CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

ITEM: Approval of Amendment No. 1 to Development Agreement Between Busy Beaver Holdings LLC, Inspire Papercrafting, LLC, and the City of West Des Moines **DATE: September 3, 2019**

RESOLUTION: Approval of Amendment No. 1 to Development Agreement

FINANCIAL IMPACT: No financial impact anticipated at this time.

BACKGROUND: On May 14, 2018, the City Council approved the original Development Agreement appropriating funding to Busy Beaver Holdings LLC for their project at 215 5th Street. Busy Beaver Holdings LLC applied for and received approval for funding under the Regulatory Compliance Fund.

According to the original Agreement, Inspire Papercrafting, LLC is the Tenant, certifying the full-time equivalent employees and operation of the business. Inspire Papercrafting, LLC is no longer a tenant of the Development Property. Wicker Works, LTD (Bing's) and Bozz Prints, LLC are the new tenants in that space, and have agreed to be substituted in the Agreement for the full-time equivalent certification and business operations obligations.

OUTSTANDING ISSUES: There are no outstanding issues.

RECOMMENDATION: Adopt the resolution approving the Amendment No. 1 to Development Agreement and authorizing the Mayor to sign the Novation on behalf of the City.

Lead Staff Member: Katie Hernandez, Business Development Coordinator KH

STAFF REVIEWS

Department Director	Clyde Evans, Community and Economic Development Director CE
Appropriations/Finance	Tim Stiles, Finance Director
Legal	
Agenda Acceptance	DS

PUBLICATION(S) (if applicable)

Published In	N/A	
Date(s) Published	N/A	
Letter sent to surrounding property owners	N/A	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Finance and Administration		
Date Reviewed	N/A		
Recommendation	Yes ☐	No ☐	Split ☐

ATTACHMENTS:

Exhibit I - Amendment No. 1 to Development Agreement
Exhibit II - Resolution

NOVATION OF AGREEMENT FOR PRIVATE DEVELOPMENT

THIS NOVATION OF AGREEMENT FOR PRIVATE DEVELOPMENT ("Novation") is made and entered into on or as of the ___ day of _____, 2019, by and between CITY OF WEST DES MOINES, IOWA, a municipality ("City"), BUSY BEAVER HOLDINGS LLC, an Iowa limited liability company, ("Developer"), INSPIRE PAPERCRAFTING, LLC, an Iowa limited liability company, ("Former Tenant), WICKER WORKS, LTD, an Iowa corporation, and BOZZ PRINTS, LLC, an Iowa limited liability company (collectively "New Tenants"), (collectively the "Parties").

WITNESSETH:

RECITALS

A. City, Developer, and Former Tenant entered into an Agreement for Private Development dated May 14, 2018 (the "Original Agreement")(Attached as Exhibit "A").

B. Former Tenant is no longer located in Developer's building and New Tenants now lease the space previously occupied by the Former Tenant.

C. Former Tenant desires to be released and discharged from its obligations and rights under the Agreement and City has agreed to release and discharge Former Tenant.

D. The Parties have agreed that as and from the date of this Novation Agreement ("Effective Date"), the Original Agreement shall be novated to New Tenants so that from the Effective Date, New Tenants shall be bound by the terms of the Original Agreement in place of Former Tenant and agree to acknowledge and expressly assume in the name, place and stead of Former Tenant all liabilities and obligations of Former Tenant under the Original Agreement.

NOVATION AND RELEASE

In consideration of the mutual promises and covenants set forth herein and in the Original Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. As of the Effective Date, New Tenants agree to perform the obligations of Former Tenant under the Original Agreement, whether arising prior to, on, or subsequent to the Effective Date, and agree to be bound by the terms and conditions of the Original Agreement in every way as if New Tenants were named as parties to the Original Agreement in place of Former Tenant.

2. As of the Effective Date, Former Tenant and City mutually release each other from the various covenants, undertakings, warranties and other obligations contained in the Original Agreement and from all claims and demands whatsoever in respect to the Original Agreement whether arising prior to, on, or subsequent to the Effective Date.

GENERAL

1. Other than New Tenants assuming the responsibilities of the Former Tenant in the Original Agreement, the terms and provisions of the Original Agreement are not otherwise modified or amended.

2. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement. A signed copy of this Amendment delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment.

3. Any notice given hereunder, under any part of Original Agreement or pursuant to the provisions hereof or thereof shall be given in accordance with the notice provisions of the Original Agreement, except that no notice is required to be delivered to Former Tenant after the Effective Date. For the purposes of the notice provisions of the Original Agreement, address for notice or communications to New Tenants shall be as follows:

Wicker Works, LTD
213 5th Street, West Des Moines, Iowa, 50265

Bozz Prints, LLC
215 5th Street, West Des Moines, Iowa, 50265

4. This Novation Agreement shall be interpreted, construed and governed by and in accordance with the laws of the State of Iowa.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed on or as of the Effective Date.

(SEAL) CITY OF WEST DES MOINES, IOWA

By: _____
Steven K. Gaer, Mayor

ATTEST:

By: _____
Ryan T. Jacobson, City Clerk

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of _____, 2019, before me a Notary Public in and for said State, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing record is the seal of said Municipality, and that said record was signed and sealed on behalf of said Municipality by authority and resolution of its City Council as contained in the Resolution adopted under Roll Call No. 19-_____, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said Municipality by it voluntarily executed.

_____
Notary Public in and for the State of Iowa

BUSY BEAVER HOLDINGS LLC, an Iowa limited liability company

By:_____
Victoria Veiock, Owner

STATE OF IOWA)
)SS
COUNTY OF POLK)

On this _____ day of _____, 2019, before me the undersigned, a Notary Public in and for said State, personally appeared Victoria Veiock, to me personally known, who, being by me duly sworn, did say that she is Owner of Busy Beaver Holdings LLC, and that said record was signed on behalf of said limited liability company; and that the said Owner as such officer, acknowledged the execution of said record to be the voluntary act and deed of said limited liability company, by her voluntarily executed.

_____
Notary Public in and for said County and State

Inspire Papercrafting, L.L.C., an Iowa limited liability company

_____

By: Dawn Vasey, Owner

STATE OF IOWA)
)SS
COUNTY OF POLK)

On this _____ day of _____, 2019, before me the undersigned, a Notary Public in and for said State, personally appeared Dawn Vasey, to me personally known, who, being by me duly sworn, did say that she is Owner of Inspire Papercrafting, L.L.C., and that said record was signed on behalf of said limited liability company; and that the said Owner as such officer, acknowledged the execution of said record to be the voluntary act and deed of said limited liability company, by her voluntarily executed.

_____

Notary Public in and for said County and State

Wicker Works, LTD, an Iowa corporation

_____

By: Victoria Veiock, President

STATE OF IOWA)
)SS
COUNTY OF POLK)

On this _____ day of _____, 2019, before me the undersigned, a Notary Public in and for said State, personally appeared Victoria Veiock, to me personally known, who, being by me duly sworn, did say that she is President of Wicker Works, LTD, and that said record was signed on behalf of said corporation; and that the said President as such officer, acknowledged the execution of said record to be the voluntary act and deed of said corporation, by her voluntarily executed.

_____

Notary Public in and for said County and State

Bozz Prints, LLC, an Iowa limited liability company

_____

By: John Bosley, Owner

STATE OF IOWA)
)SS
COUNTY OF POLK)

On this _____ day of _____, 2019, before me the undersigned, a Notary Public in and for said State, personally appeared John Bosley, to me personally known, who, being by me duly sworn, did say that he is Owner of Bozz Prints, LLC, and that said record was signed on behalf of said limited liability company; and that the said Owner as such officer, acknowledged the execution of said record to be the voluntary act and deed of said limited liability company, by him voluntarily executed.

