

04-09-301-013



04-09-308-023



04-16-100-004



04-16-100-005



EXHIBIT B-1

Project Site Plan

(attached)

EXHIBIT B-2

Project Description

To maintain its competitive advantage, Ball is exploring the potential of building an advanced research and development facility in West Chicago, Illinois or at one of its existing R&D facilities in Elburn, IL; Guadalupe, CA, Santa Paula, CA or one of its global locations. The advanced R&D facility will leverage new technologies that were pioneered in agriculture, medical or other fields to develop new flower and plant varieties and explore more functional uses of plants. Additional goals are to innovate, increase efficiencies and improve the speed of bringing new developments to market.

If the project is located in West Chicago, Ball would build several new structures including the advanced R&D facility. To accomplish this several structures would be modified, relocated or demolished. The total capital investment is estimated at approximately \$22-\$25 million in the form of new construction, existing site improvements, demolition and equipment purchases. A preliminary conceptual site plan showing the proposed changes to our West Chicago facilities is attached.

Ball estimates its capital improvement costs as:

- Site improvements: \$2.5 million
- Building Construction: \$17 million for Innovation Center; \$1.5 million to relocate greenhouses
- Equipment and Machinery Purchases: \$2.6 million
- Demolition costs: \$400,000

If the project is located in West Chicago, Ball also expects to hire approximately twenty-five (25) new full time employees with an average total compensation of \$80,000, excluding the value of benefits. Ball recently added a Chief Technology Officer ("CTO") to assist with the site selection process and be involved with the design. Access to talent, proximity to other researchers, growers and distribution channels, cost of construction, and state and local support are among critical site selection criteria.

Specifically, our plan would be to hire at the west Chicago facility, between now and two years after completing the new facility, the following:

- One (1) Chief Technology Officer at an average annual wage of \$300,000+ (already hired).
- Seven (7) Breeding & Plant Researchers at an average annual wage of \$106,000 for a total annual job payroll of \$742,000.
- Nine (9) Breeding & Plant Assistants/Technicians at an average annual wage of \$55,000 for a total annual job payroll of \$ 495,000.
- Eight (8) Office/Clerical workers at an average annual wage of \$40,000 for a total annual job payroll of \$320,000

- Total: Twenty-five (25) jobs with a total annual job payroll of \$1,857,000.

EXHIBIT C

Anticipated Assessed Values

<u>Year</u>	<u>Anticipated Assessed Valuation</u>
Year 1	\$2,918,586
Year 2	9,002,480
Year 3	9,002,480
Year 4	9,002,480
Year 5	9,002,480
Year 6	9,002,480
Year 7	9,002,480
Year 8	9,002,480
Year 9	9,002,480
Year 10	9,002,480
Year 11	9,002,480
Year 12	9,002,480
Year 13	9,002,480
Year 14	9,002,480
Year 15	<u>9,002,480</u>
Total	\$128,953,306

EXHIBIT D

Abatement Ordinance / Resolution

(attached)

[ORDINANCE / RESOLUTION] PROVIDING FOR REAL ESTATE TAX ABATEMENT

WHEREAS, the Illinois Property Tax Code, 35 ILCS 200/18-165, authorizes any taxing district to abate its taxes in relation to a specific property; and

WHEREAS, in “An Intergovernmental Agreement Between the City of West Chicago, DuPage Airport Authority, West Chicago Library District, West Chicago Fire Protection District, West Chicago Elementary School District 33, Community High School District 94, West Chicago Park District and Ball Horticultural Company in Regard to a Property Tax Abatement Relative to the Development of the Ball Horticultural Company Property,” dated _____, 2018 (“IGA”), the [City Council / Board of Trustees / Board of Commissioners / Board of Education] of the [Unit of Government] previously determined it to be in its best interests to abate a portion of its taxes on the real estate legally described in **Exhibit 1**, attached hereto and made a part hereof (“Subject Property”), in order to encourage a commercial firm to redevelop the Subject Property; and

WHEREAS, the conditions of the IGA for the abatement of a portion of the taxes on the Subject Property have been met; and

WHEREAS, in the IGA, this [City Council / Board of Trustees / Board of Commissioners / Board of Education] previously determined such abatement of taxes to be in the best interests of its tax payers in order to encourage a commercial firm to redevelop the Subject Property, increase the tax base, and increase employment opportunities; and

NOW, THEREFORE, BE IT [ORDAINED / RESOLVED] [by the [Mayor / Chairman / President] and [City Council / Board of Trustees / Board of Commissioners / Board of Education] of the [Unit of Government], DuPage County, Illinois, as follows:

Section 1. This [City Council / Board of Trustees / Board of Commissioners / Board of Education] hereby finds that all of the recitals contained in the preambles to this [Ordinance / Resolution] are full, true and correct and does now incorporate the same herein by reference.

