I, LYNN A. FAZEKAS, do hereby certify that I am the duly appointed 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:

ORDINANCE 2018-081

AUTHORIZING AN AMENDMENT TO ORDINANCE 2017-011 TO ADD ADDITIONAL SERVICE FACILITIES TO THE LIST OF PERMITTED COMMERCIAL USES IN ARTICLE II.C OF THE ORDINANCE UP TO 2,000 SQUARE FEET AND TO INCREASE THE MAXIMUM SQUARE FOOTAGE ALLOWED FOR "PROFESSIONAL SERVICE OFFICES" FROM 1,000 SQUARE FEET TO 2,000 SQUARE FEET (106, 112, 118 AND 124 E. LINCOLN HIGHWAY, AND 122 S. FIRST STREET, DEKALB, ILLINOIS) (CORNERSTONE DEKALB).

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, on the 13th day of November 2018. The original will be kept on file at the City of DeKalb Municipal Building.

WITNESS my hand and the official seal of said City this 29th day of November 2018.

LYNN A. FAZEKAS, City Clerk

Prepared by and Return to:

City Clerk's Office
City of DeKalb
200 S. Fourth Street
DeKalb, Illinois 60115
ORDINANCE 2018-081  
PASSED: NOVEMBER 13, 2018

AUTHORIZING AN AMENDMENT TO ORDINANCE 2017-011 TO ADD ADDITIONAL SERVICE FACILITIES TO THE LIST OF PERMITTED COMMERCIAL USES IN ARTICLE II.C OF THE ORDINANCE UP TO 2,000 SQUARE FEET AND TO INCREASE THE MAXIMUM SQUARE FOOTAGE ALLOWED FOR “PROFESSIONAL SERVICE OFFICES” FROM 1,000 SQUARE FEET TO 2,000 SQUARE FEET (106, 112, 118 AND 124 E. LINCOLN HIGHWAY, AND 122 S. FIRST STREET, DEKALB, ILLINOIS) (CORNERSTONE DEKALB).

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

WHEREAS, the City has previously approved Ordinance 2017-011, approving Planned Development – Commercial ("PD-C") zoning and a certain agreement for the property described therein and commonly referred to as "Cornerstone"; and

WHEREAS, pursuant to public notice and hearing, the City’s Planning and Zoning Commission have made a positive recommendation to approve an amendment to the PD-C zoning and the Development Agreement for Cornerstone, to provide for the change in zoning standards contained herein; and

WHEREAS, the City Council expressly finds that the foregoing amendment is appropriate, meets all legally required standards, is subject to consideration following the provision of all required public notice and due process, and is agreeable to the City as an amendment of the Development Agreement;

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

SECTION 1. Amendment Authorized.

The City Council of the City of DeKalb hereby adopts the following amendment to the PD-C zoning and Development Agreement for Cornerstone.

1. Article II(C) of the Development Agreement shall be read to be amended so as to include “Services facilities including barber shops, beauty shops, nail salons, copying services, artists’ studios, photographers, tailors, music and dance instruction, suntan parlors, travel agencies and other similar service facilities with determination of what constitutes a similar service facility being made by the City Manager. Notwithstanding the foregoing, no more than 2,000 square feet of available commercial square footage on the Property shall be permitted to be utilized for this purpose.” This description shall be included as a permitted use enumerated as permitted use number 4 in Article II(C).
2. Article II(C) of the Development Agreement shall be read to be amended so as to increase from 1,000 square feet to 2,000 square feet the amount of space that shall be permitted to be utilized for Professional Services Offices.

3. Notwithstanding the foregoing, Article II(E) and all other portions of the Property (as described in the Development Agreement) shall remain in full force and effect.

4. This Ordinance shall be appended to the Development Agreement and incorporated by reference as if set forth fully therein.

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

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


ATTEST:

LYNN A. FAZEKAS, City Clerk
TERRY SMITH, Mayor

STATE OF ILLINOIS
C. Permitted Commercial Uses:

There shall be no permitted commercial uses on the second or higher floors of the Building, and there shall be no permitted home occupation use of the residential components of the Building. Within the non-residential portions of the first floor of the Building and any portion of the basement of the Building allocated to supporting such non-residential areas, the permitted commercial uses shall be exclusively limited to the following:

1) Retail Uses. Purely Retail uses shall be permitted unless otherwise prohibited or limited. Minor, indoor incidental services shall be permitted as a component of Retail uses (e.g. sale of computers with incidental computer servicing, jewelry store providing incidental jeweler services).

2) Restaurants and retail food establishments, including fast-food, sit-down or other similar establishments and also including bars that maintain service of food. In association with such use, the Owner shall be permitted to establish and maintain outdoor seating areas in accordance with any approved Final Plans.

3) Professional Service Offices, such as medical offices for licensed doctors or chiropractors, urgent care, dental office, legal office, optometrist/ophthalmologist, accountant, or other similar professional service-based offices (with the determination of what constitutes a similar professional office being made by the City Manager). Notwithstanding the foregoing, no more than 24,000 square feet of the available commercial square footage on the Property shall be permitted to be utilized for this purpose.

4) Services facilities including barber shops, beauty shops, nail salons, copying services, artists’ studios, photographers, tailors, music and dance instruction, suntan parlors, travel agencies, and other similar service facilities with determination of what constitutes a similar service facility being made by the City Manager. Notwithstanding the foregoing, no more than 2,000 square feet of the available commercial square footage on the Property shall be permitted to be utilized for this purpose.
ORDINANCE 2017-011      PASSED: FEBRUARY 27, 2017

APPROVING A REZONING FROM CENTRAL BUSINESS DISTRICT (CBD) TO PLANNED DEVELOPMENT-COMMERCIAL (PD-C) ZONING AND APPROVING A DEVELOPMENT AGREEMENT WITH CORNERSTONE DEKALB, LLC FOR PROPERTY LOCATED ON THE SOUTHEAST CORNER OF 1ST STREET AND LINCOLN HIGHWAY.

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

WHEREAS, the City is in receipt of an application from Cornerstone DeKalb, LLC ("Developer") requesting a rezoning of the property located on the southeast corner of 1st Street and Lincoln Highway, as legally described in the attached Exhibit A ("Property"), and approvals necessary to demolish existing improvements and construct a mixed use building with non-residential uses on the first floor, and 51 luxury one-bedroom apartments on floor two through four ("the Project"); and

WHEREAS, the City and Developer seek to enter into a development agreement for the Project for purposes of providing approvals of a concept plan and outlining procedures required for obtaining final approvals necessary prior to construction; and

WHEREAS, the City and Developer have conducted all required public hearings before the Planning and Zoning Commission of the City of DeKalb and the City Council of the City of DeKalb for both the adoption of zoning amendments for the Property and for the adoption of a development agreement, and have otherwise satisfied all conditions precedent to the adoption of this Ordinance; and

WHEREAS, the City Council adopts the findings of fact of the Planning and Zoning Commission of the City of DeKalb attached hereto as Exhibit B, finds that the proposed rezoning is in conformance with the applicable zoning factors contained therein, and finds that approval of this Ordinance, with the corresponding approval of an amendment to the zoning for the Property and the approval of an amended annexation agreement, is in the public interest and promotes the public health, safety and welfare;

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

Section 1. Rezoning Authorized: The City Council of the City of DeKalb hereby approves a rezoning for the Property from the CBD zoning district to the PD-C zoning district, consistent with the terms and conditions of the Development Agreement attached hereto and approved herein as Exhibit C ("the Agreement"), and subject to the approval of final plans consistent with the Agreement.
Section 2. Development Agreement Approved: The City Council of the City of DeKalb hereby approves of the Agreement, and authorizes and directs the Mayor of the City of DeKalb to execute the Agreement, subject to such changes as shall be acceptable to him with the recommendation of City Staff. Thereafter, City staff is authorized and directed to take all actions as shall be required by said Development Agreement, including but not limited to the payment of the Phase 1 Incentive payments on an as-incurred basis, without requirement of any further or additional approval from City Council.

Section 3. Recording Directed: After execution by all parties, this Ordinance and the Agreement shall be recorded in the DeKalb County Recorder’s Office.

Section 4. All ordinances or portions thereof in conflict with this ordinance, are hereby repealed.

Section 5. Should any provision of this Ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions will remain in full force and affect the same as if the invalid provision had not been a part of this Ordinance.

Section 6. This Ordinance shall be in full force and effect after passage and publication pursuant to law. Publication date: February 28, 2017. Effective date: March 9, 2017.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 27th day of February, 2017 and approved by me as Mayor on the same day. Passed on First Reading by an 8-0 roll call vote. Aye: Jacobson, Finucane, Marquardt, Snow, Noreiko, Baker, Faivre, Rey. Waiver of Second Reading passed by an 8-0 roll call vote. Aye: Jacobson, Finucane, Marquardt, Snow, Noreiko, Baker, Faivre, Rey. Waiver of Second Reading passed by an 8-0 roll call vote.

ATTEST:

[Signatures]

JENNIFER JEEP JOHNSON, City Clerk

JOHN A. REY, Mayor
Exhibit A

112 E. Lincoln Highway: LOTS 2 AND 3 (EXCEPT THE EASTERY 4 FEET THEREOF OF SAID LOT 3) IN RUBY'S SUBDIVISION OF A PART OF BLOCK 2 IN THE ORIGINAL TOWN (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "D" OF PLATS, PAGE 23 ON OCTOBER 29, 1907, IN DEKALB COUNTY, ILLINOIS.

118 E. Lincoln Highway: THE EASTERY 4 FEET OF LOT 3; ALL OF LOT 4; AND THE WESTERY 12.4 FEET OF LOT 5, ALL IN RUBY'S SUBDIVISION OF A PART OF BLOCK 2 IN THE ORIGINAL TOWN (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "D" OF PLATS, PAGE 23, ON OCTOBER 29, 1907, IN DEKALB COUNTY, ILLINOIS.

122 E. Lincoln Highway: THE EAST 14.6 FEET OF LOT 5 AND THE WEST 1.4 FEET OF LOT 6 OF RUBY'S SUBDIVISION OF A PORTION OF BLOCK 2 OF THE ORIGINAL VILLAGE (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED ON OCTOBER 29, 1907, IN BOOK "D" OF PLATS, PAGE 23, SITUATED IN THE COUNTY OF DEKALB, STATE OF ILLINOIS.

124 E. Lincoln Highway: LOT 6 (EXCEPT THE EAST 4 FEET THEREOF AND EXCEPT THE WEST 1.4 FEET THEREOF) OF RUBY'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 29, 1907 IN BOOK "D" OF PLATS, PAGE 23, OF A PORTION OF BLOCK 2 OF THE ORIGINAL VILLAGE (NOW CITY) OF DEKALB, IN DEKALB COUNTY, ILLINOIS.

122 S. First Street: PART OF THE EAST ½ OF THE NORTHEAST ¼ OF SECTION 22, TOWNSHIP 40 NORTH, RANGE 4, EAST OF THE THIRD PRINCIPAL MERIDIAN, DEKALB COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF LOT 1 OF RUBY'S SUBDIVISION OF A PART OF THE WEST ½ OF BLOCK 2, IN THE CITY OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "D" OF PLATS, PAGE 23; THENCE EASTERLY ALONG THE NORTH LINE OF SAID LOT 1 AND THE PROLONGATION OF SAID NORTH LINE 200 FEET, THENCE SOUTHERLY AND PARALLEL TO THE WESTERLY LINE OF SAID LOT 1, 70 FEET, THENCE WESTERLY IN A STRAIGHT LINE TO A POINT ON THE WEST LINE OF SAID LOT 1, 70 FEET SOUTHERLY OF THE POINT OF BEGINNING; THENCE NORTHERLY AND ALONG THE WEST LINE OF SAID LOT 1, 70 FEET TO THE POINT OF BEGINNING.

THE SUBJECT PROPERTY ALSO INCLUDES THE ALLEY ADJOINING THE PROPERTIES LISTED ABOVE.

The aforementioned legal description is comprised of Parcel Identification Numbers (PINs) 08-22-282-001, 08-22-282-002, 08-22-282-003, 08-22-282-004 and 08-22-282-007 and the alley adjoining the parcels. The subject property is located at 112, 118, 122 and 124 E. Lincoln Highway and 122 S. First St., DeKalb, IL, and generally located at the southeast corner of E. Lincoln Highway and S. First St.
EXHIBIT B

Findings of Fact

1. The proposed rezoning conforms to the Comprehensive Plan, or conditions have changed to warrant the need for different types of land uses in that area. The proposed rezoning is appropriate considering the length of time the property has been vacant, as originally zoned, and taking into account the surrounding areas trend in development.

The 2005 Comprehensive Plan recommends the subject site for commercial use. In addition, the proposed project is in conformance with many of the recommendations outlined in the 2007 Downtown Revitalization Plan, the 2011 Design Guidelines, and the 2013 DeKalb City Center Plan. Mixed use buildings with commercial uses on the first floor are recommended and encouraged on the western edge of the CBD in the Plans. Staff believes that the proposed development meets the intent of the City’s Comprehensive Planning Documents.

The building at 112 and 118 Lincoln Highway have been vacant for several years and given the current condition of the building it is likely that the City will inevitably incur a cost of remediation and demolition of these two buildings if the redevelopment is not allowed. The result would be two more properties off the tax rolls next to already underperforming properties. The proposed rezoning request will allow the redevelopment of the site that will spur additional development in the downtown area.

2. The proposed rezoning conforms to the intent and purpose of the Unified Development Ordinance.

The intent and purpose of the Planned Development zoning district states:

The purpose of the Planned Development Districts is to provide a means of achieving greater flexibility in development of land in a manner not always possible in conventional zoning districts; to encourage a more imaginative and innovative design of projects; to promote a more desirable community environment; and to retain maximum control over both the design and future operation of the development.

