STATE OF ILLINOIS  
COUNTY OF DEKALB SS  
CITY OF DEKALB  

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 2018-058

AUTHORIZING A SECOND AMENDMENT TO THE 230 EAST LINCOLN HIGHWAY DEVELOPMENT INCENTIVE AGREEMENT (THE BANDIT’S CASTLE, LLC).

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, on the 14th day of May 2018, 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 29th day of June, 2018.

[Signature]
Deputy City Clerk
City of DeKalb
200 South Fourth Street
DeKalb, IL 60115
RESOLUTION 2018-058

AUTHORIZING A SECOND 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 - Resolution 2017-042), a copy of which is attached hereto as “Exhibit B”; and

WHEREAS, on March 12, 2018 the City Council approved Resolution 2018-030, providing approval for the First Amendment to the Original Agreement (“First Amendment”), a copy of which is attached hereto as “Exhibit C”; and

WHEREAS, the Owner’s ability to obtain financing through the Small Business Administration requires the terms of the Original Amendment to be amended to meet the regulations of their loan program,

WHEREAS, the City desires to support the Owner in their effort to secure favorable financing through the Small Business Administration;

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 a Second Amendment to the Original 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.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a Regular meeting thereof held on the 14th day of May, 2018, and approved by me as Mayor on the same day. Passed by A 7-0-1 roll call vote. Aye: Jacobson, Finucane, Marquardt, Noreiko, Verbic, Faivre, Smith. Nay: none. Absent: Fagan.

ATTEST:

RUTH A. SCOTT, Deputy City Clerk

JERRY SMITH, Mayor
SECOND AMENDMENT TO THE 230 EAST LINCOLN HIGHWAY DEVELOPMENT INCENTIVE AGREEMENT

THIS AGREEMENT entered this 14th day of May, 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, on March 12, 2018 the City Council approved Resolution 2018-030, providing approval for the First Amendment to the Original Agreement (“First Amendment”); and

WHEREAS, the Owner is desirous of obtaining Small Business Administration financing and is required to comply with the terms and conditions of such program; and,

WHEREAS, the City and Owner now desire to amend the Original Agreement to provide for a prolonged period during which the City’s mortgage securing the Development Incentive (as contemplated in the Original Agreement, as amended) shall be in place;

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 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 twenty year period, with ten percent (10%) forgiveness for each year during the first ten years. 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. Said repayment shall be completed on a pro-rata basis, based upon an amortization schedule calculated over the remaining period in the twenty year term of the loan. 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).

2. Article XII: Term:

This agreement shall have a term of twenty (20) fifteen (15) years from the date of commencement of forgiveness under Article VIII, Section E execution.

3. Mortgage and Further Action Authorized:

The staff of the City of DeKalb are authorized and directed to provide and/or record a release of the mortgage originally executed under the terms of the Original Agreement. Thereafter, the Mayor is authorized and directed to execute a new mortgage, substantially in the form attached to the Original Agreement, subject to such modifications as shall be acceptable to him with the recommendation of City staff, including modifications required to comply with the terms of the First Amendment and Second Amendment. Said mortgage shall be recorded in a fashion so as to be subordinate to the Small Business Administration financing that the Owner is undertaking, pursuant to Article VIII(D)(1) of the Original Agreement. The Mayor is further authorized to take such other steps as shall be required to comply with the terms and conditions of the Original Agreement, as amended, and to comply with the applicable requirements of the Small Business Association financing.

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

Jerry Smith, Mayor

ATTEST

Ruth A. Scott, Deputy City Clerk

THE BANDIT’S CASTLE, LLC

Signature

Robert Cohen Barnes

Print Name
Exhibit B
Resolution 2017-042

Recorded in its entirety (61 pages) with the DeKalb County Recorder's Office on March 14, 2018 as document 2018002313.
Exhibit C
Resolution 2018-030
Recorded in its entirety (31 pages) with the DeKalb County Recorder's Office on March 14, 2018 as document 2018002314.
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.

ATTEST:

JENNIFER JEEP JOHNSON, City Clerk

JOHN A. REY, Mayor
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This Development Incentive Agreement (the "Agreement") is made and entered the 13th 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.”

RECITALS

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 aide 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 hereinabove. 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 invoice 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 served 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 subordinated 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.gaura@cityofdekalb.com

City Attorney
City of DeKalb
200 South 4th Street
DeKalb, IL 60115
Telephone: 815-748-2093
Email: dean@fieders.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:

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<th>Exhibit</th>
<th>Description</th>
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<td>Group Exhibit F:</td>
<td>Form of Promissory Note, Corporate Undertaking, Mortgage</td>
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<tr>
<td>Exhibit G:</td>
<td>Waiver of Objection to Special Service Area</td>
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</tbody>
</table>

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
OWNER:

THE BANDIT'S CASTLE, LLC, an Illinois Limited Liability Company.

By: [Signature]

3/15/17

Subscribed and Sworn to Before Me, this 15th day of March, 2017.

Attest

MICHIGELLE JURECZEK
NOTARY PUBLIC

OFFICIAL SEAL
MICHIGELLE JURECZEK
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 02/06/21
Exhibit A: Legal Description

The property is legally described as:

230 E. Lincoln Highway

LOTS 56, 57, AND 68 IN THE COUNTY CLERK’S SUBDIVISION, A RESUBDIVISION OF BLOCKS 11, 12, 14, AND 15 OF THE ORIGINAL VILLAGE (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK “C” OF PLATS, PAGE 42, ON SEPTEMBER 15, 1902, IN DEKALB COUNTY, ILLINOIS.

Parcel Identification Numbers 0823163014 and 0823163015
Group Exhibit B: Plans

(Attached, with page numbering separately tracked from the pages of this Agreement, but incorporated herein by reference.)
Exhibit C: No Trespass / Patrol Agreement

Common Area Patrol / No-Trespass Enforcement Agreement

Property Address: 230 East Lincoln Highway

Commonly Known As: 

Property Owner: THE BANDIT'S CASTLE, LLC

Contact #: 

Property Manager: Cohen Barnes

Contact #: 815-739-9001

24 Hour Contact #: 815-739-9001

This Common Area Patrol / No-Trespass Enforcement Agreement ("Agreement") is entered into by and between the Owner of the Property identified above ("Owner" and "the Property") and the City of DeKalb ("City"). Under the terms of this Agreement, the Owner expressly authorizes and requests that the City utilize its Police Department and City Employees to undertake the following actions:

- **No-Trespass Warnings and Arrests:** The Owner appoints the City of DeKalb, its employees and agents, as an agent of the Owner, authorized and requested to undertake any actions which the Owner could lawfully take with regard to persons unlawfully present relative to no-trespassing laws and ordinances on any public or private area of the Property. The City’s personnel shall be deemed to be representatives of the Owner for purposes of enforcing no-trespass laws and ordinances and signing and testifying with regard to related complaints only. This includes providing no-trespass warnings, verbal or written, to any person on the Property other than a tenant of the Property. The City shall also be authorized to sign complaints, serve as complaining witness, and arrest or cite any person who has violated such a no-trespass warning, or who remains on the Property after being asked to leave. The City has the complete authority to enforce any State Statute or City Ordinance relating to trespass. The City shall maintain accurate records of all persons who have been advised not to trespass on the Property and shall provide a copy of the same to Owner upon request.

- **Patrol Common Areas:** The City, its employees and agents are authorized and requested to enter into any common area of the Property that is accessible either to the public or to tenants of the Premises, including parking lots, open spaces, common hallways, gathering areas, or other similar common areas of the Property, for purposes of patrolling, observing, and enforcing the Codes and Ordinances of the City of DeKalb or any applicable State Statutes. For purposes of this Agreement and any charges arising out of the City's activities on the Property, the City and its personnel shall be deemed to have been invited upon the common areas of the Property. Notwithstanding the foregoing, this shall not constitute authority for the City to enter into tenant private areas (e.g. individual tenant apartments or individual tenant businesses) without required legal authority (such as a search warrant, probable cause, exigent circumstances, etc. where required). The City is authorized to sign complaints, serve as complaining witness, and arrest or cite any person who has violated a State Statute or City Ordinance.
Report Cars for Relocation: Owner employs the entity described at signs posted at the Property for purposes of relocating unlawfully parked cars from the Property (and Owner shall maintain such postings in accordance with City Code). The City is authorized and requested to contact the tow relocator to report any vehicles on the Property that appear to be unlawfully parked, so that said vehicles may be towed in accordance with applicable regulations.

Provisions of Development Agreement: Owner shall further permit and consents to the conduct of any access or inspection authorized under the terms of any Development Agreement entered into by Owner and the City which is recorded against the Property of public record.

The Owner agrees that, if necessary, Owner or its authorized representative shall appear at any trial or proceeding arising out of the performance of this Agreement. Owner further acknowledges that the City shall not have any duty to patrol the Property, and that the Owner is responsible for the condition and monitoring of its Property. The City is not undertaking any special relationship with or obligation to Owner, other than the authority to enter the Property's common areas, and to take the actions outlined above. The City is not an agent or representative of the Owner for any purpose other than having authority to provide warnings or direct persons to leave the Property, and for serving as complaining witness and for signing complaints for legal violations occurring on the Property.

The City agrees that it shall provide notice to the Owner of any legal violations occurring on the Property upon request, and also in accordance with the requirements of City Code.

Owner shall post appropriate signage on the Property advising that its common areas, including but not limited to parking lots and open areas, are posted for No Trespassing, and appropriate signage advising of any parking restrictions for vehicles in its parking lots. Owner is encouraged to post additional signage advising that the Police Department may engage in regular patrols of common areas.

This Agreement shall remain in full force and effect until terminated in writing by either party. Notices shall be delivered to Owner at the address listed above, or to the City at 200 S. Fourth Street, DeKalb, Illinois, 60115, Attention City Attorney.

Agreed this 15 day of March, 2017.

Owner or Representative:

City of DeKalb:
Exhibit D: Traffic Enforcement Agreement

AGREEMENT

WHEREAS, The Bandit's Castle, LLC, its affiliates or subsidiaries (hereinafter collectively "OWNER"), is the Owner of a certain commercial or residential facility, or other facility as described in the Illinois Vehicle Code identified below, and named or identified as "230 East Lincoln Highway"; and,

WHEREAS, the OWNER and the CITY are desirous of protecting the public health, welfare and safety by the regulation of vehicles in those areas of the COMPLEX which have not been dedicated to the CITY and are intended for public use; and

WHEREAS, it is intended by the parties that this Agreement should apply to any property in the COMPLEX where a question may arise as to whether any particular portion of the COMPLEX which is intended to be or become public property through dedication or otherwise, has been so dedicated, or to any portion which is to remain private property but available for general public use; and

WHEREAS, the CITY has the authority to contract with the OWNER to provide such regulation under the provisions of §11-209 of the Illinois Vehicle Code (625 ILCS 5/11-209);

IT IS THEREFORE AGREED by and between the OWNER and the CITY, in consideration of the public health, welfare and safety, as follows:

1. That the CITY is empowered to accomplish all or any part of the provisions enumerated in the above referenced statutory provision, including, but not limited to the following, within the COMPLEX:
   
   A. Erect traffic regulatory signs, parking, including handicapped parking, and all other traffic control signs.

   B. Regulate the turning of vehicles or restrict vehicle types.

   C. Regulate pedestrian crosswalks within parking lots.

   D. Designate one-way traffic lanes.

   E. Establish and regulate loading zones.

   F. Regulate stopping, standing or parking in specified areas of lots.

   G. Designate fire lanes and safety zones.

   H. Provide for removal and storage of vehicles during public emergencies, or of abandoned vehicles, and the payment of reasonable charges therefor.

   I. Provide for cost sharing of planning, installation and maintenance of traffic regulations.
J. Contract for or provide by ordinance, resolution or other official action of the CITY, reasonable additional rules.

2. That the cost of the planning, installation and maintenance of parking and traffic regulations, markings, signs, striping and painting pursuant to this Agreement, and pursuant to the Development Agreement between the parties and the subdivision control ordinance of the CITY, shall be borne by the OWNER. OWNER shall be responsible for maintaining all traffic control measures and markings within the Property in good condition.

3. This Agreement shall be effective and enforceable three days after it has been recorded in the Office of the Recorder of Deeds of the county in which the COMPLEX is located and shall continue to be in full force and effect for a period of twenty years, except that after one year from the effective date of this Agreement, either party may cancel this Agreement upon sixty days’ written notice to the other party.

EXECUTED this 13th day of March, 2017.

CITY OF DEKalB
DEKalB COUNTY, ILLINOIS

By: ____________________________
Mayor

Robert Cohen Barnes d/b/a The Bendits Castle LLC

By: ____________________________
.Owner

3/15/17
Exhibit E: Project Cost Documentation Requirements

- *Applicants/Recipients are responsible for identifying and complying with all applicable laws, ordinances and regulations.*

- The Parties acknowledge that the funding contemplated under this Agreement is provided exclusively through either a Tax Increment Financing District or through sales tax rebates for funds generated on-site, and is provided exclusively for the purpose of funding private improvements. Accordingly, while the Owner is solely responsible for complying with the applicable provisions of the Illinois Prevailing Wage Act, pursuant to the guidance issued by the Illinois Department of Labor, the City shall not require the Owner to provide certified payroll records unless the Owner determines that such records are required under the Prevailing Wage Act. The Owner shall indemnify, defend and hold harmless the City from any claims arising out of the alleged Owner violation of the Prevailing Wage Act with respect to this Agreement or the Property.

- Final waivers of lien must be provided for all contractors, suppliers and materialmen. All payments associated with the purchase of real property or payment of contractors, subcontractors or materialmen providing services to the Property in connection with this Agreement, which are intended to be included in Project Completion Costs or which are intended to be eligible for payment through the Development Incentive must be paid through a title company acceptable to the City of DeKalb where the cost associated with such payment exceeds $5,000.

- Final Project Costs must be documented in a tabbed binder in accordance with these regulations:
  - The first section must include a notarized affidavit from the Applicant affirming that all information provided is complete and accurate, and affirming that all work was done in accordance with these Guidelines and all applicable laws.
  - The second section must include a spreadsheet generated by the Applicant, including all project costs that are a component of the project, broken down by vendor. All amounts listed in this spreadsheet must match the corresponding contractor invoices described below.
  - Subsequent sections should be separately tabbed by contractor. Each contractor tab should start with a spreadsheet generated by the Applicant that includes the totals from each invoice, and should be followed by a complete set of prevailing wage records, final waivers of lien, and invoices.
  - Applicants may include a Miscellaneous Expenses tab in the binder for small project expenses.
  - Credit Card Statements are not adequate to evidence expenditures. All small expenditures require actual receipts showing the expenditures. The City reserves the right to require Applicants to provide written documentation explaining any expenditure.
  - Building permits are eligible expenditures. Ineligible expenditures include: food, fuel, beverages, utility bills, web design, merchandise for stock or supply, membership dues, life insurance, or other personal expenses. The City reserves the right to disqualify any expense.

- Once an invoice is submitted, the invoice cannot be withdrawn or retracted, and the scope of work described on the invoices cannot be altered. For this reason, it is critical to ensure that these guidelines are complied with.

- The City shall also be provided with an electronic copy of all submittals, in PDF format, separated into sections as outlined above.
COMPANY UNDERTAKING
for
THE BANDIT’S CASTLE, LLC

WHEREAS, the company known as The Bandit’s Castle, LLC, is a duly recognized and active limited liability company organized and doing business in the State of Illinois; and

WHEREAS, the Company is governed by a written Operating Agreement, which provides that the Member identified below of said Company may act on behalf of the Company in the capacity herein contemplated;

NOW, THEREFORE:

BE IT RESOLVED this 23rd day of March, 2017, that the undersigned, being a duly appointed and acting Member of the Company, authorizes the Company to execute any and all documents pursuant to that certain Development Incentive Agreement with the City of DeKalb regarding the Property described in the attached Legal Description (the “Property”), all in DeKalb, Illinois, including, but not limited to, promissory note(s), security agreement(s), line(s) of credit, mortgage(s) and all other loan or financing documents to enable the Company to fulfill its obligations pursuant to said Development Incentive Agreement and to permit and enable the City of DeKalb to perfect any and all liens on the assets of the Company and/or Property.

1. Company Further Agrees as follows:

(a) "Company’s Liabilities” shall mean all obligations and liabilities of Company to the City (including, without limitation all debts, claims, and indebtedness), whether primary, secondary, direct, contingent, fixed, or otherwise, heretofore, now, and/or from time to time hereafter owing, due, or payable, however evidenced, created, incurred, acquired, or owing and however arising, whether under the “Loan Agreements” or “Development Agreement” (hereinafter defined), or by oral agreement or operation of law, or otherwise, and all terms, conditions, agreements, representations, warranties, undertakings, covenants, guaranties, and provisions to be performed, observed, or discharged by Company under the Loan Agreements.

(b) “Development Incentive Agreement” shall mean that certain 230 East Lincoln Highway Development Incentive Agreement entered into by the Company and City relating to the redevelopment of the Property described in Exhibit 1.

(c) “Loan Agreements” shall mean all agreements, instruments, and documents, including, without limitation, promissory notes, loan and security agreements, guaranties, letters of credit, mortgages, deeds of trust, environmental indemnity agreements, pledges, powers of attorney, consents, assignments, contracts, notices, leases, financing statements, and all other written matter heretofore, now, and/or from time to time hereafter executed by and/or on behalf of Company and delivered to City, including, without limitation, that certain Loan and Security Agreement dated as of the date hereof, made by Company in favor of City (Loan Agreement), and any and all substitutions, replacements, renewals, and/or amendments to and of the aforementioned agreements, instruments, and documents.

2. Company unconditionally, absolutely, and continuously guarantees and undertakes to City the
prompt performance and payment (in full) of all of Company's Liabilities, when such performance or
payment is due or declared due by City, subject to the terms and provisions of the Development Incentive
Agreement. In addition to the payment and performance of Company's Liabilities specified in
the preceding sentence, Company shall additionally be liable for all of the costs and expenses incurred by
City as identified in Section 9 of this Undertaking.

Prior to enforcing its rights under this Undertaking, the City is not required to seek to enforce or resort to
any remedies with respect to any security interests, liens, or encumbrances granted to City by Company or
any other party to secure the repayment of Company's Liabilities.

Company's Liabilities shall in no way be impaired, affected, reduced, or released by reason of (a) the City's
failure or delay to do or take any of the actions or things described in this Undertaking; (b) the invalidity
or unenforceability of Company's Liabilities or the Loan Agreements; or, (c) any loss of or change
in priority or reduction in or loss of value of any security interest, lien, or encumbrances securing the
repayment of Company's Liabilities.

3. Company represents and warrants to City that:
   (a) The statements in the preamble to this Undertaking are true and correct.
   (b) Company has reviewed and voluntarily entered into this Undertaking and the associated
       Note and Mortgage.
   (c) Company has the right, power, and capacity to enter into, execute, deliver, and perform
       this Undertaking.
   (d) This Undertaking, when duly executed and delivered, will constitute a legal, valid,
       and binding obligation of Company, enforceable against Company in accordance with its
       terms, subject to applicable bankruptcy laws or other laws affecting creditors' rights
       generally or the equity powers of the courts.
   (e) The execution, delivery, and/or performance by Company of this Undertaking shall not,
       by the lapse of time, the giving of notice, or otherwise, constitute a violation or breach of
       (1) any applicable law; or (2) any provision contained in any agreement or document
       to which Company is now or hereafter a party or by which it is or may become bound.
   (f) Company is now, and at all times hereafter shall be, solvent and generally able to pay its
debts as such debts become due, and Company now owns or will own its acquisition of the
Property which is the subject of the Development Incentive Agreement, and shall at all
times hereafter own, property that, at a fair valuation, exceeds the sum of Company's debts.
   (g) Company now has, and shall have at all times hereafter, capital sufficient to carry on all
business transactions and all businesses and transactions in which Company is about to
engage. Company does not intend to incur or believe that Company will incur debts
beyond Company's ability to pay as such debts mature.
   (h) There are no actions or proceedings that are pending or threatened against Company that
might result in any material and adverse change in Company's financial condition or
materially affect Company's ability to perform Company's Liabilities.
   (i) Company has reviewed independently the Loan Agreements, and Company has made an
independent determination as to the validity and enforceability thereof on the advice of
Company's own counsel, and in executing and delivering the Undertaking to City,
Company is not in any manner relying on City as to the validity and/or enforceability of
any security interests of any kind or nature to City.
   (j) Upon written request from City, Company agrees to furnish to City all pertinent facts
relating to the ability of Company to pay and perform Company's Liabilities, and all
pertinent facts relating to Company's ability to pay and perform Company's Liabilities. Company agrees to keep informed with respect to all such facts.
Company acknowledges and agrees that (1) City has relied and will continue to rely on the facts and information to be furnished to it by Company; (2) in executing this Undertaking and at all times hereafter, Company has relied and will continue to rely on Company’s own investigation, and Company has not and will not hereafter rely on City for any such information or facts.

4. Waivers

(a) To the extent permitted by law, Company waives all other defenses, counterclaims, and offsets of any kind or nature in connection with the validity and/or enforceability of this Undertaking, including, without limitation, (1) those arising directly or indirectly from the perfection, sufficiency, validity, and/or enforceability of any security interest granted by Company to City or acquired by City from Company; and, (2) those based on the failure or adequacy of consideration.

(b) Company hereby waives notice of the following events or occurrences and agrees that City may do any or all of the following in such manner, on such terms, and at such times as City, in its sole and absolute discretion, deems advisable without in any way impairing, affecting, reducing, or releasing Company from Company’s Liabilities:
   (1) City’s acceptance of this Undertaking;
   (2) Presentment, demand, notices of default, nonpayment, partial payment, and protest, and all other notices or formalities to which Company may be entitled;

5. Covenants and Agreements

Company covenants and agrees with City that:

(a) All security interests, liens, and encumbrances heretofore, now, and at any time or times hereafter granted by Company to City shall secure Company’s Liabilities.

(b) All indebtedness, liability, or liabilities now and at any time or times hereafter owing to Company by any party liable to City by reason of any security interests, liens, or encumbrances granted by Company to City are hereby subordinated to all indebtedness, liability, or liabilities owed by such party to City.

6. Security

To secure the prompt payment to City of, and the prompt, full, and faithful performance of, Company’s Liabilities, Company grants to City a security interest in and lien on the Property (“Collateral”).

Company shall execute and/or deliver to City, at any time and from time to time hereafter at the request of City, all agreements, instruments, documents, and other written matter that City reasonably may request, in a form and substance acceptable to City, to perfect and maintain perfected City’s security interest in the Collateral. City shall have no obligation to protect, secure, or insure any of the foregoing security interests, liens, or encumbrances or the properties or interests in properties subject thereto.

Company warrants and represents to and covenants with City that (a) Company has good, indefeasible, and merchantable title to the Collateral, or will upon its acquisition of same as contemplated by the Development Incentive Agreement; (b) City’s security interest in and lien on the Collateral is now, and at all times hereafter shall be, valid and perfected, and shall have a first priority; (c) Company shall not grant a security interest in or permit a lien, claim, or encumbrance on any of the Collateral in favor of any third party, except as contemplated by the Development Incentive Agreement; (d) the addresses specified at the end of this Undertaking include and designate Company’s principal residence and is Company’s sole residence. Company, by written notice delivered to City at least thirty (30) days prior thereto, shall advise City of Company’s acquiring any new residence or selling any existing residence, and any new residence
shall be within the continental United States of America.

7. Default
The occurrence of any of the following events shall, at the election of City, be deemed a default by Company (Event of Default) under this Undertaking:

(a) if Company fails to pay any of Company’s Liabilities when due and payable or properly declared due and payable;
(b) if Company fails or neglects to perform, keep, or observe any term, provision, condition, covenant, warranty, or representation contained in this Undertaking, which is required to be performed, kept, or observed by Company, and Company shall fail to remedy such within ten (10) days of being served with written notice from City;
(c) if the Collateral is attached, seized, subjected to a writ of distress warrant, or levied upon, or becomes subject to any lien, or comes within the possession of any receiver, conservator, trustee, custodian, or assignee for the benefit of creditors;
(d) if Company becomes insolvent or generally fails to pay, or admits its inability to pay, debts as they become due;
(e) if a petition under Title 11, United States Code, or any similar law or regulation shall be filed by Company, or if Company shall make an assignment for the benefit of its creditors, or if any case or proceeding is filed by Company for its dissolution or liquidation;
(f) if a petition under Title 11, United States Code, or any similar law or regulation shall be filed against Company, or if a case or proceeding is filed against Company for its dissolution or liquidation and such proceeding shall not be dismissed within forty-five (45) days of its filing, during which time Company shall be diligently contesting such action or proceeding;
(g) if Company is enjoined, restrained, or in any way prevented by court order from conducting all or any material part of its business affairs, and such injunction or restraint shall not be voided, removed, or dismissed within thirty (30) days of the court’s order, during which time Company shall be diligently contesting such action or proceeding;
(h) if a notice of lien, levy, or assessment is filed of record or given to Company with respect to the Collateral;
(i) if Company is in default in the payment or performance of any material obligation, indebtedness, or other liability to any third party, and such default is not cured within any cure period specified in any agreement or instrument governing the same;
(j) if any material statement, report, or certificate made or delivered to City by Company is not true and correct;
(k) any material adverse change in the financial condition, operations, business, or assets of Company, and Company shall fail to remedy such within ten (10) days of being served with written notice from City;
(l) the occurrence of a default or Event of Default under any other agreement, instrument, and/or document executed and delivered by Company to City, which is not cured by Company within any applicable cure period set forth in any such agreement, instrument, and/or document;
(m) the occurrence of a default or event of default under the Loan Agreements;
(n) the dissolution of Company or if Company attempts to cancel, revoke, or disclaim this Undertaking; or

8. Remedies
Upon the occurrence of an Event of Default, and with prior notice thereof to Company, Company’s Liabilities shall be due and payable and enforceable against Company, forthwith, at City’s principal place
of business, and City may, in its sole and absolute discretion, exercise any one or more of the following remedies that are cumulative and nonexclusive:

(a) proceed to suit against Company if Company’s Liabilities are not immediately paid by Company to City at City’s principal place of business; at City’s election, one or more successive or concurrent suits may be brought hereunder by City against Company; and/or

(b) reduce to cash or the like any of Company’s assets of any kind or nature in the possession, control, or custody of City, and, without notice to Company, apply the same in reduction or payment of Company’s Liabilities; and/or

(c) exercise any one or more of the rights and remedies accruing to City under the Loan Agreements, the Uniform Commercial Code of the relevant jurisdiction, and any other applicable law upon default by a debtor.

Company recognizes that in the event it fails to perform, observe, or discharge any of its obligations or liabilities under this Undertaking, no remedy at law will provide adequate relief to City, and agrees that City shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damage.

9. Costs, Fees, and Expenses

If at any time or times hereafter, either the Owner or the City employs counsel for advice or other representation with respect to this Undertaking or to represent the Owner or City in any litigation, contest, dispute, suit, or proceeding relating to this Undertaking or Owner’s or City’s rights hereunder, the reasonable costs, fees, and expenses incurred by either the Owner or City in any manner or way with respect to the foregoing shall be payable by Company to City, or by the City to the Owner, as the case may be, on demand. Without limiting the generality of the foregoing, such costs, fees, and expenses include reasonable (a) attorneys’ fees, costs, and expenses; (b) court costs and expenses; (c) court reporter fees, costs, and expenses; (d) long-distance telephone and facsimile charges; (e) expenses for travel, lodging, and food. The City’s and Company’s liability for all reasonable expenses and fees under this Section 9 shall also extend to the collection of any judgment that shall result from City’s or Company’s enforcement of its rights and remedies hereunder. The obligation of Company and City set forth in this agreement shall be continuing and shall not be merged into any judgment entered based on this Undertaking.

10. Miscellaneous

All payments received by City from any source on account of Company’s Liabilities shall be applied by City in its reasonable discretion, and this Undertaking shall apply to and secure any ultimate balance that may be owed to City on account of Company’s Liabilities after City’s application.

If any provision of this Undertaking or the application thereof to any party or circumstance is held invalid or unenforceable, the remainder of this Undertaking and the application of such provision to other parties or circumstances will not be affected thereby, the provisions of this Undertaking being severable in any such instance. This Undertaking shall be binding on Company and the City and inure to the benefit of Company and City and their respective heirs, personal representatives, successors, and assigns.

Whenever a notice is required or permitted to be given under this Undertaking, it shall be in writing and either delivered personally, or sent via certified mail, return receipt requested. Notice sent via certified mail shall be deemed given three (3) business days after such notice is sent. Notice served by hand delivery shall be deemed served on the day delivered. Any written notice to Company shall be to the address or addresses specified below.

This Undertaking shall continue in full force and effect until Company’s Liabilities are fully paid, performed, and discharged as provided in the Development Incentive Agreement and City gives Company
written notice thereof, such notice to be promptly sent by City after full performance of Company’s Liabilities. This Undertaking shall continue to be effective or be reinstated, as the case may be, if at any time payment of any of Company’s Liabilities is rescinded or must otherwise be returned by City upon the insolvency, bankruptcy, or reorganization of Company or otherwise, all as though such payment had not been made.

This Undertaking is submitted to City at City’s principal place of business and shall be deemed to have been made thereat. This Undertaking shall be governed and controlled as to interpretation, enforcement, validity, construction, effect, and in all other respects by the laws, statutes, and decisions of the State of Illinois. No modification, waiver, estoppel, amendment, discharge, or change of this Undertaking or any related instrument shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, estoppel, amendment, discharge, or change is sought.

To the extent that City receives any payment on account of Company’s Liabilities, or any proceeds of Collateral are applied on account of Company’s Liabilities, and any such payment(s) and/or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, subordinated, and/or required to be repaid to a trustee, receiver, or any other party under any bankruptcy act, state or federal law, common law, or equitable cause, then, to the extent of such payment(s) or proceeds received, Company’s Liabilities or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment(s) and/or proceeds had not been received by City and applied on account of Company’s Liabilities. Company agrees that Company’s Liabilities hereunder shall be revived to the extent of such revival of Company’s Liabilities.

Until expressly released in writing by City, this Undertaking shall be in addition to any other guaranties that Company has previously given to City or that Company may, from time to time, hereafter give to City relating to Company’s Liabilities.

Company warrants and represents to City that Company has read this Undertaking and understands the contents hereof and that this Undertaking is enforceable against Company in accordance with its terms.

COMPANY AND CITY AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING DIRECTLY, INDIRECTLY, OR OTHERWISE IN CONNECTION WITH, OUT OF, RELATED TO, OR FROM THIS UNDERTAKING SHALL BE LITIGATED ONLY IN THE TWENTY-THIRD JUDICIAL CIRCUIT COURT OF DEKALB COUNTY, STATE OF ILLINOIS. COMPANY AND CITY CONSENT AND SUBMIT TO THE EXCLUSIVE JURISDICTION OF SAID COURT. COMPANY AND THE CITY HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.

City of DeKalb:

[Signature]

[Stamp]

Cohen Barnes
Member
The Bandit’s Castle, LLC

3/15/17
Exhibit 1

(LEGAL)
The property is legally described as:

230 E. Lincoln Highway

**LOTS 56,57, AND 68 IN THE COUNTY CLERK’S SUBDIVISION, A RESUBDIVISION OF BLOCKS 11, 12, 14, AND 15 OF THE ORIGINAL VILLAGE (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK “C” OF PLATS, PAGE 42, ON SEPTEMBER 15, 1902, IN DEKALB COUNTY, ILLINOIS.**

Parcel Identification Numbers 0823163014 and 0823163015
PROMISSORY NOTE

DeKalb, Illinois

On April 19, 2017, for value received, The Bandit’s Castle, LLC, hereby promises to pay in lawful money of the United States, to the order of the CITY OF DEKALB at 200 South Fourth Street, DeKalb, Illinois, the principal sum of FOUR HUNDRED THOUSAND DOLLARS ($400,000.00) (the "Face Value"). Repayment hereof shall be subject to the terms and conditions of that certain Development Incentive Agreement by and between said The Bandit’s Castle, LLC, and the City of DeKalb, executed on (date), relating to the development of the property commonly and legally described in the legal description attached hereto as Exhibit 1 (the "Property") in DeKalb, Illinois. The repayment terms of this Note shall be governed by the provisions of the Development Incentive Agreement, and shall include a reduction of the balance due consistent with said Agreement. The City shall provide the Owner with a memorandum of the outstanding balance of said Note and/or a partial release of any Mortgage recorded pursuant to this Note or the Development Incentive Agreement, at any time upon the request of Owner.

This Note shall be secured by a Mortgage providing the payee with a lien on the Property. The Parties acknowledge that this Note is provided to secure the repayment of monies to be advanced to Owner over a period of time pursuant to the Development Agreement, up to an amount not to exceed the Face Value of this Note as indicated above. The then-present value secured by this Note shall be in an amount equal to the full amount of funds advanced by the City as of the date of inquiry (not to exceed the Face Value), inclusive both of funds directly advanced to Owner, funds paid on behalf of Owner, or funds held to secure the Owner Escrow as defined in the Development Incentive Agreement.

The Bandit’s Castle, LLC

By: Cohen Barnes, Member
The property is legally described as:

230 E. Lincoln Highway

LOTS 56, 57, AND 68 IN THE COUNTY CLERK'S SUBDIVISION, A RESUBDIVISION OF BLOCKS 11, 12, 14, AND 15 OF THE ORIGINAL VILLAGE (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "C" OF PLATS, PAGE 42, ON SEPTEMBER 15, 1902, IN DEKALB COUNTY, ILLINOIS.

Parcel Identification Numbers 0823163014 and 0823163015
MORTGAGE

RETURN TO:
City Clerk
City of DeKalb
200 S. Fourth Street
DeKalb IL 60115

Future Advances Mortgage
Maximum Value: $400,000.00

THIS MORTGAGE, dated this 1st day of APRIL, 2017, by The Bandit's Castle, LLC ("Mortgagor"),

WITNESSETH:

WHEREAS, Mortgagor has executed a Promissory Note in the principal sum of Four Hundred Thousand Dollars ($400,000.00) payable to the City of DeKalb ("Mortgagee"), dated the same date as this Mortgage, whereby Mortgagee is entitled to recover from Mortgagor certain expenses, costs, and advances in connection with Mortgagor's development work on the Premises as defined below and Property as defined within that certain 230 East Lincoln Highway Development Incentive Agreement executed on MARCH 13, 2019 and recorded against the Premises (as defined below) and certain other parcels of real property;

THAT to secure the payment of the indebtedness evidenced by said Promissory Note, Mortgagor does by these presents GRANT and MORTGAGE unto Mortgagee, the real estate situated in the County of DeKalb, and State of Illinois, legally described as follows:

[see legal description attached as Exhibit 1]

PROPERTY INDEX NO.: 0823163014 and 0823163015

which is referred to herein as the "Premises";

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

Further, Mortgagor does hereby pledge and assign to Mortgagee, from and after the date hereof, primarily and on a parity with said real estate and not secondarily, all the rents, issues and profits of the premises and all rents, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing, and all deposits or money as advance rent or for security, under any and all present and future leases of the premises, and does hereby transfer and assign all such leases to Mortgagee together with the right, but not the obligation, to collect, receive and receipt for all avails thereof, to apply then to said indebtedness and to demand, sue for and recover the same when due or payable. Mortgagee by acceptance of the Mortgage agrees, as a personal covenant applicable to Mortgagor only, and not as a limitation or condition hereof and not available to any lessee or tenant, that until a default shall be made or an event shall occur, when under the terms hereof shall give to Mortgagee the right to foreclose this Mortgage, Mortgagor may collect, receive and enjoy such avails.

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

NOTICE: THIS MORTGAGE SECURES TOTAL CREDIT IN THE AMOUNT OF $400,000.00, AND IS
CONSTRUED IN CONNECTION WITH THE OBLIGATIONS OF MORTGAGOR AS OWNER UNDER THAT CERTAIN 230 EAST LINCOLN HIGHWAY DEVELOPMENT INCENTIVE AGREEMENT ("AGREEMENT") RECORDED AGAINST THE PREMISES PRIOR TO THE DATE OF THIS MORTGAGE. LOANS, PAYMENTS, CREDITS AND ADVANCES UP TO THIS AMOUNT, TOGETHER WITH ANY OTHER AMOUNTS OR OTHER OBLIGATIONS OF MORTGAGOR/OWNER UNDER THIS MORTGAGE OR THE AGREEMENT ARE SENIOR TO INDEBTEDNESS TO OTHER CREDITORS UNDER SUBSEQUENTLY RECORDED OR FILED MORTGAGES AND LIENS, UNLESS AND UPON THE CITY'S SUBORDINATION OF THIS MORTGAGE LIEN AS PROVIDED IN THE AGREEMENT. THIS MORTGAGE HAS BEEN PROVIDED TO SECURE THE REPAYMENT OF OBLIGATIONS OF THE AGREEMENT, INCLUDING BUT NOT LIMITED TO REPAYMENT OF A DEVELOPMENT INCENTIVE (AS DEFINED IN THE AGREEMENT).

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

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

A) The promissory note, guaranty, obligations of Mortgagor under the Development Incentive Agreement and all extensions, renewals, modifications or substitutions thereof to The Bandit’s Castle, LLC, with a note amount of $400,000.00 (collectively, the "Evidence of Debt").

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

C) All obligations Mortgagor owes to Mortgagee, which now exist or may later arise, to the extent not prohibited by law, including but not limited to any obligation under the Development Incentive Agreement such as obligations to defend and indemnify and obligations relating to the Owner Escrow as defined therein.

D) Any additional sums advanced and expenses incurred by Mortgagee for insuring, preserving or otherwise protecting the Premises and Property and its value and any other sums advanced or expenses incurred by the Mortgagee under the terms of this Mortgage, plus interest (where applicable), as provided in the Evidence of Debt and Development Incentive Agreement.

E) Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Mortgagee and any Mortgage securing, guarantying or otherwise relating to a debt.

Mortgagor covenants and agrees:

1. To pay or cause to be paid, when due, all sums secured hereby as further defined and governed by the Development Incentive Agreement.

2. Not to abandon the premises; to keep the premises in good condition and repair and not to commit or suffer waste; to pay for and complete within a reasonable time any building at any time in the process of erection upon the premises; to promptly repair, restore or rebuild any building or improvement now or hereafter on the premises which may become damaged or destroyed; to refrain from impairing or diminishing the value of the security; to make no material alterations of the premises.
3. To comply with all requirements of law or local government ordinances governing the premises and the use thereof; and to permit Mortgagee, or their agents, to inspect the premises at all reasonable times.

4. To keep the premises free from mechanics, or other liens or claims for liens of any kind; to pay or cause to be paid, when due, any indebtedness which may be secured by a lien or charge on the premises; and, upon receipt, to exhibit to Mortgagee satisfactory evidence of the payment and discharge of such liens or claims.

5. To pay, or cause to be paid, before any penalty attaches, all general taxes and to pay, or cause to be paid, when due, all special taxes, special assessments, water charges, drainage charges, sewer service charges and other charges against the premises, of any kind whatsoever, which may be levied, assessed, charged or imposed on the premises, or any part thereof.

6. To promptly pay all taxes and assessments assessed or levied under and by virtue of any state, federal or local law or regulation hereafter passed, against Mortgagee upon this Mortgage or the debt hereby secured, or upon their interest under this Mortgage.

7. To exhibit to Mortgagee, annually upon request, official receipts showing full payment of all taxes, assessments and charges which Mortgagor is required, or shall elect, to pay or cause to be paid hereunder.

8. To keep the premises continuously insured, until the indebtedness secured hereby is fully paid against loss or damage under such types of hazard and liability insurance and in such forms, amounts and companies as may be reasonably approved or required from time to time by Mortgagee (in the absence of any specified requirements, such insurance shall be under policies providing for payment by the insurance companies of moneys sufficient either to pay the full cost of replacing or repairing the premises or to pay in full the indebtedness secured hereby); all policies whether or not required by the terms of this Mortgage, shall contain loss payable clauses in favor of Mortgagee (or, in case of foreclosure sale, in favor of the owner of the certificate of sale); in the event of loss, Mortgagor shall immediately notify Mortgagee in writing and Mortgagee hereby authorizes and directs each and every insurance company concerned to make payments for such loss directly and solely to Mortgagee (who may, but need not, make proof of loss) and Mortgagee is hereby authorized to adjust, collect and compromise, in their discretion, all claims under all policies, and Mortgagor shall sign, upon demand by Mortgagee, all receipts, vouchers and releases required by the insurance companies and the insurance proceeds, or any part thereof, may be applied by Mortgagee, at their option, either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged, and any application thereof to the indebtedness shall not relieve Mortgagors from making the payments herein required until the indebtedness is paid in full. Mortgagee may, from time to time, at their option, waive and, after any such waiver, reinstate any or all provisions hereof requiring deposit of insurance policies, by notice to Mortgagor in writing.

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

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

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

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

10. In the event of default in performance of any Mortgagor's covenants or agreements herein contained, Mortgagor may, but need not, make any payment or perform any act hereinbefore required of Mortgagor, in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit title or claim thereof, or redeem from any tax sale or forfeiture affecting the premises or contest any tax or assessment. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorney's fees, and any other monies advanced by Mortgagee to protect the premises and the lien hereof shall be so much additional indebtedness secured hereby and shall be come immediately due and payable without notice. Mortgagee, making any payment hereby authorized relating to taxes or assessments, shall be the sole judge of the legality and validity thereof and of the amount necessary to be paid in satisfaction thereof.

11. If (a) default be made in payment, when due, of any sum secured hereby, or in any of the other covenants or agreement s herein contained to be performed by Mortgagor herein or in the Agreement, or (b) if any proceedings be instituted or process issued (i) to enforce any other lien, charge or encumbrance against the premises, or (ii) to condemn the premises or any part thereof for public use, or (iii) against Mortgagor or any beneficiary thereof under any bankruptcy or insolvency laws, or (iv) to place the premises or any part thereof in the custody of any court through their receiver or other officer, and such proceedings are not dismissed or stayed on appeal or such process withdrawn within Ten (10) days after written notice to Mortgagor; or (c) if Mortgagor makes any assignment for the benefit of creditors, or are declared bankrupt, or if by or with the consent or at the instance of proceedings to extend the time of payment of the Note or to change the terms of this Mortgage be instituted under any bankruptcy or insolvency law; then:

(a) All sums secured hereby shall, at the option of Mortgagee, become
immediately due and payable without notice, with interest thereon, from the date of
the first of any such defaults, at the penalty rate; and

(b) Mortgagee may immediately foreclose this Mortgage. The Court in which any
proceedings is pending for that purpose may, at once or any time thereafter, either
before or after sale, without notice to Mortgagor, and without requiring bond, and
without regard to the solvency or insolvency of any person liable for payment of the
indebtedness secured hereby, and without regard to the then value of the premises,
or whether the same shall be occupied as a Homestead, appoint a receiver (the
provisions for the appointment of a receiver and assignment of rents being an express
condition upon which the loan hereby secured is made), for the benefit of Mortgagor
or place Mortgagee in possession under the terms of the applicable statute of the State
of Illinois, with power to collect the rents, issues and profits of the premises, due and
to become due, during such foreclosure suit and the full statutory period of
redemption notwithstanding any redemption. The receiver or Mortgagee in
possession, out of such rents, issues and profits when collected, may pay costs
incurred in the management and operation of the premises, prior and coordinate
liens, if any, and taxes, assessments, water and other utilities and insurance, then due
or thereafter accruing, and may make and pay for any necessary repairs to the
premises, and may pay all or any part of the indebtedness secured hereby or any
deficiency decree; and

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

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

(a) All principal and interest remaining unpaid and secured hereby;

(b) All other items advanced or paid by Mortgagee pursuant to this Mortgage with
interest at the penalty rate from the date of advancement;

(c) All court costs and fees, attorneys' fees, appraiser's fees, expenditures for
documentary and expert evidence, stenographer's charges, publication costs and
coats (which may be estimated as to items to be expended after entry of the decree)
of procuring all abstracts of title, title searches and examinations, title guarantee
policies, and similar data with respect to title, as Mortgagee may deem necessary. All
expenditures and expenses of the type mentioned in this subparagraph (c) shall
become so much additional indebtedness secured hereby and immediately due and
payable, with interest at the same rate as shall accrue on the principal balance when
paid or incurred by Mortgagee, in connection with (i) any proceedings, including
probate and bankruptcy proceedings to which Mortgagee shall be a party, either as
plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness
hereby secured; or (ii) preparations for the commencement of any suit for the
foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (iii) preparations for the defense of security hereof, whether or not actually commenced. The proceeds of any foreclosure sale shall be distributed and applied to the items described in subparagraph (a), (b) and (c) in order of priority inversely to the manner in which said subparagraphs are above listed and any surplus of the proceeds of such sale be paid to Mortgagor.

13. No remedy or right of mortgagor shall be exclusive of, but shall be in addition to, every other remedy or right now or hereafter existing at law or in equity. No delay in exercising, or omission to exercise, any remedy or right accruing on default shall impair any such remedy or right, or shall be construed to be a waiver of any such default, or acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagor.

14. Without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for payment of any indebtedness secured hereby or for performance of any obligation contained herein, and without affecting the rights of Mortgagor with respect to any security not expressly released in writing, Mortgagor may, at any time and from time to time, either before or after the maturity of said note, and without notice or consent:

(a) Release any person liable for payment of all or any part of the indebtedness or for performance of any obligation.

(b) Make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof.

(c) Exercise or refrain from exercising or waive any right Mortgagor may have.

(d) Accept additional security of any kind.

(e) Release or otherwise deal with any property, real or personal, securing the indebtedness, including all or any part of the property mortgaged hereby.

15. Upon full payment of all sums secured hereby at the time and in the manner provided, then this conveyance shall be null and void and within thirty (30) days after written demand therefor a re-conveyance or release of the premises shall be made by Mortgagor to Mortgagor.

16. All provisions hereof shall inure to and bind the respective heirs, executors, administrators, successors, vendees and assigns of the parties hereto, and the word "Mortgagor" shall include all persons claiming under or through Mortgagor and all persons liable for the payment of the indebtedness or any part hereof, whether or not such persons shall have executed the Note or this Mortgage. Whenever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders.

17. That this Mortgage cannot be changed except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

18. This lien may be subordinated with the written consent of the City Manager.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage the day and year first above written.
The Bandit's Castle, LLC

By:                                                    
Cohen Barnes, Member

STATE OF ILLINOIS)  
) ss  
COUNTY OF DEKALB)  

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Cohen Barnes, authorized Member of The Bandit's Castle, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Member, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth; and the same Member then and there acknowledge that he did affix the seal of said company to said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 17 day of April, 2017.

Notary Public

[Seal]
Exhibit 1
Legal Description

(LEGAL DESCRIPTION)

The property is legally described as:

230 E. Lincoln Highway

LOTS 56, 57, AND 68 IN THE COUNTY CLERK’S SUBDIVISION, A RESUBDIVISION OF BLOCKS 11, 12, 14, AND 15 OF THE ORIGINAL VILLAGE (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK “C” OF PLATS, PAGE 42, ON SEPTEMBER 15, 1902, IN DEKALB COUNTY, ILLINOIS.

Parcel Identification Numbers 0823163014 and 0823163015
Exhibit G: Waiver of Objection to Special Service Area

STATE OF ILLINOIS

COUNTY OF DEKALB

Waiver of Objection to Special Service Area

NOW COMES the affiant, The Bandit’s Castle, LLC by and through its Member/Manager, Cohen Barnes, and for its LANDOWNER WAIVER OF OBJECTION TO CREATION OF SSA, states as follows:

1. That it has negotiated with the City of DeKalb regarding the improvement of its property located at ____, legally described on the attached Exhibit 1 ("the property"), with said improvements consisting generally of the construction and development of a commercial development.

2. That it is aware that as a condition of approval of the permits required for construction of the above-described improvements, the City is requiring the creation of a backup/dormant maintenance Special Service Area to provide a backup source of funding to maintain common, private improvements located on and/or servicing the property. It agrees and covenants that this Waiver of Objection has been executed to demonstrate that it does not object to the creation of an SSA (as contemplated on Exhibit 2), and acknowledges that the City is relying upon the execution of this waiver in approving the construction permit that it otherwise would not be obligated to approve.

3. That it is presently the owner of some or all of the property legally described in the attached Exhibit 1.

4. That, having been ably represented by its own counsel and having been fully apprised of its right and ability to object to the creation of a special service area, it seeks to formally waive any such objection to the creation and imposition of a special service area, according to the terms and purposes announced in the attached Exhibit 2, and further affirmatively indicate its consent to those terms and any other reasonable terms which may be required to create and implement the backup special service area. This consent shall apply to any land presently owned by it, or any land later acquired by it, contained within the legal description of the property at issue.

5. That it has submitted this Landowner Waiver of Objection to Creation of SSA to the City of DeKalb, for the purpose of waiving any objection it, as the or one of the landowners of the properties described in the attached Exhibit 1 which shall be subject to the special service area upon creation, may otherwise have. This Waiver of Objection shall be binding upon all subsequent owners of the property, and may be recorded against the property.

FURTHER, AFFIANT SAYETH NAUGHT.

By: 

[Signature]
SUBSCRIBED AND SWORN to before me this __ day of __________, 20__

MARK P. DOHERTY
Notary Public, State of Illinois
My Commission Expires 1/25/19
The property is legally described as:

230 E. Lincoln Highway

LOTS 56, 57, AND 68 IN THE COUNTY CLERK’S SUBDIVISION, A RESUBDIVISION OF BLOCKS 11, 12, 14, AND 15 OF THE ORIGINAL VILLAGE (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDERD IN BOOK “C” OF PLATS, PAGE 42, ON SEPTEMBER 15, 1902, IN DEKALB COUNTY, ILLINOIS.

Parcel Identification Numbers 0823163014 and 0823163015
The purpose of the formation of special service area in general is to authorize the maintenance, repair, regular care, renewal and replacement of the Common Facilities including, without limitation, the mowing and fertilizing of grass, pruning and trimming of trees and bushes, removal and replacement of diseased or dead landscape materials, aeration of stormwater basins, maintenance of underground stormwater facilities, the repair and replacement of monument signs, storm water detention basins, storm sewers and related areas and appurtenances, culverts, drains, ditches and tiles, landscape buffers and related areas and appurtenances, in the special service area, as well as the provision of snow removal services on public sidewalks along or within the area all in accordance with the final engineering plan and final plat of subdivision for the Area, and the proposed municipal services are unique and are in addition to the improvements provided and/or maintained by the City generally. Notwithstanding the foregoing, taxes shall not be levied hereunder and said Area shall be “dormant”, and shall take effect only if the applicable required owners association, condominium association or property owner fails to maintain, repair or replace the aforesaid required items and the City chooses to assume some or all of said responsibilities.

There will be considered the levy of an annual tax of not to exceed an annual rate of two hundred-hundredths percent (2.0%, being 200¢ per $100) of the equalized assessed value of the property in the proposed special service area, said tax to be levied for an indefinite period of time from and after the date of the Ordinance establishing said Area. Said taxes shall be in addition to all other taxes provided by law and shall be levied pursuant to the provisions of the Property Tax Code. The City may levy taxes at any time under the Special Service Area, and may choose to offer none, some or all of the enumerated special services. Proceeds raised by the levy shall only be used as permitted by law.
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 2017-042

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

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, on the 13th day of March, 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 9th 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
SATISFACTION OF MORTGAGE

Satisfaction of Mortgage dated 4/19/17 recorded 5/26/17 with the DeKalb County Recorder as Document Number 2017005079

PINs: 0823163014
      0823163015

Prepared by and after recording,
Return to:

Dean M. Frieders,
City Attorney
City of DeKalb
200 S. Fourth Street
DeKalb, IL 60115
815-748-2093
SATISFACTION OF MORTGAGE

City of DeKalb of 200 South Fourth Street, DeKalb, IL 60115, a corporation organized under the laws of Illinois (the “Mortgagee”), does hereby certify and declare that the owner and holder of that certain mortgage bearing the date May 26, 2017 executed by The Bandit’s Castle of 230 E. Lincoln Highway, DeKalb, IL 60115 (the “Mortgagor”) to secure payment of the principal sum of $400,000.00 dollars and interest, and recorded at the Office of the Recorder of DeKalb, Illinois on May 26, 2017, that formerly encumbered the described real property: 230 East Lincoln Highway, DeKalb, IL 60115-3229. Parcel Identification Numbers: 0823163014 and 0823163015 which was recorded in DeKalb County, IL has been FULLY SATISFIED AND DISCHARGED.

IN WITNESS WEREOF the Mortgagee has duly affixed his or her signature under hand and seal on the 31st of May, 2018.

SIGNED, SEALED, AND DELIVERED

in the presence of:

WITNESS: Ruth Scott

City of DeKalb
Per: (seal)
By: Jerry Smith
Title: Mayor

NOTARY ACKNOWLEDGMENT

STATE OF ILLINOIS
COUNTY OF DeKalb
The instrument was acknowledged before me on the 31st day of May, 2018, by Jerry Smith as Mayor of the City of DeKalb.

Notary Public, Michelle Jurczek

My commission expires: 2/6/21
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:

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 contractor. Each contractor tab should start with a spreadsheet generated by the Applicant that includes the totals from each invoice, and should be followed by a complete set of prevailing wage records, final waivers of lien, and invoices.

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

THE BANDIT’S CASTLE, LLC

Jerry Smith, Mayor

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.

ATTEST:

[Signatures]
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
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This Development Incentive Agreement (the "Agreement") is made and entered the 13th 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."

RECATALS

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, 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 200/100) 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 hereinabove. 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 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
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-operative 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:

<table>
<thead>
<tr>
<th>Party</th>
<th>Address</th>
<th>Telephone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Clerk</td>
<td>City of DeKalb, 200 South 4th Street, DeKalb, IL 60115</td>
<td>815-748-2095</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>With copies to:</td>
<td>City Manager, City of DeKalb, 200 South Fourth Street, DeKalb, IL 60115</td>
<td>815-748-2060</td>
<td><a href="mailto:Annemarie.saura@cityofdekalb.com">Annemarie.saura@cityofdekalb.com</a></td>
</tr>
<tr>
<td></td>
<td>City Attorney, City of DeKalb, 200 South 4th Street, DeKalb, IL 60115</td>
<td>815-748-2093</td>
<td><a href="mailto:dean@frieders.com">dean@frieders.com</a></td>
</tr>
</tbody>
</table>
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 “Indemnified”) 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 Indemnified. 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:

<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Legal Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit A</td>
<td>Plans</td>
</tr>
<tr>
<td>Group Exhibit B</td>
<td></td>
</tr>
<tr>
<td>Exhibit C</td>
<td>No-Trespass / Patrol Agreement</td>
</tr>
<tr>
<td>Exhibit D</td>
<td>Traffic Enforcement Agreement</td>
</tr>
<tr>
<td>Exhibit E</td>
<td>Project Cost Documentation Requirements</td>
</tr>
<tr>
<td>Group Exhibit F</td>
<td></td>
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<tr>
<td>Exhibit G</td>
<td>Form of Promissory Note, Corporate Undertaking, Mortgage</td>
</tr>
<tr>
<td></td>
<td>Waiver of Objection to Special Service Area</td>
</tr>
</tbody>
</table>

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
OWNER:

THE BANDIT'S CASTLE, LLC, an Illinois Limited Liability Company

By: [Signature]

Attest: [Signature]

3/15/17

[Seal]

OFFICIAL SEAL
MICHÉLLE JURECZK
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 02/08/21

I,  , subscriber and sworn to before me, this 15th day of March, 2017.
STATE OF ILLINOIS  
COUNTY OF DEKALB  
CITY OF DEKALB  

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 2018-030

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

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, on the 12th day of March, 2018, 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 12th 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