RESOLUTION 2018-166          PASSED: DECEMBER 18, 2018

AUTHORIZING A PRELIMINARY DEVELOPMENT INCENTIVE AGREEMENT FOR THE RENOVATION OF THE FORMER ST. MARY’S HOSPITAL AT 145 FISK AVENUE, DEKALB, ILLINOIS, TO A BOUTIQUE HOTEL AND ASSOCIATED COMMERCIAL USES.

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

WHEREAS, the property located at 145 Fisk Avenue (“the Premises”), has a contract purchaser identified as 145 Fisk, LLC or nominee (“Owner”), and

WHEREAS, the City and Owner seek to enter into an agreement for improvements to the Premises; and

WHEREAS, Owner has proposed to commit funds to the completion of improvements on the Premises, subject to the City’s commitment to provide economic development funding for this project; and

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

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

SECTION 1. The City Council of the City of DeKalb hereby approves of the Development Incentive Agreement in the format attached hereto as Exhibit 1 (“the Agreement”), subject to such amendments as shall be acceptable to the Mayor with the recommendation of the City Manager. Staff is authorized to negotiate and proceed with presentation of Final Development Agreement for consideration of approval at a future date. The City Council approves of the Development Incentive contemplated therein and directs that funding be transferred or ported from TIF District 2 to the Central Area TIF District and allocated to this specified development project. The City Council expressly finds that this Agreement and the project contemplated herein is in accordance with the presently adopted and applicable redevelopment plans and makes this designation of approved project in order to comply with the TIF Act and designate projects for TIF 2 prior to the estimated completion date thereof.

SECTION 2. That the City Clerk of the City of DeKalb is authorized and directed to attest the Mayor’s signature.

SECTION 3. Thereafter, City staff are directed to fully comply with the terms of the Agreement, and to undertake the obligations contained therein. Provided that the work performed under the Agreement is performed in accordance with the Agreement, the City Council waives any otherwise applicable requirement for City Council approval of bids or
vendors utilized by Owner and waives any applicable competitive bidding requirement (except to the extent required under the Agreement).

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a Special meeting thereof held on the 18th day of December 2018 and approved by me as Mayor on the same day. Passed by a 5-2 roll call vote. Aye: Jacobson, Finucane, Verbic, Faivre, Smith. Nay: Fagan, Noreiko.

ATTEST:

LYNN A. FAZEKAS, City Clerk

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

145 FISK AVENUE
PRELIMINARY DEVELOPMENT INCENTIVE AGREEMENT
CITY OF DEKALB
This Preliminary Incentive Agreement (the "Agreement") is made and entered the [ ] day of [January], 2018 by and among the City of DeKalb, an Illinois municipal corporation located in DeKalb County, Illinois, (the "City"), and 145 Fisk, LLC or nominee (the "Owner"). The City and the Owner are collectively referred to as "Parties" and individually referred to as a "Party."

RECITALS

A. The Owner is the owner or contract purchaser of record of approximately 1.38 contiguous acres of real property at 145 Fisk Avenue, situated with frontage on both Fisk Avenue and Sycamore Road 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 1 parcel number (0823103027). Buildings on the Property are in an advanced state of deterioration. Collectively, the Property has declined in value during the preceding thirty years, despite the existence of a Tax Increment Financing District ("TIF District") covering the property for said period. As the Property was utilized for a tax-exempt purpose at the time of initiation of the TIF District, the Property presently has a base valuation (for TIF purposes) of $0. 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 development in accordance with this Agreement. The Property is proposed to be developed in accordance with the conceptual 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 renovation of the existing building for a multi-story mixed use facility including a hotel, a conference/gathering/reception area, a restaurant and bar/lounge, and related commercial uses.