The rezoning of the subject property provides the opportunity to more directly shape the development, use and appearance of this property in accordance with the City’s design criteria and conformance with the Comprehensive Plan. The physical boundaries of the property and densities required for the site make this site a challenging property to redevelop. The Planned Development allows the developer and the City the flexibility to agree to a development plan and standards that seek relief from the Unified Development Ordinance regarding minimum lot size, residential density and site coverage for a Planned Development. The proposed rezoning request, exceptions to the UDO and concept plan
will allow the redevelopment of the site into mixed-use project that will spur additional development in the surrounding area.

3. The proposed rezoning will not have a significantly detrimental effect on the long-range development of adjacent properties or adjacent land uses.

The proposed rezoning should not have a detrimental effect on the adjacent properties or land uses as it entitles the subject property to a re-use of the property that is complementary with the adjacent area. The PD-C zoning provides the mechanism to provide imaginative and innovative design that will have a positive effect on the surrounding area while providing relief to the applicant allowing the redevelopment of the subject property. The proposed rezoning request and concept plan will allow the redevelopment of a highly visible corner in the downtown into a mixed-use development that will generate new business opportunities and support existing commerce in the Central Business District, while spurring increased property values and other development opportunities.

4. The proposed rezoning constitutes an expansion of an existing zoning district that, due to the lack of undeveloped land, can no longer meet the demand for the intended land uses.

The subject property is currently zoned "CBD" Central Business District. Rezoning the property to "PD-C" will allow for a well-designed project. The rezoning will allow for flexibility by the applicant to redevelop the property in a manner that will complement the surrounding neighborhood in terms of size, scale and density.

5. Adequate public facilities and services exist or can be provided.

Adequate public services can be provided to the subject property. The developer is responsible for necessary utility improvements, which can be readily made. The subject property lies within adequate service areas for other City services, such as police and fire protection. Vacation of part of an existing alley is required and existing overhead utilities will need to be relocated underground.
Exhibit C

Development Agreement
Prepared By and Return To
City of DeKalb
ATTN: City Attorney
200 S. Fourth Street
DeKalb, IL 60115

CORNERSTONE DEKALB
PLANNED REDEVELOPMENT AGREEMENT
CITY OF DEKALB
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ARTICLE II: ZONING OF THE PROPERTY

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C. Permitted Commercial Uses:
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E. Prohibited Uses:
F. Special Uses:
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I. Parking Provisions:
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This Planned Development Agreement (the "Agreement") is made and entered the 28th day of February, 2017 by and among the City of DeKalb, an Illinois municipal corporation located in DeKalb County, Illinois, (the "City"), and Cornerstone DeKalb, 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 approximately 0.85 contiguous acres of real property situated at the southeast intersection of First Street and 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 five separate parcel numbers comprising four separate buildings. Several of the buildings are in an advanced state of deterioration or decay, and at least one of the buildings is presently the subject of a City-initiated lawsuit seeking demolition or remediation. Collectively, the Property has declined in equalized assessed valuation during the preceding thirty years, despite the existence of a Tax Increment Financing District ("TIF District") covering the property for said period. The City has made extensive investment in the public infrastructure through use of the TIF District over that period. The Owner has acquired the contractual right to purchase the Property and each parcel therein, and proposes to create an assemblage of parcels under common ownership, with the intention of redeveloping the Property as a mixed-use, commercial and residential 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 construction of a building upon the Property ("the Building"), and provide preliminary architectural and elevation information.

C. The Parties acknowledge that the housing density contemplated by the Property exceeds the present density permitted under the Central Business District zoning classification from the City of DeKalb, and that thus the only way of accommodating the proposed development would be to utilize Planned Development-Commercial ("PD-C") zoning. The Parties further acknowledge that use of PD-C zoning requires a development agreement to provide definition of the terms and requirements of the zoning district, and that this Agreement has been entered into to provide such definition. The Parties acknowledge that this Agreement contemplates collaborative, joint use of existing City parking facilities adjacent to the Property and the construction of new parking facilities to serve the Property, and if the collaborative use parking facilities were included in the density calculation, the Property would be within the density limits permitted by City Code.

D. 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.

E. 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 rezone the Property as PD-C, and that the City's agreement to rezone the Property 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.

F. The City acknowledges and the Owner agrees that the PD-C, as provided under the City of DeKalb Unified Development Ordinance (the “UDO”) and this Agreement, will be the most appropriate zoning classifications for the development of the Property.

G. Pursuant to notice, as required by statute and ordinance, public hearings were held by the City’s Planning and Zoning Commission on the requested zoning of the Property, and the findings of fact and recommendations made by said body relative to such requests have been forwarded to the Corporate Authorities.

H. All other and further notices, publications, procedures, public hearings and other matters attendant to the consideration and approval of this Agreement and the rezoning of the Property 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.

I. The Corporate Authorities have duly considered all necessary matters to enter into this Agreement, have considered the recommendations of the City’s Planning and Zoning Commission in connection with the proposed zoning of the Property 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 I, 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 OF THE PROPERTY

A. Zoning Applicability:

The Parties acknowledge and agree that the zoning imposed hereunder comprises the City’s determination of the zoning classification that is appropriate for the property pursuant to applicable law and the related zoning factors that the City is required to apply, and also constitutes the agreed upon zoning and minimum standards for the Property pursuant to this Agreement. The Parties acknowledge that the City is, through this Agreement, providing a substantial financial incentive for the development of the Property, and that the bargained for consideration received by the City under this Agreement expressly includes the zoning restrictions contained herein, inclusive of the full detail described in this Agreement. It is the Parties’ intention that all requirements contained herein shall be maintained in existence for the full term of this Agreement, unless modified in accordance with this Agreement. The Owner, on its own behalf and on behalf of any successor owners, inhabitants, third party beneficiaries or others, is intentionally agreeing to and accepting the limitations described herein in exchange for receiving the benefits described herein.

B. Permitted Residential Uses:

The allocation or ratio of different types of dwelling units (e.g. the number of each type of one-bedroom unit, or any proposed change in the number of units, number of bedrooms per unit or any other
similar change) permitted for the property under the PD-C zoning described above shall be as approved in this Agreement, subject to any changes allowed by the City, with approval of such changes being in the sole, reasonable discretion of the City. Review and approval/denial of any such changes proposed by the Owner shall be treated as a major amendment to the proposed development, and shall follow the provisions of the UDO with a staff review and recommendation, Planning and Zoning Commission review and recommendation, and City Council review and approval/denial. The following residential uses shall be permitted in accordance with the enumerated standards:

1) Premium one-bedroom residential apartments with full kitchen and bathrooms, with a total of 51 residential units (17 per floor), with the sizes of such units being in substantial compliance with the Plans. These unit counts shall not be altered without the express approval of the City Council. The Owner shall be entitled to maintain up to 51 units on the Property, which comprises 0.85 acres (MOL), generating a net density of 60 dwelling units/acre. This density and unit configuration shall operate as a limitation on the density of all residential use of the Property, in the aggregate.

2) The one-bedroom residential apartments shall be finished and maintained with Premium Finishes as defined herein, with such requirements to include the following minimum standards within the residential units:
   a. Premium flooring such as hardwood, tile or similar coverings within the residential units.
   b. Solid-surface, non-laminate countertops.
   c. In-room washer/dryer for clothes.
   d. In-room kitchen with refrigerator, oven/stove, microwave, and dishwasher.
   e. Building-integrated HVAC systems with individual control by unit. This provision shall be interpreted to prohibit the use of “PTAC” or other similar individual unit HVAC systems or other HVAC systems that require protrusions from the exterior walls of the facility on a per-unit basis.
   f. Full furnishings including beds, tables, chairs, dressers, closet organizers, couches and seating areas.

Compliance with these standards shall be determined by the Community Development Director, whose approval shall not be unreasonably withheld or conditioned.

3) The Owner shall provide and maintain a facility for on-site management of the Property and the residential uses therein, substantially as described in the Plans. The Owner shall further provide and maintain the other residential amenities described in the Plans, including but not limited to:
   a. A private lobby for entrance to the residential units, with such lobby and related hallway spanning the full depth of the building proposed to be constructed, permitting access from the front or rear of the Property.
   b. A private elevator serving the residential uses only.
   c. A meeting room adjacent to the management office substantially as depicted in the Plans.
   d. A workout/fitness room on the first floor, substantially as depicted in the plans, equipped and maintained with good quality exercise equipment for use by the residential patrons and their invitees.
   e. A social gathering room on the first floor for use by the residential patrons and their invitees, substantially as depicted on the Plans, equipped and maintained with seating areas and recreational facilities to permit its use.
   f. A business room on the first floor for use by the residential patrons and their invitees, substantially as depicted on the Plans, equipped and maintained with seating areas and appropriate facilities to permit its use.
g. Storage areas shall be provided in the basement of the Building for use by the residential tenants.

h. The Owner may establish outdoor recreational facilities for such residential uses (e.g., common outdoor seating areas, grill areas, etc.) in compliance with any approved Final Plans.

4) The Owner acknowledges that the density contemplated by the development of the Property exceeds the density which otherwise would be permissible in the absence of PD-C zoning designation, and in order to provide a facility that addresses public welfare concerns that would otherwise be raised by the contemplated density, the Owner agrees and acknowledges that, except during reasonable periods of repair (during which Owner shall actively work in good faith to repair and restore the amenities), it shall maintain as operational, fully functional and in good condition the building amenities contemplated by the Plans and this Agreement at all times that the Property is in operation for the purposes contemplated by the PD-C zoning.

C. Permitted Commercial Uses:

There shall be no permitted commercial uses on the second or higher floors of the Building, and there shall be no permitted home occupation use of the residential components of the Building. Within the non-residential portions of the first floor of the Building and any portion of the basement of the Building allocated to supporting such non-residential areas, the permitted commercial uses shall be exclusively limited to the following:

1) Retail Uses. Purely Retail uses shall be permitted unless otherwise prohibited or limited. Minor, indoor incidental services shall be permitted as a component of Retail uses (e.g. sale of computers with incidental computer servicing, jewelry store providing incidental jeweler services).

2) Restaurants and retail food establishments, including fast-food, sit-down or other similar establishments and also including bars that maintain service of food. In association with such use, the Owner shall be permitted to establish and maintain outdoor seating areas in accordance with any approved Final Plans.

3) Professional Service Offices, such as medical offices for licensed doctors or chiropractors, urgent care, dental office, legal office, optometrist/ophthalmologist, accountant, or other similar professional service-based offices (with the determination of what constitutes a similar professional office being made by the City Manager). Notwithstanding the foregoing, no more than 1,000 square feet of the available commercial square footage on the Property shall be permitted to be utilized for this purpose.

D. Conversion to Hotel:

The Parties agree and acknowledge that the residential component of the Property is being constructed in such a fashion as to permit its conversion from a residential use to a boutique hotel/extended stay property should future community need require such use as determined by Owner. Owner shall be permitted, at its discretion, to convert the residential areas from residential use to hotel use without requiring any rezoning or other approval of the City, provided that:

1) Owner continues to comply with the minimum requirements described in II(B)(1) through (3) (and related subsections), with the conversion of the amenities from residential to hotel use, including but not limited to construction and maintenance of the specified areas, and provision of common area access and patrol.

2) The facility is comprised and operated in such a fashion as to be obligated to collect and remit hotel tax to the City of DeKalb under then-current ordinances and regulations.

3) The facility complies with all then-applicable requirements with respect to hotel licensure and inspection.
E. **Prohibited Uses:**

None of the following uses shall be allowed in or on the Property:

1) Any use which is not expressly authorized as a Permitted Use.
2) Any residential use other than standalone residential apartments as contemplated above (and more specifically, any use which would constitute a “rooming house” or dormitory under applicable City Ordinances, or which contemplates the use of shared bathroom or kitchen facilities, shall be prohibited).
3) Community residences.
4) Group homes.
5) Parking lots, as a principal use (and more specifically, any lease, rental or otherwise offering use of on-site parking by any party other than a resident or employee of the Property).
6) Outdoor storage of any form not expressly authorized herein.
7) Sales or construction trailers, intermodal shipping containers, van trailers or similar items used for storage or office purposes, temporary structures or similar appurtenances used for office, work or storage purposes. Any such item shall be deemed to be used for office, work or storage purposes if it remains on the Property in one exterior location for more than twenty-four (24) hours at any given time. Notwithstanding the foregoing, this Section shall not apply during any time when there is a building or demolition permit outstanding.
8) Adult oriented uses; adult bookstores or other establishment displaying, leasing, trading, or selling pornographic materials or any similar use as defined in the UDO, whether as a principal use or accessory to an allowed principal use (the foregoing not prohibiting a general audiences bookstore with not more than 1% of its merchandise being adult-oriented).
9) Animal boarding.
10) Fire, bankruptcy sale, wholesale, overstock auction house or their equivalent (except that a Court-Ordered bankruptcy sale of less than thirty days duration shall be permitted).
11) Massage parlor or other similar massage establishment.
12) "Head shop", marijuana dispensary, hookah bars, or establishments that specialize primarily in the sale of tobacco, tobacco paraphernalia, glass pipes, implements utilized to burn or concentrate a substance for the purpose of permitting the smoke, fumes or vapor therefrom to be inhaled, or drug paraphernalia.
13) Cemeteries and mausoleums.
14) Funeral homes and mortuaries.
15) Automobile, truck, motorcycle, ATV, motor-scooter or motor vehicle/recreational vehicle/implement repair, service, sales, rentals, parts or components sales or installation, or maintenance.
16) Contractor offices associated with onsite storage of vehicles, supplies or equipment, building material or equipment sales, building or equipment service or maintenance offices, or the equivalent (except that temporary contractor offices present during demolition or construction activities on the Property shall be permitted).
17) Warehouses, whether accessory to a retail use, or self-service storage.
18) Tattoo parlor, massage parlor, psychic reading / tarot card shop.
19) Church or religious uses.
20) Gas or fuel station or any form of car wash or auto detailing center.
21) A dollar store or a discount department store or wholesale establishment.
22) A second-hand store.
23) A cash for gold store.
24) A full service, FDIC-insured bank, credit union, retail bank, consumer banking institution or savings and loan.
25) Currency exchange, money wiring, check cashing facility or equivalent (as a primary use).
26) Auto title loan or post-dated check or payday loan facility or equivalent, unless associated with a full-service federally-insured bank, credit union or savings and loan.
27) Pawn shops.
28) Fitness clubs or workout facilities (other than as permitted subordinate to the residential use described above).
29) Drive-thru facilities.

F. Special Uses:
Any special use contemplated for the Property shall require the amendment of this Agreement.

G. Building 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 zoning relief granted herein.

1) The Parties acknowledge that at the time of approval of this Agreement, the City has only reviewed architectural elevations showing two sides of the Building. Owner agrees and acknowledges that the Building shall be designed with “four sided architecture”, meaning that all sides of the building shall feature the same building materials and architectural improvements. Preliminary details of the architectural theme, inclusive of architectural elevations, has 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, which contemplate replacing existing building materials with like-kind materials of similar appearance and quality, 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. The exterior design, elevations, appearance, dimensions and building materials proposed for any structure or sign proposed to be built on the Property which does not directly comply with these requirements shall be subject to separate review and approval by the City Council, in its reasonable discretion. 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 zoning permissions granted herein (to establish a high-density residential development) 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 the zoning authorization provided under the PD-C designation contemplated herein.

   a. The Parties acknowledge that it is intended that Owner shall be permitted to deviate from “four sided architecture” in the area of the alley to be located on the east side of the Building, so as to provide for the appropriate design of portions of the Building
facing or located within the alley area.

b. The Parties further acknowledge that the elevations of the building shall be modified to include a decorative element at the top of the elevation.

2) Any future proposal to remodel any portion of the Property which would: a) change the number of units or bedrooms at the Property; or, b) add additional or revised structures, outdoor signage, facilities or reductions in landscaping shall be subject to review and approval by the City Manager, or at the Manager’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.

3) 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.

4) The Owner acknowledges the City’s request to modify the northwestern corner of the building to recess the entrance to the commercial facility at said location, so as to provide a greater setback from the street intersection. Owner shall comply with said request and modify the plans accordingly, unless the City agrees to approve final plans not requiring such compliance.

5) 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.

6) 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.

H. 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 zoning relief 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) The final plans shall feature improvements (such as bollards or curbing) to prohibit any vehicular use of the proposed eastern walkway on the Property and shall feature lighting acceptable to the Parties for the same area.

5) The existing above-ground electrical installations on the Property shall be replaced with buried electrical service. The Owner shall reasonably cooperate with any effort of the City to provide for the burial of other nearby electrical service if desired by the City, provided that Owner shall only be required to bear the cost of burial of electrical lines located on the Property or the portion of the alley to be vacated as described herein.

6) The Parties acknowledge that the Property is presently bisected by a City-owned public alley. The City agrees that it shall vacate the portion of such alley which is bordered on both sides by property to be owned by Owner, included within the Property, at the time of final plan approval. Upon vacation of such alley, ownership of said area shall transfer to Owner. In exchange for this relief, Owner agrees to comply with the parking standards described in (I) below.

7) 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.

I. Parking Provisions:

1) As a component of the development of the Property, Owner shall demolish the building commonly referred to as 122 S. First Street ("the South Building"), and such portion of the Property, which portion shall be specifically defined in the Parking Lot Agreement referenced herein and shall not include any portion of the Property intended to be used for the other purposes set forth in the Plans, shall be reconfigured into a parking area and drive aisle. The design and orientation of the parking and drive aisle shall be in a configuration reasonably acceptable to the City and Owner, and shall provide for public access through the Property, from the existing City parking lot west to First Street, as a replacement for the access presently granted by the alley proposed to be vacated. Such parking area shall be constructed in accordance with the final plans, which plans shall be prepared in accordance with these requirements. The parties understand and agree that said demolition and reconfiguration shall not occur until the tenancies of the current tenants of said South Building are rightfully or voluntarily terminated or to expire pursuant to the terms thereof.

2) The Parties acknowledge that the development of the Property is anticipated to generate roughly 40 new, private parking spaces. The southern end of the Property is surrounded by City-owned public parking areas. At the time of final plan approval, the City and Owner shall enter into a Parking Lot Agreement reasonably acceptable to each party, which shall be recorded against the Property and the City-owned parking lot, providing for the following conditions:

a. The Parking Lot Agreement shall provide any terms agreed to by Owner and the City relating to reservation of spaces in an existing public parking lot for use by the occupants of the Building. Any such terms shall be based upon the Owner's provision of public parking spaces in the new parking area to be constructed, in the event that Owner and City determine it is more advantageous to provide public parking in closer proximity to the Building and existing commercial enterprises, and to reserve parking for Building residents at a more distant location.
b. The Parking Lot Agreement shall provide the City with a no-cost option to acquire that portion of the Property comprising the current public alley and the South Building ("the Future Parking Area"), with such option having a duration of fifty years. At any point during such term, the City may exercise the option to acquire the Future Parking Area, but only for the purpose of constructing a multi-level public parking structure on the Future Parking Area and all or some portion of the public parking lot(s) contiguous or adjacent thereto. In the event that the City does proceed with the construction of such a parking structure, the Parking Lot Agreement shall provide that during construction, Owner shall be afforded a reserved number of parking spaces equal to the new spaces provided by Owner within the Future Parking Area (the "New Parking Spaces") in accordance with the approved final plans, in another City public parking lot in the vicinity of the Property during construction of the parking structure. The Parking Lot Agreement shall also provide that upon completion of the parking structure, the City shall convey to the Owner, by deed, easement, agreement or license (and at no cost to Owner), the right to use a number of parking spaces within the parking structure that is equal to the number of New Parking Spaces generated by Owner in constructing the project on the Property. In other words, Owner would provide the City with the property, the City would provide temporary parking facilities for Owner during construction, and following construction the City would provide Owner with permanent rights to use a portion of the parking structure. The number of New Parking Spaces shall be as identified in the final plans and the Parking Lot Agreement.

c. The Parking Lot Agreement may memorialize the terms, if any, relating to future construction of the parking lot. Said provisions may provide for the at-grade or above-ground direct connection between the future parking structure and the Building on terms and conditions mutually acceptable to the Parties.

3) The Parties agree that the development of the project is proposed to be staged so as to permit construction of the Building prior to demolition of the existing South Building, so as to create the ability of one or more existing tenants of the South Building to relocate their operations or for their leases to be rightfully or voluntarily terminated or expire pursuant to the terms thereof. Accordingly, Owner shall be permitted to obtain a final certificate of occupancy for the Building prior to demolition of the South Building and prior to construction of the New Parking Spaces and completion of improvements required in compliance with the final plans, provided that Owner posts a letter of credit or other security reasonably acceptable to the City securing the costs of demolishing and remediating the South Building, constructing the New Parking Spaces and otherwise completing improvements required in accordance with the final plans. Said security shall be in an amount not to exceed one hundred and ten percent (110%) of the engineer’s estimate of probable cost of demolishing and remediating the South Building, and the cost of constructing the new parking area in accordance with the final plans. In lieu of posting a letter of credit or other security, the Parties may agree to withhold a portion of the Phase 2 Incentive in an amount equal to the otherwise required security.

4) The Owner shall be responsible for installing, and for thereafter maintaining as operational and functional, all parking lot and common area lighting contemplated by the Plans or the final plans or as otherwise required by this Agreement on the Property. Lighting through the property shall be uniform and meet the currently applicable standards. A photometric plan shall be provided and approved with the final plans, subject to compliance with applicable code (unless standards are altered with approval of the City). Owner shall also provide building-mounted lighting along Lincoln Highway and First Street, in form and content reasonably acceptable to the Parties.

5) The Owner and City shall enter into a separate written agreement providing for traffic law enforcement on all private drives and areas of the Property within ninety (90) days after the last date of payment of any portion of the Phase 2 Incentive, in a form acceptable to the City,
and such agreement shall be recorded against the Property at the Owner’s expense. Such agreement shall be substantially in the form attached hereto as Exhibit D. All residential visitors’ parking shall be regulated with passes or by other means acceptable to the City, and shall be for a duration of three (3) days or less. The Owner shall adopt and enforce restrictions prohibiting the parking of inoperable, unregistered, unlicensed or uninsured vehicles on any portion of the Property at any time. The traffic enforcement agreement shall expressly grant the City the right but not the obligation to enforce such restrictions.

6) At the time of submission of the final plans, the Owner shall provide a revised plan showing the location, design, lighting and orientation of bike racks and bicycle parking areas, which bicycle parking area design shall be subject to review and reasonable approval by the Community Development Director.

7) The Owner shall issue parking passes (both resident and guest), in a form and fashion reasonably acceptable to the Chief of Police, which are high-visibility in nature and which are required to be prominently displayed so as to be visible from a passing car patrolling the parking lot.

8) During the construction of the project on the Property, the City shall reasonably coordinate parking activities of contractors and workers with Owner, and shall permit the Owner to allow such parties to park in the City-owned public parking lot located immediately south of the Railroad Tracks along 1st Street.

9) Following the issuance of a final certificate of occupancy and both prior to and after the demolition of the South Building, the City shall provide a process by which residential occupants of the Property can apply for resident parking permits in City-owned public parking lots, on the same terms and conditions as other Central Business District residential occupants.

J. **Permitted Outdoor Storage:**

Outdoor dumpsters, trash compactors, and similar rubbish disposal facilities shall be permitted on the Property 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. Any proposed expansion or alteration of the outdoor rubbish disposal facilities and their related landscaping/screening shall be subject to prior review and reasonable approval by the City Council to confirm compliance with this section. No other outdoor storage shall be permitted, and no storage of dumpsters or garbage or recycling containers shall be permitted outside of the walled garbage enclosure. The outdoor trash facilities shall be constructed in accordance with the final plans, and shall be constructed of masonry or another similar, weather-resistant material acceptable to the City. Once constructed, the trash facilities shall be maintained at all times in good repair, and the Owner shall take all steps as shall be required to ensure that the main entry gates to the trash facilities are kept closed at all times when the facilities are not actively being serviced by a garbage truck.

The Parties acknowledge that at the time of final plan approval, the Owner and City shall come to terms regarding long-term garbage service to the Property, either individually or in collaboration with other area businesses and properties, and further agree that the final plans shall accommodate such final garbage layout and provide all required amenities to further the same.

K. **Setbacks, Bulk Restrictions and Building Lines:**

1. Setbacks, building lines, floor area ratios, building dimension limitations, height restrictions and other similar lot/building size/shape restrictions and regulations shall meet those standards as set forth in the UDO unless otherwise approved as part of this Agreement. This Agreement shall expressly serve as the approval of the dimensions of the Property contemplated by the Plans (after such Plans are modified to comply herewith) and final dimensions shall be as provided in the final plans as approved.
2. The Parties acknowledge that at the time of approval of the Final Plans, the Owner shall provide a Final Plat that divides the Property into one or more parcels in a format that is mutually acceptable to the Parties, which approval shall not be unreasonably withheld or conditioned.

L. Rezoning of Property:

The Parties agree that, for a period of fifty (50) years from Closing, the Property shall not be rezoned to any zoning other than that imposed under this Agreement without the approval of the City and the Owner, with such rezoning requiring consent from the City in the sole and absolute discretion of the City and Owner without regard to statutory or common law zoning requisites and the agreement of the City and the Owner to an amendment of this Agreement on terms and conditions mutually acceptable to the City and the Owner, and further agree that the approvals described in this Agreement are based upon the City and Owner’s agreement with the zoning imposed under this Agreement. The Parties further agree that in the event the Owner seeks a rezoning or alteration of the zoning standards applicable to the Property, any provisions in the UDO contemplating a defined time period for review, comment or approval of a zoning application shall be deemed waived. Following that initial fifty year term, the Property may be rezoned in accordance with the then-current practices and procedures applicable to rezoning requests.

M. First Street Improvements and Maintenance:

The Owner agrees to cooperate with the City in the City’s process of reviewing and approving amendments to the First Street right of way adjacent to the Property, in an effort to create a more pedestrian/bike friendly approach to the Property. Owner shall reasonably provide all necessary easements, sidewalks and other improvements required to facilitate such construction, and shall permit public access to said improvements via public sidewalks dedicated for public use. Owner shall construct such improvements as shall be required pursuant to the final plans. Owner shall also be responsible for snow removal/deicing on the sidewalks and pathways immediately adjacent to the Property (including the First Street sidewalk, Lincoln Highway sidewalk and the pedestrian walkway east of the Building).

N. Failure to Close:

The Parties acknowledge that the Owner is the owner of record of one of the parcels comprising the Property and the contract purchaser of the balance of the parcels. In the event that the Owner fails to acquire and close upon all of the parcels within one hundred and eighty (180) 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 a property and is working in good faith to complete such transaction.

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, detention or stormwater facilities, or other improvements within the Property and for maintaining all buildings 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, pathways 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.

