



OFFICE OF THE CITY ADMINISTRATOR

Johnston, Iowa

AGENDA COMMUNICATION

August 1, 2016

<p>SUBJECT: Consider resolution #16 - 159 a resolution approving and authorizing execution of a Development Agreement by and between the city of Johnston and DSM Investments Partners, LLC, and Elite Glass & Metal, LLC</p>	<p>ACTION REQUIRED:</p> <p><input type="checkbox"/> Ordinance</p> <p><input checked="" type="checkbox"/> Resolution</p> <p><input type="checkbox"/> Approval</p> <p><input type="checkbox"/> Receive/File</p> <p><input type="checkbox"/> Attorney Review</p>
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SYNOPSIS

DSM Investments Partners, LLC. submitted a request for TIF funding for a 15,000 square foot commercial building to be located in at 4945 NW 57th Avenue in the Beaver Drive Business Park. The City Council reviewed the request at their June 6th work session and determined the project met the criteria for base TIF funding.

This is a new business to Johnston that will be constructing a multi-tenant building. The primary tenant (Elite Glass & Metal, LLC) is a glass and glazing business that currently has eight full time employees and 40 contracted employees that work in the field. The two additional tenant spaces will either be used for other businesses or to accommodate the growth of the primary tenant.

The TIF assistance is to facilitate the construction of a 15,000 square foot building and to offset some of the development cost such as exterior landscape, exterior finishes such as brick, aluminum sunshades or awnings above the entrance doors and a different color scheme for the building. They anticipate the cost of the upgrades to be around \$70,000. They also plan to improve fiber optic capability to the property, and need to extend water, sewer and electrical power to the building.

Attached is a copy of the proposed Development Agreement.

RESOLUTION NO. 16-159

RESOLUTION APPROVING AND AUTHORIZING
EXECUTION OF A DEVELOPMENT AGREEMENT BY AND
AMONG THE CITY OF JOHNSTON, DSM INVESTMENTS
PARTNERS, LLC, AND ELITE GLASS & METAL, LLC

WHEREAS, by Resolution No. 93-121, adopted September 20, 1993, and amended seven times, lastly by Amendment No. 7, approved by Resolution No. 15-42 on February 17, 2015, this Council found and determined that certain areas located within the City are eligible and should be designated as an urban renewal area under Iowa law, and approved and adopted the East Central TIF Urban Renewal Plan (the "Plan") for the East Central TIF Urban Renewal Area (the "Urban Renewal Area" or "Area") described therein, which Plan as amended, is on file in the office of the Recorder of Polk County; and

WHEREAS, it is desirable that properties within the Area be redeveloped as part of the overall redevelopment area covered by said Plan; and

WHEREAS, the City has received a proposal from DSM Investments Partners, LLC (the "Developer") and Elite Glass & Metal, LLC (the "Tenant"), in the form of a proposed Development Agreement (the "Agreement") by and among the City, Developer, and the Tenant pursuant to which, among other things, the Developer would agree to construct certain Minimum Improvements (as defined in the Agreement) on certain real property located within the East Central TIF Urban Renewal Area as defined and legally described in the Agreement and consisting of the construction of an approximately 15,000 square foot brick and metal commercial building, together with all related site improvements, as outlined in the proposed Development Agreement; and

WHEREAS, the Agreement proposes that the City will make a forgivable loan to Developer in an amount calculated based on 50% of the Tax Increment generated by the Project for five (5) years, determined under the formula outlined in the proposed Development Agreement, under the terms and following satisfaction of the conditions set forth in the Agreement, such loan not to exceed \$70,350; and

WHEREAS, one of the obligations of the Tenant relates to employment retention and/or creation; and

WHEREAS, Iowa Code Chapters 15A and 403 authorize cities to make grants or loans for economic development in furtherance of the objectives of an urban renewal project and to appropriate such funds and make such expenditures as may be necessary to carry out the purposes of said Chapters, and to levy taxes and assessments for such purposes; and

WHEREAS, the Council has determined that the Agreement is in the best interests of the City and the residents thereof and that the performance by the City of its obligations thereunder is a public undertaking and purpose and in furtherance of the Plan and the Urban Renewal Law and, further, that the Agreement and the City's performance thereunder is in furtherance of

appropriate economic development activities and objectives of the City within the meaning of Chapters 15A and 403 of the Iowa Code taking into account any or all of the factors set forth in Chapter 15A, to wit:

- a. Businesses that add diversity to or generate new opportunities for the Iowa economy should be favored over those that do not.
- b. Development policies in the dispensing of the funds should attract, retain, or expand businesses that produce exports or import substitutes or which generate tourism-related activities.
- c. Development policies in the dispensing or use of the funds should be targeted toward businesses that generate public gains and benefits, which gains and benefits are warranted in comparison to the amount of the funds dispensed.
- d. Development policies in dispensing the funds should not be used to attract a business presently located within the state to relocate to another portion of the state unless the business is considering in good faith to relocate outside the state or unless the relocation is related to an expansion which will generate significant new job creation. Jobs created as a result of other jobs in similar Iowa businesses being displaced shall not be considered direct jobs for the purpose of dispensing funds; and

WHEREAS, pursuant to notice published as required by law, this Council has held a public meeting and hearing upon the proposal to approve and authorize execution of the Agreement and has considered the extent of objections received from residents or property owners as to said proposed Agreement; and, accordingly the following action is now considered to be in the best interests of the City and residents thereof.

NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF JOHNSTON IN THE STATE OF IOWA:

Section 1. That the performance by the City of its obligations under the Agreement, including but not limited to making of a forgivable loan to the Developer in connection with the development of the Development Property under the terms set forth in the Agreement, be and is hereby declared to be a public undertaking and purpose and in furtherance of the Plan and the Urban Renewal Law and, further, that the Agreement and the City's performance thereunder is in furtherance of appropriate economic development activities and objectives of the City within the meaning of Chapters 15A and 403 of the Iowa Code, taking into account the factors set forth therein.

Section 2. That the form and content of the Agreement, the provisions of which are incorporated herein by reference, be and the same hereby are in all respects authorized, approved and confirmed, and the Mayor and the City Clerk be and they hereby are authorized, empowered and directed to execute, attest, seal and deliver the Agreement for and on behalf of the City in substantially the form and content now before this meeting, but with such changes, modifications, additions or deletions therein as shall be approved by such officers, and that from

and after the execution and delivery of the Agreement, the Mayor and the City Clerk are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Agreement as executed.

PASSED AND APPROVED this 1st day of August, 2016.

Mayor

ATTEST:

City Clerk

AGREEMENT FOR PRIVATE DEVELOPMENT

THIS AGREEMENT FOR PRIVATE DEVELOPMENT ("Agreement"), is made on or as of the ____ day of _____, 2016, by and between the CITY OF JOHNSTON, IOWA, a municipality (the "City"), established pursuant to the Code of Iowa of the State of Iowa and acting under the authorization of Chapters 15A and 403 of the Code of Iowa, 2015, as amended (the "Urban Renewal Act"), DSM Investments Partners, LLC, an Iowa limited liability company (the "Developer"), and Elite Glass & Metal, LLC, an Iowa limited liability company (the "Tenant").

BACKGROUND

WHEREAS, in furtherance of the objectives of the Urban Renewal Act, the City has undertaken a program for the development of an economic development area in the City and is engaged in carrying out urban renewal project activities in an area known as the East Central TIF Urban Renewal Area, as amended (the "Urban Renewal Area"), which is described in the Urban Renewal Plan approved for such area by Resolution 93-121 on September 20, 1993, and amended seven times, lastly by Amendment No. 7 as approved by Resolution #15-42 on February 17, 2015; and

WHEREAS, the City has also adopted Ordinance No. 924, and related prior ordinances, (the "Ordinance") under which incremental tax revenues from the Urban Renewal Area are to be deposited into a special tax increment fund of the City pursuant to Section 403.19 of the Code; and

WHEREAS, the City has been presented with a proposal to be undertaken by the Developer to develop the property legally described on the attached Exhibit A (the "Development Property") which is located within the Urban Renewal Area; and

WHEREAS, under the terms of the proposal the Developer will undertake certain construction activities as described on the attached Exhibit B and Tenant will employ employees on and within the Development Property (hereinafter the "Project") in return for a forgivable loan as specified in Article II of this Agreement (the "Forgivable Loan"); and

WHEREAS, the City Council has found the Project to be consistent with the objectives of the Plan for the Urban Renewal Area and has further found that the use of City funds to finance the Forgivable Loan is in accord with the provisions of the applicable laws under which the Project will be undertaken, including but not limited to, Iowa Code Chapters 15A and 403.

