RESOLUTION 2018-168  PASSED: DECEMBER 18, 2018

AUTHORIZING A PRELIMINARY DEVELOPMENT INCENTIVE AGREEMENT FOR THE RENOVATION OF THE EGYPTIAN THEATRE, 135 N. 2ND STREET, DEKALB, ILLINOIS.

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

WHEREAS, the property located at 135 N. 2nd Street ("the Theatre"), is currently owned by Preservation of the Egyptian Theatre ("Owner"), and

WHEREAS, the City has identified the Theatre as being of significant importance to the identity and character of the downtown; and

WHEREAS, the success of the Theatre results in a direct economic benefit to businesses throughout the community; and

WHEREAS, the Theatre in its current configuration is underutilized and meets the definitions within 65 ILCS 5/11-74.4 for the City to support redevelopment of the Theatre through the use of Tax Increment Financing; and

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

WHEREAS, Owner has proposed to commit funds to the completion of improvements of the Theatre, 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 underutilized 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 7-0 roll call vote. Aye: Jacobson, Finucane, Fagan, Noreiko, Verbic, Faivre, Smith. Nay: None.

ATTEST:

[Signature]
LYNN A. FAZEKAS, City Clerk

[Signature]
JERRY SMITH, Mayor
Prepared by and Return to:
City of DeKalb
ATTN: City Attorney
200 S. Fourth Street
DeKalb, IL 60115

EGYPTIAN THEATRE
PRELIMINARY DEVELOPMENT INCENTIVE AGREEMENT
CITY OF DEKALB
This Preliminary Incentive Agreement (the "Agreement") is made and entered the 1st day of January, 2019 by and among the City of DeKalb, an Illinois municipal corporation located in DeKalb County, Illinois, (the "City"), and Preservation of Egyptian Theatre, Inc. (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 of record of approximately 0.4 contiguous acres of real property at 135 N. 2nd Street, situated with frontage on 2nd Street and Locust Street 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 of land. The Property has been operated as a not for profit theatre ("the Theatre") and requires public and private financial support to operate the Theatre and maintain the Property. The Theatre is unable to pay for the operation and generate adequate revenue to keep up with the ongoing maintenance and make necessary capital improvements to preserve the building and make it operational year round. The Theatre requires major investment and renovation in order to be useful on a year-round basis (and so as to generate adequate revenue to cover both operational and capital expenditures), and failing such investment, the Theatre will be unable to function in an economically viable fashion, will decline in value, will deteriorate, and will contribute to neighborhood blight. The Theatre has been identified as having a significant positive economic impact on the value of surrounding properties, generating positive impacts on tourism, spending, sales tax generation, restaurant and bar sales tax generation, hotel-motel tax, resulting positive impacts on business and property valuation and thereby further generating an increase in neighborhood property taxes. The Owner has developed conceptual plans to undertake major capital improvements to the Theatre to expand its utility, profitability, ability to draw audiences (and generate the secondary benefits contemplated above), and to maintain the Theatre and address blight in accordance with this Agreement. The Property is proposed to be improved 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 construction of an expansion to the Theatre to provide modern restroom facilities, guest services areas and hospitality areas, the inclusion of provisions to serve food and beverages, renovation required to improve access to the Theatre to persons with disabilities, and related improvements. The Plans contemplate the improvement of portions of the Property and Theatre in a fashion necessary to complete the capital improvements and make it operational year-round, bring the Theatre into compliance with applicable building codes, as the existing conditions, having been constructed in 1929, are deficient with respect to accessibility for persons with disabilities and related building code requirements. The Plans also contemplate the installation of a modern heating, ventilation and air-conditioning system necessary to provide climate stabilization for the Theatre, as the present lack of air-conditioning generates conditions within the Theatre that render it unusable in warm months, and that also cause the incursion of significant high-humidity within the Theatre,
damaging the historic plaster and fixtures, and causing accelerated deterioration of other improvements therein.

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. The Property is presently zoned in a fashion anticipated to be consistent with the Plans. If, however, final plans show conditions that require the granting of any zoning permits or permissions, then undertaking that rezoning process will require 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, 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 (if necessary), and otherwise to proceed with the proposed project, subject to the contingencies outlined herein. The Owner has also indicated that a substantial source of funding for the project contemplated herein, to supplement the incentive contemplated herein, is the solicitation of charitable donations and fundraising efforts. The Owner has indicated that such efforts are more productive where the Owner can demonstrate a committed source of dollars to match contributions and/or to meet a portion of the costs of completing the project, thus necessitating the City to commit to the project as described herein, and to provide the funding contemplated herein on an expedited basis.

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. **Preliminary Contingencies:**

The Parties acknowledge and agree that the Property, as presently zoned, is anticipated to be appropriate for the use contemplated by the Plans. If it should be necessary to address the zoning of the Property, the Parties agree that they shall collaborate regarding the granting of any variances, special uses, or other zoning changes of the Property. The Parties shall determine conclusively whether any zoning change is required within ninety (90) days of the date of approval of this Agreement, and if any zoning action is required, the Owner shall promptly petition the City to initiate the same, and the City shall diligently process the petition(s) consistent with the City’s Unified Development Ordinance.

Providing that the Owner fully satisfies all contingencies outlined in this Agreement the City hereby pledges the TIF funds the City has then available, up to the amount identified herein, for the Project. Owner acknowledges and agrees that the City is not representing that it currently has sufficient TIF funds to satisfy the City’s funding obligations anticipated by this Agreement, and in evaluating this Agreement and the potential to develop the Property, Owner 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 hereby allocates and dedicates the TIF funding it has available 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. Should the Parties determine that additional property is required, the Parties agree to collaborate in good faith regarding the acquisition of lease or purchase rights to such additional property in accordance with applicable laws.

In addition, the Parties acknowledge that the Owner is required to acquire, from the City, a portion of the existing alleyway commonly referred to as Palmer Court, which the City owns in fee simple. The Parties acknowledge that pursuant to the Plans, a portion of such alleyway is required by Owner for completion of the project described herein. The City agrees that, contingent upon approval of the final development agreement contemplated herein, it shall initiate the process required to consider conveyance of such property pursuant to applicable law. The configuration and exact location of the area considered for conveyance shall be as specified in the final development agreement.

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, 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 any component of the operation of the Property that is subject to licensure (such as liquor licensure or fire life-safety licenses), agree to reasonable operational
standards to be identified in a final development agreement requiring the Owner to consent to the licensure of the Property, provision of public safety camera access on the outside of the building, and consent to inspections of the Property and related conditions re same. 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 improvements, if any are required, site control regulations, review and permitting processes and related matters in keeping with the City’s codes and policies that are generally applicable to similar development projects. The Owner acknowledges that the city’s customary requirements shall be incorporated into a final development agreement for the Property, with Owner’s acceptance of such terms being required in order to satisfy the contingency described in herein.

The Parties further agree and acknowledge that they have discussed the operation of the Property by Owner, as well as the disposition of the Property should Owner cease operation of the Property or should its use as a not-for-profit operation propose to cease. The final development agreement contemplated above shall be required to include terms and conditions mutually acceptable to the Parties with respect to the ownership and operation of the Theatre, as well as conditions securing its continuing benefit and availability to the community. The final development agreement shall also provide the City with membership on the Owner’s governing body, in form and content mutually acceptable to both Parties.

The Owner shall also, at the time of approval of the final development agreement, provide adequate assurance and evidence of its financial capacity to complete the project as described herein, or such portion of it as the City shall be contributing funds towards the costs of.

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, engineering documents and related documents and any required petitions or applications or rezoning or other required approvals, and shall initiate any zoning changes of the Property necessitated by the Project, within ninety (90) 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 of rightful and/or voluntary termination of the subject occupancies.

4) 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.

5) Upon approval of the final plans and a final development agreement 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.

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

7) 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, as currently configured, does not allow for realization of its full economic impact to the downtown, nor does the lack of modern mechanical equipment provide adequate climate control necessary for the preservation of its unique architectural features. 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 Owner 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 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 Four Million Dollars ($4,000,000) 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 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"). All provisions of this Article V are contingent upon the Owner obtaining final approval of its plans as described above. The total Development Incentive shall be an amount not to exceed the lesser of: 1) $2,500,000; or, 2) the sum of all TIF Eligible Costs as defined herein. Should the Project Completion Costs for the completion of the entirety of the project as described herein cost less than the anticipated $4,000,000, the City shall not diminish the amount of the Development Incentive, but Owner shall be required to deposit such savings (calculated as the sum of $4,000,000 less the actual Project Completion Costs) into a segregated account for expenditure towards future Capital Costs associated with the future and further improvement of the Property, and shall provide the City with documentation of such segregation of funds, and proof of use of such funds, in form and content acceptable to the City. "Capital Costs", for purposes of this limitation, shall exclude maintenance and operational costs, and shall be limited to capital costs for future improvements to the Property for projects described in the attached Exhibit C, or any amendments thereto that may be approved by the City hereafter.

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 final 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; costs associated with processing lien waivers and payment of project expenses; contractor, subcontractor and materialmen costs; mobilization, site-heating, temporary utility or other construction related costs; permit fees, tap-on, connection or recapture fees; delivery expenses; costs of permanent fixtures, furnishings and equipment; costs of constructing any public improvements that are directly associated with the completion of the project (e.g. sidewalks, driveway aprons, lighting); and other costs that are directly related to the construction 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 or relocating 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 final development agreement.

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 final development agreement for the Property, if approved.

D. **Payment of Development Incentive:**

The timing of payments of the Development Incentive shall be as established in the final development agreement for 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 grant. 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 from the escrow account described above (i.e., complete payment of all incentivized expenses), and concluding on the date which is the thirtieth anniversary of said date. The terms of forgiveness shall require the Owner to maintain operations of the Theatre for the duration specified above, in accordance with the terms of this Agreement and the final development agreement for the Property (and any amendments thereto). Should Owner so perform, the incentive contemplated herein shall be deemed to have been forgiven in full. Should the Owner fail to perform, 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. Notwithstanding the foregoing to the contrary, the City understands and agrees that the Owner may have legitimate need to borrow additional funds in the future from third party sources for necessary capital improvements or other things, and the City hereby agrees that it shall subordinate its mortgage to other commercially reasonable mortgages and/or interests that are reasonably necessary for operation of the Theatre and maintenance of the Property, provided that Owner is not in default and there is no other similar cause for the City to refuse to subordinate its loan and mortgage. The City Manager shall be authorized and directed to approve such subordination without requirement of City Council approval.

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.

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 year (“FY”)) 2019. In order to secure commercial financing and donated funds, 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 final development agreement for the Property and the satisfaction of the contingencies outlined herein (and any conditions precedent identified in the final 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 final 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. The Parties further agree that should the City take action to create the proposed TIF 3, the Parties shall undertake a mutually acceptable amendment to this Agreement, to transfer the obligation contemplated herein from TIF 1 to TIF 3. The Parties further acknowledge that TIF 3, if created, is projected to not have adequate fund balance or incremental revenue to cover the costs and obligations contemplated herein, again rendering the transfer or porting of funds necessary.

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 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 reasonably determines that the final plans are not acceptable in keeping with applicable Codes, regulations and laws, then the City may terminate this Agreement upon provision of written notice to Owner, providing that the City provides the Owner written notice of the specific reasons that the plans are not acceptable and a reasonable opportunity, but not less than forty-five (45) days, for the Owner to revise the plans and address the deficiencies.
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. 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 final development agreement contemplated herein upon Owner's satisfaction of all contingencies described above, which amended agreement shall have a term of not less than thirty (30) 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:
Egyptian Theatre
135 N. 2nd Street
DeKalb, IL 60115

With a Copy To:
Kevin G. Drendel
Drendel & Jansons Law Group
111 Flinn Street
Batavia, IL 60510
(630) 406-5440
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]
   - Exhibit C: [Capital Projects List]

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: Jerry Smith, Mayor

Lynn A. Fazekas, City Clerk

PRESIDENT

 By: [Signature]

Attest: [Signature]

OWNER:

By: [Signature]

Attest: [Signature]

Printed Name: DANIEL J. SCHONE

Printed Name: Jason Michnaik
Exhibit A: Legal Description of the Property

The Property is legally described as:

PIN: 08-23-158-005

COMMON ADDRESS: 135 N. 2ND STREET DEKalB, ILLINOIS

PARCEL 1: THE EAST 3 FEET OF LOTS 51 AND 52; LOT 58 (EXCEPT THE SOUTH 168.3 FEET THEREOF) AND ALL OF LOT 66 AS SHOWN UPON A PLAT OF THE COUNTY CLERK'S SUBDIVISION OF BLOCK 1, CITY OF DEKalB, RECORDED AS DOCUMENT NO. 103420 IN BOOK "F" OF PLATS ON PAGE 22 IN THE DEKalB COUNTY RECORDER'S OFFICE AT SYCAMORE, ILLINOIS (EXPECTING THEREFROM THE FOLLOWING: THAT PART OF LOT 58, COUNTY CLERK'S SUBDIVISION OF BLOCK 1, DEKalB, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 58; THENCE EASTERLY ALONG THE NORTH LINE THEREOF TO THE NORTHEASTERLY CORNER THEREOF; THENCE SOUTHERLY ON THE EASTERLY LINE THEREOF A DISTANCE OF 3.04 FEET TO A POINT WHICH IS THE INTERSECTION OF SAID EASTERLY LINE AND THE EASTERLY PROLONGATION OF THE SOUTH LINE OF THE WESTERLY 90 FEET OF LOT 52 OF SAID SUBDIVISION; THENCE WESTERLY ALONG SAID EASTERLY PROLONGATION A DISTANCE OF 21.15 FEET TO THE WESTERLY LINE OF SAID LOT 58; THENCE NORTHERLY ALONG SAID WESTERLY LINE TO THE POINT OF BEGINNING, EXCEPTING FROM THE ABOVE DESCRIBED THE EASTERLY 3 FEET THEREOF.)

PARCEL 2: A PART OF LOT 67 OF THE COUNTY CLERK'S SUBDIVISION OF BLOCK 1 DESCRIBED AS FOLLOWS TO-WIT: COMMENCING AT A POINT ON THE WEST LINE OF LOT 67 129.7 FEET SOUTH OF THE NORTH LINE OF SAID LOT 67; THENCE EASTERLY ALONG THE SOUTH LINE OF SAID LOT 67 4.2 FEET; THENCE NORTHERLY PARALLEL WITH THE WESTERLY LINE OF SAID LOT 67 8.5 FEET; THENCE WESTERLY PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 67 4.2 FEET TO THE WESTERLY LINE OF SAID LOT 67 THENCE SOUTH ALONG SAID LINE TO THE PLACE OF BEGINNING, ALL IN DEKalB COUNTY, ILLINOIS.
D2  MEZZANINE - EXG. CONDITION PLAN
EGYPTIAN THEATRE ADDITION
DEKALB, ILLINOIS
01-30-2018

A2.2  MEZZANINE CONCEPT PLAN
EGYPTIAN THEATRE ADDITION
DEKALB, ILLINOIS
A3.1   EAST & WEST ELEVATIONS

EGYPTIAN THEATRE ADDITION
DEKALB, ILLINOIS
Group Exhibit C: Capital Projects List

- Electrical repairs and upgrades
- Mechanical repairs and upgrades
- Plumbing repairs and upgrades
- Building safety and security system repairs and upgrades
- Historical restoration work
- Roof and structural repairs
- Tuckpointing
- Accessibility upgrades