C. Excavation and Grading:

1) In order to provide adequate assurance of performance and installation and maintenance of erosion control measures, this Agreement shall serve as the Owner's pledge to comply with all applicable codes and regulations. This pledge shall be secured by the Owner Surety as described below.
2) Prior to the start of any grading or development work on the Property, the Owner shall provide documentation, in form and content acceptable to the City (and additionally acceptable to DeKalb County if DeKalb County requests any such documentation), indicating that there are no pending IEPA investigations or environmental contamination issues with the Property (other than those to be remediated during the course of demolition).

D. Owner Surety:

1) The Parties acknowledge that pursuant to the City’s customary requirements and the applicable provisions of City Code, there are obligations herein that would be required to be secured through the posting of a letter of credit, cash escrow, bond or other security. As the City is providing the Owner with a substantial economic incentive under the terms of this Agreement, the City is agreeing to waive the requirement of posting certain security, where this Agreement indicates that the process in question is secured by the Owner Surety prior to payment of the Phase 2 Incentive. The Owner Surety shall be as defined in this section.

2) The Owner, in order to induce the City to waive the application of requirements of posting security, pledges that it shall comply with applicable requirements and shall pay all sums necessary to comply with the requirements and construct required improvements in compliance with the approved final plans, and pledges its full faith and credit in order to comply with the same. In the event that the Owner fails to comply with a requirement secured by the Owner Surety, the City may: 1) issue a written demand that Owner comply with the applicable requirement or construct a specified improvement, which Owner shall comply with; 2) require Owner to post a letter of credit, cash escrow or bond in form and content acceptable to the City, in an amount not less than one hundred and twenty percent (120%) of the cost of the improvement or obligation at issue; 3) withhold the payment of any incentive due under this Agreement; 4) withhold or condition the issuance of any approval, permit or certificate due under this Agreement; 5) incur the expense in question and deduct or credit such expense against amounts otherwise due to the Owner under the City incentive described herein; or, 6) pursue such other legal or equitable remedy as may be available.

3) Prior to payment of the Phase 2 Incentive as described herein, the City and Owner shall evaluate all outstanding items which are secured by the Owner Surety, including but not limited to any public improvements or any maintenance bond applicable during a maintenance period on a public improvement. Prior to payment of the Phase Two Incentive, Owner shall either provide Replacement Security acceptable to the City or shall agree to the escrow of a portion of the Phase Two Incentive in an amount equal to one hundred twenty percent (120%) of the cost of the outstanding items.

   a. If the Owner is required to provide Replacement Security under this subsection, the Owner shall provide such security to the City in the form of cash, irrevocable letters of credit or performance bonds. Bonds and letters of credit shall be in a form reasonably approved by the City Attorney and be issued by an entity reasonably approved by the City Manager or designee from a bank or financial institution located in the United States of America. Any bonds required under City Code or this Agreement shall be from a company licensed to do business in the State of Illinois. Any Letters of Credit required under City Code or this Agreement shall be from a financial institution reasonably acceptable to the City Manager (or designee), and the Owner shall provide such information or documentation as to the status of the proposed financial institution as the City Manager (or designee) shall reasonably require, to demonstrate their creditworthiness and stability. The amount of security posted with the City shall at all time equal one hundred twenty percent (120%) of the cost of completing those required
public improvements not yet completed at the time of the City’s implementation of this provision. The City Council shall authorize the reduction of such security from time to time, but no more than once every one hundred and eighty (180) days, as related offsite work or public improvements within the Property are completed and reasonably approved by the City Engineer and prior to their acceptance of such improvements by the City. If the Replacement Security is for a Maintenance Bond, said bond shall remain in place for an 18 month period from date of acceptance by the City. Said maintenance bond shall be equivalent to twenty percent (20%) of the value of the improvement constructed, and shall be in the form of a cash escrow, letter of credit, or other security acceptable in form and content to the City.

E. Security for Public Improvements:

In the event that the Owner constructs any public improvements (inclusive of improvements within or adjacent to a public right of way), then the provisions of this Agreement pertaining to such public improvements shall be invoked. Security to be provided by the Owner for the completion of the public improvements within or adjacent to the Property or related off-site improvements, if any, shall be provided prior to the commencement of construction on the Property or right of way and shall be in accordance with the terms of this Agreement and applicable City ordinances, as modified by this Agreement. The Owner shall provide its Owner Surety to secure such obligation.

F. Acceptance of Public Improvements and Maintenance Bond for Public Improvements:

Upon completion of public improvements and acceptance by the City, the Owner shall provide a signed bill of sale for any items of personal property to be transferred to the City, and shall execute all documentation customarily required by the City to denote acceptance and transfer of ownership. Upon acceptance of any public improvement by the City as described above, Owner shall be entitled to a corresponding release or reduction of any required security, bond or letter of credit. For an 18 month period following acceptance of any public improvement, the Owner shall guarantee the workmanship of any public improvements constructed, and shall be responsible for the performance of any repairs or remediation required on such public improvements, as reasonably determined by the City Engineer, to return them to a condition in which they would be appropriate for initial acceptance by the City, including the repair of any ordinary wear and tear on the aforesaid improvements or the repair of any broken or damaged improvements. To secure the performance of this obligation, the Owner shall provide Owner Surety until payment of the Phase Two Incentive as described above.

G. 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.

H. 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.

I. 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.

J. 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.

K. 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, and further acknowledge that all public hearings required to grant the zoning relief contemplated herein have already been conducted. The Parties further acknowledge that the timeline contained in this Agreement may be extended by the City Council from time to time without requiring an amendment of this Agreement. No public hearing shall be required for approval of the final plans, in accordance with this Agreement.

1) The Owner shall complete the acquisition of all parcels comprising the Property as soon as possible.

2) The Parties acknowledge that the South Building shall remain in use pending completion of the construction of the Building on the Property and pending the date of rightful and/or voluntary termination of the subject leases.

3) The Owner shall proceed to expeditiously remediate and demolish all other structures (other than the South Building) on the Property as quickly as possible after purchasing the same. Said work shall include the safe abandonment of existing utility connections in accordance with the requirements of the utility providing such service; no existing utility connections shall be reused unless reasonably acceptable to the utility providing said utility service.
   a. Demolition shall be performed in accordance with the applicable laws and regulations, and the conditions (if any) imposed under the terms of the City Demolition Permit issued. At any time after approval of this Agreement, the City shall issue a demolition permit upon the request of Owner, memorializing all such conditions, subject to payment of the demolition permit fee.

4) At such time as Owner has acquired ownership of all portions of the Property, Owner shall, simultaneous with initiation of demolition, work in collaboration with the City to 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. Upon approval of the final plans by City staff, such final plans shall be forwarded to the City Council for review and approval, which approval shall not require any additional public hearing. Proposed final plans shall be submitted for review by City staff within sixty (60) days of the date of acquisition of the last of the parcels comprising the Property, and the Owner and City shall in good faith endeavor to complete revision of said final plans, if any, as expeditiously as reasonably possible. 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.
   b. The final plat shall be subject to review and approval by the Planning and Zoning Commission, and then by the City Council, pursuant to City Code. The conditions of approval of the final plat may include a timeline for final staff approval of the final plat and/or vacation of the alley right of way as contemplated in this Agreement, and may provide for the completion of certain public improvements or utility upgrades prior to the date of final approval of the final plat or alley vacation.

5) Upon completion of demolition of all buildings on the Property other than the South Building and approval of the final plans by the City Council, Owner shall expeditiously seek and apply for building permits and shall undertake construction of the Building.

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

7) Upon issuance of a final certificate of occupancy for the Building, Owner may provide for relocation of any tenants remaining in the South Building. As soon as the South Building is vacated
(and not later than twenty-four (24) months after the date of approval of the final plans by City Council or the rightful and/or voluntary termination of the subject leases, whichever is later), the Owner shall demolish the South Building.

8) Immediately following demolition of the South Building, weather permitting, the Owner shall commence construction of the proposed parking lot facility at said location, which shall occur not later than thirty-six (36) months after the date of approval of final plans or the rightful or voluntary termination of the subject leases, whichever is later.

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. Owner shall not be required to pay tap-on, connection or water capital fees. 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:

Except with respect to existing improvements, which the City acknowledges as compliant with current regulations, the Owner shall provide all necessary storm sewers, detention systems and compensatory storage in compliance with the UDO, the existing flood plain ordinance of the City and all other applicable laws and regulations, as modified or amended pursuant to the terms of this Agreement including all storm water calculations prepared by a licensed Illinois engineer. The Owner shall provide for the insurance, real estate taxes and maintenance of any Owner-constructed, on-site Retention/Detention areas including but not limited to mowing and landscape maintenance, regular litter pickup, flume repairs and underground pipe cleaning or repairs. The Owner agrees to follow DeKalb County and City of DeKalb stormwater release rate regulations as amended from time to time, and any other applicable ordinances, statutes or regulations in effect at the time of development. The storm water facilities and combined storm water control and detention system shall be constructed in accordance with specifications as required by the City Engineer.

C. Sanitary Sewers:

The City shall cooperate with the Owner and execute all applications, permit requests and other documents required to obtain sanitary sewage treatment service from the DeKalb Sanitary District in order to allow the Owner’s connection to the existing and future sanitary sewer lines installed on the interior and exterior of the Property. The Owner shall pay to the requisite governmental entity their respective shares of all permits, inspection and tap on fees that are required at the time of connection to such sanitary sewer system. It shall be the Owner’s responsibility to contact the DeKalb Sanitary District to ascertain the status of and make the appropriate contributions toward any existing recapture agreements pertaining to sanitary sewer lines, lift stations or other sanitary system infrastructure, or contributions, accommodations, or agreements regarding the oversizing of sanitary sewer lines or other sanitary system improvements required
by the DeKalb Sanitary District. No separate sanitary sewer fees are due to the City, except for standard building permits, connection and inspection fees, and any fees collected by the City on behalf of the DeKalb Sanitary District payable City-wide as a condition to connection to and the use of the system by all properties.

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 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: CONTINUATION OF CURRENT USES:

The zoning provided herein is expressly conditioned upon the Owner’s completion of the improvements contemplated herein, as required by this Agreement and as described by the Plans. In reviewing the Development Agreement, the City has given due consideration to the continuation of such current uses. Accordingly, and notwithstanding any provision of the City Code, the UDO, or any other code, ordinance or regulation, now in effect or adopted during the term of this Agreement, and notwithstanding the City’s zoning of the Property pursuant to the terms hereof, but subject to the express terms of this Agreement specifically relating thereto, the current uses of the Property shall be permitted to continue as provided herein. Such uses shall be permitted to continue on the Property for a period of twenty-four (24) months from the date of approval of the final plans and shall thereafter be prohibited, except that they shall be continued under the terms of this Agreement if the improvements required herein are completed. This Article shall not be interpreted to allow the expansion of the existing uses, or increase the intensity or scope of any nonconforming use. The Property shall continue to be maintained in accordance with all City property maintenance regulations. Notwithstanding the foregoing, nothing herein shall be deemed to limit the continued use of the South Property and the tenancies thereof through the rightful or natural termination of the leases.
ARTICLE VII: FEES AND CONTRIBUTIONS:

A. Specified Fees:
   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.

1. School Impact Fees: The Parties acknowledge that the Property is contemplated pursuant to the terms of this Agreement, to be utilized in a fashion that does not invoke the payment of impact fees. However, the Parties agree and acknowledge that should the Property be used in a fashion inconsistent with the terms of this Agreement at a future date and should the Property thus trigger any obligation of the then-current impact fee ordinances or agreements in effect, the Property shall then be subject to the payment of such fees and this Agreement shall not preclude such fees.

2. Building Permit and Plan Review Fees: The Parties acknowledge that the Property is subject to building permit fees and planning, zoning and engineering review fees as proposed to be developed and constructed. The Owner shall pay all such fees, which may be incorporated into the Owner’s reimbursement request as a component of the Phase 1 or Phase 2 Development Incentive.

3. Park District and Sanitary District Impact Fees: The Parties acknowledge that they shall collaborate in good faith regarding the applicability and payment of impact or connection fees to the DeKalb Park District and DeKalb Sanitary District, and shall comply with any legal requirements ultimately applicable to the Property at the time of final plat approval or thereafter.

B. 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.

C. 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 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 VIII: DEVELOPMENT INCENTIVE:

A. Necessity of Incentive:

The Parties acknowledge that the Property, viewed as a whole, has declined in value over the preceding thirty (30) years, 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, would not demolish and remediate unsafe and environmentally contaminated buildings, and would not undertake the project. In such event, the City would be compelled to expend significant public funds for demolition, remediation and restoration, and such efforts would result in several parcels among the Property becoming vacant, publicly owned land that would not generate any property tax (or resulting TIF increment) to benefit any taxing district. 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.

B. Development Incentive Defined:

The Owner commits that it shall invest not less than Seven Million Dollars ($7,000,000) 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 Three Million Dollars ($3,000,000), payable through two phases as described herein ("the Development Incentive"). In the event that Owner fails to incur the minimum Project Completion Costs of $7,000,000, then the Development Incentive shall be reduced pro-rata, in proportion to the reduction in Project Completion Costs (i.e. a 10% reduction in Project Completion Costs below the minimum threshold defined herein shall cause a 10% reduction in the Development Incentive).

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 parking area to be constructed at the location of the current South Building, 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 furniture for the fully furnished residential apartments; 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 site assembly and acquisition costs, 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 existing parcel in the Property that Owner owns, and shall subsequently be recorded against each remaining parcel comprising the Property at the time of purchase, to include and be a valid first lien against each such parcel. Said documents shall secure the payment of up to the full Phase 1 Incentive as described below, and shall contemplate and secure further advances up to that amount.

