

DATE: March 20, 2019

TO: Bill Nicklas, City Manager

FROM: Dean Frieders, City Attorney

SUBJECT: Authorizing a Final Tax Increment Financing Incentive for the Rehabilitation of the Properties Located at 241-249 E. Lincoln Highway (Hometown Sports Bar & Grill).

I. Summary

This item relates to the proposed approval of a final development agreement for the Hometown Sports Bar & Grill project.

II. Background

On December 18, 2018, the City Council approved a preliminary development agreement with Hometown Sports Bar & Grill, 241-249 E. Lincoln Highway, relating to a proposed redevelopment of their property, to incorporate an expansion into the adjacent property. The property owner has since completed final plans for the property, obtained building permits for the proposed improvements, and is prepared to complete the improvements contemplated.

This incentive is established as a \$150,000 tax increment financing (TIF) incentive towards a total project cost of \$558,935, or roughly 27% of the total project costs. The incentive will be paid at the lesser of \$150,000, 27% of total project costs, or the total of all TIF eligible costs. In the event that project costs exceed \$558,935, the City Manager is authorized to increase the development incentive to an amount not to exceed \$167,616, and again limiting the incentive to not exceed 27% of total project costs, and not to exceed all TIF eligible costs. This contingency funding was included in the preliminary incentive agreement that Council approved and is included based upon the direction from City Council to include such funding in development agreements of this nature, where substantial rehabilitation work is being performed in older buildings that pose a significant potential for unanticipated costs. The agreement is forgiven over the period of 10 years, with 10% forgiveness each year. The agreement is not performance based, as per the preliminary agreement that was approved by Council in December.

The owner is still obligated to apply for a special use permit for the outdoor bar area, but given the owner's interest in proceeding expeditiously on project improvements, the development agreement is not contingent upon that special use permit being approved.

The owner has requested inclusion of language in the agreement contemplating the potential that the business could, at some future date, be sold to another entity as an ongoing enterprise. The agreement includes language authorizing the City Manager to approve of such an assignment, provided that the new owner acknowledges the obligations of the agreement and provides a replacement promissory note and mortgage.

III. Community Groups/Interested Parties Contacted

The preliminary development incentive agreement was approved on December 18, 2018 and now returns for consideration of final approval at a City Council meeting to allow an opportunity for public consideration and discussion.

IV. Legal Impact

The City has the legal ability to approve of and thereafter enforce the terms of the development agreement.

V. Financial Impact

This item has a related cost of between \$150,000 and \$167,616 of TIF funding. As the property is within TIF 3, the City will determine, at the time of funding, whether there are adequate balances of funding within TIF 3 or whether it is necessary to transfer (port) funds from another TIF district.

VI. Options

1. City Council may approve the resolution and related development incentive agreement.
2. City Council may disapprove of the resolution.
3. City Council may amend the resolution and/or the development incentive agreement to include alternate or additional terms.

VII. Recommendation

Approval of the resolution is recommended.



RESOLUTION 2019-057

AUTHORIZING A FINAL TAX INCREMENT FINANCING INCENTIVE AGREEMENT FOR THE REHABILITATION OF THE PROPERTIES LOCATED AT 241-249 E. LINCOLN HIGHWAY, DEKALB, ILLINOIS (HOMETOWN SPORTS BAR & GRILL).

WHEREAS, the City of DeKalb is a home-rule municipality with the power and authority conferred thereupon by virtue of the Illinois Constitution and Illinois Municipal Code; and

WHEREAS, the City has previously, on December 18, 2018, approved a certain Preliminary Development Incentive Agreement for the Hometown Sports Bar & Grill; and

WHEREAS, the City seeks to now approve of a Final Tax Increment Financing Agreement for the aforesaid project;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

SECTION 1: The City of DeKalb hereby approves of a Final Tax Increment Financing Development Incentive Agreement, substantially in the form attached hereto as Exhibit A, subject to such minor changes as shall be acceptable to the Mayor with the recommendation of the City Manager. The Mayor is authorized and directed to execute the same, and thereafter, City staff are authorized and directed to take all such actions as shall be required to effectuate the same.

SECTION 2: That the City Clerk of the City of DeKalb, Illinois be authorized and directed to attest the Mayor's Signature and shall be effective thereupon, following execution as outlined in the preceding section.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a Regular meeting thereof held on the _____ day of _____, 2019, and approved by me as Mayor on the same day.

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

241-249 E. LINCOLN HIGHWAY
HOMETOWN SPORTS BAR & GRILL
TAX INCREMENT FINANCING INCENTIVE AGREEMENT
CITY OF DEKALB

This Development Incentive Agreement (the "Agreement") is made and entered the _____ day of _____, 2019 by and among the City of DeKalb, an Illinois municipal corporation located in DeKalb County, Illinois, (the "City"), and _____ (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 that certain real property identified as 241-249 E. Lincoln Highway, situated on the north side of Lincoln Highway in the City of DeKalb, DeKalb County, Illinois, which property is legally described on Exhibit A attached hereto and incorporated herein by reference as the "Property".
- B. The Property is comprised of two parcels and two existing two-story structures with basements. The existing buildings are attached and share a common wall. The Owner has acquired the Property and each parcel therein, and proposes to redevelop the Property as a mixed-use, commercial and residential development in accordance with this Agreement. The Property is proposed to be developed in accordance with the description of work attached hereto as Exhibit B ("the Plans"), except as such description is required to be modified under the terms of this Agreement. The Plans contemplate the modification of the existing building upon the Property ("the Building"), and provide preliminary architectural and elevation information.
- C. The City and the Owner thus have negotiated and have voluntarily entered into this Agreement for purposes of enabling the redevelopment of the Property consistent with the Plans and this Agreement. The Parties previously approved certain Preliminary Development Agreement relating to the Property on December 18, 2018.
- D. The City acknowledges that the Owner's proposed use of the Property, as set forth in this Agreement, will be compatible with and will further the planning objectives of the City and that the redevelopment of the Property to the City will be of benefit to the City, will permit orderly growth, planning and development of the City, will increase the tax base of the City, and will promote and enhance the general welfare of the City and its residents. The Parties further acknowledge that the Property is zoned Central Business District (CBD).
- E. All notices, publications, procedures, and other matters attendant to the consideration and approval of this Agreement have been given, made, held and performed by the City as required by the Illinois Municipal Code, and all other applicable statutes, and all applicable ordinances, regulations and procedures of the City.
- F. 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 F, both inclusive of the foregoing recitals are true and accurate and incorporate such recitals into this Agreement as if fully set forth in this Article I.

ARTICLE II: ZONING OF THE PROPERTY

A. Zoning Applicability:

The Parties acknowledge and agree that the CBD zoning applicable under existing zoning regulations is and shall be the zoning for the Property unless and until the Parties mutually agree to an amendment thereto. The Parties acknowledge that this Agreement is not being utilized to modify the zoning applicable to the Property. However, use of the Property in contravention of the provisions of this Agreement shall constitute a material breach of this Agreement and shall authorize immediate declaration of a default by the City.

The Parties also acknowledge that under Section 5.09.03 of the Unified Development Ordinance, the outdoor patio proposed for the Property requires issuance of a Special Use Permit. Owner agrees that it shall apply for such special use permit as soon as possible. In the event that the special use permit is granted (with or without conditions), then Owner shall comply with any conditions of approval associated therewith, as a condition of the Special Use and as a condition of this Agreement. In the event that the special use permit is not granted, then the City Manager shall be authorized to approve of a revised scope of the project contemplated herein, and revised scope of the incentive (if applicable) so as to remain within the parameters of this Agreement.

B. Permitted Residential Uses:

- 1) Not more than three (3) residential units shall be permitted on the second floor of the Property.
- 2) The residential apartments permitted shall be furnished and maintained with Premium Finishes, which shall be determined by the City Manager, whose approval shall not be unreasonably withheld or conditioned.
- 3) No residential use shall be permitted on the first floor or basement level of the Property.

C. Permitted Commercial Uses:

Within the non-residential portions of the first and second floors of the Building and any portion of the basement of the Building allocated to supporting such non-residential areas, the permitted commercial uses shall be exclusively limited to those uses which are permitted in a CBD zoning district.

D. Prohibited Uses:

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

- 1) Any use which is not expressly authorized as a Permitted or Special Use in the CBD zoning district.

- 2) Any residential use other than one standalone residential apartment as contemplated above (and more specifically, any use which would constitute a "rooming house" or dormitory under applicable City Ordinances, or which contemplates the use of shared bathroom or kitchen facilities, shall be prohibited).
- 3) Community residences.
- 4) Group homes.
- 5) Parking lots, as a principal use (and more specifically, any lease, rental or otherwise offering use of on-site parking by any party other than a resident or employee of the Property).
- 6) Outdoor storage of any form not expressly authorized herein.
- 7) Sales or construction trailers, intermodal shipping containers, van trailers or similar items used for storage or office purposes, temporary structures or similar appurtenances used for office, work or storage purposes. Any such item shall be deemed to be used for office, work or storage purposes if it remains on the Property in one exterior location for more than twenty-four (24) hours at any given time. Notwithstanding the foregoing, this Section shall not apply during any time when there is a building or demolition permit outstanding.
- 8) Adult oriented uses; adult bookstores or other establishment displaying, leasing, trading, or selling pornographic materials or any similar use as defined in the UDO, whether as a principal use or accessory to an allowed principal use (the foregoing not prohibiting a general audiences bookstore with not more than 1% of its merchandise being adult-oriented).
- 9) Animal boarding.
- 10) Fire, bankruptcy sale, wholesale, overstock auction house or their equivalent (except that a Court-Ordered bankruptcy sale of less than thirty days duration shall be permitted).
- 11) Massage parlor or other similar massage establishment.
- 12) "Head shop", marijuana dispensary, hookah bars, or establishments that specialize primarily in the sale of tobacco, tobacco paraphernalia, glass pipes, implements utilized to burn or concentrate a substance for the purpose of permitting the smoke, fumes or vapor therefrom to be inhaled, or drug paraphernalia.
- 13) Cemeteries and mausoleums.
- 14) Funeral homes and mortuaries.
- 15) Automobile, truck, motorcycle, ATV, motor-scooter or motor vehicle/recreational vehicle/implement repair, service, sales, rentals, parts or components sales or installation, or maintenance.
- 16) Contractor offices associated with onsite storage of vehicles, supplies or equipment, building material or equipment sales, building or equipment service or maintenance offices, or the equivalent (except that temporary contractor offices present during demolition or construction activities on the Property shall be permitted).

- 17) Warehouses, whether accessory to a retail use, or self-service storage.
- 18) Tattoo parlor, massage parlor, psychic reading / tarot card shop.
- 19) Church or religious uses.
- 20) Gas or fuel station or any form of car wash or auto detailing center.
- 21) A dollar store or a discount department store or wholesale establishment.
- 22) A second-hand store.
- 23) A cash for gold store.
- 24) A full service, FDIC-insured bank, credit union, retail bank, consumer banking institution or savings and loan.
- 25) Currency exchange, money wiring, check cashing facility or equivalent (as a primary use).
- 26) Auto title loan or post-dated check or payday loan facility or equivalent, unless associated with a full-service federally-insured bank, credit union or savings and loan.
- 27) Pawn shops.
- 28) Fitness clubs or workout facilities (other than as permitted subordinate to the residential use described above).
- 29) Drive-thru facilities.

E. Building Related Provisions:

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

- 1) All renovations on the Property shall be built in compliance with the Plans in terms of design, elevations, appearance, aesthetics and building materials, which contemplate replacing existing building materials with like-kind materials of similar appearance and quality, in accordance with all applicable building codes. The Owner shall design, install and/or construct all signage, landscaping, lighting and improvements in conformance with the approved final plans. The exterior design, elevations, appearance, dimensions and building materials proposed for any structure or sign proposed to be built on the Property which does not directly comply with these requirements shall be subject to separate review and approval by the City Council, in its reasonable discretion. Following the installation of such materials, the Owner shall maintain such materials (including the exterior of the building, landscaping, parking areas and other portions of the Property) in good condition and shall take appropriate actions necessary to prevent the deterioration of the Property or its appearance, excepting ordinary wear and tear that does not violate applicable property maintenance codes. The Parties agree and acknowledge that environmental factors, such as the appearance and maintenance of a structure, have a significant impact on crime and on surrounding properties. Accordingly, the Parties agree and acknowledge that inherent in the incentive granted herein is the Owner's affirmative obligation to comply with all

applicable property maintenance codes to maintain the attractiveness and appearance of the Property. The failure to maintain the building façade, architectural improvements, landscaping or other aesthetic components of the Property that are either described herein or contemplated in the Plans shall constitute a violation of this Agreement.

- 2) Any future proposal to remodel any portion of the Property which would: a) change the number of units or bedrooms at the Property; or, b) add additional or revised structures, outdoor signage, facilities or reductions in landscaping shall be subject to review and approval by the City Manager, or at the Manager's discretion, may be required to be submitted to the City Council for review and approval. Such approval shall be at the reasonable discretion of the City. In addition, any zoning review and approval contemplated under City Code shall be required.
- 3) The Owner shall reasonably comply with any request of the City to install, at the City's cost and expense, wireless internet access points or other similar and related equipment on the Building or Property to permit the use of the Building or Property to aide in the provision of public internet and communications access, provided that such installation can be accomplished in such a fashion as to not impede the aesthetic appearance of the Building.
- 4) The Owner shall reasonably comply with any request of the City to install, at the City's cost and expense, security cameras on the Building or Property for use by the City, provided that such cameras are installed to monitor only public property or public access areas of the Property (e.g. the alley at the rear of the Property), and further provided that such installation can be accomplished in such a fashion as to not impede the aesthetic appearance of the Building.

F. Property Related Provisions:

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

- 1) Owner shall collaborate with the City on the location and installation of fiber optic cables on the Property, in such locations as the City shall reasonably request, to permit service of the Property or other properties by fiber optic connections. Where and if Owner is installing fiber optic service within the Building, Owner shall install additional fiber optic cables for use by the City in providing public wireless internet access and/or security cameras as described herein, at the cost and expense of the City, upon request (and Owner shall reasonably collaborate with the City on such routing). Where Owner is running fiber optic cables on the Property or permitting others to cross the Property with such cables, Owner shall provide the City an opportunity to provide its own cables to be installed in the same location, at the cost and expense of the City.
- 2) Owner shall grant the City such public access and/or public utility easements as shall be reasonably requested by the City at the time of final plan approval.
- 3) Any marketing signs, off-site signage or temporary signs of any form shall be installed only in strict compliance with the applicable provisions of the UDO pertaining to permitting and authorization of such signs.

G. Parking Provisions:

The Parties acknowledge that Owner is not required to provide parking within the development standards applicable in the CBD zoning district.

H. Permitted Outdoor Storage:

Owner presently utilizes the regional garbage disposal facilities in the City's Central Business District. Should Owner seek to utilize separate outdoor dumpsters, trash compactors, and similar rubbish disposal facilities, they shall be permitted on the Property only in accordance with plans that are reviewed and approved by the City. All such facilities shall be completely screened from view with a fence constructed of materials and colors matching the principal building it services. No other outdoor storage shall be permitted, and no storage of dumpsters or garbage or recycling containers shall be permitted outside.

ARTICLE III: DEVELOPMENT AND MAINTENANCE OF THE PROPERTY

A. Owner's Responsibility to Maintain:

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

B. Backup Special Service Area:

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

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

If at any time the Owner fails to conduct the Common Facilities Maintenance within a reasonable time after being notified by the City to do so, then the City shall have the right, but not the

obligation, to undertake such maintenance and utilize the SSA to provide sufficient funds to pay the costs of the Common Facilities Maintenance undertaken by the City. The Owner shall, upon the request of the City, grant the City an easement ("Common Facilities Maintenance Easement") over all of those Common Facilities located on the Property in favor of the City. The substance of the Common Facilities Maintenance Easement shall be as approved by legal counsel for the City. Said SSA shall have a rate as reasonably determined by the City Engineer not in excess of two hundred-hundredths percent (2.0%, being 200¢ per \$100). Approval of this Agreement shall be deemed to constitute consent to the City's establishment of a special service area as herein described.

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

Owner shall execute a copy of the Waiver of Objection to Special Service Area in the form substantially as attached hereto as Exhibit G contemporaneously with the execution of this Agreement. Notwithstanding the foregoing, the SSA shall be dormant and inactive until such point in time as the City determines that activating the SSA is required in order to fulfill the purposes outlined above.

C. Owner Surety:

The Parties acknowledge and agree that the City is advancing sums pursuant to the Development Incentive that shall be secured by a mortgage, note and personal guarantee which may be subordinate to other loans, liens and encumbrances.

D. Security for Public Improvements:

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

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

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

improvements. To secure the performance of this obligation, the Owner shall provide appropriate performance security as required by City Code.

F. Stop Work Orders:

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

G. Compliance with City Ordinances and Applicable Regulations:

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

H. Site Control:

Owner acknowledges that, depending on weather conditions, construction traffic creates debris, especially dirt, dust, and mud clots on streets and roadways adjacent to the construction site. Owner agrees that it shall inspect and clean the streets and roadways adjacent to and within 300 feet of the entrance to Owner's construction site, and take measures to control dust and debris daily while construction is occurring on said site. Owner shall also patch or repair damage to any roadway, path, driveway, sidewalk or other similar improvement which may be damaged during the course of Owner's construction or maintenance activities. As security for such obligations, and as a condition of the approval granted herein, this Agreement shall constitute Owner's

guarantee of this obligation. In the event Owner fails to clean the Property, pick-up debris or repair, or fails to patch or repair any street, path, roadway or sidewalk within two business days after receipt of notice from the City of Owner's failure to comply with this provision, then the City may perform or contract with others to perform such undertaking and invoke this provision. Owner shall, within 15 business days following written notice from the City, pay all such costs.

I. Building Codes:

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

ARTICLE IV: PROJECT STAGING

Owner shall complete renovation of the Building within six (6) months of the date of approval of the final plans by the City. The City Manager may extend this time period by up to an additional six (6) months upon written request of the Owner, without requirement for further City Council action.

ARTICLE V: FINAL PLAN APPROVAL

Except as provided below, the City hereby approves of the final plans, and/or notes the previously granted approvals listed.

- 1) Special Use Permit: Approval of a Special Use Permit shall be made as soon as practical. Any plans approved through the Special Use Permit approval process shall constitute final approval (once revised to comply with any conditions of approval).
- 2) Building Plans: Building plan approval and associated permit issuance has already occurred.
- 3) Other Plans: Any other plans or documents required to be included in the final plans as defined herein shall be subject to approval by the party authorized to issue such approvals pursuant to City Code or, if no person is specified, by the City Manager or designee.

ARTICLE VI: INTENTIONALLY OMITTED

ARTICLE VII: FEES AND CONTRIBUTIONS

A. Specified Fees:

The Owner shall pay all fees imposed under City Ordinance in the amount and in the time as described by such applicable Ordinance, unless waived herein. The City and Owner shall, at the time of payment of any required fee, cooperate to determine the amount of the fee due.

- 1) Building Permit Fees: The Parties acknowledge that the Property is subject to building permit fees as proposed to be developed and constructed. The Owner shall pay all such fees, the costs of which may be incorporated into the Owner's reimbursement request.

B. Fees Specifically and Uniquely Attributable:

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

C. Owner Responsibility for Costs:

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

- 1) Prior to the sale, assignment, lease or other transfer of any portion or portions of the Property, Owner shall provide not less than thirty (30) days' notice to the City that such transfer is contemplated. Transfers among or between family members related by blood or marriage, or between trusts, corporations, partnerships or limited liability companies which are entirely owned or controlled by family members related by blood or marriage, shall not be construed as transfers giving rise to a potential obligation under this subsection.
- 2) Within fifteen (15) days of the receipt of such notice, the City shall provide Owner with a calculation of the total amount believed to be outstanding as costs for which Owner is responsible. Owner shall then have fifteen (15) days to make written objection to any such notice. Upon said objection, if any, the Parties agree to review in good faith and work toward the resolution of the notice and related costs for which the City claims Owner is responsible within an additional fifteen (15) days and in any event prior to the closing of the consummation of such transfer.
- 3) Prior to, or at the closing of, the consummation of such transfer, Owner shall cause all such amounts to be paid to the City, unless an Owner objection remains unresolved, in which case either Party may proceed with a legal action as detailed hereinafter.
- 4) At any time within ninety (90) days following consummation of such a transfer, the City shall provide final calculations of the total amount due from Owner and Owner shall pay all such amounts within thirty days of the City providing such notice.
- 5) In the event of a failure of Owner to comply with this subsection, Owner, along with the

interest holder to which an interest in the property subject to this Agreement was transferred, shall be jointly and severally liable to the City for all such amounts described above.

- 6) Any notice of amounts so due under this agreement shall include accurate and complete (to the extent that such documentation exists) documentation from the City.

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

- 1) Issuance of a stop work order on any portion of the Development.
- 2) Refusal to issue further permits for building, occupancy, water tap on, or other development related work.
- 3) Cessation of any utility service provided by the City to any property owned or maintained by Owner or their successors or assigns.
- 4) Institution of appropriate legal action to recover any and all amounts due, or such an action by the Owner to object to the amount claimed due and/or to seek the declaration of a different amount due, in which case the prevailing party to such legal action shall be entitled to attorneys' fees, court costs, other collection costs, and interest at a rate of eight (8%) percent per annum, until such amount, including costs and interest, is paid in full, as against the non-prevailing party.
- 5) Cessation of any or all work on or pertaining to the Property by City staff, employees or consultants.

ARTICLE VIII: DEVELOPMENT INCENTIVE

A. Necessity of Incentive:

The Parties acknowledge that the Property contains conditions that are deficient compared to applicable building codes, are under-occupied and under-utilized, and otherwise present elements of blight, notwithstanding the existence of a TIF District intended to improve property valuation. 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 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 has previously invested \$368,271 in Property Acquisition Costs and is estimated to invest \$190,664 in Property Rehabilitation Costs. The Owner commits that it shall invest not less than \$558,935 in the completion of the project (inclusive of both Property Acquisition Costs and

Property Rehabilitation Costs) as defined herein (collectively, "Project Completion Costs"), and shall proceed to construct all phases of the project (after obtaining required approvals) in a good and workmanlike manner. The City shall provide a total Development Incentive of not more than the lesser of: a) \$150,000, b) the amount which is not more than 27% of the Project Completion Costs; or, c) the total of all TIF-eligible costs incurred ("the Development Incentive").

- 1) Notwithstanding the foregoing, the Parties acknowledge that the nature of construction projects on aged structures such as the Property carries with it certain inherent risks and challenges which are not capable of identification until renovation and destructive activities have commenced. While Owner has undertaken diligent investigation and has sought multiple quotes and estimates for repair work required to be completed, the Parties acknowledge the potential for unanticipated expenses and contingencies. It is the City's intention to incentivize the Owner for redevelopment and renovation of the Property in an amount not to exceed 27% of the Project Completion Costs, subject to certain limits as described herein. In recognition of the risks associated with such renovation of historic structures, the City agrees that should the Owner encounter unanticipated expenses, the City Manager shall be authorized and directed to increase the total Development Incentive payable by the City from \$150,000 to a sum not exceeding \$167,616. In order to increase the Development Incentive, Owner must document additional costs which were not known at the time of preparation of this Agreement, or which are interest or borrowing costs incurred by the Owner during the term of this Agreement relating to construction financing. The total Development Incentive which the City Manager may authorize hereunder shall not exceed the of lesser of: a) \$150,000 plus that sum which is 27% of any Project Completion Costs in excess of \$558,935; b) \$167,616; c) the amount which is not more than 27% of the Project Completion Costs; or, d) the total of all TIF-eligible costs incurred. Should the City Manager invoke this subsection VIII(B)(1), the City Manager shall make a report to the City Council, in writing, and shall require the Owner to complete new exhibits to this Agreement revised to match the final Development Incentive (e.g. the face value of the mortgage and promissory note shall be increased to match the final Development Incentive). The City Manager is authorized to take the actions contemplated in this subsection VIII(B)(1) without requirement of any further Council approval, and should the Director so act, any reference in this Agreement to a lesser sum (i.e. a lesser Development Incentive or lesser Project Completion Costs) shall be read to reflect the final amounts calculated under the Director's authority. Should the Owner submit costs in excess of the original estimate that the City Manager does not approve of, the City Manager may refer the consideration of the request to the City Council for their determination.

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. It shall include: all costs of property acquisition and closing costs, including costs necessary for 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, costs of constructing any public improvements that are directly associated with the completion of the project (e.g. sidewalks, driveway aprons, lighting); and other costs that are directly related to the construction of the Building and the improvements contemplated by the approved final plans.

- 2) TIF Eligible Costs shall include those costs which are eligible for reimbursement under the TIF Act to the fullest extent of the law, including but not limited to site assembly and acquisition costs, demolition and remediation costs, costs associated with providing public utilities to the Property, professional fees associated with the design, architecture, and/or engineering of the Property, and any other TIF eligible costs, whatsoever. TIF Eligible Costs shall *not* include any cost incurred prior to the date of the Preliminary Development Incentive 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 appended hereto as Exhibit E.

D. Payment of Development Incentive:

- 1) No portion of the Development Incentive shall be paid until the Owner has executed a corporate undertaking, promissory note and mortgage substantially in the form attached hereto as Group Exhibit F. The mortgage shall be recorded against the Property, to include and be a valid lien against each such parcel. Said documents shall secure the payment of up to the full Development Incentive and shall contemplate and secure further advances up to that amount.
- 2) The approval of this Agreement shall constitute the full and final approval of the payment of the Development Incentive in the amount described above. This sum shall be payable on a reimbursement basis towards TIF Eligible Costs including but not limited to demolition and remediation costs, and professional fees associated with the design or engineering of the Property, Building or the project as a whole.
 - a. City staff is authorized and directed to make direct payments of such expenses, without requirement of separate City Council review or authorization, provided that the expenses are documented in accordance with Exhibit E. For payment of TIF Eligible Costs, such payments shall be made on a monthly basis, again in accordance with Exhibit E. At the time of payment, Owner shall provide the City with satisfactory evidence of title including lien waivers and other required documentation.
 - b. The City's intention in providing direct payment of such expenditures is to facilitate the rapid redevelopment of the Property to ensure its renovation and return to beneficial commercial use.
- 3) At the time of requesting payout of this incentive, the Owner shall provide the City with documentation of Project Completion Costs and TIF Eligible Costs in the form required under Exhibit E. Said documentation of project costs may include any anticipated interest or closing costs associated with transitioning from construction financing to permanent financing, provided that all such costs are properly documented to the City at the time of closing on such permanent financing and are TIF eligible. The City shall, within a reasonable period after receipt of said documentation, provide the Owner with the final

payment of the Development Incentive (if any). The final payment of the Development Incentive shall be paid to Owner or its assignee, as requested by Owner, and the City Manager shall be authorized to and shall subordinate the City's mortgage(s) to the Owner's permanent financing, and any subsequent private financing obtained by the Owner.

- a. In the event that the Project Completion Costs do not include \$558,935 of total expenses, then the Development Incentive shall be reduced to not exceed twenty-seven percent of Project Completion Costs.
 - b. The Development Incentive shall be payable solely from TIF revenues actually received by the City, and in no event shall the Development Incentive exceed the total of TIF-eligible expenses incurred by Owner following the date of approval of this Agreement. In the event that TIF-eligible expenses are less than the estimated Development Incentive, the Development Incentive shall be reduced to an amount not to exceed the TIF-eligible component thereof.
 - c. All payments contemplated hereunder shall be administered through a title agency acceptable to the City, at Lessee's sole cost. Said title agency shall receive and process all payment requests and review all related documentation, including but not limited to lien waivers, to confirm appropriateness of payment.
 - d. The City shall deposit the anticipated Development Incentive Amount (\$150,000) in escrow with the aforesaid title company upon approval of Owner's final plans, and payments may be made from such escrow as costs are incurred. Such progress payments shall be paid in such a fashion that they do not exceed the percentage limitation described in Section VII(B) above (i.e. any payment from the Development Incentive shall not be paid unless Owner satisfactorily demonstrates that it has incurred and paid Project Completion Costs in an amount such that the payment of the Development Incentive is equal to or lesser than 27% of the Project Completion Costs incurred and paid at the time of partial payment of the Development Incentive).
 - e. Owner is required to provide a personal guaranty, note and mortgage under the terms of this Agreement. The Parties acknowledge that should Owner fail to construct the improvements contemplated herein and/or fail to obtain a final certificate of occupancy after such construction (with successful inspection of all improvements and all portions of the Property), it shall constitute a material breach of this Agreement, which shall entitle the City to immediately declare any portion of the Development Incentive which has been paid to be due and owing to the City, and which shall further entitle the City to take immediate legal action to compel such payment, including but not limited to calling upon the personal guaranty or note, or declaring a default on the mortgage and filing to foreclose the same. Owner acknowledges these provisions and consents to them in order to induce the City to make progress payments from the Development Incentive. The City agrees to the making of progress payments as contemplated herein in order to reduce the Owner's borrowing cost for construction loans, so as to reduce the overall project cost.
- 4) The Parties acknowledge that the Property is presently underutilized, and that completing the renovations contemplated herein is necessary in order to restore the Property to full utilization, as well as to address current conditions within portions of the interior of the Property that fail to comply with applicable building codes and that constitute conditions of blight as defined in the TIF Act. Accordingly, the Owner has requested that the City provide

the incentive contemplated herein immediately, and the project would not be possible but for the immediate undertaking thereof. The Parties acknowledge that for Fiscal Year 2019 ("FY19"), the City is presently projecting a deficit in the Central Area TIF District, commonly referred to as TIF 1, and thus in order to enable this project to be undertaken, the City shall transfer or port funds from TIF 2 to TIF 1 to fund the costs contemplated herein.

- 5) Further, the Parties acknowledge that the area in which the Property is located is presently contemplated to be subject to the recent creation of new TIF District 3. The Parties acknowledge that, should the City determine that this project should be funded from TIF 3, the City may undertake such funding (and transfer any required funding), in its sole discretion, from TIF 1 or TIF 3, as it shall determine to be appropriate.

E. Forgiveness of Development Incentive:

The Development Incentive described herein is intended to be repaid as a forgivable incentive. The incentive shall be forgiven over a ten (10) year period, with ten percent (10%) forgiveness for each year. The term of forgiveness shall commence upon the date which is the later of: the date of last payment of the Development Incentive; the date of issuance of a final certificate of occupancy; the date of any repayment under VIII(D)(3)(c) above; or the date of first commercial occupancy after issuance of a certificate of occupancy. The Owner shall be entitled to each year's forgiveness provided that the Owner continues to comply with all terms of this Agreement, continues to maintain and utilize the Property in compliance with all then-applicable codes, ordinances and regulations, continues to operate the premises and continues to maintain the improvements funded herein. The Owner agrees that it shall maintain its business operations and lease of the Property for the duration of the forgiveness period, as an operational business generating employment and sales tax revenue for the City. In the event that the Owner fails to comply with these standards, the City shall be authorized to declare a breach of this Agreement and to demand repayment of any portion of the Development Incentive not previously forgiven as of the date of the breach. In the event that the Owner contemplates leaving the Property within the forgiveness period due to the expansion of Owner's business or due to relocation within the City of DeKalb, the Owner may request that the City Council waive the provisions of this Article VIII(E). Alternatively, in the event that the Owner seeks to sell the business as an ongoing enterprise, the Owner may request that the City Manager approve the assignment of the obligations described herein to a successor owner, provided that the successor owner executes a written acknowledgment of the obligations of this Agreement and provides a replacement Promissory Note and Mortgage. The City Manager's approval shall not be unreasonably withheld or conditioned.

F. Limitation of Liability:

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

ARTICLE IX. OPERATION OF THE PROPERTY

A. Acknowledgment of Application of Operational Standards:

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

B. Operation and Lease Provisions:

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

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

Owner agrees and acknowledges that it believes each of the foregoing conditions are fully in accordance with all applicable superior governmental mandates, and that it intends to enforce such requirements based upon current law.

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

C. Public Safety Regulations: Trespass/Patrol Agreement:

The Parties shall keep in place at all times a No-Trespass Enforcement Agreement, in the then-current format utilized by the City of DeKalb (with such agreement currently being in the form attached hereto as Exhibit C) and shall cooperate at all times with regard to the enforcement of such Agreements. Further, and without regard to the content of such Agreements, the Owner agrees that it shall provide the City with all keys, codes, passes or other items required to gain

access to the interior common areas of the apartment buildings in each phase of the Property (including but not limited to the common hallways on each floor, and other common areas available for use by all occupants of the Property), and shall authorize and request the routine patrol of such areas by the City of DeKalb Police Department or other sworn officers, based upon the availability of resources for such details, at any time without prior notice. At any time that the Owner changes locking mechanisms, passcodes or other entry devices, the Owner shall provide the City with updated access mechanisms.

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

D. Knox Boxes:

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

E. Crime Free Housing and Inspection Coordination:

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

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

The Owner shall also, at any time that a given individual residential unit is not presently leased to a third party, grant the City reasonable access to such residential units for purposes of inspecting the same and verifying compliance with all City Codes. The Owner shall pay all fees associated with any generally applicable current or future inspection or registration program utilized by the City for commercial or residential rental properties. In the event that the City at any time terminates its Crime Free Housing Program or inspection protocol, the Property shall nonetheless continue to be inspection provisions otherwise provided by relevant City Code. With regard to

individual residential units leased to third parties (i.e. tenants), the Owner shall utilize its best efforts to secure lawful access to the individual units for purposes of the inspection contemplated herein, but the Parties acknowledge the rights of individual tenants with regard to their occupancy of an individual unit.

The Owner also acknowledges and agrees that the commercial portions of the Property shall require the issuance of a Fire Life-Safety license under the terms of City Code and this Agreement, which Owner shall obtain and maintain at all times. Such portions of the Property shall be subject to the then-current City Code provisions relating to inspection and review.

F. Common Area Surveillance:

The Parties acknowledge that the Owner may prospectively maintain cameras or other equipment utilized to provide video surveillance and security coverage for the parking lot and/or common areas of the Property and Building. Should the Owner install such cameras and determine that it is feasible to do so, the Owner may provide to the City a connection and inter-link to any cameras so installed, so that the City can remotely monitor such common area surveillance videos from the City Police Department. The Owner shall be responsible for providing and maintaining all technology required to establish an external, static IP address securely accessible by the City with video feed in a format acceptable to the City Police Department. With regard to such interlink, the Parties agree to mutually indemnify and hold harmless the other party from any claim arising out of the monitoring or failure to monitor such systems. Such interlink shall permit the City to access a digital feed of live data collected on the Property, and shall also allow the City to access data stored in any recording devices installed or maintained by Owner with respect to such surveillance. All security cameras and security equipment in place on the Property shall be maintained in good and fully-operable condition.

G. Tenant Notification:

The Owner shall provide each tenant or prospective tenant with a notice in a form acceptable to the City advising such tenants of the provisions of this Agreement pertaining to City of DeKalb involvement in policing common areas of the Property or otherwise inspecting or monitoring the Property.

H. Notification Regarding Affordable Housing Status or Related Agreements:

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

I. Conflict with Federal Law and Regulations:

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

ARTICLE X: MUTUAL ASSISTANCE

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

ARTICLE XI: REMEDIES

A. Failure to Construct:

- 1) This Agreement contains specific timelines for the remediation of existing structures. 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 that Owner fails to construct the Building or complete all of the improvements authorized by the final plans, the City may exercise the remedies described herein.
- 3) In the event the Owner fails to obtain approval of the final plans or if the City reasonably determines that the final plans are not in substantial compliance with the Plans and this Agreement (and if the City determines that the proposed final plans should not be approved), then the City may exercise the remedies described herein.

B. Breach Generally:

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

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

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

The failure of the Parties to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's' rights thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

If the performance of any covenant to be performed hereunder by any Party is delayed as a result of circumstances which are beyond the reasonable control of such Party (which circumstances may include acts of God, war, acts of civil disobedience, weather, terrorist acts of a direct or indirect nature, material shortages, flooding, strikes or similar acts), the time for such performance shall be extended by the amount of time of such delay.

ARTICLE XII: TERM

This agreement shall have a term of thirty (30) years from the date of execution.

ARTICLE XIII: MISCELLANEOUS

A. Amendment:

This Agreement, and the exhibits attached hereto, may be amended only by mutual consent of the City and Owner 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, Owners, and assigns, and upon the City and successor corporate authorities of the City and successor municipalities and shall constitute a covenant running with the land. This Agreement may be assigned without the City's approval, and upon said assignment and acceptance by an assignee, the assignor shall have no further obligations hereunder. If a portion of the Property is sold, the seller shall be deemed to have assigned to the purchaser any and all rights and obligations Seller may have under this Agreement which affect the portion of the Property sold or conveyed and thereafter the seller shall have no further obligations under this Agreement as it relates to the portion of the Property conveyed.
- 2) Notwithstanding the foregoing, the Owner shall not be authorized to engage in any sale or assignment of the Property or the rights conveyed under this Agreement, prior to the date upon which the Building is constructed and issued a final certificate of occupancy, the South Building is demolished, and all of the improvements described in the approved final plans have been constructed. Transfers among or between family members related by blood or marriage, or between trusts, corporations, partnerships or limited liability companies which are entirely owned or controlled by family members related by blood or marriage, shall not be construed as sale or assignment under this subsection.
 - a. The Owner may request that the City pay a portion of the incentive directly to a third party, in satisfaction of an expense incurred by Owner. However, the Parties expressly disclaim any third-party beneficiaries and expressly disclaim the right of any third party to pursue a claim against the City for payment or satisfaction of any debt, claim, lien, liability or damage pursuant to this Agreement.
- 3) The Parties acknowledge that the Property is presently owned by Owner in an individual capacity. Owner may create a corporate entity to own the Property; should Owner do so, the City agrees that it shall release the Personal Guaranty, Note and Mortgage from Owner, as attached hereto, upon receipt of a similar Corporate Guaranty, Note and Mortgage from the corporate entity, provided that the corporate entity is 100% owned by Owner. Should the corporate entity be owned by any other party or parties, in whole or in part, then the assignment provisions included herein must be satisfied. The transaction contemplated in this subsection (transfer of obligation from Owner to Owner's wholly-owned corporate designee) shall not require an amendment of this Agreement and may be approved by the City Manager without requirement of approval by the City Council.

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 S. Fourth Street
DeKalb, IL 60115
Phone: (815) 748-2095

With copies to: City Manager
City of DeKalb
200 S. Fourth Street
DeKalb, IL 60115
Phone: (815) 748-2090

City Attorney
City of DeKalb
200 S. Fourth Street
DeKalb, IL 60115
Phone: (815) 748-2093

If to the Owner: _____

With a Copy To: _____

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

F. Time of Essence:

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

G. Indemnification:

The Owner covenants and agrees to pay, at its expense, any and all damages, expenses, liabilities and losses resulting from this Agreement, the construction and development activities of the Owner, or its agents, contractors and subcontractors, and to defend and indemnify and save the City and its officers, elected and appointed agents, employees, engineers and attorneys (collectively, the "Indemnifieds") harmless of, from and against such damages, expenses, liabilities and losses as a direct and proximate result of Owner's unlawful actions in furtherance of the terms hereof and the construction activities contemplated hereby, except to the extent such damages, expenses, liabilities and losses arise by reason of the negligence or willful or wanton

act or omission of the Indemnifieds. The Owner shall provide satisfactory proof of comprehensive general liability insurance for the Property and the project during the time from approval of this Agreement until completion of the last improvement contemplated by the approved final plans, and such insurance shall name the City as additional primary insured without right of subrogation.

The Parties acknowledge that this Agreement contemplates the payment, including direct payment, of expenses associated with the redevelopment of the Property under the Phase 1 Incentive, and contemplates the City's approval of plans. Under City Code, the Parties acknowledge that the City has a limited role in inspecting improvements and conducting construction observation. Notwithstanding the foregoing, the Parties agree and acknowledge that neither the Owner nor its personnel shall be acting as an employee or official representative of the City for purposes of being offered any protection or coverage under City insurance policies for tort immunity or other legal purposes. The Owner and City acknowledge that the provisions of this Agreement shall be construed, pursuant to *Carney v. Union Pacific Railroad Company*, 2016 IL 118984, to provide the City with the right to stop or resume work, to make inspections, to receive reports and to provide recommendations or suggestions pursuant to Section 414 of the Second Restatement of Torts, and that the Owner shall be considered to be fully independent of the City both in terms of tort liability and in terms of contractual liability to third parties. No provision of this Agreement shall be construed as the City retaining control of or having liability for the actions of the Owner or its contractors or subcontractors. The City shall have no liability for Owner's selection of personnel, employees or subcontractors, nor for the presence of dangerous conditions on any portion of the Property.

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

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

H. Exhibits:

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

Exhibit A:	Legal Description
Group Exhibit B:	Plans
Exhibit C:	No-Trespass / Patrol Agreement
Exhibit D:	Intentionally Omitted

Exhibit E: Project Cost Documentation Requirements
Group Exhibit F: Form of Promissory Note, Corporate Undertaking, Mortgage
Exhibit G: Waiver of Objection to Special Service Area

I. Venue:

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

J. Survival of Provisions:

The provisions of this Agreement relating to the remedies upon default and/or the recovery of any portion of the Development Incentive (through legal action, foreclosure, deed in lieu or other process) shall survive any termination of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written and, by so executing, each of the Parties warrants that it possesses full right and authority to enter into this Agreement.

CITY:

CITY OF DEKALB, an Illinois Municipal corporation

By: _____
Jerry Smith, Mayor

Attest: _____
Lynn A. Fazekas, City Clerk

OWNER:

By: _____
Owner

Attest: _____

Print Name: _____

Print Name: _____

By: _____
Owner

Attest: _____

Print Name: _____

Print Name: _____

Exhibit A: Legal Description

The property is legally described as:

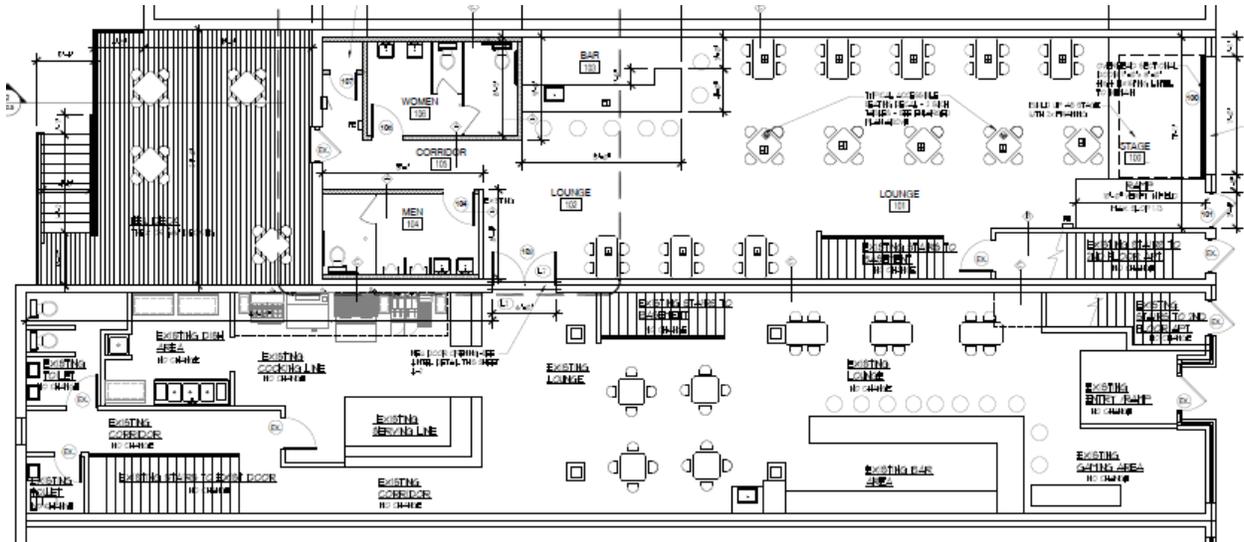
08-23-159-043 – 241 E. LINCOLN HIGHWAY

LOT 60 OF COUNTY CLERK'S SUBDIVISION OF BLOCK 12 OF THE ORIGINAL TOWN, NOW CITY, OF DEKALB, COUNTY OF DEKALB, AND STATE OF ILLINOIS ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "C" OF PLATS ON PAGE 42, RECORDER'S OFFICE, DEKALB COUNTY, ILLINOIS, EXCEPTING THEREFROM ALL THAT PART OF SAID LOT LYING NORTHEASTERLY OF A LINE PARALLEL TO AND 16 FEET SOUTHWESTERLY OF WHEN MEASURED AT RIGHT ANGLES TO THE NORTHEASTERLY LINE OF SAID LOT BEING THAT PART TAKEN IN CONDEMNATION CASE NUMBER 73-ED-247, IN THE CIRCUIT COURT OF DEKALB COUNTY, ILLINOIS.

08-23-159-037 – 249 E. LINCOLN HIGHWAY

LOT 62 IN COUNTY CLERK'S SUBDIVISION, A SUBDIVISION OF BLOCK 12 OF THE ORIGINAL TOWN (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "C" OF PLATS, PAGE 42, ON SEPTEMBER 15, 1902, IN DEKALB COUNTY, ILLINOIS; EXCEPTING THEREFROM THAT PART DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 61; THENCE SOUTH 70 DEGREES 40 MINUTES 21 SECONDS EAST, ALONG THE NORTHEASTERLY LINE OF SAID LOT, 24.08 FEET TO THE NORTHEAST CORNER OF SAID LOT; THENCE SOUTH 19 DEGREES 35 MINUTES 51 SECONDS WEST, ALONG THE SOUTHEASTERLY LINE OF SAID LOT, 27.13 FEET; THENCE NORTH 70 DEGREES 43 MINUTES 24 SECONDS WEST, 22.33 FEET; THENCE NORTH 19 DEGREES 34 MINUTES 53 SECONDS EAST, 11.13 FEET; THENCE NORTH 70 DEGREES 40 MINUTES 22 SECONDS WEST, 1.86 FEET TO THE NORTHWESTERLY LINE OF SAID LOT; THENCE NORTH 19 DEGREES 35 MINUTES 51 SECONDS EAST, ALONG THE NORTHWESTERLY LINE OF SAID LOT 16.0 FEET TO THE POINT OF BEGINNING; ALSO EXCEPTING THEREFROM THE SOUTH 12 FEET OF SAID LOT, SITUATED IN THE CITY OF DEKALB, COUNTY OF DEKALB, STATE OF ILLINOIS.

Group Exhibit B: Plans



1 SOUTH ELEVATION

Scale: 3/16" = 1'-0"

Exhibit C: No Trespass / Patrol Agreement

Common Area Patrol / No-Trespass Enforcement Agreement

Property Address: _____

Commonly Known As: _____

Property Owner: _____

Contact #: _____

Property Manager: _____

Contact #: _____

24 Hour Contact #: _____

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

- **No-Trespass Warnings and Arrests:** The Owner appoints the City of DeKalb, its employees and agents, as an agent of the Owner, authorized and requested to undertake any actions which the Owner could lawfully take with regard to persons unlawfully present relative to no-trespassing laws and ordinances on any public or private area of the Property. The City’s personnel shall be deemed to be representatives of the Owner for purposes of enforcing no-trespass laws and ordinances and signing and testifying with regard to related complaints only. This includes providing no-trespass warnings, verbal or written, to any person on the Property other than a tenant of the Property. The City shall also be authorized to sign complaints, serve as complaining witness, and arrest or cite any person who has violated such a no-trespass warning, or who remains on the Property after being asked to leave. The City has the complete authority to enforce any State Statute or City Ordinance relating to trespass. The City shall maintain accurate records of all persons who have been advised not to trespass on the Property and shall provide a copy of the same to Owner upon request.
- **Patrol Common Areas:** The City, its employees and agents are authorized and requested to enter into any common area of the Property that is accessible either to the public or to tenants of the Premises, including parking lots, open spaces, common hallways, gathering areas, or other similar common areas of the Property, for purposes of patrolling, observing, and enforcing the Codes and Ordinances of the City of DeKalb or any applicable State Statutes. For purposes of this Agreement and any charges arising out of the City’s activities on the Property, the City and its personnel shall be deemed to have been invited upon the common areas of the Property. Notwithstanding the foregoing, this shall not constitute authority for the City to enter into tenant private areas (e.g. individual tenant apartments or individual tenant businesses) without required legal authority (such as a search warrant, probable cause, exigent circumstances, etc. where required). The City is authorized to sign complaints, serve

as complaining witness, and arrest or cite any person who has violated a State Statute or City Ordinance.

- **Report Cars for Relocation:** Owner employs the entity described at signs posted at the Property for purposes of relocating unlawfully parked cars from the Property (and Owner shall maintain such postings in accordance with City Code). The City is authorized and requested to contact the tow relocater to report any vehicles on the Property that appear to be unlawfully parked, so that said vehicles may be towed in accordance with applicable regulations.
- **Provisions of Development Agreement:** Owner shall further permit and consents to the conduct of any access or inspection authorized under the terms of any Development Agreement entered into by Owner and the City which is recorded against the Property of public record.

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

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

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

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

Agreed this _____ day of _____, 20_____.

Owner(s) or Representative:

Signature: _____

Print Name: _____

City of DeKalb:

Signature: _____

Jerry Smith, Mayor

Exhibit E: Project Cost Documentation Requirements

- *Applicants/Recipients are responsible for identifying and complying with all applicable laws, ordinances and regulations.*
- The Parties acknowledge that the funding contemplated under this Agreement is provided exclusively through either a Tax Increment Financing District or through sales tax rebates for funds generated on-site and is provided exclusively for the purpose of funding private improvements. Accordingly, while the Owner is solely responsible for complying with the applicable provisions of the Illinois Prevailing Wage Act, pursuant to the guidance issued by the Illinois Department of Labor, the City shall not require the Owner to provide certified payroll records unless the Owner determines that such records are required under the Prevailing Wage Act. The Owner shall indemnify, defend and hold harmless the City from any claims arising out of the alleged Owner violation of the Prevailing Wage Act with respect to this Agreement or the Property.
- Final waivers of lien must be provided for all contractors, suppliers and materialmen. All payments associated with the purchase of real property or payment of contractors, subcontractors or materialmen providing services to the Property in connection with this Agreement, which are intended to be included in Project Completion Costs or which are intended to be eligible for payment through the Development Incentive must be paid through a title company acceptable to the City of DeKalb where the cost associated with such payment exceeds \$5,000.
- Final Project Costs must be documented in a tabbed binder in accordance with these regulations.
 - The first section must include a notarized affidavit from the Applicant affirming that all information provided is complete and accurate, and affirming that all work was done in accordance with these Guidelines and all applicable laws.
 - The second section must include a spreadsheet generated by the Applicant, including all project costs that are a component of the project, broken down by vendor. All amounts listed in this spreadsheet must match the corresponding contractor invoices described below.
 - If property acquisition is included in the project costs, the third section must include a copy of the closing statement and deed for the property.
 - Subsequent sections should be separately tabbed by contractor. Each contractor tab should start with a spreadsheet generated by the Applicant that includes the totals from each invoice and should be followed by a complete set of prevailing wage records, final waivers of lien, and invoices.
 - Applicants may include a Miscellaneous Expenses tab in the binder for small project expenses.
 - Credit Card Statements are not adequate to evidence expenditures. All small expenditures require actual receipts showing the expenditures. The City reserves the right to require Applicants to provide written documentation explaining any expenditure.
 - Building permits are eligible expenditures. Ineligible expenditures include: food, fuel, beverages, utility bills, web design, merchandise for stock or supply, membership dues, life insurance, or other personal expenses. The City reserves the right to disqualify any expense.
- Once an invoice is submitted, the invoice *cannot be withdrawn or retracted, and the scope of work described on the invoices cannot be altered*. For this reason, it is critical to ensure that these guidelines are complied with.
- The City shall also be provided with an electronic copy of all submittals, in PDF format, separated into sections as outlined above.

Group Exhibit F: Personal Guarantee and Undertaking, Promissory Note, Mortgage

THIS GUARANTEE dated this _____ day of _____, 2019, is between _____, City of DeKalb, State of Illinois hereinafter known as the "Guarantor" or "Debtor" and the City of DeKalb, an Illinois Municipal Corporation, hereinafter known as the "Lender".

IN CONSIDERATION OF the Lender extending a forgivable development incentive of One Hundred Sixty Seven Thousand Six Hundred and Sixteen dollars (\$167,616) to Guarantor plus other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Guarantor personally guarantees the prompt, full and complete performance of any and all present and future duties, obligations and indebtedness (the "Debt") due to the Lender by the Debtor, up to a limit of One Hundred Sixty Seven Thousand Six Hundred and Sixteen dollars (\$167,616) under the terms of a Development Incentive Agreement signed the _____ day of _____, 20_____ between the Debtor and Guarantor (the "Agreement") and in addition to the following terms and conditions:

The Guarantor guarantees that it will promptly pay the full amount of the Debt as and when the same will, in any manner, be or become due, either according to the terms and conditions provided by the Agreement or upon acceleration of the payment under the Agreement by reason of a default up to the aforesaid limit;

The Guarantor agrees not to pledge, hypothecate, mortgage, sell or otherwise transfer all or substantially all of Guarantor's assets without the prior written consent of the Lender;

To the extent permitted by law, the Guarantor waives all defenses, counterclaims or offsets that are legally available to the Guarantor with respect to the payment of the Debt of Debtor; and

This Personal Guarantee shall be construed exclusively in accordance with, and governed by, the laws of the State of Illinois. Any dispute arising hereunder may only be brought within the Courts of the Lender's preference. This Personal Guarantee embodies the entire promise of Guarantor to personally guarantee the Debt and supersedes all prior agreements and understandings relating to the subject matter here, whether oral or in writing. This Personal Guarantee may not be assigned or transferred without a written document, signed by the Guarantor and Lender, permitting such assignment or transfer.

Lender's Signature: _____ **Date:** _____
Jerry Smith, Mayor

Guarantor's Signature: _____ **Date:** _____

Print Name: _____

Guarantor's Signature: _____ **Date:** _____

Print Name: _____

NOTARY ACKNOWLEDGMENT

State of Illinois

County of DeKalb

On _____ before me, _____

(name and title of officer), personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that she/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Illinois that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

(Seal)

PROMISSORY NOTE

DeKalb, Illinois

Date: _____

On _____, for value received, _____, hereby promises to pay in lawful money of the Unites States, to the order of the **CITY OF DEKALB** at 200 S. Fourth Street, DeKalb, Illinois, the principal sum of One Hundred Sixty Seven Thousand Six Hundred and Sixteen dollars (\$167,616) (the "Face Value"). Repayment hereof shall be subject to the terms and conditions of that certain Planned Incentive Agreement by and between said individuals, and the City of DeKalb, executed on _____, relating to the development of the property commonly legally descried in the legal description attached hereto as Exhibit 1 (the "Property") in DeKalb, Illinois. The repayment terms of this Note shall be governed by the provisions of the Incentive Agreement and shall include a reduction of the balance due equal to sales and property tax revenues generated consistent with said Incentive Agreement. The City shall provide the Owner with a memorandum of the outstanding balance of said Note and/or a partial release of any Mortgage recorded pursuant to this Note or the Incentive Agreement, at any time upon the request of Owner.

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

By: _____

Print Name: _____

By: _____

Print Name: _____

Exhibit 1

LEGAL DESCRIPTION

08-23-159-043 – 241 E. LINCOLN HIGHWAY

LOT 60 OF COUNTY CLERK'S SUBDIVISION OF BLOCK 12 OF THE ORIGINAL TOWN, NOW CITY, OF DEKALB, COUNTY OF DEKALB, AND STATE OF ILLINOIS ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "C" OF PLATS ON PAGE 42, RECORDER'S OFFICE, DEKALB COUNTY, ILLINOIS, EXCEPTING THEREFROM ALL THAT PART OF SAID LOT LYING NORTHEASTERLY OF A LINE PARALLEL TO AND 16 FEET SOUTHWESTERLY OF WHEN MEASURED AT RIGHT ANGLES TO THE NORTHEASTERLY LINE OF SAID LOT BEING THAT PART TAKEN IN CONDEMNATION CASE NUMBER 73-ED-247, IN THE CIRCUIT COURT OF DEKALB COUNTY, ILLINOIS.

08-23-159-037 – 249 E. LINCOLN HIGHWAY

LOT 62 IN COUNTY CLERK'S SUBDIVISION, A SUBDIVISION OF BLOCK 12 OF THE ORIGINAL TOWN (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "C" OF PLATS, PAGE 42, ON SEPTEMBER 15, 1902, IN DEKALB COUNTY, ILLINOIS; EXCEPTING THEREFROM THAT PART DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 61; THENCE SOUTH 70 DEGREES 40 MINUTES 21 SECONDS EAST, ALONG THE NORTHEASTERLY LINE OF SAID LOT, 24.08 FEET TO THE NORTHEAST CORNER OF SAID LOT; THENCE SOUTH 19 DEGREES 35 MINUTES 51 SECONDS WEST, ALONG THE SOUTHEASTERLY LINE OF SAID LOT, 27.13 FEET; THENCE NORTH 70 DEGREES 43 MINUTES 24 SECONDS WEST, 22.33 FEET; THENCE NORTH 19 DEGREES 34 MINUTES 53 SECONDS EAST, 11.13 FEET; THENCE NORTH 70 DEGREES 40 MINUTES 22 SECONDS WEST, 1.86 FEET TO THE NORTHWESTERLY LINE OF SAID LOT; THENCE NORTH 19 DEGREES 35 MINUTES 51 SECONDS EAST, ALONG THE NORTHWESTERLY LINE OF SAID LOT 16.0 FEET TO THE POINT OF BEGINNING; ALSO EXCEPTING THEREFROM THE SOUTH 12 FEET OF SAID LOT, SITUATED IN THE CITY OF DEKALB, COUNTY OF DEKALB, STATE OF ILLINOIS.

MORTGAGE

Return To:
City Clerk
City of DeKalb
200 S. Fourth Street
DeKalb IL 60115

**Future Advances Mortgage
Maximum Value: \$167,616**

THIS MORTGAGE, dated this _____ day of _____, 201____, by ("Mortgagor"), **WITNESSETH:**

WHEREAS, Mortgagor has executed a Promissory Note in the principal sum of One Hundred Sixty Seven Thousand Six Hundred and Sixteen dollars (\$167,616) payable to the City of DeKalb ("Mortgagee"), dated the same date as this Mortgage, whereby Mortgagee is entitled to recover from Mortgagor certain expenses, costs, and advances in connection with Mortgagor's development work on the Premises as defined below and Property as defined within that certain Planned Incentive Agreement executed on _____ and recorded against the Premises (as defined below) and certain other parcels of real property;

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

[see Legal Description attached as Exhibit 1]

PROPERTY INDEX NO.: 08-23-159-037 and 08-23-159-043

which is referred to herein as the "Premises";

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

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

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

NOTICE: THIS MORTGAGE SECURES TOTAL CREDIT IN THE AMOUNT OF \$167,616 AND IS CONSTRUED IN CONNECTION WITH THE OBLIGATIONS OF MORTGAGOR AS OWNER UNDER THAT CERTAIN DEVELOPMENT AGREEMENT (“DEVELOPMENT AGREEMENT”) RECORDED AGAINST THE PREMISES PRIOR TO THE DATE OF THIS MORTGAGE. LOANS, PAYMENTS, CREDITS AND ADVANCES UP TO THIS AMOUNT, TOGETHER WITH ANY OTHER AMOUNTS OR OTHER OBLIGATIONS OF MORTGAGOR/OWNER UNDER THIS MORTGAGE OR THE INCENTIVE AGREEMENT ARE SENIOR TO INDEBTEDNESS TO OTHER CREDITORS UNDER SUBSEQUENTLY RECORDED OR FILED MORTGAGES AND LIENS, UNLESS AND UPON THE CITY’S SUBORDINATION OF THIS MORTGAE LIEN AS PROVIDED IN THE INCENTIVE AGREEMENT. THIS MORTGAGE HAS BEEN PROVIDED TO SECURE THE REPAYMENT OF OBLIGATIONS OF THE DEVELOPMENT AGREEMENT, INCLUDING BUT NOT LIMITED TO REPAYMENT OF A DEVELOPMENT INCENTIVE AND THE OBLIGATION TO SECURE THE OWNER ESCROW (AS BOTH TERMS ARE DEFINED IN THE DEVELOPMENT AGREEMENT).

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

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

- A) The promissory note, guaranty, obligations of Mortgagor under the Incentive Agreement and all extensions, renewals, modifications or substitutions thereof to mortgagor , with a note amount of \$167,616 (collectively, the “Evidence of Debt”).
- B) All future advances from Mortgagee to Mortgagor or other future obligations of Mortgagor to Mortgagee under any promissory note, development agreement, contract, guaranty or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the Evidence of Debt and whether or not such future advances or obligations are incurred for any purpose that was related or unrelated to the purpose of this Mortgage or the Evidence of Debt.
- C) All obligations Mortgagor owes to Mortgagee, which now exist or may later arise, to the extent not prohibited by law, including but not limited to any obligation under the Incentive Agreement such as obligations to defend and indemnify and obligations relating to the Owner Escrow as defined therein.
- D) Any additional sums advanced and expenses incurred by Mortgagee for insuring, preserving or otherwise protecting the Premises and Property and its value and any other sums advanced or expenses incurred by the Mortgagee under the terms of this Mortgage, plus interest (where applicable), as provided in the Evidence of Debt and Incentive Agreement.

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

Mortgagor covenants and agrees:

1. To pay or cause to be paid, when due, all sums secured hereby as further defined and governed by the Incentive Agreement.
2. Not to abandon the premises; to keep the premises in good condition and repair and not to commit or suffer waste; to pay for and complete within a reasonable time any building at any time in the process of erection upon the premises; to promptly repair, restore or rebuild any building or improvement now or hereafter on the premises which may become damaged or destroyed; to refrain from impairing or diminishing the value of the security; to make no material alterations of the premises.
3. To comply with all requirements of law or local government ordinances governing the premises and the use thereof; and to permit Mortgagee, or their agents, to inspect the premises at all reasonable times.
4. To keep the premises free from mechanics, or other liens or claims for liens of any kind; to pay or cause to be paid, when due, any indebtedness which may be secured by a lien or charge on the premises; and, upon receipt, to exhibit to Mortgagee satisfactory evidence of the payment and discharge of such liens or claims.
5. To pay, or cause to be paid, before any penalty attaches, all general taxes and to pay, or cause to be paid, when due, all special taxes, special assessments, water charges, drainage charges, sewer service charges and other charges against the premises, of any kind whatsoever, which may be levied, assessed, charged or imposed on the premises, or any part thereof.
6. To promptly pay all taxes and assessments assessed or levied under and by virtue of any state, federal or local law or regulation hereafter passed, against Mortgagee upon this Mortgage or the debt hereby secured, or upon their interest under this Mortgage.
7. To exhibit to Mortgagee, annually upon request, official receipts showing full payment of all taxes, assessments and charges which Mortgagor is required, or shall elect, to pay or cause to be paid hereunder.
8. To keep the premises continuously insured, until the indebtedness secured hereby is fully paid against loss or damage under such types of hazard and liability insurance and in such forms, amounts and companies as may be reasonably approved or required from time to time by Mortgagee (in the absence of any specified requirements, such insurance shall be under policies providing for payment by the insurance companies of moneys sufficient either to pay the full cost of replacing or repairing the premises or to pay in full the indebtedness secured hereby); all policies whether or not required by the terms of this Mortgage, shall contain loss payable clauses in favor of Mortgagee (or, in case of foreclosure sale, in favor of the owner of the certificate of sale); in the event of loss, Mortgagor shall immediately notify Mortgagee in writing and Mortgagor hereby authorizes and directs each and every insurance company concerned to make payments for such loss directly and solely to Mortgagee (who may, but need not, make proof of loss) and Mortgagee is hereby authorized to adjust, collect and compromise, in their discretion, all claims under all policies, and Mortgagor shall sign, upon demand by Mortgagee, all receipts, vouchers and releases required by the insurance companies

and the insurance proceeds, or any part thereof, may be applied by Mortgagee, at their option, either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged, and any application thereof to the indebtedness shall not relieve Mortgagors from making the payments herein required until the indebtedness is paid in full. Mortgagee may, from time to time, at their option, waive and, after any such waiver, reinstate any or all provisions hereof requiring deposit of insurance policies, by notice to Mortgagor in writing.

9. (a) To deliver to Mortgagee, all policies of insurance with evidence of premiums prepaid (renewal policies to be delivered not less than ten (10) days prior to the respective dates of expiration), and all abstracts of title, title guarantee policies, and other evidence of title to the premises, all of which shall be held by Mortgagee without liability, and in the event of foreclosure of this Mortgage or transfer of title to the premises in extinguishment of said indebtedness, shall become the absolute property of Mortgagee.
- (b) IF ALL OR ANY PART OF THE PREMISES OR AN INTEREST THEREIN IS SOLD OR TRANSFERRED BY MORTGAGOR WITHOUT MORTGAGEE'S PRIOR WRITTEN CONSENT, MORTGAGEE MAY, AT MORTGAGEE'S OPTION, DECLARE ALL THE SUMS SECURED BY THIS MORTGAGE TO BE IMMEDIATELY DUE AND PAYABLE. MORTGAGEE SHALL HAVE WAIVED SUCH OPTION TO ACCELERATE IF, PRIOR TO THE SALE OF TRANSFER, MORTGAGEE AND THE PERSON TO WHOM THE PREMISES IS TO BE SOLD OR TRANSFERRED REACH AGREEMENT IN WRITING THAT THE CREDIT OF SUCH PERSON IS SATISFACTORY TO MORTGAGEE AND THAT THE INTEREST PAYABLE ON THE SUMS SECURED BY THIS MORTGAGE SHALL BE AT SUCH RATE AS MORTGAGEE SHALL REQUEST. IF MORTGAGEE HAS WAIVED THE OPTION TO ACCELERATE.

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

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

10. In the event of default in performance of any Mortgagor's covenants or agreements herein contained, Mortgagee may, but need not, make any payment or perform any act hereinbefore required of Mortgagor, in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit title or claim thereof, or redeem from any tax sale or forfeiture affecting the premises or contest any tax or assessment. All monies paid for

any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorney's fees, and any other monies advanced by Mortgagee to protect the premises and the lien hereof shall be so much additional indebtedness secured hereby and shall be come immediately due and payable without notice. Mortgagee, making any payment hereby authorized relating to taxes or assessments, shall be the sole judge of the legality and validity thereof and of the amount necessary to be paid in satisfaction thereof.

11. If (a) default be made in payment, when due, of any sum secured hereby, or in any of the other covenants or agreements herein contained to be performed by Mortgagor herein or in the Agreement, or (b) if any proceedings be instituted or process issued (i) to enforce any other lien, charge or encumbrance against the premises, or (ii) to condemn the premises or any part thereof for public use, or (iii) against Mortgagor or any beneficiary thereof under any bankruptcy or insolvency laws, or (iv) to place the premises or any part thereof in the custody of any court through their receiver or other officer, and such proceedings are not dismissed or stayed on appeal or such process withdrawn within Ten (10) days after written notice to Mortgagor; or (c) if Mortgagor makes any assignment for the benefit of creditors, or are declared bankrupt, or if by or with the consent or at the instance of proceedings to extend the time of payment of the Note or to change the terms of this Mortgage be instituted under any bankruptcy or insolvency law; then:
 - (a) All sums secured hereby shall, at the option of Mortgagee, become immediately due and payable without notice, with interest thereon, from the date of the first of any such defaults, at the penalty rate; and
 - (b) Mortgagee may immediately foreclose this Mortgage. The Court in which any proceedings is pending for that purpose may, at once or any time thereafter, either before or after sale, without notice to Mortgagor, and without requiring bond, and without regard to the solvency or insolvency of any person liable for payment of the indebtedness secured hereby, and without regard to the then value of the premises, or whether the same shall be occupied as a Homestead, appoint a receiver (the provisions for the appointment of a receiver and assignment of rents being an express condition upon which the loan hereby secured is made), for the benefit of Mortgagee or place Mortgagee in possession under the terms of the applicable statute of the State of Illinois, with power to collect the rents, issues and profits of the premises, due and to become due, during such foreclosure suit and the full statutory period of redemption notwithstanding any redemption. The receiver or Mortgagee in possession, out of such rents, issues and profits when collected, may pay costs incurred in the management and operation of the premises, prior and coordinate liens, if any, and taxes, assessments, water and other utilities and insurance, then due or thereafter accruing, and may make and pay for any necessary repairs to the premises, and may pay all or any part of the indebtedness secured hereby or any deficiency decree; and
 - (c) Mortgagee shall, at its option, have the right, acting through itself, its agents or attorneys, with process of law, to enter upon and take possession of the premises and property, expel and remove any persons, goods or chattels, occupying or upon the same, and to collect or receive all the rents, issues and profits thereof, and to manage and control the same, and to lease the same or any part thereof from time to time, and after deducting all reasonable attorney's fees and all operation of the

premises, apply the remaining net income upon the indebtedness secured hereby, or upon any deficiency decree entered by virtue of any sale held pursuant to a decree of foreclosure.

12. In any foreclosure of this Mortgage, there shall be allowed and included in the decree for sale, in the event Mortgagor successfully obtains a judgment of foreclosure, to be paid out of the rents or proceeds of such sale, or by the Mortgagee, as the case may be, and only payable to the prevailing party in any such foreclosure action:
 - (a) All principal and interest remaining unpaid and secured hereby;
 - (b) All other items advanced or paid by Mortgagee pursuant to this Mortgage with interest at the penalty rate from the date of advancement;
 - (c) All court costs and fees, attorneys' fees, appraiser's fees, expenditures for documentary and expert evidence, stenographer's charges, publication costs and coats (which may be estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title searches and examinations, title guarantee policies, and similar data with respect to title, as Mortgagee may deem necessary. All expenditures and expenses of the type mentioned in this subparagraph (c) shall become so much additional indebtedness secured hereby and immediately due and payable, with interest at the same rate as shall accrue on the principal balance when paid or incurred by Mortgagee, in connection with (i) any proceedings, including probate and bankruptcy proceedings to which Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured; or (ii) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (iii) preparations for the defense of security hereof, whether or not actually commenced. The proceeds of any foreclosure sale shall be distributed and applied to the items described in subparagraph (a), (b) and (c) in order of priority inversely to the manner in which said subparagraphs are above listed and any surplus of the proceeds of such sale be paid to Mortgagor.
13. No remedy or right of mortgagee shall be exclusive of, but shall be in addition to, every other remedy or right now or hereafter existing at law or in equity. No delay in exercising, or omission to exercise, any remedy or right accruing on default shall impair any such remedy or right, or shall be construed to be a waiver of any such default, or acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee.
14. Without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for payment of any indebtedness secured hereby or for performance of any obligation contained herein, and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after the maturity of said note, and without notice or consent:
 - (a) Release any person liable for payment of all or any part of the indebtedness or for performance of any obligation.
 - (b) Make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness or modifying or waiving any obligation, or

subordinating, modifying or otherwise dealing with the lien or charge hereof.

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

(d) Accept additional security of any kind.

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

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

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

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

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

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

By: _____ Print Name: _____

By: _____ Print Name: _____

STATE OF ILLINOIS)
) **ss**
COUNTY OF DEKALB)

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

Given under my hand and notarial seal this _____ day of _____, 2019.

Notary Public

Exhibit 1

Legal Description

08-23-159-043 – 241 E. LINCOLN HIGHWAY

LOT 60 OF COUNTY CLERK'S SUBDIVISION OF BLOCK 12 OF THE ORIGINAL TOWN, NOW CITY, OF DEKALB, COUNTY OF DEKALB, AND STATE OF ILLINOIS ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "C" OF PLATS ON PAGE 42, RECORDER'S OFFICE, DEKALB COUNTY, ILLINOIS, EXCEPTING THEREFROM ALL THAT PART OF SAID LOT LYING NORTHEASTERLY OF A LINE PARALLEL TO AND 16 FEET SOUTHWESTERLY OF WHEN MEASURED AT RIGHT ANGLES TO THE NORTHEASTERLY LINE OF SAID LOT BEING THAT PART TAKEN IN CONDEMNATION CASE NUMBER 73-ED-247, IN THE CIRCUIT COURT OF DEKALB COUNTY, ILLINOIS.

08-23-159-037 – 249 E. LINCOLN HIGHWAY

LOT 62 IN COUNTY CLERK'S SUBDIVISION, A SUBDIVISION OF BLOCK 12 OF THE ORIGINAL TOWN (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "C" OF PLATS, PAGE 42, ON SEPTEMBER 15, 1902, IN DEKALB COUNTY, ILLINOIS; EXCEPTING THEREFROM THAT PART DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 61; THENCE SOUTH 70 DEGREES 40 MINUTES 21 SECONDS EAST, ALONG THE NORTHEASTERLY LINE OF SAID LOT, 24.08 FEET TO THE NORTHEAST CORNER OF SAID LOT; THENCE SOUTH 19 DEGREES 35 MINUTES 51 SECONDS WEST, ALONG THE SOUTHEASTERLY LINE OF SAID LOT, 27.13 FEET; THENCE NORTH 70 DEGREES 43 MINUTES 24 SECONDS WEST, 22.33 FEET; THENCE NORTH 19 DEGREES 34 MINUTES 53 SECONDS EAST, 11.13 FEET; THENCE NORTH 70 DEGREES 40 MINUTES 22 SECONDS WEST, 1.86 FEET TO THE NORTHWESTERLY LINE OF SAID LOT; THENCE NORTH 19 DEGREES 35 MINUTES 51 SECONDS EAST, ALONG THE NORTHWESTERLY LINE OF SAID LOT 16.0 FEET TO THE POINT OF BEGINNING; ALSO EXCEPTING THEREFROM THE SOUTH 12 FEET OF SAID LOT, SITUATED IN THE CITY OF DEKALB, COUNTY OF DEKALB, STATE OF ILLINOIS.

Exhibit 1: Legal Description of the Property

08-23-159-043 – 241 E. LINCOLN HIGHWAY

LOT 60 OF COUNTY CLERK'S SUBDIVISION OF BLOCK 12 OF THE ORIGINAL TOWN, NOW CITY, OF DEKALB, COUNTY OF DEKALB, AND STATE OF ILLINOIS ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "C" OF PLATS ON PAGE 42, RECORDER'S OFFICE, DEKALB COUNTY, ILLINOIS, EXCEPTING THEREFROM ALL THAT PART OF SAID LOT LYING NORTHEASTERLY OF A LINE PARALLEL TO AND 16 FEET SOUTHWESTERLY OF WHEN MEASURED AT RIGHT ANGLES TO THE NORTHEASTERLY LINE OF SAID LOT BEING THAT PART TAKEN IN CONDEMNATION CASE NUMBER 73-ED-247, IN THE CIRCUIT COURT OF DEKALB COUNTY, ILLINOIS.

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Exhibit 2: Proposed Terminology for Special Service Area

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

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