

ECONOMIC DEVELOPMENT AGREEMENT

This ECONOMIC DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 2017 by and among the TOWN OF WHITESTOWN, INDIANA, a municipality and a political subdivision organized and existing under the laws of the State of Indiana (the "Town"), the WHITESTOWN REDEVELOPMENT COMMISSION (the "Commission" and collectively with the Town, the "Town Parties"), a redevelopment commission organized and existing under the provisions of Indiana Code 36-7-14 and Indiana Code 36-7-25, each and amended (the "Act"), and MOONTOWN PROPERTIES, LLC, an Indiana limited liability company (the "Developer"), to facilitate the renovation of a former school building located in the Town.

W I T N E S S E T H:

WHEREAS, the Commission is the owner of a parcel of land more fully described on the attached Exhibit A (the "Property"); and

WHEREAS, the Property is the site of a former school building (the "Existing Building"), which Developer desires to rehabilitate, renovate and convert into a restaurant as further described on Exhibit B (the "Project"), provided that the Town Parties provide certain incentives to the Developer, including: (i) reimbursing the Developer for certain costs related to the replacement of the roof of the Existing Building, (ii) pavement of a public parking lot (the "Parking Lot") on property adjacent to the Property, as described in Exhibit C (the "Parking Lot Site") for the benefit of the Project and the public, and (iii) transferring the Property and Existing Building to the Developer for nominal consideration, subject to prior compliance with all applicable legal requirements, including prior compliance with Indiana Code 36-7-14 (items (i) through (iii) collectively, the "Town Incentives"); and

WHEREAS, the Town Incentives are more particularly described on Exhibit D; and

WHEREAS, the Developer estimates that its investment in the Project will equal or exceed Five Hundred Fifty Thousand Dollars (\$550,000), net of the Town Incentives (the "Project Investment"); and

WHEREAS, as an inducement to the Developer to construct the Project and make the Project Investment, the Commission and the Town find that the Town Incentives should be provided to (i) provide for the redevelopment and rehabilitation of the Property and the Existing Building and (ii) improve access to the Property, and the Project and that the planning, design, construction of the Town Incentives should be undertaken by the Town through the Commission; and

WHEREAS, excluding the value of the Property and Existing Building, the Town and Commission estimate that the costs of providing the Town Incentives will not exceed One Hundred Fifty-Five Thousand Dollars (\$155,000); and

WHEREAS, the Commission will pay for costs of the Town Incentives (the paving of the Parking Lot and roof replacement) from funds on hand of the Commission which are held by the

Commission in furtherance of economic development activities for and on behalf of the Town;
and

WHEREAS, the Town Parties have each authorized the execution of this Agreement by resolution of their respective governing bodies.

NOW, THEREFORE, in consideration of the promises and mutual obligations and covenants of the parties hereto contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and the Town Parties agree as follows:

ARTICLE I. RECITALS

1.01 Recitals Part of Agreement. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.01.

ARTICLE II. MUTUAL ASSISTANCE

2.01 Mutual Assistance. The parties agree, subject to further proceedings required by law, to take such actions, including, but not limited to, the execution and delivery of such documents, instruments, petitions and certifications (and, in the case of the Town Parties, the adoption of such ordinances and resolutions), as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent. In addition, the parties to this Agreement agree to use their best efforts to cooperate with each other and act in good faith to effectuate the intent of this Agreement.

ARTICLE III. CONSTRUCTION OF THE PROJECT

3.01. Transfer of the Property.

(a) The Commission currently owns the Property described in Exhibit A, which is located at 345 S. Bowers Street in the Town. To provide for the completion of the Project by the Developer, subject to the procedures required by law including the Act and the terms and conditions hereof, the Commission will sell to the Developer all of the Property for a purchase price of \$1. The Property will be conveyed “as is” to the Developer within ninety (90) days following execution of this agreement, through execution and delivery by the Commission of a Special Warranty deed consistent with the form of Special Warranty deed attached hereto as Exhibit E (the “Deed”), and subject to (a) building and zoning ordinances; (b) permitted exceptions to the deed and deed restrictions; and (c) the terms, conditions and restrictions of this Agreement.

(b) Within thirty (30) days following execution of this Agreement, the Town Parties will provide any environmental surveys, prior title work, and feasibility studies prepared with respect to the Property and in the Town Parties’ possession to the Developer. The Developer shall be responsible for any further environmental surveys and any title work to be completed on the Property and such items shall, if completed, be completed at the sole cost of the Developer.

