

***ECONOMIC DEVELOPMENT
REDEVELOPMENT TAX CREDIT CONTRACT***

BY

Awardee Name

AND THE

IOWA ECONOMIC DEVELOPMENT AUTHORITY

CONTRACT NUMBER: FY-BTC-XX

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***ECONOMIC DEVELOPMENT
REDEVELOPMENT TAX CREDIT CONTRACT***

| | |
|-----------------------|--------------|
| RECIPIENT(S): | Awardee Name |
| CONTRACT NUMBER: | FY-BTC-XX |
| AWARD DATE: | 8/16/2013 |
| MAXIMUM TAX BENEFITS: | \$Max Award |

This REDEVELOPMENT TAX CREDIT CONTRACT (the “**Contract**”) is made as of the Contract Effective Date by the Iowa Economic Development Authority (“**IEDA**”), 200 East Grand Avenue, Des Moines, IA 50309, and Awardee Name (“**Recipient**”), Street Address, City State Zip.

WHEREAS, the Recipient submitted an application to IEDA requesting tax credits for its Project as more fully described in Exhibit B, Description of the Project (the "Project"); and

WHEREAS, the Iowa Economic Development Authority Board (“**IEDA Board**”) awarded the Recipient Tax Benefits for the Project pursuant to the Redevelopment Tax Credit Program described in Iowa Code section 15.293A; and

NOW THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound, the Recipient and IEDA agree to the following terms:

ARTICLE 1: Contract Duration

1.1 This Contract shall be in effect on the Contract Effective Date and shall remain in effect until the occurrence of one of the following:

(a) **Through Final Contract Closeout by IEDA.** Until all the Recipient’s obligations and liabilities under the Program and the Contract have been satisfied, as determined by IEDA in its sole discretion, and IEDA has provided the Recipient with a written Notice of Final Contract Closeout; or

(b) **Termination by IEDA.** Until IEDA terminates the Contract, including but not limited to termination pursuant to Section 7.3 of the Contract; or

(c) **Termination or Reduction in Funding or Authority.** Termination of the Contract pursuant to Section 4.5(b) of the Contract; or

(d) **Mutual Written Agreement.** Upon mutual written agreement signed by the Recipient and IEDA.

ARTICLE 2: Definitions

The following terms apply to this Contract:

2.1. “**Award Date**” means the date first stated in this Contract and is the date the IEDA Board approved the Tax Benefits to the Recipient for the Project. Award Date is also the date IEDA and the Board registers the Project under Iowa Code section 15.293A(2)(a)(2) (Code Supplement 2011).

2.2 “**Contract Effective Date**” means the latest date on the signature page of this Contract.

2.3 *“Contract End Date”* means the date stated in the Notice of Final Contract Closeout issued by IEDA pursuant to Section 1.1(a).

2.4 *“Program”* means the Redevelopment Tax Credit program established by Iowa Code section 15.293A (Code Supplement 2011) and related appropriations and regulated by 261 Iowa Administrative Code chapter 65.

2.5 *“Project”* means the description of the work and activities to be completed by the Recipient as outlined in Exhibit A, Recipient’s Application and Exhibit B, Description of the Project. The Project is a qualifying redevelopment project, as defined by Iowa Code section 15.291(Code Supplement 2011).

2.6 *“Project Completion Date”* means the date by which the Recipient must complete the Project. Unless granted an extension by IEDA and the Board, the Project Completion Date shall be 30 months from the Award Date.

2.7 *“Project Completion Period”* means the period of time between Award Date and the Project Completion Date.

2.8 *“Qualifying Investment”* means the purchase price, cleanup costs, or redevelopment costs that are: (i) directly related to the Project, (ii) incurred and paid after the Award Date, and (iii) not prohibited or disallowed by Section 3.5 of this Contract, other provisions of this Contract, the Program, or any other law.

2.9 *“Recipient”* means one or more entities that have been approved for tax benefits by the IEDA Board as described on page 1 of this agreement.

2.10 *“State Actors”* means: (i) IEDA; (ii) the Board; (iii) all Board members; (iv) the State of Iowa; and (v) all departments, divisions, agencies, sections, commissions, officers, members, employees, agents, attorneys, auditors, contractors, associates, and affiliates of IEDA, the Board, and the State of Iowa.

2.11 *“Tax Benefits”* means the tax credits IEDA has awarded for this Project as detailed in Article 3.

ARTICLE 3: Award Terms

3.1 Total Tax Benefit. The IEDA Board has approved Tax Benefits to the Recipient in an amount not to exceed \$Max Award. If there is more than one recipient IEDA will attempt to determine the amount of Qualifying Investment attributable to each recipient. The maximum Tax Benefits claimed by the Recipient shall not exceed [30, 24, 15, 12]% of the Qualifying Investment under Iowa Code section 15.293A(3) (Code Supplement 2011). In the event that a green designation is sought and those requirements are not met, the amount of the tax credit shall be that for which requirements have been met, to be determined solely by IEDA.