Section 2. The County Clerk of DuPage County, Illinois is hereby ordered to abate the real estate taxes to be extended on the Subject Property, on behalf of the [Unit of Government] according to the rate set forth in Section 3 below, but excluding any levy or levies for debt service (“Abatement Rate”), commencing at the start of the next calendar year after the year in which this [Ordinance / Resolution] is passed. However, in no event shall the aggregate abatement of real estate taxes levied against the Subject Property by the [Unit of Government], together with real estate taxes levied against the Subject Property and abated in previous and future years by all other taxing districts, exceed the total of Four Million and No/100 Dollars (\$4,000,000.00).

Section 3. The Abatement Rate shall be Fifty Percent (50%) of the real estate taxes to be extended on the Subject Property on behalf of the [Unit of Government].

Section 4. The [Mayor / Chairman / President] and [Clerk / Secretary] of this [Unit of Government] are hereby authorized and directed to execute this [Ordinance / Resolution] and cause a certified copy of the same to be filed with the County Clerk of DuPage County, Illinois.

Section 5. This [Ordinance / Resolution] shall be in full force and effect upon its adoption and publication.

[PASSED / ADOPTED] this _____ day of _____, 20__ by a majority vote of the Corporate Authorities of the [Unit of Government] on a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by the [Mayor / Chairman / President] of the [Unit of Government] on the ____ day of _____, 20__.

[Mayor / Chairman / President]

ATTEST:

[Clerk / Secretary]

[Published in pamphlet form / Published in the _____ newspaper, being a newspaper of general circulation within the [Unit of Government] this ____ day of _____, 20__.]

EXHIBIT 1

LEGAL DESCRIPTION OF THE SUBJECT PROPERTY

(attached)

Common Addresses:

622 Town Road
West Chicago, Illinois 60185

and also identified as

1017 Roosevelt Road
West Chicago, Illinois 60185

Parcel Index Numbers:

04-09-301-007
04-09-301-008
04-09-301-009
04-09-301-010
04-09-301-011
04-09-301-012
04-09-301-013

PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN IN WINFIELD TOWNSHIP, DUPAGE COUNTY, ILLINOIS AND FURTHER DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE BURLINGTON NORTHERN SANTA FE RAILROAD RIGHT-OF-WAY AND THE WESTERN RIGHT-OF-WAY OF TOWN ROAD, SOUTHERLY ALONG THE WESTERN RIGHT-OF-WAY OF TOWN ROAD A DISTANCE OF 2,340.22 FEET; THENCE WESTERLY (AT AN INTERNAL ANGLE OF 91 DEGREES 33 MINUTES 23 SECONDS) A DISTANCE OF 624.24 FEET TO THE NORTHERN RIGHT-OF-WAY OF ROOSEVELT ROAD; THENCE NORTHWESTERLY ALONG THE NORTHERN RIGHT-OF-WAY OF ROOSEVELT ROAD A DISTANCE OF 455.27 FEET TO THE EASTERN PROPERTY LINE OF THE COMMONWEALTH EDISON COMPANY TRANSMISSION CORRIDOR; THENCE NORTHERLY ALONG THE COMMONWEALTH EDISON COMPANY TRANSMISSION CORRIDOR PROPERTY LINE A DISTANCE OF 1,499.06 FEET; THENCE NORTHEASTERLY ALONG THE SOUTHERN RIGHT-OF-WAY OF THE BURLINGTON NORTHERN & SANTA FE RAILWAY A DISTANCE OF 1,065.72 FEET TO THE POINT OF BEGINNING.

Parcel Index Numbers:

04-16-100-004
04-16-100-005

THAT PART OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTHEASTERLY OF THE NORTHEASTERLY LINE OF ROOSEVELT ROAD AS WIDENED BY CONDEMNATION CASE 81ED-21, IN DUPAGE COUNTY, ILLINOIS.

Parcel Index Number:

04-09-308-023

LOTS 13 THROUGH 22 IN BLOCK 5 AND LOTS 4, 5, 6, AND 7 IN BLOCK 4, ALL IN ALTA VISTA GARDENS, A SUBDIVISION OF PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 8, 1927 AS DOCUMENT 237267, IN DUPAGE COUNTY, ILLINOIS. THAT PART OF VACATED STIMMEL STREET LYING SOUTH OF AND ADJOINING LOT SEVEN IN BLOCK 4 AND NORTH OF AND ADJOINING LOT 22 IN BLOCK 5 AND BETWEEN LINES DRAWN FROM THE SOUTHWEST CORNER OF SAID LOT 7 TO THE NORTHWEST CORNER OF SAID LOT 22 AND FROM THE SOUTHEAST CORNER OF SAID LOT 7 TO THE NORTH EAST CORNER OF SOUTH LOT 22, ALL IN ALTA VISTA GARDENS, A SUBDIVISION OF PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH., RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 8, 1927 AS DOCUMENT 237267, IN DUPAGE COUNTY, ILLINOIS, SAID PORTIONS OF STREET HAVING BEEN VACATED BY ORDINANCE PASSED AND APPROVED NOVEMBER 17, 1958 A COPY OF WHICH WAS RECORDED APRIL 26, 1961 AS DOCUMENT R61-4306, IN DUPAGE COUNTY, ILLINOIS.