2. The approval of this Agreement shall constitute the full and final approval of the payment of a Phase 1 Incentive in the amount of One and One Half Million Dollars ($1,500,000). 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 property acquisition costs, 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 and, at any closing consummated through a title company, shall provide the City with a lender’s policy of title insurance.

   b. The City’s intention in providing direct payment of such expenditures, including property acquisition costs, is to secure a valid first mortgage on all properties comprising the Property, free and clear of any other superior liens or encumbrances other than property taxes (which Owner shall be obligated to pay under the terms of the Mortgage) and the
Owner agrees to cooperate with such process and to preserve the City’s valid standing as first lienholder. In the event that the Owner fails to complete the project or build the Building within the timeline described herein, the City shall be entitled to foreclose upon said first lien status and to acquire the entirety of the Property through a judicial foreclosure, or through a deed in lieu of foreclosure.

c. Within ninety (90) days of the date of final plan approval, Owner shall submit to the City all invoices and expenses requested to be included in the Phase 1 Incentive, along with the documentation required under Exhibit E, and the City shall pay such expenses in accordance with the provisions outlined above, up to the maximum amount of the Phase 1 Incentive. Any expenses in excess of that maximum amount shall be carried forward to the Phase 2 Incentive, unless the City Council authorizes earlier payment of the same.

3. Following the time of approval of the final plans, it is contemplated that Owner shall transition from City-funded payment of expenditures to private construction financing and/or a bridge loan. After the date of final plan approval, the City Manager shall be authorized to and shall reasonably sign and execute upon Owner’s request any agreement or document required to subordinate the City’s first lien (as described above) to Owner’s private financing of the project, and the City shall so subordinate its lien for any financing required by Owner for completion of the improvement of the Property and construction of the Building and related improvements or refinancing of the same upon the request of the Owner.

4. 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. For purposes of this Agreement, a final certificate of occupancy shall apply at such time as the City issues a final certificate of occupancy certifying the Building as habitable, without regard to the completion of the demolition of the South Building or completion of the parking lot. 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 Phase 2 Incentive, which shall consist of the payment of TIF Eligible Expenses up to the full Development Incentive of Three Million Dollars ($3,000,000) (i.e. if the Phase 1 Incentive reaches the full $1,500,000, then the Phase 2 Incentive shall be a like $1,500,000. If the Phase 1 Incentive is only $1,300,000, then the Phase 2 Incentive shall be $1,700,000). The Phase 2 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. After approval of the final plans, no further City Council approval of the Phase 2 Incentive shall be required, and City staff shall take all such actions as shall be necessary to effectuate such payment.

a. In the event that the Project Completion Costs do not include $3,000,000 of TIF Eligible Expenses, then the City shall pay the Phase 2 Incentive in an amount equal to the total of all TIF Eligible Expenses less the Phase 1 Incentive. The remaining balance between the total Phase 1 and Phase 2 Incentives and $3,000,000 shall be deemed the Carryover Incentive (i.e. if the Phase 1 Incentive equals $1,500,000 and the total TIF Eligible Costs equal $2,800,000, then the Phase 2 Incentive shall equal $1,300,000 and the Carryover Incentive shall equal $200,000).

b. The Carryover Incentive, if any, shall be payable solely from sales tax, restaurant and bar tax and hotel/motel tax generated on the Property on or after the date of the final certificate of occupancy. The Carryover Incentive shall be payable on an as-generated basis based
upon amounts actually received by the City. The Owner acknowledges that the City receives periodic payments of the taxes described in this subsection, and the City shall forward payments towards the Carryover Incentive within sixty (60) days of the date of receipt of such proceeds.

5. As noted in Section II(I)(3) above, the project may be staged in such a fashion that the South Building remains standing at the time of issuance of a final certificate of occupancy for the primary building on the Property. In the event that the TIF eligible project costs have not met or exceeded the $3,000,000 Development Incentive contemplated herein, the Parties may agree to defer the payment of a portion of the Phase 2 Incentive equal to the 110% amount described in Section II(I)(3) until the date upon which the demolition and remediation of the South Building and the completion of the parking area contemplated for that location is completed in accordance with the Final Plans. At such date as the City approves of said demolition/remediation/construction in accordance with the Final Plans, the Owner shall submit documentation of project cost in accordance with this Agreement and shall thereafter be eligible for payment of the final portion of the Development Incentive in accordance with the provisions of this Agreement. In such event, the timeline for initiation of repayment / forgiveness of the Development Incentive shall be triggered based upon the date of payment of the final portion of the Phase 2 Development Incentive.

E. Forgiveness of Development Incentive:

The Development Incentive described herein is intended to be repaid as a forgivable incentive, payable through the generation of revenues from the development of the Property after the date of final plan approval.

1. Calculation of Property Tax Generated During Term of TIF District: The Parties agree that the equalized assessed valuation of the parcels comprising the Property as of the date of creation of the TIF District (and from which the TIF increment is calculated) is $274,877 ("the Base TIF Valuation"). The Parties also acknowledge that for the remaining duration of the TIF District, new increment generated by the development of the Property shall be payable into the TIF. Accordingly, for the remaining years of the TIF District, one hundred percent of the TIF increment generated from the Property, based upon the increase in equalized assessed valuation over the Base TIF Valuation, shall be included as payment towards the forgiveness of the Development Incentive. Owner shall receive a 100% credit for all new increment generated in the TIF District during the remaining years of the TIF District without any regard to surplus declarations or intergovernmental agreements affecting the distribution of such TIF increment.

2. Calculation of Property Tax Generated After Term of TIF District: The Parties agree that the present day equalized assessed valuation of the parcels comprising the Property as of the date of this Agreement, based upon 2015 taxes payable in 2016, is $245,396 (the “Present Valuation”). Based upon the Present Valuation and application of the City’s property tax rate for 2015, payable in 2016, and without regard to the TIF District, the City and all other affected taxing districts would have received $32,627.51 in total property tax from the Property for the aforesaid tax year (the “Base Property Tax”). In the first year that the City does not receive TIF Increment from the TIF District, and in each subsequent year until the loan is fully forgiven or the end of the Forgiveness Period as defined herein, Owner shall receive a credit for any New Property Tax Revenue from the Property in excess of the Base Property Tax. For purposes of this Agreement, the “New Property Tax Revenue” shall be defined as the positive amount, if any, received as actual property tax revenue from the Property in excess of the Base Property Tax, based upon increases in the then-current assessed valuation of the Property and/or increases in the affected taxing districts' property tax rates, or a combination thereof. The City shall calculate the total property tax received by all affected taxing districts and shall compare said amount against the Base Property Tax. The difference, defined herein as the
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New Property Tax Revenue, shall be credited 100% against the Development Incentive. It is
the intention of the Parties to credit all new TIF increment generated from the Property against
the Development Incentive (during the term of the City's now-presently existing TIF
Districts), and to credit all new property tax generated to all affected taxing districts against
the Development incentive (after the term of the City's now-presently existing TIF Districts).

3. Calculation of Sales Tax, Restaurant and Bar Tax and Hotel-Motel Tax: One hundred percent
of all sales tax, restaurant and bar tax and hotel-motel tax generated from the Property after the
date of issuance of the final certificate of occupancy and which is actually received by the City
(either through direct collection by the City or through payments from any state agency
engaged in collecting such taxes) shall be credited against the Development Incentive until the
loan is fully forgiven or the end of the Forgiveness Period as defined herein. Owner shall
receive a credit for all such tax generated from the Property, without regard to the retention of
existing, current tenants of any portion of the Property in the Building.

4. The Forgiveness Period shall be for a period of thirty (30) years, commencing upon the date of
payment of the Phase 2 Incentive (or the date of payment of the last portion thereof), and
concluding on the date which is the thirtieth anniversary of said date. Notwithstanding the
foregoing, all revenues which count towards the forgiveness of the development incentive as
provided herein, which are generated on or after the date of issuance of a final certificate of
occupancy for the Building, shall be credited against the Development Incentive, even if such
revenues accrue prior to the start of the thirty-year forgiveness period.

The total of new revenue credits as calculated under the preceding Sections VIII(E)(1), (2) and (3) shall
collectively comprise the Incentive Repayment. If, upon conclusion of the Forgiveness Period, the
Incentive Repayment has failed to equal the total of the Development Incentive paid under this Agreement,
then the remaining balance shall not be forgiven and shall be a debt due and owing to the City requiring
repayment within one hundred twenty (120) days of Owner's receipt of written notice of same from the
City. The City may, at such point, enforce its right of repayment by virtue of a contract action seeking
damages for violation of this Agreement (if Owner refuses to pay upon demand), may initiate an action for
foreclosure of the City's mortgage(s), or may pursue such other legal or equitable remedies as may exist.

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. With regard
to forgiveness of a portion of the Development Incentive under subsection VIII(E)(3) above, the
sole source of funds for such forgiveness shall consist of revenues actually received by the City as
defined above (with regard to subsections VIII(E)(1) and (3), and revenues actually received by
the City and other affected taxing districts (with regard to subsection VIII(E)(2)). 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.
ARTICLE IX. OPERATION OF THE PROPERTY:

A. Acknowledgment of Application of Operational Standards:
The Parties acknowledge and agree that the provisions of this Article IX relating to the operation of the Property following its rezoning and redevelopment are critical and integral to the zoning standards provided for herein. The Owner agrees and acknowledges to comply with the following standards and requirements, and acknowledges that they have been drafted to address the public safety concerns otherwise arising out of the operation of a development with a zoning density that exceeds the density otherwise contemplated by permissible zoning allowances.

B. Operation and Lease Provisions:
In consideration of the provisions herein and in order to construct and maintain a development of the quality intended by the Owners and expected by the City, the Owners agree to secure, through covenants, operational policies or other means acceptable to the City, to provide management of the Property that will comport with the following standards, subject to applicable superior governmental mandates:

1. Any unit rented shall have a written lease that shall include a Crime Free Housing Lease Addendum in the format then-currently approved by the City.
2. Any person living in any rental unit, except for children under the age of eighteen (18), must be a party to the lease and must sign the lease.
3. A thorough criminal background check and other screening shall be implemented to all prospective tenants where permitted by law, a thorough credit check shall be implemented to all lease guarantors where permitted by law, and the Owner shall, to the fullest extent permissible under the applicable laws, make responsible tenant approval decisions based upon such information.
4. Each individual unit shall satisfy all restrictions on consanguinity imposed under applicable City Codes or Ordinances.

Owner agrees and acknowledges that it believes each of the foregoing conditions are fully in accordance with all applicable superior governmental mandates, and that it intends to enforce such requirements based upon current law. The Owner shall utilize appropriate measures to restrict access to the full-depth lobby, residential common areas of the Building and basement of the Building, so as to provide for the security of the premises. The Owner shall implement access controls so as to ensure that, at minimum, the common areas are secure from public access between the hours of 10:00pm until 6:00am.

The Owner shall provide not less than monthly cleaning services to each residential unit within the Building, and shall make monthly entrance into each unit to confirm compliance with all lease provisions and applicable restrictions. The Owner shall maintain a log of such cleanings completed, and shall provide the same to the City upon request.

Owner shall either manage the Property itself, or shall utilize a professional property manager for the purpose of managing the Property, and shall ensure that the Building and Property are maintained and utilized in accordance with all applicable codes and regulations.

C. 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 apartment buildings in each phase of the Property (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.

D. 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.

E. Crime Free Housing and Inspection Coordination:

The Owner acknowledges that the City operates a Crime Free Housing Program requiring property lessors to register with the City and to undertake certain training and notification requirements. Owner agrees to comply with the then-current requirements of such a program, unless Owner reasonably demonstrates that its property manager has already completed such training and/or program. Further, the Parties acknowledge that the Crime Free Housing Program generally contemplates exterior inspections of properties to confirm compliance with applicable City Codes. Given the density of residential development contemplated for the Property, the Owner agrees that it shall coordinate and permit an annual inspection of the entirety of the Property by such personnel as the City shall reasonably designate, shall thereafter promptly remediate any violations observed during such inspections, and shall permit reasonable reinspections to confirm that all violations have been corrected. The Owner shall also grant consent to the City to inspect the Property at any time the City receives a complaint from any third party regarding an alleged violation of applicable codes or regulations. Nothing herein shall prohibit the Owner from objecting to the existence of any alleged violation as noted by the City, as provided by law.

Inspections pursuant to this consent may be conducted by the City Police Department, Building, Public Works, or Fire Department staff, City Manager, or City Attorney, for purposes of determining compliance with the provisions of City Code, or for purposes of determining compliance with any other applicable code or regulation. The consent for inspection shall extend to any portion of the premises other than to an individual, presently leased residential space to which the Owner cannot unilaterally consent.

The Owner shall also, at any time that a given individual residential unit is not presently leased to a third party, grant the City reasonable access to such residential units for purposes of inspecting the same and verifying compliance with all City Codes. The Owner shall pay all fees associated with any generally applicable current or future inspection or registration program utilized by the City for commercial or residential rental properties. In the event that the City at any time terminates its Crime Free Housing Program or inspection protocol, the Property shall nonetheless continue to be inspection provisions otherwise provided by relevant City Code. With regard to individual residential units leased to third parties (i.e. tenants), the Owner shall utilize its best efforts to secure lawful access to the individual units for
purposes of the inspection contemplated herein, but the Parties acknowledge the rights of individual tenants with regard to their occupancy of an individual unit.

F. Common Area Surveillance:

The Parties acknowledge that the Owner maintains or prospectively shall 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 agrees to provide to the City a connection and inter-link to any cameras so installed, so that the City can remotely monitor such common area surveillance videos from the City Police Department. The Owner shall be responsible for providing and maintaining all technology required to 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, 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. All security cameras and security equipment in place on the Property shall be maintained in good and fully-operable condition.

G. Tenant Notification:

The Parties acknowledge that, because of the density of this development, the Parties have agreed upon a proactive public safety policy to maintain a high-quality and safe development, and to prevent public safety concerns that could otherwise arise. The Owner shall provide each tenant or prospective tenant with a notice in a form acceptable to the City advising such tenants of the provisions of this Agreement pertaining to City of DeKalb involvement in policing common areas of the Property or otherwise inspecting or monitoring the Property.

H. Notification Regarding Affordable Housing Status or Related Agreements:

The Parties acknowledge that the Property is not anticipated to be utilized as affordable or subsidized housing, based upon the significant current supply of such housing within the community. Pursuant to applicable laws, this Agreement shall not prohibit such use. However, the Parties acknowledge that use of the Property as affordable or subsidized housing may have an impact on the services provided by the City and City-supported agencies or the demand for services. The Parties acknowledge that the City would require time to be able to arrange for and provide such services through itself or City-supported agencies. Accordingly, not less than six (6) months before the date on which any agreement relating to any portion of the Property and affecting or pertaining to its use as affordable housing under federal or state laws (e.g. LIHPHA agreements, HAP agreements, vouchers and other similar agreements) is proposed to be entered into, to be renewed or to be renegotiated, and not less than six (6) months before the Owner enters into any new or renewal agreement or terminates an existing agreement affecting or pertaining to the use of any portion of the Property as affordable housing under federal or state law, Owner shall provide the City with written notice of such agreement or circumstance.

I. Conflict with Federal Law and Regulations:

In the event that any provision of this Agreement conflicts with applicable federal laws or regulations, including those pertaining to affordable housing, the City and Owner recognize that the federal law shall supersede local regulation to the extent required under federal law. Nothing in this Agreement shall be construed in a fashion that violates any federal statute governing affordable housing. Notwithstanding the foregoing, the Owner and City agree and acknowledge that they have reviewed and negotiated the terms of this Agreement with great care and precision, and both agree and covenant that they believe in good faith that the terms hereof are in compliance with all applicable laws. In the event that a
federal law supersedes any provision hereof, the Parties agree that they shall negotiate in good faith to approve an amendment to this Agreement that complies with the applicable federal law, and which accomplishes the objective of the term of this Agreement which violates federal law.

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 for the construction of new buildings and improvements. Those timelines may be extended by the City Council, with agreement of the Owner, from time to time by resolution, without requiring an amendment of this Agreement, for good cause shown by Owner, in the Council’s discretion. The Parties acknowledge that this Agreement is structured with a forgivable incentive, forgiven through the generation of property and sales tax revenue from the Property. The Parties also acknowledge that there is an existing TIF District with a limited number of years remaining on its term, and during the term of that TIF District, the forgiveness of the Development Incentive is greatly expedited due to the generation of TIF increment that is credited against the Development Incentive. Accordingly, the Parties acknowledge that the failure of the Owner to comply with the timeline indicated herein, even if consented to by the City, will be at the Owner’s peril, as it may jeopardize the project’s ability to generate adequate revenues that are credited to Owner under this Agreement, and may thus generate an obligation for Owner to repay a portion of the Development Incentive to the City.

2. In the event that Owner, through its fault, fails to acquire all of the parcels comprising the Property, the City may exercise the remedies described herein (foreclosure, suit for damages, deed in lieu of foreclosure or other remedies permitted by law) to recover the properties that were acquired and/or pursue damages for breach of contract.

   a. Owner shall provide the City with written notice upon its successful closure of a real estate transaction, wherein ownership of any portion of the Property shall be transferred entirely from the current ownership to Owner. This transaction and notice shall occur within the timelines described in this Agreement (unless otherwise extended by mutual, written agreement of the City and Owner). It is the Owner and the City’s express and joint agreement that this Agreement and the incentives offered and zoning imposed hereunder is expressly intended to be contingent upon the Owner taking ownership of the Property, and that if the change in ownership does not occur, this rezoning shall be subject to revocation consistent with the process outlined herein. The Parties agree that this Agreement and the approvals, incentives and zoning conferred hereunder is subject to limits on transfer or assignment as provided in Section XIII(D)(2) below, and that this zoning shall be subject to revocation if the Owner fails to becomes the actual owner of the entirety of the Property.
3. In the event that Owner fails to construct the Building or complete all of the improvements authorized by the final plans, the City may exercise the remedies described herein.

4. 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 substantial 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.

The violation of any provision of this Agreement may be deemed by the City to be a violation of the PD-C zoning contemplated herein, which may be prosecuted in the fashion of any other violation of the City’s Uniform Development Ordinance, or may be grounds for initiation of a proceeding under Article XIII (K) hercuf.
ARTICLE XII: TERM:

The Parties acknowledge that this Agreement has been negotiated in furtherance of the designation of the Property with PD-C zoning that authorizes the high density contemplated herein. The Parties also acknowledge that this Agreement memorializes a Development Incentive with a repayment term of up to thirty (30) years from the date of final plan approval. Accordingly, except as otherwise provided herein, it is the intention of the Parties to maintain this Agreement in full force and effect for the full duration of the time that the Property maintains PD-R zoning and, to the fullest extent of the law, the Parties intend that this Agreement not terminate unless and until the Parties agree to amend this Agreement.

In the event that the law requires any lesser term for this Agreement, then this Agreement shall remain in full force and effect for the maximum duration permitted by law, and in the event that any applicable law requires the specification of a duration, such duration shall be not less than fifty (50) years.

ARTICLE XIII: MISCELLANEOUS:

A. Amendment:

This Agreement, and the exhibits attached hereto, may be amended only by mutual consent of the City and Owner of an affected Parcel, by adoption of an ordinance 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 zoning of the Property 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
potions 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, the South Building is
demolished, and all of the improvements described in the approved final plans have been
constructed. 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 Phase 1 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@cityofdekab.com

City Attorney
City of DeKalb
200 South 4th Street
DeKalb, IL 60115
Telephone: 815-748-2093
Email: dean@frieders.com
If to the Owner:  
Cornerstone DeKalb, LLC  
c/o John Pappas, Member/Manager  
3 Fairway Circle  
DeKalb, IL 60115

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 Phase 1 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.

H. Exhibits:

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

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

I. Venue:

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

J. Revocation of Zoning and Termination of Planned Development Agreement:

In the event that the Owner: 1) fails to complete the transaction or fails to provide the notice required herein; 2) notifies the City that it is not going to complete the transaction; or, 3) otherwise violates the terms of this Agreement, the City shall issue a written notice to Owner. Said notice shall indicate that the City shall terminate the Agreement in accordance with this provision, after affording the Owner an opportunity to present evidence as to why the Agreement has not been violated, in a due process hearing before an officer mutually agreeable by Owner and the City, conducted in the same fashion as a hearing to revoke a Special Use. After the conduct of such hearing, and provided said officer agrees, the City shall be authorized and entitled to terminate this Agreement, at which time the Property shall be converted back to its previous status as Central Business District zoning, the right to payment of any further portion of the Development Incentive shall terminate, and the City shall record a notice of such zoning change against the Property. The Owner and City have devised and agreed to the process contained herein so as to afford the Owner with a due process proceeding and so as to avoid an unlawful zoning reversion.
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

Attest: City Clerk
OWNER:

CORNERSTONE DEKALB, LLC, an Illinois Limited Liability Company

By: [Signature]

Attest: [Signature]

OFFICIAL SEAL
RACHEL PACEY
Notary Public - State of Illinois
My Commission Expires Mar 28, 2017
Exhibit A: Legal Description

The subject property is legally described as:

112 E. Lincoln Highway: LOTS 2 AND 3 (EXCEPT THE EASTERNLY 4 FEET THEREOF OF SAID LOT 3) IN RUBY'S SUBDIVISION OF A PART OF BLOCK 2 IN THE ORIGINAL TOWN (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "D" OF PLATS, PAGE 23 ON OCTOBER 29, 1907, IN DEKALB COUNTY, ILLINOIS.

118 E. Lincoln Highway: THE EASTERNLY 4 FEET OF LOT 3; ALL OF LOT 4; AND THE WESTERNLY 12.4 FEET OF LOT 5, ALL IN RUBY'S SUBDIVISION OF A PART OF BLOCK 2 IN THE ORIGINAL TOWN (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "D" OF PLATS, PAGE 23, ON OCTOBER 29, 1907, IN DEKALB COUNTY, ILLINOIS.

122 E. Lincoln Highway: THE EAST 14.6 FEET OF LOT 5 AND THE WEST 1.4 FEET OF LOT 6 OF RUBY'S SUBDIVISION OF A PORTION OF BLOCK 2 OF THE ORIGINAL VILLAGE (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED ON OCTOBER 29, 1907, IN BOOK "D" OF PLATS, PAGE 23, SITUATED IN THE COUNTY OF DEKALB, STATE OF ILLINOIS.

124 E. Lincoln Highway: LOT 6 (EXCEPT THE EAST 4 FEET THEREOF AND EXCEPT THE WEST 1.4 FEET THEREOF) OF RUBY'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 29, 1907 IN BOOK "D" OF PLATS, PAGE 23, OF A PORTION OF BLOCK 2 OF THE ORIGINAL VILLAGE (NOW CITY) OF DEKALB, IN DEKALB COUNTY, ILLINOIS.

122 S. First Street: PART OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 22, TOWNSHIP 40 NORTH, RANGE 4, EAST OF THE THIRD PRINCIPAL MERIDIAN, DEKALB COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF LOT 1 OF RUBY'S SUBDIVISION OF A PART OF THE WEST 1/2 OF BLOCK 2, IN THE CITY OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "D" OF PLATS, PAGE 23; THENCE EASTERNLY ALONG THE NORTH LINE OF SAID LOT 1 AND THE PROLONGATION OF SAID NORTH LINE 200 FEET, THENCE SOUTHERLY AND PARALLEL TO THE WESTERLY LINE OF SAID LOT 1, 70 FEET, THENCE WESTERLY IN A STRAIGHT LINE TO A POINT ON THE WEST LINE OF SAID LOT 1, 70 FEET SOUTHERLY OF THE POINT OF BEGINNING; THENCE NORTHERLY AND ALONG THE WEST LINE OF SAID LOT 1, 70 FEET TO THE POINT OF BEGINNING.

THE SUBJECT PROPERTY ALSO INCLUDES THE ALLEY ADJOINING THE PROPERTIES LISTED ABOVE.

The aforementioned legal description is comprised of Parcel Identification Numbers (PINs) 08-22-282-001, 08-22-282-002, 08-22-282-003, 08-22-282-004 and 08-22-282-007 and the alley adjoining the parcels. The subject property is located at 112, 118, 122 and 124 E. Lincoln Highway and 122 S. First St., DeKalb, IL, and generally located at the southeast corner of E. Lincoln Highway and S. First St.
Group Exhibit B: Plans

(Attached, with page numbering separately tracked from the pages of this Agreement, but incorporated herein by reference.)
NORTH ELEVATION

WEST ELEVATION

PROJECT SUMMARY
- TOTAL FLOORS: 4 STORIES
- HEIGHT TO HIGHEST TOP OF CORNICE: 54'7"'
- TOTAL BUILDING AREA: 34,569 SQ FT
- TOTAL GROSS FLOOR: 11,585 SQ FT
- TOTAL AREA OF UPPER FLOOR: 11,585 SQ FT
- EACH: 3 FLOORS - 4,566 SQFT
- PROJECT WILL BE FULLY FIRE SPRINKLERED
- PROJECT WILL BE FULLY ALARMED
- CONSTRUCTION TYPE WILL BE IV A (FIRE AJ)
- 3 VERTICAL ELEVATORS FROM UPPER FLOORS
- RESIDENT LOBBY ON THE GROUND FLOOR
- ACCESSIBLE ELEVATOR WILL BE PROVIDED
- 3 COMMERCIAL SPACES WITH 3-ONE BEDROOM APARTMENTS ON 3 UPPER FLOORS
Exhibit C: No Trespass / Patrol Agreement

Common Area Patrol / No-Trespass Enforcement Agreement

Property Address: 122, 118, 124 E. Lincoln Hwy. and 122 S. First St.

Commonly Known As: cornerstone DeKalb

Property Owner: Cornerstone DeKalb, LLC

Contact #: John Pappas, 815-970-0905

Property Manager: Rory Heidi Skova

Contact #: 815-751-4171

24 Hour Contact #: John Pappas, 815-970-0905

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 ___ day of ___ , 20__

Owner or Representative:

City of DeKalb:
Exhibit D: Traffic Enforcement Agreement

AGREEMENT

WHEREAS, Cornerstone DeKalb, 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 "Cornerstone DeKalb"; 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 8th day of March, 2017.

CITY OF DEKALB
DEKALB COUNTY, ILLINOIS

By: ___________________________
Mayor

By: ___________________________
OWNER

By: ___________________________
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.
  • If property acquisition is included in the project costs, the third section must include a copy of the closing statement and deed for the property.
  • Subsequent sections should be separately tabbed by contractor. Each contractor tab should start with a spreadsheet generated by the Applicant that includes the totals from each invoice, and should be followed by a complete set of prevailing wage records, final waivers of lien, and invoices.
  • Applicants may include a Miscellaneous Expenses tab in the binder for small project expenses.
  • Credit Card Statements are not adequate to evidence expenditures. All small expenditures require actual receipts showing the expenditures. The City reserves the right to require Applicants to provide written documentation explaining any expenditure.
  • Building permits are eligible expenditures. Ineligible expenditures include: food, fuel, beverages, utility bills, web design, merchandise for stock or supply, membership dues, life insurance, or other personal expenses. The City reserves the right to disqualify any expense.

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

• The City shall also be provided with an electronic copy of all submittals, in PDF format, separated into sections as outlined above.
COMPANY UNDERTAKING
for
CORNERSTONE DEKALB, LLC

WHEREAS, the company known as Cornerstone DeKalb, 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 28th day of February, 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 Cornerstone DeKalb Planned Redevelopment 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 Redevelopment 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) “Redevelopment Agreement” shall mean that certain Cornerstone DeKalb Planned Redevelopment 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 Redevelopment 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 upon its acquisition of the Property which is the subject of the Redevelopment 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 Redevelopment 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 Redevelopment Agreement; (d) the address 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 Redevelopment 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:  

John Pappas  
Member  
Cornerstone Development, LLC
Exhibit 1

The property tax identification numbers are: PINs 08-22-282-001, 08-22-282-002, 08-22-282-003, 08-22-282-004 and 08-22-282-007 and the alley adjoining the parcels. The subject property is located at 112, 118, 122 and 124 E. Lincoln Highway and 122 S. First St., Dekalb, IL, and generally located at the southeast corner of E. Lincoln Highway and S. First St.

The Subject Property is legally described as follows:

112 E. Lincoln Highway: LOTS 2 AND 3 (EXCEPT THE EASTERLY 4 FEET THEREOF OF SAID LOT 3) IN RUBY'S SUBDIVISION OF A PART OF BLOCK 2 IN THE ORIGINAL TOWN (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "D" OF PLATS, PAGE 23 ON OCTOBER 29, 1907, IN DEKALB COUNTY, ILLINOIS.

118 E. Lincoln Highway: THE EASTERLY 4 FEET OF LOT 3; ALL OF LOT 4; AND THE WESTERLY 12.4 FEET OF LOT 5, ALL IN RUBY'S SUBDIVISION OF A PART OF BLOCK 2 IN THE ORIGINAL TOWN (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "D" OF PLATS, PAGE 23, ON OCTOBER 29, 1907, IN DEKALB COUNTY, ILLINOIS.

122 E. Lincoln Highway: THE EAST 14.6 FEET OF LOT 5 AND THE WEST 1.4 FEET OF LOT 6 OF RUBY'S SUBDIVISION OF A PORTION OF BLOCK 2 OF THE ORIGINAL VILLAGE (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED ON OCTOBER 29, 1907, IN BOOK "D" OF PLATS, PAGE 23, SITUATED IN THE COUNTY OF DEKALB, STATE OF ILLINOIS.

124 E. Lincoln Highway: LOT 6 (EXCEPT THE EAST 4 FEET THEREOF AND EXCEPT THE WEST 1.4 FEET THEREOF) OF RUBY'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 29, 1907 IN BOOK "D" OF PLATS, PAGE 23, OF A PORTION OF BLOCK 2 OF THE ORIGINAL VILLAGE (NOW CITY) OF DEKALB, IN DEKALB COUNTY, ILLINOIS.

122 S. First Street: PART OF THE EAST ¼ OF THE NORTHEAST ¼ OF SECTION 22, TOWNSHIP 40 NORTH, RANGE 4, EAST OF THE THIRD PRINCIPAL MERIDIAN, DEKALB COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF LOT 1 OF RUBY'S SUBDIVISION OF A PART OF THE WEST ¼ OF BLOCK 2, IN THE CITY OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "D" OF PLATS, PAGE 23; THEN EASTERLY ALONG THE NORTH LINE OF SAID LOT 1 AND THE PROLONGATION OF SAID NORTH LINE 200 FEET, THENE SOUTHERLY AND PARALLEL TO THE WESTERLY LINE OF SAID LOT 1, 70 FEET, THENE WESTERLY IN A STRAIGHT LINE TO A POINT ON THE WEST LINE OF SAID LOT 1, 70 FEET SOUTHERLY OF THE POINT OF BEGINNING; THENE NORTHERLY AND ALONG THE WEST LINE OF SAID LOT 1, 70 FEET TO THE POINT OF BEGINNING.

THE SUBJECT PROPERTY ALSO INCLUDES THE ALLEY ADJOINING THE PROPERTIES LISTED ABOVE.

THIS IS NOT A HOMESTEAD PROPERTY
On [date], for value received, Cornerstone DeKalb, 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 THREE MILLION DOLLARS ($3,000,000.00) (the "Face Value"). Repayment hereof shall be subject to the terms and conditions of that certain Cornerstone Planned Redevelopment Agreement by and between said Cornerstone DeKalb, LLC, and the City of DeKalb, executed on February 28, 2017, relating to the development of the property commonly 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 Redevelopment Agreement, and shall include a reduction of the balance due equal to sales and property tax revenues generated consistent with said Redevelopment 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 Redevelopment 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 Redevelopment Agreement.

Cornerstone DeKalb, LLC

By: ________________________________
John Pappas, Member
The Property is legally described as follows:

The property tax identification numbers are: PINs) 08-22-282-001, 08-22-282-002, 08-22-282-003, 08-22-282-004 and 08-22-282-007 and the alley adjoining the parcels. The subject property is located at 112, 118, 122 and 124 E. Lincoln Highway and 122 S. First St., DeKalb, IL, and generally located at the southeast corner of E. Lincoln Highway and S. First St.

The Subject Property is legally described as follows:

112 E. Lincoln Highway: LOTS 2 AND 3 (EXCEPT THE EASTERN 4 FEET THEREOF OF SAID LOT 3) IN RUBY'S SUBDIVISION OF A PART OF BLOCK 2 IN THE ORIGINAL TOWN (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "D" OF PLATS, PAGE 23 ON OCTOBER 29, 1907, IN DEKALB COUNTY, ILLINOIS.

118 E. Lincoln Highway: THE EASTERN 4 FEET OF LOT 3; ALL OF LOT 4; AND THE WESTERN 12.4 FEET OF LOT 5, ALL IN RUBY'S SUBDIVISION OF A PART OF BLOCK 2 IN THE ORIGINAL TOWN (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "D" OF PLATS, PAGE 23, ON OCTOBER 29, 1907, IN DEKALB COUNTY, ILLINOIS.

122 E. Lincoln Highway: THE EAST 14.6 FEET OF LOT 5 AND THE WEST 1.4 FEET OF LOT 6 OF RUBY'S SUBDIVISION OF A PORTION OF BLOCK 2 OF THE ORIGINAL VILLAGE (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED ON OCTOBER 29, 1907, IN BOOK "D" OF PLATS, PAGE 23, SITUATED IN THE COUNTY OF DEKALB, STATE OF ILLINOIS.

124 E. Lincoln Highway: LOT 6 (EXCEPT THE EAST 4 FEET THEREOF AND EXCEPT THE WEST 1.4 FEET THEREOF) OF RUBY'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 29, 1907 IN BOOK "D" OF PLATS, PAGE 23, OF A PORTION OF BLOCK 2 OF THE ORIGINAL VILLAGE (NOW CITY) OF DEKALB, IN DEKALB COUNTY, ILLINOIS.

122 S. First Street: PART OF THE EAST \( \frac{1}{4} \) OF THE NORTHEAST \( \frac{1}{4} \) OF SECTION 22, TOWNSHIP 40 NORTH, RANGE 4, EAST OF THE THIRD PRINCIPAL MERIDIAN, DEKALB COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF LOT 1 OF RUBY'S SUBDIVISION OF A PART OF THE EAST \( \frac{1}{4} \) OF BLOCK 2, IN THE CITY OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "D" OF PLATS, PAGE 23; THENCE EASTERNLY ALONG THE NORTH LINE OF SAID LOT 1 AND THE PROLONGATION OF SAID NORTH LINE 200 FEET, THENCE SOUTHERLY AND PARALLEL TO THE WESTERLY LINE OF SAID LOT 1, 70 FEET, THENCE WESTERLY IN A STRAIGHT LINE TO A POINT ON THE WEST LINE OF SAID LOT 1, 70 FEET SOUTHERLY OF THE POINT OF BEGINNING; THENCE NORTHERLY AND ALONG THE WEST LINE OF SAID LOT 1, 70 FEET TO THE POINT OF BEGINNING.

THE SUBJECT PROPERTY ALSO INCLUDES THE ALLEY ADJOINING THE PROPERTIES LISTED ABOVE.

THIS IS NOT A HOMESTEAD PROPERTY
MORTGAGE

Prepared by:
City Clerk
City of DeKalb
200 S Fourth St.
DeKalb, IL  60115
MORTGAGE

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

Future Advances Mortgage
Maximum Value: $3,000,000.00

THIS MORTGAGE, dated this 1st day of March, 2017 by Cornerstone DeKalb, LLC ("Mortgagor"),

WITNESSETH:

WHEREAS, Mortgagor has executed a Promissory Note in the principal sum of Three Million Dollars ($3,000,000.00) payable to the City of DeKalb ("Mortgagee"), dated the same date as this Mortgage, whereby Mortgagor 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 Cornerstone Planned Redevelopment Agreement executed on March 1, 2017 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:

Lot 6 (except the East 4 feet thereof and except the West 1.4 feet thereof) of Ruby’s Subdivision, according to the plat thereof recorded October 29, 1907 in Book “D” of Plats, Page 23, of a portion of Block 2 of the Original Village (now City) of DeKalb, in DeKalb County, Illinois.

The property or its address is commonly known as 124 E. LINCOLN HWY., DEKALB, IL 60115. The property tax identification number is: 08-22-282-004

AND

The property or its address is commonly known as 122 E. LINCOLN HWY., DEKALB, IL 60115. The property tax identification number is: 08-22-282-003

The East 14.6 feet of Lot 5 and the West 1.4 feet of Lot 6 of Ruby’s Subdivision of a portion of Block 2 of the Original Village (now City) of DeKalb, according to the plat thereof recorded on October 29, 1907, in Book “D” of Plats, page 23, situated in the County of DeKalb, State of Illinois.

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 $3,000,000.00, AND IS CONSTRUED IN CONNECTION WITH THE OBLIGATIONS OF MORTGAGOR AS OWNER UNDER THAT CERTAIN CORNERSTONE PLANNED REDEVELOPMENT AGREEMENT ("REDEVELOPMENT AGREEMENT") RECORDED AGAINST THE PREMISES PRIOR TO THE DATE OF THIS MORTGAGE. LOANS, PAYMENTS, CREDITS AND ADVANCES UP TO THIS AMOUNT, TOGETHER WITH ANY OTHER AMOUNTS OR OTHER OBLIGATIONS OF MORTGAGOR/OWNER UNDER THIS MORTGAGE OR THE REDEVELOPMENT AGREEMENT ARE SENIOR TO INDEBTEDNESS TO OTHER CREDITORS UNDER SUBSEQUENTLY RECORDED OR FILED MORTGAGES AND LIENS, UNLESS AND UPON THE CITY'S SUBORDINATION OF THIS MORTGAGE LIEN AS PROVIDED IN THE REDEVELOPMENT AGREEMENT. THIS MORTGAGE HAS BEEN PROVIDED TO SECURE THE REPAYMENT OF OBLIGATIONS OF THE REDEVELOPMENT AGREEMENT, INCLUDING BUT NOT LIMITED TO REPAYMENT OF A DEVELOPMENT INCENTIVE AND THE OBLIGATION TO SECURE THE OWNER ESCROW (AS BOTH TERMS ARE DEFINED IN THE DEVELOPMENT 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 Redevelopment 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 Redevelopment 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 Redevelopment Agreement and all extensions, renewals, modifications or substitutions thereof to Cornerstone DeKalb, LLC, with a note amount of $3,000,000.00 (collectively, the "Evidence of Debt").

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

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

D) Any additional sums advanced and expenses incurred by Mortgagee for insuring, preserving or otherwise protecting the Premises and Property and its value and any other sums advanced or expenses incurred by the Mortgagee under the terms of this Mortgage, plus interest (where applicable), as provided in the Evidence of Debt and Redevelopment Agreement.
E) Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Mortgagee and any Mortgage securing, guarantying or otherwise relating to a debt.

Mortgagor covenants and agrees:

1. To pay or cause to be paid, when due, all sums secured hereby as further defined and governed by the Redevelopment 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, Mortgage shall immediately notify Mortgagee in writing and Mortgagor hereby authorizes and directs each and every insurance company concerned to make payments for such loss directly and solely to Mortgagee (who may, but need not, make proof of loss) and Mortgagor 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 MORTGAGOR NOTICE OF ACCELERATION. SUCH NOTICE SHALL PROVIDE A PERIOD OF NOT LESS THAN THIRTY (30) DAYS FROM THE DATE THE NOTICE IS MAILED WITHIN WHICH MORTGAGOR MAY PAY THE SUMS DECLARED DUE. IF MORTGAGOR FAILS TO PAY SUCH SUMS PRIOR TO THE EXPIRATION OF SUCH PERIOD, MORTGAGEE MAY, WITHOUT FURTHER NOTICE OR DEMAND ON MORTGAGOR, INVOKE ANY REMEDIES PERMITTED BY THIS MORTGAGE.

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

10. In the event of default in performance of any Mortgagor's covenants or agreements herein contained, Mortgagee may, but need not, make any payment or perform any act hereinbefore required of Mortgagor, in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit title or claim thereof, or redeem from any tax sale or forfeiture affecting the premises or contest any tax or assessment. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorney's fees, and any other monies advanced by Mortgagee to protect the premises and the lien hereof shall be so much additional indebtedness secured hereby and shall be come immediately due and payable without notice. Mortgagee, making any payment hereby authorized relating to taxes or assessments, shall be the sole judge of the legality and validity thereof and of the amount necessary to be paid in satisfaction thereof.
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 Mortgagee or place Mortgagee in possession under the terms of the applicable statute of the State of Illinois, with power to collect the rents, issues and profits of the premises, due and to become due, during such foreclosure suit and the full statutory period of redemption notwithstanding any redemption. The receiver or Mortgagee in possession, out of such rents, issues and profits when collected, may pay costs incurred in the management and operation of the premises, prior and coordinate liens, if any, and taxes, assessments, water and other utilities and insurance, then due or thereafter accruing, and may make and pay for any necessary repairs to the premises, and may pay all or any part of the indebtedness secured hereby or any deficiency decree; and

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

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

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

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

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

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

(d) Accept additional security of any kind.

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

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

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

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

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

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

Cornerstone DeKalb, LLC

By: John Pappas, Member

STATE OF ILLINOIS )
COUNTY OF DEKALB ) s

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that John Pappas, authorized Member of Cornerstone DeKalb, 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 1st day of March, 2017

Notary Public

OFFICIAL SEAL
SUSAN M JOHNSON
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:08/01/19
EXHIBIT 1
Legal Description

The property or its address is commonly known as **124 E. LINCOLN HWY., DEKALB, IL 60115**. The property tax identification numbers are: **08-22-282-004**

Lot 6 (except the East 4 feet thereof and except the West 1.4 feet thereof) of Ruby's Subdivision, according to the plat thereof recorded October 29, 1907 in Book "D" of Plats, Page 23, of a portion of Block 2 of the Original Village (now City) of DeKalb, in DeKalb County, Illinois.

**THIS IS NOT A HOMESTEAD PROPERTY**

AND

The property or its address is commonly known as **122 E. LINCOLN HWY., DEKALB, IL 60115**. The property tax identification numbers are: **08-22-282-003**

The East 14.8 feet of Lot 5 and the West 1.4 feet of Lot 6 of Ruby's Subdivision of a portion of Block 2 of the Original Village (now City) of DeKalb, according to the plat thereof recorded on October 29, 1907, in Book "D" of Plats, page 23, situated in the County of DeKalb, State of Illinois.

**THIS IS NOT A HOMESTEAD PROPERTY**
SUPPLEMENT TO MORTGAGE

[Handwritten text: 176600357 (illegible)]
SUPPLEMENT TO
MORTGAGE

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

Supplement to Future Advances Mortgage dated March 1, 2017, and recorded by the DeKalb County Recorder on March 1, 2017, known as Document No. 2017001828
(Maximum Value: $3,000,000.00)

THIS SUPPLEMENT TO MORTGAGE, dated this 28th day of March, 2017, by Cornerstone DeKalb, LLC ("Mortgagor"), WITNESSETH:

WHEREAS, Mortgagor has executed a Promissory Note in the principal sum of Three Million Dollars ($3,000,000.00) payable to the City of DeKalb ("Mortgagee"), dated March 1, 2017, 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 Cornerstone Planned Redevelopment Agreement executed on February 28, 2017 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:

PART OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 22, TOWNSHIP 40 NORTH, RANGE 4, EAST OF THE THIRD PRINCIPAL MERIDIAN, DEKALB COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 1 OF RUBY'S SUBDIVISION OF A PART OF THE WEST 1/2 OF BLOCK 2, IN THE CITY OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "D" OF PLATS, PAGE 23; THENCE EASTERNLY ALONG THE NORTH LINE OF SAID LOT 1 AND THE PROLONGATION OF SAID NORTH LINE 200 FEET; THENCE SOUTHERLY AND PARALLEL TO THE WESTERLY LINE OF SAID LOT 1, 70 FEET; THENCE WESTERLY IN A STRAIGHT LINE TO A POINT ON THE WEST LINE OF SAID LOT 1, 70 FEET SOUTHERLY OF THE POINT OF BEGINNING; THENCE NORTHERLY AND ALONG THE WEST LINE OF SAID LOT 1, 70 FEET TO THE POINT OF BEGINNING.

THIS IS NOT HOMESTEAD PROPERTY

The property or its address is commonly known as: 122 S. FIRST ST., DEKALB, IL 60115.

PROPERTY INDEX NO.: 08-22-282-007

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

CORNERSTONE DEKALB, LLC

By:

JOHN PAPAS, 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 John Pappas, authorized Member of Cornerstone DeKalb, 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 28th day of March, 2017.
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, Cornerstone DeKalb, LLC by and through its Member/Manager, John Pappas, 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 [see attached], legally described on the attached Exhibit 1 ("the property"), with said improvements consisting generally of the construction and development of a mixed-use Planned 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 8\textsuperscript{th} day of
March, 2017

NOTARY PUBLIC

"OFFICIAL SEAL"
RUTH A. SCOTT
Notary Public, State of Illinois
NOTARY ID 603785
My Commission Expires 6/24/18
The subject property is legally described as:

112 E. Lincoln Highway: LOTS 2 AND 3 (EXCEPT THE EASTERLY 4 FEET THEREOF OF SAID LOT 3) IN RUBY'S SUBDIVISION OF A PART OF BLOCK 2 IN THE ORIGINAL TOWN (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "D" OF PLATS, PAGE 23 ON OCTOBER 29, 1907, IN DEKALB COUNTY, ILLINOIS.

118 E. Lincoln Highway: THE EASTERLY 4 FEET OF LOT 3; ALL OF LOT 4; AND THE WESTERLY 12.4 FEET OF LOT 5, ALL IN RUBY'S SUBDIVISION OF A PART OF BLOCK 2 IN THE ORIGINAL TOWN (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "D" OF PLATS, PAGE 23, ON OCTOBER 29, 1907, IN DEKALB COUNTY, ILLINOIS.

122 E. Lincoln Highway: THE EAST 14.6 FEET OF LOT 5 AND THE WEST 1.4 FEET OF LOT 6 OF RUBY'S SUBDIVISION OF A PORTION OF BLOCK 2 OF THE ORIGINAL VILLAGE (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED ON OCTOBER 29, 1907, IN BOOK "D" OF PLATS, PAGE 23, SITUATED IN THE COUNTY OF DEKALB, STATE OF ILLINOIS.

124 E. Lincoln Highway: LOT 6 (EXCEPT THE EAST 4 FEET THEREOF AND EXCEPT THE WEST 1.4 FEET THEREOF) OF RUBY'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 29, 1907 IN BOOK "D" OF PLATS, PAGE 23, OF A PORTION OF BLOCK 2 OF THE ORIGINAL VILLAGE (NOW CITY) OF DEKALB, IN DEKALB COUNTY, ILLINOIS.

122 S. First Street: PART OF THE EAST ¼ OF THE NORTHEAST ¼ OF SECTION 22, TOWNSHIP 40 NORTH, RANGE 4, EAST OF THE THIRD PRINCIPAL MERIDIAN, DEKALB COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF LOT 1 OF RUBY'S SUBDIVISION OF A PART OF THE WEST ½ OF BLOCK 2, IN THE CITY OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "D" OF PLATS, PAGE 23; THENCE EASTERLY ALONG THE NORTH LINE OF SAID LOT 1 AND THE PROLONGATION OF SAID NORTH LINE 200 FEET, THENCE SOUTHERLY AND PARALLEL TO THE WESTERLY LINE OF SAID LOT 1, 70 FEET, THENCE WESTERLY IN A STRAIGHT LINE TO A POINT ON THE WEST LINE OF SAID LOT 1, 70 FEET SOUTHERLY OF THE POINT OF BEGINNING; THENCE NORTHERLY AND ALONG THE WEST LINE OF SAID LOT 1, 70 FEET TO THE POINT OF BEGINNING.

THE SUBJECT PROPERTY ALSO INCLUDES THE ALLEY ADJOINING THE PROPERTIES LISTED ABOVE.

The aforementioned legal description is comprised of Parcel Identification Numbers (PINs) 08-22-282-001, 08-22-282-002, 08-22-282-003, 08-22-282-004 and 08-22-282-007 and the alley adjoining the parcels. The subject property is located at 112, 118, 122 and 124 E. Lincoln Highway and 122 S. First St., DeKalb, IL, and generally located at the southeast corner of E. Lincoln Highway and S. First St.
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.
STATE OF ILLINOIS  
COUNTY OF DEKALB ) SS  
CITY OF DEKALB  

I, LYNN A. FAZEKAS, do hereby certify that I am the duly appointed 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:

ORDINANCE 2018-081

AUTHORIZING AN AMENDMENT TO ORDINANCE 2017-011 TO ADD ADDITIONAL SERVICE FACILITIES TO THE LIST OF PERMITTED COMMERCIAL USES IN ARTICLE II.C OF THE ORDINANCE UP TO 2,000 SQUARE FEET AND TO INCREASE THE MAXIMUM SQUARE FOOTAGE ALLOWED FOR “PROFESSIONAL SERVICE OFFICES” FROM 1,000 SQUARE FEET TO 2,000 SQUARE FEET (106, 112, 118 AND 124 E. LINCOLN HIGHWAY, AND 122 S. FIRST STREET, DEKALB, ILLINOIS) (CORNERSTONE DEKALB).

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, on the 13th day of November 2018. The original will be kept on file at the City of DeKalb Municipal Building.

WITNESS my hand and the official seal of said City this 29th day of November 2018.

LYNN A. FAZEKAS, City Clerk

Prepared by and Return to:

City Clerk’s Office
City of DeKalb
200 S. Fourth Street
DeKalb, Illinois 60115
ORDINANCE 2018-081  

PASSED: NOVEMBER 13, 2018

AUTHORIZING AN AMENDMENT TO ORDINANCE 2017-011 TO ADD ADDITIONAL SERVICE FACILITIES TO THE LIST OF PERMITTED COMMERCIAL USES IN ARTICLE II.C OF THE ORDINANCE UP TO 2,000 SQUARE FEET AND TO INCREASE THE MAXIMUM SQUARE FOOTAGE ALLOWED FOR "PROFESSIONAL SERVICE OFFICES" FROM 1,000 SQUARE FEET TO 2,000 SQUARE FEET (106, 112, 118 AND 124 E. LINCOLN HIGHWAY, AND 122 S. FIRST STREET, DEKALB, ILLINOIS) (CORNERSTONE DEKALB).

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

WHEREAS, the City has previously approved Ordinance 2017-011, approving Planned Development – Commercial ("PD-C") zoning and a certain agreement for the property described therein and commonly referred to as "Cornerstone"; and

WHEREAS, pursuant to public notice and hearing, the City's Planning and Zoning Commission have made a positive recommendation to approve an amendment to the PD-C zoning and the Development Agreement for Cornerstone, to provide for the change in zoning standards contained herein; and

WHEREAS, the City Council expressly finds that the foregoing amendment is appropriate, meets all legally required standards, is subject to consideration following the provision of all required public notice and due process, and is agreeable to the City as an amendment of the Development Agreement;

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

SECTION 1. Amendment Authorized.

The City Council of the City of DeKalb hereby adopts the following amendment to the PD-C zoning and Development Agreement for Cornerstone.

1. Article II(C) of the Development Agreement shall be read to be amended so as to include "Services facilities including barber shops, beauty shops, nail salons, copying services, artists' studios, photographers, tailors, music and dance instruction, suntan parlors, travel agencies and other similar service facilities with determination of what constitutes a similar service facility being made by the City Manager. Notwithstanding the foregoing, no more than 2,000 square feet of available commercial square footage on the Property shall be permitted to be utilized for this purpose." This description shall be included as a permitted use enumerated as permitted use number 4 in Article II(C).
2. Article II(C) of the Development Agreement shall be read to be amended so as to increase from 1,000 square feet to 2,000 square feet the amount of space that shall be permitted to be utilized for Professional Services Offices.

3. Notwithstanding the foregoing, Article II(E) and all other portions of the Property (as described in the Development Agreement) shall remain in full force and effect.

4. This Ordinance shall be appended to the Development Agreement and incorporated by reference as if set forth fully therein.

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

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


ATTEST:

LYNN A. FAZEKAS, City Clerk

TERRY SMITH, Mayor
EXHIBIT A

ORDINANCE 2017–011
ARTICLE I LC
CORNERSTONE DEKALB

C. Permitted Commercial Uses:

There shall be no permitted commercial uses on the second or higher floors of the Building, and there shall be no permitted home occupation use of the residential components of the Building. Within the non-residential portions of the first floor of the Building and any portion of the basement of the Building allocated to supporting such non-residential areas, the permitted commercial uses shall be exclusively limited to the following:

1) Retail Uses. Purely Retail uses shall be permitted unless otherwise prohibited or limited. Minor, indoor incidental services shall be permitted as a component of Retail uses (e.g. sale of computers with incidental computer servicing, jewelry store providing incidental jeweler services).

2) Restaurants and retail food establishments, including fast-food, sit-down or other similar establishments and also including bars that maintain service of food. In association with such use, the Owner shall be permitted to establish and maintain outdoor seating areas in accordance with any approved Final Plans.

3) Professional Service Offices, such as medical offices for licensed doctors or chiropractors, urgent care, dental office, legal office, optometrist/ophthalmologist, accountant, or other similar professional service-based offices (with the determination of what constitutes a similar professional office being made by the City Manager). Notwithstanding the foregoing, no more than 24,000 square feet of the available commercial square footage on the Property shall be permitted to be utilized for this purpose.

4) Services facilities including barber shops, beauty shops, nail salons, copying services, artists' studios, photographers, tailors, music and dance instruction, suntan parlors, travel agencies, and other similar service facilities with determination of what constitutes a similar service facility being made by the City Manager. Notwithstanding the foregoing, no more than 2,000 square feet of the available commercial square footage on the Property shall be permitted to the utilized for this purpose.