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MEMORANDUM

Date: September 25, 2018

To: President Rintz and Village Trustees
Village Manager Rob Bahan

From: Peter M. Friedman
Benjamin L. Schuster

Re: One Winnetka Approval Documents

Enclosed is the set of final approval documents for the One Winnetka planned development proposal. If the Village Council desires to approve the One Winnetka development, it will need to approve the following five ordinances and resolutions:

1. An Ordinance Rezoning the Property Located at 710 Elm Street to the C2 General Retail Commercial District and Including Portions of the Property Within the C2 Commercial Overlay District, the Transitional Height Sub-District, and the Standard Height Sub-District of the C2 General Retail Commercial District (“**Rezoning Ordinance**”);
2. A Resolution Approving a Final Plat of Subdivision (“**Subdivision Resolution**”);
3. An Ordinance Granting a Special Use Permit, a Variation from the Winnetka Zoning Ordinance, and a Certificate of Appropriateness for the Reconstruction and Operation of a Public Parking Lot Within the C2 General Retail Commercial District (“**Village Parking Lot Ordinance**”);
4. An Ordinance Granting Final Approval of a Planned Development (“**Planned Development Ordinance**”);
5. A Resolution Approving an Amended and Restated Development Agreement (“**Development Agreement Resolution**”);

(Collectively, the “**Approval Documents.**”)

While all of the Approval Documents will be on the agenda for the Village Council’s September 18, 2018 meeting, the Subdivision Resolution and Development Agreement Resolution will be on the agenda for discussion only. Unlike ordinances, resolutions do not require two readings. Therefore, while the Village Council may vote to approve introduction of the ordinances at its September 18 meeting, the Village Council will not vote on the resolutions until it votes on final approval of the ordinances.

I. Background and Status of Document Preparation.

The Approval Documents have been reviewed by Village Staff. We have also provided the drafts of the Approval Documents to the Developer and its attorney. The Developer has provided us with comments, questions, and suggested changes to the Approval Documents. In consultation with Village Staff, we have made some of the requested changes, but not made other requested changes. We specifically did not make any change that we believed was inconsistent with the Council's directions, requested conditions, or public commitments made during the public hearing process and Council consideration.

We have also made clear that these Approval Documents remain subject to the Council's public review and approval. Thus, the Approval Documents are not final and we have not bound the Village with regard to these documents or the provisions contained in them.

The following is a detailed summary of the Approval Documents.

II. Development Time Restrictions.

The Approval Documents contain numerous provisions regarding the timing of various aspects of the Development and permits. The following is a general summary of keys steps and timing requirements for the Development.

The Developer owns the property commonly known as 511-515 Lincoln Avenue, 714-732 Elm Street, and 740 Elm Street. However, the Developer does not yet own the property commonly known as 736 Elm Street (the "**Conney's Parcel**"). The Developer is the contract purchaser of the Conney's Parcel and has indicated that it will take title to the Conney's Parcel if the Village Council approves the Approval Documents. Because the Developer does not yet own the Conney's Parcel, some of the Approval Documents and the approvals granted therein will not take effect immediately, and their effective date will be triggered by the Developer's acquisition of the Conney's Parcel.

- The Planned Development Ordinance will take effect within 10 days after adoption. However, the approval of the planned development in the Ordinance will not be effective until the plat of subdivision ("**Plat**") is recorded. The Plat cannot be recorded until the Developer takes title to the Conney's Parcel. The Development Agreement and Planned Developer Ordinance require the Developer to take title to the Conney's Parcel and record the Plat by December 31, 2018 ("**Recording Deadline**"), provided that the Developer has a right to extend the Recording Deadline by two 90-day periods in the event that the Developer is unable to close on the Conney's Parcel by the end of the year. The Developer's approvals may be revoked by the Village Council if the Developer does not take title to the Conney's Parcel and record the Plat by the Recording Deadline.
- Within 30 days after the Planned Development Ordinance is adopted the Developer must execute the Development Agreement.
- The rezoning of the One Winnetka Property and Village's parking lot property will take effect after the Plat is recorded, and rezoning must occur by the Recording Deadline

(subject to the Developer's right to extend the Recording Deadline for two 90-day periods).