(c) In connection with the sale of the Property to the Developer, the Developer and the Commission shall execute and deliver the following items:

The Developer and/or Commission, as applicable, shall execute and deliver the following:

- (A) the Deed conveying to Developer fee simple title to the Property;
 - (B) if necessary, a vendor's affidavit in form and substance such that any title company providing title insurance in connection herewith (the "Title Company") agrees to delete the standard exceptions for non-survey matters;
 - (C) if necessary, an affidavit that the Commission is not a "foreign person", in form and substance required by the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder;
 - (D) a certification by the Commission that all of the representations and warranties set forth in this Agreement remain true and accurate in all respects as of the dated of the closing of the transfer of the Property to the Developer (the "Property Closing") and that, to the Commission's knowledge, there is no existing breach of this Agreement by any of the Town Parties;
 - (E) a certification by the Developer that all of the representations and warranties set forth in this Agreement remain true and accurate in all respects as of the Property Closing and that, to the Developer's knowledge, there is no existing breach of this Agreement by the Developer;
 - (F) a recordable memorandum of this Agreement, to be recorded in the chain of title for the Property;
 - (G) such other customary documents or instruments, resolutions, consents of members, partners, and/or shareholder and other evidence as the Commission, the Developer or the Title Company reasonably may request, establishing that: (1) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action; and (2) the execution and delivery of such documents, and the conveyance of the Property to Developer in accordance with the terms and conditions of this Agreement, have been properly authorized by the signatories thereto; and
 - (H) such other customary documents or instruments as the Commission, the Developer or the Title Company may request in connection with the transfer of the Property (including, for example, a Sales Disclosure Form and a closing statement).
- (d) The Developer assumes and agrees to pay (i) all real estate taxes and assessments becoming a lien against the Property after the Property Closing; and (ii) so much of the current year taxes as shall be allocable to the Developer by proration (based upon the number of days remaining in the year in which the Property Closing occurs after the Property Closing). The Commission shall

pay (or cause to be paid): (1) all real estate taxes and assessments becoming a lien against the Property prior to the Property Closing; (2) any installments of real estate taxes payable during the year in which the Property Closing occurs; and (3) so much of the current year taxes as shall be allocable to Commission by proration (based upon the number of days in the year in which the Property Closing occurs prior to and including the Property Closing). Accordingly, as provided by this Section, the real estate taxes with respect to the Property are being prorated and allocated to Commission and the Developer on an accrual basis and based upon the period during which Commission and the Developer, respectively, hold title to the Property. If the applicable tax rate has not been set, then the current tax rate shall be used for the purposes of such prorations, and there shall be no subsequent adjustment or re-proration. Notwithstanding the foregoing, it is anticipated that there are no current assessments or current year taxes assessed against the Property and that the foregoing proration shall not be required.

3.02 Construction of the Project.

(a) The Developer shall have a period of sixty (60) days from execution of this Agreement, or until the Property Closing if sooner, to satisfy any concerns it may have relative to zoning or land use, drainage, permits (including applicable alcohol permits), environmental conditions, access, utilities, or any other matters related to the feasibility of the Project (collectively, "Contingencies"). In the event the Developer determines that it is not satisfied as to any Contingencies prior to the expiration of such period, the Developer shall notify the Town Parties and may terminate this Agreement, and the parties shall have no further rights or obligations under this Agreement.

(b) The Developer shall complete the Project on the Property in accordance with permits and approvals to be issued by the Town Building Commissioner. The total cost of the Project shall equal or exceed the Project Investment, without including any cost of the Town Incentives. The Project shall be completed (as evidenced by the issuance of a conditional or temporary certificate of occupancy) by April 1, 2018, weather permitting, or such later date as may be agreed to by the Town Parties in writing (the "Completion Date"). The Developer is responsible for providing or arranging to provide for the funding of all costs to complete the Project. Such funding and cost is separate and apart from the costs of the Town Incentives to be provided by the Town Parties. The Project shall consist of the items and/or parameters set forth in Exhibit B attached hereto which the Developer shall cause to be constructed on the Property as described in Exhibit A. The total cost of the Project Investment shall not be less than \$550,000. The Developer further covenants that it shall utilize the Project as a restaurant, brewery, and/or microbrewery, and other incidental or related uses, and in a manner consistent with the Project, as described in Exhibit B for at least five (5) years following Completion Date.

(c) The Developer shall commence construction of the Project by no later than one-hundred eighty (180) days from the date of Property Closing.

(d) Developer shall obtain or shall have determined that it is able to obtain all necessary permits, licenses, approvals and consents required by law for the construction and use of the Project prior to the Property Closing.

(e) For a period ending five (5) years from the Completion Date, the Developer agrees to (i) identify the restaurant/brewery/microbrewery as located in or a part of the Whitestown community, in any advertisement or literature in which the location of the business is provided and (ii) participate in a Whitestown chamber of commerce, or similar organization promoting business specific to the Whitestown community, if organized in the future.

(f) Developer shall be responsible to maintain, repair and replace the Project in good condition and repair, and operate a restaurant/brewery/microbrewery in a commercially reasonable and workmanlike manner, for a minimum of five (5) years following the Completion Date.

(g) For a period of five (5) years after the Town issues a certificate of occupancy for the Property, in the event that the Developer (or any successor) desires at any time to sell the Property, Developer shall provide and the Town Parties shall have a right of first purchase (“First Option”) to acquire the Property at the fair market value as demonstrated by the average of two (2) independent appraisals provided by appraisers selected by the Town Parties, with the cost of the appraisals split between the Town Parties and Developer. After receipt of both appraisals, the Town Parties shall have thirty (30) days to notify the Developer of its intention to exercise its First Option. If the Town Parties so notify the Developer, then the Developer and the Town Parties shall proceed with closing on the sale of the Property within sixty (60) days under the same terms set forth in Sections 3.01(b) through 3.01(d), except that the roles of the parties are reversed. If the Town Parties fail to notify the Developer within thirty (30) days of the Town Parties’ decision to exercise its First Option, then Developer shall be free to sell the Property to a third party. If the proposed selling price is decreased by more than five percent (5%) of the average of the two (2) appraisers obtained under this Section, then Developer shall reoffer the developed property to the Town Parties and the Town Parties shall have fifteen (15) days to notify Developer of acceptance of the lesser price.

(h) Upon reasonable written notice delivered to the Developer, the Town, or its inspector, may perform an inspection of the Project. Within seven (7) business days after an inspection, the Town may deliver to the Developer a notice (the “Non-Compliance Notice”) that identifies a Material Defect (for purposes of this provision, a “Material Defect” is any item or component of the Project that (i) is not in compliance with applicable building codes; (ii) violates applicable rules, regulations, laws, or ordinance with respect to the Project; or (iii) has not been performed materially in accordance with the terms and conditions of this Agreement). If the Town timely delivers a Non-Compliance Notice, then the Developer shall correct, or cause to be corrected, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice, except and to the extent that any such Material Defects previously have been accepted, or deemed to have been accepted, by the Town. Notwithstanding anything to the contrary set forth herein, all items or components of the Project with respect to which no Material Defects are identified in a timely Non-Compliance Notice shall be deemed to be accepted by the Town, subject to Latent Defects (for purposes of this provision, a “Latent Defect” is a material defect that (i) is not discovered, and reasonably is not discoverable, by the Town or its inspector during an inspection and (ii) has a material and adverse effect on the use, operation, structure, or longevity of the Project). This provision shall be in addition to, and shall not in any respects be deemed to be, a waiver of any power of the Town under applicable laws or this Agreement.

3.03. Project Records, Reporting. For purposes of demonstrating the economic development guaranteed by the Project, for a period up to and including five (5) year(s) following the Completion Date, the Developer shall keep and maintain in its offices complete and accurate records and supporting documents relating to the receipt and expenditures related to the construction and completion of the Project.

3.04. Inspection of Project Records. For purposes of demonstrating the economic development guaranteed by this Project, the Developer will cooperate with and permit any duly authorized representative of the Town Parties, during regular business hours of Developer and upon not less than ten (10) days' prior written notice, to have access to and the right to examine the records and supporting documents required to be kept and maintained under this Agreement. Such access and right will terminate five (5) years following the Completion Date. Prior to such termination, the Developer will cooperate reasonably with the Town Parties in connection with any such examination. Any examination will be at the expense of the Town Parties.

3.05 Building Approvals. The Town Parties shall hold such meetings and assist Developer with all necessary permit applications and other submittals to each and any other applicable board, commission or office of the Town to facilitate procurement, by the Developer, of all necessary and appropriate authorizations, approvals, permits and other entitlements required or otherwise associated with the Project to accommodate the timely construction of the Project.

ARTICLE IV TOWN INCENTIVES

4.01 Covenant to Provide Town Incentives. The Town Parties shall provide the Town Incentives as described in Exhibit D attached hereto, to facilitate the Project. The Town Incentives shall be separate and apart from the Project and the cost of the Town Incentives shall not be considered a part of the Project Investment. The scope, design, development and construction of the Town Incentives will be made, authorized and approved by the Commission, and as and to the extent appropriate any other departments, boards or other agencies of the Town. The Town Parties will work with and inform the Developer regarding the provision and timing of the Town Incentives in order to ensure that the Town Incentives conform to the needs and uses for the Project. The Town Incentives shall be provided as follows:

(a) The transfer of the Property to the Developer shall be handled in accordance with Section 3.01 hereof.

(b) The Town Parties will, through the Developer, solicit bids for the new roof construction on the Existing Building and select the roof contractor within sixty days (60) following transfer of the Property, subject to applicable laws and that the roof contractor shall in any event be acceptable to the Town Parties and the Developer. The Developer will be responsible for timely paying the selected contractor for the costs/invoices related to the construction of the roof. Following completion of the Project by the Developer and commencement of operations of the restaurant, brewery, and/or microbrewery on the Property as contemplated by this Agreement, the Town Parties will reimburse the Developer for the costs actually and timely paid by the Developer to the selected contractor for the new roof construction on the Existing Building, up to an amount not to exceed One Hundred Twenty-Five Thousand Dollars (\$125,000) and within sixty (60) days of receipt of an invoice from the Developer for such costs.

(c) The Town Parties shall commence renovation and paving of the Parking Lot on the Parking Lot Site not later than September 1, 2017 weather permitting, and anticipate completion of the renovation and paving will be completed not later than October 1, 2017. Once the Developer completes the Project, the Town Parties agree to allow the Developer a non-exclusive use of the Parking Lot Site for temporary parking purposes under the same terms and conditions that the Town Parties permits the Parking Lot Site to be used by the general public. In using the Parking Lot Site, the Developer (and its patrons) accept the Parking Lot Site in its "AS IS" condition and assume all risk of using the Parking Lot Site. Developer agrees to indemnify, defend, and hold the Town Parties harmless from any and all liability, including but not limited to all damages, court costs and reasonable attorneys' fees incurred by the Town Parties, for any damages, claims, or actions arising in connection with Developer's use of the Parking Lot Site (collectively, the "Covered Claims"), provided any such Covered Claims (i) will be covered by Developer's insurance or (ii) are the result of reckless actions or inactions of the Developer. Absent misuse of the Parking Lot Site or damages caused by Developer for Covered Claims, the Town Parties will provide the Developer with notice sixty (60) days prior to permanently terminating the Developer's use of the Parking Lot Site.

(d) The parties anticipate that the Developer will attempt to obtain a standard 210 liquor license for the Project; however, in the event the Developer is unable to obtain such a license prior to the Completion Date, the Town Parties will approve the Project for an Economic Development Alcohol Permit authorized pursuant to I.C. § 7.1-3-20-16.8, and this Agreement shall constitute the Commitments required by Whitestown Ordinance 2016-09.

ARTICLE V AUTHORITY

5.01 **Actions.** Each of the Town Parties represents and warrants that it has taken or will take (subject to further proceedings required by law and the Developer's performance of its agreements and obligations hereunder) such action(s) as may be required and necessary to enable each of the respective Town Parties to execute this Agreement and to carry out fully and perform the terms, covenants, duties and obligations on its part to be kept and performed as provided by the terms and provisions hereof.

5.02 **Powers.** The Town Parties represent and warrant that each has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform their respective obligations under this Agreement.

ARTICLE VI DEFAULTS

6.01 **Developer Events of Default/Developer Default Notice.** Each of the following events is an "event of default" hereunder:

(a) If the Developer fails to perform any obligation under this Agreement provided that the Town Parties have fulfilled any applicable obligations relating to such Developer obligation; or

(b) Failure by the Developer to make the Project Investment by the Completion Date; or

(c) Failure by the Developer to construct the Project in accordance with terms of this Agreement and as described in Exhibit B; or

(d) Failure by the Developer to complete the Project by the Completion Date; or

(e) Cessation of all construction work of a material nature with respect to the Project for a period of at least sixty (60) days or for more than ninety (90) days during any one hundred eighty (180) day period; or

(f) The commencement by the Developer of any voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or the appointment of or the taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Developer or of any substantial part of its property, or the making by it of any general assignment for the benefit of creditors, or the failure of the Developer generally to pay its debts as such debts become due, or the taking of corporate action by the Developer in furtherance of any of the foregoing; or

(g) the entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the Developer in an involuntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar official of the Developer or for any substantial part of its property, or ordering the windup or liquidation of its affairs; or the filing and pendency for thirty (30) days without dismissal of a petition initiating an involuntary case under any other bankruptcy, insolvency or similar law.

(h) Upon the occurrence of any default on the part of the Developer hereunder, the Town Parties shall give the Developer written notice (a "Developer Default Notice") of the circumstances constituting that default and the Developer shall have thirty (30) days following its receipt of such Developer Default Notice in which to cure any such default or such longer period as may be reasonably required, provided that the Developer commences such cure within that thirty (30) day period and diligently pursues such cure to completion. In the event the Developer fails to timely cure any such default hereunder, the Town Parties may commence pursuant of its remedies under Section 6.02 and 6.04 hereof.

6.02 Town Party Remedies. Until the Developer achieves substantial completion of the Project in compliance with this Agreement, upon the happening of any event of default specified in Section 6.01 and the continuance of the same for the period, if any, specified in Section 6.01, and the unsuccessful conclusion of formal mediation between the parties, for those defaults listed in subsections 6.01(a) through 6.01(e), the Town may elect, in addition to any other legal and equitable remedies available to the Town, to (i) terminate this Agreement, terminate or suspend the provision of the Town Incentives and terminate all related agreements; and (ii) re-enter the Property and cause title to the Property to revert in the Commission, and Developer hereby grants to Commission the

right of reversion of the title to the Property under these conditions. The foregoing rights shall be deemed exercised upon delivery to the Developer of written notice to the Developer of the Commission's determination to exercise its right to take possession of the Property. Such notice may be recorded by the Town contemporaneously with, or at any time after, its delivery of such notice. Upon delivery of such notice, the Developer shall surrender possession of the Property to the Commission and title to the Property shall automatically, and without further action, re-vest in the Commission. Any such re-vesting shall be free and clear of any and all encumbrances, liens, easements, agreements, and other matters of record. No delay or failure by the Town to enforce any of the covenants, conditions, reservations and rights contained in this Agreement, or to invoke any available remedy with respect to a breach by Developer shall under any circumstances be deemed or held to be a waiver by the Town of the right to do so thereafter, or an estoppel of the Town to assert any right available to it upon the occurrence, recurrence of continuation of any violation or violations hereunder.

6.03 Default of Town Parties. Upon the occurrence of any default on the part of the Town Parties hereunder, the Developer shall give the Town Parties written notice (a "Town Default Notice") of the circumstances constituting that default and the Town Parties shall have thirty (30) days following its receipt of such Town Default Notice in which to cure any such default or such longer period as may be reasonably required, provided that the Town Parties commence such cure within that thirty (30) day period and diligently pursue such cure to completion. In the event that the Town Parties fail to timely cure any such default hereunder, the Developer may commence the dispute resolution procedures as provided in Section 6.04 below.

6.04 Dispute Resolution. Any lawsuit arising out of or relating to this Agreement must be brought in a state or federal court of appropriate jurisdiction situated in the State of Indiana. The Town Parties and Developer consent to the jurisdiction of such court and irrevocably waive any objections they may have to such jurisdiction or venue.

ARTICLE VII MISCELLANEOUS

7.01 Nondiscrimination. Developer and its officers, agents and employees will not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions or privileges of employment, because of her or his race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability or United States military service veteran status.

7.02 Information Reporting. The Developer shall cooperate in all reasonable ways and provide necessary and reasonable information to the Town Parties or any other applicable governmental authority to enable the Town Parties to review Developer's performance of its obligations under this Agreement, assure its compliance with the terms of this Agreement, prepare any reports required by applicable law, and to comply with any other reporting requirements of the Act and/or this Agreement.

7.03 Cooperation. The Town Parties covenant and agree to take or cause to be taken (and shall cooperate with Developer to enable Developer to take or cause to be taken) all actions necessary or desirable under statutes, regulations and rules applicable to the Project and the Town Incentives, and to execute and deliver or cause to be executed and delivered (and shall cooperate

with Developer to enable Developer to execute and deliver or cause to be executed and delivered) such agreements, instruments, documents, indentures, applications and other papers as may be necessary or desirable under such statutes, regulations and rules to assist and permit Developer to undertake and complete the Project and enable the Town Parties to undertake and provide the Town Incentives.

7.04 Certificates. On Developer's request, the Town Parties shall each execute and deliver a certificate stating: (a) that this Agreement is in full force and effect or will provide a written explanation of why this Agreement is not in full force and effect; (b) that Developer is not in default under the terms of this Agreement or specifying why Developer is in default; or (c) any other matters which the Developer reasonably requests. When Developer has satisfied all of its obligations under this Agreement then, on Developer's request, the Town Parties shall each execute an instrument in recordable form evidencing the termination of this Agreement and releasing the covenants. Upon Developer receiving a certificate of occupancy for the Project, Developer shall have no further obligations to Town Parties under this Agreement except as provided in Section 3.02(e) through (g) and 4.01(c).

7.05 Agreement Binding on the Town Parties. No covenant, obligation or other agreement in this Agreement shall be deemed to be a covenant, obligation or agreement of any past, present or future member, official, officer, agent or employee of the Town Parties, other than in his or her official capacity, and neither the officers of the governing bodies of the respective Town Parties executing this Agreement shall be liable personally by reason of the covenants, obligations or agreements of the Town Parties under this Agreement.

7.06 Assignment. Developer may not assign its interests, rights and responsibilities under this Agreement without the prior written consent of the Town Parties which shall not be unreasonably withheld. The President of the Commission is hereby authorized to grant or deny any such written consent on behalf of the Town Parties provided such consent shall not be unreasonably withheld. Notwithstanding the foregoing, no such consent on the part of the Town Parties shall be required following the Completion Date. In addition, and without limitation, the Town Parties acknowledge and agree that the Developer may encumber its interest in the Project with a mortgage or similar instrument or indenture, which instruments shall in all cases be subject to the rights of the Commission outlined in Section 6.02 hereof and in the Deed. In connection with any assignment hereunder, the assigning party shall assume all obligations under this Agreement, unless otherwise consented to by the Town Parties.

7.07 Binding Effect. This Agreement shall inure to the benefit of and be binding upon Developer, the Commission, the Town and their respective legal representatives, and permitted successors and assigns.

7.08 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument.

7.09 Notices. Except as otherwise specifically set forth in the Agreement, all notices, demands, consents or approvals given in connection with this Agreement (the "Notice") shall be in writing and shall be deemed sufficiently given or delivered: (a) on the date the Notice is

delivered by personal delivery; (b) on the date the Notice is delivered by any nationally recognized overnight delivery service providing tracking service; (c) on the date the return receipt is signed or refused for any Notice sent by certified mail, postage prepaid, return receipt requested; so long as in each case, the Notice is delivered at the addresses set forth below, or to any other address for which notice is given as provided in this Section:

If to Developer: Pete Mattingly
Moontown Properties, LLC
10711 East 200 South
Zionsville, Indiana 46077

With a copy to: Michael L. Einterz
EINTERZ & EINTERZ
4600 Northwest Plaza West Drive
Zionsville, Indiana 46077

*If to Commission :
and/or Town* Town of Whitestown
6210 Veterans Drive
Whitestown, Indiana 46075
Attention: Town Manager

With a copy to: Stephen C. Unger
Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, Indiana 46204

7.10 No Joint Venture or Partnership. Nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship between the Town Parties and the Developer or any affiliate thereof.

7.11 Time of Essence. Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the performance of their obligations (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation. The Town Parties agree that they will, in good faith, expedite the review and approval of matters relating to this Agreement that are under their respective jurisdiction. The Developer agrees that whenever any provision of this Agreement provides for its review and/or approval, it will make a good faith effort to take such action as expeditiously as possible.

7.12. Force Majeure. If either party is delayed or hindered in or prevented from the performance of any act required under this Agreement (which does not include the payment of any monetary amounts) by reason of any strike, lock out, labor trouble, inability to procure materials or energy, failure of power, riot, insurrection, picketing, sit in, war, acts of foreign or domestic terrorism, civil unrest, or other unavoidable reason of a like nature not attributable to the negligence or fault of the party delayed in performing or doing any act required under the terms of this Agreement, then the performance of the work or action will be excused for the period of the

unavoidable delay and the period for performance of any action will be extended for an equivalent period.

7.13 Wording. Any word used in this Agreement shall be construed to mean either singular or plural as indicated by the number of signatures hereto. All references to the Act, the Indiana Code, and codified ordinances, rules, or any other statute, regulation or ordinance are intended to refer to the provisions presently in effect and to all future amendments, modifications, replacements or successor provisions.

7.14 Construction. This Agreement shall be construed and enforced in accordance with the laws of the State of Indiana. This Agreement shall constitute the entire agreement of Developer, Town and Commission and no oral, verbal or implied agreement or understanding shall cancel, modify or vary the terms of this Agreement. No representations or promises shall be binding on the parties hereto except those representations and promises contained herein or in some future writing signed by the parties making such representations and promises. This Agreement may only be amended by a written instrument executed by each of the parties to this Agreement, or their permitted successors or assigns.

7.15 Governing Law. Except to the extent preempted by federal law, the laws of the State of Indiana shall govern all aspects of this Agreement, including execution, interpretation, performance and enforcement.

7.16 No Waiver. Neither failure nor delay on the part of the Town Parties or Developer in exercising any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such right preclude any further exercise thereof or the exercise of any other right. No waiver of any provision of this Agreement or consent to any departure by Developer or the Town Parties therefrom shall be effective unless the same shall be in writing, signed on behalf of the Town Parties or Developer by a duly authorized officer thereof, and the same shall be effective only in the specific instance for which it is given. No notice to or demand on the Town Parties or Developer shall entitle the Town Parties or Developer to any other or further notices or demands in similar or other circumstances, or constitute a waiver of any of the Town Parties' or Developer' right to take other or further action in any circumstances without notice or demand.

7.17 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original for all purposes.

7.18 Binding of Successors, Assigns. Subject to the further provisions of this Agreement, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Town Parties and Developer and their respective successors and assigns. The parties agree that the terms of this Agreement shall not merge into the Deed.

7.19 Further Assurances. Subject to the further provisions of this Agreement, Developer and the Town Parties shall, at such party's expense, upon request of the other such party, duly execute and deliver, or cause to be executed and delivered, such further instruments and perform or cause to be performed such further acts as may be reasonably necessary or proper in the reasonable opinion of the Town Parties or Developer to carry out the provisions and purposes of

this Agreement.

7.20 Severability. The invalidity, illegality or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity, legality or enforceability of the remaining provisions.

7.21 Headings. The headings of the articles, sections and paragraphs used in this Agreement are for convenience only and shall not be read or construed to affect the meaning or construction of any provision.

7.22 Entire Agreement. This Agreement and the document incorporated by reference herein constitutes the entire agreement by and between the Town Parties and Developer and supersedes all prior agreements, written or verbal, between the Town Parties and Developer. No statements, promises or agreements whatsoever, in writing or verbally, in conflict with the terms of this Agreement have been made by the Town Parties or Developer that in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations of this Agreement.

7.23 Public Use of Parking Lot. The parties hereby acknowledge and agree that nothing herein shall be deemed to provide the Developer with any preferential or special legal entitlements (e.g., license, lease, franchise or other special right) to the use of the Parking Lot greater than the opportunity for use of such Parking Lot by the general public.

7.24 Interpretation. The headings in this Agreement are inserted for convenience and identification only and are not intended to aid in the interpretation of this Agreement. Unless the context requires otherwise, (i) the singular includes the plural and vice versa, (ii) the recitals, all schedules, attachments and exhibits identified herein form a part of this Agreement, (iii) the word “including” or any variation thereof means “including, without limitation” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it, and (iv) where a term is defined, another part of speech or grammatical form of that term shall have a corresponding meaning.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Town Parties and Developer have executed this Agreement the day and year first written above.

TOWN OF WHITESTOWN, INDIANA

Town Council President

Attest:

Clerk-Treasurer

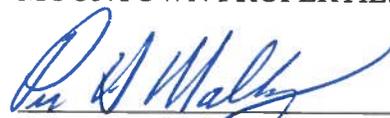
WHITESTOWN REDEVELOPMENT
COMMISSION

President

Attest:

Secretary

MOONTOWN PROPERTIES, LLC



Pete Mattingly, President

Attest:



ROBERTA A. ELINE

3090358

EXHIBIT A

Property Legal Description

Lots numbered Fifteen (15), Sixteen (16), and Seventeen (17) in Bucks Second Addition to the Town of Whitestown, Boone County, Indiana, as per plat thereof recorded in Plat Book 3, page 20, in the Office of the Recorder of Boone County, Indiana.

EXHIBIT B

Description of Project

Renovation, Rehabilitation and Conversion of Existing Building

Developer (Moontown Properties, LLC) proposes to perform the following to complete the conversion of the Existing Building into a combination Brewery, Brewpub and Event Space:

- Provide design and engineering required to complete and submit plans for State and Local approval and permits
- Organize and attend meetings as required with Town of Whitestown and County officials to facilitate the acquisition of permits
- Renovation and conversion of the entire building with the intention of maintaining as much of the original character of the building as practical
- Complete necessary selective demolition to facilitate the conversion
- Site work including utilities, earthwork, sidewalks and pavement
- Enclosed area on Southeast Corner of main building to screen restaurant and brewery storage
- Renovation of the existing out building for brewery storage and other uses
- If practical, convert the entire main building to a one level structure for ease of access and to meet accessibility requirements
- Exterior improvements to building including renovation of main windows (East and West), addition and removal of exterior doors for egress
- Exterior painting as necessary to maintain the integrity and appearance of the exterior brick
- Addition of code complaint mechanical and electrical systems to create a climate controlled space
- Design and Installation of a fire sprinkler system
- Interior construction including concrete work, masonry openings and repairs, steel reinforcing for openings and equipment
- Addition of interior partitions and ceilings as required to facilitate creating rest rooms, kitchen , event space, and brewpub

EXHIBIT C

Parking Lot Site Legal Description

Lot numbered Thirteen (13) in Bucks Second Addition to the Town of Whitestown, Boone County, Indiana, as per plat thereof recorded in Plat Book 3, page 20, in the Office of the Recorder of Boone County, Indiana

EXHIBIT D

Description of the Town Incentives

The Town Incentives include (i) the pavement of public parking lot on the property owned by the Town Parties and adjacent to the Property, generally located at Lot numbered Thirteen (13) in Bucks Second Addition to the Town of Whitestown, Boone County, Indiana, as per plat thereof recorded in Plat Book 3, page 20, in the Office of the Recorder of Boone County, Indiana, at a total estimated maximum cost to the Town Parties of \$30,000, (ii) reimbursement of up to \$125,000 for the costs actually incurred by the Developer, with respect to payments made to a contractor selected following solicitation of bids by the Town Parties through the Developer, for the replacement or rehabilitation of the roof of the Existing Building to generally accepted reasonable commercial standards; and (iii) transferring the Property and Existing Building to the Developer for nominal consideration.

EXHIBIT E

Form of Deed

SPECIAL WARRANTY DEED

THIS INDENTURE WITNESSETH, that the WHITESTOWN REDEVELOPMENT COMMISSION, an Indiana redevelopment commission and organized and existing under the provisions of I.C. § 36-7-14 and I.C. § 36-7-25 (“Grantor”), CONVEYS AND SPECIALLY WARRANTS to MOONTOWN PROPERTIES, LLC (“Grantee”) for the sum of Ten Dollar (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, in the following described real estate in Boone County, Indiana:

Lots numbered Fifteen (15), Sixteen (16), and Seventeen (17) in Bucks Second Addition to the Town of Whitestown, Boone County, Indiana, as per plat thereof recorded in Plat Book 3, page 20, in the Office of the Recorder of Boone County, Indiana.

345 South Bowers Street, Whitestown, IN 46075

Parcel No. 018-00230-01 / 06-08-19-000-074.000-019 – Bucks 2nd Lot 15-17

(“Property”)

Subject to all applicable taxes and assessments, zoning restrictions, easements, rights-of-way, and other restrictions, covenants, or encumbrances of record, or matters that would be disclosed by an accurate survey or inspection of the premises.

Grantor hereby creates the following restrictions on the Property which, unless altered in writing by Grantor, (i) shall run with the title to the Property and shall apply to and be binding upon Grantee, its successors and assigns and all tenants and occupants of the Property, and (ii) shall inure to the benefit of (and may be enforced by) Grantor:

(a) No part of the Property shall be used for any purpose other than the operation of a full-service dining restaurant (no fast food or drive through), brewery-restaurant, and/or microbrewery-restaurant, and for purposes which are ancillary to such operations, or for one of the following uses classified as general business under the Whitestown Unified Development Ordinance: accounting, auditing, & bookkeeping services; advertising agencies; agricultural credit institutions; apparel shop, shoes, or custom tailoring; art & music schools; banks & branch banks; barber shop or beauty shop; bed & breakfast; bicycle shops; bond & mortgage company; book & stationary store; cafeteria; candy, nut & confectionary; charitable institutions; china, glassware, metalware; civic, social, or religious organizations; dance halls, studios & schools; dinner theater; engineering & architectural service; food processing; fruits & vegetables; grocery, bakery, meat & fish; hardware store; hobby, toy & game shops; indoor recreation facility; lodge or private club; motion picture theater; municipal or government buildings; museum & art gallery; music & video store; photographic studio; professional office; skating; tavern; wholesale business; public owned park or recreational facility; and

(b) for a period of five (5) years after the date of this Special Warranty Deed, Grantor shall have a right of first refusal and option to purchase the Property as set forth in the Economic

Development Agreement dated -----, 2017, between Grantor and Grantee and recorded as Instrument No. _____ in the Office of the Recorder of Boone County, Indiana..

If Grantee or its successors or assigns fails to comply with the covenants and restrictions herein, then, in addition to any other remedies provided for herein, or any other remedies available at law or in equity, Grantor shall be entitled to injunctive relief.

The warranty of title of Grantor is limited to a warranty against the acts of Grantor and those claiming by, through or under Grantor, and not otherwise.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed this _____ day of _____, 2017.

WHITESTOWN REDEVELOPMENT
COMMISSION
an Indiana redevelopment commission

By: _____
Sarah Ford, President

STATE OF INDIANA)
)SS:
COUNTY OF BOONE)

Before me, a Notary Public in and for said State and County, personally appeared Sarah Ford, President of the Whitestown Redevelopment Commission, who acknowledged the execution of this Special Warranty Deed for and on behalf of said entity.

Witness my hand and Notarial Seal this _____ day of _____, 2017.

My Commission Expires:

Notary Signature

My _____ County _____ of

Residence: _____

Printed

This Instrument prepared by Stephen C. Unger, Bose McKinney & Evans LLP, 111 Monument Circle, Ste. 2700, Indianapolis, IN 46204.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Stephen C. Unger

After recording return to
And send tax bill to:

