I, LYNN A. FAZEKAS do hereby certify that I am the duly appointed City Clerk of the City of DeKalb, DeKalb County, Illinois, and as such officer, I am the keeper of the records and files of the City Council of said City.

I do further certify that the attached is a true and correct copy of:

RESOLUTION 2018-095

AUTHORIZING A TAX INCREMENT FINANCING DEVELOPMENT INCENTIVE AGREEMENT WITH KEVIN AND MELISSA LOVELL TRUST FOR SITE IMPROVEMENTS AT 404 AND 424 E. LINCOLN HIGHWAY, AND 120 S. FOURTH STREET, DEKALB, ILLINOIS.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, on the 23rd day of July 2018. The original will be kept on file at the City of DeKalb Municipal Building.

WITNESS my hand and the official seal of said City this 8th day of April 2019.

Prepared by and Return to:

City Clerk’s Office
City of DeKalb
200 S. Fourth Street
DeKalb, Illinois 60115
RESOLUTION 2018-095

AUTHORIZING A TAX INCREMENT FINANCING DEVELOPMENT INCENTIVE AGREEMENT WITH KEVIN AND MELISSA LOVELL TRUST FOR SITE IMPROVEMENTS AT 404 AND 424 E. LINCOLN HIGHWAY AND 120 S. FOURTH STREET, DEKALB, ILLINOIS.

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

WHEREAS, the property located at 404 and 424 E. Lincoln Highway and 120 S. Fourth Street ("the Premises") is currently owned by Kevin and Melissa Lovell Trust ("Developers"); and

WHEREAS, the City and Developers seek to enter into a development agreement for improvements to the Premises, and

WHEREAS, the Developers have 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"). Said incentive shall be provided to the Developer as a forgivable loan through the Central Area Tax Increment Financing District ("TIF") for eligible project costs, to be provided after submission of appropriate project cost documentation in form and content acceptable to the Community Development Director.

Section 2. That the Deputy 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. The City Council expressly approves of the provision of the funding contemplated therein without requirement of further Council approval. 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 Regular meeting thereof held on the 23rd day of July 2018 and approved by me as Mayor on the same day. Passed by a 7-0-1 roll call vote. Aye: Jacobson, Finucane, Marquardt, Noreiko, Verbic, Faiivre, Smith. Nay: None. Absent/Recused: Fagan.

ATTEST:

RUTH A. SCOTT, Deputy City Clerk

JERRY SMITH, Mayor
Exhibit 1

402 AND 424 E. LINCOLN HIGHWAY, AND 120 S. FOURTH
KEVIN AND MELISSA LOVELL TRUST
DEVELOPMENT INCENTIVE AGREEMENT
CITY OF DEKALB
This Development Incentive Agreement (the "Agreement") is made and entered the ___ day of April, 201___, by and among the City of DeKalb, an Illinois municipal corporation located in DeKalb County, Illinois, (the "City"), and Kevin and Melissa Lovell Trust (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 402 and 424 E. Lincoln Highway and 120 S. Fourth, situated at the southeast intersection of Fourth Street and Lincoln Highway in the City of DeKalb, DeKalb County, Illinois, which property is legally described on Exhibit A attached hereto and incorporated herein by reference as the "Property".

B. The Property is comprised of six (6) separate tax parcels with one existing single-story commercial structure. The Owner has acquired the Property and each parcel therein, and proposes to improve the property to maintain and expand its utility for use in vehicle repair and servicing in accordance with this Agreement. The Property is proposed to be developed in accordance with the plans attached hereto as Group Exhibit B ("the Plans"), except as such plans are required to be modified under the terms of this Agreement. The Plans contemplate site modifications upon the Property ("the Project") to improve the parking lot.

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.

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 currently zoned CBD.

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

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 existing 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. Further, the Parties agree that at the time of approval of this Agreement, the Parties have been preparing for a rezoning of the Property to PD-C zoning, Planned Development—Commercial, to enable the utilization of the Property in a more productive fashion. The provisions of this Agreement, the incentives contemplated herein and the related benefits and consideration offered to the Owner are expressly contingent upon the Owner applying for and receiving a PD-C zoning designation within six months of the date of approval of this Agreement. Should Owner obtain such a rezoning, this Agreement shall be appended to the approved Planned Development Agreement for the Property as an exhibit. Should Owner fail to obtain such rezoning, then this Agreement shall be void and of no further force of effect, without regard to or requirement for the provision of any notice. If the Owner is then-presently pursuing the rezoning in good faith, the Community Development Director may extend this six-month period for a term not to exceed six additional months, but shall not be obligated to do so.

B. Permitted Commercial Uses:

Except as provided herein and as may be authorized by any rezoning to authorize vehicle repair and servicing, the Property shall be permitted to be utilized for any “Permitted Use” in the CBD zoning district as identified in the City of DeKalb Unified Development Ordinance (UDO).

C. Permitted Residential Uses:

There shall be no permitted residential uses on the Property.

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.
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 in the UDO.
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) 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).
14) Warehouses, whether accessory to a retail use, or self-service storage.
15) Psychic reading/Tarot card shop
16) Church or religious uses.
17) Gas or fuel station or any form of car wash or auto detailing center.
18) A dollar store or a discount department store or wholesale establishment.
19) A second-hand store.
20) A cash for gold store.
21) Currency exchange, money wiring, check cashing facility or equivalent (as a primary use).
22) 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.
23) Pawn shops.
24) Drive-thru facilities.

Use of the Property for any of the foregoing uses shall constitute a violation and breach of this Agreement which shall justify immediate termination by the City, and shall invoke the clawback contained herein. It is contemplated herein that the final permitted, special and prohibited use list shall be established through the zoning process described above, and memorialized through an amendment to this Agreement.

E. Project Related Provisions:

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

1) All Project improvements on the Property shall be built in compliance with the Plans in terms of design, appearance, aesthetics and landscape materials, or as modified as a result of the rezoning process. The Owner shall design, install and/or construct all pavement, landscaping, lighting and improvements in conformance with final plans to be approved by the Community Development Director in writing. Following the installation of such materials, the Owner shall maintain such materials (including the paved parking, landscaping and lighting 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, 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) 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 Project or Property to permit the use of the Project 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 Project.

