

Date August 6, 2007

**RESOLUTION ACCEPTING DEVELOPER-INITIATED REDEVELOPMENT
PROPOSAL FROM HOUGHTON PROPERTIES
TO REDEVELOP DISPOSITION PARCEL NO. 16A
(SOUTH OF MATTERN AVENUE TO E. JEFFERSON AVENUE
BETWEEN DIXON AND DE WOLF STREETS)
IN THE GUTHRIE AVENUE BUSINESS PARK URBAN RENEWAL AREA
AND SETTING DATE OF HEARINGS**

WHEREAS, on September 26, 1988 by Roll Call No. 88-4238, the City Council of the City of Des Moines approved the Urban Renewal Plan for the Guthrie Avenue Business Park Urban Renewal Project (hereinafter referred to as "Plan"), an area generally bounded by Guthrie Avenue to the north, Washington Avenue to the south, the Union Pacific Railroad right-of-way to the east and East 17th Street to the west and said Plan has subsequently been amended; and

WHEREAS, Houghton Properties ("Offeror") presented a developer-initiated proposal including preliminary design plans ("Proposal") for private redevelopment of Disposition Parcel No. 16A ("Property") in the Guthrie Avenue Business Park to the Urban Design Review Board on July 24, 2007, which Proposal is attached herein as Attachment "A"; and

WHEREAS, the attached Proposal and the Urban Renewal Development Agreement ("Agreement"), tendered herewith and executed by the Offeror, proposes redevelopment of 100,567 square feet in three office/warehouse/distribution facilities, parking and landscaping at an estimated development cost of approximately \$3 million; and

WHEREAS, said Proposal provides that Offeror will purchase the Property for a purchase price of \$345,000; and

WHEREAS, said Proposal also provides that the City shall deduct from the purchase price of the Property at closing (a) the lowest responsible of three bids for approved demolition work, (b) \$158,000, which represents the net present value of the projected tax revenue stream from an additional estimated 24,000 square feet the Offeror will construct at the southeast corner of De Wolf Street and E. Jefferson Avenue beyond the minimum 66,000 square feet of building improvements, and (c) \$25,000 to limit the City's liability to Offeror for any additional hazardous or solid waste discovered on the Property; and

WHEREAS, said Proposal meets the minimum needs of the City for such redevelopment, is comprehensive and legal in form and content as evaluated by City staff in its staff report attached herein as Attachment "B," has been reviewed by the Urban Design Review Board at its July 24, 2007 meeting, at which the Board recommended acceptance of the Offeror's Proposal to this Council; and

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WHEREAS, the proposal contemplates and is contingent upon the City's vacation by ordinance of East 18th Street between Mattern and East Jefferson Avenues and East Jefferson Avenue between Dixon and DeWolf Streets; and

WHEREAS, the proposed Minimum Development Requirements and Competitive Criteria, attached herein as Attachment "C", were reviewed by the Urban Design Review Board at its July 24, 2007 meeting, which recommended approval to the Council; and

WHEREAS, said Offeror has tendered a cashier's check made payable solely to the City of Des Moines from U.S. Bank as a good faith deposit in the amount of \$86,250 for the development of Disposition Parcel No. 16A; and

WHEREAS, Section 403.8, Code of Iowa, provides:

1. A municipality may sell, lease or otherwise transfer real property or any interest in real property acquired by it, and may enter into contracts for such purposes in an urban renewal area for residential, recreational, commercial, industrial or other uses, or for public use, subject to such covenants, conditions and restrictions, including covenants running with the land, it deems to be necessary or desirable to assist in preventing the development or spread of future slums or blighted areas, or to otherwise carry out the purposes of this chapter. However, the sale, lease, other transfer, or retention, and any agreement relating to it, may be made only after the approval of the urban renewal plan by the local governing body. The purchasers or lessees and their successors and assigns shall devote the real property only to the uses specified in the urban renewal plan, and they may be obligated to comply with other requirements the municipality determines to be in the public interest, including the requirements to begin within a reasonable time any improvements on the real property required by the urban renewal plan. The real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan except as provided in subsection 3. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account and give consideration to the uses provided in such plan; the restrictions upon and the covenants, conditions and obligations assumed by the purchaser or lessee or by the municipality retaining the property; and the objectives of the plan for the prevention of the recurrence of slum or blighted areas. The municipality in an instrument of conveyance to a private purchaser or lessee may provide that the purchaser or lessee shall not sell, lease, or otherwise transfer the real property, without the prior written consent of the municipality, until the purchaser or lessee has completed the construction of any or all improvements which the purchaser or lessee has become obligated to construct. Real property acquired by a municipality which, in accordance with the urban renewal plan, is to be transferred, shall be transferred as rapidly as feasible in the public interest, consistent with the carrying out of the urban renewal plan. A contract for a transfer under the urban renewal plan or part or parts of the contract or plan as the municipality determines, may be recorded in the land records of the county in such a manner to afford actual or constructive notice of the contract or plan.

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2. A municipality may dispose of real property in an urban renewal area to private persons only under reasonable competitive bidding procedures it shall prescribe, or as provided in this subsection. A municipality, by public notice by publication in a newspaper having a general circulation to the community, thirty days prior to the execution of a contract to sell, lease or otherwise transfer real property, and prior to the delivery of an instrument of conveyance with respect to the real property under this section, may invite proposals from and make available all pertinent information to any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or a part of the area.

The notice shall identify the area, or portion of the area, and shall state that proposals shall be made by those interested within thirty days after the date of publication of the notice, and that further information available may be obtained at the office designated in the notice. The municipality shall consider all redevelopment or rehabilitation proposals, and the financial and legal ability of the persons making the proposals to carry them out, and the municipality may negotiate with any persons for proposals concerning the purchase, lease or other transfer of real property acquired by the municipality in the urban renewal area. The municipality may accept the proposal it deems to be in the public interest and in furtherance of the purposes of this chapter. However, a notification of intention to accept the proposal shall be filed with the governing body not less than thirty days prior to the acceptance. Thereafter, the municipality may execute a contract in accordance with subsection 1 and may deliver the deeds, leases and other instruments and may take all steps necessary to effectuate the contract.

