

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING
EXECUTION OF A DEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF IOWA FALLS AND CYD HUSTLE
LLC

WHEREAS, by Resolution No. 1989-11, adopted March 20, 1989, which has been amended 15 times, lastly by Amendment No. 15 as approved by Resolution No. 2019-41 on August 19, 2019, 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 Iowa Falls Urban Renewal Plan (the "Urban Renewal Plan" or "Plan") for the Iowa Falls 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 Hardin 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 Cyd Hustle LLC (the "Developer"), in the form of a proposed Development Agreement (the "Agreement") by and between the City and the Developer, pursuant to which, among other things, the Developer would agree to construct certain Minimum Improvements (as defined in the Agreement) consisting of the renovation of and construction of an addition to an existing building and the installation of brewing equipment therein, together with all related site improvements, on certain real property located within the Urban Renewal Area as defined and legally described in the Agreement ("Development Property"), as outlined in the proposed Agreement; and

WHEREAS, pursuant to the Agreement, the City will take a security interest in the brewing equipment to be installed in the building for a period of five (5) years from the date of the Agreement; and

WHEREAS, the Agreement further proposes that the City will make a one-time grant payment in the amount of \$85,000 ("Economic Development Grant") to the Developer, under the terms and following satisfaction of the conditions set forth in the Agreement; and

WHEREAS, one of the obligations of the Developer under this Agreement relates to employment retention and creation at the Development Property; and

WHEREAS, Chapters 15A and 403, Code of Iowa, authorize cities to make grants 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, Code of Iowa, taking into account any or all of the factors set forth in Chapter 15A, Code of Iowa, 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 IOWA FALLS 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 grant 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, Code of Iowa, 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 18th day of November, 2019.

Mayor

ATTEST:

City Clerk

AGREEMENT FOR PRIVATE DEVELOPMENT

BY AND BETWEEN

CITY OF IOWA FALLS, IOWA

AND

CYD HUSTLE LLC

THIS AGREEMENT FOR PRIVATE DEVELOPMENT (“Agreement”), is made on or as of the ____ day of _____, 2019, by and between the CITY OF IOWA FALLS, IOWA, a municipality (“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, 2019, as amended (“Urban Renewal Act”); and CYD HUSTLE LLC, an Iowa limited liability company having offices for the transaction of business at 812 1st Ave. N.E., Clarion, Iowa (“Developer”).

WITNESSETH:

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, in this connection, is engaged in carrying out urban renewal project activities in an area known as the Iowa Falls Urban Renewal Area (the “Urban Renewal Area”), which is described in the Iowa Falls Urban Renewal Plan approved for such Urban Renewal Area by Resolution No. 1989-11 on March 20, 1989, and subsequently amended fifteen times, most recently on August 19, 2019 (the “Urban Renewal Plan”); and

WHEREAS, a copy of the foregoing Urban Renewal Plan, as amended, has been recorded among the land records in the office of the Recorder of Hardin County, Iowa; and

WHEREAS, Developer is the owner of certain real property located in the foregoing Urban Renewal Area and as more particularly described as follows:

Lot 4, Block 34, Iowa Falls, Hardin County, Iowa

Hardin County Parcel No. 892113412001

(which property is hereinafter referred to as the “Development Property”); and

WHEREAS, Developer intends to cause certain improvements, including the installation of equipment in and construction of an addition to an existing building (the “Minimum Improvements”), to be completed on the Development Property in order to convert the Development Property into a suitable site for brewing operations and will thereafter operate its business on the Development Property in accordance with this Agreement; and

WHEREAS, the City is willing to provide certain incentives to Developer in consideration for Developer’s obligations all pursuant to the terms and conditions of this Agreement; and

WHEREAS, the City believes that the development of the Development Property pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the foregoing project has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I. DEFINITIONS

Section 1.1. Definitions. In addition to other definitions set forth in this Agreement, all capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

Agreement means this Agreement for Private Development and all exhibits and appendices hereto, as the same may be from time to time modified, amended, or supplemented.

City means the City of Iowa Falls, Iowa, or any successor to its functions.

Code means the Code of Iowa, 2019, as amended.

Commencement Date means the date of this Agreement.

Developer means Cyd Hustle LLC, and its permitted successors and assigns.

Development Property means that portion of the Urban Renewal Area legally described in the preambles hereof.

Economic Development Grant means the payment to be made by the City to Developer under Article VIII of this Agreement.

Employee means a natural person employed by the Developer in Developer's operations on the Development Property.

Event of Default means any of the events described in Section 10.1 of this Agreement.

