



## **MEMORANDUM**

**TO:** President and Village Board of Trustees

**FROM:** Everette M. Hill, Jr.

**DATE:** October 2, 2024

**RE:** Summary Sheet for Triangle Development Matter Before the Village Board on 10/7/2024

The 10/7/2024 agenda sets forth five (5) Triangle development matters for the Village Board's consideration. Of these, two TIF related ordinances and the Business District ordinance will enable the Village to provide financial assistance in order to make the Triangle redevelopment feasible. These TIF related ordinances and the Business District Ordinance have all been the subject of numerous public hearings.

The Special Service Area ("SSA") ordinance only sets the date and time for a public hearing in order to establish the SSA after adoption of the Redevelopment Agreement ("RDA"). Taxes levied via the SSA will be assessed only against the properties in the DOP and MST TIF Districts.

The ordinance adopting the RDA (negotiated between the parties over the past 18 months) will establish the legal relationship between the Village and the Developer for the entire life of the DOP TIF District. A further description of these five items follows:

1. The ordinance approving the second amendment to the MST TIF District.

This ordinance will accomplish two objectives:

- (1) reduce and adjust the boundary, but not the remaining life of the existing MST TIF District, so that only the *developed* portions of the MST TIF (University of Chicago medical facilities, CVS, 9750 mixed use building) and related parking remain intact; and
- (2) extinguish the existing tax increment financing on the remaining portion of the existing MST TIF District to make way for the new Downtown Orland Park TIF District.

2. The ordinance approving the new Downtown Orland Park Tax Increment Financing District (“DOP TIF”).

This ordinance will establish the boundary of the new DOP TIF and enable the Village to raise the necessary funding for the DOP Redevelopment Project Area. The new DOP Redevelopment Project Area will be developed with restaurant and entertainment facilities, a day care center, retail shopping and office areas, a new Heroes Park, enhancements to the pond and water features and sufficient parking to service the users of the new development. The DOP Redevelopment Project will contain no residential uses. This new DOP TIF will include that area of the MST TIF that the previous ordinance removed and the two small parcels at the southwest corner on the west side of Southwest Highway.

3. The ordinance establishing a Business District (“Triangle BD”).

This ordinance will enable the Village to assess an additional 1% sales tax within the Triangle BD. Revenues generated by this tax will be used to aid in the retirement of the debt incurred by the Village in fulfilling its obligations pursuant to the RDA. The Business District sales tax will remain in place for 23 years and be applied only to the property within its boundary.

4. An ordinance approving the establishment of a public hearing date for the establishment of a special service area that will be generally co-terminus with the Business District.

This ordinance does not establish the SSA but does provide for the statutorily required public hearing to eventually do so. The SSA, once established, will levy an additional property tax to provide funding for the maintenance of the public improvements including roads, stormwater drainage, water features, public parking, seasonal decorations and Heroes Park. The SSA tax will only be levied against properties within the SSA and will be used only to maintain the aforesaid facilities. After the public hearing there is a 60-day waiting period before an ordinance establishing the SSA may be introduced. The establishment of the SSA is integral to the fulfillment of both the Developer’s and the Village’s obligations pursuant to the RDA. As indicated in the RDA, the amount of the annual recommended SSA levy will be determined by a five-person committee consisting of three Village officials and two members of the Developer’s team. The Village Board will have the ultimate authority to set the annual levy.

5. The ordinance approving the RDA which will govern the legal relationship between the Village and the Developer over the life of the DOP TIF.

The RDA is an agreement that has been negotiated between the Village and the Developer. As has been stated the RDA establishes the legal relationship of the

parties and sets forth the obligations of each to the other. The RDA incorporates the concepts contained in the previously adopted Special Use for a Planned Development, the TIF ordinances, the Business District ordinance and the yet-to-be established SSA. It also contains many other terms and rules that will allow for smooth property transfer, development, construction and maintenance. The RDA essentially contains and expands upon the items in the Term Sheet that was approved by the Village Board many months ago. Staff wishes to point out that the RDA addresses two matters which differ from the Term Sheet. The staff wishes to emphasize that these two changes do not alter the already approved zoning concept plan. Neither do the exceptions change the Village's financial obligations for the project. These exceptions will be explained in the summary of the significant terms and conditions of the RDA set forth below:

\*This will be a phased development to which the Village will reimburse the Developer for up to \$33,000,000 in eligible costs as defined by the TIF statute. Of that total, approximately \$7.5M will go toward the construction of Heroes Park and \$2.5M will be spent on utility relocation. The RDA contemplates that the Village will issue a series of promissory notes to the Developer. Each note will be equal to the Village's contribution to a particular Phase of Development. The purpose of the notes is to assure the Developer's lender that the Village will stand behind its financial commitments to the project. The Village will pay down these obligations through the issuance of bonds to be retired by the incremental property taxes generated by the Project and the Business District sales taxes. While it is expected that the incremental property taxes will be sufficient to retire the bonds, they will be backed by the full faith and credit of the Village.

The original Term Sheet specifies that these notes commit the Village to using the TIF increment to reimburse the Developer's cost in completing TIF eligible work for each phase. This obligation remains intact. *However, the RDA now contains a requirement that the Developer repay these monies back to the Village, subject to the Developer's entitlement to a performance credit equal to the amount that is to be repaid to the Village.* By structuring the TIF Fund reimbursement in this fashion, the Developer can align the realization of taxable TIF Funds with the Developer's ability to claim depreciation (and accelerated depreciation of the assets) which will provide a deduction to offset the tax liability that would otherwise arise on account of the receipt of the TIF reimbursement from the Village. *This is the first deviation from the Term Sheet and is a benefit to the Developer; but is expense neutral to the Village.* For each Phase of Development, the Village will have the right to hold back up to 5% of the aforesaid *performance credit* for that Phase. The Village will then be required to pay the accumulated total of the 5% holdbacks only at such time as: (1) Certificates of Substantial Completion have been issued for 90% of the total square footage developed in accordance with the Special Use; and (2) the Village's approval and acceptance of all public infrastructure for the entire project.

\*Each Phase will be constructed according to the Special Use for a Planned Development that was approved by the Village Board on August 5, 2024. Since the Plan Commission has already approved the plan that is attached to this Special Use, the individual phases of development will not require another hearing before the Plan Commission, so long as that Phase is in substantial conformity with the Special Use. Nonetheless, each Phase must be presented to the Village Board for final approval at a public meeting. If the Developer submits a plan for a Phase of Development that departs significantly from the Special Use, the Village Board may send that Phase back to the Plan Commission for further review and public comment.

\*The village currently owns all the land that is subject to redevelopment. The RDA contemplates that title to each parcel will be transferred to the Developer upon completion of the prior Phase of Development. However, the RDA contains sufficient flexibility that, upon Board approval, the Developer may be permitted to proceed with more than one Phase of Development at the same time. The selling price of each parcel has already been negotiated and those prices are set forth in Exhibit \_\_\_ of the RDA. No closing will take place for a Phase of Development until the Developer has provided proof that all financing to complete that Phase is in place.

The Term Sheet also called for the Developer to eventually take ownership of the interior roadways, the stormwater detention facilities, the pond at the north end of the project, Heroes Park, public utilities and the existing water tower (“Certain Improvements”) Portions of the SSA revenue would then be assigned to the Developer to pay for the maintenance of these Certain Improvements. The Developer’s tax experts now say that taking title to these properties would create a significant tax liability to the Developer, thus hampering their ability to complete the project. Therefore, the RDA now contemplates that the Village will retain title to these Certain Improvements. Maintenance will still be financed through the SSA but give the Village the ability to either perform the maintenance or enter into an operation and maintenance agreement with the Developer for such maintenance. Not only is this revenue neutral to the Village but the change enables the Village to retain title to these Certain Improvements. *This retention of ownership of Certain Improvements is the second of the two deviations from the Term Sheet.*

\*The Developer will supply a performance bond for all infrastructure improvements. The bond may be reduced as portions of these infrastructure improvements are completed, but the bond may never fall below 10% of the total cost of the improvements until the final Certificate of Occupancy for the entire project has been issued by the Village.

\*Except for delays caused by Force Majeure, which is defined in the RDA, the Developer is required to adhere to the project schedule as set forth in an exhibit to the RDA.

\*The Developer is required to provide a complete insurance package to the Village which will be primary to any Village coverage. The Village will be named as an additional insured on all such Developer policies.

\*In the unlikely event that the Developer defaults on payments to the Developer's lender, the lender will be required to observe a "standstill period" and negotiate with the Village prior to exercising any right of foreclosure. A very important aspect of the RDA and the Special Use is that no party, not the Developer, not the lender nor any other party, may develop the subject property in any manner other than that set forth in the Special Use and the RDA.

\*The Developer must endeavor to find users that do not require drive-through facilities. If a drive-through facility is to be constructed, it must be done in complete conformity to the Village Code.

\*Non-property tax paying uses are prohibited within the limits of the newly created DOP TIF District. This restriction will be required as a condition of approval during the Phase of Development approval process. Any deviation from this prohibition will require the adoption of an ordinance by the Village Board. This prohibition is necessary to protect the TIF increment stream.

\*The Developer is required to use commercially reasonable efforts to find a long-term retail user for the 143<sup>rd</sup> Street Railroad Depot.