

**REDEVELOPMENT AND ECONOMIC INCENTIVE AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF MONTICELLO**

**AND**

**ELLA PROPERTY DEVELOPMENT, LLC**

**(216 – 220 W. Washington Street, Monticello, Illinois)**

**THIS REDEVELOPMENT AND ECONOMIC INCENTIVE AGREEMENT** (“*Agreement*”), is dated the 25<sup>th</sup> day of July, 2022 (“*Effective Date*”), and is by and between the **CITY OF MONTICELLO**, an Illinois municipal corporation and with offices located at 210 N. Hamilton Street, Monticello, Illinois (“*City*”) and Ella Property Development, LLC, an Illinois corporation with an address at 3417 S. Persimmon Circle, Urbana Illinois (“*Recipient*”) (the City and Recipient are collectively referred to as “*Parties*” and sometimes individually as “*Party*”).

**IN CONSIDERATION OF** the recitals and the mutual covenants and agreements set forth in this Agreement, the Parties agree as follows:

**SECTION 1. RECITALS.**

A. In 2019, the City passed and approved an ordinance approving a business district plan and designating a business district (“*Business District*”) in accordance with the Business District Development and Redevelopment Act (65 ILCS 5/11-74.3-1, *et seq.*) (“*Act*”).

B. The Act authorizes the City to enter into agreements with entities to pay or reimburse costs eligible for reimbursement under the Act, including, without limitation, certain costs associated with rehabilitating and improving buildings and structures located in the Business District.

C. The Recipient owns certain property located in the Business District commonly known as 216 – 220 W. Washington Street, Monticello, Illinois (“*Property*”).

D. Utilizing funds generated by taxes levied in accordance with the Act, the City administers a Building Improvement Program (“*Program*”) through which individuals may apply to receive City funding to support certain improvements and activities.

E. The Recipient submitted a Program application attached as Exhibit A (“*Application Documents*”) seeking Program funds.

F. The Recipient seeks Program funds for the purpose of masonry repair and façade improvements on Exhibit B (collectively, (“*Improvements*”).

G. The Recipient represents that the Improvements' estimated cost is \$23,557.81.

H. Providing Program funds to the Recipient to support the Property and Improvements will improve the quality of buildings and structures located in the Business District and expand the City's property tax base, consistent with the Program's requirements.

I. Pursuant to the Act and Illinois Municipal Code (65 ILCS 5/8-1-2.5), the City is authorized to appropriate and expend funds for economic development purposes, including, without limitation, making awards to commercial enterprises that are deemed necessary or desirable for the promotion of the City's economic development.

J. The Corporate Authorities find that it is necessary and desirable for the promotion of City's economic development to award to the Recipient Program funds in accordance with and subject to this Agreement's terms.

## **SECTION 2. ECONOMIC INCENTIVE AWARD.**

A. Award Amount. Subject to this Agreement's terms, the City agrees to provide to the Recipient an award in the amount of (1) Ten Thousand (\$10,000) dollars or (2) 50% of the Improvements' actual cost, as determined by the City upon its review of the Recipient Documents (as defined below), whichever is less ("**Award**").

B. Application to Receive Award. Upon Recipient completing the Improvements in accordance with this Agreement and all City codes, rules, and regulations, as amended, including, without limitation, all Program rules and guidelines, and the City's issuance of a full and binding certificate of occupancy affirming completion of the Improvements in accordance with the same, the Recipient shall submit to the City: (1) a properly executed statement / bill of sale showing the full cost of the Improvements, including, without limitation, labor, materials, and equipment necessary to complete the Improvements; (2) proof of payment of the contract cost pursuant to the statement; (3) final lien waivers from all of Recipient's contractors, subcontractors, employees, or individuals providing any services concerning the Improvements; (4) proof that costs associated with the Improvements are eligible for reimbursement under the Act; (5) receipts, checking account statements, and canceled checks; and (6) all other documentation deemed necessary by the City Administrator concerning the Improvements and the Property (collectively, "**Recipient Documents**").

C. Payment of Award. Within 30 days of (1) the City receiving from the Recipient a complete set of Recipient Documents and (2) the City verifying that the costs identified in the Recipient Documents are eligible for reimbursement under the Act and able to be reimbursed in accordance with Section 2.D, the City will issue a check to the Recipient in the amount of the Award. In no case shall the City's payment exceed the Award amount, regardless of the amount of any costs incurred by the Recipient.

D. Award Funding. The Award will be payable from taxes levied and actually received by the City in accordance with the Act, as they become available, and from no other source. The Recipient shall have no recourse against the City's general fund or other City

revenues, and this Agreement shall have no effect on the City's ability to issue debt in the future. Upon this Agreement's voluntary or involuntary termination, any unpaid amount owed by the City to the Recipient shall be forgiven in full.

**SECTION 3. MAINTENANCE.**

A. Compliance with Codes. Recipient agrees to operate, use, preserve, and maintain the Improvements and the Property in full compliance with all City codes, rules, and regulations, as amended, including, without limitation, this Agreement and all Program rules and guidelines.

B. Open Book. In addition to providing the City and other entities with jurisdiction access to the Property to conduct permit-related inspections of the Improvements, the Recipient will provide the City full access, upon the City providing reasonable notice, to all portions of the Property and all documents and records concerning the Improvements. During business hours and at the Recipient's office, the Recipient shall make available for review by the City and its agents the books and records relating to the Recipient's costs with respect to the Improvements to enable the City to verify the Improvements' cost, including, but not limited to, the Recipient's, general contractor's and contractors' sworn statements, general contracts, subcontracts, purchase orders, waivers of lien, paid receipts, invoices, and all other information requested by the City. These records shall be available for inspection, audit, and examination. The City agrees to keep all financial information of the Recipient confidential, except to the extent required for compliance with any applicable law, rule, or regulation. The foregoing City review and audit rights shall terminate on the Effective Date's 2 year anniversary.

**SECTION 4. DEFAULT; CLAWBACK; REMEDIES.**

A. Failure to Complete. If the Recipient fails, for any reason whatsoever, to complete all of the following by November 30, 2022, this this Agreement shall terminate immediately and without further action, and all of the Parties' rights and obligations shall become null and void, including, without limitation, the City's obligation to pay the Award to the Recipient: (1) complete the Improvements in accordance with this Agreement; (2) apply for and receive from the City a full and binding certificate of occupancy for the Improvements; and (3) obtain all City, state, and federal certificates, licenses, permissions, and approvals necessary to occupy Property for the purposes identified in the Application Documents.

B. Enforcement. Each Party to this Agreement may, in law or in equity, by suit, action, mandamus, or any other proceeding, including, without limitation, specific performance, enforce or compel the performance of this Agreement. Recipient agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against the City, or any of its elected or appointed officials, officers, employees, agents, representatives, engineers, or attorneys, on account of the negotiation, execution, or breach of this Agreement; except to the extent that the City has committed fraud or exhibited willful or wanton disregard to the rights of Recipient under this Agreement. In the event of a judicial proceeding brought by one party to this Agreement against the other party to this Agreement pursuant to this Section 4.B, the prevailing party shall be entitled to reimbursement from the unsuccessful party of all costs and expenses, including without limitation reasonable attorneys' fees, incurred in connection with the

judicial proceeding. Neither Party shall seek personal liability against an official, officer, employee, or agent of the other party in connection with this Agreement.

## **SECTION 5. INSURANCE AND INDEMNIFICATION.**

A. **Insurance.** Recipient will procure and deliver evidence of such policies to the City, at the Recipient's cost and expense, and shall maintain in full force and effect through the term of this Agreement, a policy or policies of commercial general liability insurance and, during any period of constructing the Improvements, contractor's liability insurance, with liability coverage under the commercial general liability insurance to be not less than one million and no/100 (\$1,000,000.00) dollars each occurrence and two million and no/100 (\$2,000,000.00) dollars aggregate. All such policies shall be in such form and issued by such companies as shall be reasonably acceptable to the City Attorney to protect the City and the Recipient against any liability incidental to the use of or resulting from any claim for injury or damage occurring on or about the Property. Each such policy shall name the City as an additional insured party. Any insurance carried by the City for like risks shall be secondary and in excess of the insurance required hereunder. The City shall be given written notice at least thirty (30) days prior to any cancellation or material amendment of the policy or policies required hereunder.

B. **City Review.** The Recipient acknowledges and agrees that the City is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the City's review and approval of any plans for the Property, including, without limitation, the issuance of any approvals, permits, certificates, or acceptances for the Improvements or the City's approval of this Agreement, that the City's review and approval of those plans and issuance of those approvals, permits, certificates, or acceptances does not, and shall not, in any way, be deemed to insure the Recipient, or any of its heirs, successors, assigns, tenants, and licensees, or any other person, against damage or injury of any kind at any time. This Section shall survive the Agreement's voluntary or involuntary termination.

C. **City Procedure.** The Recipient acknowledges and agrees that notices, meetings, and hearings have been properly given and held by the City with respect to the approval of this Agreement and agrees not to challenge the City's approval on the grounds of any procedural infirmity or of any denial of any procedural right. This Section shall survive the Agreement's voluntary or involuntary termination.

D. **Indemnity.** The Recipient releases the City from, and covenants and agrees that the City shall not be liable for, and covenants and agrees to defend, indemnify, and hold harmless the City and its elected and appointed officials, officers, employees, and agents from and against any and all losses, claims, damages, liabilities, investigations, or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from or in any way connected with directly or indirectly with the Improvements, the Property, the Program, or this Agreement, including, without limitation, actions or claims arising from or related to the Prevailing Wage Act (820 ILCS 30/0.01, *et seq.*) ("**Act**"). The Recipient further covenants and agrees to pay for or reimburse the City and its elected and appointed officials, officers, employees, and agents for any and all costs, reasonable attorney's fees, liabilities, and expenses incurred in connection with investigating, defending against, or otherwise in connection with any

such losses, claims, damages, liabilities, investigations, or causes of action. The City shall have the right to select legal counsel and to approve any settlement in connection with such losses, claims, damages, liabilities, or causes of action. The provisions of this section shall survive this Agreement's voluntary or involuntary termination.

The Recipient understands and acknowledges that, depending on how the Recipient uses the Award, the Award and any work or labor the Recipient purchases with the Award may become subject to the Act. The Recipient covenants and agrees to comply, and to contractually obligate and cause its construction manager, any general contractor, each subcontractor or other applicable entity or person to comply with the applicable requirements of the Act. All contracts subject to the Act shall list the specified rates to be paid to all laborers, workers and mechanics for each craft or type of worker or mechanic employed pursuant to such contract. If the prevailing wage rates are revised, the revised rates shall apply to all such contracts. The Recipient shall provide the City with copies of all such contracts entered into by the Recipient or others to evidence compliance with this Section. The Recipient together with its contractors, subcontractors, agents, employees and others may be obligated to provide such documents, information and certifications, including appropriate payroll certifications, as are necessary to comply with the Act. The Recipient will maintain segregated accounting records detailing expenses incurred and paid for with public and private funds.

## **SECTION 6. RECIPIENT'S OBLIGATIONS.**

### **A. Construction of Improvements.**

1. **Construction.** The Recipient shall construct and install the Improvements on the Property in substantial compliance with the project scope, site plans, architectural plans and elevations, engineering plans, and plats, as appropriate, submitted to and approved by the City. Further, the Recipient will at all times install, construct, operate, and maintain the Improvements on the Property in compliance with all applicable City, state, and federal laws, ordinances, rules, and regulations, as amended, including, without limitation, all applicable zoning ordinances, building codes, environmental codes, life safety codes, and tax ordinances, rules, and regulations of the City.
2. **Construction Permits.** No construction, improvement, or development of any kind shall be permitted on any portion of the Property unless and until the Recipient has received approval from all necessary City commissions, boards, and departments, and has been issued valid and binding building permits. Further, no operation or occupancy of the Property may occur prior to the issuance of a full and binding certificate of occupancy.
3. **Fees, Costs, and Expenses.** The Recipient shall be responsible for and pay all City imposed fees on the construction of the Improvements and operation and maintenance of the Property, including, without limitation: (a) all City permit fees; (b) all City costs incurred administering the Program and this Agreement; (c) all City costs incurred drafting and negotiating this

Agreement, including legal fees and expenses; and (d) the City's costs and fees incurred enforcing this Agreement, including reasonable legal fees, expenses, and appeal costs and fees.

B. Modifications to Improvements. The Recipient shall not enter into any Agreement or contract or take any action or inaction to alter, change or remove the Improvements, or the approved design thereof, nor shall Recipient undertake any other changes, by contract or otherwise, to the Improvements unless such changes are first submitted to the City for review and approval, as required by the City codes, rules, and regulations, as amended.

C. Certificate of Assistance. The Recipient agrees to place a certificate, in a form provided by the City, identifying the Recipient as a Program participant. The certificate shall be placed in the Property's front window or other location approved by the City that is visible to the public.

D. Property Taxes and Valuation. Recipient shall timely and fully pay when due all taxes and assessments levied against the Property. Recipient shall not petition to reduce the assessed value of the Property, appeal the applicable property tax rate, seek any real estate tax exemption, or otherwise pursue a reduction in any real property tax owed during this Agreement's term.

#### **SECTION 7. TERM.**

Except as otherwise provided herein, this Agreement shall be binding upon (1) the City issues a full and binding certificate of occupancy for the Improvements; and (2) the City's delivery of the Award to Recipient.

#### **SECTION 8. GENERAL PROVISIONS.**

A. No Third Parties. This Agreement is for the sole and exclusive benefit of the Parties hereto and their respective successors and permitted assigns and no third party is intended to or shall have any rights hereunder.

B. Assignment. No part of this Agreement may be assigned by any Party without prior written consent of both Parties.

C. Building Improvement Program. The Recipient represents and warrants that all statements and representations in the Application Documents are true, accurate, and complete. Recipient's failure to provide truthful, accurate, or complete Application Documents, shall constitute a default under this Agreement and relieve the City of its duties and obligations under this Agreement, including, without limitation, payment of the Award.

D. Entire Agreement. This Agreement shall constitute the entire agreement of the Parties hereto. All prior agreements between the Parties, whether written or oral, are merged herein and shall be of no force and effect, which shall remain in full force and effect notwithstanding this Agreement's terms.

E. Amendments and Modifications. No modification, addition, deletion, revision, alteration or other change to this Agreement shall be effective unless and until such change is reduced to writing, executed, and properly approved by the City's Corporate Authorities, pursuant to all applicable statutory procedures.

F. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies and benefits provided to the City by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits allowed by law.

G. Non-Waiver. The City shall be under no obligation to exercise any of the rights granted to it in this Agreement except as it shall determine to be in its best interest from time to time. The failure of the City to exercise at any time any such rights shall not be deemed or construed as a waiver thereof, nor shall such failure void or affect the City's right to enforce such rights of any other rights.

H. Notice. All notices required or permitted to be given under this Agreement shall be in writing and shall be (i) personally delivered, or (ii) delivered by a reputable overnight courier, or (iii) delivered by certified mail, return receipt requested, and deposited in the U. S. Mail, postage prepaid.

Notices and communications to the Recipient shall be addressed to, and delivered at, the following address:

Ella Property Development, LLC  
3417 S. Persimmon Circle  
Urbana, Illinois 61802  
Attn: Christina Swing

Notices and communications to the City shall be addressed to, and delivered at, the following address:

City of Monticello  
210 N. Hamilton Street  
Monticello, Illinois 61856  
Attn: Callie McFarland, Director of Community Development

With a copy to:

City of Monticello  
210 N. Hamilton Street  
Monticello, Illinois 61856  
Attn: Mayor

I. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

Venue for any dispute relating to this Agreement shall be in the Circuit Court for the Sixth Judicial Circuit, Piatt County, Illinois.

J. Severability. If any provision of this Agreement is construed or held to be void, invalid, illegal, or unenforceable in any respect, the remaining part of that provision and the remaining provisions of this Agreement shall not be affected, impaired, or invalidated thereby, but shall remain in full force and effect. The unenforceability of any provision of this Agreement shall not affect the enforceability of that provision in any other situation.

K. Interpretation. This Agreement shall be construed without regard to the identity of the Party who drafted the various provisions of this Agreement. Each and every provision of this Agreement shall be construed as though all Parties to this Agreement participated equally in the drafting of this Agreement, and any rule or construction that a document is to be construed against the drafting Party shall not be applicable to this Agreement.

L. Incorporation of Recitals and Exhibits. This Agreement's recitals and Exhibits A attached to this Agreement are, by this reference, incorporated in and made a part of this Agreement.

M. Authority to Execute.

1. The City. The City hereby represents to the Recipient that the persons executing this Agreement on its behalf have been properly authorized to do so by the City's Corporate Authorities.

2. The Recipient. The Recipient hereby warrants and represents to the City (i) that it has the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement and to bind the Property as set forth in this Agreement, (ii) that all legal actions needed to authorize the execution, delivery, and performance of this Agreement have been taken, and (iii) that neither the execution of this Agreement nor the performance of the obligations assumed by the Recipient will (a) result in a breach or default under any agreement to which the Recipient is a party or to which it or the Property is bound or (b) violate any statute, law, restriction, court order, or agreement to which the Recipient or the Property are subject, and to which the Recipient has actual or constructive knowledge.

N. Headings. The headings, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

O. Freedom of Information Act Compliance. The Recipient agrees to maintain, without charge, all records and documents concerning or relating to this Agreement and the Property in accordance with the Freedom of Information Act 5 ILCS 140/1, *et seq.* ("**FOIA**"). Upon the City's request, the Recipient shall produce all records requested by the City within the timeframe requested by the City, and if additional time is needed to compile the requested records, the Recipient shall promptly notify the City. In the event that either party is found to

have not complied with FOIA due to the other party's failure to produce documents or otherwise appropriately respond to a request under FOIA, then the party failing to produce and/or respond shall indemnify and hold harmless the other party, and pay all amounts determined to be due, including, but not limited to, fines, costs, attorneys' fees and penalties.

[Signature page follows]

**IN WITNESS WHEREOF**, the Parties have set their hands and seals as of the date first written above.

**CITY OF MONTICELLO**, an Illinois municipal corporation

By: \_\_\_\_\_  
Larry Stoner, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Jill Potts, Clerk

Dated: \_\_\_\_\_

**ELLA PROPERTY DEVELOPMENT LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF PIATT        )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, **DO HEREBY CERTIFY THAT Larry Stoner and Jill Potts**, the Mayor and City Clerk, respectively, of the **CITY OF MONTICELLO**, an Illinois municipal corporation, are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act on behalf of said municipal corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Signature of Notary

Seal

My Commission expires: \_\_\_\_\_

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STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF \_\_\_\_\_        )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, **DO HEREBY CERTIFY THAT \_\_\_\_\_** of Ella Property Development, LLC, is personally known to me to be the same persons whose name is subscribed to the foregoing instrument, and appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Signature of Notary

Seal

My Commission expires: \_\_\_\_\_

Exhibit B

**Application Documents**

[attached]

Exhibit B

**Description and Depiction of Improvements**

[attached]