DEVELOPMENT AGREEMENT
And PROMISSORY NOTES

By and Between

CITY OF DES MOINES, IOWA

and

Court Center, L.L.C.

Approved by City Council:
Date: DEC 19 2005
Roll Call No. 05-2995

Exhibits:
A - Legal Description
B - Conceptual Development Plan
This DEVELOPMENT AGREEMENT, including Exhibits, each of which is attached hereto and by this reference made a part hereof (the Development Agreement and Exhibits are together hereinafter called the "Agreement"), is made on or as of the _____ day of December, 2005, 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 Court Center, L.L.C, an Iowa limited liability company having its home office at 200 Stanton Avenue, Suite 101, Ames, IA 50014 (hereinafter called "Developer"), WITNESSETH:

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

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

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

WHEREAS, Developer has proposed to redevelop property within the Historic Court Avenue District located at 216 Court Avenue, more specifically described in Exhibit "A" attached hereto
(herein called the "Property"), for commercial and retail uses by renovating a three story building having approximately 33,000 square feet of gross floor (herein collectively called the "Improvements") in substantial compliance with the Conceptual Development Plan attached hereto as Exhibit "B"; and,

WHEREAS, Developer's obligations under this Agreement to construct the Improvements will generate the following public gains and benefits: (i) it will initiate the improvement and redevelopment of the Court Avenue Historical District in accordance with the Urban Renewal Plan; (ii) it will encourage further private investment and will attract and retain other businesses in the Court Avenue Historical District area to reverse the pattern of disinvestment and declining employment in the area; and, (iii) it will lead to the creation and retention of job opportunities within the Court Avenue Historical District area which might otherwise be lost; 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. CONSTRUCTION OF IMPROVEMENTS.

Section 101. Duty to Construct Improvements. Developer agrees, subject to the terms of this Agreement, to undertake the redevelopment of the Property by renovations to the building located at 210 Court Avenue, having at least three stories and approximately 33,000 square feet of gross floor area for office, professional service, retail and entertainment in substantial compliance with the Conceptual Development Plan attached hereto as Exhibit "B" and in conformity with this Agreement, the land use requirements of the Urban Renewal Plan, and all applicable State and local laws and regulations. The building improvements are herein collectively referred to as the "Improvements".

Section 102. Time for Completion of Improvements. A. Preparation of the project site as required to commence construction of the Improvements shall be commenced within 180
days after the date of the final execution of this Agreement. Developer shall complete construction of the Improvements by September 30, 2006, unless such times are extended by mutual agreement of the parties.

Section 103. Progress Reports. From commencement of construction of the Improvements until construction of the Improvements 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 104. Access to Property. Prior to issuance of the Certificate of Completion, Developer shall permit City's representatives access to the Property 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 for the access provided for in this Section.

ARTICLE 2. APPROVAL OF PLANS.

Section 201. 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 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 202. Conceptual Development Plan. A. The approved Conceptual Development Plan for the Improvements is attached hereto as Exhibit B. Any amendment to the Conceptual Development Plan must be proposed by Developer and approved by the City.

B. City approval of an amendment to the Conceptual Development Plan shall not be unreasonably withheld or delayed. A proposed amendment to the Conceptual Development Plan shall be deemed approved unless City rejects the amendment, in whole or in part, within twenty-one (21) days after City receives the proposed amendment. If City rejects an amendment to the Conceptual Development Plan, in whole or in part, it will set forth in writing the reasons for such rejection.

C. The Conceptual Development Plan as originally approved and as amended, shall include a conceptual site plan,
schematic signage and lighting plan, detailed building elevations for each building face of the Improvements, floor plans for the first and second stories and a landscaping plan. 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 Conceptual Development Plan or an amendment thereto pursuant to one does not constitute approval for purposes of the other.

D. A proposed amendment to the Conceptual Development Plan shall be approved by the City Council if the Plan as so amended satisfies the following criteria:

1) The Conceptual Development Plan must comply with the requirements of this Agreement and must satisfy the land use requirements of the Metro Center Urban Renewal Plan.

2) The durability, appearance and quality of the exterior materials must be substantially equivalent to that provided by the original Conceptual Development Plan attached hereto as Exhibit "B".

