

August 12, 2021

VIA UPS OVERNIGHT

Mr. Charles Meyer
Assistant Village Manager
Village of Lincolnwood
6900 N. Lincoln Ave.
Lincolnwood, IL 60712

Re: District 1860 – Redevelopment Agreement-Second Amendment

Dear Chuck:

Enclosed are four (4) original copies of the D1860-Lincolnwood, IL Redevelopment Agreement-Second Amendment executed by Tucker Development. Please have all four copies signed by Mayor Patel and return them to me for recordation.

Sincerely,


Steven M. Elrod

SME/js
Enclosures

THIS SPACE FOR RECORDERS USE ONLY

VILLAGE OF LINCOLNWOOD

ORDINANCE NO. 2021-3542

**AN ORDINANCE APPROVING AN AMENDMENT TO
THE DISTRICT 1860 PLANNED UNIT DEVELOPMENT
(4500-4560 West Touhy Avenue and 7350 North Lincoln Avenue)**

ADOPTED BY THE
PRESIDENT AND BOARD OF TRUSTEES
OF THE VILLAGE OF LINCOLNWOOD
THIS 20th DAY OF JULY, 2021.

Published in pamphlet form
by the authority of the
President and Board of Trustees
of the Village of Lincolnwood,
Cook County, Illinois this
20th day of July, 2021


Village Clerk

**AN ORDINANCE APPROVING AN AMENDMENT TO
THE DISTRICT 1860 PLANNED UNIT DEVELOPMENT
(4500-4560 West Touhy Avenue and 7350 North Lincoln Avenue)**

WHEREAS, Touhy & Lincoln LLC ("**Owner**") is the record title owner of those certain parcels of real property consisting of approximately 8.47 acres, located at the address commonly known as 4500-4560 West Touhy Avenue and 7350 North Lincoln Avenue, Lincolnwood, Illinois, and legally described in **Exhibit A** attached to and, by this reference, made a part of this Ordinance ("**Property**"); and

WHEREAS, on November 20, 2018, the Village President and Board of Trustees adopted Resolution No. R2018-2104 ("**Preliminary Approval Resolution**"), approving a preliminary plat of subdivision and a preliminary development plan for a planned unit development on the Property, consisting of the development of a multiple-building mixed-use residential, retail, commercial, and hotel development on the Property, comprised of: (i) a seven-story hotel building at the northern end of the Property ("**Hotel Building**"); (ii) a six-story mixed-use building in the southeast portion of the Property ("**Mixed-Use Building**"); and (iii) a one-story retail and commercial building, with rooftop parking, in the southwest portion of the Property ("**Retail/Commercial Building**") (collectively, the "**District 1860 PUD**"); and

WHEREAS, the Village, the Owner, and First LWD, LLC have entered into: (i) a redevelopment agreement, dated February 5, 2019, governing the use and development of the Property, incorporating the conditions set forth in the Preliminary Approval Resolution, and setting forth their respective rights and responsibilities concerning the provision of tax increment financing to stimulate and induce the development of the Property; and (ii) a first amendment to the redevelopment agreement, dated September 15, 2020 (as amended, the "**Redevelopment Agreement**"); and

WHEREAS, First LWD, LLC, has since withdrawn from the Redevelopment Agreement in accordance with Section 16.B.1 of the Redevelopment Agreement; and

WHEREAS, the Owner sought final approval for the District 1860 PUD in two stages: (i) the first stage, consisting of the Mixed-Use Building and the Retail/Commercial Building, and of the off-street parking lots, utilities, landscaping, and other improvements that will serve those two buildings ("**Stage 1**"); and (ii) the second stage, consisting of the Hotel Building and the off-street parking lots, utilities, landscaping, and other improvements that will serve that building ("**Stage 2**"); and

WHEREAS, on November 19, 2019, the Village President and Board of Trustees adopted the following documents concerning the District 1860 PUD:

1. Resolution No. R2019-2200, amending the approved preliminary development plan for the District 1860 PUD to: (a) increase the footprint of the Retail/Commercial Building, from approximately 22,500 square feet to approximately 35,000 square feet; (b) relocate the Mixed-Use Building from a location that is set back six feet from the Touhy Avenue right-of-way; (c) reduce the width of the perimeter landscaped screening along the west property line of

the Property to three feet six inches; and (d) reduce the number of parkway trees to be planted within the Touhy Avenue right-of-way; and

2. Resolution No. R2019-2201, approving the final plat of subdivision for the Property; and

3. Ordinance No. 2019-3432 ("**Stage 1 Special Use Ordinance**"), granting a special use permit and approving a final development plan for Stage 1 of the District 1860 PUD ("**Stage 1 Final Development Plan**").

WHEREAS, on February 18, 2020, the President and Board of Trustees adopted the following documents concerning the District 1860 PUD:

1. Resolution No. R2020-2221, further amending the approved preliminary development plan for the District 1860 PUD to: (i) reduce the width of the perimeter landscaped screening along the northwest property line of the Hotel Parcel to three feet; (ii) reduce the quantity of high-quality materials required for the exterior building elevations of the Hotel Building; and (iii) increase the maximum permitted height of the Hotel Building to 85 feet and seven stories; and

2. Ordinance No. 3453, granting a special use permit and approving a final development plan for Stage 2 of the District 1860 PUD.

WHEREAS, on September 15, 2020, the President and Board of Trustees adopted Ordinance No. 2020-3487, amending the special use permit and the Stage 1 Final Development Plan approved by the Stage 1 Special Use Ordinance to allow for construction of the Proposed Development in accordance with an alternate design for the Retail/Commercial Building and for the off-street parking areas on the Property ("**2020 Amendatory Ordinance**"); and

WHEREAS, Section 5.A of the 2020 Amendatory Ordinance provided that the 2020 Amendatory Ordinance would not take effect unless the Owner elected to pursue the development of Stage 1 of the Proposed Development in accordance with the 2020 Amendatory Ordinance; and

WHEREAS, pursuant to Section 3 of the Stage 1 Special Use Ordinance, Stage 1 of the Property must be developed, used, and maintained in accordance with the Stage 1 Final Development Plan; and

WHEREAS, pursuant to Section 4.E of the Stage 1 Special Use Ordinance, the Village has approved a modification from Section 7.10 of "The Village of Lincolnwood Ordinance," as amended ("**Zoning Ordinance**"), to decrease the minimum number of off-street parking spaces for the Property, from 988 spaces to 749 spaces; and

WHEREAS, the Owner now desires to further modify the Proposed Development of the Property, to: (1) modify the footprint of the Retail/Commercial Building; (2) increase the size of the Retail/Commercial Building, from 35,400 square feet to 38,015 square feet; (3) reduce the height of the Retail/Commercial Building, from 49 feet to 40 feet; (4) modify the design of the off-street parking areas on the Property; (5) modify the location of signage on the Property; and (6) modify the exterior building materials for the Retail/Commercial Building (collectively, the "**Proposed Modifications**"); and

WHEREAS, in order to allow the construction of the District 1860 PUD with the Proposed Modifications, pursuant to Article VIII, Part A of the Zoning Ordinance, the Owner filed an application with the Village for approval of: (i) an amendment to the District 1860 PUD; and (ii) additional zoning modifications within the District 1860 PUD to allow the Proposed Modifications (collectively, the *“Requested Relief”*); and

WHEREAS, a public hearing of the Plan Commission of the Village of Lincolnwood to consider approval of the Requested Relief was duly advertised in the *Chicago Tribune* on June 22, 2021, and held on July 7, 2021; and

WHEREAS, on July 7, 2021, the Plan Commission made findings and recommendations in support of the Requested Relief, subject to specified conditions; and

WHEREAS, the President and Board of Trustees has determined that the Proposed Modifications comply with the required standards for special use permits and planned unit developments as set forth in Articles V and VIII of the Zoning Ordinance; and

WHEREAS, the Owner has agreed to execute and record an amendment to the Redevelopment Agreement, prepared by the Village Attorney, reflecting the Proposed Modifications, the text of which is in substantially in the form attached to and, by this reference, made a part of this Ordinance as **Exhibit I (“Second Amendment to Redevelopment Agreement”)**; and

WHEREAS, consistent with the Plan Commission recommendation, the President and Board of Trustees have determined that it will serve and be in the best interests of the Village and its residents to approve the Requested Relief, in accordance with, and subject to, the conditions, restrictions, and provisions of this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE PRESIDENT AND BOARD OF TRUSTEES OF LINCOLNWOOD, COOK COUNTY, ILLINOIS, as follows:

SECTION 1. RECITALS. The facts and statements contained in the preamble to this Ordinance are found to be true and correct and are hereby adopted as part of this Ordinance.

SECTION 2. APPROVAL OF AMENDMENT TO DISTRICT 1860 PUD. Subject to, and contingent upon, the conditions, restrictions, and provisions set forth in Section 5 of this Ordinance, the Village President and Board of Trustees hereby approve an amendment to the District 1860 PUD in accordance with the Amended Stage 1 Final Development Plan (as defined in Section 4 of this Ordinance) and to permit the Proposed Modifications on the Property, in accordance with, and pursuant to, Articles V and VIII of the Zoning Ordinance and the home rule powers of the Village.

SECTION 3. APPROVAL OF ZONING MODIFICATIONS WITHIN A PLANNED DEVELOPMENT. In accordance with and pursuant to Section 8.03(3) of the Zoning Ordinance and the home rule powers of the Village, and subject to, and contingent upon, the conditions, restrictions, and provisions set forth in Section 5 of the Ordinance, the President and Board of Trustees hereby approve the following modifications from the Zoning Ordinance for the District 1860 PUD:

A. Off-Street Parking Space Quantity. A modification from Section 7.10 of the Zoning Ordinance to further decrease the minimum number of required off-street parking spaces, to 721 spaces.

B. Off-Street Parking Space Width. A modification from Section 7.06(6) of the Zoning Ordinance to decrease the minimum width for 43 of the off-street parking spaces on the Property, from nine feet to eight feet six inches, as depicted in the Amended Stage 1 Final Development Plan.

C. Building Materials. A modification from Section 6.04(4) of the Zoning Ordinance to permit the construction of the Retail/Commercial Building with precast panels used as a predominant material.

D. Monument Signs. A modification from Section 11.04(1)i.1 of the Zoning Ordinance to increase the quantity of monument signs permitted on the Property, from one sign to four signs.

SECTION 4. APPROVAL OF AMENDED STAGE 1 FINAL DEVELOPMENT PLAN.

