

**AFTER RECORDING
RETURN TO:**

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This space for Recorder's use only

**ECONOMIC INCENTIVE AND
TAX INCREMENT ALLOCATION FINANCING
DEVELOPMENT AGREEMENT**

By and Between

THE CITY OF ROCHELLE, ILLINOIS

AND

MTI, INC.

**ECONOMIC INCENTIVE AND
TAX INCREMENT ALLOCATION FINANCING
DEVELOPMENT AGREEMENT**

THIS ECONOMIC INCENTIVE AND TAX INCREMENT ALLOCATION FINANCING DEVELOPMENT AGREEMENT (“Agreement”), is dated the 9th day of June, 2015, and is by and between the **CITY OF ROCHELLE** an Illinois municipal corporation (“**City**”), and **MTI, Inc.**, a Delaware corporation (“**MTI**”); (the City and MTI may each be referred to as a “**Party**” and collectively referred to as “**Parties**”).

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

SECTION 1. RECITALS.

A. The City has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety, and welfare of the City and its residents, to prevent the spread of blight, to encourage private development in order to enhance the local tax base, to increase employment, and to enter into contractual agreements with developers and redevelopers for the purpose of achieving such objectives.

B. The City is authorized under the provisions of Art. VII, Section 10 of the State of Illinois Constitution to contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law.

C. The City is authorized under the provisions of Art. VIII of the State of Illinois Constitution to use public funds for public purposes.

D. The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, as amended, 65 ILCS 5/11-74.4-1 et seq. (“**Act**”), to finance redevelopment projects in accordance with and pursuant to the Act.

E. The City is authorized under the provisions of the Illinois Municipal Code to make grants to commercial enterprises that are deemed necessary or desirable for the promotion of economic development within the City, 65 ILCS 5/8-1-2.5 (“**Code**”).

F. The City Council, pursuant to and in accordance with the Act, is considering adoption of (i) an ordinance approving a Tax Increment Redevelopment Plan and a Tax Increment Redevelopment Project (together, the “**TIF Plan and Project**”), (ii) an ordinance designating a Tax Increment Redevelopment Project Area, and (iii) an ordinance adopting Tax Increment Allocation Financing (collectively, “**TIF Ordinances**”), establishing the Downtown Tax Increment Finance Redevelopment Project Area (“**TIF District**”).

G. MTI is the contract purchaser of certain parcels of land in the TIF District, commonly known as the Hub Theater, located at 416 Lincoln Highway, and the Graber Building, located at 413 Fourth Avenue,, Rochelle, Illinois, which parcels are legally described in **Exhibit A** (“**MTI Property**”).

H. MTI proposes to redevelop the MTI Property and to operate the “Hub Theater” as a performing arts center and the “Graber Building” as a retail/office building (“**the**”).

Development”), and the City desires to financially assist MTI, pursuant to and in accordance with this Agreement, the Code and the Act, to facilitate the Development on the MTI Property.

I. The Development on the MTI Property is essential to meet the overall objectives of the TIF District, thereby implementing and advancing the TIF Plan and Project.

J. The City has complied or will comply with all notice procedures with respect to entering into this Agreement.

K. The City desires to have the MTI Property developed in accordance with and pursuant to this Agreement to clear the blighting factors and characteristics of the TIF District, to promote the health, safety, and welfare of the City and its residents, to prevent the spread of those blighting conditions and characteristics in the TIF District, encourage further private investment and development and promote economic development within the City, enhance the City’s tax base, increase employment opportunities for City residents, and enhance the future tax revenues for those overlying taxing bodies who levy against the MTI Property, and within the TIF District.

L. MTI has represented to the City that without financial assistance from the City as detailed herein, the Development is not economically feasible and that MTI would not undertake the Development.

M. The foregoing Recitals are incorporated herein and made a part of this Agreement.

SECTION 2. MTI’S OBLIGATIONS.

A. Commencement and Completion of Construction. MTI shall commence work on the Development not later than August 31, 2015. Construction of the Development shall be Substantially Completed, within the time frames outlined on MTI’s construction schedule, attached hereto as **Exhibit D** and incorporated herein (“Construction Schedule”), but not later than May 31, 2017. “Substantial Completion” or “Substantially Completed” shall mean that the Development is eligible to receive a temporary certificate of occupancy. Failure to timely commence or substantially complete construction shall constitute an event of default.

