

CITY OF WEST CHICAGO

WHERE HISTORY & PROGRESS MEET
DEVELOPMENT COMMITTEE

**Monday, July 12 2021
7:00 P.M. - Council Chambers**

This meeting is in person

AGENDA

1. Call to Order, Roll Call, and Establishment of a Quorum
2. Approval of Minutes
 - A. May 10, 2021
3. Public Participation
4. Items for Consent
 - A. **Zoning Text Amendment** – Creates a use that allows for non-profit/religious food trucks with the purpose of delivering healthy food options to people and areas of town where it may be more challenging to acquire such food.
5. Items for Discussion
 - A. **Aspen Ventures Townhouses** – On January 11 this year, Development Committee members were given the chance to review and discuss the desirability of townhomes on Block Two, consistent with the Central-Main Street Redevelopment Plan Update. Since then Staff and attorneys have worked on a sales agreement and redevelopment agreement. Also, a parking alignment to satisfy St. Vincent de Paul was achieved and already approved by City Council. The agreements need to be reviewed and recommended for City Council approval.
 - B. **De-TIF/Re-TIF of Downtown TIF District** – With the Aspen Ventures Group townhouse agreements being processed and financing discussions concluding on a downtown apartment building (to be presented first to Finance Committee before the conceptual plans are presented to Development Committee), Kane McKenna and Associates proposed to conduct the needed study to De-TIF and Re-TIF portions of the existing Downtown TIF. The costs are estimated at a not-to-exceed amount of \$45,500.00. Resolution No. 21-R-0056 would authorize the Mayor to sign the contract.
6. Unfinished Business
7. New Business
8. Reports from Staff
9. Adjournment

Draft

MINUTES

DEVELOPMENT COMMITTEE

May 10, 2021 7:00 P.M.

1. Call to Order, Roll Call, and Establishment of a Quorum.

Alderman Stout called the meeting to order at 7:00 p.m.

Roll call found Aldermen James Beifuss, Melissa Birch Ferguson, Christine Dettmann, John Jakabscin, Jayme Sheahan and Rebecca Stout present.

Also in attendance was Community Development Director, Tom Dabareiner.

2. Approval of Minutes.

A. March 8, 2021.

Alderman Birch Ferguson moved and Alderman Sheahan seconded a motion to approve the minutes. Voting Aye: Aldermen Beifuss, Birch Ferguson, Jakabscin, Sheahan and Stout. Voting to Abstain: Alderman Dettmann. Voting Nay: 0.

3. Public Participation. None.

4. Items for Consent.

A. 1700 & 1750 Downs Drive – FXI, Inc., on behalf of AGNL Foam LLC, is requesting approval of a Minor Subdivision to perform a Lot Consolidation of two parcels on a 13.8 acre property located in the M Manufacturing District.

B. 146-148 Washington Street – Kindred Coffee seeks a façade grant for exterior brick tuck-pointing and roof replacement.

C. 527 Main Street – The West Chicago Historical Society seeks a façade grant to pay for trim painting at the Kruse House.

Alderman Jakabscin moved, and Alderman Birch Ferguson seconded the motion to approve Items 4. A., B., and C. Voting Aye: Aldermen Beifuss, Birch

Ferguson, Dettmann, Jakabscin, Sheahan and Stout. Voting Nay: 0.

5. Items for Discussion.

- A. Election of Development Committee Chairperson and Vice-Chairperson** – The Development Committee [is] a standing committee of the City Council (Sec. 2-74). Members of standing committees shall elect their own chairman [and vice chairman] at their first meeting following the seating of Aldermen upon their election (Sec. 2-70).

Alderman Birch Ferguson moved to nominate Alderman Stout as Committee chairperson, and Alderman Beifuss seconded the nomination. Voting Aye: Aldermen Beifuss, Birch Ferguson, Dettman, Jakabscin, Sheahan and Stout. Voting Nay: 0.

Alderman Stout moved to nominate Alderman Birch Ferguson as Committee vice chairperson, and Alderman Sheahan seconded the nomination. Voting Aye: Aldermen Beifuss, Birch Ferguson, Dettman, Jakabscin, Sheahan and Stout. Voting Nay: 0.

6. Unfinished Business. None.

7. New Business.

Alderman Beifuss asked for an update on the short-term rental program. Tom Dabareiner answered that staff has a Zoom meeting with three short-term rental owners in the City to discuss the matter on Thursday, May 13, 2021. Alderman Jakabscin asked if any of those attending would be asked to obtain long-term rental licenses. Mr. Dabareiner replied that some of the proprietors staff has reached out to rent year-round, and so they may be required to obtain rental licenses rather than register as short-term rental properties.

8. Reports from Staff. None.

9. Adjournment.

Alderman Birch Ferguson moved, and Alderman Jakabscin seconded the motion to adjourn the Development Committee meeting at 7 : 0 7 p.m. Voting Aye: Aldermen Beifuss, Birch Ferguson, Dettman Jakabscin, Sheahan and Stout. Voting Nay: 0.

Respectfully submitted.

Jane Burke

CITY OF WEST CHICAGO

DEVELOPMENT COMMITTEE AGENDA ITEM SUMMARY

ITEM TITLE:

Text Amendment, App. A. Art. VI, Sec. 6.27 (Outside Vending-Continuous)

Ordinance No. 21-O-0018

AGENDA ITEM NUMBER: 4.A.

FILE NUMBER: _____

COMMITTEE AGENDA DATE: July 12, 2021

COUNCIL AGENDA DATE: _____

STAFF REVIEW: Tom Dabareiner, AICP

SIGNATURE _____



APPROVED BY CITY ADMINISTRATOR: Michael Guttman

SIGNATURE _____

ITEM SUMMARY:

A local religious organization contacted the City to seek a Zoning Ordinance Text Amendment to allow them to fulfill their mission of providing nutritious foods, focusing on people who live in "food deserts", and delivering healthy foods to those who find it otherwise challenging to shop at a grocery store. Staff supports the initiative, as the City's current Zoning Ordinance deals only with for-profit food trucks and limits their services to single properties inside the M-1 Manufacturing District.

Staff's draft differentiates the proposed use from traditional food truck vendors. The proposal limits the activity to charitable organizations and religious institutions. These organizations must provide the City with proof of their not-for-profit status and provide a statement indicating that supplying nutritious foods to those unable to obtain them easily is part of their mission. These vehicles would be able to provide food and services in residential districts and elsewhere as may be predetermined.

At their July 7 meeting, members of the Plan Commission voted unanimously in support of the Text Amendment.

ACTION PROPOSED:

Discuss and recommend approval of the Zoning Ordinance Text Amendment to Sec. 6.27.

COMMITTEE RECOMMENDATION:

Pc: Red-lined version of the text amendment
Draft Ordinance & PC Report

**Proposed Text Amendments to Appendix A (Zoning Code)
of the Code of Ordinances of the City of West Chicago
Outside Vending-Continuous**

Underline = New Text; ~~Strikethrough~~ = Deleted Text

Amendment to Section 6.27 (Outside Vending-Continuous) of Article VI (Zoning Districts Generally), of Appendix A, of the Code of Ordinances of the City of West Chicago to add the following:

6.27. - Outside vending—Continuous.

- (A) Permanently enclosed outside sales. Home improvement and grocery stores are allowed an enclosed and unroofed area attached to the store for permanent display of landscaping materials, etc. Such area shall comply with all building setbacks and shall be enclosed by a fence of a height not exceeding twenty-five (25) feet. Materials stored within the outside sales area shall not be stacked higher than the screening fence.
- (B) Mobile outside vendors. Any person selling or offering for sale merchandise or services from a vehicle or otherwise, upon private property. Such activity shall be permitted in the M district only. Mobile outside vendors shall include pushcart vendors and mobile food wagons. Such uses shall be permitted if they serve only the business on the property; those offering goods for sale to the general public are prohibited.
- (C) Not-For-Profit Mobile Food Vehicles. Mobile food vehicles operated by a not-for-profit charitable organization or religious institution for the sole purpose of providing essential food items to individuals as part of the purpose or mission of said not-for-profit charitable organization or religious institution shall be permitted in every zoning district. Prior to commencement of operations of the mobile food vehicle, the charitable organization or religious institution shall submit to the City a current certificate from the Illinois Secretary of State indicating the organization or institution complies with the provisions of the General Not-For-Profit Corporation Act. Documentation indicating that providing essential food products to individuals is part of the purpose or mission of the organization or institution shall also be submitted to the City.**
- ~~(C)~~ (D) Fund-raising. Organizations may conduct fund-raising activities on private property with the permission of both the business owner and property owner on whose lot the activity is to take place. Such activities shall last no longer than seventy-two (72) continuous hours.
- ~~(D)~~ (E) Sidewalk display. Home improvement and grocery stores of twenty thousand (20,000) square feet or larger may place items for sale on the front sidewalk. Such display may be permanent. However, the materials shall be arranged so that a minimum of a four-foot wide walkway is preserved; pedestrian and vehicle traffic shall not be hindered in any manner. The area utilized for such display shall not be wider than fifty (50) percent of the width of the building front. Signage shall be debited from the business's overall allowable wall signage.
- ~~(E)~~ (F) Automobile service station display. Gas stations may continuously display merchandise outside of the building, provided such display area is located along the building front or

within a row of pumps. Items placed along the building front shall be stacked below the window, and items placed within a row of pumps shall be stacked no higher than six (6) feet. Such display shall not interfere with vehicle traffic. Signage shall be debited from the business's overall allowable wall signage.

ORDINANCE NO. 21-O-0018

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF WEST CHICAGO – APPENDIX A ARTICLE VI OF THE ZONING CODE RELATING TO NOT-FOR-PROFIT MOBILE FOOD VEHICLES

WHEREAS, Mobile Food Vendors, also known as “Food Trucks”, are only permitted in very limited circumstances within the City; and

WHEREAS, Section 6.27 of the Zoning Code, which regulates outside vending uses, allows food trucks in the M Manufacturing District only and the food truck may only serve employees on the property where the food truck is parked; and

WHEREAS, Food Trucks in any other scenario are prohibited by the Zoning Code; and

WHEREAS, the City understands that local not-for-profit religious groups and charitable organizations are interested using a Food Truck to provide essential healthy food products, such as fruits and vegetables, to various parts of the community that could be considered “food deserts”; and

WHEREAS, these areas may be difficult for residents to afford or access healthy food from a grocery store; and

WHEREAS, the purpose of this service, and others like it, is to bring necessary healthy foods directly to a neighborhood for residents who would otherwise not be able to obtain healthy food; and

WHEREAS, the City Council believes it is in the best interest of the City to amend the regulations of Mobile Outside Food Vendors to allow this type of charitable service; and

WHEREAS, Notice of Public Hearing on said text amendment was published in the Daily Herald on or about June 21, 2021, as required by the ordinances of the City of West Chicago and the statutes of the State of Illinois; and

WHEREAS, a Public Hearing was conducted by the Plan Commission/Zoning Board of Appeals of the City of West Chicago on July 7, 2021 pursuant to said Notice; and

WHEREAS, at the Public Hearing all interested parties had an opportunity to be heard; and

WHEREAS, the corporate authorities of the City of West Chicago have received the recommendation of the Plan Commission/Zoning Board of Appeals which contains specific findings of fact, pursuant to Recommendation No. 21-RC-0008, a copy of which is attached hereto as Exhibit “A” which is, by this reference, made a part hereof.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of West Chicago, Du Page County, Illinois, in regular session assembled, as follows:

Section 1. That Section 6.27 (Outside Vending-Continuous) of Article VI (Zoning Districts Generally), of Appendix A, of the Code of Ordinances of the City of West Chicago be amended as follows:

- (A) Permanently enclosed outside sales. Home improvement and grocery stores are allowed an enclosed and unroofed area attached to the store for permanent display of landscaping materials, etc. Such area shall comply with all building setbacks and shall be enclosed by a fence of a height not exceeding twenty-five (25) feet. Materials stored within the outside sales area shall not be stacked higher than the screening fence.
- (B) Mobile outside vendors. Any person selling or offering for sale merchandise or services from a vehicle or otherwise, upon private property. Such activity shall be permitted in the M district only. Mobile outside vendors shall include pushcart vendors and mobile food wagons. Such uses shall be permitted if they serve only the business on the property; those offering goods for sale to the general public are prohibited.
- (C) Not-For-Profit Mobile Food Vehicles. Mobile food vehicles operated by a not-for-profit charitable organization or religious institution for the sole purpose of providing essential food items to individuals as part of the purpose or mission of said not-for-profit charitable organization or religious institution shall be permitted in every zoning district. Prior to commencement of operations of the mobile food vehicle, the charitable organization or religious institution shall submit to the City a current certificate from the Illinois Secretary of State indicating the organization or institution complies with the provisions of the General Not-For-Profit Corporation Act. Documentation indicating that providing essential food products to individuals is consistent with the purpose or mission of the organization or institution shall also be submitted to the City.**
- ~~(C)~~ (D) Fund-raising. Organizations may conduct fund-raising activities on private property with the permission of both the business owner and property owner on whose lot the activity is to take place. Such activities shall last no longer than seventy-two (72) continuous hours.
- ~~(D)~~ (E) Sidewalk display. Home improvement and grocery stores of twenty thousand (20,000) square feet or larger may place items for sale on the front sidewalk. Such display may be permanent. However, the materials shall be arranged so that a minimum of a four-foot wide walkway is preserved; pedestrian and vehicle traffic shall not be hindered in any manner. The area utilized for such display shall not be wider than fifty (50) percent of the width of the building front. Signage shall be debited from the business's overall allowable wall signage.
- ~~(E)~~ (F) Automobile service station display. Gas stations may continuously display merchandise outside of the building, provided such display area is located along the building front or within a row of pumps. Items placed along the building front shall be stacked below the window, and items placed within a row of pumps shall be stacked no higher than six (6) feet. Such display shall not interfere with vehicle traffic. Signage shall be debited from the business's overall allowable wall signage.

Section 2. That all ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, expressly repealed.

Section 3. That this Ordinance shall be in full force and effect after its passage, approval and publication in pamphlet form as provided by law.

PASSED this _____ day of _____, 2021.

Alderman Beifuss	_____	Alderman Chassee	_____
Alderman Sheehan	_____	Alderman Brown	_____
Alderman Hallett	_____	Alderman Dettman	_____
Alderman Birch-Ferguson	_____	Alderman Dimas	_____
Alderman Swiatek	_____	Alderman Garling	_____
Alderman Stout	_____	Alderman Short	_____
Alderman Jakabcsin	_____	Alderman Morano	_____

APPROVED as to form: _____
City Attorney

APPROVED THIS _____ day of _____, 2021.

Mayor Ruben Pineda

ATTEST:

City Clerk Nancy M. Smith

PUBLISHED: _____

EXHIBIT “A”

RECOMMENDATION # 21-RC-0008

TO: The Honorable Mayor and City Council

SUBJECT: PC 21-09
Zoning Text Amendment for Not-For-Profit Mobile Food Vehicles.

DATE: July 7, 2021

DECISION: The motion to approve the amendment was approved by a vote of four (4) “yes” and zero (0) “no”.

RECOMMENDATION:

After a review of the proposed text amendment as presented, the Plan Commission/Zoning Board of Appeals finds that the proposed amendment does not pose a threat to the health, safety and welfare of the community. It is the Commission’s opinion that the proposed amendment will be beneficial to the City of West Chicago.

The amendment is in keeping with the purpose of the Zoning Code. The Plan Commission is of the opinion that this proposed amendment will protect, promote, and improve the public health, safety, morals, convenience, order, appearance, prosperity and the general welfare of the citizens of West Chicago community.

Respectfully submitted,

Barbara Laimins
Chairperson

VOTE:

For
Laimins
Hale
Billingsley
Banasiak

Against

Abstain

Absent
Henkin
Kasprak
Devitt

CITY OF WEST CHICAGO

DEVELOPMENT COMMITTEE AGENDA ITEM SUMMARY

ITEM TITLE:

Development Agreement between City of West Chicago
and AVG High Street LLC

Ordinance No. 21-O-0020

AGENDA ITEM NUMBER: 5-A

FILE NUMBER: _____

COMMITTEE AGENDA DATE: July 12, 2021

COUNCIL AGENDA DATE: _____

STAFF REVIEW: Tom Dabareiner, AICP

SIGNATURE 

APPROVED BY CITY ADMINISTRATOR: Michael Guttman **SIGNATURE** _____

ITEM SUMMARY:

On January 11, 2021, Aspen Ventures Group presented a well-received concept at the Development Committee meeting that showed eight townhouses on City property at the corner of High Street and Center Street. That developer created a new LLC, AVG High Street LLC, and it seeks to construct townhouses in substantial conformance with what was described that evening and adopted in the Central-Main Street Redevelopment Plan. The development would occur on Block Two of the Plan, as intended. This is an important first step in bringing the Plan to fruition.

A Development Agreement was prepare to help manage the land sale and other matters. The main components of the Development Agreement are: (1) the land, owned by the City, is provided to the developer at no charge for the purpose of building eight townhouses; (2) cash in the amount of \$175,000 will be paid the developer to cover the gap in development costs, which is an eligible TIF expense.

Prior to adoption by the City Council, the availability of the land must be presented in legal notice format. This is why the Development Committee sees this material in July but City Council will not see it until August.

ACTION PROPOSED:

Discuss and recommend approval Ordinance No. 21-O-0020.

