Memorandum of Understanding Between Iowa State University and The City of Ames, Iowa Relating to the CYTown Development

This Memorandum of Understanding ("MOU" or "Agreement") entered this ____ day of _____, 2024, by and between the CITY OF AMES, IOWA ("City"), and IOWA STATE UNIVERSITY OF SCIENCE AND TECHNOLOGY ("Iowa State University" or "ISU"),

RECITALS

Iowa State University is the owner of property located between Lincoln Way and Jack Trice Way, South University Boulevard to Beach Avenue ("CYTown Development Area"); and,

lowa State University intends to develop the CYTown Development Area to create a multi-use district, which may contain uses including retail, office, residential, medical, entertainment, event space, hotel, research, academic, administrative, and other similar activities and related supporting infrastructure; and,

The existing major facilities located within the boundaries of the CYTown Development Area, including C.Y. Stephens Auditorium, Fisher Theater, Hilton Coliseum, and the Scheman Building, have been art and cultural anchors of the Ames and ISU community since the first facility was opened in 1969; and,

The City and ISU agree that a prosperous local arts and entertainment community improves the welfare, comfort, and convenience of Ames' citizens, promotes economic development and tourism, and enhances the community identity; and,

The existence of quality facilities and equipment is necessary to achieve these objectives; and,

The existing facilities require substantial financial investments in maintenance and enhancements, and insufficient funding exists to complete these investments; and,

The development of complementary facilities and attractions within the vicinity creates the opportunity to both finance those investments and regain the status of these facilities as a premier performing arts, visitor, events, and entertainment center of the community and state; and,

The City and ISU have a long history of cooperating together for the benefit of both the Ames Community and the University.

Accordingly, it is the mutual desire of ISU and the City to realize the development of a premier performing arts, visitor, events, and entertainment area, and the parties have committed to mutual understanding regarding the cooperation between them as provided for in this MOU to achieve this development.

I. DESCRIPTION OF DEVELOPMENT GOALS

The parties intend that the CYTown Development Area (which area is described in Section IV of this Agreement) will achieve the following:

- A. Rehabilitate and enhance the performing arts, visitor, and events facilities within the CYTown Development Area, for the benefit of Iowa State University and the community of Ames; and,
- B. Develop new Convention and Hotel space and rehabilitate existing Convention space; and,
- C. Attract and retain students, visitors, employees, and businesses to Iowa State University and the City of Ames; and,
- D. Develop a "destination" to attract individuals to the community to work, play, and live; and,
- E. Generate revenues to achieve the rehabilitation and enhancement efforts as described above.

II. PURPOSE OF MEMORANDUM OF UNDERSTANDING

It is the purpose of this MOU to:

- A. Establish the Principles and General Understanding between the parties regarding their cooperative relationship to establish the goals set forth above; and,
- B. Identify mutually beneficial funding sources to help accomplish the rehabilitation and enhancement of the performing arts, visitor, and events facilities within the CYTown Development Area; and,
- C. Develop a framework to resolve issues that may arise between the Parties pertaining to taxability and other legal provisions that may jointly impact ISU and the City.

III. DEFINITIONS:

As used in this MOU, the following terms have the meanings outlined below:

Convention – Conferences, seminars, trade shows, meetings, trainings, or symposia, generally of an educational or professional nature, where indoor open space is necessary to facilitate an assembly of people with a common interest.

CYTown Suites – Apartment-style dwelling units, access to which is made available to certain donors to ISU.

Events – Scheduled activities that provide opportunity for interaction in a social setting, including banquets, galas, balls, or lectures.

Food and Drink Establishments – Restaurants, bars, breweries, distilleries, and other places serving food or beverages, providing service to visitors to the CYTown Development Area.

Hotel - Any number of buildings or portions thereof providing lodging or rooming to transient members of the public.

Medical – A facility providing medical or surgical care to patients where overnight care is not provided.

Office – A facility containing activities conducted in an office setting and primarily focusing on administrative, business, government, professional, medical, or financial services.

Performing Arts – Creative arts performed in front of an audience, including music, dance, comedy performances, and theater.

Retail – A facility containing uses that involve the sale, lease, or rental of new or used consumer products, including prepared foods, to the general public and uses providing services involving predominantly personal or business services, including repair of consumer and business goods. Retail shall not include service stations, motor vehicle, truck, or equipment sales.

