

OCT 23 2008

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IOWA DEPT. OF ECONOMIC DEVELOPMENT

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DIVISION OF COMMUNITY DEVELOPMENT

**MEMORANDUM OF AGREEMENT ("MOA")**

**BETWEEN IOWA COUNTY, IOWA**

**AND THE**

**IOWA STATE HISTORIC PRESERVATION OFFICE**

**REGARDING THE "ALB-GOLD BIONADE" ECONOMIC DEVELOPMENT SET-ASIDE PROJECT PROPOSED FOR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM ASSISTANCE THROUGH THE IOWA DEPARTMENT OF ECONOMIC DEVELOPMENT (IDED) FOR DEVELOPMENT IN AMANA, IOWA**

**WHEREAS**, Iowa County, Iowa (hereinafter referred to as "Iowa County") plans to assist "A & B Food and Beverage, Inc.", a Delaware Corporation, (also known as "Alb-Gold Bionade") with proposed development in Amana, Iowa, (i.e., the "undertaking"), by providing Federal funding from the Iowa Department of Economic Development ("IDED") through the Community Development Block Grant ("CDBG") Program (1974 Housing and Community Development Act, as amended, 24 CFR Part 570); and

**WHEREAS**, the undertaking consists of the proposed development of a manufacturing facility that is intended to create 99 jobs over three years to produce German pasta and beverages through the construction of a proposed 121,500 square foot facility at 3887 220<sup>th</sup> Trail (Iowa Highway 220), Amana, Iowa; and

**WHEREAS**, Iowa County has defined the undertaking's Area of Potential Effect ("APE") as the Amana Colonies National Historic Landmark; and

**WHEREAS**, Iowa County has determined the undertaking may have an adverse effect on the Amana Colonies which has been designated as a National Historic Landmark, and has consulted with the Iowa State Historic Preservation Office ("SHPO") pursuant to 36 CFR Part 800, of the regulations implementing Section 106 of the National Historic Preservation Act (16 USC §470f); and

**WHEREAS**, Iowa County provided opportunity to Indian Tribes of known interest for the project area, (Iowa Tribe of Oklahoma; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Tribe of the Mississippi in Iowa; Sac & Fox Tribe of Indians of Oklahoma; and Sac & Fox Tribe of Missouri), to review and comment concerning the undertaking, but none responded to said opportunity; and

**WHEREAS**, Iowa County has or will consult with Alb-Gold Bionade, IDED, National Park Service ("NPS"), Amana Society, Amana Colonies Land Use District, and Amana Colonies Land Use District - Historic Preservation Commission regarding the effects of the undertaking on historic properties and has invited them to sign this MOA either as "invited signatories" or "concurring parties" and

**WHEREAS**, in accordance with 36 CFR Part 800.6(a)(1), Iowa County has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect determination with specified documentation and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii), as documented in letter dated July 23, 2008 and by reference is made a part of this Memorandum of Agreement; and

**NOW, THEREFORE**, Iowa County and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

## **I. STIPULATIONS**

- A. Iowa County will set up and arrange a conference call, or other suitable accommodation(s), with the design architects for the project to discuss possible measures that may be implemented to minimize adverse effect. This call, or other accommodation(s), will include representatives of Iowa County, Alb-Gold Bionade, Amana Colonies Land Use District, Amana Colonies Land Use District - Historic Preservation Commission, NPS, and SHPO. From consultation previously initiated, as identified by the SHPO and others, these measures may include: (a) the planting of additional landscaping to screen the facility; (b) changing the primary façade of the facility to minimize visual effects; (c) incorporating neutral / native colors and/or textures; (d) lowering the placement of signage; (e) re-arranging facility placement on-site; and (f) other design related issues that may arise which need to be discussed until final design is submitted for review.
- B. Finalized conceptual plan documents for the project will be prepared by Alb-Gold Bionade's architect, engineer, or other agent and directly provided by them to the SHPO, NPS and the other invited signatory or concurring parties identified in this agreement for review and comment. Should revisions be necessary, revised documents will be prepared and provided to all participating parties for additional review and comment.
- C. Prior to the start of construction activities, a copy of the final plans and specifications prepared by Alb-Gold Bionade's architect, engineer, or other agent will be submitted by Iowa County to SHPO for final review and approval.
- D. Iowa County will ensure that agreed upon measures as the result of this consultation are undertaken and completed.

## **II. DURATION**

This MOA will be null and void if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, Iowa County may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Section VI below.

### III. POST-REVIEW DISCOVERIES

If, after execution of this MOA, other potential historic properties are discovered, or unanticipated effects on historic properties found, Iowa County shall ensure through its administrative service provider, the East Central Iowa Council of Governments (ECICOG), that the following measures are carried out with any cost incurred (such as assessment by archeologist) to be incurred by either project funding from the CDBG Program or Alb-Gold Bionade. It shall be the responsibility of Alb-Gold Bionade to provide immediate notification of any noted discovery.

#### A. Unanticipated Discovery (Exclusive of Human Remains and Human Burials).

If project activities uncover any item(s) that might be of archaeological, historical, or architectural interest, or if important new archaeological, historical, or architectural data should be encountered within or immediately adjacent to the project APE, Iowa County will to the extent practicable make reasonable efforts to avoid further impacts to the resources until an assessment can be made by an individual meeting the Secretary of the Interior's Professional Qualifications found in 36 CFR Part 61, Appendix A. Iowa County will also will immediately contact the SHPO.

#### B. Unanticipated Discovery of Human Remains and Grave Associated Objects.

It is recognized that all human burials in the State of Iowa are protected by law regardless of sex, historical age, cultural/ethnic affiliation, or manner of interment. In the event that human remains or burials are encountered during archaeological investigations or project activities, work in the area will cease and appropriate steps will be taken to secure the site and notify officials at the Burials Program at the University of Iowa – Office of the State Archaeologist (319) 384-0740 or the Iowa Department of Health as appropriate:

- i. If the remains appear to be ancient (i.e., older than 150 years), it is recognized that the burial is legally protected under Chapters 263B and 716.5 of the Iowa Code. The University of Iowa – Office of the State Archaeologist shall have jurisdiction to insure that the appropriate procedures are observed in accordance with the law. Timetables and treatment options will fall within the purview of the State Archaeologist or his/her designee in consultation with the project proponents, and the legally recognized descendant or descendant group(s).
- ii. If the remains appear to be less than 150 years old, it is recognized that the burial is legally protected under Chapters 144.43, 523I.316 and 716.5 of the Iowa Code and falls under the jurisdiction of the Iowa Department of Public Health.

#### **IV. MONITORING AND REPORTING**

Each year following the execution of this MOA until it expires or is terminated, Iowa County shall provide all parties to this MOA a summary report detailing work undertaken pursuant to agreed upon consultation terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in Iowa County's efforts to carry out the terms of this MOA. This monitoring / reporting shall be conducted on behalf of Iowa County by its administrative service provider, the East Central Iowa Council of Governments (ECICOG).

#### **V. DISPUTE RESOLUTION**

Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, Iowa County shall consult with such party to resolve the objection. If Iowa County determines that such objection cannot be resolved, Iowa County will:

- A. Forward all documentation relevant to the dispute, including Iowa County's proposed resolution, to the ACHP. The ACHP shall provide Iowa County with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, Iowa County shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. Iowa County will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, Iowa County may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, Iowa County shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.
- C. Iowa County's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

#### **VI. AMENDMENTS**

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

#### **VII. TERMINATION**

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VI, above. If within thirty (30) days an amendment cannot be

reached, any signatory may terminate the MOA upon written notification to the other signatories.

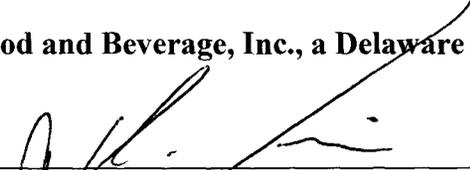
Once the MOA is terminated, and prior to work continuing on the undertaking, Iowa County must either: (a) execute an MOA pursuant to 36 CFR Part 800.6; or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR Part 800.7. Iowa County shall notify the signatories as to the course of action it will pursue.

Execution of this MOA by Iowa County and SHPO, and implementation of its terms, evidence that Iowa County has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

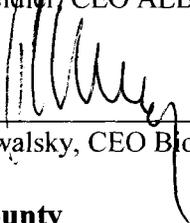
This MOA shall otherwise automatically expire / terminate upon the undertaking's completion.

**SIGNATORIES:**

**A&B Food and Beverage, Inc., a Delaware Corporation**

  
\_\_\_\_\_  
Klaus Freidler, CEO ALB-GOLD Teigwaren GmbH

Date 11.25.08

  
\_\_\_\_\_  
Peter Kowalsky, CEO Bionade International GmbH

Date 11/25/08

**Iowa County**

  
\_\_\_\_\_  
Ricky L. Gerard, Chairman  
Iowa County Board of Supervisors

Date 10-17-08

**Iowa State Historic Preservation Office**

  
\_\_\_\_\_  
Barbara A. Mitchell, Deputy State Historic Preservation Officer

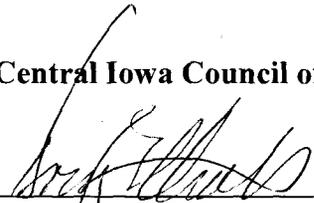
Date 10/27/08

**Iowa Department of Economic Development**

  
\_\_\_\_\_  
Hank Manning, Team Leader, Public Facilities  
Community Development Division

Date 10/21/08

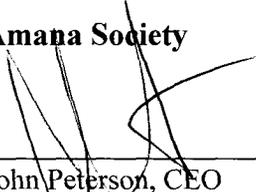
**East Central Iowa Council of Governments**

  
\_\_\_\_\_  
Doug Elliott, Executive Director

Date 10/10/08

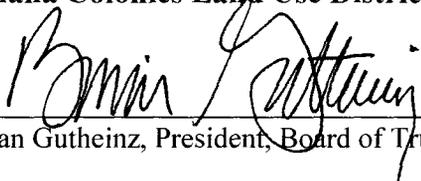
**CONCURRING PARTIES:**

**Amana Society**

  
\_\_\_\_\_  
John Peterson, CEO

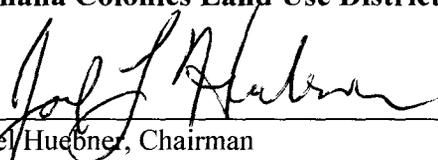
Date 11/19/2008

**Amana Colonies Land Use District**

  
\_\_\_\_\_  
Brian Gutheinz, President, Board of Trustees

Date 10/31/2008

**Amana Colonies Land Use District – Historic Preservation Commission**

  
\_\_\_\_\_  
Joel Huebner, Chairman

Date 11/17/2008

Notes:

*\* This document assumes that the term "signatory" has been defined in the agreement to include both signatories and invited signatories.*

*\*\* The agency must submit a copy of the executed MOA, along with the documentation specified in Sec. 800.11(f), to the ACHP prior to approving the undertaking in order to meet the requirements of section 106. 36 CFR § 800.6(b)(1)(iv).*