_____

Notary Public in and for said County and State

REGULATORY COMPLIANCE FUND
AGREEMENT FOR PRIVATE DEVELOPMENT

THIS AGREEMENT FOR PRIVATE DEVELOPMENT ("Agreement"), is made on or as of the 14th day of May, 2018, by and between the CITY OF WEST DES MOINES, IOWA, a municipality (the "City"), established pursuant to the Code of Iowa of the State of Iowa and acting under the authorization of Chapter 15A of the Code of Iowa, 2017, and Busy Beaver Holdings LLC, an Iowa limited liability company (the "Developer"), and Inspire Papercrafting, L.L.C., 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 Historic West Des Moines Urban Renewal Area (the "Area"), which is described in the Urban Renewal Plan ("Plan") approved for such area by Resolution No. 17-04-03-14 on April 3, 2017; and

WHEREAS, the City has also approved Resolution No.17-02-06-20, establishing the Property Improvement Fund ("PIF") Program, and the program was later amended by Resolution No. 17-05-30-16, which is an economic incentive policy to provide assistance to property owners in the Area for renovation and upgrade of older commercial, office, industrial, and mixed use properties; and

WHEREAS, the City has also approved Resolution No. 17-02-06-21, and the program was later amended by Resolution No. 17-06-12-11 establishing the Regulatory Compliance Fund ("RCF") Program, which is an economic incentive policy to assist property owners in the Area with costs of compliance with government regulations; and

WHEREAS, the PIF Program and the RCF Program are both identified as urban renewal projects in the Plan; and

WHEREAS, the Developer has submitted an application to receive funding through one or both of the above programs for certain construction activities as described on the attached Exhibit B (hereinafter the "Project") that the Developer seeks to undertake on the property legally described on the attached Exhibit A (the "Development Property"), which is located within the Area; and

WHEREAS, Tenant shall operate its business at the Development Property and commit to hire and retain employees thereon; and

WHEREAS, the City has conditionally approved the Developer to receive economic development incentive funding as specified in Article II of this Agreement (the "Development Incentives") in return for the Developer's completion of the Project, provided that the Developer and Tenant agrees to and remains in compliance with the terms of this Agreement; and

WHEREAS, the City Council has found the Project to be consistent with the objectives of the Plan for the Area, the PIF and RCF programs, and has further found that the use of City funds to finance the Development Incentives is in accord with the provisions of the applicable laws under which the Project will be undertaken, including but not limited to, Iowa Code Chapter 15A.

NOW, THEREFORE, the City and the Developer, in consideration of the promises and mutual

obligations set forth in this Agreement now agree and covenant as follows:

ARTICLE I
REPRESENTATIONS AND COVENANTS OF DEVELOPER AND TENANT

1. Representations and Covenants of the Developer. Developer makes the following representations and covenants:

a. Minimum Improvements. Developer shall 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.

b. No Violations or Claims. To its knowledge and with respect to the Project, the Developer is 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 with respect to such laws.

c. Total Investment. Developer represents that its total investment in the Development Property for the Project will be not less than $26,000, and that without the Development Incentives contemplated herein, Developer would not undertake the Project.

d. Insurance. Developer agrees during construction of the Minimum Improvements and thereafter until the Termination Date, as that term is defined in Article VI, Section 11, 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.

e. Cooperation. Developer will 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.

f. 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 August 2018 ("Completion Date").

g. Compliance with Laws. Developer will 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, disability, gender identity, national origin, race, religion, sex, sexual orientation, or veteran status.

h. Available Information. Upon request, Developer 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.

i. 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.

j. Real Property Taxes and Assessments. Developer agrees that prior to the Termination Date of this Agreement:

i. Developer 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, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings;

ii. Developer 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 between the date of execution of this Agreement and the Termination Date; and

iii. Developer 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.

k. Annual Certification. To assist the City in monitoring the Agreement and performance of Developer hereunder, 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; 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, 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. Such statement, proof and certificate shall be provided not later than October 15 of the year in which the Developer first receives any Development Incentives, and each subsequent October 15 through the Termination Date. Developer shall provide supporting information for its Annual Certifications upon request of the City. See Exhibit D-1 for form required for Developer's Annual Certification.

l. Tenant Lease. Developer shall allow Tenant to lease the Development Property until at least the Termination Date of this Agreement, as that term is defined in Article IV, Section 11.

2. Representations and Covenants of Tenant. Tenant makes the following representations and covenants:

a. Employment. Within two (2) years after disbursement of any Development Incentives to Developer, as set forth in Article II of this Agreement, the Tenant shall employ at least three (3) Full-Time Equivalent Employees at the Development Property, and Tenant shall retain at least three (3) Full-Time Equivalent Employees at the Development Property through the Termination Date of this Agreement, as that term is defined in Article VI, Section 11.

