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MEMORANDUM

TO: Cara Pavlicek, Village Manager

CC: Paul L. Stephanides, Esq., Village Attorney

FROM: Darryl R. Davidson, Esq.

DATE: May 30, 2017

RE: Village of Oak Park, Cook County, Illinois
Greater Mall (Downtown) Tax Increment Redevelopment Project Area
Corporate Authorities and Property Interests – Proposed Removal of Properties

I. INTRODUCTION

The Village of Oak Park, Cook County, Illinois (the “**Village**”) approved a redevelopment plan and project and designated a redevelopment project area for a significant portion of the Village known as the Greater Downtown Tax Increment Financing Redevelopment Project Area (the “**Redevelopment Project Area**”). In 2003, the Village, Oak Park and River Forest High School District 200, Cook County, Illinois (“**District 200**”) and Oak Park Elementary School District 97 (“**District 97**”) entered into an Intergovernmental Agreement (“**Intergovernmental Agreement**”) concerning the extension of the time period of tax allocation financing and the future use of tax increment revenues of the Redevelopment Project Area. In 2011, the Village, District 200 and District 97 entered into a Settlement Agreement (the “**Settlement Agreement**”) to resolve disputes over the terms of the Intergovernmental Agreement. The Settlement Agreement was amended in July, 2013 by the parties to allow for

Cara Pavlicek, Village Manager
May 30, 2017
Page 2

the provision of certain public improvements in the Redevelopment Project Area and in September, 2016 to allow for the payment by the Village of its additional costs related to the Colt/Westgate redevelopment project and structured the timing of certain fund distributions to the affected taxing districts of the Redevelopment Project Area.

The effect of the Settlement Agreement and its amendments has been to cause surplus distribution, foreclose additional private redevelopment projects in the Redevelopment Project Area and limit the use of incremental tax revenues for certain specific pre-existing obligations named therein, namely a set of scheduled debt payments pertaining to the Redevelopment Project Area, defined as “Current Obligations.” The Current Obligations now outstanding include general obligation bonds of the Village and a series of sales tax revenue bonds issued in 1996, denominated as Sales Tax Revenue Bonds (Holley Court Garage Project), Series 2006C (the **“Series 2006C Sales Tax Revenue Bonds”**).

Section 4(n) of the Tax Increment Allocation Redevelopment Act of the State of Illinois, as amended (the **“TIF Act”**) (65 ILCS 5/11-74.4-4(n)) provides that if any member of the corporate authority owns or controls an interest, direct or indirect, in any redevelopment area, he or she shall disclose the same in writing to the Village Clerk, which disclosure shall be acknowledged by the Village’s President and Board of Trustees (the **“Village Board”**) and entered upon the minute books. Individuals with such interests must refrain from official involvement, voting or communicating concerning any matter pertaining to the redevelopment plan, project or area. No member or employee shall acquire any interest, direct or indirect, in any property in any area or a proposed area. There are certain limited exceptions for residences or month-to-month leaseholds. See the full text of 65 ILCS 5/11-74.4-4(n) as Exhibit A.

Cara Pavlicek, Village Manager
May 30, 2017
Page 3

The Village Board is considering the advisability of the adoption of two ordinances in light of the fact that (i) members of the corporate authorities own or lease property in the Redevelopment Project Area, (ii) even though no new private redevelopment projects may be approved by the Village in the Redevelopment Project Area since 2011, the provisions of Section 4(n) arguably are operative until the formal termination of the Redevelopment Project Area during tax levy year 2018, (iii) and, if so, without further action, that the administrative burden on the Village to exclude multiple members of the Village Board from Village business with respect to “any matter” pertaining to the redevelopment plan, project or area is simply too great.

The first ordinance removes a number of parcels from the Redevelopment Project Area, including the parcels involving the present corporate authorities (the “**Parcel Removal Ordinance**”) and the second ordinance would amend the Village Code to include a provision to exempt the Village from the provisions of Section 4(n) of the TIF Act retroactively to the date of the Settlement Agreement (the “**Village Code Amendment Ordinance**”).

You have asked me to review and comment on the current situation as to (i) the effect of the Parcel Removal Ordinance on existing bond obligations of the Village, including the Series 2006C Sales Tax Revenue Bonds, (ii) whether the adoption of the Parcel Removal Ordinance would relieve the affected corporate authorities from the provisions of Section 4(n) of the TIF Act, and (iii) whether it would be necessary or advisable for the Village to consider the Village Code Amendment Ordinance.

Cara Pavlicek, Village Manager
May 30, 2017
Page 4

II. DISCUSSION

**A. Does The Adoption Of The Parcel Removal Ordinance
Violate The Covenants Of Existing Village General Obligation
Bonds Or The Series 2006C Sales Tax Revenue Bonds?**

The Parcel Removal Ordinance would delete a series of over 80 parcels along South Marion Street and South Oak Park Avenue from the Redevelopment Project Area, allowing the increased taxable value thereof to be released from the allocation procedures of the TIF Act and allowing the affected taxing districts to benefit from the increased tax base. The Village estimates that these parcels have a total equalized assessed value of approximately \$8,150,000, which would mean that approximately \$850,000 of taxes will not be deposited in the Village's Special Tax Allocation Fund, such funds would be directly collected by the affected taxing districts, instead of being forwarded to them by the Village pursuant to the terms of the Settlement Agreement.

As to any of the general obligation bonds potentially or currently being paid from the annual tax revenues in connection with the Redevelopment Project Area, there is no effect on the bondholders, since there is a separate ad valorem levy for such bonds which provides security to such bondholders, and the financial operations and financial contributions of the Redevelopment Project Area are not material in connection with the Village's contract with the general obligation bondholders.

A deeper examination of the proceedings of the Village in respect to the Series 2006C Sales Tax Revenue Bonds is warranted, however. See Exhibit B, which is the Village's latest disclosure on the Series 2006C Sales Tax Revenue Bonds, and Exhibit C, which is Section 12 of Ordinance Number 2006-O-67, authorizing the issuance of such bonds. The Series 2006C Sales

Cara Pavlicek, Village Manager
May 30, 2017
Page 5

Tax Revenue Bonds have three (3) sources of revenue for payment of its debt service. One is a pledge of all Village sales taxes (currently at almost 5 times coverage – see page 4 of Exhibit B), as well as incremental property taxes from the Redevelopment Project Area (now a Current Obligation under the Settlement Agreement) and certain funds held in the Village's Parking Revenue Fund. The sales tax coverage is so large that an illustration of the two other revenue sources pledged (being incremental tax and parking revenues) was deemed unnecessary by the Village. Reviewing the specific covenants to bondholders in the authorizing ordinance for the Series 2006C Sales Tax Revenue Bonds (see Exhibit C hereof), there is no covenant to maintain a specific level of incremental taxes or to maintain the Redevelopment Project Area as a static entity. Such covenants, in fact, would be inadvisable due to the variable nature of tax increment revenues, being dependent on the tax rates of other taxing districts and also being dependent on new development and increased real estate tax payments. Section 11A of Ordinance No. 2006-O-67 provides that such incremental taxes, when collected, be deposited pursuant to the TIF Act and the redevelopment plan, which would include the Settlement Agreement and its amendments (which have made provision therefor as a Current Obligation). Releasing approximately \$850,000 of incremental taxes will not reduce the Current Obligation paid to the Village pursuant to the terms of the Settlement Agreement and the amendments. The affected taxing districts (including the Village) will simply receive certain real estate tax revenues in a simpler method than currently under the Settlement Agreement. Also, there is no covenant to maintain tax increment collections at a certain level to provide bondholder protection in this instance. Revenue bondholders of tax increment obligations are cognizant of the fact that such revenues are variable. In this instance, the bondholders have three sources of revenue to provide security

Cara Pavlicek, Village Manager
May 30, 2017
Page 6

and the overall amount of taxes affected by the Parcel Removal Ordinance is minimal as to the Series 2006C Sales Tax Revenue Bonds since they are a “Current Obligation” under the Settlement Agreement. Therefore, adoption of the Parcel Removal Ordinance does not violate existing revenue bond covenants of the Village.

B. Does The Adoption Of The Parcel Removal Ordinance Relieve The Affected Corporate Authorities From The Provisions Of Section 4(n) Of The TIF Act?

Yes, municipalities with tax increment redevelopment project areas routinely remove parcels of property from such areas upon learning that members of the corporate authorities, commissions or employees are direct or indirect owners of properties therein. If this does not happen, the legislative scheme is public disclosure, followed by a ban on a local official’s activity or communication concerning any matter pertaining to the plan, project or area. The General Assembly was obviously concerned with local officials potentially using the financial incentives of the TIF Act to benefit themselves, in violation of their fiduciary duties to the public. Other laws, such as the Illinois Municipal Code (65 ILCS 5/3.1-55-10) and the Public Officers Prohibited Activities Act (50 ILCS 105/3(a)) are designed to protect the public and also regulate the activities of public officials, with a differing set of provisions concerning public contracting and public officials’ private pecuniary interests. These laws do not focus on voting bans or prohibiting participation in discussions with any Village officials.

C. Is It Necessary Or Advisable For The Village To Consider The Village Code Amendment Ordinance?

No, in light of the fact that the Parcel Removal Ordinance resolves the issues involved with Section 4(n) of the TIF Act, there is really no need to adopt the proposed Village Code Amendment Ordinance. The TIF Area, regulated heavily by the Settlement Agreement, is slated

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Cara Pavlicek, Village Manager
May 30, 2017
Page 7

to be terminated in the relatively near future and the circumstances sought to be remedied by the proposed Village Code Amendment Ordinance will no longer exist, if the Parcel Removal Ordinance is adopted.

EXHIBIT A – TIF ACT (65 ILCS 5/11-74.4-4(n))

“(n) If any member of the corporate authority, a member of a commission established pursuant to Section 11-74.4-4(k) of this Act, or an employee or consultant of the municipality involved in the planning and preparation of a redevelopment plan, or project for a redevelopment project area or proposed redevelopment project area, as defined in Sections 11-74.4-3(i) through (k) of this Act, owns or controls an interest, direct or indirect, in any property included in any redevelopment area, or proposed redevelopment area, he or she shall disclose the same in writing to the clerk of the municipality, and shall also so disclose the dates and terms and conditions of any disposition of any such interest, which disclosures shall be acknowledged by the corporate authorities and entered upon the minute books of the corporate authorities. If an individual holds such an interest then that individual shall refrain from any further official involvement in regard to such redevelopment plan, project or area, from voting on any matter pertaining to such redevelopment plan, project or area, or communicating with other members concerning corporate authorities, commission or employees concerning any matter pertaining to said redevelopment plan, project or area. Furthermore, no such member or employee shall acquire of any interest direct, or indirect, in any property in a redevelopment area or proposed redevelopment area after either (a) such individual obtains knowledge of such plan, project or area or (b) first public notice of such plan, project or area pursuant to Section 11-74.4-6 of this Division, whichever occurs first. For the purposes of this subsection, a property interest acquired in a single parcel of property by a member of the corporate authority, which property is used exclusively as the member's primary residence, shall not be deemed to constitute an interest in any property included in a redevelopment area or proposed redevelopment area that was established before December 31, 1989, but the member must disclose the acquisition to the municipal clerk under

the provisions of this subsection. A single property interest acquired within one year after the effective date of this amendatory Act of the 94th General Assembly or 2 years after the effective date of this amendatory Act of the 95th General Assembly by a member of the corporate authority does not constitute an interest in any property included in any redevelopment area or proposed redevelopment area, regardless of when the redevelopment area was established, if (i) the property is used exclusively as the member's primary residence, (ii) the member discloses the acquisition to the municipal clerk under the provisions of this subsection, (iii) the acquisition is for fair market value, (iv) the member acquires the property as a result of the property being publicly advertised for sale, and (v) the member refrains from voting on, and communicating with other members concerning, any matter when the benefits to the redevelopment project or area would be significantly greater than the benefits to the municipality as a whole. For the purposes of this subsection, a month-to-month leasehold interest in a single parcel of property by a member of the corporate authority shall not be deemed to constitute an interest in any property included in any redevelopment area or proposed redevelopment area, but the member must disclose the interest to the municipal clerk under the provisions of this subsection.” (emphasis added)

EXHIBIT B

2016 DISCLOSURE

Relating to

VILLAGE OF OAK PARK, COOK COUNTY, ILLINOIS

CUSIP NUMBER: 671620

\$9,995,000 Sales Tax Revenue Bonds (Holley Court Garage Project), Series 2006C

For further information please contact:

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6/23/16

Sales Tax History

Service Occupation and Use Tax(I)

State Fiscal Year <u>Ending June 30</u>	State Sales Tax <u>Distributions(2)</u>	Annual Percentage Change + (-)
2006.....	\$3,206,831	3.66%(3)
2007.....	3,250,832	1.37%
2008.....	3,217,239	(1.03%)
2009.....	3,073,948	(4.45%)
2010.....	3,168,500	3.08%
2011.....	3,310,505	4.48%
2012.....	3,570,125	7.84%
2013.....	3,447,131	(3.45%)
2014.....	3,427,652	(0.57%)
2015.....	3,466,018	1.12%

Notes: (1) Source: Illinois Department of Revenue. This table does not include the 1.00% home-rule sales tax.

(2) Tax distributions are based on records of the Illinois Department of Revenue relating to the 1% municipal portion of the Retailers' Occupation, Service Occupation and Use Tax, collected on behalf of the Village, less a State administration fee. The municipal 1% includes tax receipts from the sale of food and drugs which are not taxed by the State.