A. Approval of Amendment. Subject to, and contingent upon, the conditions, restrictions, and provisions set forth in Section 5 of this Ordinance, the President and Board of Trustees hereby amends the Stage 1 Final Development Plan for Stage 1 of the District 1860 PUD to include the following documents (collectively, the "*Amended Stage 1 Final Development Plan Documents*"):

1. The Engineering Plans, prepared by Gewalt Hamilton Associates and consisting of two sheets, with a latest revision date of June 10, 2021, a copy of which is attached to this Ordinance as **Exhibit B**;

2. The Landscape Plan, prepared by Callison RTKL and consisting of one sheet, with a latest revision date of June 23, 2021, a copy of which is attached to this Ordinance as **Exhibit C**;

3. The Site and Roof Plans, prepared by Callison RTKL and consisting of three sheets, with a latest revision date of June 23, 2021, a copy of which is attached to this Ordinance as **Exhibit D**;

4. The Sight-Line Study Plan, prepared by Callison RTKL and consisting of one sheet, with a latest revision date of June 23, 2021, a copy of which is attached to this Ordinance as **Exhibit E**;

5. The Building B Elevations, prepared by Callison RTKL and consisting of two sheets, with a latest revision dates of June 22, 2021 and June 23, 2021, a copy of which is attached to this Ordinance as **Exhibit F**; and

6. The Site Rendering View Plans, prepared by Callison RTKL and consisting of three sheets, with a latest revision dates of June 22, 2021 and June 23, 2021, a copy of which is

attached to this Ordinance as **Exhibit G**; and

7. The Building Facade Materials Plan, prepared by Callison RTKL and consisting of one sheet, with a latest revision date of June 23, 2021, a copy of which is attached to this Ordinance as **Exhibit H**;

8. The Revised Final Plat of Subdivision, to be submitted and reviewed in accordance with Section 5.C of this Ordinance and pursuant to Chapter 16 of the "Municipal Code of Lincolnwood," as amended ("*Village Code*"), and which, upon approval, will automatically be deemed to be a component of the Amended Stage 1 Final Development Plan without further amendment or modification of this Ordinance or of the District 1860 PUD.

B. Conflicts. In the event that any of the Amended Stage 1 Final Development Plan Documents conflict with the plans and documents identified in Section 3 of the Stage 1 Special Use Ordinance or in Section 4 of the 2020 Amendatory Ordinance, the Amended Stage 1 Final Development Plan Documents control.

SECTION 5. CONDITIONS. Notwithstanding any use or development right that may be applicable or available pursuant to the provisions of the Zoning Ordinance, or any other rights the Owner may have, the approvals granted in Section 2 of this Ordinance are hereby expressly subject to and contingent upon the development, use, and maintenance of the District 1860 PUD and the Property in compliance with each and all of the following conditions:

A. Standard Conditions.

1. Compliance with Regulations. The development, use, operation, and maintenance of the Property must comply with all applicable Village codes and ordinances, as the same have been or may be amended from time to time, except to the extent specifically provided otherwise in this Ordinance.

2. Compliance with Amended Stage 1 Final Development Plan. The redevelopment, use, operation, and maintenance of the Property must comply with the Amended Stage 1 Final Development Plan, except: (a) for minor changes and site work approved by the Director of Community Development and the Village Engineer (for matters within their respective permitting authorities) in accordance with all applicable Village standards; and (b) as provided in Section 5.D of this Ordinance.

B. Second Amendment to Redevelopment Agreement.

1. Execution and Recordation. Within 30 days after the adoption of this Ordinance, the Owner must execute the Second Amendment to Redevelopment Agreement.

2. Compliance. The development, use, operation, and maintenance of the Property must at all times comply with all terms, conditions, restrictions, and provisions of the Development Agreement, as amended by the Second Amendment to Redevelopment Agreement.

C. Revised Plat of Subdivision. Prior to issuance of a building permit for the Retail/Commercial Building, the Owner must comply with the applicable procedures for review

and approval of a revised final plat of subdivision for the Property, reflecting the Proposed Modifications to the District 1860 PUD, as set forth in Section 16-4-5 of the Village Code.

D. Use of Materials on Retail/Commercial Building. The Owner must use its good faith efforts to modify the materials used on the west façade of the Retail/Commercial Building, and to screen view of the west façade from points west of the Property, in order to improve the aesthetic appearance of the west façade.

E. Transformer Screening. The Owner must screen the transformer to be located on the Property along the Touhy Avenue right-of-way, to the satisfaction of the Village Manager.

F. Reimbursement of Village Costs. In addition to any other costs, payments, fees, charges, contributions, or dedications required under applicable Village codes, ordinances, resolutions, rules, or regulations, the Owner must pay to the Village, promptly upon presentation of a written demand or demands therefor, all legal fees, costs, and expenses incurred or accrued in connection with the review, negotiation, preparation, consideration, and review of this Ordinance. Payment of all such fees, costs, and expenses for which demand has been made must be made by a certified or cashier's check. Further, the Owner must pay upon demand all costs incurred by the Village for publications and recordings required in connection with the aforesaid matters.

SECTION 6. CONTINUED EFFECT; CONFLICTS.

A. Except as expressly modified by this Ordinance, the District 1860 PUD will remain in full force and effect, and the Owner and Applicant must comply with all requirements, conditions, and restrictions in the District 1860 PUD. Any violation of this Ordinance will be deemed a violation of the District 1860 PUD and the Zoning Ordinance.

B. In the event of a conflict between the provisions of any of the ordinances comprising the District 1860 PUD and the provisions of this Ordinance, the provisions of this Ordinance will control.

SECTION 7. RECORDATION; BINDING EFFECT. A copy of this Ordinance will be recorded in the Office of the Cook County Recorder of Deeds. This Ordinance and the privileges, obligations, and provisions contained herein run with the Property and inure to the benefit of, and be binding upon, the Owner and its personal representatives, successors, and assigns, including, without limitation, subsequent owners or lessees of the Property.

SECTION 8. FAILURE TO COMPLY WITH CONDITIONS. Upon the failure or refusal of the Owner to comply with any or all of the conditions, restrictions, or provisions of this Ordinance, in addition to all other remedies available to the Village, the approvals granted in Sections 2, 3, and 4 of this Ordinance will, at the sole discretion of the Village President and Board of Trustees, by ordinance duly adopted, be revoked and become null and void; provided, however, that the Village President and Board of Trustees may not so revoke the approvals granted in Sections 2, 3, and 4 unless it first provides the Owner with two months advance written notice of the reasons for revocation and an opportunity to be heard at a regular meeting of the Village President and Board of Trustees. In the event of such revocation, the Village Manager and Village Attorney are hereby authorized and directed to bring such zoning enforcement action as may be appropriate under the circumstances.

SECTION 9. AMENDMENTS. Any amendment to any provision of this Ordinance may be granted only pursuant to the procedures, and subject to the standards and limitations, provided in the Zoning Ordinance.

SECTION 10. SEVERABILITY. If any provision of this Ordinance or part thereof is held invalid by a court of competent jurisdiction, the remaining provisions of this Ordinance are to remain in full force and effect, and are to be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Ordinance to the greatest extent permitted by applicable law.

SECTION 11. EFFECTIVE DATE. This Ordinance will be effective only upon the occurrence of all of the following events:

- A. Passage by the Village President and Board of Trustees in the manner required by law; and
- B. Publication in pamphlet form in the manner required by law; and
- C. Recordation of this Ordinance, together with such exhibits as the Village Clerk deems appropriate for recordation, with the office of the Recorder of Cook County.

PASSED this 20th day of July, 2021.

AYES: Trustees Martel, Ikezoe-Halevi, Saleem, Diaz Herrera, Sargon, Klatzco
NAYS: None
ABSENT: None
ABSTENTION: None

APPROVED by me this 20th day of July, 2021.