C. The Parties acknowledge that in order to permit the redevelopment of the Property in accordance with the Plans, it will be necessary to approve final plans for the Property, and also to rezone the Property to Planned Development-Commercial ("PD-C") zoning. Undertaking that rezoning process requires the completion of certain public hearings, and other conditions precedent to final approvals being granted. However, the proposed development is adequately advanced in planning as to be eligible for consideration of an incentive agreement. Further, the Owner is at a point of incurring substantial professional fees and related costs which are eligible for reimbursement through the development incentive contemplated herein. Because the preliminary analysis of costs on the project has demonstrated that the project has a significant financing gap and would not independently be financeable because of the blight and deterioration of the Property, the Owner has indicated that but-for the provision of the incentive contemplated herein, it would not undertake the project. Accordingly, the Parties have entered into this Agreement so as to provide an incentive for the Owner to complete further preparation of final plans, to incur the expenses associated with rezoning the Property, and otherwise to proceed with the proposed project, subject to the contingencies outlined herein.
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, subject to further agreement or amendment as described below.

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 provide the incentive contemplated herein, and that the City’s agreement to conditionally approve the incentive in accordance with the provisions of this Agreement, to provide access to public utility services and other City services, and to otherwise perform the City’s obligations under this Agreement constitutes valuable, bargained-for consideration that benefits the Owner and the Property.

F. All other and further notices, publications, procedures, public hearings and other matters attendant to the consideration and approval of this Agreement and the conditional approval of an incentive for 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.

G. The Corporate Authorities have duly considered all necessary matters to enter into this Agreement and have further duly considered the terms and provisions of this Agreement and have authorized the Mayor to execute, and the City Clerk to attest, this Agreement on behalf of the City.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements herein made, the Parties hereby agree as follows:

ARTICLE I: INCORPORATION OF RECITALS

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

ARTICLE II: ZONING OF THE PROPERTY

A. Zoning Contingency:

The Parties acknowledge and agree that the Property, as presently zoned, cannot lawfully be used for the purposes described above nor for the configuration contemplated by the Plans. Accordingly, the Parties agree that it is necessary for them to undertake a process to contemplate the rezoning of the Property consistent with the description in the recitals. The incentive contemplated in this Agreement is and shall be contingent upon the Owner applying for and successfully obtaining rezoning of the Property to a PD-C zoning designation (or other designation acceptable to the Parties), and entering into a
planned development agreement which either incorporates or amends the terms of this Agreement so as to provide for the orderly development of the Property.

The Parties acknowledge that the Owner has the Property under contract and, other than completing the rezoning of the Property and attendant approval of final plans in substantial conformity to the attached Plans, is prepared and committed to undertaking and completing the development of the Property. However, should the Property fail to be rezoned, or should the Parties fail to agree upon the terms of a suitable Planned Development Agreement within one (1) year of the date of approval of this Agreement, this Agreement shall terminate and shall be of no further force or effect (with the Parties acknowledging that this period may be extended in accordance with the requirements of this Agreement). Owner agrees and acknowledges that any costs incurred prior to approval of a planned development agreement as contemplated herein, while they may be eligible for inclusion in the costs subject to reimbursement, are incurred at Owner’s sole risk and cost until such point in time as the Property is rezoned and the planned development agreement is approved, and any other conditions or contingencies outlined herein are satisfied in full.

Owner acknowledges all contingencies outlined in this Agreement, and agrees and acknowledges that until all such contingencies are fully satisfied, it has no basis to detrimentally rely upon the representations of the City with respect to the availability of incentive funding. Owner further acknowledges that in evaluating this Agreement and the potential to develop the Property, it has not relied upon any statement or condition not expressly outlined herein.

Notwithstanding the foregoing, the City agrees that, at such point in time that all contingencies outlined herein are satisfied in accordance with the terms of this Agreement, the City shall provide the funding contemplated herein, in accordance with the terms hereof. The intention and legally binding agreement of the Parties is to commit to the payment of the development incentive contemplated herein, subject to conditions that both of the Parties agree are reasonable and commercially customary conditions with respect to the payment of a development incentive. The City agrees and acknowledges that, by virtue of the approval of this Agreement, it shall allocate and dedicate funding towards the costs of the project contemplated herein, and shall reserve such funding for use towards the eligible costs outlined herein.

B. Additional Property:

The Parties acknowledge that, during the course of planning the development of the Property, Owner may elect to, or may be required to, purchase or acquire other parcels of land in the vicinity of the Property, in order to facilitate the orderly development of the Property, to provide access thereto, or to address stormwater detention or other utility related issues. Such acquisitions shall be considered to be a component of this Agreement and eligible components of the costs incentivized hereunder. Should the Parties later agree, by virtue of a final development agreement or otherwise, to include additional properties within the development, then the intent of the Parties is to read this Agreement as including such additional properties within the definition of Property as
contained herein, to subject such additional properties to the zoning and related contingencies described herein, and otherwise to treat such additional properties as a component of the Property, notwithstanding that Owner has not, at time of approval of this Agreement, acquired such other properties.

ARTICLE III: DEVELOPMENT AND MAINTENANCE OF THE PROPERTY:

A. Further Agreement Required:

The Parties acknowledge that under the terms of development agreements customarily utilized by the City, the Owner will be required to commit to developing the Property in accordance with applicable zoning and development standards (except as modified by the PUD zoning the Property is anticipated to utilize), to install and/or connect to such utility connections as shall be required for the Property, to construct such road improvements, traffic control devices or access points as shall be necessary to access the Property, to pay such fees as shall be applicable to the development of the Property, to commit to the future maintenance of the Property, to consent to the creation of a backup special service area for the Property, to agree to indemnify, defend, hold harmless and insure the City and specified related parties, and with regard to the commercial and hotel operations, agree to certain operational standards requiring the Owner to consent to the licensure of the Property, provision of public safety camera access, consent to inspections of the Property and related conditions. The Owner will also be required to agree to provisions relating to the orderly development and construction of the Property, provision of financial security for public and private improvements, site control regulations, review and permitting processes and related matters. The Owner agrees and acknowledges that it has familiarized itself with the City’s customary requirements as they have been applied to previous development projects and acknowledges that such requirements shall be incorporated into a final development agreement for the Property at the time of rezoning of the Property, with Owner’s acceptance of such terms being required in order to satisfy the contingency described in Article II(A) above.

ARTICLE IV: PROJECT STAGING:

The Parties acknowledge that the construction of the project upon the Property shall be staged. 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.

1) The Owner shall submit preliminary (or proposed final) plans, a suitable traffic study, engineering documents and related documents and any required petitions or applications or rezoning or other required approvals, and shall initiate the rezoning of the Property, within one-hundred twenty (120) days of the date of approval of this Agreement. Such plans shall include detail regarding the conceptual floorplans, proposed architectural elevations, site layout and setbacks, utility connections and stormwater management, traffic flow, proposed uses and such additional information as shall be required by the Community Development Director.
2) The Owner shall immediately collaborate with City staff with regard to the identification of any additional properties which are required to be acquired for the orderly development of the Property pursuant to Article II(B) above, and shall expeditiously proceed to purchase or secure options to purchase such parcels.

3) The Parties acknowledge that portions of the additional properties (if any) may remain in use pending completion of the renovation/construction on the Property, and pending the date on which termination of such occupancy is required to terminate in order to complete the orderly development of the project contemplated herein (and in no instance later than the date of first issuance of a temporary or final certificate of occupancy for any portion of the Property, after redevelopment as contemplated herein).

4) The Owner shall proceed to expeditiously undertake any required revisions to plans and proposals so as to enable the Property to proceed to public hearing on the consideration of rezoning to a Planned Unit Development, Commercial (PUD-C) zoning designation with a positive staff recommendation, and thereafter to be considered for approval by the City Council with a corresponding PUD-C development agreement.

5) Before or contemporaneously with the approval of preliminary (or final) plans, Owner shall consult with the Chief Building Official of the City regarding proposed architectural plans for the renovation of the Property.

6) Upon approval of the final plans by the City Council, Owner shall expeditiously generate and submit final architectural plans, seek and apply for building permits and shall undertake construction or renovation of the buildings on the Property in accordance with the approved final plans.

7) Owner shall substantially complete construction on the Property within twelve (12) months of the date of approval of the final plans by City Council, with the twelve (12) month time period starting on the date whereby all building permits are issued (or any extension to such period as may be authorized pursuant to the terms of this Agreement).

8) Pending completion of the construction, and at all times prior to and subsequent to the approval of final plans by the City Council, Owner shall maintain the existing facilities on the Property in a condition that complies with applicable Property Maintenance Codes.

ARTICLE V: DEVELOPMENT INCENTIVE:

A. Necessity of Incentive:

The Parties acknowledge that the Property has been blighted and vacant for more than 25 years, and has had a deleterious impact on adjacent property values and uses, 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 proposing to undertake 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 downtown 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 remediate unsafe buildings, and would not undertake the project. Accordingly, the Parties agree and acknowledge that the Development Incentive as described herein is necessary in order to induce this project to occur, and satisfies all requirements applicable to such an incentive.

B. Development Incentive Defined:

The Owner commits that it shall invest not less than Seven Million One Hundred Thousand Dollars ($7,100,000) 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 and satisfying contingencies outlined herein) in a good and workmanlike manner. Following such approvals and contingencies, the City shall provide a total Development Incentive of Two Million Five Hundred Thousand Dollars ($2,500,000), payable through one or more phases as described herein ("the Development Incentive"). In the event that Owner fails to incur the minimum Project Completion Costs of $7,100,000, 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). All provisions of this Article V are contingent upon the Owner obtaining final approval of its plans, rezoning the Property, lender financing, and executing a planned development agreement as described above. The total Development Incentive shall be an amount not to exceed the lesser of: 1) $2,500,000; 2) the sum of all TIF Eligible Costs as defined herein; or, 3) the amount which is equivalent to thirty-five and three-tenths percent (35.3%) of the Project Completion Costs, as defined herein.

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 buildings on the Property, and such other costs as shall be included within the definition of Project Completion Costs as contemplated within the planned development 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 a percentage of total actual project costs in accordance with the TIF Act and the
final planned development agreement; 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 hotel units; costs of constructing any public improvements that are directly associated with the completion of the project (e.g. rights of way, roadways, sidewalks, driveway aprons, lighting); and other costs that are directly related to the construction on the Property 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, costs associated with making permanent physical improvements to existing structures on the Property, and any other TIF eligible costs, whatsoever. TIF Eligible Costs shall only include costs incurred after the date of approval of this Agreement. Such costs shall be eligible for inclusion within the TIF Eligible Costs without regard to whether they are incurred before or after the contingencies contemplated herein are satisfied, and without regard to whether they are incurred before or after the property is rezoned and/or subjected to the requirements of a planned development agreement (provided that the contingencies are in fact satisfied prior to payment).

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 that the City customarily utilizes, which shall be appended to the planned development agreement for the Property, if approved.

D. Payment of Development Incentive:

The timing and phasing of payments of the Development Incentive shall be as established in the planned development agreement for the Property, approved at the time of rezoning of the Property if all contingencies contemplated herein are satisfied.

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. Forgiveness is anticipated to be calculated based upon revenues generated by the redevelopment of the Property following issuance of a final certificate of occupancy, including: 1) new property tax increment generated, on an annual basis, as compared to the base equalized assessed valuation of the property in the last full year preceding redevelopment thereof (i.e. $32,893 as the tax year 2017 valuation); 2) sales tax generated by the Property; 3) restaurant and bar tax generated by the Property; and, 4) hotel-motel tax generated by the Property. The Forgiveness Period shall be for a period of thirty (30) years, commencing upon the last date of payment of any portion of the Development Incentive, 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 buildings on the Property, 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 V(E)(1), (2), (3), and 4 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. Should the City not have adequate funding within the Special Tax Allocation Fund for any reason, the City shall not be obligated to make payments of the Development Incentive hereunder, without regard to whether Owner has satisfied the contingencies contemplated herein. However, the City has no reason to believe it does not have adequate funding within the Special Tax Allocation Fund for any reason or that it will not have adequate funding within the Special Tax Allocation Fund for any reason arising in the foreseeable future.

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 the Illinois Municipal Code 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 the Illinois Municipal Code are to provisions as in effect now and as hereafter amended.

G. Need for Present Development Incentive Commitment:

The Parties agree and acknowledge that, in order for Owner to secure commercial financing to render the redevelopment of the Property possible, Owner is required to secure the City’s commitment to utilize a development incentive as contemplated herein. The Parties further acknowledge Owner’s intention to initiate and work diligently towards
completion of the redevelopment project contemplated herein within calendar year (and City fiscal years ("FY")) 2019. In order to secure commercial financing, the Owner is required to demonstrate the funding and availability of the Development Incentive, and in order to make that demonstration, the City is obligated to allocate presently available funds to this project, to budget and appropriate said funds within FY2019 for this project and this Property, and otherwise to comply with this Agreement. Such actions are required in order to enable Owner to proceed with the plans contemplated herein which are required to satisfy the contingencies of this Agreement.

The City agrees that, for FY2019, it shall budget an adequate sum to cover the incentive contemplated herein. Immediately upon approval of the plans and a planned development agreement for the Property and the satisfaction of the contingencies outlined herein (and any conditions precedent identified in the planned development agreement), the City agrees that it shall transfer such budgeted funds from the Special Tax Allocation Fund to a commercial escrow account for the purpose of providing funding to pay TIF Eligible Costs as defined above. The transfer of funds to such commercial escrow and the payment of any funds from the escrow shall be subject to the implementation of restrictions acceptable to the City with regard to project and TIF eligibility demonstration and documentation in accordance with the City’s usual and customary practices for development projects of this nature. Such requirements shall be documented in the planned development agreement for the Property. The Parties agree and acknowledge that the City’s commitment to budgeting funds in FY2019 and transferring funds to a commercial escrow account as contemplated herein is necessary in order to enable the financing of the Property and the project contemplated herein, and thus necessary to eliminate the blight contained on the Property.

The City acknowledges that the Property is within the Central Area Tax Increment Financing District, commonly referred to as TIF 1. The financial projections for TIF 1 for FY2019 presently show TIF 1 lacking adequate funding in order to cover the costs associated with the project and the redevelopment of the Property. Accordingly, the City agrees that it shall commit funding from the adjacent Tax Increment Financing District 2 ("TIF 2") to funding of the project and redevelopment of the Property, and shall port and transfer such funds from TIF 2 to TIF 1, for retention in the TIF 1 Special Tax Allocation Fund and for ultimate transfer to the commercial escrow, pending satisfaction of the contingencies contemplated herein.

ARTICLE VI. 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 VII: REMEDIES:

A. Failure to Construct:

1. This Agreement contains specific timelines for the rezoning and development of the Property. 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.

2. In the event the Owner fails to obtain approval of the final plans or if the City determines that the final plans are not acceptable, then the City may terminate this Agreement upon provision of written notice to Owner.

B. Breach Generally:

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

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

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

The failure of the Parties to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's' rights thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.
If the performance of any covenant to be performed hereunder by any Party is delayed as a result of circumstances which are beyond the reasonable control of such Party (which circumstances may include acts of God, war, acts of civil disobedience, weather, terrorist acts of a direct or indirect nature, material shortages, flooding, strikes or similar acts), the time for such performance shall be extended by the amount of time of such delay.

ARTICLE VIII: TERM:

The Parties acknowledge that this Agreement has been negotiated in furtherance of the redevelopment of the Property. This Agreement shall have a term of two (2) years from the date of approval by the City Council and should the contingencies contemplated herein not be satisfied within two (2) years, this Agreement shall terminate without requirement of further notice (unless such period is extended in accordance with the terms hereof). Notwithstanding the foregoing, the Parties agree and acknowledge that it is their intention to extend the term of this Agreement by an amendment hereto in the form of the planned unit development agreement contemplated herein upon Owner’s satisfaction of all contingencies described above, which amended agreement shall have a term of not less than fifty (50) years.

ARTICLE IX: 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.

2. This Agreement shall not be assigned without the City's express, written approval as memorialized via a resolution of the City Council. This Agreement may be assigned with the City's consent, pursuant to a written amendment to this Agreement. Such amendment shall provide for the transfer of obligations to the successor owner/assignee, and may also provide for any proposed changes in use of the Property or the scope of the redevelopment project.

3. Except as provided in the preceding subsection, the Owner shall not be authorized to engage in any sale, encumbrance, hypothecation or assignment of the Property or the rights conveyed under this Agreement, prior to the date upon which all final certificates of occupancy on the Property are issued, and all of the improvements described in the final plans (once approved) 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.

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: 815-748-2090

City Attorney  
City of DeKalb  
200 South 4th Street  
DeKalb, IL 60115  
Telephone: 815-748-2093
If to the Owner: 145 Fisk, LLC or nominee  
1101 DeKalb Avenue, Suite 2  
Sycamore, IL 60178  

With a Copy To: C. Nicholas Cronauer  
1101 DeKalb Ave., Suite 2  
Sycamore, IL 60178  

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.

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 of the Property  
   **Group Exhibit B:** Concept Plans

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 including but not limited to a knowing, voluntary waiver of the right to pursue any claim in federal court.

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: [Signature] [Signature]

CITY OF DEKALB, Mayor
By: Jerry Smith, Mayor

CITY OF DEKALB, City Clerk
By: [Signature] Lynn A. Fazekas, City Clerk

OWNER:

By: [Signature] [Signature]

By: C. Nicholas Coombes
Printed Name: C. Nicholas Coombes

By: [Signature] [Signature]

By: Michelle Jureczek
Printed Name: Michelle Jureczek

OFFICIAL SEAL
MICHELLE JURECZEK
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 02/08/21
The Property is Legally Described as:

LOTS "A" AND "B" AS SHOWN ON THE PLAT OF SURVEY OF A PART OF SECTION 23, TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DEKALB COUNTY, ILLINOIS, MADE BY W.M. HAY, SURVEYOR, FOR J.A. SOLON, OWNER AND RECORDED JANUARY 11, 1924, IN PLAT BOOK "D", PAGE 88, (EXCEPTING THEREFROM THE FOLLOWING: THAT PART OF SAID LOT "B" DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID LOT "B" ON THE NORTHERLY RIGHT OF WAY LINE OF FISK AVENUE (FORMERLY NORTH AVENUE); THENCE NORTHEASTERLY ALONG THE EASTERLY LINE OF SAID LOT "B", A DISTANCE OF 132. FEET; THENCE NORTHWASTERLY PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT "B", A DISTANCE OF 130.2 FEET TO THE NORTHWASTERLY LINE OF SAID LOT "B"; THENCE SOUTHWASTERLY ALONG THE NORTHWASTERLY LINE OF SAID LOT "B", A DISTANCE OF 60.4 FEET TO AN ANGLE POINT IN THE BOUNDARY LINE OF SAID LOT "B"; THENCE SOUTHWASTERLY ALONG THE WESTERLY LINE OF SAID LOT "B", A DISTANCE OF 81.6 FEET TO THE SOUTHWASTERLY CORNER OF SAID LOT "B"; THENCE SOUTHEASTERLY ALONG THE SOUTHERLY LINE OF SAID LOT "B", A DISTANCE OF 170.5 FEET TO THE POINT OF BEGINNING), ALL SITUATED IN DEKALB COUNTY, ILLINOIS.

Commonly known as: 145 Fisk Avenue, DeKalb, IL
PIN: 08-23-103-027