

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into this 9th day of March, 2021, between the City of Greenfield acting through its Board of Public Works and Safety (“City”) and Depot Street Investments, LLC, an Indiana limited liability corporation (“Developer”).

WHEREAS, Developer has received approvals for location improvement of real estate at 240 W Mill Street in Greenfield, Indiana (the “Real Estate”); and

WHEREAS, Developer is desirous of redeveloping the 0.45 acre Real Estate into a restaurant and bar; and

WHEREAS, City has a Redevelopment Plan (“Plan”) for Downtown Greenfield designed to redevelop areas in order to increase employment opportunities, improve the tax base, reduce vacancy rate and underdeveloped ground in the Redevelopment Area, encourage growth and rebuild public infrastructure in the Redevelopment Area; and

WHEREAS, City has determined that the improvement of the Real Estate is in line with the Plan; and

WHEREAS, the parties are desirous to enter into an agreement that will define a public-private partnership plan to the Real Estate that will accommodate and benefit the Developer and the City.

NOW, THEREFORE, the City and Developer agree as follows:

1. Developer will complete the work set forth in the approved site development plan dated December 8, 2020. Developer estimates the value of improvements to Real Estate at approximately \$1,200,000.
2. Developer will acquire all permits required by any applicable regulatory agencies to complete the Work;
3. Developer will build the any public or private improvements within the public rights of way or easements per the City’s Public Improvement Design Standards and Specifications Manual;
4. City has provided \$100,000.00, via Grant Agreement dated April 21, 2020, for façade improvements of Real Estate and all terms of said Grant Agreement are incorporated herein and remain in full force and effect.
5. City will install a transformer and primary electric service to the Real Estate, at City’s expense, a value of \$6,357.00. Developer is responsible for running all building service lines to transformer and acknowledges and understands that Developer is responsible for all inspections and/or testing associated with the work performed by City relative to the installation

of electrical improvements referenced in this provision and that upon completion, all maintenance and operations associated with such infrastructure beyond the public main will be the responsibility of the Developer.

6. City will install sanitary improvements in Riley Avenue and Mill Street rights of way that consists of main rehab and lateral stub to Real Estate, at City's expense, a value of \$4,400.00. The Developer shall be responsible for installing the appropriately sized grease interceptor and 6" sanitary sewer lateral to the public system. The grease interceptor and lateral is understood to be in the right of way of Mill Street and an Encroachment Agreement with the Board of Public Works will be executed and recorded by Developer. Developer acknowledges and understands that Developer is responsible for all inspections and/or testing associated with the work performed by City relative to the installation of sanitary improvements referenced in this provision and that upon completion, all maintenance and operations associated with such infrastructure beyond the public main will be the responsibility of the Developer.

7. City will install a 6" fire suppression service with post indicator valve (PIV) and a 2" domestic service from the water main in Riley Avenue along the north side of the Real Estate, completely within the property lines of Real Estate, stubbing into the building per the development plans dated December 8, 2020. The City work listed above will be done at City's expense, a value of \$18,040.00. The Developer shall be responsible for 1) installing a 4" dry Fire Department Connection (FDC) line from the building out to Riley Avenue, 2) for the coring of the building where the stub in will occur, 3) the repair and sealing of the cored holes after the water lines stub into the building, 4) any hauling of excess spoils and import of proper backfill, if required, 5) testing to include hydrostatic and bacteriological sampling, and 6) long term operation and maintenance and any future repairs or replacements. Developer acknowledges and understands that Developer is responsible for all inspections and/or testing associated with the work performed by City relative to the installation of water improvements referenced in this provision and that upon completion, all maintenance and operations associated with such infrastructure beyond the public main will be the responsibility of the Developer.

8. City will install improvements along Mill Street from Riley Avenue to Pennsylvania Street including curb, sidewalk, ADA ramps, storm improvements, spot paving, and on-street parking. These improvement will be done at the City's expense, a value of \$60,000.00.

9. City will collect connection and availability fees in the amount of \$25,935.00 for City utilities. The value of such fees are based on a 0.45 acre property and installation of a 2" water meter and are listed below:

- a) Electric connection fee: ~~\$500.00~~ (N/A - previously connected),
- b) Electric availability fee: ~~\$1,300.00~~ (N/A - previously connected),
- c) Water connection fee: \$2,000.00,
- d) Water availability fee: \$585.00,
- e) Sanitary connection fee: \$22,000.00,
- f) Sanitary availability fee: \$1,350.00;

10. City will not participate in any change orders that arise due to foreseen or unforeseen conditions encountered by Developer during construction;

11. Additionally, the Developer will be allowed the nonexclusive use of what is commonly referred to as the "Wolf Lot" for parking of the Developer's patrons until such time as the City provides 30 days written notice to Developer that the "Wolf Lot" will no longer be available for public parking.

12. As consideration of City's investment, Developer agrees to construct, within five (5) years from date of execution of this Development Agreement, a publicly accessible restroom facility on the site of the Real Estate. Such restroom facility shall be constructed in accordance with designs and specifications provided by Developer and approved by the City which shall accommodate a minimum 90 users per hour and be open during all City-sponsored events held at Depot Street Park. The Developer and the City shall enter into a 99 year lease, the general terms of which are that upon inspection and acceptance of the public accessible restroom facility on the subject real estate, the City will thereafter be solely responsible for the operation and maintenance of the public restroom facility paying all costs associated therewith, including, but not limited to, all cost of operation, maintenance, utilities, general comprehensive liability insurance, property damage insurance, and any other associated costs. As a further term of said lease, the Developer agrees to lease to the City the publicly accessible restroom facility for the sum of One Dollar (\$1.00) per year. Furthermore, the terms of the lease shall be binding upon the Developer and all of its subsequent legal successors in interest. Said lease may only be assigned by Developer with the written consent of the City.

13. The parties intend for this Development Agreement to be binding upon the successors and assigns of the parties;

14. The failure of any party hereto to insist upon strict performance of any of the terms, covenants or conditions of this Development Agreement shall not be deemed a waiver of any rights or remedies which such party may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any such terms, covenants or conditions.

15. Should Developer fail or refuse to perform any of its duties and obligations under this Development Agreement, the City shall have the right to pursue all legal causes of action and remedies for such breach, and shall be entitled to require repayment of all sums expended by the City in the performance of its duties under the Development Agreement. AS agreed upon damages, the City shall be entitled to collect all incurred court costs, cost of litigation, attorney fees, and prejudgment interest from the date any lawsuit is filed until all sums due and owing to the City have been paid by developer.

16. The services performed by the City and the infrastructure installed are provided to Developer "As Is", with all faults. There are no warranties or guarantees, express or implied, relating to the City installed infrastructure. The Developer acknowledges and agrees that there are no representations, warranties, covenants, or conditions whether express, implied, arising at law, in equity, or by custom of trade, statutory or otherwise, oral or written, including without limitation, the implied warranties of merchantability, fitness for a particular purpose, title or

quiet enjoyment made by the City or relied upon by the Developer to induce the entering into and performance of Developers obligations pursuant to the Development Agreement.

17. Developer shall fully defend, indemnify, and hold harmless the City from any and all claims, lawsuits, demands, causes of action, liability, loss, damage and/or injury, of any kind arising from the Work (including without limitation all claims for monetary loss, property damage, equitable relief, personal injury and/or wrongful death), whether brought by an individual or other entity, or imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of, in any way whatsoever, any acts, omissions, negligence, or willful misconduct on the part of Developer, its officers, owners, personnel, employees, agents, contractors, invitees or volunteers. This indemnification applies to and includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorney's fees, and related costs or expenses, and any reimbursements to the city for all legal fees, expenses, and costs incurred by it.

(Remainder of page left intentionally blank; signature page follows)

IN WITNESS WHEREOF, the parties have set their hands on the date first written above.

GREENFIELD BOARD OF
PUBLIC WORKS & SAFETY

DEPOT STREET INVESTMENTS, LLC


Mayor Chuck Fewell

Katherine Locke

Larry Breese

Kelly McClarnon

Glenna Shelby



By: Thomas J. Moore
Title: President