



# MEMORANDUM

## COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT

**TO:** Thomas Thomas

**SUBJECT:** Dollar General Relocation

**DATE:** September 3, 2013

In our efforts to redevelop Watchtower Plaza, the City has relocated a number of businesses. Dollar General has taken time to find a location. They have partnered with Cissell Mueller Company, LLC to develop a new store on the part of the site they City recently acquired just to the north of McDonald's on 11<sup>th</sup> Street. DG Partners LLC is the holding company which Cissell Mueller uses for its Dollar General projects. The City will be selling the land for \$100.00. The reduced fee is part of the relocation package offered to Dollar General. The sale is contingent on Dollar General entering into a long term lease at the new location and executing a lease termination agreement with the City for the current Watchtower Plaza location.

**Recommendation:**

Staff recommends City Council approve the sales agreement for \$100.00, allow for minor attorney modifications and authorize the City Manager to execute the contract documents and refer to the City Attorney for ordinance.

**Submitted by:** Jeffery Eder, Community & Economic Development Director

**Approved:** Thomas Thomas, City Manager

## SALE CONTRACT

THIS SALE CONTRACT (the "Contract"), is made and entered into this 9th day of September, 2013, by and between City of Rock Island, Illinois ("Seller") and DG Partners LLC, a Missouri limited liability company ("Purchaser").

WHEREAS, Seller is the owner of certain property which Seller desires to sell to Purchaser and Purchaser desires to purchase from Seller on the terms specified herein.

NOW, THEREFORE, in consideration of the recitals set forth above, and the covenants and agreements contained herein, the parties agree as follows:

### ARTICLE I PURCHASE AND SALE OF PROPERTY

Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller the following (collectively, the "Property"): the real property situated in the City of Rock Island, State of Illinois, commonly described as a portion of 950 31<sup>st</sup> Ave. #10222-consisting of 1.35 acres with frontage of 188' on 11<sup>th</sup> Street and a depth of 313'; situated north of existing McDonalds retail building. See Exhibit A attached. ("Real Property"), the exact legal description for the Real Property to be used in the deed of conveyance from Seller to Purchaser shall be that legal description as determined in Purchaser's owner's policy of title insurance obtained pursuant to this Contract; together with all of those certain buildings, structures and improvements which are located on the Real Property, if any, together with all rights, easements and privileges appurtenant to the Real Property; and all tangible and intangible personal property located on or used in connection with the ownership, operation or maintenance of the Property ("Personal Property").

### ARTICLE II PURCHASE PRICE AND TERMS OF SALE

In consideration of the transfer of the Property, Purchaser agrees to pay to Seller the sum of One Hundred and 00/100 dollars (\$100.00 ) ("Purchase Price"), as follows One hundred and 00/100 dollars (\$1,00.00) ("Deposit") shall be deposited by Purchaser within five (5) business days of the date of this Contract with a title company selected by Purchaser ("Escrowee"); and the balance of the Purchase Price in the amount of zero and 00/100 dollars (\$0.00 ) subject to prorations and adjustments as provided in this Contract shall be paid (at Purchaser's option) by wire transfer, certified or cashier's check or a check issued by Escrowee at the time of Closing. The Deposit made pursuant to this Contract shall be held in escrow by Escrowee. In the event that the sale closes pursuant to this Contract, the Deposit shall be applied to the Purchase Price. In the event that the sale fails to close pursuant to this Contract due solely to the unexcused breach of this Contract by Purchaser, then the Deposit shall be delivered to Seller pursuant to Article VII. In all other events, the Deposit shall be returned to Purchaser upon the termination of this Contract.

### ARTICLE III CONDITIONS PRECEDENT

This Contract shall terminate and Purchaser entitled to a return of its Deposit if Purchaser gives written notice to Seller of its disapproval of the following items on or before one hundred eighty (45) days following the date of this Contract; provided that Purchaser may at any time prior to such date waive all or any part of this contingency or terminate this Contract by written notice to Seller of such waiver or termination:

- (i) A fully executed lease between Purchaser and a tenant for the Property.
- (ii) A binder for title insurance and endorsements as may be requested by Purchaser (including legible and complete copies of all documents constituting exceptions to title as shown by the binder for title insurance) which Seller shall obtain within fifteen (15) days of the date of this Contract, and a survey of the Property which Purchaser may at

Purchaser's option obtain ("preliminary title report"). In the event Purchaser should give written notice of its disapproval of the preliminary title report on or before one hundred eighty (180) days from the date of this Contract, Seller shall have five (5) days ("Cure Date") following receipt of notice of disapproval to cure the objection or to give written notice of Seller's intention to cure such objection at or prior to Closing. Should Seller fail to cure or give written notice on or prior to the Cure Date of Seller's intention to cure such objection at or prior to Closing, then this Contract shall terminate and Purchaser shall be entitled to a return of its Deposit, unless Purchaser waives said objection by written notice to Seller within five (5) days following the Cure Date.

(iii) The availability of acquisition, construction and permanent financing for development of the Property on terms acceptable to Purchaser.

(iv) The availability of all necessary occupancy permits, utility service, access, governmental approvals, variances and zoning for the development of the Property for Purchaser's intended use.

(v) The results of all inspections, environmental studies and reports, soil borings, engineering studies, hazardous waste studies, geo-hydrological studies, operational analysis, feasibility analysis, appraisals and other studies or reports with respect to the Property as Purchaser may request.

(vi) The Seller has the right to terminate this contract if Dollar General fails to reach a lease agreement with purchaser or if the Seller fails to reach a lease termination agreement with Dollar General for it location at 3830 11<sup>th</sup> Street (Watch Tower Shopping Center)

#### ARTICLE IV PRORATIONS AND ADJUSTMENTS

The following prorations and adjustments shall be made to the cash portion of the Purchase Price at Closing: (i) rents shall be prorated and adjusted as of the date of Closing on the basis of thirty (30) days to the month with the day of Closing being credited or charged to Purchaser at the case may be. General taxes based on the latest available assessment and rate, subdivision upkeep assessments, utility bills, and other apportionable operating costs shall be prorated and adjusted as of the date of Closing on the basis of thirty (30) days to the month, Purchaser shall be given credit for the day of Closing; (ii) on or before Closing, Seller shall cause any and all assessments, liens and encumbrances affecting the Property to be satisfied and released; and (iii) Seller will pay for any deed stamps or deed tax and any other state or local transfer tax resulting from the sale, Purchaser will pay for the policy of title insurance and the survey, and Seller and Purchaser will each pay one-half (1/2) of any other customary Closing fees of Escrowee.

#### ARTICLE V PROVISIONS WITH RESPECT TO CLOSING

Closing shall occur on or before one hundred ninety five (195) days from the date of this Contract ("Closing") at the office of Escrowee if all of the contingencies have been satisfied or waived by such date, or on such other date as Purchaser and Seller may mutually agree upon. Seller shall deliver to Purchaser at Closing the following documents, in such form as Purchaser shall approve: (i) a fully executed and recordable general warranty deed subject to no matters other than the exceptions contained in the preliminary title report and not disapproved by Purchaser; (ii) a bill of sale for the Personal Property with warranties as to title and the absence of liens or encumbrances; and (iii) such additional documents as might be reasonably required by Purchaser or Escrowee to consummate the sale of the Property to Purchaser under the terms of this Contract. Seller shall deliver possession of the Property to Purchaser on the date of Closing. Purchaser shall deliver to Seller at Closing the balance of the Purchase Price.

ARTICLE VI  
SELLER'S REPRESENTATIONS AND WARRANTIES

To induce Purchaser to enter into this Contract and to consummate the transactions contemplated hereby, Seller represents and warrants to Purchaser: (i) that Seller owns fee title to the Property free and clear of any liens, encumbrances or restrictions of any kind except the exceptions set forth in the preliminary title report; and that Seller has authority and is empowered to consummate the sale of the Property pursuant to this Contract and that no person, firm or corporation other than Seller has any right, title or interest in or possession of the Property or any portion thereof; (ii) that the Property, to Seller's best knowledge and belief, is in compliance with all applicable governmental laws, codes, regulations, and rules; that the Property is not the subject of any pending or threatened condemnation proceeding, or special tax assessment; and that to Seller's best knowledge and belief, no fact or condition exists which could result in the termination or reduction of the current access from the Property to existing highways and roads, or to utility services presently serving the Property; (iii) that there are no actions, suits, proceedings or investigations pending or to the best of Seller's knowledge threatened against the Property or against Seller affecting any portion of the Property at law or in equity before any federal or state court or tribunal or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agent or instrumentality, domestic or foreign; and (iv) that Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code.

ARTICLE VII  
DEFAULTS AND REMEDIES

In the event that any of Seller's representations or warranties contained herein are untrue or if Seller shall have failed to have timely performed any of its obligations, covenants and/or agreements contained herein which are to be performed by Seller, then Purchaser, at its option may either terminate this Contract and receive a full and immediate refund of the Deposit or sue Seller for specific performance and/or pursue any and all other remedies Purchaser may have at law or equity. If Purchaser shall fail to close the purchase of the Property as contemplated hereby due to the default of Purchaser hereunder, then the Deposit shall be paid to Seller as liquidated damages as Seller's sole and exclusive remedy for such default, Seller hereby specifically waiving any and all rights which it may have to damages or specific performance as a result of Purchaser's default under this Contract. The parties agree that this sum, in the form of Purchaser's deposit, represents the parties' best estimate of damages to be suffered by Seller in the event of Purchaser's breach, it being extremely difficult and impracticable, if not impossible, to determine Seller's actual damages in the event of such breach.

ARTICLE VIII  
BROKERS' CONSULTANT FEE

Buyer shall be responsible to pay all consultant fees to real estate brokers and salesmen involved in the transaction contemplated by this Contract. Buyer agrees to pay a consultant fee to Cissell Mueller Company, L.L.C. Said consultant fee shall be payable on and only in the event of Closing.

ARTICLE IX  
MISCELLANEOUS

A. Purchaser may assign its rights under this Contract without the consent of Seller. This Contract is binding upon and inures to the benefit of the parties hereto and their respective heirs, legal representatives, executors, administrators, successors and assigns. This Contract constitutes the entire agreement between Seller and Purchaser. If any provision hereof is for any reason unenforceable or inapplicable, the other provisions hereof will remain in full force and effect in the same manner as if such unenforceable or inapplicable provision had never been contained herein. This Contract shall be construed under and in accordance with the laws of the State of

Illinois . The representations, warranties and covenants contained herein shall not merge in any document and shall survive Closing. Whenever the last day for the exercise of any privilege or the discharge of any duty hereunder shall fall upon a Saturday, Sunday or public or legal holiday, the party having such privilege or duty shall have until 5:00 p.m. on the next succeeding regular business day to exercise such privilege or discharge such duty. Seller shall indemnify and hold Purchaser harmless from and against any and all claims, liabilities, losses, damages, costs and expenses, including but not limited to, reasonable attorneys' fees, court costs and litigation expenses, which Purchaser may reasonably incur or sustain by reason of or in connection with any misrepresentation made by or on behalf of Seller, any breach of Seller's warranties, or the failure of Seller to fulfill any of its covenants or agreements under this Contract.

B. Unless otherwise specifically provided herein, any notices to be given hereunder shall be in writing, and shall be deemed given upon personal delivery to Purchaser or Seller, as the case may be, or upon deposit in any United States mail receptacle, registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Seller: City of Rock Island  
.Thomas Thomas, City Manager  
  
1528 Third Ave., Rock Island, IL 61201  
  
Phone: 309-732-2012

With a copy to: Jeff A. Eder-eder.jeff@rigov.org  
Ted Kutsunis, City Attorney, tkutsunis@aol.com Deb Lerscchen, Legal Assistant,  
dlerschen@nextexpress.net

If to Purchaser: DG Partners LLC  
Bob Cissell  
5530 Salt River Road St. Peters, Missouri 63376  
Phone: 636-970-0330  
E-Mail: bobcissell@cissellmueller.com

With a copy to: Cissell Mueller Company, L.L.C.  
Tim O'Brien  
5530 Salt River Road, St. Peters, MO 63376  
Phone: 636-970-0330  
E-Mail: [timobrien@cissellmueller.com](mailto:timobrien@cissellmueller.com)

C. Purchaser has executed this Contract and delivered it to Seller for execution. Purchaser may withdraw this offer by written notice to Seller and this offer will be of no force and effect if Seller fails to deliver to Purchaser a fully executed copy of this Contract and any amendments and addendums thereto without amendment, modification or revision on or before September 13, 2013 at 4:00 p.m..

D. The parties agree that this document may be transmitted between them by facsimile machine or PDF scan and email. The parties intend that faxed signature, or signatures scanned to a PDF image and emailed, constitute original signatures and are binding on the parties. Each party shall be promptly forward to the other party(ies) the original signature pages containing such party's original ink signature. This document may be executed simultaneously or in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ARTICLE X  
RESTRICTIONS  
INTENTIONALLY DELETED

IN WITNESS WHEREOF, the parties hereto have duly executed this Contract as of the date first above written.

Purchaser:

DG PARTNERS LLC

By: \_\_\_\_\_

Name: Robert D. Cissell

Title: Manager

Seller:

City of Rock Island

By: \_\_\_\_\_

Name: Thomas Thomas

Title: City Manager