First Mortgage means any Mortgage granted to secure any loan made pursuant to either a mortgage commitment obtained by Developer from a commercial lender or other financial institution to fund any portion of the construction costs and initial operating capital requirements of the Minimum Improvements or all such Mortgages as appropriate.

Minimum Improvements means the renovation of an existing building located on the Development Property, the construction of a 900 square foot addition to the existing building, and installation of a 3.5 barrel mash tun, a 3.5 barrel brew kettle, a 7 barrel hot liquor tank, three 3.5 barrel fermenters, two 3.5 barrel serving tanks, and all related equipment, including hookups, as well as other related improvements to the Development Property necessary to create a brewing facility and taproom therein, as further described and depicted in Exhibit A attached hereto.

Mortgage means any mortgage or security agreement in which Developer has granted a mortgage or other security interest in the Development Property, or any portion or parcel thereof, or any improvements constructed thereon.

Net Proceeds means any proceeds paid by an insurer to Developer under a policy or policies of insurance required to be provided and maintained by Developer, pursuant to Article V of this Agreement and remaining after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such proceeds.

Project means the construction and operation of the Minimum Improvements on the Development Property by Developer and the creation and retention of jobs by Developer, as described in this Agreement.

State means the State of Iowa.

Termination Date means the date of termination of this Agreement, as established in Section 12.8 of this Agreement.

Unavoidable Delays means delays resulting from acts or occurrences outside the reasonable control of the party claiming the delay 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).

Urban Renewal Area means the area known as the Iowa Falls Urban Renewal Area.

Urban Renewal Plan means the Iowa Falls Urban Renewal Plan, as amended, approved with respect to the Iowa Falls Urban Renewal Area, described in the preambles hereof.

ARTICLE II. REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of Developer. Developer makes the following representations and warranties:

a. Cyd Hustle LLC is an Iowa limited liability company, duly organized and validly existing under the laws of the State of Iowa and duly registered and authorized to do business in the State of Iowa, and has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under this Agreement.

b. This Agreement has been duly and validly authorized, executed, and delivered by Developer and, assuming due authorization, execution and delivery by the City, is in full force and effect and is a valid and legally binding instrument of Developer enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws relating to or affecting creditors' rights generally.

c. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of any contractual

restriction, evidence of indebtedness, agreement, or instrument of whatever nature to which Developer is now a party or by which it or its property is bound, nor do they constitute a default under any of the foregoing.

d. There are no actions, suits, or proceedings pending or threatened against or affecting Developer in any court or before any arbitrator or before or by any governmental body in which there is a reasonable probability of an adverse decision which could materially adversely affect the business (present or prospective), financial position or results of operations of Developer or which in any manner raises any questions affecting the validity of the Agreement or Developer's ability to perform its obligations under this Agreement.

e. Developer shall cause 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.

f. Developer will use its best efforts to obtain or cause to be obtained, in a timely manner, all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed.

g. The construction of the Minimum Improvements will require a total investment of approximately \$85,000.

h. Developer has not received any notice from any local, State, or federal official that the activities of Developer or Employer with respect to the Development Property may or will be in violation of any environmental law or regulation (other than those notices, if any, of which the City has previously been notified in writing). Developer is not currently aware of any State or federal claim filed or planned to be filed by any party relating to any violation of any local, State, or federal environmental law, regulation, or review procedure applicable to the Development Property, and Developer is not currently aware of any violation of any local, State, or federal environmental law, regulation, or review procedure which would give any person a valid claim under any State or federal environmental statute with respect thereto.

i. Developer has firm commitments for construction or acquisition and permanent financing for the Project in an amount sufficient, together with equity commitments, to successfully complete the Minimum Improvements in accordance with the terms of this Agreement.

j. 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.

k. Subject to Unavoidable Delays, the Developer will complete the Minimum Improvements by December 31, 2020.

l. Developer would not undertake its obligations under this Agreement without the payment by the City of the Economic Development Grant being made to Developer pursuant to this Agreement.

m. Developer will not seek to change the current land assessment category, or the zoning classification, of the Development Property or the Minimum Improvements between the date of execution of this Agreement and the Termination Date.

ARTICLE III. CONSTRUCTION

Section 3.1. Construction of Minimum Improvements. Developer agrees that it will cause the Minimum Improvements to be completed on the Development Property in conformance with the terms of this Agreement. Developer agrees that the scope and scale of the Minimum Improvements to be constructed shall not be significantly less than the scope and scale of the Minimum Improvements as detailed and outlined in this Agreement and shall require a total investment of approximately \$85,000. Developer shall provide further information and plans for the Minimum Improvements as may be necessary for the issuance of a building permit or other permits necessary to complete the Project.