Jesal Patel, President
Village of Lincolnwood, Cook County, Illinois

ATTESTED and FILED in my office this
20th day of July, 2021


Beryl Herman, Village Clerk
Village of Lincolnwood, Cook County, Illinois

EXHIBIT A

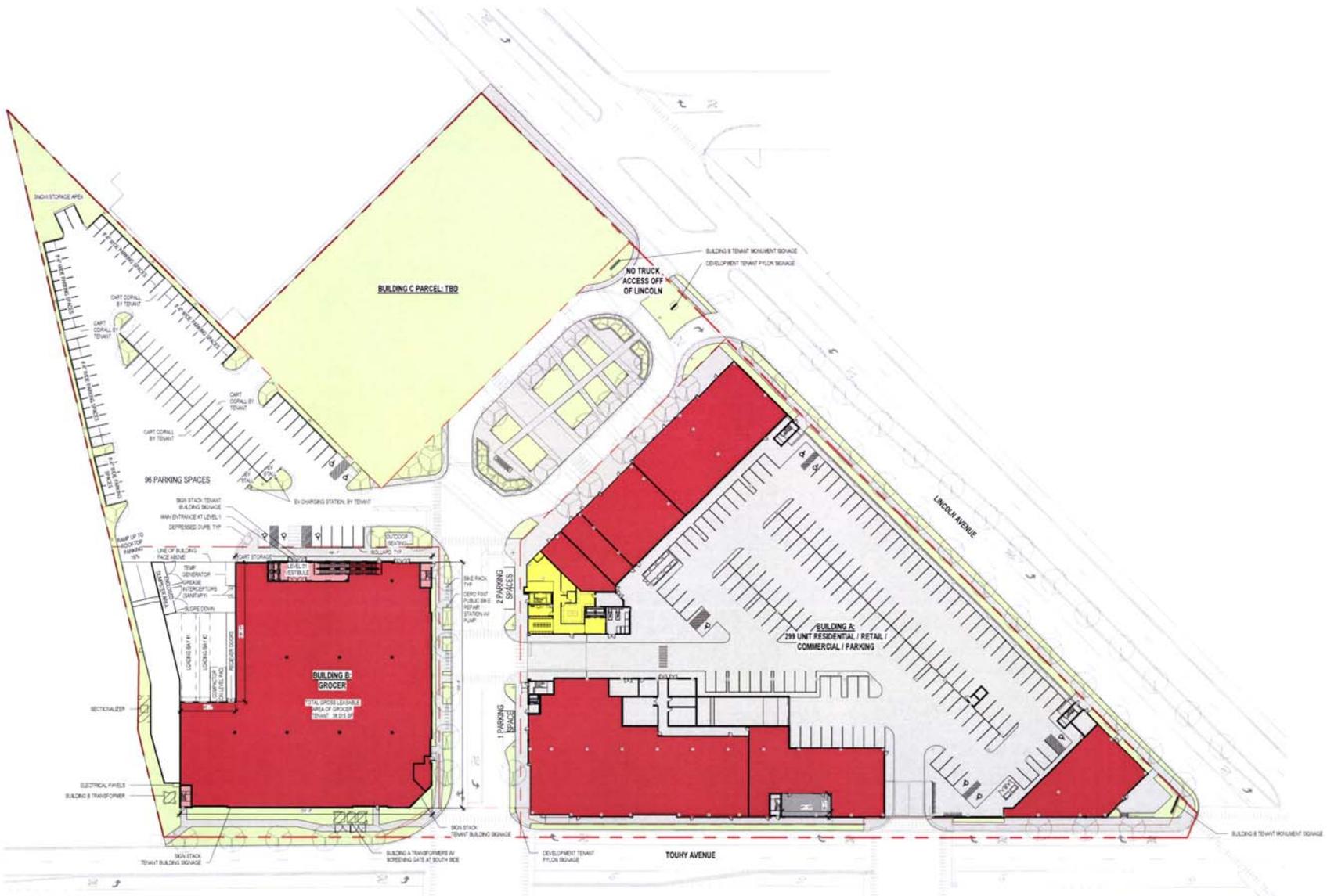
LEGAL DESCRIPTION OF THE PROPERTY

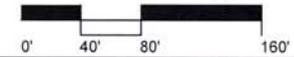
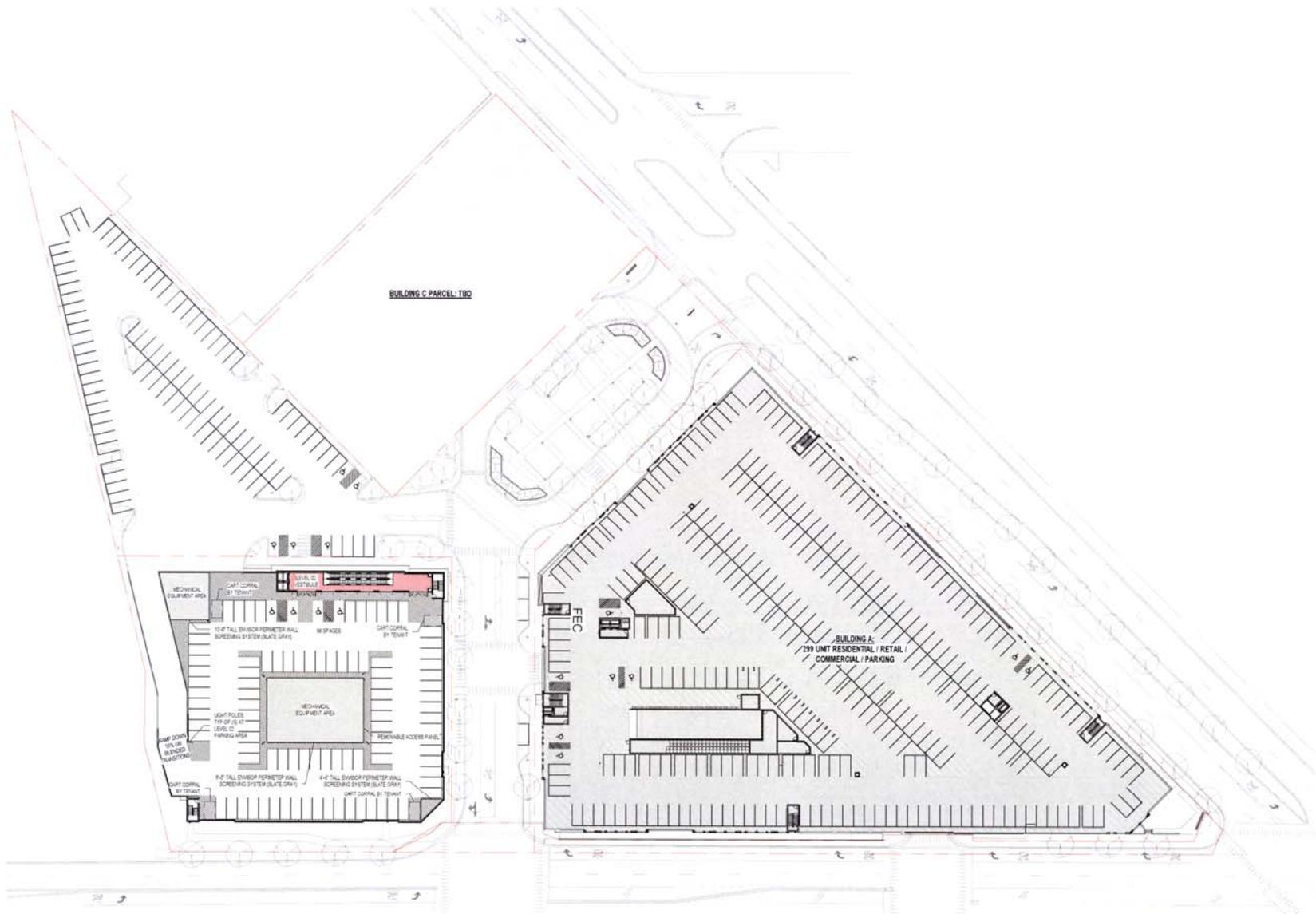
LOTS 1, 2, 3 AND 4 IN LINCOLN-TOUHY SECOND ADDITION TO LINCOLNWOOD,
BEING A RESUBDIVISION IN THE SOUTHWEST ¼ OF SECTION 27, TOWNSHIP 41
NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT PARTS
TAKEN FOR HIGHWAY PURPOSES) IN COOK COUNTY ILLINOIS.

EXHIBIT B
ENGINEERING PLANS

EXHIBIT C
LANDSCAPE PLAN

EXHIBIT D
SITE AND ROOF PLANS





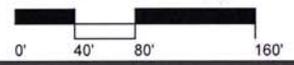
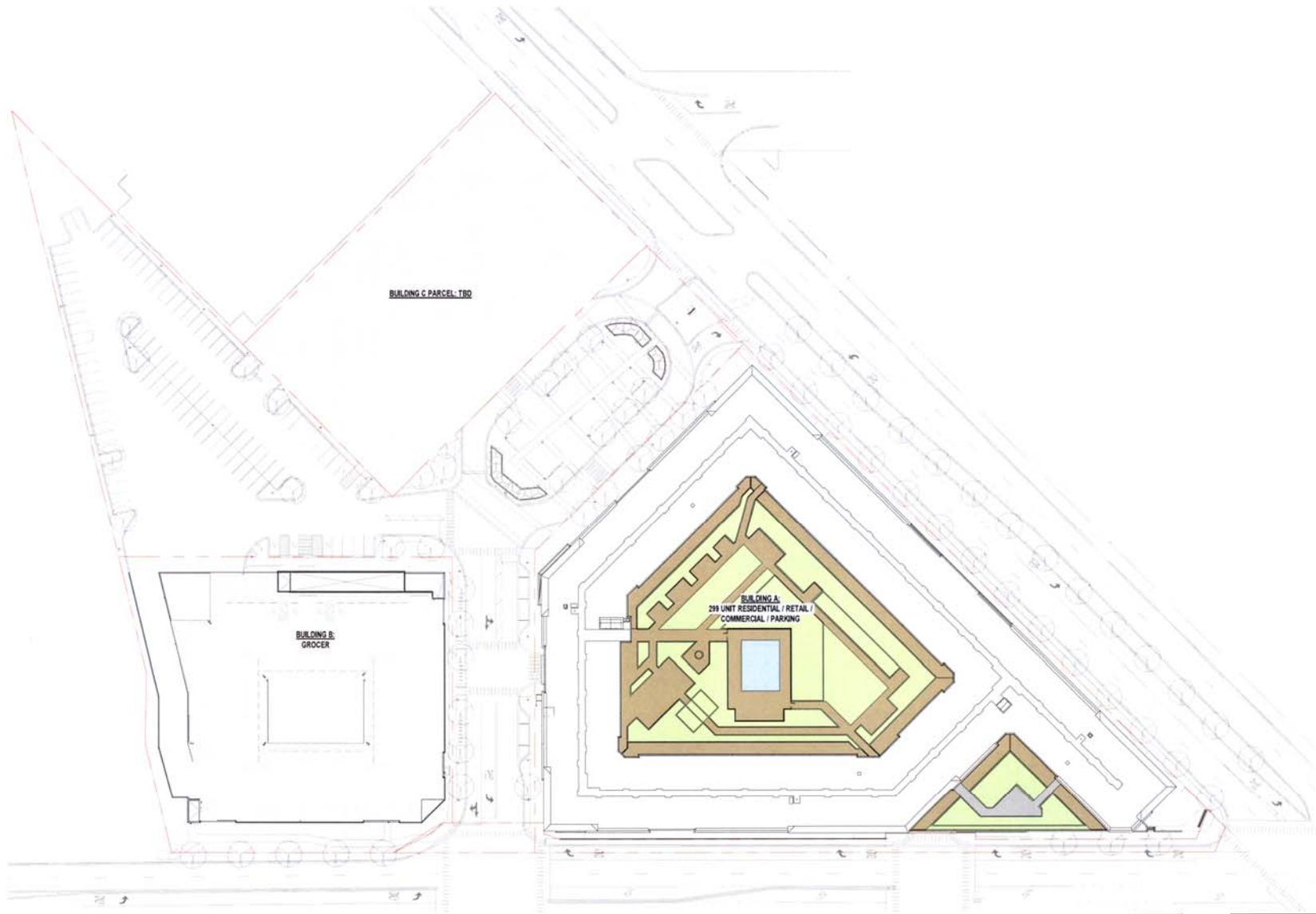
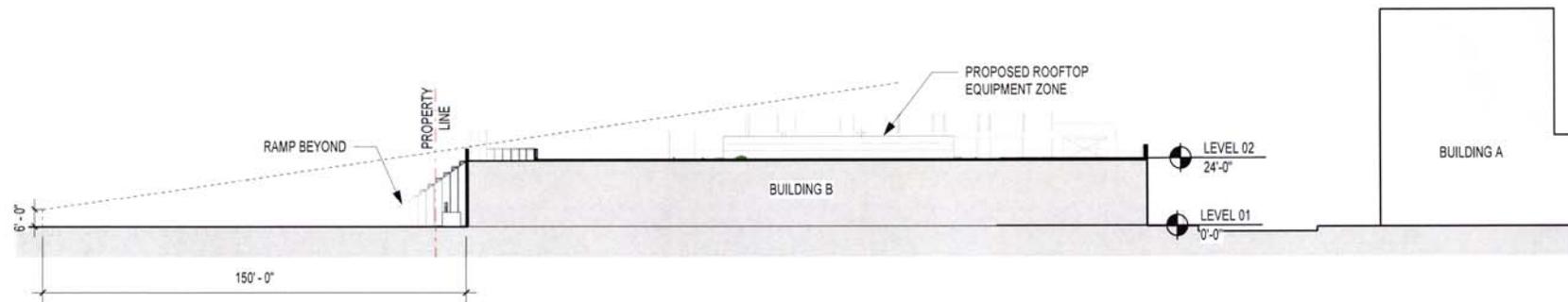
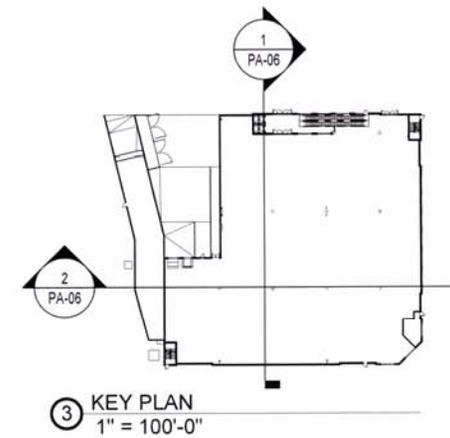
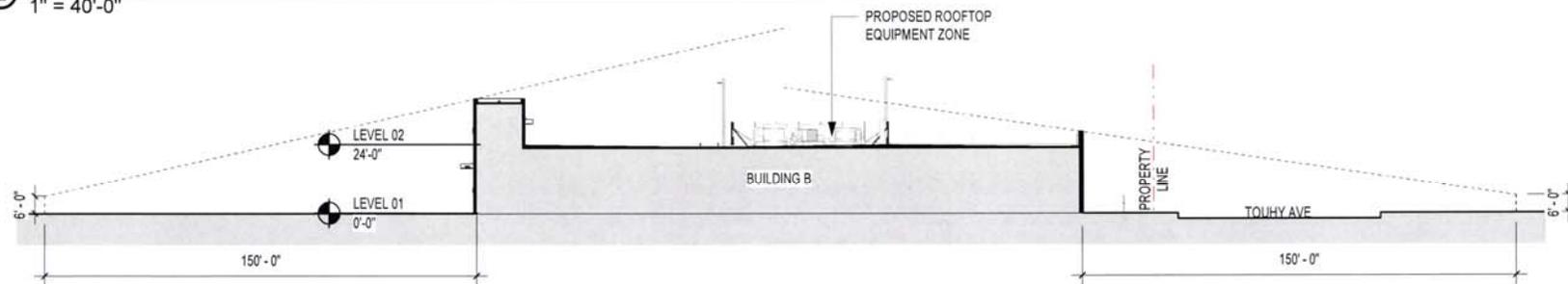


EXHIBIT E
SIGHT-LINE STUDY PLANS



② SIGHT LINE SECTION - BUILDING B E/W
1" = 40'-0"



① SIGHT LINE SECTION - BUILDING B N/S
1" = 40'-0"

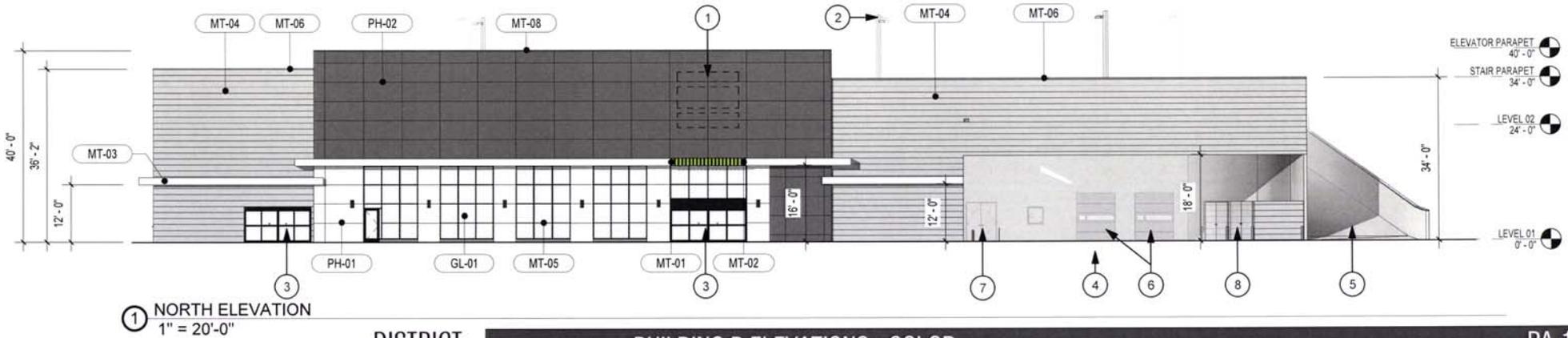
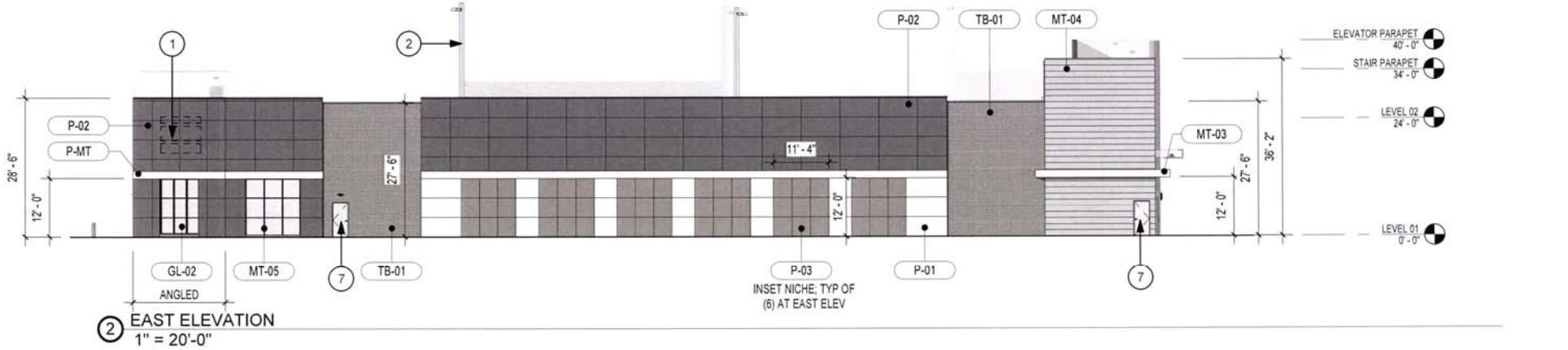
NOTE: VIEWS SHOWN ABOVE DEPICT INABILITY TO SEE ROOF TOP UNITS FROM POSITIONS ON OR OFF SITE; THEREFORE, ROOF TOP SCREENING NOT REQUIRED.

EXHIBIT F
BUILDING ELEVATIONS

EXTERIOR MATERIALS	
MARK	DESCRIPTION
GL-01	STOREFRONT GLAZING (CLEAR)
GL-02	STOREFRONT GLAZING (OBSCURE)
MT-01	PREFINISHED METAL CANOPY (BLACK KYNAR)
MT-02	PREFINISHED METAL COPING (SHERWIN WILLIAMS ELECTRIC LIME GREEN 6921)
MT-03	PREFINISHED METAL CANOPY SYSTEM (BONE WHITE KYNAR)
MT-04	CORRUGATED METAL PANEL
MT-05	BLACK ANODIZED ALUMINUM STOREFRONT SYSTEM
MT-06	PARAPET COPING

EXTERIOR MATERIALS	
MARK	DESCRIPTION
P-01	PAINT TO MATCH PHENOLIC PANEL (COLOR 1) FASHION GREY 5619-CB
P-02	PAINT TO MATCH PHENOLIC PANEL (COLOR 2) GRAPHITE SPECTRUM 6726-AB
P-03	PAINT TO MATCH PHENOLIC PANEL (COLOR 3) TBD
P-11	PAINT (SHERWIN WILLIAMS SW 7861 REFLECTION)
P-MT	PAINT TO MATCH PREFINISHED METAL CANOPY SYSTEM (BONE WHITE KYNAR)
PC-01	PRECAST CONCRETE
PH-01	PHENOLIC PANEL (COLOR 2) GRAPHITE SPECTRUM 6726-AB
PH-02	PHENOLIC PANEL (COLOR 1) FASHION GREY 5619-CB
TB-01	THIN BRICK (ENDICOTT VELOUR SN4)

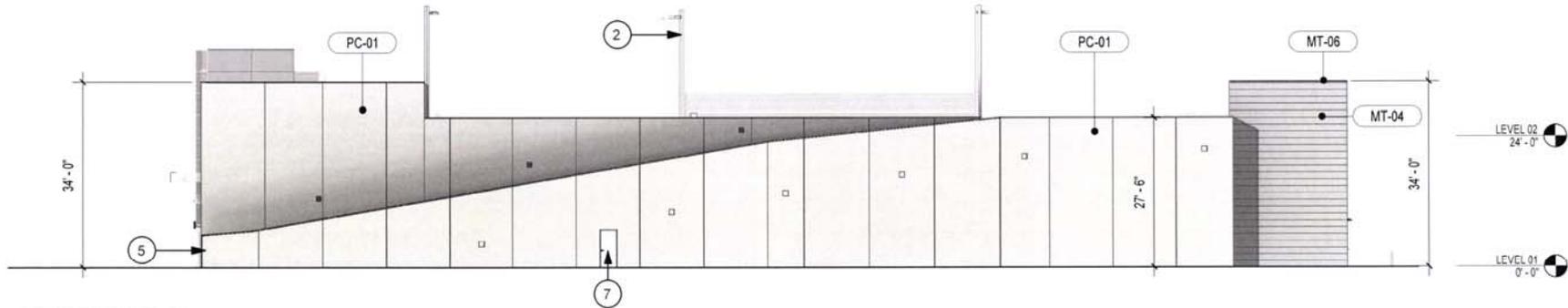
KEYNOTE LEGEND	
#	DESCRIPTION
1	ANCHOR TENANT SIGNAGE LOCATION. FINAL ANCHOR SIGNAGE TO BE REVIEWED & APPROVED UNDER SEPARATE SUBMITTAL
2	POLE MOUNTED LIGHT FIXTURE BEYOND
3	PEDESTRIAN ENTRY/EXIT
4	RECESSED LOADING DOCK
5	ROOFTOP PARKING RAMP
6	INSULATED OVERHEAD LOADING DOOR
7	HOLLOW METAL DOOR, PAINTED TO MATCH ADJACENT MATERIAL
8	TRASH ENCLOSURE
9	SCREENED TRANSFORMER LOCATION



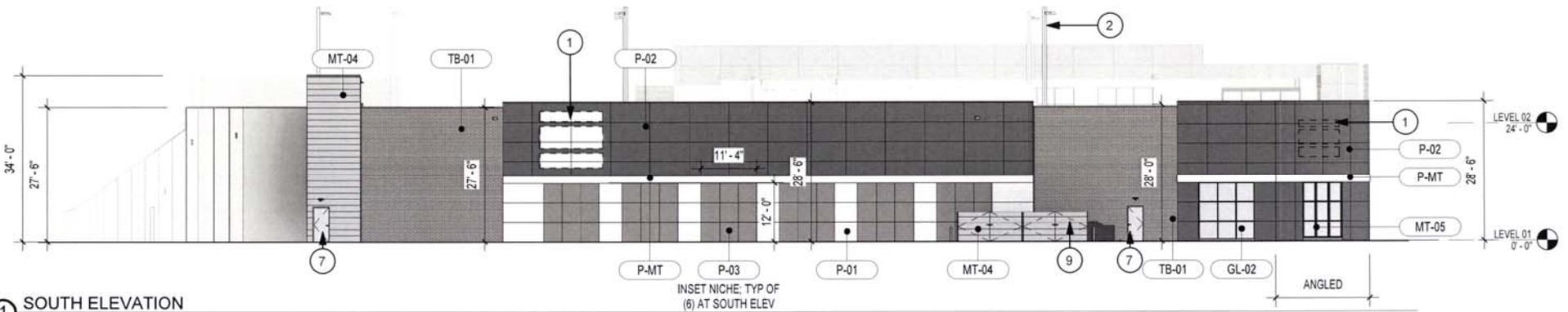
EXTERIOR MATERIALS	
MARK	DESCRIPTION
GL-01	STOREFRONT GLAZING (CLEAR)
GL-02	STOREFRONT GLAZING (OBSCURE)
MT-01	PREFINISHED METAL CANOPY (BLACK KYNAR)
MT-02	PREFINISHED METAL COPING (SHERWIN WILLIAMS ELECTRIC LIME GREEN 6921)
MT-03	PREFINISHED METAL CANOPY SYSTEM (BONE WHITE KYNAR)
MT-04	CORRUGATED METAL PANEL
MT-05	BLACK ANODIZED ALUMINUM STOREFRONT SYSTEM
MT-06	PARAPET COPING

EXTERIOR MATERIALS	
MARK	DESCRIPTION
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P-02	PAINT TO MATCH PHENOLIC PANEL (COLOR 2) GRAPHITE SPECTRUM 6726-AB
P-03	PAINT TO MATCH PHENOLIC PANEL (COLOR 3) TBD
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P-MT	PAINT TO MATCH PREFINISHED METAL CANOPY SYSTEM (BONE WHITE KYNAR)
PC-01	PRECAST CONCRETE
PH-01	PHENOLIC PANEL (COLOR 2) GRAPHITE SPECTRUM 6726-AB
PH-02	PHENOLIC PANEL (COLOR 1) FASHION GREY 5619-CB
TB-01	THIN BRICK (ENDICOTT VELOUR SN4)

KEYNOTE LEGEND	
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8	TRASH ENCLOSURE
9	SCREENED TRANSFORMER LOCATION



② WEST ELEVATION
1" = 20'-0"



① SOUTH ELEVATION
1" = 20'-0"

EXHIBIT G

SITE RENDERING VIEW PLANS





CALLISONRTKL

VIEW NORTH INTO SITE BETWEEN BUILDINGS A AND B

DISTRICT
1860

TUCKER
DEVELOPMENT



CALLISONRTKL

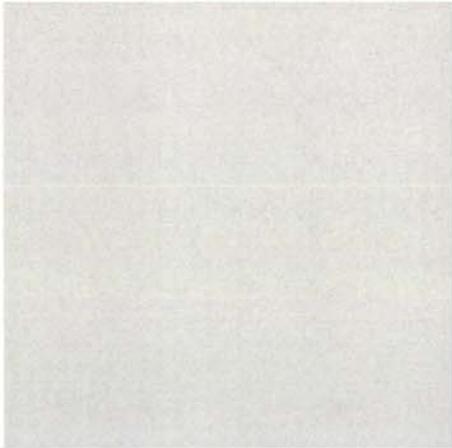
PA-21

6/23/2021

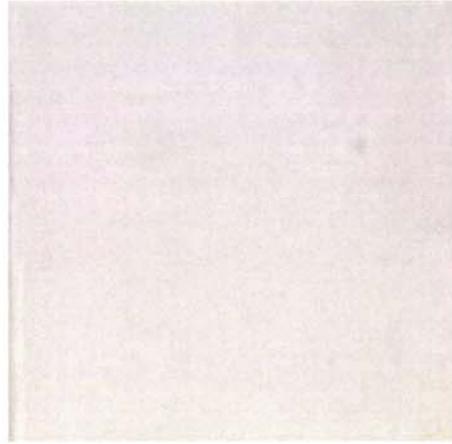


EXHIBIT H
BUILDING FAÇADE MATERIAL PLAN

PHENOLIC PANEL & PAINTED PRECAST TO
MATCH PHENOLIC PANEL



PRECAST CONCRETE



THIN BRICK



CORRUGATED METAL PANEL

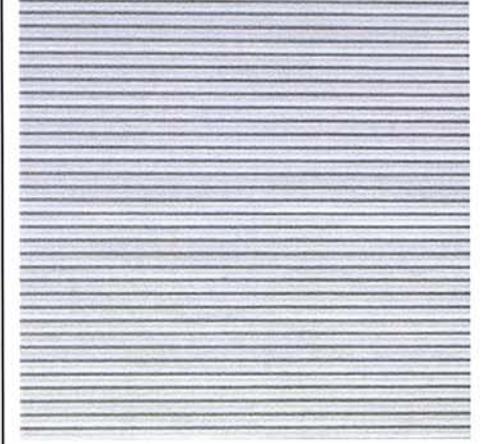


EXHIBIT I

SECOND AMENDMENT TO REDEVELOPMENT AGREEMENT

**THIS DOCUMENT
PREPARED BY AND AFTER
RECORDING RETURN TO:**

Steven M. Elrod
Elrod Friedman LLP
325 N. LaSalle St., Ste. 400
Chicago, IL 60654

Above Space For Recorder's Use Only

**SECOND AMENDMENT TO THE REDEVELOPMENT AGREEMENT
BY AND BETWEEN
THE VILLAGE OF LINCOLNWOOD AND
TOUHY & LINCOLN LLC
(DISTRICT 1860 DEVELOPMENT)
DATED AS OF JULY 20, 2021**

**SECOND AMENDMENT TO THE REDEVELOPMENT AGREEMENT
BY AND BETWEEN
THE VILLAGE OF LINCOLNWOOD AND
TOUHY & LINCOLN LLC
(DISTRICT 1860 DEVELOPMENT)**

THIS IS A SECOND AMENDMENT ("**Second Amendment**"), dated as of July 20, 2021 ("**Effective Date**"), to a Redevelopment Agreement dated February 5, 2019, as amended by that certain First Amendment dated as of September 15, 2020 (as amended, the "**Redevelopment Agreement**"), by and between the **VILLAGE OF LINCOLNWOOD**, an Illinois home rule municipal corporation ("**Village**"), and **TOUHY & LINCOLN LLC**, an Illinois limited liability company ("**Retail Developer**").

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth in this First Amendment, and pursuant to the Village's home rule powers, the Village and the Retail Developer hereto agree as follows:

SECTION 1. RECITALS.

A. Retail Developer is the record title owner of those certain parcels of real property consisting of approximately 8.47 acres, commonly known as 4500-4560 West Touhy Avenue and 7350 North Lincoln Avenue, Lincolnwood, Illinois, and legally described in Exhibit A attached to and, by this reference, made a part of this First Amendment ("**Property**").

B. On November 20, 2018, the Corporate Authorities adopted Resolution No. R2018-2104 ("**Preliminary Approval Resolution**"), approving a preliminary plat of subdivision and a preliminary development plan for the development of a multiple-building mixed-use residential, retail, commercial, and hotel development on the Property, comprised of: (i) a seven-story hotel building at the northern end of the Property ("**Hotel Building**"); (ii) a six-story mixed-use building in the southeast portion of the Property ("**Mixed-Use Building**"); and (iii) a one-story retail and commercial building, with rooftop parking, in the southwest portion of the Property ("**Retail/Commercial Building**") (collectively, the "**Proposed Development**").

C. On February 5, 2019, the Village, Retail Developer, and First LWD, LLC ("**First LWD**") entered into the Redevelopment Agreement, which was amended by the First Amendment

D. On November 19, 2019, the Corporate Authorities adopted the following documents concerning the Proposed Development of the Property:

1. Resolution No. R2019-2200, amending the approved preliminary development plan for the Proposed Development to: (a) increase the footprint of the Retail/Commercial Building, from approximately 22,500 square feet to approximately 35,000 square feet; (b) relocate the Mixed-Use Building from a location that is set back six feet from the Touhy Avenue right-of-way; (c) reduce the width of the perimeter landscaped screening along the west property line of the Property to three feet six inches; and (d) reduce the number of parkway trees to be planted within the Touhy Avenue right-of-way;

2. Resolution No. R2019-2201, approving the final plat of subdivision for the Property; and

3. Ordinance No. 2019-3432 ("**Stage 1 Special Use Ordinance**"), granting a special use permit and approving a final development plan for Stage 1 of the Proposed Development of the Property ("**Stage 1 Final Development Plan**").

E. On February 18, 2020, the Corporate Authorities adopted the following documents concerning the Proposed Development of the Property:

1. Resolution No. R2020-2221, further amending the approved preliminary development plan for the Proposed Development to: (i) reduce the width of the perimeter landscaped screening along the northwest property line of the Hotel Parcel to three feet; (ii) reduce the quantity of high-quality materials required for the exterior building elevations of the Hotel Building; and (iii) increase the maximum permitted height of the Hotel Building to 85 feet and seven stories; and

2. Ordinance No. 2020-3453, granting a special use permit and approving a final development plan for Stage 2 of the Proposed Development of the Property ("**Stage 2 Final Development Plan**").

F. On September 15, 2020, the Corporate Authorities adopted Ordinance No. 2020-3487, amending the special use permit and the Stage 1 Final Development Plan approved by the Stage 1 Special Use Ordinance to allow for construction of the Proposed Development in accordance with an alternate design for the Retail/Commercial Building and for the off-street parking areas on the Property ("**2020 Amendatory Ordinance**"). Section 5.A of the 2020 Amendatory Ordinance provided that the 2020 Amendatory Ordinance would not take effect unless Retail Developer elected to pursue the development of Stage 1 of the Proposed Development in accordance with the 2020 Amendatory Ordinance.

G. On September 15, 2020, the Village and Retail Developer entered into the Sales Tax Rebate Agreement.

H. On July 20, 2021, pursuant to Section 16.B.1 of the Redevelopment Agreement, First LWD delivered its written notice of withdrawal from the Redevelopment Agreement, and Retail Developer delivered its written notice pursuant to 16.B.2 of the Redevelopment Agreement assuming the obligations of First LWD under the Redevelopment Agreement.

I. Pursuant to Section 3 of the Stage 1 Special Use Ordinance, Stage 1 of the Property must be developed, used, and maintained in accordance with the Stage 1 Final Development Plan.

J. Retail Developer now desires to further modify the Proposed Development of the Property, to: (1) modify the footprint of the Retail/Commercial Building; (2) increase the size of the Retail/Commercial Building, from 35,400 square feet to 38,015 square feet; (3) reduce the height of the Retail/Commercial Building, from 49 feet to 40 feet; (4) modify the design of the off-street parking areas on the Property; (5) modify the location of signage on the Property; and (6) modify the exterior building materials for the Retail/Commercial Building (collectively, the "**Proposed Modifications**").

K. Retail Developer further desires to revise the conditions for provision of tax increment financing for the Proposed Development.

L. In order to allow the construction of the Proposed Development with the Proposed Modifications, Retail Developer filed, pursuant to Part A of Article VIII of the Zoning Ordinance, an application with the Village to amend the Stage 1 Final Development Plan in accordance with the Proposed Modifications.

M. Pursuant to Section 8.05(5)a of the Zoning Ordinance, the Proposed Modifications constitute "major changes" to the approved planned unit development.

N. A public hearing of the Plan Commission of the Village of Lincolnwood to consider the Proposed Modifications was duly advertised in the Chicago Tribune on June 22, 2021, and held on July 7, 2021, at which hearing the Plan Commission recommended approval of the Proposed Modifications.

O. On July 20, 2021, the Village President and Board of Trustees approved Ordinance No. _____, amending the special use permit approved by the Stage 1 Special Use Ordinance and the Stage 1 Final Development Plan in accordance with the Proposed Modifications ("**2021 Amendatory Ordinance**").

P. As provided in, and as a condition of, the 2020 Amendatory Ordinance, Retail Developer has agreed to execute this Second Amendment so as to: (1) provide that Stage 1 of the Proposed Development proceed in compliance with the Stage 1 Special Use Ordinance and the Stage 1 Final Development Plan, as amended by the 2021 Amendatory Ordinance; and (2) revise the conditions for provision of tax increment financing and sales tax rebate financing for the Proposed Development.

Q. The Village and Retail Developer now desire to further amend the Redevelopment Agreement, in accordance with Section 17.E of the Redevelopment Agreement, to allow for the development of the Property in accordance with the Proposed Modifications.

SECTION 2. DEFINITIONS; RULES OF CONSTRUCTION.

A. **Definitions.** All capitalized words and phrases used throughout this Second Amendment have the meanings set forth in the various provisions of this Second Amendment. If a word or phrase is not specifically defined in this Second Amendment, it has the same meaning as in the Redevelopment Agreement.

B. **Rules of Construction.** Except as specifically provided in this Second Amendment, all terms, provisions and requirements contained in the Redevelopment Agreement remain unchanged and in full force and effect. In the event of a conflict between the text of the Redevelopment Agreement and the text of this Second Amendment, the text of this Second Amendment controls.

SECTION 3. ACKNOWLEDGMENT OF HOTEL DEVELOPER WITHDRAWAL. The Village and Retail Developer acknowledge and agree that, pursuant to Section 16.B.1 of the Redevelopment Agreement, First LWD has withdrawn from the Redevelopment Agreement, and, therefore, has no further right or obligation under the Redevelopment Agreement, as "Hotel Developer" or otherwise. Pursuant to Section 16.B.2 of the Redevelopment Agreement, Retail

Developer has assumed all of the obligations of Hotel Developer under the Redevelopment Agreement.

SECTION 4. COMPLIANCE WITH THE 2021 AMENDATORY ORDINANCE AND WITH THE AMENDED STAGE 1 FINAL DEVELOPMENT PLAN.

A. General Use and Development Restrictions. Stage 1 of the redevelopment and use of, and the construction on, the Property, must, except for minor alterations due to final engineering and site work approved by the Village Director of Public Works or the Village Director of Community Development, as appropriate, comply, and be in accordance, with all documents identified in Section 3 of the Stage 1 Special Use Ordinance, as amended by the 2021 Amendatory Ordinance.

B. Amendment of Final Development Plan.

1. The Village and Retail Developer acknowledge and agree that, pursuant to Section 4 of the 2021 Amendatory Ordinance, the Stage 1 Final Development Plan is amended to include the documents identified in Section 4 of the 2021 Amendatory Ordinance and collectively described as the ***“Amended Stage 1 Final Development Plan Documents”*** (including, without limitation, the future revised Final Plat, as described in Section 5.C of the 2021 Amendatory Ordinance). In the event that the Amended Stage 1 Final Development Plan Documents conflict with the Stage 1 Final Development Plan approved pursuant to the Stage 1 Special Use Ordinance, the Amended Stage 1 Final Development Plan Documents control.

2. Specifically, and without limitation of Section 4.B.1 of this Second Amendment, Retail Developer acknowledges that it is not feasible to develop Stage 1 in accordance with both the Amended Stage 1 Final Development Plan Documents and the 2021 Amendatory Ordinance on the one hand, and the 2020 Amendatory Ordinance on the other hand. Accordingly, Retail Developer irrevocably waives its rights under Section 5.A of the 2020 Amendatory Ordinance and under the First Amendment to the Redevelopment Agreement to pursue the development of Stage 1 in accordance with the 2020 Amendatory Ordinance.

3. Retail Developer agrees that, notwithstanding the Amended Stage 1 Final Development Plan Documents to the contrary, it will: (a) construct, as part of the development of Stage 1 of the Development, the sidewalk and vehicular drives on the Hotel Parcel as depicted in the Stage 2 Final Development Plan, and to the satisfaction of the Village Fire Marshal; and (b) perform Site Restoration on the remaining portion of the Hotel Parcel, and install a fence or other appropriate security measures, in compliance with the Zoning Code and to the satisfaction of the Village Manager, until such time as the Hotel Parcel is developed in accordance with the Stage 2 Final Development Plan.

SECTION 5. AMENDMENT. The Redevelopment Agreement is hereby amended as follows:

A. Section 2.A of the Redevelopment Agreement is hereby amended further to add the following definitions:

“Gross Receipts”: “Gross Receipts” has the meaning ascribed to it in the Retailers’ Occupation Tax Act.

“Home Rule Sales Tax”: The sales tax imposed in the Village pursuant to Village’s Home Rule Sales Tax Ordinance (Section 8-4-1 of the Village Code) under the Home Rule Municipal Retailers’ Occupation Tax Act, 65 ILCS 5/8-11-1, and the Home Rule Municipal Service Occupation Tax Act, 65 ILCS 5/8-11-5. As of the Effective Date of this Second Amendment, the Home Rule Sales Tax is 1.25 percent.

“Municipal Sales Tax”: That portion or component of the Sales Taxes generated on the Retail Parcel that the Village actually receives from the State of Illinois.

“Note Closing”: Defined in Section 9.A of this Agreement **Each of Note Closing A and Note Closing B.**

“Note Closing A”: The closing of the execution and delivery of the First TIF Note and the Third TIF Note, as described in greater detail in Section 9 of this Agreement.

“Note Closing B”: The closing of the execution and delivery of the Second TIF Note, as described in greater detail in Section 9 of this Agreement.

“Retailers’ Occupation Tax Act”: Taxes imposed and collected by the State of Illinois and remitted to the Village pursuant to the Retailer’s Occupation Tax Act, the Service Use Tax Act, 35 ILCS 110/1 *et seq.*, the Service Occupation Tax Act, 35 ILCS 115/1 *et seq.*, and the Use Tax Act, 35 ILCS 105/1 *et seq.*

“Sales Tax Rebate Agreement”: That certain District 1860 Sales Tax Rebate Agreement by and between the Village and Retail Developer, dated as of September 15, 2020, for the rebate by the Village of a portion of the Municipal Sales Tax generated by the Retail/Commercial Building.

“Sales Taxes”: (i) Any and all taxes imposed and collected by the State of Illinois pursuant to the Retailer’s Occupation Tax Act; (ii) the taxes imposed and collected by the State of Illinois pursuant to the Home Rule Sales Tax, in an amount not to exceed 1% of the sales price; and (iii) any other “sales tax” or successor tax that may be enacted by the State of Illinois that the Village is able to verify as being generated from the Retail Parcel. Sales Taxes specifically exclude, without limitation: (1) any and all taxes imposed and collected on the sale of recreational or medical cannabis; (2) any and all taxes imposed and collected on video gaming, off-track betting, or sports wagering; (3) the Village’s food and beverage tax, as set forth in Article 21 of Chapter 8 of the Village Code; and (4) the Village’s package liquor tax, as set forth in Article 22 of Chapter 8 of the Village Code.

B. Section 4.D of the Redevelopment Agreement is hereby amended further to read as follows:

“SECTION 4. DEVELOPMENT. USE. OPERATION. AND MAINTENANCE OF THE PROPERTY.

Notwithstanding any use or development right that may be applicable or available pursuant to the provisions of the Village Code or the Zoning Ordinance or any other rights Developers **Retail Developer** may have, upon adoption by the

Village of the Development Approvals, the Property shall be developed, used, operated, and maintained only pursuant to, and in accordance with, the terms and provisions of this Agreement and its exhibits, including, without limitation, the following development conditions:

* * *

D. Retail/Commercial Building.

Retail Developer agrees that:

1. The Retail/Commercial Building shall be as depicted on the Elevation Plan that is part of the Final Development Plan, the tallest portion of which shall not exceed two stories in height.

2. The Retail/Commercial Building shall consist of ~~not less than 35,000~~ **approximately 38,015** square feet of retail/commercial space."

C. Section 9 of the Redevelopment Agreement is hereby amended in its entirety to read as follows:

"SECTION 9. TIF FINANCING.

A. Reimbursement for Redevelopment Project Costs.

1. The Parties acknowledge that Developers **Retail Developer** will pay, or have paid, for some or all of the Redevelopment Project Costs related to the Development. To provide for the **payment and/or** reimbursement of Developers **Retail Developer** for such Redevelopment Project Costs, the Corporate Authorities will execute and deliver to Developers **Retail Developer** three tax-exempt notes that contain the terms and provisions set forth in Section 9.B of this Agreement and such other terms as may be mutually agreed to by the Parties and will be substantially in the form attached to this Agreement as **Exhibit B** (collectively, the "**TIF Notes**"); provided, however, that:

a. The Village's agreement to **pay and/or** reimburse such costs pursuant to the TIF Notes and this Section 9 will not take effect until the dates of the closing of the execution and delivery of the TIF Notes contemplated by this Section 9 (~~collectively, the "**Note Closings**"~~); and

b. The maximum amount of the reimbursement shall be the amount that is the sum of all principal and interest payments of the TIF Notes.

2. The Note Closings will occur at dates and locations mutually agreed to by the Parties, as soon as reasonably practicable after all of the conditions set forth in Section 9.C of this Agreement have been satisfied.

B. TIF Notes. Subject to the provisions and conditions in this Section 9, the Village will issue three ~~tax-exempt~~ non-recourse TIF Notes, as follows:

1. Par Value of Notes.

- a. First TIF Note. The Village will issue a note to Retail Developer in a par value equal to an amount that will yield net cash proceeds of up to \$25,000,000.00 (estimated to be approximately \$15,876,250.00) (less the estimated cost of the installation of the New Traffic Signal, if IDOT refuses to approve the installation thereof) after which is net of the provision for a reserve fund, capitalized interest, and closing costs associated with an anticipated sale of such note ("First TIF Note"). The precise par value of the First TIF Note will be mutually determined by the Village and Retail Developer.
- b. Second TIF Note. The Village will issue a note to Retail Developer in a par value not to exceed \$1,000,000.00 equal to an amount that will yield net cash proceeds representing the difference between the net cash proceeds of the First TIF Note and \$25,000,000.00 (estimated to be approximately \$9,123,750.00) (less the estimated cost of the installation of the New Traffic Signal, if IDOT refuses to approve the installation thereof), which is net of the provision for a reserve fund, capitalized interest, and closing costs associated with an anticipated sale of such note ("Second TIF Note"). The precise par value of the Second TIF Note will be mutually determined by the Village and Retail Developer.
- c. Third TIF Note. The Village will issue a note to Retail Developer in a par value of \$5,000,000.00 ("Third TIF Note").

2. Terms of Notes. Each TIF Note will:

- a. Evidence the Village's obligation to reimburse the recipient Retail Developer for Redevelopment Project Costs, subject to and in accordance with this Agreement;
- b. Bear interest as follows:
 - i. Interest on the First TIF Note and the Second TIF Note will be tax-exempt under federal income tax laws, and will bear interest at a rate equal to the median value of the uninsured 20-year BAA G.O. Bond Index as published by Thompson Reuters MMD five business days prior to the date

of issuance of the TIF Note, plus 275 basis points, to be compounded semi-annually, which interest will begin to accrue on the date on which the TIF Note is issued; and

- ii. Interest on the Third TIF Note will be federally taxable, and will bear interest at 7.00%, to be compounded semi-annually, which interest will begin to accrue on the date on which the Third TIF Note is issued;
- c. Have a maximum term not to exceed 20 years after issuance thereof, or the expiration of the TIF District on January 1, 2042, whichever occurs first, after which time the Village will have no further obligation to pay and/or reimburse the recipient Retail Developer for Redevelopment Project Costs under this Agreement or such TIF Note;
- d. Be secured solely by the Pledged Amount, as provided, and subject to the limitations set forth, in this Agreement;
- e. Provide for the semi-annual payment of the Incremental Property Taxes and Municipal Sales Taxes for the preceding tax year, consistent with the applicable TIF Note amortization schedule, on January 1 (for principal and interest payments) and July 1 (for interest payments only) of each year after issuance thereof, which payments will not exceed the Pledged Amount in the Account at any time, until the earlier to occur of (i) the payment of the TIF Note in full, or (ii) the termination of the Village's obligation to reimburse the Developer to whom such Note was issued for Redevelopment Project Costs as set forth in this Agreement TIF District on January 1, 2042;
- f. Provide that the Village will have no obligation whatsoever to make any payments in excess of the Redevelopment Project Costs that have been: (i) incurred by Retail Developer (~~for the Second or Third TIF Note Notes~~) or by the Hotel Developer (~~for the Second TIF Note~~); and (ii) certified by the Village pursuant to Section 9.G of this Agreement; and
- g. Provide that each payment will be applied first to accrued but unpaid interest, second to current interest, and third to principal.

3. Amortization Schedules. Retail Developer shall prepare, and the Village shall issue upon issuance of the associated TIF Note, an amortization schedule for each TIF Note, in final forms mutually agreed by the Parties.

