

Maureen A. Josh
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Clerk of the Circuit Court
DeKalb County, Illinois

IN THE CIRCUIT COURT FOR DeKALB COUNTY
TWENTY-THIRD JUDICIAL CIRCUIT

145 FISK, LLC & CHARLES BULSON,)
)
 Plaintiff,)
)
 v.)
)
 F. William Nicklas, individually, & the City of)
 DeKalb,)
)
 Defendants,)
)
 and)
)
 John F. Pappas, Pappas Development, LLC,)
 PNG Development, LLC, and Heartland Real)
 Estate Holdings, LLC)
)
 Respondents in Discovery.)

Case No.: 20 L 34

Jury Trial Demanded

TO RESPONDENTS IN DISCOVERY:

YOU ARE HEREBY NOTIFIED that on **September 18, 2020**, a complaint, a copy of which is attached, was filed in the above Court naming you as a Respondent in Discovery. Pursuant to the applicable Code of Civil, the above named Plaintiff(s) are authorized to proceed with the discovery of the named Respondent(s) in Discovery.

YOU ARE SUMMONED AND COMMANDED to appear for deposition, before a notary public, answer the attached written interrogatories, and respond to the attached request to produce.

We are scheduled to take the oral video-taped discovery deposition of the above named Respondents or its corporate representative pursuant to Rule 30(b)(6)), on **October 22, 2020**, at the hour of 10:00 a.m., at the office CRONAUER LAW, LLP, Illinois, in accordance with the rules and provisions of this Court. Witness and mileage fees in the amount of \$_____ are attached; and

Respondent, to be answered under oath by Respondent, and delivered to the office of CRONAUER LAW, LLP Illinois, within 28 days from date of service

TO THE OFFICER/SPECIAL PROCESS SERVER:

This summons must be returned by the officer or other person to whom it was given for service, with endorsement or affidavit of service and fees and an endorsement or affidavit of payment to the Respondent of witness and mileage fees, if any, immediately after service. If service cannot be made, this summons shall be returned so endorsed.

WITNESS,

Clerk of Court

Date of Service: September ____, 2020

(To be inserted by officer on copy left with Respondent or other person)

Attorney No. 6305683
Name: C. Nicholas Cronauer
Attorney for: Plaintiff
Address: 1101 DeKalb Ave., Suite 2
City/State/Zip: Sycamore, IL 60178
Telephone: (815) 895-8585

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Plaintiff,)

v.)

F. William Nicklas, individually, & the City of)
DeKalb,)

Defendants,)

and)

John F. Pappas, Pappas Development, LLC,)
PNG Development, LLC, and Heartland Real)
Estate Holdings, LLC)

Respondents in Discovery.)

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Pursuant to Rules of Illinois Civil Procedure, 145 FISK, LLC (“Plaintiff”) requests that the RESPONDENTS IN DISCOVERY (“Respondent”) answer the following Interrogatories, in writing and under oath, and in accordance with the definitions and instructions set forth herein, within twenty-eight (28) days of service.

I. DEFINITIONS

1. “ATTACHMENTS” means files or data that are physically or logically associated with or embedded into email or other information objects (such as OLE associations embedded in Excel®) and should be identified by mapping to their parent by the Document or Production number. If attachments and embedded files are combined with their parent documents, then “BeginAttach” and “EndAttach” fields listing the unique beginning and end number for each attachment or embedded document must be included.

2. “COMMUNICATION” means or refers to the transmittal of information, facts or ideas, including, but not limited to, COMMUNICATIONS in the form of any discussion, conversation, inquiry, negotiation, agreement, understanding, face to face meeting, telephone conversation, letter, correspondence, note, memorandum, e-mail message, telegram, advertisement or other form of exchange of words, whether oral or written.

3. "COMPLAINT" refers to Plaintiff's Complaint filed on February 22, 2012 and subsequently removed to Federal Court, the Northern District in the Western Division.

4. "COMPUTER and COMPUTER EQUIPMENT" means all data processing equipment, including without limitation (1) central processing units (CPU's) whether contained in a server or free standing computer or laptop or PDA or similar device that may contain data storage capabilities, irrespective of whether such storage is virtualized (e.g. cloud based) or whether the data be structured or unstructured, and (2) any equipment where computer files (including without limitation, records, documents, logs, and any other contiguous or non-contiguous bit strings), hidden system files or metadata presently reside such as hard disk drives, optical disk drives, removable media, such as floppy disk drives, CD-ROM and DVD drives, ZIP drives, Jaz drives, Maxtor drives or snap drives, data processing card, computer magnetic tapes, backup tapes, drum and disk storage devices or any other similar electronic storage media or system, application or platform of whatever name or description. "COMPUTER and COMPUTER EQUIPMENT" also means all digital image evidence that may be stored on any type of hardware used to store or manipulate electronic images including but not limited to microfilm, microfiche and their repositories and readers, or design or engineering computer systems and regardless of any digital image's format, including .jpf, .bpm, or some other advanced or proprietary form of digital image format, such as CAD layered drawings. "COMPUTER and COMPUTER EQUIPMENT" also refers to sources of digital evidence that may not presently be in use by YOUR company or may have been deleted from YOUR active systems, whether the source is a backup tape or disk, some other data retention system or some form of disaster recovery system. "COMPUTER and COMPUTER EQUIPMENT" also refers to places where digital evidence may reside that may have been deleted from YOUR active files and which may not be readily recoverable from a backup medium, such as metadata.

5. "COMPUTER SYSTEM" refers to free standing servers, computers and laptops, and also refers to the network infrastructure and computer support systems RESPONDENT or subject to RESPONDENT'S possession, custody or control, such as its subsidiaries, divisions, departments, predecessors, successors, assigns, joint ventures, partners, parents, agents or affiliates (in this country or throughout the world) including but not limited to the following:

- a. RESPONDENT'S LAN, WAN or other network systems, regardless of methods of connectivity (e.g., by T1, T3, or optical lines), domains, including PDC's network OS (such as Novell, Microsoft, UNIX, Citrix or some other similar type) or protocols continuous data

protection, and backup and disaster recovery hardware and media, regardless of the physical location of those electronic storage systems.

b. RESPONDENT'S email servers and any repository of email, whether or not virtualized or cloud based, (including within inbox, sent box, deleted box, draft box, or some similar file of the computers of employees or management), or in any back form whatsoever; regardless of whether YOU use Microsoft Exchange, Outlook, Outlook Express, Lotus Notes or some combination of email management software or some alternative commercial or proprietary email management software.

c. RESPONDENT'S IS administrative offices, including backup and disaster recovery restoration plans and repositories, continuous data protection, data retention plans and repositories, purge plans and repositories, training plans and repositories, and libraries of hardcopy materials of any description (regardless where located) and online training and operation manuals that have been scanned to disk.

d. All offsite technical and service bureau support systems, including but not limited to ASP (application service provider) support, scanning or data conversion support, offsite, and further including but not limited to virtualized or cloud based data storage or archive support.

e. Web hosting and administration services, including intranet and extranet sites, regardless of whether they are now publicly posted or exist in English or some other language.

6. "CORRESPONDENCE" means or refers to all written and unwritten but recorded COMMUNICATIONS, including non-duplicate drafts, version not sent, and copies that differ only in margin notes or annotations, including memos, any and all documents sent by Defendant or Respondent to YOU as part of your inquiry, request, application packages and documents, letters, analog or digital recordings, voicemail, email, computer files, computer disks, or other correspondence or things sent or received by you to or from any entity, including correspondence or files maintained or exchanged internally within your business or with your employees for the Project's Tax Increment Financing ("TIF").

7. "DATE" means the exact year, month, and date, if known, or if not known, your best approximation thereof.

8. The terms "RESPONDENT," "YOU" and "YOUR" refers to any of your subsidiaries, parents, predecessor entities and affiliates, and all agents, employees, officers, and other representatives acting on your behalf.

9. "DESCRIBE" when used in relation to any process, policy, act or event means explain the process, policy, act or event in complete and reasonable detail, stating the time, date and location of all pertinent actions, identifying all personal participating or present, and identifying all documents relating thereto.

10. "DOCUMENT" or "DOCUMENTS" includes writings, manuals, papers, drawings, graphs, diagrams, maps, charts, ATTACHMENTS, CORRESPONDENCE, COMMUNICATIONS, photographs sound recordings, images, computer programs, and other data or data compilations, including ESI – stored in any medium from which information can be obtained.

11. "DUPLICATES" means exact duplicate ESI documents (based on MD5 or SH-1 hash values) resident within a party's data set. Only documents where the main document and the attachments are exactly the same will be considered exact duplicates. ESI with differing file names but identical has values shall not be considered duplicates. Exact duplicate shall mean bit-for-bit identically with both document content and any associated metadata. Where any such documents have attachments, has values must be identical for both the document-plus-attachment (including associated metadata) as well as for any attachment (including associated metadata standing alone.

12. "ELECTRONICALLY STORED INFORMATION" or "ESI" as used herein, means and refers to computer generated information or data, of any kind, stored on computers, file servers, disks, tape or other devices or media, or otherwise evidenced by recording on some storage media, whether real, virtual, or cloud based.

13. "IDENTIFY," when used with respect to a COMMUNICATION means to state the type of communication (i.e., telephone discussion, email, face-to-face, etc.), the name and present address of each person present during the communication, or who otherwise observed or heard the communication and to state in reasonable detail the subject matter of the communication and the date upon which it occurred. If the communication is evidenced by any writing, identify all documents that are related to the communication in the manner provided above.