Tenant - Any non-ISU person or entity charged rent, or where any other consideration is required in exchange for a right to occupy the premises by a non-ISU person or entity.

Visitor – A person who travels to the CYTown Development area to enjoy an event, food and drink establishment, performing art, or entertainment activity.

IV. CYTOWN DEVELOPMENT AREA COMPONENTS:

A. The extent of the CYTown Development Area is depicted on Attachment 1 to this Agreement. The CYTown Development Areas consists of the land and improvements

located south of Lincoln Way, north of Jack Trice Way, west of South University Boulevard, and east of Beach Avenue, in Ames, Iowa, excluding:

- 1. The Alumni Center building,
- 2. Any traditional research, academic, or administrative building servicing solely ISU within the boundaries of the CYTown Development Area, and
- 3. The existing facilities in the CYTown Development Area including ("Existing Facilities"):
 - a. C.Y. Stephens Auditorium
 - b. Fisher Theater
 - c. Scheman Building
 - d. Hilton Coliseum
 - e. Campbell Transit Center

B. PROPOSED FACILITIES:

BLDG.	PHASE	USE	PLAN AREA (sq. ft.)
А	=	University Use	20,300
В	=	Retail / Event	15,000
С	=	L1: Office / L2-3: Office / Suites	9,500
D	I	L1: Office / L2-3: Office / Suites	7,000
E	I	L1: Office / L2-3: Office / Suites	24,050
F		Medical Clinic	16,667
G	I	Restaurant / Event	15,823
Н	I	Retail / Event	12,025
I	I	Retail / Event 12	
J	Ш	Retail / Event	17,000
K	II	Retail / Event	15,000
L	II	Convention / Hotel	55,000

- C. The proposed facilities and their configuration as described in the table above are preliminary and conceptual in nature, and the parties understand that the facilities to be constructed and operated may not be built to these exact specifications of square footage or locations. The configuration, timing of the construction, and opening of the proposed facilities described in this MOU is within the sole discretion of Iowa State University.
- D. In general, however, for purposes of this MOU only, the CYTown Development Area is described in the following two phases:

- 1. **Phase I** the facilities located in the portion of the CYTown Development Area bounded on the south by Jack Trice Way and on the north by an eastwest line 700 feet north of the centerline of Jack Trice Way (Buildings E, F, G, H, and I as depicted on Attachment 2)
- 2. Phase II any facility not included in Phase I.
- E. As part of the development expenses of the CYTown Development Area, the Campbell Transit Center has been demolished and will be reconstructed by ISU in another portion of the CYTown Development Area to facilitate the construction of the overall CYTown Development Area. For purposes this MOU, the relocated Campbell Transit Center is not part of Phase I or Phase II.

V. ISSUES OF STATE LAW

- A. The Parties understand that there are areas of State law including taxation and competition with private enterprises that may impact the development. While recognizing that this MOU does not supersede State law, the Parties agree, to the extent allowed by State law, to work together where appropriate to attempt to address and resolve issues that arise relating to any aspect of the CYTown Development that implicates issues of governmental competition with private enterprise or taxation.
- B. The City and ISU agree that to the fullest extent allowed by law, from the revenue generated through the CYTown Development, an amount equivalent to the normal property tax collection attributable/payable to the City for similar private developments will be invested back into the CYTown Development as described in this MOU Paragraph VII. The City and ISU agree to take all action within their legal authority to facilitate this intent. The parties agree not to take any formal affirmative action within their legal authority inconsistent with this intent.
- C. The agreements described in this paragraph and the provisions of this MOU apply exclusively to the CYTown Development Area and shall not establish a precedent with respect to the Parties' relationship on other development projects.

VI. CYTOWN ADVISORY COMMITTEE

- A. The Parties agree to create a "CYTown Advisory Committee" consisting of the following (or their designees):
 - 1. The Iowa State University President
 - 2. The Iowa State University Research Park President

- 3. The City Manager of the City of Ames
- B. The purpose of the CYTown Advisory Committee is to:
 - 1. Provide input to the Iowa State University President on the overall development of the CYTown Development Area. To that end, the Committee will perform an annual financial review of the Development Area and make recommendations regarding a plan for the investments in, and a schedule for, the planned improvements.
 - 2. Appear before and present information to the Ames City Council, in the event ISU intends to demolish any of the Existing Facilities during the term of this Agreement. Such presentation shall occur prior to commencement of demolition, except where a building has been damaged as a result of disaster or calamity and demolition is necessary as a matter of urgency to protect life or property.
 - 3. Discuss any issues pertaining to the CYTown Development Area which are not disposed of by this Agreement.

VII. PROPERTY TAX AND PROPERTY TAX EQUIVALENTS COLLECTED IN LIEU OF TAXES (MOU PILOT)

- A. ISU agrees to collect from Tenants in buildings in the CYTown Development Area (as described and subject to the exclusions in Section IV of this Agreement) an amount in addition to any charges for rent or common area maintenance, which amount shall be a Payment in Lieu of Tax (PILOT).
- B. The amount of PILOT to be collected for each building in a given year shall be calculated in a manner similar to the assessment of property and the collection of property taxes in the City of Ames, per the procedures described below:
 - Upon receipt of approval for occupancy of a building by the State Fire Marshal, ISU shall notify the Ames City Assessor and request that an assessment value be established for that building as required by Iowa Code Section 427.1(18). It is understood that an assessment value provided by the Ames City Assessor is to be used by the Parties for the purpose of determining value to fulfill the provisions of this Agreement, and that the assessment value is not a tax statement.

The assessment value shall be considered the "Building Value" for the purposes of this Agreement. The Building Value is subject to revision by the City Assessor from time to time through normal assessment processes (e.g., revaluation in odd-numbered years; changes due to additions, demolition, renovations, etc.). The most recently established Building Value shall be the value used for the calculation of PILOT for a given building. Nothing in this paragraph restricts in any way the rights of ISU or any other qualified party to protest the Building Value established by the Ames City Assessor as provided in Iowa law, in which case the assessment value established through the protest process and any applicable appeals shall be the considered the Building Value.

- a. In the event the Ames City Assessor fails to furnish a Building Value to ISU in an assessment notice mailed on or before April 1 of the year following initial occupancy or in any odd-numbered year thereafter, then the Building Value for that year shall be established through an independent appraisal prepared in accordance with the Uniform Standards of Professional Appraisal Practice. The appraisal report shall be completed on or before June 1. The selection of an appraiser and the costs therefor shall be the responsibility of ISU. Upon receipt of the independent appraiser report, ISU shall provide a copy to the City. Annually thereafter, the Building Value shall be as calculated by the Ames City Assessor per Paragraph VII(B)(1) above, or through the provisions of this Paragraph VII(B)(1)(a).
- The Building Value, as established in accordance with Paragraphs VII(B)(1) and VII(B)(1)(a) above, is not required to be determined for any building(s) for which property tax has been otherwise assessed and collected by any taxing authority.
- 3. ISU shall cooperate with reasonable requests by the Ames City Assessor to review construction documents, lease agreements, and/or conduct site inspections for the purpose of establishing value in the initial and subsequent years. Because building code compliance on State property is under the jurisdiction of the State Fire Marshal rather than the City of Ames, ISU agrees to notify the Ames City Assessor of any alterations, additions, renovations, demolition, or other building modifications that occur to any building after it becomes initially occupied.

- 4. On or before June 1 each year, ISU shall furnish the City with land values for each building as of January 1 of that year for the purpose of calculating PILOT.
- 5. On or before July 1 each year, the City shall furnish ISU with statements for each building for which a value has been established, which shall describe the following:
 - a. The most recent Building Value.
 - b. The most recent land value as furnished by ISU.
 - c. Amounts calculated by multiplying that Building Value and that land value by the most recent assessment limitation percentage (rollback) certified by the Iowa Department of Revenue as applicable to the type of use for that building.
 - d. The amounts calculated in Paragraph VII(B)(5)(c) then divided by \$1,000 and multiplied by the adopted Ames City/Ames Community School District (Tax District Number 850067) Consolidated Levy Rate ("CLR-850067") for the period beginning July 1 of that year. This amount is the total amount of Payment in Lieu of Tax ("PILOT") for that building.
 - e. The PILOT calculated in Paragraph VII(B)(5)(d) is to be divided into two portions:
 - i. **The MOU PILOT** an amount equivalent to the proportion of the City's levy rate as compared to the CLR-850067 for that year, as applied to the Building Value only, and
 - ii. **The Remainder PILOT** the portion of the collected PILOT that remains after subtracting the amount of the MOU PILOT.
- 6. ISU shall collect the PILOT from Tenants not later than June 30 each year for PILOT calculated as of the preceding July 1.

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7. An example of a statement to be furnished to ISU, demonstrating the calculations described in Paragraph VII(B)(5), is shown below:

2027 CYTown PILOT Statement - EXAMPLE							
Retail Building XYZ	THIS IS NOT A TAX BILL						
Approved for Occupancy 10/12/20	026						
		w/Commercial Property Assessment Limitation (Rollback)					
	January 1, 2027	for July 1, 2027 (90%)					
Building Value (Per Assessor)	\$ 1,750,000	Building Value	2		\$ 1,575,000		
Land Value (Per ISU)	\$ 625,000	Land Value			\$ 562 <i>,</i> 500		
TOTAL	\$ 2,375,000	TOTAL			\$ 2,137,500		
July 1, 2027 Adopted	Rate per \$1,000	Times Rolled Back Value:	Amount to be Collected On or Before June 30, 2028:				
		<i></i>		Building	Land		
Ames City Levy		9.29336	MOU PILOT:	\$14,637.04	0.00		
Sum of All Other Levies	21.52286	Remainder PILOT:	\$33,898.50	\$17,334.12			
			Subtotal:	\$48,535.54	\$17,334.12		
TOTAL (CLR-850067)	30.81622	Total PILOT:	\$65,869.66				

- C. ISU may dedicate all or a portion of the Remainder PILOT to a specific purpose.
- D. Phase I MOU PILOT revenues and Phase II MOU PILOT revenues shall be accounted for separately.
- E. ISU agrees that MOU PILOT revenues collected from Tenants will be used only for the following purposes:
 - Remittance to the City Not later than December 31 each year, ISU shall remit all <u>eligible</u> MOU PILOT revenues, as described below, collected in the previous fiscal year to the City, and the City may use such revenues for any lawful purpose.

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The amount of the MOU PILOT revenues <u>eligible</u> to be remitted to the City from each Phase, each year, is limited in accordance with the schedules below:

Years After the First Building Constructed in <u>Phase I</u> is Approved for Occupancy by the State Fire Marshal	Portion of Phase I MOU PILOT Revenues Collected by ISU That Year <u>Eligible</u> to be Remitted to the City		
0-19	0%		
20-24	25%		
25-29	50%		
30 and thereafter	75%		

PHASE I MOU PILOT REVENUES:

PHASE II MOU PILOT REVENUES:

Years After the First Building Constructed in <u>Phase II</u> is Approved for Occupancy by the State Fire Marshal	Portion of Phase II MOU PILOT Revenues Collected by ISU That Year <u>Eligible</u> to be Remitted to the City		
0-19	0%		
20-24	25%		
25-29	50%		
30 and thereafter	75%		

- a. Notwithstanding the foregoing, in the event ISU transfers or expends any of the Remainder PILOT revenues for a university or governmental purpose other than that which is specifically described in Paragraph VIII(A)(1)(b) of this Agreement ("Withdrawal"), then the City may, at its option, elect to collect from MOU PILOT revenues an amount equal to ISU's Withdrawal. Such amount collected by the City shall be taken from the MOU PILOT revenues collected by ISU in the same year as the Withdrawal and, if necessary, MOU PILOT revenues collected in subsequent years until the amount equal to ISU's Withdrawal is collected by the City or this Agreement is terminated, whichever occurs first.
- b. The City may, at its option, waive its right to collect any or all MOU PILOT revenues it is eligible to receive from ISU in any given year if the City chooses to further fund improvements in the CYTown Development Area.
- c. If any taxing authority determines that a portion of the CYTown Development Area, but not the CYTown Development Area in its entirety, is subject to the payment of property taxes to the City, the Parties agree that:
 1) the nontaxable portion of the CYTown Development Area will remain subject to the terms of this MOU, and 2) for the portion of the CYTown

Development Area for which property taxes have been collected and remitted by any taxing authority to the City, ISU will not be obligated to continue collecting or paying the City MOU PILOT for that portion of the CYTown Development Area so long as that portion of the CYTown Development Area remains taxable.

- Contribution to Performing Arts, Visitor, and Events Enhancements ISU agrees that any MOU PILOT revenues not remitted to the City in accordance with Paragraph VII(E)(1) above will be deposited in the CYTown Development Area Capital Improvements Fund ("Capital Improvements Fund").
 - a. Any funds in the Capital Improvements Fund are to be used exclusively for:
 - i. Enhancements to and renovations of any of the following:
 - a. C.Y. Stephens Auditorium,
 - b. Fisher Theater,
 - c. The Scheman Building,
 - d. Hilton Coliseum. Enhancements to Hilton Coliseum are limited to improvements to the building envelope (roof, windows, doors), mechanical systems, or seating; or,
 - ii. Construction of new flat space or Convention space, not including construction of a Hotel, provided that no further enhancements and renovations are planned or needed for the facilities listed in Paragraph VII(E)(2)(a)(i) above.
 - b. Enhancements and renovations to be financed by the Capital Improvements Fund are non-operational activities which include, but are not limited to, restroom renovations and expansion, replacement of carpet and interior finishes, replacement theater seating, patron amenity improvements, building system deferred maintenance, technology upgrades, skywalk connection expansion, theater production improvements, and event space construction and renovation.
 - c. However, the Capital Improvements Fund may not be used to finance:

- i. Any improvement to Hilton Coliseum other than improvements to the building envelope (roof, windows, doors), mechanical systems, or seating; or,
- ii. Decorations, sculptures, landscaping, or other ornamental fixtures within the CYTown Development Area.

VIII. ACCOUNTING FOR CYTOWN FINANCES

- A. ISU agrees to operate the finances of the CYTown Development Area as an enterprise (i.e., an isolated, business-like activity). ISU shall create and manage an Operating Fund and a Capital Improvements Fund for the CYTown Development Area.
 - 1. Revenues and expenses shall be assigned to the Operating Fund as follows:

a. Revenues:

- i. Donations and/or fundraising related to the CYTown Suites or other improvements,
- ii. Land rents or leases for commercial spaces,
- iii. Common area maintenance fees,
- iv. Hotel/convention revenues,
- v. Remainder PILOT revenues, except those Remainder PILOT revenues which, through an agreement with another property taxing authority, are either remitted to that authority or dedicated to a specific purpose, and
- vi. All other revenues, excluding MOU PILOT revenues.
- b. Expenses:
 - i. Operating expenses for CYTown,
 - ii. Common area maintenance and development expenses,
 - iii. Construction costs and/or Debt service payments for the "Proposed Facilities," infrastructure, and common areas generally described in Paragraph IV(A) of this Agreement, and
 - iv. Developer rebates.
- 2. Revenues and expenses shall be assigned to the Capital Improvements Fund as follows:

a. Revenues:

i. Those MOU PILOT revenues not remitted to the City,

- ii. A transfer of any unencumbered balance, as determined by ISU, remaining in the Operating Fund at the conclusion of each fiscal year.
- b. Expenses:
 - i. Debt service or cash for improvements or construction as described in Paragraph VII(E)(2)(b) of this Agreement.
- B. It is the intent of ISU to utilize the Capital Improvements Fund from the CYTown Development Area to finance improvements to the Existing Facilities as soon as practicable after sufficient income has been collected to do so. To achieve this goal, ISU shall contract for construction of the first improvements to C.Y. Stephens Auditorium, Fisher Theater, and the Scheman Building prior to the accumulation of any balance in the Capital Improvements Fund exceeding \$4,000,000.
- C. Not later than December 31 each year, ISU will provide the City with audited financial statements prepared in accordance with Generally Accepted Accounting Principles, which statements include itemized reports of all revenues, operating expenditures, MOU PILOT, debt service, and capital improvements related to the CYTown Development Area Capital Improvements and Operating Funds for the preceding fiscal year. The CYTown Development Area fiscal year will be July 1 through June 30.

IX. ISU RESPONSIBILITIES:

A. All facilities within the CYTown Development Area shall be under the administration, management, governance, and control of Iowa State University. By way of specification but not limitation, all rules, policies, purchases, and contracts pertaining to the construction and operation of the CYTown Development Area shall be the sole prerogative of Iowa State University, except that ISU shall, in general, charge market-based land rents, as reasonably determined by ISU, to all Tenants leasing commercial space within the CYTown Development Area, with the exception of any portion of any building used as "CYTown Suites."

X. CONSTRUCTION, UTILITIES, AND TRAFFIC

A. Responsibilities regarding construction, ownership, and operation of electric, water, sanitary sewer, storm water, and traffic infrastructure to serve the CYTown Development area, and other responsibilities for permitting and certain public services, are described in a separate agreement between the Parties ("CYTown Development Area Construction, Utilities, Traffic, and Related Services Memorandum of Understanding").

XI. NO ENTITY CREATED

A. No separate legal entity or agency is created under this Agreement.

XII. AMENDMENT

- A. This Agreement represents the entire Agreement of the parties. Except as provided in Paragraphs B-C of this Section, any amendment to this Agreement shall be in writing, approved by each party, and executed by the authorized representative of each party.
- B. If ISU, after the effective date of this Agreement, enters into or thereafter amends a similar agreement with another taxing authority, then the City may elect to substitute any of the following provisions in this Agreement with the same provision(s) of the agreement between ISU and the other taxing authority:
 - a. The duration as set forth in Paragraph XVI(A) of this Agreement,
 - b. The calculation method of the PILOT for that other taxing authority (e.g., a calculation of PILOT that is not based on the proportion of the taxing authority's adopted levy rate as compared to the consolidated levy rate as described in Section VII of this Agreement), and/or
 - c. The portion of PILOT that is eligible to be remitted to the taxing authority in a given year of the Agreement (e.g., the tables set forth in Paragraph VII(E)(1) of this Agreement.
- C. Any substitution elected in writing by the City as described in Paragraph XII(B) above shall be considered an amendment as described in this Section and shall be effective on the date notice is received by ISU.

XIII. SEVERABILITY

A. In the event any part or paragraph of this Agreement is declared void as being contrary to Iowa law, the remaining provisions of this Agreement that are valid shall continue in full force and effect.

XIV. INDEMNIFICATION

A. To the extent permitted by law, each party shall indemnify and hold harmless the other party and the other party's officers, agents and employees, against any and all claims, demands, damages, loss or liability incurred by the indemnified party, including reasonable legal fees, directly or indirectly resulting from or arising out of the negligent or wrongful acts or omissions of the indemnifying party, or its officers, agents or employees.

XV. PRIOR AGREEMENTS

A. In the event any provision of this Agreement conflicts with a provision of another Agreement between the parties existing as of the Effective Date of this Agreement, the provisions of this Agreement shall control.

XVI. TERMINATION

- A. DURATION: This MOU shall remain in effect for thirty-five (35) years from the date the first building in Phase II is approved for occupancy by the State Fire Marshal, unless the Agreement is terminated prior to that date by the mutual consent of the Parties hereto, or through the termination provisions of this Section XVI.
- B. This MOU may be terminated by ISU with 90 days' notice if the final determination of any taxing authority requires the payment of any property taxes to the City contrary to the provisions of this Agreement.
- C. Upon termination of this MOU, ISU agrees that any balance remaining in the Capital Improvements Fund shall remain subject to the provisions of Paragraphs VII(E)(2)(a-c) and Section VIII of this MOU, which describe the permitted uses of funds. The obligations described in this paragraph shall survive the termination of this MOU and ISU shall be relieved of these obligations only when the balance in the Capital Improvements Fund is exhausted.

XVII. COUNTERPARTS

A. This MOU may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. The parties acknowledge that this Agreement is subject to Ames City Council and Iowa Board of Regents approval.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed effective as of the date first above written.

CITY OF AMES, IOWA

IOWA STATE UNIVERSITY

By:

John Haila, Mayor

By:

Wendy Wintersteen, President

Attest:

Renee Hall, City Clerk

ATTACHMENT 1: CYTOWN DEVELOPMENT AREA BOUNDARIES





Excluded

Page **16** of **17**

ATTACHMENT 2: CYTOWN DEVELOPMENT AREA PHASING PLAN

