

## **SPRING MILL STATION – SWC - DEVELOPER AGREEMENT**

This post-zoning Developer Agreement is entered into this \_\_\_\_ day of \_\_\_\_-2015 between the City of Westfield, Indiana (“City”) a duly formed Indiana municipal corporation and Westfield Residential Investors, LLC (“WRI”), a duly formed Indiana limited liability company. This Agreement is based upon the exchange of adequate, valuable consideration, the receipt of which is hereby mutually acknowledged. The City and WRI now stipulate and agree as follows:

### **Section 1. Mutual Duties and Obligation**

- A. This Agreement shall be deemed a part of the zoning and land use restrictions and covenants on the property comprising the Spring Mill Station SWC PUD, a drawing of which is attached hereto as Exhibit “A” and incorporated by reference herein and a legal description of which is attached as Exhibit “B” (hereafter the “Development”).

### **Section 2. Duties and Obligation of WRI**

- A. WRI shall be required to build a Roundabout (“Roundabout”) at the spine road of the Development and 161<sup>st</sup> Street. The spine road is approximately 660’ west of Spring Mill Road. The Roundabout shall be installed prior to the first Certificate of Occupancy (“CO”) for the Spring Mill Station SWC PUD project.
- B. The Roundabout shall be designed and constructed by WRI and reviewed, inspected and, when deemed acceptable by City, approved by City staff.
- C. Any right-of-way required for the Roundabout on WRI property shall be donated to City. Any right-of-way required for the Roundabout on property east of the Development shall be donated by the land owner by separate agreement between WRI and that land owner, or as otherwise agreed by the City.
- D. The full cost of the Roundabout shall be calculated prior to construction and agreed to by the City and WRI. The full upfront cost to construct the Roundabout shall be paid by WRI.

### **Section 3. Duties and Obligations of the City**

- A. The City will work quickly during any reviews of the Roundabout design plans.
- B. Any additional necessary right-of-way required for the Roundabout on the north side of 161<sup>st</sup> Street shall be acquired by the City if the City deems it necessary on terms and conditions that shall be determined by the parties.

- C. The full cost of the Roundabout shall be calculated prior to construction and agreed to by the City and WRI. The full upfront cost to construct will be paid by WRI.
- D. WRI shall receive a credit of the calculated Road Impact Fees for construction of the Roundabout. It is expected that this credit is unlikely to cover the full cost to construct the Roundabout.
- E. The City shall support this Agreement and the allocation of the tax increment generated by the WRI development as it is captured to reimburse WRI for the costs of the roundabout on the north side of 161<sup>st</sup> Street to the Westfield Redevelopment Commission.

#### Section 4. Termination.

This Agreement shall be in effect from August \_\_\_\_\_, 2015 for a period of 120 months terminating on August \_\_\_\_\_, 2025 and shall be of no effect after that time. All previously executed agreements and addendums between the Parties shall also be null and void at that time. This Agreement as well as any and all previous understandings shall all be contingent to the approval of this Agreement by the Westfield Redevelopment Commission.

#### Section 5. Amendment.

No alteration, modification, or amendment to this Agreement is permitted, except by written agreement signed by the Parties or their successor in interest as appropriate.

#### Section 6. Dispute Resolution.

In the event that any dispute arising hereunder cannot be resolved by the Parties, each party waives its right to trial by jury, and stipulates that the Circuit or Superior Courts of Hamilton County, Indiana shall be the only proper court(s) of venue and jurisdiction.

#### Section 7. Authority

The undersigned attests, subject to the penalties for perjury, that he is the contracting party, or that he is the properly authorized representative, agent, member or officer of the contracting party, that he has not, nor has any other member, employee, representative, agent or officer of the contracting party, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

Section 8. Indemnification.

Each Party agrees to indemnify and hold harmless the other Party and the officers, agents, servants, and employees of such entity, in their official and personal capacities from and against any and all claims, demand, actions, causes of action, judgment, loss, costs, damages, injuries and expenses (including reasonable attorneys' fees) except for those arising out of or related to a Party's gross negligence or intentional wrongful conduct in its performance under this Agreement.

In Witness Whereof, the City and Junction have, through their duly-authorized representatives, entered into this Agreement. The Parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below hereby agree to the terms thereof.

“CITY”

City of Westfield, Indiana,  
An Indiana municipal corporation

Signed: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

“WRI”

Westfield Residential Investors, LLC,  
an Indiana Limited Liability Company

\_\_\_\_\_  
R. Birch Dalton, Member

Dated: \_\_\_\_\_