NOW, THEREFORE, the City, Developer, and Tenant in consideration of the promises and mutual obligations set forth in this Agreement now agree and covenant as follows:

ARTICLE I
DEVELOPER REPRESENTATIONS AND COVENANTS

1. Minimum Improvements. Developer will cause the improvements described in Exhibit B to this Agreement (the "Minimum Improvements") to be constructed in accordance with the terms of this Agreement, the Urban Renewal Plan, and all local, State, and federal laws and regulations.

2. Employment. Beginning on April 1, 2017 and continuing through the Termination Date, as set out in Article VI, Section 10, the Tenant will employ no fewer than 8 Full Time Equivalent Employees at the Minimum Improvements and on the Development Property. Tenant's Annual Certifications shall show a Monthly Average of at least 8 Full-Time Equivalent Employees has been maintained from April 1, 2017 through the Termination Date.

For purposes of this Agreement, "Full Time Equivalent (FTE) Employees" shall mean either (i) a "full time" employee who works at least 40 hours per week or 2,000 hours per year or (ii) any combination of "part time" employees, who, in the aggregate, work at least 2,000 hours per year. For purposes of this Agreement, "Monthly Average" means the average number of Full-Time Equivalent Employees employed as of October 1 of each year and as of the first day of each of the preceding eleven (11) months, as shown in Developer's Annual Certification in Article I, Section 13. Tenant shall provide information as requested by the City to determine compliance with the foregoing employment obligations.

3. No Violations or Claims. To their knowledge and with respect to the Project, the Developer and Tenant are not in material violation of any local, state or federal environmental law or regulation and is not aware of any pending or threatened claim against the Developer or Tenant with respect to such laws.

4. Total Investment. The Developer represents that its total investment in the Development Property shall be not less than \$1,000,000, and that without the Forgivable Loan contemplated herein, Developer would not undertake the Project.

5. Insurance. The Developer agrees during construction of the Minimum Improvements and thereafter until the Termination Date to maintain builder's risk, property damage, and liability insurance coverages with respect to the Minimum Improvements in such amounts as are customarily carried by like organizations engaged in activities of comparable size and liability exposure with insurance companies reasonably satisfactory to the City, together with such additional coverages as the City may reasonably request, and shall provide evidence of such coverages to the City upon request.

6. Cooperation. Developer and Tenant shall cooperate fully with the City in resolution of any traffic, parking, trash removal or public safety problems which may arise in connection with the construction and operation of the Minimum Improvements.

7. Completion Date. Developer expects that, barring delays resulting from acts or occurrences outside its reasonable control, including but not limited to storms, floods, fires, explosions or other casualty losses, unusual weather conditions, strikes, boycotts, lockouts or other labor disputes, delays in transportation or delivery of material or equipment, litigation commenced by third parties, or the acts of any federal, State or local governmental unit (other than the City), the Minimum Improvements will be completed by March 31, 2017.

8. Operation of Minimum Improvements. Tenant shall occupy the Minimum Improvements on the Development Property pursuant to a Lease with Developer until at least the Termination Date as that term is defined in Article VI, Section 10.

9. Compliance with Laws. Developer and Tenant shall comply with all state, federal and local laws, rules and regulations relating to the Minimum Improvements, including laws prohibiting discrimination against any applicant, employee or tenant because of age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status.

10. Available Information. Upon request, Developer and Tenant shall promptly provide the City with copies of information requested by City that are related to this Agreement so that City can determine compliance with the Agreement.

11. Inspection. Developer agrees that it shall permit designated representatives of the City, upon reasonable notice (which does not have to be written), to enter upon the Development Property during the construction of the Minimum Improvements to inspect such construction and the progress thereof.

12. Real Property Taxes and Assessments. Developer and Tenant agree that prior to the Termination Date:

(a) They will not seek administrative review or judicial review of the applicability or constitutionality of any tax statute relating to the taxation of real property contained on the Development Property determined by any tax official to be applicable to the Development Property, Minimum Improvements or Developer/Tenant, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings;

(b) They will not seek any tax exemption deferral or abatement either presently or prospectively authorized under any State, federal or local law with respect to taxation of real property contained on the Development Property (including the Minimum Improvements) between the date of execution of this Agreement and the Termination Date; and

(c) They will not seek to change the current land assessment category from commercial/industrial, or the zoning classification, of the Development Property or the Minimum Improvements.

13. Annual Certification. To assist the City in monitoring the Agreement and performance of Developer and Tenant hereunder:

(a) A duly authorized officer of Developer shall annually provide to the City: (i) proof that all ad valorem taxes on the Development Property and Minimum Improvements have been paid for the prior fiscal year and any taxes due and payable for the current fiscal year as of the date of certification; (ii) the base value of the property as of January 1, 2016 prior to construction of the Minimum Improvements; (iii) the date of the first full assessment of the Minimum Improvements; and (iv) certification that such officer has re-examined the terms and provisions of this Agreement and that at the date of such certificate, and during the preceding twelve (12) months, Developer is not, or was not, in default in the fulfillment of any of the terms and conditions of this Agreement and that no Event of Default (or event which, with the lapse of time or the giving of notice, or both, would become an Event of Default) is occurring or has occurred as of the date of such certificate or during such period, or if the signer is aware of any such default, event or Event of Default, said officer shall disclose in such statement the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto.

(b) A duly authorized officer of Tenant shall annually provide to the City: (i) certification of the number of Full-Time Equivalent Employees employed by Tenant in the Minimum Improvements as of October 1 and as of the first day of each of the preceding eleven (11) months (prorated for the first certification); and (ii) certification that such officer has re-examined the terms and provisions of this Agreement and that at the date of such certificate, and during the preceding twelve (12) months, Tenant is not, or was not, in default in the fulfillment of any of the terms and conditions of this Agreement and that no Event of Default (or event which, with the lapse of time or the giving of notice, or both, would become an Event of Default) is occurring or has occurred as of the date of such certificate or during such period, or if the signer is aware of any such default, event or Event of Default, said officer shall disclose in such statement the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto.

Such statements, proof and certificates shall be provided not later than October 15 of each year, commencing October 15, 2017 and ending on October 15, 2022, both dates inclusive. Developer and Tenant shall provide supporting information for its Annual Certifications upon request of the City. *See Exhibits D-1 and D-2 for forms required for Annual Certifications.*

ARTICLE II

FORGIVABLE LOAN AND PROMISSORY NOTE

1. Forgivable Loan. For and in consideration of the obligations of the Developer and Tenant as set forth herein, and as a necessary means of achieving the goals and objectives of the Urban Renewal Plan, the City agrees (subject to the conditions set forth in this Article and this Agreement) to make a Forgivable Loan to the Developer in the amount and calculated according to the formula set forth below in Section 2 for costs associated with the Minimum Improvements (the "Forgivable Loan"). Such loan shall be made as soon as possible after all the

Conditions Precedent in Section 3 have been completed.

2. Calculation of Loan Amount. The amount of the Forgivable Loan will be calculated based on 50% of the Tax Increment generated by the Project for five (5) years based on the 2016-2017 TIF tax rate of \$31.26588/\$1,000. Tax Increment is defined as the property tax revenues generated by the construction of the Minimum Improvements (building only) based on the TIF tax rate for the City of Johnston. The formula to be used will be ((new assessed value of building only, after rollback) x \$31.26588/\$1,000) x 50%) x 5 = Forgivable Loan amount. The calculation will be done one time using the TIF tax rate shown above and will not be adjusted in future years based on a varying TIF tax rate. The estimated increase in taxable value of the Development Property caused by construction of the Minimum Improvements is expected to be approximately \$1,000,000 (\$900,000 after the commercial/industrial rollback), which equates into an estimated amount of Forgivable Loan of approximately \$70,350. The actual amount of the Forgivable Loan will be finalized once the Development Property is assessed by the Polk County Assessor and the amount of the Forgivable Loan is calculated, but in no event shall it exceed the Maximum Amount established by Article II, Section 8.

3. Conditions Precedent. Notwithstanding the provisions of Section 2, the City's obligation to grant Developer the Forgivable Loan under this Agreement shall be subject to satisfaction of the following conditions precedent:

- (a) the Developer and Tenant shall be in material compliance with all the terms and provisions of this Agreement; and
- (b) the Minimum Improvements shall be completed and fully assessed; and
- (c) the Developer shall have executed a Promissory Note in the form attached as Exhibit C.

4. Forgiveness of the Forgivable Loan.

(a) The Forgivable Loan shall be forgiven at the rate of 20% of the total amount of the Forgivable Loan initially granted to Developer, per year, for five years beginning on December 31 after the Minimum Improvements are completed and fully assessed, assuming

- i. Developer and Tenant are in compliance with all terms, conditions and obligations of this Agreement as of the date the loan forgiveness is to be granted, including the employment obligations in Article I, Section 2; and
- ii. the Minimum Improvements are assessed at a value at or exceeding the fully assessed valuation of January 1, 2018; and
- iii. Developer has paid all ad valorem taxes due with respect to the

Development Property; and

- iv. Developer and Tenant have timely filed the Annual Certifications required under Article I, Section 13 hereof and the Council approves thereof.

(b) The City will, on an annual basis beginning the year the Minimum Improvements are fully assessed, make a determination that Developer and Tenant are in compliance with the terms, conditions and obligations of this Agreement, (and Developer and Tenant shall supply to the City the Annual Certifications and any other substantiation documentation reasonably requested by the City in order to make this determination) and will notify Developer by each December 1 if the Developer does not qualify for that year's loan forgiveness.

5. Forgivable Loan Default. If the loan is not forgiven and/or repaid by Developer pursuant to the terms of this Agreement, then an Event of Default has occurred, in which event the City has all the rights under this Agreement and under the terms of the Promissory Note.

6. Promissory Note.

(a) The Developer will execute a Promissory Note in the form attached as Exhibit C to this Agreement as a condition precedent to the grant of the Forgivable Loan (See Article II, Section 3(c)). Assuming Developer's compliance with this Agreement, the Promissory Note will be reduced by 20% of the initial balance of the Forgivable Loan by each December 31 for five (5) years. The City will provide notice to Developer by December 1 if Developer fails to qualify for that year's loan forgiveness as described in this Article.

(b) Should Developer fail to qualify for loan forgiveness in whole or in part during any year, the remaining balance of the loan that has not been forgiven will become immediately due and payable on December 31 of that year and the City shall send notice to the Developer. All unpaid sums will accrue interest at the rate of 4% per annum accruing from the date payment is due.

7. Cancellation of Promissory Note. The Promissory Note will be cancelled when no outstanding balance of the Promissory Note exists. No outstanding balance will exist upon occurrence of any of the following:

- (a) the entire Forgivable Loan has been forgiven;
- (b) the Developer has paid the City the full amount of the Forgivable Loan; or
- (c) a portion of the Forgivable Loan has been forgiven, and the Developer has paid the entire remaining balance of the Forgivable Loan to the City.

8. Maximum Amount. The total amount of the Forgivable Loan paid by the City shall not exceed the amount calculated under Article II, Section 2 above, or \$70,350, whichever is less. The City makes no guarantee as to the actual amount of the Forgivable Loan which Developer shall receive. The Forgivable Loan shall be the only monetary consideration given by the City to the Developer or Tenant in connection with this Agreement.

The Forgivable Loan is only for the Minimum Improvements described in this Agreement and not any future expansions which, to be eligible for additional incentives, would be the subject of an amendment or new agreement, at the sole discretion of the City Council.

ARTICLE III **INDEMNIFICATION**

1. Release and Indemnification. The Developer and Tenant release the City and the governing body members, officers, agents, servants and employees thereof (the "Indemnified Parties") from, covenants and agrees that the Indemnified Parties shall not be liable for, and agrees to indemnify, defend and hold harmless the Indemnified Parties against, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project.

Except for any willful misrepresentation or any willful or wanton misconduct or any unlawful act of the Indemnified Parties, the Developer and Tenant agree to protect and defend the Indemnified Parties, now or forever, and further agree to hold the Indemnified Parties harmless, from any claim, demand, suit, action or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from (i) any violation of any agreement or condition of this Agreement (except with respect to any suit, action, demand or other proceeding brought by the Developer against the City to enforce its rights under this Agreement), (ii) the acquisition and condition of the Development Property and the construction, installation, ownership, and operation of the Project or (iii) any hazardous substance or environmental contamination located in or on the Development Property.

The Indemnified Parties shall not be liable for any damage or injury to the persons or property of Developer, Tenant or their officers, agents, servants or employees or any other person who may be about the Minimum Improvements or Development Property due to any act of negligence of any person, other than any act of negligence on the part of any such Indemnified Party or its officers, agents, servants or employees.

2. Survival. The provisions of this Article III shall survive the termination of this Agreement.

ARTICLE IV **PROHIBITION AGAINST ASSIGNMENT AND TRANSFER**

1. Status of Developer and Tenant; Transfer of Substantially All Assets;

Assignment. As security for the obligations of Developer and Tenant under this Agreement, Developer and Tenant represent and agree that, prior to the Termination Date, Developer and Tenant shall maintain existence as a company and will not wind up or otherwise dispose of all or substantially all of its assets or transfer, convey, or assign their interest in the Development Property or in this Agreement to any other party unless: (i) the transferee partnership, corporation, limited liability company or individual assumes in writing all of the obligations of the transferring entity under this Agreement; and (ii) the City consents thereto in writing in advance thereof.

2. Prohibition Against Use as Non-Taxable or Centrally Assessed Property. During the term of this Agreement, the Developer and Tenant, or their successors or assigns, agree that the Development Property cannot be transferred or sold to a non-profit entity or used for a purpose that would exempt the Development Property or Minimum Improvements from property tax liability. Nor can the Development Property or Minimum Improvements be used as centrally assessed property (including but not limited to, Iowa Code § 428.24 to 428.29 (Public Utility Plants and Related Personal Property); Chapter 433 (Telegraph and Telephone Company Property); Chapter 434 (Railway Property); Chapter 437 (Electric Transmission Lines); Chapter 437A (Property Used in the Production, Generation, Transmission or Delivery of Electricity or Natural Gas); and Chapter 438 (Pipeline Property)).

ARTICLE V **DEFAULT AND REMEDIES**

1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events during the Term of this Agreement:

- (a) Failure by Developer to cause the construction of the Minimum Improvements to be completed and the operations to continue pursuant to the terms and conditions of this Agreement;
- (b) Transfer of Developer's or Tenant's interest in the Development Property or any interest in this Agreement or the assets of Developer or Tenant in violation of the provisions of this Agreement;
- (c) Failure by Developer to pay ad valorem taxes on the Development Property and Minimum Improvements;
- (d) Failure by Developer or Tenant to substantially observe or perform any covenant, condition, or obligation under this Agreement;
- (e) The holder of any mortgage on the Development Property, or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable mortgage documents;

(f) Failure by Developer to comply with any and all obligations on the Promissory Note.

(g) Developer shall:

- (i) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended, or under any similar federal or state law; or
- (ii) make an assignment for the benefit of its creditors; or
- (iii) admit in writing its inability to pay its debts generally as they become due; or
- (iv) be adjudicated as bankrupt or insolvent; or if a petition or answer proposing the adjudication of Developer as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of Developer or the Minimum Improvements, or part thereof, shall be appointed in any proceedings brought against Developer, and shall not be discharged within ninety (90) days after such appointment, or if Developer shall consent to or acquiesce in such appointment; or

(h) Any representation or warranty made by Developer or Tenant in this Agreement or in any written statement or certificate furnished by Developer or Tenant pursuant to this Agreement, shall prove to have been incorrect, incomplete or misleading in any material respect on or as of the date of the issuance or making thereof.

2. Loan Forgiveness Contingent. The loan forgiveness set out in Article II is wholly contingent upon the Developer, Tenant, and their permitted successors being and remaining in compliance with the obligations, responsibilities, and covenants of this Agreement. Under no circumstances will the Developer be entitled to, or have a claim of interest in, any past loan forgiveness for a year in which Developer was not entitled to receive that year's loan forgiveness.

3. Developer or Tenant Breach. If the Developer or Tenant fails to perform any of its obligations under this Agreement, and fails to cure said breach within thirty (30) days after written notice from the City to the Developer and Tenant, the City may (i) suspend its performance under this Agreement, (ii) terminate this Agreement upon written notice to the

Developer and Tenant, or (iii) demand payment in full of the Forgivable Loan, or (iv) take any other legal or equitable action deemed appropriate to enforce the Developer's and/or Tenant's obligations under this Agreement.

4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

5. No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

6. Enforcement Costs. Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of Developer or Tenant herein contained, Developer and Tenant agree that the defaulting party shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses as may be reasonably and appropriately incurred by the City in connection therewith.

ARTICLE VI **MISCELLANEOUS**

1. Conflict of Interest. Developer and Tenant represent and warrant that, to their best knowledge and belief after due inquiry, no officer or employee of the City, or their designees or agents, nor any consultant or member of the governing body of the City, and no other public official of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision-making process or gain insider information with regard to the Project, has had or shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work or services to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

2. Notices. Notices, demands, or other communications 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, or delivered personally, and

- (a) In the case of the City, to City of Johnston, 6221 Merle Hay Road, Johnston, IA 50131, Attn: City Clerk,

- (b) In the case of the Developer, to DSM Investments Partners, LLC, 210 NE Delaware Avenue, Suite 200, Ankeny IA 50021, Attn: Craig Lusthoff,
- (c) In the case of the Tenant, to Elite Glass & Metal, LLC, 1595 NE 69th Place, Suite 92, Ankeny, IA 50021, Attn: Nate Burgod,

or to such other designated individual or officer or to such other address as either party shall have furnished to the other in writing in accordance herewith.

3. Iowa Law Controlling. This Agreement shall be governed and construed under the laws of the State of Iowa.

4. Entire Agreement. This Agreement and the Exhibits here referenced shall constitute the entire agreement between the City, Developer, and Tenant, and supersedes all other written and oral agreements, discussions and negotiations.

5. Amendments. This Agreement may not be amended or assigned by either party without the express permission of the other party.

6. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

7. Severability. In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

8. Successors and Assigns. This Agreement is intended to and shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

9. No Third-Party Beneficiaries. No rights or privileges of any party hereto shall inure to the benefit of any landowner, contractor, subcontractor, material supplier, or any other person or entity, and no such contractor, landowner, subcontractor, material supplier, or any other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

10. Termination. This Agreement shall terminate and be of no further force or effect after the date on which the Forgivable Loan is completely forgiven by the City or completely repaid by the Developer, unless terminated earlier under the provisions of this Agreement.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and the Developer and Tenant have caused this Agreement to be duly executed on or as of the ____ day of _____, 2016.

EXHIBIT A

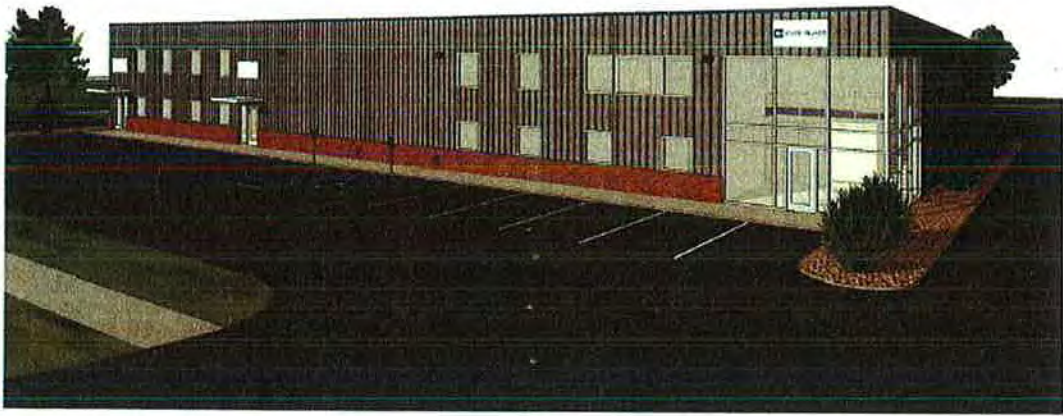
DESCRIPTION OF DEVELOPMENT PROPERTY

Street address: 4945 NW 57th Avenue, Johnston, Iowa

Legal description: LOT 3 BEAVER DRIVE BUSINESS PARK PLAT 1

Parcel No.: 241/00313-017-003

EXHIBIT B-1



A01: Colored Elevations
A02: Elevations
A03: General Layout
A04: 1st Floor Plans
A05: 2nd Floor Plans
A06: Enlarged Office Plans
A07: Landscaping Plan