- The Planned Development Ordinance will expire 90 days after the Plat is recorded unless the Developer has submitted by that date a full and complete building permit application for the Development. The Council can grant two, 90-day extensions to this deadline under limited circumstances set forth in the Planned Development Ordinance. The Village is required to promptly review and act on the building permit application.
- Within 60 days after issuance of the building permit, the Developer must commence construction, beyond mere fencing and site preparation.
- The construction of the Development must be substantially complete within 24 months after the building permit is issued, and the term of the building permit is specifically set at 24 months.

III. Summary of Rezoning Ordinance.

The Village owns the public parking lot located at 710 Elm Street ("***Pre-Development Parking Lot Parcel***"). If the Village Council approves the Development, the Village will convey a portion of the Parking Lot Parcel to the Developer ("***Post-Development Transfer Parcel***") and retain a portion of the Pre-Development Parcel ("***Post-Development Parking Lot Parcel***"), which will remain a public parking lot.

The Pre-Development Parking Lot Parcel is currently zoned in B1 Multi-Family Residential District. In order for the Developer to construct a portion of its building on the Post-Development Transfer Parcel, and the Village to use the Post-Development Parking Lot Parcel as a public parking lot, both Parcels need to be rezoned to the C2 General Retail Commercial District.

In addition, the Post-Development Transfer Parcel needs to be included in the Standard Height Sub-District of the C2 General Retail Commercial District, and the Post-Development Parking Lot Parcel needs to be included in the Transitional Height Sub-District of the C2 General Retail Commercial District for the properties to be redeveloped as proposed. The inclusion of the properties in the two zoning sub-districts is necessary to provide the Developer the necessary height for the One Winnetka Building and its balconies, which will hang over onto the Post-Development Parking Lot Parcel.

The Rezoning Ordinance provides for these zoning changes. The zoning changes will take effect when the Developer acquires the Conney's Parcel and the Plat is recorded.

IV. Summary of Subdivision Resolution

The properties are currently subdivided into multiple lots of record, and the various lot lines are not consistent with the how the properties will be redeveloped. Accordingly, the Developer has applied for the approval of a three-lot subdivision.

The Subdivision Resolution approves the Plat, which will create three lots: (i) Lot 1, which will include the Developer's building; (ii) Lot 2, which will include the Post-Development Parking Lot to be owned by the Village to the east of the One Winnetka building; and (iii) Lot 3, which is a vertical portion of Lot 1 designated for the level of the One Winnetka parking garage to be owned by the Village and used for commuter, employee, and public parking.

Because the Developer does not own the Conney's Parcel, the approval granted in the Subdivision Resolution cannot take effect until the Developer acquires title to the Conney's Parcel, which must occur and the Plat recorded by the Recording Deadline (subject to the Developer's right to extend the Recording Deadline for two 90-day periods).

V. Summary of Village Parking Lot Ordinance

The Village Parking Lot Ordinance provides the necessary approvals for the Post-Development Parking Lot Parcel to remain a public parking lot. Pursuant to the Zoning Ordinance, the Village Council must grant the Village a special use permit for the Post-Development Parking Lot Parcel to be used as a public parking lot in the C2 General Retail Commercial District.

In addition, the Village Parking Lot Ordinance also grants a variation to the setback requirements of the Zoning Ordinance and a certificate of appropriateness, both of which are needed for the Developer to construct the parking lot on the parcel as designed.

The Village Parking Lot Ordinance cannot, and will not, take effect until after the Post-Development Parking Parcel is rezoned, which will occur after the Developer acquires the Conney's Parcel and the Plat is recorded.

VI. Summary of Planned Development Ordinance

A. Property. The Planned Development Ordinance grants the Developer approval for a planned development for the properties commonly known as 511-515 Lincoln Avenue and 714-740 Elm Street ("**PD Property**"). While the Developer's Property and the level of the parking garage to be acquired by the Village will be within the planned development, the Village's Post-Development Parking Parcel is not included within the boundaries of the planned development. This will provide the Village more flexibility should it ever desire to redevelop or sell the Post-Development Parking Lot Parcel.

B. Developer/Applicant. The original applicant was Stonestreet Partners, LLC. At the time of the original application, two related limited liability companies (Winnetka Station, LLC and PSB/Elm Street, LLC), both managed by David Trandel, held title or were under contract to acquire the various components of the Property. Subsequently, two new limited liability companies, SB One Winnetka, LLC and SB Winnetka, LLC (collectively, "**Developer**") have acquired or are under contract to acquire all of the PD Property. Both of these LLCs are also managed and/or controlled by David Trandel.

C. Zoning Relief. The Planned Development Ordinance grants the Developer final approval of a planned development on the PD Property. The details of the proposed development are included in the staff report that accompanies this memo ("**Development**"). The

Planned Development Ordinance also approves the “*Final Development Plan*,” which is comprised of the following plans and drawings, all of which are included in your packet – (1) Planned Development Plat, (2) Architectural Plan, (3) Final Engineering Plan, and (4) the Landscape and Lighting Plan. The zoning relief does not take effect until the Developer acquires the Conney’s Parcel and the Plat is recorded.

The Planned Development Ordinance also approves the following --

- building height exceptions to allow the parapet on the corner turret to be 61.5 feet, the remaining area of the Lincoln Avenue building to be 59 feet, the center building on Elm Street to be 48 feet, 10 inches, and the easternmost building on Elm Street to be 58 feet;
- an upper story setback exception to reduce the upper story setback to zero,
- a rear yard setback exception to reduce the rear yard setback to zero, and
- a drive-aisle width exception to reduce the width of the parking garage drive aisles from 24 feet to 22 feet.

It is important to remember that while the Planned Development Ordinance, together with the other Approval Documents, grants the Developer the zoning relief necessary to construct the Development, it does not authorize the Developer to begin any construction. The Developer will still need to prepare and submit to the Village for approval construction plans to obtain demolition and building permits.

D. Conditions. All of the zoning relief approved in the Planned Development Ordinance is subject to several specific conditions set forth in the Planned Development Ordinance as well as in the Development Agreement (“*Common Conditions*”). Below is a brief description of the Conditions:

1. Agreement. The Developer must enter into and execute the Development Agreement within 30 days after adoption of the Ordinance.
2. Single Phase. The Development must be a single-phase development.
3. Residential Units. No less than 55 and no more than 62 residential units shall be constructed as part of the Development.
4. Parking. The Developer must construct and provide: (i) 115 underground private parking spaces on the PD Property for use by the residences and guests; (ii) 131 underground public parking spaces on Lot 3 for commuter, employee, and general public use; (iii) 33 public parking spaces Post-Development Parking Lot Parcel; (iv) 11 on-street public parking spaces in and along the east side of the Lincoln Avenue right-of-way and repair or reconstruct any other parking spaces on the Lincoln Avenue right-of-way damaged by any construction; and (v) 24 on-street public parking spaces in and along the south side of the Elm Street right-of-way.

5. Refuse and Recycling. The Developer must comply with the Loading and Refuse Plan to manage and control refuse and recycling collection and disposal in order to alleviate, to the greatest extent possible, noise and inconvenience to neighboring businesses and residences.
6. Ingress and Egress. All ingress and egress related to the Development must have sufficient turn radiuses for cars and trucks and safe sightlines and access.
7. Signage. All signage must comply with the Village Code.
8. Use Restriction. The first-floor retail space at the southwest corner of the Development and south of the interior east-west corridor may not be used as a restaurant without Village Council approval. All other retail uses are governed by the otherwise applicable provisions in the Zoning Code.
9. Ventilation. Commercial kitchen exhaust must be vented through the roof of the Development at elevations in excess of existing adjacent buildings.
10. Continued Cooperation. The Developer must meet with Hadley Institute and 711 Oak representatives no less than once a month during the first 12 months of construction, unless otherwise agreed by the parties. After the first year, these meetings are once every two months until the final occupancy permit is issued for the Development. These meetings are to eliminate, or reduce as much as possible, the Development's impact on these properties and operations. The Developer must provide written reports to the Village on these meetings.
11. Video Surveillance. Developer must install a video surveillance system for the new underground commuter spaces and the Post-Development Parking Lot Parcel. The system must be compatible with the Village's system.
12. East Parking Lot Safety Measures. The Developer is required to implement specific safety measures related to the operation of the east parking lot and the Hadley Institute. These are described in the Hadley Institute Plan and include measures to alert pedestrians of cars entering and exiting the parking lot and covered walkways and other facilities for safety during construction.
13. Landscaping/Streetscape. The Developer must install landscape and streetscape improvements, including street lights, pedestrian lights, clay pavers, tree grates, irrigation, bike racks, trees, and other streetscape improvements, along (a) the north side of Elm Street, from Arbor Vitae to Lincoln Avenue; (b) the south side of Elm Street from the east property line of the Post-Development Parking Lot Parcel to Lincoln Avenue; and (c) the east and west sides of Lincoln Avenue, from Elm Street to the southern property line of Developer's Post-Development Property, all (i) in general accordance with the Village Streetscape Plan, which an excerpt of such plan is attached as Exhibit J, as determined by the Village (unless requirements of the Village Streetscape Plan are waived by the Village), which Village Streetscape may be modified by the Village at any time prior to the installation of the landscape and streetscape improvements, and (ii) pursuant to final construction plans approved by the Village Manager.

14. Site Utilities. Developer is responsible for the extension, installation, and connection of all public and private utility facilities necessary to serve the Development.
15. Power Cables. Existing power cables must be relocated and the Village will acquire an easement if the Developer routes any of the cables under the building.
16. General Use and Maintenance of Property. The Developer must comply with the Village Code and additional minimum standards necessary to protect the public health and safety during demolition of existing structures and construction of the Development. As part of these requirements Developer must (a) maintain the Property and any buildings (new or old) in good repair and condition and not allow the Property or any buildings to fall into disrepair prior to demolition.
17. Taxes and Utilities. The Developer shall pay all taxes and utility fees as and when due and shall provide proof that the PD Property is free of utility, tax or other liens as a condition for final planned development approval and as a condition for the issuance of any permits.
18. Term of Building Permit. The building permit issued for the construction of the Proposed Development shall be in effect for a term of 24 months from the date of issuance.
19. Binding Effect/Transferability. Generally, all of the terms and conditions of the Planned Development Ordinance are binding on the Developer and its successors and assigns, and any subsequent owners of any part of the PD Property. However, prior to completion of the Development, the Developer cannot transfer any rights under the Ordinance to any other person or entity without the Village's prior approval and in accordance with the Development Agreement.

F. Non-Interference. The Developer is required to ensure that all of Developer's activities are designed to minimize or eliminate interruption or interference with adjacent businesses, pedestrians, vehicular traffic.

G. Noncompliance. The Village has the right to terminate the zoning approvals and other approval in the Planned Development Ordinance in the event of the Developer's noncompliance with the Planned Development Ordinance or the Development Agreement. If the Planned Development Ordinance is revoked, the PD Property would be governed solely by the C-2 General Retail Commercial and C-2 Overlay District regulations.

I. Developer Acceptance. The Planned Development Ordinance does not take effect unless the Developer, within 10 days after Planned Development Ordinance adoption, fully executes an unconditional agreement and consent to comply with all of the provision of the Planned Development Ordinance and to indemnify and hold the Village harmless from any and all claims related to the Village's adoption of the Planned Development Ordinance.

VII. Development Agreement.

Development agreements are typically utilized when a proposed development not only requires zoning relief but also construction of public improvements and other affirmative obligations of the developer beyond simply constructing the development. Development agreements contractually obligate developers to undertake construction obligations and restrict use of a developer's property to the specific proposed development. These agreements also require various forms of financial security to protect the local government from failed or stalled developments or improper or incomplete construction of required improvements. The Development Agreement for One Winnetka does all of these things.

The Village and the Developer entered into a development agreement on February 1, 2017 pursuant to the Preliminary Planned Development Ordinance ("**Initial Development Agreement**"). The Development Agreement included in the Approval Documents replaces the Initial Development Agreement. The terms of the Development Agreement are summarized below.

A. Parties. The parties to the Development Agreement are the Village and the two Developer LLCs, SB Winnetka, LLC and SB One Winnetka, LLC.

B. Property. The Development Agreement, like the Planned Development Ordinance, governs the Development. The Development Agreement also requires the Developer to maintain ownership of the entire PD Property other than Lot 3 at all times during the construction of the Development and a failure to do so authorizes the Village to revoke the approvals and terminate the Development Agreement. The Development Agreement further provides that the Developer will convey to the Village Lot 3 five business days after the Developer acquires title to the Conney's Parcel, and the Village will convey to the Developer the Post-Development Transfer Parcel only after the Village issues the final certificate of occupancy for the residential units.

C. Homeowners Associations. The Development Agreement contains comprehensive provisions ensuring that the association that will govern the privately-owned residential units and own the common areas is properly established and legally obligated to properly maintain the common areas. These provisions prohibit anything in the association documents from being inconsistent with the Development Agreement and provides the Village the authority to cure in the event that the Village decides the common area improvements are not being properly undertaken.

D. Development of Property. The Development Agreement provides that notwithstanding any other right that might otherwise exist with regard the PD Property's use, the PD Property will be used and development solely pursuant to the Development Agreement, and specifically pursuant to the Planned Development Ordinances and the Final Development Plan and all of its exhibits.

E. Timing. The Development Agreement includes and incorporates the time restrictions and requirements outlined in Section II of this Memo.

F. Footings and Foundation Permit. The Development Agreement provides that the Developer may receive from the Village a “footings and foundation” permit prior to issuance of a full-scale building permit for the entire Development. This does not mean that the Development will be constructed in phases. It simply allows the Developer the ability to get footings and foundation work completed before all of the final building permit plans and engineering work is ready for final permit. The Development Agreement provides several protections for the Village and specific standards for whether the footings and foundation permit should be issued. These include: (i) that Developer has submitted an application to the Village for a building permit; (ii) Lot 3 has been conveyed to the Village; (iii) a plan compliance inspector has been selected; (iv) the Developer has acquired the Conney’s Parcel; (v) the Village has approved a Reciprocal Easement Agreement; (vi) the Developer has provided the Village with the Letter of Credit; and (vii) proof of project financing. The Developer is also required to indemnify the Village for anything related to this permit.

G. Plan Compliance Inspector. The Development Agreement allows the Village, in consultation with the Developer, to retain an outside plan inspector to assist the Village in ensuring compliance with the Final PD. The plan compliance inspector will regularly inspect the Development construction activity and report any and all discrepancies to the Village and the Developer. The Developer is responsible reimbursing the Village for the cost of the inspector up to \$30,000.00.

H. Improvements. Section 6 of the Development Agreement lists all of the public and private improvements (other than the buildings) that the Developer is specifically required to construct, including stormwater, sanitary sewer, potable water, roads, sidewalks, parking facilities, video surveillance for the B1 Level public parking facilities, electronic “available parking” signage system, east parking lot pedestrian safety measures, landscaping and streetscape, electric power cables, and all other utilities necessary to serve the Development. Section 6 also includes detailed standards and procedures for the construction, approval, completion, and (if applicable) dedication and maintenance of completed improvements. With regard to public improvements, the Developer is also required to maintain and repair any defects in the improvements.

I. Demolition and Construction. Section 7 of the Development Agreement provides specific requirements on demolition and construction activities at the Property. The Developer is required to diligently pursue construction of all buildings, structures, and improvements at the Property and in strict compliance with the building permit and Construction Schedule and Staging Plan. The Developer must also comply with detailed provisions on construction traffic, routes of access, and schedule.

J. Construction Debris. The Developer must receive the Village’s approval of a plan for recycling of demolition and construction debris prior to issuance of any permit for construction of the Development.

K. Protection of Buildings. The Developer is solely responsible for monitoring the Development to prevent damage to neighboring properties and buildings. This protection includes seismic monitoring for adjacent buildings.

L. Completion. Subsection 7.J of the Development Agreement requires the Developer to remove partially completed structures and improvements and if the Developer fails to do so the Village is authorized to do it and then utilize the security provided by the Developer to pay for the costs. These provisions protect the Village in the event the Development stalls. The Village will have authority to clear the site and perform other site restoration work if the Developer fails to do so.

M. Conveyance of Lot 3. Section 8 of the Development Agreement requires the Developer to convey to the Village Lot 3 within five business days of the Developer's acquisition of the Conney's Parcel. Subsection 8.B requires the Developer to purchase the Village a \$5 million title insurance policy for Lot 3.

N. Village Fees and Costs. Section 9 of the Development Agreement provides that the Developer will be required to pay a maximum of \$375,000 for the initial building permit for the Development. This amount does not include fees for electrical services, fire suppression facilities, or subsequent permits and field changes. In addition, Section 9 requires the Developer to pay all other applicable fees, costs, and charges required under the Village Code. This Section also requires the Developer to pay the Village's attorney's fees and any other third-party legal, engineering and other consulting or administrative fees and expenses accrued in connection with Development as well as the preparation, negotiations, consideration, and review of the Development Agreement and Final PD Ordinances.

O. Security. Section 10 of the Development Agreement contains the financial security requirements for the Developer, as follows:

1. Performance Security. The Developer must post with the Village prior to obtaining any demolition or footings and foundation permits a letter of credit, or other form of security acceptable to the Village, known as the "*performance security*" (the precise form of which - if a letter of credit is used - is attached to the Development Agreement as an Exhibit) in the amount of 125 percent of the estimated cost of completing all of the improvements (other than the actual buildings). This Village can draw on this security in a number of specified circumstances, including if the Developer fails to complete the improvements pursuant to the Development Agreement, fails to correct defects in the improvements, fails or refuses to restore the Property in the event the Development stalls, or otherwise fails to comply with the obligations under the Development Agreement. The Village has the right under the Development Agreement to require this security to be replenished if the Village determines the funds remaining are insufficient to cover any remaining obligations.

2. Guaranty Security. The Developer must post with the Village a second letter of credit, or other form of security acceptable to the Village, known as the "*guaranty security*" (the precise form of which - if a letter of credit is used - is also attached to the Development Agreement as an Exhibit). As the public improvements are completed and accepted by the Village, the performance security is reduced and replaced by the guaranty security. The guaranty security is required to be 15 percent of the actual costs of the completed public improvements for which the performance security is being released. The guaranty security is required for two years from the date of acceptance by the Village of the public

improvement and may be utilized by the Village to ensure the Developer's compliance with the two-year maintenance for improvements under the Development Agreement.

3. Project Financing. Subsection 10.J of the Development Agreement requires the Developer to provide (prior to issuance of the footings and foundation permit, or any building or demolition permits) specific proof that it has secured the necessary debt, equity, or self-financed financing in amounts necessary to construct and complete the Development and its improvements.

4. Guaranty of Completion. Subsection 10.K of the Development Agreement requires the Developer to provide (prior to approval of the Final PD Ordinance) a third-party guaranty, the specific form of which is attached to the Development Agreement as an Exhibit. Generally, the guaranty would require the guarantor to step in and undertake any and all of the Developer's obligations under the Development Agreement if the Developer fails or refuses to satisfy its obligations. The guaranty must be submitted to the Village within 25 business days after approval of the Planned Development Ordinance. Additionally, the Development Agreement now requires that the guarantor meet the following three financial standards to be acceptable to the Village – (i) a debt to equity ratio of less than two to one; (ii) no less than \$7,500,000 of working capital; and (iii) no less than \$25,000,000 in net worth.

P. Liability and Indemnity. Section 11 of the Development Agreement provides that the Developer will fully indemnify and hold the Village harmless from any all claims that may be made against the Village (or any of the Village's staff or elected officials) as a result of the approval of the Development, issuance of any permits, or construction of the Development.

Q. Transfer Restrictions. Section 12 of the Development Agreement provides that prior to completion of the Development and the issuance of all of its certificates of occupancy, the Developer may not transfer any interest in the Property without the Village's prior approval. Any such approved transfer would be conditioned on the person or entity to which all or part of the Property is being transferred executing a "transferee assumption agreement" (the specific form of which is attached to the Development Agreement as an Exhibit), obligating the transferee to assume all of the obligations of the Developer. These transfer restrictions do not apply to the sale of individual residential units or two transfers after the completion of the Development in compliance with the Development Agreement.

R. Default and Remedies. Sections 14 and 15 of the Development Agreement provide the Village with comprehensive remedies in the event of Developer's breach of the Development Agreement, including the ability of the Village to draw from the performance or guaranty securities to complete unfinished work, secure and restore the Property, require or otherwise provide for the demolition and removal of any partially constructed buildings, structures, or improvements from the Property, and the revocation and termination of the previously approved zoning relief and the Planned Development Ordinance.