3.2 Statutory and Regulatory Requirements. The Recipient shall be bound to the requirements of and eligible for Tax Benefits described in Iowa Code sections 15.291 through 15.293A (Code Supplement 2014) and 261 Iowa Administrative Code chapter 65, related to the Program.

3.3 Application to Future Tax Years. Any tax credit in excess of the taxpayer’s liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever comes first.

3.4 Application to Prior Tax Years. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit.

3.5 Limitations on Qualifying Investments. Notwithstanding any other provision of this Contract to the contrary, the term “Qualifying Investments” as used in this Contract and under the Program shall be subject to the following restrictions:

(a) **No In-Kind Contributions.** In-kind contributions or in-kind expenditures to the Project or any other non-monetary transactions related to the Project shall not be claimed, included, allowed, or otherwise permitted as Qualifying Investment.

(b) **No Deferred Compensation or Payments.** Deferred, delayed, or future compensation or payments shall not be claimed, included, allowed, or otherwise permitted as Qualifying Investment. Qualifying Investment shall only include monetary transactions that are complete and final as of the date the Recipient submits the Schedule of Claimed Expenses as described in Section 4.4 of this Contract.

(c) **Arm’s Length Transactions Only.** Qualifying Investment shall only include fair market value monetary payments from the Recipient to persons or entities that are not affiliated with or related to the Recipient. A person or entity shall be deemed “affiliated with or related to the Recipient” if one or more of the following is true:

(1) The person or entity that receives the payment directly or indirectly controls the Recipient; or

(2) The Recipient directly or indirectly controls the entity that receives the payment;
or

(3) The person or entity that receives the payment is an owner, member, shareholder, or partner of the Recipient or the person or entity that receives the payment otherwise directly or indirectly owns the Recipient in part or in whole; or

(4) The Recipient is an owner, member, shareholder, or partner of the business entity that receives the payment or the Recipient otherwise directly or indirectly owns, in part or in whole, the business entity that receives the payment.

(d) **Project Deadline.** All Qualifying Investment shall be deemed to have been made on the date the Project is completed. If the Project is completed more than 30 months after the Award Date, the Project shall not be eligible for any Tax Benefits under the Program or this Contract. IEDA with the approval of the Board may, solely in its discretion, provide additional time beyond the 30 months from the Award Date for the Recipient to complete the Project. However, IEDA shall not provide more than a total of 12 months additional time for the Project to be completed. **Failure to complete the Project within the timeline described in this Section 3.5(d) shall result in the Recipient receiving no Tax Benefits under the Program or this Contract.**

(e) **No Prior Costs.** Any costs incurred and/or paid prior to the Award Date, regardless of whether such costs are related to the Project, shall not be claimed, included, allowed, or otherwise permitted as “Qualifying Investment.”

(f) **Exclude Payments Made with Other Government Incentives.** Qualifying Investment shall not include any payments made from any funds received or originating from a city, county, local government, the State of Iowa, or the United State government (collectively “**Governmental Entities**”) or any agency, department, commission, board, division, or other entity of the Governmental Entities, regardless of whether such funds were received through a grant, loan, forgivable loan, tax credit, or any other incentive. Any payments described in this paragraph shall not be claimed, included, allowed, or otherwise permitted as Qualifying Investment.

(g) Payments Submitted Exclusively for Incentives from the Program. Any payment that: (i) the Recipient submits or will submit to the IEDA for Tax Benefits and (ii) the Recipient receives or will receive Tax Benefits under this Contract and the Program, shall not be claimed, included, allowed, or otherwise submitted, by any person or entity, to any Governmental Entity in order to claim or receive any grant, loan, forgivable loan, tax credit, or any other incentive. Any payment for which any person or entity previously received or will receive any grant, loan, forgivable loan, tax credit, or any other incentive from a Governmental Entity shall not be claimed, included, allowed, or otherwise permitted as Qualifying Investment.

(h) No Inflated Payments or Kick Backs. In addition to satisfying all the other restrictions and conditions contained in this Contract, all payments must be final and fully-paid in order to be Qualifying Investment. The Recipient shall not engage in, or enter into agreements or other arrangements with any other person or entity whereby the Recipient and/or a payee agrees to engage in, the following conduct:

(i) Reporting higher or inflated payments than actually received in order to receive additional Tax Benefits; or

(ii) Accepting inflated payments or payments greater than fair market value prior to the submission of the Schedule of Claimed Expenses (as described in Section 4.4 of this Contract) for the purpose of increasing the apparent Qualifying Investment, then repaying all or a portion of the payment to the Recipient, the Recipient's designee, or a person or entity affiliated with or related to the Recipient as defined in Section 3.4(c) of this Contract; or

(iii) Engaging in any other act or omission whereby the Recipient, a payee, the Recipient's designee, or a person or entity affiliated with or related to the Recipient as defined in Section 3.4(c) of this Contract misleads, deceives, or defrauds IEDA in order to obtain Tax Benefits to which the Recipient would not otherwise be entitled to under the Program or this Contract.

ARTICLE 4: Conditions to Issuance of a Tax Credit Certificate

4.1 Tax Credit Certificate Required to Claim Benefits. Recipient shall not claim the tax benefits described in Article 3 until IEDA has issued a Tax Credit Certificate for this Project.

4.2 Issuance of Tax Credit Certificate. Once IEDA determines the Recipient has satisfied all the conditions of this Contract and complied with all the rules and requirements of the Program and this Contract, IEDA will issue a Tax Credit Certificate to the Recipient for this Project.

4.3 Conditions to Issuance of Tax Credit Certificate. The obligation of IEDA to issue a Tax Credit Certificate shall be subject to the conditions precedent described in this Article 4 and the full execution of and compliance with this Contract and the Program.

4.4 Documents Submitted. IEDA shall have received each of the following documents, properly executed and completed, and approved by IEDA as to form and substance within 30 days of the Project Completion Date:

(a) Schedule of Claimed Expenses and Supporting Documentation. A completed Schedule of Claimed Expenses using the form described in Exhibit C, Schedule of Claimed Expenses form, of this Contract, as well as documentation to support and verify the expenses described therein. No other form shall be accepted by IEDA.

(b) Third-Party Auditor's Report. An auditor's report including but not limited to Claimed Expenses contained in "Exhibit C, Schedule of Claimed Expenses" form prepared by an independent certified public accountant that is licensed in the State of Iowa. The auditor's report must be completed

pursuant to Generally Accepted Accounting Principles (GAAP) and comply with any additional requirements of or requests by IEDA.

(c) **Articles of Incorporation or Articles of Organization.** Copies of the articles of incorporation or articles of organization, whichever is appropriate, of the Recipient, certified in each instance by its secretary or assistant secretary.

(d) **Certificate of Existence.** A certificate of existence for the Recipient from the State of incorporation or organization, whichever is applicable.

(e) **Written Certification Statement.** A written certification signed by an authorized representative of the Recipient certifying that:

- i. All work for which Tax Benefits are being requested has been completed;
- ii. Such work conforms to and complies with any applicable specifications, terms, requirements, and provisions contained in the Contract, including but not limited to Exhibit A (the Recipient's Application) and Exhibit B (Description of the Project);
- iii. All costs and expenses submitted by Recipient have been incurred and paid by Recipient in accordance with the terms and provisions of the Program and the Contract, including but not limited to Exhibit A (the Recipient's Application) and Exhibit B (Description of the Project);
- iv. All costs and expenses submitted by Recipient are: (a) allowable and eligible for Tax Benefits, and (b) directly related to and in conformance with the Project;
- v. All such submitted costs and expenses have been paid timely in accordance with the terms of any applicable agreements, contracts, or other documents;
- vi. Recipient has complied with and continues to be in compliance with all terms and provisions of the Contract, and Recipient has not breached or violated any term or provision of the Contract; and
- vii. All information provided in the Schedule of Claimed Expenses form, supporting documentation, and this written certification is true, accurate, and complete.

(f) **Other Required Documents.** IEDA shall have received such other contracts, instruments, documents, certificates, and opinions as the IEDA may request.

(g) **Solid or Hazardous Waste Audit.** To comply with Iowa Code section 15A.1(3)(b), if the Recipient generates solid or hazardous waste, it must either: a) submit a copy of the Recipient's existing in-house plan to reduce the amount of waste and safely dispose of the waste based on an in-house audit conducted within the past 3 years; or b) submit an outline of a plan to be developed in-house, or c) submit documentation that the Recipient has authorized the Iowa Department of Natural Resources or Iowa Waste Reduction Center to conduct the audit.

(h) **Release Form – Confidential Tax Information.** A signed Authorization for Release of Confidential State Tax Information form to permit IEDA to receive the Recipient's state tax information directly from the Iowa Department of Revenue for the purpose of evaluation and administration of tax credit programs and other state financial assistance programs.

(i) **State Building Code Bureau Approval.** Evidence of compliance with State building codes, where applicable. Bidding for construction shall not be conducted prior to the written approval of the final plans by the State Building Code Bureau of the Iowa Department of Public Safety, and only if either of the following applies:

1. The building or structure is located in a governmental subdivision which has not adopted a local building code, or

2. The building or structure is located in a governmental subdivision which has adopted a building code, but the building code is not enforced.

4.5 Suspension, Reduction or Delay of Issuance of Tax Credit Certificate, or Authorization of Tax Benefits. Any one or more of the following shall be grounds for IEDA to suspend, delay, reduce, revoke, and/or terminate the Tax Benefits or delay the issuance of a Tax Credit Certificate:

(a) *Unremedied event of default.* The occurrence of an Event of Default (as defined in this Contract).

(b) *Reduction, discontinuance or alteration of state funding/programs.* Any termination, reduction, or delay of funds or Tax Benefits available under the Program due, in whole or in part, to (i) lack of, reduction in, or a deappropriation of revenues or Tax Benefits previously appropriated or authorized for this Contract or (ii) any reason beyond the IEDA's control may, in the IEDA's sole discretion, result in the suspension, reduction, delay, revocation, and/or termination of Tax Benefits to the Recipient.

ARTICLE 5: Outstanding Tax Liabilities

5.1 Tax benefits awarded under this contract cannot be used to satisfy the Recipient's outstanding state or local tax liability. If the Recipient has an outstanding Iowa tax liability, the IEDA shall not issue a tax credit certificate to Recipient until all such liabilities have been satisfied. The IEDA reserves the right to require submission of any and all information necessary to demonstrate that Recipient is current with all Iowa tax obligations.

ARTICLE 6: Covenants of the Recipient

For the duration of this Contract, the Recipient covenants to IEDA as follows:

6.1 Project Performance Obligations. By the Project Completion Date, Recipient shall complete the Project and comply with all other performance requirements described in this Contract. The Recipient shall promptly provide IEDA with written notice of any major changes that would impact the success of the Project. The Recipient shall continue to meet and maintain all statutory, regulatory, and contractual eligibility requirements for the Tax Benefits made available under this Contract.

6.2 Taxes. The Recipient shall duly pay and discharge all taxes, rates, assessments, fees and governmental charges upon or against its properties, in each case before the same become delinquent and before penalties accrue thereon.

6.3 Maintenance of Properties. The Recipient shall maintain, preserve, and keep its properties related to the Project in good repair, working order and condition (ordinary wear and tear excepted) and will from time to time make all needful and proper repairs, renewals, replacements, additions and betterments thereto so that at all time the efficiency thereof shall be fully preserved and maintained in accordance with prudent business practices.

6.4 No Changes in the Project. The Recipient shall not materially change the Project as described in the Recipient's approved application for funding, Exhibit A of this Contract, unless approved in writing by IEDA prior to the change.

6.5 Changes in Recipient Ownership, Structure and Control. The Recipient shall not materially change the ownership, structure, or control of the business if it would adversely affect the Project.

Recipient shall provide IEDA with advance notice of any proposed changes in ownership, structure, or control. The materiality of the change and whether or not the change affects the Project shall be as reasonably determined by IEDA.

6.6 Required Reports. The Recipient shall prepare, sign, and submit all documents and information described in Article 4.4 of this Contract, within 30 days of the Project Completion Date. In addition, IEDA reserves the right to require more frequent submission of reports if, in the opinion of the IEDA, more frequent submissions would provide needed information about Recipient's Project performance, or if necessary in order to meet requests from the Iowa General Assembly, the Department of Management, the Governor's office, the Iowa Department of Public Safety, the Iowa Division of Criminal Investigation, or the Iowa Attorney General's Office.

6.7 Compliance with Laws. The Recipient will comply in all material respects with the requirements of all federal, state, and local laws, rules, regulations and orders applicable to or pertaining to the Project including, but not limited to, all applicable environmental, hazardous waste or substance, toxic substance, and underground storage laws and regulations, and the Recipient will obtain any permits, licenses, buildings, improvements, fixtures, equipment or its property required by reason of any applicable environmental, hazardous waste or substance, toxic substance or underground storage laws or regulations. The Recipient shall comply in all material respects with all applicable federal, state, and local laws, rules, ordinances, regulations and orders applicable to the prevention of discrimination in employment, including the administrative rules of the Iowa Department of Management and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action. The Recipient shall comply in all material respects with all applicable federal, state and local laws, rules, ordinances, regulations and orders applicable to worker rights and worker safety, including but not limited to laws, rules, ordinances, regulations, and orders regarding wages, hours, child labor, workers' compensation, unemployment insurance, and payroll taxes. The Recipient is subject to and shall comply with IEDA's administrative rules for the Program.

6.8 Inspection and Audit. The Recipient shall permit the IEDA and its duly authorized representatives, at such times and intervals as the IEDA may designate, to:

- (a) Conduct site visits and inspect the Project.
- (b) Audit financial records related to the Project.
- (c) Examine and make copies of any books of accounts and other financial records related to the Project.
- (d) Discuss the affairs, finances and accounts of the Recipient with, and to be advised as to the same by, its officers, and independent public accountants. By this provision, the Recipient authorizes its officers and accountants to discuss with the IEDA and the IEDA's duly authorized representatives the finances and affairs of the Recipient.

6.9 Maintenance and Retention of Records.

(a) Maintain Accounting Records. The Recipient is required to maintain all books, records, and all other evidence pertaining to the Project and this Contract (**hereinafter "the Records"**) in accordance with generally accepted accounting principles and such other procedures specified by IEDA.

(b) Access to Records. The Records shall be available at all times, and made available to IEDA and its designees at places and times designated by IEDA, for the duration of this Contract and any extensions thereof. Recipient shall make the Records available to: (i) IEDA, (ii) IEDA's internal or external auditors, agents, or designees; (iii) the Auditor of the State of Iowa, the Attorney General of the State of Iowa, (iv) the Iowa Division of Criminal Investigations and any other applicable law enforcement agencies.

(c) Records Retention Period. Recipient shall retain the Records for a period of three (3) years from the Contract End Date, unless the records are the subject of an audit, investigation, or administrative or legal proceeding. In those instances, the records shall be retained until the audit, investigation, or proceeding has been resolved.

6.10 Required Notices from Business to IEDA. The Recipient shall promptly provide IEDA with written notice of any major changes that would impact the success of the Project. In addition, the Recipient shall promptly notify IEDA of the initiation of any claims, lawsuits, bankruptcy proceedings or other proceedings brought against the Recipient or any other person or business entity that would adversely impact the Project.

6.11 Indemnification. The Recipient shall indemnify, defend, and hold harmless the State Actors from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

(a) Any claim, demand, action, citation, or legal proceeding arising out of or resulting from the Project;

(b) Any claim, demand, action, citation, or legal proceeding arising out of or resulting from a breach by the Recipient of any representation, warranty or covenant made by the Recipient in this Contract;

(c) Any claim, demand, action, citation, or legal proceeding arising out of or related to occurrences that the Recipient is required to insure against as provided for in this Contract; and

(d) Any claim, demand, action, citation, or legal proceeding which results from an act or omission of the Recipient or any of their agents in its or their capacity as an employer of a person.

6.12 Release. Recipient shall release, discharge, and relinquish the State Actors from any liability arising from or related to the termination, suspension, reduction, or delay of Tax Benefits under this Contract or under the Program, including but not limited to any liability arising from or related to any: (i) losses, (ii) damages (including but not limited to amounts associated with loss of prospective profits, revenues, anticipated sales or rents, or goodwill), (iii) expenses and investments (including but not limited to expenditures, investments, loans, financings or commitments made or entered into by Recipient in connection with this Contract), (iv) costs, penalties, fines, and charges (including but not limited to any damages, fines, penalties, charges or other amounts resulting from Recipient's failure to comply with any applicable federal, state, and local laws, rules, ordinances, codes, regulations, and orders), (v) settlement amounts, (vi) fees (including but not limited to attorney fees and other professional fees), (vii) judgments, (viii) actions, (ix) tax credit claims, or (x) any other claims

6.13 Nonassignment. The Recipient shall not assign this Contract without the written consent of the IEDA.

6.14 Repayment of Unallowable Costs. Recipient shall repay any Tax Benefits claimed that are determined by IEDA, its auditors, agents, or designees, the Auditor of State, the Iowa Department of Revenue, the Iowa Attorney General's Office, or similar authorized governmental entity to be unallowable under the terms of this Contract.

ARTICLE 7: Default

An unremedied Event of Default can result in termination of this Contract and repayment of the value of the Tax Benefits actually received, plus applicable default interest and costs.

7.1 Events of Default. Any one or more of the following shall constitute an "*Event of Default*" under this Contract:

(a) *Noncompliance with Contract.* Failure to observe or perform any provision of this Contract; or

(b) *Material Misrepresentation.* Any representation or warranty made by the Recipient in this Contract or in any statement or certificate furnished by it pursuant to this Contract proves untrue in any material respect as of the date of the issuance or making thereof, including but not limited to a representation or warranty in one of the following statements or certificates: (i) the reports described by Section 4.4. of this Contract, (ii) the statements made in Exhibit A, (iii) the statements in Recipient's Application, or (iv) any other statement made in connection with this Contract,; or

(c) *Judgment Over \$100,000.* Any judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes in an aggregate amount in excess of \$100,000 shall be entered or filed against the Recipient or against any of its property and remains unvacated, unbonded or unstayed for a period of 30 days; or

(d) *Adverse Change in Financial Condition.* Any change shall occur in the financial condition of the Recipient which would have a material adverse effect on the ability of the Recipient to perform under this Contract; or

(e) *Bankruptcy or Similar Proceedings Initiated.* Either the Recipient shall: (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended; (ii) not pay, or admit in writing its inability to pay, its debts generally as they become due; (iii) make an assignment for the benefit of creditors; (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its property; (v) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it; or (vi) fail to contest in good faith any appointments or proceeding described in Section 7.1(f) of this Contract; or

(f) *Appointment of Officials.* A custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for either the Recipient or any substantial part of any of its respective property, or a proceeding described above shall be instituted against either the Recipient and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty (60) days; or

(g) *Insecurity.* IEDA shall in good faith deem itself insecure and believes, after consideration of all the facts and circumstances then existing, that the satisfaction of the obligations under this Contract, or the performance of or observance of the covenants in this Contract, is or will be materially impaired; or

(h) *Failure to Submit Required Reports.* The Recipient fails to submit complete reports by the required due dates as outlined in Articles 4 and 6; or

(i) *Failure to Maintain Program Eligibility Requirements.* Recipient fails to maintain a statutory

or regulatory eligibility requirement for Tax Benefits made available under this Contract; or

(j) *Noncompliance with Another State Contract.* Failure to observe or perform any provision of any other contract between the Recipient and the State; or

(k) *Noncompliance with Any Other Project-Related Contract.* Failure to observe or perform any provision of any contract arising from or related to the Project, regardless of who is a party to such contract; or

(l) *Failure to Comply with Program Statute or Rules.* Failure to comply with Program statutes or administrative rules.

7.2 Notice of Default and Opportunity to Cure. If IEDA believes an Event of Default has occurred under this Contract, IEDA shall issue a written Notice of Default to the Recipient, setting forth the nature of the alleged default in reasonable specificity, and providing therein a reasonable period time, which shall not be fewer than thirty (30) days from the date of the Notice of Default, in which the Recipient shall have an opportunity to cure. Notwithstanding anything in this Section 7.2 or this Contract to the contrary, if IEDA determines that cure is not possible or feasible, IEDA may immediately deem the Recipient in default under the Contract.

7.3 Remedies Available to IEDA. When an Event of Default has occurred and is not cured within the allowable time period, IEDA may, after written notice to Recipient:

- (a) Terminate this Contract.
- (b) Revoke the authorized Tax Benefits.
- (c) Reduce the authorized Tax Benefits.
- (d) Require full repayment of all or a portion the value of Tax Benefits received.

7.4 Default Interest Rate. If an Event of Default occurs and remains uncured, a default interest rate of 10% APR compounded monthly shall apply to repayment of amounts due under this Contract. The default interest rate shall accrue from the first date Tax Benefits are claimed.

7.5 Expenses. The Recipient agrees to pay to the IEDA all expenses, costs, and fees incurred or paid by IEDA in connection with any Default or Event of Default by the Recipient or in connection with the enforcement of any of the terms of this Contract, including but not limited to audit expenses, attorneys' fees, and court costs

ARTICLE 8: Representations and Warranties

The Recipient represents and warrants to IEDA as follows:

8.1 Organization and Qualifications. The Recipient is duly organized, validly existing and in good standing under the state of its incorporation or organization, whichever is applicable. The Recipient has full and adequate power to own its property and conduct its business as now conducted, and is duly licensed or qualified and in good standing in each jurisdiction in which the nature of the Recipient conducted by it or the nature of the property owned or leased by it requires such licensing or qualifying, except where the failure to so qualify would not have a material adverse effect on the Recipient's ability to perform its obligations under the Program and the Contract.

8.2 Authority and Validity of Obligations. The Recipient has full right and authority to enter into this Contract. The person signing this Contract has full authority on behalf of Recipient to sign this contract and perform each and all of the obligations under the Contract. The Contract delivered by the Recipient has been duly authorized, executed, and delivered by the Recipient and constitutes the valid and binding obligations of the Recipient and is enforceable in accordance with its terms. This Contract and related documents do not contravene any provision of law or any judgment, injunction, order, or decree binding upon the Recipient or any provision of the Recipient's formation or incorporation documents, contravene or constitute a default under any covenant, indenture, or contract of or effecting the Recipient or any of its properties.

8.3 Financial Reports. The Recipient has no contingent liabilities which are material to it, other than as indicated on financial statements furnished to IEDA. Such financial statements are and shall be in conformity with GAAP applied on a consistent basis.

8.4 No Material Adverse Change. Since the Award Date and to the knowledge of the Recipient, there has been no material adverse change in the condition of the Recipient (financial or otherwise) or the prospects of the Recipient that would adversely affect the Project.

8.5 Full Disclosure; Recipient's Application. The statements and other information furnished to the IEDA by Recipient in its application and in connection with the negotiation of this Contract do not contain any untrue statements of a material fact or omit a material fact necessary to make the material statements contained herein or therein not misleading. The IEDA acknowledges that as to any projections furnished to the IEDA, the Recipient only represents that the same were prepared on the basis of information and estimates it believed to be reasonable.

8.6 Trademarks, Franchises and Licenses. The Recipient owns, possesses, or has the right to use all necessary patents, licenses, franchises, trademarks, trade names, trade styles, copyrights, trade secrets, know how and confidential commercial and proprietary information to conduct its business as now conducted and complete the Project, without known conflict with any patent, license, franchise, trademark, trade name, trade style, copyright or other proprietary right of any other Person. As used in this Contract, "*Person*" means an individual, partnership, corporation, association, trust, unincorporated organization, or any other entity or organization, including a government or agency or political subdivision thereof.

8.7 Governmental Authority and Licensing. The Recipient has received all licenses, permits, and approvals of all Federal, state, local, and foreign governmental authorities, if any, necessary to conduct its business and complete the Project, in each case where the failure to obtain or maintain the same could reasonably be expected to have a material adverse effect. No investigation or proceeding which, if adversely determined, could reasonably be expected to result in revocation or denial of any material license, permit, or approval is pending or, to the knowledge of the Recipient threatened.

8.8 Litigation and Other Controversies. There is no litigation or governmental proceeding pending, nor to the knowledge of the Recipient threatened, against the Recipient which if adversely determined would result in any material adverse change in Recipient or its financial condition, properties, or operations, nor is the Recipient aware of any existing basis for any such litigation or governmental proceeding.

8.9 Good Title. The Recipient has good and defensible title (or valid leasehold interests) to all of its property involved with the Project reflected on the most recent balance sheets furnished to the IEDA (except for sales of assets in the ordinary course of business).

8.10 Taxes. All tax returns required to be filed by the Recipient in any jurisdiction have, in fact, been filed, and all taxes, assessments, fees and other governmental charges upon the Recipient or upon any of

its property, income or franchises, which are shown to be due and payable in such returns, have been paid, except such taxes, assessments, fees and governmental charges, if any, as are being contested in good faith and by appropriate proceedings which prevent enforcement of the matter under contest and as to which adequate reserves established in accordance with GAAP have been provided. The Recipient knows of no proposed additional tax assessment against it for which adequate provisions in accordance with GAAP have not been made on its accounts. Adequate provisions in accordance with GAAP for taxes on the books of the Recipient have been made for all open years, and for their current fiscal period.

8.11 Other Contracts. The Recipient is not in default under the terms or any covenant, indenture or contract of or affecting either the Recipient or any of its properties, which default, if uncured, would have a material adverse effect on the Recipient or its financial condition, properties, or operations.

8.12 No Default. No Default or Event of Default, as defined in Article 7, has occurred or is continuing.

8.13 Compliance with Laws. The Recipient is in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to the operations of the Recipient and its completion of the Project and laws and regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes or substances, non-compliance with which could have a material adverse effect on the Project or financial condition, properties, business or operations of the Recipient. The Recipient has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental or health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, properties, business or operations of the Recipient.

8.14 Effective Date of Representations and Warranties. The warranties and representations of this Article are made as of the Contract Effective Date and shall be deemed to be renewed and restated by the Recipient at the time the Recipient submits information under Article 4 to receive a Tax Credit Certificate and at the time Tax Benefits are claimed by the Recipient or any transferee of the Tax Benefits.

ARTICLE 9: Limitation of Liability

9.1 Limitation of Liability. Recipient acknowledges and agrees that the maximum potential liability of IEDA arising from or related to the Project or this Contract is for the Tax Benefits described in Section 3.1 of this Contract. IEDA shall not, under any circumstances, be obligated financially under the Program and this Contract except to award Tax Benefits pursuant to the Program and the Contract. Other than the Tax Benefits awarded pursuant to the terms of the Program and the Contract, the State Actors as defined in Section 2.10 of this Contract shall not, under any circumstances, be liable for any: (i) losses, (ii) damages (including but not limited to amounts associated with loss of prospective profits, revenues, anticipated sales or rents, or goodwill), (iii) expenses and investments (including but not limited to expenditures, investments, loans, financings or commitments made or entered into by Recipient in connection with this Contract), (iv) costs, penalties, fines, and charges (including but not limited to any damages, fines, penalties, charges or other amounts resulting from Recipient's failure to comply with any applicable federal, state, and local laws, rules, ordinances, codes, regulations, and orders), (v) settlement amounts, (vi) fees (including but not limited to attorney fees and other professional fees), (vii) judgments, (viii) actions, (ix) tax credit claims, or (x) any other claims.

ARTICLE 10: Miscellaneous

10.1 State of Iowa Recognition. If the Project involves construction and there is signage recognizing the financial contributions made to the Project the Recipient agrees to include the Iowa Economic Development Authority on the list of entities providing assistance. For example, a sign or plaque indicating that the Project was funded in part by an Award from the State of Iowa, Iowa Economic Development Authority.

10.2 Choice of Law and Forum; Governing Law.

(a). The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Agreement without regard to the choice of law provisions of Iowa law or any other principles of conflicts of law.

(b). In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Agreement, the proceeding shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if such court has jurisdiction. If however, such court lacks jurisdiction and jurisdiction lies only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division.

(c). Nothing in this Agreement shall be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the State Actors as defined in Section 2.10 of this Contract.

10.3 Contract Amendments. Neither this Contract nor any documents incorporated by reference in connection with this Contract, may be changed, waived, discharged or terminated orally, but only as provided below:

(a) *Writing required.* The Contract may only be amended if done so in writing and signed by the Recipient and IEDA. Examples of situations requiring an amendment include, but are not limited to, time extensions, budget revisions, and significant alterations of existing activities or beneficiaries.

(b) *IEDA review.* Requests to amend this Contract shall be processed by IEDA in compliance with the IEDA Board's rules and procedures applicable to contract amendments.

10.4 Notices. Except as otherwise specified herein, all notices hereunder shall be in writing (including, without limitation by fax) and shall be given to the relevant party at its address, e-mail address, or fax number set forth below, or such other address, e-mail address, or fax number as such party may hereafter specify by notice to the other given by United States mail, by fax or by other telecommunication device capable of creating a written record of such notice and its receipt. Notices hereunder shall be addressed:

To the Recipient at:

Awardee Name
contact name
Street Address
City State Zip

E-mail: email address
Telephone: phone #
Facsimile: fax #

To the IEDA at:

Iowa Economic Development Authority
200 East Grand Avenue
Des Moines, Iowa 50309
Attention: Matt Rasmussen, Program Manager

E-mail: matt.rasmussen@iowa.gov

Telephone: 515.725.3126

Facsimile: 515.725.3010

Each such notice, request or other communication shall be effective (i) if given by facsimile, when such facsimile is transmitted to the facsimile number specified in this Article and a confirmation of such facsimile has been received by the sender, (ii) if given by e-mail, when such e-mail is transmitted to the e-mail address specified in this Article and a confirmation of such e-mail has been received by the sender, (iii) if given by mail, five (5) days after such communication is deposited in the mail, certified or registered with return receipt requested, addressed as aforesaid or (iv) if given by any other means, when delivered at the addresses specified in this Article.

10.5 Headings. Article headings used in this Contract are for convenience of reference only and are not a part of this Contract for any other purpose.

10.6 Final Authority. The IEDA shall have the authority to reasonably assess whether the Recipient has complied with the terms of this Contract. Any IEDA determinations with respect to compliance with the provisions of this Contract shall be deemed to be final determinations pursuant to Iowa Code Chapter 17A, Iowa Administrative Procedure Act.

10.7 Waivers. No waiver by IEDA of any default hereunder shall operate as a waiver of any other default or of the same default on any future occasion. No delay on the part of the IEDA in exercising any right or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any right or remedy by IEDA shall preclude future exercise thereof or the exercise of any other right or remedy.

10.8 Counterparts. This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

10.9 Survival of Representations. All representations and warranties made herein or in any other Contract document or in certificates given pursuant hereto or thereto shall survive the execution and delivery of this Contract and the other Contract documents and shall continue in full force and effect with respect to the date as of which they were made until all of Recipient's obligations or liabilities under this Contract have been satisfied.

10.10 Severability of Provisions. Any provision of this Contract, which is unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. All rights, remedies and powers provided in this Contract or any other Contract document may be exercised only to the extent that the exercise thereof does not violate any applicable mandatory provisions of law, and all the provisions of this Contract and any other Contract document are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Contract or any other Contract document invalid or unenforceable.

10.11 Successors and Assigns. This Contract shall be binding upon the Recipient and its respective successors and assigns, and shall inure to the benefit of the IEDA and the benefit of their respective successors and assigns.

10.12 Nonassignment. This Contract shall not be assigned, in whole or in part, by Recipient unless approved in writing by IEDA prior to the assignment.

10.13 Third Party Beneficiaries. Other than the State Actors as described in this Contract, there are no third-party benefits to this Contract.

10.14 Documents Incorporated by Reference. The following documents are incorporated by reference and considered an integral part of this Contract:

1. Exhibit A - Recipient's Application (on file with IEDA).
2. Exhibit B - Description of the Project.
3. Exhibit C - Schedule of Claimed Expenses form.

10.15 Order of Priority. In the case of any inconsistency or conflict between the specific provisions of this document and the exhibits, the following order of priority shall control:

1. Articles 1 - 10 of this Contract.
2. Exhibit A - Recipient's Application (on file with IEDA).
3. Exhibit B - Description of the Project.
4. Exhibit C - Schedule of Claimed Expenses form.

10.16 Complete Integration. This Contract contains the entire understanding between the Recipient and IEDA relating to the Project and any representations that may have been made before or after the signing of this Contract, which are not contained herein, are nonbinding, void and of no effect. None of the Parties have relied on any such prior representation in entering into this Contract.

EXECUTION

IN WITNESS WHEREOF in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into this Contract and have caused their duly authorized representatives to execute this Contract, effective as of the latest date stated below.

FOR IEDA:

FOR RECIPIENT:

BY:

BY:

Deborah V. Durham, Director

Signature

Printed Name and Title

Date

Date

LIST OF EXHIBITS

- Exhibit A - Recipient's Application (on file with IEDA)
- Exhibit B - Description of the Project
- Exhibit C - Schedule of Claimed Expenses Form - (electronic copy of Schedule of Claimed Expenses Form will be sent to Recipient by IEDA)

This project(Brief Project Description)