



Date April 20, 2009

**RESOLUTION APPROVING URBAN RENEWAL DEVELOPMENT AGREEMENT
WITH DOLL DISTRIBUTING LLC, CONVEYANCE OF DISPOSITION PARCEL NO.
28A IN THE GUTHRIE AVENUE BUSINESS PARK URBAN RENEWAL AREA AND
AUTHORIZING MAYOR TO EXECUTE CLOSING AND CONVEYANCE
DOCUMENTS REGARDING DISPOSITION PARCEL NO. 28A**

WHEREAS, by Roll Call No. 09-291, dated February 23, 2009, the City Council accepted a developer initiated redevelopment proposal from Doll Distributing LLC (Mark Doll, CEO, 815 South Branch, Waukee, Iowa 50263) to redevelop Disposition Parcel 28A (South of Thompson Avenue to E. Jefferson Avenue on De Wolf Street) in the Guthrie Avenue Business Park Urban Renewal Area and set a date for a hearing; and

WHEREAS, by Roll Call No. 09-291, the City Council set April 6, 2009 at 5 pm for the deadline for other parties to submit competing proposals to redevelop Disposition Parcel 28A and directed that published notice be given of the urban renewal competitive bid process and the City's intention to accept Doll Distributing's proposal in the absence of timely submission of competing proposals. No competing proposals have been submitted; and

WHEREAS, Roll Call No. 09-291 provides that in the event that no qualified competing proposals are received, the City Clerk shall submit the Urban Renewal Development Agreement to the Council for final approval; and

WHEREAS, Roll Call No. 09-291 provides that in the event that no qualified competing proposals are received, the City Council intends to approve the sale of Disposition Parcel 28A to Doll Distributing and to authorize execution of the Urban Renewal Development Agreement at a public hearing on April 20, 2009 at 5 pm in Council Chambers, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that:

1. The Urban Renewal Development Agreement, attached herein as Exhibit "A" is hereby approved and the Mayor is



Roll Call Number

Agenda Item Number

55

Date April 20, 2009


authorized and directed to execute the agreement on behalf of the City of Des Moines.

- 2. The sale of Disposition Parcel 28A to Doll Distributing, LLC is hereby approved. The Mayor is authorized and directed to execute all necessary closing documents and a special warranty deed conveying the property on behalf of the City upon the satisfaction of all preconditions to closing contained in the Urban Development Agreement.

(Council Communication No. 09-228 attached)

Moved by _____ to adopt.

APPROVED AS TO FORM:



 Michael F. Kelley
 Assistant City Attorney

Attachments: Urban Renewal Development Agreement with Doll Distributing, LLC

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

MOTION CARRIED APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

**URBAN RENEWAL AGREEMENT
FOR SALE OF LAND
FOR PRIVATE REDEVELOPMENT**

GUTHRIE AVENUE BUSINESS PARK URBAN RENEWAL PROJECT

Disposition Parcel No. 28A

By and Between

CITY OF DES MOINES, IOWA

and

DOLL DISTRIBUTING LLC

Approved by City Council:

Date: _____, 2009

Roll Call No. 09-_____

Exhibits:

“A” Special Warranty Deed

NOTE: This Agreement and all exhibits hereto shall be on file and available for public inspection in the office of the City Clerk, at City Hall, City of Des Moines, Iowa.

This AGREEMENT, including Exhibits, each of which is attached hereto and by this reference made a part hereof (the Agreement and Exhibits are together hereinafter called the "Agreement"), is made on or as of the 23rd day of February, 2009, by and between the CITY OF DES MOINES, IOWA, a municipal corporation, having its offices at City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa (hereinafter called "City"), acting pursuant to Chapter 403 of the Code of Iowa, (hereinafter called "Urban Renewal Law"), and Doll Distributing LLC, having an office for the transaction of business at 1901 De Wolf Street, Des Moines, IA 50316 (hereinafter called "Developer").

WITNESSETH:

WHEREAS, in furtherance of the objectives of the Urban Renewal Law, City has undertaken a program for the clearance and reconstruction or rehabilitation of slum and blighted areas in the City to make use of underutilized areas of the City of Des Moines; to remove conditions which have prevented normal development of the land by private enterprise; and to avoid stagnant and unproductive conditions of land which is potentially useful and viable for contributing to the public health, safety and welfare and in this connection is engaged in carrying out an urban renewal project known as the Guthrie Avenue Business Park Urban Renewal Project (hereinafter called "Project") in an area (hereinafter called "Project Area") located in the City of Des Moines; and,

WHEREAS, as of the date of this Agreement there has been prepared and approved by City a plan for the Project, consisting of the Urban Renewal Plan and amendments thereto indicated in the following table, all of which have been recorded among the land records in the Office of the Recorder for Polk County, Iowa, as indicated in the following table:

<u>Action</u>	<u>Date Adopted</u>	<u>Adopted by City Roll Call No.</u>	<u>Polk County Recorders Office Book</u>	<u>Beginning at Page</u>
Plan Adopted	9/22/88	88-4238	5958	44
1st Amendment	7/16/90	90-1373	6273	983
2nd Amendment	2/15/93	93-510	6750	414

(which plan, as so amended is hereinafter called the "Urban Renewal Plan"); and,

WHEREAS, the City owns the real estate located in the vicinity of 1901 De Wolf Street in the Guthrie Avenue Business Park, and more specifically described as follows (hereinafter called the "Property"):