For purposes of this Agreement, "Full Time Equivalent 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.

b. No Violations or Claims. To its knowledge and with respect to the Project, the Tenant is 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 Tenant with respect to such laws.

c. Cooperation. Tenant will 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.

d. Operation of Minimum Improvements. Tenant will occupy the Development Property until at least the Termination Date as that term is defined in Article VI, Section 11.

e. Compliance with Laws. Tenant will 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.

f. Available Information. Upon request, 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.

g. Inspection. Tenant 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.

h. Annual Certification. To assist the City in monitoring the Agreement and performance of Tenant hereunder, 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 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 statement, proof and certificate shall be provided not later than October 15 of the year in which the Developer first receives any Development Incentives, and each subsequent October 15 through the Termination Date. Tenant shall provide supporting information for its Annual Certifications upon request of the City. See Exhibit D-2 for form required for Tenant's Annual Certification.

i. Signage. Tenant shall prominently post a sign viewable by the public during the construction of the Minimum Improvements and for at least sixty (60) days following the receipt of a certificate of occupancy which reads: "This project is made possible by funding from the City of West Des Moines Redevelopment Programs for Historic West Des Moines." The sign will be provided by the City of West Des Moines.

ARTICLE II
DEVELOPMENT INCENTIVES

1. Applicable Development Incentives. Subject to the conditions set forth in this Article and this Agreement, the City has conditionally approved Developer to receive Development Incentives through the following program(s):

[X] Regulatory Compliance Fund Program ("RCF") (Article II, Section 2)

Developer is only eligible to receive those Development Incentives described in the Section(s) of this Article II that are associated with the program(s) for which Developer is approved, as shown above. If Developer is approved for Incentives under both the PIF and RCF programs, the same project costs may not be submitted for reimbursement under both programs. Those Development Incentives granted through the above approved program(s) shall be the only monetary consideration given by the City to the Developer in connection with this Agreement.

2. Regulatory Compliance Fund Program ("RCF") Incentives

a. Grant. If Developer is approved to receive incentives under the RCF program, then for and in consideration of the obligations of the Developer 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 Grant to the Developer for certified and approved Project Costs (as described in Section 2(b)(iv)-(v) below) incurred by Developer in constructing those Minimum Improvements necessary to comply with government regulations, but not to exceed $10,030.73 (the "Grant").

b. Conditions Precedent. The City's obligation to provide Developer the Grant under this Agreement shall be subject to satisfaction of ALL of the following conditions precedent:

(i) the Developer shall be in material compliance with all the terms and provisions of this Agreement;

(ii) Project construction shall have begun within six (6) months from the date of this Agreement;

(iii) the Minimum Improvements must be necessary to comply with government regulations;

(iv) Developer shall certify to the City the amount of the incurred Project Costs in the form attached as Exhibit F with accompanying proof of payment and lien waivers; and

(v) the Project Costs are subject to review and approval by the City, which shall approve the certified Project Costs if it determines, in good faith but in its sole discretion, that the Project Costs were incurred for the Project, were fully paid by the Developer, are free and clear of any liens, and have not otherwise been reimbursed by the City.

c. Timing of Grant Payment(s). Conditioned upon satisfaction of the Conditions Precedent in Article II, Section 2(b) and the approval by the applicable City building official of the satisfactory completion of a discrete portion of the Minimum Improvements, the City shall provide Developer that portion of the Grant necessary to reimburse the Developer for the approved Project Costs incurred in constructing the completed portion of the Minimum Improvements, but not to exceed $10,030.73 in the aggregate. Each payment under this provision shall be made consistent with the City's disbursement schedule following the City's approval of the completion of the discrete portion of the Minimum Improvements and the approval of the associated Project Costs.

