



2020003408

DOUGLAS J. JOHNSON
RECORDER - DEKALB COUNTY, IL

RECORDED: 4/21/2020 08:48 AM
REC FEE: 75.00

STATE OF ILLINOIS)
COUNTY OF DEKALB) SS
CITY OF DEKALB)

PAGES: 33

POOR ORIGINAL OR CONTAINS COLORED INK
RECORDER NOT RESPONSIBLE
FOR REPRODUCTION

CERTIFICATION

I, **RUTH A. SCOTT**, am the duly qualified and appointed Executive Assistant of the City of DeKalb, DeKalb County, Illinois, as authorized by Local Ordinance 2019-059, and as such Executive Assistant, I maintain and am safe-keeper of the records and files of the Mayor and City Council of said City.

I do hereby certify that the attached hereto is a true and correct copy of:

ORDINANCE 2020-024

**AUTHORIZING A TAX INCREMENT FINANCING DEVELOPMENT
INCENTIVE AGREEMENT WITH GULLIE, LLC FOR THE REMODELING
OF THE PROPERTY LOCATED AT 260 E. LINCOLN HIGHWAY, DEKALB,
ILLINOIS.**

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, on the 13th day of April 2020.

WITNESS my hand and the official seal of said City this 20th day of April 2020.



RUTH A. SCOTT, Executive Assistant

Prepared by and return to:

City of DeKalb
City Manager's Office
Attention: Ruth A. Scott
200 S. Fourth Street
DeKalb, Illinois 60115

AUTHORIZING A TAX INCREMENT FINANCING DEVELOPMENT INCENTIVE AGREEMENT WITH GULLIE, LLC FOR THE REMODELING OF THE PROPERTY LOCATED AT 260 E. LINCOLN HIGHWAY, DEKALB, ILLINOIS.

WHEREAS, the City of DeKalb (the "City") is a home rule unit of local government which may exercise any power and perform any function pertaining to its government and affairs pursuant to Article VII, Section 6, of the Illinois Constitution of 1970; and

WHEREAS, the City has the authority to promote the health, safety, and welfare of the City and its residents, prevent the spread of blight and deterioration by promoting the development of certain properties through Tax Increment Financing ("TIF"), and enter into agreements with property owners, developers, and others necessary or incidental to the implementation and furtherance of the development plan pursuant to 65 ILCS 5/11-74.4, *et seq.*; and

WHEREAS, Gullie, LLC (the "Developer") is the contract purchaser of property located at the common address of 260 E. Lincoln Highway in the City and legally described on Exhibit A attached hereto and incorporated herein (the "Property"); and

WHEREAS, the Property is within the City's TIF 3 district and has been underutilized, obsolete, vacant, and declined in equalized assessed valuation for several years; and

WHEREAS, Developer intends to purchase and redevelop the Property as an El Jimador Mexican restaurant at an estimated cost of \$689,100.00 (the "Project"); and

WHEREAS, Developer has requested \$124,100.00 in TIF incentives from the City for certain TIF-eligible costs associated with the Project; and

WHEREAS, Developer represents and warrants that the Project would not be completed but for the requested TIF incentives from the City, but that Developer otherwise has sufficient financing, expertise, and skill to construct, complete, and develop the Project in accordance with this Agreement; and

WHEREAS, the City and Developer have negotiated a Development Agreement for purposes of enabling the redevelopment of the Property in the form attached hereto and incorporated herein as Exhibit B (the "Development Agreement"); and

WHEREAS, the City's corporate authorities have considered the Development Agreement and have determined that the best interests of the City's health, safety, and welfare including, but not limited to, the sustainable economic growth and development of the City and enhanced equalized assessed valuation of the Property, will be served by approving this Agreement;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of DeKalb, DeKalb County, Illinois, as follows:

SECTION 1: The foregoing recitals are true, material, adopted and incorporated into this Ordinance as Section 1 to this Ordinance.

SECTION 2: The City's corporate authorities approve the Development Agreement attached hereto and incorporated herein as Exhibit B to this Ordinance, and further authorize and direct the Mayor to execute, and the City Clerk or Executive Assistant to attest, the Development Agreement and all other documents necessary to effect the execution of the Development Agreement, and for the City Manager or his designee to the security documents attached as Group Exhibit E to the Development Agreement with the DeKalb County Clerk and Recorder.

SECTION 3: This Ordinance and each of its terms shall be the effective legislative act of a home rule municipality without regard to whether such ordinance should (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law, or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the corporate authorities of the City of DeKalb that to the extent that the terms of this Ordinance should be inconsistent with any non-preemptive state law, that this Ordinance shall supersede state law in that regard within its jurisdiction.

SECTION 4: This Ordinance shall be in full force and effect from and after its passage and approval as provided by law.

ADOPTED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a Regular meeting thereof held on the 13th day of April 2020 and approved by me as Mayor on the same day. Passed on First Reading by a 7-1 roll call vote. Aye: Morris, Finucane, Smith, McAdams, Verbic, Faivre, Mayor Smith. Nay: Perkins. Second Reading waived by a 7-1 roll call vote. Aye: Morris, Finucane, Smith, McAdams, Verbic, Faivre, Mayor Smith. Nay: Perkins.

ATTEST:


RUTH A. SCOTT, Executive Assistant


JERRY SMITH, Mayor



EXHIBIT A
(Legal Description)

THAT PART OF THE NORTHWEST QUARTER OF SECTION 1 AND THAT PART OF THE NORTHEAST QUARTER OF SECTION 2, ALL IN TOWNSHIP 39 NORTH, RANGE 4 EAST, OF THE THIRD PRINCIPAL MERIDIAN, LOCATED IN DEKALB COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 2; THENCE SOUTH 89 DEGREES 57 MINUTES 05 SECONDS WEST (BASIS OF BEARINGS - ILLINOIS STATE PLANE COORDINATES, EAST ZONE (NAD83)) ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 2 A DISTANCE OF 33.00 FEET TO A POINT LYING 33 FEET WESTERLY OF (MEASURED PERPENDICULAR TO) THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 2; THENCE NORTH 00 DEGREES 31 MINUTES 24 SECONDS EAST PARALLEL WITH AND 33 FEET WESTERLY OF (MEASURED PERPENDICULAR TO) THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 2 A DISTANCE OF 2,579.72 FEET TO A POINT LYING 50 FEET SOUTHERLY OF (MEASURED PERPENDICULAR TO) THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 2; THENCE SOUTH 89 DEGREES 46 MINUTES 03 SECONDS EAST PARALLEL WITH AND 50 FEET SOUTHERLY OF (MEASURED PERPENDICULAR TO) THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 2 AND PARALLEL WITH AND 50 FEET SOUTHERLY OF (MEASURED PERPENDICULAR TO) THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 1 A DISTANCE OF 42.52 FEET TO A BEND POINT; THENCE SOUTH 89 DEGREES 42 MINUTES 19 SECONDS EAST PARALLEL WITH AND 50 FEET SOUTHERLY OF (MEASURED PERPENDICULAR TO) THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 1 A DISTANCE OF 23.48 FEET TO A POINT LYING 33 FEET EASTERLY OF (MEASURED PERPENDICULAR TO) THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 1; THENCE SOUTH 00 DEGREES 31 MINUTES 24 SECONDS WEST PARALLEL WITH AND 33 FEET EASTERLY OF (MEASURED PERPENDICULAR TO) THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 1 A DISTANCE OF 2,579.66 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 1; THENCE NORTH 89 DEGREES 32 MINUTES 16 SECONDS WEST ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 1 A DISTANCE OF 33.00 FEET TO THE POINT OF BEGINNING, CONTAINING 3.909 ACRES, MORE OR LESS.

Exhibit B
DEVELOPMENT AGREEMENT
(260 E. Lincoln Highway)

This Development Agreement (the "Agreement") is made and entered into this 13th day of April 2020, by and between the City of DeKalb, an Illinois home rule municipal corporation (the "City") and Gullie, LLC, an Illinois limited liability company (the "Developer"), who are collectively referred to as the Parties.

RECITALS:

WHEREAS, the City has the authority to promote the health, safety, and welfare of the City and its residents, prevent the spread of blight and deterioration and inadequate public facilities by promoting the development of certain properties through Tax Increment Financing ("TIF"), and enter into agreements with property owners, developers, and others necessary or incidental to the implementation and furtherance of the development plan pursuant to 65 ILCS 5/11-74.4, *et seq.*; and

WHEREAS, Developer is the contract purchaser of property located at the common address of 260 E. Lincoln Highway in the City and legally described on Exhibit A attached hereto and incorporated herein (the "Property"); and

WHEREAS, the Property is within the City's TIF 3 district; and

WHEREAS, the Property has been underutilized, obsolete, vacant, and declined in equalized assessed valuation for several years; and

WHEREAS, Developer intends to purchase and redevelop the Property as an El Jimador Mexican restaurant including, but not limited to, remodeling the first floor restaurant area to allow for approximately 185 seats, remodeling the exterior facade, and reconfiguring the outside fencing to widen pedestrian passage on the adjacent sidewalk, in accordance with the plans attached hereto and incorporated herein as "Exhibit B" (the

"Plans") at an estimated cost of \$689,100.00, all of which is referred to herein as the "Project"; and

WHEREAS, Developer has requested \$124,100.00 in TIF incentives from the City for certain TIF-eligible costs associated with the Project; and

WHEREAS, Developer represents and warrants that the Project would not be completed but for the requested TIF incentives from the City, but that Developer otherwise has sufficient financing, expertise, and skill to construct, complete, and develop the Project in accordance with this Agreement; and

WHEREAS, the Parties stipulate that Developer does not require zoning approval from the City for the Project; and

WHEREAS, Developer acknowledges that it is not entitled to the City's approval of the TIF incentives, which constitutes valuable consideration for the Parties' promises, undertakings, and covenants provided herein; and

WHEREAS, the Parties have negotiated and voluntarily entered into this Agreement for purposes of enabling the redevelopment of the Property consistent with the Plans and this Agreement; and

WHEREAS, the Parties are legally authorized to enter into this Agreement and to perform all of their respective undertakings and covenants set forth herein; and

WHEREAS, the City's Corporate Authorities have considered this Agreement and have determined that the best interests of the City's health, safety, and welfare including, but not limited to, the sustainable economic growth and development of the City and enhanced equalized assessed valuation of the Property, will be served by this Agreement.

NOW, THEREFORE, in consideration of the promises, undertakings and covenants hereinafter set forth, and for other good and valuable consideration, the receipt

and sufficiency of which is hereby mutually acknowledged by the parties hereto, the Parties agree as follows:

1.0 Recitals: The foregoing recitals are true, correct, and hereby incorporated into this Agreement as if fully set forth in this paragraph.

2.0 Development of the Property: Developer shall commence and complete the Project with reasonable professional skill and in accordance with this Agreement within twelve (12) months of the date of the issuance of the first demolition or construction permit requested by Developer in connection with the Project. The construction and development of the Property shall conform to the Plans and comply with the City's Code and all other applicable ordinances, regulations, and laws. The City agrees to issue demolition and construction permits requested by Developer in connection with the Project. Developer shall pay all applicable fees required under the City's Code for the Project, including plan review, permit, and building inspection fees.

3.0 Maintenance of the Property: The maintenance and operation of the Property shall comply with the City's Code and all other applicable ordinances, regulations, and laws. The Property shall be managed, operated, and maintained with reasonable professional skill by appropriately trained personnel. Developer shall cooperate in good faith with the City to maintain the Property in compliance with applicable City ordinances regarding property maintenance. Developer further agrees to install, maintain, and provide access to a "Knox Box" entry system on the Property's primary building entrances for use by the City's emergency responders and to allow the City's law enforcement personnel to access any surveillance video footage operated on the Property for law enforcement purposes.

4.0 TIF Incentive:

4.1 The City shall reimburse Developer's TIF-eligible expenses from funds available to the City in the City's Special Tax Allocation Fund from the real estate tax increment collected by the City's TIF 3 District in a total amount not to exceed \$124,100.00 as follows: (1) \$62,050.00 for the reimbursement of TIF-eligible expenses upon 50% completion of the construction of Project as solely determined by the City Manager in his exercise of discretion and judgment; and, (2) \$62,050.00 for the reimbursement of TIF-eligible expenses upon the issuance of a final occupancy certificate from the City.

4.2 The Parties acknowledge that the City's liability to pay the TIF Incentive shall be expressly limited to funds available to the City in the City's Special Tax Allocation Fund from the real estate tax increment collected by the City's TIF 3 District. The City's limited obligation under this Agreement to reimburse Developer shall neither constitute an indebtedness of the City under Illinois law, nor shall it constitute or give rise to any pecuniary liability, charge, or lien against the City, any City fund, or otherwise require the City to utilize its taxing authority to fulfill the terms of this Agreement.

4.3 The Parties agree that the City shall not reimburse Developer's TIF-eligible expenses until Developer has provided the City with: (1) all records, certifications, documents, and information requested by the City to determine and approve Developer's TIF-eligible expenses substantially in the form attached hereto and incorporated herein as Exhibit C (the "Project Cost Documentation Requirements"); and (2) an executed promissory note and mortgage substantially in the forms attached hereto and incorporated herein as Group Exhibit D (the "Security Documents").

4.4 Except as otherwise provided by this Agreement, the City shall approve or disapprove Developer's written requests for reimbursement of TIF-eligible expenses within thirty (30) days of after receipt, and if approved, shall provide payment to the Developer within forty-five (45) days of said approval. Developer may submit written requests for reimbursement consisting of estimates of costs before actually incurring said expenses, subject to later confirmation by actual bills. The City's approval shall not be unreasonably withheld and, if disapproved, the City shall express in writing the basis therefore and allow Developer a reasonable time to take actions reasonably necessary to obtain said approval.

4.5 The TIF incentive provided herein is intended to be repaid as a forgivable incentive, payable through the generation of revenues (e.g., real property taxes; sales taxes) from the development of the Property after the effective date of this Agreement through the effective 20-year term of this Agreement. The Parties stipulate that, as of the effective date of this Agreement, the Property's equalized assessed valuation is \$88,960.00, the Property's real property tax irrespective of the TIF District is \$10,180.00, and the Property's sales tax, restaurant and bar tax generation for the 2019 year is \$0.00. During the term of the TIF District, 100% of the TIF increment generated from the Property after the effective date of this Agreement shall be included as a payment or credit toward the forgiveness of the TIF incentive provided herein. After the expiration of the TIF District, 100% of the real property tax generated from the Property after the effective date of this Agreement in excess of the Property's real property tax as of the effective date of this Agreement shall be included as a payment or credit toward the forgiveness of the TIF incentive provided herein. After the effective date of this Agreement, 100% of all sales tax, restaurant and bar tax generated from the Property that is actually received by the

City shall be included as a payment or credit toward the forgiveness of the TIF incentive provided herein.

4.6 If, upon the expiration of the term of this Agreement, the TIF incentive provided herein has not been completely repaid or forgiven as contemplated by the above paragraph, then the remaining balance shall be a debt due and owing to the City requiring repayment within 120 days of Owner's receipt of written notice of same from the City. The City may enforce its right of repayment by virtue of a contract action seeking damages for violation of this Agreement, initiate an action for foreclosure of the City's mortgage(s), and pursue such other legal or equitable remedies as provided by law. Notwithstanding anything foregoing to the contrary, the City understands and agrees that the Owner may have legitimate need to borrow additional funds in the future from third-party sources for necessary capital improvements or other things, and the City hereby agrees that it shall subordinate its mortgage to other commercially reasonable mortgages and/or interests that are reasonably necessary for the Project completion, operation, and maintenance.

5.0 Indemnification: Developer and its agents, employees, officers, and contractors agree to defend, indemnify, and hold harmless the City and the City's officers, employees, and agents from any and all causes of action, claims, liabilities, losses, damages, injuries, expenses, costs, penalties, fines, and reasonable attorney's fees arising out of this Agreement, the TIF incentive provided under this Agreement, the construction and development of the Project, and the maintenance of the Property. Developer's obligation under this Paragraph shall survive the expiration of this Agreement.

6.0 Miscellaneous:

6.1 The parties acknowledge and agree that the individuals who are members of the group constituting the City's corporate authorities are entering into this Agreement in their corporate capacities as members of such group and shall have no personal liability in their individual capacities.

6.2 (a) This Agreement shall be valid and binding for a term of twenty (20) years after the effective date of this Agreement, upon the City and upon Developer, together with their respective successors and assigns, and is further intended to be binding upon each successive lot owner of any lots of record created by the approval and recording of any Final Plats, and shall constitute a covenant running with the land. This Agreement shall be recorded with the DeKalb County Recorder's Office.

(b) Developer may assign this Agreement without City approval, but only in connection with its conveyance of all or any part of the Property, and upon said assignment and acceptance by an assignee, Developer shall have no further obligations hereunder as to the Property or that portion of the Property conveyed, but shall continue to be bound by this Agreement and shall retain the obligations created thereby with respect to any portion of the Property retained and not conveyed. If Developer or its successors sell a portion of the Property, the seller shall be deemed to have assigned to the purchaser any and all rights and obligations it may have under this Agreement (excluding rights of recapture) which affect the portion of the Property sold or conveyed and thereafter the seller shall have no further obligations under this Agreement as it relates to the portion of the Property so conveyed, but any such seller shall retain any rights and obligations it may have under this Agreement with respect to any part of the Property retained and not conveyed by such seller. The seller shall have the right to

require the purchaser to deposit with the City a replacement Letter of Credit, in a form reasonably acceptable to the City Attorney, whereupon the City shall accept the replacement Letter of Credit in substitution of the seller's Letter of Credit.

6.3 The failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect. No action taken by any party to this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any party at law or equity.

6.4 In the event that any pertinent existing or future regulations, resolutions or ordinances of the City are inconsistent with or conflict with the terms or provisions of this Agreement, the terms or provisions of this Agreement shall supersede the regulations, resolutions or ordinances in question to the extent of such inconsistency or conflict

6.5 (a) Upon a breach of this Agreement, any of the parties may secure the specific performance of the covenants and agreements herein contained or may exercise any remedies available at law via an appropriate action, the sole venue for which shall be in the Circuit Court of DeKalb County, Illinois. The prevailing party to any such action shall be entitled to recover its costs and reasonable attorneys' fees from the non-prevailing party, as determined by the Court.

(b) In the event of a material breach of this Agreement, the parties agree that the party alleged to be in breach shall have thirty (30) days after written notice of said

breach to correct the same prior to the non-breaching party seeking a judicial remedy as provided for herein; provided, however, that said thirty (30) day period shall be extended if the defaulting party has commenced to cure said default and is diligently proceeding to cure the same.

(c) If the performance of any covenant to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (including, without limitation, acts of God, war, strikes, inclement weather conditions, inability to secure governmental permits, or similar acts, but specifically excluding epidemics, pandemics, and public health emergencies such as COVID-19), the time for such performance shall be extended by the length of such delay; however, the party that seeks the benefit of this provision shall give the other(s) written notice of both its intent to rely upon this provision and the specific reason which permits the party to avail itself of the benefit of this provision.

6.6 This Agreement sets forth all agreements, understandings, and covenants between and among the parties. This Agreement supersedes all prior agreements, negotiations and understandings, written and oral, and is a full integration of the entire Agreement of the parties. Any amendment to this Agreement shall be in writing duly approved by the Parties.

6.7 This Agreement is not intended to and shall not be construed as creating an agency, joint venture, or partnership relationship between the Parties or giving any third-party any interests or rights with respect to this Agreement.

6.8 If any provision, clause, word, or designation of this Agreement is held to be invalid by any court of competent jurisdiction, such provision, clause, word or designation shall be deemed to be excised from this Agreement and the invalidity thereof

shall not affect any other provision, clause, word, or designation contained herein. Furthermore, if any provision of this Agreement is held invalid, the invalidity thereof shall not cause the City to change any zoning classification which has been approved by the City pursuant to the provisions of the City's ordinances and the valid provisions of this Agreement, and such zoning classifications shall not otherwise be changed during the term of this Agreement without Owner's approval.

6.9 The City agrees to aid Owner and to cooperate reasonably with Owner in dealing with any and all applicable governmental bodies and agencies in obtaining utility and other governmental services for the Property. Furthermore, it is understood and agreed by the parties hereto that the successful consummation of this Agreement requires their continued cooperation. The Owners shall not seek to disconnect any portion of the Property from the City during the term of this Agreement.

6.10 This Agreement may be executed in multiple counterparts, all of which when taken together shall constitute one Agreement.

6.11 The headings of the Sections of this Agreement are for convenience and reference only and do not form a part hereof and do not modify, interpret or construe the understandings of the parties hereto.

6.12 This Agreement may be reproduced by means of carbons, xerox process, or otherwise. Each such reproduction, if manually executed by the parties, shall for all purposes be deemed, and the same is hereby declared, to be a duplicate original of this Agreement.

6.13 Terms used in this Agreement shall be read in the singular or the plural as may be appropriate to the context in which they are used.

6.14 Notices, including Notices to effect a change as to the persons hereinafter designated to receive Notice(s), or other writings which any party is required to or may wish to serve upon any other party in connection with this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the City, or the Corporate Authorities:

City of DeKalb
Attention: City Manager
200 S. Fourth St.
DeKalb, Illinois 60115

with a copy to the City Attorney:

John F. Donahue
Donahue & Rose, PC
9501 W. Devon Ave., Suite 702
Rosemont, IL 60018

If to the Developer:

Gullie, LLC
1830 Margaret Ln.
DeKalb, IL 60115

with a copy to the Developer's Attorney:

Mark P. Doherty
Doherty Law Firm, LLC
125 N. 1st St.
DeKalb, IL 60115

6.15 The parties each intend that this Agreement shall require the parties to act in accordance with any and all applicable laws and regulations enacted by any other governmental authority which are applicable to any action or activity undertaken by either party pursuant to, under, or in furtherance of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers duly authorized to execute the same, the day and year first above written.

[This space is intentionally omitted]

ATTEST:

By:


Ruth Scott, Executive Assistant

CITY OF DEKALB

By:


Jerry Smith, City Mayor

ATTEST:

By:



Ruth A. Scott

Title:

Executive
Assistant
- City of
DeKalb

GULLIE, LLC

By:


Tom Weaver

Its:

Co-owner
Co-owner

EXHIBIT A

(Legal Description of the Property)

County
LOT 51 OF BLOCK 11 ~~COUNTY~~ CLERK'S SUBDIVISION OF BLOCKS 11, 12, 14 AND 15 OF THE ORIGINAL GE (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN THE RECORDER'S OFFICE OF DEKALB COUNTY, ILLINOIS IN BOOK "C" OF PLATS, PAGE 42, SITUATED IN DEKALB COUNTY, ILLINOIS.

Common Address: 260 E. Lincoln Highway, DeKalb, IL 60115
PIN: 08-23-163-011

EXHIBIT B
(Plans)

1. First Floor Plan by John McLane dated 12-11-03.
2. Drawings of exterior façade, 3 pages, submitted by Developer's letter dated 2-24-20

The Doherty Law Firm, LLC
Attorneys at Law

Mark P. Doherty
Attorney at Law

E-mail: info@dohertylawfirm.com
E-fax: 815.756.2839
Online: dohertylawfirm.com

Legal Assistants:
Kara K. Near
Theresa M. Aubele

Rolf A. Anderson
Of counsel

DuPage County:
1467 Aurora Way
Wheaton, Illinois 60189
630.377.9750

Kane County:
801 East Main Street
Saint Charles, Illinois 60174
630.377.9750

DeKalb County:
125 North First Street
DeKalb, Illinois 60115
815.787.6666

February 24, 2020

Via email only to bill.nicklas@CITYOFDEKALB.com

Bill Nicklas
City Manager
City of DeKalb
200 S. Fourth Street
DeKalb, Illinois 60115

RE: Tom Weaver and Ryan Gifford (Gullie, LLC)
Purchase and renovation of 260 E. Lincoln Hwy., DeKalb, Illinois 60115

Dear Mr. Nicklas,

Thank you for your time at our recent meeting. As we discussed, my clients, Tom Weaver and Ryan Gifford, are under contract to purchase the above property. They have created the business entity Gullie, LLC (of which Tom and Ryan are the only two Members) to complete the purchase. Tom and Ryan are longtime area residents and businessmen, with strong ties to the community and a palpable excitement and dedication to pursue this purchase and renovation. They share the City's appreciation of the longstanding tradition of successful businesses at this wonderful downtown location and the benefits to the City and the community at large to invest in and revitalize this area. I have enjoyed meeting with Tom and Ryan as they have exhibited their passion for the revitalization ongoing in the City and their desire to be positive contributors to this strong economic movement. Their plan is to open a Mexican restaurant on the first level with access to the adjacent patio area and to host private events on the second level. My clients' intent is to be open and ready for business by May 2020.

My clients are seeking TIF eligible funds from the City of DeKalb to facilitate their acquisition and renovation of the subject property. The contract purchase price is \$560,000 and, as provided in the construction Estimate provided to you along with the design renderings at our meeting, the renovation construction costs are \$124,100 for a total of \$684,100. My clients hereby request TIF funds of forty percent (40%) of said costs for a total of \$273,640.

We respectfully request to be included on the meeting agenda of the City Council at the earliest opportunity. If you or the Council have any questions or concerns or seek further information, please let me know. We thank you and the Council in advance for your time and consideration.

Sincerely,


Mark P. Doherty

cc: Tom Weaver and Ryan Gifford (via email only)







WEAVER CONSTRUCTION INC.

No. **20-1201**

228 W. Page St. - Sycamore, IL 60178

T: 815-899-1515 F: 815-899-7852 Tom 815-739-5206 Todd 630-816-8735

Todd@WeaverConstructionInc.com

ESTIMATE

Date: **1/9/2020**

CUSTOMER:

EL JIMADOR MEXICAN GRILL

Attn:

Email:

Ph#

Fax#

EL JIMADOR MEXICAN GRILL

260 E. Lincoln Hwy

We sincerely appreciate the opportunity to serve your needs.

Project Manager:

Job Title:

Payment Terms:

TOM WEAVER

BUILD-OUT

**Upon receipt of invoice; add 1.5% 20-days
after invoice-date.**

Scope of work to include:

Architect : **\$8,000.00**

Building Façade:

- | | |
|--|--------------------|
| • New Awnings. | \$21,100.00 |
| • Exterior Paint. | \$4,400.00 |
| • Stucco Plaster, Tile, and Masonry Lower Portion. | \$12,300.00 |
| • Changes To Existing Signs w/ New Name. | \$4,000.00 |
| • New Sign on Corner of Building. | \$4,300.00 |
| • Over head doors | \$6,500.00 |

Interior:

- | | |
|-------------------------------------|--------------------|
| • Demo. | \$5,800.00 |
| • Bar Millwork and Trim. | \$3,500.00 |
| • Stone Work. | \$9,500.00 |
| • Tile Floors in Bathroom and Entry | \$6,100.00 |
| • Paint. | \$5,400.00 |
| • Carpentry. | \$5,000.00 |
| • Lighting. | \$8,200.00 |
| • Floor Re-Sand and Stain. | \$16,000.00 |
| • Trim and Finishes. | \$4,000.00 |

***All labor, equipment, and material to complete work described
above provided by WCI, unless otherwise noted.***

*Note - This is an estimate only per original discussion with GC; physical or cost change arising
during construction performance will be discussed with owner and adjusted accordingly. Material
is bid at current price; any increase after above estimate-date to be added to below total.*

Quality is remembered long after price is forgotten

TOTAL this Estimate: \$124,100.00

Exhibit C: Project Cost Documentation Requirements

- *Applicants/Recipients are responsible for identifying and complying with all applicable laws, ordinances and regulations.*
- The Parties acknowledge that the funding contemplated under this Agreement is provided exclusively through either a Tax Increment Financing District or through sales tax rebates for funds generated on-site, and is provided exclusively for the purpose of funding private improvements. Accordingly, while the Developer is solely responsible for complying with the applicable provisions of the Illinois Prevailing Wage Act, pursuant to the guidance issued by the Illinois Department of Labor, the City shall not require the Developer to provide certified payroll records unless the Developer determines that such records are required under the Prevailing Wage Act. The Developer shall indemnify, defend and hold harmless the City from any claims arising out of the alleged Developer violation of the Prevailing Wage Act with respect to this Agreement or the Property.
- Final waivers of lien must be provided for all contractors, suppliers and materialmen. All payments associated with the purchase of real property or payment of contractors, subcontractors or materialmen providing services to the Property in connection with this Agreement, which are intended to be included in Project Completion Costs or which are intended to be eligible for payment through the Development Incentive must be paid through a title company acceptable to the City of DeKalb where the cost associated with such payment exceeds \$5,000.
- Final Project Costs must be documented in a tabbed binder in accordance with these regulations.
 - The first section must include a notarized affidavit from the Applicant affirming that all information provided is complete and accurate, and affirming that all work was done in accordance with these Guidelines and all applicable laws.
 - The second section must include a spreadsheet generated by the Applicant, including all project costs that are a component of the project, broken down by vendor. All amounts listed in this spreadsheet must match the corresponding contractor invoices described below.
 - If property acquisition is included in the project costs, the third section must include a copy of the closing statement and deed for the property.
 - Subsequent sections should be separately tabbed by contractor. Each contractor tab should start with a spreadsheet generated by the Applicant that includes the totals from each invoice, and should be followed by a complete set of prevailing wage records, final waivers of lien, and invoices.