Section 203. Building Permits/Construction Permits. The Construction Plans submitted by Developer for the Improvements shall be in substantial compliance with the approved Conceptual Development Plan. City may withhold approval of building permits if the Construction Plans do not substantially comply with the approved Conceptual Development Plan. City approval of a building permit for the Improvements or a portion thereof shall constitute approval of the Construction Plans for the Improvements or the portion thereof authorized by such permit.

Section 204. Certificate of Completion. A. Developer shall request a "Certificate of Completion" with respect to the Improvements by notifying City in writing that it has completed the Improvements in substantial compliance with the approved Construction Plans, and furnishing City with an architect's certificate or reasonable equivalent to that effect.

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

D. The determination by City regarding completion of the Improvements is independent of any required determination by City regarding the issuance of an Occupancy Permit pursuant to the Building Code of City. The issuance of an Occupancy Permit for any portion of the Property shall not serve as a substitute for the Certificate of Completion referenced in this Section.

Section 205. Effect of Issuance. A. Upon issuance of the Certificate of Completion, 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. Developer may utilize the Certificate of Completion only as evidence of compliance with or satisfaction of Developer's construction obligations under this Agreement.

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

ARTICLE 3. URBAN RENEWAL COVENANTS.

Section 301. General - Duration of Covenants. The Property and each portion thereof shall be subject to the Urban Renewal Covenants set forth herein until ten (10) years after the issuance of the Certificate of Completion pursuant to Section 204.

Section 302. Urban Renewal Covenants. The Property and each portion thereof acquired by Developer pursuant to this Agreement shall be subject to the following covenants, limitations and restrictions regarding its future use and development (herein referred to as the "Urban Renewal Covenants"):  

1. Prohibition Against Discrimination in Sale or Leasing. Developer, its successors and assigns shall not discriminate
against or segregate any person or group of persons on account of age, race, religion, creed, color, sex, national origin, ancestry, disability or familial status in the sale, leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Property or the Improvements erected or to be erected thereon, and not establish or permit any such practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, sub-tenants or vendees in the Property or the Improvements erected or to be erected thereon.

2. Prohibition Against Discrimination in Employment. In the employment of persons upon the Property, Developer, its successors and assigns shall comply with all federal, State of Iowa and local laws prohibiting discrimination.

3. Urban Renewal Plan. The Property shall be used in conformity with the land use requirements of the Urban Renewal Plan.

Section 303. Covenants; Binding Upon Successors in Interest. It is intended that the covenants undertaken by Developer pursuant to this Article shall be covenants running with the land, and that they shall, in any event and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, only to the extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City against Developer, its successors and assigns and every successor in interest to any of the Parcels or any part thereof or any interest therein, and any party in possession or occupancy of any of the Parcels, or any part thereof.

ARTICLE 4. TAXES AND ASSESSMENTS.

Section 401. Payment of Taxes. Developer acknowledges and agrees that it will pay when due all taxes and assessments, general or special, levied upon or assessed against any part of the Property subject to the conditions and limitations provided herein.

Section 402. (Not Used)

Section 403. Situs for Taxation. Developer shall not, during the fifteen (15) year term following the issuance of the Certificate of Completion, cause or voluntarily permit any part of the Property or Improvements thereto 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 the Property pursuant to any present or future statute or ordinance.

Section 404. (Not Used)

Section 405. Tax Abatement for Improvements. A. The Property is situated within the Capitol Center West Urban Revitalization Area "D" sub-area of the City-Wide Urban Revitalization Area, and provided the Property is redeveloped in accordance with the Design Guidelines Court Avenue Historic District Area and this Agreement, the City represents that the Improvements are eligible for a ten-year declining tax abatement pursuant to the schedule set forth in Iowa Code 1999 §404.3(2).

ARTICLE 5. ASSIGNMENT AND TRANSFER.

Section 501. Representations As to Redevelopment. Developer recognizes and acknowledges:

(1) The importance of the redevelopment of the Property to the general welfare of the community as a whole;

(2) The substantial public aid that has been made available by City for the purpose of making such redevelopment possible;

(3) The fact that the qualifications and identity of Developer are of particular concern to the community and City. Developer further recognizes that these qualifications and identity are an important element in City's decision to enter into this Agreement.