COMMITTEE RECOMMENDATION:

Attached: Ordinance No. 21-O-0020

ORDINANCE NO. 21-O-0020

**AN ORDINANCE AUTHORIZING A DEVELOPMENT AGREEMENT FOR THE
NORTHWEST CORNER OF CENTER STREET AND HIGH STREET IN THE
CITY OF WEST CHICAGO DOWNTOWN TIF DISTRICT**

BE IT ORDAINED, by the Mayor and City Council of the City of West Chicago, DuPage County, Illinois, as follows:

SECTION 1: The Mayor and City Council of the City of West Chicago ("City") find as follows:

- A. The City is a home rule unit of government in accordance with Article VII, Section 6 of the Constitution of the State of Illinois, 1970.
- B. 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 inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base and increase additional tax revenues realized by the City, to foster increased economic activity within the City, to increase employment opportunities within the City, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise take action in the best interests of the City.
- C. The City is authorized, under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.*, as amended ("Act"), to finance redevelopment in accordance with the conditions and requirements set forth in the Act.
- D. On May 21, 1990, pursuant to the Act and Ordinances 2273, 2274 and 2275, as amended by Ordinance 13-O-0031, adopted May 21, 2013, and as amended by Ordinance 13-O-0034, adopted October 7, 2013 ("TIF Ordinances"), the City approved a tax increment redevelopment plan and project ("TIF Plan"), designated the tax increment redevelopment project area ("Redevelopment Project Area"), and adopted tax increment financing relative to the City's downtown tax increment financing district ("TIF District"); said TIF District being legally described and depicted as set forth in EXHIBIT A-1 and EXHIBIT A-2, respectively, attached hereto and made part hereof.

- E. The City is the fee owner of certain real property located within the Redevelopment Project Area, said property being legally described on EXHIBIT B attached hereto and made part hereof ("Property").
- F. AVG High Street LLC, a Delaware limited liability company authorized to conduct business in the State of Illinois ("Developer"), desires to acquire ownership of the Property and redevelop the Property with eight (8) townhomes ("Project").
- G. Attached hereto as EXHIBIT C and made part hereof is a development agreement, between the Developer and the City, which sets forth the terms and conditions pursuant to which the Developer will proceed with, and operate, the Project on the Property ("Development Agreement").
- H. Notice of the City's intent to enter into the Development Agreement, including the City's intent to transfer title to the Property pursuant thereto, as required by 65 ILCS 5/11-74.4-4(c), was published on _____, 2021 ("TIF Notice"); a copy of the publisher's certificate in relation to said TIF Notice being attached hereto as EXHIBIT D and made part hereof.
- I. In accordance with the Act, it is in the best interests of the City to approve the Development Agreement, so that redevelopment within the TIF District can continue, said redevelopment pursuant to the Act being the City's public purpose for providing the incentive set forth in the Development Agreement.

SECTION 2: Based upon the foregoing, and pursuant to the Act, the Development Agreement, attached hereto as EXHIBIT C, is hereby approved, and the Mayor and City Clerk of the City are hereby authorized and directed to execute and deliver such other instruments, including said Development Agreement attached hereto as EXHIBIT C, as may be necessary or convenient to consummate said property transaction, and as may be necessary or convenient to carry out the terms of said Development Agreement.

SECTION 3: That this Ordinance shall be in full force and effect from and after its adoption, approval and publication in pamphlet form as provided by law.

PASSED this ____ day of _____ 2021.

Alderman J. Beifuss	_____	Alderman L. Chassee	_____
Alderman J. Sheahan	_____	Alderman H. Brown	_____
Alderman A. Hallett	_____	Alderman C. Dettmann	_____
Alderman Birch-Ferguson	_____	Alderman S. Dimas	_____
Alderman C. Swiatek	_____	Alderman M. Garling	_____
Alderman R. Stout	_____	Alderman J. Short	_____
Alderman J. Morano	_____	Alderman J. Jakabcsin	_____

APPROVED as to form: _____
City Attorney

ADOPTED this ____ day of _____ 2021.

Mayor Ruben Pineda

ATTEST:

City Clerk, Nancy M. Smith

PUBLISHED: _____

EXHIBIT A-1

**Legal Description of the
West Chicago Downtown TIF District**

APPENDIX A
LEGAL DESCRIPTION OF THE REDEVELOPMENT PROJECT AREA

The legal description of the Redevelopment Project Area is described as follows:

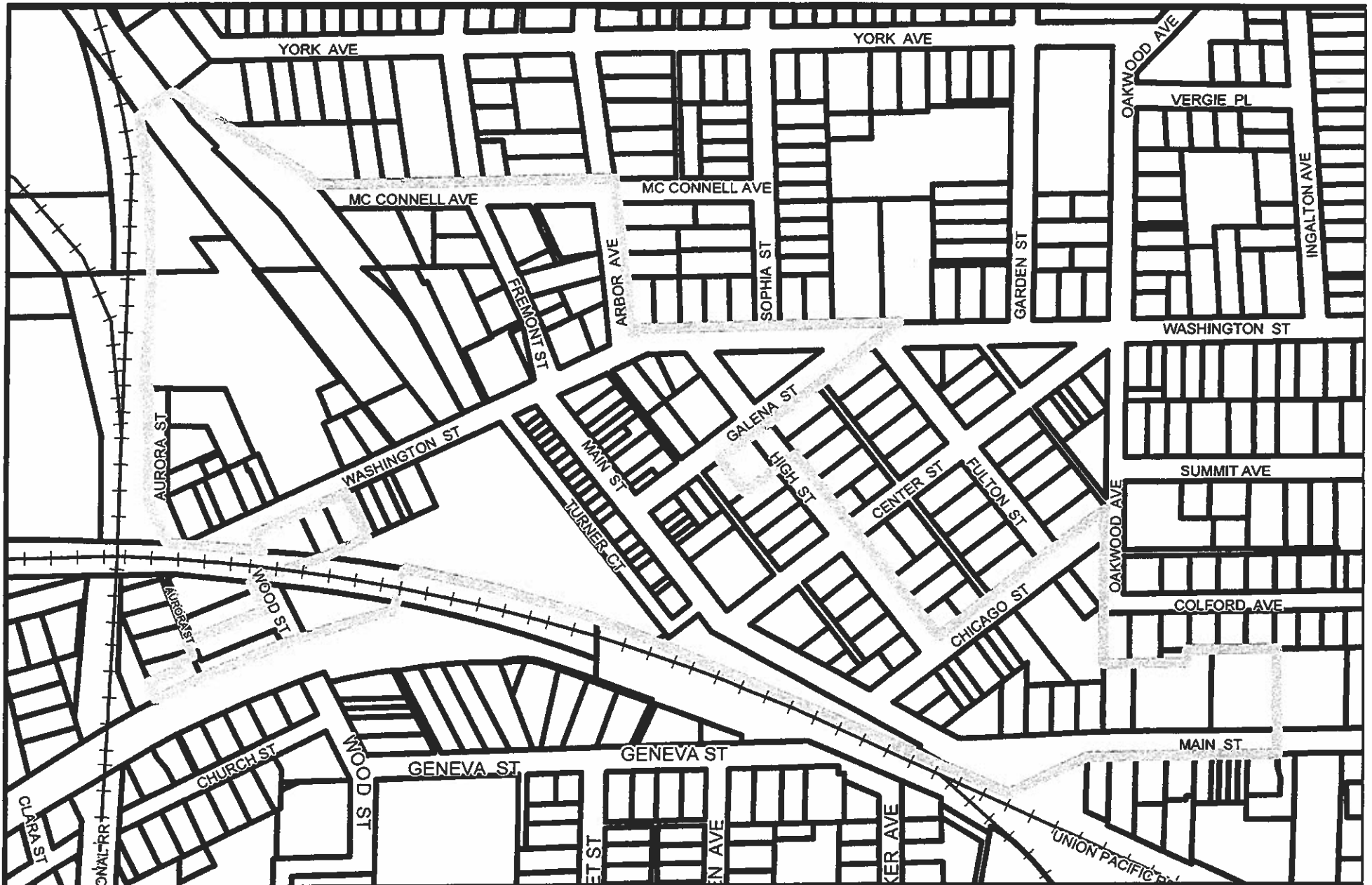
The southwest quarter of Section 3, the southeast quarter of Section 4, the northeast quarter of Section 9 and part of the north half of Section 10, all in Township 39 North, Range 9 East of the Third Principal Meridian in DuPage County, Illinois, described as follows: Beginning at the point of intersection of the northerly right-of-way line of Washington Street and the easterly right-of-way line of Arbor Avenue being also the southwesterly corner of Lot 7 in McConnell's Town of Turner Addition; thence northwesterly along said easterly right-of-way line of Arbor Avenue and said line extended to a point of intersection with the northerly right-of-way line of McConnell Avenue; thence westerly along said northerly right-of-way line of McConnell Avenue extended across Arbor Avenue and along said northerly right-of-way line to a point of intersection with the easterly right-of-way line of Fremont Street; thence northwesterly along said easterly right-of-way line of Fremont Street to a point of intersection with the southerly right-of-way line of York Avenue; thence westerly along said southerly right-of-way line of York Avenue extended across Fremont Street to a property corner being 132 feet, more or less, from the westerly right-of-way line of Fremont Street as measured along said south right-of-way line of York Avenue; thence southeasterly along a property line being parallel with said westerly right-of-way of Fremont Street, a distance of 165 feet, more or less, to a property corner; thence westerly along a property line being parallel with said southerly right-of-way line of York Avenue to the southeasterly corner of J. T. Hosford's Third Addition to Turner; thence continuing westerly along the south line of said J. T. Hosford's Third Addition to a point on a northeasterly line of Lot 1 of Jacobson's Assessment Plat; thence northwesterly along said northeasterly line of Lot 1 of Jacobson's Assessment Plat being also a southwesterly line of Lot 4 in said J. T. Hosford's Third Addition and along said line extended to a point on the northeasterly right-of-way line of the Union Pacific Railway; thence southwesterly along a line across said Union Pacific Railway right-of-way a distance of approximately 100 feet to a point where the southwesterly line of the right-of-way of the Union Pacific Railway intersects with the easterly line of the right-of-way of the Canadian National Railroad; thence southerly along said easterly right-of-way line of the Canadian National Railway on various courses and distances to a point on a northerly right-of-way line of the Union Pacific Railway said point also being the point of intersection of the westerly right-of-way line of north Aurora Street with said northerly right-of-way line of the Union Pacific Railway; thence westerly along said north line of the Union Pacific Railway right-of-way a distance of 100 feet; thence southerly along a line across said Union Pacific Railway right-of-way and across Washington Street to the point of intersection of the southerly right-of-way line of said Washington Street and the easterly right-of-way line of South Aurora Street; thence southerly and southeasterly along said easterly right-of-way line of South Aurora Street and along said line extended across the right-of-way of the Burlington Northern Railroad to a point on the southerly right-of-way line of said railroad; thence northeasterly, easterly and southeasterly on various courses and distances along said southerly right-of-way line of the Burlington Northern Railroad and along the southeasterly right-of-way line of the Union Pacific Railway to a point being the northeasterly corner of Lot "B" in College Hill Estates; thence southerly along the easterly line of said Lot "B" in College Hill Estates and said easterly line extended across Geneva Street to a point on the southerly right-of-way line of said Geneva Street; thence easterly, southerly and southeasterly on various courses and distances along said southerly right-of-way line of Geneva Street to a point of intersection with the westerly right-of-way line of Parker Avenue; thence southeasterly along a line to a point on the easterly right-of-way line of said Parker Avenue being a point on the west line of Lot 1 in Parker's Addition to West Chicago a distance of 25 feet northerly of the southwest corner of said Lot 1; thence southeasterly along a line to a point on the south line of said Lot 1 in Parker's Addition, a distance of 60 feet easterly from the southwest corner of said Lot 1; thence easterly along said south line of Lot 1 in Parker's Addition to the southeast corner of said Lot 1, being also the northeast corner of Lot 2 in said Parker's Addition; thence southerly along the east line of said Lot 2 in Parker's Addition to a point a distance of 50 feet northerly from the southeast corner of said Lot 2; thence southeasterly along a line to a point on the easterly extension of the south line of said Lot 2 in Parker's Addition, a distance of 145.44 feet easterly from the southwest corner of said Lot 2; thence southeasterly along a line to a point on the easterly extension of the south line of Lot 3 in said Parker's Addition, a distance of 161.87 feet easterly from the southwest corner of said Lot 3; thence southwesterly along a line described as ending at a point on the easterly extension of the south line of Lot 9 of said Parker's Addition, a distance of 125.5 feet from the southwest corner of said Lot 9, to a point on said line being 224.96 feet north of its southern terminus as measured on said line; thence southwesterly a distance of 68.02 feet, more or less, along a line to the northeast corner of Lot 7 in said Parker's Addition; thence southwesterly along a line to a point on the south line of said Lot 7 in Parker's Addition being 103.16 feet easterly of the southwest corner of said Lot 7; thence southwesterly along a line to a point on the south line of Lot 9 in said Parker's Addition being 87.08 feet easterly of the southwest corner of said Lot 9 being also a point on the northerly right-of-way line of Spencer Street; the previous seven courses and distances are the westerly right-of-way line of Wilson Avenue as presently dedicated; thence westerly along said northerly right-of-way line of Spencer Street and

said northerly line extended westerly across Parker Avenue to a point of intersection of said northerly right-of-way line with the easterly line of Block 1 of Barber's Addition to the Town of Turner extended northerly; thence southerly along said easterly line of Block 1 of Barber's Addition extended northerly and along said easterly line to a point on the northerly right-of-way line Conde Street; thence easterly along said northerly right-of-way line of Conde Street extended across Wilson Avenue, Clayton Street and the former Sycamore Avenue to a point on the easterly right-of-way of said former Sycamore Avenue; thence northerly along said easterly right-of-way line of the former Sycamore Avenue to a point of intersection with the northerly right-of-way line of Spencer Street; thence westerly along said northerly right-of-way line of Spencer Street, a distance of 162.50 feet to the most westerly corner of Lot 1 George R. Knott's Addition to West Chicago; thence northeasterly along the westerly line of said George R. Knott's Addition, a distance of 301.6 feet to a northwesterly corner of said Lot 1 in George R. Knott's Addition; thence easterly along the northerly line of said Lot 1 in George R. Knott's Addition, a distance of 156 feet, more or less, to a corner of the Union Pacific Railway property; thence northeasterly along an easterly line of said Union Pacific Railway property, a distance of 50 feet, more or less, to a point on the southwesterly right-of-way line of said Union Pacific Railway; thence southeasterly along said southwesterly right-of-way line of the Union Pacific Railway on various courses and distances to a point of intersection with the easterly right-of-way line of Illinois State Highway Route 59 (Neltor Boulevard); thence northerly to the point of intersection of the northeasterly right-of-way line of the Union Pacific Railway with the easterly right-of-way line of said Illinois Route 59; thence northerly and northwesterly along said east right-of-way line of Illinois Route 59 to the point of intersection with the southerly right-of-way line of Hillview Avenue; thence easterly along said southerly right-of-way line of Hillview Avenue to a point of intersection with the easterly right-of-way line of Easton Avenue extended southerly; thence northerly along said easterly right-of-way line of Easton Avenue and said easterly line extended across Hillview Avenue, Main Street and Washington Street to a point on the northerly right-of-way line of said Washington Street; thence westerly along said northerly right-of-way line of Washington Street and said northerly line extended across Illinois Route 59 to the point of intersection with the easterly right-of-way line of Oak Street; thence southwesterly along a line across said Washington Street to the northwesterly corner of Prudential Realty Company's Resubdivision of the Anthony Property; thence southerly along the westerly line of said Prudential Realty Company's Resubdivision of the Anthony Property a distance of 601.02 feet (605.22 feet recorded) to the southwesterly corner of said Resubdivision of the Anthony Property being also a point on the northerly line of Lot 1 of the West Chicago Historical Society Consolidation Plat; thence westerly along said northerly line of Lot 1 of the West Chicago Historical Society Consolidation Plat to the northwesterly corner of said Lot 1; thence southerly along the westerly line of said Lot 1 of the West Chicago Historical Society Consolidation Plat to the southwesterly corner of said Lot 1 being also a point on the northerly right-of-way line of Colford Avenue; thence westerly along said northerly right-of-way line of Colford Avenue to a point of intersection with the easterly line of Lot 14 in Pleasant Hill Addition to West Chicago extended northerly; thence southerly along said easterly line of Lot 14 in Pleasant Hill and said line extended to the southeasterly corner of said Lot 14; thence westerly along the southerly line of said Pleasant Hill Addition to a point on the east line of the west 232 feet of the east 985.38 feet of the northeast quarter of the northwest quarter of Section 10, Township 39 North, Range 9 East of the Third Principal Meridian; thence southerly along said east line of the west 232 feet of the east 985.38 feet of the northeast quarter of the northwest of said Section 10, a distance of 16.5 feet to a point on the north line of the south 231 feet of said west 232 feet; thence westerly along said north line of the south 231 feet, a distance of 232 feet to a point on the west line of said east 985.38 feet of the northeast quarter of the northwest quarter of said Section 10; thence northerly along said west line of the east 985.38 feet, a distance of 16.5 feet to a point on the south line of Colford Subdivision; thence westerly along said south line of Colford Subdivision to a point on the east line of the west 219.78 feet of the northeast quarter of the northwest quarter of Section 10, Township 39 North, Range 9 East of the Third Principal Meridian; thence southerly along said east line of the west 219.78 feet of the northeast quarter of the northwest quarter of said Section 10, a distance of 34.5 feet to a point on the north line of the south 213 feet of said west 219.78 feet; thence westerly along said north line of the south 213 feet, a distance of 219.78 feet to a point on the west line of the northeast quarter of the northwest quarter of said Section 10; thence northerly along said west line of the northeast quarter of the northwest quarter of said Section 10, a distance of 134.9 feet to a point of intersection with the south right-of-way line of Colford Avenue; thence easterly along said south right-of-way line of Colford Avenue to a point of intersection with the easterly right-of-way line of Oakwood Avenue extended southerly; thence northerly along said easterly right-of-way line of Oakwood Avenue and said easterly line extended across Colford Avenue to a point directly east of the most easterly corner of Lot 5 in Block 6 of the Original Town of Turner; thence west along a line across Oakwood Avenue to said most easterly corner of Lot 5 in Block 6 in the Original Town of Turner being also a point on the northwesterly right-of-way line of Chicago Street; thence southwesterly along said northwesterly right-of-way line of Chicago Street extended across Fulton Street to a point of intersection with the northeasterly right-of-way line of High Street; thence northwesterly along said northeasterly right-of-way line of High Street extended across Center Street to a point of intersection with the southeasterly right-of-way line

EXHIBIT A-2

**Depiction of the
West Chicago Downtown TIF District**

(see attached)



CITY OF WEST CHICAGO
CENTRAL BUSINESS T.I.F. DISTRICT
54.5 ACRES

Legend

- +— RAILROAD
- ▨ T.I.F. BOUNDARY
- ▭ PARCELS

N



EXHIBIT B

Legal Description of the Property

Legal Description:

LOTS 7, 8, 9 AND 10 IN BLOCK 3 IN TOWN OF JUNCTION, BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 9, AND PART OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 22, 1856 AS DOCUMENT NO. 10634, IN DUPAGE COUNTY, ILLINOIS.

P.I.Ns.: 04-10-109-011-0000; 04-10-109-012-0000; 04-10-109-013-0000; and 04-10-109-014-0000.

Common Address: 210, 216, 222 and 228 High Street, West Chicago, Illinois 60185.

EXHIBIT C

Development Agreement

(attached)

**DEVELOPMENT AGREEMENT FOR THE NORTHWEST CORNER
OF CENTER STREET AND HIGH STREET IN THE
CITY OF WEST CHICAGO DOWNTOWN TIF DISTRICT**

This **DEVELOPMENT AGREEMENT FOR THE NORTHWEST CORNER OF CENTER STREET AND HIGH STREET IN THE CITY OF WEST CHICAGO DOWNTOWN TIF DISTRICT** ("Agreement") is made and entered into as of the ____ day of _____, 2021 ("Effective Date") by and between the City of West Chicago, Illinois, an Illinois home rule municipal corporation ("City"), and AVG High Street LLC, a Delaware limited liability company authorized to conduct business in the State of Illinois ("Developer"). The City and the Developer are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

WITNESSETH:

In consideration of the following preliminary statements, the mutual covenants herein contained, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties hereto agree as follows:

I. PRELIMINARY STATEMENTS

Among the matters of mutual inducement which have resulted in this Agreement are the following:

- A. The City is a home rule unit of local government in accordance with Article VII, Section 7 of the Constitution of the State of Illinois, 1970.
- B. Pursuant to 65 ILCS 5/8-1-2.5, the City is authorized to appropriate and expend funds for economic development purposes, and the City has the authority to promote the health, safety and welfare of the City and its inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base and increase additional tax revenues realized by the City, to foster increased economic within the City, to increase employment opportunities within the City, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise take action in the best interests of the City.
- C. On May 21, 1990, pursuant to Ordinances 2273, 2274 and 2275, as amended by Ordinance 13-O-0031, adopted May 21, 2013, and as amended by Ordinance 13-O-0034, adopted October 7, 2013 (collectively the "TIF Ordinances"), and the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.3-1, et seq., as amended from time to time ("TIF Act"), the City Mayor and City Council designated a redevelopment project area for the City's "Downtown Redevelopment Project Area," as legally described and depicted as set forth in EXHIBITS

A-1 and A-2, respectively, attached hereto and made part hereof ("TIF District"), approved a redevelopment plan and project for the TIF District ("TIF Plan") and adopted tax increment financing within the TIF District, respectively, and made a finding that the TIF District is in need of redevelopment.

- D. Pursuant to the TIF Act and the TIF Plan, the City has the authority to undertake the development, redevelopment, improvement, maintenance, and revitalization in the TIF District, and to take actions, and expend funds, to increase economic activity in the TIF District.
- E. The City is the fee owner of certain vacant real property located in the TIF District, commonly known as 210, 216, 222 and 228 High Street, West Chicago, Illinois 60185, which is legally described in EXHIBIT B attached hereto and made part hereof ("City Property").
- F. Developer desires to acquire, redevelop and operate the City with a townhome development consisting of eight (8) townhomes, as depicted on the site plan attached hereto as EXHIBIT C and made part hereof, and as described in further detail on EXHIBIT D attached hereto and made part hereof ("Project").
- G. Developer was, has been, and continues to be, unable to undertake the acquisition and redevelopment of the City Property with the Project, but for certain incentives to be provided by the City in accordance with the TIF Act and 65 ILCS 5/8-1-2.5, which the City is willing to provide under the terms and conditions contained in this Agreement. The Parties acknowledge and agree that but for the incentives, to be provided by the City per this Agreement, Developer cannot, and could not, successfully and economically acquire, develop, rehabilitate, renovate, reconstruct, repair and operate the City Property with the Project in a manner satisfactory to the City. The City has determined that it is desirable and in its best interests to assist Developer in the manner set forth herein, and as this Agreement may be supplemented and amended from time to time.
- H. The City, in order to stimulate and induce development of the City Property with the Project, has agreed to sell the City Property to Developer at a nominal price under the TIF Act, and to reimburse Developer for certain of its Eligible Redevelopment Project Costs (as defined in Section II.E. below) an amount not to exceed One Hundred Seventy-Five Thousand and No/100 Dollars (\$175,000.00) ("Reimbursement Cap"), all in accordance with the terms and provisions of this Agreement.
- I. It is necessary for the successful completion of the Project, and for the successful implementation of the TIF Plan, that the City enter into this

Agreement with Developer to provide for the redevelopment of the City Property with the Project.

- J. This Agreement has been submitted to the Corporate Authorities of the City (as defined in Section II.B. below) for consideration and review, the Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the City according to the terms hereof, and any and all actions of the Corporate Authorities of the City precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.
- K. This Agreement has been submitted to the Managing Member of Developer for consideration and review, Developer's Members have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon Developer according to the terms hereof, and any and all action of Developer's Managing Member precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.
- L. The Parties are desirous of having the TIF District and City Property rehabilitated, developed and redeveloped in accordance with the TIF Plan, and particularly the Project as a part thereof, in order to serve the needs of the City, arrest physical decay and decline in the TIF District and the City Property, stimulate growth and stabilize the tax base of the City, and, in furtherance thereof, the City is willing to offer Developer certain incentives, under the terms and conditions in this Agreement, to assist such development.

II. DEFINITIONS

For the purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement shall have the meanings provided from place to place herein, and as follows:

- A. **"Change in Law"** means the occurrence, after the Effective Date, of an event described below in this definition, provided such event materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Agreement and such event is not caused by the Party relying thereon:

Change in Law means any of the following: (1) the enactment, adoption, promulgation or modification of any federal, State or local law, ordinance, code, rule or regulation (other than by the City or with respect to those made by the City, only if they violate the terms of this Agreement); (2) the order or judgment of any federal or State court, administrative agency or

other governmental body (other than the City); or (3) the adoption, promulgation, modification or interpretation in writing of a written guideline or policy statement by a governmental agency (other than the City, or, with respect to those made by the City, only if they violate the terms of this Agreement). Change in Law, for purposes of this Agreement, shall also include the imposition of any conditions on, or delays in, the issuance or renewal of any governmental license, approval or permit (or the suspension, termination, interruption, revocation, modification, denial or failure of issuance or renewal thereof) necessary for the undertaking of the actions to be performed under this Agreement (except any imposition of any conditions on, or delays in, any such issuance or renewal by the City, except as provided herein).

- B. **"Corporate Authorities"** means the Mayor and City Council of the City of West Chicago, Illinois.
- C. **"Day"** means a calendar day.
- D. **"Effective Date"** means the date on which this Agreement is executed on behalf of the City, with said date being inserted in the opening paragraph of this Agreement.
- E. **"Eligible Redevelopment Project Costs"** means a portion of Developer's costs of the Project, to be reimbursed, in part, from Incremental Property Taxes pursuant to the TIF Act, by the City, as provided in this Agreement, which qualify as eligible redevelopment project costs under Section 3(q) of the TIF Act, 65 ILCS 5/11-74.4-3(q), and the TIF Ordinances, as set forth in EXHIBIT E attached hereto and made a part hereof.
- F. **"Incremental Property Taxes"** means that portion of the *ad valorem* real estate taxes, if any, arising from the taxes levied upon property in the TIF District, which taxes have been actually collected by the City and which are attributable to the increase in the equalized assessed valuation ("EAV") of property in the TIF District over and above the EAV of property in the TIF District at the time of the formation of the TIF District, all as determined by the County Clerk of the County of DuPage, Illinois, pursuant to and in accordance with the TIF Act, the TIF Ordinances and this Agreement, and which are in the possession of the City at the time of payment of the Reimbursement (as defined in Section VI.B. below).
- G. **"Party / Parties"** means the City and/or Developer, individually/collectively, and their respective successors and/or assigns as permitted herein, as the context requires.

- H. **"Person"** means any individual, corporation, partnership, limited liability company, joint venture, association, trust, or government or any agency or political subdivision thereof, or any agency or entity created or existing under the compact clause of the United States Constitution.
- I. **"State"** means the State of Illinois.
- J. **"Uncontrollable Circumstance"** means any event which:
1. is beyond the reasonable control of and without the fault of the Party relying thereon; and
 2. is caused by one or more of the following events:
 - a. a Change in Law;
 - b. insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion, fire, nuclear incident, war or naval blockade;
 - c. epidemic, pandemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary or ordinary weather conditions or other similar act of God;
 - d. governmental condemnation or taking other than by the City;
 - e. strikes or labor disputes, or work stoppages not initiated by Developer;
 - f. unreasonable delay in the issuance of building or other permits or approvals by the City or other governmental authorities having jurisdiction other than the City;
 - g. shortage or unavailability of essential materials, which materially change the ability of the Party relying thereon to carry out its obligations under this Agreement;
 - h. unknown or unforeseeable geo-technical or environmental conditions;
 - i. major environmental disturbances;
 - j. vandalism; or
 - k. terrorist acts.

Uncontrollable Circumstance shall not include: economic hardship; unavailability of materials (except as described in Subsection 2.g. above); or a failure of performance by a contractor (except as caused by events which are Uncontrollable Circumstances as to the contractor).

For each day that a Party is delayed in its performance under this Agreement by an Uncontrollable Circumstance, the dates set forth in this Agreement shall be extended by one (1) day.

III. CONSTRUCTION OF TERMS

This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

- A. Definitions include both singular and plural.
- B. Pronouns include both singular and plural and cover all genders.
- C. The word "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".
- D. Headings of Sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- E. All exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement. In the event of a conflict between any exhibit and the terms of this Agreement, the Agreement shall control.
- F. Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters stated or set forth. Reference to supplemental agreements, certificates, demands, requests, approvals, consents, notices and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.
- G. The City Administrator, unless applicable law requires action by the Corporate Authorities, shall have the power and authority to make or grant or do those things, certificates, requests, demands, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the City and with the effect of binding the City as limited by and provided for in this Agreement. The Parties are entitled to rely on the full power and authority of the Persons executing this Agreement on behalf of the City as having been properly and legally given by the City.
- H. In connection with other actions to be taken under this Agreement, and unless applicable documents require action by Developer in a different manner, Developer hereby designates the Managing Member as its authorized representative who shall individually have the power and authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other

actions required or described in this Agreement for and on behalf of Developer and with the effect of binding Developer in that connection. The Parties are entitled to rely on the full power and authority of the Persons executing this Agreement on behalf Developer as having been properly and legally given by Developer.

IV. COOPERATION OF THE PARTIES

The Parties agree to cooperate in implementing the Project in accordance with their respective obligations set forth in this Agreement and specific approvals by the City in the future relative to the development of the City Property and the Project.

V. PLANNING, ACQUISITION AND DEVELOPMENT OF THE PROJECT AREA

A. Zoning.

1. On or before July 1, 2021, Developer shall submit to the City a complete application for all zoning approvals needed for the Project, which application shall be not inconsistent with the Project's site plan and description in EXHIBITS C and D, respectively, along with proof of firm financing for the Project ("Proposed Zoning Approvals").
2. The City shall thereafter consider, process and act on the Proposed Zoning Approvals as set forth in the City of West Chicago Zoning Ordinance.
3. If the Proposed Zoning Approvals are approved by the Corporate Authorities, the Project shall be amended to conform with the terms of the zoning approvals as approved by the Corporate Authorities ("Approved Zoning"). In the event of any conflicts between the terms of this Agreement and the Approved Zoning, the terms of the Approved Zoning shall control. The date the Corporate Authorities take final action on the Proposed Zoning Approvals shall be the "Zoning Final Action Date."
4. If the Approved Zoning is approved with conditions to, or modifications from, the Proposed Zoning Approvals which are unacceptable to Developer, Developer may elect to terminate this Agreement by providing the City with written notice within ten (10) days after the Zoning Final Action Date. In the event Developer elects to terminate this Agreement pursuant to this Section V.A.4., this Agreement shall terminate immediately and no Party shall be liable to another for the performance of any obligation herein.

5. If the Proposed Zoning Approvals are denied by the City, this Agreement shall terminate immediately and no Party shall be liable to another for the performance of any obligation herein.

B. City Property Acquisition.

1. Within sixty (60) days after the of the Zoning Final Action Date, and so long as Developer is in compliance with its obligations in this Agreement, the City shall transfer title to the City Property to Developer, in an "as-is, where-is" condition, including no environmental representations or warranties of any kind whatsoever, pursuant to the "Real Estate Sales Contract" attached hereto as EXHIBIT F and made part hereof ("Contract"), with such changes to the Contract to make the Contract consistent with this Agreement. In the event of any conflict between the terms of this Agreement and the Contract, the terms of this Agreement shall control. The City Property shall be conveyed from the City to Developer on the following terms:
 - a. Purchase price: Ten and No/100 Dollars (\$10.00);
 - b. Form of deeds: quit claim deed;
 - c. Permitted exceptions on title: (i) covenants, conditions, restrictions and easements of record; (ii) all applicable laws and ordinances affecting the City Property, including but not limited to, zoning, subdivision, public health, environmental and building; (iii) public and private easements, recorded and unrecorded for utilities and drainage and other purposes over, under and upon the City Property; (iv) 2020 and 2021 general property taxes not yet due and payable and subsequent years; and (v) acts done or suffered by or judgments against Developer;
 - e. Warranties: none whatsoever, as-is, where-is condition, including no environmental representations or warranties;
 - f. Broker: the City and Developer represent to the other that neither has retained a broker regarding the conveyance of the City Property from the City to Developer; and
 - g. Closing costs: paid by Developer.
2. The date the last parcel in the City Property is acquired by Developer shall be the "Acquisition Date."

3. Developer acknowledges and agrees that it and future owners of any portion of the City Property shall comply with the parking obligations on the City Property set forth in the “ [TITLE OF THE AMENDED PARKING AGREEMENT WITH ST. VINCENT DePAUL] ” dated July __, 2021 (“Parking Agreement”), so long as the Park Agreement remains in effect.

C. **Permit Submittals.** Within thirty (30) days after the Zoning Final Action Date, Developer shall apply for all necessary permits and approvals from the City and any other federal, State, regional or county agencies having jurisdiction over the Project as may be required to commence construction of the Project (“Project Approvals”). Developer shall diligently pursue issuance of the Project Approvals and Developer shall timely respond to all Project Approvals-related requests of governmental agencies having jurisdiction over the Project.

D. **Construction Commencement and Completion.**

1. Construction on the Project shall commence within sixty (60) days of the Zoning Final Action Date (“Construction Commencement Deadline”). Upon receipt of all Project Approvals, Developer shall notify the City of the receipt thereof in writing.
2. Within thirty (30) days after written request from Developer, and provided that Developer has not received any notice of default under this Agreement or notice of non-compliance with any City codes with respect to Developer’s construction obligations, any of which have not been cured, and after the City has issued the final certificate of occupancy the Project, and has confirmed that the proposed improvements in the City Property have been constructed in compliance with all City codes and this Agreement, the City shall deliver a certificate of completion and satisfaction of all construction terms, covenants and conditions contained in this Agreement (“Certificate of Project Completion”) or, if not complete or satisfied, a written statement as to what deficiencies exist. The date the Certificate of Project Completion is issued shall be the “Commencement Date.” Developer shall obtain a Certificate of Project Completion within the earlier of twelve (12) months of the Zoning Final Action Date or December 15, 2022.

E. **City Buy Back.**

1. Subject to Uncontrollable Circumstances, if Developer has not made application for all necessary permits and approvals from all governmental agencies having jurisdiction over the Project as may be required to commence construction of the Project within the time

frame set forth above, the City may deliver a notice of default to Developer and, in the event that Developer has failed to make application for all necessary permits and approvals within fourteen (14) days after receipt of such notice, the City shall have the option to purchase the City Property from Developer, at the same price paid by Developer to the City for the City Property, and under the same terms and conditions applicable to the City's conveyance thereof to Developer, including the same quality of title therefor, upon written notice from the City to Developer within thirty (30) days of a non-cured default of Developer's obligations as set forth in this Section V.E.1. and, upon conveyance of the City Property back to the City, this Agreement shall be of no further force or effect.

2. Subject to Uncontrollable Circumstances, if Developer has not commenced construction of the Project within the time frame set forth above, the City may deliver a notice of default to Developer and, in the event that Developer has failed to commence construction, or take the prerequisite steps necessary to commence construction and diligently pursue commencement of same, within fourteen (14) days after receipt of such notice, the City shall have the option to purchase the City Property from Developer, at the same price paid by Developer to the City for the City Property, and under the same terms and conditions applicable to the City's conveyance thereof to Developer, including the same quality of title therefor, upon written notice from the City to Developer within thirty (30) days of a non-cured default of Developer's obligations as set forth in this Section V.E.2. and, upon conveyance of the City Property back to the City, this Agreement shall be of no further force or effect.
3. Subject to Uncontrollable Circumstances, if Developer has not obtained a Certificate of Project Completion within the time frame set forth above, the City shall deliver a notice of default to Developer and, in the event that Developer has failed to obtain a Certificate of Project Completion or taken the prerequisite steps necessary to obtain a Certificate of Project Completion and diligently pursue completion of same within fourteen (14) days after receipt of such notice, the City shall have the option to purchase the City Property from Developer, at the same price paid by Developer for the City Property plus twenty-five percent (25%) of Developer's documented hard costs of construction of the Project, meaning direct costs of construction materials and construction labor, but excluding soft costs of construction of the Project, including, but not limited to professional fees, service fees and other non-construction material and construction labor related

costs, and under the same terms and conditions applicable to the City's conveyance thereof to Developer, including the same quality of title therefor, upon written notice from the City to Developer within thirty (30) days of a non-cured default of Developer's obligations as set forth in this Section V.E.3. and, upon conveyance of the City Property to the City, this Agreement shall be of no further force or effect.

- F. **Marketing.** Developer shall use commercially reasonable efforts to market the Project directly, or through a broker, prior to, and after, acquiring the City Property.

VI. CITY'S OBLIGATIONS

The City shall have the obligations set forth below, in addition to those set forth elsewhere in this Agreement related to the Project:

- A. **City Cooperation.** The City agrees to cooperate with Developer in Developer's attempts to obtain all necessary approvals from any governmental or quasi-governmental entity other than the City and, upon request of Developer, will promptly execute any applications or other documents (upon their approval by the City) which Developer intends to file with such other governmental or quasi-governmental entities in regard to the Project. The City shall further promptly respond to, and/or process, and consider reasonable requests of Developer for applicable demolition permits, building permits, driveway permits, curb cut permits, or other permits necessary for the construction of the Project. Approval of any building permit applications and/or engineering plans shall be contingent on Developer providing all required and requested documentation including, but not limited to, engineering reports, calculations and plans required to substantiate that said improvements fully conform with all applicable State statutes and also all City ordinances and codes, as well as receipt of all required approvals from any federal, State, regional or county agencies having applicable jurisdiction.
- B. **Reimbursement.** The City shall reimburse Developer for certain of its Eligible Redevelopment Project Costs in an amount not to exceed the Reimbursement Cap ("Reimbursement"), as follows:
1. The City's obligation to pay the Developer the Reimbursement is conditioned on (i) the Developer not being in default of any of its obligations under this Agreement, (ii) the City issuing the Certificate of Project Completion, and (ii) the Developer submitting to the City Administrator, and receiving approval from the City, one (1) request for reimbursement of Eligible Redevelopment Project Costs in an amount equal to the Reimbursement Cap ("Request").

2. The Request shall be signed by the Developer under oath, shall be accompanied by a copy of the paid receipts related thereto, and any other information and materials reasonably requested by the City, and shall be submitted to the City Administrator. The City shall timely review the Request. Unless the City has good cause to believe that the Request seeks reimbursement for non-Eligible Redevelopment Project Costs, or unless the City has good cause to believe that the Request is otherwise improper, the City shall grant the Request and pay the Developer the Reimbursement within sixty (60) calendar days after the City's approval thereof. If the City elects to withhold or deny such payment, the City shall promptly (and in any event not later than the date payment would otherwise have been due) advise the Developer in writing as to the specific basis for the City's position.
3. THE CITY'S OBLIGATION TO PAY THE DEVELOPER THE REIMBURSEMENT IS A LIMITED OBLIGATION PAYABLE SOLELY FROM INCREMENTAL PROPERTY TAXES RECEIVED BY THE CITY AND SHALL NOT BE A GENERAL OBLIGATION OF THE CITY OR SECURED BY THE FULL FAITH AND CREDIT OF THE CITY. INSUFFICIENCY OF THE INCREMENTAL PROPERTY TAXES TO PAY THE REIMBURSEMENT WHEN DUE SHALL NOT BE AN EVENT OF DEFAULT THEREON, AND NO HOLDER OF THE RIGHT TO RECEIVE ANY ONGOING PAYMENTS SHALL HAVE ANY RECOURSE WHATSOEVER AGAINST THE CITY IN THE EVENT THAT THERE ARE INSUFFICIENT INCREMENTAL PROPERTY TAXES.

VII. DEVELOPER'S OBLIGATIONS

Developer shall have the obligations set forth below, in addition to those set forth elsewhere in this Agreement, for the development, construction, financing, completion and furtherance of the Project:

- A. Developer shall construct the Project in full conformance with the City's approvals related thereto.
- B. Developer shall at all times acquire, install, construct, operate and maintain the Project in conformance with all applicable laws, rules, ordinances and regulations. All work with respect to the Project shall conform to all applicable federal, State and local laws, regulations and ordinances, including, but not limited to, zoning, subdivision and planned development codes, building codes, environmental laws (including any law relating to public health, safety and the environment and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or

hereafter promulgated thereafter), life safety codes, property maintenance codes and any other applicable codes and ordinances of the City, or any of its rules or regulations or amendments thereto which are in effect from time to time during the construction and maintenance of the Project and/or during the term of this Agreement.

- C. During the construction of the Project, Developer shall stage its construction of the Project to avoid to the fullest extent possible any community disruption. During construction, Developer shall also keep all public streets used by Developer clean on a daily basis, and for each day in which such public streets are not properly clean, Developer shall pay the City the sum of Five Hundred and No/100 Dollars (\$500.00) for each such violation. Developer agrees not to contest any violation notice issued by the City under this Section.
- D. Developer shall park and stage all construction equipment, materials and vehicles to be used in relation to the construction of the Project on the City Property, or at such alternate location as approved by the City.
- E. Developer shall submit written evidence to the City, in a form and substance satisfactory to the City, that Developer has access to sufficient funds to pay any costs of the Project.
- F. Developer shall meet with the Corporate Authorities and City staff and make presentations to the Corporate Authorities and City staff as reasonably requested by the City, in order to keep the City apprised of the progress of the Project.

VIII. ADDITIONAL COVENANTS OF DEVELOPER

- A. **Developer Existence.** Developer will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and standing as a limited liability company authorized to do business in Illinois, so long as Developer maintains an interest in the City Property or has any other remaining obligation pursuant to the terms of this Agreement.
- B. **Further Assistance and Corrective Instruments.** The City and Developer agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may be reasonably required for carrying out the intention of or facilitating the performance of this Agreement to the extent legally permitted and within the City's and Developer's sound legal discretion.
- C. **No Gifts.** Developer covenants that no manager, member, employee or agent of Developer, or any other Person connected with Developer, has made, offered or given, either directly or indirectly, to any member of the

Corporate Authorities, or any officer, employee or agent of the City, or any other Person connected with the City, any money or anything of value as a gift, or as a means of influencing his or her action in his or her capacity with the City, other than as provided for under 5 ILCS 430/10-10 through 10-40, as amended.

- D. **Disclosure.** Concurrently with execution of this Agreement, Developer shall disclose to the City the names, addresses and ownership interests of all Persons that have an ownership interest in Developer, together with such supporting documentation that may be requested by the City. Developer further agrees to notify the City throughout the term of this Agreement of the names, addresses and ownership interests of any new owners, shareholders or members of Developer.
- E. **Property Taxes.** Developer and successor owners of any portion of the City Property agree to pay, or cause to be paid, all general and special property taxes levied during their respective period of ownership against their respective interest in the City Property and/or the Project on or prior to the date same is due and said taxes shall not become delinquent. Developer and successor owners shall deliver evidence of payment of such taxes to the City upon request. Developer agrees:
1. to not, and to not permit or allow any of its affiliates or employees, to challenge, contest, or seek a reduction in, or assert tax-exempt status in relation to, the property taxes assessed against the City Property, including the Project located thereon, below the "Anticipated Assessed Values" on EXHIBIT G attached hereto and made a part hereof;
 2. to prohibit any third party obligated to pay the property taxes, in whole or in part, assessed against the City Property, including the Project located thereon, or any portion thereof, from challenging, contesting, seeking a reduction in or asserting tax-exempt status in relation to the property taxes assessed against the City Property, including the Project located thereon, below the Anticipated Assessed Values, as shown on EXHIBIT G; and
 3. to not file, participate in, or allow any of its affiliates or employees to file or participate in a tax rate objection, contest or other challenge to the taxes and/or levies of the taxing districts authorized by law to levy property taxes against the City Property, including the Project located thereon, below the Anticipated Assessed Values, as shown on EXHIBIT G.

IX. ADHERENCE TO CITY CODES AND ORDINANCES

All development and construction of the Project shall comply in all respects with the provisions in the building, plumbing, mechanical, electrical, storm water management, fire prevention, property maintenance, zoning and subdivision codes of the City and all other germane codes and ordinances of the City in effect from time to time during the course of construction of the Project. Developer, by executing this Agreement, expressly warrants that it has examined and is familiar with all the covenants, conditions, restrictions, building regulations, zoning ordinances, property maintenance regulations, environmental laws (including any law relating to public health, safety and the environment and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereafter) and land use regulations, codes, ordinances, federal, State and local ordinances, and the like, currently in effect.

X. SPECIAL CONDITIONS

Developer's Project shall be an "open book" project, meaning that Developer and the general contractor (or contractors, if more than one) will assure continuing access to the City's agents for the purpose of reviewing and auditing their respective books and records relating to any item necessary to determine the costs of the Project; provided, however, that all such access shall be limited to normal business hours upon reasonable prior notice and shall not occur more frequently than four (4) times per calendar quarter. The foregoing City review rights shall terminate five (5) years after the issuance of the Certificate of Project Completion with respect to costs for the Project, unless Developer has failed to make available any such books and/or records requested in writing by the City. Developer shall provide to the City copies of any partnership agreements, limited liability company operating agreements or joint venture agreements pertaining to the City Property to which Developer is a Party; provided that Developer may, if Developer has previously provided the City not less than thirty (30) days to review such confidential financial materials, remove from the copies of such agreements any confidential financial information previously disclosed to the City and not since changed in form or substance and the City shall keep such agreements confidential, to the maximum extent permitted by law. Failure to provide the documents or allow review of the books within fifteen (15) days after request by the City shall be an Event of Default, as defined in Section XV.A. below. Developer shall exercise prudence and good faith in attempting to contract with persons or entities that are reputable and experienced in their respective areas for the provision of services or material for the design and construction of Project at costs not in excess of market rates. The general contractor (or general contractors) designated by Developer shall be experienced and reputable.

XI. REPRESENTATIONS AND WARRANTIES OF DEVELOPER

Developer represents and warrants to the City as follows, as of the Effective Date and during the term of this Agreement:

- A. Developer is a limited liability company duly organized and existing under the laws of the State of Delaware, is authorized to do business in Illinois, and is authorized to and has the power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement. Developer is solvent, able to pay its debts as they mature and financially able to perform all the terms of this Agreement. To Developer's knowledge, there are no actions at law or similar proceedings which are pending or threatened against Developer which would result in any material and adverse change to Developer's financial condition, or which would materially and adversely affect the level of Developer's assets as of the date of this Agreement or that would materially and adversely affect the ability of Developer to proceed with the construction and development of the Project.
- B. Neither the execution and delivery of this Agreement by Developer, the consummation of the transactions contemplated hereby by Developer, nor the fulfillment of or compliance with the terms and conditions of this Agreement by Developer conflicts with or will result in a breach of any of the terms, conditions or provisions of any offerings or disclosure statement made or to be made on behalf of Developer (with Developer's prior written approval), any organizational documents, any restriction, agreement or instrument to which Developer or any of its partners, members, managers or venturers is now a party or by which Developer or any of its partners, members, managers or venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of Developer, any related party or any of its partners, members, managers or venturers under the terms of any instrument or agreement to which Developer, any related party or any of its partners, members, managers or venturers is now a party or by which Developer, any related party or any of its partners, members, managers or venturers is bound.
- C. Developer has sufficient financial and economic resources to implement and complete Developer's obligations contained in this Agreement.
- D. Developer has not received any notice from any local, State or federal official that the activities of Developer with respect to the City Property and/or the Project may or will be in violation of any environmental law or regulation. Developer is not aware of any State or federal claim filed or planned to be filed by any person relating to the City Property and any

violation of any local, State or federal environmental law, regulation or review procedure, and Developer is not aware of any violation of any local, State or federal law, regulation or review procedure which would give any person a valid claim under any State or federal environmental statute relative to the City Property.

- E. Developer, and its respective principals, are skilled in the development and operation of medical office buildings and retail space and are able to provide the Project with the necessary skill, knowledge and expertise as well as input from other experts and consultants in the construction and operation of such a Project.

XII. REPRESENTATIONS AND WARRANTIES OF THE CITY

The City represents, warrants and agrees as the basis for the undertakings on its part herein contained that:

- A. It is an Illinois home rule municipal corporation, duly organized and validly existing under the laws of the State of Illinois, and has all requisite corporate power and authority to enter into this Agreement.
- B. The execution, delivery and the performance of this Agreement and the consummation by the City of the transactions provided for herein and the compliance with the provisions of this Agreement:
 - 1. have been duly authorized by all necessary corporate action on the part of the City;
 - 2. require no other consents, approvals or authorizations on the part of the City in connection with the City's execution and delivery of this Agreement; and
 - 3. shall not, by lapse of time, giving of notice or otherwise result in any breach of any term or condition of any indenture, agreement or other instrument to which the City is subject.
- C. To the best of the City's knowledge, there are no proceedings pending or threatened against or affecting the City in any court or before any governmental authority which involves the possibility of materially or adversely affecting the ability of the City to perform its obligations under this Agreement.

XIII. INSURANCE

- A. Developer, and any successor in interest to Developer, shall obtain and continuously maintain insurance on the City Property and the Project and,

from time to time at the request of the City, furnish proof to the City that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that Developer must obtain and continuously maintain; provided, however, that Developer shall obtain the insurance described in Section XIII.A.1. below prior to the commencement of construction of any portion of the Project, and maintain same in place until the Project is complete:

1. Builder's risk insurance, written on the so-called "Builder's Risk - Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.
 2. Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an owner's/contractor's policy naming the City and its elected and appointed officials, officers, agents and employees as additional insureds, with limits against bodily injury and property damage of not less than \$2,000,000.00 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis.
 3. Workers compensation insurance, with statutory coverage.
- B. All insurance required in this Section XIII. shall be obtained and continuously maintained through responsible insurance companies selected by Developer or its successors that are authorized under the laws of the State to assume the risks covered by such policies. The City must be named as a cancellation notice recipient. Not less than fifteen (15) days prior to the expiration of any policy, Developer, or its successor or assign, must renew the existing policy or replace the policy with another policy conforming to the provisions of this Section XIII. In lieu of separate policies, Developer, or its successor or assign, may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

XIV. INDEMNIFICATION, HOLD HARMLESS AND RELEASE PROVISIONS

- A. Developer releases from and covenants and agrees that the City and its elected and appointed officials, officers, agents, including independent contractors, consultants and legal counsel, servants and employees (collectively the "Indemnified Parties" and individually an "Indemnified Party") shall not be liable for and agrees to indemnify, defend and hold harmless the Indemnified Parties against any loss or damage to property

or any injury to or death of any person occurring at or about or resulting from any defect in the Project or the City Property or arising under this Agreement or actions in furtherance thereof to the extent not attributable to the gross negligence or willful misconduct of an Indemnified Party.

- B. Except for gross negligence or willful misconduct of the Indemnified Parties, Developer agrees to indemnify the Indemnified Parties, now and forever, and further agrees to defend and hold them harmless from any claims, demands, suits, costs, expenses (including reasonable attorney's fees), actions or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of Developer (or if other Persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the City in this Agreement.
- C. The City makes no warranties or representations regarding, nor does it indemnify Developer with respect to, the existence or nonexistence on or in the vicinity of the City Property, or anywhere within the TIF District of any toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, or any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601-9657, as amended) (collectively, the "Hazardous Substances"). The foregoing disclaimer relates to any Hazardous Substance allegedly generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on or in the vicinity of the City Property, or within the TIF District, as well as any activity claimed to have been undertaken on or in the vicinity of the City Property, that would cause or contribute to causing (1) the City Property to become a treatment, storage or disposal facility within the meaning of, or otherwise bring the City Property within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §6901, *et seq.*, or any similar State law or local ordinance, (2) a release or threatened release of toxic or hazardous wastes or substances, pollutants or contaminants, from the City Property, within the meaning of, or otherwise bring the City Property within the ambit of, CERCLA, or any similar State law or local ordinance, or (3) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions, that would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. §1251, *et seq.*, or any similar State law or local ordinance. Further, the City makes no warranties or representations regarding, nor does the City indemnify

Developer with respect to, the existence or nonexistence on or in the vicinity of the Project, or anywhere within the City Property or the TIF District, of any substances or conditions in or on the City Property, that may support a claim or cause of action under RCRA, CERCLA, or any other federal, State or local environmental statutes, regulations, ordinances or other environmental regulatory requirements. The City makes no representations or warranties regarding the existence of any above ground or underground tanks in or about the City Property, or whether any above or underground tanks have been located under, in or about the City Property have subsequently been removed or filled.

- D. Developer waives any claims against the Indemnified Parties for indemnification, contribution, reimbursement or other payments arising under federal, State and common law or relating to the environmental condition of the land comprising the City Property.
- E. No liability, right or claim at law or inequity shall attach to or shall be incurred by the City's elected and appointed officials, officers, attorneys, agents and/or employees, and any such rights or claims of Developer against the City's elected and appointed officials, officers, attorneys, agents and/or employees are hereby expressly waived and released as a condition of and as consideration for the execution of the Agreement by the City.

XV. EVENTS OF DEFAULT AND REMEDIES

- A. **Developer Events of Default.** The following shall each be an "Event of Default" with respect to this Agreement:
 - 1. If any representation made by Developer in this Agreement, or in any certificate, notice, demand or request made by Developer, in writing and delivered to the City pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if Developer does not remedy the default, within fifteen (15) days after written notice from the City.
 - 2. Default by Developer for a period of fifteen (15) days after written notice thereof in the performance or breach of any covenant contained in this Agreement concerning the existence, structure or financial condition of Developer; provided, however, that such default or breach shall not constitute an Event of Default if such default cannot be cured within said fifteen (15) days and Developer, within said fifteen (15) days, initiates and diligently pursues

appropriate measures to remedy the default and in any event cures such default within sixty (60) days after such notice.

3. Default by Developer in the performance or breach of any covenant, warranty or obligation contained in this Agreement; provided, however, that such default shall not constitute an Event of Default if such default cannot be cured within said fifteen (15) days and Developer, within said fifteen (15) days initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within sixty (60) days after such notice.
4. The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Developer in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or State bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Developer for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days.
5. The commencement by Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or State bankruptcy, insolvency or other similar law, or the consent by Developer to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Developer or of any substantial part of the City Property, or the making by any such entity of any assignment for the benefit of creditors or the failure of Developer generally to pay such entity's debts as such debts become due or the taking of action by Developer in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others.
6. Failure to have funds to meet Developer's obligations.
7. A sale, assignment, or transfer of the Project or the City Property, except in accordance with this Agreement.
8. Change in Developer, except in accordance with this Agreement.
9. Developer abandons the Project. Abandonment shall be deemed to have occurred when work stops on the Project on the City Property for more than thirty (30) days for any reason other than Uncontrollable Circumstances.

10. Developer fails to comply with applicable governmental codes and regulations in relation to the construction and maintenance of the Project contemplated by this Agreement and such failure continues for more than fifteen (15) days after written notice thereof from the City; provided, however, that such default or breach shall not constitute an Event of Default if such default cannot be cured within said fifteen (15) days and Developer, within said fifteen (15) days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within sixty (60) days after such notice. The maintenance requirement of this provision shall not be covered by and shall survive any Certificate of Project Completion of any kind issued during the term of this Agreement.
 11. A representation or warranty of Developer is not true for a period of fifteen (15) days after written notice from the City; provided, however, that such default or breach shall not constitute an Event of Default if such default cannot be cured within said fifteen (15) days and Developer, within said fifteen (15) days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within sixty (60) days after such notice.
- B. **City Events of Default.** Default by the City in the performance or breach of any material obligation of the City contained in this Agreement shall be an Event of Default; provided, however, that such default shall not constitute an Event of Default if the City commences a cure within thirty (30) days after written notice from Developer, and in any event cures such default within sixty (60) days after such notice, subject to Uncontrollable Circumstances.
- C. **Remedies for Default.** In the case of an Event of Default hereunder:
1. A defaulting Party shall, upon written notice from a non-defaulting Party, take immediate action to cure or remedy such Event of Default. If, in such case, any monetary Event of Default is not cured, or if in the case of a non-monetary Event of Default, action is not taken or not diligently pursued, or if action is taken and diligently pursued but such Event of Default or breach shall not be cured or remedied within a reasonable time, but in no event more than fifteen (15) additional days, unless extended by mutual agreement, a non-defaulting Party may institute such proceedings as may be necessary or desirable in its/their opinion to cure or remedy such Event of Default, including, but not limited to, proceedings to compel specific performance of a defaulting Party's obligations under this Agreement.

2. In the case of an Event of Default by Developer, in addition to any other remedies at law or in equity, the City shall be relieved of their obligations under this Agreement.
- D. **No Waiver by Delay or Otherwise.** Any delay by any Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that any Party should not be deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made with respect to any specific Event of Default be considered or treated as a waiver of the rights by the waiving Party of any future Event of Default hereunder, except to the extent specifically waived in writing. No waiver made with respect to the performance, nor the manner or time thereof, of any obligation or any condition under the Agreement shall be considered a waiver of any rights except if expressly waived in writing.
 - E. **Rights and Remedies Cumulative.** The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise by such Party, at that time or different times, of any other such remedies for the same Event of Default.
 - G. **Reimbursement of City for Legal and Other Fees and Expenses.** In the event that any third party or parties institute any legal proceedings against Developer and/or the City, which relate to the terms of this Agreement, then, in that event, the Parties shall cooperate in the defense of any such lawsuit, with each Party assuming, fully and vigorously, its own defense of such lawsuit, and the City's costs and expenses of its defense, of whatever nature (including attorney's fees), shall be paid by Developer.

XVI. EQUAL EMPLOYMENT OPPORTUNITY

- A. **No Discrimination.** Developer shall comply with all federal, State and local laws relating to equal employment opportunity. To the extent permitted by law, Developer shall use reasonable efforts to employ qualified residents of the City.
- B. **Advertisements.** Developer shall, in all solicitations or advertisements for employees placed by or on behalf of Developer state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

- C. **Contractors.** Any contracts made by Developer with any general contractor, agent, employee, independent contractor or any other Person in connection with the Project shall contain language similar to that recited in Subsections A. and B. above.

XVII. MISCELLANEOUS PROVISIONS

- A. **Cancellation.** In the event a Party is prohibited, in any material respect, from performing covenants and agreements or enjoying the rights and privileges in this Agreement, or with respect to the City in the TIF Plan, including Developer's duty to build and operate the Project, by the order of any court of competent jurisdiction, or in the event that all or any part of the TIF Act or any ordinance adopted by the City in connection with the Project shall be declared invalid or unconstitutional, in whole or in part, by a final decision of a court of competent jurisdiction and such declaration shall materially affect the Project or the covenants and agreements or rights and privileges of Developer or the City, then and in any such event, the Party so materially affected may, at its election, cancel or terminate this Agreement in whole (or in part with respect to that portion of the Project materially affected) by giving written notice thereof to the other Parties within sixty (60) days after such final decision or amendment.
- B. **Notices.** All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (1) personal service, (2) overnight courier, or (3) registered or certified first class mail, postage prepaid, return receipt requested.

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

With a copy to: City Administrator
 City of West Chicago
 475 Main Street
 West Chicago, Illinois 60185

and: Klein, Thorpe and Jenkins, Ltd.
 20 North Wacker Drive, Suite 1660
 Chicago, Illinois 60606
 Attention: Gregory T. Smith

If to Developer: AVG High Street LLC
 c/o Aspen Venture Group, Inc.
 1430 N. Astor Street, Suite 13A
 Chicago, Illinois 60610
 Attention: Philip Richardson

The Parties, by notice hereunder, may designate any further or different addresses to which subsequent notices, certificates, approvals, consents or other communications shall be sent. Any notice, demand or request sent pursuant to clause (1) shall be deemed received upon such personal service. Any notice, demand or request sent pursuant to clause (2) shall be deemed received on the day immediately following deposit with the overnight courier, and any notices, demands or requests sent pursuant to clause (3) shall be deemed received forty-eight (48) hours following deposit in the mail.

- C. **Time is of the Essence.** Time is of the essence of this Agreement.
- D. **Integration.** Except as otherwise expressly provided for in this Agreement, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.
- E. **Counterparts.** This Agreement may be executed in two (2) counterparts, each of which shall be an original and each of which shall constitute but one and the same Agreement.
- F. **Recordation of Agreement and Developer Obligations Run with Title.** The Parties agree to record this Agreement on title to the City Property with the DuPage County Recorder's Office within five (5) business days of the Acquisition Date. Developer shall pay the recording charges. As of the Acquisition Date, the obligations of Developer under this Agreement are covenants that run with title to the City Property and all successor owners of any portion of the City Property shall be bound to perform the obligations of Developer under this Agreement.
- H. **Severability.** If any provision of this Agreement, or any Section, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held to be invalid, the remainder of this Agreement shall be construed as if such invalid part were never included herein, and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.
- I. **Choice of Law / Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and any court proceedings between the Parties hereto shall be brought in the 18th Judicial Circuit Court in DuPage County, Illinois.

- J. **Amendments.** This Agreement may not be modified or amended except by a written instrument executed by the Parties hereto.
- K. **Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other Person other than the Parties, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third parties to the Parties, nor shall any provision give any third parties any rights of subrogation or action over or against any Party. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.
- L. **Waiver.** A Party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.
- M. **Cooperation and Further Assurances.** The Parties each covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better clarifying, assuring and confirming unto the Parties or other appropriate Persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.
- N. **No Joint Venture, Agency or Partnership Created.** Nothing in this Agreement, or any actions of the Parties to this Agreement, shall be construed by the Parties or any third party to create the relationship of a partnership, agency or joint venture between or among such Parties.
- O. **Tort Immunity.** Nothing contained in this Agreement shall constitute a waiver of any privileges, defenses or immunities which the City may have under the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101, *et seq.*, as amended, with respect to any claim brought by a third party.
- P. **No Personal Liability of Officials of the Parties.** No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of the Corporate Authorities, City Administrator, City, or any elected or appointed official, officer, partner, member, director, agent, employee or attorney of the City or Developer, in his or her

individual capacity, and no elected official, officer, partner, member, director, agent, employee or attorney of the City or Developer shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement, or any failure in that connection.

- Q. **Term.** This Agreement shall remain in full force and effect until for fifteen (15) years after the Acquisition Date.
- R. **Assignment.** This Agreement, and the rights and obligations hereunder, may not be assigned by Developer prior to completion of the Project (as evidenced by issuance of the Certificate of Project Completion for the entire Project by the City to Developer) unless the City, in the exercise of its sole and absolute discretion, consents in writing to such assignment. After the issuance of the aforesaid Certificate of Project Completion by the City, Developer shall have the right to assign its interests in this Agreement, and its rights and obligations hereunder, subject to the consent in writing of the City, such consent not to be unreasonably withheld.
- S. **Governmental Limitations.** All commitments of the City hereunder are limited to the extent required by law.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on or as of the day and year first above written.

CITY OF WEST CHICAGO,
an Illinois home rule municipal corporation

ATTEST:

By: _____
Ruben Pineda
City Mayor

By: _____
Nancy Smith
City Clerk

Date: _____, 2021

AVG HIGH STREET LLC
a Delaware Limited Liability Company

ATTEST:

By: _____
Philip Richardson
Managing Member

By: _____
Robert Maka
Member

Date: _____, 2021

**ACKNOWLEDGMENT
(CITY)**

State of Illinois)
) SS
County of DuPage)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Ruben Pineda and Nancy Smith, personally known to me to be the Mayor and City Clerk of the City of West Chicago, and 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 severally acknowledged that as such Mayor and City Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Mayor and City Council of said Illinois municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said Illinois municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2021.

Notary Public

**ACKNOWLEDGMENT
(DEVELOPER)**

State of Illinois)
) SS
County of _____)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the _____ of AVG High Street LLC, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that, as such _____, he/she signed and delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2021.

Notary Public

EXHIBIT A-1
TIF DISTRICT LEGAL DESCRIPTION
(attached)

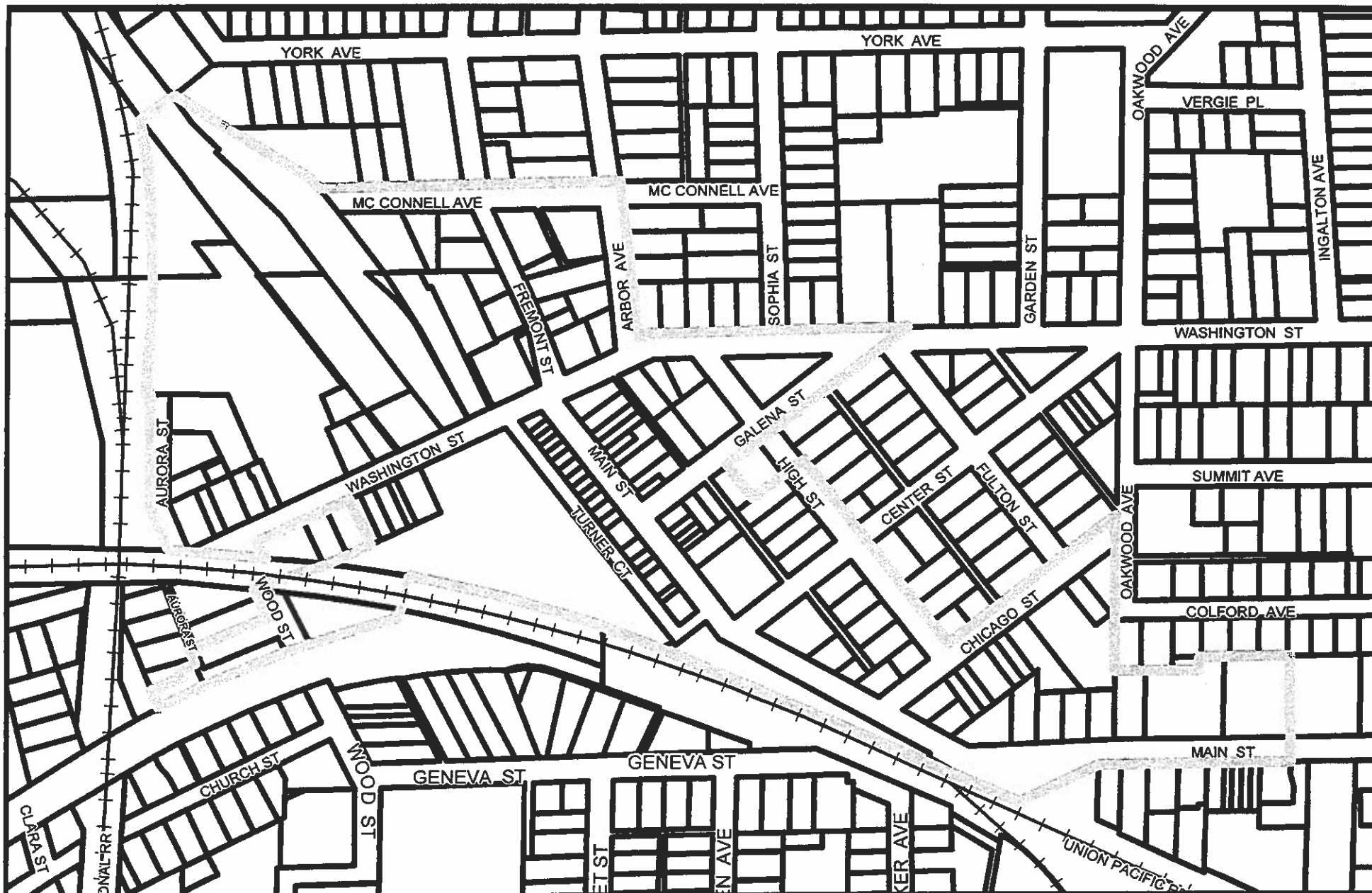
APPENDIX A
LEGAL DESCRIPTION OF THE REDEVELOPMENT PROJECT AREA

The legal description of the Redevelopment Project Area is described as follows:

The southwest quarter of Section 3, the southeast quarter of Section 4, the northeast quarter of Section 9 and part of the north half of Section 10, all in Township 39 North, Range 9 East of the Third Principal Meridian in DuPage County, Illinois, described as follows: Beginning at the point of intersection of the northerly right-of-way line of Washington Street and the easterly right-of-way line of Arbor Avenue being also the southwesterly corner of Lot 7 in McConnell's Town of Turner Addition; thence northwesterly along said easterly right-of-way line of Arbor Avenue and said line extended to a point of intersection with the northerly right-of-way line of McConnell Avenue; thence westerly along said northerly right-of-way line of McConnell Avenue extended across Arbor Avenue and along said northerly right-of-way line to a point of intersection with the easterly right-of-way line of Fremont Street; thence northwesterly along said easterly right-of-way line of Fremont Street to a point of intersection with the southerly right-of-way line of York Avenue; thence westerly along said southerly right-of-way line of York Avenue extended across Fremont Street to a property corner being 132 feet, more or less, from the westerly right-of-way line of Fremont Street as measured along said south right-of-way line of York Avenue; thence southeasterly along a property line being parallel with said westerly right-of-way of Fremont Street, a distance of 165 feet, more or less, to a property corner; thence westerly along a property line being parallel with said southerly right-of-way line of York Avenue to the southeasterly corner of J. T. Hosford's Third Addition to Turner; thence continuing westerly along the south line of said J. T. Hosford's Third Addition to a point on a northeasterly line of Lot 1 of Jacobson's Assessment Plat; thence northwesterly along said northeasterly line of Lot 1 of Jacobson's Assessment Plat being also a southwesterly line of Lot 4 in said J. T. Hosford's Third Addition and along said line extended to a point on the northeasterly right-of-way line of the Union Pacific Railway; thence southwesterly along a line across said Union Pacific Railway right-of-way a distance of approximately 100 feet to a point where the southwesterly line of the right-of-way of the Union Pacific Railway intersects with the easterly line of the right-of-way of the Canadian National Railroad; thence southerly along said easterly right-of-way line of the Canadian National Railway on various courses and distances to a point on a northerly right-of-way line of the Union Pacific Railway said point also being the point of intersection of the westerly right-of-way line of north Aurora Street with said northerly right-of-way line of the Union Pacific Railway; thence westerly along said north line of the Union Pacific Railway right-of-way a distance of 100 feet; thence southerly along a line across said Union Pacific Railway right-of-way and across Washington Street to the point of intersection of the southerly right-of-way line of said Washington Street and the easterly right-of-way line of South Aurora Street; thence southerly and southeasterly along said easterly right-of-way line of South Aurora Street and along said line extended across the right-of-way of the Burlington Northern Railroad to a point on the southerly right-of-way line of said railroad; thence northeasterly, easterly and southeasterly on various courses and distances along said southerly right-of-way line of the Burlington Northern Railroad and along the southeasterly right-of-way line of the Union Pacific Railway to a point being the northeasterly corner of Lot "B" in College Hill Estates; thence southerly along the easterly line of said Lot "B" in College Hill Estates and said easterly line extended across Geneva Street to a point on the southerly right-of-way line of said Geneva Street; thence easterly, southerly and southeasterly on various courses and distances along said southerly right-of-way line of Geneva Street to a point of intersection with the westerly right-of-way line of Parker Avenue; thence southeasterly along a line to a point on the easterly right-of-way line of said Parker Avenue being a point on the west line of Lot 1 in Parker's Addition to West Chicago a distance of 25 feet northerly of the southwest corner of said Lot 1; thence southeasterly along a line to a point on the south line of said Lot 1 in Parker's Addition, a distance of 60 feet easterly from the southwest corner of said Lot 1; thence easterly along said south line of Lot 1 in Parker's Addition to the southeast corner of said Lot 1, being also the northeast corner of Lot 2 in said Parker's Addition; thence southerly along the east line of said Lot 2 in Parker's Addition to a point a distance of 50 feet northerly from the southeast corner of said Lot 2; thence southeasterly along a line to a point on the easterly extension of the south line of said Lot 2 in Parker's Addition, a distance of 145.44 feet easterly from the southwest corner of said Lot 2; thence southeasterly along a line to a point on the easterly extension of the south line of Lot 3 in said Parker's Addition, a distance of 161.87 feet easterly from the southwest corner of said Lot 3; thence southwesterly along a line described as ending at a point on the easterly extension of the south line of Lot 9 of said Parker's Addition, a distance of 125.5 feet from the southwest corner of said Lot 9, to a point on said line being 224.96 feet north of its southern terminus as measured on said line; thence southwesterly a distance of 68.02 feet, more or less, along a line to the northeast corner of Lot 7 in said Parker's Addition; thence southwesterly along a line to a point on the south line of said Lot 7 in Parker's Addition being 103.16 feet easterly of the southwest corner of said Lot 7; thence southwesterly along a line to a point on the south line of Lot 9 in said Parker's Addition being 87.08 feet easterly of the southwest corner of said Lot 9 being also a point on the northerly right-of-way line of Spencer Street; the previous seven courses and distances are the westerly right-of-way line of Wilson Avenue as presently dedicated; thence westerly along said northerly right-of-way line of Spencer Street and

said northerly line extended westerly across Parker Avenue to a point of intersection of said northerly right-of-way line with the easterly line of Block 1 of Barber's Addition to the Town of Turner extended northerly; thence southerly along said easterly line of Block 1 of Barber's Addition extended northerly and along said easterly line to a point on the northerly right-of-way line Conde Street; thence easterly along said northerly right-of-way line of Conde Street extended across Wilson Avenue, Clayton Street and the former Sycamore Avenue to a point on the easterly right-of-way of said former Sycamore Avenue; thence northerly along said easterly right-of-way line of the former Sycamore Avenue to a point of intersection with the northerly right-of-way line of Spencer Street; thence westerly along said northerly right-of-way line of Spencer Street, a distance of 162.50 feet to the most westerly corner of Lot 1 George R. Knott's Addition to West Chicago; thence northeasterly along the westerly line of said George R. Knott's Addition, a distance of 301.6 feet to a northwesterly corner of said Lot 1 in George R. Knott's Addition; thence easterly along the northerly line of said Lot 1 in George R. Knott's Addition, a distance of 156 feet, more or less, to a corner of the Union Pacific Railway property; thence northeasterly along an easterly line of said Union Pacific Railway property, a distance of 50 feet, more or less, to a point on the southwesterly right-of-way line of said Union Pacific Railway; thence southeasterly along said southwesterly right-of-way line of the Union Pacific Railway on various courses and distances to a point of intersection with the easterly right-of-way line of Illinois State Highway Route 59 (Neltner Boulevard); thence northerly to the point of intersection of the northeasterly right-of-way line of the Union Pacific Railway with the easterly right-of-way line of said Illinois Route 59; thence northerly and northwesterly along said east right-of-way line of Illinois Route 59 to the point of intersection with the southerly right-of-way line of Hillview Avenue; thence easterly along said southerly right-of-way line of Hillview Avenue to a point of intersection with the easterly right-of-way line of Easton Avenue extended southerly; thence northerly along said easterly right-of-way line of Easton Avenue and said easterly line extended across Hillview Avenue, Main Street and Washington Street to a point on the northerly right-of-way line of said Washington Street; thence westerly along said northerly right-of-way line of Washington Street and said northerly line extended across Illinois Route 59 to the point of intersection with the easterly right-of-way line of Oak Street; thence southwesterly along a line across said Washington Street to the northwesterly corner of Prudential Realty Company's Resubdivision of the Anthony Property; thence southerly along the westerly line of said Prudential Realty Company's Resubdivision of the Anthony Property a distance of 601.02 feet (605.22 feet recorded) to the southwesterly corner of said Resubdivision of the Anthony Property being also a point on the northerly line of Lot 1 of the West Chicago Historical Society Consolidation Plat; thence westerly along said northerly line of Lot 1 of the West Chicago Historical Society Consolidation Plat to the northwesterly corner of said Lot 1; thence southerly along the westerly line of said Lot 1 of the West Chicago Historical Society Consolidation Plat to the southwesterly corner of said Lot 1 being also a point on the northerly right-of-way line of Colford Avenue; thence westerly along said northerly right-of-way line of Colford Avenue to a point of intersection with the easterly line of Lot 14 in Pleasant Hill Addition to West Chicago extended northerly; thence southerly along said easterly line of Lot 14 in Pleasant Hill and said line extended to the southeasterly corner of said Lot 14; thence westerly along the southerly line of said Pleasant Hill Addition to a point on the east line of the west 232 feet of the east 985.38 feet of the northeast quarter of the northwest quarter of Section 10, Township 39 North, Range 9 East of the Third Principal Meridian; thence southerly along said east line of the west 232 feet of the east 985.38 feet of the northeast quarter of the northwest of said Section 10, a distance of 16.5 feet to a point on the north line of the south 231 feet of said west 232 feet; thence westerly along said north line of the south 231 feet, a distance of 232 feet to a point on the west line of said east 985.38 feet of the northeast quarter of the northwest quarter of said Section 10; thence northerly along said west line of the east 985.38 feet, a distance of 16.5 feet to a point on the south line of Colford Subdivision; thence westerly along said south line of Colford Subdivision to a point on the east line of the west 219.78 feet of the northeast quarter of the northwest quarter of Section 10, Township 39 North, Range 9 East of the Third Principal Meridian; thence southerly along said east line of the west 219.78 feet of the northeast quarter of the northwest quarter of said Section 10, a distance of 34.5 feet to a point on the north line of the south 213 feet of said west 219.78 feet; thence westerly along said north line of the south 213 feet, a distance of 219.78 feet to a point on the west line of the northeast quarter of the northwest quarter of said Section 10; thence northerly along said west line of the northeast quarter of the northwest quarter of said Section 10, a distance of 134.9 feet to a point of intersection with the south right-of-way line of Colford Avenue; thence easterly along said south right-of-way line of Colford Avenue to a point of intersection with the easterly right-of-way line of Oakwood Avenue extended southerly; thence northerly along said easterly right-of-way line of Oakwood Avenue and said easterly line extended across Colford Avenue to a point directly east of the most easterly corner of Lot 5 in Block 6 of the Original Town of Turner; thence west along a line across Oakwood Avenue to said most easterly corner of Lot 5 in Block 6 in the Original Town of Turner being also a point on the northwesterly right-of-way line of Chicago Street; thence southwesterly along said northwesterly right-of-way line of Chicago Street extended across Fulton Street to a point of intersection with the northeasterly right-of-way line of High Street; thence northwesterly along said northeasterly right-of-way line of High Street extended across Center Street to a point of intersection with the southeasterly right-of-way line

EXHIBIT A-2
TIF DISTRICT DEPICTION
(attached)



CITY OF WEST CHICAGO
CENTRAL BUSINESS T.I.F. DISTRICT
54.5 ACRES

Legend

-  RAILROAD
-  T.I.F. BOUNDARY
-  PARCELS



EXHIBIT B
CITY PROPERTY LEGAL DESCRIPTION
(attached)

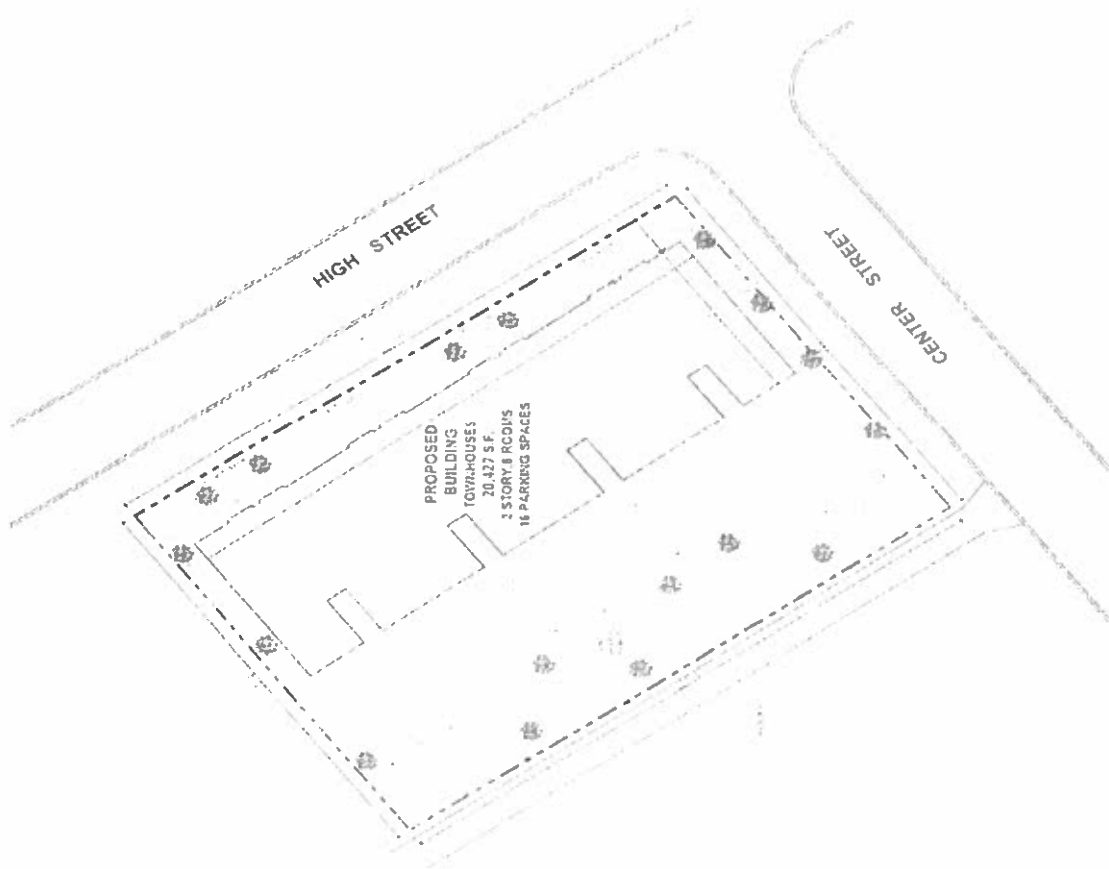
Legal Description:

LOTS 7, 8, 9 AND 10 IN BLOCK 3 IN TOWN OF JUNCTION, BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 9, AND PART OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 22, 1856 AS DOCUMENT NO. 10634, IN DUPAGE COUNTY, ILLINOIS.

P.I.Ns.: 04-10-109-011-0000; 04-10-109-012-0000; 04-10-109-013-0000; and 04-10-109-014-0000.

Common Address: 210, 216, 222 and 228 High Street, West Chicago, Illinois 60185.

EXHIBIT C
PROJECT DEPICTION
(attached)





Front Elevation



Rear Elevation

EXHIBIT D

PROJECT DETAILED DESCRIPTION

Written Description of Project/Plans

The proposed project consists of utilizing the site that is currently vacant and constructing one building consisting of eight 'for sale' two story townhomes. Each townhome will consist of approximately 1,800 square feet of living space, plus a basement and two car attached garage. The townhomes will have three bedrooms and 2.5 bathrooms. The project will have an 'urban' look with the garage located in the back of each townhome and the building situated close to the streets. Access to the garages will be from the existing alley located along the west side of the site.

A copy of the schematic site plan and elevations is attached hereto.

Schedule for Development

The Development Team is prepared to begin this project immediately. It is anticipated that pre-development will take up to sixty days to complete engineering and architectural drawings, and that construction will take approximately eight months.

EXHIBIT E
ELIGIBLE REDEVELOPMENT PROJECT COSTS
(attached)

**Eligible Redevelopment Costs
Relative to the Project**

Eligible Redevelopment Project Cost Description	Redevelopment Project Cost Category Under 65 ILCS 5/11-74.4-3(q)	Eligible Cost	Estimated Amount
Building and other demolition	65 ILCS 5/11-74.4-3(q)(2)	Demolition of buildings and site preparation	\$8,000
Environmental remediation	65 ILCS 5/11-74.4-3(q)(2)	Site preparation and addressing environmental contamination	\$0
Public infrastructure construction	65 ILCS 5/11-74.4-3(q)(4)	Construction of public works	\$45,000
Site assembly, including sitework and detention	65 ILCS 5/11-74.4-3(q)(2)	Property assembly, site preparation and clearing and grading of land	\$45,000
Professional services	65 ILCS 5/11-74.4-3(q)(1)	Professional service costs for architectural, engineering, legal, financial, planning or other services	\$77,000
[Other categories] Construction Interest	65 ILCS 5/11-74.4-3(q)(5)	1/3 (33.3%) of interest paid on construction loan(s)	\$21,215

EXHIBIT F
CONTRACT
(attached)

REAL ESTATE PURCHASE AND SALES CONTRACT

(210, 216, 222 AND 228 HIGH STREET, WEST CHICAGO, ILLINOIS 60185)

THIS REAL ESTATE PURCHASE AND SALES CONTRACT (210, 216, 222 AND 228 HIGH STREET, WEST CHICAGO, ILLINOIS 60185) ("Contract") is made as of the Effective Date (as defined in Section 25 below) between the CITY OF WEST CHICAGO, an Illinois home rule municipal corporation ("Seller") and the AVG High Street LLC, a Delaware limited liability company authorized to conduct business in the State of Illinois ("Buyer").

AGREEMENT:

1. **SELLER IS A MUNICIPAL ENTITY AND THIS CONTRACT IS SUBJECT TO THE APPROVAL OF, AND IS NOT ENFORCEABLE UNLESS APPROVED AT AN OPEN MEETING BY, THE MAYOR AND CITY COUNCIL OF SELLER.**

2. **SALE.** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions set forth in this Contract, the fee simple title to the parcel of land commonly known as 210, 216, 222 and 228 High Street, West Chicago, Illinois, property identification numbers ("PINs") 04-10-109-011-0000; 04-10-109-012-0000; 04-10-109-013-0000; and 04-10-109-014-0000, located in the County of DuPage (collectively the "**Property**"), which Property is legally described in **EXHIBIT A** attached hereto and made a part hereof, and which legal description shall be updated to conform with the legal description from the "Survey," as defined in Section 9 below, if the legal description from the Survey differs from that in **EXHIBIT A**.

3. **PURCHASE PRICE.** The purchase price for the purchase of the Property by Buyer is **TEN AND NO/100 DOLLARS (\$10.00) ("Purchase Price")**.

4. **EARNEST MONEY DEPOSIT.** No earnest money deposit shall be made by Buyer.

5. **CLOSING DATE.** The closing ("**Closing**") of the contemplated purchase and sale of the Property shall take place through a deed and money escrow ("**Escrow**") on or before the time set forth in Section V.B.1. of the "Development Agreement for the Northwest Corner of Center Street and High Street in the City of West Chicago Downtown TIF District" by and between Seller and Buyer dated _____, 2021 ("**Closing Date**") either at an office of Chicago Title Insurance Company ("**Title Company**"), remotely with the Title Company, or at such other time and place, as mutually agreed to by the parties. Seller shall pay the costs charged by the Title Company for the title policy, the Escrow, the Title Commitment, the Survey and recording the Deed (as defined in Section 10 below), except that Buyer shall pay the costs of any title insurance endorsements, Buyer's inspection costs and Buyer attorney's fees.

6. **"AS IS/WHERE IS" Transaction.** Notwithstanding any term in this Contract to the contrary, this Contract is for the sale and purchase of the Property in its "AS IS/WHERE IS" condition as of the Effective Date, and Seller makes no representations or warranties whatsoever to Buyer, including with respect to the environmental condition or status of the Property. Buyer acknowledges that no representations, warranties or guarantees of any kind with respect to the condition of the Property have been made by Seller whatsoever. Within ten (10) business days after the Effective Date, Seller shall deliver to Buyer title report(s), relevant recorded documents, available surveys, site plans and environmental and/or other reports, studies and

documents in its possession regarding or related to the Property. Buyer may conduct an inspection prior to the Closing at Buyer's expense. In that event, Seller shall make the Property available to Buyer's inspector prior to the Closing at reasonable times. Buyer shall indemnify and hold harmless Seller from and against any loss or damage caused by the acts of negligence of Buyer or any person performing any inspection. In the event the documents and/or inspection reveals that the condition of the Property is unacceptable to Buyer and Buyer so notifies Seller within ten (10) business days after the Effective Date, this Contract shall be null and void. Buyer's notice shall not include a copy of any inspection reports and/or list of unacceptable matters found. The parties hereby agree that any such inspections are solely for the benefit of Buyer and that Buyer shall only tender copies of any reports or findings to Seller if Seller requests same in writing. In addition, the Parties hereby agree that Buyer is relying solely on its own inspection and investigation of the Property and is not relying, in any way, on any representations made or given in connection with the condition of the Property. Failure of Buyer to notify Seller of cancellation or to conduct said inspection shall operate as a waiver of Buyer's right to terminate this Contract (except as set forth in Section 7 below).

7. **BUYER'S OPTION TO TERMINATE CONTRACT.** Buyer shall not be obligated to take title to the Property if, in Buyer's sole and exclusive judgment, for any reason whatsoever, Buyer determines within a ten (10) business day period following the Effective Date, that the use or condition of the Property (including the groundwater thereunder), or any part thereof or any adjacent property, poses a material health, safety or environmental hazard, or if the Property Assessment reveals the existence of any condition which may be dangerous and/or unacceptable to Buyer, or in violation of any law or regulation including, but not limited to, the presence of any hazardous material (collectively the "**Property Defect**"). If, in the sole and exclusive judgment of Buyer, Buyer determines that there is a Property Defect, Buyer shall have the right to revoke its acceptance of the Contract, and to declare the Contract and related closing documents, if any, null and void. Said termination and revocation shall only be valid if written notice is tendered to Seller within ten (10) business days of the Effective Date. Failure of Buyer to notify Seller within the timeframe stated herein, or to conduct said inspection, shall operate as a waiver of Buyer's right to terminate this Contract as provided for in this Section 7.

8. **TITLE INSURANCE.** Within ten (10) business days of the Effective Date, Buyer shall obtain a title commitment issued by the Title Company, in the amount of the Purchase Price, with extended coverage over standard title exceptions 1 through 5 ("**Title Commitment**"), together with copies of all underlying title documents listed in the Title Commitment ("**Underlying Title Documents**"), subject only to those matters described in **EXHIBIT B**, attached hereto and made a part hereof ("**Permitted Exceptions**"). If the Title Commitment, Underlying Title Documents or the Survey disclose exceptions to title, which are not acceptable to Buyer ("**Unpermitted Exceptions**"), Buyer shall have ten (10) business days from the later of the delivery of the Title Commitment, the Underlying Title Documents and the Survey to object to the Unpermitted Exceptions. Buyer shall provide Seller with an objection letter ("**Buyer's Objection Letter**") listing the Unpermitted Exceptions, which are not acceptable to Buyer. Seller shall have until the Closing ("**Seller's Cure Period**") to have the Unpermitted Exceptions removed from the Title Commitment or to cure such Unpermitted Exceptions or to have the Title Company commit to insure against loss or damage that may be occasioned by such Unpermitted Exceptions, after Buyer's receipt of a proforma title policy ("**Proforma Title Policy**") reflecting the Title Company's commitment to insure the Unpermitted Exceptions. If Seller fails to have the Unpermitted Exceptions removed or, in the alternative, to obtain a Title Commitment insuring the Unpermitted Exceptions within the specified time, Buyer may elect to either (i) terminate this Contract and this Contract shall become null and void without further action of the parties, or (ii) upon notice to Seller before the Closing, take title as it then is with the right to deduct from the Purchase Price any liens or encumbrances of a definite or ascertainable amount which are listed in the Title Commitment. All Unpermitted

Exceptions, which the Title Company commits to insure, shall be included within the definition of Permitted Exceptions. The Proforma Title Policy shall be conclusive evidence of good title as shown therein as to all matters insured by the Title Company, subject only to the Permitted Exceptions. Buyer shall pay the cost for any later date title commitments, and Buyer shall pay for the cost of the later date to its Proforma Title Policy.

9. **SURVEY.** Prior to the Closing, Seller shall obtain a Plat of Survey ("**Survey**") that conforms to the Minimum Standards of Practice for boundary surveys, is dated not more than six (6) months prior to the date of Closing, and is prepared by a professional land surveyor licensed to practice land surveying under the laws of the State of Illinois. The Survey shall show visible evidence of improvements, rights of way, easements, use and measurements of all parcel lines. The land surveyor shall set monuments or witness corners at all accessible corners of the land. All such corners shall also be visibly staked or flagged. The Survey shall include the following statement, placed near the professional land surveyor seal and signature: "This professional service conforms to the current Illinois Minimum Standards for a boundary survey."

10. **DEED.** Seller shall convey fee simple title to the Property to Buyer, by a recordable Quit Claim Deed ("**Deed**"), subject only to the Permitted Exceptions. Seller shall also execute and deliver, at Closing, any and all documents, in addition to the Deed, including an Affidavit of Title; Non-Foreign Affidavit; Bill of Sale; Title Company documentation including, but not limited to, an ALTA Statement, GAP Undertaking and such other documents reasonably requested either by Buyer or the Title Company to consummate the transaction contemplated herein and to vest fee simple title to the Property in Buyer subject only to the Permitted Exceptions and the issuance of Buyer's Title Company owners title insurance policy. Seller shall be responsible for the recording fee for the Deed.

11. **CLOSING DOCUMENTS.** On the Closing Date, the obligations of Buyer and Seller shall be as follows:

A. Seller shall deliver or cause to be delivered to the Title Company:

- i. the original executed and properly notarized Deed;
- ii. the original executed and property notarized Affidavit of Title;
- iii. the original executed and property notarized Non-Foreign Affidavit;
- iv. counterpart originals of Seller's Closing Statement; and
- v. such other standard closing documents or other documentation as is required by applicable law or the Title Company to effectuate the transaction contemplated hereby, including, without limitation, ALTA Statements and GAP Undertaking, such other documentation as is reasonably required by the Title Company to issue Buyer its owners title insurance policy in accordance with the Proforma Title Policy and in the amount of the Purchase Price insuring the fee simple title to the Property in Buyer as of the Closing Date, subject only to the Permitted Exceptions.

B. Buyer shall deliver or cause to be delivered to the Title Company:

- i. the balance of the Purchase Price, plus or minus prorations;

- ii. counterpart originals of Seller's Closing Statement; and
- iii. ALTA Statement and such other standard closing documents or other documentation as is required by applicable law or the Title Company to effectuate the transaction contemplated herein.

C. The parties shall jointly deposit fully executed State of Illinois Transfer Declarations and County Transfer Declarations.

12. **POSSESSION.**

A. Possession of the Property has been with Seller prior to the Effective Date.

B. If the Closing occurs, possession of the Property shall be finally and fully delivered to Buyer on the Closing Date.

13. **PRORATIONS.** At Closing, the following adjustments and prorations shall be computed as of the Closing Date and the balance of the Purchase Price shall be adjusted to reflect such prorations. All prorations shall be based on a 366-day year, with Seller having the day prior to the Closing Day.

A. **Real Estate Taxes.** General real estate taxes for 2020 and 2021 and subsequent years, special assessments and all other public or governmental charges against the Property, if any, which are or may be payable on an annual basis (including charges, assessments, liens or encumbrances for sewer, water, drainage or other public improvements completed or commenced on or prior to the Closing Date) shall be adjusted and apportioned as of the Closing Date. If the exact amount of general real estate taxes is not known at Closing, the proration will be based on 105% of the most recent full year tax bill, and shall be conclusive, with no subsequent adjustment.

B. **Miscellaneous.** All other charges and fees customarily prorated and adjusted in similar transactions shall be prorated as of Closing Date. In the event that accurate prorations and other adjustments cannot be made at Closing because current bills or statements are not obtainable (as, for example, all water, sewer, gas and utility bills), the parties shall prorate on the best available information. Final readings and final billings for utilities shall be taken as of the date of Closing except for a water bill which may be taken up to two (2) days before the Closing Date.

14. **CONVEYANCE TAXES.** The parties acknowledge that, as Seller is a governmental entity, this transaction is exempt from any State and any County real estate transfer tax pursuant to 35 ILCS 200/31-45(b). Seller shall furnish completed Real Estate Transfer Declarations signed by Seller or Seller's agent in the form required pursuant to the Real Estate Transfer Tax Act of the State of Illinois.

15. **COVENANTS, REPRESENTATIONS AND WARRANTIES OF SELLER.** Seller covenants, represents and warrants to Buyer as to the following matters, each of which is so warranted to be true and correct as of the Effective Date:

A. **Title Matters.** Seller has good and marketable fee simple title to the Property, subject only to the Permitted Exceptions.

B. Violations of Zoning and Other Laws. Seller has received no written notice from any governmental agency alleging any violations of any statute, ordinance, regulation or code. The Property as conveyed to Buyer shall include all rights of Seller to the use of any off-site facilities, including, but not limited to, storm water detention facilities, necessary to ensure compliance with all zoning, building, health, fire, water use or similar statutes, laws, regulations and orders and any instrument in the nature of a declaration running with the Property.

C. Pending and Threatened Litigation. To the best knowledge and belief of Seller, there are no pending or threatened matters of litigation, administrative action or examination, claim or demand whatsoever relating to the Property.

D. Eminent Domain, etc. To the best knowledge and belief of Seller, there is no pending or contemplated eminent domain, condemnation or other governmental taking of the Property or any part thereof.

E. Access to Property Utilities. To the best knowledge and belief of Seller, No fact or condition exists which would result in the termination or impairment of access to the Property or which could result in discontinuation of presently available or otherwise necessary sewer, water, electric, gas, telephone or other utilities or services.

F. Assessments. To the best knowledge and belief of Seller, there are no public improvements in the nature of off-site improvements, or otherwise, which have been ordered to be made and/or which have not heretofore been assessed, and there are no special or general assessments pending against or affecting the Property.

G. Authority of Signatories; No Breach of Other Agreements; etc. The execution, delivery of and performance under this Contract by Seller is pursuant to authority validly and duly conferred upon Seller and the signatories hereto. The consummation of the transaction herein contemplated and the compliance by Seller with the terms of this Contract do not and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any agreement, arrangement, understanding, accord, document or instruction by which Seller or the Property are bound; and will not and does not, to the best knowledge and belief of Seller, constitute a violation of any applicable law, rule, regulation, judgment, order or decree of, or agreement with, any governmental instrumentality or court, domestic or foreign, to which Seller or the Property are subject or bound.

H. Executory Agreements. Seller is not a party to, and the Property is not subject to, any contract or agreement of any kind whatsoever, written or oral, formal or informal, with respect to the Property, other than this Contract. Buyer shall not, by reason of entering into or closing under this Contract, become subject to or bound by any agreement, contract, lease, license, invoice, bill, undertaking or understanding which Buyer shall not have expressly and specifically previously acknowledged and agreed in writing to accept. Seller warrants and represents that no written leases, licenses or occupancies exist in regard to the Property and, further, that no person, corporation, entity, tenant, licensee or occupant has an option or right of first refusal to purchase, lease or use the Property, or any portion thereof.

I. Mechanic's Liens. All bills and invoices for labor and material of any kind relating to the Property have been paid in full, and there are no mechanic's liens or other claims outstanding or available to any party in connection with the Property.

J. Governmental Obligations. To the best knowledge of Seller, there are no unperformed obligations relative to the Property outstanding to any governmental or quasi-governmental body or authority.

K. Easements. Seller represents to the best of Seller's knowledge that the Property has no private easements or agreements that would hinder Seller from its intended use of the Property.

L. Section 1445 Withholding. Seller represents that he/she/it/they is/are not a "foreign person" as defined in Section 1445 of the Internal Revenue Code and is/are, therefore, exempt from the withholding requirements of said Section. At Closing, Seller shall furnish Buyer with a Non-Foreign Affidavit as set forth in said Section 1445.

Seller neither indemnifies and nor holds Buyer harmless against all losses, damages, liabilities, costs, expenses (including reasonable attorneys' fees) and charges which Buyer may incur or to which Buyer may become subject as a direct or indirect consequence of such breach of the above representations or warranties made hereunder, including all incidental and consequential damages. When used in this Section, the expression "to the best knowledge and belief of Seller," or words to that effect, is deemed to mean that Seller, without duty of examination, investigation or inquiry, is not aware of any thing, matter or the like that is contrary, negates, diminishes or vitiates that which such term precedes.

16. [INTENTIONALLY OMITTED]

17. **DEFAULT AND CONDITIONS PRECEDENT TO CLOSING.**

A. It is a condition precedent to Closing that:

- i. fee simple title to the Property is shown to be good and marketable, subject only to the Permitted Exceptions, as required hereunder and is accepted by Buyer; and
- ii. Seller has performed under the Contract and otherwise has performed all of its covenants and obligations and fulfilled all of the conditions required of it under the Contract in order to close on the Closing Date.

B. If, before the Closing Date, Buyer becomes aware of a breach of any of Seller's representations and warranties or of Seller failing to perform all of its covenants or otherwise failing to perform all of its obligations and fulfill all of the conditions required of Seller in order to close on the Closing Date, Buyer may, at its option:

- i. elect to enforce the terms hereof by action for specific performance; or
- ii. terminate this Contract; or

iii. proceed to Closing notwithstanding such breach or nonperformance.

In all events, Buyer's rights and remedies under this Contract shall always be non-exclusive and cumulative and the exercise of one remedy shall not be exclusive of or constitute the waiver of any other, including all rights and remedies available to it at law or in equity.

C. In the event of a default by Buyer, Seller shall be entitled to pursue all remedies at law and equity, including, but not limited to, for damages and specific performance.

D. Notwithstanding the foregoing, the parties agree that no default of or by either party shall be deemed to have occurred unless and until notice of any failure by the non-defaulting party has been sent to the defaulting party and the defaulting party has been given a period of five (5) business days from receipt of the notice to cure the default.

18. **BINDING EFFECT.** This Contract shall inure to the benefit of and shall be binding upon the heirs, legatees, transferees, assigns, personal representatives, owners, agents, administrators, executors and/or successors in interest of any kind whatsoever of the parties hereto.

19. **BROKERAGE.** Buyer represents that it has not retained a broker regarding the proposed transaction. Seller represents that it has not retained a broker regarding the proposed transaction. Each party hereby defends, indemnifies and holds the other harmless against any and all claims of brokers, finders or the like, and against the claims of all third parties claiming any right to a commission or compensation by or through acts of that party or that party's partners, agents or affiliates in connection with this Contract. Each party's indemnity obligations shall include all damages, losses, costs, liabilities and expenses, including reasonable attorneys' fees, which may be incurred by the other in connection with all matters against which the other is being indemnified hereunder. This provision shall survive the Closing for six (6) months.

20. **NOTICES.** Any and all notices, demands, consents and approvals required under this Contract shall be sent and deemed received: (A) on the third business day after mailed by certified or registered mail, postage prepaid, return receipt requested, or (B) on the next business day after deposit with a nationally-recognized overnight delivery service (such as Federal Express) for guaranteed next business day delivery, or (C) by e-mail transmission on the day of transmission, with the original notice mailed by certified or registered mail, postage prepared, return receipt requested, or (D) by personal delivery, if addressed to the parties as follows:

If to Seller: City Mayor
City of West Chicago
475 Main Street
West Chicago, Illinois 60185

With a copy to: City Administrator
City of West Chicago
475 Main Street
West Chicago, Illinois 60185

and: Klein, Thorpe and Jenkins, Ltd.
20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606
Attention: Gregory T. Smith

If to Buyer: AVG High Street LLC

Attention: _____

With a copy to: _____

Attention: _____

Any party hereto may change the name(s), address(es) and e-mail address(es) of the designee to whom notice shall be sent by giving written notice of such change to the other parties hereto in the same manner, as all other notices are required to be delivered hereunder.

21. **RIGHT OF WAIVER.** Both Buyer and Seller may, at any time and from time to time, waive each and any condition of the Closing, without waiver of any other condition or other prejudice of its rights hereunder. Such waiver by a party shall, unless otherwise herein provided, be in a writing signed by the waiving party and delivered to the other party.

22. **DISCLOSURE OF INTERESTS.** In accordance with Illinois law, 50 ILCS 105/3.1, prior to execution of this Contract by Seller, an owner, authorized trustee, corporate official or managing agent must submit a sworn affidavit to Seller disclosing the identity of every owner and beneficiary having any interest, real or personal, in the Property, and every shareholder entitled to receive more than 7½% of the total distributable income of any corporation having any real interest, real or personal, in the Property, or, alternatively, if a corporation's stock is publicly traded, a sworn affidavit by an officer of the corporation or its managing agent that there is no readily known individual having a greater than 7½% percent interest, real or personal, in the Property. The sworn affidavit shall in the form in **EXHIBIT C** attached hereto and made a part hereof.

23. **ASSIGNMENT.** Buyer shall not have the right to assign or transfer Buyer's interest in this Contract, without Seller's written consent, which Seller may withhold in its sole and absolute discretion.

24. **MISCELLANEOUS.**

A. Buyer and Seller mutually agree that time is of the essence throughout the term of this Contract and every provision hereof in which time is an element. No extension of time for performance of any obligations or acts shall be deemed an extension of time for performance of any other obligations or acts. If any date for performance of any of the terms, conditions or provisions hereof shall fall on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

B. This Contract provides for the purchase and sale of property located in the State of Illinois, and is to be performed within the State of Illinois. Accordingly, this Contract, and all questions of interpretation, construction and enforcement hereof, and all controversies hereunder, shall be governed by the applicable statutory and common law of the State of Illinois. The parties agree that, for the purpose of any litigation relative to this Contract and its enforcement, venue shall be in the Circuit Court in the county where the Property is located and the parties consent to the *in personam* jurisdiction of said Court for any such action or proceeding.

C. The terms, provisions, warranties and covenants of Section 15 shall survive the Closing and delivery of the Deed and other instruments of conveyance. The provisions of Section 15 of this Contract shall not be merged therein, but shall remain binding upon and for the parties hereto until fully observed, kept or performed.

D. The provisions of the Uniform Vendor and Buyer Risk Act of the State of Illinois shall be applicable to this Contract.

E. Buyer and Seller hereby agree to make all disclosures and do all things necessary to comply with the applicable provisions of the Real Estate Procedures Act of 1974. In the event that either party shall fail to make appropriate disclosures when asked, such failure shall be considered a breach on the part of said party.

F. The parties warrant and represent that the execution, delivery of and performance under this Contract is pursuant to authority, validly and duly conferred upon the parties and the signatories hereto.

G. The Section headings contained in this Contract are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several Sections hereof.

H. Whenever used in this Contract, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

I. If Seller is a Trust, this Contract is executed by the undersigned Trustee, not personally but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. Said Trustee hereby warrants that it possesses full power and authority to execute this Contract. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings, warranties and agreements herein made on the part of the Trustee while in form purporting to be the representations, covenants, undertakings, warranties and agreements of said Trustee are nevertheless each and every one of them made and intended not as personal representations, covenants, undertakings, warranties and agreements by the Trustee or for the purpose or with the intention of binding Trustee personally but are made and intended for the purpose of binding only the trust property, and this Contract is executed and delivered by said Trustee not in its own right, but solely in the exercise of the power conferred upon it as said Trustee; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said Trustee on account of this Contract or on account of any representations, covenants, undertakings, warranties or agreements of said Trustee in this Contract contained either express or implied, all such personal liability, if any, being expressly waived and released.

In the event Seller is a Trust as provided above, this Contract shall be signed by the Trustee and also by the person or entity holding the Power of Direction under the Trust. The person or entity signing this Contract is by his/her/their/its signature represents, warrants and covenants with Buyer that he/she/they/it has the authority to enter into this Contract and the obligations set forth herein. All references to Seller's obligations, warranties and representations shall be interpreted to mean the Beneficiary or Beneficiaries of the Trust.

J. In the event either party elects to file any action in order to enforce the terms of this Contract, or for a declaration of rights hereunder, the prevailing party, as determined by the court in such action, shall be entitled to recover all of its court costs and reasonable attorneys' fees as a result thereof from the losing party.

K. If any of the provisions of this Contract, or the application thereof to any person or circumstance, shall be invalid or unenforceable to any extent, the remainder of the provisions of this Contract shall not be affected thereby, and every other provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

L. This Contract may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

25. **EFFECTIVE DATE.** This Contract shall be deemed dated and become effective on the date that the authorized signatories of Buyer shall sign the Contract, which date shall be the date stated below Buyer's signature.

26. **CONTRACT MODIFICATION.** This Contract and the Exhibits attached hereto and made a part hereof, or required hereby, embody the entire Contract between the parties hereto with respect to the Property and supersede any and all prior agreements and understandings, whether written or oral, and whether formal or informal. No extensions, changes, modifications or amendments to or of this Contract, of any kind whatsoever, shall be made or claimed by Seller or Buyer, and no notices of any extension, change, modification or amendment made or claimed by Seller or Buyer (except with respect to permitted unilateral waivers of conditions precedent by Buyer) shall have any force or effect whatsoever unless the same shall be endorsed in writing and fully signed by Seller and Buyer.

27. **EXHIBITS.** The following Exhibits are attached hereto and made a part hereof by reference:

<u>Exhibit A</u>	Legal Description of the Property
<u>Exhibit B</u>	Permitted Exceptions
<u>Exhibit C</u>	Disclosure Affidavit

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date below their respective signatures.

SELLER:

BUYER:

CITY OF WEST CHICAGO,
an Illinois home rule municipal corporation

By: _____
Name: Ruben Pineda
Title: City Mayor

ATTEST:

By: _____
Name: Nancy Smith
Title: City Clerk

Date Seller executed: _____

AVG HIGH STREET LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

Date Buyer executed: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 7, 8, 9 AND 10 IN BLOCK 3 IN TOWN OF JUNCTION, BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 9, AND PART OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 22, 1856 AS DOCUMENT NO. 10634, IN DUPAGE COUNTY, ILLINOIS.

P.I.Ns.: 04-10-109-011-0000; 04-10-109-012-0000; 04-10-109-013-0000; and 04-10-109-014-0000.

Common Address: 210, 216, 222 and 228 High Street, West Chicago, Illinois 60185.

EXHIBIT B

PERMITTED EXCEPTIONS

1. 2020 and 2021 real estate taxes and subsequent years, not due and payable for the Property.
2. Building lines and easements, if any.
3. Covenants, conditions, restrictions, public and private easements, recorded and unrecorded for utilities and drainage, and other purposes over, under and upon the Property, and covenants, easements, restrictions and matters of record.
4. The restrictions and reservations, if any, contained in the Deed.
5. Acts done or suffered by or judgments against Buyer.

ALL BUYERS MUST SIGN AN AFFIDAVIT THAT IS SUBSTANTIALLY SIMILAR TO THE ONE BELOW

DISCLOSURE AFFIDAVIT

1. That I am over the age of eighteen and the (choose one)
☐ owner or
☐ authorized trustee or
☐ corporate official or
☐ managing agent or
☐ _____ of the Real Estate (as defined herein).

2. That the Real Estate (as defined herein) being sold to Buyer by the City of West Chicago is commonly known as 210, 216, 222 and 228 High Street, West Chicago, Illinois 60185 and is located in the County of DuPage, City of West Chicago, State of Illinois (herein referred to as the "Real Estate"). The Real Estate has Assessor's Permanent Index Numbers of 04-10-109-011-0000; 04-10-109-012-0000; 04-10-109-013-0000; and 04-10-109-014-0000.

3. That I understand that, pursuant to 50 ILCS 105/3.1, prior to execution of a real estate purchase agreement between the record fee owner of the Real Estate and Buyer, Illinois State Law requires the owner, authorized trustee, corporate official or managing agent to submit a sworn affidavit to the Buyer disclosing the identity of every owner and beneficiary having any interest, real or personal, in the Real Estate, and every shareholder entitled to receive more than 7½% of the total distributable income of any corporation having any interest, real or personal, in the Real Estate.

4. As the ☐ owner or
☐ authorized trustee or
☐ corporate official or
☐ managing agent or
☐ _____ of the Real Estate, I declare under oath that
 (choose one):

☐ The owners or beneficiaries of the trust are: _____
 _____ or

☐ The shareholders with more than 7 1/2% interest are: _____
 _____ or

☐ The corporation is publicly traded and there is no readily known individual having greater than a 7½% interest in the corporation.

This Disclosure Affidavit is made to induce the Buyer to accept title to the Real Estate in accordance with 50 ILCS 105/3.1.

AFFIANT

SUBSCRIBED AND SWORN to before me
this ____ day of _____, 2021.

NOTARY PUBLIC

EXHIBIT G

ANTICIPATED ASSESSED VALUES

Year	Anticipated Assessed Valuation
Year 1	\$ 935,999
Year 2	\$ 955,679
Year 3	\$ 975,753
Year 4	\$ 996,228
Year 5	\$ 1,017,112
Year 6	\$ 1,038,414
Year 7	\$ 1,060,143
Year 8	\$ 1,082,306
Year 9	\$ 1,104,912
Year 10	\$ 1,127,970
Year 11	\$ 1,151,489
Year 12	\$ 1,175,479
Year 13	\$ 1,199,949
Year 14	\$ 1,224,908
Year 15	\$ 1,250,366
Total	\$ 16,296,707

EXHIBIT D

**Publisher's Certificate
Relative to the 65 ILCS 5/11-74.4-4(c)
Property Conveyance Notification**

(attached)

PUBLIC NOTICE
PURSUANT TO 65 ILCS 5/11-74.4-4(c)

The Corporate Authorities of the City of West Chicago, at a City Council meeting on _____, 2021 at _____ p.m., at the West Chicago City Hall, 475 Main Street, West Chicago, Illinois 60185, will consider adopting an Ordinance authorizing the Mayor and City Clerk to execute a Development Agreement which will involve the transfer of title to the below-described City-owned property:

LOTS 7, 8, 9 AND 10 IN BLOCK 3 IN TOWN OF JUNCTION, BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 9, AND PART OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 22, 1856 AS DOCUMENT NO. 10634, IN DUPAGE COUNTY, ILLINOIS.

P.I.Ns.: 04-10-109-011-0000; 04-10-109-012-0000; 04-10-109-013-0000; and 04-10-109-014-0000.

Common Address: 210, 216, 222 and 228 High Street, West Chicago, Illinois 60185.

in furtherance of the redevelopment objectives of the West Chicago Downtown TIF District in West Chicago, Illinois. The proposed development will include eight (8) townhomes. A copy of the latest draft of the proposed Development Agreement is available at the City Hall at 475 Main Street, West Chicago, Illinois 60185, for review. Any party interested in submitting an alternative proposal or bid should contact the West Chicago City Administrator, Michael Guttman, at 475 Main Street, West Chicago, Illinois 60185. Any alternative proposals should be submitted to the City Administrator no later than _____, 2021 at 4:00 p.m.

CITY OF WEST CHICAGO

Nancy Smith
City Clerk

CITY OF WEST CHICAGO

DEVELOPMENT COMMITTEE AGENDA ITEM SUMMARY

ITEM TITLE:

De-TIF/Re-TIF Agreement with Kane McKenna and Associates, Inc. for the Downtown TIF District

Resolution No. 21-R-0056

AGENDA ITEM NUMBER: 5.B.

FILE NUMBER: _____

COMMITTEE AGENDA DATE: July 12, 2021

COUNCIL AGENDA DATE: _____

STAFF REVIEW: Tom Dabareiner, AICP

SIGNATURE 

APPROVED BY CITY ADMINISTRATOR: Michael Guttman **SIGNATURE** _____

ITEM SUMMARY:

It has long been planned that the Downtown TIF District, which is nearing its completion, would need to be re-defined to take financial advantage of the redevelopment of the downtown with new townhouses and apartment buildings. Kane McKenna and Associates, Inc. (KMA) proposes to assist the City in investigating the desirability and feasibility of terminating the existing Downtown TIF Redevelopment Project Area. In turn, they would update the boundaries, prepare revenue projections, estimate costs for eligible public improvements, complete a new Redevelopment Plan and Project, and assist with the Termination of the existing Downtown TIF and establishment of the new TIF. While the costs could be less, the not-to-exceed amount for this work is \$45,500.00.

The Resolution authorizes the Mayor to sign the related Agreement. A copy of the Agreement is attached to the Resolution.

ACTION PROPOSED:

Discuss and recommend approval of Resolution No. 21-R-0056.

COMMITTEE RECOMMENDATION:

Pc: Resolution No. 21-R-0056

April 19, 2021

Mr. Michael Guttman
City Administrator
City of West Chicago
475 Mains Street
West Chicago, Illinois 60185

**Re: Letter of Agreement – City of West Chicago Potential De-TIF/Re-TIF of
Downtown TIF District TIF**

Dear Mr. Guttman:

Kane, McKenna and Associates, Inc. ("KMA") is prepared to assist the City of West Chicago (the "City") regarding professional services associated with the review and analysis of the City's Downtown TIF Redevelopment Plan and Project located within the City, generally along the north and south side of Washington Street between Arbor Street and Route 59 (the "Project").

**TASK 1 – UPDATE TIF QUALIFICATION REPORT AND RELATED FISCAL
IMPACT REVIEW**

- (1) Assist the City in investigating the desirability and feasibility of terminating the existing Downtown TIF Redevelopment Project Area and replacing it with a new Downtown TIF Redevelopment Project Area and other appropriate economic development incentives for funding certain redevelopment costs related to redevelopment of the Project.
- (2) Prepare preliminary estimates of tax increment revenues and supportable public assistance.
- (3) Review the characteristics of the Project area in order to update the specific boundaries of the TIF district and related economic development programs, and to assess the potential qualification factors (strengths and weaknesses) of any identified area under Illinois law.

- (4) Prepare a preliminary analysis which assesses the pros and cons of pursuing TIF or other forms of economic incentives.

At a minimum, the Report will include the following:

- a. Review area for land use and conditions and summarize results.
 - b. Establish preliminary project boundaries.
 - c. Determine area qualifications for a potential TIF District.
 - d. Prepare site survey analysis and identify necessary documentation to back up any findings.
- (5) In the event that other local financing programs or economic development tools are complimentary to or alternatives to TIF, KMA would identify programs and a strategy for implementing them and any conditions for their use in connection with the Project.
- (6) For presentation to the City, prepare the initial tax revenue projections and prepare related financing alternatives. Identify potentially eligible public improvements and other activities as well as potential public financing options.

Estimated costs for Task 1 are \$7,500 to \$10,500.

TASK 2 – COMPLETE NEW REDEVELOPMENT PLAN AND PROJECT

Subject to the findings of Task 1 and associated deliberations of the City, under City direction complete the TIF Redevelopment Plan and Project required by the TIF law. Among other elements the Redevelopment Plan prepared for the proposed TIF District will include:

- (1) A statement of redevelopment goals and objectives.
- (2) Examination of TIF qualification factors and presentation of rationale for basis under which the TIF District is to be justified under State law.
- (3) A statement of eligible redevelopment activities the City may allow under the plan.
- (4) Presentation of estimated costs for the redevelopment projects contemplated for implementation under the plan.

- (5) A detailed discussion of impediments to the successful redevelopment of the project area and the measures the City could undertake to eliminate such barriers so as to promote economic revitalization of the project area.
- (6) Assist the City by participating in required public hearings, and Joint Review Board meetings, as well as helping to ensure preparation and execution of proper notification as required for all meetings.
- (7) Assist the City in participating in meetings with all interested and affected parties, including property owners, and overlapping tax jurisdictions. KMA will help the City to follow the procedures for such gatherings as required by State law.
- (8) Work with the City's counsel to meet all the requirements of Illinois law so as to insure proper establishment of the TIF District.
- (9) Assist City's counsel in preparation of the appropriate Ordinances required for adoption of the TIF Redevelopment Plan and Project by the City to legally put in place the TIF District.
- (10) Assist the City to establish and maintain complete documentation files to assure proper support of eligibility findings in order to support legal standing for establishment of the TIF District.

Estimated costs for Task 2 are \$25,000 to \$30,000.

TASK 3 – PREPARE FOR TERMINATION OF EXISTING DOWNTOWN TIF

Subject to the findings of Task 1 and associated deliberations of the City:

- (1) Assist the City with preparing notices of proposed termination of the TIF to taxing districts
- (2) Assist City with reconciliation of existing TIF fund balances, revenues and expenditures.
- (3) Assist City's counsel in preparation of the appropriate Ordinances required for termination of the existing Downtown TIF Redevelopment Plan and Project by the City to legally terminate the existing Downtown TIF District.

Estimated costs for Task 3 are \$2,500 to \$5,000.

Mr. Michael Guttman
Page Four
April 19, 2021

COMPENSATION FOR SERVICES

The City shall be billed monthly for services at the following rates per hour:

<u>Personnel</u>	<u>Hourly Rates</u>
Chairman/President	\$225.00/Hour
Executive Vice President	\$200.00/Hour
Officers	\$175.00/Hour
Associates	\$125.00/Hour
Research	\$ 70.00/Hour
Administrative	\$ 30.00/Hour

Either party may cancel this contract upon three (3) days written notice.

It is understood that the City intends to pass along costs incurred for the work to the proposed owner/developer.

Please note that hourly billings do not include out of pockets for newspaper publications, large mailings, and the preparation of the legal descriptions

Mr. Michael Guttman
Page Four
April 19, 2021

Please indicate City's acceptance of this Agreement by executing the original and copy, and by returning the original to us. We look forward to working with you on this project.

Sincerely,

Philip R. McKenna

Philip R. McKenna
President

Nina J. Coppola

Nina J. Coppola
Vice President

AGREED TO:

Philip R. McKenna
Philip R McKenna, President
Kane, McKenna and Associates, Inc.

Date

City of West Chicago

Date