RESOLUTION 2018-040       PASSED: MARCH 26, 2018

AUTHORIZING IMMEDIATE PAYMENT OF THE INCENTIVE FOR 230 EAST LINCOLN HIGHWAY (THE BANDIT’S CASTLE, LLC).

WHEREAS, the City of DeKalb (hereinafter referred to as "the City"), and The Bandit’s Castle, LLC ("Owner"), have previously entered into an amended agreement dated March 12, 2018 (Amended Agreement), a copy of which is attached hereto as "Exhibit A"; and,

WHEREAS, the City was required to amend the FY2018 Budget in order to fund the $468,282 expense associated with the Amended Agreement; and,

WHEREAS, the approval of Ordinance 2018-010 amending the FY2018 Budget would occur post approval of the accounts payable during the City Council Regular Meeting to take place on March 26, 2018; and,

WHEREAS, further delay of a payout for the incentive would result in a negative financial impact for the Owner;

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL of the City of DeKalb, Illinois as follows:

Section One. That the Finance Director of the City of DeKalb is authorized and directed to make immediate payment of the incentive amounts contemplated herein, upon receipt and approval of all required documentation by her.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a Regular meeting held on the 26th day of March, 2018, and approved by me as Mayor on the same day. Passed by a 6-1-1 roll call vote. Aye: Jacobson, Finucane, Marquardt, Noreiko, Faivre, Smith. Nay: Verbic. Absent: Fagan.

ATTEST:

SUSANNA HERRMANN, City Clerk

JERRY SMITH, Mayor
RESOLUTION 2018-030        PASSED: MARCH 12, 2018

AUTHORIZING AN AMENDMENT TO THE 230 EAST LINCOLN HIGHWAY DEVELOPMENT INCENTIVE AGREEMENT (THE BANDIT'S CASTLE, LLC).

WHEREAS, the City of DeKalb (hereinafter referred to as "the City"), and The Bandit's Castle, LLC ("Owner"), have previously entered into an agreement dated March 13, 2017, (Original Agreement), a copy of which is attached hereto as "Exhibit B"; and

WHEREAS, after entering into the Original Agreement, the Owner incurred greater than anticipated project costs due to unknown conditions of the property located at 230 East Lincoln Highway; and

WHEREAS, the Owner has requested an amendment to the Original Agreement that would increase the amount of the incentive provided and allow for future financial assistance to be provided to prospective tenants of the available commercial spaces; and

WHEREAS, the City desires to support the Owner in their effort to recruit viable businesses to the Owner's vacant commercial spaces;

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL of the City of DeKalb, Illinois as follows:

Section One. That the Mayor of the City of DeKalb, Illinois, is authorized and directed to execute an amended agreement with The Bandit's Castle, LLC for facility improvements to the property located at 230 E. Lincoln Highway, a copy of which is attached hereto and made a part thereof as Exhibit "A," subject to such changes as shall be acceptable to him.

ADOPTED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a Regular meeting held on the 12th day of March, 2018, and approved by me as Mayor on the same day. Passed by a 6-1-1 roll call vote. Aye: Jacobson, Finucane, Marquardt, Noreiko, Faivre, Smith. Nay: Verbic. Absent: Fagan.

ATTEST:

[Signatures]

SUSANNA HERRMANN, City Clerk

JERRY SMITH, Mayor
EXHIBIT A

AMENDMENT TO THE 230 EAST LINCOLN HIGHWAY DEVELOPMENT INCENTIVE AGREEMENT.

THIS AGREEMENT entered this 12th day of March, 2018, between the City of DeKalb, Illinois, a home rule municipality, (hereinafter referred to as “the City”), and The Bandit’s Castle, LLC (“Owner”), TO WIT:

Address of Property to be improved: 230 E. Lincoln Highway, DeKalb, Illinois. (“Subject Property”)

WITNESSETH:

WHEREAS, the City and Owner entered into an agreement on March 13, 2017 ("Original Agreement") a copy of which is attached hereto as Exhibit B, which identified certain improvements at the Subject Property for which the City would reimburse the Owner and the conditions for such reimbursement; and

WHEREAS, on March 13, 2017, the City Council approved Resolution 2017-042, authorizing an Economic Incentive with the Owner; and

WHEREAS, the Owner is requesting to amend the terms of the Original Agreement due to the final project costs exceeding the original cost estimates included in the Original Agreement; and

WHEREAS, the City acknowledges the risk associated with significant rehabilitation projects involving buildings constructed prior to 1900; and

WHEREAS, the Owner’s ability to provide future financial assistance for tenant build-out is no longer possible due to greater than anticipated project costs; and,

WHEREAS, the long-term vacancy of the first floor commercial spaces is not beneficial to the City; and,

WHEREAS, the City and Owner now desire to amend the Original Agreement;

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

1. Article VIII: Development Incentive, Section B – Development Incentive Defined:

The Owner commits that it shall invest approximately One Million Two Hundred Thousand Dollars ($1,200,000) One Million Four Hundred Seventy Three Thousand Dollars ($1,473,000) in the completion of the project as defined herein ("Project Completion Costs"), and shall proceed to construct all phases of the project (after obtaining required approvals) in a good and workmanlike manner. The City shall provide a total Development Incentive of not more than the lesser
of: a) $400,000-$468,282; b) the amount which is one third (1/3) of the Project Completion Costs; or, c) the total of all TIF-eligible costs incurred ("the Development Incentive"). In the event that Owner fails to incur Project Completion Costs of $1,200,000 $1,473,000 or more, then the Development Incentive shall be reduced pro-rata based upon the figure which is one third of the Project Completion Costs (i.e. if Project Completion Costs total $1,000,000, the Development Incentive shall not exceed $333,333.33).

2. Exhibit E: Project Cost Documentation Requirements

Final Project Costs must be documented in a tabbed binder in accordance with these regulations.

a. 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.

b. 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. The second section must include a sworn contractor affidavit that lists contractors and subcontractors, a summary of the project, contract amounts, and draws from the construction loan.

c. Subsequent sections should be separately tabbed by contract. 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.

d. Applicants may include a Miscellaneous Expenses tab in the binder for small project expenses.

e. 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.

f. 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.

IN WITNESS WHEREOF, the parties hereto have executed this amendment to the Original Agreement on the date first appearing above.

CITY OF DEKALB, ILLINOIS
A Municipal Corporation

CITY OF DEKALB, ILLINOIS
A Municipal Corporation

THE BANDIT'S CASTLE, LLC

Cohen Barnes
owner/manager/member
EXHIBIT B

RESOLUTION 2017-042 PASSED: MARCH 13, 2017

AUTHORIZING A REDEVELOPMENT AGREEMENT
FOR THE PROPERTY LOCATED AT 230 EAST
LINCOLN HIGHWAY, DEKALB, ILLINOIS.

WHEREAS, the City of DeKalb is a home-rule municipal corporation with all power and authority derived under the law; and

WHEREAS, the building located at 230 East Lincoln Highway ("the Premises") is under contract to purchase by The Bandit's Castle, LLC ("Developer"); and

WHEREAS, the City and Developer seek to enter into a development agreement for improvements to the Premises; and

WHEREAS, Developer has proposed to commit a substantial sum of funds to the completion of renovation of the building on the Premises, subject to the City's commitment to provide economic development funding for this project; and

WHEREAS, the City Council of the City of DeKalb has determined that it is necessary and advantageous and supports the public health, welfare and safety to provide an economic incentive to ensure the revitalization of an otherwise obsolete property.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL of the City of DeKalb, Illinois:

Section 1. The City Council of the City of DeKalb hereby approves of the Development Incentive Agreement in the format attached hereto as Exhibit 1 ("the Agreement"), subject to such revisions as shall be acceptable to the Mayor with the recommendation of City staff. Said revision shall include the addition of the legal description for both parcels comprising the property located at 230 East Lincoln Highway. The City Council also expressly approves of the provision of a City-funded incentive in an amount not to exceed the lesser of: 1) $400,000; 2) the total of all TIF-eligible costs incurred; or, 3) that sum which is 1/3 of the total project costs for the Improvements as defined in the Agreement. Said incentive shall be provided to the Developer as a forgivable loan through the Central Area Tax Increment Financing District ("TIF") for eligible project costs, to be provided after submission of appropriate project cost documentation in form and content acceptable to the Community Development Director. Said incentive shall be processed by the City as a TIF-funded grant, repaid as a forgivable loan over a period of ten years as described in the Agreement.

Section 2. That the City Clerk of the City of DeKalb is authorized and directed to attest the Mayor's signature.
Section 3. Thereafter, City staff are directed to fully comply with the terms of the Agreement, and to undertake the obligations contained therein. The City Council expressly approves of the provision of the funding contemplated therein without requirement of further Council approval. Provided that the work performed under the Agreement is performed in accordance with the Agreement, the City Council waives any otherwise applicable requirement for City Council approval of bids or vendors utilized by Owner and waives any applicable competitive bidding requirement (except to the extent required under the Agreement).

Section 4. The City Clerk is authorized and directed to record a copy of the Agreement following execution of the same.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a regular meeting thereof held on the 13th day of March, 2017, and approved by me as Mayor on the same day. Passed by a 7-1 roll call vote. Aye: Finucane, Marquardt, Snow, Noreiko, Baker, Faivre, Rey. Nay: Jacobson.

ATTTEST:

[Signature]

JENNIFER JEE JOHNSON, City Clerk

[Signature]

JOHN A. REY, Mayor
Prepared By and Return To
City of DeKalb
ATTN: City Attorney
200 S. Fourth Street
DeKalb, IL 60115

230 EAST LINCOLN HIGHWAY
DEVELOPMENT INCENTIVE AGREEMENT
CITY OF DEKALB
ARTICLE XI: REMEDIES: ................................................................. 18
A. Failure to Construct: .......................................................... 18
B. Breach Generally: ............................................................ 18

ARTICLE XII: TERM: .................................................................. 19

ARTICLE XIII: MISCELLANEOUS: .............................................. 19
A. Amendment: ........................................................................ 19
B. Severability: ........................................................................ 19
C. Entire Agreement: ............................................................... 19
D. Successors and Assigns: ...................................................... 20
E. Notices: ................................................................................. 20
F. Time of Essence: ................................................................. 21
G. Indemnification: ................................................................. 21
H. Exhibits: .............................................................................. 22
I. Venue: ................................................................................ 22
J. Survival of Provisions: ......................................................... 22

Exhibit A: Legal Description .................................................... 25
Group Exhibit B: Plans ............................................................. 26
Exhibit C: No Trespass / Patrol Agreement ......................... 27
Exhibit D: Traffic Enforcement Agreement ....................... 29
Exhibit E: Project Cost Documentation Requirements .......... 31
Group Exhibit F: Form of Promissory Note, Corporate Undertaking, Mortgage .... 32
Exhibit G: Waiver of Objection to Special Service Area ....... 50
This Development Incentive Agreement (the "Agreement") is made and entered the 12th day of March, 2017 by and among the City of DeKalb, an Illinois municipal corporation located in DeKalb County, Illinois, (the "City"), and The Bandit’s Castle, LLC (the “Owner”). The City and the Owner are collectively referred to as “Parties” and individually referred to as a “Party.”

RE C I T A L S

A. The Owner is the owner or contract purchaser of record of a parcel of real property situated at 230 East Lincoln Highway in the City of DeKalb, DeKalb County, Illinois, which property is legally described on Exhibit A attached hereto and incorporated herein by reference as the “Property”.

B. The Property is comprised of a two story (plus basement) commercial building. The Owner has acquired the contractual right to purchase the Property and the structure therein, and proposes to redevelop the Property as a commercial development in accordance with this Agreement. The Property is proposed to be developed in accordance with the plans attached hereto as Group Exhibit B ("the Plans"), except as such plans are required to be modified under the terms of this Agreement. The Plans contemplate the improvement of the building upon the Property ("the Building"), and provide preliminary architectural and elevation information. The redevelopment of the Property and the Building is proposed to occur within the parameters of existing zoning restrictions applicable to the Property under the terms of the City's Unified Development Ordinance (UDO) Central Business District (CBD) zoning regulation that is currently in place. There is no proposed residential component of the development.

C. The City and the Owner thus have negotiated and have voluntarily entered into this Agreement for purposes of enabling the redevelopment of the Property consistent with the Plans and this Agreement.

D. The City acknowledges that the Owner’s proposed use of the Property, as set forth in this Agreement, will be compatible with and will further the planning objectives of the City and that the redevelopment of the Property to the City will be of benefit to the City, will permit orderly growth, planning and development of the City, will increase the tax base of the City, and will promote and enhance the general welfare of the City and its residents. The Owner acknowledges that the City is not required to provide the incentive outlined herein, and that the City’s agreement to provide the incentive in accordance with the provisions of this Agreement, to provide access to public utility services and other City services, and to otherwise perform the City’s obligations under this Agreement constitutes valuable, bargained-for consideration that benefits the Owner and the Property.

E. The City acknowledges and the Owner agrees that the CBD zoning, as provided under the UDO, will be the most appropriate zoning classifications for the development of the Property and that the Property will not have any residential use or residential component during the term of this Agreement.

F. All other and further notices, publications, procedures, public hearings and other matters attendant to the consideration and approval of this Agreement have been given, made, held and performed by the City as required by the Illinois Municipal Code, and all other applicable statutes, and all applicable ordinances, regulations and procedures of the City.

G. The Corporate Authorities have duly considered all necessary matters to enter into this Agreement and have further duly considered the terms and provisions of this Agreement and have authorized the Mayor to execute, and the City Clerk to attest, this Agreement on behalf of the City.
NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements herein made, the Parties hereby agree as follows:

ARTICLE I: INCORPORATION OF RECITALS

The Parties acknowledge that the statements and representations contained in Paragraphs A through G, both inclusive of the foregoing recitals are true and accurate and incorporate such recitals into this Agreement as if fully set forth in this Article I.

ARTICLE II: ZONING AND IMPROVEMENT OF THE PROPERTY

A. Zoning Applicability:

The Property is presently zoned CBD and shall remain zoned CBD for the duration of this Agreement unless a mutually acceptable amendment to this Agreement is approved by both parties. The Owner shall not permit any residential use of the Property to occur during the term of this Agreement except with the express approval of the City Council.

B. Permitted Uses:

Other than as outlined above, all uses which are permitted or special uses in the CBD zoning district shall be permitted or special uses as provided herein and this Agreement shall not alter the applicable zoning, save for the Owner’s pledge to not undertake residential use of the Property during the term of this Agreement.

C. Improvements to Property:

Owner shall construct, as a component of the redevelopment of the Property, improvements generally consisting of the following items:

1) Owner shall undertake a full replacement/improvement of the front façade of the property, in general compliance with the conceptual drawings included in the Plans, inclusive of the improvements to the second floor area of the façade as depicted therein.

2) Owner shall install a new and modern design heating/ventilation/air conditioning system to service the needs of the Building.

3) Owner shall undertake any roof repair or replacement required to render the Building secure against elements and in compliance with all applicable codes.

4) Owner shall construct an on-site elevator to serve all three floors of the Building, in a fashion compliant with all applicable codes.

5) Owner shall construct an expansion of the rear stairwell of the Building in compliance with all applicable codes, if required.

6) Owner shall construct an improved rear façade in form and content acceptable to the Community Development Director if a rear stairwell is required. If no rear stairwell is required, Owner shall repair and improve the existing rear façade to comply with all applicable building codes and regulations.

7) Owner shall complete an interior buildout of the Building, inclusive of commercial/office/retail/storage uses in the basement, two commercial/retail spaces on the first floor of the Building (of approximately 1,200 square feet and 1,400 square feet, respectively), and commercial/retail uses on the second floor of the building.

All improvements shall be subject to any conditions or restrictions imposed pursuant to building permits or other approvals issued by the City, and Owner shall obtain, at its cost, all such required permits and inspections. The final proposed floor plan, scope of improvement, façade materials and elevations shall be subject to review and approval by the Community Development Director, which approval shall not be unreasonably withheld or conditioned. In the event that the Community Development Director withholds
approval, the Owner may appeal such decision to the City Council, whose decision shall be final.

The Parties acknowledge that at the time of approval of this Agreement, the City has only reviewed architectural elevations showing portions of the Building. Owner agrees and acknowledges that the Building shall be designed with "four sided architecture", meaning that all exposed sides of the building shall feature architectural improvements. Preliminary details of the architectural theme, inclusive of preliminary architectural elevations, have been provided as part of the Plans. All renovations on the Property shall be built in compliance with the Plans in terms of design, elevations, appearance, aesthetics and building materials, in accordance with all applicable building codes. The Owner shall design, install and/or construct all signage, landscaping, lighting and improvements in conformance with the approved final plans.

Following the installation of such materials, the Owner shall maintain such materials (including the exterior of the building, landscaping, parking areas and other portions of the Property) in good condition and shall take appropriate actions necessary to prevent the deterioration of the Property or its appearance, excepting ordinary wear and tear that does not violate applicable property maintenance codes. The Parties agree and acknowledge that environmental factors, such as the appearance and maintenance of a structure, have a significant impact on crime and on surrounding properties. Accordingly, the Parties agree and acknowledge that inherent in the incentive granted herein is the Owner's affirmative obligation to comply with all applicable property maintenance codes to maintain the attractiveness and appearance of the Property. The failure to maintain the building façade, architectural improvements, landscaping or other aesthetic components of the Property that are either described herein or contemplated in the Plans shall constitute a violation of this Agreement.

Any future proposal to remodel any portion of the Property which would add additional or revised structures, outdoor signage, facilities or changes in building materials shall be subject to review and approval by the Community Development Director, or at the Director's discretion, may be required to be submitted to the City Council for review and approval. Such approval shall be at the reasonable discretion of the City.

D. Required Revisions to Plans:

1) The final plans for the Building shall be required to provide a consistent standard for any lighting, awnings or signage proposed to be installed on the Building. All lighting, awnings and signage shall be installed and thereafter maintained in accordance with these standards unless strict compliance is waived by the Community Development Director, it being the intention of the Parties that the signage and awnings on the Building shall be of a common design and character so as to promote a cohesive appearance of the Building.

2) The Owner shall reasonably comply with any request of the City to install, at the City's cost and expense, wireless internet access points or other similar and related equipment on the Building or Property to permit the use of the Building or Property to aid in the provision of public internet and communications access, provided that such installation can be accomplished in such a fashion as to not impede the aesthetic appearance of the Building.

3) The Owner shall reasonably comply with any request of the City to install, at the City’s cost and expense, security cameras on the Building or Property for use by the City, provided that such cameras are installed to monitor only public property or public access areas of the Property (e.g. the proposed walkway at the east side of the Property and/or parking areas), and further provided that such installation can be accomplished in such a fashion as to not impede the aesthetic appearance of the Building.
4) Outdoor dumpsters, trash compactors, and similar rubbish disposal facilities shall be permitted on the Property only in accordance with the approved final plans, provided that all such facilities shall be completely screened from view with a fence constructed of materials and colors matching the principal building it services as contemplated by the Plans.

E. Property Related Provisions:

Owner shall comply with the following restrictions which shall be deemed to be applicable to the entire Building and Property, as a condition of this Agreement and the incentives included herein, and as a component of the incentive granted herein.

1) Owner shall collaborate with the City on the location and installation of fiber optic cables on the Property, in such locations as the City shall reasonably request, to permit service of the Property or other properties by fiber optic connections. Where and if Owner is installing fiber optic service within the Building, Owner shall install additional fiber optic cables for use by the City in providing public wireless internet access and/or security cameras as described herein, at the cost and expense of the City, upon request (and Owner shall reasonably collaborate with the City on such routing). Where Owner is running fiber optic cables on the Property or permitting others to cross the Property with such cables, Owner shall provide the City an opportunity to provide its own cables to be installed in the same location, at the cost and expense of the City.

2) Owner shall grant the City such public access and/or public utility easements as shall be reasonably requested by the City at the time of final plan approval.

3) Owner shall provide building lighting and street lighting on streets adjacent to the Property based upon a consistent standard adopted at the time of final plan approval, acceptable to Owner and the City, and shall thereafter maintain lights in such locations in compliance with the adopted standards. For any public streetlights installed in accordance with this standard, following construction of the project and acceptance of public improvements, the obligation to maintain and operate such lights shall be the responsibility of the City.

4) Any marketing signs, off-site signage or temporary signs of any form shall be installed only in strict compliance with the applicable provisions of the UDO pertaining to permitting and authorization of such signs.

F. Failure to Close:

In the event that the Owner fails to acquire and close upon all of the parcels within sixty (60) days of the date of this Agreement, the City and Owner shall renegotiate this Agreement and the terms of repayment of any portion of the City incentive paid prior to said date or, failing the same, the City may declare a default and exercise any rights contained herein. The City Manager shall be authorized and directed to extend this timeline without any further approval from the City Council in the event that the Owner is, through no fault of the Owner's, unable to close on the property and is working in good faith to complete such transaction.

G. Future Parking Areas:

The Parties acknowledge that at the time of preparation of this Agreement, the Owner has not yet completed final plans for the improvement of the Property. However, the Property includes a rear parking/access area, located immediately south of the Building, which is adjacent to publicly owned alley and public parking lot. The Owner agrees that, at any point during the term of this Agreement, upon the written request of the City, the Owner shall either deed such parking/access area to the City or shall provide the City with a public access and parking easement covering such areas (at the City's preference), to allow the integration of such areas into a combined parking/public access area. The City and Owner shall reasonably cooperate on the design of such area to facilitate access into the Building by Owner and Owner's
tenants or invitees. The City's ability to acquire such areas shall be limited to circumstances where the City is acquiring the area to provide common public parking. In such instance, the Parties shall ascertain the total number of parking spaces provided to Owner on Owner's Property prior to the conveyance to the City, and the City shall reserve a like number of parking spaces for Owner within the common public parking area.

ARTICLE III: DEVELOPMENT AND MAINTENANCE OF THE PROPERTY:

A. Owner's Responsibility to Maintain:

The Owner shall be responsible for the maintenance and care of any and all common areas, parking lots or other improvements within the Property and for maintaining the Building on the Property in accordance with all City Building, Zoning and Property Maintenance Codes, and in accordance with the terms set forth in this Agreement. The Owner shall assume full responsibility for ensuring the property's compliance with the applicable codes and requirements. The Owner shall also be responsible for construction of all new improvements and amenities as depicted in the approved final plans, unless the City agrees, in writing, that it shall be responsible for some portion of construction of a public improvement.

B. Backup Special Service Area:

Owner and its successors, assignees and grantees, shall not object to and agree to cooperate with the City in establishing a special service area ("SSA") after final plan approval, for the Property, to be utilized as a backup mechanism for the care and maintenance of the Common Facilities, which include but are not limited to, lighting, parking lots, private roads, paved areas, drains, tiles, waterways, valves and related appurtenances, common landscaped areas, bike/pedestrian paths, racks, property monumentation, signage, rubbish disposal facility enclosures, park areas, open space and any other common areas of the Property.

Owner shall have the primary responsibility of providing for the regular care, maintenance, renewal and replacement of the Common Facilities including, without limitation, the mowing and fertilizing of grass, removal of debris or garbage, pruning and trimming of trees and bushes, lighting, sidewalks, removal and replacement of diseased or dead landscape materials, mosquito abatement, property monumentation and signage, maintenance of valves and related appurtenances, landscaping, maintenance of all private curbs and roadways, driveways and drive aisles, and the repair and replacement of signs, so as to keep the same in a clean, sightly and first class condition (the "Common Facilities Maintenance"). Common Facilities Maintenance shall be limited to the maintenance and upkeep of existing improvements, improvements described herein, and any then-current improvements at the time of performing maintenance.

If at any time the Owner fails to conduct the Common Facilities Maintenance within a reasonable time after being notified by the City to do so, then the City shall have the right, but not the obligation, to undertake such maintenance and utilize the SSA to provide sufficient funds to pay the costs of the Common Facilities Maintenance undertaken by the City. The Owner shall, upon the request of the City, grant the City an easement ("Common Facilities Maintenance Easement") over all of those Common Facilities located on the Property in favor of the City. The substance of the Common Facilities Maintenance Easement shall be as approved by legal counsel for the City. Said SSA shall have a rate as reasonably determined by the City Engineer not in excess of two hundred-hundredths percent (2.0%, being 200¢ per $100.

Approval of this Agreement shall be deemed to constitute consent to the City's establishment of a special service area as herein described.
Nothing in this Agreement shall prevent the City from levying or imposing property taxes, including but not limited to special service areas, special assessment areas, or other ad valorem or flat rate taxes upon the Property in the manner provided by law which are applicable to and apply equally to all other properties within the City or from establishing a special service area that encompasses solely the Property.

Owner shall execute a copy of the Waiver of Objection to Special Service Area in the form substantially as attached hereto as Exhibit G, within ninety (90) days of the date of closing upon the last of the parcels comprising the Property, and prior to the issuance of any payment of the Development Incentive contemplated herein.

C. Stop Work Orders:

The City shall issue stop orders as necessary to insure development occurs as required by this Agreement and City Ordinances. Unless issued in case of emergency, said stop orders shall be preceded by reasonable notice (not less than three business days) and opportunity to comply. In the event that the Owner fails to meet any deadline imposed under the terms of this Agreement or otherwise violates any provision of this Agreement, the City may issue stop work orders for any work at the Property, pending either the posting of a security acceptable to the City to guarantee the completion of all work required, or the entry of the Parties into an amendment to this Agreement.

D. Compliance with City Ordinances and Applicable Regulations:

The Parties agree that, except as specifically modified in this Agreement and the attached drawings and Exhibits, the Property shall be developed in compliance with all ordinances, codes and regulations of the City in effect at the time of development. The Parties acknowledge that it is the ultimate responsibility of the Owner to comply with any and all requirements of this Agreement and applicable City Codes. Thus, in the event that up to, but prior to construction or any time after execution of this Agreement, the City or its consultants issue a permit or give an approval not consistent with the terms of this Agreement or any applicable City Codes, such erroneous permit or approval may be of no force and effect and thus may be revoked. The Owner agrees that it may not rely on any such issued permit or approval for purposes of vested rights or estoppels to compel an improvement not consistent with the terms of this Agreement or applicable City Codes. The Owner hereby waives any claims of damages, of any type or character, against the City, its employees or its consultants based on such erroneously issued permits or approvals. A utility easement with terms and provisions reasonably acceptable to Owner and the City shall be provided by the Owner as may be requested by the City Engineer. All construction shall be in accordance with the City codes and ordinances and any comments of the City Engineer, City Planner or other City consultants which shall be provided at the time of plan review, except as may be specifically modified and/or governed by this Agreement. All such comments must be addressed prior to site development. All permits from the Illinois Environmental Protection Agency or any other agency with jurisdiction over the Property, if any are applicable, must be issued prior to work on water main, sanitary sewer or storm sewer improvements commences. The Parties acknowledge that, at the time of preparation of this Agreement, the Plans have not been reviewed by the City Engineer or City Public Works Department, and the Owner agrees and acknowledges that it shall make all such amendments to the Plans as may be reasonably required pursuant to their review.

E. Site Control:

Owner acknowledges that, depending on weather conditions, construction traffic entering and leaving a construction site creates debris, especially dirt, dust, and mud clots on streets and roadways adjacent to the construction site. Owner agrees that it shall inspect and clean the streets and roadways adjacent to and within 500 feet of the entrance to Owner's construction site, and take measures to control
dust daily while construction is occurring on said site. Owner further agrees to periodically mow weeds, pick up trash and debris and repair and replace soil erosion control fencing so as to comply with applicable ordinances of the City, all of which activities may be contracted to its development trades and contractors. Owner shall also patch or repair damage to any roadway, path, driveway, sidewalk or other similar improvement which may be damaged during the course of Owner’s construction or maintenance activities. As security for such obligations, and as a condition of the issuance of any filling or grading permits, Owner shall provide the Owner Surety in a form consistent with the Owner Surety referenced hereinafore. In the event Owner fails to clean the Property, mow weeds, pick-up debris or repair or replace soil erosion control fencing as required, or fails to patch or repair any street, path, roadway or sidewalk within two business days after receipt of notice from the City of Owner’s failure to comply with this provision, then the City may perform or contract with others to perform such undertaking and invoke the Owner Surety. Owner shall, within 15 business days following written notice from the City, pay all such costs.

F. Building Codes:

In constructing improvements and conducting renovation on the Property, the Owner shall comply with all then-current building codes of the City of DeKalb or any other agency having jurisdiction over the Property, except as may be specifically modified and/or governed by this Agreement. At the time of any future amendments or modifications of the building or the Property, the Owner shall comply with the then-current code requirements of the City, except as may be specifically modified and/or governed by this Agreement.

G. Fire Suppression / Alarm:

The Owner shall install a full fire alarm and fire suppression system in compliance with applicable code requirements and shall, except during reasonable periods of maintenance, thereafter keep such systems in service, operational and in good repair.

ARTICLE IV: PROJECT STAGING:

The Parties acknowledge that the construction of the project upon the Property shall be staged, as described below.

1) The Owner shall close upon the Property as expeditiously as possible.

2) At such time as Owner has acquired ownership of the Property, Owner shall submit final plans for review and approval by the City.

   a. Proposed final plans shall be subject to review and revision in collaboration with City staff, and shall be required to be in substantial conformity with the Plans attached hereto. Deviation from the Plans shall be permitted where reasonably acceptable to the City and where resulting in an improvement to the Property. The City shall not unreasonably withhold or condition approval of the final plans, provided that they are in substantial conformance with the concept plans and the conditions and restrictions contained in this Agreement. As indicated above, final plans shall be subject to approval by the Community Development Director, and any denial of such approval may be appealed to the City Council.

3) Owner shall complete construction of the Building within eighteen (18) months of the date of approval of the final plans by the City.

ARTICLE V: INFRASTRUCTURE:

A. Water Mains and Potable Water Supply:
The Property is currently serviced by an existing connection to the City’s potable water system. The Owner shall have the right to connect to and use such system and mains upon payment of the costs of connecting to the City’s water mains and the costs of any water meters or related devices. The Owner shall be responsible for constructing all on-site and off-site improvements necessary to connect to the Property and any development on the Property to the presently existing water mains and potable water supply of the City. The Owner shall be exclusively responsible for the payment of all costs, expenses and charges associated with the design, construction and permitting of such improvements, including but not limited to any security required under this Agreement or applicable law, any permits required by the City, the Illinois Environmental Protection Agency or any other agency having jurisdiction, or any other costs whatsoever.

B. Storm Water Retention, Facilities and Improvements:

The City acknowledges that no storm water improvements are contemplated herein, and the Property shall comply with applicable regulations.

C. Sanitary Sewers:

Owner shall comply with all applicable regulations, codes and ordinances.

D. Utility Connections:

The installation of the necessary and appropriate on-site electric, natural gas, cable, television, telephone facilities, and future internet access facilities (when available) to the Property shall be by underground installation (where reasonably possible) and pursuant to the requirements of such utility companies or pursuant to the agreement of the City with such entities and at no cost to the City. The City agrees to cooperate with the Owner to permit the extension of all such utilities along existing public right-of-ways and/or City owned property and otherwise allow the extension of all necessary utilities to the Property, provided, however, that the City’s agreement to cooperate with the Owner to allow the extension of utilities to the Property shall in no way relieve the Owner of its obligations to obtain any and all easements and permits necessary to do so, at Owner’s sole cost and expense.

E. Grant of Easements / Right of Way:

The Parties acknowledge that at present, the City does not contemplate the installation of additional public utilities or street improvements in the vicinity of the Property. However, the Owner agrees and acknowledges that it shall grant to the City, at no cost to the City, easements or right of way along the perimeter of the Property upon request, if required for the construction or maintenance of public improvements owned or operated by the City, or by any governmental entity providing services to the Property. Such easements shall be limited in size as reasonably required to provide area for public improvements.

ARTICLE VI: FEES AND CONTRIBUTIONS:

The Owner shall pay all fees imposed under City Ordinance in the amount and in the time as described by such applicable Ordinance, unless waived herein. The City and Owner shall, at the time of payment of any required fee, cooperate to determine the amount of the fee due. The Parties acknowledge that the Property is subject to building permit fees and planning and engineering review fees as proposed to be developed and constructed.

A. Fees Specifically and Uniquely Attributable:

The Parties further agree that the fees contained within this Agreement are specifically and uniquely attributable to the development of the Property and that the Owner participated in the calculation and
reconciliation of said fees, and the Owner and any successor hereby agree they will neither file any lawsuit nor take any other legal action challenging the imposition, collection, use, necessity enforceability, validity, or applicability of the fees described in this Agreement, nor shall Owner pay any such fees under protest. Notwithstanding the foregoing, Owner or the subsequent owners or developers of any portion of the Property shall be responsible for payment of all future fees, charges and assessments relating to their use or modification of the property, including but not limited to building permit fees for remodeling of any structure on the development, and similar charges or fees.

B. Owner Responsibility for Costs:

Owner agrees and acknowledges that, as a result of the preparation of this Agreement and related documents, and as a result of the ongoing commitment of resources by the City that is caused as a direct result of this Agreement, the process of creating this Agreement, and the Development that is to be constructed under the terms of this Agreement, the City may incur substantial expenses at the request of Owner, and the Owner may become responsible for substantial charges and fees in order to perform its obligations under this Agreement including but not limited to the Owner Surety. The City agrees that Owner shall not be responsible for any costs incurred prior to the date of this Agreement. Owner acknowledges that assignment or transfer of any interest in any property subject to this Agreement can increase the complexity of recovering those costs for the City and, in order to induce the City to enter into this Agreement, Owner agrees as follows:

1. Prior to the sale, assignment, lease or other transfer of any portion or portions of the Property, Owner shall provide not less than thirty (30) days notice to the City that such transfer is contemplated. Transfers among or between family members related by blood or marriage, or between trusts, corporations, partnerships or limited liability companies which are entirely owned or controlled by family members related by blood or marriage, shall not be construed as transfers giving rise to a potential obligation under this subsection.

2. Within fifteen (15) days of the receipt of such notice, the City shall provide Owner with a calculation of the total amount believed to be outstanding as costs for which Owner is responsible. Owner shall then have fifteen (15) days to make written objection to any such notice. Upon said objection, if any, the Parties agree to review in good faith and work toward the resolution of the notice and related costs for which the City claims Owner is responsible within an additional fifteen (15) days and in any event prior to the closing of the consummation of such transfer.

3. Prior to, or at the closing of, the consummation of such transfer, Owner shall cause all such amounts to be paid to the City, unless an Owner objection remains unresolved, in which case either Party may proceed with a legal action as detailed hereinafter.

4. At any time within ninety (90) days following consummation of such a transfer, the City shall provide final calculations of the total amount due from Owner and Owner shall pay all such amounts within thirty days of the City providing such notice.

5. In the event of a failure of Owner to comply with this subsection, Owner, along with the interest holder to which an interest in the property subject to this Agreement was transferred, shall be jointly and severally liable to the City for all such amounts described above.

6. Any notice of amounts so due under this agreement shall include accurate and complete (to the extent that such documentation exists) documentation from the City.
Owner further acknowledges that, at any point, if Owner fails to make a payment requested by the City within thirty (30) days of such request, or such additional time as the City shall agree to provide (with any such extension being acknowledged by the City in writing), the City may unilaterally choose to implement any or all of the following remedies until such point in time as Owner has paid all amounts due and/or restored any escrow accounts maintained by the Owner by virtue of this Agreement:

1. Issuance of a stop work order on any portion of the Development.

2. Refusal to issue further permits for building, occupancy, water tap on, or other development related work.

3. Cessation of any utility service provided by the City to any property owned or maintained by Owner or their successors or assigns.

4. Institution of appropriate legal action to recover any and all amounts due, or such an action by the Owner to object to the amount claimed due and/or to seek the declaration of a different amount due, in which case the prevailing party to such legal action shall be entitled to attorneys' fees, court costs, other collection costs, and interest at a rate of eight (8%) percent per annum, until such amount, including costs and interest, is paid in full, as against the non-prevailing party.

5. Cessation of any or all work on or pertaining to the Property by City staff, employees or consultants.

ARTICLE VII: INTENTIONALLY OMITTED:

ARTICLE VIII: DEVELOPMENT INCENTIVE:

A. Necessity of Incentive:

The Parties acknowledge that the Property has not experienced beneficial redevelopment or growth and has remained vacant for a significant period, notwithstanding the existence of a TIF District intended to improve property valuation. The Parties further acknowledge that the buildings comprising the Property are blighted within the statutory definitions contemplated by the Tax Increment Financing Allocation Act ("TIF Act"), and that the Owner is undertaking a project that will incur substantial TIF-eligible expenses. The Parties further acknowledge that the Project is anticipated to generate substantial new revenues for the City and for other affected taxing districts and public entities, along with substantial new opportunities for commerce in the City’s Central Business District and other areas. Further, the Parties acknowledge that but for the provision of the incentive described herein, the Developer would be unable to undertake the project contemplated herein, as based upon extensive study of the proposed project and its costs, and the Parties have mutually concluded that this project would not be economically feasible and the Owner would not acquire the properties and would not undertake the project. Accordingly, the Parties agree and acknowledge that the Development Incentive as described herein is necessary in order to induce this project to occur, and satisfies all requirements applicable to such an incentive. Further, the Parties have determined that in the absence of this Development Incentive, the Owner could purchase, lease or construct new commercial/retail space either within or outside the City of DeKalb at a lesser cost than the Owner incurs by purchasing and repurposing an existing building within the core of the City’s Central Business District. The City acknowledges the value of encouraging beneficial reuse of such structures, and provides this Development Incentive to encourage and enable such redevelopment which would not happen but for this Agreement.
B. Development Incentive Defined:

The Owner commits that it shall invest approximately One Million Two Hundred Thousand Dollars ($1,200,000) in the completion of the project as defined herein ("Project Completion Costs"), and shall proceed to construct all phases of the project (after obtaining required approvals) in a good and workmanlike manner. The City shall provide a total Development Incentive of not more than the lesser of: a) $400,000; b) the amount which is one third (1/3) of the Project Completion Costs; or, c) the total of all TIF-eligible costs incurred ("the Development Incentive"). In the event that Owner fails to incur Project Completion Costs of $1,200,000 or more, then the Development Incentive shall be reduced pro-rata based upon the figure which is one third of the Project Completion Costs (i.e. if Project Completion Costs total $1,000,000, the Development Incentive shall not exceed $333,333.33).

C. Definition of Eligible Costs:

1. Project Completion Costs, as described above, shall include all costs relating to the planning, purchase, demolition, remediation, restoration or construction of the project on the Property inclusive of the Building and the Property, incurred after the date of approval of this Agreement. It shall include: all costs of property acquisition and closing costs, including costs necessary to buyout of and/or relocation of existing tenancies, without the expenditure of which by Owner this project could not move forward as described and contemplated herein; demolition, environmental remediation and site restoration costs; professional design and engineering fees; costs of utility service, installation or relocation, including without limitation underground storm water pipes, sanitary runs or pipes, relocation of electric services and equipment, grease traps; interim financing and construction bridge loan interest costs; legal and other professional fees; management fees not to exceed twelve percent (12%) of total actual project costs; costs associated with processing lien waivers and payment of project expenses; contractor, subcontractor and materialmen costs; mobilization, site-heating, temporary utility or other construction related costs; permit fees, tap-on, connection or recapture fees; delivery expenses; costs of permanent fixtures, furnishings and equipment; costs of constructing any public improvements that are directly associated with the completion of the project (e.g. sidewalks, driveway aprons, lighting); and other costs that are directly related to the construction of the Building and the improvements contemplated by the approved final plans.

2. TIF Eligible Costs shall include those costs which are eligible for reimbursement under the TIF Act to the fullest extent of the law, including but not limited to demolition and remediation costs, costs associated with providing public utilities to the Property, professional fees associated with the design, architecture, and/or engineering of the Property, and any other TIF eligible costs, whatsoever.

3. For any cost to be included as a Project Completion Cost or TIF Eligible Cost, said cost must be documented in accordance with the Project Cost Documentation requirements appended hereto as Exhibit E.

D. Payment of Development Incentive:

1. Prior to the making of any payment of the Development Incentive under this Agreement, the Owner shall execute a corporate undertaking, promissory note and mortgage substantially in the form attached hereto as Group Exhibit F. The mortgage shall be recorded against the Property and shall contemplate and secure further advances up to the full amount of the potential Development Incentive. The mortgage and loan secured thereby shall be subordinate to any other purchase, acquisition or construction financing that the Owner obtains in order to facilitate the redevelopment of the Property, and the City Manager shall be authorized and directed to execute any subordination agreement or other similar documentation, without
requirement of separate City Council approval.

2. The approval of this Agreement shall constitute the full and final approval of the payment of the Development Incentive in the amount described above. This sum shall be payable on an as-incurred basis towards TIF Eligible Costs incurred prior to the approval of the final plans, including but not limited to demolition and remediation costs, and professional fees associated with the design or engineering of the Property, Building or the project as a whole.

a. City staff is authorized and directed to make direct payments of such expenses, without requirement of separate City Council review or authorization, provided that the expenses are documented in accordance with Exhibit E. For payment of property acquisition costs at a real property closing, the City staff shall be authorized to make direct payment to the title company or escrow office processing the closing. Such payments, as time-sensitive payments, shall be processed in accordance with the established closing schedule for an individual real estate closing. For payment of other TIF Eligible Costs such as professional fees or related expenses, such payments shall be made on a monthly basis, again in accordance with Exhibit E. At the time of payment, Owner shall provide the City with satisfactory evidence of title.

b. The City’s intention in providing direct payment of such expenditures, including property acquisition costs, is to facilitate the rapid redevelopment of the Property to ensure its conversion and return to beneficial commercial use.

3. At such time as the Owner obtains a final certificate of occupancy for the Building, it is contemplated that the Owner will transition from construction financing to permanent financing. At such time, the Owner shall provide the City with documentation of Project Completion Costs and TIF Eligible Costs in the form required under Exhibit E. Said documentation of project costs may include any anticipated interest or closing costs associated with transitioning from construction financing to permanent financing, provided that all such costs are properly documented to the City at the time of closing on such permanent financing and are TIF eligible. The City shall, within a reasonable period after receipt of said documentation, provide the Owner with the final payment of the Development Incentive (if any). The final payment of the Development Incentive shall be paid to Owner or its assignee, as requested by Owner, and the City Manager shall be authorized to and shall subordinate the City’s mortgage(s) to the Owner’s permanent financing, and any subsequent private financing obtained by the Owner.

a. In the event that the Project Completion Costs do not include $1,200,000 of total expenses, then the Development Incentive shall be reduced to not exceed one-third of Project Completion Costs.

b. The Development Incentive shall be payable solely from TIF revenues actually received by the City, and in no event shall the Development Incentive exceed the total of TIF-eligible expenses incurred by Owner following the date of approval of this Agreement. In the event that TIF-eligible expenses are less than one-third of Project Completion Costs, the Development Incentive shall be reduced to an amount not to exceed the TIF-eligible component thereof.

c. The Parties acknowledge that the Owner shall be receiving as-incurred payments of the Development Incentive, prior to the time that the City and Owner have the final figures for the Project Completion Costs. The City and Owner shall use their best efforts to ensure that the Development Incentive paid to Owner does not exceed one-third of Project Completion Costs. However, in the event that the final accounting for the project shows that more than one-third of the Project Completion Costs were reimbursed to Owner, Owner shall provide repayment of any excess reimbursement to the City within thirty (30) days of the date of the City’s written request for the same.
E. **Forgiveness of Development Incentive:**

The Development Incentive described herein is intended to be repaid as a forgivable incentive. The incentive shall be forgiven over a ten year period, with ten percent (10%) forgiveness for each year. The term of forgiveness shall commence upon the date which is the later of: the date of last payment of the Development Incentive; the date of issuance of a final certificate of occupancy; the date of any repayment under VIII(D)(3)(c) above; or, the date of the first commercial occupancy of any portion of the Building (after renovation). The Owner shall be entitled to each year’s forgiveness provided that the Owner continues to comply with all terms of this Agreement, continues to maintain and utilize the Property in compliance with all then-applicable codes, ordinances and regulations, and continues to maintain the improvements funded herein. The Owner agrees that it shall maintain its business operations and ownership rights of the Property for the duration of the forgiveness period, as an operational business in the current industry, generating employment and sales tax revenue for the City. In the event that the Owner fails to comply with these standards, the City shall be authorized to declare a breach of this Agreement and to demand repayment of any portion of the Development Incentive not previously forgiven as of the date of the breach. In the event that the Owner contemplates leaving the Property within the forgiveness period due to the expansion of Owner’s business or due to relocation within the City of DeKalb, the Owner may request that the City Council waive the provisions of this Article VIII(E).

F. **Limitation of Liability:**

The Parties acknowledge that the City’s liability to pay the Development Incentive shall be expressly limited to funds available to the City in the City’s Special Tax Allocation Fund, which Fund has as its sole source of revenue incremental taxes collected in the City’s TIF Districts. Owner may not compel any exercise of taxing authority by the City to make payments provided for hereunder. The provisions of this Agreement do not constitute indebtedness or a loan of credit of either Party within the meaning of any constitutional or statutory provision, except to the extent required to permit enforcement of the City’s rights under the corporate undertaking, promissory note and mortgage required herein. To the extent required by law, for each year during the term of this Agreement, the City hereby agrees that it will budget for and appropriate funds necessary to satisfy its obligations hereunder. Such appropriation shall be a part of City’s annual budget adopted in accordance with 65 ILCS 5/8-11-20 and applicable provisions of City Code. The City shall make any appropriation necessary for the year that the Agreement is entered into by means of a budget amendment, if any is necessary. All references to provisions in 65 ILCS 5/8-11-20 are to provisions as in effect now and as hereafter amended.

G. **Incentive Security:**

The Parties acknowledge and agree that the City is advancing sums pursuant to the Development Incentive that shall be secured by a mortgage which may be subordinate to other loans, liens and encumbrances. The Parties further acknowledge that the City undertakes and accepts certain risks during the conduct of the construction and prior to the issuance of a final certificate of occupancy, in that the City will be advancing sums prior to being assured that the project shall be completed. Accordingly, in order to induce the City to provide the incentive described herein, payable as described herein, the Owner agrees that it shall provide the City with security for the City’s incentive payment, in form and content acceptable to the City Manager with the recommendation of City staff, prior to the payment of any portion of the Development Incentive. Such security shall be maintained in place until the commencement of the forgiveness period of the Development Incentive as described above. The security may be in the form of an irrevocable letter of credit, a performance bond, a payment bond a surety bond or another acceptable format, provided that such bond either secures the repayment of the Development Incentive to the City in the event that the project for any reason fails to be completed, or provided that such bond secures the completion of improvements funded by the City through the payment of the Development
Incentive.

In the event that the security is provided in the form of a cash bond, surety bond or similar "economic" bond, the proceeds shall be utilized to repay the City for any portion of the Development Incentive previously paid and the City shall have sole discretion in the use of such funds after repaid to the City. In the event that the security is provided in the form of a performance bond, such bond shall be utilized to guarantee the completion of any work initiated or paid through the use of the Development Incentive, and such additional work as shall be within the scope of such bond.

ARTICLE IX. OPERATION OF THE PROPERTY:

A. Public Safety Regulations: Trespass/Patrol Agreement:

The Parties shall keep in place at all times a No-Trespass Enforcement Agreement, in the then-current format utilized by the City of DeKalb (with such agreement currently being in the form attached hereto as Exhibit C), and shall cooperate at all times with regard to the enforcement of such Agreements. Further, and without regard to the content of such Agreements, the Owner agrees that it shall provide the City with all keys, codes, passes or other items required to gain access to the interior common areas of the Building (including but not limited to the common hallways on each floor, and other common areas available for use by all occupants of the Property), and shall authorize and request the routine patrol of such areas by the City of DeKalb Police Department or other sworn officers, based upon the availability of resources for such details, at any time without prior notice. At any time that the Owner changes locking mechanisms, passcodes or other entry devices, the Owner shall provide the City with updated access mechanisms.

Owner shall also make itself and its management representative available for meetings with the City on a periodic basis (or as otherwise requested by the City) for the purpose of reviewing security plans, trespass enforcement lists or similar issues.

B. Knox Boxes:

The Owner shall install and maintain a ‘Knox Box’ entry systems for use by City of DeKalb emergency responders, at locations designated by the City of DeKalb Fire Chief, and shall ensure that such systems are available for use and operational at all times. At minimum, one (1) Knox Box shall be installed at an approved location on each primary entrance to the Building.

C. Common Area Surveillance:

The Parties acknowledge that the Owner may maintain cameras or other equipment utilized to provide video surveillance and security coverage for the parking lot and/or common areas of the Property and Building. The Owner acknowledges that the City requests that the Owner provide to the City a connection and inter-link to any such cameras so installed, so that the City can remotely monitor such common area surveillance videos from the City Police Department. Such monitoring would be provided through having the Owner establish an external, static IP address securely accessible by the City with video feed in a format acceptable to the City Police Department. With regard to such interlink, if provided, the Parties agree to mutually indemnify and hold harmless the other party from any claim arising out of the monitoring or failure to monitor such systems. Such interlink shall permit the City to access a digital feed of live data collected on the Property, and shall also allow the City to access data stored in any recording devices installed or maintained by Owner with respect to such surveillance. Regardless of the provision of the interlink, all security cameras and security equipment installed on the Property shall be maintained in good and fully-operable condition by Owner and Owner shall comply with any request of the DeKalb Police Department to provide video footage recorded of any exterior portion of the Property or Building or any public or common area outside of the Property or Building.
D. **Commercial Property Registration and Inspection:**

The Owner shall comply with the then-current requirements of any applicable commercial property registration or inspection ordinance maintained by the City, and shall voluntarily comply with an annual inspection of the premises in accordance therewith. The Owner shall secure all such permissions and shall include in any leases for any portion of the Property such authorization as shall be required to permit the full inspection of any portion of the Building or Property. During the term of this Agreement, the Owner shall reasonably cooperate with any request by the City to inspect the Property, the Building or any portion thereof, by any City employee or contractor, to confirm compliance with the terms of this Agreement.

**ARTICLE X: MUTUAL ASSISTANCE:**

The Parties shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement; to aid and assist each other in carrying out the terms and objectives of this Agreement and the intentions of the Parties as reflected by said terms, including, without limitation, the giving of such notices, the holding of such public hearings, 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 and as may be necessary to give effect to the terms and objectives of this Agreement.

**ARTICLE XI: REMEDIES:**

A. **Failure to Construct:**

1. This Agreement contains specific timelines for the acquisition, demolition and remediation of existing structures and improvements. Those timelines may be extended by the City Manager, with agreement of the Owner, from time to time by written agreement, without requiring an amendment of this Agreement or approval of the City Council, for good cause shown by Owner, in the City Manager’s discretion.

2. In the event that Owner fails to complete the renovation of the Building or complete all of the improvements authorized by the final plans, the City may exercise the remedies described herein.

3. In the event the Owner fails to obtain approval of the final plans or if the City reasonably determines that the final plans are not in compliance with the Plans and this Agreement (and if the City determines that the proposed final plans should not be approved), then the City may exercise the remedies described herein.

B. **Breach Generally:**

Upon a breach of this Agreement, any of the Parties, solely in the venue as provided hereinafter, by an action or proceedings at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance or both. No action taken by any party hereto pursuant to the provisions of this Article or pursuant to the provisions of any other Article of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and nonexclusive of any other remedy either set forth herein or available to any party at law or in equity.

In the event of a material breach of this Agreement, the Parties agree that the Party alleged to be in breach shall have forty-five (45) days after written notice of said breach to correct the same prior to the non-breaching Party’s seeking of any remedy provided for herein (provided, however, that said forty-five (45)
day period shall be extended if the defaulting Party has initiated the cure of said default and is diligently proceeding to cure the same).

If any of the Parties shall fail to perform any of its obligations hereunder, and the Party affected by such default shall have given written notice of such default to the defaulting party, and such defaulting Party shall have failed to cure such default within forty-five (45) days of such default notice (provided, however, that said forty-five (45) day period shall be extended if the defaulting party has initiated the cure of said default and is diligently proceeding to cure the same), then, in addition to any and all other remedies that may be available, either in law or equity, the Party affected by such default shall have the right (but not the obligation) to take such action as in its reasonable discretion and judgment shall be necessary to cure such default.

The failure of the Parties 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 rights thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

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 (which circumstances may include acts of God, war, acts of civil disobedience, weather, terrorist acts of a direct or indirect nature, material shortages, flooding, strikes or similar acts), the time for such performance shall be extended by the amount of time of such delay.

ARTICLE XII: TERM:

This agreement shall have a term of fifteen (15) years from the date of execution.

ARTICLE XIII: MISCELLANEOUS:

A. Amendment:
This Agreement, and the exhibits attached hereto, may be amended only by mutual consent of the City and Owner, by adoption of an ordinance or resolution by the City approving said amendment as provided by law, and by the execution of said amendment by the City and Owner.

B. Severability:
If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements and portions of this Agreement, and to that end, all provisions, covenants, agreements and portions of the Agreement are declared to be severable. If for any reason the Development Incentive is ruled invalid, in whole or in part, the Corporate Authorities, as soon as possible, shall take such actions (including the holding of such public hearings and the adoption of such ordinances and resolutions) as may be necessary to give effect to the spirit and intent of this Agreement and the objectives of the Parties, as disclosed by this Agreement.

C. Entire Agreement:
This Agreement sets forth all agreements, undertakings 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. In the event of any conflict between two or more components of this Agreement providing standards, guidelines or requirements for Owner to act upon
in or around the Property, construction or related activities for the Property, the more restrictive provision shall apply unless the City agrees otherwise.

D. Successors and Assigns:

1. This Agreement shall inure to the benefit of, and be binding upon the Owner and its successors, grantees, lessees, and assigns, and upon the City and successor corporate authorities of the City and successor municipalities, and shall constitute a covenant running with the land. This Agreement may be assigned without the City's approval, and upon said assignment and acceptance by an assignee, the assignor shall have no further obligations hereunder. If a portion of the Property is sold, the seller shall be deemed to have assigned to the purchaser any and all rights and obligations Seller may have under this Agreement 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 conveyed.

2. Notwithstanding the foregoing, the Owner shall not be authorized to engage in any sale or assignment of the Property or the rights conveyed under this Agreement, prior to the date upon which the Building is constructed and issued a final certificate of occupancy following renovation thereof. Transfers among or between family members related by blood or marriage, or between trusts, corporations, partnerships or limited liability companies which are entirely owned or controlled by family members related by blood or marriage, shall not be construed as sale or assignment under this subsection.

   a. The Owner may request that the City pay a portion of the Development Incentive directly to a third party, in satisfaction of an expense incurred by Owner. However, the Parties expressly disclaim any third party beneficiaries and expressly disclaim the right of any third party to pursue a claim against the City for payment or satisfaction of any debt, claim, lien, liability or damage pursuant to this Agreement.

E. Notices:

Any notice required or permitted by the provisions of this Agreement shall be in writing and sent by certified mail, return receipt requested, or personally delivered, to the Parties at the following addresses, or at such other addresses as the Parties may, by notice, designate:

City Clerk
City of DeKalb
200 South 4th Street
DeKalb, IL 60115
Telephone: 815-748-2095

With copies to:

City Manager
City of DeKalb
200 South Fourth Street
DeKalb, IL 60115
Telephone: 815-748-2060
Email: Annemarie.gauri@cityofdekab.com

City Attorney
City of DeKalb
200 South 4th Street
DeKalb, IL 60115
Telephone: 815-748-2093
Email: dean@frieders.com
If to the Owner:

With a Copy To: Mark P. Doherty
The Doherty Law Firm, LLC
125 North First Street
DeKalb, IL 60115
Email: mark@dohertylawfirm.com

Notices shall be deemed given on the third (3rd) business day following deposit in the U.S. Mail, if given by certified mail as aforesaid, and upon receipt, if personally delivered.

F. Time of Essence:
Time is of the essence of this Agreement and of each and every provision hereof.

G. Indemnification:
The Owner covenants and agrees to pay, at its expense, any and all damages, expenses, liabilities and losses resulting from this Agreement, the construction and development activities of the Owner, or its agents, contractors and subcontractors, and to defend and indemnify and save the City and its officers, elected and appointed agents, employees, engineers and attorneys (collectively, the “Indemnifieds”) harmless of, from and against such damages, expenses, liabilities and losses as a direct and proximate result of Owner’s unlawful actions in furtherance of the terms hereof and the construction activities contemplated hereby, except to the extent such damages, expenses, liabilities and losses arise by reason of the negligence or willful or wanton act or omission of the Indemnifieds. The Owner shall provide satisfactory proof of comprehensive general liability insurance for the Property and the project during the time from approval of this Agreement until completion of the last improvement contemplated by the approved final plans, and such insurance shall name the City as additional primary insured without right of subrogation.

The Parties acknowledge that this Agreement contemplates the payment, including direct payment, of expenses associated with the redevelopment of the Property under the Development Incentive, and contemplates the City’s approval of plans. Under City Code, the Parties acknowledge that the City has a limited role in inspecting improvements and conducting construction observation. Notwithstanding the foregoing, the Parties agree and acknowledge that neither the Owner nor its personnel shall be acting as an employee or official representative of the City for purposes of being offered any protection or coverage under City insurance policies for tort immunity or other legal purposes. The Owner and City acknowledge that the provisions of this Agreement shall be construed, pursuant to Carney v. Union Pacific Railroad Company, 2016 IL 118984, to provide the City with the right to stop or resume work, to make inspections, to receive reports and to provide recommendations or suggestions pursuant to Section 414 of the Second Restatement of Torts, and that the Owner shall be considered to be fully independent of the City both in terms of tort liability and in terms of contractual liability to third parties. No provision of this Agreement shall be construed as the City retaining control of or having liability for the actions of the Owner or its contractors or subcontractors. The City shall have no liability for Owner’s selection of personnel, employees or subcontractors, nor for the presence of dangerous conditions on any portion of the Property.

Owner shall have sole control over the manner and means of providing the work and services performed under this Agreement. The City’s payment of any sums to Owner shall be limited to that described in this Agreement with respect to payment of the Development Incentive, and the City shall not
reimburse any expenses, provide any benefits, withhold any employment taxes or otherwise have a financial relationship with Owner other than payment of the stated Development Incentive. The Owner shall be solely responsible for contracting for the construction of improvements, acquiring properties, paying or withholding of taxes, or otherwise complying with applicable laws and agreements relating to its employees or contractors.

Without limiting the applicability of the foregoing indemnification provisions, the Owner expressly and without limitation agrees that it shall indemnify and hold harmless the City from any claims, damages, fines, penalties, legal fees or other costs or expenses whatsoever, arising as a proximate result of Owner’s unlawful activities or construction on the Property and relating to any federally protected wetland, the delineation or failure to delineate wetlands, the protection or mitigation or failure to protect or mitigate wetlands, the identification of floodplains, or the construction of any improvement or structure in or near any wetland or floodplain area, within or outside the Property.

Owner shall provide the City with a certificate of commercial general liability insurance naming the City as additional primary insured, without right of subrogation, prior to the commencement of construction on the Property and shall maintain such insurance in place until the commencement of the forgiveness period as defined herein; such policy shall have minimum limits of $1,000,000 per person and $2,000,000 per occurrence.

H. Exhibits:

The following Exhibits referred to herein and attached to this Agreement are hereby made a part of this Agreement:

- **Exhibit A:**
  - Legal Description
- **Group Exhibit B:**
  - Plans
- **Exhibit C:**
  - No-Trespass / Patrol Agreement
- **Exhibit D:**
  - Traffic Enforcement Agreement
- **Exhibit E:**
  - Project Cost Documentation Requirements
- **Group Exhibit F:**
  - Form of Promissory Note, Corporate Undertaking, Mortgage
- **Exhibit G:**
  - Waiver of Objection to Special Service Area

I. Venue:

Jurisdiction and venue for any dispute arising out of relating to the terms of this Agreement, the zoning or restrictions imposed hereunder, the development of the Property or otherwise relating to the relationship of the Parties or contents hereof shall have its jurisdiction and venue exclusively fixed in the Twenty-Third Judicial Circuit, DeKalb County, Illinois, and the parties expressly and intentionally waive the right to pursue claims in any other jurisdiction or venue.

J. Survival of Provisions:

The provisions of this Agreement relating to the remedies upon default and/or the recovery of any portion of the Development Incentive (through legal action, foreclosure, deed in lieu or other process) shall survive any termination of this Agreement.
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written and, by so executing, each of the Parties warrants that it possesses full right and authority to enter into this Agreement.

CITY:

CITY OF DEKALB, an Illinois Municipal corporation

By: John Rey, Mayor

City Clerk: Jennifer Jeep Johnson
OWNED:
THE BANDIT'S CASTLE, LLC, an Illinois Limited Liability Company

By: [Signature]
owner/manager/member
3/15/17

Subscribed and sworn to before me this 15th day of March, 2017.

Attest:
Michelle Jureczek
Notary Public

OFFICIAL SEAL
MICHELLE JURECZEK
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 02/06/21
AMENDING THE FISCAL YEAR-END DECEMBER 31, 2018, (FY2018) BUDGET OF THE CITY OF DEKALB, ILLINOIS.

BE IT ORDAINED BY THE CITY COUNCIL of the City of DeKalb, Illinois, as follows:

Section 1. That, the City of DeKalb, which utilizes the Budget Process as contemplated by Article 8, Division 2 of the Illinois Municipal Code including but not limited to 65 ILCS 5/8-2-9.1 through 65 ILCS 5/8-2-9.10, adopts an amendment to its FY2018 Budget, as shown below:

<table>
<thead>
<tr>
<th>TIF #1 (Central Area)</th>
<th>Account Number</th>
<th>Increase/ (Decrease)</th>
<th>Revised Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priv Prop Rehab / Redevelop</td>
<td>13-00-00-300-8624</td>
<td>$468,282</td>
<td>$3,518,282</td>
</tr>
</tbody>
</table>

Section 2. That each section, paragraph, sentence, clause and provision of this Ordinance is separable and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this ordinance, nor any part thereof, other than that part affected by such decision.

Section 3. Upon its passage and approval according to law, this Ordinance shall by authority of the City Council be published in pamphlet form.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 26th day of March, 2018, and approved by me as Mayor on the same day. First Reading held on March 12, 2018. Passed on Second Reading by a 6-1-1 roll call vote. Aye: Jacobson, Finucane, Marquardt, Noreiko, Faivre, Smith. Nay: Verbic. Absent: Fagan.

ATTEST:

SUSANNA HERRMANN, City Clerk

JERRY SMITH, Mayor