14. "IDENTIFY," when used with respect to a natural person, means to state the person's full name, present or last known business affiliation and position past and present home address and past position and business affiliation, if any with YOU. "IDENTIFY," when used with respect to YOUR employee means state the employee's name, date of birth, state of residence, state of employment (If different than state of residence), position with the YOU, number of years experience (or, where appropriate, months) with the bank and current contact information.

15. "IDENTIFY," when used with respect to a company or other business entity, means to state the company's legal name, the names under which it does business, its form (e.g., national association, federal savings bank, partnership, corporation, etc.), the address of its home office and principal place of business, and to identify its principal proprietors, officers, or directors.

16. "IDENTIFY," when used with respect to a DOCUMENT, means to state the date(s) prepared, drafted or generated, the author(s) intended an actual recipient(s), type of DOCUMENT (e.g. "letter," "Terms of Service," or "email"), and to identify its last known custodian or location

17. "INCLUDING" means "including, but not limited to;" "INCLUDES" means "includes, but not limited to."

18. "MEDIA" means object or device, real or virtualized, INCLUDING a disc, tape, computer, or other device (whether real or cloud based) on which data is or was stored.

19. "METADATA" means and refers to data about data, including without limitation, information embedded in a native file or other data that is not ordinarily viewable or printable from the application that generated, edited, or modified such native file which describes the characteristics, origins, usage, and validity of the electronic file as well as information generated automatically by the operation of a computer or other information technology system when a native file is created, modified, transmitted, deleted or otherwise manipulated by a user of such system.

20. "METATDATA" means, in connection with ESI requested and includes without limitation, file, application, and system metadata. The following fields that are referred to (to the extent available): BeginAttach; EndAttach; Title/Subject; Sent/Date and Time (for emails only); Last Modified Date and Time Created Date and Time (for E-docs); Received Date and Time (for emails only); Author; Recipients; cc; bcc; Source (custodian); Hash Value; File Path; Media (type of media that the document was stored on when it was collected); Page Count; Original File Name; Doc extension; Full Text; Accessed Date & Time; and Last Print Date.

21. "NATIVE DATA FORMAT" means and refers to the format of ESI, whether structured or unstructured, in which it was generated and as used by the producing party in the usual course of its business and in its regularly conducted activities.

22. "PERSON(S)" means and refers to all entities, and, without limiting the generality of the foregoing, includes natural persons, joint owners, associations, companies, partnerships, joint ventures, corporations, government entities, trusts and estates.

23. "PLAINTFF" refers to 145 FISK, LLC.

24. "PRODUCTION OF PAPER DOCUMENTS" means production of paper-based original DOCUMENTS (i.e., DOCUMENTS which were not first generated by a computer such as hand-written memoranda) and shall be produced in hard copy manner.

25. "RELATE TO," "RELATED TO" and "RELATING TO" mean concerning, referring to, describing, discussing, evidencing, explaining and/or constituting.

26. "RELEVANT TIME PERIOD" refers to the period beginning January 1, 2018 through present day.

27. "PROJECT" means your investigation, due diligence, negotiation, consummation, and execution of a sales agreement and the planning involved with the purchase and development of "Agora Tower" upon DeKalb County, Illinois real estate bearing parcel identification numbers of: 0823184001, 0823184002, 0823184003, 0823184020, 0823184024, & 0823184027 that is commonly known as the "Mooney" property touching the corners of Fourth & Locust Streets.

II. INSTRUCTIONS

1. If You produce documents in response to any Interrogatory, such documents are requested to be **produced in their native data format, along with all relevant metadata**. In the event You maintain that documents to be produced in response to any Interrogatory are more readily available and easier to use, search, manage and produce in a non-native form, You shall promptly notify Plaintiff's counsel of the specific documents at issue and the Parties shall engage in a meet-and-confer. If no agreement as to the format of the production for documents specified can be reached at the meet-and-confer, the Parties shall submit their dispute to the Court.

2. If You produce documents in response to any Interrogatory, please organize and label the documents to correspond with each numbered Interrogatory.

3. If You object or otherwise refuse to respond to any portion of any Interrogatory, You shall (1) state the nature and basis of the objection or reason for such refusal in sufficient fashion to permit the Court to rule on the validity of the objection; and (2) answer all portions of such Interrogatory that are not claimed to be objectionable. Blanket or "general objections" are insufficient.

4. If You object to any Interrogatory on the ground of privilege or work product, You shall, in a separate Privilege Log, identify the privileged Document(s) or Communication(s)

5. The singular form of a word shall be interpreted as plural, and the plural form of a word shall be interpreted as singular, whichever makes the Interrogatory most broad.

6. As used herein, the present tense shall include the past tense.

7. "And" and "or" when used herein shall be construed conjunctively or disjunctively as necessary to make each Interrogatory inclusive rather than exclusive.

8. For any term used herein which is not otherwise specifically defined, the common and usual meaning of such term is intended. Any ambiguity in these Interrogatories shall be resolved so as to construe these Interrogatories as broadly as possible.

9. Defined terms need not be capitalized to retain their defined meaning.

10. Interrogatories set forth below are continuing in nature, and You shall comply with Rule 26 of the Federal Rules of Civil Procedure regarding supplementing its responses.

III. INTERROGATORIES

1. Identify the person responding to these interrogatories and list their address and contact information.

ANSWER:

2. Identify all software or other computer programs that you used to receive, process, use, transfer, or store correspondence and other documents sent to you from Defendants or Respondents and all its agents, employees, and third-party contractors for the Project.

ANSWER:

3. Identify all software or other computer programs that you used to create plans, graphics, prints, or other documents in order to conceptualize the project.

ANSWER:

4. Identify the location, real or virtual, of all documents and ESI that the Plaintiff has requested, together with custodians thereof, in response to Plaintiff's First Request for the Production of Documents to Defendant.

ANSWER:

5. Identify all code words, keywords, term, acronyms, synonyms, semantic synonyms, abbreviations or definitional or conceptual substitutes for all documents and ESI used by you to search for documents and ESI requested in Plaintiff's First Request for the Production of Documents.

ANSWER:

6. Identify the search methodology, together with error testing, sampling, and results used by You in connection with your search for documents and ESI requested in Plaintiff's First Request for the Production of Documents to Defendant.

ANSWER:

7. Identify all correspondence, documents, and other information, whether by mail, email, fax, or otherwise electronically, you sent or received in connection with the Project, and identify Defendants' employees responsible for the intake of any information for the project.

ANSWER:

8. For each physical location used by Defendant for the intake and/or storage of Plaintiff's correspondence, documents and other information, whether received by mail, fax, or electronically, in connection with the Project during the relevant time period, identify each employee at each location involved with the intake and storage of relevant information.

ANSWER:

9. Identify every agent, employee, or contractor of any Defendant or Respondent that you communicated or transferred information with for the Project.

ANSWER:

10. Identify all Defendant's employees, personnel and/or independent contractors who processed and supervised the processing of the correspondence, documents, and other information in connection with YOUR inquiry, request, and application for TIF and the Project.

ANSWER:

11. Identify all Defendants or Respondents who had any involvement in determining if the Project would qualify for Tax Increment Financing ("TIF") with the City.

ANSWER:

12. Identify all other Defendants' employees, personnel and/or independent contractors involved with the intake, processing, review, phone service, approval, of your request for TIF funds.

ANSWER:

13. Describe the procedure you utilized to determine whether the Project was eligible for TIF financing, including the number of times this determination was made with respect to any TIF district, the identities of the Defendants' employee(s) who made this determination for you, whether there was any internal oversight of this determination, the process used to notify you of the Defendants' determination, and the date upon which the determination was relayed to you.

ANSWER:

14. Identify all policies, procedures or routines for scanning or otherwise retaining physical documents or correspondence sent to Defendant or Respondent by You.

ANSWER:

15. Describe the mailing, scanning or fax system used by you to receive or intake information and correspondence associated with the Project's TIF availability, including an explanation for how the system has recorded, maintained, utilized and stored correspondence, paper documents, and ESI that you have received in connection with any request for TIF.

ANSWER:

16. Identify all source code control and code library retention policies and practices in place by You during the relevant time period and that relates to any inquiry and subsequent request for TIF.

ANSWER:

17. Describe Defendant's procedure for responding to Yours inquiries regarding the status of any TIF for the project during the relevant time period.

ANSWER:

18. Identify all witnesses who are competent to testify in connection with each answer to these interrogatories.

ANSWER:

19. Identify the individual(s) who first authorized the potential requesting TIF for the project.

ANSWER:

20. State all the dates on which you verified, considered, reviewed or evaluated the project's eligibility for TIF and describe the steps taken on each date.

ANSWER:

21. Identify any third-party or vendor that you used or contracted with to perform any step in the process used to evaluate and consider the availability of TIF for the project, including in your answer a description of the specific tasks each such third-party or vendor performed.

ANSWER:

22. Identify all other Defendant employees, personnel and/or independent contractors involved with the review of Plaintiff's TIF inquiry and subsequent formal request.

ANSWER:

23. Identify your document and information retention period.

ANSWER:

24. Identify any cell phone number, account number, and service provider used to discuss the Project and TIF

ANSWER

25. Identify the dates (or approximate date) upon which you had any meeting with Defendant Nicklas at Ellwood Steak and Fish House.

ANSWER

Respectfully submitted,

CRONAUER LAW, LLP

By: C. Nicholas Cronauer

CRONAUER LAW, LLP
C. Nicholas Cronauer
Attorneys for Plaintiff
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O (815) 895-8585/F (815) 895-4070

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SECOND RE-FILED AMENDED COMPLAINT AT LAW via 28 U.S.C. § 1367(d)

NOW COMES the Plaintiff, 145 FISK, LLC, by and through its undersigned attorney, and complains of the Defendants, F. William Nicklas and the City of DeKalb, and Respondents in Discovery John Pappas, Pappas Development, LLC, and PNG Development, LLC, and Heartland Real Estate Holdings, LLC, and in refileing this complaint pursuant to 28 U.S.C. § 1367(d) as follows:

JURISDICTION AND VENUE

1. This court has subject-matter jurisdiction over the Plaintiff's claims pursuant to 28 U.S.C. §1367(c) because the Federal Court for the Northern District of Illinois, Western Division, declined to exercise supplemental jurisdiction over all state law claims after dismissing just Plaintiff's original jurisdiction federal 42 U.S.C. § 1983 claims.

2. Venue is proper in DeKalb, Illinois, because that is where the relevant tortious acts have occurred and the residence of all parties.

3. Despite any appeal of the Federal Claims, Defendant City of DeKalb previously requested and must therefore consent to claim splitting given its Federal filing seeking to transfer venue in the Federal Court for all City of DeKalb claims to this state court and is judicially estopped from taking a contrary position.

THE PARTIES

4. At all times relevant hereto, the Plaintiff is a holding company that is an Illinois Limited Liability Company registered within the State of Illinois having its principal place of business in Sycamore, Illinois and at all times acted through its two principals.

5. Since January 1, 2019, the Defendant F. William Nicklas worked and was employed by the City of DeKalb, located in DeKalb County, Illinois, as the City Manager. He also resides in DeKalb County, Illinois.

6. Respondents in Discovery work within DeKalb County and reside or do business within DeKalb County.

FACTS PERTINENT TO ALL COUNTS

A. THE 145 FISK DEVELOPMENT

7. At all times relevant hereto, the City of DeKalb is a municipal corporation and body politic located within DeKalb County, Illinois with the authority to allocate TIF incentives for certain financially unviable projects pursuant to 65 ILCS 5/11-74.2-1 that are in “blighted” areas. In this case, the City of DeKalb passed a resolution on December 13, 2018 in favor of Plaintiff for rehabilitation an abandoned building into a boutique hotel because, per the resolution language, it “would not be economically feasible and the Owner, would not acquire the properties, would not remediate unsafe buildings, and would not undertake the project.”

8. Plaintiff was formed by two principals who are member managers of the LLC on December 13, 2018 in order to carry out the development and rehabilitation of a parcel of real estate and improvements thereon pursuant to a preliminary development agreement with the City of DeKalb using Tax Increment Financing (“TIF”).

9. The principals for Plaintiff had been working diligently and well with the City of DeKalb (hereinafter “City”) and its then staff beginning in the early winter of 2016-2017 through 2018 in order to develop a project that would meet the needs of the City by transforming a blighted, run-down building commonly known as 145 Fisk Avenue into an economic vehicle for the benefit of the community. Plaintiff never worked, met, or otherwise talked to any City Manager of the City of DeKalb about the project and worked exclusively with City staff at all times relevant herein prior to January 1, 2019.

10. As reflected in the July 5, 2018 memorandum to the City Council, attached hereto as **Exhibit 13**, the Plaintiff initially proposed, and the City initially was receptive to, the idea of the building housing apartments with a first-floor commercial aspect; however, that concept was eventually changed at the City’s request after Plaintiff incurred planning costs for an apartment complex above commercial space. The City then did not want additional apartment structures being built and also expressed concern that the property tax generated from a proposed apartment complex was not sufficient to support a return on a TIF investment since property taxes do not primarily benefit the City.

11. This request for a better return on TIF and increased sales/hotel tax revenue to the City caused the principals to create a plan to transform the dilapidated, blighted building into a boutique hotel that could serve as a destination venue for banquets, conferences, and weddings and generate significant hotel room tax.

12. The City Council gave a unanimous vote of confidence in the hotel project on July 9, 2018 after a memorandum and subsequent presentation from the then economic development planner. As was being expressed to the City Council in the memorandum for the preliminary vote being taken on July 9, 2018:

In an effort to reduce financial risk on this project, the Developer has requested to bring a concept plan forward to Council prior to closing on the property and investing in planning documents that would be required for the rezoning process. Therefore, this project is being presented to Council for discussion only and no action would be taken at this time. Should Council determine there is consensus to support this project and the incentive, staff would work with the Developer to streamline an approval process for consideration of an incentive and any required zoning approvals that allows the Developer to start construction as soon as possible.

13. Plaintiff immediately began working with City staff on the project, incurring expenses, and started the planning process. In August or September 2018, issues arose due to allegations made by other taxing bodies about the City of DeKalb and its improper use of TIF funds and uncertainty arose about whether any funds could be allocated anymore, or if the TIF district would continue past the end of the 2018 year-end. Thereafter, the Plaintiff was told by City staff during several meetings to simply sit idle and wait to see how the TIF controversy played out before incurring additional planning costs. A subsequent meeting was held where the Plaintiff was told it would likely have to wait for a year in order for a new TIF district to be created and become funded for the project to proceed.

14. On or about November 30, 2018, then City Attorney Dean Frieders called one of Plaintiff's principals and informed the principal that the City would be entering into preliminary TIF agreements before the end of the year in order to allocate TIF funds, and that this project would be voted upon for formal approval on December 18, 2018.

15. Prior to the December 18, 2018 vote, the City gave a preliminary vote of confidence to the project on July 9, 2018, so that the principals could proceed with development. The vote was made after information was submitted to the City staff employed to oversee TIF projects. The City of

DeKalb City Council, along with its planning and zoning commission, thus voted twice to approve the Plaintiff's project, and on December 18, 2018 formally approved a preliminary development agreement, which was codified as formal, binding resolution 2018-166, awarding two million five-hundred thousand dollars (\$2.5 million) to the Plaintiff for the business, which would be 35% of the construction costs.

16. The passed resolution states, in pertinent part, the following:

WHEREAS, Owner has proposed to commit funds to the competition of improvements on the Premises, subject to the City's commitment to provide economic development funding for this project; *see* Resolution 2018-166, 4th WHEREAS.

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; *id.* at 5th WHEREAS

the project has a significant financing gap and would not independently be financeable because of the blight and deterioration of the Property, the Owner has indicated that but-for the provision of the incentive contemplated herein, it would not undertake the project. *See* Resolution 2018-166, at Recitals, C.

* * *

Further, the Parties acknowledge that but for the provision of the incentive described herein, the Developer would be unable to undertake the project contemplated herein, as based upon extensive study of the proposed project and its costs, and the Parties have mutually concluded that this project would not be economically feasible and the Owner, would not acquire the properties, would not remediate unsafe buildings, and would not undertake the project. Accordingly, the Parties agree and acknowledge that the Development Incentive as described herein is necessary in order to induce this project to occur, **and satisfies all requirements applicable to such an incentive.** *See Id.*, at Article V(A) (Page 7 of 19).

17. Additionally, the resolution explicitly states that the funding was absolutely necessary for the project to even proceed:

In order to secure commercial financing, the Owner is required to demonstrate the funding and availability of the Development Incentive, and in order to make that demonstration, the City is obligated to allocate presently available funds to this project,

to budget and appropriate said funds within FY2019. *See id.*, at Article V(G) (Page 9-10 of 19).

18. The December 18, 2018 resolution that was duly passed by the City council rendered the City's agreement with the Plaintiff ministerial in nature and removed any and all discretion among any other employee to do anything than comply with the terms of the agreement.

19. Also, on December 18, 2018, the City of DeKalb voted to hire a new City Manager, Defendant F. William Nicklas, who began his employment on or about January 1, 2019. Despite the December 18, 2018 resolution, the preliminary development agreement was not available to be signed until the middle to end of the first week of January 2019, which is also when an escrow agreement was signed.

20. Before Defendant Nicklas' employment, Plaintiff worked cooperatively for years with the City of DeKalb staff and both sides worked dynamically and flexibly so that the project could succeed. Prior to Defendant Nicklas' employment as the City Manager, Defendant Nicklas sat on an advisory committee for a community college that reviewed City TIF projects. The Defendant made statements that he did not support the Plaintiff's project during these meetings.

21. During the first week of January 2019, Plaintiff had \$5,000 deposited into an escrow account for its benefit with the City. The \$5,000 was for the City to incur and apply to the balance all its costs associated with third-party professionals, such as engineers, review Plaintiff's submission.

B. DEFENDANT NICKLAS' HISTORY

22. Very soon after Defendant Nicklas began his employment with the City, he intentionally and purposefully began working to surreptitiously nullify the resolution supporting the preliminary agreement executed by the City of DeKalb with Plaintiff despite the fact the resolution stated that Plaintiff's project **satisfies all requirements applicable to such an incentive**. Despite Plaintiff working with City Staff and never having any contact with the prior City Managers, which were at least two, Defendant Nicklas took immediate, hostile, and biased interest in Plaintiff's project. The

hostility was due to Nicklas's involvement in prior issues that were the subject of another lawsuit Plaintiff's principal was involved.

23. Prior to his employment as City Manager, Defendant Nicklas resigned from his prior employment with Northern Illinois University ("NIU") after he left a voicemail for the wrong number. Defendant Nicklas left a message for a friend telling him to call him back so that he could become a preferred vender with Northern Illinois University and avoid the statutory procurement process and procedure that is mandated by State Law before entering into contracts. *See Exhibit 1.* Defendant Nicklas has a habit of having worked behind the scenes to benefit people of his choosing. On April 21, 2017, Defendant Nicklas was disclosed as a witness in a pending lawsuit, and part of the reason for his disclosure was due to his prior conduct as Manager. The witness disclosure appears below:

¶
→ William Nicklas, is expected to testify consistent with his deposition, if taken, and will discuss the process, procedures, and personal knowledge of the City inspection process and the homes identified in the complain that he inspected, his dealings with the City and lack of home development, and his dealings with developers in order to help spur development growth, and how he used impact fees to raise revenue for the town, as well as how he would get around the

Page 2 of 4¶

procurement code for City contracts.¶

→ Pursuant to Rule 213(e), any individual identified in any document produced or interrogatory response. The subject matter will be consistent with the information contained in the record where the person is identified.¶

¶
→ Pursuant to Rule 213(e), a Park District Representative will testify consistent with the information contained in the documents disclosed herein.¶

¶
→ Any individual disclosed by the Defendant or deposed in this matter.¶

24. While employed by NIU, Nicklas became intimately familiar with holding companies and how they actually work. Defendant Nicklas had formed a holding company in December 2013 known as College Town Partners, and attempted to redevelop an area near the subject property under a concept known as DeKalb 2020. Defendant Nicklas sought to acquire foreclosed homes for the redevelopment. Defendant Nicklas had input in creating the DeKalb 2020 marketing material, which is attached hereto as **Exhibit 2**. The holding company he formed for his development is attached hereto as **Exhibit 6**.

25. Defendant Nicklas' DeKalb 2020 project ultimately was unsuccessful due to a lack of public support. Defendant Nicklas was seeking to execute his concept in part by relying on banks to provide him foreclosed home information, which is well documented in his NIU emails.

26. Defendant Nicklas knew, given his own involvement in trying to develop a hotel conference center in College Town Partners, that there was and is a great need for the community and region to have a conference center hotel that would serve to supply banquet and meeting space that is not found in a single facility.

27. Defendant Nicklas believes that the development of a hotel and convention center in the Ellwood neighborhood would stimulate community pride and create a facility for entertainment, and be sustainable.

28. Defendant Nicklas attempted his hotel development in conjunction with Shodeen, a developer he has worked with and came to know well over the course of his career in City government, which is referenced in the DeKalb 2020 publication. Defendant Nicklas referred to them during a February 1, 2019 joint review meeting as a potential for TIF funds.

29. To date, Defendant Nicklas still has plans for TIF funds to be used for Shodeen and a hotel, as he made clear in his March 9, 2020 TIF outline for the City Council; however, he has been unable to fulfill such plans given the litigation surrounding his tortious interference. Nonetheless, he

has earmarked up to \$1,450,000 in TIF funds for his friend and client's project in order for the plans to come to fruition under his tenure, which is accurately depicted below:

The table below shows the commitments and a few question marks for TIF support for private property rehabilitation in FY2020 and FY2021:

FY2020 TIF#3 Projects	Est. \$	FY2021 TIF#3 Projects	Est. \$
Budget	3,778,250	Budget	2,875,000
<i>Private Prop. Rehab</i>		<i>Private Prop. Rehab</i>	
Plaza DeKalb	350,000	Agora Tower	1,375,000
Egyptian	500,000	Other Rehab Projects:	
Agora Tower	1,625,000	The House	?
Former DeKalb Clinic Sewer Relocation	150,000	McCabe's	?
Lovell Tire	142,091	Lord Stanley's	?
Hometown Bar & Grill	150,000	E. Lincoln Highway	?
Balli	216,800	W. Linc: 1 st to Pearl	?
AIP Program	53,250	AIP Program	50,000
Total	3,187,141	Total	1,425,000
Available	591,109	Available:	1,450,000
<i>Public Infrastructure</i>		<i>Public Infrastructure</i>	
IL Rt. 38 Downtown	500,000	IL Rt. 38 Downtown	1,500,000
FY2020 TIF#1 Projects		FY2021 TIF#1 Projects	
DeKalb Airport TIP	1,000,000	DeKalb Airport TIP	1,000,000

There is room in the FY2020 TIF #3 Budget for any of the three options described above.

C. DEFENDANT'S CONDUCT AS THE DEKALB CITY MANAGER

30. On February 1, 2019, and before Defendant Nicklas ever met with the Plaintiff's principals, Defendant Nicklas began talking about bringing Shodeen to DeKalb, who previously wanted to develop a hotel in DeKalb. Defendant Nicklas sought to work with Shodeen for his own prior development project. Defendant Nicklas authored a document that was released to the public April 23, 2019, wherein he wrote that "Shodeen" had a development plan for "University Park Commons" which "featured a full-service business-class hotel." Defendant Nicklas stated he'd had had "some discussion with Shodeen representatives . . . since the first of this year but no development plan or incentive initiative is under review." See April 23, 2019 TIF Joint Review Board Agenda, attached hereto as Exhibit 9.

31. In January of 2019, before meeting with Plaintiff or reviewing any information, Defendant Nicklas intimated that the Plaintiff's project was less likely to proceed during a formal meeting with taxing bodies despite having done no work with the Plaintiff to assess the project nor request any information from the Plaintiff. Up to that point Plaintiff had been working with City staff for planning and zoning, and had submitted blueprints, elevations, and other materials requested of it by City staff that engineers created.

32. During a January 25, 2019 Joint Review Board meeting, Defendant Nicklas was asked about the three TIF projects that were all approved on December 18, 2018 for "preliminary development agreements." Defendant Nicklas stated that the two other projects approved with Plaintiff's were "very likely" to come to fruition but Plaintiff's project was "very preliminary commitment" and a "placeholder really of \$2,500,000."

33. Defendant was asked during the meeting if the TIF money would become surplus and therefore distributed to the taxing bodies if any project did not come to fruition, to which Defendant Nicklas responded "yes."

34. Defendant Nicklas, by calling the Plaintiff's project a "placeholder of \$2,500,000" was a "Freudian slip" because Defendant Nicklas knew then that he would seek to reallocate Plaintiff's TIF funds to a different project being spearheaded by developer John Pappas and that he was very familiar with John Pappas and his major investor in the project.

35. Defendant Nicklas had personally represented Pappas' large investor before under his consulting company, "Nicklas Consulting" for, presumably, remuneration, in order to act as a consultant/lobbyist and gain support for a development by the City of Sycamore City Council after public pushback and initial votes by public bodies showed a lack support for the project.

36. Defendant Nicklas knew that his client was a large investor in the Pappas project and the investor's name was disclosed in public meetings about the project.

37. Toward the end of January 2019, Defendant Nicklas caused the Council to fire the staff that Plaintiff had been working with to develop its business. Nicklas then took control of overseeing the project and began requesting material that was not pertinent to the resolution requirements, planning and zoning, or had already been provided prior to the December 18, 2018 vote, or had never been previously needed nor requested (since it was totally irrelevant to planning and zoning and was not a factor). The preliminary agreement provided that the City had everything needed for the TIF funds other than being rezoned because the project “satisfies all requirements applicable to such an incentive.” See Resolution 18-166, at Article V(A) (Page 7 of 19), attached hereto as **Exhibit 7**.

38. Defendant Nicklas also requested arbitrary material that he knew was not necessary (nor required by the resolution) given his work and involvement in being a director of College Town Partners, which published the DeKalb 2020 material attached hereto as an **Exhibit 2**.

39. Defendant Nicklas was acting in bad faith by requesting information with no clear objective, guidelines or metrics, nor could he provide any ability to comply with his subjective requests given the language in the resolution. Defendant Nicklas was simply seeking to torpedo the project with arbitrary requests that he could then use to subjectively determine non-compliance and reallocate the funds to John Pappas, which he had been working with to bring to the council a different project that would benefit Pappas and Defendant Nicklas’ prior consulting client.

40. Defendant Nicklas intended for these requests to distract from the planning and zoning time-frame in the preliminary development agreement and create misinformation for its plan to tortiously interfere despite the binding resolution.

41. Publicly, and on January 25, 2019, Defendant Nicklas told the taxing bodies and the general public that if the Plaintiff’s TIF allocation did not come to fruition, then the money allocated to Plaintiff would be returned to the area school district and taxing bodies. Defendant Nicklas however told Plaintiff’s principals privately that if it’s project failed then he could then re-allocate the

pledged TIF funds to other projects within the City of DeKalb, which he confirmed publicly on April 19, 2019.

42. Defendant Nicklas took the unusual and out of the ordinary step of sending the Plaintiff's project to a preliminary review by planning and zoning on February 6, 2019, purely so that the public could offer opinions as to the project. Defendant Nicklas did this based on his prior failed attempt to develop a hotel in the hope that the public would not support this project and then effectively end the Plaintiff's development on that date.

43. At the February 6, 2019 planning and zoning meeting, two people spoke against the project, one of which was an area landlord rather than a resident. More people spoke in support of the project rather than against it. The planning and zoning board offered its support and confidence in proceeding with the project during the meeting. The most vocal planning and zoning member raising any issues about the Plaintiff's project was a lawyer that was employed with the law firm representing the Pappas project.

44. Defendant Nicklas attended the February 6, 2019 planning and zoning meeting and was aware of its preliminary support to proceed with the project by the planning and zoning committee.

D. PLAINTIFF'S INTERACTIONS WITH DEFENDANT NICKLAS

45. On February 22, 2019, Defendant Nicklas met with principal Bulson at Defendant's request despite Plaintiff trying to work through planning and zoning with those responsible for reviewing the project submissions. Defendant Nicklas arrived at the meeting with a tone, and demeanor that was aggressive, angry, and unprofessional. Nicklas proceeded to then intimidate principal Bulson by interrogation of trivial issues unrelated and irrelevant to anything with planning and zoning or the preliminary development agreement. The other principal was unable to attend the meeting because he was still engaged in prosecuting a civil jury trial that had started on February 5, 2019, which Defendant Nicklas was made aware.

46. During the February 22, 2019 meeting, Defendant Nicklas stated that he did not know anything about Principal Bulson who he met with, but that he was somewhat familiar with the other Principal. The other principal's only association, interaction, or relationship with Defendant Nicklas prior to him becoming the City Manager was through the lawsuit where Defendant Nicklas called the Constitution "pesky," which is depicted below:

~~I'll send a note around to my counterparts on Friday. I should mention that if any revisions were approved, they would have to apply to all new homes and developments in Sycamore. That pesky Constitution has strictures against artificial distinctions, and choosing one subdivision over another without some exigent circumstances would qualify as an "artificial distinction."~~

I'll be in touch.

Bill

47. Defendant Nicklas only attempted to obtain background information on the principal associated with the lawsuit in which Defendant Nicklas was disclosed as a witness and never sought to obtain any information or background on principal Bulson because he was not the person who discovered the email where Nicklas called the Constitution "pesky."

48. On February 22, 2019, Defendant Nicklas informed the principal during this meeting that he was in the back of the room during the February 6, 2019 planning and zoning meeting, and intimated that it was inappropriate for him to be at the planning and zoning meeting because he does not make those decisions but that he was there in an attempt to influence the panel.

49. During the meeting, Defendant Nicklas stated to the principal that he was now running the City of DeKalb, and wanted all personal information on the principals and any organization they were affiliated with, and then began name dropping people in the community who were bankers that he would use as sources from which to gather information about the principals.

50. Defendant Nicklas continuously sought and attempted to intimidate the principal during the meeting from proceeding with the project.

51. The principal assured Defendant Nicklas that the project is low risk because it is a rehabilitative reuse of an existing structure with a build out for adaptive use because the exterior is essentially finished. Defendant Nicklas was also informed that the project was essentially a parking lot and interior build out because the super-structure was complete and that Plaintiff had a structural and civil engineer and architect review the structure for suitability, all of whom found it was suitable for the intended use.

52. Defendant Nicklas was informed that, according to the Architect, Civil, and Structural Engineer, whose plans were submitted to the City staff, the structure is capable of handling the proposal. Defendant Nicklas did not care about any of the facts as it related to planning and zoning or the obligations created by the resolution.

53. Prior to December 18, 2018, Plaintiff's principals had submitted a *pro forma* document to a City staff that was reviewed, approved, and accepted, and was deemed "consistent" with his experience working on other similar projects. As such, the project was then recommended based on that *pro forma* document, which then led to the preliminary development agreement on December 18, 2018.

54. After the February 22, 2019, meeting Plaintiff's principal received a call from the City employee and he indicated that the Plaintiff now needed to provide another *pro forma* document for the project indicating its financial viability. This *pro forma* document was required only by Defendant Nicklas, but was not required by the preliminary agreement because a *pro forma* document already had been reviewed and approved by City staff before the December vote. Defendant Nicklas eventually refused to review or discuss the *pro forma* document with the Plaintiff during a March meeting.

55. It was not until March 8, 2019 that Plaintiff received an email from City staff that Plaintiff could proceed with its planning. Plaintiff could not proceed any further up to that point until its plans

were reviewed and approved. On February 19, 2019, Plaintiff had sent its plans for review by City staff.

56. After Plaintiff's finally received word from City staff that it could now proceed, Plaintiff's principals quickly arranged for a meeting with Defendant Nicklas, which occurred on March 13, 2019 at 5:00 p.m. The additional hotel *pro forma* document despite not being required by the preliminary development agreement which had already been reviewed and approved by City staff before December 18, 2018. The ostensible purpose was to review the document again. At the meeting however, Defendant Nicklas refused to review the *pro forma* document and began asking who the principals' bankers were. He refused to look at, consider, critique, or offer any other advice as to the second *pro forma* document.

57. Defendant Nicklas was told of two banks that could be used for the project. The meeting did not address any planning and zoning issues or any other issue pertinent to the preliminary agreement terms. Plaintiff's principals left the meeting again, without any substance for proceeding from Defendant Nicklas. Defendant Nicklas simply demanded access to their personal information despite the preliminary agreement stating everything had been satisfied for the incentive to proceed to planning and zoning.

58. Early morning the next day, one of the principals received a call from a banker at one of the above referenced banks. Defendant Nicklas had called the bank and requested personal information about the principal even though it was not relevant nor related to the preliminary agreement or planning and zoning. Regardless, Defendant Nicklas talked to the banker and was made aware that his financial concerns about the principal presently lacked merit. Defendant Nicklas, after receiving this information, made no attempt to contact any bank associated with principal Bulson even though principal Bulson offered for him to talk to his banker. Defendant Nicklas never attempted to learn anything about Bulson, his background, or experience.

59. Defendant Nicklas, upon learning of the positive financial position of one of Plaintiff's principals, then changed his position from focusing on the principals' personal wherewithal (which is not pertinent nor required for TIF nor the preliminary agreement) and demanded, in writing, that financial information for the LLC doing the project be provided. The LLC is the Plaintiff as a shell, which was still a holding company. Defendant Nicklas intended to and did, misleadingly, the holding company shell documents in order to deceive the City Council and general public about how the development of the project operates in practice and the viability of the project.

60. Because of this positive personal information Defendant Nicklas gained, Defendant Nicklas then sent financial forms he created himself or obtained from somewhere else rather than use any official City documents for the Plaintiff to complete. He was very specific that he now needed the financials **just for** the entity doing the project, 145 Fisk, LLC, which was a holding company in the middle of planning and zoning work, rather than a going concern. Defendant had access to checks previously written to the City for the project by Plaintiff and knew that the working capital was coming from Plaintiff's principals since the Plaintiff was still a holding company.

61. On March 22, 2019, Plaintiff, through its principal, filed its petition for rezoning and paid the \$500 application fee, for which there is a receipt.

D. DEFENDANT'S OVERT MISCONDUCT

62. On or about March 27, 2019, Plaintiff's principal Bulson received a voicemail from a City employee that Defendant Nicklas was refusing to place Plaintiff's petition on the planning and zoning committee agenda. Defendant Nicklas blocked the petition for reasons unrelated to any issue or factor for planning and zoning, and for none of the issues Defendant Nicklas listed on his April 19, 2019 agenda for terminating the project.

63. Defendant Nicklas has blocked, and continues to block, the Plaintiff's planning and zoning petition from proceeding despite accepting \$500 for the petition and filing a petition that met all the

requirements to initiate a hearing with Planning and Zoning Committee of the City under the terms of the preliminary agreement.

64. 145 Fisk, LLC is a holding company, not yet a going concern, and the funding to support the project is coming from the principals, which Defendant Nicklas understands because he has been part of such a structure.

65. Defendant Nicklas is well aware that a holding company obtains funds from other sources for projects, as is acknowledged in Defendant's emails he sent during his attempt to develop, *inter alia*, a hotel. He previously sent emails requesting funding for his holding (aka "Shell") company from other sources. *See* March 10, 2014 email, attached hereto as **Exhibit 3**.

66. After Defendant Nicklas received financial information for 145 Fisk, LLC, rather than request additional information or request clarification, he sent an email, attached hereto as **Exhibit 4**, asking the Plaintiff, through its principals, to withdraw their petition or else be mindful he could embarrass and harm the reputation of the principals within the community.

67. Defendant Nicklas' email constitutes an unlawful threat to defame the Plaintiff through its principals after his attempts to kill the project failed.

68. Defendant Nicklas threatened the principals with making false statements and disingenuous statements to the DeKalb City Council and public if the Plaintiff did not withdraw the application.

69. Defendant Nicklas threatened to embarrass and harm the Plaintiff through its principals' reputations if it did not withdraw the petition because Defendant Nicklas knew the Plaintiff had otherwise complied with the preliminary agreement for TIF since the preliminary agreement provided that:

"the Parties have mutually concluded that this project would not be economically feasible and the Owner, would not acquire the properties, would not remediate unsafe buildings, and would not undertake the project. Accordingly, the Parties agree and

acknowledge that the Development Incentive as described herein is necessary in order to induce this project to occur, and satisfies all requirements applicable to such an incentive.”

70. Defendant Nicklas threatened the Plaintiff's principals and attempted to force them to withdraw their petition because he lacked a basis to otherwise inform the Council of valid problems or issues with the project and knew the principals had initiated a petition for re-zoning that he was blocking.

71. Plaintiff complied with the terms of the preliminary agreement as requested by the City staff, working diligently with the City staff to fulfill the preliminary obligations for the project and proceed to construction. Plaintiff would have been able to complete the project if not for Defendant Nicklas' interference.

72. The Plaintiff through its principals have the same experience and background now as they did in the prior three Council and zoning votes approving the project. Nothing has changed in the equation but for Defendant Nicklas being involved.

73. A principal asked that Defendant Nicklas recuse himself from overseeing this project given his history and public statements. However, Defendant Nicklas refused, adamantly, twice, which is attached hereto as **Exhibit 5**.

74. Defendant Nicklas was the previous City Manager for the City of Sycamore, and litigation is pending over an ordinance in effect during his tenure regarding impact fees. One of the principals is the attorney defending and prosecuting a case regarding the impact fee ordinance.

75. Defendant Nicklas knows he was disclosed by the principal as a material witness in the Sycamore lawsuit due to emails he authored on the topic, one of which referred to the Constitution as being “pesky” when he was talking with a person from Shodeen Development because Nicklas was asked for a favor in order to waive or reduce subdivision impact fees.

76. Defendant Nicklas, despite his statement that the constitution was “pesky” while working with Shodeen development on its impact fees, has an ongoing relationship with Shodeen from his tenure being a City Manager at Sycamore. Shodeen previously sought TIF incentives from DeKalb and Defendant Nicklas has begun mentioning them in public TIF meetings. Nicklas interfered with Plaintiff’s preliminary agreement so that the TIF funds can be released and then re-allocated. On April 19, 2019, Defendant Nicklas publicly stated he could use Plaintiff’s TIF funds for other projects despite his prior statements to the taxing bodies that the funds would be deemed surplus and returned to the taxing bodies.

77. Defendant Nicklas used misstatements in order to manipulate the City Council into voting against a viable project that already received preliminary approval so that he can control the TIF funds for projects and allocate money to developers of his choosing despite the preliminary development agreement.

78. Defendant Nicklas has intentionally misled the DeKalb City Council about the truth of the Fisk Project and his motives for killing the project, and made assertions about the Plaintiff through its principals that lack any basis in fact, such as claiming that the principals have blown off meetings to go over planning and zoning and that they have not done anything to proceed with the project.

79. The principals have incurred tens of thousands of dollars in costs through planning the project and were working cooperatively with the City of DeKalb staff tasked with overseeing the project. After Defendant Nicklas took control he proceeded to improperly and unlawfully interfere with the project in order to end the project, and defamed the Plaintiff through its principals.

80. Defendant Nicklas is aware of his role in the City of Sycamore litigation as a witness and has behaved in a manner that sought to circumvent the legal procurement code to benefit friends.

81. On April 19, 2019, Defendant Nicklas fulfilled his threat to try to embarrass and harm the reputation of the Plaintiff by causing to be published an agenda to the City Council full of material

misstatements about Plaintiff, its principals, and the project, as reasons for voting against the project. The Defendant Nicklas also made public statements to local news outlets that were false. Defendant Nicklas alleged that Plaintiff had the inability to complete the project and comply with the preliminary TIF agreement, but he omitted material information, and he intentionally put statements in a false light and made false statements about Plaintiff's principal's working capital and collateral. One example of a material misstatement (that was not even pertinent to the preliminary development agreement), was Defendant Nicklas stating that the Plaintiff's principals "suggested they were going to get bank financing for the balance, and that means they have no collateral." He also stated there was no working capital on April 19, 2019. Defendant's statement is contrary to the actual development agreement terms, wherein the City agreed and acknowledged "that, in order for Owner to secure commercial financing to render the redevelopment of the Property possible, Owner is required to secure the City's commitment to utilize a development incentive as contemplated herein."

82. Defendant Nicklas knew that his statement regarding Plaintiff's bank financing means no collateral was false because, given his prior experience as a banker, it is contrary to the commercial banking rules set forth by the Office of the Comptroller of the Currency, which is attached in relevant part hereto as **Exhibit 10**.

83. Defendant's false statement had the effect he intended on listeners and receivers. That falsehood was adopted and re-published, and shared publicly across social media platforms by others and seen by others, two of which appear below:



Nick Atwood

Resorting to personal attacks without disputing. The allegation that the developers don't have any working capital or collateral seemingly supports the city managers decision. TIF money is not seed money, and without sufficient resources, that project is doomed and the city money would be wasted.

5m Like Reply



Michael Howell

The story I heard is that the developer had zero money or collateral and was solely dependent on the TIF money for the project.

Deadboat Developer.



84. Defendant Nicklas statements to the media about the issue were public comments to the local paper that were not made in a proper manner for proper parties within his role as the City Manager.

85. During the August 24, 2020 City Council meeting, it was stated about Defendant Nicklas conduct that "It is not the manager's role to be giving interviews to local media taking an opposing position to a policy that is put forth for consideration."

86. On April 22, 2019, the Mayor of DeKalb released a statement where the undue influence of Defendant Nicklas false statements were made apparent:

(Through) the due diligence that Bill and others have done, he has determined that the fiscal wherewithal is simply not there as it relates to the city going forward with a grant of \$2.5 million to this project," says Smith. "Is the project dead in (the) water? I think it probably will be. I can't project what the city council is going to do Monday night ... I'm inclined to support the recommendation of Bill and that is to terminate the agreement.

87. Defendant Nicklas intentionally and purposefully changed the sequence and series of events for land use approval and delayed review of materials in order to prevent the Plaintiff from getting to the planning and zoning commission and raised issues entirely irrelevant to planning and zoning.

88. On April 23, 2019, the morning after the City Council unlawfully terminated Resolution 2018-166, which occurred the night of April 22, 2019, Defendant Nicklas had authored and released **Exhibit 9**, wherein he sets forth that he had been working with not only Shodeen, but John Pappas in order to re-develop 204 N. Fourth street into two apartment buildings and therein asks that "the 'Project' monies previously committed in preliminary fashion to the 145 Fisk project be dedicated" primarily to the John Pappas project, which is being funded by an investor that Defendant Nicklas has accepted remuneration from for his consulting business and is a conflict of interest. That

Defendant Nicklas authored **Exhibit 9** and substantially generated the content found therein before the City vote repudiating and terminating Plaintiff's project.

89. Defendant Nicklas is not believed to have disclosed his conflict of interest with the Pappas investor to anyone before any vote on the project nor did he recuse himself from the project despite having previously represented the major investor in consulting with the City of Sycamore.

90. That Defendant Nicklas has a habit and pattern of attempting to publicly embarrass people, which the judiciary colloquially calls "borking," as a means to improperly influence third parties. For example, he was previously sued in this court for retaliating publicly against the NIU police chief Donald Grady, *see Grady v. Board of Trustees of N. Ill. Univ.*, quoting *Head v. Chicago Sch. Reform Bd. of Trs.*, 225 F.3d 794 (7th Cir. 2000). There is also another case currently pending by a City of DeKalb landlord in this court for public statements Defendant Nicklas made about the landlord to the local paper. *See* 3:19-cv-50197, ECF # 1, at ¶ 34-35. Additionally, this summer he has had a public feud with the elected City Clerk of DeKalb where he has attempted to publicly embarrass her and question her competence publicly. Defendant' Nicklas' prior pattern, practice, and habit of "borking" third parties he opposes is the same *modus operandi* he carried out in this case against Plaintiff's project and principals.

91. Additionally, as occurred in this case, Defendant Nicklas' habit and *modus operandi* of selectively favoring his "past partnership" developers with government funds. *See* email dated January 25, 2019, attached hereto as **Exhibit 12**. In an August 8, 2019 email, Defendant Nicklas would offer his "next move" to "privately [sic] feel out" nearby government officials he called "taxtakers" for the developer Krusinski and that he would be "discreet." *See* email attached hereto as **Exhibit 11**. Four days later, On August 12, 2019 Defendant Nicklas would publicly state paradoxically to the DeKalb City Council "... transparency I believe is necessary for open and honest government."

92. Defendant Nicklas, as an agent for the City, requested and had returned to Plaintiff its \$5,000 escrow deposit, in full. No deductions were made to the \$5,000 because Defendant Nicklas obstructed all professional third-party review of the plans.

COUNT I: TORTIOUS INTERFERENCE WITH A BUSINESS EXPECTANCY¹
(DEFENDANT NICKLAS)

NOW COMES the Plaintiff, by its undersigned attorney, and for Count I of his complaint, alleges as follows:

1–90. Plaintiff incorporates the allegations above as if set forth fully herein.

93. The foregoing allegations as a whole given the preliminary agreement for Tax Increment Financing, and Plaintiff's compliance with the agreement and submission for rezoning and assertions from City staff, Plaintiff had a reasonable expectancy of entering into a valid business relationship with the City of DeKalb to develop a dilapidated building into a boutique hotel business.

94. Given the preliminary agreement language, wherein the Parties agreed and acknowledged that the Development Incentive "is necessary in order to induce this project to occur, and **satisfies all requirements applicable to such an incentive,**" plus three votes of confidence and the preliminary agreement entered into with the City, a reasonable expectancy of entering into a valid business relationship existed before Defendant Nicklas tortiously interfered.

95. Defendant had knowledge of the expectancy because he was present for the December 18, 2018 meeting where the expectancy was approved by the City Council.

¹ So as to avoid any confusion in answering the complaint, tortious interference with a business expectancy is a separate, independent cause of action from tortious interference with a contract. *See, i.e., Mannion v. Stallings & Company, Inc.*, 204 Ill.App.3d 179 (1st Dist. 1990); *Miller v. Lockport Realty Group, Inc.*, 377 Ill.App.3d 369 (1st Dist. 2007); *Fellbauer v. City of Geneva*, 142 Ill.2d 495 (1991); *Lusber v. Becker Brothers, Inc.*, 155 Ill.App.3d 866 (3d Dist. 1987); *Clarage v. Kuzma*, 342 Ill.App.3d 573 (3d Dist. 2003); *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill.App.3d 849 (1st Dist. 2008).

96. Commencing after Defendant Nicklas started in his position and after Defendant's intimation in January 2019 that the project was less viable compared to other TIF projects (before ever meeting or requesting any information from the Plaintiff), Defendant Nicklas intentionally or purposefully interfered with the project and has prevented the realization of the TIF expectancy by his actions, omissions, misstatements to the City Council and public. He also refused to place the project before the Planning and Zoning Commission for issues unrelated to the preliminary zoning agreement.

97. Defendant Nicklas now seeks to use his undue influence to reallocate the TIF funds to his preferred pet projects and developers/consulting clients and the animus toward Plaintiff's principal due to having uncovered and disclosed his prior misdeeds.

98. Plaintiff has a property interest in the contract to purchase the subject property as well as the preliminary agreement passed as a resolution to develop the property using tax increment financing and as part of that property right, was required to rezone the property. Defendant Nicklas blocked and refused to permit due process for rezoning given the fact that the board gave a vote of confidence on February 6, 2019 rather than rejecting it after the public hearing.

99. Defendant Nicklas had a voicemail left refusing to initiate Plaintiff's rezoning petition because the development agreement stated:

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.** *See Id.*, at Article V(A) (Page 7 of 19).

100. By refusing to provide a mechanism for the property to be rezoned, Defendant Nicklas violated Plaintiff's due process rights in retaliation for its First Amendment Activity as outlined above.

101. As a result of the violation of due process, Plaintiff suffered actual damages of no less than \$2.5 million dollars and lost profits.

102. That filing, prosecuting and defending the lawsuit where Defendant Nicklas was discovered as referring to the Constitution as “pesky” was a protected activity because “the First Amendment’s right to petition the government for the redress of grievances extends to the courts in general and applies to litigation in particular.”

103. That Plaintiff, given that Defendant Nicklas refusal to recuse himself from Plaintiff’s project to develop a boutique hotel with the City Council and City Staff, it suffered a deprivation by Defendant Nicklas because of his tortious interference, defamation, and misrepresentations under the color of state law without due cause, and such economic interference would likely deter First Amendment activity in the future given his malicious, intentional, and improper conduct in his role as the City Manager, and Defendant Nicklas as being identified as a witness in a prior and pending lawsuit where he referred to the Constitution as being “Pesky” is activity that was “at least a motivating factor” in the Defendant Nicklas’ decision to take the retaliatory action against Plaintiff described herein since its principal is prosecuting and defending the case.

104. That Defendant Nicklas was willfully motivated against the Plaintiff’s principal’s involvement in uncovering Nicklas denigration of the United States Constitution and disclosing Nicklas as a witness regarding a voicemail where Nicklas asked for a friend to contact him in order to get around the statutory procurement process requirements set by State Law.

105. That Defendant Nicklas refused to recuse himself from the Plaintiff’s project despite this background and despite being asked by Plaintiff to recuse himself. Defendant Nicklas should have recused himself given his involvement in the prior case and given his business association with a Pappas Investor.

106. Given Defendant Nicklas' prior comments against the project before being City Manager, his failed development, his assertions contained in the DeKalb 2020 material, and his anger at being a witness in a lawsuit due to his email with Shodeen about the Constitution being pesky, Defendant used his role as the City Manager to tortiously interfere willfully and maliciously with the TIF expectancy rather than recuse himself and let the City staff handle the ministerial project, which had been the standard operating procedure prior to his arrival.

107. Plaintiff has incurred damages resulting from the interference in an amount no less than \$2.5 million dollars, plus lost business profits, and development costs.

Wherefore, Plaintiff, 145 FISK, LLC, respectfully requests this Court to enter judgment in its favor after a trial by jury and against Defendant Nicklas in an amount in excess of \$2.5 million dollars for compensatory damages, development costs, plus taxable costs, and any other equitable relief deemed just.

COUNT II: FIRST AMENDMENT RETALIATION CLAIM (DEFENDANT NICKLAS)

*****DISMISSED BY FEDERAL COURT, BEING APPEALLED, CITATION SOLEH FOR PRESERVATION OF CLAIM***.**

COUNT III: VIOLATION OF DUE PROCESS (DEFENDANT NICKLAS)

NOW COMES the Plaintiff, by its attorney and for his Count III, complains of the Defendant

Nicklas as follows pursuant to 42 U.S.C. § 1983:

*****DISMISSED BY FEDERAL COURT, BEING APPEALED, CITATION SOLELY FOR PRESERVATION OF CLAIM*****

COUNT IV: DEFAMATION PER SE

NOW COMES the Plaintiff, by its attorney and for its Count IV, complains of the Defendant Nicklas as follows:

1-106. Plaintiff realleges and reincorporates the allegations above as if set forth fully herein.

108. Defendant Nicklas has made material misstatements to the City Council and the public, some of which are alleged above, and others which can only be known through the discovery process but his intent and his threats to embarrass and harm the reputation of Plaintiff are premised upon making statements which are false.

109. Because Plaintiff was working diligently to complete the development and was able to navigate Defendant Nicklas' February 6, 2019 planning and zoning meeting, which Plaintiff never even applied for but was placed on the agenda by Defendant Nicklas, Defendant Nicklas had to resort to defamation and intimidation by asking the Principals to withdraw their project from consideration or else face a public shaming by him.

110. Defendant Nicklas carried through with his April 2019 threat to embarrass and harm the reputation of the Plaintiff by publishing untrue statements of fact to the City Council and other third parties and general public.

111. That Defendant Nicklas conduct in April 2019, which fulfilled his attempt to intimidate and threaten to embarrass the Plaintiff as set forth in **Exhibit 4**, violated 720 ILCS 5/12-6(a)(5)-(6) and 25 CFR § 11.406(a)(3), which sets that standard for ordinary care that the Defendant intentionally, willfully, and maliciously deviated from.

112. Defendant Nicklas made the defamatory statements intentionally given his obsessive review of irrelevant, collateral, but personal information of the Plaintiff's through its principals that had no basis in fact nor required by the signed preliminary TIF agreement or resolution 2018-166. *See* Ex. 7.

113. Defendant Nicklas published the statements with intentional disregard for the truth and with malice in order to harm the Plaintiff and its agents as evidenced by Defendant's prior email, voicemail, Defendant's failed DeKalb 2020 development, witness in a pending lawsuit, and his preference for reallocating the TIF money to his preferred developer.

114. Defendant knew his statements contained in the April 19, 2019 agenda, as well as his voluntary statements to local media outlets about the working capital and lacking collateral were untrue and he knew they were untrue because they are contrary to the very assertions he circulated in his DeKalb 2020 plan, the preliminary agreement, and the information he gleaned talking to one banker, and his own knowledge of how commercial lending works given his prior involvement in banking.

115. Defendant Nicklas' false statements directly impute the inability of Plaintiff to perform or want of integrity in performing its duties in its trade and business developing the property, which was confirmed by the Mayor's April 22, 2018 statement; creating defamation *per se* and presumed damages, in addition to actual damages that exceed \$2.5 million.

Wherefore, Plaintiff, 145 FISK, LLC, respectfully requests this Court enter an order of judgment against Defendant Nicklas in excess of \$2.5 million dollars in compensatory damages, plus development costs, punitive damages, taxable costs, and any other remedy this court deems equitable and just.

COUNT V: DEFAMATION PER QUOD (ALTERNATIVE COUNT TO COUNT IV)

NOW COMES the Plaintiff, by its attorney and for its Count V, complains of the Defendant Nicklas as follows:

1-114. Plaintiff realleges and reincorporates the allegations above as if set forth fully herein.

116. Defendant Nicklas' statements, to the extent such statements contained in Exhibit 4 as well as the April 19, 2019 agenda, news outlets outlined above, and the Mayor as expressed on WLBK before any formal vote that was about the Plaintiff but are not apparent on their face; then

extrinsic circumstances show the defamation. Extrinsic circumstances include that the Plaintiff is a holding company still in the planning stages that was not required to yet be fully funded under any resolution or law nor needed to be fully funded before planning and zoning was done. Defendant Nicklas' prior involvement in directing his holding/shell company as well as serving previously as a banker who no doubt understands this, is extrinsic evidence necessary to demonstrate its injurious meaning he falsely maintained;

117. Due to the defamatory statements, Plaintiff suffered actual damages of \$2.5 million.

Wherefore, Plaintiff, 145 FISK, LLC respectfully request this Court, enter an order of judgment against Defendant Nicklas in excess of \$2.5 million dollars compensatory damages, punitive damages, taxable costs, and any other remedy this court deems equitable and just.

COUNT VI: BREACH OF CONTRACT (CITY OF DEKALB)

NOW COMES the Plaintiff, by its attorney and for its Count VI, complains of Defendant City of DeKalb as follows:

118. Plaintiff realleges and reincorporates the allegations above as if set forth fully herein.

119. Resolution 2018-166 approved the preliminary development agreement and approved and set forth remedies "Upon a breach of this Agreement," which permits damages for the failure of performance.

120. Article VII(b) states that "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."

121. Defendant City never apprised Plaintiff of any alleged breach of the preliminary development agreement, thus, it never afforded a forty-five (45) days to cure any alleged breach.

122. Defendant City breached the TIF agreement by failing to initiate a timely review of Plaintiff's plans given the re-zonign timeline despite accepting and receiving \$5,000 for such review by third-party professionals but returning the funds without any deduction for review by professionals.