Parcel Index Numbers:

04-08-402-005

04-09-301-001

THAT PART OF SECTIONS 8 AND 9, TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE EAST LINE OF SAID SECTION 8 WITH THE CENTER LINE OF ROOSEVELT ROAD (SAID CENTERLINE BEING A LINE 50.0 FEET NORTHERLY AND PARALLEL WITH THE SOUTHERLY LINE OF SAID ROAD AS WIDENED AND RELOCATED BY PLAT OF DEDICATION RECORDED AUGUST 24, 1932 AS DOCUMENT 328847) AND RUNNING THENCE NORTHWESTERLY ON SAID CENTERLINE ON A CURVE TO THE LEFT HAVING A RADIUS OF 3203.32 FEET, AN ARC DISTANCE OF 552.58 FEET, TO THE SOUTHEAST CORNER OF ADRIAN'S SUBDIVISION (PLAT DOCUMENT R81-48534) THENCE NORTH 00 DEGREES 51 MINUTES EAST ALONG THE EAST LINE OF SAID ADRIAN'S SUBDIVISION AND ALSO PARALLEL WITH THE EAST LINE OF SAID SECTION 491.71 FEET TO THE SOUTHEASTERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO, BURLINGTON AND QUINCY RAILROAD, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID ADRIAN'S SUBDIVISION THENCE NORTH 58 DEGREES 38 MINUTES EAST ON SAID LINE 687.95 FEET TO THE WEST LINE OF THE RIGHT-OF-WAY OF THE COMMONWEALTH EDISON COMPANY (FORMALLY PUBLIC SERVICE COMPANY) AS DESCRIBED IN DEED RECORDED SEPTEMBER 23, 1926 AS DOCUMENT 221874; THENCE SOUTH 02 DEGREES 56 MINUTES WEST ON SAID WEST LINE OF THE COMMONWEALTH EDISON COMPANY RIGHT-OF-WAY 599.35 FEET TO AN ANGLE AND SAID WEST LINE; AND CONTINUING ON SAID WEST LINE SOUTH 05 DEGREES 08 MINUTES WEST 281.11 FEET TO A JOG WEST IN SAID THE COMMONWEALTH EDISON COMPANY RIGHT OF WAY; THENCE SOUTH 89 DEGREES 30 MINUTES WEST 74.0 FEET TO THE EAST LINE OF SAID SECTION 8; THENCE SOUTH 00 DEGREES 51 MINUTES WEST ON SAID SECTION LINE 274.94 FEET TO THE POINT OF BEGINNING, (EXCEPTING THEREFROM THE SOUTHWEST 60 FEET AS MEASURED RADIAL AND NORMAL TO THE CENTERLINE OF ROOSEVELT ROAD TAKEN FOR ROAD PURPOSES BY CONDEMNATION CASE 81 ED 18), IN THE CITY OF WEST CHICAGO, DUPAGE COUNTY, ILLINOIS.

EXHIBIT E

ABATEMENT PROCESS

Capitalized terms in this EXHIBIT E shall have the meanings as set forth for said terms in the “Intergovernmental Agreement Between The City Of West Chicago, DuPage Airport Authority, West Chicago Library District, West Chicago Fire Protection District, West Chicago Elementary School District 33, Community High School District 94, West Chicago Park District And Ball Horticultural Company In Regard To A Property Tax Abatement Relative To The Development Of The Ball Horticultural Company Property” (“IGA”), unless otherwise defined in this EXHIBIT E.

As of the Effective Date of the IGA, the process for administering the Tax Abatement is:

1. Within sixty (60) days of the Commencement Date, each UNIT OF GOVERNMENT shall adopt an Abatement Ordinance / Resolution, and send a certified copy of its Abatement Ordinance / Resolution to the Clerk.
2. The Clerk shall, at the time the tentative tax rates are prepared for each year’s property tax levy, send to the chief executive officer of each of the UNITS OF GOVERNMENT a letter setting forth, with respect to the Tax Abatement, the parcel(s) affected, the amount of property taxes to be levied, and the amount of the abatement attributable to each of the UNITS OF GOVERNMENT (“Abatement Letter”).
3. Each of the UNITS OF GOVERNMENT shall, each year, review the Abatement Letter from the Clerk, note any changes in the information provided, and then sign and return the Abatement Letter to the Clerk, all within seven (7) days of receipt of the Abatement Letter.
4. The Clerk shall track and account for the total Tax Abatement paid to the DEVELOPER.
5. The Clerk shall calculate the property tax levy for each of the UNITS OF GOVERNMENT taking the Tax Abatement into account, as approved by each of the UNITS OF GOVERNMENT with regard to its annual Abatement Letter.
6. The Tax Abatement for the Subject Property abated in previous and future years by all other taxing districts, shall not exceed the total of Four Million and No/100 Dollars (\$4,000,000.00).

RESOLUTION NO. 18-R-0051

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN ECONOMIC
INCENTIVE AGREEMENT BY AND BETWEEN THE CITY OF WEST
CHICAGO AND THE BALL HORTICULTURAL COMPANY**

BE IT RESOLVED by the City Council of the City of West Chicago, in regular session assembled, that the Mayor is hereby authorized to execute an Economic Incentive Agreement by and between the City of West Chicago and the Ball Horticultural Company, a copy of which, in substantially the same form, is attached hereto and incorporated herein as Exhibit "A".

APPROVED this 2nd day of July, 2018

AYES: _____

NAYES: _____

ABSTAIN: _____

ABSENT: _____

Mayor Ruben Pineda

ATTEST:

City Clerk Nancy M. Smith

**ECONOMIC INCENTIVE AGREEMENT BY AND BETWEEN
THE CITY OF WEST CHICAGO AND BALL HORTICULTURAL COMPANY.**

This ECONOMIC INCENTIVE AGREEMENT (“Agreement”) is entered into this ___ day of _____, 2018 (“Effective Date”) by and between the City of West Chicago, an Illinois home rule municipal corporation (“CITY”), and Ball Horticultural Company, an Illinois corporation (“DEVELOPER”). The CITY and the DEVELOPER are sometimes individually referred to herein as a “Party” and collectively referred to as the “Parties.”

WITNESSETH

WHEREAS, DEVELOPER, the CITY, and certain other units of government, entered into the “INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF WEST CHICAGO, DUPAGE AIRPORT AUTHORITY, WEST CHICAGO LIBRARY DISTRICT, WEST CHICAGO FIRE PROTECTION DISTRICT, WEST CHICAGO ELEMENTARY SCHOOL DISTRICT 33, COMMUNITY HIGH SCHOOL DISTRICT 94, WEST CHICAGO PARK DISTRICT AND BALL HORTICULTURAL COMPANY IN REGARD TO A PROPERTY TAX ABATEMENT RELATIVE TO THE REDEVELOPMENT OF THE BALL HORTICULTURAL PROPERTY” on _____, 2018 (“IGA”); and

WHEREAS, as set forth in the IGA, the DEVELOPER owns approximately 59 acres of land located at 622 Town Road, West Chicago, Illinois, with said property being legally described on EXHIBIT A-1, attached to the IGA, and depicted on EXHIBIT A-2, attached to the IGA (the “Subject Property”); and

WHEREAS, the Subject Property serves as Developer’s international

headquarters, and is improved with horticultural facilities including offices, seed distribution center, seed treatment facility, trialing greenhouses, research laboratory, and other improvements; and

WHEREAS, DEVELOPER desires to continue its presence in West Chicago, IL, to expand upon its use of the Subject Property; and to continue to invest in its global business in West Chicago; and

WHEREAS, specifically, Developer desires to substantially redevelop the Subject Property so as to expand and replace existing facilities and improvements, and construct an advanced research and development facility (together, the "Redevelopment Project") as depicted and further described in EXHIBIT B-1 and EXHIBIT B-2, respectively, attached to the IGA; and

WHEREAS, DEVELOPER has budgeted the cost of the Redevelopment Project at least Twenty Million (\$22,000,000.00) Dollars; and

WHEREAS, the IGA provides that the DEVELOPER will receive a real estate tax abatement from the CITY and certain other units of government pursuant to 35 ILCS 200/18-165 ("Tax Abatement"), if the conditions for the Tax Abatement in the IGA are satisfied; and

WHEREAS, the DEVELOPER has requested that, in addition to the Tax Abatement, the CITY provide the DEVELOPER with additional incentives set forth in this Agreement ("Additional Incentives") to assist the DEVELOPER in acquiring the Subject Property and improving it with the Project; and

WHEREAS, to induce the DEVELOPER to cause the Project to be constructed and operated, which will provide future financial benefits for the CITY, the CITY agrees

to provide the DEVELOPER with the Additional Incentives set forth herein, in exchange for the DEVELOPER'S agreement to (a) comply with the terms of the IGA and the terms of this this Agreement, and (b) develop the Project on the Subject Property; and

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution, 65 ILCS 5/8-1-2.5, 5 ILCS 220/1 *et seq.* and the CITY'S home rule powers provide the authority for this Agreement; and

WHEREAS, it is in the best interests of the Parties to enter into this Agreement;

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and agreements contained herein, the Parties hereto agree as follows:

1. **INCORPORATION OF PREAMBLES.** The preambles hereto, as set forth above, are incorporated herein by reference and are made part hereof.
2. **DEVELOPER CONDITIONS.** The DEVELOPER'S right to receive the Additional Incentives under this Agreement is expressly conditioned upon the performance by the DEVELOPER, or the DEVELOPER's tenant on the Subject Property (the "Tenant"), of the following conditions, to the extent the conditions can be met prior to the Additional Incentives being granted to the DEVELOPER.

The DEVELOPER shall:

- A. Not be in default of its obligations in the IGA;
- B. Retain ownership or control over the Subject Property during the term of this Agreement;
- C. Operate, or cause a tenant to operate, the Ball Horticultural Company business on the Subject Property as ongoing business operation consistent with EXHIBIT B-2 attached to the IGA.
- C. Provide the CITY all documents reasonably requested by the CITY regarding the matters set forth in the IGA and this Agreement.

- D. Between the Effective Date and two (2) years following the "Commencement Date," being the date the DEVELOPER receives the last of the certificates of occupancy or final approvals for the Redevelopment Project from all governmental entities having jurisdiction over the design and construction of the Project, employ at the Subject Property no less than twenty-five (25) newly created full-time equivalent employees, and thereafter continue to employ not less than twenty-five (25) full-time equivalent employees during the remaining term of this Agreement.
- E. No less than once per calendar year during the term of this Agreement, on a date selected by the CITY, provide a written report to the CITY with:
 - 1. A summary of DEVELOPER's then-current operations at the Subject Property (including the number of full-time equivalent employees, employed at the West Chicago facility), and any plans for prospective growth or expansion at the Subject Property; and
 - 2. Copies of documentation showing the number of square feet of the Redevelopment Project on the Subject Property used for carrying out the Ball Horticultural business on the Subject Property, including but not limited to property casualty policy renewal certificate, and/or annual fire inspection reports.
- F. No more often than once per calendar year, on a date selected by the CITY, provide a certified payroll summary, or similar documentation acceptable to the CITY, to verify the DEVELOPER's compliance with its obligations in Section 2.D. above, and DEVELOPER shall redact and remove employee names, Social Security numbers, salaries and other sensitive and personal information removed from the documentation provided to the CITY hereunder.

3. **ADDITIONAL INCENTIVES.** The Additional Incentives are:

- A. **PARTIAL BUILDING PERMIT COSTS WAIVER.** The DEVELOPER shall only be required to pay only Fifty Percent (50%) of any building permit costs payable to the CITY for the Project, and the CITY shall waive the remaining building permit costs for the Project payable to the CITY, up to a total building permit costs waiver of One Hundred Thousand and No/100 Dollars (\$100,000.00) in the aggregate. Building permit costs waived herein exclude the sewer capacity fee and all third party costs paid by the CITY associated with the building permit for the Project, such as, but not limited to, plan review costs and the land cash fee to the West Chicago Fire Protection District. The amount of the actual building permit

costs waived herein shall be the "Building Permit Waiver Costs."

B. **PARTIAL MUNICIPAL ELECTRICITY UTILITY TAX REBATE.** During the period beginning on January 1st of the calendar year immediately following the Commencement Date (the "Electric Utility Rebate Commencement Date"), and ending on the tenth (10th) anniversary thereof, and for so long during that period as the Redevelopment Project is operated on the Subject Property, the CITY shall rebate to the DEVELOPER, in the time and manner described in Section 4 below, Fifty Percent (50%) of the CITY's municipal electricity utility tax paid by the DEVELOPER or its tenant and collected by the CITY for the Subject Property, in an amount not to exceed Two Hundred Thousand and No/100 Dollars (\$200,000.00) in the aggregate. The amount of the CITY's municipal electricity utility tax actually rebated to the DEVELOPER herein shall be the "Electricity Utility Rebate."

4. **PARTIAL MUNICIPAL UTILITY TAX REBATE PAYMENT.** The CITY shall rebate the DEVELOPER, or the DEVELOPER's assignee, the municipal electricity utility tax as set forth in Section 3.B. above paid by the DEVELOPER, or the DEVELOPER's tenant operating the Project on the Subject Property, no more than two (2) times annually, and covering no more than six (6) months of electricity consumption on the Project per payment. The DEVELOPER, or the DEVELOPER's assignee, shall submit invoices to the CITY requesting the municipal electricity utility tax rebate, together with documentation of the payment of the municipal electricity utility taxes paid for the Subject Property, along proof of payment and such other information and/or documents reasonably requested by the CITY. Upon the CITY's receipt of all supporting documentation and information, and upon confirmation the DEVELOPER, or the DEVELOPER's assignee, is entitled to receive the rebate payment, the CITY shall pay the DEVELOPER, or the DEVELOPER's assignee, the rebate within thirty (30) days thereafter.

5. **ADDITIONAL INCENTIVES CLAWBACK.** If the DEVELOPER ceases operating the Project on the Subject Property during the term of this Agreement, or if the DEVELOPER breaches any of its obligations in this Agreement, then, in either such instance, the CITY shall provide written notice of such cessation or breach to DEVELOPER (a "Default Notice"). If DEVELOPER does not (a) recommence operation of the Project within thirty (30) days following DEVELOPER's receipt of a Default Notice, or (b) cure any such breach of this Agreement within such thirty (30) day period (provided, that if such cure cannot reasonably be performed in thirty (30) days, then, DEVELOPER shall have such additional time as may be reasonably required to effect such cure provided that DEVELOPER commences such cure within such thirty (30) day period and diligently pursues the same to completion), then the CITY may elect, by written notice to DEVELOPER, to terminate this Agreement (hereinafter, a "Termination"), whereupon the DEVELOPER shall reimburse the CITY the Additional Incentives as follows:

- A. If a Termination occurs within the first five (5) years immediately after the "Commencement Date," the DEVELOPER shall pay the CITY Seventy Five Percent (75%) of the Building Permit Waiver Costs and the Electricity Utility Rebate realized by DEVELOPER prior to the date on which the Termination occurs, and thereafter the DEVELOPER shall not be entitled to receive any Additional Incentives pursuant to this Agreement; or
- B. If a Termination occurs after five (5) years but before ten (10) years from the Commencement Date, the DEVELOPER shall pay the CITY Fifty Percent (50%) of the Building Permit Waiver Costs and the Electricity Utility Rebate, and thereafter the DEVELOPER shall not be entitled to receive any Additional Incentives pursuant to this Agreement.

The DEVELOPER's reimbursement obligations herein shall survive, and be binding upon the DEVELOPER, regardless of the termination or expiration of this Agreement. The DEVELOPER shall reimburse the CITY as provided herein

within thirty (30) days of a written demand from the CITY for such reimbursement.

6. **INTERVENING ACTIONS.** The Parties acknowledge that the Additional Incentives are predicated upon current law in the State of Illinois, as of the Effective Date, allowing the CITY to make the Additional Incentives available to the DEVELOPER. Should the Illinois General Assembly, or a court of competent jurisdiction, hereafter eliminate or limit the CITY's authority to make the Additional Incentives available to the DEVELOPER, or alter the municipal electricity utility tax formula in a manner which prevents the CITY from paying the municipal electricity utility tax rebate to the DEVELOPER, or should the CITY's ability to make any Additional Incentives to DEVELOPER be limited or eliminated in any manner, then, upon the occurrence of any of the foregoing events, (a) the DEVELOPER shall not be entitled to receive the Additional Incentive(s) so limited, and (b) DEVELOPER may, by written notice delivered to the CITY at any time following the occurrence of any of the foregoing events, elect to terminate this Agreement whereupon this Agreement shall be of no further force or effect (including, without limitation, the DEVELOPER's liability under Section 5 above).

7. **GENERAL CONDITIONS/REQUIREMENTS.**

- A. This Agreement is entered into for the benefit of each of the Parties, solely, and not for the benefit of any third party.
- B. Nothing contained in this Agreement shall constitute a waiver of any privileges, defenses or immunities which the CITY may have under the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101, *et seq.*, with respect to any claim brought by a third party.

- C. The obligations of the DEVELOPER shall constitute covenants running with the land of the Subject Property and shall be binding on successors and assigns of the DEVELOPER and shall bind all owners of the Subject Property, including the Project located thereon, or any portion thereof.
- D. This Agreement or a "Memorandum" of this Agreement shall be recorded on title to the Subject Property at the expense of the DEVELOPER upon taking effect.
- E. Upon a breach of this Agreement the non-breaching Party, by an action or proceeding solely in equity brought in the 18th Judicial Circuit Court, in DuPage County, Illinois, may secure the specific performance of the covenants and agreements herein contained, for failure of performance.
- F. In the event of a default by any of the Parties, the defaulting Party, as adjudicated by a court of competent jurisdiction, shall pay to the non-defaulting Party, upon demand, all of the non-defaulting Party's reasonable costs, charges and expenses, including, but not limited to, the costs of accountants, consultants, attorneys and others retained by the non-defaulting Party for the purpose of enforcing any of the obligations of the defaulting Party under this Agreement.
- G. The failure of any Party to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, by any other Party, shall not constitute or be construed as a waiver or relinquishment of any Party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.
- H. If the performance by any Party hereunder is delayed as a result of circumstances which are beyond the reasonable control of such Party (which circumstances shall only include acts of God, war, strikes or similar acts of *force majeure*), the time for such performance shall be extended by the amount of time of such delay.
- I. This Agreement shall remain in full force and effect so long as the IGA remains in effect.
- J. In the event that the CITY's authority to carry out its obligation in this Agreement is repealed, become null and void or otherwise become invalid, then the CITY's obligations hereunder shall cease and no further obligations of any sort shall be required of the CITY. The DEVELOPER shall have no recourse against the CITY in such event.
- K. No amendment to, or modification of, this Agreement shall be effective

unless and until it is in writing and approved by the authorized representative of the DEVELOPER and by the CITY'S corporate authorities, and executed and delivered by the authorized representatives of each Party.

- L. If, during the term of this Agreement, any lawsuits or other proceedings are filed or initiated against any Party before any court, commission, board, bureau, agency, unit of government or sub-unit thereof, arbitrator, or other instrumentality, that may materially affect or inhibit the ability of any Party to perform its obligations under, or otherwise to comply with, this Agreement ("Litigation"), the Party against which the Litigation is filed or initiated shall promptly deliver a copy of the complaint or charge related thereto to the other Parties and shall thereafter keep the other Parties fully informed concerning all aspects of the Litigation. Each Party shall, to the extent necessary, cooperate with the other Parties in this event. The Parties each agree to use their respective best efforts to defend the validity of this Agreement and all approvals of the Parties related thereto, including every portion thereof and every approval given, and every action taken, pursuant thereto.

- M. The DEVELOPER shall and hereby agrees to defend, hold harmless and indemnify the CITY, and its respective elected officials, appointed officials, employees, agents and attorneys (collectively the "CITY Affiliates") from and against any and all third-party claims, demands, suits, damages, liabilities, losses, expenses, and judgments against any CITY Affiliates resulting from DEVELOPER's breach of its obligations hereunder. The obligation of the DEVELOPER in this regard shall include, but shall not be limited, to all costs and expenses, including reasonable attorneys' fees, incurred by the CITY Affiliates in responding to, defending against, or settling any such claims, demands, suits, damages, liabilities, losses, expenses or judgments. The DEVELOPER covenants that it will reimburse the CITY Affiliates, or pay over to the CITY Affiliates, all reasonable sums of money the CITY Affiliates pay, or becomes liable to pay, to any such third-party by reason of any of the foregoing; provided, however, that the DEVELOPER's liability under this Section 7.M. shall be limited to the total amount of the Additional Incentives that the DEVELOPER has received pursuant to this Agreement as of the date of any such claim, demand, suit, damage, liability, loss, expense, or judgment. In any suit or proceeding for which DEVELOPER is required to indemnify and hold any CITY Affiliates harmless hereunder, such CITY Affiliates shall have the right to appoint counsel of their own choosing to represent it, the reasonable costs and expenses of which shall be paid by the DEVELOPER.

- N. The DEVELOPER shall maintain the Subject Property, and operate the Project, in compliance with all Federal, State, County, and CITY laws,

ordinances, resolutions, rules and regulations.

8. **NOTICES.** Notice or other writings which any Party is required to, or may wish to, serve upon any other Party in connection with this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

A. If to the CITY:

City of West Chicago
475 Main Street
West Chicago, Illinois 60185
Attention: Mayor

With copies to:

City of West Chicago
475 Main Street
West Chicago, Illinois 60185
Attn: City Administrator

City Attorney

B. If to the DEVELOPER:

Ball Horticultural Company
622 Town Road
West Chicago, IL 60185
Attention: Todd Frauendorfer

With a copy to:

Ice Miller
2300 Cabot Drive, Suite 455
Lisle, IL 60532
Attn: Michael Roth

or to such other address, or additional individuals/entities, as any Party may from time to time designate in a written notice to the other Parties. Service by personal delivery shall be deemed given when delivery occurs, and service by certified or registered mail shall be deemed given three (3) days after depositing same in the mail.

9. **COUNTERPARTS.** This Agreement may be executed simultaneously in two (2) counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

10. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the Parties and supersedes any prior understanding or written or oral agreements between them regarding the within subject matter. There are no representations, agreements, arrangements or understandings, oral or written, between and among the Parties hereto relating to the subject matter of this Agreement which are not fully expressed herein.
11. **EFFECTIVE DATE.** This Agreement shall be deemed dated and become effective on the date the last of the Parties execute this Agreement as set forth below, which date shall be filled in on page 1 hereof.

IN WITNESS WHEREOF, the CITY, pursuant to authority granted by the adoption of a Motion/Resolution by its City Council, has caused this Agreement to be executed by its Mayor and attested by its Clerk and DEVELOPER, pursuant to proper authority granted in accordance with its organizational documents, has caused this Agreement to be executed by its President and attested by its Secretary.

[SIGNATURE PAGE TO FOLLOW]

CITY

CITY OF WEST CHICAGO

By: _____
Ruben Pineda, Mayor

ATTEST:

Name: _____
City Clerk

Dated: _____

DEVELOPER

**BALL HORTICULTURAL
COMPANY**

By: _____
Todd Frauendorfer, Treasurer

ATTEST:

Name: _____
Title: _____

Dated: _____

CITY OF WEST CHICAGO

PUBLIC AFFAIRS COMMITTEE AGENDA ITEM SUMMARY

ITEM TITLE:

Ordinance No. 18-O-0035 – Authorizing the Disposal of Surplus Equipment, Stock Inventory, and/or Personal Property Owned By the City Of West Chicago

AGENDA ITEM NUMBER: 8. D.**COMMITTEE AGENDA DATE:** June 25, 2018**COUNCIL AGENDA DATE:** July 2, 2018**STAFF REVIEW:** Michael Uplegger, Chief of Police**SIGNATURE** _____**APPROVED BY CITY ADMINISTRATOR:** Michael L. Guttman**SIGNATURE** _____**ITEM SUMMARY:**

City staff has identified surplus equipment, stock inventory, and/or personal property that has no useful life and is no longer useful to the City, has little or no salvage value, and should be properly disposed of (please refer to Ordinance No. 18-O-0035 and Attachment "A" for additional information).

Therefore, staff is requesting that these items be declared surplus so that they may be disposed of through the City's contractual waste hauler, recycled, donated, or sold to a local scrap dealer for scrap value; in a manner deemed appropriate by the City Administrator, with or without consideration.

ACTIONS PROPOSED:

Staff recommends adoption of Ordinance No. 18-O-0035.

COMMITTEE RECOMMENDATION:

The Public Affairs Committee recommends adoption of Ordinance No. 18-O-0035.

CITY OF WEST CHICAGO

Public Affairs Committee AGENDA ITEM SUMMARY

ITEM TITLE:

Homecoming Parade
West Chicago Community High School
September 14, 2018

AGENDA ITEM NUMBER: 8.E.**FILE NUMBER:** _____**COMMITTEE AGENDA DATE:** June 25, 2018**COUNCIL AGENDA DATE:** July 2, 2018**STAFF REVIEW:** Tom Dabareiner**SIGNATURE** _____**APPROVED BY CITY ADMINISTRATOR:****SIGNATURE** _____**ITEM SUMMARY:**

West Chicago Community High School requests permission to hold a Homecoming Parade on Friday, September 14, 2018 from 12:45 p.m. until approximately 2:00 p.m. The proposed parade route is noted in the attached permit application. A request has also been made for Police and Fire District vehicles to accompany Community High School vehicles in the parade.

ACTIONS PROPOSED:

Recommend event for approval as proposed.

COMMITTEE RECOMMENDATION:

At its June 25, 2018 meeting, the Committee recommended approval of this request.

CITY OF WEST CHICAGO

Public Affairs Committee AGENDA ITEM SUMMARY

ITEM TITLE:

Homecoming - Fireworks Display
Wheaton Academy
October 5, 2018

AGENDA ITEM NUMBER: 8.F.

FILE NUMBER: _____

COMMITTEE AGENDA DATE: June 25, 2018

COUNCIL AGENDA DATE: July 2, 2018

STAFF REVIEW: Tom Dabareiner

SIGNATURE _____

APPROVED BY CITY ADMINISTRATOR:

SIGNATURE _____

ITEM SUMMARY:

Wheaton Academy is requesting permission for their Homecoming event on Friday, October 5, 2018 which includes a fireworks display at 9:45 p.m. The West Chicago Fire Protection District is aware of this request. Residents in the surrounding neighborhoods will be notified by Wheaton Academy of the date and time of the fireworks display in advance of the event.

A Fireworks Permit will be secured through the Fire Protection District.

ACTIONS PROPOSED:

Recommend event for approval as proposed, contingent upon receipt of an approved Fireworks Permit from the West Chicago Fire Protection District.

COMMITTEE RECOMMENDATION:

At its June 25, 2018 meeting, the Committee recommended approval of this request.