B. Development. MTI will acquire the MTI Property, repair and install private site infrastructure, repair and install site improvements, rehabilitate existing buildings, and perform other improvements necessary for the completion of the Development in substantial compliance with the elevations, engineering plans and landscape plans, as may be hereafter amended, prepared by MTI (or its consultants) and approved by the City, and in conformance with all applicable City, state, and federal laws, ordinances, rules, and regulations, including, without limitation, all applicable zoning ordinances, building codes, environmental codes, and life safety codes of the City. The proposed Project Budget is shown in **Exhibit B**.

C. Assessed Value and Tax Rate. MTI shall not petition to reduce the assessed value of the MTI Property below the January 1, 2014 equalized assessed value (“EAV”) of \$22,299.00 for the Hub Theater, and \$22,433.00 for the Graber Building.

D. Construction Permits. No construction, improvement, or development of any kind shall be permitted on any portion of the MTI Property unless and until MTI has been issued building permits. Further, no business operation or occupancy of the MTI Property, other than

by current tenants whose tenancy holds over after purchase of the MTI Property by MTI, may occur prior to the issuance of a certificate of occupancy and appropriate business license.

E. Fees. MTI shall pay all normal fees to the City for the Development, including permit, inspection, review and tap-on fees, as provided by ordinance, and the City shall make an economic development grant to MTI, pursuant to the Code, in the amount of such fees.

F. Certification of Reimbursable Costs. MTI shall, from time to time, submit to the City Finance Manager, Certificates of Reimbursable Project Costs and accompanying documentation, in a form substantially consistent with **Exhibit C**, certifying costs incurred in connection with the Development which are reimbursable under the TIF Act; provided, however, that MTI shall only be eligible for reimbursement of those costs for the Development as specifically set forth in Subsection 3.C. Certificates of Reimbursable Project Costs shall be accompanied by project expenditure summaries, as prepared by MTI, with appropriate supporting documentation.

The Finance Manager shall have fourteen (14) business days, after receipt of such information from MTI, to recommend approval or disapproval, in writing, to the City Council of such request for reimbursement and, if recommending disapproval of a request, to provide MTI in writing, two (2) weeks prior to action by the City Council, a detailed explanation as to why such reimbursement should be disapproved in whole or in part. Any approved request shall be submitted to the City Council for approval within 30 days of the request and paid within 7 days following approval of the City Council.

In the event the City denies a request for reimbursement, the City shall promptly notify MTI in writing, specifying the item(s) denied and the reason therefor. MTI shall have the right to cure the cause of the denial and resubmit its application for reimbursement, detailing the action taken to cure the defect. In the event the resubmission is denied, MTI may appeal to the City Attorney and City Manager who shall meet and confer with MTI to attempt to resolve the cause of the denial. If the matter is not resolved, MTI may further appeal to the City Council, whose decision shall be final.

G. Compliance with Laws. MTI agrees to comply with all applicable laws, rules and regulations of any Federal, State or local entity or agency, including the Illinois Prevailing Wage Act, to the extent required by law.

H. Successors or Assigns. Prior to Substantial Completion of the Development, MTI shall not make any assignment of its rights, benefits or obligations under the Agreement without the prior written consent of the City; provided, however, that MTI may perform a collateral assignment for its construction and permanent financing.

SECTION 3. CITY OBLIGATIONS.

A. Reimbursement of Eligible Costs Provided that MTI is in compliance with this Agreement, for certified TIF-eligible costs as described below, MTI shall receive reimbursement from the City of not to exceed twenty percent (20%) of TIF-eligible costs for purchase and renovation of the Hub Theater and not to exceed ten percent (10%) of the TIF-eligible costs for purchase and renovation of the Graber Building, not to exceed a total reimbursement of One Million Dollars (\$1,000,000.00), including the \$250,000.00 Initial Contribution, for all TIF-eligible costs of purchase and renovation of both buildings ("TIF Cap."). The City's obligation to reimburse MTI beyond the Initial Contribution is contingent upon the formation of the TIF

District. After the Initial Contribution, the City shall not be required to reimburse MTI for any TIF-eligible costs if such reimbursement, when added to previous reimbursements to MTI from the Initial Contribution or otherwise, would total more than 20% (for the Hub Theater) or 10% (for the Graber Building) of all TIF-eligible costs expended for the Development, or would total an amount in excess of the TIF Cap.