Section 502. Legal Status / Authorization to Sign. In view of the representations and acknowledgments stated in Section 501, Developer further represents and agrees that prior to issuance of a Certificate of Completion for the Improvements, Court Center L.L.C., "Developer" shall continue to be an Iowa limited liability company with its home office located at 200 Stanton Avenue, Suite 101, Ames, Iowa. Developer and its officers signing this agreement on behalf of Developer represent and warrant that they have the authorization of Developer’s members to enter into this Agreement. The requirements of this Section shall terminate upon issuance of the Certificate of Completion pursuant to Section 204.

Section 503. Prohibition Against Transfer. A. In view of the representations and acknowledgments stated in Section 501, Developer covenants and agrees that it has not and, prior to issuance of
the Certificate of Completion for the Improvements, will 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 transfer the Property, or any part thereof or any interest
therein, or any agreement to do any of the same. The approval by City
shall not be unreasonably withheld. The requirements of this Section
shall not apply to the lease of space within the completed building
for use consistent with the requirements of this Agreement. The
requirements of this Section shall terminate upon issuance of the
Certificate of Completion pursuant to Section 204.

B. City shall be entitled to require as a condition to any
such approval that:

(i) Any proposed transferee shall have the qualifications and
financial responsibility, as 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 are submitted to City for review prior to
the transfer;

(iv) The consideration payable for the Property upon any sale
prior to issuance of the Certificate of completion 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, it being the intent of this provision 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.

ARTICLE 6. ECONOMIC DEVELOPMENT ASSISTANCE.

Section 601. Basis for Assistance. In consideration of Developer’s obligation to construct the Improvements in accordance with this Agreement and in consideration of the employment opportunities that will be created as a result of such undertaking, City shall cause to be provided the tax abatement identified in Section 405, the Neighborhood Commercial Revitalization Loan, the Economic Development Bridge Loan and the Economic Development Grant, identified in this Article.

Section 602. Conditions Precedent. The obligation of City to pay to Developer the Economic Development Grant provided in this Article is contingent upon Developer having first satisfied each of the following conditions:

(1) Developer has acquired title to all the Property described in Exhibit "A" attached hereto;

(2) Developer has qualified for the issuance of the Certificate of Completion in accordance with Section 204.

Section 603. Neighborhood Commercial Revitalization Loan (NCR): A. Provided Developer has first satisfied the requirements set forth in Section 602(1) and 602 (2), City shall pay to Developer a loan under the Neighborhood Commercial Revitalization Loan Program (herein referred to as the "NCR Loan").

B. City agrees to make the NCR loan to Developer in the amount of Two Hundred Thousand and 00/100 dollars ($200,000.00).

C. The loan proceeds shall be used exclusively for the purchase of materials for renovations to the commercial building located 216 Court Avenue, Des Moines, IA 50309.

D. The Neighborhood Commercial Revitalization (NCR) Loan shall be secured by a mortgage against the project property. The mortgage shall be subordinate to the Developer’s Senior Lender in the amount of $2,540,000. The City acknowledges that the mortgage pledge as collateral to the NCR Loan shall remain subordinate to new loan advances, if any, by Developer’s Senior Lender for the purpose of providing new funds to the Developer.
for payment of new tenant improvements at 216 Court Avenue, Des Moines, IA. Developer shall provide City with documentation on the costs of new tenant improvements and the amounts, if any, of new funds to be advanced by Senior Lender with a request for the City subordination. City shall review and approve the subordination request, which approval will not be unreasonable withheld.

E. City shall disburse loan proceeds after satisfactory review and approval of: (a) all loan and mortgage documents required by the City of Des Moines to facilitate the loan transaction and properly executed by Developer; (b) evidence of project costs, including purchase and construction contracts entered in to by Developer totaling at least $4,000,000.

Section 604. Neighborhood Commercial Revitalization Loan Promissory Note.

FOR VALUE RECEIVED Court Center, L.L.C. (the "Maker") promises to pay to the order of the City of Des Moines, Iowa, a municipal corporation organized under the laws of the State of Iowa ("Holder") at the Accounting Department, City Hall, 400 Robert D Ray Drive, Des Moines, Iowa, 50309, or at such other place as may be designated from time to time by the Holder of this Note, the principal sum of Two-Hundred Thousand and 00/100 Dollars ($200,000.00), together with interest on the unpaid principal to be accrued from the date of disbursements of loan funds, in lawful money of the United States of America, such principal and interest to be paid in the following manner:

For sixty months following loan disbursement, the promissory note will carry an interest rate of Zero (0%) percent per annum;

Beginning on the first business day of the sixty-first (61) month following loan disbursement, the promissory note will bear a rate of interest of Four (4%) percent per annum

Beginning on the first business day of the sixty-second (62) month following loan disbursement and monthly thereafter, installments of One Thousand Four Hundred Seventy-Nine and 38/100 Dollars ($1,479.38) for a period of 180 monthly payments. Provided each installment payment shall be applied first to interest, accrued to date of receipt of such installment and the balance, if any, to principal with the balance of principal and interest.

Payment of any installment of principal or interest
owing on this Note may be made prior to the maturity date thereof without penalty. Payments not paid by the maturity date shall thereafter draw interest at the rate of twelve percent (12%) per annum on the unpaid balance. Any payments shall be applied first to interest and then to reduction of principal. In the event of any Default hereunder, the Maker agrees to pay the costs of collection including reasonable attorneys' fees.

Section 605. Economic Development Bridge Loan. A. Provided Developer has first satisfied the requirements set forth in Section 602(1) and 602 (2), City shall advance to Developer an Economic Development Bridge Loan (herein referred to as the "Bridge Loan").

B. The Bridge Loan proceeds shall be used by Developer to assist in the purchase of the building and materials for renovations of the Improvements. The Bridge Loan shall be repaid by Developer from funds provided through the syndication or sale of federal and state Historical Tax Credits allocated to the project as further described in Section 606.

C. City shall disburse the Bridge Loan proceeds after satisfactory review and approval of: (a) all loan, collateral and personal guaranty documents required by the City of Des Moines to facilitate the loan transaction and properly executed by Developer; (b) evidence of project costs, including purchase and construction contracts entered into by Developer totaling at least $4,000,000.

D. Economic Development Bridge Loan Promissory Note.

FOR VALUE RECEIVED Court Center, L.L.C. (the “Maker”) promises to pay to the order of the City of Des Moines, Iowa, a municipal corporation organized under the laws of the State of Iowa (“Holder”) at the Accounting Department, City Hall, 400 Robert D Ray Drive, Des Moines, Iowa, 50309, or at such other place as may be designated from time to time by the Holder of this Note, the principal sum of Two-Hundred Thousand and 00/100 Dollars ($200,000.00), together with interest at the rate of Zero percent (0%) on the unpaid principal to be accrued from the date of disbursements of loan funds in lawful money of the United States of America, such principal and interest to be paid in the following manner:

Principal Balance due and payable September 30, 2005

Payment principal or interest owing on this Note may be made prior to the maturity date thereof without penalty. In the event of any Default hereunder, the Maker agrees to pay the costs
of collection including reasonable attorneys' fees.

Section 606. Federal and State Tax Credits. A. The Developer shall submit the Conceptual Design Plan in sufficient detail as required for the State of Iowa Historical Preservation Office and the National Park Service to render a recommendation on the applicability of federal and state historical tax credits, and shall in good faith diligently pursue approval from said state and federal agencies as required for an allocation of federal and state historic tax credits for the qualifying portion of the Improvements.

B. If the State of Iowa Historical Preservation Office and the National Park Service approve the Conceptual Design Plan for an allocation of federal and state historic tax credits, the Developer shall construct the improvements in accordance with the approved plans.

C. Upon completion of the improvements the Developer shall in good faith diligently pursue final approval of the federal and state historic tax credits and upon the issuance of said tax credits, the Economic Development Grant referenced in Section 607, shall be canceled.

D. Upon issuance of the federal and state historic tax credits, the Developer shall in good faith syndicate said credits at a commercially reasonable rate to generate sufficient funds to pay in full the Economic Development Bridge Loan, referenced in Section 605.

E. If the Developer has in good faith diligently pursued and completed the Improvements in accordance with the approved Conceptual Design Plans approved by the State of Iowa Historical Preservation Office and the National Park Service, but was denied final approval of federal and state historic tax credits for the qualifying portion of the Improvements, the Economic Development Grant shall remain in force and Developer shall assign its right to receive the annual installments of the economic development grant to the City of Des Moines for payment of the Economic Development Bridge Loan referenced in Section 605.

Section 607. Economic Development Grant. A. Provided Developer has first satisfied the requirements set forth in Section 602, then subject to Sections 604 and 605, City shall pay to Developer an economic development grant (herein referred to as the "Economic Development Grant"), in ten (10) annual installments.
The annual installments on the Economic Development Grant shall be paid each December 15th, commencing December 15, 2008.

B. The December 15th, 2008, commencement date for the Economic Development Grant is contingent upon the Improvements being substantially completed and assessed for taxation by January 1, 2007. For each calendar year or part thereof that Developer is delayed in meeting this contingency, the commencement date shall be delayed by one year.

C. The amount of each annual installment on the Economic Development Grant shall be equal to sixty percent (60%) of the incremental increase in the amount of taxes levied upon the taxable value of the Improvements, excluding the taxes levied upon the value of the underlying land, due and payable in that fiscal year. The incremental increase in the amount of taxes levied upon the taxable value of the Improvements is calculated as the taxes levied upon the January 1, 2007 assessed valuation of the Improvements less that portion of taxes levied upon the January 1, 2005 assessed valuation of the Improvements upon the Property.

Section 608. Conditions Subsequent. A. To remain entitled to receive the installments on the Economic Development Grant, Developer must comply with the following conditions:

1) Taxes. All property taxes levied on the Property or any improvements thereon must be timely paid as provided in Section 401, subject to the right to challenge such taxes as provided by law and limited herein.

2) Maintenance. The Improvements must be maintained in substantial compliance with the approved Construction Plans. If the Improvements are materially damaged by fire or other casualty, repairs to return the Improvements to substantial compliance with the approved Construction Plans must be commenced within six (6) months and diligently pursued to completion.

3) Use. The Improvements must be used in compliance with the Urban Renewal Covenants and the land use requirements of the Urban Renewal Plan.

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1 Assumed schedule for assessment, levy and payment of taxes:
1-1-07 Improvements Assessed for taxation
7-1-07 First subject to tax levy on the Improvements
9-31-08 First installment of taxes due on the Improvements
12-15-08 First installment on the Economic Development Grant
4) **Employment.** The Property must serve as the principal place of employment for at least **20** full time equivalent employees.

5) **Occupancy.** The 25% of the space within the building must be occupied and used for commercial purposes, excluding any space temporary vacant for not more than 9 months.

**Section 609. Source of Funding for Economic Development Grant.** A. Each installment of the Economic Development Grant shall be paid by City solely from the special fund financed by the division of revenue pursuant to Iowa Code (1999) §403.19(2) from taxes levied upon property within the Metro Center Urban Renewal Project Area. The obligations of City under this Agreement shall not constitute a general obligation of the City.

B. The City represents, warrants and agrees that for so long as Developer is not in default under this Agreement and the City is obligated to make further installments of the Economic Development Grant in accordance with the terms of this Agreement:

1) City shall not repeal the designation of the Property as an urban renewal area pursuant to Iowa Code §403.5.

2) City shall not repeal Ordinance No. 13,565, nor amend such ordinance in any manner that impairs the City's ability to pay the installments on the Economic Development Grant as contemplated by this Agreement.

3) That the City will timely certify to Polk County each installment on the Economic Development Grant for payment from the special fund for the Metro Center Urban Renewal Project in accordance with Iowa Code §403.19(2).

**ARTICLE 7. REMEDIES.**

Section 701. **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.\(^2\)

Section 702. 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 703. 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,

\(^2\) Kersten Co., Inc., v. Department of Social Services, 207 N.W.2d 117 (Iowa 1973).
freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of City or of Developer, as the case may be, shall be extended for the period of the enforced delay: Provided, that the party seeking the benefit of the provisions of this Article shall, within twenty (20) days after the beginning of any such enforced delay, have notified the other party thereof in writing, and of the cause or causes thereof, and setting forth the anticipated extension required as a result of the enforced delay.
Section 704. 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 8. MISCELLANEOUS.

Section 801. Representatives Not Individually Liable. A. No member, official, or employee of City shall be personally liable to Developer in the event of any default or breach by City or for any amount which may become due to Developer or on any obligations under the terms of this Agreement.

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

Section 802. Fire, Extended Coverage Insurance. Developer shall keep in force, for a period of twelve (12) years following the date of the Certificate of Completion for the Improvements, fire and extended coverage insurance upon the Improvements with insurance underwriters authorized to do business in the State of Iowa satisfactory to City. Such insurance shall be in an amount equal to the replacement cost of the Improvements, excluding cost of foundations, underground pipes, wiring and outside paving. Such policy or policies of insurance shall have endorsed thereon "Inflation Guard Endorsement". In lieu of such "Inflation Guard Endorsement," Developer shall adjust the amount of coverage annually to cover the replacement cost of the Improvements (less the cost of foundations, underground pipes, wiring, and outside paving). Developer shall file with the City Clerk of City a certificate of insurance which clearly discloses on its face coverage in conformity with all of the foregoing requirements and if requested, Developer shall additionally submit a certified copy of the policy to City. In lieu thereof, Developer may provide proof of self-insurance to the City, provided such self-insurance is commercially reasonable.
In the event of destruction of the Improvements or any part thereof during the period that the installments on the Economic Development Grant are payable, Developer shall rebuild the Improvements in accordance with Section 604(A)(2).

Section 803. **City Not a Guarantor, Surety or Partner.** City is not a guarantor or surety for the redevelopment nor for any indebtedness incurred by Developer. It is mutually understood that nothing in this Agreement is intended or shall be construed as in any way creating or establishing the relationship of copartners between the parties hereto, or as constituting Developer as a contractor, agent or representative of City for any purpose of in any manner whatsoever.

Section 804. **Time.** Time is of the essence in the performance of this Agreement.

Section 805. **Interpretation of Contract.** A. The Conceptual Development Plan, drawings, specifications, related documents, and any approved changes or modifications thereto shall be incorporated into this Agreement as amendments thereto 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 Conceptual Development Plan 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, Des Moines, Iowa.

B. This Agreement shall be construed in accordance with the laws of the State of Iowa. Venue of any action or proceeding concerning this agreement shall be exclusively in Polk County, Iowa.

Section 806. **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 807. **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.

Section 808. **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 809. Extensions for 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.

Section 810. Notices. A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested; delivered personally; or sent by overnight courier service, as follows:

(a) in the case of Developer, addressed to:

Attn: David A. Keller  
200 Stanton Avenue, Suite 101  
Ames, IA 50014

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

Attn: Terrance N. Vorbrich  
Office of Economic Development  
City of Des Moines  
400 Robert D. Ray Drive  
Des Moines, Iowa, 50309,

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

Section 811. Counterparts. This Agreement is executed in _____ (__) counterparts, each of which shall constitute one and the same instrument. A copy of this Agreement, including all the Exhibits shall be maintained in the office of the City Clerk of City.

Section 812. Termination Certificate. Upon the termination of this Agreement as provided herein or upon satisfaction by the parties of all their obligations under this Agreement (including payment of the Economic Development Grant), 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.
Section 813. Contingency. This Agreement is contingent upon Developer acquiring title to the entire Property within ninety (90) days of the final execution of this Agreement. Developer may elect to cancel this Agreement by giving notice to City within ninety five (95) days of the final execution of this Agreement that Developer has not acquired title to the entire Property. This contingency shall be deemed waived unless notice of the election to cancel is received by City within ninety five days of the final execution of this Agreement.

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

Court Center, L.L.C. "Developer",
an Iowa limited liability company

BY: ____________________________
   Russ K. McCullough
   Its: Manager

BY: ____________________________
   David A. Keller
   Its: Manager

STATE OF IOWA                     
County of Polk                     

On this 19 day of December, 2005, before me, a Notary Public in and for the State of Iowa, personally appeared Russ K. McCullough and David A. Keller to me personally known, who being by me duly sworn, did say that they are the Managers of Court Center, LLC, executing the within and foregoing instrument, that said instrument was signed on behalf of said limited liability corporation by authority of its managers; and that they as such Managers acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability corporation by it and by them voluntarily executed.

[Notary Public Seal]

Notary Public in the State of Iowa

[Signature]
CITY OF DES MOINES, IOWA,
a municipal corporation,

By: T. Franklin Cownie
M. Franklin Cownie, Mayor

ATTEST:

By: Diane Rauh, City Clerk

APPROVED AS TO FORM:

Michael F. Kelley
Assistant City Attorney

STATE OF IOWA )
COUNTY OF POLK ) ss:

On this 19th day of December, 2005, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T. 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. 05-2995 of City Council on the 19th day of December, 2001, and that T. 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.

Karen Marie Herzberg
Notary Public in the State of Iowa
EXHIBIT "A"
LEGAL DESCRIPTION

The Property is located in the vicinity of 216 Court Avenue, Des Moines, IA and is more specifically described as follows:

Lots 1 and 2 in Block 30 in FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa