

VILLAGE OF VERNON HILLS

ORDINANCE NO. 2009-036

AN ORDINANCE AUTHORIZING THE VILLAGE PRESIDENT TO EXECUTE A
THIRD AMENDMENT TO THE REDEVELOPMENT AGREEMENT WITH VHTC,
LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, FOR THE PROPERTY AT
THE NORTH SIDE OF U.S. ROUTE 45, NORTH OF U.S. ROUTE 21 IN THE
VILLAGE OF VERNON HILLS, LAKE COUNTY

THE 21ST DAY OF JULY 2009

Published in pamphlet form by the
Authority of the President and Board
Of Trustees of the Village of Vernon
Hills, Lake County, Illinois, this 22nd
Day of July 2009

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WHEREAS, the Village has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the Village and its inhabitants, to prevent the presence of blight, to encourage private redevelopment in order to enhance the local tax base, to increase additional tax revenues realized by the Village, foster increased economic activity within the Village, to increase employment opportunities within the Village, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise be in the best interests of the Village; and

WHEREAS, the Village is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., as amended (the "Act"), to finance redevelopment in accordance with the conditions and requirements set forth in the Act; and

WHEREAS, on May 9, 2006, the Village and VHTC, LLC (the "Developer") entered into a Redevelopment Agreement to stimulate and induce redevelopment in the Redevelopment Project Area (the "Redevelopment Agreement"); and

WHEREAS, on July 10, 2007 the Village and the Developer executed the First Amendment to the Redevelopment Agreement (“First Amendment”) to clarify and confirm certain provisions thereof; and

WHEREAS, on December 20, 2007, the Village remitted three million two thousand dollars (\$3,002,000) in bond proceeds to VHTC as partial payment of the amounts owed to VHTC on the purchase of the Half Day Inn Property pursuant to Section 5.3 of the Redevelopment Agreement.

WHEREAS, on January 8, 2008, the Village and the Developer executed the Second Amendment to the Redevelopment Agreement (“Second Amendment”).

WHEREAS, the Parties now desire to further amend the Redevelopment Agreement in order to allow the Developer to assign the Developer’s interest in the Developer’s Notes pursuant to the Redevelopment Agreement (Assignment attached as **Exhibit “A”**); and

WHEREAS, this Third Amendment has been submitted to the Members of the Developer for consideration and review, the Members have taken all actions required to be taken prior to the execution of this Third Amendment in order to make the same binding upon the Developer according to the terms hereof, and any and all action of the Members of the Developer precedent to the execution of this Third Amendment have been undertaken and performed in the manner required by law; and

WHEREAS, the Village has conducted such hearings as are required to be held under the Act and all applicable law.

NOW THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF VERNON HILLS, LAKE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION I: Recitals. The foregoing recitals shall be and are hereby incorporated in this Section One as if said recitals were fully set forth herein.

SECTION II: Third Amendment to Redevelopment Agreement. This Ordinance authorizes the Village President to execute a third amendment to the Redevelopment Agreement with VHTC, LLC, said Amendment being attached in Exhibit A, for the property at the north side of U.S. Route 45, West of U.S. Route 21 in order to modify certain provisions thereof.

SECTION III: Invalidity of Any Section. If any section, paragraph, or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provisions shall not affect any of the remaining provisions of this ordinance.

SECTION IV: Superseder and Effective Date. All ordinances, resolutions, motions or orders in conflict herewith shall be and the same hereby are, repealed to the extent of such conflict, and this ordinance shall be in full force and effect immediately upon its passage by the Corporate Authorities and approval as provided by law.

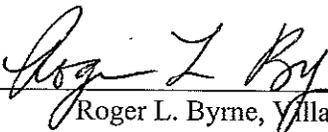
SECTION VII. Ordinance Number. This Ordinance shall be known as Ordinance Number 2009-036.

Adopted by roll call vote as follows:

AYES: 6-Hebda, Koch, Marquardt, Schultz, Schwartz, Williams

NAYS: 0-None

ABSENT AND NOT VOTING: 0-None



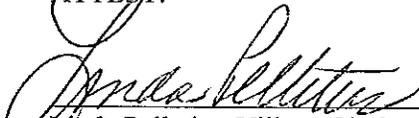
Roger L. Byrne, Village President

PASSED: 7/21/2009

APPROVED: 7/21/2009

PUBLISHED IN PAMPHLET FORM: 7/22/2009

ATTEST:



Linda Pelletier, Village Clerk



AFFIDAVIT OF SERVICE

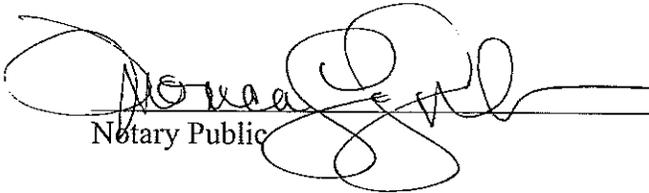
STATE OF ILLINOIS)
)
COUNTY OF LAKE)

I, LINDA PELLETIER, BEING FIRST DULY APPOINTED, DEPOSES AND SAYS ON OATH THAT AS VILLAGE CLERK OF THE VILLAGE OF VERNON HILLS, SHE DID CAUSE THE FOREGOING CERTIFICATE FOR ORDINANCE 2009-036, AN ORDINANCE AUTHORIZING THE VILLAGE PRESIDENT TO EXECUTE A THIRD AMENDMENT TO THE REDEVELOPMENT AGREEMENT WITH VHTC, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, FOR THE PROPERTY AT THE NORTH SIDE OF U.S. ROUTE 45, NORTH OF U.S. ROUTE 21 IN THE VILLAGE OF VERNON HILLS, LAKE COUNTY

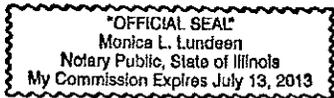


LINDA PELLETIER, VILLAGE CLERK

SUBSCRIBED AND SWORN to Before
Me this 19 day of August, 2009



Notary Public



**THIRD AMENDMENT TO
REDEVELOPMENT AGREEMENT**

THIS THIRD AMENDMENT TO REDEVELOPMENT AGREEMENT (this "Third Amendment"), is made and entered into as of the 21st day of July, 2009 ("Third Amendment Date") by and between the VILLAGE OF VERNON HILLS, ILLINOIS, an Illinois municipal corporation, located in Lake County, Illinois (the "Village") and VHTC, LLC, an Illinois limited liability company (the "Developer"). (The Village and the Developer are sometimes referred to individually as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, the Village has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the Village and its inhabitants, to prevent the presence of blight, to encourage private redevelopment in order to enhance the local tax base, to increase additional tax revenues realized by the Village, foster increased economic activity within the Village, to increase employment opportunities within the Village, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise be in the best interests of the Village; and

WHEREAS, the Village is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., as amended (the "Act"), to finance redevelopment in accordance with the conditions and requirements set forth in the Act; and

WHEREAS, on May 9, 2006, the Village and the Developer entered into a Redevelopment Agreement to stimulate and induce redevelopment in the Redevelopment Project Area (the "Original Redevelopment Agreement"); and

WHEREAS, on July 10, 2007 the Village and the Developer executed the First Amendment to the Redevelopment Agreement ("First Amendment") to clarify and confirm certain provisions thereof; and

WHEREAS, on December 20, 2007, the Village remitted three million two thousand dollars (\$3,002,000) in bond proceeds to VHTC as partial payment of the amounts owed to VHTC on the purchase of the Half Day Inn Property pursuant to Section 5.3 of the Redevelopment Agreement.

WHEREAS, on January 8, 2008, the Village and the Developer executed the Second Amendment to the Redevelopment Agreement ("**Second Amendment**"; together with the First Amendment and the Original Development Agreement are sometimes referred to as the "**Redevelopment Agreement**").

WHEREAS, the Parties now desire to further amend the Redevelopment Agreement in order to allow the Developer to assign the Developer's interest in the Developer's Notes pursuant to the Redevelopment Agreement (Assignment attached as **Exhibit "A"**); and

WHEREAS, this Third Amendment has been submitted to the Members of the Developer for consideration and review, the Members have taken all actions required to be taken prior to the execution of this Third Amendment in order to make the same binding upon the Developer according to the terms hereof, and any and all action of the Members of the Developer precedent to the execution of this Third Amendment have been undertaken and performed in the manner required by law; and

WHEREAS, the Village has conducted such hearings as are required to be held under the Act and all applicable law.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

ARTICLE ONE

INCORPORATION OF RECITALS

The findings, representations and agreements set forth in the above Recitals are material to this Third Amendment and are hereby incorporated into and made a part of this Third Amendment as though fully set out in this **Article One**, and constitute findings, representations and agreements of the Village and of the Developer according to the tenor and import of the statements in such Recitals.

ARTICLE TWO

DEFINITIONS

For the purposes of this Third Amendment, unless the context clearly requires otherwise, words and terms used in this Third Amendment shall have the same meanings as in the Redevelopment Agreement, except for the following:

“Developer’s Notes” means the three (taxable or nontaxable) Tax Increment Revenue Notes (Half Day Partners Project) subject to the provisions of the Note Ordinances. The Improvements Note is hereby modified as described in **ARTICLE FOUR** of this Third Amendment. The third note (**“2nd Improvements Note”**) will be issued by the Village to the Developer upon completion of all required improvements that are not completed as of the date of the final drawdown of the Improvements Note but are required under the Redevelopment Agreement, as amended and as set forth on **Exhibit “B”**. The 2nd Improvements Note, referred to collectively with the Half Day Inn Note and the Improvements Note as **“Developer’s Notes”** shall carry an interest rate of eight percent (8%).

ARTICLE THREE

CONSTRUCTION

This Third Amendment, except where the context by clear implication shall otherwise require, shall be construed and applied the same as in the Redevelopment Agreement.

ARTICLE FOUR

MODIFICATION TO SECTION 5.2

Effective as of the date of this Third Amendment, subsection 5.2 b of the Redevelopment Agreement shall be amended to provide that the Village will redeem the Half Day Inn Note, the Improvements Note and the 2nd Improvements Note principal and interest on or before August 1, 2012. Additionally, at the Village's sole discretion, on July 1, 2011 and thereafter, the Developer's Notes can be called at par.

ARTICLE FIVE

MODIFICATION TO SECTION 5.3

Effective as of the date of this Third Amendment, Section 5.3 of the Redevelopment Agreement shall be amended to include the following provisions:

5.3 Allocation of Costs and Expenses. Subject to the provisions of the Note Ordinance, in addition to the reimbursements provided for in the Redevelopment Agreement:

(a) The Village shall reimburse fifty percent (50%) of the construction costs associated with upsizing the lift station, which was required to complete the Water and Sewer Utilities work. Such reimbursement shall be in the amount of one hundred eighty four thousand nine hundred dollars (\$184,900);

(b) The Village shall reimburse the Developer an additional one hundred ninety five thousand one hundred dollars (\$195,100) for the acquisition costs of the Half Day Inn Property in the Improvements Note;

(c) The Improvements Note principal shall be capped at two million thirty dollars (\$2,030,000); and

(d) Subject to the Second Note Ordinance, upon issuance of all Certificates of Completion for any outstanding improvements as set forth on **Exhibit "B"**, the Village shall issue the 2nd Improvements Note in an amount not to exceed three hundred five thousand dollars (\$305,000). Issuance of the 2nd Improvements Notes shall constitute the full extent of

the Village's Financial Assistance to the Developer as it pertains to the construction of the Project.

ARTICLE SIX

ADDITIONAL DEVELOPER COVENANTS AND AGREEMENTS

Effective as of the date of this Third Agreement, **Article Six** of the Redevelopment Agreement shall be amended by adding the following section to **Article Six** of the Redevelopment Agreement:

6.9 Proceeds of Assignment of Developer's Notes. The Developer agrees to utilize the proceeds from the anticipated assignment of the Developer's Notes (Note Assignment Agreement Attached as **Exhibit "A"**) to reduce the underlying debt on the Property held by Associated Bank or its successors. Evidence of such reduction of the debt satisfactory to the Village shall be provided to the Village prior to the Village's obligation to issue the 2nd Improvements Note.

ARTICLE SEVEN

MODIFICATION TO SECTION 11.3

Effective as of the date of this Third Agreement, Section 11.3 of the Redevelopment Agreement shall be amended by adding the following:

d. **Waiver of Events of Default** – The Village hereby agrees to treat all obligations of the Developer, under the Redevelopment Agreement, as fully performed for the sole purpose of the redemption of the Developer's Notes as described in Section 5.2 of the Redevelopment Agreement. As such, the redemption of the Developer's Notes shall be treated as an unconditional obligation.

ARTICLE EIGHT

MISCELLANEOUS PROVISIONS

8.1 Notices. All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service, (b) electronic communications, whether by telex, telegram or telecopy, (c) overnight courier, or (d) registered or certified first class mail, postage prepaid, return receipt requested.

If to Village: Village of Vernon Hills
290 Evergreen Drive
Vernon Hills, Illinois 60061
Attn: Village Manager

With a copy to: Schain, Burney, Ross & Citron, Ltd.
222 N. LaSalle Street, Suite 1910
Chicago, Illinois 60601
Attn: Bernard Citron

If to the Developer: VHTC, LLC
c/o The Taxman Corporation
5215 Old Orchard Road, Suite 130
Skokie, Illinois 60077
Attention: Seymour Taxman

With a copy to: Acosta Kruse & Zemenides LLC
One S. Wacker Drive, Suite 3890
Chicago, Illinois 60606
Attn: Rolando Acosta

and

Much Shelist
2030 Main Street, Suite 1200
Irvine, California 92614
Attention: Glenn D. Taxman

The Parties, by notice hereunder, may designate any further or different addresses to which subsequent notices, certificates, approvals, consents or other communications shall be sent. Any notice, demand or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any

notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier, and any notices, demands or requests sent pursuant to clause (d) shall be deemed received forty-eight (48) hours following deposit in the mail.

8.2 Time of the Essence. Time is of the essence of this Third Amendment.

8.3 Counterparts. This Third Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

8.4 Recordation of Amendment. The Parties agree to record this Third Amendment in the Recorder's Office of Lake County.

8.5 Severability. If any provision of this Third Amendment, or any section, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held to be invalid, the remainder of this Third Amendment shall be construed as if such invalid part were never included herein, and this Third Amendment shall be and remain valid and enforceable to the fullest extent permitted by law.

8.6 Choice of Law. This Third Amendment shall be governed by and construed in accordance with the laws of the State of Illinois.

8.7 Entire Contract and Amendments. This Third Amendment (together with the exhibits attached hereto) is the entire contract and a full integration of the agreement between the Village and the Developer relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the Village and the Developer, and may not be modified or amended except by a written instrument executed by the Parties hereto.

8.8 Waiver. Any party to this Third Amendment may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy

hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Third Amendment.

8.9 Cooperation and Further Assurances. The Village and the Developer each covenants and agrees that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better clarifying, assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the Village or the Developer or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Third Amendment.

8.10 Successors in Interest. This Third Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective authorized successors and assigns; provided, however, that the Developer may not assign its rights under this Third Amendment without the express written approval of the Village. Notwithstanding anything herein to the contrary, the Village may delegate its obligation hereunder.

8.11 No Joint Venture, Agency or Partnership Created. Nothing in this Third Amendment, or any actions of the Parties to this Third Amendment, shall be construed by the Parties or any third person to create the relationship of a partnership, agency or joint venture between or among such parties.

8.12 No Personal Liability of Officials of Village or the Developer. No covenant or agreement contained in this Third Amendment shall be deemed to be the covenant or agreement of the Mayor, Village Council member, Village Manager, any official, officer, partner, member, director, agent, employee or attorney of the Village or the Developer, in his or her individual capacity, and no official, officer, partner, member, director, agent, employee or attorney of the Village or the Developer shall be liable personally under this Third Amendment or be subject to any personal liability or accountability by reason of or in connection with or

arising out of the execution, delivery and performance of this Third Amendment, or any failure in that connection.

8.13 Repealer. To the extent that any ordinance, resolution, rule, order or provision of the Village's code of ordinances, or any part thereof, is in conflict with the provisions of this Third Amendment, the provisions of this Third Amendment shall be controlling, to the extent lawful.

8.14 Term This Third Amendment shall remain in full force and effect until May 21, 2025, unless the Redevelopment Plan with respect to the Project is extended or until termination of the Redevelopment Project Area or until otherwise terminated pursuant to the terms of this Third Amendment.

8.15 Estoppel Certificates. Each of the parties hereto agrees to provide the other, upon not less than ten (10) business days prior request, a certificate ("**Estoppel Certificate**") certifying that this Third Amendment is in full force and effect (unless such is not the case, in which such parties shall specify the basis for such claim), that the requesting party is not in default of any term, provision or condition of this Third Amendment beyond any applicable notice and cure provision (or specifying each such claimed default) and certifying such other matters reasonably requested by the requesting party.

8.16 Municipal Limitations All municipal commitments are limited to the extent required by law.

8.17 No Private Payments The Village and the Developer recognize that payments from the Developer to the Village, other than payments made by the Developer of taxes of general applicability, may be deemed to be private payments under the Internal Revenue Code of 1986, as amended (the "**Code**") and that any such payments may cause interest on the Developer's Notes, Bonds and other financing instruments not to be excludable from the gross income of the owners thereof for federal income tax purposes. Accordingly, the Village and the Developer covenant and agree that the Village will accept no payment from the

Developer pursuant to any provision of this Third Amendment without first obtaining the advice of Chapman and Cutler LLP, Chicago, Illinois ("**Bond Counsel**") that such payment will not impair the status of interest on any Developer's Notes, Bond or other financing instruments issued on a tax-exempt basis under the Code, as not includible in the gross income of the owners thereof for federal income taxation purposes.

ARTICLE NINE

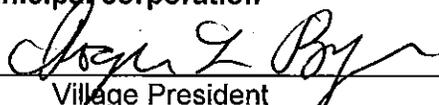
EFFECTIVENESS

The Effective Date for this Third Amendment shall be the day on which this Third Amendment is fully executed pursuant to a duly enacted Village ordinance authorizing the execution and adoption of this Third Amendment. The Developer shall execute this Third Amendment not later than twenty-one (21) days after Village Council authorization of execution of this Third Amendment or else this Third Amendment will be deemed void.

[SIGNATURE PAGE FOLLOWS]

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

**VILLAGE OF VERNON HILLS, an Illinois
municipal corporation**

By: 
Its: Village President

ATTEST:

By: 
Its: Village Clerk

VHTC, LLC,
an Illinois limited liability company

By: Taxman Manager LLC,
an Illinois limited liability company,
its Manager

By: _____
Seymour Taxman, a Manager

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On _____, 2009, before me, the undersigned, a Notary Public in and for said State, personally appeared **Seymour Taxman**, to me known to be a manager Taxman Manager LLC, the manager of VHTC, LLC, the limited liability company that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My Commission Expires:

Notary Public
Residing at _____

CONSENT OF VHTC MORTGAGEE

ASSOCIATED BANK, NATIONAL ASSOCIATION, a national banking association ("**VHTC Mortgagee**"), holder of that certain Mortgage dated as of May 15, 2006, and recorded in the Recorder's Office of Lake County, in the State of Illinois, on May 26, 2005 as Document No. 5998888 (as amended from time to time, the "**VHTC Mortgage**") on the VHTC Property, hereby consents to the execution and recording of the within Third Amendment to Redevelopment Agreement and agrees that the lien of the VHTC Mortgagee under the VHTC Mortgage is and will be subject and subordinate to the terms of this Third Amendment to Redevelopment Agreement.

IN WITNESS WHEREOF, VHTC Mortgagee has caused this Consent of VHTC Mortgagee to be signed by its duly authorized officer on its behalf; all done as of _____, 2009.

**ASSOCIATED BANK, NATIONAL ASSOCIATION,
a national banking association**

By: _____
Name: _____
Title: _____

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be an authorized officer of ASSOCIATED BANK, NATIONAL ASSOCIATION, a national banking association (the "Bank"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument pursuant to authority given by the Bank as his/her own free and voluntary act, and as the free and voluntary act and deed of the Bank, for the uses and purposes therein set forth.

Given under my hand and official seal as of _____, 2009.

Notary Public

SEAL

EXHIBITS

EXHIBIT A DEVELOPER'S NOTES ASSIGNMENT AGREEMENT

EXHIBIT B UNFINISHED IMPROVEMENTS