

COUNCIL ACTION FORM

SUBJECT: **DEPOT DEVELOPMENT AGREEMENT**

BACKGROUND:

Following the City Council meeting of October 24, the Depot Development Agreement was updated with the direction given by the City Council. The agreement allows the owner of the Depot property, Merry Bee Properties, LLC, to use 100 of the 198 spaces for tenant and other private use while retaining 98 spaces for public use. These spaces will be reserved for public use for 50 years following approval of the agreement.

The City Council also directed that the spaces reserved for the public be retained in the middle of the Depot property. If the agreement is approved, staff will work with the owner on identifying those spaces.

In addition, the City Council directed that the commercial buildings maintain functional entrances abutting public streets for each tenant. In addition, the main entrance at the corner of Main Street and Clark Avenue shall remain as a functional entrance.

Language from the prior agreements regarding maintaining the historic façade of the Depot and the view of the Depot from Main Street also has been incorporated into this agreement.

Alternatives:

1. The City Council can approve the new agreement for the Depot regarding parking, maintaining the historic façade and view of the Depot, and retaining public entrances.
2. The City Council can deny the new agreement for the Depot.

CITY MANAGER'S RECOMMENDED ACTION:

The proposed agreement reflects the direction given by the City Council and also meets the request of the owner. **Therefore, it is the recommendation of the City Manager that the City Council accept Alternative 1, to approve the agreement.**

INSTRUMENT PREPARED BY:	Brian D. Torresi, 2605 Northridge Pkwy., Ames, IA 50010 (515) 288-2500
RETURN TO:	City of Ames, Iowa, Attn: City Clerk, 515 Clark Ave., Ames, IA 50010

**AMENDED AND RESTATED
AMES DEPOT DEVELOPMENT AGREEMENT**

THIS AMENDED AND RESTATED AMES DEPOT DEVELOPMENT AGREEMENT (this "Amendment") is made and entered into as of the Effective Date (as that term is defined herein) by and between Merry Bee Properties, LLC (the "Owner") and the City of Ames, Iowa (the "City") (the Owner and the City are hereinafter collectively referred to as the "Parties" or individually as a "Party"). This Amendment shall be effective as of the date the last of the Parties hereto executes same (the "Effective Date").

RECITALS

WHEREAS, pursuant to that certain Ames Depot Development Agreement dated August 5, 1993, and filed in the office of the Recorder of Story County, Iowa, on July 25, 1994, as Instrument No. 94-08439 (the "Original Agreement"), the City and Main Street Station, L.C. ("Prior Owner-1") agreed on various terms and conditions related to the development of real property in Ames, Story County, Iowa, as legally described on the attached Exhibit A (the "Property"); and

WHEREAS, the Original Agreement was amended pursuant to: (a) an Amendment to Development Agreement dated November 23, 1993, and filed in the office of the Recorder of Story County, Iowa, on March 10, 1995, as Instrument No. 95-01792, and on July 27, 1995, as Instrument No. 95-06255 (collectively, "Amendment-1"); (b) an Amendment Ames Depot Development Agreement dated May 24, 1994, and filed in the office of the Recorder of Story County, Iowa, on March 10, 1995, as Instrument No. 95-01794, and on July 27, 1995, as Instrument No. 95-06256 (collectively, "Amendment-2"); (c) an Amendment to Ames Depot Development Agreement dated June 30, 1994, and filed in the office of the Recorder of Story County, Iowa, on March 10, 1995, as Instrument No. 95-01796, and on July 27, 1995, as Instrument No. 95-06258 (collectively, "Amendment-3"); (d) an Amendment Ames Depot Development Agreement dated June 9, 1998, and filed in the office of the Recorder of Story County, Iowa, on August 6, 1998, as Instrument No. 98-10956 ("Amendment-4"); and (e) an Amendment Ames Depot Development Agreement dated May

8, 2001, and filed in the office of the Recorder of Story County, Iowa, on May 14, 2001, as Instrument No. 01-05737 (“Amendment-5”) (the Original Agreement, Amendment-1, Amendment-2, Amendment-3, Amendment-4, Amendment-5, and any and all other amendments to the Original Agreement, recorded or unrecorded, are hereinafter collectively referred to as the “Agreement” and are incorporated herein by this reference as if fully set forth); and

WHEREAS, the City conveyed the Property, and any and all rights under the Agreement except as expressly reserved therein, to Prior Owner-1 by Quit Claim Deed dated July 25, 1995, and filed in the office of the Recorder of Story County, Iowa, on July 27, 1995, as Instrument No. 95-06260 (“QCD-1”), and by Quit Claim Deed dated October 26, 1995, and filed in the office of the Recorder of Story County, Iowa, on October 27, 1995, as Instrument No. 95-09570 (“QCD-2”) (QCD-1 and QCD-2 are hereinafter collectively referred to as the “Deed”); and

WHEREAS, Prior Owner-1 conveyed the Property to Main Street Station II, LLC (“Prior Owner-2”) by Warranty Deed dated June 1, 2006, and filed in the office of the Recorder of Story County, Iowa, on June 12, 2006, as Instrument No. 06-06773, and Prior Owner-2 conveyed the Property to Owner by Warranty Deed dated June 1, 2017, and filed in the office of the Recorder of Story County, Iowa, on June 1, 2017, as Instrument No. 17-05233; and

WHEREAS, in the Deed, the City reserved certain easements on the Property and certain parking provisions set forth in Paragraph 11 of the Original Agreement (collectively, the “Reserved Rights”); and

WHEREAS, Owner and the City desire to, among other things, amend the Reserved Rights and to revive certain provisions in the Agreement related to the historic characteristics of the Property.

NOW, THEREFORE, in consideration of the Recitals, and for other good and valuable consideration, the Parties hereby agree as follows:

- 1. INCORPORATION OF RECITALS.** The foregoing Recitals are incorporated herein and made a part of this Amendment as if fully set forth verbatim. The Recitals and exhibits hereto, if any, are a substantive, contractual part of this Amendment.
- 2. MODIFICATION OF RESERVED RIGHTS.** The rights reserved by the City in the Deed with respect to parking on the Property, as specifically set forth in Paragraph 11 of the Original Agreement, are hereby amended by completely replacing said Paragraph 11 and the Reserved Rights with the following language (the “Modified Reserved Rights”):

“Parking. (a) The Owner shall provide to the City, at the Owner's cost, parking on the Property for 98 automobiles for public parking in the central area of the parking lot serving the Property (the “Parking Area”) and the Owner shall have the right to relocate the Parking Area, from time to time on the Property. (b) In consideration of

the Owner's obligation to provide and maintain the Parking Area, the City agrees that it will, at its sole cost, monitor and regulate the parking on the Parking Area and enforce the City's parking regulations with respect to the Parking Area. The City shall have the sole right and obligation to establish and enforce parking regulations with respect to the Parking Area. Such regulations shall promote the use of the Parking Area by tenants, employees, customers, business visitors, and business guests of the Project and of the central business district of the City. The City shall not, without the prior written consent of the Owner: (i) install parking meters on the Parking Area, (ii) impose any fees for parking in the Parking Area, or (iii) permit longer than three (3) hour parking in the Parking Area. The Owner may, from time to time, request a change in the regulations established by the City for the Parking Area, but any change requested by the Owner shall be consistent with the use of the Parking Area for the parking of motor vehicles by the general public. The City shall have the right to enter upon the Property for the purpose of allowing the City to perform its obligations under this paragraph. The City's right to enter upon the Property pursuant to the foregoing provision shall be limited to that portion of the Property constituting the Parking Area. (c) During the period that the Owner is obligated to provide parking pursuant to this paragraph, the Owner shall perform all maintenance of the Parking Area at its sole cost and expense, such maintenance to include by way of specification, but not limitation, repairing and restriping the pavement, lighting, cleaning, snow and ice removal, all to standards not less than those standards that are adhered to by the City for City parking lots. If necessary, the Owner shall have the right to temporarily close all or a portion of the Parking Area to permit the Owner to (i) relocate the Parking Area, (ii) perform its maintenance obligations with respect to the Project and the Parking Area, and (iii) to perform future construction on the Property. (d) Nothing contained in this paragraph shall be deemed to be a gift or dedication of any portion of the Property to the general public; it being the intention of the Parties that this paragraph will be strictly limited to the purposes expressed herein. (e) Unless earlier terminated by the agreement of the City, the Owner's obligations pursuant to this paragraph shall terminate fifty (50) years from the Effective Date.”

3. DESIGN QUALITIES. Owner agrees that the former railroad depot building on the Property (the “Depot”), as it exists as of the Effective Date, shall be preserved and reused. Alterations or additions to the Depot shall be compatible with the exterior historic qualities thereof. To preserve the view of the Depot from Main Street, Owner hereby agrees that Owner shall not construct any structure (excluding light poles, landscaping, traffic signage, directional signage, parking signage, project signage, and banner poles) more than thirty-six (36) inches in height in the area that lies twenty-five (25) feet on either side of a line perpendicular to the center of the Depot extended North to the South line of Main Street, without the prior approval of the City. Commercial buildings existing on the Property as of the Effective Date shall maintain a functional entrance or exit to an abutting public street for each tenant space, except that tenant spaces solely facing the Parking Area

are exempt from this standard. The entrance at the corner of Main Street and Clark Avenue shall remain as a functional entrance for the public.

4. **PRIOR AGREEMENTS.** The Parties hereby understand, acknowledge, and agree, that except for the Modified Reserved Rights and except for the Depot preservation standards as set forth herein, the Agreement, and any and every other agreement in any way related thereto, is of no force or effect whatsoever, and that any rights the City may have with respect to the Property are being completely dissolved, amended, modified, and/or replaced, as the case may be, by this Amendment, without regard to the impact of the Deed on the Agreement.

5. **MISCELLANEOUS.** This Amendment shall run with the Property and shall be binding upon Owner, its successors and assigns. Time is of the essence in this Amendment. The failure to promptly assert any rights herein shall not, however, be a waiver of such rights or a waiver of any existing or subsequent default. To facilitate execution, this Amendment may be executed in as many counterparts as may be required and the Parties may execute facsimiles of this Amendment. It shall not be necessary that the signature on behalf of the Parties appear on each counterpart. All counterparts shall collectively constitute a single agreement.

6. **JURY TRIAL WAIVER. THE PARTIES HERETO, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED ON OR ARISING OUT OF THIS AMENDMENT OR INSTRUMENT, OR ANY RELATED INSTRUMENT OR AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS, WHETHER ORAL OR WRITTEN, OR ACTION OF ANY PARTY HERETO. NO PARTY SHALL SEEK TO CONSOLIDATE BY COUNTERCLAIM OR OTHERWISE, ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY ANY PARTY HERETO EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY ALL PARTIES.**

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the dates set forth below.

(SIGNATURE PAGE FOLLOWS)

**SIGNATURE PAGE OF
AMENDED AND RESTATED
AMES DEPOT DEVELOPMENT AGREEMENT**

MERRY BEE PROPERTIES, LLC, Owner

By: _____

Clifford Smith, Manager

DATE: November __, 2017

STATE OF IOWA, COUNTY OF STORY, ss:

This instrument was acknowledged before me on this ___ day of November, 2017, by Clifford Smith, as a Manager of Merry Bee Properties, LLC.

Notary Public in and for the State of Iowa
My commission expires _____

CITY OF AMES, IOWA, the City

By: _____

Ann H. Campbell, Mayor

Attest by: _____

Diane R. Voss, City Clerk

STATE OF IOWA, COUNTY OF STORY, ss:

On this ___ day of November, 2017, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Ann H. Campbell, Mayor, and Diane R. Voss, City Clerk, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

Notary Public in and for the State of Iowa
My commission expires _____

EXHIBIT A
PROPERTY

Parcel A of the Plat of Survey filed in the Office of the Recorder of Story County, Iowa, on the 17th day of June, 1994, in Book 12, Page 86, as Instrument No. 94-06868, for a part of Section Two (2), Township Eighty-three (83) North, Range Twenty-four (24) West of the 5th P.M., located in the City of Ames, Story County, Iowa, described as follows:

Being Block 16 Blair's Addition to Ames and a part of Block 46 Blair's 3rd Addition and Chicago Northwestern Railway Company Station Grounds described as: Commencing at the SE Corner of Lot 28, Block 17, Blair's Addition to Ames, Iowa; thence S 0°55'13" W, 80.00 feet along the West line of Clark Avenue to the South line of Main Street and the Point of Beginning; thence S 0°55'13" W, 258.14 feet along the West line of Clark Avenue to a point 35.00 feet radial distance from the centerline of the North Track of said Chicago Northwestern Railway Company; thence N 82°16'33" W, 74.98 feet; thence N 81°21'58" W, 75.03 feet; thence N 80°21'20" W, 74.98 feet; thence N 79°23'54" W, 75.01 feet; thence N 78°39'24" W, 75.02 feet; thence N 78°06'03" W, 75.07 feet; thence N 77°52'40" W, 74.98 feet; thence N 77°34'23" W, 74.98 feet; thence N 77°24'24" W, 74.99 feet; thence N 77°12'46" W, 74.95 feet; thence N 77°10'20" W, 60.36 feet to a point on the East line of Grand Avenue in the City of Ames, Iowa, said point also being 35.00 radial distance from the centerline of the North track of said railroad; thence N 0°57'31" E, 104.92 feet along the East line of Grand Avenue to the South line of Main Street as established in Deed dated August 4, 1937 from the Chicago Northwestern Railway Company to the State of Iowa; thence N 88°30'24" E, 211.72 feet along the South line of Main Street; thence, continuing along the South line of Main Street, S 89°10'16" E, 585.59 feet to the Point of Beginning, containing 3.50 acres, more or less