WHEREAS, it is necessary and appropriate that the City Council take certain actions with respect to the Property in order to accept the Proposal for the purchase of the Property and give fair opportunity for other potential offerors to submit a Proposal for the purchase of the Property; and

WHEREAS, such necessary and appropriate actions of the City Council shall include the following:

1. Approval of the Minimum Development Requirements and Competitive Criteria (Attachment "C") which meet the objectives and requirements of the Plan, as amended, and which were developed to evaluate proposals.
2. Acceptance of the Offeror's Proposal in accordance with the Offeror's presentation to the Urban Design Review Board on July 24, 2007 and Urban Renewal Development Agreement.

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3. Approval of the general form of required documents for a redevelopment proposal to be used by competing redevelopers, which documents include:
 - A. Summary of Proposal.
 - B. Letter of Transmittal.
 - C. Redeveloper's Statement for Public Disclosure.
 - D. Redeveloper's Statement of Qualifications and Financial Responsibility.
 - E. Financial Condition of the Redeveloper.
 - F. Non-Collusion Affidavit.
 - G. Urban Renewal Development Agreement.

4. Setting dates for:
 - A. The receipt of competing proposal(s) and the opening thereof.
 - B. The period of time after receipt of competing proposal(s) for each offeror to amend its proposal in writing and the deadline for completion of each amendment.
 - C. The period of time for review of proposal(s) by the Urban Design Review Board and the period of time for the Board to make recommendations to this Council.

5. Declaration that in the event the Offeror's Proposal is the only proposal for the redevelopment of the Property or the only one that is timely submitted and meets the Minimum Development Requirements, contained in Attachment "C", such Proposal will be given final approval by the Council's authorization that the Agreement herein submitted as a part of Attachment "A" be executed on behalf of the City of Des Moines.

6. Declaration that in the event the Offeror's Proposal is modified or a competing proposal is selected for award of the sale of Property, further public notice will be published of the City's intent to enter into the resulting Agreement; and

WHEREAS, the City has adopted a fair market value for Disposition Parcel No. 16A, which is \$345,000 for uses in accordance with the Urban Renewal Plan; and

WHEREAS, this Council believes the acceptance of the Offeror's Proposal to redevelop the Property and the advertisement for competing redevelopment proposals is in the best interests of the City of Des Moines, Iowa.

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

1. The Proposal, attached herein as Attachment "A", which includes the Agreement executed by the Offeror for the Property be and is hereby accepted and approved as to form for the purposes hereinafter stated.

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2. For the purposes of defining the offering of the Property for redevelopment, said Proposal of Offeror shall be deemed to be and to illustrate the minimum proposal acceptable to the City of Des Moines in terms of: (A) general form of proposal and data required for competing proposals; (B) land parcelization; (C) type of land use required; (D) intensity of land use required; (E) sale price; (F) easements to be obtained and/or received; (G) form of deed; (H) time and place for delivery of deed; (I) taxes; (J) recordation of deed; (K) performance assurances; (L) time for commencement and completion of improvements; (M) time permitted for plan submission and review; (N) rights of access to property; (O) construction plans, improvements and certificate of completion; (P) restrictions on use of property; (Q) prohibitions against assignment and transfer; (R) mortgage financing and rights of mortgagees; (S) remedies; and (T) all miscellaneous provisions.
3. The Minimum Development Requirements and Competitive Criteria (Attachment "C") are determined to meet the objectives and requirements of the Plan, as amended, and are hereby approved and adopted.
4. Competing proposals to the Offeror's Proposal shall:
 - A. Devise a method and sources of financing which must be adequate to assure financing of the project in a timely manner.
 - B. Provide a certified or registered check, or bid bond with corporate surety, or unconditional and irrevocable letter of credit (from a lending institution approved by the City) or certificate of deposit redeemable by the City without another endorsement issued to the City in the amount of \$86,250 payable to the order of the City of Des Moines, Iowa, for Disposition Parcel No. 16A as the good faith deposit. The minimum land price must be offered. If a check is submitted, it shall be deposited in an interest-bearing account by the City. Any interest earned pursuant to such deposit shall be paid to the competing offeror when the good faith deposit is returned. If the competing proposal is accepted, the good faith deposit will be held by the City as security for execution by the competing offeror of the Urban Renewal Development Agreement and as security for proceeding with development. The good faith deposit of a successful competing offeror shall be released upon the completion of construction and the issuance of a Certificate of Completion or in accordance with the other terms of the Urban Renewal Development Agreement. The good faith deposit of an unsuccessful competing offeror shall be returned by the City upon selection of another redeveloper.
 - C. Propose a time schedule for commencement and completion of the construction within one year from execution of the Agreement.

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- D. Devise an architectural and landscaping design which meets the Minimum Development Requirements, contained in Attachment "C", which specify Disposition Parcel No. 16A uses, minimum building size, building setbacks, building height, building entrance, building design and materials, off-street parking, loading and access, outside storage and service areas, site design and materials, lighting and signage.
- E. Complete all required documentation to indicate design specifications for the development. Development must proceed as designed. Proposals may provide alternate designs which require exception(s) or variance(s) from the Board of Adjustment. If the exception(s) or variance(s) are not granted, the original design must be used.

Deviations from the proposal form shown in Attachment "A" shall be permitted only as set forth in this resolution or to accommodate submission of competing proposals in accordance with the requirements referenced above.

- 5. The staff report contained in Attachment "B" and the recommendation of the Urban Design Review Board that the Proposal and plans of the Offeror (Attachment "A") be accepted and approved by this Council are hereby confirmed and approved.
- 6. It is hereby determined that the Offeror possesses the qualifications and financial resources necessary to acquire and redevelop the Property in the manner stated in its Proposal in accordance with the Plan, as amended.
- 7. It is hereby determined that the purchase price of \$345,000 to be paid by the Offeror meets the fair market value thereof for uses in accordance with the Urban Renewal Plan and shall be the established minimum price for Disposition Parcel No. 16A/Guthrie Avenue Business Park Urban Renewal Area.
- 8. The City Clerk shall receive and retain for public examination the attached Proposal and Urban Renewal Development Agreement of said Property by the Offeror subject to the conditions herein stated and in accordance with Chapter 403, Code of Iowa, and in the event of no qualified competing proposals, the City Clerk shall submit the same to this Council for final approval and execution upon expiration of the notice period hereinafter prescribed.
- 9. The action of this Council be considered to be and does hereby constitute final notice to all concerned of the intention of this Council to give final approval of the Offeror's Proposal to purchase and redevelop the Property and enter into the Agreement with the Offeror.
- 10. This roll call and Attachments "A," "B" and "C" shall be on file at the Office of the City Clerk and at the Office of Economic Development, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.

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11. Approval and acceptance of the Offeror's Proposal (Attachment "A") is conditioned upon there being no better proposal submitted by a competitor for the redevelopment of the Property within the period or periods hereinafter stated.
12. The Property shall be competitively offered for sale based on the terms and conditions hereinafter stated and such offering shall be in substantial conformance with the provisions of Chapter 403, Code of Iowa, requiring "reasonable competitive bidding procedures" as same are herein prescribed and which method is hereby determined to be the appropriate method for making the land available for redevelopment.
13. The required forms for the submission of proposals and statements by the competing offeror(s), including the form of Urban Renewal Development Agreement, shall be in substantial conformity with the provisions of this Roll Call and shall be available on request from the Office of Economic Development, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, 50309 (283-4004) and be completely executed in all particulars required by said forms.
14. All inquiries regarding the terms and conditions of this offering must be submitted in writing to the Office of Economic Development, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, 50309. All responses to inquiries shall be in writing and will be kept on file at the Office of the City Clerk and the Office of Economic Development Division, City Hall. No written inquiries shall be accepted after 5:00 p.m. on September 11, 2007.
15. Written competing proposals for the purchase and redevelopment of said Property must be received by the Office of Economic Development on or before 8:15 a.m., September 18, 2007. In the event no competing proposals are timely submitted, the City Council intends to approve the sale of the property to Houghton and authorize execution of such urban renewal agreement for sale of land at a public hearing on September 24, 2007 at 5:00 p.m. in the Council Chambers, 400 Robert D. Ray Drive, Des Moines, Iowa. All proposals must be submitted in three manually executed copies in a securely sealed package with no exterior indication of the identity of the person or firm making the proposal. The form of proposals must include completed and executed copies of all documents. Said proposals shall be received in the Office of Economic Development located in City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa. Each proposal will then be publicly opened at a meeting of the Urban Design Review Board commencing at 8:30 a.m. on September 18, 2007.

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16. An Office of Economic Development staff member shall deliver the competing proposals to the Urban Design Review Board at its meeting on September 18, 2007, and the Urban Design Review Board is hereby nominated and appointed as the agent of the City of Des Moines, Iowa, to receive competing proposals for the purchase of said Property from the Office of Economic Development staff members at its September 18, 2007 meeting. The Urban Design Review Board shall proceed at such time to acknowledge receipt of each proposal in its Minutes, and the Board is authorized and directed to make a preliminary analysis of each proposal for compliance with the requirements hereinabove stated and for quality of the proposal in view of the following criteria by which each proposal will finally be evaluated by this Council, to wit:
 - A. The degree to which the proposal meets the objectives and requirements of the Urban Renewal Plan, as amended, as reflected by the Minimum Development Requirements and Competitive Criteria (Attachment "C").
 - B. The ability of the competing offeror to commence and complete the redevelopment activity in an expeditious and timely manner with the start of construction anticipated to be no more than 90 days after the date of conveyance of the Property by the City.
 - C. Ambiguity and/or lack of information in the proposal shall be judged negatively.
17. Following receipt of a competing proposal(s) and during the period of such preliminary analysis, there shall be a period of seven days, starting on September 18, 2007 and ending at 9:00 a.m. on September 25, 2007, for the Offeror to amend its proposal in response and deliver same to the Office of Economic Development in the same manner as competing proposal(s) aforesaid.
18. In the event any competing proposal is received and determined by the Urban Design Review Board to meet the Minimum Development Requirements contained in Attachment "C" and the required form of proposal requirements of this Roll Call, the Board shall schedule a meeting on or by October 2, 2007 for a bid-off. During such bid-off, each competing proposal will bid against the other, starting with the first proposal received until each proposal will not be further improved in response to the last bid. The period of time of such bid-off shall not be in excess of three consecutive hours and the rules of such bid-off shall be as informally determined by the Urban Design Review Board at or before such bid-off period and shall be absolute.
19. In the event of such bid-off, the Urban Design Review Board shall forthwith make its recommendation to this Council for such further proceedings as may then be appropriate under the provisions of Chapter 403, Code of Iowa.
20. In the event the Urban Design Review Board determines that no competing proposal meets the Minimum Development Requirements contained in Attachment "C" or the form of proposed requirements stated in this Roll Call, any material submitted by the Offeror to amend its proposal shall not become binding.

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- 21. All competing proposals received which are deemed to meet the requirements of this Roll Call shall not be withdrawn under any circumstances until October 31, 2007.
- 22. (a) That the City Council of the City of Des Moines shall consider adoption of an ordinance permanently vacating East 18th Street between Mattern and East Jefferson Avenues and East Jefferson Avenue between Dixon and DeWolf Streets, more specifically described as follows:

All that part of Lot Z, T. E. Brown's, Official Plat, (Mattern Avenue) right-of-way lying North of and adjoining Block 11 and 12, of said T. E. Brown's, and lying North of and adjoining Lot K of said T. E. Brown's (East 18th Street) right-of-way, and all that part of said Lot K, (East 18th Street) right-of-way lying East of and adjoining said Block 11, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

The vacation of such right-of-way is hereby referred to the Plan and Zoning Commission for its report and recommendation. The Commission is requested to submit its report and recommendation prior to the public hearing scheduled below.

(b) That the meeting of the City Council at which the adoption of said ordinance is to be scheduled shall be on September 24, 2007, said meeting to be held at 5:00 p.m., in the Council Chambers.

(c) The City Clerk is hereby authorized and directed to publish notice of said proposal in the form hereto attached all in accordance with § 362.3 of the Iowa Code.

(Council Communication No. 07-465 Attached)

APPROVED AS TO FORM:

Moved by _____ to approve.


 Michael F. Kelley
 Assistant City Attorney

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

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.

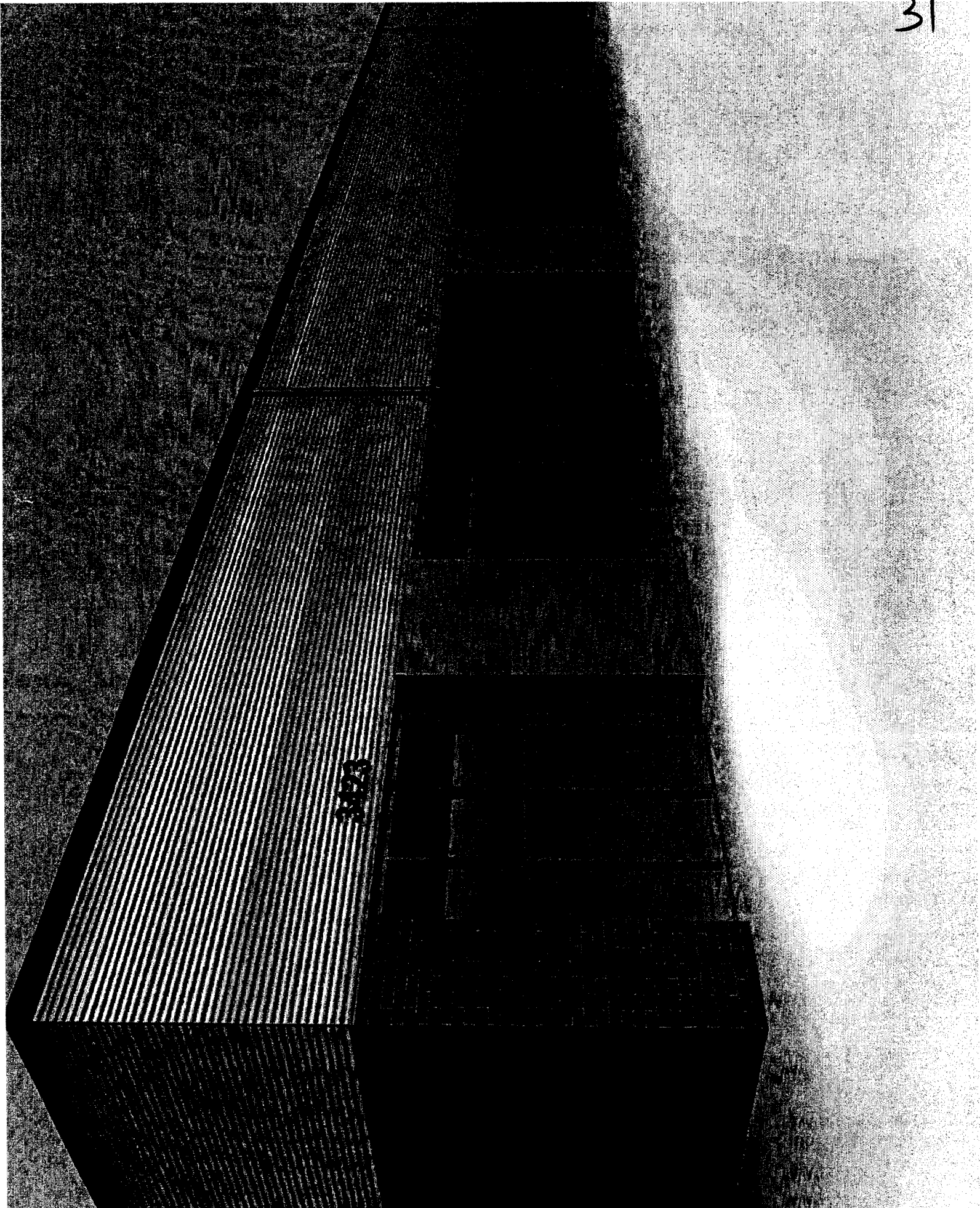
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

 City Clerk

MOTION CARRIED

APPROVED

 Mayor



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**URBAN RENEWAL
DEVELOPMENT AGREEMENT**

GUTHRIE AVENUE BUSINESS PARK URBAN RENEWAL AREA

By and Between

CITY OF DES MOINES, IOWA

and

HOUGHTON PROPERTIES

Approved by City Council:

Date:

Roll Call No. 07-_____

Exhibits:

“A” - Declaration of Covenants

“B” – Minimum Assessment Agreement

NOTE: Only Exhibits “A” and “B” are intended to be recorded in the land records of the Polk County Recorder. 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 _____ day of _____, 2007, 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 Houghton Properties, an Iowa Partnership having its principal office at 12814 Cardinal Lane, Urbandale, Iowa, 50323 (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, 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; 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 Guthrie Avenue Business Park Urban Renewal Plan and amendments thereto (hereinafter called "Urban Renewal Plan"), 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>Urban Renewal Plan or Amendment</u>	<u>Date</u>	<u>Adopted by City Roll Call No.</u>	<u>Polk Co. Book</u>	<u>Recorder's Office at Beginning at Page</u>
Urban Renewal Plan	09/26/88	88-4238	5958	44
First Amendment	07/16/90	90-3173	6263	983
Second Amendment	02/15/93	93-510	6750	414

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

WHEREAS, the City has offered to sell and the Developer is willing to purchase Disposition Parcel No. 16A (hereinafter called "Property") which is located in the Project Area and which is more particularly described in Section 1 of this Agreement, and to redevelop the Property in accordance with the terms and conditions of this Agreement; and

WHEREAS, Developer's proposal for redevelopment of the Property is set forth in Exhibit C; and

WHEREAS, the 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 the 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 law and requirements under which the

Project has been undertaken; and

WHEREAS, the Developer's obligations under this Agreement to construct the Improvements furthers 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 intensive and coordinated mixed-use development of commercial, light industrial and parking improvements, and to encourage the coordinated development of parcels and structures to achieve efficient building design and the provision of adequate parking; and,

WHEREAS, the economic development incentives for the development of the Improvements shall be provided by the City to Developer pursuant to the Urban Renewal Law and Chapter 15A of the Code of Iowa and Developer's obligations under this Agreement to construct the Improvements will generate the following public gains and benefits: (i) it will encourage further private investment and will attract and retain businesses in the Project Area to reverse the pattern of disinvestment; and, (ii) it will further the City's efforts to create and retain job opportunities within the Project Area which might otherwise be lost; and,

WHEREAS, the development of the Improvements is a speculative venture and the public gains and benefits from the construction and redevelopment opportunities would not occur without the economic incentives provided by this Agreement, and the public gains and benefits are warranted in comparison to the amount of economic incentives; 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 warrant the provision of the economic assistance 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 OF PROPERTY

Section 1.1. Agreement for Purchase and Sale. The City agrees to sell to the Developer and the Developer agrees to purchase from the City the following described Property (Disposition Parcel 16A):

All that part of Vacated Lot Z, T.E. Brown's, Official Plat (Mattern Avenue) right-of-way lying North of and adjoining Block 12 of said T.E. Brown's, and lying North of and adjoining the East ½ of Vacated Lot K, of said T. E. Brown's (East 18th Street) right-of-way, and East ½ of said Vacated Lot K, (East 18th Street) right-of-way lying West of and adjoining the North 269.0 feet of Block 12, of said T.E. Brown's, and all that said Lot K, (East 18th Street) right-of-way lying West of and adjoining the South

341.0 feet of said Block 12, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

Section 1.2. Property Purchase Price.

A. The market value of Disposition Parcel 16A has been calculated by the city at \$1.35 per square foot, which shall be rounded upward to the nearest \$100.00. The Property is approximately 255,546 square feet (5.87 acres), which shall be sold for \$345,000.00.

B. Developer shall procure at least three bids for demolition of any existing buildings on the Property, any trees in the building footprint and future paved areas, any trees that are unhealthy, and any streets, sidewalks, pavement, asphalt or fencing on the Property. Developer shall present the lowest three responsive and responsible bids to the City which shall then select a demolition contractor to perform the described demolition and clearing. Developer shall enter into an agreement with and shall be responsible for paying the selected contractor. The City shall deduct the cost of the lowest responsible demolition bid from the purchase price at closing and shall be relieved of any further obligations concerning demolition or clearing at the Property. The City shall be responsible for asbestos testing and removal from the structure at 1711 Dixon Street.

C. The City and Developer agree that Developer is entitled to apply for tax abatement for the two proposed warehouse/distribution buildings with a combined estimated square footage of 80,000 square feet. Developer agrees not to apply for any County or State of Iowa tax abatement for the third proposed warehouse/distribution building of approximately 24,000 square feet. In exchange, the City shall at closing deduct from the purchase price the approximated net present value of the projected tax revenue stream, which shall be \$158,000.00.

D. The City shall deduct \$25,000.00 from the purchase price, which will be its sole cost and upper limit of the City's responsibility for any claims or charges concerning any additional hazardous or solid waste discovered on the property.

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 for Conveyance. The City shall convey the Property within thirty (30) days after satisfaction of all of the following conditions:

- (1) Approval by the City of the Conceptual Plan, as provided in Section 4-2.
- (2) Vacation of Streets. Vacation by ordinance of East 18th Street between Mattern and East Jefferson Avenues and Mattern Avenue between Dixon and

DeWolf Streets.

- (3) Delivery to Developer of the environmental documents referred to in Section 1.7.

Upon satisfaction of all of the above conditions, 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.

On the conveyance date, upon a finding of merchantable title in the City of Des Moines, free and clear of all liens and encumbrances, except for easements and restrictions of record, by the Developer's attorney in conformity with Iowa Law and Title Standards of the Iowa State Bar Association, the Developer shall pay the purchase price in cash or by certified check, subject to any deduction or offsets as specified in this Agreement. Thereafter, the City shall deliver the Deed, and the Developer shall take possession of 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's 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. Environmental. The property is being sold "as is." The city has provided Developer with a letter dated March 22, 2005 from the State of Iowa Department of Natural Resources ("DNR") regarding a Limited Environmental Assessment performed on the Property as well as the DNR's No Further Action Certificate dated July 29, 2003 (Registration No. 198608739). The DNR stated in its letter that the data contained in the report does not exceed action levels for chemicals of concern, and the DNR is not requiring further site investigation at this time.

Section 1.8. Overhead Power Lines. The City shall work with MidAmerican Energy to remove the overhead power lines along East 18th Street between Mattern and East Jefferson Avenues. MidAmerican Energy shall be responsible for the expense of removal as this is part of an

urban renewal project. All other easements shall be retained.

ARTICLE 2. GOOD FAITH DEPOSIT: DISPOSITION PARCEL NO. 16A

Section 2.1. Amount. Simultaneously with the execution of this Agreement, the Developer shall deliver to the City its Good Faith Deposit in the amount of 25% of the Purchase Price which is \$86,250.00 (that amount and any earnings thereon shall hereinafter be referred to as "Deposit"), as security for completion of its obligations under this Agreement for Disposition Parcel No. 16A. The Deposit may be in the form of a registered, certified or cashier's check, a corporate surety bond, an unconditional and irrevocable letter of credit issued to the City by a leading institution approved by the City, or a certificate of deposit redeemable by the City without another endorsement.

Section 2.2. Interest. If the Deposit is in the form of a registered, certified or cashier's check, the City shall deposit the check in an interest-bearing account. In such case or if the Deposit is in the form of a certificate of deposit, the City shall promptly upon release of the Deposit pay to the Developer any interest received by the City.

Section 2.3. Retention by City. Upon Developer's failure to construct the agreed-upon improvements, and subject to the terms and conditions of this Agreement, the Deposit and any accrued interest shall be retained by the City.

2.4. Return to Developer. Upon the issuance of the Certificate of Completion as provided in Section 4.5 the City shall return the Deposit and any accrued interest to the Developer.

ARTICLE 3. CONSTRUCTION OF IMPROVEMENTS

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"):

- 1) Construct at least two and no more than three buildings, together containing at least 66,000 square feet of enclosed space, suitable for commercial and light industrial uses.
- 2) Construct streetscape improvements.

The Improvements shall be constructed in conformity with this Agreement, the land use requirements of the Urban Renewal Plan, the approved Conceptual Development Plan and all applicable State and local laws and regulations.

Section 3.2. Time for Completion of Improvements. A. Developer shall commence construction of the Improvements by April 1, 2008, and shall complete construction of the Improvements by July 1, 2009, subject to receipt of building permits within a reasonable period of

time. 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 the request and Developer and its Architect or a designated representative shall participate in the conference.

Section 4.2. Conceptual Development Plan.

A. As of the date of this Agreement, 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 for the first and second stories, typical floor plans for each floor above the second story 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 comply with the following requirements:

- 1) The Improvements must satisfy the minimum development requirements set forth in

Article 5.

- 2) The Conceptual Development Plan must satisfy the land use 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 4.2, 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 a building permit if the Construction Plans do not substantially comply with the applicable 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. Certificate of Completion.

A. Developer shall request a "Certificate of Completion" for the Improvements by notifying City in writing that it has completed all the Improvements and furnishing City with an architect's certificate to that effect.

B. Promptly upon receipt of Developer's notification of request for Certificate of Completion, City shall inspect the Improvements. If City determines that Developer has completed the necessary 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 necessary 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 any part 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 applicable Certificate of Completion referenced in this Section.

Section 4.6. Effect of Issuance. A. 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 with respect to the Improvements covered by the Certificate.

B. The Certificates of Completion shall be in recordable form to allow filing among the land records of the Polk County Recorder's Office.

ARTICLE 5. MINIMUM DEVELOPMENT REQUIREMENTS FOR IMPROVEMENTS.

Section 5.1. Minimum Development Requirements for the Property. Developer shall construct the Improvements to the Property in conformity with the following Minimum Development Requirements:

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 building improvements shall contain a minimum of 66,000 square feet of enclosed space. Building improvements shall be constructed in at least two but not more than three buildings. The Developer shall enter into a Minimum Assessment Agreement with the City at the time Disposition Parcel No. 16A is conveyed which fixes the Minimum Actual Value of the required improvements at \$2,970,000 (\$45/square foot).

Section 5.4. Building Setbacks. Buildings shall be set back at least 25 feet from the property lines parallel to Dixon and De Wolf Streets and E. Jefferson Avenue. The side yard and the rear yard setbacks shall be 10 feet each. Mattern Avenue between Dixon and De Wolf Streets and E. 18th Street between Mattern and E. Jefferson Avenues will be vacated. The eastern portion of Mattern Avenue and E. 18th Street will be conveyed as part of Disposition Parcel No. 16A.

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 Dixon and De Wolf Streets.

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.

The Developer shall describe and demonstrate the aspects of its development that will promote environmental sustainability, specifically related to building design and construction. The Developer 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. 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.

B. Materials and Resources

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

C. 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.

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.

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 in the front of the buildings and along the E. Jefferson Avenue side of the buildings, 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. Two driveway accesses shall be permitted for vehicular access onto the site from Dixon Street, four driveway accesses from De Wolf Street and three driveway accesses from E. Jefferson Avenue. The design must be in accordance with the City's driveway access standards. The City Engineering Department may authorize an alternative number of driveway accesses on Dixon and De Wolf Streets and E. Jefferson Avenue based on the proposed site plan.
- C. Existing driveway approaches on Dixon and De Wolf Streets and E. Jefferson Avenue shall be closed.
- 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 5.10. 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 properly planted and well maintained.

The Developer shall describe and demonstrate the aspects of its development that will promote environmental sustainability, specifically related to site development. The Developer 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 Dixon and De Wolf Streets and E. Jefferson Avenue, 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 Dixon and De Wolf Streets and E. Jefferson Avenue 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 Dixon and De Wolf Streets and E. Jefferson Avenue 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 predation 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 or be approved by the Community Development Department.

- (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 Developer 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 5.11. 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 5.12. 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 5.13. Employment. The Developer and/or building tenants collectively shall be encouraged to have a minimum of 59 full-time equivalent, permanent employees within 12 months after an Occupancy Permit has been issued for the buildings.

Section 5.14. Wages and Benefits. The Developer 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. Commencement. The Property shall be subject to the Covenants set forth herein. The Covenants for the Property shall commence with the recording of the Declaration of Covenants pursuant to Section 6.5.

Section 6.2. Covenants. The Property shall be subject to the following covenants, limitations and restrictions regarding its future use and development (herein referred to as the "Covenants"):

- (1) Development. Developer shall undertake the development of the Property by constructing the Improvements thereon in accordance with the terms of this Agreement and all applicable State and City laws and regulations.

- (2) Urban Renewal Land Use. Developer shall use the Property in conformity with the land use requirements of the Urban Renewal Plan.
- (3) Commercial Use. The Improvements shall be devoted, maintained and used exclusively for retail, commercial or light industrial uses and shall be assessed as commercial property.
- (4) 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, 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 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 thereon.
- (5) 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.
- (6) 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 Construction Plans. In the event of fire or other casualty loss, repairs to restore the Improvements to their former condition in substantial conformance with the approved Construction Plans shall be commenced within one hundred twenty (120) days and diligently pursued to completion.
- (7) Prohibition Against Transfer.
 - A. Prior to issuance of the Certificate of Completion for the portion of the Improvements pursuant to Article 4, 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) leasing of individual commercial space in the ordinary course of business, (ii) any such transfer to a lender for the purpose of obtaining funds only to the extent necessary for acquiring the Property and constructing the Improvements, or (iii) easements or other encumbrances necessary for the Improvements. The approval by City shall not be unreasonably withheld.

B. Prior to issuance of a Certificate of Completion for the portion of the Improvements pursuant to Article 4, 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 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 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.

(8) Limitation Upon Encumbrance of Property.

A. Prior to issuance of the Certificate of Completion for the portion of 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 acquiring the Property and constructing the Improvements, and (ii) for easements or other encumbrances necessary for the Improvements. Developer shall use its best 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 9.6 hereof.

C. Developer shall not be required to remove any encumbrance or lien required to be removed under paragraph 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.

(9) Situs for Taxation. Developer, its successors and assigns, and every successor in interest to the Property and the Improvements thereon, or any part thereof, shall not cause or voluntarily permit any part of the Property and the Improvements thereon to be owned by a telephone utility or any other entity of a type where the assessed value of taxable property of such entity is not treated as located within the Guthrie Avenue Business Park Urban Renewal Project Area in its entirety and, except for available Urban Revitalization tax abatement under Iowa Code Chapter 404 as limited pursuant to Articles 1 and 7, shall not apply for a deferral of property tax on the Property pursuant to any present or future statute or ordinance.

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, 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 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.

Section 6.5. Declaration of Covenants. Concurrently with its acquisition of the Property, Developer shall cause the Declaration of Covenants in the form of Exhibit "A" attached hereto, to be properly executed by all owners and lienholders of the Property and recorded, subjecting such Property to the covenants imposed by this Article.

ARTICLE 7. TAXES, MINIMUM ASSESSMENT AGREEMENT

Section 7.1. Division of Property. It is understood and agreed by the parties that the Property may be divided into separate tax parcels for the purpose of ad valorem property tax assessment.

Section 7.2. Minimum Aggregate Assessed Value for Commercial Improvements.

- A. Upon issuance of the Certificate of Completion in accordance with Article 4, the minimum actual taxable value which shall be fixed for assessment purposes for the aggregated value of all building improvements, excluding the underlying land, shall be Two Million, Nine Hundred and Seventy Thousand Dollars (\$2,970,000.00).
- B. The Minimum Assessed Value for each separate tax parcel in the Improvements set forth above shall commence upon the January 1st following the issuance of the Certificate of Completion in accordance with Article 4 and shall remain in effect for a term of fifteen (15) years (herein referred to as the "Term of the Minimum Assessment Agreement"). Developer agrees on behalf of itself and its successors and assigns that during the Term of the Minimum Assessment Agreement:

- (1) it will not seek administrative or judicial review of the applicability or constitutionality of any real property tax statute determined by any duly authorized public official to be applicable to the Property and Improvements or to Developer, or raise the inapplicability or unconstitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings;
- (2) it will not cause a reduction in the taxable value of any separate tax parcel of the Improvements below the Minimum Assessed Value through:
 - (i) willful destruction of the Improvements to the Property or any part thereof;
 - (ii) a request to the Assessor to reduce the taxable value of any ownership unit in the area of the Improvements below the Minimum Assessed Value;
 - (iii) an appeal to the Board of Review to reduce the taxable value of any ownership unit in the area of the Improvements below the Minimum Assessed Value;
 - (iv) a petition to the board of review or the director of review of the State of Iowa to reduce the taxable value of any ownership unit in the area of the Improvements below the Minimum Assessed Value;
- (v) an action in a District Court of the State of Iowa seeking to reduce the taxable value of any ownership unit in the area of the Improvements below the Minimum Assessed Value established for that unit;
- (vi) an application to the director of revenue of the State of Iowa, the Assessor, or any other public officer or body requesting the abatement or deferral of, or an exemption from, real property taxes upon any ownership unit in the area of the Improvements pursuant to any present or future statute or ordinance;
- (vii) an application to the Assessor to have all or any part of the improvements to any ownership unit in the area of the Improvements declared to be tax exempt; or
- (viii) any other proceeding, whether administrative, legal or equitable, with any administrative body within City, Polk County, or the State of Iowa or with any court of the State of Iowa or the federal government.

Section 7.3. Minimum Assessment Agreement. At or before closing, Developer shall enter into and record a binding Minimum Assessment Agreement for the Improvements in the form attached hereto as Exhibit "B", fixing the Minimum Aggregate Assessed Value and the Minimum

Assessed Value as established in Section 7.2. Nothing herein shall waive the rights of Developer or any successor in interest under Iowa law to contest that portion of any actual value assessment made by an Assessor in excess of the Minimum Aggregate Assessed Value or the applicable Minimum Assessed Value established herein.

Section 7.4. Situs for Taxation. Developer shall not, during the term of the Covenants established in Section 6.2, cause or voluntarily permit any part of the Property or Improvements thereon, to be owned by a telephone utility or any other entity of a type where the assessed value of taxable property of such entity is not treated as located within the Project Area in its entirety or apply for a deferral of property tax on such Property pursuant to any present or future statute or ordinance.

Section 7.5. Tax Abatement. As additional consideration for the commitments of the City contained herein, Developer agrees on behalf of itself and each and every one of its successors and assigns that it shall not be entitled to a state enterprise tax abatement or to an Iowa Code Chapter 404 urban revitalization exemption from taxation on the value added by an additional 23,967 square feet above the minimum development requirements of 66,000 square feet of commercially assessed improvements to the Property. Further, Developer agrees on behalf of itself and its successors and assigns that it will file no application for tax abatement or tax exemption for such improvements, and in the event such application is made, the City shall disapprove such application and shall not, and cannot be compelled to, forward such application to the County Assessor. Notwithstanding this restriction, Developer may file an application for tax abatement for the balance of building improvements which shall be approximately 76,600 square feet of flex space. \

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. 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 8.3. 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, unavailability of materials, 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 8.4. 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 nor any officer or employee of Developer shall be personally liable in the event of any default or breach by either party or for any amount which may become due 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 or 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. *Choice of Laws.* This Agreement shall be construed in accordance with the laws of the State of Iowa.

D. *Timing.* Time is of the essence in the performance of this Agreement.

E. *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.

F. *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:

Houghton Properties
12814 Cardinal Lane
Urbandale, IA 50323
Attn: Jack Houghton

- (b) in the case of City, addressed to:

City of Des Moines
400 Robert D. Ray Drive
Des Moines, Iowa, 50309
Attn: City Manager

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. 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.

"Houghton Properties"

By: Jack Houghton
Jack Houghton [Title]

STATE OF IOWA)
) SS.
COUNTY OF POLK)

On this 24th day of July, 2007, before me, a Notary Public in and for the State of Iowa, personally appeared Jack Houghton to me personally known, who being by me duly sworn, did state that he is the president of Houghton Properties, an Iowa partnership, executing the within and foregoing instrument; that the instrument was signed on behalf of Houghton Properties, an Iowa partnership, by authority of its members and managers; and that he as such officer acknowledged the execution of the instrument to be the voluntary act and deed of Houghton Properties by it and by him voluntarily executed.

Stephanie O. Trujillo
Notary Public in the State of Iowa

Stephanie O. Trujillo
Iowa Notarial Seal
Commission Number 740169
My Commission Expires
April 12, 2009

"City"

CITY OF DES MOINES, IOWA

ATTEST:

By: _____
Diane Rauh, City Clerk

By: _____
T.M. Franklin Cownie, Mayor

APPROVED AS TO FORM:

Michael F. Kelley
Deputy City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ___ day of _____, 2007, 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. 07-_____ of City Council on the ___ day of _____, 2007, 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

July 24, 2007

RE: Approval of Minimum Development Requirements and Competitive Criteria for Disposition Parcel No. 16A in the Guthrie Avenue Business Park and Approval of the Houghton Properties' Developer-Initiated Preliminary Proposal

To Members of the City Council:

The Urban Design Review Board, at its July 24, 2007 meeting, has approved the Minimum Development Requirements and Competitive Criteria for Disposition Parcel No. 16A in the Guthrie Avenue Business Park and the Houghton Properties' developer-initiated preliminary proposal for this City-owned property. The Board moved to approve the project by a 7-0 vote.

Thank you for allowing the Board to provide design review assistance for projects involving the disposition of City property.

Sincerely,



Todd Garner, Chair
Urban Design Review Board



URBAN DESIGN REVIEW BOARD

CITY HALL
400 ROBERT D. RAY DRIVE
DES MOINES, IOWA 50309-1891
(515) 283-4004

All American City 1949, 1976, 1981

GUTHRIE AVENUE BUSINESS PARK URBAN RENEWAL AREA

DISPOSITION PARCEL NO. 16A

MINIMUM DEVELOPMENT REQUIREMENTS

The following minimum development requirements must be met in order to develop Disposition Parcel No. 16A in the Guthrie Avenue Business Park. Disposition Parcel No. 16A is generally located approximately 270 feet south of the south line of Mattern Avenue to E. Jefferson Avenue between Dixon and De Wolf Streets (south half of Block 11 and all of Block 12 in T.E. Brown's Official Plat of the NE ¼ Section 36 Township 79N Range 24W).

