

RESOLUTION NO. 1060

RESOLUTION APPROVING A DONATION AGREEMENT BETWEEN THE CITY OF WEST BRANCH, IA AND THE HILLSHIRE BRANDS COMPANY.

WHEREAS, the Hillshire Brands Company wishes to make a contribution to the City of an approximately two-acre tract of land located near the intersection of North Downey Road and the Hoover Nature Trail; and

WHEREAS, the Animal Control Commission has been working with West Branch Girl Scouts to select a location and develop a dog park; and

WHEREAS, the Animal Control Commission and the West Branch Girl Scouts believe that the Hillshire Brands Company property located near the intersection of North Downey Road and the Hoover Nature Trail would be an appropriate location for a dog park; and

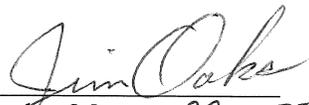
WHEREAS, the Hillshire Brands Company has prepared a donation agreement for the consideration of the West Branch City Council; and

WHEREAS, the West Branch City Attorney has reviewed and approved of said agreement; and

WHEREAS, it is now necessary to approve said agreement.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of West Branch, Iowa, that the aforementioned agreement is hereby approved. Further, the Mayor is directed to execute the agreement on behalf of the City.

Passed and approved this 17<sup>th</sup> day of December, 2012.

  
~~Don Kessler~~, Mayor PRO TEM  
JIM OAKS

ATTEST:

  
Matt Muckler, City Administrator/Clerk

## DONATION AGREEMENT

THIS DONATION AGREEMENT (this "*Agreement*") is made as of the 12<sup>th</sup> day of December, 2012, by and between the CITY OF WEST BRANCH, IOWA, a municipal corporation ("*Donee*") and THE HILLSHIRE BRANDS COMPANY, a Maryland corporation (formerly known as Sara Lee Corporation) ("*Donor*", and together with Donee, the "*Parties*").

WITNESSETH:

WHEREAS, Donor is the owner of a certain tract of real estate situated in Cedar County, Iowa and more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "*Property*");

WHEREAS, Donor wishes to make a contribution to Donee, in accordance with the terms of this Agreement, of the Property;

WHEREAS, Donee has agreed to accept the conveyance of the Property, in accordance with the terms of this Agreement; and

NOW, THEREFORE, for no consideration other than the fulfillment of the charitable intent of Donor, and the mutual promises, agreements and covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Agreement to Donate and Receive. In accordance with and subject to the terms and conditions hereof, on the Closing Date (as hereinafter defined in Section 4), Donor agrees to donate to Donee, and Donee agrees to accept from Donor, the Property. Donor shall transfer possession of the Property to Donee on the Closing Date.

2. Closing. The closing ("*Closing*") of the transactions contemplated hereby shall be December 14, 2012 (the "*Closing Date*"), subject to the terms and conditions hereof. On the Closing Date, Donor shall execute and deliver to Donee a Quit Claim Deed, transferring and conveying to Donee Donor's right, title and interest in the Property, subject to the lien of general real estate taxes for the then-current tax fiscal year, and easements, restrictions, conditions, reservations, encroachments and other matters of fact or record, which deed shall be in a recordable form satisfactory to Donor and Donee.

3. As-Is Sale. DONEE HAS BEEN AFFORDED THE OPPORTUNITY TO FULLY AND COMPLETELY EXAMINE, INSPECT, TEST AND INVESTIGATE THE PROPERTY. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT DONEE IS ACQUIRING THE PROPERTY "AS IS" AND "WHERE IS", AND WITH ANY AND ALL FAULTS AND THAT DONOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE QUALITY, PHYSICAL CONDITION, VALUE OF THE PROPERTY OR IMPROVEMENTS THEREON, OR ANY OTHER MATTER OR THING AFFECTING OR RELATED TO THE PROPERTY OR THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF HABITABILITY, WARRANTIES OF MERCHANTABILITY AND/OR OF FITNESS FOR A PARTICULAR PURPOSE), WHICH MIGHT BE PERTINENT IN CONSIDERING THE ACCEPTANCE OF THE DONATION

OF THE PROPERTY, AND DONEE DOES HEREBY EXPRESSLY ACKNOWLEDGE THAT NO SUCH REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE.

4. Governing Law; Jurisdiction and Venue. This Agreement and the rights of the Parties shall be governed by the laws of the State of Iowa.

5. Entire Agreement; Counterparts. This Agreement contains the entire agreement of the Parties with respect to the transfer of the Property, and there are no representations, covenants or other agreements except as expressly stated or referred to herein. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which shall be deemed one and the same instrument. This Agreement is not assignable.

6. Further Assurances. At any time and from time to time, the Parties agree to provide reasonable cooperation and assistance to each other and to take all reasonable steps and execute, deliver, file, record, publish, and take such other actions with respect to documents and instruments which may be reasonably necessary or desirable to effectuate or evidence the spirit and intent of this Agreement.

[SIGNATURE PAGES FOLLOW]

**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement as of the date first written above.

**DONOR**

**THE HILLSHIRE BRANDS COMPANY**

By: \_\_\_\_\_  
Name: Brian M. Hunter  
Its: Assistant Secretary

**DONEE**

**CITY OF WEST BRANCH, IOWA**

By: *Jimi Oaks*  
Name: JAM OAKS  
Title: MAYOR PRO TEM