123. Plaintiff, on April 24, 2019, informed the City of its breach of the preliminary development agreement by its conduct on April 22, 2019 that repudiated the resolution and agreement. Plaintiff afforded Defendant City forty-five (45) days to cure its breach. However, to date, no such cure occurred or been attempted and forty-five (45) days has passed precluding it to now cure its default. *See* Correspondence dated April 24, 2019 and attached hereto as **Exhibit 8**.

124. That Resolution 18-166 created a preliminary development agreement that contractually bound the City of DeKalb, and the City breached the agreement on April 22, 2019 by voting to repudiate the agreement and duly passed resolution without any formal notice of a breach or time to cure.

125. Additionally, Defendant City of DeKalb unlawfully repudiated and terminated the preliminary development agreement on April 22, 2019, which was at the absolute most day 112 of the agreement's execution and still within the period for initiating the planning and zoning petition.

126. The agreement did not require the planning and zoning to be completed within one-hundred twenty (120) days, only that the review be initiated. *See* Ex. 7, at Article IV(1).

127. As previously alleged, Defendant Nicklas, per a voicemail he had left, was unilaterally refusing to permit the Plaintiff's previously filed planning and zoning petition to proceed.

128. Plaintiff complied with the terms of the resolution and thus the development agreement and has suffered damages as a result of the City's breach of contract in excess of \$2,500,000.

Wherefore, Plaintiff, 145 FISK, LLC respectfully request this Court, enter an order of judgment against Defendant City of DeKalb in excess of \$2.5 million dollars compensatory damages, taxable costs, and any other remedy this court deems equitable and just.

COUNT VII: BREACH OF GOOD FAITH AND FAIR DEALING
(DEFENDANT CITY OF DEKALB)

NOW COMES the Plaintiff, by its attorney and for its Count VII, complains of Defendant City of DeKalb as follows:

Plaintiff realleges and reincorporates the allegations above as if set forth fully herein.

129. That the preliminary development agreement is subject to an implied condition of good faith and fair dealing.

130. That the City of DeKalb, as a body politic and through its City Manager, breached its duty of good faith and fair dealing by representing to Plaintiff and the public that the Plaintiff's project was being utilized for a boutique hotel and that if the project did not come to fruition, the funds would be returned to the taxing bodies as surplus.

131. Defendant breached its duty of good faith and fair dealing by using the Plaintiff's project as a "placeholder really" for the Pappas project Defendant Nicklas had been advocating behind the scenes as well as to holdback funds for a Shodeen development.

132. Defendant breached its duty of good faith and fair dealing by using Plaintiff's project as a means of earmarking in 2018, before the applicable TIF district closed on December 31, 2018 per the TIF statute, as a means to extend the period for allocating TIF funds from the district to another project, which ultimately ended up being John Pappas.

133. Further, Defendant accepted \$5,000 for review of the Plaintiff's plans, but then returned the funds without any deduction for the plans having ever been reviewed.

134. Defendant breached its duty of good faith and fair dealing by using Plaintiff's project as a means to extend the period of time for which it could re-allocate TIF funds to a Pappas project that used a large investor that was a prior client of Defendant Nicklas.

135. Defendant breached its duty of good faith and fair dealing by then utilizing defamation as a means to justify terminating the project and therefore cause slander and libel of Plaintiff's principal, rather than simply being honest with the Plaintiff and community at large with what the actual plan for the TIF funds were and try to work out some type of accord and satisfaction due to his animus and vitriol as outlined fully above.

Wherefore, Plaintiff, 145 FISK, LLC respectfully request this Court, enter an order of judgment against Defendant City of DeKalb in excess of \$2.5 million dollars compensatory damages, , taxable costs, and any other remedy this court deems equitable and just.

COUNT VIII: TORTIOUS INTERFERENCE WITH A CONTRACT (DEFENDANT NICKLAS)—ALTERNATIVE TO COUNT I

Plaintiff realleges and reincorporates the allegations above as if set forth fully herein.

136. That the preliminary development agreement approved by Resolution 18-166 was the existence of a valid and enforceable contract between the plaintiff and the City of DeKalb and provided terms for any breach of the agreement.

137. The City of DeKalb was required to offer a permanent agreement by the terms of the agreement upon simply a re-zoning of the property, which Plaintiff was precluded by Defendant Nicklas from ever initiating.

138. Defendant was aware of the contract given his presence during the passage of the resolution;

139. Defendant intentionally and unjustifiably induced a breach of the contract as fully set forth above;

140. Defendant Nicklas' wrongful conduct caused a subsequent breach of the agreement by the City of DeKalb by the third party Nicklas, and

141. Plaintiff was damaged as a result of the breach in excess of \$2,500,000.

Wherefore, Plaintiff, 145 FISK, LLC respectfully request this Court, enter an order of judgment against Defendant City of DeKalb in excess of \$2.5 million dollars compensatory damages, taxable costs, and any other remedy this court deems equitable and just.

COUNT IX: VIOLATION OF EQUAL PROTECTION (DEFENDANT NICKLAS)

DISMISSED BY FEDERAL COURT AND BEING APPEALED, CITED FOR PRESERVATION OF CLAIM

COUNT X: RESPONDENTS IN DISCOVERY

NOW COMES the Plaintiff, 145 FISK, LLC, by and through its undersigned attorney, and pursuant to 735 ILCS 5/2-402, designates as Respondents in Discovery John F. Pappas, Pappas Development, LLC, PNG Development, LLC, and Heartland Real Estate Holdings, LLC by alleging that:

Plaintiff realleges and reincorporates the allegations above as if set forth fully herein.

142. That Respondents engaged in negotiations and eventually executed a contract to purchase real estate within the City of DeKalb that resulted in Defendant Nicklas tortiously interfering with Plaintiff's project in order to steer the TIF funds to his preferred developer, friend, and investor who was a client of his.

143. That this court has jurisdiction over Plaintiff's state law claims, which permits application of Illinois' civil discovery mechanism found at 735 ILCS 5/2 to the respondents in discovery.

144. That John Pappas, Pappas Development, LLC, and PNG Development, LLC, and Heartland Real Estate Holdings, LLC, are believed to have information essential to the determination of who should properly be named as additional defendants in the action for potential tortious interference and conspiracy and in-concert claims given their involvement in securing Plaintiff's TIF funds and utilizing a contract to purchase the property that was contingent on obtaining TIF funds despite the public and official statements from the City of Dekalb that the TIF funds would become surplus and distributed to the taxing bodies if the Plaintiff's project did not succeed.

WHEREFORE, PLAINTIFF prays that it be permitted to proceed with initial discovery against Respondents in Discovery by interrogatories attached hereto and oral discovery, and any other relief deemed equitable and just.

COUNT XI: PERMANENT INJUNCTION ENJOINING MISUSE OF DEKALB COUNTY FUNDS (separate action in chancery)

NOW COMES the Plaintiff, CHARLES BULSON, by and through its undersigned attorney, and pursuant to 735 ILCS 5/2-404, Rule 135(b), and Rule 232, seeking an injunction and constructive public trust over misappropriated Tax Increment Funds:

145. Attached hereto as Exhibit 14 is the audit for the City's TIF funds, completed by Ernest and Young accounting firm, the findings of which are incorporated herein by reference.

146. That the Defendant Manager, as an agent and representative of the Defendant City, admitted to the TIF funds being mismanaged and misappropriated as outlined in the audit as well as with the conclusions of the audit attached as Exhibit 14.

147. Plaintiff Charles Bulson owns property within DeKalb County and therefore is a DeKalb County taxpayer who, as a taxpayer, is an equitable owner with an equitable right to enjoining the illegal use or misappropriation of public funds. In common with the other DeKalb County taxpayers, Charles Bulson has standing to enjoin misuse of funds being deprived from the DeKalb County Collector.

148. Based on the audit, the DeKalb County Collector was deprived of public funds, due to the City's misappropriation of TIF funds and misallocation to unqualified projects, in an amount no less than \$4,566,502.

149. Additionally, the TIF audit found that certain projects used for TIF funds likely were not eligible for use of TIF funds because some were entirely new construction projects.

150. That the City's current TIF 3 fund balance is comprised of funds related to its prior TIF accounts giving rise to the misappropriation, which can be traced and enjoined along with a constructive trust being placed upon any project that used TIF funds when not actually being TIF eligible.

151. Plaintiff has the right to enforce his interest as a taxpayer in public resources that were and are being used in illegally via the TIF Act.

152. The TIF funds misappropriated, misapplied, and wrongfully retained are unquestionably public funds.

153. Plaintiff was harmed by the breach of public trust when the TIF resources were spent and managed unlawfully.

154. Plaintiff is not required to rely solely upon the efforts of local public law officers for the protection of the public rights associated with TIF and has standing to maintain this cause of action.

WHEREFORE, Plaintiff seeks to enjoin the City of DeKalb from continued misuse of the DeKalb County Collector's Public Funds now being held now in TIF 3, which are being wrongfully withheld and earmarked for development projects, unlawfully, and for a constructive trust on any assets that were improperly funded with TIF funds, taxable costs, and any other relief that is deemed equitable and just.

Respectfully submitted,

CRONAUER LAW, LLP
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815-895-8585/815-895-4070 Fax

145 Fisk, LLC & Charles Bulson

BY: /s/ C. Nicholas Cronauer
One of its Attorneys (#: 6305683)