY OF MESA

Signature

Christopher J. Brady

Date _____

STATE OF ARIZONA)
) §§
County of Maricopa)

The foregoing was executed before me on _____, 2017, by Christopher J. Brady, the _____ of the City of Mesa, for and on behalf thereof.

Notary Public

My Commission Expires:

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Legal Description for Amendment to Development Agreement

Parcel 5 (APN 304-03-043-A)

A portion of the Southwest quarter of Section 9, Township 1 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at a brass cap flush marking the West quarter corner of said Section 9, which bears North 00 degrees 57 minutes 01 seconds West 2635.13 feet from a brass cap in handhole marking the Southwest corner of said Section 9;

Thence South 00 degrees 57 minutes 01 seconds East 1317.57 along the West line of said Section 9;
Thence South 89 degrees 37 minutes 32 seconds East 55.01 feet to the Point of Beginning;

Thence continuing South 89 degrees 37 minutes 32 seconds East 2555.94 feet to a point on the West line of that certain land described in instrument recorded in Document No. 2005-0648908;

Thence South 05 degrees 42 minutes 49 seconds West 355.67 feet along said west line;
Thence South 02 degrees 37 minutes 16 seconds West 306.05 feet;
Thence North 89 degrees 30 minutes 30 seconds West 560.00 feet;

Thence South 00 degrees 29 minutes 30 seconds West 594.04 feet, said point being 65 feet North of the South line of said Section 9;

Thence North 89 degrees 36 minutes 30 seconds West 207.72 feet;
Thence South 00 degrees 23 minutes 30 seconds West 15.00 feet;

Thence North 89 degrees 36 minutes 27 seconds West 1767.61 feet to a point on the West line of the Southwest quarter of said Section 9, said point being parallel to an 50 feet North of said South Section line;

Thence North 00 degrees 57 minutes 01 seconds West 209.99 feet along said West Section line;
Thence North 89 degrees 02 minutes 56 seconds East 55.00 feet;
Thence North 00 degrees 57 minutes 01 seconds West 1056.29 feet to the Point of Beginning.

PARCEL NO. 6 (APN 304-03-042-A)

A portion of the Southwest quarter of Section 9, Township 1 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at a brass cap flush marking the West quarter corner of said Section 9, which bears North 00 degrees 57 minutes 01 seconds West 2635.13 feet from a brass cap in handhole marking the Southwest corner of said Section 9;

Thence South 00 degrees 57 minutes 01 seconds East 1317.57 feet;

Thence South 89 degrees 37 minutes 32 seconds East, 2610.94 feet to a point on the West line of that certain land described in instrument recorded in Document No. 2005-0648908;

Thence South 05 degrees 42 minutes 49 seconds West 355.67 feet along said West line;

Thence continuing along said West line, South 02 degrees 37 minutes 16 seconds West, 306.05 feet to the Point of Beginning;

Thence continuing along said West line South 02 degrees 37 minutes 16 seconds West 538.47 feet to a point being 120.01 feet North of the South line of said Section 9;

Thence South 46 degrees 41 minutes 41 seconds West 62.24 feet;

Thence South 88 degrees 56 minutes 11 seconds West 472.46 feet to a point, said point being 65 feet North of the South line of said Section 9;

Thence North 89 degrees 36 minutes 30 seconds West, 22.78 feet;

Thence North 00 degrees 29 minutes 30 seconds East, 594.04 feet;

Thence South 89 degrees 30 minutes 30 seconds East, 560.00 feet to the Point of Beginning.

PARCEL NO. 7 (APN 304-03-012-U)

A portion of the Southwest quarter of Section 9, Township 1 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at a brass cap flush marking the West quarter corner of said Section 9, which bears North 00 degrees 57 minutes 01 seconds West 2635.13 feet from a brass cap in handhole marking the Southwest corner of said Section 9;

Thence South 00 degrees 57 minutes 01 seconds East 1317.57 feet to the Point of Beginning;

Thence South 89 degrees 37 minutes 32 seconds East 55.01 feet;

Thence South 00 degrees 57 minutes 01 seconds East 1056.29 feet;

Thence South 89 degrees 02 minutes 56 seconds West 55.00 feet to the West line of said Section 9;

Thence along said West Section line, North 00 degrees 57 minutes 01 seconds West 1057.57 feet to the Point of Beginning.