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March 23, 2012

Ms. Cynthia Jared
Reed Smith LLP
10 South Wacker Drive
40th Floor
Chicago, Illinois 60606

Via U.S. Mail and email (cjared@reedsmith.com)

Re: Village of Western Springs – Timber Trails Development Environmental Matters and Special Assessment 2005-01

Dear Ms. Jared:

In response to your December 5, 2011 letter relative to the above-referenced matters, the Village makes the following comments in the order that matters are raised in your letter.

The Village acknowledges that the Owners of Timber Trails Subdivision (Real Property Holding - Western Springs, Illinois, LLC (RPHWS) and Real Property Holding - Western Springs, Illinois, Phase 2, LLC (RPHWS2)) have obtained NFR letters for portions of Unit 1. However, as noted below in more detail, the Owners submitted revised remediation action plans with the IEPA without seeking prior Village review, which is required by Section 24(B) of the Annexation Agreement (a contractual obligation assumed by the Owners). There was a failure to include all of the Unit 1 parcels owned by the Owners in the submittal to the IEPA, which again is inconsistent with the prior submittal to the IEPA by the original developer and contrary to Section 24(B). In this regard, the Owners appear to be acting unilaterally to accomplish their own ends without regard for the terms of the Annexation Agreement and have left ten (10) unsold RPHWS-owned Unit 1 platted lots with no plan for dealing with their environmental conditions.

While the Village has worked cooperatively with you, RedSeal and each of the parties who have been presented as interested in acquiring some or all of the Timber Trails site, it is important to note that the Village has been consistent in its position that the close out of Special Assessment 2005-01 would be done on mutually agreeable terms that do not put the Village or its residents at financial risk, and that any changes to the Annexation Agreement and the residential planned unit development would not be done piecemeal but dealt with at one time in public before the appropriate boards, committees and commission during the required public hearing process. To date, we have reached agreement on the approach for requesting the termination of the Special Assessment, but we have yet to reach mutually agreeable terms on the close-out agreement, but the Village is willing to continue to negotiate to arrive at such terms.

The Owners have requested modifications to the Annexation Agreement by the mere fact that they have asked the Village to close out the Special Assessment. I am not sure why your letters keep repeating the statement that "the Owners have not requested any modifications to the Annexation Agreement..."

Your clients also have entered into a real estate contract to sell all of Unit 2 to Openlands, which involves multiple, significant amendments to the Annexation Agreement including: (1) removal

of the "no tax exempt property" provision that covers Unit 2; (2) allowing the sale of Unit 2 to an end user who will substantially change that portion of the development from a taxable, residential use to a proposed, but not confirmed, non-taxable, open space use; (3) conveyance of title to Outlot W (the Southwest Basin) to a third party and not the Association; and (4) conveyance of title to Unit 2 public land (tree conservation areas, other open space and street rights-of-way) that has been dedicated to the Village and $25,642,984 of land acquisition funds have been paid out to the prior developer and Mid-America bank under BOLI Draw #1 in exchange for the dedication. Your refusal to provide a copy of the real estate contract between the Owners and Openlands is unreasonable and raises questions that need to be addressed regarding the Owners' attempt to sell land that has been dedicated to the Village and the Association.

The Village has communicated to you on numerous occasions that these requested amendments to the Annexation Agreement will be considered. However, they are significant and have to be resolved at the same time, since the development was approved as a single, unified residential planned unit development and the Special Assessment covers both Unit 1 and Unit 2, and the public improvements that were approved for Unit 1 and Unit 2 are interconnected and are to be paid for with the Special Assessment Bond Funds.

While the three potential new owners you have presented to the Village have indicated that they require removal of the Special Assessment lien from the Timber Trails site, the Village Manager has been contacted by parties interested in purchasing the Timber Trails site who have expressed an interest in keeping the Special Assessment Bonds in place. The Village is willing to consider the close out of the Special Assessment on terms that are mutually agreeable to the parties.

The Village's Bond Counsel will address your comments regarding the unpaid special assessment payments under a separate cover letter. Nevertheless, it is clear that the failure of the prior developer and now the Owners to pay the required assessments (over $5,000,000) as they have come due forced the Village to use the Security to pay certain obligations that were to be paid by the Making and Levying Fund, which has not been funded due to the original developer / the Owners' failure to pay the annual assessments since 2009. This situation was created by the prior developer's and the Owners' inactions. These matters can be accounted for and reconciled when the Owners either pay the required assessments or provide the Village with additional funds to replenish the Security that has been drawn upon to satisfy these obligations. The Village also is not waiving its special assessment lien foreclosure rights by allowing the Owners to delay in paying these annual assessments. Your office has been provided with every BOLI-approved "Draw" upon the Security. The Village will work cooperatively with you to identify any payments that need to be reconciled and then we can decide how to resolve this matter. In our opinion, the definition of Costs of Improvement is broad enough to cover the inter-fund transfers so as to refute your allegation that these payments were improper.

The conceptual approach discussed by the Village and the Owners regarding the close out of the Special Assessment – closing out the Special Assessment with court approval and allowing the Village to retain the Security for purposes of completing the Unit 2 Public Improvements, as designed or under new "Village-approved" infrastructure plan, and other compliance matters under the Annexation Agreement – has never been in dispute. We have not been able to reach final agreement on the terms that have been included in the exchanges of the draft of the close-out agreement. The Owners have proposed this close out of the Special Assessment to improve their position in regard to the development as a whole – they want to sell this land as quickly as possible for what they deem to be an acceptable price in order to get out from underneath the obligations of the Annexation Agreement. The Village has a variety of different interests and longer range

concerns for the property, as it impacts the quality of life for the community and budgetary matters for the Village and other taxing districts. It is clear from the Special Assessment Bond documents and the Annexation Agreement that the Village would not be taking on liabilities for this development. The developer and its lenders assumed the benefits and liabilities of this development. This approach needs to be maintained in the close-out agreement. I am optimistic that the parties can reach an accord on these terms with further negotiations.

Next, I will address each of the numbered points contained in your December 5, 2011 letter:

1. Additional Security / Improvement Fund

While the Owners may disagree with the value of additional Security assigned by the Village Engineer, under Sections 8(G) and 11(A and B) of the Annexation Agreement cited below, the Owners cannot ignore their obligation to maintain adequate Security, as determined by the Village Engineer, which also includes a requirement that separate Security be posted for each construction phase (i.e., Unit 2) and the Village is not obligated to accept any public improvements until adequate Security has been posted. Your proposal that the *status quo* be maintained on the level of Security constitutes a request to modify the requirements of the Annexation Agreement and is a decision that must be made by the Village Board. The draft close-out agreement can be easily modified to accommodate your proposal if approved by the Village Board.

8. CONSTRUCTION OF ON-SITE AND OFF-SITE PUBLIC IMPROVEMENTS.

G. Phased Construction of Off-Site and On-Site Improvements. To the extent Off-Site and On-Site Public Improvements are developed or installed in phases, the Village shall inspect and accept the same on a phase-by-phase basis. The Developer shall be required to install water mains and sewer mains, Storm Water Management Facilities, paved streets, street lighting, and Pedestrian Circulation System in each construction phase only. All Storm Water Management Facilities shall be installed on a phase-by-phase basis, except that portions of the Storm Water Management Facilities that are located within a later phase shall be completed by the Developer in earlier phases as required by the Village Engineer in order to ensure that adequate, operational Storm Water Management Facilities are built to serve each respective phase. **Provided, however, where such phased utility improvements are required to be interconnected or looped to or with another phase of the Approved Development, the Village shall not be required to accept such phased improvements unless adequate Security is deposited with the Village to assure the completion of the required interconnection or looping in accordance with the applicable Governmental Regulations and approved Final Engineering Plan.**

11. **On-Site and Off-Site Public Improvements – Security and Acceptance**.

A. **The Developer may not commence any construction or development activities of any kind on the Subject Property**, except for the work identified in Section 24 pertaining to site development work, until adequate Security (as defined below) **is provided for the completion of the On-Site and**

Off-Site Public Improvements attributable only to that construction phase of the Approved Development. There shall be separate Security for each construction phase and for the site development work identified in Section 24 below.

B. **The Security to be provided by Developer for On-Site and Off-Site Public Improvements benefiting an individual phase of the Approved Development shall be provided at 110% of the Village Engineer's estimate of cost.** In the first instance, Developer shall provide such Security in the form of the proceeds from the sale of the SAD Bonds in connection with the Special Assessment. Any additional Security required over and above the SAD Bond proceeds shall be in the form of performance bonds from a national surety authorized to do business in Illinois. The terms contained in each type of Security, including the ability of the Village to call or make demand on such Security, shall be approved by the Village Attorney.
(emphasis added.)

We are in agreement that, if the Special Assessment and its Bonds are closed out, the remaining Security in the Improvement Fund and the Letter of Credit funds (LOC funds) shall be retained by the Village for use in accordance with the terms of the Annexation Agreement, the Agreement for Public Improvements and the terminated Indenture. The payout of that Security would continue to be monitored and approved by the BOLI. We need to further discuss the vehicle (e.g., escrow or WinTrust / Maxsafe Account) that these funds would be deposited into. I am not aware of a financial account or escrow mechanism (other than the dedicated SAD Bond Funds) that would offer protection from Village creditors for these funds. It is clear to me that the safest place for the Security to be maintained free from creditors is the Bond Escrow Account. The WinTrust / Maxsafe account program is a federally insured banking program that protects large deposits that exceed the typical minimum FDIC limits. The MaxSafe account program provides up to fifteen (15) times the security of a normal banking deposit with up to $3,750,000 of FDIC Insurance per titled account. Although we have discussed this matter before, additional information on the WinTrust / Maxsafe account program can be found at: www.maxsafeaccount.com.

Your concern that the funds in the Improvement Fund be deposited into an account that restricts the ability of the Village to draw upon such funds without certification that the funds will be used for the Costs of Improvement (as defined in the Indenture) is understood. To address this issue, I included at Section 4(c) of the draft close-out agreement (dated September 9, 2011) the following provision; "Within fifteen (15) days of the entry of the Termination Order, the Owners and the Village shall direct the Trustee to draw the remaining fund balance at the time of said direction from the Improvement Fund and to deposit said amount into the same WinStar bank account program into a Village designated account that is separate from the WinStar account that holds the Private LOC funds. For accounting purposes, the funds from the Improvement Fund and the Private LOC funds shall be separately accounted for by the Village." (The reference to WinStar will be revised to WinTrust.) There has been no change in the Village's position that the funds from the Improvement Fund will be maintained separately from the LOC funds, as they are subject to different conditions. Currently, the funds in the Improvement Fund are subject to the Indenture and the Private LOC funds are subject to the terms of the Annexation Agreement and the Agreement for Public Improvements. The close-out agreement proposes to maintain this separate treatment of these funds.

As you are aware, Draw #39 contained an adjustment to address concerns related to double amounts drawn on the Improvement Fund. The Village credited $20,736.50 to the Improvement Fund for an unintentional request of the same amounts contained in Draws #33 and #34. Just to be clear, at no time was a duplicate payment made to any vendor. In addition, as part of Draw #39, the Village credited $458.03 to the Improvement Fund after separate payment was received from the Owner for a Federal Express invoice and a correction in the amount of $89.00 was drawn for a clerical transposing of dollar amounts. If you have any other concerns with respect to Draw #39, please advise. In regard to the standing objections that attorney Gary Caplan has raised in regard to other BOLI Draws, I have responded to him by letter and will continue to work in an effort to try to amicably resolve those objections.

2. Requirement to Obtain a NFR Letter

Section 24(B) of the Annexation Agreement required the Developer:

> to have an environmental assessment of the soil chemistry at the Subject Property performed prior to conducting any grading, excavation or any other work that causes or may cause soil disturbance. **The environmental assessment shall be performed by an environmental consultant selected by the Village Engineer and the scope of testing and analysis shall be determined by the Village Engineer**. If warranted, the environmental assessment report prepared by the environmental consultant shall contain an action plan relative to remediation or disposal of contaminated soils as well as any protective measures relative to the performance of Grading and Site Development Work to ensure public health and safety. A copy of the environmental assessment report shall be delivered to the Village Engineer and the Developer once completed. **The Developer agrees to comply with the action plan relative to remediation or disposal of contaminated soils as well as any protective measures relative to the performance of Grading and Site Development Work.** (emphasis added.)

In accordance with the above Annexation Agreement provisions, and pursuant to the IEPA's Voluntary Site Remediation Program, a Site Investigation Report (SIR) and Remedial Action Plan (RAP) for Soil in Development Area Phase 1A of Timber Trails was prepared by ELM Consulting, L.L.C. The SIR/RAP was approved by the IEPA on November 3, 2005. A copy this SIR/RAP has already been provided to you under the Village's response to your December 14, 2011 FOIA request. In the Executive Summary, the SIR/RAP summarizes how the report was prepared to satisfy requirements to obtain a NFR letter from the IEPA. In addition, a SIR/RAP for Phases 1B and 2 of Timber Trails was prepared by Entrix Environmental Consultants, which also addresses the need to request and obtain a NFR letter from the IEPA. Copies of the Entrix SIR/RAP have been previously provided to you. Both of these were submitted to and approved by the Village Engineer in accordance with Section 24(B) of the Annexation Agreement.

Based on the provisions of Section 24(B) of the Annexation Agreement, the Owner is required to comply with all provisions of these SIRs/RAPs, which include full remediation in accordance with the plans and the IEPA comments, and the request and granting of a NFR letter from the IEPA. The Annexation Agreement essentially incorporates these plans and compels the Owner to comply with them. Moreover, $1,500,000 of the Public Improvement Fund was allocated to pay for a portion of the anticipated environmental remediation work on

the development site (see the Engineer's Estimate Cost). Based on these documents, there is a contractual obligation in the Annexation Agreement requiring the Owner to obtain a NFR letter on all areas in Timber Trails.

It is important to note that, although the Annexation Agreement was initially entered into between the Village and the Developer, as the current owners of the Property to which the Annexation Agreement applies and is recorded against, the Annexation Agreement also binds Real Property Holding – Western Springs, Illinois LLC and Real Property Holding – Western Springs, Illinois, Phase 2, LLC. Section 35 (Continuity of Obligations) of the Annexation Agreement specifically states: "the provisions of this Agreement, including but not limited to the obligation to subdivide and develop the Subject Property in accordance with the Approved Plans, and the obligation to provide such covenants shall be a covenant that runs with the land and shall be binding upon all successors in title to the Developer and on any builders who purchase any of the lots for development." The Owners' actions in obtaining NFR letters that cover certain portions of Timber Trails is an acknowledgement of the environmental remediation obligations under the Annexation Agreement.

As such, the Owners cannot attempt to circumvent the Annexation Agreement's requirement that, among other things, the Village Engineer determine the scope and method of environmental testing and approve the environmental remediation plan. You acknowledged this fact in an April 26, 2010 email to me wherein you noted "in accordance with the Annexation Agreement, the Village has a right to review the testing plan. Whom should the consultant be working with to obtain that approval." On that same date, I provided you with the contact information of Jim Huff, the Village's Environmental Engineer, and asked that the testing plan be sent to Jim, Pat Higgins and me. Nonetheless, no plan was apparently forwarded to the Village or its consultants until August 19, 2010, over one month after it had already been submitted to the IEPA, thus eliminating the Village's contractual right to review and approve the plan.

Therefore, any changes to the aforementioned Village Engineer-approved SIPs/RAPs made by the current Owners were not presented to or approved by the Village pursuant to the terms of the Annexation Agreement. Any new plans submitted by the Owners that were not approved by the Village Engineer, namely those that attempt to only seek NFR letters for only certain areas within Timber Trails, do not fulfill the obligations of the Owners under the Annexation Agreement.

I understand that the IEPA changed its position on certain testing methodologies and data requirements for this development site and that conveyance of title to lots by the original developer changed the method of working with the IEPA to obtain NFR letters for those lots. This is consistent with past nuances of working with the IEPA on remediation matters. Nevertheless, the Owners and the Village need to address the pending environmental matters in Unit 1 and Unit 2 in a manner that can hopefully bring a resolution that is acceptable to the IEPA, the Owners and the Village.

3. Subdivision

The proposed text regarding creating a buffer zone along the western boundary of Unit 1 is in direct response to the Owners entering into a sales contract to convey Unit 2 to a buyer who has no intention of completing Unit 2 as approved and designed under the approved residential PUD. The Openlands proposal is a significant departure from the approved PUD. While the original

developer and the Village provided for the development of Unit 1 and Unit 2 in phases, there was never any contemplation nor provision for the development of any portion of the site in a manner that is contrary to the approved PUD or that would simply leave an unfinished Unit 1 western boundary and its streets and utilities unfinished and dead-ended. The buffer zone concept, which was proposed to facilitate and compliment the Openlands proposal, allows Unit 1 to be completed in a manner that is consistent with the original design for the PUD, including the provision of open space and walking paths behind certain lots that would not receive the same dedicated amenities that the other Unit 1 lots receive if Unit 2 is not developed as planned. The Unit 1 residents deserve this consideration from both the Village and the Owners. Likewise, the petition to be filed with the court to close-out the Special Assessment would be enhanced by making these adjustments because it would help to eliminate any objections by Unit 1 residents that they did not receive the full benefit of the public improvements that were to be installed.

If Unit 2 is developed with residential units, then there would be no need for the buffer zone concept. However, the Owners interjected uncertainty into this close-out process by entering into a contract for the sale of Unit 2 with Openlands. The Village has an obligation to make sure that this development is either built-out in accordance with the Annexation Agreement or, if there is going to be an amendment to the Annexation Agreement (as proposed by the Owners), that the amended development plan is in the best interests of the Village and its residents.

4. Tree Preservation Fine

Under Section 21 of the Annexation Agreement, the Tree Preservation Fine ($224,700) is payable by the "responsible party." The Fine was identified and served on the original developer, but not paid. Per Section 35 (Continuity of Obligations) of the Annexation Agreement, the Owners, by taking title to the Timber Trails site, were subject to the terms and obligations of the Annexation Agreement, which constituted covenants that ran "with the land and shall be binding upon all successors in title to the Developer and on any builders who purchase any of the lots for development." The Village has always had a right to deduct from the Security (LOC funds) this fine amount, but has held off on doing so in an effort to resolve the matter in a mutually agreeable manner. At one point, an offer was made on behalf of the Owners to contribute the amount of the Tree Preservation Fine towards a solution for the Unit 1 environmental remediation matter. This is a matter that the parties should continue to explore and resolve in a mutually agreeable manner.

5. Completion of Public Improvements

The Village agrees that the parties need to reach an agreement on the completion of the Unit 2 Public Improvements, as the Owners (like the original developer) are currently in default under the Annexation Agreement in regard to these Improvements.

In regard to the "cost allocation" for funding certain public improvements and private improvements completed during the development process, the Village has followed this cost allocation process that was put in place by the original developer and the Village with each BOLI approval of each draw starting with Draw #1. The cost allocation sheet has been part of each BOLI-approved Draw that involved payment for public improvement work. I have provided you with every BOLI-approved draw (and supporting documentation) plus a copy of the initial "cost allocation" sheet that was agreed to by the parties. To deviate from the cost allocation sheet now would not be appropriate or consistent with the historic use of the funds of the Public Improvement. This matter was discussed with attorney Caplan in June 2009. Now that you have the cost allocation sheet and each of the BOLI-approved Draws, please advise of the Owners' position on this matter.

6. Payment of Expenses

The tentative schedule of costs and expenses that you are requesting was included in the draft close-out agreement dated September 9, 2011 as Exhibit "B" (March 11, 2011 Memorandum from Grace Turi, Finance Director for the Village). If you do not have a copy, please advise. To the extent there are additional costs and expenses, the Village will provide you with an updated schedule.

The remaining issues relative to the Bonds will be addressed in a separate letter from the Village's Bond Counsel.

7. Intrafund Transfers. Section 5.03

The Intrafund transfers have been addressed at Page 1 of this letter.

8. Process of Termination

The "steps" that you make reference to in Section 4(b) are those identified in Section 3 (a. to g.) of the close-out agreement. The close-out agreement will be revised to include a more specific cross-reference provision to clarify this matter. I will be sending you a revised close-out agreement within the next fourteen (14) days, after I receive additional input from the Village Board.

Because the close-out procedure is subject to the jurisdiction and discretion of a circuit court judge, it would be inappropriate to provide for "a date certain" by which the Special Assessment will be terminated. The Village can only commit to take all reasonable steps and actions to petition for the termination of the Special Assessment.

Per your request, I have enclosed a copy of a March 14, 2012 Memorandum from Finance Director Grace Turi that provides a summary of the funds that have been drawn upon the Improvement Fund and the Private LOC in regard to the Kosik litigation, the 10% administrative fee and the items that are payable from the under-funded Making and Levying Fund. If you want copies of the account statements (monthly or quarterly, as maintained), please advise.

Since we have been working on this close-out agreement and its related issues for some time, I will be discussing all of the matters you have raised with the Village Board in an effort to seek additional direction.

The Village desires to continue working with the Owners towards resolving the pending issues that exist with regard to the Timber Trails development.

If there are any questions or you need additional information from the Village or me, please feel free to contact me.

Sincerely,

KLEIN, THORPE AND JENKINS, LTD.

Michael T. Jurusik

Enclosure

cc: William T. Rodeghier and Board of Trustees (w/ encl.)
Patrick R. Higgins, Village Manager (w/ encl.)
Ingrid Velkme, Deputy Manager (w/ encl.)
Martin Scott, Director of Community Development (w/ encl.)
Jeff Ziegler, Village Engineer (w/ encl.)

March 14, 2012

Memo: Patrick Higgins, Village Manager
Michael Jurusik, Village Attorney

From: Grace Turi, Director of Finance

Re: Making and Levying Expenses

As requested, I have reviewed the activity of the line of credit account associated with the Timber Trails development. The following is a list of the transactions:

Paid from Bond Fund		
$5,000.00	Draw # 25	
$27,087.36		Chapman and Cutler
$5,000.00	Draw #30	Amalgamated Bank
$104,750.00		Village of Western Springs
$5,000.00	Draw # 37	Amalgamated Bank
$5,568.00	Draw # 38	Chapman and Cutler
$46,184.89		Legal Fees - Prendergast
$3,689.00		Legal Fees - Forte
$202,279.25		
Paid from Letter of Credit		
$41,801.86	Paid from LOC	Legal Fees KT&J Kosik Litigation
$138,168.85	Paid from LOC	VWS 10% adminstration fee
$179,970.71		
$382,249.96	Total	