1. Land Price

Disposition Parcel No. 16A shall be sold at Fair Market Value. The City has appraised the land and has 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 263,563 square feet (6.05 acres), which shall be sold for \$355,900.

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).

3. Minimum Building Size and Taxable Value

The building improvements shall contain a minimum of 66,000 square feet of enclosed space. Building improvements shall be constructed in at least two but not more than three buildings. The Redeveloper shall enter into a Minimum Assessment Agreement with the City at the time Disposition Parcel No. 16A is conveyed which fixes the Minimum Actual Value of the improvements at \$2,970,000 (\$45/square foot).

4. Building Setbacks

Buildings shall be set back at least 25 feet from the property lines parallel to Dixon and De Wolf Streets and E. Jefferson Avenue. The side yard and the rear yard setbacks shall be 10 feet each. Mattern Avenue between Dixon and De Wolf Streets and E. 18th Street between Mattern and E. Jefferson Avenues are proposed to be vacated. The eastern portion of Mattern Avenue and E. 18th Street are anticipated to be conveyed as part of Disposition Parcel No. 16A.

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.

6. Building Entrance

The main entrances to the buildings shall be on Dixon and De Wolf Streets.

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.

The Redeveloper shall describe and 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.

A. 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.

B. Materials and Resources

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

C. 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.

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.

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 in the front of the buildings and along the E. Jefferson Avenue side of the buildings, 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. Two driveway accesses shall be permitted for vehicular access onto the site from Dixon Street, four driveway accesses from De Wolf Street and three driveway accesses from E. Jefferson Avenue. The design must be in accordance with the City's driveway access standards. The City Engineering Department may authorize an alternative number of driveway accesses on Dixon and De Wolf Streets and E. Jefferson Avenue based on the proposed site plan.
- C. Existing driveway approaches on Dixon and De Wolf Streets and E. Jefferson Avenue shall be closed.
- D. Truck maneuvering shall be done on site and on a surface paved with asphalt concrete or Portland cement.

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.

10. **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 properly planted and well maintained.

The Redeveloper shall describe and 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 Dixon and De Wolf Streets and E. Jefferson Avenue, 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 Dixon and De Wolf Streets and E. Jefferson Avenue 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 Dixon and De Wolf Streets and E. Jefferson Avenue 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.

11. 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.

12. 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.

13. Employment

Disposition Parcel No. 16A contains approximately 6.05 acres. The Redeveloper and/or building tenants collectively shall be encouraged to have a minimum of 60 full-time equivalent, permanent employees within 12 months after an Occupancy Permit has been issued for the buildings.

14. Wages and Benefits

The Redeveloper and/or building tenants shall pay employees, excluding supervisory personnel, on average a minimum of \$12.00/hour including benefits.

GUTHRIE AVENUE BUSINESS PARK URBAN RENEWAL AREA

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DISPOSITION PARCEL NO. 16A

COMPETITIVE CRITERIA (0-100 POINTS)

The City of Des Moines will use the following competitive criteria to evaluate proposals that have met the minimum development requirements. These competitive criteria will be used to select the Redeveloper when there are competing proposals. Points will be awarded according to how well the proposal meets these criteria. The maximum number of points to be awarded is 100.

1. Redeveloper Qualifications (Maximum Award of 20 Points)

The degree to which the Redeveloper provides evidence regarding the following capabilities:

- A. Financial and management capacity of the Redeveloper to commence and complete the proposed redevelopment in a timely manner.
- B. Demonstrated experience of the Redeveloper to conduct projects of a similar size and character relative to the proposed project.
- C. Proven experience of the Redeveloper to perform successful public/private commercial/industrial redevelopment projects.

2. Building/Site Characteristics (Maximum Award of 20 Points)

A. Architectural Design and Building Quality

The degree to which the proposed buildings contribute to a positive business park image as defined by:

- (1) Visual interest in the building--for example, varying the depth of wall surfaces, installing windows and doors to create patterns of visual relief in facades and to allow natural light to filter in, adding architectural details to enhance character and using building materials effectively through patterns, textures and colors.
- (2) Quality of building materials that are aesthetically pleasing and will have long-term durability.

B. Site Design

The degree to which development of the site functions well and contributes to a positive business park image as defined by:

- (1) Parking and Loading--The degree to which parking areas are integrated into the overall site plan by utilizing landscaping, lighting, identifiable and adequately lighted pedestrian walkways and subdivisions to eliminate large continuous areas of parking where appropriate, and the effectiveness of minimizing the visibility of loading areas along E. Jefferson Avenue.

- (2) Landscaping and Screening—The degree to which landscaping provides a variety of trees and plants suitable to soil conditions on the site, attracts wildlife, accommodates overhead power line requirements and softens the impact of the buildings or the expanse of parking on the site; the degree to which the amount and the quality of the landscaping exceed the minimum development requirements; and the degree to which screening is attractive and functions well.

C. *Environmental Sustainability*

The degree to which the buildings and the site will promote environmental sustainability, as demonstrated through the use of the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Green Building Rating System.

3. *Intensity of Development (Maximum Award of 10 Points)*

The degree to which the proposed buildings exceed the minimum 66,000 square feet of development. One point will be awarded for each additional 3,000 square feet up to a maximum of ten points.

4. *Project Amenities (Maximum Award of 5 Points)*

The degree to which the Redeveloper invests in project amenities, such as quality signage and lighting. The total cost of project amenities shall be itemized.

5. *Purchase Price (Maximum Award of 5 Points)*

One point will be awarded for each additional \$.10 per square foot offered over the minimum price up to a maximum of five points.

6. *Financing Commitment (Maximum Award of 20 Points)*

The degree of financing commitment demonstrated by evidence of specific equity capital and/or mortgage financing for the project.

7. *Waiver of Tax Abatement (Maximum Award of 10 Points)*

Maximum points will be awarded to a proposal which indicates that urban revitalization and industrial tax abatement will not be applied for as a condition of the project contract. In addition, the Redeveloper must not receive the value of the tax abatement prior to, during or after construction of the project. One-half of the maximum points will be awarded when a proposal indicates that only industrial tax abatement will be used.

8. *Economic Return to the City and Community (Maximum Award of 10 Points)*

The degree to which the estimated taxable value of the project, the number of employees on the payroll at the site within 12 months after an Occupancy Permit has been issued for the development, and the projected payroll will exceed the minimum development requirements.