d. Event of Default/Repayment of Grant. If an Event of Default occurs under this Agreement and is not timely cured, Developer shall be obligated to repay to the City a prorated amount of the Grant received by the Developer, with interest at 4% per annum, such interest to be calculated from the date occurring 30-days following the provision of written notice identifying a breach of contract by the City to the Developer, pursuant to Article V, Section 3 below. The amount of the Grant that must be repaid upon an Event of Default will be reduced by 20% each December 31 after the date of this Agreement, assuming there is no uncured Event of Default at that time.

e. Maximum Amount. The total amount of the Grant paid by the City to Developer shall not exceed 50% of the amount of the certified and approved Project Costs incurred by Developer in constructing those Minimum Improvements necessary to comply with government regulations or $10,030.73, whichever is less. The City makes no guarantee as to the actual amount of the Grant which Developer shall receive. The Grant 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 or Tenant 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 or Tenant or its 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: 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 will maintain their existence as companies and will not wind up or otherwise dispose of all or substantially all of their assets or transfer, convey, or assign their interest in the Development Property, the Minimum Improvements, or their interest in this Agreement to any other party unless: (i) the transferee partnership, corporation, limited liability company or individual assumes in writing all of the then-outstanding obligations of Developer and Tenant (as the case may be) under this Agreement; and (ii) the City consents thereto in writing in advance thereof. Notwithstanding the foregoing, however, or any other provisions of this Agreement, Developer may pledge any and/or all of its assets as security for any financing of the Minimum Improvements, and the City agrees that Developer may assign its interest under this Agreement for such purpose.

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 interest in the Development Property or any interest in this Agreement or the assets of Developer 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, including but not limited to the employment obligations;

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. Developer or Tenant 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 or Tenant 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 Tenant or the Minimum Improvements, or part thereof, shall be appointed in any proceedings brought against Developer or Tenant, and shall not be discharged within ninety (90) days after such appointment, or if Developer or Tenant shall consent to or acquiesce in such appointment; or

g. 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. Reserved.

3. Developer 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, the City shall be entitled to do any one or more of the following: (i) suspend its performance under this Agreement, (ii) terminate this Agreement upon written notice to the Developer, (iii) demand and receive repayment from Developer of the RCF Grant as described in Article II, Section 2(d), and/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 the City of West Des Moines at 4200 Mills Civic Pkwy, P.O. Box 65320, West Des Moines, Iowa 50265-0320, Attn: Ryan Jacobson, City Clerk;

b. In the case of the Developer, to Busy Beaver Holdings LLC, (the "Developer"), 801 37th Street, West Des Moines, IA 50265, Attn: Victoria Veiock, Owner;

c. In the case of the Tenant, to Inspire Papercrafting, L.L.C., (the "Tenant"), 6889 Hwy 65-69, Indianola, IA 50125, Attn: Dawn Vasey, Owner;

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, the Developer, and the 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 written 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 either 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. Memorandum of Agreement. The parties agree to execute and record a Memorandum of Agreement for Private Development, in substantially the form attached as Exhibit G, to serve as notice to the public of the existence and provisions of this Agreement, and the rights and interests held by the City by virtue hereof. The City shall pay for all costs of recording.

11. Termination Date. Unless terminated earlier under the provisions of this Agreement, the Agreement shall terminate and be of no further force or effect on December 31, 2023.

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 in their names and behalf by their authorized representatives, all on or as of the day first above written.

[Remainder of page intentionally left blank; Signature pages follow]

(SEAL)

CITY OF WEST DES MOINES, IOWA

By: _____
Steven K. Gaer, Mayor

ATTEST:

By: _____
Ryan Jacobson, City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 14th day of May, 2018, before me a Notary Public in and for said State, personally appeared Steven K. Gaer and Ryan Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Katie Johnson
Notary Public in and for said County and State

KATIE JOHNSON
Commission Number 787901
My Commission Expires
January 14, 2021

(Signature page to Development Agreement – City of West Des Moines, Iowa)

Busy Beaver Holdings LLC, an Iowa limited liability company

By: _____
Victoria Veiock, Owner

STATE OF IOWA)
)SS
COUNTY OF POLK)

On this 9th day of May, 2018, before me the undersigned, a Notary Public in and for said State, personally appeared Victoria Veiock, to me personally known, who, being by me duly sworn, did say that she is Owner of Busy Beaver Holdings LLC, and that said instrument was signed on behalf of said limited liability company; and that the said Owner as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by her voluntarily executed.

_____
Notary Public in and for said County and State

NOTARIAL SEAL IOWA
LISA J BALL
COMMISSION NUMBER 778437
MY COMMISSION EXPIRES
MAY 13, 2019

[Signature page to Agreement for Private Development – Developer]

Inspire Papercrafting, L.L.C., an Iowa limited liability company

Dawn R Vasey

By: Dawn Vasey, Owner

STATE OF IOWA)
)SS
COUNTY OF POLK)

On this 9th day of May, 2018, before me the undersigned, a Notary Public in and for said State, personally appeared Dawn Vasey, to me personally known, who, being by me duly sworn, did say that she is Owner of Inspire Papercrafting, L.L.C., and that said instrument was signed on behalf of said limited liability company; and that the said Owner as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by her voluntarily executed.

L Ball

Notary Public in and for said County and State

NOTARIAL SEAL IOWA
LISA J BALL
COMMISSION NUMBER 778437
MY COMMISSION EXPIRES
MAY 13, 2019

[Signature page to Agreement for Private Development – Tenant]

EXHIBIT A
DESCRIPTION OF DEVELOPMENT PROPERTY

Street address: 215 5th Street, West Des Moines, IA 50265

Legal description: -EX E 8F- LT 13 BLK 11 VALLEY JUNCTION

Parcel No.: 320/04398-001-000

EXHIBIT B
DESCRIPTION OF PROJECT

MINIMUM IMPROVEMENTS:

The Minimum Improvements consist of: HVAC improvement projects; replacement water heater

Those improvements, if any, necessary for regulatory compliance include: HVAC improvement projects; replacement water heater

The construction of the Minimum Improvements will be completed by: August 2018

Construction costs are expected to be approximately: $26,000

EXHIBIT C

RESERVED

EXHIBIT D -1

DEVELOPER ANNUAL CERTIFICATION
(due before October 15th as required under terms of Development Agreement)

The Developer certifies the following:

During the time period covered by this Certification, the Developer is and was in compliance with the Agreement as follows:

(i) All ad valorem taxes on the Development Property then owned by the Developer in the Urban Renewal Area have been timely paid for the prior fiscal year (and for the current year, if due) and attached to this Annual Certification are proof of payment of said taxes;

(ii) The undersigned officer of Developer has re-examined the terms and provisions of the Agreement and certify that at the date of such certificate, and during the preceding twelve (12) months, the Developer is not, or was not, in default in the fulfillment of any of the terms and conditions of the 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.

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct to the best of my knowledge and belief.

Signed this _____ day of _____, 20___.

Busy Beaver Holdings LLC

By:_____
Victoria Veiock, Owner

Attachments: Proof of payment of taxes

EXHIBIT D -2

TENANT ANNUAL CERTIFICATION
(due before October 15th as required under terms of Development Agreement)

The Tenant certifies the following:

During the time period covered by this Certification, the Tenant is and was in compliance with the Agreement as follows:

(i) The total number of Full-Time Equivalent Employees, as defined in Article I, paragraph 2(a) of the Agreement, employed by Tenant at the Development Property as of October 1, 20___ and as of the first day of each of the preceding eleven (11) months were are follows:

October 1, 20__: _____	April 1, 20__:_____
September 1, 20__:_____	March 1, 20__:_____
August 1, 20__:_____	February 1, 20___:_____
July 1, 20__:_____	January 1, 20__:_____
June 1, 20__:_____	December 1, 20__:_____
May1, 20__: _____	November 1, 20__:_____

(ii) The undersigned officer of Tenant has re-examined the terms and provisions of the Agreement and certify that at the date of such certificate, and during the preceding twelve (12) months, the Tenant is not, or was not, in default in the fulfillment of any of the terms and conditions of the 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.

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct to the best of my knowledge and belief.

Signed this _____ day of _____, 20___.

Inspire Papercrafting, L.L.C.

By:_____
Dawn Vasey, Owner

EXHIBIT E

(RESERVED)

EXHIBIT F

DEVELOPER CERTIFICATION OF PROJECT COSTS

Busy Beaver Holdings LLC (the "Developer") certifies that the expenses shown on the table below were/are the actual expenses incurred by the Developer for the Minimum Improvements that are the subject of a Development Agreement entered into the _____ day of _____, 2018 between the City of West Des Moines, Iowa and the Developer (the "Agreement"). The Developer certifies that no expenses claimed or shown on this table relate to personal or unallowable expenses.

In the event of an overpayment by the City for expenses not actually incurred or for unallowable expenses, or if payment was received from another source for any portion of the expenses claimed, the Developer assumes responsibility for repaying the City in full for those expenses.

Certified Project Costs					
Necessary For Regulatory Compliance? Y/N (Y=will be applied to RCF program if eligible; N=will be applied to PIF program if eligible)	**Project Cost Category**	**Engineering, Plans, Specifications**	**Construction Costs**	**Material Costs**	**Miscellaneous**
	Invoice description and cost				
	Invoice description and cost				
	Invoice description and cost				
	Invoice description and cost				
	Invoice description and cost				
	Invoice description and cost				
	Invoice description and cost				
	Invoice description and cost				
	Total Cost per category				

If you need additional space please attach another table.

Attach actual receipts and invoices and lien waivers

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct to the best of my knowledge and belief.

By: _____

Busy Beaver Holdings LLC

Doc ID: 033104430005 Type: GEN
Kind: MEMORANDUM AGREEMENT
Recorded: 06/26/2018 at 09:43:50 AM
Fee Amt: $27.00 Page 1 of 5
Revenue Tax: $0.00
Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2017-00100687
BK 16976 PG 855-859

EXHIBIT G

MEMORANDUM OF AGREEMENT FOR PRIVATE DEVELOPMENT

Type of Document: **MEMORANDUM OF AGREEMENT FOR PRIVATE DEVELOPMENT BETWEEN THE CITY OF WEST DES MOINES, BUSY BEAVER HOLDINGS LLC, AND INSPIRE PAPERCRAFTING, L.L.C.**

RETURN TO:

Return Document to: Ryan Jacobson, City Clerk
City of West Des Moines
4200 Mills Civic Parkway, Suite 2B
West Des Moines, IA 50265

Preparer Information: Katie Hernandez, City of West Des Moines, 4200 Mills Civic Pkwy, Suite 1A, West Des Moines, IA 50265, 515-273-0770

Taxpayer Information: **N/A**

GRANTORS: N/A

GRANTEES: N/A

LEGAL DESCRIPTION:

-EX E 8F- LT 13 BLK 11 VALLEY JUNCTION

Polk County, Iowa Parcel ID number is 320/04398-001-000

Address: 215 5th Street, West Des Moines, IA 50265

WHEREAS, the City of West Des Moines, Iowa (the "City"), Busy Beaver Holdings LLC ("Developer"), and Inspire Papercrafting, L.L.C. ("Tenant") did on or about the 14th day of May, 2018, make, execute and deliver, each to the other, an Agreement for Private Development (the "Agreement"), wherein and whereby Developer and Tenant agreed, in accordance with the terms of the Agreement to develop and operate certain real property located within the City.

The Development Property is described as follows:

-EX E 8F- LT 13 BLK 11 VALLEY JUNCTION

Polk County, Iowa Parcel ID number is 320/04398-001-000

Address: 215 5th Street, West Des Moines, IA 50265

(the "Development Property"); and

WHEREAS, the term of the Agreement commenced on the 14th day of May, 2018, and terminates as set forth in the Agreement; and

WHEREAS, the City and Developer and Tenant desire to record a Memorandum of the Agreement referring to the Development Property and their respective interests therein.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. That the recording of this Memorandum of Agreement for Private Development shall serve as notice to the public that the Agreement contains provisions restricting development and use of the Development Property and the improvements located and operated on such Development Property.

2. That all of the provisions of the Agreement and any subsequent amendments thereto, if any, even though not set forth herein, are by the filing of this Memorandum of Agreement for Private Development made a part hereof by reference, and that anyone making any claim against any of said Development Property in any manner whatsoever shall be fully advised as to all of the terms and conditions of the Agreement, and any amendments thereto, as if the same were fully set forth herein.

3. That a copy of the Agreement and any subsequent amendments thereto, if any, shall be maintained on file for public inspection during ordinary business hours in the office of the City Clerk, West Des Moines, Iowa.

[Signatures Start on Next Page]

CITY OF WEST DES MOINES, IOWA

By: _____
Steven K. Gaer, Mayor

ATTEST:

By: _____
Ryan Jacobson, City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 14th day of May, 2018, before me a Notary Public in and for said State, personally appeared Steven K. Gaer and Ryan Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Katie Johnson
Notary Public in and for said County and State

KATIE JOHNSON
Commission Number 787901
My Commission Expires
January 14, 2021

(Signature page to Memorandum of Agreement – City of West Des Moines, Iowa)

Busy Beaver Holdings LLC

By: Victoria Veiock
Victoria Veiock, Owner

STATE OF IOWA)
)SS
COUNTY OF POLK)

On this 9th day of May, 2018, before me the undersigned, a Notary Public in and for said State, personally appeared Victoria Veiock, to me personally known, who, being by me duly sworn, did say that she is Owner of Busy Beaver Holdings LLC, and that said instrument was signed on behalf of said limited liability company; and that the said Owner as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by her voluntarily executed.

Notary Public in and for said County and State

NOTARIAL SEAL IOWA
LISA J BALL
COMMISSION NUMBER 778437
MY COMMISSION EXPIRES
MAY 13, 2019

(Signature page to Memorandum of Agreement –Developer)

Inspire Papercrafting, L.L.C.

By: Dawn R Vasey
Dawn Vasey, Owner

STATE OF IOWA)
)SS
COUNTY OF POLK)

On this 9th day of May, 2018, before me the undersigned, a Notary Public in and for said State, personally appeared Dawn Vasey, to me personally known, who, being by me duly sworn, did say that she is Owner of Inspire Papercrafting, L.L.C., and that said instrument was signed on behalf of said limited liability company; and that the said Owner as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by her voluntarily executed.

L Ball
Notary Public in and for said County and State

NOTARIAL SEAL IOWA
LISA J BALL
COMMISSION NUMBER 778437
MY COMMISSION EXPIRES
MAY 13, 2019

(Signature page to Memorandum of Agreement –Tenant)

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF AN AMENDMENT OF THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF WEST DES MOINES, BUSY BEAVER HOLDINGS LLC, INSPIRE PAPERCRAFTING, LLC, WICKER WORKS, LTD, AND BOZZ PRINTS, LLC

WHEREAS, on the 14th day of May, 2018, the City of West Des Moines, Iowa ("City"), Busy Beaver Holdings LLC (the "Developer") and Inspire Papercrafting, LLC (the "Former Tenant") entered into an Agreement for Private Development (the "Agreement") pursuant to the City's Regulatory Compliance Fund Program; and

WHEREAS, pursuant to said Agreement, the Developer agreed to construct defined Minimum Improvements by a specified completion date as described in the Agreement; and

WHEREAS, pursuant to said Agreement, the Former Tenant agreed to comply with defined employment obligations and business operations at the Development Property; and

WHEREAS, the City has received a notice from the Developer of the Former Tenant's vacation of the Development Property and the necessity of an amendment (the "Amendment") to the Agreement to reflect Wicker Works, LTD and Bozz Prints, LLC (collectively the "New Tenants") occupation as current tenants of the Development Property, pursuant to which the City, Developer, Former Tenant and New Tenants agree to the Amendment with the purpose of substituting the Former Tenant for the New Tenants; and

WHEREAS, pursuant to said Agreement, the New Tenants agree to comply with all obligations of the Former Tenant; and

WHEREAS, the City is agreeable to Developer's, Former Tenant's, and New Tenants' proposal under the terms and conditions of the Amendment; and

WHEREAS, the Agreement provides that it may only be amended by a subsequent writing signed by the parties.

NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES IN THE STATE OF IOWA:

Section 1. That the form and content of the Amendment, 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 Amendment 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 Amendment, 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 Amendment as executed.

PASSED AND APPROVED this 3rd day of September, 2019.

_____
Mayor

ATTEST:

_____
City Clerk