B. Initial Contribution. The City shall, within 30 days of the approval of this Agreement, adopt an "Inducement Resolution" which shall authorize an initial payment into escrow with an agreed escrow agent (the "Initial Contribution") in the amount of \$250,000.00. The Initial Contribution shall be disbursed in accordance with escrow instructions as follows: (1) to pay up to 100% of the purchase price and/or architectural and engineering costs for the Hub Theater and/or the Graber Building; (2) to reimburse MTI for eligible project costs thereafter, in accordance with the requirements of this Agreement; (3) to be refunded to the City in the event MTI does not close on the purchase of the Hub Theater and the Graber Building on or before July 31, 2015; and (4) any remaining balance held in escrow to be refunded to the City in the event the Development has not been substantially completed by the completion date shown on **Exhibit D**, or in the event the Development has been vacated prior to said date. In the event the Development has been vacated prior to substantial completion, MTI shall, upon written demand from the City, promptly reimburse the City for any portion of the Initial Contribution which has not been refunded to the City from the escrow.

C. Eligible Costs. The City will reimburse MTI for certified TIF eligible costs, as defined by the Act and this Agreement, up to the TIF Cap, which costs shall include only costs incurred and paid by MTI for the following :

- Site rehabilitation and redevelopment,
- Rehabilitation of existing structures,
- Property acquisition costs for the Hub Theater and Graber Building,
- Architectural and engineering costs

Anticipated Eligible Costs subject to reimbursement are shown in **Exhibit B** hereto. The City shall be entitled to reimbursement for all reimbursements made to MTI, or TIF-Eligible payments made to others, from available TIF Increment.

SECTION 4. INSURANCE AND INDEMNIFICATION.

A. Liability Insurance Prior to Completion. Prior to issuance of building permits, MTI (or MTI's contractor) shall procure and deliver evidence of such policies to the City, at MTI's (or such contractor's) cost and expense, and shall maintain in full force and effect through completion of construction of the Development, a policy or policies of commercial general liability insurance and, during any period of construction, contractor's liability insurance, with liability coverage under the commercial general liability insurance to be not less than Two Million and no/100 Dollars (\$2,000,000.00) each occurrence and Five Million and no/100 Dollars (\$5,000,000.00) aggregate. All such policies shall be in such form and issued by such companies as shall be reasonably acceptable to the City to protect the City and MTI against any liability incidental to the use of or resulting from any claim for injury or damage occurring in or about the Development, or the construction and improvement thereof by MTI, except to the extent arising from City (or its agents, employees and contractors) acts or omissions for which it may be held liable under the laws of the State of Illinois (in which case the City shall look solely to its own insurance). Each such policy shall name the City as an additional insured. Any

insurance carried by the City for like risks shall be secondary and in excess of the insurance required hereby. The City shall be given written notice at least thirty (30) days prior to any cancellation or material amendment of the policy or policies required hereunder. Alternatively, MTI may satisfy its insurance obligations in this Section 5.A. by way of a blanket policy or policies which includes other liabilities, properties and locations having a per occurrence liability of Two Million and no/100 Dollars (\$2,000,000.00) and a general policy aggregate of at least Five Million and no/100 Dollars (\$5,000,000.00). MTI shall provide to the City a replacement certificate prior to expiration of any policy.

B. MTI's Risk Prior to Completion. Prior to completion of the construction of the Development, as certified by the City, MTI shall keep in force at all times builders risk insurance on a completed value basis, in non-reporting form, against all risks of physical loss, including collapse, covering the total value of work performed and equipment, supplies and materials furnished for the Development (including on-site stored materials), all as to work by MTI. Such insurance policies shall be issued by companies satisfactory to the City. Such policies shall contain a provision that the same will not be canceled without prior written notice to the City.

SECTION 5. DEFAULT; CURE

Failure on the part of either Party to comply with any material term, representation, warranty, covenant, agreement, or condition of this Agreement within thirty (30) days after written notice thereof shall constitute an event of default. No default of this Agreement may be found to have occurred if performance has commenced to cure such default to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice and the Party alleged to be in default continues diligently to pursue such cure. In the event of default by the City in the performance of any of its obligations under this Agreement, MTI's sole remedy shall be specific performance (including statutory interest on any sums deemed to be improperly withheld) or termination of the Agreement. The City shall not be liable for consequential damages or lost profits. In the event of default by MTI in the performance of any of its obligations under this Agreement the City shall be entitled to take such action as is appropriate according to the term of this Agreement and any other remedies available at law or in equity.

