

DEVELOPMENT AGREEMENT
ANDY'S FROZEN CUSTARD
&
THE CITY OF INDEPENDENCE, MISSOURI

This Development Agreement (this “**Agreement**”) is made this ____ day of _____, 2020 by and between Andy's Frozen Custard L.L.C, a limited liability company (the “**Developer**”), and the City of Independence, Missouri, a municipal corporation (the “**City**”). The Developer and the City may collectively be referred to herein as the “**Parties**” or individually as a “**Party**”.

RECITALS

- A. The Developer is developing certain real property located in the City as an Andy's Frozen Custard commercial establishment presently referred to as “Andy's Custard” (the “**Development**”);
- B. The Developer submitted a Preliminary Site Plan for property located at 4029 S. Noland Road in Independence Missouri, which included the removal of an existing structure, the location of a new building, sign pole location, and parking lot improvements at the intersection of S. Noland Road a City Street and E Lynn Court Drive a private drive. (the “**Required Improvements**”) see Exhibit A;
- C. The limits of the Improvements will encroach onto land necessary for intersection improvements at S. Noland Road and E. Lynn Court Drive; and
- D. The City desires to enter into an agreement with Developer to facilitate the completion of intersection improvements at S. Noland Road and E. Lynn Court Drive (the “**Intersection Improvements**”),

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, the Parties covenant and agree upon all of the foregoing recitals, which are made a part of this Agreement, and upon the following:

1. **Developer Responsibilities.** The Developer shall donate a northern portion of the lot as City Right-of-Way located at 4029 S. Noland Road in Independence Missouri more specifically described as the north property line south 28 feet the entire width of the lot for the purpose of alignment and signal improvements to the intersection of Noland Road and E. Lynn Court Drive, see hatched area on attached Exhibit A.

The Developer, shall furnish the City with a complete final site plan with all appropriate legal descriptions, easements, measurements, and storm water mitigation measures along with final locations and designs of utilities with appropriate easements approved by all applicable City departments.

2. **City Responsibilities.**

The City shall provide and deliver approximately, 1,800 cubic yards of fill material that has been tested suitable to the site at 4029 S. Noland Road in Independence Missouri for the purpose of raising the site for construction of a new Andy's Frozen Custard Restaurant. Other opportunities to provide additional fill will be considered depending on suitability, project timeline, and quantity.

Provide geometric roadway improvements along Lynn Court for the intersection improvements in the City's Capital Improvement Program with a 2022-23 City Fiscal Year target date.

Provide signal improvements at the intersection of Lynn Court and Noland Road in the subsequent years.

3. **Permitting and Fees.** All applicable construction permit fees will be assessed for the Required Improvements; construction permit fees or other like or similar charges associated with the Intersection Improvements will be assessed.
4. **Timeline Considerations.** In order to remain sensitive to the overall needs of the City and Developer, fill material will be delivered to the site the first half of December 2020.
5. **Remedies.** The Parties may either in law or equity, by suit, action, mandamus or other proceedings in court seek declaratory relief, enforce and compel specific performance of this Agreement and/or seek damages for its breach. In the event of any action for breach of this Agreement, the prevailing party in such action shall be entitled to an award of their attorneys' fees and costs of suit.
6. **Notice.** All notices, requests and demands shall be in writing and shall be sent by registered or certified mail, return receipt requested, postage prepaid (in which case such notice shall be deemed given on the third business day after mailing), or by a nationally recognized overnight delivery service that provides proof of delivery, with charges prepaid (in which case such notice shall be deemed given on the next business day after deposit with such delivery service), addressed as follows:

If to the City:

Director of Municipal Services
City of Independence
City Hall
111 E. Maple Ave.
Independence, MO 64050

With a copy to:

City Counselor
City of Independence, Missouri
City Hall
111 E. Maple Ave.
Independence, MO 64050

If to the Developer:

Andy's Frozen Custard Kansas City, LLC
211 E. Water Street
Springfield, Missouri 65806
Attention: Andy Kuntz

With a copy to:

~~William Moore~~
Ruse Frets White Goss
Gentile Rhodes, P.C.
4510 Belleview Avenue, Suite 300
Kansas City, MO 64111
Attention: William Moore

7. General Provisions.

- (a) No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both City and Developer; nor will the waiver of any defect under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The failure of either Party to exercise any right under this Agreement will not constitute the approval of any wrongful act by the other Party.
- (b) The parties to this Agreement may amend or modify this Agreement only by written instrument duly executed by the Parties.
- (c) No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.
- (d) This Agreement constitutes the entire Agreement between the Parties, and no statements, promises, or inducements that are not contained in this Agreement will be binding on the parties. This Agreement may not be assigned to any other parties unless such assignment is approved in writing by both Parties.
- (e) If any part, term, or provision of this Agreement is held by a court to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the part, term, or provision was never part of this Agreement.
- (f) Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under any applicable state law.
- (g) This Agreement shall be construed in accordance with and governed by the laws of the State of Missouri.
- (h) This Agreement is executed in multiple counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement as of the day and year first set forth above.

**ANDY’S FROZEN CUSTARD KANSAS CITY
LLC,**
a Missouri limited liability company

By: _____
Andy Kuntz, Authorized Signatory

ATTEST:

City Clerk

By: _____
City Manager

APPROVED AS TO FORM:

City Counselor

EXHIBITS

Exhibit A – Preliminary Depiction of Improvements