- Applicants may include a Miscellaneous Expenses tab in the binder for small project expenses.
- Credit Card Statements are not adequate to evidence expenditures. All small expenditures require actual receipts showing the expenditures. The City reserves the right to require Applicants to provide written documentation explaining any expenditure.
- Building permits are eligible expenditures. Ineligible expenditures include: food, fuel, beverages, utility bills, web design, merchandise for stock or supply, membership dues, life insurance, or other personal expenses. The City reserves the right to disqualify any expense.
- Once an invoice is submitted, the invoice *cannot be withdrawn or retracted, and the scope of work described on the invoices cannot be altered*. For this reason, it is critical to ensure that these guidelines are complied with.
- The City shall also be provided with an electronic copy of all submittals, in PDF format, separated into sections as outlined above.

Group Exhibit D: Form of Promissory Note and Mortgage

(This space is intentionally omitted)

PROMISSORY NOTE
for
GULLIE, LLC

\$124,100.00
DeKalb, Illinois
April 18, 2020

After April 18, 2020, for value received, Gullie, LLC promises to pay to the order of the City of DeKalb (the "City"), \$124,100.00 (One Hundred Twenty Four Thousand One Hundred Dollars and Zero Cents) on April 18, 2040 with interest from the date of this instrument at the rate of 0% per year with interest payable from the date of this instrument and with interest computed always on the diminishing and unpaid principal balances of the debt, if any, evidenced by this instrument. All sums of principal and interest due will be payable at the City of DeKalb, 200 S. 4th St., DeKalb, Illinois 60115, or at any other place as payee or holder may specify in writing.

The indebtedness evidenced by this instrument may be prepaid in whole or in part at any time without penalty or premium for prepayment.

This note is secured by a mortgage given under the same date as this instrument; and all persons to whom this instrument may come are referred to the mortgage for its effect on this note and the application of the amounts paid pursuant to the mortgage, for the procuring of releases of property from its lien on the indebtedness evidenced by this instrument.

This note has also been made pursuant to a Development Agreement between the City and Gullie, LLC dated April 13, 2020 (the "Development Agreement") and is subject to those terms of said Development Agreement; which terms provide that the principal amount of this note may be reduced or forgiven retroactive to the date of the issuance of this note as provided in the terms of the Development Agreement. The terms of the Development Agreement are incorporated herein as if they were fully set forth as part of this Note.

Gullie, LLC agrees to pay reasonable attorney's fee, including reasonable appellate court fees, if any, if this note is placed in the hands of an attorney for collection after default.

ATTEST:

By: 

Print Name: Ruth A. Scott

Title: Executive Assistant -
City of DeKalb

GULLIE, LLC

By: 

Print Name: Tom Weaver

Its: co-owner

STATE OF ILLINOIS)
) ss.
COUNTY OF DEKALB)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Tom Weaver, personally known to me to be the same person whose name is subscribed to the foregoing Promissory Note as the Owner of Gullie, LLC, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act as the authorized agent of Gullie, LLC, for the uses and purposes therein set forth.

Given under my hand and official seal
and sworn to before me this 17th day
of April, 2020.



Notary Public



Ordinance 2020-024

Mortgage to be recorded separately.

pages 21-31



2020003409

DOUGLAS J. JOHNSON
RECORDER - DEKALB COUNTY, IL

RECORDED: 4/21/2020 08:48 AM
REC FEE: 55.00

PAGES: 12

MORTGAGE

Dated: April 13, 2020

Gullie, LLC (Mortgagor) and the City of DeKalb (Mortgagee)

Commonly known as: 260 E. Lincoln Highway, DeKalb, DeKalb County, Illinois 60115

PIN: 08-23-163-011

Prepared by and Return to:

John Donahue, City Attorney

Attention: City Manager's Office – Ruth Scott

City of DeKalb

200 S. Fourth Street

DeKalb, Illinois 60115

(Ordinance 2020-024)

12

MORTGAGE

RETURN TO:

City Clerk
City of DeKalb
200 S. Fourth Street
DeKalb IL 60115

Future Advances Mortgage
Maximum Value: \$124,100.00

THIS MORTGAGE, dated this 13th day of April 2020, by **GULLIE, LLC** ("Mortgagor"), **WITNESSETH:**

Whereas, Mortgagor has executed a Promissory Note in the principal sum of One Hundred Twenty Four Thousand One Hundred Dollars and Zero Cents (\$124,100.00) payable to the City of DeKalb ("Mortgagee"), dated the same date as this Mortgage, whereby Mortgagee is entitled to recover from Mortgagor certain expenses, costs, and advances in connection with Mortgagor's development work on the Premises as defined below and Property as defined within that certain Development Agreement executed on April 13, 2020 and recorded against the Premises as legally described in Exhibit A attached hereto and incorporated herein by reference;

THAT to secure the payment of the indebtedness evidenced by said Promissory Note, Mortgagor does by these presents GRANT and MORTGAGE unto Mortgagee, the real estate situated in the County of DeKalb, and State of Illinois, legally described as follows on Exhibit 1, which is attached hereto and incorporated herein by reference, and which is referred to herein as the "Premises";

Together with all improvements, tenements, hereditaments, easements and all types and kinds of furniture, fixtures and equipment whether now on the premises or hereafter erected, installed or placed thereon or therein, or whether physically attached thereto or not, are and shall be deemed a part of said real estate as between the parties hereto and all persons claiming by, through or under them, and a portion of the security for said indebtedness; and also all the estate, right, title and interest of Mortgagor in and to the premises; and

Further, Mortgagor does hereby pledge and assign to Mortgagee, from and after the date hereof, primarily and on a parity with said real estate and not secondarily, all the rents, issues and profits of the premises and all rents, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing, and all deposits or money as advance rent or for security, under any and all present and future leases of the premises, and does hereby transfer and assign all such leases to Mortgagee together with the right, but not the obligation, to collect, receive and receipt for all avails thereof, to apply then to said indebtedness and to demand, sue for and recover the same when due or payable.

Mortgagee by acceptance of the Mortgage agrees, as a personal covenant applicable to Mortgagor only, and not as a limitation or condition hereof and not available to any lessee or tenant, that until a default shall be made or an event shall occur, when under the terms hereof shall give to Mortgagee the right to foreclose this Mortgage, Mortgagor may collect, receive and enjoy such avails.

TO HAVE AND TO HOLD the premises unto Mortgagee, their successors, and assigns, forever, for the purposes and uses herein set forth.

NOTICE: THIS MORTGAGE SECURES TOTAL CREDIT IN THE AMOUNT OF \$124,100.00, AND IS CONSTRUED IN CONNECTION WITH THE OBLIGATIONS OF MORTGAGOR AS OWNER UNDER THAT CERTAIN DEVELOPMENT AGREEMENT ("DEVELOPMENT AGREEMENT") RECORDED AGAINST THE PREMISES PRIOR TO THE DATE OF THIS MORTGAGE. LOANS, PAYMENTS, CREDITS AND ADVANCES UP TO THIS AMOUNT, TOGETHER WITH ANY OTHER AMOUNTS OR OTHER OBLIGATIONS OF MORTGAGOR/OWNER UNDER THIS MORTGAGE OR THE REDEVELOPMENT AGREEMENT ARE SENIOR TO INDEBTEDNESS TO OTHER CREDITORS UNDER SUBSEQUENTLY RECORDED OR FILED MORTGAGES AND LIENS, UNLESS AND UPON THE CITY'S SUBORDINATION OF THIS MORTGAGE LIEN AS PROVIDED IN THE REDEVELOPMENT AGREEMENT. THIS MORTGAGE HAS BEEN PROVIDED TO SECURE THE REPAYMENT OF OBLIGATIONS OF THE REDEVELOPMENT AGREEMENT, INCLUDING BUT NOT LIMITED TO, REPAYMENT OF A DEVELOPMENT INCENTIVE.

Maximum Obligation Limit: The total amount of secured debt secured by this Mortgage at any one time shall not exceed the amount stated above. This limitation does not include loan charges, commitment fees, attorney's fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Mortgagee's security and to perform any of the covenants contained in this Mortgage or the Development Agreement. Future advances are contemplated and, along with other future obligations, are secured by this mortgage even though all or part may not yet be advanced. Nothing contained in this Mortgage shall constitute an irrevocable commitment to make additional or future loans or advances in any amount, and no commitment to future advances, whether contained herein or in the Development Agreement, shall create any right of or liability to any third party not identified expressly herein.

The debt secured by this Mortgage includes, but is not limited to:

- A) The promissory note, guaranty, obligations of Mortgagor under the Development Agreement and all extensions, renewals, modifications or substitutions thereof to Gullie, LLC, with a note amount of \$129,100.00 (collectively, the "Evidence of Debt").
- B) All future advances from Mortgagee to Mortgagor or other future obligations of Mortgagor to Mortgagee under any promissory note, development

agreement, contract, guaranty or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the Evidence of Debt and whether or not such future advances or obligations are incurred for any purpose that was related or unrelated to the purpose of this Mortgage or the Evidence of Debt.

- C) All obligations Mortgagor owes to Mortgagee, which now exist or may later arise, to the extent not prohibited by law, including but not limited to any obligation under the Development Agreement such as obligations to defend and indemnify and obligations relating to the Owner Escrow as defined therein.
- D) Any additional sums advanced and expenses incurred by Mortgagee for insuring, preserving or otherwise protecting the Premises and Property and its value and any other sums advanced or expenses incurred by the Mortgagee under the terms of this Mortgage, plus interest (where applicable), as provided in the Evidence of Debt and Redevelopment Agreement.
- E) Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Mortgagee and any Mortgage securing, guarantying or otherwise relating to a debt.

Mortgagor covenants and agrees:

1. To pay or cause to be paid, when due, all sums secured hereby as further defined and governed by the Development Agreement.
2. Not to abandon the premises; to keep the premises in good condition and repair and not to commit or suffer waste; to pay for and complete within a reasonable time any building at any time in the process of erection upon the premises; to promptly repair, restore or rebuild any building or improvement now or hereafter on the premises which may become damaged or destroyed; to refrain from impairing or diminishing the value of the security; to make no material alterations of the premises.
3. To comply with all requirements of law or local government ordinances governing the premises and the use thereof; and to permit Mortgagee, or their agents, to inspect the premises at all reasonable times.
4. To keep the premises free from mechanics, or other liens or claims for liens of any kind; to pay or cause to be paid, when due, any indebtedness which

may be secured by a lien or charge on the premises; and, upon receipt, to exhibit to Mortgagee satisfactory evidence of the payment and discharge of such liens or claims.

5. To pay, or cause to be paid, before any penalty attaches, all general taxes and to pay, or cause to be paid, when due, all special taxes, special assessments, water charges, drainage charges, sewer service charges and other charges against the premises, of any kind whatsoever, which may be levied, assessed, charged or imposed on the premises, or any part thereof.
6. To promptly pay all taxes and assessments assessed or levied under and by virtue of any state, federal or local law or regulation hereafter passed, against Mortgagee upon this Mortgage or the debt hereby secured, or upon their interest under this Mortgage.
7. To exhibit to Mortgagee, annually upon request, official receipts showing full payment of all taxes, assessments and charges which Mortgagor is required, or shall elect, to pay or cause to be paid hereunder.
8. To keep the premises continuously insured, until the indebtedness secured hereby is fully paid against loss or damage under such types of hazard and liability insurance and in such forms, amounts and companies as may be reasonably approved or required from time to time by Mortgagee (in the absence of any specified requirements, such insurance shall be under policies providing for payment by the insurance companies of moneys sufficient either to pay the full cost of replacing or repairing the premises or to pay in full the indebtedness secured hereby); all policies whether or not required by the terms of this Mortgage, shall contain loss payable clauses in favor of Mortgagee (or, in case of foreclosure sale, in favor of the owner of the certificate of sale); in the event of loss, Mortgagor shall immediately notify Mortgagee in writing and Mortgagor hereby authorizes and directs each and every insurance company concerned to make payments for such loss directly and solely to Mortgagee (who may, but need not, make proof of loss) and Mortgagee is hereby authorized to adjust, collect and compromise, in their discretion, all claims under all policies, and Mortgagor shall sign, upon demand by Mortgagee, all receipts, vouchers and releases required by the insurance companies and the insurance proceeds, or any part thereof, may be applied by Mortgagee, at their option, either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged, and any application thereof to the indebtedness shall not relieve Mortgagors from making the payments herein required until the indebtedness is paid in full. Mortgagee may, from time to time, at their option, waive and, after any such waiver, reinstate any or all provisions hereof requiring deposit of insurance policies, by notice to Mortgagor in writing.

9. (a) Upon Mortgagee's written request, to deliver to Mortgagee, all policies of insurance with evidence of premiums prepaid (renewal policies to be delivered not less than ten (10) days prior to the respective dates of expiration), and all abstracts of title, title guarantee policies, and other evidence of title to the premises, all of which shall be held by Mortgagee without liability, and in the event of foreclosure of this Mortgage or transfer of title to the premises in extinguishment of said indebtedness, shall become the absolute property of Mortgagee.

(b) IF ALL OR ANY PART OF THE PREMISES OR AN INTEREST THEREIN IS SOLD OR TRANSFERRED BY MORTGAGOR WITHOUT MORTGAGEE'S PRIOR WRITTEN CONSENT, MORTGAGEE MAY, AT MORTGAGEE'S OPTION, DECLARE ALL THE SUMS SECURED BY THIS MORTGAGE TO BE IMMEDIATELY DUE AND PAYABLE. MORTGAGEE SHALL HAVE WAIVED SUCH OPTION TO ACCELERATE IF, PRIOR TO THE SALE OF TRANSFER, MORTGAGEE AND THE PERSON TO WHOM THE PREMISES IS TO BE SOLD OR TRANSFERRED REACH AGREEMENT IN WRITING THAT THE CREDIT OF SUCH PERSON IS SATISFACTORY TO MORTGAGEE AND THAT THE INTEREST PAYABLE ON THE SUMS SECURED BY THIS MORTGAGE SHALL BE AT SUCH RATE AS MORTGAGEE SHALL REQUEST. IF MORTGAGEE HAS WAIVED THE OPTION TO ACCELERATE.

IF MORTGAGEE EXERCISES SUCH OPTION TO ACCELERATE, MORTGAGEE SHALL MAIL MORTGAGOR NOTICE OF ACCELERATION. SUCH NOTICE SHALL PROVIDE A PERIOD OF NOT LESS THAN THIRTY (30) DAYS FROM THE DATE THE NOTICE IS MAILED WITHIN WHICH MORTGAGOR MAY PAY THE SUMS DECLARED DUE. IF MORTGAGOR FAILS TO PAY SUCH SUMS PRIOR TO THE EXPIRATION OF SUCH PERIOD, MORTGAGEE MAY, WITHOUT FURTHER NOTICE OR DEMAND ON MORTGAGOR, INVOKE ANY REMEDIES PERMITTED BY THIS MORTGAGE.

THE REQUIREMENT OF MORTGAGEE'S CONSENT PRIOR TO ANY TRANSFER SHALL INCLUDE ALL LEGAL INTEREST OF MORTGAGOR IN THE PREMISES. SAID REQUIREMENT EXTENDS TO CONTRACTS FOR DEED, TRANSFERS TO LAND TRUSTS OR OTHER TRUSTS (EVEN THOUGH MORTGAGOR OR ANY OF THEM ARE BENEFICIARIES THEREIN), AND ASSIGNMENTS OF BENEFICIAL INTERESTS IN LAND TRUSTS AND OTHER TRUSTS.

10. In the event of default in performance of any Mortgagor's covenants or agreements herein contained, Mortgagee may, but need not, make any payment or perform any act hereinbefore required of Mortgagor, in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit title or claim thereof, or redeem from any tax sale or forfeiture affecting the premises or contest any tax or assessment. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorney's fees, and any other monies advanced by Mortgagee to protect the premises and the lien hereof shall be so much additional indebtedness secured hereby and shall be come immediately due and payable without notice. Mortgagee, making any payment hereby authorized relating to taxes or assessments, shall be the sole judge of the legality and validity thereof and of the amount necessary to be paid in satisfaction thereof.
11. If (a) default be made in payment, when due, of any sum secured hereby, or in any of the other covenants or agreements herein contained to be performed by Mortgagor herein or in the Agreement, or (b) if any proceedings be instituted or process issued (i) to enforce any other lien, charge or encumbrance against the premises, or (ii) to condemn the premises or any part thereof for public use, or (iii) against Mortgagor or any beneficiary thereof under any bankruptcy or insolvency laws, or (iv) to place the premises or any part thereof in the custody of any court through their receiver or other officer, and such proceedings are not dismissed or stayed on appeal or such process withdrawn within Ten (10) days after written notice to Mortgagor; or (c) if Mortgagor makes any assignment for the benefit of creditors, or are declared bankrupt, or if by or with the consent or at the instance of proceedings to extend the time of payment of the Note or to change the terms of this Mortgage be instituted under any bankruptcy or insolvency law; then:
- (a) All sums secured hereby shall, at the option of Mortgagee, become immediately due and payable without notice, with interest thereon, from the date of the first of any such defaults, at the penalty rate; and
 - (b) Mortgagee may immediately foreclose this Mortgage. The Court in which any proceedings is pending for that purpose may, at once or any time thereafter, either before or after sale, without notice to Mortgagor, and without requiring bond, and without regard to the solvency or insolvency of any person liable for payment of the indebtedness secured hereby, and without regard to the then value of the premises, or whether the same shall be occupied as a Homestead, appoint a receiver (the provisions for the appointment of a receiver and assignment of rents being an express condition

upon which the loan hereby secured is made), for the benefit of Mortgagee or place Mortgagee in possession under the terms of the applicable statute of the State of Illinois, with power to collect the rents, issues and profits of the premises, due and to become due, during such foreclosure suit and the full statutory period of redemption notwithstanding any redemption. The receiver or Mortgagee in possession, out of such rents, issues and profits when collected, may pay costs incurred in the management and operation of the premises, prior and coordinate liens, if any, and taxes, assessments, water and other utilities and insurance, then due or thereafter accruing, and may make and pay for any necessary repairs to the premises, and may pay all or any part of the indebtedness secured hereby or any deficiency decree; and

- (c) Mortgagee shall, at its option, have the right, acting through itself, its agents or attorneys, with process of law, to enter upon and take possession of the premises and property, expel and remove any persons, goods or chattels, occupying or upon the same, and to collect or receive all the rents, issues and profits thereof, and to manage and control the same, and to lease the same or any part thereof from time to time, and after deducting all reasonable attorney's fees and all operation of the premises, apply the remaining net income upon the indebtedness secured hereby, or upon any deficiency decree entered by virtue of any sale held pursuant to a decree of foreclosure.

- 12. In any foreclosure of this Mortgage, there shall be allowed and included in the decree for sale, in the event Mortgagor successfully obtains a judgment of foreclosure, to be paid out of the rents or proceeds of such sale, or by the Mortgagee, as the case may be, and only payable to the prevailing party in any such foreclosure action:

- (a) All principal and interest remaining unpaid and secured hereby;
- (b) All other items advanced or paid by Mortgagee pursuant to this Mortgage with interest at the penalty rate from the date of advancement;
- (c) All court costs and fees, reasonable attorneys' fees, appraiser's fees, expenditures for documentary and expert evidence, stenographer's charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title searches and examinations, title guarantee policies, and similar data with respect to title, as Mortgagee may deem necessary, as determined and/or approved by the Court and, to the contrary, Mortgagee shall pay to Mortgagor said costs as same

may be determined and/or approved by the Court. All expenditures and expenses of the type mentioned in this subparagraph I shall become so much additional indebtedness secured hereby and immediately due and payable, with interest at the same rate as shall accrue on the principal balance when paid or incurred by Mortgagee, in connection with (i) any proceedings, including probate and bankruptcy proceedings to which Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured; or (ii) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (iii) preparations for the defense of security hereof, whether or not actually commenced. The proceeds of any foreclosure sale shall be distributed and applied to the items described in subparagraph (a), (b) and (c) in order of priority inversely to the manner in which said subparagraphs are above listed and any surplus of the proceeds of such sale be paid to Mortgagor.

13. No remedy or right of mortgagee shall be exclusive of, but shall be in addition to, every other remedy or right now or hereafter existing at law or in equity. No delay in exercising, or omission to exercise, any remedy or right accruing on default shall impair any such remedy or right, or shall be construed to be a waiver of any such default, or acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee.
14. Without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for payment of any indebtedness secured hereby or for performance of any obligation contained herein, and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after the maturity of said note, and without notice or consent:
 - (a) Release any person liable for payment of all or any part of the indebtedness or for performance of any obligation.
 - (b) Make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof.
 - (c) Exercise or refrain from exercising or waive any right Mortgagee may have.

- (d) Accept additional security of any kind.
- (e) Release or otherwise deal with any property, real or personal, securing the indebtedness, including all or any part of the property mortgaged hereby.
15. Upon full payment of all sums secured hereby at the time and in the manner provided, then this conveyance shall be null and void and within thirty (30) days after written demand therefor a re-conveyance or release of the premises shall be made by Mortgagee to Mortgagor.
16. All provisions hereof shall inure to and bind the respective heirs, executors, administrators, successors, vendees and assigns of the parties hereto, and the word "Mortgagor" shall include all persons claiming under or through Mortgagor and all persons liable for the payment of the indebtedness or any part hereof, whether or not such persons shall have executed the Note or this Mortgage. Whenever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders.
17. That this Mortgage cannot be changed except by an agreement in writing, signed by the party against whom enforcement of the change is sought.
18. This lien may be subordinated with the written consent of the City Manager and this lien remains subject to the provisions of a certain Development Agreement between the City and Gullie, LLC dated April 13, 2020 (the "Development Agreement") and is subject to those terms of said Development Agreement, which terms provide for such subordination, and the terms of the Development Agreement are incorporated herein as if they were fully set forth as part of this Mortgage.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage the day and year first above written.

ATTEST:

By: 

Print Name: Ruth A. Scott

Title: Executive Assistant
- City of DeKalb

GULLIE, LLC

By: 


Print Name: Tom Weaver

Its: Co-Owner

STATE OF ILLINOIS)
) ss
COUNTY OF DEKALB)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Tom Weaver, personally known to me to be the same person whose name is subscribed to the foregoing instrument as an owner of Gullie, LLC, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act as the authorized agent of Gullie, LLC, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 17th day of April, 2020.



Notary Public

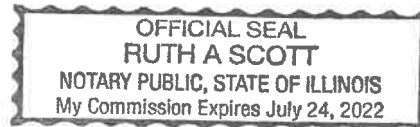


Exhibit 1 to Mortgage
(Legal Description of the Property)

County
LOT 51 OF BLOCK 11 ~~COUNTY~~ CLERK'S SUBDIVISION OF BLOCKS 11, 12, 14 AND I
5 OF THE ORIGINAL GE (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT
THEREOF RECORDED IN THE RECORDER'S OFFICE OF DEKALB COUNTY,
ILLINOIS IN BOOK "C" OF PLATS, PAGE 42, SITUATED IN DEKALB COUNTY,
ILUNOIS.

Common Address: 260 E. Lincoln Highway, DeKalb, IL 60115
PIN: 08-23-163-011



2020004162

DOUGLAS J. JOHNSON
RECORDER - DEKALB COUNTY, IL

RECORDED: 5/12/2020 09:55 AM
REC FEE: 56.00 RHSPS FEE: 9.00

PAGES: 18

ord 2020-024

-----[Space Above This Line For Recording Data]-----

5252-2000040

SUBORDINATION AGREEMENT
(Affordable)

This SUBORDINATION AGREEMENT (this "**Agreement**") dated as of May 8th 2020, is executed by and among (i) **FIRST NATIONAL BANK OF OMAHA** ("**Senior Lender**"), (ii) **CITY OF DEKALB**, an Illinois municipal corporation ("**Subordinate Lender**"), and (iii) **GULLIE, LLC**, an Illinois limited liability company ("**Borrower**").

RECITALS:

A. Pursuant to that certain loan agreement dated as of the date hereof, executed by and between Borrower and Senior Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Senior Loan Agreement**"), Senior Lender has agreed to make a loan to Borrower in the original principal amount of \$420,000 (the "**Senior Loan**"), as evidenced by that certain Note dated as of the date hereof, executed by Borrower and made payable to the order of Senior Lender in the amount of the Senior Loan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Senior Note**").

B. In addition to the Senior Loan Agreement, the Senior Loan and the Senior Note are also secured by a certain Mortgage, Assignment of Leases and Rents, and Security Agreement dated as of the date hereof (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Senior Security Instrument**"), encumbering the property described in the Senior Security Instrument as the "**Mortgaged Property**", and more particularly described in Exhibit A.

C. Borrower has requested Senior Lender to permit that certain subordinate loan in the amount of \$124,100.00 (the "**Subordinate Loan**") from Subordinate Lender to Borrower and to allow the Subordinate Loan to be secured by a mortgage lien against the Mortgaged Property.

D. Senior Lender has agreed to permit the Subordinate Loan and to allow the subordinate mortgage lien against the Mortgaged Property subject to all of the conditions contained in this Agreement.

AGREEMENTS:

NOW, THEREFORE, in order to induce Senior Lender to permit the Subordinate Loan to Borrower and to allow a subordinate mortgage lien against the Mortgaged Property, and in consideration thereof, Senior Lender, Subordinate Lender and Borrower agree as follows:

1. Recitals.

The recitals set forth above are incorporated herein by reference.

2. Definitions.

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

"Affiliate" means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual Controlled by, under common Control with, or which Controls such Person, and in all cases any other Person that holds fifty percent (50%) or more of the ownership interests in such Person.

"Borrower" means the Person named as such in the first paragraph on page 1 of this Agreement, any successor or assign of Borrower, including without limitation, a receiver, trustee or debtor-in-possession and any other Person (other than Senior Lender) who acquires title to the Mortgaged Property after the date of this Agreement.

"Business Day" means any day other than (a) a Saturday, (b) a Sunday, (c) a day on which Senior Lender is not open for business, or (d) a day on which the Federal Reserve Bank of New York is not open for business.

"Condemnation Action" means any action or proceeding, however characterized or named, relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect.

"Control" (including with correlative meanings, the terms "Controlling," "Controlled by" and "under common Control with"), as applied to any entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or operations of such entity, whether through the ownership of voting securities, ownership interests or by contract or otherwise.

"Default Notice" means: (a) a copy of any written notice from Senior Lender to Borrower and Subordinate Lender stating that a Senior Loan Default has occurred under the Senior Loan Documents; or (b) a copy of the written notice from Subordinate Lender to Borrower and Senior Lender stating that a Subordinate Loan Default has occurred under the Subordinate Loan Documents. Each Default Notice shall specify the default upon which such Default Notice is based.

"Person" means an individual, an estate, a trust, a corporation, a partnership, a limited liability company or any other organization or entity (whether governmental or private).

“Senior Lender” means the Person named as such in the first paragraph on Page 1 of this Agreement, its successors and assigns and any other Person who becomes the legal holder of the Senior Loan after the date of this Agreement.

“Senior Loan Default” means the occurrence of an “Event of Default” as that term is defined in the Senior Loan Documents.

“Senior Loan Documents” means the Senior Security Instrument, the Senior Note, the Senior Loan Agreement, and all other “Loan Documents” as that term is defined in the Senior Loan Agreement.

“Subordinate Lender” means the Person named as such in the first paragraph on page 1 of this Agreement, any successor or assign of Subordinate Lender, including without limitation, a receiver, trustee or debtor-in-possession and any other Person who becomes the legal holder of the Subordinate Note after the date of this Agreement.

“Subordinate Loan Default” means a default by Borrower in performing or observing any of the terms, covenants or conditions in the Subordinate Loan Documents to be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Loan Documents for curing the default.

“Subordinate Loan Documents” means the Subordinate Note, the Subordinate Mortgage, the Decolopment Agreement by and between Borrower and Subordinate Lender dated as of April 13, 2020, and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loan.

“Subordinate Mortgage” means the Future Advances Mortgage by Borrower for the benefit of Subordinate Lender dated as of April 13, 2020 encumbering the Mortgaged Property as security for the Subordinate Loan and recorded on April 21, 2020 as Document No. 2020003409 among the recorder’s office for the County of DeKalb, Illinois.

“Subordinate Note” means the Promissory Note dated on or about April 13, 2020 issued by Borrower to Subordinate Lender, or order, to evidence the Subordinate Loan.

3. Permission to Place Mortgage Lien Against Mortgaged Property.

Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Mortgaged Property contained in the Senior Loan Documents and subject to the provisions of this Agreement, to permit Subordinate Lender to record the Subordinate Mortgage and other recordable Subordinate Loan Documents against the Mortgaged Property to secure Borrower’s obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of Borrower to Subordinate Lender under and in connection with the Subordinate Loan.

4. Borrower’s and Subordinate Lender’s Representations and Warranties.

Borrower and Subordinate Lender each makes the following representations and warranties to Senior Lender:

(a) Subordinate Loan Documents.

The Subordinate Loan is evidenced by the Subordinate Note and is secured by the Subordinate Mortgage, and the Subordinate Loan Documents.

(b) Subordinate Note.

The Subordinate Note shall be deemed to contain the following provision:

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by a Note (and any schedules) dated as of the date of the Subordination Agreement (defined below) in the original principal amount of \$420,000, executed by Gullie, LLC, an Illinois limited liability company, and payable to the order of First National Bank of Omaha (“**Senior Lender**”), to the extent and in the manner provided in that certain Subordination Agreement dated as of _____, 2020 herewith between the payee of this Note, and Senior Lender and the City of DeKalb, an Illinois municipal corporation (the “**Subordination Agreement**”). The Future Advance Mortgage (and any exhibits and amendments) securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Mortgage, Assignment of Leases and Rents, and Security Agreement (and any exhibits) securing the Note and the terms, covenants and conditions of the Loan and Security Agreement evidencing the terms of the Note, as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the Future Advance Mortgage (and any exhibits and amendments) securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder’s acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by Subordinate Lender under the Subordination Agreement.

(c) Relationship of Borrower to Subordinate Lender and Senior Lender.

Subordinate Lender is not an Affiliate of Borrower and is not in possession of any facts which would lead it to believe that Senior Lender is an Affiliate of Borrower.

(d) Term.

The term of the Subordinate Note does not end before the stated term of the Senior Note.

(e) Subordinate Loan Documents.

The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, Senior Lender prior to the date of this Agreement.

5. Reserved.

6. Terms of Subordination.

(a) Agreement to Subordinate.

Senior Lender and Subordinate Lender agree that (1) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement, to the prior payment in full of the Indebtedness evidenced by the Senior Loan Documents, and (2) the liens, terms, covenants and conditions of the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Security Instrument and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Security Instrument and the other Senior Loan Documents (including but not limited to, all sums advanced for the purposes of (A) protecting or further securing the lien of the Senior Security Instrument, curing defaults by Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Loan Documents, or (B) constructing, renovating, repairing, furnishing, fixturing or equipping the Mortgaged Property).

(b) Subordination of Subrogation Rights.

Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this subsection) would be senior to the lien of the Senior Security Instrument, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Security Instrument.

(c) Payments Before Senior Loan Default.

Until Subordinate Lender receives a Default Notice (or otherwise acquires actual knowledge) of a Senior Loan Default, Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents.

(d) Payments After Senior Loan Default.

Borrower agrees that, after it receives a Default Notice (or otherwise acquires knowledge) of a Senior Loan Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any other sums secured by the Subordinate Loan Documents) without Senior Lender's prior written consent, except to the extent necessary to maintain the Mortgaged Property paid current with respect to any taxes levied or assessed against the Mortgaged Property. Subordinate Lender agrees that, after it receives a Default Notice from Senior Lender with written instructions directing Subordinate Lender not to accept payments from Borrower on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any other sums secured by the

Subordinate Loan Documents) without Senior Lender's prior written consent, except to the extent necessary to maintain the Mortgaged Property paid current with respect to any taxes levied or assessed against the Mortgaged Property. If Subordinate Lender receives written notice from Senior Lender that the Senior Loan Default which gave rise to Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by Senior Lender, the restrictions on payment to Subordinate Lender in this Section 6 shall terminate, and Senior Lender shall have no right to any subsequent payments made to Subordinate Lender by Borrower prior to Subordinate Lender's receipt of a new Default Notice from Senior Lender in accordance with the provisions of this Section 6(d).

(e) Remitting Subordinate Loan Payments to Senior Lender.

If, after Subordinate Lender receives a Default Notice from Senior Lender in accordance with Section 6(d), Subordinate Lender receives any payments under the Subordinate Loan Documents not paid by Borrower for the purpose of maintaining the Mortgaged Property paid current with respect to any taxes levied or assessed against the Mortgaged Property, Subordinate Lender agrees that such payment or other distribution will be received and held in trust for Senior Lender and unless Senior Lender otherwise notifies Subordinate Lender in writing, will be promptly remitted, in kind to Senior Lender, properly endorsed to Senior Lender, to be applied to the principal of, interest on and other amounts due under the Senior Loan Documents in accordance with the provisions of the Senior Loan Documents. By executing this Agreement, Borrower specifically authorizes Subordinate Lender to endorse and remit any such payments to Senior Lender, and specifically waives any and all rights to have such payments returned to Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by Subordinate Lender, and remitted to Senior Lender under this Section 6, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to Senior Lender waive any Subordinate Loan Default which may arise from the inability of Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

(f) Notice of Payment from Other Persons.

Subordinate Lender agrees to notify (telephonically or via email, followed by written notice) Senior Lender of Subordinate Lender's receipt from any Person other than Borrower of a payment with respect to Borrower's obligations under the Subordinate Loan Documents, promptly after Subordinate Lender obtains knowledge of such payment.

(g) Agreement Not to Commence Bankruptcy Proceeding.

Subordinate Lender agrees that during the term of this Agreement it will not commence or join with any other creditor in commencing any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings against or with respect to Borrower, without Senior Lender's prior written consent.

7. Default Under Subordinate Loan Documents.

(a) Notice of Subordinate Loan Default and Cure Rights.

Subordinate Lender shall deliver to Senior Lender a Default Notice within five (5) Business Days in each case where Subordinate Lender has given a Default Notice to Borrower. Failure of Subordinate Lender to send a Default Notice to Senior Lender shall not prevent the exercise of Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. Senior Lender shall have the right, but not the obligation, to cure any Subordinate Loan Default within sixty (60) days following the date of such notice; provided, however that Subordinate Lender shall be entitled, during such sixty (60) day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents. All amounts paid by Senior Lender in accordance with the Senior Loan Documents to cure a Subordinate Loan Default shall be deemed to have been advanced by Senior Lender pursuant to, and shall be secured by, the Senior Loan Agreement and the Senior Security Instrument.

(b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.

If a Subordinate Loan Default occurs and is continuing, Subordinate Lender agrees that, without Senior Lender's prior written consent, it will not commence foreclosure proceedings with respect to the Mortgaged Property under the Subordinate Loan Documents or exercise any other rights or remedies it may have under the Subordinate Loan Documents, including, but not limited to accelerating the Subordinate Loan (and enforcing any "due on sale" provision included in the Subordinate Loan Documents), collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder unless and until it has given Senior Lender at least sixty (60) days prior written notice; during such sixty (60) day period, however, Subordinate Lender shall be entitled to exercise and enforce all other rights and remedies available to Subordinate Lender under the Subordinate Loan Documents and/or under applicable laws, including without limitation, rights to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in any land use restriction agreement.

(c) Cross Default.

Borrower and Subordinate Lender agree that a Subordinate Loan Default shall constitute a Senior Loan Default under the Senior Loan Documents and Senior Lender shall have the right to exercise all rights or remedies under the Senior Loan Documents in the same manner as in the case of any other Senior Loan Default. If Subordinate Lender notifies Senior Lender in writing that any Subordinate Loan Default of which Senior Lender has received a Default Notice has been cured or waived, as determined by Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Mortgaged Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default shall be deemed cured, and the Senior Loan shall be reinstated, provided, however, that Senior Lender shall not be required to return or otherwise credit for the benefit of Borrower any default rate interest or other default related charges or payments received by Senior Lender during such Senior Loan Default.

8. Default Under Senior Loan Documents.

(a) Notice of Senior Loan Default and Cure Rights.

Senior Lender shall deliver to Subordinate Lender a Default Notice within five (5) Business Days in each case where Senior Lender has given a Default Notice to Borrower. Failure of Senior Lender to send a Default Notice to Subordinate Lender shall not prevent the exercise of Senior Lender's rights and remedies under the Senior Loan Documents, subject to the provisions of this Section 8(a), nor shall such failure constitute a default by Senior Lender under this Agreement. Subordinate Lender shall have the right, but not the obligation, to cure any such Senior Loan Default within sixty (60) days following the date of such Default Notice or the date on which Subordinate Lender otherwise acquires actual knowledge of Senior Loan Default; provided, however, that Senior Lender shall be entitled during such sixty (60) day period to continue to pursue its remedies under the Senior Loan Documents. Subordinate Lender may have up to ninety (90) days from the date of the Default Notice to cure a non-monetary default if during such ninety (90) day period Subordinate Lender keeps current all payments required by the Senior Loan Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Lender's secured position relative to the Mortgaged Property, as determined by Senior Lender in its sole discretion, then Senior Lender may exercise during such ninety (90) day period all available rights and remedies to protect and preserve the Mortgaged Property and the rents, revenues and other proceeds from the Mortgaged Property. All amounts paid by Subordinate Lender to Senior Lender to cure a Senior Loan Default shall be deemed to have been advanced by Subordinate Lender pursuant to, and shall be secured by the Subordinate Mortgage.

(b) Cross Default.

Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a Senior Loan Default shall not constitute a default under the Subordinate Loan Documents (if no other default has occurred under the Subordinate Loan Documents) until either (1) Senior Lender has accelerated the maturity of the Senior Loan, or (2) Senior Lender has taken affirmative action to exercise its rights under the Senior Loan Documents to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior Loan Documents. At any time after a Senior Loan Default is determined to constitute a default under the Subordinate Loan Documents, Subordinate Lender shall be permitted to pursue its remedies for default under the Subordinate Loan Documents, subject to the restrictions and limitations of this Agreement. If at any time Borrower cures any Senior Loan Default to the satisfaction of Senior Lender, as evidenced by written notice from Senior Lender to Subordinate Lender, any default under the Subordinate Loan Documents arising from such Senior Loan Default shall be deemed cured and the Subordinate Loan shall be retroactively reinstated as if such Senior Loan Default had never occurred.

9. Conflict.

Borrower, Senior Lender and Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control

solely as to the following: (a) the relative priority of the security interests of Senior Lender and Subordinate Lender in the Mortgaged Property; (b) the timing of the exercise of remedies by Senior Lender and Subordinate Lender under the Senior Loan Documents and the Subordinate Loan Documents, respectively; and (c) solely as between Senior Lender and Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which Senior Lender and Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default, as the case may be; give Borrower the right to notice of any Senior Loan Default or Subordinate Loan Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

10. Rights and Obligations of Subordinate Lender Under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

(a) Protection of Security Interest.

Subordinate Lender shall not, without the prior written consent of Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that Subordinate Lender shall have the right to advance funds to cure Senior Loan Defaults pursuant to Section 8(a) and advance funds pursuant to the Subordinate Loan Documents for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Mortgaged Property and curing other defaults by Borrower under the Subordinate Loan Documents.

(b) Condemnation or Casualty.

Following the occurrence of (1) a Condemnation Action, or (2) a fire or other casualty resulting in damage to all or a portion of the Mortgaged Property (collectively, a "**Casualty**"), at any time or times when the Senior Security Instrument remains a lien on the Mortgaged Property the following provisions shall apply:

(A) Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation Action or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation Action or a Casualty shall be and remain subject and subordinate in all respects to Senior Lender's rights under the Senior Loan Documents with respect thereto, and Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Condemnation Action or a Casualty made by Senior Lender; provided, however, this subsection or anything contained in this Agreement shall not limit the rights of Subordinate Lender to file any pleadings, documents, claims

or notices with the appropriate court with jurisdiction over the proposed Condemnation Action or Casualty; and

(B) all proceeds received or to be received on account of a Condemnation Action or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the Senior Loan) in the manner determined by Senior Lender in its sole discretion; provided, however, that if Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Loan shall be paid to, and may be applied by, Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents, provided however, Senior Lender agrees to consult with Subordinate Lender in determining the application of Casualty proceeds, provided further, however, that in the event of any disagreement between Senior Lender and Subordinate Lender over the application of Casualty proceeds, the decision of Senior Lender, in its sole discretion, shall prevail.

(c) Insurance.

Subordinate Lender agrees that all original policies of insurance required pursuant to the Senior Security Instrument shall be held by Senior Lender. The preceding sentence shall not preclude Subordinate Lender from requiring that it be named as a loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of the proceeds of property damage insurance under the Senior Security Instrument, or that it be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.

(d) No Modification of Subordinate Loan Documents.

Borrower and Subordinate Lender each agree that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender in each instance, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender under the Senior Loan Documents. Any amendment of the Subordinate Loan Documents or assignment of Subordinate Lender's interest in the Subordinate Loan without Senior Lender's consent shall be void ab initio and of no effect whatsoever.

11. Modification or Refinancing of Senior Loan.

Subordinate Lender consents to any agreement or arrangement in which Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money. Subordinate Lender further agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the

purpose of refinancing all or any part of the Senior Loan (including reasonable and necessary costs associated with the closing and/or the refinancing); and that all the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt; and that all references to the Senior Loan, the Senior Note, the Senior Loan Agreement, the Senior Security Instrument, the Senior Loan Documents and Senior Lender shall mean, respectively, the refinance loan, the refinance note loan agreement, the mortgage securing the refinance note, all documents evidencing securing or otherwise pertaining to the refinance note and the holder of the refinance note.

12. Default by Subordinate Lender or Senior Lender.

If Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting lender shall have the right to all available legal and equitable relief.

13. Reinstatement.

To the extent that Borrower makes a payment to Senior Lender or Senior Lender receives any payment or proceeds of the collateral securing the Senior Loan for Borrower's benefit, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable doctrine, then to the extent of such payment or proceeds received and not retained by Senior Lender, this Agreement shall be reinstated and continue in full force and effect until full and final payment shall have been made to Senior Lender. Subordinate Lender agrees to hold in trust for Senior Lender and promptly remit to Senior Lender any payments received by Subordinate Lender after such invalidated, rescinded or returned payment was originally made.

14. Notices.

(a) Process of Serving Notice.

All notices under this Agreement shall be:

- (1) in writing and shall be:
 - (A) delivered, in person;
 - (B) mailed, postage prepaid, either by registered or certified delivery, return receipt requested;
 - (C) sent by overnight courier; or
 - (D) sent by electronic mail with originals to follow by overnight courier;
- (2) addressed to the intended recipient at the address(es) below the signature block, as applicable; and

(3) deemed given on the earlier to occur of:

(A) the date when the notice is received by the addressee; or

(B) if the recipient refuses or rejects delivery, the date on which the notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or any express courier service.

(b) Change of Address.

Any party to Agreement may change the address to which notices intended for it are to be directed by means of notice given to the other parties identified in this Agreement.

(c) Receipt of Notices.

Senior Lender, Subordinate Lender or Borrower shall not refuse or reject delivery of any notice given in accordance with this Agreement. Each party is required to acknowledge, in writing, the receipt of any notice upon request by the other party.

15. General.

(a) Assignment/Successors.

This Agreement shall be binding upon Borrower, Senior Lender and Subordinate Lender and shall inure to the benefit of the respective legal successors, transferees and assigns of Borrower, Senior Lender and Subordinate Lender. Borrower shall not assign any of its rights and obligations under this Agreement without the prior written consent of Senior Lender.

(b) No Partnership or Joint Venture.

Senior Lender's permission for the placement of the Subordinate Loan does not constitute Senior Lender as a joint venturer or partner of Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

(c) Senior Lender's and Subordinate Lender's Consent.

Wherever Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

(d) Further Assurances.

Subordinate Lender, Senior Lender and Borrower each agrees, at Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Mortgage is subordinate to the

lien, covenants and conditions of the Senior Loan Documents, or to further evidence the intent of this Agreement.

(e) Amendment.

This Agreement shall not be amended except by written instrument signed by all parties hereto.

(f) Governing Law.

This Agreement shall be governed by the laws of the jurisdiction in which the Mortgaged Property is located without giving effect to any choice of law provisions thereof that would result in the application of the laws of another jurisdiction. Senior Lender, Subordinate Lender and Borrower agree that any controversy arising under or in relation to this Security Instrument shall be litigated exclusively in the jurisdiction in which the Mortgaged Property is located. The state and federal courts and authorities with jurisdiction in such locale shall have exclusive jurisdiction over all controversies that arise under or in relation to this Agreement. The parties hereto irrevocably consent to service, jurisdiction, and venue of such courts for any such litigation and waive any other venue to which any might be entitled by virtue of domicile, habitual residence or otherwise.

(g) Severable Provisions.

If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(h) Term.

The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (1) the payment in full of the principal of, interest on and other amounts payable under the Senior Loan Documents; (2) the payment in full of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to Section 6 hereof; (3) the acquisition by Senior Lender of title to the Mortgaged Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Senior Loan Documents; or (4) the acquisition by Subordinate Lender of title to the Mortgaged Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Loan Documents, but only if such acquisition of title does not violate any of the terms of this Agreement.

(i) Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

(j) Sale of Senior Loan.

Nothing in this Agreement shall limit Senior Lender's (including any assignee or transferee of Senior Lender) right to sell or transfer the Senior Loan, or any interest in the Senior Loan. The Senior Loan or a partial interest in the Senior Loan (together with this Agreement and the other Loan Documents) may be sold one or more times without prior notice to Borrower.

[Remainder of Page Intentionally Blank]

SUBORDINATE LENDER:

CITY OF DEKALB, an Illinois municipal corporation

By: _____

Name: Bill Nicklas

Title: City Manager

Address: 200 S. Fourth Street
DeKalb, Illinois 60115

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) ss:
COUNTY OF DEKALB)

I, Ruth A. Scott, a Notary Public in and for the said County of DeKalb, DO HEREBY CERTIFY that Bill Nicklas personally known to me to be the City manager for THE CITY OF DEKALB, an Illinois municipal corporation personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and severally acknowledged that as such City manager, he/she signed and delivered the said instrument as the free and voluntary act and deed of said Municipal corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 5th day of May 2020.

[Signature]
Notary Public

[SEAL]

My commission expires: 7-24-2022



prepared by
return to
City of DeKalb
200 S. Fourth St.
DeKalb, IL 60115

IN WITNESS WHEREOF, Borrower, Senior Lender and Subordinate Lender have signed and delivered this Agreement under seal (where applicable) or have caused this Agreement to be signed and delivered under seal (where applicable) by a duly authorized representative. Where applicable law so provides, Borrower, Senior Lender and Subordinate Lender intend that this Agreement shall be deemed to be signed and delivered as a sealed instrument.

SENIOR LENDER:

FIRST NATIONAL BANK OF OMAHA

By: [Signature]
Name: Ronald A. Bemis
Title: VP

Address: 141 W. Lincoln Hwy.
DeKalb, Illinois 60115

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) ss:
COUNTY OF DEKALB)

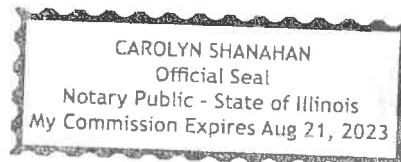
I, The undersigned, a Notary Public in and for the said County of DeKalb, DO HEREBY CERTIFY Ronald A. Bemis personally known to me to be the Senior Closing Specialist of FIRST NATIONAL BANK OF OMAHA personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and severally acknowledged that as such _____, he signed and delivered the said instrument as the free and voluntary act and deed of said Bank, for the uses and purposes therein set forth.

Given under my hand and official seal this 8th day of May 2020.

[SEAL]

My commission expires: _____

[Signature]
Notary Public



BORROWER:

GULLIE, LLC, an Illinois limited liability company

By: _____

Name: _____

Title: _____

Address: 1830 Margaret Lane
DeKalb, Illinois 60115

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) ss:
COUNTY OF DEKALB)

I, the undersigned, a Notary Public in and for the said County of DeKalb, DO HEREBY CERTIFY that Puan Gifford personally known to me to be the he of GULLIE, LLC, an Illinois limited liability company personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and severally acknowledged that as such he, he/she signed and delivered the said instrument as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and official seal this 8th day of May 2020.

Carolyn Shanahan
Notary Public

[SEAL]

My commission expires: _____

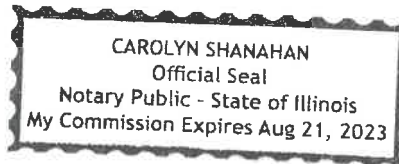


EXHIBIT A

LEGAL DESCRIPTION

LOT 51 OF BLOCK 11 OF THE COUNTY CLERK'S SUBDIVISION OF BLOCKS 11, 12, 14 AND 15 OF THE ORIGINAL VILLAGE (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN THE RECORDER'S OFFICE OF DEKALB COUNTY, ILLINOIS IN BOOK "C" OF PLATS, PAGE 42, SITUATED IN DEKALB COUNTY, ILLINOIS.

Commonly known as 260 E. Lincoln Hwy., Dekalb, Illinois 60115
P.I.N.: 08-23-163-011

El Jimador
260 E. Lincoln
Hwy.

**ASSIGNMENT AND ASSUMPTION OF LEASE
AND NOVATION AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF LEASE AND NOVATION AGREEMENT ("Agreement") is made and entered into this 8th day of May 2020 by and among Universal Restaurant Group, Inc. d/b/a O'Leary's Irish Pub & Grill ("Assignor"), Gullie, LLC ("Assignee"), and the City of DeKalb, Illinois ("City").

WHEREAS, City, as owner/City, and Assignor, as Lessee, are parties to that certain Land Lease Agreement dated May 28, 2018;

WHEREAS, Pursuant to the Lease, Assignor leases from City certain real property ("Land"), which is described on Exhibit A to the Lease, which is located adjacent to the real property commonly known as 260 E. Lincoln Hwy., DeKalb, Illinois 60115 as described in Exhibit A of the Lease;

WHEREAS, Assignor desires to assign to Assignee, and Assignee desires to assume from Assignor, as of May 8, 2020 ("Effective Date") all of Assignor's rights and obligations under the Lease accruing from and after the Effective Date, on the terms set forth below;

WHEREAS, In consideration of Assignee assuming all of Assignor's rights and obligations under the Lease, City agrees to release Assignor from all liabilities under the Lease accrued and accruing from and after the Effective Date, on the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby affirmed, the parties agree as follows, as of the Effective Date:

1. Recitals. The above recitals are true and correct and are incorporated herein by reference.
2. Assignment. Assignor assigns, transfers and conveys to Assignee all of Assignor's rights, title, obligations and interest in, to and under the Lease.
3. Assumption.
 - a. Assignee unconditionally assumes and shall promptly, fully and completely keep, fulfill, observe, perform and discharge each and every covenant and obligation that may accrue and become performable, due or owing by Assignor under the Lease from and after the Effective Date.
 - b. Assignee shall perform the obligations of Assignor that may accrue and become performable, due or owing under the Lease from and after the Effective Date, and Assignee shall be bound by all of the terms and conditions of the Lease in every way as if Assignee were originally a party thereto as Lessee. Assignee shall have no liability or obligation whatsoever with respect to any covenant, condition or obligation arising or accruing under the Lease prior to the Effective Date.

4. Release of Assignor Novation.
- a. Notwithstanding anything to the contrary in the Lease, City releases and forever discharges Assignor, as well as its shareholders, officers, employees, agents and representatives, from all obligations accruing under the Lease.
 - b. City recognizes Assignee as Assignor's successor-in-interest in and to the Lease. Commencing on the Effective Date, Assignee by this Agreement becomes entitled to all right, title and interest of Assignor in and to the Lease. Following the Effective Date: (i) the term "Lessee," as used in the Lease, shall refer to Assignee; (ii) City accepts the liability of Assignee in lieu of the liability of Assignor; and (iii) City shall be bound by the terms of the Lease in every way as if Assignee were named in the Lease in place of Assignor as a party thereto.
 - c. City consents to the within assignment and assumption of the Lease and City waives any recapture right that it may have under the Lease as a result of this assignment. The consent by City to the within assignment and assumption of the Lease shall not be deemed an approval of any future assignment of the Lease or subletting of the Land or any portion thereof. No further assignment or sublease of all or any portion of the Land shall be made without the prior written approval of City, if and when required pursuant to and in accordance with the provisions of the Lease.
 - d. City represents and warrants to Assignee that, to the best of City's knowledge as of the date hereof: (i) Assignor is not in breach or default of any terms, covenant, condition or requirement imposed on it under the Lease; and (ii) there exists no grounds or basis for any claim or allegation by City (with or without any further notice or grace period) of any breach or default by Assignor (as Lessee) under the Lease.
 - e. City represents to Assignee that the Term of the Lease will expire on December 31, 2021.
5. Condition: Use: Defaults.
- a. Assignee shall take possession of the Land in its present "as is" condition, subject to ordinary wear and tear and damage by casualty prior to the Effective Date. No representations or warranties have been made to Assignee concerning the condition of the Land, nor have any promises to remodel, change, alter, or improve the Land been made by Assignor or any party on behalf of Assignor. Assignee has completed such investigation of the Land as Assignee deems appropriate.
 - b. Assignor represents to Assignee that, to its actual knowledge and without duty of further inquiry, as of the Effective Date, neither Assignor nor its employees, agents, contractors, licensees or others for whom Assignor is responsible have used, released, deposited, disposed of or otherwise handled any Hazardous Materials in, on or about the Land in violation of the Lease or in violation of applicable laws, codes or regulations.
 - c. Assignor represents to Assignee that, to its actual knowledge and without duty of further inquiry, as of the Effective Date: (i) Assignor is not in breach or default of any terms, covenant, condition or requirement imposed on it under the Lease or with respect to the Land, and (ii) there exists no grounds or basis for any claim or allegation by City (with or without any further notice or grace period) of any breach or default by Assignor (as Lessee) under the Lease, and (iii) Assignor has not

received any notice that any violation of applicable laws, codes or regulations exists and remains uncured in or about the Land, and (iv) to the best of Assignor's knowledge, upon reasonable inquiry, City is not in breach or default of any terms, covenant, condition or requirement imposed on City under the Lease.

- d. Assignor represents to Assignee that, to its actual knowledge and without duty of further inquiry, no consent or approval from any third party is required in order for Assignor to enter into this Agreement or perform or be bound by the terms and conditions hereof. There are no liens or encumbrances on or affecting the Land as a result of any work undertaken by or on behalf of the Assignor (nor does any basis or grounds exist for such a lien or encumbrance).

6. Miscellaneous.


- a. Any capitalized terms not otherwise defined within this Agreement shall have the meanings set forth in the Lease.
- b. Each provision of this Agreement shall extend, bind and inure to the benefit of City, Assignor and Assignee and their respective permitted successors and assigns, including without limitation successor assignees of the Lease.
- c. This Agreement contains the entire agreement between the parties, and all prior negotiations and agreements are merged in this Agreement. This Agreement may not be changed, modified or discharged, in whole or in part, except by a written instrument executed by the party against whom enforcement of the change, modification or discharge is sought.
- d. This Agreement may be executed in any number of counterparts, each of which upon execution and delivery shall be considered an original for all purposes; provided, however, all such counterparts shall, together, upon execution and delivery, constitute one and the same instrument. The Agreement may be executed by facsimile or electronic signature, provided that any party shall be entitled to request, and all parties shall thereafter be obligated to tender, a wet-ink executed copy of the Agreement.
- e. This Agreement shall be governed in all respects by the laws of the State of Illinois.
- f. If any term or provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term shall not be affected thereby.
- g. Each of Assignor, Assignee and City consent to all the provisions of this Agreement.

Signed and agreed on the date first above written by and between:

Universal Restaurant Group, Inc. d/b/a
O'Leary's Irish Pub & Grill ("Assignor")

City of DeKalb ("City")

By: _____
Name: _____
Title: _____

By: 
Name: Bill Hicks
Title: City Attorney

received any notice that any violation of applicable laws, codes or regulations exists and remains uncured in or about the Land, and (iv) to the best of Assignor's knowledge, upon reasonable inquiry, City is not in breach or default of any terms, covenant, condition or requirement imposed on City under the Lease.

- d. Assignor represents to Assignee that, to its actual knowledge and without duty of further inquiry, no consent or approval from any third party is required in order for Assignor to enter into this Agreement or perform or be bound by the terms and conditions hereof. There are no liens or encumbrances on or affecting the Land as a result of any work undertaken by or on behalf of the Assignor (nor does any basis or grounds exist for such a lien or encumbrance).

6. Miscellaneous.

- a. Any capitalized terms not otherwise defined within this Agreement shall have the meanings set forth in the Lease.
- b. Each provision of this Agreement shall extend, bind and inure to the benefit of City, Assignor and Assignee and their respective permitted successors and assigns, including without limitation successor assignees of the Lease.
- c. This Agreement contains the entire agreement between the parties, and all prior negotiations and agreements are merged in this Agreement. This Agreement may not be changed, modified or discharged, in whole or in part, except by a written instrument executed by the party against whom enforcement of the change, modification or discharge is sought.
- d. This Agreement may be executed in any number of counterparts, each of which upon execution and delivery shall be considered an original for all purposes; provided, however, all such counterparts shall, together, upon execution and delivery, constitute one and the same instrument. The Agreement may be executed by facsimile or electronic signature, provided that any party shall be entitled to request, and all parties shall thereafter be obligated to tender, a wet-ink executed copy of the Agreement.
- e. This Agreement shall be governed in all respects by the laws of the State of Illinois.
- f. If any term or provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term shall not be affected thereby.
- g. Each of Assignor, Assignee and City consent to all the provisions of this Agreement.

Signed and agreed on the date first above written by and between:

Universal Restaurant Group, Inc. d/b/a
O'Leary's Irish Pub & Grill ("Assignor")

City of DeKalb ("City")

By:

Name: Mel Witmer
Title: President

By:

Name: _____
Title: _____

Gullie, LLC ("Assignee")

By:

[Signature]
Name: Gullie, LLC
Title: Manager

end 2020-024



2020004162

DOUGLAS J. JOHNSON
RECORDER - DEKALB COUNTY, IL
RECORDED: 5/12/2020 09:55 AM
REC FEE: 56.00 RHSPS FEE: 9.00

PAGES: 18

-----[Space Above This Line For Recording Data]-----
5252-2000040

**SUBORDINATION AGREEMENT
(Affordable)**

This SUBORDINATION AGREEMENT (this "Agreement") dated as of May 8th, 2020, is executed by and among (i) **FIRST NATIONAL BANK OF OMAHA** ("Senior Lender"), (ii) **CITY OF DEKALB**, an Illinois municipal corporation ("Subordinate Lender"), and (iii) **GULLIE, LLC**, an Illinois limited liability company ("Borrower").

RECITALS:

A. Pursuant to that certain loan agreement dated as of the date hereof, executed by and between Borrower and Senior Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "Senior Loan Agreement"), Senior Lender has agreed to make a loan to Borrower in the original principal amount of \$420,000 (the "Senior Loan"), as evidenced by that certain Note dated as of the date hereof, executed by Borrower and made payable to the order of Senior Lender in the amount of the Senior Loan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "Senior Note").

B. In addition to the Senior Loan Agreement, the Senior Loan and the Senior Note are also secured by a certain Mortgage, Assignment of Leases and Rents, and Security Agreement dated as of the date hereof (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "Senior Security Instrument"), encumbering the property described in the Senior Security Instrument as the "Mortgaged Property", and more particularly described in Exhibit A.

C. Borrower has requested Senior Lender to permit that certain subordinate loan in the amount of \$124,100.00 (the "Subordinate Loan") from Subordinate Lender to Borrower and to allow the Subordinate Loan to be secured by a mortgage lien against the Mortgaged Property.

D. Senior Lender has agreed to permit the Subordinate Loan and to allow the subordinate mortgage lien against the Mortgaged Property subject to all of the conditions contained in this Agreement.

AGREEMENTS:

NOW, THEREFORE, in order to induce Senior Lender to permit the Subordinate Loan to Borrower and to allow a subordinate mortgage lien against the Mortgaged Property, and in consideration thereof, Senior Lender, Subordinate Lender and Borrower agree as follows:

1. Recitals.

The recitals set forth above are incorporated herein by reference.

2. Definitions.

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

"Affiliate" means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual Controlled by, under common Control with, or which Controls such Person, and in all cases any other Person that holds fifty percent (50%) or more of the ownership interests in such Person.

"Borrower" means the Person named as such in the first paragraph on page 1 of this Agreement, any successor or assign of Borrower, including without limitation, a receiver, trustee or debtor-in-possession and any other Person (other than Senior Lender) who acquires title to the Mortgaged Property after the date of this Agreement.

"Business Day" means any day other than (a) a Saturday, (b) a Sunday, (c) a day on which Senior Lender is not open for business, or (d) a day on which the Federal Reserve Bank of New York is not open for business.

"Condemnation Action" means any action or proceeding, however characterized or named, relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect.

"Control" (including with correlative meanings, the terms "Controlling," "Controlled by" and "under common Control with"), as applied to any entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or operations of such entity, whether through the ownership of voting securities, ownership interests or by contract or otherwise.

"Default Notice" means: (a) a copy of any written notice from Senior Lender to Borrower and Subordinate Lender stating that a Senior Loan Default has occurred under the Senior Loan Documents; or (b) a copy of the written notice from Subordinate Lender to Borrower and Senior Lender stating that a Subordinate Loan Default has occurred under the Subordinate Loan Documents. Each Default Notice shall specify the default upon which such Default Notice is based.

"Person" means an individual, an estate, a trust, a corporation, a partnership, a limited liability company or any other organization or entity (whether governmental or private).

"Senior Lender" means the Person named as such in the first paragraph on Page 1 of this Agreement, its successors and assigns and any other Person who becomes the legal holder of the Senior Loan after the date of this Agreement.

"Senior Loan Default" means the occurrence of an "Event of Default" as that term is defined in the Senior Loan Documents.

"Senior Loan Documents" means the Senior Security Instrument, the Senior Note, the Senior Loan Agreement, and all other "Loan Documents" as that term is defined in the Senior Loan Agreement.

"Subordinate Lender" means the Person named as such in the first paragraph on page 1 of this Agreement, any successor or assign of Subordinate Lender, including without limitation, a receiver, trustee or debtor-in-possession and any other Person who becomes the legal holder of the Subordinate Note after the date of this Agreement.

"Subordinate Loan Default" means a default by Borrower in performing or observing any of the terms, covenants or conditions in the Subordinate Loan Documents to be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Loan Documents for curing the default.

"Subordinate Loan Documents" means the Subordinate Note, the Subordinate Mortgage, the Decolopment Agreement by and between Borrower and Subordinate Lender dated as of April 13, 2020, and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loan.

"Subordinate Mortgage" means the Future Advances Mortgage by Borrower for the benefit of Subordinate Lender dated as of April 13, 2020 encumbering the Mortgaged Property as security for the Subordinate Loan and recorded on April 21, 2020 as Document No. 2020003409 among the recorder's office for the County of DeKalb, Illinois.

"Subordinate Note" means the Promissory Note dated on or about April 13, 2020 issued by Borrower to Subordinate Lender, or order, to evidence the Subordinate Loan.

3. Permission to Place Mortgage Lien Against Mortgaged Property.

Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Mortgaged Property contained in the Senior Loan Documents and subject to the provisions of this Agreement, to permit Subordinate Lender to record the Subordinate Mortgage and other recordable Subordinate Loan Documents against the Mortgaged Property to secure Borrower's obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of Borrower to Subordinate Lender under and in connection with the Subordinate Loan.

4. Borrower's and Subordinate Lender's Representations and Warranties.

Borrower and Subordinate Lender each makes the following representations and warranties to Senior Lender:

(a) Subordinate Loan Documents.

The Subordinate Loan is evidenced by the Subordinate Note and is secured by the Subordinate Mortgage, and the Subordinate Loan Documents.

(b) Subordinate Note.

The Subordinate Note shall be deemed to contain the following provision:

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by a Note (and any schedules) dated as of the date of the Subordination Agreement (defined below) in the original principal amount of \$420,000, executed by Gullie, LLC, an Illinois limited liability company, and payable to the order of First National Bank of Omaha ("Senior Lender"), to the extent and in the manner provided in that certain Subordination Agreement dated as of , 2020 herewith between the payee of this Note, and Senior Lender and the City of DeKalb, an Illinois municipal corporation (the "Subordination Agreement"). The Future Advance Mortgage (and any exhibits and amendments) securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Mortgage, Assignment of Leases and Rents, and Security Agreement (and any exhibits) securing the Note and the terms, covenants and conditions of the Loan and Security Agreement evidencing the terms of the Note, as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the Future Advance Mortgage (and any exhibits and amendments) securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by Subordinate Lender under the Subordination Agreement.

(c) Relationship of Borrower to Subordinate Lender and Senior Lender.

Subordinate Lender is not an Affiliate of Borrower and is not in possession of any facts which would lead it to believe that Senior Lender is an Affiliate of Borrower.

(d) Term.

The term of the Subordinate Note does not end before the stated term of the Senior Note.

(e) Subordinate Loan Documents.

The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, Senior Lender prior to the date of this Agreement.

5. Reserved.

6. Terms of Subordination.

(a) Agreement to Subordinate.

Senior Lender and Subordinate Lender agree that (1) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement, to the prior payment in full of the Indebtedness evidenced by the Senior Loan Documents, and (2) the liens, terms, covenants and conditions of the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Security Instrument and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Security Instrument and the other Senior Loan Documents (including but not limited to, all sums advanced for the purposes of (A) protecting or further securing the lien of the Senior Security Instrument, curing defaults by Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Loan Documents, or (B) constructing, renovating, repairing, furnishing, fixturing or equipping the Mortgaged Property).

(b) Subordination of Subrogation Rights.

Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this subsection) would be senior to the lien of the Senior Security Instrument, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Security Instrument.

(c) Payments Before Senior Loan Default.

Until Subordinate Lender receives a Default Notice (or otherwise acquires actual knowledge) of a Senior Loan Default, Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents.

(d) Payments After Senior Loan Default.

Borrower agrees that, after it receives a Default Notice (or otherwise acquires knowledge) of a Senior Loan Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any other sums secured by the Subordinate Loan Documents) without Senior Lender's prior written consent, except to the extent necessary to maintain the Mortgaged Property paid current with respect to any taxes levied or assessed against the Mortgaged Property. Subordinate Lender agrees that, after it receives a Default Notice from Senior Lender with written instructions directing Subordinate Lender not to accept payments from Borrower on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any other sums secured by the

Subordinate Loan Documents) without Senior Lender's prior written consent, except to the extent necessary to maintain the Mortgaged Property paid current with respect to any taxes levied or assessed against the Mortgaged Property. If Subordinate Lender receives written notice from Senior Lender that the Senior Loan Default which gave rise to Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by Senior Lender, the restrictions on payment to Subordinate Lender in this Section 6 shall terminate, and Senior Lender shall have no right to any subsequent payments made to Subordinate Lender by Borrower prior to Subordinate Lender's receipt of a new Default Notice from Senior Lender in accordance with the provisions of this Section 6(d).

(e) Remitting Subordinate Loan Payments to Senior Lender.

If, after Subordinate Lender receives a Default Notice from Senior Lender in accordance with Section 6(d), Subordinate Lender receives any payments under the Subordinate Loan Documents not paid by Borrower for the purpose of maintaining the Mortgaged Property paid current with respect to any taxes levied or assessed against the Mortgaged Property, Subordinate Lender agrees that such payment or other distribution will be received and held in trust for Senior Lender and unless Senior Lender otherwise notifies Subordinate Lender in writing, will be promptly remitted, in kind to Senior Lender, properly endorsed to Senior Lender, to be applied to the principal of, interest on and other amounts due under the Senior Loan Documents in accordance with the provisions of the Senior Loan Documents. By executing this Agreement, Borrower specifically authorizes Subordinate Lender to endorse and remit any such payments to Senior Lender, and specifically waives any and all rights to have such payments returned to Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by Subordinate Lender, and remitted to Senior Lender under this Section 6, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to Senior Lender waive any Subordinate Loan Default which may arise from the inability of Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

(f) Notice of Payment from Other Persons.

Subordinate Lender agrees to notify (telephonically or via email, followed by written notice) Senior Lender of Subordinate Lender's receipt from any Person other than Borrower of a payment with respect to Borrower's obligations under the Subordinate Loan Documents, promptly after Subordinate Lender obtains knowledge of such payment.

(g) Agreement Not to Commence Bankruptcy Proceeding.

Subordinate Lender agrees that during the term of this Agreement it will not commence or join with any other creditor in commencing any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings against or with respect to Borrower, without Senior Lender's prior written consent.

7. Default Under Subordinate Loan Documents.

(a) Notice of Subordinate Loan Default and Cure Rights.

Subordinate Lender shall deliver to Senior Lender a Default Notice within five (5) Business Days in each case where Subordinate Lender has given a Default Notice to Borrower. Failure of Subordinate Lender to send a Default Notice to Senior Lender shall not prevent the exercise of Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. Senior Lender shall have the right, but not the obligation, to cure any Subordinate Loan Default within sixty (60) days following the date of such notice; provided, however that Subordinate Lender shall be entitled, during such sixty (60) day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents. All amounts paid by Senior Lender in accordance with the Senior Loan Documents to cure a Subordinate Loan Default shall be deemed to have been advanced by Senior Lender pursuant to, and shall be secured by, the Senior Loan Agreement and the Senior Security Instrument.

(b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.

If a Subordinate Loan Default occurs and is continuing, Subordinate Lender agrees that, without Senior Lender's prior written consent, it will not commence foreclosure proceedings with respect to the Mortgaged Property under the Subordinate Loan Documents or exercise any other rights or remedies it may have under the Subordinate Loan Documents, including, but not limited to accelerating the Subordinate Loan (and enforcing any "due on sale" provision included in the Subordinate Loan Documents), collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder unless and until it has given Senior Lender at least sixty (60) days prior written notice; during such sixty (60) day period, however, Subordinate Lender shall be entitled to exercise and enforce all other rights and remedies available to Subordinate Lender under the Subordinate Loan Documents and/or under applicable laws, including without limitation, rights to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in any land use restriction agreement.

(c) Cross Default.

Borrower and Subordinate Lender agree that a Subordinate Loan Default shall constitute a Senior Loan Default under the Senior Loan Documents and Senior Lender shall have the right to exercise all rights or remedies under the Senior Loan Documents in the same manner as in the case of any other Senior Loan Default. If Subordinate Lender notifies Senior Lender in writing that any Subordinate Loan Default of which Senior Lender has received a Default Notice has been cured or waived, as determined by Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Mortgaged Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default shall be deemed cured, and the Senior Loan shall be reinstated, provided, however, that Senior Lender shall not be required to return or otherwise credit for the benefit of Borrower any default rate interest or other default related charges or payments received by Senior Lender during such Senior Loan Default.

8. Default Under Senior Loan Documents.

(a) Notice of Senior Loan Default and Cure Rights.

Senior Lender shall deliver to Subordinate Lender a Default Notice within five (5) Business Days in each case where Senior Lender has given a Default Notice to Borrower. Failure of Senior Lender to send a Default Notice to Subordinate Lender shall not prevent the exercise of Senior Lender's rights and remedies under the Senior Loan Documents, subject to the provisions of this Section 8(a), nor shall such failure constitute a default by Senior Lender under this Agreement. Subordinate Lender shall have the right, but not the obligation, to cure any such Senior Loan Default within sixty (60) days following the date of such Default Notice or the date on which Subordinate Lender otherwise acquires actual knowledge of Senior Loan Default; provided, however, that Senior Lender shall be entitled during such sixty (60) day period to continue to pursue its remedies under the Senior Loan Documents. Subordinate Lender may have up to ninety (90) days from the date of the Default Notice to cure a non-monetary default if during such ninety (90) day period Subordinate Lender keeps current all payments required by the Senior Loan Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Lender's secured position relative to the Mortgaged Property, as determined by Senior Lender in its sole discretion, then Senior Lender may exercise during such ninety (90) day period all available rights and remedies to protect and preserve the Mortgaged Property and the rents, revenues and other proceeds from the Mortgaged Property. All amounts paid by Subordinate Lender to Senior Lender to cure a Senior Loan Default shall be deemed to have been advanced by Subordinate Lender pursuant to, and shall be secured by the Subordinate Mortgage.

(b) Cross Default.

Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a Senior Loan Default shall not constitute a default under the Subordinate Loan Documents (if no other default has occurred under the Subordinate Loan Documents) until either (1) Senior Lender has accelerated the maturity of the Senior Loan, or (2) Senior Lender has taken affirmative action to exercise its rights under the Senior Loan Documents to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior Loan Documents. At any time after a Senior Loan Default is determined to constitute a default under the Subordinate Loan Documents, Subordinate Lender shall be permitted to pursue its remedies for default under the Subordinate Loan Documents, subject to the restrictions and limitations of this Agreement. If at any time Borrower cures any Senior Loan Default to the satisfaction of Senior Lender, as evidenced by written notice from Senior Lender to Subordinate Lender, any default under the Subordinate Loan Documents arising from such Senior Loan Default shall be deemed cured and the Subordinate Loan shall be retroactively reinstated as if such Senior Loan Default had never occurred.

9. Conflict.

Borrower, Senior Lender and Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control

solely as to the following: (a) the relative priority of the security interests of Senior Lender and Subordinate Lender in the Mortgaged Property; (b) the timing of the exercise of remedies by Senior Lender and Subordinate Lender under the Senior Loan Documents and the Subordinate Loan Documents, respectively; and (c) solely as between Senior Lender and Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which Senior Lender and Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default, as the case may be; give Borrower the right to notice of any Senior Loan Default or Subordinate Loan Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

10. Rights and Obligations of Subordinate Lender Under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

(a) Protection of Security Interest.

Subordinate Lender shall not, without the prior written consent of Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that Subordinate Lender shall have the right to advance funds to cure Senior Loan Defaults pursuant to Section 8(a) and advance funds pursuant to the Subordinate Loan Documents for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Mortgaged Property and curing other defaults by Borrower under the Subordinate Loan Documents.

(b) Condemnation or Casualty.

Following the occurrence of (1) a Condemnation Action, or (2) a fire or other casualty resulting in damage to all or a portion of the Mortgaged Property (collectively, a "Casualty"), at any time or times when the Senior Security Instrument remains a lien on the Mortgaged Property the following provisions shall apply.

(A) Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation Action or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation Action or a Casualty shall be and remain subject and subordinate in all respects to Senior Lender's rights under the Senior Loan Documents with respect thereto, and Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Condemnation Action or a Casualty made by Senior Lender; provided, however, this subsection or anything contained in this Agreement shall not limit the rights of Subordinate Lender to file any pleadings, documents, claims

or notices with the appropriate court with jurisdiction over the proposed Condemnation Action or Casualty; and

(B) all proceeds received or to be received on account of a Condemnation Action or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the Senior Loan) in the manner determined by Senior Lender in its sole discretion; provided, however, that if Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Loan shall be paid to, and may be applied by, Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents, provided however, Senior Lender agrees to consult with Subordinate Lender in determining the application of Casualty proceeds, provided further, however, that in the event of any disagreement between Senior Lender and Subordinate Lender over the application of Casualty proceeds, the decision of Senior Lender, in its sole discretion, shall prevail.

(c) Insurance.

Subordinate Lender agrees that all original policies of insurance required pursuant to the Senior Security Instrument shall be held by Senior Lender. The preceding sentence shall not preclude Subordinate Lender from requiring that it be named as a loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of the proceeds of property damage insurance under the Senior Security Instrument, or that it be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.

(d) No Modification of Subordinate Loan Documents.

Borrower and Subordinate Lender each agree that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender in each instance, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender under the Senior Loan Documents. Any amendment of the Subordinate Loan Documents or assignment of Subordinate Lender's interest in the Subordinate Loan without Senior Lender's consent shall be void ab initio and of no effect whatsoever.

11. Modification or Refinancing of Senior Loan.

Subordinate Lender consents to any agreement or arrangement in which Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money. Subordinate Lender further agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the

purpose of refinancing all or any part of the Senior Loan (including reasonable and necessary costs associated with the closing and/or the refinancing); and that all the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt; and that all references to the Senior Loan, the Senior Note, the Senior Loan Agreement, the Senior Security Instrument, the Senior Loan Documents and Senior Lender shall mean, respectively, the refinance loan, the refinance note loan agreement, the mortgage securing the refinance note, all documents evidencing securing or otherwise pertaining to the refinance note and the holder of the refinance note.

12. Default by Subordinate Lender or Senior Lender.

If Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting lender shall have the right to all available legal and equitable relief.

13. Reinstatement.

To the extent that Borrower makes a payment to Senior Lender or Senior Lender receives any payment or proceeds of the collateral securing the Senior Loan for Borrower's benefit, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable doctrine, then to the extent of such payment or proceeds received and not retained by Senior Lender, this Agreement shall be reinstated and continue in full force and effect until full and final payment shall have been made to Senior Lender. Subordinate Lender agrees to hold in trust for Senior Lender and promptly remit to Senior Lender any payments received by Subordinate Lender after such invalidated, rescinded or returned payment was originally made.

14. Notices.

(a) Process of Serving Notice.

All notices under this Agreement shall be:

- (1) in writing and shall be:
 - (A) delivered, in person;
 - (B) mailed, postage prepaid, either by registered or certified delivery, return receipt requested;
 - (C) sent by overnight courier; or
 - (D) sent by electronic mail with originals to follow by overnight courier;
- (2) addressed to the intended recipient at the address(es) below the signature block, as applicable; and

(3) deemed given on the earlier to occur of:

(A) the date when the notice is received by the addressee; or

(B) if the recipient refuses or rejects delivery, the date on which the notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or any express courier service.

(b) Change of Address.

Any party to Agreement may change the address to which notices intended for it are to be directed by means of notice given to the other parties identified in this Agreement.

(c) Receipt of Notices.

Senior Lender, Subordinate Lender or Borrower shall not refuse or reject delivery of any notice given in accordance with this Agreement. Each party is required to acknowledge, in writing, the receipt of any notice upon request by the other party.

15. General.

(a) Assignment/Successors.

This Agreement shall be binding upon Borrower, Senior Lender and Subordinate Lender and shall inure to the benefit of the respective legal successors, transferees and assigns of Borrower, Senior Lender and Subordinate Lender. Borrower shall not assign any of its rights and obligations under this Agreement without the prior written consent of Senior Lender.

(b) No Partnership or Joint Venture.

Senior Lender's permission for the placement of the Subordinate Loan does not constitute Senior Lender as a joint venturer or partner of Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

(c) Senior Lender's and Subordinate Lender's Consent.

Wherever Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

(d) Further Assurances.

Subordinate Lender, Senior Lender and Borrower each agrees, at Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Mortgage is subordinate to the

lien, covenants and conditions of the Senior Loan Documents, or to further evidence the intent of this Agreement.

(e) Amendment.

This Agreement shall not be amended except by written instrument signed by all parties hereto.

(f) Governing Law.

This Agreement shall be governed by the laws of the jurisdiction in which the Mortgaged Property is located without giving effect to any choice of law provisions thereof that would result in the application of the laws of another jurisdiction. Senior Lender, Subordinate Lender and Borrower agree that any controversy arising under or in relation to this Security Instrument shall be litigated exclusively in the jurisdiction in which the Mortgaged Property is located. The state and federal courts and authorities with jurisdiction in such locale shall have exclusive jurisdiction over all controversies that arise under or in relation to this Agreement. The parties hereto irrevocably consent to service, jurisdiction, and venue of such courts for any such litigation and waive any other venue to which any might be entitled by virtue of domicile, habitual residence or otherwise.

(g) Severable Provisions.

If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(h) Term.

The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (1) the payment in full of the principal of, interest on and other amounts payable under the Senior Loan Documents; (2) the payment in full of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to Section 6 hereof; (3) the acquisition by Senior Lender of title to the Mortgaged Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Senior Loan Documents; or (4) the acquisition by Subordinate Lender of title to the Mortgaged Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Loan Documents, but only if such acquisition of title does not violate any of the terms of this Agreement.

(i) Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

(j) Sale of Senior Loan.

Nothing in this Agreement shall limit Senior Lender's (including any assignee or transferee of Senior Lender) right to sell or transfer the Senior Loan, or any interest in the Senior Loan. The Senior Loan or a partial interest in the Senior Loan (together with this Agreement and the other Loan Documents) may be sold one or more times without prior notice to Borrower.

[Remainder of Page Intentionally Blank]

Unofficial

SUBORDINATE LENDER:

CITY OF DEKALB, an Illinois municipal corporation

By: 

Name: Bill Nicklas

Title: City Manager

Address: 200 S. Fourth Street
DeKalb, Illinois 60115

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) ss:
COUNTY OF DEKALB)

I, Ruth A. Scott, a Notary Public in and for the said County of DeKalb, DO HEREBY CERTIFY that Bill Nicklas personally known to me to be the City Manager for THE CITY OF DEKALB, an Illinois municipal corporation personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and severally acknowledged that as such City Manager, he/she signed and delivered the said instrument as the free and voluntary act and deed of said Municipal corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 5th day of May 2020.


Notary Public

[SEAL]

My commission expires: 7-24-2022



Prepared by
return to
City of DeKalb
200 S. Fourth St.
DeKalb, IL 60115

IN WITNESS WHEREOF, Borrower, Senior Lender and Subordinate Lender have signed and delivered this Agreement under seal (where applicable) or have caused this Agreement to be signed and delivered under seal (where applicable) by a duly authorized representative. Where applicable law so provides, Borrower, Senior Lender and Subordinate Lender intend that this Agreement shall be deemed to be signed and delivered as a sealed instrument.

SENIOR LENDER:

FIRST NATIONAL BANK OF OMAHA

By:

Name: Ronald A. Bemis

Title: VP

Address: 141 W. Lincoln Hwy.
DeKalb, Illinois 60115

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) ss:
COUNTY OF DEKALB)

I, He undersigned, a Notary Public in and for the said County of DeKalb, DO HEREBY CERTIFY Ronald A. Bemis personally known to me to be the Senior Closing Specialist of FIRST NATIONAL BANK OF OMAHA personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and severally acknowledged that as such _____, he signed and delivered the said instrument as the free and voluntary act and deed of said Bank, for the uses and purposes therein set forth.

Given under my hand and official seal this 8th day of May 2020.

[SEAL]

Carolyn Shanahan
Notary Public

My commission expires: _____



BORROWER:

GULLIE, LLC, an Illinois limited liability company

By: _____

Name: _____

Title: _____

Address: 1830 Margaret Lane
DeKalb, Illinois 60115

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) ss:
COUNTY OF DEKALB)

I, the undersigned, a Notary Public in and for the said County of DeKalb, DO HEREBY CERTIFY that Ryan Gullie personally known to me to be the he of GULLIE, LLC, an Illinois limited liability company personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and severally acknowledged that as such he, he/she signed and delivered the said instrument as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and official seal this 25 day of May 2020.

Carolyn Shanahan
Notary Public

[SEAL]

My commission expires: _____



EXHIBIT A

LEGAL DESCRIPTION

LOT 51 OF BLOCK 11 OF THE COUNTY CLERK'S SUBDIVISION OF BLOCKS 11, 12, 14 AND 15 OF THE ORIGINAL VILLAGE (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN THE RECORDER'S OFFICE OF DEKALB COUNTY, ILLINOIS IN BOOK "C" OF PLATS, PAGE 42, SITUATED IN DEKALB COUNTY, ILLINOIS.

Commonly known as 260 E. Lincoln Hwy., Dekalb, Illinois 60115

P.I.N.: 08-23-163-011

Unofficial