4. Prepayment of TIF Notes.

- a. The Village may not prepay the First TIF Note for a period of five years after the date of issuance, except upon the prior written consent of Retail Developer the registered owner thereof.
- b. The Village may, in its sole discretion, not prepay the Second TIF Note at any time at which there are Incremental Property Taxes available in excess of the Village's payment obligations pursuant to such TIF Notes and this Agreement for a period of five years after the date of issuance, except upon the prior written consent of the registered owner thereof.
- c. The Village may, in its sole discretion, prepay the Third TIF Note at any time at which there are Incremental Property Taxes available in excess of the Village's payment obligations pursuant to such TIF Notes and this Agreement; provided, however, that the Village may not issue the final payment on the principal of the Third TIF Note prior to the expiration of the TIF District pursuant to the TIF Act, except upon approval by the Corporate Authorities, by resolution duly adopted.

C. Pre-conditions to Note Closing A. The Note Closing A will occur only upon the satisfaction of each and all of the following conditions:

1. Developers Retail Developer shall have delivered the Required Zoning Submittals to the Village in accordance with Section 3 of this Agreement.
2. The Corporate Authorities shall have adopted the Zoning Approval Ordinance.
3. The Corporate Authorities shall have approved the Final Plat (as revised pursuant to Section 5.C of Village Ordinance No. _____, adopted by the Corporate Authorities on July 20, 2021), and the Final Plat shall have been recorded in the Office of the Cook County Recorder of Deeds.
4. The Evidence of Property Acquisition Date shall have occurred.

~~5. The Evidence of the Hotel Parcel Acquisition Date shall have occurred.~~

6. 5. Developers **Retail Developer** shall be in material compliance with all the terms and conditions of this Agreement, to be performed and/or observed by Developers **Retail Developer**, up until the time of the Note Closing **A**.

7. 6. Retail Developer shall have provided to the Village a written confirmation from Retail Developer that, since November 20, 2018, there have been no changes in such party's financial condition which would adversely impact its ability to complete the Development on the Retail Parcel.

8. 7. Retail Developer shall have provided to the Village a fully-executed set of documents evidencing the issuance of construction loans necessary for construction of that portion of the Development that is located on the Retail Parcel.

~~9. Hotel Developer shall have provided to the Village a fully-executed set of documents evidencing the issuance of construction loans necessary for construction of that portion of the Development that is located on the Hotel Parcel.~~

10. 8. Retail Developer shall have provided the Village with a written confirmation that Retail Developer has entered into one or more third-party guaranteed maximum or lump sum contract(s) for the completion of the Retail Development.

~~11. Hotel Developer shall have provided the Village with a written confirmation that Hotel Developer has entered into one or more third-party guaranteed maximum or lump sum contract(s) for the completion of the Hotel Development.~~

12. 9. Retail Developer shall have provided to the Village evidence that Retail Developer has executed leases for the Retail Parcel as required by the construction loan documents submitted pursuant to Section ~~9.C.9~~ **9.C.7** of this Agreement, **which executed leases must include a lease to Amazon Fresh for the grocer space.**

~~13. Hotel Developer shall have provided to the Village a fully-executed franchise agreement with a nationally-recognized hotel brand equivalent to Courtyard by Marriott, and/or Residence Inn by Marriott, for operation of the Hotel within the Hotel Building.~~

14. 10. Retail Developer shall have provided to the Village with **a** written confirmation that IDOT has provided to both the Village and Retail Developer written or verbal confirmation that IDOT has approved the Final Development Plan with respect to all Improvements over which IDOT has jurisdiction (subject to Section 5.C.1 of this Agreement).

45- 11. The Village shall have issued building permits for the following specific Improvements: (a) demolition of all existing structures and foundations on the Property as of the Effective Date of this Agreement; (b) footings and foundations for the Mixed-Use and Retail/Commercial Buildings to be constructed on the Property; (c) site grading; and (d) installation of all underground utilities.

C-5. Pre-conditions to Note Closing B. Note Closing B will occur only upon the satisfaction of each and all of the following conditions:

1. Retail Developer shall have delivered the Required Zoning Submittals to the Village in accordance with Section 3 of this Agreement.

2. The Corporate Authorities shall have adopted the Zoning Approval Ordinance.

3. The Corporate Authorities shall have approved the Final Plat (as revised pursuant to Section 5.C of Village Ordinance No. _____, adopted by the Corporate Authorities on July 20, 2021), and the Final Plat shall have been recorded in the Office of the Cook County Recorder of Deeds.

4. The Evidence of Property Acquisition Date shall have occurred.

5. Retail Developer shall be in material compliance with all the terms and conditions of this Agreement, to be performed and/or observed by Retail Developer, at the time of Note Closing B.

6. Retail Developer shall have provided to the Village a written confirmation, executed by an authorized officer of Retail Developer, that, since the Effective Date, there have been no changes in Retail Developer's financial condition which would adversely impact its ability to complete the Development on the Hotel Parcel.

7. Retail Developer shall have provided to the Village a fully-executed set of documents evidencing the issuance of construction loans necessary for construction of that portion of the Development that is located on the Hotel Parcel.

8. Retail Developer shall have provided the Village with a written confirmation that Retail Developer has entered into one or more third-party guaranteed maximum or lump sum contract(s) for the completion of the Hotel Development.

9. Retail Developer shall have provided to the Village a fully-executed franchise agreement with a nationally-recognized hotel brand equivalent to Courtyard by Marriott, and/or Residence Inn by Marriott, for operation of the Hotel within the Hotel Building.

10. Retail Developer shall have provided to the Village with written confirmation that IDOT has provided to both the Village and Retail Developer written or verbal confirmation that IDOT has approved the Final Development Plan with respect to all Improvements over which IDOT has jurisdiction (subject to Section 5.C.1 of this Agreement).

11. The Village shall have issued building permits for the following specific Improvements: (a) demolition of all existing structures and foundations on the Property as of the Effective Date of this Agreement; (b) footings and foundations for the Hotel Building to be constructed on the Property; (c) site grading; and (d) installation of all underground utilities.

12. Retail Developer shall have provided to the Village a third-party report prepared by a recognized feasibility consultant that demonstrates that the project receipt of Pledged Amounts for the term of the TIF Notes exceeds debt service for both the First TIF Note and the Second TIF Note in each year by 1.30 times.

D. Issuance and Sale of TIF Notes.

1. First TIF Note.

a. The Village will deposit the First TIF Note with the Indenture Trustee (as that term is defined in Section 9.E.3 of this Agreement).

b. The First TIF Note may be (i) assigned to or pledged as collateral to any lender providing project financing, or (ii) sold or assigned to a Qualified Investment Buyer as defined under Rule 144A of the 1933 Securities Act. Notwithstanding the foregoing, Retail Developer may transfer the First TIF Note at any time to (x) any entity controlling, controlled by or under common control with Retail Developer, or (y) any entity in which the majority equity interest is owned by the parties that have a majority equity interest in Retail Developer.

c. The net cash proceeds of any sale by Retail Developer of the First TIF Note will be deposited into the TIF Escrow Account and drawn upon for costs eligible for payment and/or reimbursement under the TIF Act by Retail Developer as and when such TIF eligible costs are incurred, in accordance with Section 9.F.3.b and 9.F.4.b of this Agreement.

2. Second TIF Note.

a. The Village will issue the ~~Second TIF Note~~ directly to the ~~Hotel Developer~~ at the Note Closing deposit the Second TIF Note with the Indenture Trustee (as that term is defined in Section 9.E.3 of this Agreement).

b. The Second TIF Note may be (i) assigned to or pledged as collateral to any lender providing project financing, or (ii) sold or assigned to a Qualified Investment Institutional Buyer as defined under Rule 144A of the 1933 Securities Act. Notwithstanding the foregoing, ~~Hotel~~ Retail Developer may transfer the Second TIF Note at any time to (x) any entity controlling, controlled by or under common control with ~~Hotel~~ Retail Developer, or

(y) any entity in which the majority equity interest is owned by the parties that have a majority equity interest in Hotel Retail Developer.

c. The net cash proceeds of any sale by Retail Developer of the Second TIF Note will be deposited into the TIF Escrow Account and drawn upon for costs eligible for reimbursement under the TIF Act by Retail Developer as and when such TIF eligible costs are incurred, in accordance with Section 9.F.3.b and 9.F.4.b of this Agreement.

3. Third TIF Note.

a. The Village will issue the Third TIF Note directly to the Retail Developer at the Note Closing A.

b. The Third TIF Note may be assigned, sold, or pledged as a collateral assignment to a third party lender providing construction financing for the Project, but otherwise may not be assigned, sold, or pledged except upon the prior written consent of the Corporate Authorities.

E. Pledged Amount.

1. The Village pledges, for repayment of the costs of the Development of the Property in accordance with this Section 9, the amount equal to: (i) Incremental Property Taxes, **plus (ii) Municipal Sales Taxes, less (ii) (iii)** the School District Portion and the Library District Portion ("**Pledged Amount**").

2. The Pledged Amount will be irrevocably pledged to the repayment of the amounts due under the TIF Notes, as provided in this Agreement and as follows:

a. The First TIF Note **and the Second TIF Note, when issued,** will have a first lien on the Pledged Amount, **on parity.**

b. ~~The Second TIF Note will have a second lien on the Pledged Amount.~~ **[Reserved]**

c. The Third TIF Note will have a ~~third~~ **second** lien on the Pledged Amount, except as provided in Section 1(l)(3) of the School District IGA. The Parties acknowledge and agree that Retail Developer shall be responsible and liable for all payments due to the School Districts pursuant to Section 1(l)(3) of the School District IGA. **Nothing in this Second Amendment shall be deemed or interpreted to change or impact the obligation of the Retail Developer for payments due to the School Districts pursuant to Section 1(l) (3) of the School District IGA.**

3. The Pledged Amount shall be deposited into a **segregated** fund ("**Fund**") to be held by **the Village, and transferred to** a financial institution with trust powers ("**Indenture Trustee**"), created pursuant to an agreement among the Village, Developers **Retail Developer,** and Indenture Trustee ("**Indenture**") **to pay debt service due on the First TIF Note and the Second TIF Note.** Within the Fund, there shall be created separate accounts which will

provide for the payments as follows: (a) first, to the payments due under the First TIF Note **and the Second TIF Note**; (ii) second, ~~to the payments due under the Second TIF Note~~, (iii) third, to the payments due under the Third TIF Note, and (iv) fourth **third**, with any excess deposited to a general account **or accounts** held by the Village for excess Incremental Property Taxes **and Municipal Sales Taxes** available after the payment of the above described payments. The Indenture shall provide that, notwithstanding the amortization schedules for the Second and Third TIF Notes, no payments will be due under the Second TIF Note or Third TIF Note prior to receipt by the Indenture Trustee of certificates of expenditure that evidence the expenditure by Hotel Developer (with respect to the Second TIF Note) or by Retail Developer (with respect to the Third TIF Note) of Redevelopment Project Costs that are equal to or greater than the payments due pursuant to the amortization schedules of such TIF Notes.

4. In the Village's sole discretion **and subject to any lockout period**, the TIF Notes may also be paid from proceeds of any bonds or other obligations issued by the Village or any other sources available to the Village and permitted by law to be used to make payments under the TIF Note; provided, however, that the Pledged Amount will not be reduced by the amount of any such payments from bond proceeds, other obligations, or other sources.

5. Any funds contained in the Fund in excess of the Pledged Amount, or in excess of the amounts required to be paid pursuant to the amortization schedules for the TIF Notes, may be used by the Village for any lawful purpose permitted under the TIF Act, including, but not limited to: (a) calculation and distribution of "surplus" in accordance with Sections 11-74.4-7 and 11-74.4-8a of the TIF Act; and (b) prepayment of one or more of the TIF Notes, except as provided in Section 9.B.4.a of this Agreement. Because the Fund is a special fund, the amounts in the fund will be disbursed in accordance with this Agreement, the TIF Approval Ordinances, and the TIF Notes without further action by the Corporate Authorities.