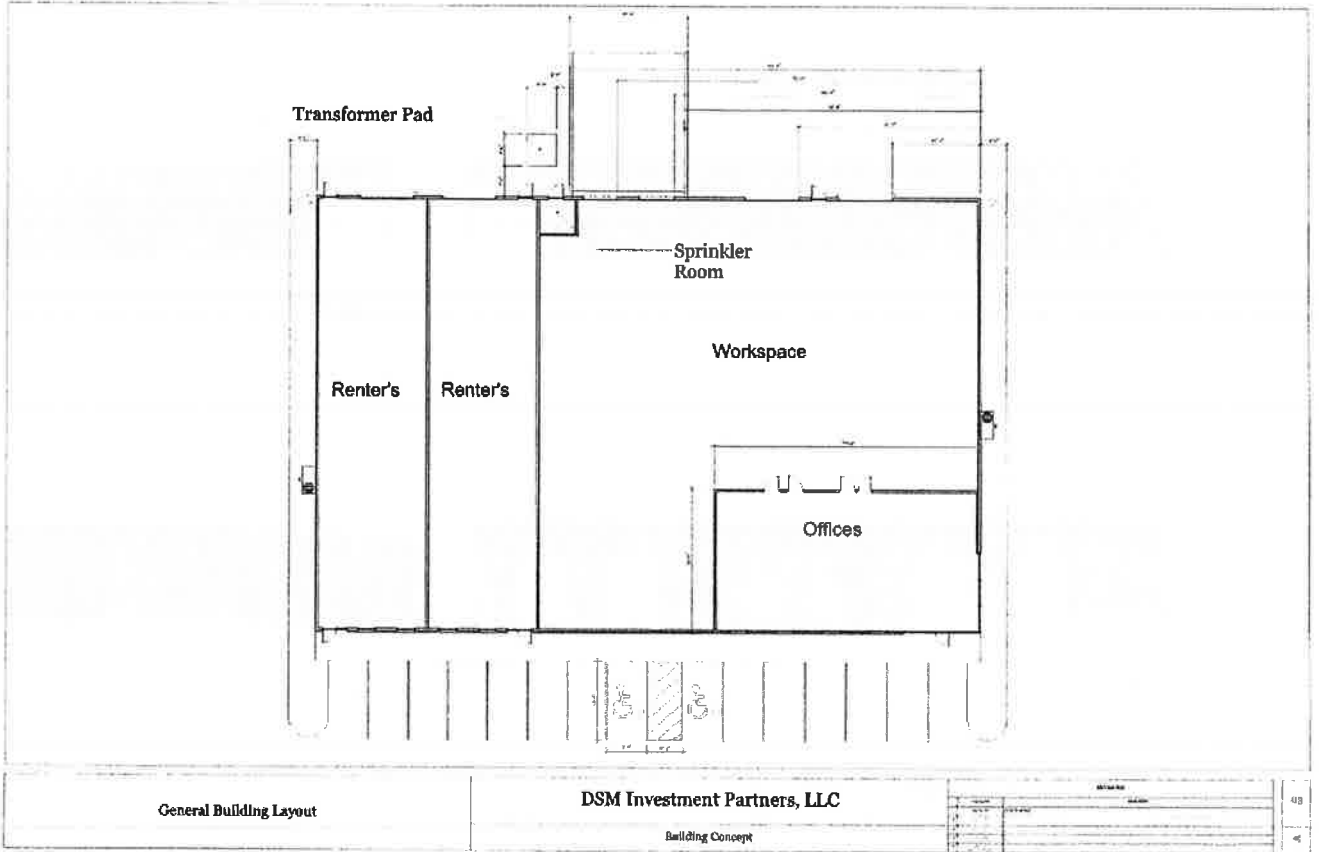
Metal Siding = Slate Grey
Trim = Royal Blue
Curtain Wall/Store Front = Clear Anodized
Glass: Clear with Low-E Color

DSM Investment Partners, LLC

Building Concept

Autodesk	
1/11/2014	1/11/2014
1/11/2014	1/11/2014





General Building Layout

DSM Investment Partners, LLC

Building Concept

REVISIONS		DATE	BY