SECTION 6. GENERAL PROVISIONS.

A. Notice. Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, (iv) by facsimile, or (v) by electronic internet mail ("e-mail"). Unless otherwise provided in this Agreement, notices shall be deemed received after the first to occur of (a) the date of actual receipt; or (b) the date that is one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) the date that is three (3) business days after deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section 6.A., each party to this Agreement shall have the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address shall be effective until actually received.

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

The City of Rochelle
420 N. 6th St.
Rochelle, IL 61068
ATTN: City Manager

With a copy to: Alan H. Cooper
Cooper & Lyons
233 E. Route 38, Suite 202
P. O. Box 194
Rochelle, IL 61068

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

MTI, Inc.
3810 Murrell Road
Suite 201
Viera, FL 32955
Att'n: Mike McCarty

B. Interpretation and Construction. Time is of the essence in the performance of this Agreement. This Agreement shall be governed by, and enforced in accordance with, the internal laws, of the State of Illinois. Should any provision, covenant, agreement, or portion of this Agreement be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement shall not be impaired thereby. This Agreement constitutes the entire agreement between the Parties and supersedes any and all prior agreements and negotiations between the Parties, whether written or oral, relating to the subject matter of this Agreement. No amendment or modification of this Agreement shall be effective until it is reduced to writing and signed by all parties to this Agreement. This Agreement shall be construed without regard to the identity of the Party who drafted the various provisions of this Agreement, and any rule or construction that a document is to be construed against the drafting Party shall not be applicable to this Agreement. Exhibits A through D attached to this Agreement are, by this reference, incorporated in, and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement shall control.

C. No Third Party Beneficiaries. No claim as a third party beneficiary under this Agreement by any person shall be made, or be valid, against the City or MTI.

D. Force Majeure. Neither the City nor MTI nor any successor in interest to either of them shall be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, strike, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or for an abnormal duration, tornadoes or cyclones, and other events or conditions beyond the reasonable control of the party affected which in fact interferes with the ability of such party to discharge its obligations hereunder. The individual or entity relying on this Section with respect to any such delay shall, upon the occurrence of the event causing such delay, immediately give written notice to the other parties to this Agreement. The individual or entity relying on this

Section with respect to any such delay may rely on this Section only to the extent of the actual number of days of delay affected by any such events described above.

E. Term of Agreement. The term of this Agreement shall commence on the date that both Parties have executed it and terminate upon termination of the TIF district.

F. Recordation. This Agreement shall be recorded in the Office of the Ogle County Recorder, and the City shall be responsible for the recordation costs.

G. Counterparts. This Agreement may be executed in counterpart, each of which shall constitute an original document, which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have hereto set their hands on the date first above written.

ATTEST:

CITY OF ROCHELLE, an Illinois municipal corporation

By: _____
Its City Clerk

By: _____
Its Mayor

ATTEST:

MTI, INC. a Delaware corporation

By: _____
Its: _____

By: _____
Its: _____

STATE OF ILLINOIS)
) ss.
COUNTY OF OGLE)

I, the undersigned notary public, do hereby certify that David S. Plyman and Bruce McKinney, the City Manager and City Clerk, respectively, of the City of Rochelle, an Illinois municipal corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed and delivered the said instrument in said capacity, pursuant to authority of the governing body of the City.

Given under my hand and official seal, this _____ day of _____,
20____.

(SEAL)

NOTARY PUBLIC

STATE OF _____)
) ss.
COUNTY OF _____)

I, the undersigned notary public, do hereby certify that _____, the _____ and _____, respectively, of MTI, Inc., a Delaware corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed and delivered the said instrument in said capacity, pursuant to authority of the governing body of the Corporation.

Given under my hand and official seal, this _____ day of _____,
20____.

(SEAL)

NOTARY PUBLIC

EXHIBIT A

MTI PROPERTY LEGAL DESCRIPTIONS

HUB THEATER

Lot Three (3) in Block Seven (7) in the Original Town of Lane, now called the City of Rochelle, according to the Plat thereof recorded in Book D of Plats page 2 as Document No. 9921; situated in the Township of Flagg, the County of Ogle and State of Illinois.

PIN 24-24-339-018

GRABER BUILDING

The South 22 feet of Lot 6 in Block 8 of the Original Town of Lane (now called the City of Rochelle), Ogle County, Illinois, according to the plat thereof recorded July 30, 1853 as Document No. 9921 and re-recorded June 30, 1915 in Book D of Plats, Page 2; situated in the Township of Flagg, County of Ogle and State of Illinois.

PIN 24-24-340-009

EXHIBIT B

DEVELOPER'S PROJECT BUDGET

Hub Theater

Real Estate Purchase (MTI)	\$ 100,000.00	
Architect/Engineering (MTI)	\$ 50,000.00	
Renovation (MTI)	\$1,600,000.00	
Legal/Consulting (MTI)	<u>\$ 50,000.00</u>	
Total		\$1,800,000.00

Graber Building

Real Estate Purchase (MTI)	\$ 100,000.00	
Architect/Engineering (MTI)	\$ 100,000.00	
Renovation 3 Floors/Basement (MTI)	\$1,500,000.00	
Sprinklers, Elevator	\$ 80,000.00	
Tenant Buildout Costs	\$ 150,000.00	
Legal/Consulting (MTI)	\$ 50,000.00	
Insurance (MTI)	<u>\$ 20,000.00</u>	
Total		\$2,000,000.00

EXHIBIT C

FORM OF REIMBURSEMENT REQUEST

[This form may be revised by the City at its sole discretion. Additional information may be requested from Developer]

The undersigned _____, being first duly sworn, on oath states as follows:

1. I am _____ [title] of MTI, Inc. (“Developer”) and I am authorized by Developer to make the following representations on behalf of Developer to the City of Rochelle for the purpose of inducing the City to make certain payments to Developer, as hereafter set forth.

2. I hereby certify that the costs set forth on Schedule A hereto have been incurred by Developer in connection with Developer’s performance of its obligations under the Economic Incentive and Tax Increment Financing Development Agreement (“RDA”) between Developer and the City, dated _____, 2015, and that such costs are eligible for payment from the Downtown Special Tax Allocation Fund in connection with the MTI Property redevelopment project, and that the additional information provided herewith is complete and accurate.

Dated _____, 20__

MTI, Inc.

by _____

Subscribed and sworn to before me
this _____ day of _____, 20__

Notary Public

* * * * *

Schedule A

- Itemized expenditures
- Identification of relationship of each expenditure to development project
- Evidence of payment (paid invoices, evidence of wire transfers, etc.)
- Lien waivers
- Amount of this payment request
- Total payments received to date

EXHIBIT D

CONSTRUCTION SCHEDULE

HUB THEATER

August 2015—Obtain building permit to demo interior walls used to split theater into three parts. Remove drop ceiling to return to original configuration. Remove balcony add on screen and return to original condition. Remove debris located throughout the theater. Remove all carpet. Reconfigure heating system from stage area to new location.

September 2015—Review structure with architect and engineering and develop final architectural plans. Determine if side balcony seats are possible. Sandblast front of theater and replace awnings.

October 2015—Continue cleanup and final design. Theater in shell form.

November 2015 through February 2016—Finalize plans. Begin inside work.

March 2016—Continue construction and install some equipment.

April through August 2016—Continue redevelopment.

September 2016—Evaluate status.

June 15, 2017—Latest date for Grand Opening, based on normal delays, equipment delivery, etc.

GRABER BUILDING

August 2015—Begin demo to clear building of debris. Remove all window coverings, Check windows for usage. Develop working drawings and engineering.

September 2015—Paint exterior. Evaluate building for sprinklers and elevator.

October 2015—Evaluate electrical, plumbing and HVAC.

November 2015—Order components for rebuild.

December 2015 through March 2016—Inside electrical and utility work.

April 2016 through May 2016—Exterior rebuild and window installation

.

June 2016 through August 2016— Interior work. Build out first retail space.

September 2016 through February 2017—Complete interior/exterior work.

March 2017 through May 2017—Buildout of final retail space 1st floor.

June 2017—Project completed.