3) The Owner shall reasonably comply with any request of the City to install, at the City's cost and expense, security cameras on the Project or Property for use by the City, provided that such cameras are installed to monitor only public property or public access areas of the Property (e.g. the proposed walkway at the east side of the Property and/or parking areas), and further
provided that such installation can be accomplished in such a fashion as to not impede the aesthetic appearance of the Project.

4) 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.

5) 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.

6) Owner shall provide building lighting and site lighting on the Property based upon a consistent standard adopted at the time of final plan approval, acceptable to Owner and the City, and shall thereafter maintain lights in such locations in compliance with the adopted standards.

F. Parking Provisions:

Owner shall be required to construct Project in accordance with Plans attached hereto as Exhibit B, as may be amended pursuant to the rezoning, after approval of the final plans by the Community Development Director in writing.

G. Permitted Outdoor Storage:

Outdoor dumpsters, trash compactors, and similar rubbish disposal facilities shall be permitted on the Property in accordance with the approved final plans, provided that all such facilities shall be completely screened from view with a wall constructed of materials and colors matching the principal building it services as contemplated by the Plans. Any proposed expansion or alteration of the outdoor rubbish disposal facilities and their related landscaping/screening shall be subject to prior review and reasonable approval by the City Council to confirm compliance with this section. No other outdoor storage shall be permitted, and no storage of dumpsters or garbage or recycling containers shall be permitted outside of the walled garbage enclosure. The outdoor trash facilities shall be constructed in accordance with the final plans, and shall be constructed of a high-quality weather-resistant material acceptable to the City. Once constructed, the trash facilities shall be maintained at all times in good repair, and the Owner shall take all steps as shall be required to ensure that the main entry gates to the trash facilities are kept closed at all times when the facilities are not actively being serviced by a garbage truck. Owner shall also be permitted to maintain outdoor vehicle storage of operable vehicles that are then-presently being serviced by the repair shop located on the Property.
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, stormwater facilities, or other improvements within the Property and for maintaining all buildings on the Property in accordance with all City Building, Zoning and Property Maintenance Codes, and in accordance with the terms set forth in this Agreement. The Owner shall assume full responsibility for ensuring the property's compliance with the applicable codes and requirements. The Owner shall also be responsible for construction of all new improvements, pathways and amenities as depicted in the approved final plans, unless the City agrees, in writing, that it shall be responsible for some portion of construction of a public improvement.

B. **Backup Special Service Area:**

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

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

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

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

Owner shall execute a copy of the Waiver of Objection to Special Service Area in the form substantially as attached hereto as Exhibit G.

Prior to activating the Special Service Area, the City shall afford the Owner notice and an opportunity to cure consistent with the provisions of this Agreement.

C. Environmental:

Prior to the start of any grading or development work on the Property, the Owner shall provide documentation, in form and content acceptable to the City (and additionally acceptable to DeKalb County if DeKalb County requests any such documentation), indicating that there are no pending IEPA investigations or environmental contamination issues with the Property (other than those to be remediated during the course of demolition).

D. Owner Surety:

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

E. Security for Public Improvements:

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

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

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

G. Stop Work Orders:

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

H. Compliance with City Ordinances and Applicable Regulations:

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

I. Site Control:

Owner acknowledges that, depending on weather conditions, construction traffic entering and leaving a construction site creates debris, especially dirt, dust, and mud clots on streets and roadways adjacent to the construction site. Owner agrees that it shall inspect and clean the streets and roadways adjacent to and within 500 feet of the entrance to Owner's construction site, and take measures to control dust daily while construction is occurring on said site. Owner further agrees to periodically mow weeds, pick up trash and debris and repair and replace soil erosion control fencing so as to comply with applicable ordinances of the City, all of which activities may be contracted to its development trades and contractors. Owner shall also patch or repair damage to any roadway, path, driveway, sidewalk or other similar improvement which may be damaged during the course of Owner's construction or maintenance activities. As security for such obligations, and as a condition of the issuance of any filling or grading permits, Owner shall provide the Owner Surety in a form consistent with the Owner Surety referenced hereinabove. In the event Owner fails to clean the Property, mow weeds, pick-up debris or repair or replace soil erosion control fencing as required, or fails to patch or repair any street, path, roadway or sidewalk within two business days after receipt of notice from the City of Owner's failure to comply with this provision, then the City may perform or contract with others to perform such undertaking and invoke the Owner Surety. Owner shall, within 15 business days following written notice from the City, pay all such costs. In the event that the City takes any remedial action under this subsection, the City may thereafter require that Owner establish and post a cash escrow with the City as a nuisance bond to cover the cost of any required future abatements.

J. Building Codes:

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

K. Railroad Right of Way:

The Parties acknowledge that the Property is immediately adjacent to a railroad right of way. Owner shall comply with all applicable laws, rules and regulations relating to access to the right of way and work in or near the right of way, at its sole cost and expense (except as otherwise provided herein).

ARTICLE IV: PROJECT STAGING:

Following approval of this Agreement, Owner shall work in collaboration with the
City to submit final plans for review and approval by the City. Proposed final plans shall be subject to review and revision in collaboration with City staff, and shall be required to be in substantial conformity with the Plans attached hereto, subject to such changes as shall be approved through the rezoning process contemplated above. Deviation from the Plans shall be permitted where reasonably acceptable to the City and where resulting in an improvement to the Property. Owner shall complete Project within six (6) months of the date of approval of the final plans by the City.

**ARTICLE V: INTENTIONALLY OMITTED:**

**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.

   1. Building Permit and Plan Review Fees: The Parties acknowledge that the Property is subject to building permit fees and planning, zoning and engineering review fees as proposed to be developed and constructed. The Owner shall pay all such fees.

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 has deteriorated in condition and is served by public utilities and infrastructure that are not in an advantageous location. The Property is unique in that it is located at a complex area with intersecting utilities, two intersecting state highways and a railroad which complicate the development or redevelopment of the area. 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 $90,995.24 in Property Acquisition and Demolition Costs, and is estimated to invest $127,118.10 in Property Rehabilitation Costs. The Owner commits that it shall invest not less than $218,113.36 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 as described below. The Development Incentive shall include the sum of the figures tallied under subsection VIII(B)(1) and (2), for costs of the MROW and DROW as
defined and limited therein.

1. **Mandatory Right of Way Improvements ("MROW"):** As a component of the construction of the project, the Owner is required to construct certain improvements to the public right of way and the curtilage of the Property, with a total estimated cost of $61,536.62. The Development Incentive shall include reimbursement for the costs of the MROW, in an amount not more than the lesser of: a) $61,536.62, b) the amount which is not more than 28% of the Project Completion Costs; or, c) the total of all TIF-eligible costs incurred in constructing the MROW. The MROW components are described as follows:

   a. Concrete Curb and Gutter Removal and Replacement
   b. Pavement and Sidewalk Removal and Replacement
   c. Excavation
   d. Subbase Materials
   e. Curb and Walk
   f. Striping
   g. Storm Sewer Removal/Replacement
   h. Hand-hole adjustment
   i. Flaggers
   j. Traffic Control
   k. Other Improvements Required by Authorities Having Jurisdiction
   l. In the event that the MROW has a total cost of less than $61,536.62, the incentive contemplated herein may be used to pay for the costs of other TIF-eligible expenses acceptable to the Community Development Director, provided that the limits described in Section VIII(B) are not exceeded. The Community Development Director is authorized and directed to approve of such additional TIF-eligible expenses.

2. **Discretionary Right of Way Improvements ("DROW"):** As a component of the construction of the project, the City has requested that Owner make certain additional improvements to the right of way, to extend the existing Lincoln Highway streetscape between its current terminus west of Fourth Street, and its current terminus east of the Property. The estimated additional costs of the DROW above the cost of the MROW improvements are $87,257.31. The Development Incentive shall include reimbursement for 100% of the TIF-eligible costs incurred in constructing the DROW. The DROW components are described as follows:

   a. Underlayment for paver sidewalk
   b. New Paver Sidewalk and Detectable Warnings
   c. Street Light Removal and Replacement
   d. Other Improvements Required by Authorities Having Jurisdiction
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 to buyout of and/or relocation of existing tenancies, without the expenditure of which by Owner this project could not move forward as described and contemplated herein; demolition, environmental remediation and site restoration costs; professional design and engineering fees; costs of utility service, installation or relocation, including without limitation underground storm water pipes, sanitary runs or pipes, relocation of electric services and equipment, grease traps; interim financing and construction bridge loan interest costs; legal and other professional fees; costs associated with processing lien waivers and payment of project expenses; contractor, subcontractor and materialmen costs; mobilization, site-heating, temporary utility or other construction related costs; permit fees, tap-on, connection or recapture fees; delivery expenses; costs of permanent fixtures, 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 this 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. Prior to the making of any payment of the Development Incentive under this Agreement, the Owner shall execute a corporate undertaking, promissory note and mortgage substantially in the form attached hereto as Group Exhibit F. The mortgage shall be recorded against the existing parcel in the Property that Owner owns, and shall subsequently be recorded against each remaining parcel comprising the Property at the time of purchase, to include and be a valid first lien against each such parcel. Said documents shall secure the payment of up to the full Development Incentive as described herein, 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, including property acquisition costs, is to facilitate the rapid redevelopment of the Property to ensure its conversion 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 $218,113.36 of total expenses, then the Development Incentive for the MROW shall be reduced to not exceed 28 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. All such payments shall be made at the conclusion of the project, upon approval of a temporary or final certificate of occupancy and acceptance of all public improvements. If payment is made at time of temporary certificate of occupancy, the City may withhold sums to cover any work which remains outstanding.
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 date of last payment of the Development Incentive. 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 as an automotive repair shop (or an alternate use approved by the City Council) 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).

F. Limitation of Liability:

The Parties acknowledge that the City’s liability to pay the Development Incentive shall be expressly limited to funds available to the City in the City’s Special Tax Allocation Fund, which Fund has as its sole source of revenue incremental taxes collected in the City’s TIF Districts. With regard to forgiveness of a portion of the Development Incentive under subsection VIII(E)(3) above, the sole source of funds for such forgiveness shall consist of revenues actually received by the City as defined above. Owner may not compel any exercise of taxing authority by the City to make payments provided for hereunder. The provisions of this Agreement do not constitute indebtedness or a loan of credit of either Party within the meaning of any constitutional or statutory provision, except to the extent required to permit enforcement of the City’s rights under the corporate undertaking, promissory note and mortgage required herein. To the extent required by law, for each year during the term of this Agreement, the City hereby agrees that it will budget for and appropriate funds necessary to satisfy its obligations hereunder. Such appropriation shall be a part of City’s annual budget adopted in accordance with 65 ILCS 5/8-11-20 and applicable provisions of City Code. The City shall make any appropriation necessary for the year that the Agreement is entered into by means of a budget amendment, if any is necessary. All references to provisions in 65 ILCS 5/8-11-20 are to provisions as in effect now and as hereafter amended.

ARTICLE IX. OPERATION OF THE PROPERTY:

A. Acknowledgment of Application of Operational Standards:

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

B. 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. 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.

C. 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.

D. Common Area Surveillance:

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

E. Commercial Property Registration and Inspection:

The Lessee shall comply with the then-current requirements of any applicable
commercial property registration or inspection ordinance maintained by the City, and
shall voluntarily comply with an annual inspection of the premises in accordance
therewith. The Lessee shall secure all such permissions and shall include in any leases
for any portion of the Property such authorization as shall be required to permit the full
inspection of any portion of the Building or Property. During the term of this Agreement,
the Lessee shall reasonably cooperate with any request by the City to inspect the
Property, the Building or any portion thereof, by any City employee or contractor, to
confirm compliance with the terms of this Agreement.
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. The Parties acknowledge that this Agreement is structured with a forgivable incentive. The Parties also acknowledge that there is an existing TIF District with a limited number of years remaining on its term, and during the term of that TIF District, the forgiveness of the Development Incentive is greatly expedited due to the generation of TIF increment that is credited against the Development Incentive. Accordingly, the Parties acknowledge that the failure of the Owner to comply with the timeline indicated herein, even if consented to by the City, will be at the Owner's peril, as it may jeopardize the project's ability to generate adequate revenues that are credited to Owner under this Agreement, and may thus generate an obligation for Owner to repay a portion of the Development Incentive to the City.

2. In the event that Owner 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.

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
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 S. Fourth Street
DeKalb, IL 60115
Telephone: 815-748-2093

If to the Owner:
Kevin and Melissa Lovell Trust
1335 Florence Drive
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 "Indemnified") 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 and non-contributory insured without right of subrogation.

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

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

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

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

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

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

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

CITY:

CITY OF DEKALB, an Illinois Municipal corporation

By: [Signature]  Attest: [Signature]

Jerry Smith, Mayor

OWNER:

Kevin and Melissa Lovell Trust

By: [Signature]  Attest: [Signature]

Print Name: Kevin Lovell  Melissa Lovell

Print Name: [Signature]

[Stamp: "OFFICIAL SEAL: RICHARD D. LARSON  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 9/27/2019"]
Exhibit A: Legal Description

The property is legally described as:

SUBJECT PARCELS (Lots A, B, C, D, E, F, and G):

Group Exhibit B: Plans

(Attached, with page numbering separately tracked from the pages of this Agreement, but incorporated herein by reference.)
Exhibit C: No Trespass / Patrol Agreement

Common Area Patrol / No-Trespass Enforcement Agreement

Property Address: 462 and 424 E 114th St, 4th

Commonly Known As: Lovell's Tire

Property Owner: Kevin B. & Melissa G. Lovell Dec. of Trust DTD 4/03/98
Contact #: 815-751-1608

Property Manager: Kevin B. Lovell
Contact #: 815-751-1608

24 Hour Contact #: 815-751-1608

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

- **No-Trespass Warnings and Arrests:** The Owner appoints the City of DeKalb, its employees and agents, as an agent of the Owner, authorized and requested to undertake any actions which the Owner could lawfully take with regard to persons unlawfully present relative to no-trespassing laws and ordinances on any public or private area of the Property. The City's personnel shall be deemed to be representatives of the Owner for purposes of enforcing no-trespass laws and ordinances and signing and testifying with regard to related complaints only. This includes providing no-trespass warnings, verbal or written, to any person on the Property other than a tenant of the Property. The City shall also be authorized to sign complaints, serve as complaining witness, and arrest or cite any person who has violated such a no-trespass warning, or who remains on the Property after being asked to leave. The City has the complete authority to enforce any State Statute or City Ordinance relating to trespass. The City shall maintain accurate records of all persons who have been advised not to trespass on the Property and shall provide a copy of the same to Owner upon request.

- **Patrol Common Areas:** The City, its employees and agents are authorized and requested to enter into any common area of the Property that is accessible either to the public or to tenants of the Premises, including parking lots, open spaces, common hallways, gathering areas, or other similar common areas of the Property, for purposes of patrolling, observing, and enforcing the Codes and
Ordinances of the City of DeKalb or any applicable State Statutes. For purposes of this Agreement and any charges arising out of the City’s activities on the Property, the City and its personnel shall be deemed to have been invited upon the common areas of the Property. Notwithstanding the foregoing, this shall not constitute authority for the City to enter into tenant private areas (e.g. individual tenant apartments or individual tenant businesses) without required legal authority (such as a search warrant, probable cause, exigent circumstances, etc. where required). The City is authorized to sign complaints, serve as complaining witness, and arrest or cite any person who has violated a State Statute or City Ordinance.

- **Report Cars for Relocation:** Owner employs the entity described at signs posted at the Property for purposes of relocating unlawfully parked cars from the Property (and Owner shall maintain such postings in accordance with City Code). The City is authorized and requested to contact the tow relocator to report any vehicles on the Property that appear to be unlawfully parked, so that said vehicles may be towed in accordance with applicable regulations.

- **Provisions of Development Agreement:** Owner shall further permit and consents to the conduct of any access or inspection authorized under the terms of any Development Agreement entered into by Owner and the City which is recorded against the Property of public record.

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

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

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

This Agreement shall remain in full force and effect until terminated in writing by either party. Notices shall be delivered to Owner at the address listed above, or to the City at
200 S. Fourth Street, DeKalb, Illinois, 60115, Attention City Attorney. Agreed this 8th day of April, 2019.

Owner or Representative: [Signature]

Print Name: Kevin B. & Melissa G. Lovell Dec. of Trust DTD 4/03/98

City of DeKalb: [Signature] Jerry Smith, Mayor
Exhibit D: Traffic Enforcement Agreement

AGREEMENT

WHEREAS, Kevin B. & Melissa G. Lovell, Dec. of Trust DTD 4/03/98, its affiliates or subsidiaries (hereinafter collectively "OWNER"), is the Owner of a certain commercial or residential facility, or other facility as described in the Illinois Vehicle Code identified below, and named or identified as "DeKalb"; and

WHEREAS, the OWNER and the CITY are desirous of protecting the public health, welfare and safety by the regulation of vehicles in those areas of the COMPLEX which have not been dedicated to the CITY and are intended for public use; and

WHEREAS, it is intended by the parties that this Agreement should apply to any property in the COMPLEX where a question may arise as to whether any particular portion of the COMPLEX which is intended to be or become public property through dedication or otherwise, has been so dedicated, or to any portion which is to remain private property but available for general public use; and

WHEREAS, the CITY has the authority to contract with the OWNER to provide such regulation under the provisions of §11-209 of the Illinois Vehicle Code (625 ILCS 5/11-209);

IT IS THEREFORE AGREED by and between the OWNER and the CITY, in consideration of the public health, welfare and safety, as follows:

1. That the CITY is empowered to accomplish all or any part of the provisions enumerated in the above referenced statutory provision, including, but not limited to the following, within the COMPLEX:

   A. Erect traffic regulatory signs, parking, including handicapped parking, and all other traffic control signs.

   B. Regulate the turning of vehicles or restrict vehicle types.

   C. Regulate pedestrian crosswalks within parking lots.

   D. Designate one-way traffic lanes.

   E. Establish and regulate loading zones.

   F. Regulate stopping, standing or parking in specified areas of lots.

   G. Designate fire lanes and safety zones.
H. Provide for removal and storage of vehicles during public emergencies, or of abandoned vehicles, and the payment of reasonable charges therefor.

I. Provide for cost sharing of planning, installation and maintenance of traffic regulations.

J. Contract for or provide by ordinance, resolution or other official action of the CITY, reasonable additional rules.

2. That the cost of the planning, installation and maintenance of parking and traffic regulations, markings, signs, striping and painting pursuant to this Agreement, and pursuant to the Development Agreement between the parties and the subdivision control ordinance of the CITY, shall be borne by the OWNER. OWNER shall be responsible for maintaining all traffic control measures and markings within the Property in good condition.

3. This Agreement shall be effective and enforceable three days after it has been recorded in the Office of the Recorder of Deeds of the county in which the COMPLEX is located and shall continue to be in full force and effect for a period of twenty years, except that after one year from the effective date of this Agreement, either party may cancel this Agreement upon sixty days' written notice to the other party.

EXECUTED this 8th day of April, 2019.

CITY OF DEKALB
DEKALB COUNTY, ILLINOIS

By: Jerry Smith, Mayor

OWNER Co-Trustees

Print Name: Kevin B. & Melissa G. Lovell Dec. of Trust
DID 4/03/98
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 for private improvements unless the Owner determines that such records are required under the Prevailing Wage Act. The Owner shall provide certified payroll records and shall comply with the Prevailing Wage Act with regard to any public improvements constructed, unless the Owner determines that such compliance is not required by law. 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.
  o 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.
  o 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.
  o 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.
  o 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.
  o Applicants may include a Miscellaneous Expenses tab in the binder for small project expenses.
Credit Card Statements are not adequate to evidence expenditures. All small expenditures require actual receipts showing the expenditures. The City reserves the right to require Applicants to provide written documentation explaining any expenditure.

Building permits are eligible expenditures. Ineligible expenditures include: food, fuel, beverages, utility bills, web design, merchandise for stock or supply, membership dues, life insurance, or other personal expenses. The City reserves the right to disqualify any expense.

- Once an invoice is submitted, the invoice cannot be withdrawn or retracted, and the scope of work described on the invoices cannot be altered. For this reason, it is critical to ensure that these guidelines are complied with.
- The City shall also be provided with an electronic copy of all submittals, in PDF format, separated into sections as outlined above.
COMPANY UNDERTAKING
for
Kevin B. & Melissa G. Lovell Dec. of Trust
DTD 4/03/98

WHEREAS, the company known as Kevin B. & Melissa G. Lovell Dec. of Trust DTD 4/03/98 is a duly recognized and active limited liability company organized and doing business in the State of Illinois; and

WHEREAS, the Company is governed by a written Operating Agreement, which provides that the Member identified below of said Company may act on behalf of the Company in the capacity herein contemplated;

NOW, THEREFORE:

BE IT RESOLVED this day of April, 2019, that the undersigned, being a duly appointed and acting Member of the Company, authorizes the Company to execute any and all documents pursuant to that certain Development DeKalb Planned Incentive Agreement with the City of DeKalb regarding the Property described in the attached Legal Description (the “Property”), all in DeKalb, Illinois, including, but not limited to, promissory note(s), security agreement(s), line(s) of credit, mortgage(s) and all other loan or financing documents to enable the Company to fulfill its obligations pursuant to said Incentive Agreement and to permit and enable the City of DeKalb to perfect any and all liens on the assets of the Company and/or Property.

1. Company Further Agrees as follows:

(a) "Company’s Liabilities" shall mean all obligations and liabilities of Company to the City (including, without limitation all debts, claims, and indebtedness), whether primary, secondary, direct, contingent, fixed, or otherwise, heretofore, now, and/or from time to time hereafter owing, due, or payable, however evidenced, created, incurred, acquired, or owing and however arising, whether under the “Loan Agreements” or “Development Agreement” (hereinafter defined), or by oral agreement or operation of law, or otherwise, and all terms, conditions, agreements, representations, warranties, undertakings, covenants, guaranties, and provisions to be performed, observed, or discharged by Company under the Loan Agreements.

(b) “Incentive Agreement” shall mean that certain DeKalb Planned Incentive Agreement entered into by the Company and City relating to the redevelopment of the Property described in Exhibit 1.

(c) “Loan Agreements” shall mean all agreements, instruments, and documents, including, without limitation, promissory notes, loan and security agreements, guaranties, letters of credit, mortgages, deeds of trust, environmental indemnity agreements, pledges, powers of attorney, consents,
assignments, contracts, notices, leases, financing statements, and all other written matter heretofore, now, and/or from time to time hereafter executed by and/or on behalf of Company and delivered to City, including, without limitation, that certain Loan and Security Agreement dated as of the date hereof, made by Company in favor of City (Loan Agreement), and any and all substitutions, replacements, renewals, and/or amendments to and of the aforementioned agreements, instruments, and documents.

2. Company unconditionally, absolutely, and continuously guarantees and undertakes to City the prompt performance and payment (in full) of all of Company's Liabilities, when such performance or payment is due or declared due by City, subject to the terms and provisions of the Incentive Agreement. In addition to the payment and performance of Company's Liabilities specified in the preceding sentence, Company shall additionally be liable for all of the costs and expenses incurred by City as identified in Section 9 of this Undertaking.

Prior to enforcing its rights under this Undertaking, the City is not required to seek to enforce or resort to any remedies with respect to any security interests, liens, or encumbrances granted to City by Company or any other party to secure the repayment of Company's Liabilities.

Company's Liabilities shall in no way be impaired, affected, reduced, or released by reason of (a) the City's failure or delay to do or take any of the actions or things described in this Undertaking; (b) the invalidity or unenforceability of Company's Liabilities or the Loan Agreements; or, (c) any loss of or change in priority or reduction in or loss of value of any security interest, lien, or encumbrances securing the repayment of Company's Liabilities.

3. Company represents and warrants to City that:
   (a) The statements in the preamble to this Undertaking are true and correct.
   (b) Company has reviewed and voluntarily entered into this Undertaking and the associated Note and Mortgage.
   (c) Company has the right, power, and capacity to enter into, execute, deliver, and perform this Undertaking.
   (d) This Undertaking, when duly executed and delivered, will constitute a legal, valid, and binding obligation of Company, enforceable against Company in accordance with its terms, subject to applicable bankruptcy laws or other laws affecting creditors' rights generally or the equity powers of the courts.
   (e) The execution, delivery, and/or performance by Company of this Undertaking shall not, by the lapse of time, the giving of notice, or otherwise, constitute a violation or breach of (1) any applicable law; or (2) any provision contained in any agreement or document to which Company is now or hereafter a party or by which it is or may become bound.
   (f) Company is now, and at all times hereafter shall be, solvent and generally able to pay its debts as such debts become due, and Company now owns
or will upon its acquisition of the Property which is the subject of the Incentive Agreement, and shall at all times hereafter own, property that, at a fair valuation, exceeds the sum of Company's debts.

(g) Company now has, and shall have at all times hereafter, capital sufficient to carry on all business transactions and all businesses and transactions in which Company is about to engage. Company does not intend to incur or believe that Company will incur debts beyond Company's ability to pay as such debts mature.

(h) There are no actions or proceedings that are pending or threatened against Company that might result in any material and adverse change in Company's financial condition or materially affect Company's ability to perform Company's Liabilities.

(i) Company has reviewed independently the Loan Agreements, and Company has made an independent determination as to the validity and enforceability thereof on the advice of Company's own counsel, and in executing and delivering the Undertaking to City, Company is not in any manner relying on City as to the validity and/or enforceability of any security interests of any kind or nature to City.

(j) Upon written request from City, Company agrees to furnish to City all pertinent facts relating to the ability of Company to pay and perform Company's Liabilities, and all pertinent facts relating to Company's ability to pay and perform Company's Liabilities. Company agrees to keep informed with respect to all such facts. Company acknowledges and agrees that (1) City has relied and will continue to rely on the facts and information to be furnished to it by Company; (2) in executing this Undertaking and at all times hereafter, Company has relied and will continue to rely on Company's own investigation, and Company has not and will not hereafter rely on City for any such information or facts.

4. Waivers

(a) To the extent permitted by law, Company waives all other defenses, counterclaims, and offsets of any kind or nature in connection with the validity and/or enforceability of this Undertaking, including, without limitation, (1) those arising directly or indirectly from the perfection, sufficiency, validity, and/or enforceability of any security interest granted by Company to City or acquired by City from Company; and, (2) those based on the failure or adequacy of consideration.

(b) Company hereby waives notice of the following events or occurrences and agrees that City may do any or all of the following in such manner, on such terms, and at such times as City, in its sole and absolute discretion, deems advisable without in any way impairing, affecting, reducing, or releasing Company from Company's Liabilities:

(1) City's acceptance of this Undertaking;

(2) Presentment, demand, notices of default, nonpayment, partial payment, and protest, and all other notices or formalities to which Company may be entitled;
5. **Covenants and Agreements**

Company covenants and agrees with City that:

(a) All security interests, liens, and encumbrances heretofore, now, and at any time or times hereafter granted by Company to City shall secure Company's Liabilities.

(b) All indebtedness, liability, or liabilities now and at any time or times hereafter owing to Company by any party liable to City by reason of any security interests, liens, or encumbrances granted by Company to City are hereby subordinated to all indebtedness, liability, or liabilities owed by such party to City.

6. **Security**

To secure the prompt payment to City of, and the prompt, full, and faithful performance of, Company's Liabilities, Company grants to City a security interest in and lien on the Property ("Collateral").

Company shall execute and/or deliver to City, at any time and from time to time hereafter at the request of City, all agreements, instruments, documents, and other written matter that City reasonably may request, in a form and substance acceptable to City, to perfect and maintain perfected City's security interest in the Collateral. City shall have no obligation to protect, secure, or insure any of the foregoing security interests, liens, or encumbrances or the properties or interests in properties subject thereto.

Company warrants and represents to and covenants with City that (a) Company has good, indefeasible, and marketable title to the Collateral, or will upon its acquisition of same as contemplated by the Incentive Agreement; (b) City's security interest in and lien on the Collateral is now, and at all times hereafter shall be, valid and perfected, and shall have a first priority; (c) Company shall not grant a security interest in or permit a lien, claim, or encumbrance on any of the Collateral in favor of any third party, except as contemplated by the Incentive Agreement; (d) the addresses specified at the end of this Undertaking include and designate Company's principal residence and is Company's sole residence. Company, by written notice delivered to City at least thirty (30) days prior thereto, shall advise City of Company's acquiring any new residence or selling any existing residence, and any new residence shall be within the continental United States of America.

7. **Default**

The occurrence of any of the following events shall, at the election of City, be deemed a default by Company (Event of Default) under this Undertaking:

(a) if Company fails to pay any of Company's Liabilities when due and payable or properly declared due and payable;

(b) if Company fails or neglects to perform, keep, or observe any term, provision, condition, covenant, warranty, or representation contained in this Undertaking, which is required to be performed, kept, or observed by
Company, and Company shall fail to remedy such within ten (10) days of being served with written notice from City;

(c) if the Collateral is attached, seized, subjected to a writ of distress warrant, or levied upon, or becomes subject to any lien, or comes within the possession of any receiver, conservator, trustee, custodian, or assignee for the benefit of creditors;

(d) if Company becomes insolvent or generally fails to pay, or admits its inability to pay, debts as they become due;

(e) if a petition under Title 11, United States Code, or any similar law or regulation shall be filed by Company, or if Company shall make an assignment for the benefit of its creditors, or if any case or proceeding is filed by Company for its dissolution or liquidation;

(f) if a petition under Title 11, United States Code, or any similar law or regulation shall be filed against Company, or if a case or proceeding is filed against Company for its dissolution or liquidation and such proceeding shall not be dismissed within forty-five (45) days of its filing, during which time Company shall be diligently contesting such action or proceeding;

(g) if Company is enjoined, restrained, or in any way prevented by court order from conducting all or any material part of its business affairs, and such injunction or restraint shall not be voided, removed, or dismissed within thirty (30) days of the court's order, during which time Company shall be diligently contesting such action or proceeding;

(h) if a notice of lien, levy, or assessment is filed of record or given to Company with respect to the Collateral;

(i) if Company is in default in the payment or performance of any material obligation, indebtedness, or other liability to any third party, and such default is not cured within any cure period specified in any agreement or instrument governing the same;

(j) if any material statement, report, or certificate made or delivered to City by Company is not true and correct;

(k) any material adverse change in the financial condition, operations, business, or assets of Company, and Company shall fail to remedy such within ten (10) days of being served with written notice from City;

(l) the occurrence of a default or Event of Default under any other agreement, instrument, and/or document executed and delivered by Company to City, which is not cured by Company within any applicable cure period set forth in any such agreement, instrument, and/or document;

(m) the occurrence of a default or event of default under the Loan Agreements;

(n) the dissolution of Company or if Company attempts to cancel, revoke, or disclaim this Undertaking; or

8. Remedies
Upon the occurrence of an Event of Default, and with prior notice thereof to Company, Company's Liabilities shall be due and payable and enforceable against Company, forthwith, at City's principal place of business, and City may, in its sole and absolute discretion, exercise any one or more of the following remedies that are cumulative and nonexclusive:

(a) proceed to suit against Company if Company's Liabilities are not immediately paid by Company to City at City's principal place of business; at City's election, one or more successive or concurrent suits may be brought hereunder by City against Company; and/or

(b) reduce to cash or the like any of Company's assets of any kind or nature in the possession, control, or custody of City, and, without notice to Company, apply the same in reduction or payment of Company's Liabilities; and/or

(c) exercise any one or more of the rights and remedies accruing to City under the Loan Agreements, the Uniform Commercial Code of the relevant jurisdiction, and any other applicable law upon default by a debtor.

Company recognizes that in the event it fails to perform, observe, or discharge any of its obligations or liabilities under this Undertaking, no remedy at law will provide adequate relief to City, and agrees that City shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damage.

9. Costs, Fees, and Expenses

If at any time or times hereafter, either the Owner or the City employs counsel for advice or other representation with respect to this Undertaking or to represent the Owner or City in any litigation, contest, dispute, suit, or proceeding relating to this Undertaking or Owner's or City's rights hereunder, the reasonable costs, fees, and expenses incurred by either the Owner or City in any manner or way with respect to the foregoing shall be payable by Company to City, or by the City to the Owner, as the case may be, on demand. Without limiting the generality of the foregoing, such costs, fees, and expenses include reasonable (a) attorneys' fees, costs, and expenses; (b) court costs and expenses; (c) court reporter fees, costs, and expenses; (d) long-distance telephone and facsimile charges; (e) expenses for travel, lodging, and food. The City's and Company's liability for all reasonable expenses and fees under this Section 9 shall also extend to the collection of any judgment that shall result from City's or Company's enforcement of its rights and remedies hereunder. The obligation of Company and City set forth in this agreement shall be continuing and shall not be merged into any judgment entered based on this Undertaking.

10. Miscellaneous

All payments received by City from any source on account of Company's Liabilities shall be applied by City in its reasonable discretion, and this Undertaking shall apply to and secure any ultimate balance that may be owed to City on account of Company's Liabilities after City's application.
If any provision of this Undertaking or the application thereof to any party or circumstance is held invalid or unenforceable, the remainder of this Undertaking and the application of such provision to other parties or circumstances will not be affected thereby, the provisions of this Undertaking being severable in any such instance. This Undertaking shall be binding on Company and the City and inure to the benefit of Company and City and their respective heirs, personal representatives, successors, and assigns.

Whenever a notice is required or permitted to be given under this Undertaking, it shall be in writing and either delivered personally, or sent via certified mail, return receipt requested. Notice sent via certified mail shall be deemed given three (3) business days after such notice is sent. Notice served by hand delivery shall be deemed served on the day delivered. Any written notice to Company shall be to the address or addresses specified below.

This Undertaking shall continue in full force and effect until Company’s Liabilities are fully paid, performed, and discharged as provided in the Incentive Agreement and City gives Company written notice thereof, such notice to be promptly sent by City after full performance of Company’s Liabilities. This Undertaking shall continue to be effective or be reinstated, as the case may be, if at any time payment of any of Company’s Liabilities is rescinded or must otherwise be returned by City upon the insolvency, bankruptcy, or reorganization of Company or otherwise, all as though such payment had not been made.

This Undertaking is submitted to City at City’s principal place of business and shall be deemed to have been made thereat. This Undertaking shall be governed and controlled as to interpretation, enforcement, validity, construction, effect, and in all other respects by the laws, statutes, and decisions of the State of Illinois. No modification, waiver, estoppel, amendment, discharge, or change of this Undertaking or any related instrument shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, estoppel, amendment, discharge, or change is sought.

To the extent that City receives any payment on account of Company’s Liabilities, or any proceeds of Collateral are applied on account of Company’s Liabilities, and any such payment(s) and/or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, subordinated, and/or required to be repaid to a trustee, receiver, or any other party under any bankruptcy act, state or federal law, common law, or equitable cause, then, to the extent of such payment(s) or proceeds received, Company’s Liabilities or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment(s) and/or proceeds had not been received by City and applied on account of Company’s Liabilities. Company agrees that Company’s Liabilities hereunder shall be revived to the extent of such revival of Company’s Liabilities.

Until expressly released in writing by City, this Undertaking shall be in addition to any
other guaranties that Company has previously given to City or that Company may, from time to time, hereafter give to City relating to Company's Liabilities.

Company warrants and represents to City that Company has read this Undertaking and understands the contents hereof and that this Undertaking is enforceable against Company in accordance with its terms.

COMPANY AND CITY AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING DIRECTLY, INDIRECTLY, OR OTHERWISE IN CONNECTION WITH, OUT OF, RELATED TO, OR FROM THIS UNDERTAKING SHALL BE LITIGATED ONLY IN THE TWENTY-THIRD JUDICIAL CIRCUIT COURT OF DEKALB COUNTY, STATE OF ILLINOIS. COMPANY AND CITY CONSENT AND SUBMIT TO THE EXCLUSIVE JURISDICTION OF SAID COURT. COMPANY AND THE CITY HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.

City of DeKalb:  
Jerry Smith, Mayor

Member:  
Melissa Lovell, Co. Trustees

Print Name: Kevin B. & Melissa G. Lovell Dec. of Trust

DTD 4/03/98
Exhibit 1

(LEGAL)

THIS IS NOT A HOMESTEAD PROPERTY

The property or its address is commonly known as 402 AND 424 E. LINCOLN HIGHWAY, AND 120 S. FOURTH DEKALB, IL 60115. The property tax identification numbers are: 08-23-302-021
PROMISSORY NOTE

DeKalb, Illinois

4-8-19

Kevin B. & Melissa G. Lovell

On (date), for value received, Dec. of Trust DTD 4/03/98, hereby promises to pay in lawful money of the United States, to the order of the CITY OF DEKALB at 200 South Fourth Street, DeKalb, Illinois, the principal sum of $1,936,000 Dollars (the “Face Value”). Repayment hereof shall be subject to the terms and conditions of that certain Development Incentive Agreement by and between said Kevin B. & Melissa G. Lovell, Dec. of Trust DTD 4/03/98 and the City of DeKalb, executed on (date), relating to the development of the property commonly legally described in the legal description attached hereto as Exhibit 1 (the “Property”) in DeKalb, Illinois. The repayment terms of this Note shall be governed by the provisions of the 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: [Signature]

Co-Trustees

Print Name: Kevin B. & Melissa G. Lovell Dec. of Trust

DTD 4/03/98
Exhibit 1

(LEGAL)

THIS IS NOT A HOMESTEAD PROPERTY

The property or its address is commonly known as 402 AND 424 E. LINCOLN HIGHWAY, AND 120 S. FOURTH DEKALB, IL 60115. The property tax identification numbers are: 08-23-302-021
MORTGAGE

Dated: April 8, 2019

Kevin B. and Melissa G. Lovell Dec. of Trust DTD 4/3/1998 (Mortgagor) and the City of DeKalb (Mortgagee)

Commonly known as: 402 and 424 E. Lincoln Highway, and 120 S. Fourth Street, DeKalb, DeKalb County, Illinois 60115

PIN: 08-23-302-021

Prepared by and Return to:
Dean M. Frieders
City of DeKalb City Attorney
200 S. Fourth Street
DeKalb, Illinois 60115
(Resolution 2016-096)
MORTGAGE

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

Future Advances Mortgage
Maximum Value: $4,937,000

THIS MORTGAGE, dated this 8th day of April, 2019, by
Kevin B. & Melissa G. ("Mortgagor"), WITNESSETH:

WHEREAS, Mortgagor has executed a Promissory Note in the principal sum of
One Hundred Sixty-Eight Thousand Seven Hundred Dollars ($168,793.00) payable to
the City of DeKalb ("Mortgagor"), dated the same date as this Mortgage, whereby
Mortgagor is entitled to recover from Mortgagor certain expenses, costs, and
advances in connection with Mortgagor’s development work on the Premises as
defined below and Property as defined within that certain Development
Incentive Agreement executed on 4-8-19 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 Mortgagor, 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.: 08-23-302-021

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 Mortgagor, 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 Mortgagor 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. Mortgagor 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 Mortgagor the right to foreclose this Mortgage, Mortgagor may collect, receive and enjoy such avails.

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

NOTICE: THIS MORTGAGE SECURES TOTAL CREDIT IN THE AMOUNT OF $150,000, 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 MORTGAGE 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 Mortgagor'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 *Kevin B. & Melissa G.*, with a note amount of $148,793.00 (collectively, the "Evidence of Debt").

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

C) All obligations Mortgagor owes to Mortgagee, which now exist or may later arise, to the extent not prohibited by law, including but not limited to any obligation under the 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

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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: [Signature]

Member

Trustees

Print Name: Kevin B. & Melissa G. Lovell

Dec. of Trust DTD 4/03/98

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 Kevin B. *, authorized Member of

Trustees. *, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Member, appeared before me this day in person and acknowledged that he signed

*Melissa G. Lovell Dec. of Trust DTD 4/03/98
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 3rd day of April, 2019.

[Signature]

Notary Public

"OFFICIAL SEAL"
RICHARD D. LARSON
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 9/27/2019
EXHIBIT 1
Legal Description

THIS IS NOT A HOMESTEAD PROPERTY

The property or its address is commonly known as 402 AND 424 E. LINCOLN HIGHWAY, AND 120 S. FOURTH STREET, DEKALB, IL 60115. The property tax identification number is 08-23-302-021.

Exhibit G: Waiver of Objection to Special Service Area

STATE OF ILLINOIS
) SS.
COUNTY OF DEKALB
)

Waiver of Objection to Special Service Area

NOW COMES the affiant, Kevin B. & Melissa G. Lovell by and through its Member/Manager, same, and for its LANDOWNER WAIVER OF OBJECTION TO CREATION OF SSA, states as follows:

1. That it has negotiated with the City of DeKalb regarding the improvement of its property located at 402, 424, 444, 1205, 408, legally described on the attached Exhibit 1 ("the property"), with said improvements consisting generally of the construction and development of a mixed-use Planned Development.

2. That it is aware that as a condition of approval of the permits required for construction of the above-described improvements, the City is requiring the creation of a backup/dormant maintenance Special Service Area to provide a backup source of funding to maintain common, private improvements located on and/or servicing the property. It agrees and covenants that this Waiver of Objection has been executed to demonstrate that it does not object to the creation of an SSA (as contemplated on Exhibit 2), and acknowledges that the City is relying upon the execution of this waiver in approving the construction permit that it otherwise would not be obligated to approve.

3. That it is presently the owner of some or all of the property legally described in the attached Exhibit 1.

4. That, having been ably represented by its own counsel and having been fully apprised of its right and ability to object to the creation of a special service area, it seeks to formally waive any such objection to the creation and imposition of a special service area, according to the terms and purposes announced in the attached Exhibit 2, and further affirmatively indicate its consent to those terms and any other reasonable terms which may be required to create and implement the backup special service area. This consent shall apply to any land presently owned by it, or any land later acquired by it, contained within the legal description of the property at issue.

5. That it has submitted this Landowner Waiver of Objection to Creation of SSA to the City of DeKalb, for the purpose of waiving any objection it, as the or one of the landowners of the properties described in the attached Exhibit 1 which shall be subject to the special service area upon creation, may otherwise have. This Waiver of Objection shall be binding upon all subsequent owners of the property, and may be recorded against the property.

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FURTHER, AFFIANT SAYETH NAUGHT.

By: 

Print Name: Kevin B. & Melissa G. Lovell
Dec. of Trust DTD 4/03/98
Its: Co-Trustees

SUBSCRIBED AND SWORN to before me this 3rd day of

, 2019

NOTARY PUBLIC

"OFFICIAL SEAL" 
RICHARD D. LARSON 
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 9/27/2019
Exhibit 1: Legal Description of the Property

The property is legally described as:

SUBJECT PARCELS (Lots A, B, C, D, E, F, and G):

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.