6. Developers **Retail Developer** hereby acknowledge **acknowledges** that the Pledged Amount may be insufficient to cover the payment of all principal and interest on the TIF Notes. If the Pledged Amount is insufficient to pay all the principal and interest due under the TIF Notes, Developers **Retail Developer** hereby unconditionally acknowledge **acknowledges** and agree **agrees** that, notwithstanding any other provision of this Agreement to the contrary:

a. The Village's obligation to make any payments of principal and interest due under the TIF Notes, or otherwise to reimburse Developers **Retail Developer** for Redevelopment Project Costs, is not and will not be a general debt of the Village or a charge against its general credit or taxing powers, but is and will be a special limited obligation payable solely out of Incremental Property Taxes **and Municipal Sales Taxes** received by the Village;

b. They **Retail Developer** will have no recourse against the Village provided that the Pledged Amount required to be deposited in the Fund from time to time pursuant to the TIF Act and this Agreement has been deposited into the Fund and the amount equal to the Pledged Amount in each year has been used solely to pay amounts due under the TIF Notes;

c. They Retail Developer will have no right to, and agrees that they Retail Developer will not, compel any exercise of the taxing power of the Village to pay any principal or interest, or to reimburse any Redevelopment Project Cost, and no execution of any claim, demand, cause of action or judgment may be levied upon or collected from the general credit, general funds or other property of the Village (unless the Village refuses to make the payment to ~~Developers~~ Retail Developer or to any holder of a TIF Note in violation of this Agreement); and

d. No recourse may be had for any payment pursuant to this Agreement against any past, present, or future director, member, elected or appointed officer, official, agent, representative, employee, or attorney of the Village in his or her individual capacity.

F. **TIF Escrow Account.** The Village and Retail Developer hereby agree to establish an escrow account for the deposit of the proceeds of the sale of the First TIF Note and of the Pledged Amount, and for the payment of such proceeds to ~~Developers~~ Retail Developer and to the holders of the TIF Notes ("**TIF Escrow Account**"), in accordance with the following:

1. Escrow Agent. The escrow agent for the TIF Escrow Account shall be Chicago Title Insurance Company, or such other escrowee or trustee as may be mutually agreed by the Parties ("**Escrow Agent**").

2. Escrow Agreement. The TIF Escrow Account shall be established and governed pursuant to an escrow agreement that is to be consistent with this Agreement and is to be negotiated in good faith and executed by the Parties and the Escrow Agent.

3. Deposits into TIF Escrow Account.

a. The First TIF Note shall be deposited into the TIF Escrow Account at the Note Closing A.

b. The Second TIF Note shall be deposited into the TIF Escrow Account at Note Closing B.

~~b. c.~~ The proceeds of any sale of the First TIF Note and the Second TIF Note shall be deposited by Retail Developer into the TIF Escrow Account immediately upon the closing of such sale.

4. Payments from TIF Escrow Account.

a. The Escrow Agent may release the First TIF Note and/or the Second TIF Note, as the case may be, to the assignee or purchaser of such Note, upon the mutual written direction of the Village and Retail Developer.

b. Payment of funds from the TIF Escrow Account shall be made in accordance with the procedure set forth in Section 9.G of this Agreement.

c. To the extent Retail Developer is in default under this Agreement and said default is not in the process of being cured in accordance with this Agreement, or Retail Developer ceases construction of the Development for a period of six months or more, subject to any Uncontrollable Circumstance, any amount remaining in the TIF Escrow Account shall be used to retire all or a portion of the Second TIF Note or, if the Second TIF Note has not been issued, the First TIF Note. In addition, in the event there are excess proceeds in the TIF Escrow Account not used to pay or reimburse Redevelopment Project Costs, such excess shall be transferred to the Trustee and used to redeem the Second TIF Note, or if the Second TIF Note has not been issued, then to redeem the First TIF Note.

G. Payment to Developers Retail Developer.

1. Submission of Certification Requests. For reimbursement of Redevelopment Project Costs in accordance with the TIF Notes, ~~Developers~~ **Retail Developer** shall submit to the Village written requests for certification of such Redevelopment Project Costs in the form attached as **Exhibit C** to this Agreement ("**Certification Request**"). Neither **Retail Developer** may not submit more than one Certification Request per calendar quarter month. Each Certification Request shall be accompanied by: (i) evidence that the requesting **Retail Developer** has actually incurred and paid all Redevelopment Project Costs for which such **Retail Developer** seeks reimbursement; and (ii) sworn statements and lien waivers from the **Retail Developer's** general contractor for any material, fixtures, apparatus, machinery, services, or labor provided by any contractor, subcontractor, or other person or entity entitled to file a lien under the Mechanics Lien Act, 770 ILCS 60/1, included in the Redevelopment Project Costs for which reimbursement is sought. If the requesting **Retail Developer** does not fulfill its obligations as set forth in the preceding sentence, the Village will have no obligation to certify or reimburse such **Retail Developer** for Redevelopment Project Costs that have not been separately identified as required by this Section 9.G.1.

2. Eligibility for Payment. Notwithstanding any other provision of this Agreement, ~~Developers~~ **Retail Developer** will be entitled to be reimbursed or paid from Incremental Property Taxes for Redevelopment Project Costs only if:

a. ~~The requesting~~ **Retail Developer** actually incurs such Redevelopment Project Costs;

b. Such Redevelopment Project Costs are certified pursuant to Section 9.G.3 of this Agreement;

c. Reimbursement or payment is permitted pursuant to this Agreement, the Redevelopment Plan, and the TIF Act;

d. The requesting Developer is not in default or breach of any obligation under this Agreement; and

e. Retail Developer is not in default of any obligation of Retail Developer set forth in the School District IGA; ~~and,~~

3. [Reserved].

4. Review of Certification Requests. The Village Manager will approve or disapprove each Certification Request, or, if the Village Manager finds an error or deficiency in the Certification Request, the Village Manager will give written notice to the requesting Developer, identifying such error or deficiency in reasonable detail, within 60 days after the date that the Village receives the Certification Request. The process of submission, identification of errors or deficiencies and resubmission shall continue in good faith until the Parties agree on the content of the Certification Request.

5. Issuance of Certificates of Expenditure. Upon approval of a Certification Request, the Village Manager shall issue a Certification of Expenditure in an amount corresponding to the approved Certification Request, as follows:

a. For Certification Requests related to the First and Second TIF Note Notes, the Village Manager shall deliver the Certification of Expenditure to the Escrow Agent, and the Escrow Agent shall thereafter release the approved amount to Retail Developer from the funds in the Escrow Account.

b. For Certification Requests related to the ~~Second~~ and Third TIF Notes Note, the Village Manager shall deliver the Certification of Expenditure to the Retail Developer, and the Retail Developer shall thereafter pay the holder of the applicable TIF Note in accordance with the amortization schedule therefor, but in no event in an amount greater than that set forth in the Certification of Expenditure.

H. Commitment to Fair Employment Practices and Affirmative Action; Prevailing Wage. If and to extent applicable in accordance with the Requirements of Law, Developers Retail Developer shall comply with the requirements pertaining to fair employment practices and affirmative action described in the Redevelopment Plan and the Illinois Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*), as may be applicable.

I. Depository Agreement. The Village and Retail Developer hereby agree to establish an escrow account for the deposit of the capitalized interest and debt service reserve from proceeds of the sale of the First TIF Note and the Second TIF Note, which shall be evidenced by a Depository Agreement with the note trustee ("Trustee"). Amounts on deposit in the Depository Agreement shall be used to pay debt service in the event there are insufficient Pledged Amounts. Any amounts remaining when the TIF Notes are retired shall be returned to the Village and shall be used for the last payment of debt service owed on the TIF Notes secured by such reserves."

D. Section 10 of the Redevelopment Agreement, concerning the Village's obligation to provide the Hotel Tax Rebate to Hotel Developer, is hereby repealed in its entirety and reserved.

SECTION 6. REPLACEMENT OF RED LIGHT CAMERA. In the event that, as a result

of the Development of the Property, IDOT requires the removal of the existing red light traffic camera currently in operation for the intersection of Touhy Avenue and Lincoln Avenue, Retail Developer must cooperate in good faith to identify a location for, and allow for the installation of, a new red light traffic camera at that intersection. Specifically, and without limitation of the foregoing, Retail Developer agrees to permit the installation of a new red light traffic camera on the Property if Developer cannot identify a suitable alternate location at the Touhy Avenue and Lincoln Avenue intersection.

SECTION 7. SUSPENSION OF PAYMENTS UNDER SALES TAX REBATE AGREEMENT. The Village and Retail Developer acknowledge and agree that, notwithstanding any provision of the Sales Tax Rebate Agreement to the contrary, the Village will have no obligation to make any payments of Sales Tax Rebate (as that term is defined in the Sales Tax Rebate Agreement) to Retail Developer for any Municipal Sales Taxes actually received by the Village: (a) for sales occurring on or before the date of Note Closing B; or (b) for sales occurring on or after the date of Note Closing B, except for those Municipal Sales Taxes that are actually received and that are not required to pay debt service on the First TIF Note or the Second TIF Note. The Village and Retail Developer further acknowledge and agree that this Second Amendment is not to be deemed or interpreted as: (a) delaying, in any way, the Commencement Date of the Sales Tax Rebate Agreement; or (b) extending, in any way, the Term of the Sales Tax Rebate Agreement (as those terms are defined in the Sales Tax Rebate Agreement). The Village and Retail Developer agree to cooperate in good faith to prepare and execute, within 60 days after the Effective Date of this Second Amendment, an appropriate amendment to the Sales Tax Rebate Agreement to reflect this Section 7.

SECTION 8. RECORDING; BINDING EFFECT.

A copy of this Second Amendment will be recorded in the Office of the Cook County Recorder of Deeds against the Property. This Second Amendment and the privileges, obligations, and provisions contained herein run with the Property and inure to the benefit of, and are and will be binding upon, the Village, Retail Developer, and their respective personal representatives, successors, and assigns.

SECTION 9. REPRESENTATIONS.

A. By the Village. The Village hereby represents and warrants that: (1) the persons executing this Second Amendment on its behalf have been properly authorized to do so by the Corporate Authorities; (2) it has full power and authority to execute and deliver this Second Amendment and to perform all of its obligations imposed pursuant to this Second Amendment; and (3) this Second Amendment constitutes a legal, valid and binding obligation of the Village enforceable in accordance with its terms.

B. By Retail Developer. Retail Developer hereby represents and warrants that: (1) it has full power and authority to execute and deliver this Second Amendment and to perform all of its obligations imposed pursuant to this Second Amendment; and (2) this Second Amendment constitutes a legal, valid and binding obligation of Retail Developer enforceable in accordance with its terms.

[SIGNATURE PAGE FOLLOWS]

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

ATTEST:

Beryl Herman
Beryl Herman, Village Clerk

VILLAGE OF LINCOLNWOOD,
an Illinois home rule municipal corporation

By: Jesal Patel
Its: Village President

ATTEST:

By: _____
Its: _____

TOUHY & LINCOLN LLC,
an Illinois limited liability company
By: Richard Tucker
Its: President

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY