RESOLUTION 2019-072  
PASSED: APRIL 22, 2019

TERMINATING A DEVELOPMENT INCENTIVE AGREEMENT FOR THE RENOVATION OF THE FORMER ST. MARY'S HOSPITAL AT 145 FISK AVENUE, DEKALB, ILLINOIS.

WHEREAS, the City of DeKalb has previously approved Resolution 2018-166 which authorized and approved a Preliminary Development Incentive Agreement for the Renovation of the Former St. Mary’s Hospital at 145 Fisk Avenue, DeKalb, Illinois, to a Boutique Hotel and Associated Commercial Uses (respectively, “the Agreement” attached hereto as Exhibit A and “the Property”); and

WHEREAS, the Agreement provided preliminary approval of a development incentive for the redevelopment of the Property, but the Agreement was contingent upon a number of conditions precedent to the approval of a final and unconditional development incentive; and

WHEREAS, the City has endeavored in good faith to work with the Owner of the Property, as identified in the Agreement, in furtherance of the purposes of the Agreement, but has been unable to advance the project to a state wherein a final incentive agreement can be considered for approval, or where an unconditional approval of a financial incentive can be provided; and

WHEREAS, the Agreement included certain actions that were required to occur and information to be provided by Owner within a limited time period, so as to enable the City to come to an informed conclusion regarding the nature and appropriateness of the Owner’s financial pro forma, to understand the scope and complexity of the proposed development, and otherwise to fully understand the proposal for redevelopment of the Property with a City incentive, and those actions have not occurred or been pursued; and

WHEREAS, Article II(A) of the Agreement indicated that the Owner was responsible for seeking the rezoning of the Property to a Planned Development - Commercial (PD-C) zoning designation and entering into a planned development agreement which incorporated or amended the terms of the Agreement so as to provide for the orderly development of the Property and, based upon the information provided by the Owner, the City has concluded that it is not possible to reach such a mutually acceptable agreement; and

WHEREAS, Article II(A) of the Agreement indicated that any provision of a financial incentive would be subject to conditions that were “reasonable and commercially custom...with respect to the payment of a development incentive”, and the City has requested financial records, studies, reports and other documentation that is reasonable and commercially custom with regard to similar requests for incentives and the Owner has failed to provide the same; and

WHEREAS, Article III(A) of the Agreement indicated that the Owner was required to agree
to provisions relating to the provision of financial security for both public and private improvements at the Property and the Owner has refused to provide documentation evidencing the financial security of the public and private improvements, or even the ability to fund public and private improvements; and

WHEREAS, under Article IV(1) of the Agreement, Owner was required to submit "preliminary (or proposed final) plans, a suitable traffic study, engineering documents and related documents and any required petitions for rezoning or other required approvals", and to also initiate rezoning of the Property, within 120 days of the date of approval of the Agreement, with the plans including "detail regarding the conceptual floorplans, proposed architectural elevations, site layout and setbacks, utility connections and stormwater management, traffic flow, proposed uses and such additional information as shall be required by the Community Development Director"; and

WHEREAS, the Agreement was approved on December 18, 2018 and as of April 17, 2019 (120 days thereafter), the Owner had failed to submit: 1) complete preliminary or proposed final plans in accordance with Article 5.13.10(3) of the Unified Development Ordinance or the requirements of the Agreement; 2) any form of traffic study; 3) engineering plans; 4) conceptual floorplans; 5) complete proposed architectural elevations; 6) detailed information on site layout and complete listings of proposed setbacks; 7) information regarding all proposed utility connections or stormwater management; 8) engineering plans showing traffic flow; or, 9) a detailed description of the proposed uses of the Property; and

WHEREAS, while the Owner did timely submit a petition for rezoning, the Owner’s petition simply indicated a desire to rezone the Property to "PDC" zoning without any explanation of the proposed terms or desired relief sought through such zoning designation; and

WHEREAS, Article IV(2) required the Owner to immediately collaborate with City staff on the identification of any other parcels required for the development of the Property and the Owner has failed to meaningfully do so; and

WHEREAS, Article IV(4) required the Owner to “expeditiously undertake any required revisions to the plans and proposals so as to enable the Property to proceed to public hearing on the consideration of rezoning”, and the Owner has failed to undertake either the preliminary submission or the later revision of such plans; and

WHEREAS, Article IV(5) required the Owner, prior to or contemporaneously with submission of preliminary or final plans (i.e. within the 120-day period) to consult with the City’s Chief Building Official regarding proposed exterior elevations at the Property and the Owner has failed to undertake any such consultation; and

WHEREAS, Article V(A) indicates that the provision of any financial incentive by the City is only to occur after all contingencies and conditions precedent as outlined in the Agreement are satisfied in full, and such contingencies and conditions precedent have not been satisfied; and
WHEREAS, Article V(D) of the Agreement indicates that the timing for payment of any financial incentive would be determined by a subsequent development agreement, and in the absence of a subsequent development agreement, there is no obligation to make any payment of financial incentives to the Owner; and

WHEREAS, Article V(F) of the Agreement expressly indicates that the Agreement does not represent any indebtedness or loan of credit to Owner, and thus does not constitute any form of financial pledge or commitment; and

WHEREAS, Article VII(A)(2) of the Agreement indicates that should the Owner fail to obtain final approval of plans by the Agreement or if the City determines that such plans are not acceptable, the City may terminate the Agreement upon provision of written notice to Owner (without any requirement of advance notice); and

WHEREAS, based upon a review of the financial information presented by Owner including the pro forma attached hereto as Exhibit B, the City has concluded that it is not possible to come to agreement on the terms of a proposed amendment to the Agreement to implement a final development incentive approval; and

WHEREAS, despite Owner’s numerous failures to perform as outlined above, the fundamental inability of the parties to reach terms for the final development incentive agreement is an event for which Owner can produce no cure; and

WHEREAS, under Article II(A) of the Agreement, the Owner agreed and acknowledged that it had no basis to rely upon the availability of any City financial incentive, and acknowledged that it had not and would not make any such reliance; and

WHEREAS, the Owner is free to pursue the development of the Property and/or the rezoning of the same, without a City financial incentive, and the termination of the Agreement shall have no impact upon the zoning factors or related analysis applicable to the consideration or approval of any zoning or site development request, this action being limited to the termination of the Agreement and conclusion of any present consideration of a City-funded financial incentive for the redevelopment of the Property;

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

Section 1: The City Council of the City of DeKalb hereby incorporates by reference the recitals outlined at the initiation of this Resolution as if set forth fully herein and finds them to be true and accurate. Based thereupon, the City authorizes the termination of the Agreement, as approved on December 18, 2018. The City Council further finds that the basis for termination is not solely the Owner’s failure to comply with the timelines and submittal requirements as outlined in the Agreement, but also based upon the City’s informed conclusion, after further consideration of the proposed project and documentation as submitted by Owner, that it will not be possible to reach a mutually acceptable amendment to the Agreement as required for the provision of a financial
incentive.

The Mayor shall be authorized and directed to provide written notice of such termination.

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.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 22nd day of April 2019 and approved by me as Mayor on the same day. Passed by an 8-0 roll call vote. Aye: Jacobson, Finucane, Stupegia, Fagan, Noreiko, Verbic, Faivre, Smith. Nay: None.

ATTEST:

LYNN A. FAZEKAS, City Clerk

JERRY SMITH, Mayor
April 23, 2019

145 Fisk, LLC
1101 DeKalb Avenue, Suite 2
Sycamore, Illinois 60178

C. Nicholas Cronauer
1101 DeKalb Avenue, Suite 2
Sycamore, Illinois 60178

RE: Notice of Termination / Preliminary Development Agreement.

Dear Sirs:

As you are aware, the City of DeKalb City Council unanimously approved Resolution 2019-072 ("the Resolution") on April 22, 2019, directing that I dispatch a notice of termination of the Preliminary Development Agreement that had previously been approved on December 18, 2019 ("the Agreement"). The aforesaid Resolution incorporates a series of findings that the City Council adopted by reference therein. I would note that the City offered both the opportunity to meet regarding the Agreement, as well as the opportunity, on several occasions, to submit additional information regarding the proposed project. Those offerings not having been accepted, the City is in a position where it has concluded that it will not be possible to develop a mutually acceptable final development agreement, as a default which is not capable of cure.

Pursuant to the Resolution, please consider this to be your formal notice of termination of the Agreement.

Sincerely,

Jerry Smith
Mayor

c: City Manager
City Attorney
RESOLUTION 2018-166  

PASSED: DECEMBER 18, 2018

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

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

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

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

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

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

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

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

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

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

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

ATTEST:

LYNN A. FAZEKAS, City Clerk

JERRY SMITH, Mayor

STATE OF ILLINOIS
Prepared By and Return To:
City of DeKalb
ATTN: City Attorney
200 S. Fourth Street
DeKalb, IL 60115

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

RECITALS

A. The Owner is the owner or contract purchaser of record of approximately 1.38 contiguous acres of real property at 145 Fisk Avenue, situated with frontage on both Fisk Avenue and Sycamore Road in the City of DeKalb, DeKalb County, Illinois, which property is legally described on Exhibit A attached hereto and incorporated herein by reference as the "Property."

B. The Property is comprised of 1 parcel number (0823103027). Buildings on the Property are in an advanced state of deterioration. Collectively, the Property has declined in value during the preceding thirty years, despite the existence of a Tax Increment Financing District ("TIF District") covering the property for said period. As the Property was utilized for a tax-exempt purpose at the time of initiation of the TIF District, the Property presently has a base valuation (for TIF purposes) of $0. The Owner has acquired the contractual right to purchase the Property and each parcel therein, and proposes to create an assemblage of parcels under common ownership, with the intention of redeveloping the Property as a mixed-use, commercial development in accordance with this Agreement. The Property is proposed to be developed in accordance with the conceptual plans attached hereto as Group Exhibit B ("the Plans"), except as such plans are required to be modified under the terms of this Agreement. The Plans contemplate the renovation of the existing building for a multi-story mixed use facility including a hotel, a conference/gathering/reception area, a restaurant and bar/lounge, and related commercial uses.

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

E. The City acknowledges that the Owner’s proposed use of the Property, as set forth in this Agreement, will be compatible with and will further the planning objectives of the City and that the redevelopment of the Property to the City will be of benefit to the City, will permit orderly growth, planning and development of the City, will increase the tax base of the City, and will promote and enhance the general welfare of the City and its residents. The Owner acknowledges that the City is not required to provide the incentive contemplated herein, and that the City’s agreement to conditionally approve the incentive in accordance with the provisions of this Agreement, to provide access to public utility services and other City services, and to otherwise perform the City’s obligations under this Agreement constitutes valuable, bargained-for consideration that benefits the Owner and the Property.

F. All other and further notices, publications, procedures, public hearings and other matters attendant to the consideration and approval of this Agreement and the conditional approval of an incentive for the Property have been given, made, held and performed by the City as required by the Illinois Municipal Code, and all other applicable statutes, and all applicable ordinances, regulations and procedures of the City.

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

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

ARTICLE I: INCORPORATION OF RECITALS

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

ARTICLE II: ZONING OF THE PROPERTY

A. Zoning Contingency:

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

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

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

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

B. Additional Property:

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

ARTICLE III: DEVELOPMENT AND MAINTENANCE OF THE PROPERTY:

A. Further Agreement Required:

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

ARTICLE IV: PROJECT STAGING:

The Parties acknowledge that the construction of the project upon the Property shall be staged. The Parties further acknowledge that the timeline contained in this Agreement may be extended by the City Council from time to time without requiring an amendment of this Agreement.

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

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

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

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

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

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

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

**ARTICLE V: DEVELOPMENT INCENTIVE:**

**A. Necessity of Incentive:**

The Parties acknowledge that the Property has been blighted and vacant for more than 25 years, and has had a deleterious impact on adjacent property values and uses, notwithstanding the existence of a TIF District intended to improve property valuation. The Parties further acknowledge that the buildings comprising the Property are blighted within the statutory definitions contemplated by the Tax Increment Financing Allocation Act ("TIF Act"), and that the Owner is proposing to undertake a project that will incur substantial TIF-eligible expenses. The Parties further acknowledge that the Project is anticipated to generate substantial new revenues for the City and for other affected taxing districts and public entities, along with substantial new opportunities for commerce in the
City's downtown and other areas. Further, the Parties acknowledge that but for the provision of the incentive described herein, the Developer would be unable to undertake the project contemplated herein, as based upon extensive study of the proposed project and its costs, and the Parties have mutually concluded that this project would not be economically feasible and the Owner would not acquire the properties, would not remediate unsafe buildings, and would not undertake the project. Accordingly, the Parties agree and acknowledge that the Development Incentive as described herein is necessary in order to induce this project to occur, and satisfies all requirements applicable to such an incentive.

B. Development Incentive Defined:

The Owner commits that it shall invest not less than Seven Million One Hundred Thousand Dollars ($7,100,000) in the completion of the project as defined herein (“Project Completion Costs”), and shall proceed to construct all phases of the project (after obtaining required approvals and satisfying contingencies outlined herein) in a good and workmanlike manner. Following such approvals and contingencies, the City shall provide a total Development Incentive of Two Million Five Hundred Thousand Dollars ($2,500,000), payable through one or more phases as described herein (“the Development Incentive”). In the event that Owner fails to incur the minimum Project Completion Costs of $7,100,000, then the Development Incentive shall be reduced pro-rata, in proportion to the reduction in Project Completion Costs (i.e. a 10% reduction in Project Completion Costs below the minimum threshold defined herein shall cause a 10% reduction in the Development Incentive). All provisions of this Article V are contingent upon the Owner obtaining final approval of its plans, rezoning the Property, lender financing, and executing a planned development agreement as described above. The total Development Incentive shall be an amount not to exceed the lesser of: 1) $2,500,000; 2) the sum of all TIF Eligible Costs as defined herein; or, 3) the amount which is equivalent to thirty-five and three-tenths percent (35.3%) of the Project Completion Costs, as defined herein.

C. Definition of Eligible Costs:

1. Project Completion Costs, as described above, shall include all costs relating to the planning, purchase, demolition, remediation, restoration or construction of the project on the Property inclusive of the buildings on the Property, and such other costs as shall be included within the definition of Project Completion Costs as contemplated within the planned development agreement. It shall include: all costs of property acquisition and closing costs, including costs necessary to buyout of and/or relocation of existing tenancies, without the expenditure of which by Owner this project could not move forward as described and contemplated herein; demolition, environmental remediation and site restoration costs; professional design and engineering fees; costs of utility service, installation or relocation, including without limitation underground storm water pipes, sanitary runs or pipes, relocation of electric services and equipment, grease traps; interim financing and construction bridge loan interest costs; legal and other professional fees; management fees not to exceed a percentage of total actual project costs in accordance with the TIF Act and the
final planned development agreement; costs associated with processing lien waivers and payment of project expenses; contractor, subcontractor and materialmen costs; mobilization, site-heating, temporary utility or other construction related costs; permit fees, tap-on, connection or recapture fees; delivery expenses; costs of permanent fixtures, furnishings and equipment; costs of furniture for the fully furnished hotel units; costs of constructing any public improvements that are directly associated with the completion of the project (e.g. rights of way, roadways, sidewalks, driveway aprons, lighting); and other costs that are directly related to the construction on the Property and the improvements contemplated by the approved final plans.

2. TIF Eligible Costs shall include those costs which are eligible for reimbursement under the TIF Act to the fullest extent of the law, including but not limited to site assembly and acquisition costs, demolition and remediation costs, costs associated with providing public utilities to the Property, professional fees associated with the design, architecture, and/or engineering of the Property, costs associated with making permanent physical improvements to existing structures on the Property, and any other TIF eligible costs, whatsoever. TIF Eligible Costs shall only include costs incurred after the date of approval of this Agreement. Such costs shall be eligible for inclusion within the TIF Eligible Costs without regard to whether they are incurred before or after the contingencies contemplated herein are satisfied, and without regard to whether they are incurred before or after the property is rezoned and/or subjected to the requirements of a planned development agreement (provided that the contingencies are in fact satisfied prior to payment).

3. For any cost to be included as a Project Completion Cost or TIF Eligible Cost, said cost must be documented in accordance with the Project Cost Documentation requirements that the City customarily utilizes, which shall be appended to the planned development agreement for the Property, if approved.

D. Payment of Development Incentive:

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

E. Forgiveness of Development Incentive:

The Development Incentive described herein is intended to be repaid as a forgivable incentive, payable through the generation of revenues from the development of the Property after the date of final plan approval. Forgiveness is anticipated to be calculated based upon revenues generated by the redevelopment of the Property following issuance of a final certificate of occupancy, including: 1) new property tax increment generated, on an annual basis, as compared to the base equalized assessed valuation of the property in the last full year preceding redevelopment thereof (i.e. $32,893 as the tax year 2017 valuation); 2) sales tax generated by the Property; 3) restaurant and bar tax generated by the Property; and, 4) hotel-motel tax generated by the Property. The Forgiveness Period shall be for a period of thirty (30) years, commencing upon the last date of payment of any portion of the Development Incentive, and concluding on the date
which is the thirtieth anniversary of said date. Notwithstanding the foregoing, all revenues
which count towards the forgiveness of the development incentive as provided herein,
which are generated on or after the date of issuance of a final certificate of occupancy for
the buildings on the Property, shall be credited against the Development Incentive, even
if such revenues accrue prior to the start of the thirty-year forgiveness period. The total
of new revenue credits as calculated under the preceding Sections V(E)(1), (2), (3), and
4 shall collectively comprise the Incentive Repayment. If, upon conclusion of the
Forgiveness Period, the Incentive Repayment has failed to equal the total of the
Development incentive paid under this Agreement, then the remaining balance shall not
be forgiven and shall be a debt due and owing to the City requiring repayment within one
hundred twenty (120) days of Owner’s receipt of written notice of same from the City. The
City may, at such point, enforce its right of repayment by virtue of a contract action
seeking damages for violation of this Agreement (if Owner refuses to pay upon demand),
may initiate an action for foreclosure of the City’s mortgage(s), or may pursue such other
legal or equitable remedies as may exist.

F. Limitation of Liability:

The Parties acknowledge that the City’s liability to pay the Development Incentive
shall be expressly limited to funds available to the City in the City’s Special Tax
Allocation Fund, which Fund has as its sole source of revenue incremental taxes
collected in the City’s TIF Districts. Should the City not have adequate funding within
the Special Tax Allocation Fund for any reason, the City shall not be obligated to make
payments of the Development Incentive hereunder, without regard to whether Owner
has satisfied the contingencies contemplated herein. However, the City has no reason
to believe it does not have adequate funding within the Special Tax Allocation Fund for
any reason or that it will not have adequate funding within the Special Tax Allocation
Fund for any reason arising in the foreseeable future.

Owner may not compel any exercise of taxing authority by the City to make
payments provided for hereunder. The provisions of this Agreement do not constitute
indebtedness or a loan of credit of either Party within the meaning of any constitutional
or statutory provision, except to the extent required to permit enforcement of the City’s
rights under the corporate undertaking, promissory note and mortgage required herein.
To the extent required by law, for each year during the term of this Agreement, the City
hereby agrees that it will budget for and appropriate funds necessary to satisfy its
obligations hereunder. Such appropriation shall be a part of City’s annual budget
adopted in accordance with the Illinois Municipal Code and applicable provisions of City
Code. The City shall make any appropriation necessary for the year that the Agreement
is entered into by means of a budget amendment, if any is necessary. All references to
provisions in the Illinois Municipal Code are to provisions as in effect now and as
hereafter amended.

G. Need for Present Development Incentive Commitment:

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

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

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

ARTICLE VI. MUTUAL ASSISTANCE:

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

A. Failure to Construct:

1. This Agreement contains specific timelines for the rezoning and development of the Property. Those timelines may be extended by the City Council, with agreement of the Owner, from time to time by resolution, without requiring an amendment of this Agreement, for good cause shown by Owner, in the Council’s discretion.

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

B. Breach Generally:

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

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

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

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

**ARTICLE VIII: TERM:**

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

**ARTICLE IX: MISCELLANEOUS:**

A. **Amendment:**

This Agreement, and the exhibits attached hereto, may be amended only by mutual consent of the City and Owner of an affected Parcel, by adoption of an ordinance by the City approving said amendment as provided by law, and by the execution of said amendment by the City and Owner.

B. **Severability:**

If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements and portions of this Agreement, and to that end, all provisions, covenants, agreements and portions of the Agreement are declared to be severable. If for any reason the zoning of the Property is ruled invalid, in whole or in part, the Corporate Authorities, as soon as possible, shall take such actions (including the holding of such public hearings and the adoption of such ordinances and resolutions) as may be necessary to give effect to the spirit and intent of this Agreement and the objectives of the Parties, as disclosed by this Agreement.

C. **Entire Agreement:**

This Agreement sets forth all agreements, undertakings and covenants between and among the Parties. This Agreement supersedes all prior agreements, negotiations and understandings, written and oral, and is a full integration of the entire agreement of the Parties. In the event of any conflict between two or more components of this Agreement providing standards, guidelines or requirements for Owner to act upon in or
around the Property, construction or related activities for the Property, the more restrictive provision shall apply unless the City agrees otherwise.

D. Successors and Assigns:
   1. This Agreement shall inure to the benefit of, and be binding upon the Owner and its successors, grantees, lessees, and assigns, and upon the City and successor corporate authorities of the City and successor municipalities, and shall constitute a covenant running with the land.
   2. This Agreement shall not be assigned without the City's express, written approval as memorialized via a resolution of the City Council. This Agreement may be assigned with the City's consent, pursuant to a written amendment to this Agreement. Such amendment shall provide for the transfer of obligations to the successor owner/assignee, and may also provide for any proposed changes in use of the Property or the scope of the redevelopment project.
   3. Except as provided in the preceding subsection, the Owner shall not be authorized to engage in any sale, encumbrance, hypothecation or assignment of the Property or the rights conveyed under this Agreement, prior to the date upon which all final certificates of occupancy on the Property are issued, and all of the improvements described in the final plans (once approved) have been constructed. Transfers among or between family members related by blood or marriage, or between trusts, corporations, partnerships or limited liability companies which are entirely owned or controlled by family members related by blood or marriage, shall not be construed as sale or assignment under this subsection.

E. Notices:
   Any notice required or permitted by the provisions of this Agreement shall be in writing and sent by certified mail, return receipt requested, or personally delivered, to the Parties at the following addresses, or at such other addresses as the Parties may, by notice, designate:

   City Clerk                  City of DeKalb
                                200 South 4th Street
                                DeKalb, IL 60115
                                Telephone: 815-748-2095

   With copies to:             City Manager
                                City of DeKalb
                                200 South Fourth Street
                                DeKalb, IL 60115
                                Telephone: 815-748-2090

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

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

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

F. **Time of Essence:**

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

G. **Indemnification:**

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

H. **Exhibits:**

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

   - **Exhibit A:** Legal Description of the Property
   - **Group Exhibit B:** Concept Plans

I. **Venue:**

   Jurisdiction and venue for any dispute arising out of or relating to the terms of this Agreement, the zoning or restrictions imposed hereunder, the development of the Property or otherwise relating to the relationship of the Parties or contents hereof shall have its jurisdiction and venue exclusively fixed in the Twenty-Third Judicial Circuit, DeKalb County, Illinois, and the parties expressly and intentionally waive the right to pursue claims in any other jurisdiction or venue including but not limited to a knowing, voluntary waiver of the right to pursue any claim in federal court.

J. **Survival of Provisions:**

   The provisions of this Agreement relating to the remedies upon default and/or the recovery of any portion of the Development Incentive (through legal action, foreclosure, deed in lieu or other process) shall survive any termination of this Agreement.
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written and, by so executing, each of the Parties warrants that it possesses full right and authority to enter into this Agreement.

CITY:

CITY OF DEKALB, an Illinois Municipal corporation

By: Jerry Smith, Mayor

By: [Signature]

Attest: Lynn A. Fazekas, City Clerk

(Attest: [Signature])

OWNER:

By: [Signature]

Attest: [Signature]

Printed Name: C. Nicholas Coomer

Printed Name: Michelle Jureczek

OFFICIAL SEAL
MICHELLE JURECZEK
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 03/08/21
Exhibit A: Legal Description of the Property

The Property is Legally Described as:

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

Commonly known as: 145 Fisk Avenue, DeKalb, IL
PIN: 08-23-103-027
Group Exhibit B: Plans
April 23, 2019

145 Fisk, LLC
1101 DeKalb Avenue, Suite 2
Sycamore, Illinois 60178

C. Nicholas Cronauer
1101 DeKalb Avenue, Suite 2
Sycamore, Illinois 60178

RE: Notice of Termination / Preliminary Development Agreement.

Dear Sirs:

As you are aware, the City of DeKalb City Council unanimously approved Resolution 2019-072 ("the Resolution") on April 22, 2019, directing that I dispatch a notice of termination of the Preliminary Development Agreement that had previously been approved on December 18, 2019 ("the Agreement"). The aforesaid Resolution incorporates a series of findings that the City Council adopted by reference therein. I would note that the City offered both the opportunity to meet regarding the Agreement, as well as the opportunity, on several occasions, to submit additional information regarding the proposed project. Those offerings not having been accepted, the City is in a position where it has concluded that it will not be possible to develop a mutually acceptable final development agreement, as a default which is not capable of cure.

Pursuant to the Resolution, please consider this to be your formal notice of termination of the Agreement.

Sincerely,

Jerry Smith
Mayor

c: City Manager
   City Attorney