

State of Alabama)
County of DeKalb)

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (hereinafter “MOU”) is made and entered into this 30th day of August, 2022 by and between Marathon Realty Corp., a Virginia corporation (hereinafter “Developer”) and the City of Fort Payne, Alabama, a municipal corporation (hereinafter City);

1. The Developer wishes to construct and operate a grocery store, under the Food City banner, and construct other retail shop space on the property located at 1015 Gault Avenue South, Fort Payne, Alabama 35967 (collectively, the “Project”).

2. If constructed and put into operation, the Project will bring new tax revenues and jobs, in the City.

3. The City, by and through its Mayor and City Council, hereby recognize the benefit to the citizens of the City and to the City in assuring the Project produces jobs, shopping opportunities, and property and sales tax revenues for the City.

4. The cost to the Developer for site development related to the Project are estimated to be approximately \$3,300,000 to \$3,400,000.00.

5. The benefit to the City includes, but is not limited to the following:

(a) The provision of jobs for approximately 140 people, being both full and part-time.

(b) Estimated new annual tax revenues in excess of \$400,000.00 to the City due to sales tax alone.

(c) Said sales tax, based on the possible occupants and new customers not presently shopping in the City, would be new taxes received by the City.

6. In consideration of the foregoing, and of the mutual covenants and agreements as heretofore set out, it is agreed as follows:

(a) The Developer shall construct, at a minimum, the building plans attached hereto as Exhibit “A”, which include a Food City and additional shop space. The Developer shall receive prior approval from the City, not to be unreasonably withheld, conditioned, or delayed regarding the Project’s design and specifications of its connection to the City’s sewer system.

(b) The Developer shall use reasonable commercial efforts to recruit additional businesses to occupy the additional shop space.

(c) In return, the City has made a determination that assisting in said development is in the best interest of the City, and its citizens, providing both additional revenues to the City and additional employment opportunities for the citizens of Fort Payne. The primary terms of this MOU were duly advertised by the City in accordance with the Constitutional Amendments of the State of Alabama (the “Constitutional Amendments”) and a public meeting was conducted by the City Council of the City on August 30, 2022 in accordance with the Constitutional Amendments.

(d) In consideration thereof, the City has agreed to pay to Developer, as directed by the Developer, a total sum of \$3,100,000.00 payable as follows:

- (i) The City shall pay \$1,200,000.00 upon the commencement of construction, to be defined as the beginning of excavation or demolition for the project and continuing on a regular or daily basis until completion of the building
- (ii) The City shall pay \$1,000,000.00 when Food City opens its doors for operation of business to the public.
- (iii) The City shall pay \$900,000.00 upon the one-year anniversary of the opening for operation of business to the public.

7. The performance under this contract is contingent upon the following:

(a) This agreement is contingent by approval in accordance with the requirements of Amendment 772 to the Constitution of Alabama of 1901, as amended (a/k/a as Section 94.01 of the official recompilation of the Constitution of Alabama of 1901).

(b) Subject to the force majeure provisions containing herein the Developer must initiate construction of the Project within six months from the date of approval of this agreement by the DeKalb County Circuit Court (the “Construction Commencement Deadline”). Should it not do so, this MOU is void unless extended in writing by the parties thereto.

(c) The Developer must complete construction and Food City shall open its doors for business to the public within 12 months of the date of initiating construction subject to the force majeure provisions contained herein (the “Construction Completion Deadline”). Notwithstanding the foregoing, the Developer shall not be considered in breach or default of its covenant to complete and open the Food City supermarket by the Construction Completion Deadline if Developer has commenced construction by the Construction Commencement Deadline and is diligently pursuing the same to completion.

(d) Should the Food City supermarket not open or no longer be in operation within five years of the date of execution of this Agreement, all amounts paid by the City to the Developer shall be due

back to the City within 90 days of the five year anniversary of this MOU or date of closure, together with 2.5 % interest.

8. Notwithstanding anything contained in this MOU to the contrary, the Developer (or any agent thereof or successor in interest thereto) shall not be considered in breach or default of its obligations with respect to the beginning and completion of construction of the Project, opening of the Food City supermarket, or continuous operation of the supermarket for the aforementioned five year period in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, acts of public enemy, acts of adjoining property owners, governmental authority, fires, floods, epidemic, pandemic, quarantine restrictions, strikes, embargoes, regulations or controls, fire or other casualty, judicial orders, unavailable materials, labor shortages, breach of contract by contractors or subcontractors, sever weather or delays of subcontractors due to such causes, any failure or defect in the supply, quantity or character of electricity, gas, water or other utilities furnished to the property, or any other reason of a like nature not the fault of Developer, it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times of performance of any of the obligations of the Developer shall be extended for the period of the enforced delay.

9. This MOU constitutes the final agreement of the parties and represents the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior understandings, written or oral. The terms of this MOU may only be changed, modified, or discharges by an instrument in writing signed by each of the parties hereto.

Executed on this the 30th day of August, 2022.


CITY OF FORT PAYNE
By its Mayor


By: Stephen D. Spangler
President, Marathon Realty Corp.