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MEMORANDUM

TO: Peter J. Tesei, First Selectman
FROM: John Wayne Fox, Town Attorney
DATE: August 7, 2019
RE: Greenwich Plaza

As you know, the Town is in the process of considering the possibility of entering into a Development Agreement with Greenwich Plaza, Inc. with respect to the Greenwich Transportation Center. As you also know, this concept has been the subject of extensive discussion to date with the Board of Selectmen, as well as various committees of the BET. If approved, it will eventually be reviewed and voted on not only by those boards but also by the RTM.

As you know, the property in question is subject to a long-term lease going back to September of 1967 between the Town of Greenwich and Greenwich Plaza, Inc. This lease runs through 2037 with an option to extend it an additional 20 years.

As part of the proposed Redevelopment Agreement, the air space of Greenwich Plaza Parcel 4 consisting of Tracts 1, 2 and 3 commencing at a level of 8'1" above mean sea level and extending upward within the boundaries of said tracts of land, would

be conveyed to Greenwich Plaza, Inc. In addition, it should be noted that under the terms of the existing lease, Greenwich Plaza, Inc. may offer to purchase either the demised premises, which is defined as the air rights, or the fee to the underlying tracts, at the expiration of the lease or any extension thereof. This would be for consideration to be determined by the appraisal process set out in the lease. It should also be noted that Greenwich Plaza, Inc. is the current owner of the Parcel 1 land and improvements north of the railroad tracks on which there will be future development and renovation as part of the Development Agreement.

While there are multiple questions raised by various board members, two questions that this office has been asked to address are (i) whether the Town can publicly market the air rights to other potential bidders and (ii) whether the Town is required to market the air rights to other potential bidders prior to conveying the air rights to Greenwich Plaza.

With respect to the first question, we believe that the Town can publicly market the air rights to other potential third party bidders. The Air Rights Lease (the "Lease") does not prohibit the Town from selling or assigning its interest in the Lease or the air rights. In the absence of an express prohibition, the Town is free to sell or assign its interest in the Lease and the air rights. Any prospective purchaser of the air rights would acquire the air rights subject to the Lease for the remaining term thereof. This would include, as an example, the right of Greenwich Plaza, Inc. to offer to purchase either the demised premises or the fee to the underlying tracts. It would also be subject to the right of Greenwich Plaza, Inc. to exercise its renewal option of the Lease.

While the Town has the right to publicly market the air rights to other potential bidders, we do not believe that the Town is required to do so. Nothing contained in the Town's Charter, or the Municipal Powers set forth in Chapter 98 of the General Statutes, requires the Town to publicly market the air rights prior to selling or conveying the same. Section 7-148(c)(3) of Chapter 98 of the General Statutes specifically authorizes the Town to sell, lease, manage, transfer, release and convey real and personal property, without any requirement that such property be publicly marketed to solicit bids. While the authority contained in Section 7-148(c)(3) may be further limited, or conditioned, by the provisions of the Town's Charter, the Town's Charter likewise does not require the Town to publicly market the air rights prior to selling or conveying the same. Section 2-35 of the Code of Ordinances, which governs the sale of property, only requires the solicitation of bids with respect to property acquired by the Town by tax foreclosure proceedings (or a conveyance in lieu thereof). Accordingly, Section 2-35 of the Code of Ordinances does not apply to the sale or transfer of the air rights, and no other section of the Town's Charter requires the Town to publicly market the air rights to other potential bidders.

In summary, we believe that the Town has the right to publicly market the air rights to other potential third party bidders. However, we do not believe that the Town is required to do so.