Section 3.2. Commencement and Completion of Construction. Subject to Unavoidable Delays, Developer shall cause construction of the Minimum Improvements to be undertaken and completed: (i) by no later than December 31, 2020 or (ii) by such other date as the parties shall mutually agree upon in writing. Time lost as a result of Unavoidable Delays shall be added to extend this date by a number of days equal to the number of days lost as a result of Unavoidable Delays. All work with respect to the Minimum Improvements shall be in conformity with the building permits issued by the building official of the City or any amendments thereto as may be approved by the building official.

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.

ARTICLE IV. PROPERTY TAXES

Section 4.1. Real Property Taxes. Developer or its successors shall pay or cause to be paid, when due, all real property taxes and assessments payable with respect to all and any parts of the Development Property acquired and owned or leased by them and pursuant to the provisions of this Agreement. Until Developer's obligations have been assumed by any other person or legal title to the property is vested in another person, all pursuant to the provisions of this Agreement, Developer shall be solely responsible for all assessments and taxes.

Developer and its permitted successors and assigns 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 raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; and

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 between the date of execution of this Agreement and the Termination Date.

ARTICLE V. INSURANCE

Section 5.1. Insurance Requirements.

a. Developer will provide and maintain or cause to be maintained at all times during the process of constructing the Minimum Improvements (and, from time to time at the request of the City, furnish the City with proof of payment of premiums on) such insurance as is statutorily required and any addition insurance customarily carried by like organizations engaged in like activities of comparable size and liability exposure.

b. Upon completion of construction of the Minimum Improvements and at all times prior to the Termination Date, Developer or Employer shall maintain or cause to be maintained, at its cost and expense (and from time to time at the request of the City shall furnish proof of the payment of premiums on), insurance as follows:

i. Insurance against loss and/or damage to the Minimum Improvements and structures on the Development Property under a policy of policies covering such risks as are ordinarily insured against by similar businesses, including (without limiting the generality of the foregoing) fire, extended coverage, vandalism and malicious mischief, explosion, water damage, demolition cost, debris removal, and collapse in an amount not less than the full insurable replacement value of the Minimum Improvements and such structures;

ii. Comprehensive general public liability insurance as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure;

iii. Such other insurance, including workers' compensation insurance respecting all employees of Developer and Employer on the Development Property, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that Developer or Employer may be self-insured with respect to all or any part of its liability for workers' compensation.

c. All insurance required by this Article V to be provided prior to the Termination Date shall be taken out and maintained in responsible insurance companies selected by Developer, which are authorized under the laws of the State to assume the risks covered thereby. In lieu of separate policies, Developer may maintain a single policy, or blanket or umbrella policies, or a combination thereof, which provide the total coverage required herein.

d. Developer agrees to notify the City immediately in the case of damage exceeding \$25,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. Net Proceeds of any such insurance shall be paid directly to Developer, and Developer will forthwith repair, reconstruct, and restore the Minimum Improvements to substantially the same or an improved condition or value as they existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction and restoration, Developer will apply the Net Proceeds to any insurance relating to such damage received by Developer to the payment or reimbursement of the costs thereof.

e. Developer shall complete the repair, reconstruction, and restoration of the Minimum

Improvements, whether or not the Net Proceeds of insurance received by Developer for such purposes are sufficient.

ARTICLE VI. FURTHER COVENANTS OF DEVELOPER

Section 6.1. Maintenance of Properties. Developer will maintain, preserve, and keep their properties within the City (whether owned in fee or a leasehold interest), including but not limited to the Development Property and Minimum Improvements, in good repair and working order, ordinary wear and tear excepted, and from time to time will make all necessary repairs, replacements, renewals, and additions.

Section 6.2. Maintenance of Records. Developer will keep at all times proper books of record and account in which full, true, and correct entries will be made of all dealings and transactions of or in relation to the business and affairs of Developer relating to this Project in accordance with generally accepted accounting principles, consistently applied throughout the period involved, and Developer will provide reasonable protection against loss or damage to their respective books of record and account.

Section 6.3. Compliance with Laws. Developer will comply with all State, federal, and local laws, rules and regulations relating to the Development Property and Minimum Improvements.

Section 6.4. Non-Discrimination. In the construction of the Minimum Improvements and the related business operations on the Development Property, Developer shall not discriminate against any applicant, employee, or customer because of age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status. Developer shall ensure that applicants, employees, and customers are considered and are treated without regard to their age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status.

Section 6.5. Available Information. Upon request, Developer shall promptly provide the City with copies of information requested by City that are related to this Agreement or the Project so that City can determine compliance with this Agreement.

Section 6.6. Employment Obligations. By no later than January 1, 2021, Developer shall hire at least two (2) full-time equivalent Employees and at least two (2) part-time equivalent Employees to work at the Development Property. Developer shall retain a Monthly Average of two (2) full-time equivalent Employees and two (2) part-time equivalent Employees at the Development Property until the Termination Date. The Annual Certifications submitted by Developer pursuant to Section 6.7 shall show that a Monthly Average of two (2) full-time equivalent Employees and two (2) part-time equivalent Employees at the Development Property has been maintained since January 1, 2021.

“Monthly Average” means the average number of full-time equivalent or part-time equivalent Employees, as applicable, that are employed as of October 1 of each year and as of the first day of each of the preceding eleven (11) months, as shown on the Annual Certifications submitted pursuant to Section 6.7.

Section 6.7. Annual Certification. To assist the City in monitoring this Agreement and the performance of Developer hereunder, duly authorized representatives of Developer shall annually provide to the City a certification in the form of Exhibit C, including: (i) proof that all ad valorem taxes on the Development Property have been timely paid for the prior fiscal year (and for the current year, if due); (ii)

the date of the first full assessment of the Minimum Improvements after completion of the Minimum Improvements; (iii) certification of the number of full-time equivalent Employees and part-time equivalent Employees employed by Developer at the Development Property as of October 1 and as of the first day of each of the preceding eleven (11) months (prorated for the first certification); and (iv) certification that the representatives have 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 representative 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 each year, commencing October 15, 2021 and ending on October 15, 2026, both dates inclusive. Developer shall provide supporting information for its Annual Certifications upon request of the City. See Exhibit C for form required for the Annual Certification.

Section 6.8. Term of Operation. Developer shall continuously maintain its operations at the Minimum Improvements on the Development Property, including the employment obligations in Section 6.6, from the completion of the Minimum Improvements until the Termination Date of this Agreement.

Section 6.9. Developer Completion Guarantee. By signing this Agreement, Developer hereby guarantees to the City performance by Developer of all the terms and provisions of this Agreement pertaining to Developer's obligations with respect to the construction of the Minimum Improvements. Without limiting the generality of the foregoing, Developer guarantees that: (a) construction of the Minimum Improvements shall commence and be completed within the time limits set forth herein; (b) the Minimum Improvements shall be constructed and completed in accordance with the Construction Plans; (c) the Minimum Improvements shall be constructed and completed free and clear of any mechanic's liens, materialman's liens and equitable liens; and (d) all costs of constructing the Minimum Improvements shall be paid when due.

ARTICLE VII. PROHIBITION AGAINST ASSIGNMENT AND TRANSFER

Section 7.1. Status of Developer; Transfer of Substantially All Assets; Assignment.

a. As security for the obligations of Developer under this Agreement, Developer represents and agrees that, prior to the Termination Date, it will 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 its interest in the Development Property, Minimum Improvements, or 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 Developer under this Agreement; and (ii) the City consents thereto in writing in advance thereof.

b. In the event that Developer wishes to assign this Agreement, Developer and the transferee individual or entity shall provide a written notice to the City, requesting that the City consent to an amendment or assignment of this Agreement to accommodate the transfer and to provide for the assumption of all Developer's obligations, as applicable, under this Agreement. Such transfer shall not be effective unless and until the City consents in writing to an amendment or assignment of this Agreement authorizing the transfer, which consent shall be given or withheld in the sole discretion of the City.

Section 7.2. Prohibition Against Use as Non-Taxable or Centrally Assessed Property. During the term of this Agreement, Developer, and its 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 VIII. ECONOMIC DEVELOPMENT GRANT

Section 8.1. Economic Development Grant. For and in consideration of the obligations being assumed by Developer hereunder, and in furtherance of the goals and objectives of the Urban Renewal Plan for the Urban Renewal Area and the Urban Renewal Act, the City agrees to make a one-time grant payment in the amount of Eighty-Five Thousand Dollars (\$85,000) (the “Economic Development Grant”) to Developer within 15 business days of satisfaction of all the following conditions precedent:

- a. Developer shall have ordered the brewing equipment included in the Minimum Improvements, as evidenced by an invoice showing the equipment as ordered to be submitted to the City by no later than June 1, 2020;
- b. Developer shall have granted City a security interest in the brewing equipment included in the Minimum Improvements by execution of the Security Agreement attached hereto as Exhibit D;
- c. The City’s completion of all legislative actions necessary to appropriate sufficient funds for the Economic Development Grant to be paid from the City’s TIF Capital Project Fund, including any public notices and hearings deemed necessary or appropriate;
- d. Developer being and remaining in compliance with the terms of this Agreement at the time of payment; and
- e. No Event of Default has occurred and is continuing.

Section 8.2. Security Interest in Brewing Equipment; Financing Statement. As security for the obligations of Developer under this Agreement and in consideration of the Economic Development Grant described in this Article VIII, the Developer hereby grants to the City a security interest in the brewing equipment identified as collateral (the “Collateral”) in the Financing Statement attached hereto as Exhibit D. The Developer shall execute in favor of the City such financing statement(s) and/or security agreement(s) as required by the City to perfect and maintain its security interest in the Collateral for five (5) years from the Commencement Date.

ARTICLE IX. INDEMNIFICATION

Section 9.1. Release and Indemnification Covenants.

a. Except for any willful misrepresentation or any willful or wanton misconduct, negligence, or any unlawful act of the City and the governing body members, officers, agents, servants, and employees thereof (hereinafter, for purposes of this Article IX, the “Indemnified Parties”), Developer releases the Indemnified Parties from, covenant 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 Minimum Improvements or Development Property.

b. Except for any willful misrepresentation or any willful or wanton misconduct, negligence, or any unlawful act of the Indemnified Parties, Developer agrees to protect and defend the Indemnified Parties, now or forever, and further agrees to hold the Indemnified Parties harmless, from any claim, demand, suit, action, or other proceedings whatsoever by any third-party 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 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 Minimum Improvements; or (iii) any hazardous substance or environmental contamination located in or on the Development Property.

c. The Indemnified Parties shall not be liable for any damage or injury to the persons or property of Developer, 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 or willful misconduct on the part of any such Indemnified Party or its officers, agents, servants, or employees.

d. All covenants, stipulations, promises, agreements, and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of the City, and not of any governing body member, officer, agent, servant, or employee of the City in the individual capacity thereof.

e. The provisions of this Article IX shall survive the termination of this Agreement.

ARTICLE X. REMEDIES

Section 10.1. 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 Minimum Improvements to be constructed or operated pursuant to the terms and conditions of this Agreement;

b. Failure by Developer to continuously operate is business on the Development Property and employ Employees therein from the completion of the Minimum Improvements until the Termination Date;

c. Transfer of any of Developer’s interests in the Development Property, Minimum Improvements, or this Agreement or the assets of Developer in violation of the provisions of this Agreement;

d. Failure by Developer to timely pay ad valorem taxes on the Development Property and Minimum Improvements;

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:

i. files 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. makes an assignment for the benefit of its creditors; or

iii. admits in writing its inability to pay its debts generally as they become due; or

iv. is 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

g. Any representation or warranty made by Developer in this Agreement or in any written statement or certificate furnished by Developer 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.

Section 10.2. Remedies on Default. Whenever any Event of Default referred to in Section 10.1 of this Agreement occurs and is continuing, the City may take any one or more of the following actions after giving thirty (30) days' written notice to Developer, and the holder of the First Mortgage (but only to the extent the City has been informed in writing of the existence of a First Mortgage and been provided with the address of the holder thereof) of the Event of Default, but only if the Event of Default has not been cured to the satisfaction of the City within said thirty (30) days, or if the Event of Default cannot reasonably be cured within thirty (30) days and Developer does not provide assurances reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible:

a. The City may suspend its performance under this Agreement until it receives assurances from Developer, deemed adequate by the City, that Developer will cure the default and continue performance under this Agreement;

b. The City may terminate this Agreement;

c. The City may withhold the Certificate of Completion;

d. The City may take any action, including legal, equitable or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of Developer under this Agreement;

e. The City shall be entitled to recover from the Developer, and the Developer shall pay to the City, an amount equal to the full amount of the Economic Development Grant previously made to Developer under Article VIII hereof, with interest thereon at the highest rate permitted by State law. The City may take any action, including any legal action it deems necessary, to recover such amount from Developer. The City may demand such payment at any time following its determination that Developer is in default under this Agreement; or

f. The City shall be entitled to foreclose upon its security interest held in the Collateral identified the Financing Statement attached hereto as Exhibit D, unless the Developer repays to the City an amount equal to the full amount of the Economic Development Grant previously made to Developer under Article VIII hereof, within said thirty (30) days of notice of an Event of Default. If Developer does not repay to the City an amount equal to the full amount of the Economic Development Grant previously made to Developer under Article VIII hereof within said thirty (30) days of notice of an Event of Default, then Developer agrees to waive any and all rights of redemption related to the City's security interest in the Collateral.

Section 10.3. 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.

Section 10.4. 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.

Section 10.5. Agreement to Pay Attorneys' Fees and Expenses. Whenever any Event of Default occurs and the City employs attorneys or incurs 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 herein contained, Developer agrees that it 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 XI. MISCELLANEOUS

Section 11.1. Conflict of Interest. Developer represents and warrants that, to the best of its knowledge and belief after due inquiry, no officer or employee of the City, or its 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.

Section 11.2. Notices and Demands. A notice, demand or other communication under this Agreement by any 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 Developer, is addressed or delivered personally to Cyd Hustle LLC at 812 1st Ave. N.E., Clarion, Iowa 50525, Attn: Willard Lancaster;
- b. In the case of the City, is addressed to or delivered personally to the City at City of Iowa Falls, City Hall, 315 Stevens Street, Iowa Falls, Iowa 50126, Attn: City Finance Director/City Clerk;

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

Section 11.3. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 11.4. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 11.5. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Iowa.

Section 11.6. Entire Agreement. This Agreement and the exhibits hereto reflect the entire agreement among the parties regarding the subject matter hereof, and supersedes and replaces all prior agreements, negotiations or discussions, whether oral or written. This Agreement may not be amended except by a subsequent writing signed by all parties hereto.

Section 11.7. 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 permitted successors and assigns.

Section 11.8. Termination Date. This Agreement shall terminate and be of no further force or effect on and after December 31, 2026, unless terminated earlier under the provisions of this Agreement.

Section 11.9. Memorandum of Agreement. The parties agree to execute and record a Memorandum of Agreement for Private Development, in substantially the form attached as Exhibit B, 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.

Section 11.10. 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.

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 Developer has caused this Agreement to be duly executed in its name and behalf by its authorized representatives, all on or as of the day first above written.

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

(SEAL)

CITY:
CITY OF IOWA FALLS, IOWA

By: _____
Gene Newgaard, Mayor

ATTEST:

By: _____
Kaci Elkin, City Finance Director/City Clerk

STATE OF IOWA)
) SS
COUNTY OF HARDIN)

On this _____ day of _____, 2019, before me a Notary Public in and for said State, personally appeared Gene Newgaard and Kaci Elkin, to me personally known, who being duly sworn, did say that they are the Mayor and City Finance Director/City Clerk, respectively, of the City of Iowa Falls, 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 Finance Director/City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Notary Public in and for the State of Iowa

[Signature page to Agreement for Private Development – City of Iowa Falls]

DEVELOPER:
CYD HUSTLE LLC,
An Iowa limited liability company

By: _____
Willard Lancaster

Its: _____

ATTEST:

By: _____
Teresa Lancaster

Its: _____

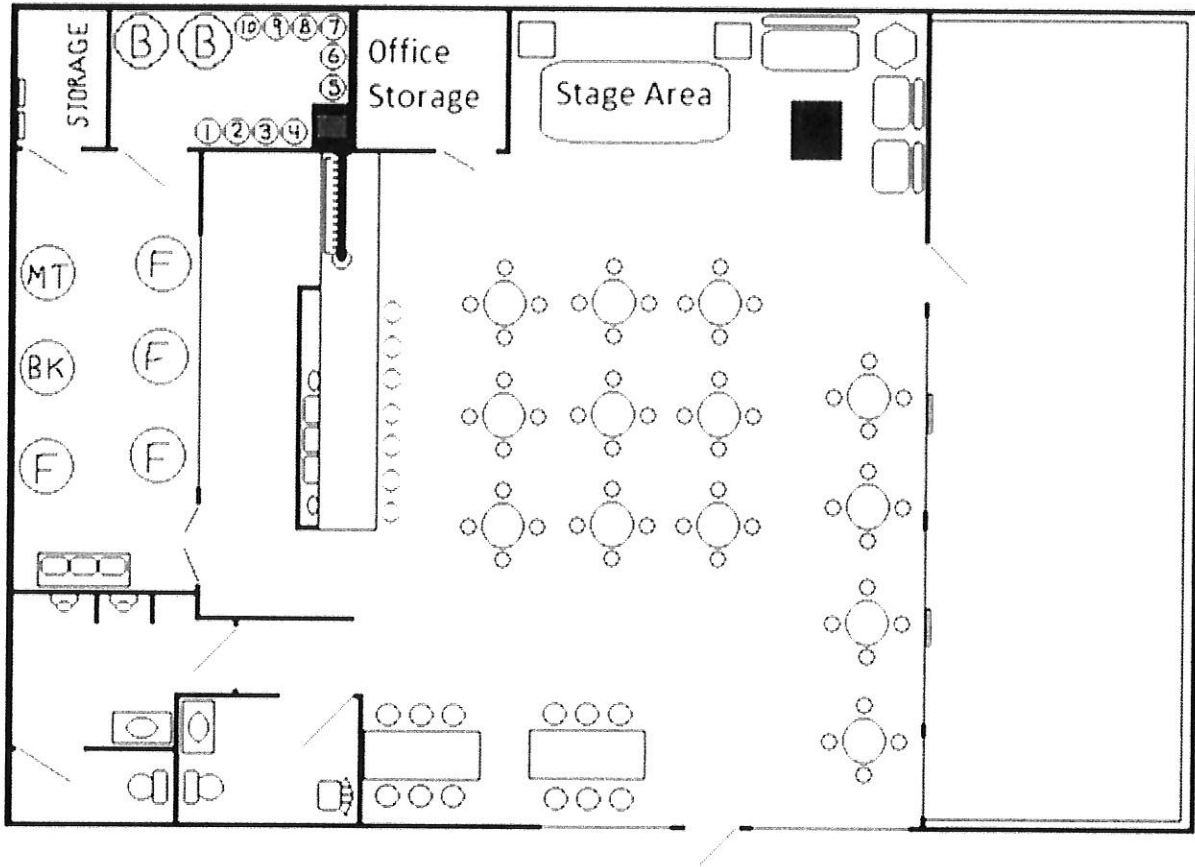
STATE OF IOWA)
) SS
COUNTY OF _____)

On this _____ day of _____, 2019, before me the undersigned, a Notary Public in and for said State, personally appeared Willard Lancaster and Teresa Lancaster, to me personally known, who, being by me duly sworn, did say that they are *[Members/Managers]* of Cyd Hustle LLC, and that said instrument was signed on behalf of said limited liability company; and that the said signers acknowledged the execution of said instrument to be the voluntary act and deed of said company, by it and by them voluntarily executed.

Notary Public in and for State of Iowa

[Signature page to Agreement for Private Development – Cyd Hustle LLC]

EXHIBIT A
INITIAL FLOOR PLAN FOR MINIMUM IMPROVEMENTS



Type of Document: MEMORANDUM OF AGREEMENT FOR PRIVATE
DEVELOPMENT BETWEEN THE CITY OF IOWA FALLS AND
CYD HUSTLE LLC

Return Document to: City Clerk
City of Iowa Falls
315 Stevens Street
Iowa Falls, IA 50126

Preparer Information: Nathan J. Overberg
Ahlers & Cooney, P.C.
100 Court Ave., Ste. #600
Des Moines, IA 50309
(515) 243-7611

Taxpayer Information: N/A

GRANTORS: N/A

GRANTEES: N/A

LEGAL DESCRIPTION: Lot 4, Block 34, Iowa Falls, Hardin County, Iowa

MEMORANDUM OF AGREEMENT FOR PRIVATE DEVELOPMENT

WHEREAS, the City of Iowa Falls, Iowa (“City”) and Cyd Hustle LLC (“Developer”) did on or about the ____ day of _____, 2019, make, execute, and deliver, each to the other, an Agreement for Private Development (the “Agreement”), wherein and whereby Developer agreed, in accordance with the terms of the Agreement and the Iowa Falls Urban Renewal Plan, as amended, to develop certain real property located within the City and within the Iowa Falls Urban Renewal Area, legally described as follows:

Lot 4, Block 34, Iowa Falls, Hardin County, Iowa

(the “Development Property”); and

WHEREAS, the term of the Agreement commenced on the ____ day of _____, 2019 and terminates on December 31, 2026, unless otherwise terminated as set forth in the Agreement; and

WHEREAS, the City and Developer 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, Iowa Falls, Iowa.

IN WITNESS WHEREOF, the City and Developer have executed this Memorandum of Agreement for Private Development on the ____ day of _____, 2019.

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

(SEAL)

CITY:
CITY OF IOWA FALLS, IOWA

By: _____
Gene Newgaard, Mayor

ATTEST:

By: _____
Kaci Elkin, City Finance Director/City Clerk

STATE OF IOWA)
) SS
COUNTY OF HARDIN)

On this _____ day of _____, 2019, before me a Notary Public in and for said State, personally appeared Gene Newgaard and Kaci Elkin, to me personally known, who being duly sworn, did say that they are the Mayor and City Finance Director/City Clerk, respectively, of the City of Iowa Falls, 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 Finance Director/City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Notary Public in and for the State of Iowa

[Signature page to Memorandum of Agreement for Private Development – City of Iowa Falls]

EXHIBIT C
DEVELOPER ANNUAL CERTIFICATION
(due annually 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 Section 6.7 of the Agreement as follows:

(i) all ad valorem taxes on the Development Property 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 Minimum Improvements were first fully assessed on January 1, 20____, at a full assessment value (building/improvements only) of \$_____;

(iii) The total number of full-time equivalent Employees and part-time equivalent Employees employed by Developer on 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:

	Full Time	Part Time		Full Time	Part Time
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____	_____	_____
May 1, 20____	_____	_____	November 1, 20____	_____	_____

(iv) the undersigned representative of Developer has re-examined the terms and provisions of the Agreement and certifies 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 signer 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.

DEVELOPER:
 CYD HUSTLE LLC,
 An Iowa limited liability company

By: _____

Name: _____

Its: _____

Date: _____

Attachments: Proof of payment of taxes

**EXHIBIT D
FINANCING STATEMENT**



UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) Nathan Overberg, 515-243-7611				
B. E-MAIL CONTACT AT FILER (optional) NOverberg@ahlerslaw.com				
C. SEND-ACKNOWLEDGMENT TO: (Name and Address) <table border="1"> <tr> <td>Nathan Overberg</td> </tr> <tr> <td>Ahlers & Cooney, P.C.</td> </tr> <tr> <td>100 Court Avenue, Suite 600</td> </tr> <tr> <td>Des Moines, IA 50309</td> </tr> </table>	Nathan Overberg	Ahlers & Cooney, P.C.	100 Court Avenue, Suite 600	Des Moines, IA 50309
Nathan Overberg				
Ahlers & Cooney, P.C.				
100 Court Avenue, Suite 600				
Des Moines, IA 50309				

Print Reset

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b). Use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name. If any part of the individual Debtor's name will not fit in line 1b, leave all of item 1b blank, check here and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad).

1a. ORGANIZATION'S NAME Cyd Hustle LLC					
OR	1b. INDIVIDUAL'S SURNAME Lancaster		FIRST PERSONAL NAME Willard	ADDITIONAL NAME (INITIALS)	SUFFIX
1c. MAILING ADDRESS 812 1st Ave. N.E.		CITY Clarion	STATE IA	POSTAL CODE 50525	COUNTRY USA

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b). Use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name. If any part of the individual Debtor's name will not fit in line 2b, leave all of item 2b blank, check here and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad).

2a. ORGANIZATION'S NAME					
OR	2b. INDIVIDUAL'S SURNAME		FIRST PERSONAL NAME	ADDITIONAL NAME (INITIALS)	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b).

3a. ORGANIZATION'S NAME City of Iowa Falls, Iowa					
OR	3b. INDIVIDUAL'S SURNAME		FIRST PERSONAL NAME	ADDITIONAL NAME (INITIALS)	SUFFIX
3c. MAILING ADDRESS 315 Stevens Street		CITY Iowa Falls	STATE IA	POSTAL CODE 50126	COUNTRY USA

4. COLLATERAL: This financing statement covers the following collateral:

3.5 barrel mash tun, a 3.5 barrel brew kettle, a Stout Tanks 7 barrel hot liquor tank, three Wenzhou Shuangding Machinery Co. 3.5 barrel fermenters, and two Wenzhou Shuangding Machinery Co. 3.5 barrel serving tanks installed in the building located on Hardin County Parcel No. 892113412001

5. Check <u>only</u> if applicable and check <u>only</u> one box: Collateral is held in a Trust (see UCC1Ad, Item 17 and instructions)		being administered by a Decedent's Personal Representative
5a. Check <u>only</u> if applicable and check <u>only</u> one box:		
<input type="checkbox"/> Public-Finance Transaction	<input type="checkbox"/> Manufactured-Home Transaction	<input type="checkbox"/> A Debtor is a Transmitting Utility
5b. Check <u>only</u> if applicable and check <u>only</u> one box:		
<input type="checkbox"/> Agricultural Lien	<input type="checkbox"/> Non-UCC Filing	
7. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> Lessee/Lessor <input type="checkbox"/> Consignor/Consignee <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailee/Bailor <input type="checkbox"/> Licensee/Licenser		
8. OPTIONAL FILER REFERENCE DATA:		

FILING OFFICE COPY — UCC FINANCING STATEMENT (Form UCC1) (Rev. 04/20/11) International Association of Commercial Administrators (IACA)