(3) The 2006 percentage change is based on 2005 sales tax of \$3,093,554.

Retailers' Occupation, Service Occupation and Use Tax(I)

Fiscal Year <u>Ending June 30</u>	Municipal <u>Tax</u>	Municipal Home Rule <u>Tax</u>	Total State Sales <u>Tax Distributions(2)</u>
2006.....	\$3,206,831	\$2,067,316	\$5,274,147
2007.....	3,250,832	2,113,147	5,363,979
2008.....	3,217,239	2,118,905	5,334,144
2009.....	3,073,948	1,969,439	5,043,386
2010.....	3,168,500	2,073,200	5,241,700
2011.....	3,310,505	2,222,720	5,533,225
2012.....	3,570,125	2,442,695	6,012,820
2013.....	3,447,131	2,312,883	5,760,014
2014.....	3,427,652	2,352,730	5,780,382
2015.....	3,466,018	2,387,156	5,853,174

Notes: (1) Source: Illinois Department of Revenue.

(2) Includes the 1.00% municipal home-rule sales tax.

Sales Tax Receipts by Kind of Business⁽¹⁾
 (For 12 months ended June 30, 2015)

	Amount Returned to the Village ⁽²⁾	Percent
General Merchandise	\$ 39,091	1.13%
Food	696,187	20.18%
Drinking and Eating Places	804,111	23.31%
Apparel	118,981	3.45%
Furniture, Hardware and Radio	84,703	2.46%
Lumber, Building and Hardware	37,450	1.09%
Automotive and Filling Stations	546,820	15.85%
Drugs and Other Retail	591,403	17.14%
Agriculture and Extractive	457,590	13.26%
Manufacturers	<u>73,802</u>	<u>2.14%</u>
Total	<u>\$3,450,139</u>	<u>100.00%</u>

Notes: (1) Source: State of Illinois, Department of Revenue. This table does not include the 1.00% home-rule sales tax. It is the most current available.
 (2) The amount returned to the Village is equal to 1% of taxable sales made at businesses located with the corporate limits of the Village.

SALES TAX REVENUE DEBT INFORMATION

Sales Tax Revenue Bonds⁽¹⁾
 (Principal Only)

Calendar Year	Series 2006C	Total Outstanding Debt	Cumulative Retirement	
			Amount	Percent
2016.....	\$ 770,000	\$ 770,000	\$ 770,000	7.70%
2017.....	790,000	790,000	1,560,000	15.61%
2018.....	820,000	820,000	2,380,000	23.81%
2019.....	830,000	830,000	3,210,000	32.12%
2020.....	845,000	845,000	4,065,000	40.57%
2021.....	870,000	870,000	4,925,000	49.27%
2022.....	920,000	920,000	5,845,000	58.48%
2023.....	980,000	980,000	6,825,000	68.28%
2024.....	1,000,000	1,000,000	7,825,000	78.29%
2025.....	1,050,000	1,050,000	8,875,000	88.79%
2026.....	1,120,000	1,120,000	9,995,000	100.00%
Total.....	\$9,995,000	\$9,995,000		

Note: (1) Source: the Village.



Sales Tax Revenue Bonds(f)
Projected Debt Service Coverage

Calendar Year	Net Revenue Available for Debt Service(g)	Steuers	Combined Debt Service(h)	Combined Debt Service(i)	Mandatory Coverage(j)	Remaining Available(j)
2015.....	\$ 5,855,174	\$ 1,183,353	\$ 1,183,353	\$ 1,183,353	\$ 1,173,344	\$ 4,656,612
2016.....	5,855,174	1,172,763	1,172,763	1,172,763	1,173,344	4,582,472
2017.....	5,855,174	1,171,163	1,171,163	1,171,163	1,176,744	4,652,012
2018.....	5,855,174	1,169,563	1,169,563	1,169,563	1,172,544	4,704,812
2019.....	5,855,174	1,168,963	1,168,963	1,168,963	1,168,244	4,723,012
2020.....	5,855,174	1,168,363	1,168,363	1,168,363	1,168,044	4,731,812
2021.....	5,855,174	1,167,763	1,167,763	1,167,763	1,170,243	4,717,066
2022.....	5,855,174	1,167,163	1,167,163	1,167,163	1,173,343	4,638,799
2023.....	5,855,174	1,166,563	1,166,563	1,166,563	1,170,068	4,716,449
2024.....	5,855,174	1,165,963	1,165,963	1,165,963	1,171,338	4,710,369
2025.....	5,855,174	1,164,363	1,164,363	1,164,363	1,167,000	4,685,574
2026.....	5,855,174	1,162,763	1,162,763	1,162,763	1,167,400	
Total.....		\$12,663,775	\$12,663,775	\$12,663,775		

Notes: (1) Source: The Village's 2015 sales tax receipts including the 1,0026 home rule sales tax receipts. Does not include up to \$400,000 of interest paid prior to June 2015 and ending December 2015. Does not include parking revenues of the System.

(2) Includes Sales Tax Revenue Bonds, Series 2008C.



EXHIBIT C

Section 12. General Covenants. The Village covenants and agrees with the holders and registered owners of the Series 2006C Bonds as follows:

A. The Village will punctually pay or cause to be paid from the Principal and Interest Account of the Special Tax Allocation Fund, the Pledged Sales Tax Account or the Surplus Account of the Parking Revenue Fund the principal of and interest on the Series 2006C Bonds in strict conformity with the terms of the Series 2006C Bonds and this Ordinance, and it will faithfully observe and perform all of the conditions, covenants and requirements thereof and hereof.

B. The Village will pay and discharge, or cause to be paid and discharged, from the Principal and Interest Account of the Special Tax Allocation Fund, the Pledged Sales Tax Account or the Surplus Account of the Parking Revenue Fund any and all lawful claims which, if unpaid, might become a lien or charge upon the Pledged Moneys, or any part thereof, or which might impair the security of the Series 2006C Bonds. Nothing herein contained shall require the Village to make any such payment so long as the Village in good faith shall contest the validity of said claims.

C. The Village will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the Village, in which complete and correct entries shall be made of all transactions relating to the Pledged Moneys.

D. The Village will preserve and protect the security of the Series 2006C Bonds and the rights of the Bondholders, and will warrant and defend their rights against all claims and demands of all persons. From and after the sale and delivery of the Series 2006C Bonds by the Village, the Series 2006C Bonds shall be incontestable by the Village.

E. The Village will adopt, make, execute and deliver any and all such further ordinances, resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention of, or to facilitate the performance of, this Ordinance, and for the better assuring and confirming unto the Bondholders of the rights and benefits provided in this Ordinance.

F. As long as any Series 2006C Bond remains Outstanding, the Village will continue to deposit and apply the Pledged Moneys as provided herein. The Village covenants and agrees with the purchasers of the Series 2006C Bonds and with the Bondholders that so long as any Series 2006C Bond remains Outstanding, the Village will take no action or fail to take any action which in any way would adversely affect the ability of the Village to allocate or collect the Pledged Moneys. The Village and its officers will comply with all present and future applicable laws in order to assure that the Pledged Moneys may be collected and deposited into the Principal and Interest Account of the Special Tax Allocation Fund, the Pledged Sales Tax Account and the Surplus

Account of the Parking Revenue Fund and to the credit of the respective Accounts thereof, as provided herein.

Section 13. Issuance of Additional Bonds. As long as there are any Series 2006C Bonds Outstanding, no obligations or bonds of any kind shall be issued which are payable from the Pledged Moneys or any portion thereof except upon compliance with one of the options (A) through (E) set out below.

A. Additional Bonds Under Parity Test. Additional Bonds may be issued upon compliance with the following conditions:

1. As shown by the most recently available audit of an independent certified public accountant, which audit shall be for either the most recent Fiscal Year, or the preceding Fiscal Year if (a) the most recent Fiscal Year has ended within 210 days of the date of issuance of the proposed Additional Bonds and (b) the audit for the most recent Fiscal Year is not yet available, the Pledged Sales Taxes must equal 100% and, including such Pledged Sales Taxes, the Pledged Moneys (subject to the provisions hereinafter stated in paragraph 2 relating to the Pledged Subordinated Parking Revenues) must equal at least 150% of Maximum Annual Debt Service on all Outstanding Bonds, computed immediately after the issuance of the proposed Additional Bonds, but only for those Fiscal Years in which the Outstanding Bonds immediately prior to such issuance will continue to be Outstanding Bonds as provided herein.

2. As to the Pledged Subordinated Parking Revenues, for purposes of such calculation Net Revenues of the System may be adjusted (the "*Adjusted Net Revenues*") as follows: In the event there shall have been an increase in the rates of the System from the rates in effect at the beginning of the Fiscal Year of such audit, which increase is in effect at the time of the issuance of any such Additional Bonds, the Net Revenues as described hereinabove may be adjusted to reflect the Net Revenues of the System for the Fiscal Year as they would have been had the existing rates been in effect during all of said Fiscal Year. Any such adjustment shall be