RESOLUTION 2017-092                     PASSED: JULY 24, 2017

AUTHORIZING A SECOND AMENDMENT TO THE
DEVELOPMENT INCENTIVE AGREEMENT FOR THE
DEKALB SHOPPING CENTER LOCATED AT 1612-1718
SYCAMORE ROAD, DEKALB, ILLINOIS.

WHEREAS, the City of DeKalb is a home rule municipality with the power and authority
conferred upon it by the Illinois Municipal Code and the Constitution of the State of
Illinois; and

WHEREAS, the City and Owner have previously entered into a Development Agreement
dated December 17, 2008, a copy of which is appended hereto as Attachment A to
Exhibit 1 (the Original Agreement); and

WHEREAS, the Original Agreement included the provision of an incentive to the
First Rockford Group, Inc., which entity is the corporate predecessor of Owner; and

WHEREAS, under the terms of the Original Agreement, Owner was obligated to generate
revenues in the form of property tax increment, new sales tax, and related City revenues
in order to generate funds to provide for repayment or forgiveness of the development
incentive provided therein, which repayment/forgiveness was required to be
accomplished within seven years from the date of payment of the incentive by the City;
and

WHEREAS, under the terms of the Original Agreement, Owner was obligated to either
complete a redevelopment of the property located at 1331 Sycamore Road (referred to in
the Original Agreement as the "Sycamore Road Project"), or to acquire a new parcel of
real estate and develop said property with a retail user new to the City of DeKalb
(referred to in the Original Agreement as the "Alternative Project"); and

WHEREAS, the City and Owner agreed and acknowledged that Owner had not fully met
its obligations under the Original Agreement, and the City and Owner entered into an
amended agreement authorized by Resolution 2016-127 dated November 28, 2016, a
copy of which is appended hereto as Attachment B to Exhibit 1 ("the Amended
Agreement"), in order to provide Owner with additional opportunity to meet the
requirements of the Original Agreement; and

WHEREAS, Paragraph 4 of the Amended Agreement obligated Owner to complete
certain improvements to the parking lot not later than August 1, 2017; and

WHEREAS, Owner and City have been working cooperatively on the plans for the parking
lot improvements required by Paragraph 4 of the Amended Agreement, and
acknowledge the improvements will not be completed by the August 1, 2017, deadline;
and

WHEREAS, Owner has requested permission to complete the parking lot improvements
outlined in Paragraph 4 of the Amended Agreement by October 1, 2017, instead of August 1, 2017, and the City is willing to grant such additional time; and

WHEREAS, except for the additional time needed to complete parking lot improvements, Owner agrees to abide all other terms of the Original Agreement and Amended Agreement as more fully defined in the Amended Agreement.

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

Section 1. That the Mayor of the City of DeKalb, Illinois, be authorized and directed to execute the agreement attached hereto as Exhibit 1 entitled “Second Amendment to Development Incentive Agreement DeKalb Shopping Center Development 1612-1718 Sycamore Road”.

Section 2: That the City Clerk of the City of DeKalb, Illinois be authorized and directed to attest to the Mayor’s Signature and shall be effective thereupon.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 24th day of July, 2017, and approved by me as Mayor on the same day. Passed by an 8-0 roll call vote. Aye: Jacobson, Finucane, Marquardt, Fagan, Noreiko, Verbic, Faivre, Smith. Nay: None.

ATTEST:

[Signatures]

SUSAN R. BRENNAN, City Clerk

JERRY SMITH, Mayor
Exhibit 1

Second Amendment to Development Incentive Agreement
DeKalb Shopping Center Development
1612 – 1718 Sycamore Road

THIS AGREEMENT entered this 24th day of July, 2017 between the City of DeKalb, Illinois, a home rule municipality, (hereinafter referred to as “the City”), and the following designated owner (“Owner”), TO WIT:

Name of Owner:    First Midwest Group

Address of Property to be improved:   1612 through 1718 Sycamore Road
   (“SUBJECT PROPERTY)

WITNESSETH:

WHEREAS, the City and Owner have previously entered into a Development Agreement dated December 17, 2008, a copy of which is appended hereto as Attachment A (“the Original Agreement”); and,

WHEREAS, the Original Agreement included the provision of an incentive to the First Rockford Group, Inc., which entity is the corporate predecessor of Owner; and,

WHEREAS, under the terms of the Original Agreement, Owner was obligated to generate revenues in the form of property tax increment, new sales tax, and related City revenues in order to generate funds to provide for repayment or forgiveness of the development incentive provided therein, which repayment/forgiveness was required to be accomplished within seven years from the date of payment of the incentive by the City; and,

WHEREAS, under the terms of the Original Agreement, Owner was obligated to either complete a redevelopment of the property located at 1331 Sycamore Road (referred to in the Original Agreement as the “Sycamore Road Project”), or to acquire a new parcel of real estate and develop said property with a retail user new to the City of DeKalb (referred to in the Original Agreement as the “Alternative Project”); and,

WHEREAS, the City and Owner agreed and acknowledged that Owner had not fully met its obligations under the Original Agreement, and the City and Owner entered into an amended agreement authorized by Resolution 2016-127 dated November 28, 2016, a copy of which is appended hereto as Attachment B (“the Amended Agreement”), in order to provide Owner with additional opportunity to meet the requirements of the Original Agreement; and
WHEREAS, Paragraph 4 of the Amended Agreement obligated Owner to complete certain improvements to the parking lot not later than August 1, 2017; and

WHEREAS, Owner and City have been working cooperatively on the plans for the parking lot improvements required by Paragraph 4 of the Amended Agreement, and acknowledge the improvements will not be completed by the August 1, 2017 deadline; and

WHEREAS, Owner has requested permission to complete the parking lot improvements outlined in Paragraph 4 of the Amended Agreement by October 1, 2017 instead of August 1, 2017, and the City is willing to grant such additional time; and

WHEREAS, except for the additional time needed to complete parking lot improvements, Owner agrees to abide all other terms of the Original Agreement and Amended Agreement as more fully defined in the Amended Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreement obtained herein, the City and the Owner do hereby agree as follows:

1. Recitals: The City and Owner acknowledge the accuracy and validity of the recitals hereto and incorporate them herein as if fully restated.

2. Timeline to Complete Parking Lot Improvements Extended: The timeline outlined in Paragraph 4 of the Amended Agreement to complete the parking lot improvements outlined in Paragraph 4 shall be extended until October 1, 2017.

3. Except as provided herein, all other terms of the Amended Agreement shall remain in full force and effect.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the date first appearing above.

CITY OF DEKALB, ILLINOIS
A Municipal Corporation

[Signature]
Jerry Smith, Mayor

[Signature]
Susanna Puri, City Clerk

OWNER

[Signature]
Sunil Puri, Owner
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of the 1st day of December, 2008, by and between the CITY OF DEKALB, ILLINOIS, an Illinois municipal corporation (the "City") and FIRST ROCKFORD GROUP, INC., an Illinois corporation (First Rockford Group, Inc. and its affiliates being referred to hereafter as "First Rockford").

RECITALS

WHEREAS, the City is a home rule municipality under the Constitution and laws of the State of Illinois; and

WHEREAS, the City has established various TIF Districts to attract development including a TIF District established by Ordinance 86-78 which includes the DeKalb Shopping Center Subdivision, the legal description for which is attached as Exhibit "A"; and

WHEREAS, the City desires to attract and secure certain businesses to the City in order to reduce leakage of sales tax revenue out of the City; and

WHEREAS, First Rockford or an affiliated entity is the owner of Lots F, H, J, K, and parts of Lots B and L of the DeKalb Shopping Center Subdivision ("DeKalb Shopping Center"), and

WHEREAS, First Rockford or an affiliated entity is in the process of re-developing a portion of the DeKalb Shopping Center to enhance its attractiveness to potential retailers and appropriate users ("Project I"), attached hereto as Exhibit "B" as a site plan; and

WHEREAS, First Rockford or an affiliated entity has identified The Wright Athletic Club, Inc. ("Wright") as a tenant for more than 14,000 square feet of vacant space at the DeKalb Shopping Center ("Wright Location"); and

WHEREAS, the placement of Wright can only occur if a substantial additional investment is made to the façade and interior of Project I; and

WHEREAS, First Rockford or an affiliated entity has identified a proposed retail user not currently in the City or DeKalb market area for a newly constructed 6,000 square foot building at the real estate legally described on Exhibit "C" and commonly known as 1331 Sycamore Road ("Sycamore Road Project");

WHEREAS, completion of the Sycamore Road Project will involve the replacement of an aged structure with a modern facility along a key commercial corridor and will generate sales tax (home rule sales tax and retailers' occupation tax) revenue for the City, all or part of which will be new the City; and
WHEREAS, should First Rockford not be able to consummate the Sycamore Road Project, First Rockford Group shall undertake to acquire real estate it does not own as of the date of this Agreement and develop it, and secure for operation on such site a retail user new to the City of DeKalb (the "Alternative Project"). The Sycamore Road Project and the Alternative Project are collectively referred to herein as "Project 2".

WHEREAS, to date, First Rockford or an affiliated entity has received no TIF support for either Project 1 or Project 2; and

WHEREAS, the development of Projects 1 and 2 should stimulate local economic and commercial activity in the City, enhance and broaden the local tax base by increasing local property tax and retailers’ occupation tax payable to the City, and otherwise generally improve the economic vitality of the City; and

WHEREAS, the collective investment by First Rockford or an affiliated entity in Projects 1 and 2 support the City’s participation in Project 1 to facilitate Wright locating to Project 1 to a greater degree than would be justified by Wright alone;

WHEREAS, the City acknowledges it intends to utilize TIF money to advance the development projects referenced herein but explicitly states and agrees that TIF money is not being provided or directed to any project that is outside of a TIF District; and

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. **RECITALS.** Each of the Recitals set forth above are adopted and incorporated into the terms of this Agreement.

2. **TERM.** This Agreement shall be in effect for a period of ten (10) years from the date herein entered above.

3. **CITY’S OBLIGATIONS.**

3.1 In consideration of, and contingent upon, the performance of First Rockford’s obligations outlined in Section 4, the City hereby agrees to reimburse First Rockford through TIF funds an amount not to exceed twenty percent (20%) of First Rockford’s costs related to the façade, landscaping and interior improvements for Project 1 which would be eligible for reimbursement as a TIF qualified cost pursuant to 65 ILCS 5/11-74.4.1, et seq. ("TIF Reimbursable Costs") or One Hundred Thousand Dollars and No Cents ($100,000.00), whichever is less ("Reimbursement Amount"); provided however, the City shall not provide reimbursement for interior improvements for the Wright Location. Said reimbursement shall apply only to costs incurred by First Rockford after approval of this Agreement by the City Council. For clarification, the Reimbursement Amount shall be calculated based on the total of First Rockford’s expenditures for Project 1 whether interior or exterior, but the specific payment made by the City to First Rockford shall be against invoices and lien waivers only for TIF Reimbursable Costs associated with the exterior of Project 1 after the approval of this Agreement.
by the City Council. The Reimbursement Amount means and includes only the sums loaned to First Rockford.

3.2 The City’s obligation to pay First Rockford for TIF Reimbursable Costs will be structured as an interest free loan subject to forgiveness as follows:

3.2.1 To the extent the City receives revenues equal to the Reimbursement Amount within seven (7) years from the date of the first reimbursement payment by the City to First Rockford through the following: (a) any increase in real estate taxes above the real estate taxes assessed in 2008 for Project 1; except however for parcel 08-13-151-044 (as such parcel exists as of the date of this Agreement) only eighty-two percent (82%) of the increase in real estate taxes above that assessed in 2008 shall be used in the calculation; (b) any increase in sales tax (home rule sales tax and retailers’ occupation tax) generated by new tenants in Project 1 (including Wright) subsequent to the 2008 base year as evidenced by the periodic report of the new tenants’ returns submitted to the Illinois Department of Revenue (form RR-a-A, form ST-1, or similar form), for which First Rockford shall require the tenants to execute a form authorizing disclosure to the City, which First Rockford shall provide to the Illinois Department of Revenue and provide a copy to the City; (c) any increase in the City’s real estate taxes above the City’s real estate taxes assessed in 2008 for the Sycamore Road Project or the Alternative Project, whichever first receives an occupancy permit, less any funds paid to any other governmental bodies by virtue of any currently existing intergovernmental agreements with those governmental bodies; and (d) as to either the Sycamore Road Project or the Alternative Project, whichever first receives an occupancy permit, ninety (90%) percent of the sales tax generated at such location as evidenced: (i) for a publicly traded company, by the imputed sales tax (home rule sales tax and retailers’ occupation tax) based upon the national sales average of such user; or (ii) for a retailer user which is not publicly traded as evidenced by the periodic report of the new tenants’ returns submitted to the Illinois Department of Revenue (form RR-a-A, form ST-1, or similar form), for which First Rockford shall require the tenants to execute a form authorizing disclosure to the City, which First Rockford shall provide to the Illinois Department of Revenue and provide a copy to the City, less any funds paid to any other governmental bodies by virtue of any currently existing intergovernmental agreements with those governmental bodies. If a tenant does not execute said form authorizing disclosure to the City, then any increase in sales tax for said tenant shall not be used in decreasing the loan amount; provided, it is understood the form may follow payment to the City by the Illinois Department of Revenue, and will be used to calculate retroactively for the period covered by the form and sales taxes collected. Receipt by the City within the seven (7) year period shall be deemed to have occurred if the amounts were generated during the applicable period but are pending distribution by another governmental entity i.e., DeKalb County as to real estate taxes.

4. **FIRST ROCKFORD OBLIGATIONS.**

4.1 First Rockford shall secure a lease with Wright or other new tenant for Project 1, which shall be entered into and executed and occupancy by said tenant shall occur by April 1, 2009, subject to force majeure, in which case a day-for-day extension shall apply not to exceed six (6) months, in order to reduce vacancy in Project 1 by at least ten percent (10%). If First Rockford fails to do so, no reimbursement under Section 3 of this Agreement shall be made by the City.
4.2 First Rockford shall perform all of the work necessary to complete the physical improvements for Project 1, including but not limited to: façade improvements, landscaping, HVAC, new electrical systems and flooring, in order to obtain occupancy permits for one or more new lessees including Wright, and such work shall be in substantial compliance with anticipated elevation attached hereto as Exhibit "D" and a preliminary landscaping plan, described on Exhibit "E", which is attached hereto.

4.3 First Rockford shall endeavor to secure a new user for the Sycamore Road Project and complete such physical improvements to the building at that location, failing which, First Rockford shall complete the Alternative Project.

4.4 First Rockford shall provide an irrevocable letter of credit in favor of the City on the terms and conditions contained in Section 5.

5. IRREVOCABLE LETTER OF CREDIT

5.1 In consideration of the City’s obligations set forth above and for the loan forgiveness identified in Section 3, First Rockford shall secure and keep in force in favor of the City an Irrevocable Letter of Credit in the amount of Fifty Thousand Dollars and No Cents ($50,000.00) until the Reimbursement Amount has been paid in full to the City. The Letter of Credit shall be subject to the reasonable approval of the City Attorney and shall be issued by a financial institution that has a location where the letter can be presented for draw down within 100 miles of the City of DeKalb. The Letter of Credit shall obligate the issuer to honor drafts by the City at any time before expiration, upon presentation of said drafts and no other document. In addition, the Letter of Credit shall expressly permit the City to execute drafts in portions of the total.

5.2 The City may authorize a reduction in the amount of the Letter of Credit on an annual basis only after the amount of increased sales and/or property taxes as specified in Section 3.2 above has reached Fifty Thousand Dollars ($50,000.00); and in such event any said reduction would be in an amount only equal to that amount of increased sales and/or property taxes which exceeds $50,000.

5.3 The letter of credit shall be terminated upon the full repayment of the Reimbursement Amount described in Section 3.1 above.

5.4 If, at the expiration of the seven year period, the increased property and sales tax (home rule and retailers’ occupation tax) revenues generated from Projects 1 and 2 as set forth above in Section 3.2.1 have not reached the Reimbursement Amount, the City shall then be entitled to recoup the balance due through a draw down on the irrevocable Letter of Credit.

5.5 In the event that First Rockford transfers all or any portion of its ownership interest in Project 1 prior to the full payment of the Reimbursement Amount, the City shall then be entitled to recoup the balance due, up to the balance of the Reimbursement Amount or $50,000, whichever is greater, through a draw down on the irrevocable Letter of Credit. It is understood and agreed that transfer of an ownership interest in Project 1 to an entity which shares majority common ownership and management to that of First Rockford will not be, by
itself, a triggering event for the City's right to draw on the letter of credit nor will such a transfer require any consent from the City; provided however that First Rockford provides reasonable evidence of the shared ownership and control to the City prior to any such transfer.

6. **PROCESS FOR REIMBURSEMENT**

First Rockford shall submit to the City Manager (or his designee) one or more written statements ("Request for Reimbursement") setting forth the amount of payments made which are eligible for TIF reimbursements. Such Requests for Reimbursement may only be submitted once every month. Each Request shall be accompanied by: (1) true and correct copies of such bills, contracts, invoices or other documentation as the City Manager (or his designee) shall reasonably require to evidence the right of reimbursement or (2) a certification of First Rockford that the costs reflected thereby have been paid or incurred for Project 1, except for costs related to improvements for the interior of the Wright Location which sums shall be used in calculating the Reimbursement Amount but which shall not be eligible for direct reimbursement. First Rockford shall also submit lien waivers for all subcontracted labor and materials with its Requests for Reimbursement. The City Manager (or his designee) shall have fourteen (14) days after receipt of any Request for Reimbursement from First Rockford to approve or disapprove such Request for Reimbursement and, if disapproved, to provide First Rockford in writing and in detail with an explanation as to why the City Manager (or his designee) is not prepared to approve such Request for Reimbursement citing with specificity the basis for such disapproval pursuant to the terms of this Agreement. Upon timely approval by the City Manager, the City shall disburse twenty percent (20%) of the TIF Eligible Expenses listed in the Request for Reimbursement within thirty (30) days, the total of payments made pursuant to Requests for Reimbursement being capped as described above.

7. **DEFAULT GENERALLY.** The occurrence of any one or more of the following events (each an "Event of Default") shall constitute a material default and breach of this Agreement by the non-performing party (the "Defaulting Party"): 

7.1 **Monetary Default.** The failure to make any payment required to be made under this Agreement within ten (10) days after the Defaulting Party has received notice of its failure to make such payment on or before the due date for such payment; or

7.2 **Non-monetary Default.** The failure to observe or perform any of the covenants, conditions or obligations of this Agreement within thirty (30) days after the issuance of a notice by another party specifying the nature of the default claimed; provided, however, if such matter is not susceptible of being cured within thirty (30) days, the cure period shall be extended for a reasonable period of time provided that the Defaulting Party commences the cure within said thirty (30) day period and thereafter diligently pursues the cure to completion.

7.3 Upon the occurrence of an Event of Default and after the time to cure has expired and the Defaulting Party has failed to cure the default, the other party shall be entitled to take any action and pursue any remedies allowed under applicable law or in equity by virtue of such Event of Default.

8 **MISCELLANEOUS.**
8.1 **Force Majeure.** Whenever performance of any obligation is required of any party hereunder, such party shall use all due diligence, and shall take all necessary measures in good faith, to perform such obligation; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, governmental restrictions or approvals, severe weather, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials or damage to work in progress by reason of fire or other casualty or other causes beyond the reasonable control of such party, other than financial reasons, (each such occurrence a "Delaying Cause" and collectively the "Delaying Causes"), then provided that the party alleging a Delaying Cause shall notify all other parties hereto in writing within ten (10) business days of the commencement of a Delaying Cause, setting forth, in detail, the nature of the Delaying Cause, the commencement date of the Delaying Cause and an estimate as to the duration of the Delaying Cause, then the time for performance as herein specified shall be appropriately extended by the duration of the Delaying Cause. At the conclusion of the Delaying Cause, the party claiming same shall similarly notify the other parties hereto of the conclusion of the Delaying Cause and the duration thereof claimed by the notifying party. In no event shall the aggregate of all Delaying Causes exceed 365 days. The provisions of this Section shall not operate to excuse any party from the prompt payment of any monies required by this Agreement or from the performance of any obligation which can be satisfied within the required time period by the payment of money.

8.2 **Defense and Indemnification.** First Rockford covenants and agrees to defend and indemnify the City, its officers, elected and appointed, agents, employees, engineers and attorneys (the "Indemnitees") against any and all claims, lawsuits, damages, demands, expenses, liabilities and losses of any nature whatsoever directly or indirectly related to entering into this Agreement. First Rockford's duty to defend as provided herein is limited to payment for attorneys' fees reaching $100,000. Thereafter, the parties agree that the continuing defense of any litigation will be subject to mutual agreement by the parties. This limitation with respect to First Rockford's duty to defend has no impact on First Rockford's duty to indemnify, however.

8.3 **Costs and Attorney's Fees.** If any party brings or commences any legal action or proceeding to enforce any of the terms of this Agreement, or for damages by reason of an alleged breach of this Agreement, the prevailing party in such action shall be entitled to recover all costs and expenses of litigation, including reasonable attorney's fees. For purposes of this provision, it is expressly agreed that the attorney's fees of the City will be set at a reasonable level consistent with market value and not based on the actual fee or salary paid to the attorney for the City.

8.4 **Notices.** All notices, demands, statements and requests required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) in person or by a reputable courier service that provides receipt of delivery, (ii) by deposit in the U.S. mail, postage prepaid, by certified or registered mail, return receipt requested, (iii) by nationally recognized overnight courier service, or (iv) by facsimile immediately followed by delivery in accordance with (i), (ii) or (iii) above, in each case addressed to the parties concerned at the addresses or facsimile numbers set forth below (or at such other address or facsimile number as a party may specify by written notice pursuant to this Section to the other parties):
Communications sent by personal delivery, courier service or facsimile transmission, as set forth above, shall be effective upon receipt; provided, however, that, with respect to facsimile transmission, the subsequent delivery is made in accordance with (iv) above. Communications set by mail as set forth above shall be effective three (3) days after proper deposit in the U.S. mail. It is further agreed that each party hereto will promptly furnish to the other parties hereto a copy of any notice it may receive from any third party that may affect the rights of any party hereunder.

8.5 Amendments and Waivers. This Agreement may not be amended, modified or discharged, nor may any of its terms be waived, except by an instrument in writing signed by all of the parties.

8.6 Mutual Assistance and Consents. The parties agree to use their reasonable efforts to do all things necessary or appropriate to execute this Agreement and to aid and assist each other in carrying out the terms of this Agreement, including, without limitation, the enactment by the City of such resolutions and ordinances and the taking of such other actions as may be necessary to enable the parties' compliance with the terms and provisions of this Agreement. In the event that any party to this Agreement is required to grant its consent or approval to the other party to this Agreement in connection with any of the terms and provisions of this Agreement, such consent or approval shall not be unreasonably withheld.

8.7 Transferability. The transferability and assignability of any of the rights in this Agreement and the agreement as a whole, is not automatic and is subject to the express written consent of the City, which shall not be unreasonably withheld.

8.8 Survival; Time of the Essence. The defense and indemnity provisions, warranties, representations and agreements of this Agreement shall survive the termination date. Time is of the essence with respect to all dates and deadlines contained herein.

8.9 Governing Law and Venue. This Agreement shall be governed by the internal laws of the State of Illinois and any litigation shall be brought in the Sixteenth Judicial Circuit, DeKalb County, Illinois.
8.10 **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Agreement.

8.11 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

8.12 **Severability.** If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable under applicable law, then the remainder hereof and the application of such term, covenant or condition to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby.

8.13 **Relationship of the Parties.** Nothing contained herein or in any other instrument or agreement between the City and First Rockford shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partnership or joint venture between the parties hereto.

8.14 **Affiliate.** As used herein, the phrase "affiliated entity" shall mean any entity or person controlled by or under common control (by any of voting control, ownership, or value) of any specified entity.

**IN WITNESS WHEREOF,** the parties have caused this Agreement to be executed by their duly authorized representatives effective as of the date first set forth above.

**CITY:**

**CITY OF DEKALB, ILLINOIS,**
An Illinois Municipal Corporation

By: [Signature]
Name: Kris Povlsen, Acting Mayor

Attest:
Name: Donna Johnson, City Clerk

**FIRST ROCKFORD:**

**FIRST ROCKFORD GROUP, INC.,**
an Illinois corporation

By: [Signature]
Name: Sunil Purvis
Title: President
STATE OF ILLINOIS

COUNTY OF DEKALB

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Sunil Puri, personally known to me to be the President of FIRST ROCKFORD GROUP, INC., an Illinois corporation, whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument of writing in such capacity, as his free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this 11th day of December, 2008.

[ Seal ]

First Rockford Group, Inc.
By: [Signature]
Name: Jennifer J. Harter
Notary Public
My Commission Expires: March 10, 2012
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EXHIBIT A

LEGAL DESCRIPTION SHOPPING CENTER

PARCEL ONE:

LOTS H, K, L AND PART OF LOT G (EXCEPT THAT PART DESCRIBED AS
FOLLOWS: COMMENCING AT THE MOST SOUTHERLY CORNER OF LOT E OF THE
DEKALB SHOPPING CENTER SUBDIVISION RECORDED IN BOOK "L" OF PLATS,
PAGE 15, THENCE SOUTHEASTERLY, ALONG THE MOST SOUTHWESTERLY LINE
OF SAID LOT G FOR A DISTANCE OF 19.0 FEET; THENCE NORTHEASTERLY,
ALONG A LINE PARALLEL WITH THE SOUTHEASTERLY LINE OF SAID LOT E
FOR A DISTANCE OF 190.0 FEET TO ITS INTERSECTION WITH AN
EXTENSION OF THE NORTHEASTERLY LINE OF SAID LOT E; THENCE
NORTHWESTERLY, ALONG A LINE PARALLEL WITH THE SOUTHWESTERLY LINE
OF SAID LOT G FOR A DISTANCE OF 19.0 FEET TO THE NORTHEASTERLY
CORNER OF SAID LOT G; THENCE SOUTHWESTERLY, ALONG THE
SOUTHWESTERLY LINE OF SAID LOT E FOR A DISTANCE OF 140.0 FEET TO
THE POINT OF BEGINNING), ALL AS PER THE PLAT OF DEKALB SHOPPING
CENTER SUBDIVISION RECORDED IN BOOK "L" OF PLATS, PAGE 15 AS
DOCUMENT NO. 293364 IN DEKALB COUNTY, ILLINOIS.

EXCEPTING THEREFROM THE FOLLOWING:

THAT PART OF LOT "L" IN DEKALB SHOPPING CENTER SUBDIVISION, AS
RECORDED IN BOOK "L" OF PLATS, PAGE 15, DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHERLY CORNER OF LOT "M" OF SAID DEKALB
SHOPPING CENTER SUBDIVISION; THENCE NORTHEASTERLY, ALONG THE
SOUTHEASTERLY LINE OF SAID LOT "M" TO THE EASTERLY CORNER
THEREOF; THENCE NORTHWESTERLY, ALONG THE NORTHEASTERLY LINE OF
SAID LOT "M" TO THE SOUTHEASTERLY LINE OF SYCAMORE ROAD; THENCE
SOUTHWESTERLY, ALONG SAID SOUTHEASTERLY LINE, 40.0 FEET; THENCE
SOUTHEASTERLY, PARALLEL WITH SAID NORTHEASTERLY LINE, 139.76 FEET
TO A LINE THAT IS PARALLEL WITH AND 35.0 FEET SOUTHWESTERLY OF
THE SOUTHWESTERLY LINE OF SAID LOT "M"; THENCE
SOUTHWESTERLY, PARALLEL WITH SAID SOUTHWESTERLY LINE, 184.26 FEET
TO THE NORTHEASTERLY LINE OF DRESSER ROAD; THENCE NORTHEASTERLY,
ALONG SAID NORTHEASTERLY LINE, 35.33 FEET TO THE POINT
OF BEGINNING, ALL IN THE CITY OF DEKALB, DEKALB COUNTY, ILLINOIS.

PARCEL TWO:

LOT F AND THAT PART OF LOT B AS PER THE PLAT OF DEKALB SHOPPING
CENTER SUBDIVISION RECORDED IN BOOK "L" OF PLATS, PAGE 15, AS
DOCUMENT NO. 293364 IN DEKALB COUNTY, ILLINOIS,
DESCRIBED AS FOLLOWS: COMMENCING AT THE MOST NORTHERLY CORNER OF
SAID LOT B; THENCE SOUTHWESTERLY, ALONG THE NORTHEASTERLY LINE
OF SAID LOT B TO THE MOST WESTERLY CORNER OF SAID LOT B; THENCE
SOUTHEASTERLY, ALONG THE SOUTHWESTERLY LINE OF SAID LOT B, A
DISTANCE OF 57.0 FEET; THENCE NORTHEASTERLY, ALONG A LINE
PARALLEL WITH THE NORTHEASTERLY LINE OF SAID LOT B TO THE
NORTHEASTERLY LINE OF SAID LOT B; THENCE NORTHEASTERLY, ALONG THE
NORTHEASTERLY LINES OF SAID LOT B TO THE POINT OF BEGINNING
(EXCEPTING THEREFROM THE FOLLOWING: A STRIP OF LAND DESCRIBED AS
FOLLOWS: COMMENCING AT THE MOST NORTHERLY CORNER OF SAID LOT B;
THENCE SOUTHWESTERLY, ALONG SAID NORTHEASTERLY LINE, A DISTANCE
OF 20.8 FEET; THENCE SOUTHEASTERLY, ALONG A LINE PARALLEL WITH
SAID NORTHEASTERLY LINE, A DISTANCE OF 31.5 FEET TO AN ANGLE
POINT; THENCE SOUTHEASTERLY, ALONG A LINE PARALLEL WITH SAID
NORTHEASTERLY LINE TO ITS INTERSECTION LINE OF PREMISES FIRST
HEREINABOVE DESCRIBED, AT A POINT 20.8 FEET SOUTHWESTERLY OF (AS
MEASURED ALONG THE SOUTHEASTERLY LINE OF THE PREMISES FIRST
HEREINABOVE DESCRIBED) THE NORTHEASTERLY LINE OF SAID LOT B;
THENCE NORTHEASTERLY, ALONG A LINE PARALLEL WITH THE
NORTHEASTERLY LINE OF SAID LOT B, A DISTANCE OF 20.8 FEET TO THE
NORTHEASTERLY LINE OF SAID LOT B; THENCE NORTHEASTERLY, ALONG THE
NORTHEASTERLY LINES OF SAID LOT B TO THE POINT OF BEGINNING).

BUT EXCLUDING THEREFROM:

TRACT A
TRACT A:

THAT PART OF LOTS F, J AND K OF THE DEKALB SHOPPING CENTER SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "L" OF PLATS, PAGE 15, AT DOCUMENT NO. 209364, DESCRIBED AS FOLLOWS: BEGINNING AT THE MOST EASTERY CORNER OF SAID LOT J; THENCE SOUTHEASTERLY, ALONG THE NORTHEASTERLY LINE OF SAID LOT F, 82.80 FEET; THENCE SOUTHWESTERLY, AT AN ANGLE OF 106°31'31", MEASURED COUNTERCLOCKWISE FROM SAID NORTHEASTERLY LINE, 146.88 FEET TO THE SOUTHWESTERLY LINE OF SAID LOT F; THENCE NORTHEASTERLY, AT AN ANGLE OF 89°53'32", MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 65.0 FEET; THENCE NORTHWESTERLY, AT RIGHT ANGLE TO THE LAST DESCRIBED COURSE, 106.72 FEET TO THE NORTHEASTERLY LINE OF SAID LOT L; THENCE NORTHEASTERLY, AT AN ANGLE OF 89°14'28", MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID NORTHEASTERLY LINE AND ALONG THE NORTHEASTERLY LINE OF SAID LOT K, 63.01 FEET TO THE SOUTHWESTERLY CORNER OF SAID LOT J; THENCE SOUTHEASTERLY, AT AN ANGLE OF 90°49'34", MEASURED COUNTERCLOCKWISE FROM THE NORTHEASTERLY LINE, ALONG THE SOUTHWESTERLY LINE OF SAID LOT J, 102.88 FEET TO THE SOUTHEASTERLY CORNER OF SAID LOT J; THENCE NORTHEASTERLY, AT AN ANGLE OF 90°31'50", MEASURED CLOCKWISE FROM SAID SOUTHWESTERLY LINE, 181.39 FEET TO THE POINT OF BEGINNING, ALL IN THE CITY OF DEKALB, DEKALB COUNTY, ILLINOIS.
FOR REFERENCE ONLY.
MAY NOT BE TO SCALE AND
DOES NOT CONSTITUTE A
REPRESENTATION OR
WARRANTY
Lot Three (3) in Sycamore Road Subdivision, a subdivision of part of the East Half (1/2) of Section 14, Township 40 North, Range 4, East of the Third Principal Meridian, according to the Plat thereof recorded on May 23, 1984 in Book "S" of Plats, page 85, as Document No. 84-02927, in DeKalb County, Illinois; situated in County of DeKalb and State of Illinois (Excepting therefrom that portion deeded to the State of Illinois Department of Transportation Division of Highways for roadway purposes by Warranty Deed recorded by Document No. 94001145).
EXHIBIT E

PRELIMINARY LANDSCAPING PLAN

First Rockford is still finalizing a landscaping plan which will identify the landscaping improvements to be completed at the DeKalb Plaza Shopping Center.

The scope of the landscaping work will focus generally on enhancing the image of the Shopping Center’s entryway from Sycamore Road. As part of this scope, First Rockford is attempting to create an entrance parkway. This would involve adding a landscaping island separating the ingoing and outgoing traffic. This landscaping island would be overfilled with soil and then completed with various species of perennials and shrubs. First Rockford is also exploring ways to improve perimeter landscaping across the Sycamore Road gateway to provide a richer, more colorful atmosphere upon entry.
ATTACHMENT B

Exhibit 1

Amendment to Development Incentive Agreement
DeKalb Shopping Center Development
1612 – 1718 Sycamore Road

THIS AGREEMENT entered this 25th day of November, 2016 between the City of DeKalb, Illinois, a home rule municipality, (hereinafter referred to as “the City”), and the following designated owner (“Owner”), TO WIT:

Name of Owner: DeKalb-Harlem, L.L.C.

Address of Property to be improved: 1612 through 1718 Sycamore Road
("SUBJECT PROPERTY")

WITNESSETH:

WHEREAS, the City and Owner have previously entered into a Development Agreement dated December 17, 2008, a copy of which is appended hereto as Exhibit A ("the Original Agreement"); and,

WHEREAS, the Original Agreement included the provision of an incentive to the First Rockford Group, Inc., which entity is the corporate predecessor of Owner; and,

WHEREAS, under the terms of the Original Agreement, Owner was obligated to generate revenues in the form of property tax increment, new sales tax, and related City revenues in order to generate funds to provide for repayment or forgiveness of the development incentive provided therein, which repayment/forgiveness was required to be accomplished within seven years from the date of payment of the incentive by the City; and,

WHEREAS, under the terms of the Original Agreement, Owner was obligated to either complete a redevelopment of the property located at 1331 Sycamore Road (referred to in the Original Agreement as the "Sycamore Road Project"), or to acquire a new parcel of real estate and develop said property with a retail user new to the City of DeKalb (referred to in the Original Agreement as the "Alternative Project"); and,

WHEREAS, the City and Owner agree and acknowledge that Owner has not fully met its obligations under the Original Agreement; and,

WHEREAS, Owner has requested that the City consider an Amendment of the Original Agreement, as memorialized herein, to extend the term of the Original Agreement and provide it with additional opportunity to meet the requirements thereof; and,
WHEREAS, as an inducement to the City and as for consideration in exchange for the City's agreement to extend said term, Owner has agreed to undertake and perform the obligations contained herein;

NOW THEREFORE, in consideration of the mutual covenants and agreement obtained herein, the City and the Owner do hereby agree as follows:

1. Recitals: The City and Owner acknowledge the accuracy and validity of the recitals hereto and incorporate them herein as if fully restated.

2. Term of Original Agreement Extended: The timeline for Owner's completion of the underlying obligations of the Original Agreement (i.e. the generation of revenue to satisfy the forgivable incentive and the development of the Alternative Project) shall be extended until December 31, 2018.

3. Documentation to be Provided: At least 90 days prior to the deadline outlined in the previous section, Owner shall provide:
   
   A. Full documentation of all revenues that it believes have been generated, in compliance with the Original Agreement, to satisfy the obligations of the Original Agreement as modified herein.

   B. Documentation that it has completed the Alternative Project, to satisfy the obligations of the Original Agreement as modified herein.

Said documentation shall be in form and content acceptable to the Community Development Director, and shall include official documentation (e.g. governmentally issued property tax records, sales tax returns, certificates of occupancy, etc.) to memorialize its full performance of its obligations.

4. Additional Owner Improvements: As and for consideration offered to induce the City to agree to the amendments outlined above, Owner agrees that it shall complete the following improvements to the Subject Property, with all such improvements to be fully completed by not later than August 1, 2017:

   A. All existing parking lot lighting at the Subject Property shall be removed, and shall be replaced with energy-efficient LED parking lot lighting.

   B. The entirety of the existing parking lot at the Subject Property will be fully resurfaced with new asphalt (i.e. a full resurfacing, and not merely sealcoating or patching).

   C. The existing parking lot shall be restriped and reconfigured to promote greater on-site parking capacity.
D. The Owner acknowledges that the right of way along East Dresser Road was converted from landscaped area to pavement at some point in the past. Owner shall remove pavement from such area and replace with sod. The City agrees to provide such permits or approvals as are necessary for Owner to perform such work in the right-of-way.

All such improvements shall be installed in full compliance with currently applicable codes and regulations of the City and all other applicable regulations, and shall be in a format and of a design acceptable to the Community Development Director, except as may be approved by the City Council pursuant to an application filed by the Owner to reduce landscape islands and landscaping in order to achieve desired parking counts. The City and Owner acknowledge that completion of this work shall reduce the impervious surface area at the Subject Property by adding landscape islands, but both parties acknowledge that full compliance with parking lot landscape islands may not be practical given the existing layout. Owner shall obtain all permits and permissions required for the completion of this work, prior to commencing on-site activities. The improvements shall not be deemed complete until all such improvements are fully constructed and have received a final certificate of occupancy, approved final inspection and/or all other required approvals.

5. Continued Maintenance: Owner agrees to maintain all improvements for a period of seven (7) years from the date of this Agreement.

6. Default: If the Owner fails to complete or cause the completion of the improvements described above subject to the terms of this Agreement or fails to comply with any other term of this Agreement, then upon written notice being given by the City Manager to the Owner, served in person or by certified mail to the address on this Agreement, the Owner may be immediately held in default under the Original Agreement, and would be obligated to refund the entire proceeds advanced to the Owner under said Original Agreement. Upon default of this Agreement by either party, other than default upon the installation of improvements as described, the Owner and/or the City shall have any and all remedies available at law.

7. Term: This Agreement shall have a term commencing upon the date of execution by both parties, and terminating upon the first to occur of: a) the City's notice of termination based upon a material breach of this Agreement or the occurrence of one of the conditions justifying termination as outlined herein; or, b) the passage of ten years from the date of execution by the City.

8. Miscellaneous Provisions: This Agreement and the Original Agreement as amended herein shall constitute the entirety of the agreement between the parties and no previous draft, note or discussion shall contravene any provision hereof. Any modification to this Agreement shall be effective only if in writing, signed by both parties. Any dispute arising out of the performance of this Agreement shall have its jurisdiction and venue exclusively fixed in the Twenty-Third Judicial Circuit Court of DeKalb County, Illinois.
9. Insurance, Indemnity: Owner acknowledges that the City is not responsible for the means, performance or construction of any improvements and its sole involvement is the provision of an incentive following construction of the improvements. OWNER shall maintain in full force and effect liability insurance with limits of not less than $1,000,000 per occurrence during the term of construction of its improvements. Owner shall be responsible for any and all damages to property or persons arising out of an error, omission, and/or negligent act in the prosecution of the work or failure to prosecute the work and shall indemnify and hold harmless the City, its officers, agents, and employees from all suits, claims, actions or damages of any nature whatsoever resulting therefrom. Owner shall assume all restitution and repair costs arising out of an error, omission and/or negligence. Owner agrees to indemnify and save harmless the City, including its elected or appointed officials, employees, attorneys and agents (collectively, the “City Indemnitees”) against any and all claims, loss damage, injury, liability, and court costs and attorney’s fees incident thereto, including any claims made by employees of the Owner or any of their subcontractors, as well as all other persons, resulting directly or indirectly from the work covered by this contract or the equipment used in connection therewith. It is understood that this agreement shall apply to any and all such claims whether resulting from the negligence or the intentional acts of the Owner, the Owner’s employees, contractors or subcontractors, the City or City Indemnitees or otherwise, with the single exception of any claim, damage, loss, or expense arising solely out of the intentional misconduct of the City or City Indemnitees. The Owner is solely responsible for determining the accuracy and validity of any information provided to the Owner by the City or its representatives. This indemnification shall apply to the fullest extent of the law, and in the event that any provision hereof is determined to be unenforceable, the indemnification obligations shall be severable and the fullest extent of indemnification that may lawfully apply shall remain in full force and effect. This indemnification shall include any claims arising out of the erection, construction, placement or operation of any scaffold, hoist, crane, stay, ladders, support or other mechanical contrivance in connection with such work including but not limited to losses, claims, damages and expenses arising pursuant to claims asserted against the City pursuant to theories premised upon Section 414 or Section 343 of the Restatement (Second) of Torts. This indemnification shall not be limited in any way by limitations on the amount or type of damages, compensation, or benefits payable by or for the Owner under Workers’ Compensation Acts, disability benefit acts, or other employee benefit acts, and serves as an express agreement to waive the protection of Kotecki v. Cyclops Welding Corp, 146 Ill.2d 155 (1991) in Illinois.
IN WITNESS THEROF, the parties hereto have executed this Agreement on the date first appearing above.

CITY OF DEKALB, ILLINOIS
A Municipal Corporation

John Rey, Mayor

PROPERTY OWNER

Sunil Puri, owner

ATTEST:
City Clerk
I, RUTH A. SCOTT, do hereby certify that I am the duly appointed Deputy City Clerk of the City of DeKalb, DeKalb County, Illinois, and as such officer, I am the keeper of the records and files of the City Council of said City.

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

RESOLUTION 2017-092

AUTHORIZING A SECOND AMENDMENT TO THE DEVELOPMENT INCENTIVE AGREEMENT FOR THE DEKALB SHOPPING CENTER LOCATED AT 1612-1718 SYCAMORE ROAD, DEKALB, ILLINOIS.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, on the 24th day of July, 2017, and the original is now on file at the City of DeKalb Municipal Building.

WITNESS my hand and the official seal of said City this 14th day of March, 2018.

RUTH A. SCOTT, Deputy City Clerk

Prepared by and Return to:
Deputy City Clerk Ruth Scott
City of DeKalb
200 South Fourth Street
DeKalb, IL 60115