PARCEL OF LAND IN LOTS 2, 3, 4, 21, 22, AND 23 IN BLOCK 13, LOTS 2, 3, 4, 21, 22, AND 23 IN BLOCK 14, A PORTION OF VACATED E. 19TH STREET BETWEEN BLOCKS 13 AND 14, AND A PORTION OF VACATED WAYNE STREET ALONG THE EAST SIDE OF BLOCK 14, ALL IN T.E. BROWN'S OFFICIAL PLAT OF THE NE1/4 OF SECTION 36, TOWNSHIP 79 NORTH, RANGE 24 WEST OF THE 5TH P.M., EXCEPT THE NE 40 ACRES, AS RECORDED IN BOOK C PAGE 462, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AS A POINT OF REFERENCE AT THE INTERSECTION OF THE EXTENSION OF THE MATTERN AVENUE CENTERLINE AND THE EAST RIGHT-OF-WAY LINE OF DEWOLF STREET; THENCE S00°12'43"E, 445.06 FEET ALONG THE SAID EAST RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING; THENCE S89°58'43"E, 538.80 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE S01°15'11"E, 100.02 FEET ALONG SAID WEST RIGHT-OF-WAY LINE TO A POINT; THENCE N89°58'43"W, 540.62 FEET TO A POINT ON THE SAID EAST RIGHT-OF-WAY LINE OF DEWOLF STREET; THENCE N00°12'43"W, 100.00 FEET ALONG SAID EAST RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING AND CONTAINING 1.239 ACRES MORE OR less

WHEREAS, the Property is located in the Project Area a light industrial area northeast of downtown Des Moines, oriented to attract owner-operators of small and mid-sized businesses; and,

WHEREAS, the City has offered to sell and Developer is willing to purchase the Property described above, and to redevelop the property in accordance with the terms and conditions of this agreement; and

WHEREAS, Developer has agreed to construct and/or install upon the Property the improvements more specifically described in Article 3, and herein referred to as the "Improvements"; and,

WHEREAS, the Developer's obligations under this Agreement to construct the Improvements further the objectives of the Urban Renewal Plan to preserve and create an environment which will protect the health, safety and general welfare of City residents and maintain taxable values within the Urban Renewal Project Area, to encourage the development of new commercial improvements and to encourage the coordinated development of parcels and streets to achieve efficient building design and redevelopment and to promote new job opportunities for City residents; and

WHEREAS, City believes that the redevelopment of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable state and local laws and requirements under which the project has been undertaken, and justify the provisions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE 1. CONVEYANCE

Section 1.1. Agreement for Purchase and Sale. The city agrees to sell to Developer and Developer agrees to purchase from the City the following described property:

PARCEL OF LAND IN LOTS 2, 3, 4, 21, 22, AND 23 IN BLOCK 13, LOTS 2, 3, 4, 21, 22,

AND 23 IN BLOCK 14, A PORTION OF VACATED E. 19TH STREET BETWEEN BLOCKS 13 AND 14, AND A PORTION OF VACATED WAYNE STREET ALONG THE EAST SIDE OF BLOCK 14, ALL IN T.E. BROWN'S OFFICIAL PLAT OF THE NE1/4 OF SECTION 36, TOWNSHIP 79 NORTH, RANGE 24 WEST OF THE 5TH P.M., EXCEPT THE NE 40 ACRES, AS RECORDED IN BOOK C PAGE 462, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AS A POINT OF REFERENCE AT THE INTERSECTION OF THE EXTENSION OF THE MATTERN AVENUE CENTERLINE AND THE EAST RIGHT-OF-WAY LINE OF DEWOLF STREET; THENCE S00°12'43"E, 445.06 FEET ALONG THE SAID EAST RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING; THENCE S89°58'43"E, 538.80 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE S01°15'11"E, 100.02 FEET ALONG SAID WEST RIGHT-OF-WAY LINE TO A POINT; THENCE N89°58'43"W, 540.62 FEET TO A POINT ON THE SAID EAST RIGHT-OF-WAY LINE OF DEWOLF STREET; THENCE N00°12'43"W, 100.00 FEET ALONG SAID EAST RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING AND CONTAINING 1.239 ACRES MORE OR less

Section 1.2. Property Purchase Price.

- A. The purchase price of the Property is \$74,250.00, which is based upon fair market value 1.35/square foot x 55,000 square feet.
- B. Developer shall pay the purchase price at closing by cash or certified bank draft so as to permit City to have immediate access to the funds. The parties acknowledge and agree that the Purchase Price set forth above reflects the fair market value of the Property after deduction for the limitations imposed upon the future use and the obligations imposed upon the Developer for the development of the Property by this Agreement.

Section 1.3. Form of Deed. The Property shall be conveyed to the Developer by Special Warranty Deed (hereinafter called "Deed") in recordable form, substantially in the form attached hereto as Exhibit D, free and clear of liens and encumbrances. Title conveyed to the Developer shall, however, be subject to easements, including sewer and utility easements and restrictions of record to all conditions, covenants, and restrictions set forth or referred to elsewhere in this Agreement, and to all conditions, covenants, restrictions, and requirements of the Urban Renewal Plan.

Section 1.4. Time and Place of Conveyance. The City shall convey the Property within thirty (30) days after approval by City of the Conceptual Plan, as provided in Section 42 and Developer's demonstration of adequate financing to complete the Improvements. The City shall deliver to the Developer notice of the proposed date of conveyance (hereinafter referred to as "conveyance date") and shall deliver to Developer's attorney an abstract of title to the Property continued to a date subsequent to the date of the notice. As soon as practical after receipt of the

abstract, the Developer's attorney shall notify the City in writing of any objections to title. The City shall make every reasonable effort to perfect the title in accordance with said title opinion prior to the conveyance date. The Developer shall be entitled to possession of the abstract after it accepts delivery of title to the Property. Any outstanding property taxes attributable to the period of City ownership of the Property and any outstanding property taxes from prior years shall be the responsibility of the City. The City may, in its sole discretion, satisfy its tax obligations in the form of a deduction for the amount of such property taxes from the Purchase Price.

Section 1.5. Recordation of Deed. Promptly after delivery of the Deed, the Developer shall file the Deed among the land records in the Polk County Recorder's Office. The Developer shall pay all costs of recording the Deed and shall provide the City with a copy imprinted with the date, time, book and page numbers of such recording.

Section 1.6. Special Assessments. The City shall be responsible for the payment of all special assessments, and/or installments thereof, which have been certified to the Polk County Treasurer prior to the conveyance date.

Section 1.7. Good Faith Deposit. The Developer has, at the time of submission of this Agreement to the City, delivered to the City a good faith deposit in the form of cash, certified or cashier's check, or other form satisfactory to the City in the amount of **\$18,562.50** hereinafter called "Good Faith Deposit." The Good Faith Deposit shall serve as security for the performance of the Developer's obligations herein to timely satisfy any conditions precedent to Closing set forth in Section 1.4 and to timely complete construction of the Improvements. The Good Faith Deposit, if in the form of cash or check, shall be deposited by the City in an interest bearing account and all interest earned shall be added to the Good Faith Deposit. The Good Faith Deposit shall be returned to the Developer or applied to the Purchase Price upon issuance of the Certificate of Completion for the Improvements, retained by the City for failure to complete the Improvements in accordance with the provisions of Article 5, Conceptual Development Plan and building permits, or returned to the Developer as otherwise set forth herein.

ARTICLE 2. ENVIRONMENTAL CONDITIONS

Section 2.1. Environmental Conditions.

- A. City shall provide a Real Estate Transfer -Groundwater Hazard Statement showing that City has no knowledge of any wells, solid waste disposal sites, hazardous wastes, underground storage tanks, or human burial sites on the Property, other than as disclosed in the Environmental Reports identified herein. If City is unable to provide the required statement prior to the conveyance of the Property to Developer, Developer or City may elect to cancel this Agreement. If this Agreement is so cancelled, City shall promptly refund to Developer the Good Faith Deposit and neither Developer nor City shall have any further rights against or liability to the other under this Agreement.

B. Nothing in this Agreement shall be deemed to be or constitute a waiver by City of any defense available to it as a governmental entity against any claim brought by a third party or governmental entity pursuant to 42 U.S.C. §9601(35)(a)(ii) and 9607(b)(3).

C. Section 2.3. Indemnity. Notwithstanding the previous Sections of this Article, the City will indemnify and hold harmless Developer, and its officers, directors, owners, agents, and other representatives, from and against any and all damages, losses, liabilities, costs and expenses, and any and all claims, demands or suits, including without limitation the costs and expenses of any and all actions, suits, proceedings, charges, demands, assessments, judgments, and penalties, including reasonable attorneys' fees and expenses in connection therewith, resulting from or arising out of any liability: (1.) arising from requirements of any law or regulation or ; (2) otherwise necessary to attain or maintain compliance with any law, relating to or arising from the presence or existence in surface water, groundwater, soil or subsurface strata of any hazardous substance or contamination requiring investigation or remediation action by a State or Federal environmental agency as a result of an emission, discharge or release of any hazardous substance to, on, onto or into the Property existing or arising out of events occurring on or before the Closing.

Section 2.2. Inspection. Developer shall have access to any part of the Property in the possession or control of City at all reasonable times to make inspections, surveys, appraisals, soundings or test borings, or environmental or other testing as may be required. Following any such activities, Developer shall restore such portions of the property disturbed if reasonably deemed necessary by City. If any environmental contamination is found upon any portion of the Property that will materially interfere with the construction and use of the Improvements, Developer may elect to cancel this Agreement. If this Agreement is so cancelled, City shall return the Good Faith Deposit to Developer and neither Developer nor City shall have any further rights against or liability to the other under this Agreement. This right of cancellation shall cease upon the first conveyance of any part of the Property to Developer pursuant to this Agreement.

ARTICLE 3. CONSTRUCTION OF IMPROVEMENTS AND EMPLOYMENT

Section 3.1. Duty to Construct Improvements. Developer agrees, subject to the terms of this Agreement, to undertake the redevelopment of the Property by timely constructing the following improvements (collectively referred to as the "Improvements") which shall be constructed in conformity with this Agreement, the Urban Renewal Plan, the approved Conceptual Development Plan and all applicable State and local laws and regulation:

A new addition to the building located 1901 De Wolf Street (the "Addition") containing at least 18,000 square feet of warehouse and office space with associated parking, open space and landscaping.

Section 3.2. Time for Completion of Improvements. Developer shall commence construction of the Improvements by April 30, 2009 shall complete construction of the Improvements by December 30, 2009 Construction of the Improvements, once commenced, shall be diligently pursued to completion.

Section 3.3. Progress Reports. From commencement of construction of the Improvements until construction has been completed, Developer shall make reports, in such detail and at such times as may reasonably be requested by City, as to the actual progress of Developer with respect to such construction and installation.

Section 3.4. Access to Property. During construction of any of the Improvements and prior to expiration of the Urban Renewal Covenants, Developer shall permit City's representatives access to the Improvements at all reasonable times which City reasonably deems necessary for the purposes of this Agreement. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided for in this Section.

ARTICLE 4. APPROVAL OF CONCEPTUAL DEVELOPMENT PLAN

Section 4.1. Site Plan Review Pre-application Conference. At the earliest practical date, Developer shall submit to the Community Development Department of City a request for a pre-application conference for the Site Plan for the Property pursuant to the Site Plan Review process as required by City of Des Moines Municipal Code Section 82-207. Such pre-application conference shall be held within fifteen (15) days of each request and Developer and its Architect or a designated representative shall participate in the conference.

Section 4.2. Conceptual Development Plan.

- A. By no later than February 28, 2009, Developer shall submit to City a "Conceptual Development Plan" and the proposed construction schedule for the Improvements, in sufficient completeness and detail to show that such Improvements will comply with the requirements of this Agreement, and will be in conformity with the land use requirements of the Urban Renewal Plan and all applicable State and local laws and regulations.
- B. The Conceptual Development Plan shall include conceptual site plans, schematic signage and lighting plans, detailed building elevations for each building face, floor plans and landscaping plans. The review required by the Site Plan Ordinance (Des Moines Municipal Code §82-206 to §82-219) is a separate review process from the review of the Conceptual Development Plan provided for in this Agreement. Approval of a plan pursuant to one does not constitute approval for purposes of the other.
- C. The Conceptual Development Plan shall satisfy the minimum development requirements set forth in Article 5 of this Agreement, shall comply with the requirements of this Agreement and must satisfy the requirements of the Urban Renewal Plan and all applicable State and local laws and regulations.
- D. City approval of the Conceptual Development Plan shall not be unreasonably withheld or delayed. The Conceptual Development Plan shall be deemed approved unless City rejects the Plan, in whole or in part, within thirty (30)

days after City receives the complete Plan. If City rejects the proposed Conceptual Development Plan, in whole or in part, it will set forth in writing the reasons for such rejection. Developer shall, as promptly as possible, submit an amended or corrected Conceptual Development Plan and the time for review shall be the same as provided for the original submission. City will make this a priority and shall endeavor to promptly complete its review of the Plan.

Section 4.3. Changes to Conceptual Development Plan. All material changes to the approved Conceptual Development Plan are subject to City's approval, which shall not be unreasonably withheld or delayed. If Developer desires to make any material change to the approved Conceptual Development Plan, Developer must submit the proposed change to City. If the Conceptual Development Plan, as modified by the proposed change, conforms to the requirements of Section 42, City shall approve the proposed change by notifying Developer in writing. Any such change to the Conceptual Development Plan shall be deemed approved by City unless it is rejected, in whole or in part, by written notice to Developer within thirty (30) days after City receives such proposed change. City will make this a priority and shall endeavor to promptly complete its review of any such change.

Section 4.4. Building Permits/Construction Permits. The Construction Plans submitted by Developer for the Improvements shall be in substantial compliance with the approved Conceptual Development Plan. City may withhold approval of building permits if the Construction Plans do not substantially comply with the approved Conceptual Development Plan. City approval of a building permit for the Improvements or a portion thereof shall constitute approval of the Construction Plans for the portion of the Improvements specifically authorized by such permit.

Section 4.5. Certificates of Completion.

- A. Developer shall request a "Certificate of Completion" for the Improvements by notifying City in writing that it has completed the Improvements in substantial compliance with the approved Construction Plans, and furnishing City with an architect's certificate or reasonable equivalent to that effect.
- B. Promptly upon receipt of Developer's notification of completion of the Improvements, City shall inspect the Improvements. If City determines that Developer has completed the Improvements in substantial compliance with the provisions of this Agreement and the approved Construction Plans, City shall issue a "Certificate of Completion" so certifying. Issuance of the Certificate of Completion shall not be unreasonably withheld or delayed by City. If City determines that Developer has not completed the Improvements in substantial compliance with the provisions of this Agreement and the approved Construction Plans, City shall, within thirty (30) days of receiving Developer's notification of completion, provide Developer with a written statement of the basis for City's determination which specifies the actions to be performed by Developer in order to obtain the certification.

- C. The determination by City regarding completion of the Improvements is independent of any required determination by City regarding the issuance of an Occupancy Permit pursuant to the Building Code of City. The issuance of an Occupancy Permit for any portion of the property shall not serve as a substitute for the Certificate of Completion referenced in this Section.
- D. The Certificates of Completion shall be in recordable form to allow filing among the land records of the Polk County Recorder's Office.

Section 4.6. Effect of Issuance. Upon issuance of the Certificate of Completion for the Improvements, the obligations and covenants contained in this Agreement with respect to the construction of the Improvements, and the dates for the beginning and completion thereof, shall be satisfied and terminated. However, all other obligations and covenants contained in this Agreement shall remain in full force and effect. Developer may utilize the Certificate of Completion only as evidence of compliance with or satisfaction of Developer's construction obligations under this Agreement.

ARTICLE 5. MINIMUM DEVELOPMENT REQUIREMENTS FOR IMPROVEMENTS

Section 5.1. Land Price. Land shall be sold at Fair Market Value. It has been determined that the Fair Market Value is \$1.35/square foot. The sale price shall be rounded up to the nearest \$100. There are approximately 55,000 square feet in the parcel proposed for sale, which shall be sold for \$74, 250.

Section 5.2. Land Use. The site shall be developed for the commercial and light industrial uses in the *Des Moines Municipal Code*, Section 134-1087 (M-1 Light Industrial Zoning).

Section 5.3. Minimum Building Size and Taxable Value. The parties acknowledge that the proposed project is an expansion of an existing building.

Section 5.4. Building Setbacks. Buildings shall be set back at least 25 feet from the property lines. The side yard and the rear yard setbacks shall be 10 feet each.

Section 5.5. Building Height. Principal buildings shall not exceed 45 feet in height nor be taller than three stories. Accessory buildings shall not exceed 18 feet in height nor be taller than one story.

Section 5.6. Building Entrance. The main entrances to the buildings shall be on De Wolf Street.

Section 5.7. Building Design and Materials. All buildings shall be designed by a registered architect and shall provide visual interest. Design approaches include but are not limited to varying

the depth of wall surfaces and using building materials effectively through patterns, textures and colors.

Building materials shall be selected that contribute to design quality as well as the long-term sustainability of the development. They shall be durable and require low maintenance.

Principal buildings shall have one hundred percent (100%) of their façades on all sides, excluding windows and doors, covered with stone, brick, architectural tilt-up concrete panels, architectural block (such as split-faced block), architectural metal panels, tile or an aesthetically appealing combination of such materials. Wood, exterior insulation and finish systems ("EIFS") and galvanized metal as primary exterior building materials are prohibited.

The Redeveloper is encouraged to demonstrate the aspects of its development that will promote environmental sustainability, specifically related to building design and construction. The Redeveloper is encouraged but not limited to focus on the following categories excerpted from the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Green Building Rating System.

Energy and Atmosphere

- (1) Optimize the building's energy performance, and
- (2) Use renewable energy (such as geothermal systems), and
- (3) Eliminate the use of materials that deplete ozone.

Materials and Resources

- (1) Divert demolition debris from disposal, and
- (2) Use local/regional materials, and
- (3) Construct with recycled and rapidly renewable materials.

Indoor Environmental Quality

- (1) Monitor carbon dioxide, and
- (2) Increase ventilation, and
- (3) Use low-emitting materials, and
- (4) Provide individual control of lighting and thermal comfort, and
- (5) Introduce daylight and views.

Section 5.8. Off-Street Parking, Loading and Access. Spaces for off-street parking and loading shall be provided in accordance with the provisions of the *Des Moines Municipal Code*, Section 134-1376 and 1377. All loading docks shall be located to the rear of the buildings. Drive-in doors may be permitted on any elevation, provided they are architecturally compatible with the overall building design.

Additional off-street parking, loading and access provisions are:

- A. Off-street parking areas, loading spaces and vehicular access drives shall be:
 - (1) Paved with at least a 6-1/2 inch thick asphalt concrete or 6-inch thick Portland cement surface (automobile access) and at least an 8-inch thick asphalt concrete or 7-1/2 inch thick Portland cement surface (truck access) in accordance with City Engineering Department site plan policies to accommodate anticipated traffic load. The City Engineering Department may authorize an alternative pavement thickness based on a soil engineer's report.
 - (2) Paved in a manner and at a grade adequate for drainage of all surface water accumulation.
 - (3) Arranged, constructed and marked to provide for safe and orderly parking,

loading, access and storage of vehicles and semi-trailers.

- B. The design must be in accordance with the City's driveway access standards.
- C. Existing driveway approaches and overall circulation plan shall be detailed.
- D. Truck maneuvering shall be done on site and on a surface paved with asphalt concrete or Portland cement.

Section 5.9. Outside Storage and Service Areas. Outside storage of materials, equipment (including vehicles to be left for more than 72 hours), dumpsters and exterior utilities shall be screened with quality materials that are compatible with the building. Screening shall consist of a minimum 6-foot high, 100% opaque screen. Additional guidelines for screening are provided in the *Des Moines Municipal Code*, Section 134-1087 (M-1 Light Industrial Zoning). Outside storage of materials, equipment or dumpsters shall not be located in any required setback area, nor shall it exceed the height of the fence.

Outside storage areas shall be:

- A. Paved with asphalt concrete, Portland cement, pervious pavement or other surface that provides a durable and dustless surface that the City Engineering Department approves.
- B. Graded and drained to dispose of all surface water accumulation.
- C. Arranged, constructed and marked to provide for safe and orderly parking, loading and storage of vehicles and equipment.

Section . Site Design and Materials. Landscaping plans shall be designed by a landscape architect, knowledgeable nursery person or other person that the Community Development Director determines to be competent. All landscaping shall be property planted and well maintained.

The Redeveloper is encouraged to demonstrate the aspects of its development that will promote environmental sustainability, specifically related to site development. The Redeveloper is encouraged but not limited to focus on the following categories excerpted from the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Green Building Rating System.

- A. Sustainable Sites
 - (1) Reduce site disturbance and protect sensitive areas, and
 - (2) Minimize storm water runoff, increase on-site infiltration and reduce contaminants, and
 - (3) Landscape and use reflective materials to reduce heat islands.
- B. Water Efficiency
 - (1) Reduce the use of potable water for landscape irrigation, and
 - (2) Recycle water for domestic use.

Landscaping shall be provided as follows:

- A. Open Space
 - (1) A minimum of 20% of the site shall be comprised of vegetated open space. Landscaping shall create visual interest and variety, accentuate building elements, such as the entrances, and enhance the features of the site, such as terrain, walkways and driveways.
 - (2) A minimum of 20% of the street yard shall be planted with trees, shrubs and other groundcover. The street yard is considered the area that lies between the street property line and the front walls of the building on the site.

- (3) The area between the curb and property lines and all portions of the site not used for building, parking, loading, storage or access shall be planted with grass at a minimum.
- (4) A minimum of one tree shall be planted and maintained for every 1,000 square feet of the street yard area with additional shrubbery interspersed in the street yard area. Individual trees may be substituted by a grouping of shrubs (seven or more shrubs) for up to 25% of the street yard trees, except that no substitution of shrubs may be made for trees in the parking setback area. The trees required in this paragraph may be counted toward the 20% vegetated open space and street yard landscaping requirement.
- (5) In the first 10 feet of the street yard along De Wolf Street one tree shall be planted for every 25 lineal feet, on average, of street frontage in a linear pattern to create a boulevard effect. Trees shall be spaced no more than 50 feet apart on center. The trees required in this paragraph may be counted toward the 20% vegetated open space and street yard landscaping requirement.
- (6) Trees planted in the street yard along De Wolf Street shall be at least 2-1/2 inch caliper (measured 6 inches from the ground when planted) overstory deciduous trees.
- (7) Trees planted elsewhere on the site shall be at least 1-1/2 inch caliper (measured 6 inches from the ground when planted) deciduous trees or 8-foot tall balled and burlapped or 15-gallon containerized conifers.
- (8) Loading and service areas that are visible from De Wolf Street shall be screened. Screening shall consist of a minimum of 8-foot tall balled and burlapped or 15-gallon containerized conifers. One tree shall be planted for every 25 lineal feet, on average, of area to be screened. The trees required in this paragraph may be counted toward the 20% vegetated open space and street yard landscaping requirement.
- (9) Every effort shall be made to plant native species that are not prone to insect or disease and are not invasive in nature. Tree and shrub species shall be selected from the approved list in the adopted Des Moines Landscape Standards.
- (10) The landscaping plan shall show how trees will be properly planted and maintained and shall specify that the wire baskets will be removed from the root ball, rope cut and burlap pulled back to ensure healthy growth and development. All trees shall be mulched and shall be watered as needed.
- (11) Healthy, mature trees with a diameter of 8 inches or larger located outside the building footprint and paved areas shall be retained on the site. Efforts shall be made to save as many healthy, mature trees as possible. Site designers shall consider this when determining the placement of the building and paved areas on the site. The size, species and location of trees to be retained shall be identified on the landscaping plan. If it is necessary to remove healthy, mature trees to facilitate sound redevelopment outside the building footprint and paved areas, the Redeveloper shall request Urban Design Review Board approval when submitting final design plans and prior to tree removal.
- (12) Trees that will be retained on the site, including their root systems, shall be protected from stress or damage while conducting grading, site preparation and

other construction activities on the site. The landscaping plan shall indicate how this requirement will be met.

B. Off-Street Parking.

- (1) A 10-foot setback between any street right-of-way as well as between all property lines and a parking lot shall be planted with grass at a minimum. In addition, one tree shall be planted for every 25 lineal feet, on average, of street frontage. Trees shall be spaced no more than 50 feet apart on center. The trees required in this paragraph may be counted toward the 20% vegetated open space and street yard landscaping requirement.
- (2) A minimum of 5% of the interior space of a parking lot, which includes the permanently surfaced parking stall, space for maneuverability and internal circulation aisles, shall be landscaped.

Landscaping shall include at least one 1-1/2 inch caliper (measured 6 inches from the ground when planted) overstory deciduous tree and three shrubs per 20 parking spaces and grass, which may be planted in the interior space or at the perimeter edge of the parking lot. The goal of this requirement is to prevent a continuous unbroken line of parking consisting of more than 20 stalls of parking without visual relief. The trees required in this paragraph may be counted toward the 20% vegetated open space and street yard landscaping requirement.

- (3) The landscaping plan shall show how landscaped areas will be protected from vehicular damage.

The Community Development Director may approve minor design modifications if the landscape design substantially complies with the landscaping requirements or when justified by building and/or lot layout constraints.

Section. Lighting. Exterior lighting selection and placement shall be attractive and compatible with the building design and operations. A detailed lighting plan is not required when submitting the redevelopment proposal but shall be provided at the time of final design plan review. The Urban Design Review Board shall review the lighting plan with final approval by the City Council.

Section. Signage. Exterior signage shall be attractive and compatible with the building design. Signage shall be provided in accordance with the C-2 zoning standards described in the *Des Moines Municipal Code*, Section 134-951, except pole signs shall be prohibited. Freestanding signs shall be monument signs and shall have a sign face that does not exceed four feet in height; if a sign base is used, it shall not exceed one foot in height. A detailed signage plan is not required when submitting the redevelopment proposal but shall be provided at the time of final design plan review. The Urban Design Review Board shall review the signage plan with final approval by the City Council.

Section. Employment. The number of current employees and the projection of jobs added in the next five years meets and exceeds the requirement under the Urban Renewal Plan

Section. Wage and Benefits. The Redeveloper and/or building tenants shall pay employees,

excluding supervisory personnel, on average a minimum of \$12.00/hour including benefits.

ARTICLE 6. URBAN RENEWAL COVENANTS.

Section 6.1. Duration. Any portion of the Property conveyed to Developer (herein collectively referred to as the "Property") shall be subject to the Covenants set forth herein from the date such Property is conveyed to Developer (the "Closing Date") until ten (10) years after the date of issuance of Certificates of Completion for the Improvements pursuant to Article 4 of this Agreement.

Section 6.2. Covenants. Each portion of the Property acquired by Developer pursuant to this Agreement shall be subject to the following covenants, limitations and restrictions regarding its future use and development (herein referred to as the "Covenants"):

1. Prohibition Against Discrimination in Sale or Leasing. Developer, its successors and assigns shall not discriminate against or segregate any person or group of persons on account of age, race, religion, creed, color, sex, sexual orientation, national origin, ancestry, disability, familial status or sexual orientation in the sale, leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property or the improvements erected or to be erected thereon, and not establish or permit any such practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, sub-tenants or vendees in the property or the improvements erected or to be erected thereon.
2. Prohibition Against Discrimination in Employment. In the employment of persons upon the Property, Developer, its successors and assigns shall comply with all federal, State of Iowa and local laws prohibiting discrimination.
3. Maintenance. The Improvements constructed upon the Property pursuant to this Agreement shall be maintained in good condition and repair in substantial conformance with the approved Conceptual Development Plan. In the event of fire or other casualty loss, repairs to restore the Improvements to their former condition in substantial conformance with the approved Conceptual Development Plan shall be commenced within ninety (90) days and diligently pursued to completion.
4. Payment of Taxes. Developer shall pay when due all taxes and assessments, general or special, levied upon or assessed against any part of the Property conveyed to it pursuant to this Agreement, subject to the conditions and limitations provided herein.
5. Fire, Extended Coverage Insurance. Developer shall keep in force fire and extended coverage insurance upon the Improvements with insurance underwriters authorized to do business in the State of Iowa reasonably satisfactory to City. Such insurance shall be in an amount equal to the replacement cost of the Improvements, excluding cost of foundations,

underground pipes, wiring and outside paving. If requested by the City, Developer shall deliver to the City a current certificate of insurance which clearly discloses on its face coverage in conformity with all of the foregoing requirements and a certified copy of the policy. In the event of destruction of the Improvements or any part thereof, said insurance and all monies payable by reason of such insurance or destruction to Developer shall be held in trust by Developer, and shall be promptly used by Developer for the purpose of repairing the Improvements and restoring the same to their former condition and use or for the purpose of replacing the Improvements, with equivalent or more suitable improvements.

6. Prohibition Against Transfer.

- A. Prior to issuance of the Certificate of Completion, Developer shall not, without the prior written approval of City, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer of the Property, or any part thereof or any interest therein, or any agreement to do any of the same, except (i) any such transfer to a lender for the purpose of obtaining funds only to the extent necessary for constructing the Improvements, and (ii) easements or other encumbrances necessary for the Improvements. The approval by City shall not be unreasonably withheld.
- B. City shall be entitled to require as a condition to any such approval that:
- (i) Any proposed transferee shall have the qualifications and financial responsibility, as reasonably determined by City, necessary and adequate to fulfill the obligations undertaken in this Agreement by Developer (or, in the event the transfer is of or relates to part of the Property, such obligations to the extent that they relate to such part);
 - (ii) Any proposed transferee, by an instrument in writing reasonably satisfactory to City and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of City, expressly assume all of the obligations of Developer under this Agreement and agree to be subject to all the conditions and restrictions to which Developer is subject (or, in the event the transfer is of or relates to part of the Property, such obligations, conditions, and restrictions to the extent that they relate to such part);
 - (iii) All instruments and other legal documents involved in effecting transfer be submitted to City for review prior to the transfer;
 - (iv) The consideration payable for any portion of the Property upon any such sale shall not exceed an amount representing the actual cost (including carrying charges) to Developer of the Property (or allocable to the part thereof or interest therein transferred) and the improvements already constructed by Developer pursuant to this Agreement. The intent of this provision is to preclude assignment of this Agreement or

transfer of the Property (or any parts thereof) for profit prior to issuance of the Certificate of Completion; and

Provided, that in the absence of specific written agreement by City to the contrary, no such approved transfer by City shall be deemed to relieve Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Improvements, from any of its obligations with respect thereto.

7. Limitation Upon Encumbrance of Property.

- A. Prior to issuance of the Certificate of Completion for the Improvements pursuant to Article 4, Developer shall not engage in any transaction imposing any encumbrance or lien upon the Property or any part thereof, whether by express agreement or operation of law, or suffer any encumbrance or lien to attach to the Property, except as permitted under paragraph B, below.
- B. Liens and encumbrances may be imposed upon the Property, and any part thereof, only: (i) for the purpose of obtaining funds to the extent necessary for constructing the Improvements, and (ii) for easements or other encumbrances necessary for the Improvements. Developer shall use its commercially reasonable efforts to cause to be included in any mortgage on the Property a provision requiring that whenever the mortgagee shall deliver any notice or demand to Developer with respect to any breach or default by Developer in its obligations under such mortgage, the mortgagee shall at the same time forward a copy of such notice or demand to City at the address shown in Section 116 hereof.
- C. Developer shall not be required to remove any encumbrance or lien required to be removed under paragraphs A, above, so long as Developer shall contest, in good faith and at its own cost and expense, the amount or validity thereof, in an appropriate manner or by appropriate proceedings which shall operate during the pendency thereof to prevent the collection of or other realization upon the encumbrance or lien so contested, and the sale, forfeiture, or loss of the Property or any part thereof to satisfy the same. Each such contest shall be promptly prosecuted to final conclusion (subject to the right of Developer to settle any such contest), and Developer shall, promptly after the final determination of such contest or settlement thereof, pay and discharge the amounts which shall be determined to be payable therein, together with all penalties, interest, costs and expenses thereon or in connection therewith. Developer shall give City prompt written notice of any such contest and of the final outcome thereof.

Section 6.3. Required Terms in any Conveyance. Developer shall endeavor to include in every deed, lease, sublease and other instrument conveying all or any part of Developer's interest in any portion of the Property, a provision identifying the terms, conditions, restrictions and requirements of this Article and acknowledging that the City may enforce the terms, conditions, restrictions and requirements of this Article against Developer's successors and assigns to the same

extent as against Developer. Developer shall cooperate in good faith in the City's enforcement of the requirements of Section 6.2, above, against Developer's successors and assigns to any interest in the Property.

Section 6.4. Covenants: Binding Upon Successors in Interest. It is intended that the covenants undertaken by Developer pursuant to this Article shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, only to the extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City, its successors and assigns, against Developer, its successors and assigns and every successor in interest to any portion of the Property and the improvements erected or to be erected thereon, or any part thereof or any interest therein, and any party in possession or occupancy of any of such property, or any part thereof.

ARTICLE 7. TAX ABATEMENT

Section 7.1. Tax Abatement. Tax Abatement. The Property is situated within the Guthrie Avenue Business Park Redevelopment Area sub-area of the City-Wide Urban Revitalization Area, and provided the construction of the Improvements has begun by December 31, 2011 and completed by December 31, 2012, and the Property is redeveloped in accordance with this Agreement and all applicable tax abatement requirements, City represents that, except as otherwise provided in this Section, the assessed value added to the Property by the construction of the Improvements is eligible for tax abatement pursuant to the schedules set forth in Iowa Code (2007) §404.3(2), (3) and (4), and Developer may file an application to the County Assessor for a 3-year 100% exemption on the value added by the Improvement. Unless the current City-wide Urban Revitalization Plan is amended and extended, any value added by improvements made after December 31, 2012 is not eligible for tax abatement as the Plan lapses on that date.

ARTICLE 8. REMEDIES.

Section 8.1. In General. Except as otherwise specifically provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by either party hereto, such party shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, shall complete such cure or remedy within forty-five (45) days (or such other time as may be specifically provided herein) after receipt of such notice. In case such action is not promptly taken or not diligently pursued, or the default or breach shall not be cured or remedied within such time, in addition to such other rights as it may have hereunder, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations and for damages for breach of contract. In any claim, action or civil proceeding wherein damages are sought for breach of this Agreement, City shall have the same rights and liabilities as a private non-governmental party for any breach of this Agreement.

Section 8.2. Effect of Injunction Against City. In the event that prior to any conveyance of any portion of the Property to Developer, City is permanently enjoined or prevented by law (other than by the voluntary act of City) from conveying the Property to Developer, then Developer or City may elect to terminate this Agreement, in which case neither party shall have any further obligation to the other. City shall contest in good faith any action brought by third parties before any judiciary or administrative body seeking to enjoin or stop the City's conveyance of the Property to the Developer.

Section 8.3. Specific Remedies, Retention of Good Faith Deposit, Reverter.

- A. In the event Developer is declared to be in breach of its obligations under Article 1 to timely satisfy the conditions precedent to Closing then, the City may terminate this Agreement and the Good Faith Deposit shall be retained by the City as liquidated damages and as its property without any deduction, offset, or recoupment whatsoever and except for retention of the Good Faith Deposit, neither the Developer nor the City shall have any further rights against or liability to the other under this Agreement. Notwithstanding the above, if Developer's breach is caused by Developer's inability to obtain commitments for adequate financing to complete construction of the Improvements and Developer furnishes evidence that it made diligent efforts to obtain such financing, then the City shall return the Good Faith Deposit to Developer and neither the Developer nor the City shall have any further rights against or liability to the other under this Agreement.
- B. In the event that after Closing, Developer is determined by a court of competent jurisdiction to be in breach of this Agreement for failing to commence construction of the Improvements, then in addition to any other remedy allowed by law, all legal and equitable title to the Property shall revert back to City free and clear of all liens and encumbrances imposed upon the Property by Developer. This right-of-reversion shall be superior to all other liens and encumbrances placed upon the Property by Developer until construction of the Improvements is commenced by the construction of a portion of the footings and foundations for the buildings to be constructed upon the Property. This right-of-reversion shall terminate upon the placement of a portion of the footings and foundations for the buildings to be constructed upon the Property.
- C. In the event the Improvements are not substantially completed by December 30, 2009, as required by Section 3.2, then for each calendar month, or any part of a month greater than 15 days, between that date, and the date the Improvements are substantially completed, City shall retain 10% of the Good Faith Deposit as liquidated damages for the delay.

Section 8.4. Other Rights and Remedies, No Waiver by Delay. City and Developer shall have the right to institute such actions or proceedings, as each may deem desirable for effectuating the purposes of this Article. Provided, that any delay by City or Developer in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights shall not operate as a

waiver of such rights or to deprive either City or Developer of or limit such rights in any way; it being the intent of this provision that City and Developer should not be constrained to exercise such remedies at a time when such party may still hope otherwise to resolve the problems created by the default involved so as to avoid the risk of being deprived of or limited in the exercise of such remedies because of concepts of waiver, laches, or otherwise. No waiver in fact made by City or Developer with respect to any specific default by the other party shall be considered or treated as a waiver of the rights of City or Developer with respect to any other defaults by the other party or with respect to the particular default, as the case may be, except to the extent specifically waived in writing by City or Developer.

Section 8.5. Enforced Delay in Performance. Except for an obligation to pay money to the other pursuant to this Agreement, neither City nor Developer shall be considered in breach of, or in default of, its obligations with respect to this Agreement, or any portion thereof, including redevelopment, or the beginning and completion of construction of the Improvements, in the event of an 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, temporary injunctions, acts of God, acts of the public enemy, acts of government (provided City may not rely upon its own acts as reason for delay), acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes or other labor disruptions, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; 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 for performance of the obligations of City or of Developer, as the case may be, shall be extended for the period of the enforced delay: Provided, that the party seeking the benefit of the provisions of this Article shall, within twenty (20) days after the beginning of any such enforced delay, have notified the other party thereof in writing, and of the cause or causes thereof, and setting forth the anticipated extension required as a result of the enforced delay.

Section 8.6. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any default or breach by the other party. No waiver made by either party shall be deemed a waiver in any respect in regard to any other rights of the party making the waiver or of any other obligations of the other party.

ARTICLE 9. MISCELLANEOUS.

Section 9.1. Representatives Not Individually Liable.

- A. No member, official, or employee of City shall be personally liable to Developer in the event of any default or breach by City or for any amount which may become due to Developer or on any obligations under the terms of this Agreement.

- B. Notwithstanding anything contained in this Agreement to the contrary, the person or persons executing this Agreement on behalf of either party shall incur no personal liability with respect to either party's performance hereunder.

Section 9.2. City Not a Guarantor, Surety or Partner. City is not a guarantor or surety for the redevelopment nor for any indebtedness incurred by Developer. It is mutually understood that nothing in this Agreement is intended or shall be construed as in any way creating or establishing the relationship of copartners between the parties hereto, or as constituting Developer as a contractor, agent or representative of City for any purpose of in any manner whatsoever.

Section 9.3. Interpretation of Contract.

- A. *Documents to be Considered Together.* The approved Conceptual Development Plan and Construction Plans and any approved changes or modifications thereto shall be incorporated into this Agreement effective as of the date of such approvals. Any interpretation of the provisions of this Agreement shall be made by construing this Agreement and all Exhibits hereto together with the approved Development Plan and Construction Plans and any approved amendments thereto. Copies of all such documents shall be placed on permanent file in the Office of the City Clerk, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.
- B. *Titles of Articles and Sections.* Titles of the several sections, subsections, and paragraphs of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.
- C. *Merger.* None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring title to the Property to Developer, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.
- D. *Choice of Laws.* This Agreement shall be construed in accordance with the laws of the State of Iowa.
- E. *Timing.* Time is of the essence in the performance of this Agreement.
- F. *Non-working Days.* In the event the last date for performing any act required by this Agreement falls upon a weekend day or holiday, then the time for performing such act shall be extended to the next following working day.
- G. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

Section 9.4. Waiver of Jury Trial. City and Developer each hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement or any instrument or document delivered hereunder.

Section 9.5. Agreement Binding on Successors in Interest. This Agreement shall inure to the benefit of and shall be binding upon successors and assigns of the parties.

Section 9.6. Notices. A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested; delivered personally; or sent by overnight courier service, as follows:

- (a) in the case of Developer, addressed to:
Attn: Mark Doll
Doll Distributing
1901 De Wolf Street
Des Moines, Iowa 50317
- (b) in the case of City, addressed to:
Attn: City Manager
City of Des Moines
400 Robert D. Ray Drive
Des Moines, Iowa, 50309,

or to such other address, Department, or individual as either may, from time to time, designate in writing and forward to the other as provided in this Article.

Section 9.7. Recordation. City Clerk shall cause this Agreement to be recorded at the City's expense in the land records of the Polk County Recorder's Office. A copy of this Agreement, including all the Exhibits shall be maintained in the office of the City Clerk of City.

Section 9.8. Termination Certificate. Upon the termination of this Agreement as provided herein or upon satisfaction by the parties of all their obligations under this Agreement and upon request by Developer, City shall issue to Developer a Termination Certificate certifying that Developer has satisfied all its obligations under this Agreement. Such Termination Certificate shall be in recordable form to permit it to be recorded in the records of the Polk County Recorder. Developer may utilize the Termination Certificate as evidence of its compliance with and satisfaction of all its obligations under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on or as of the day first above written.

DEVELOPER

Doll Distributing, LLC.

Mark Doll - CEO,
Mark Doll, CEO Doll Distributing, LLC

CITY OF DES MOINES, IOWA

ATTEST:

By: _____
Diane Rauh, City Clerk

By: _____
T.M. Franklin Cownie, Mayor

APPROVED AS TO FORM:

Michael F. Kelley
Assistant City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ___ day of _____, 2009, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and DIANE RAUH, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Roll Call No. 09-_____ of City Council on the ___ day of _____, 2009, and that T.M. FRANKLIN COWNIE and DIANE RAUH acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.

Notary Public in the State of Iowa