MOHAWK VALLEY
EDGE

ECONOMIC DEVELOPMENT GROWTH ENTERPRISES CORPORATION
584 Phoenix Drive • Rome, New York 13441
315-338-0393 • 800-765-4990 • FAX 315-338-5694
E-Mail: info@mvedge.org • www.mvedge.org

MEMORANDUM

MEMO TO: David R. Styka, Vice President Finance-Family Dollar
Heather Adams, Legal Counsel Family Dollar

FROM: Steven J. DiMeo, President Mohawk Valley EDGE

DATE: March 14, 2012

CC: Jef Saunders, Legal Counsel GLDC and MV EDGE
Paul Reichel, Bond Schoeneck & King
Linda Romano, Bond Schoeneck & King
Shawna Papale, Sr. Vice President Mohawk Valley EDGE & Executive Director OCIDA

RE: Modification to Family Dollar PILOT Agreement & PILOT Allocation Agreement

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The following outlines two options that may be considered by the Oneida County Industrial Development Agency ("OCIDA") for modifying the Family Dollar Services, Inc. ("Family Dollar") PILOT Agreement. Both options amortize the amount of the QEZE RPT not realized due to the statutory changes to the Empire Zone Program that handled the calculation for PILOT transactions differently from transactions where the real property remained on the tax rolls. In addition, the options will also incorporate, as part of the overall credit to Family Dollar under the New PILOT Agreement, payments that Family Dollar makes directly to GLDC under the PILOT Allocation Agreement. A summary of each option is set forth below:

- **Option 1: Family Dollar New PILOT Agreement with Modification to the PILOT Allocation Agreement between GLDC, OCIDA and the taxing jurisdictions; or**

- **Option 2: Family Dollar New PILOT Agreement with Balloon Payment on Outstanding GLDC Debt as of December 31, 2015, and No PILOT Allocation Agreement Modification**

The specifics for each option are summarized as follows:

Option 1: Family Dollar PILOT Modification with Modification to the PILOT Allocation Agreement between GLDC, OCIDA and the taxing jurisdictions:

Under this option, the current PILOT Agreement would be terminated effective December 31, 2012 and would be replaced with a new PILOT Agreement that would be for a term of ten years, commencing on January 1, 2016 and ending on December 31, 2025. Under Option 1, Family Dollar would agree to maintain the current property assessment of $50,056,000 for the entire term of the Agreement inclusive of the time period where the property is placed back on the tax rolls for Calendar Years 2013-2015 (the

"PILOT Opt Out Term") through the duration of the new PILOT Agreement that is proposed for consideration for Calendar Years 2016-2025.

Coupled with the new PILOT Agreement, the PILOT Allocation Agreement that currently exists would need to be modified and approved by the taxing jurisdictions.

The particulars under this option are as follows:

1. The Family Dollar PILOT Agreement would be terminated effective December 31, 2012 and the property would be placed back on the tax rolls. This would need to be accomplished before the taxable status date, which is July 31, 2012. For the PILOT Opt Out Term, Family Dollar would receive tax bills from each of the taxing jurisdictions and Family Dollar would be obligated to pay 100% of the real property taxes based on the current assessment of $50,056,000 and the actual combined tax levy for the taxing jurisdictions then in effect.

    - As shown in the attached Option 1 spreadsheet, Family Dollar would pay $2,872,226.34 in real property taxes (based on the existing assessment and the current combined tax levy but in reality the actual tax obligation will be based on the combined tax levy for the City, County and School District in 2013, 2014 and 2015). After netting out the NYS Minimum Tax amount, Family Dollar would be eligible to receive up to the difference as a QEZE Refund.

    - Because the property is placed back on the tax rolls for the PILOT Opt Out Term, the Family Dollar QEZE RPT Refund would be based on the property's assessment and the applicable tax levy used to calculate the amount or real property taxes due and payable to the taxing jurisdictions. The formula for calculating QEZE RPT refunds where there are PILOTs would not apply during the PILOT Opt Out Term.

2. Family Dollar would make monthly payments of $70,200.71 for P&I on the GLDC PIF financing for the project for calendar years 2013-2014 ($842,408.52/year) and monthly payments of $70,410.48 for P & I for calendar year 2015 ($844,925.76). The payments to GLDC from Family Dollar would not be deducted from the tax payments made by Family Dollar directly to the taxing jurisdictions, and thus would be an obligation over and above the real property taxes paid by Family Dollar during the PILOT Opt Out Term. The amount paid by Family Dollar to GLDC on the GLDC PIF financing for calendar years 2013-2015 would be amortized as a credit under the new PILOT Agreement for the period of 2016-2025.

    Further, Family Dollar's obligation to pay the GLDC PIF financing during the PILOT Opt Out Term would be evidenced by a promissory note, the payment of which would be unconditionally guaranteed by Family Dollar Stores, Inc. pursuant to its corporate guaranty. The entire transaction would be subject to the execution of such other documentation as may be required by counsel for GLDC and counsel for GLDC's lenders.

    - The total GLDC loan payments made during the PILOT Opt Out Term total $2,529,742.76.

3. A new PILOT Agreement would be approved for ten years, commencing on January 1, 2016 and ending on December 31, 2025. The terms of the new PILOT Agreement would be:

- January 1, 2016 – December 31, 2020: Family Dollar would pay to OCIDA PILOT payments equal to 66.67% of all taxes due and owed to each of the applicable taxing jurisdictions based on the assessed valuation of $50,056,000 and the combined tax levy then in effect;

- January 1, 2021-December 31, 2025: Family Dollar would pay to OCIDA PILOT payments equal to 75% of all taxes due and owed to each of the applicable taxing jurisdictions based on the assessed valuation of $50,056,000 and the combined tax levy then in effect; and

- The new PILOT Agreement would include ***further adjustments*** to reflect the amortization of $5,713,612.11 in estimated costs that would be applied as a credit over ten years ($571,612.94/year). This annual credit amount would be an offset against the new PILOT that would take effect on January 1, 2016 and continue through December 31, 2025 and consists of two amounts:

    - **First, the difference in the amount of PILOT Payments made by Family Dollar for the period 2008-2012, adjusted by the annual NYS Minimum Tax owed, which adjusted amount would then subtracted from the calculation established by the NYS Department of Tax and Finance for QEZE RPT Refunds on PILOTs using the formula in the CT606**.

      In the attached spreadsheet, GLDC estimates the difference between adjusted PILOT payments made and the amount of QEZE RPT Refunds earned as of January 31, 2012 to be $3,186,386.55 (based on estimated NYS Minimum Taxes of $450,000 for calendar years 2011 and 2012, and actual NYS Minimum Taxes for calendar years 2008-2010 as provided to GLDC by Family Dollar). This amount will be adjusted up or down once the actual amount of the Minimum NYS Tax is known for 2011 and 2012 and the actual full value tax rate for Oneida County as published in the CT606 for tax years 2016-2020 (current full value tax rate for Oneida County in 2012 is $30.40).

    - **Second, the credit would also include the amortization of the GLDC PIF financing paid by Family Dollar during the PILOT Opt Out Term of Calendar Years 2013-2015, which amounts to $2,527,225.56. This is the total GLDC PIF financing to be paid directly by Family Dollar to GLDC for the PILOT Opt Out Term for Calendar Years 2013-2015.**

    - Using the current assessment and the current combined tax levy, the total that would be credited against the new PILOT is estimated at $5,716,129.35 ($3,186,386.55 in the unrealized QEZE RPT and $2,527,225.56 in GLDC PIF financing payments made by Family Dollar to GLDC during the PILOT Opt Out Term).

4. As part of a revised agreement, OCIDA would enter into a new PILOT Agreement with Family Dollar for a term of ten years that takes effect on January 1, 2016 and ends on December 31,

2025 using the current assessment of $50,056,000 that would remain unchanged for the entire term of the agreement.

- For 2016-2020, and 2021-2025 The Family Dollar PILOT obligation would be calculated as follows:

  a) For 2016-2020, the PILOT would be calculated by taking the total assessment/$1,000 X the combined tax levy X 0.6667; and for 2021-2025, the PILOT would be calculated by taking the total assessment/$1,000 X the combined tax levy X 0.75.

  b) The PILOTs for 2016-2020 and 2021-2025 would be further adjusted with the credit amount that was calculated at $571,612.94/year (estimate based on adjustments for unrealized QEZE RPT and the amortization of the direct GLDC Loan Payments made to GLDC for the PILOT Opt Out Term as described in #3 above. The actual amount would be adjusted up or down, based on the net difference in the unrealized QEZE RPT Refund after adjusting the PILOT amount by the Minimum NYS tax).

  c) Based on the attached spreadsheet for the Family Dollar Services Inc. Revised PILOT Proposal & Amortization of Unrealized QEZE RPT Refunds/GLDC Loan Payments During the PILOT Opt Out Term, the amount of the estimated PILOT obligation due from Family Dollar to OCIDA:

     - Calendar Year 2016-2020: the annual estimated PILOT obligation would be $1,343,300.37/year (assuming current combined tax levy of $57.380261/$1,000 Assessed Valuation. The actual amount will be based on the then combined tax levy for the City, County and School District); and

     - Calendar Year 2016-2020: the annual estimated PILOT obligation would be $1,582,556.82 assuming current combined tax levy of $57.380261/$1,000 Assessed Valuation. The actual amount will be based on the then combined tax levy for the City, County and School District);

  d) The adjusted PILOT amounts for Calendar Years 2016-2021 would be further reduced by the GLDC PIF financing payments due to GLDC for the period 2016-2021, which amounts are as follows:

     - CY 2016: $433,006.12
     - CY 2017-2019: $138,615.60
     - CY 2020: $123,485.28
     - CY 2012: $ 30,527.01

- OCIDA would then remit to each taxing jurisdiction, it's pro-rata share of the remaining PILOT, which is shown in the Option 1 Spreadsheet that is attached.

5. It is presumed that Family Dollar would be eligible to receive remaining QEZE RPT Refunds for the period of 2016-2019 under the new PILOT using the QEZE factor of 0.8 for year 11, 0.6 for year 12, 0.4 for year 13, and 0.2 for year 14. OCIDA and GLDC make no representation that the QEZE RPT Refunds for years 11-14 would not be interrupted by this transaction or other changes in law that may occur that eliminate or alter the QEZE formula for Real Property Tax Refunds.

Option 2: Family Dollar New PILOT Agreement with Balloon Payment on Outstanding GLDC Debt as of December 31, 2015, and No PILOT Allocation Agreement Modification

Option 2 would be the alternative scenario if the taxing jurisdictions do not approve the new PILOT Allocation Agreement required under Option 1.

Option 2 would follow the same format and structure as noted under Option 1 above, with one notable difference, to wit: there would be no **PILOT Allocation Agreement for the period of 2016-2025.**

Instead, as part of the Revised Agreement and new PILOT Agreement, Family Dollar would be obligated to make a balloon payment to GLDC on the outstanding principal balance of the GLDC loans as of December 31, 2015, which amount is $907,560.70.

This amount would then be added to the amount credited for the GLDC PIF financing paid during the PILOT Opt Out Term, and the total unrealized QEZE RPT described in Option 1 above and would be amortized over ten years ($90,756.07/year) and would be an additional adjustment in the amount of Family Dollar's PILOT Obligation.

As a result, the total amount of the amortized credits for 2016-2025 is estimated at $6,623,690.10 ($662,369.01). This includes:

- $3,186,386.60 for the unrealized QEZE RPT Refunds to be adjusted up or down based on the actual NYS Minimum Tax for 2011 and 2012;

- $2,529,742.80 for the GLDC PIF financing payments made directly to GLDC from Family Dollar for the PILOT Opt Out Term of 2013-2015; and

- $907,756.07, which reflects the GLDC Balloon Payment due on December 31, 2015 that Family Dollar would pay to GLDC under this Option.

- The sum of these amounts is $6,623,885.47 or $662,388.55/year in credits that would be amortized as an additional adjustment in the PILOT obligation from Family Dollar to the taxing jurisdictions.

- Since the GLDC PIF financing obligation will have been satisfied with the balloon payment, there would be no need to secure taxing jurisdiction approval of any new PILOT Allocation Agreement.

Based on the attached spreadsheet for **Option 2,** the amount of the estimated PILOT obligations due from Family Dollar to OCIDA (after incorporation of the credits referenced in #4 above is estimated at:

- Calendar Years 2016-2020: the annual estimated PILOT obligation is $1,252,544.29/year (assuming current combined tax levy of $57.380261/$1,000 Assessed Valuation. The actual amount will be based on the then combined tax levy for the City, County and School District); and

- Calendar Year 2016-2020: the annual estimated PILOT obligation is $1,491,800.75 assuming current combined tax levy of $57.380261/$1,000 Assessed Valuation. The actual amount will be based on the then combined tax levy for the City, County and School District);

It is presumed that Family Dollar would be eligible to receive remaining QEZE RPT Refunds for the period of 2016-2019 under the new PILOT using the QEZE factor of 0.8 for year 11, 0.6 for year 12, 0.4 for year 13, and 0.2 for year 14. OCIDA and GLDC make no representation that the QEZE RPT Refunds for years 11-14 would not be interrupted by this transaction or other changes in law that may occur that eliminate or alter the QEZE formula for Real Property Tax Refunds.

As a further condition, Family Dollar would be obligated to make payment for all reasonable legal and applicable agency fees for OCIDA and any reasonable legal fees of GLDC to implement either of these options. These costs would be reimbursed to OCIDA and GLDC at closing in order for a new PILOT to be approved and executed.

<u>Summary</u>:

The ability to move forward is contingent on GLDC being able to secure OCIDA approval of a new PILOT agreement and, if OCIDA wants to pursue Option 1, approval of a revised PILOT Allocation Agreement by all affected parties. It is not clear whether the taxing jurisdictions would agree to a revised PILOT Allocation Agreement. Time is an important consideration since the taxable status date is July 31, 2012.

Since both options contemplate a new PILOT Agreement and the fact that the proposed agreement is a deviation of the current OCIDA PILOT policy, it would be necessary for a new application to be submitted to OCIDA, and an initial authorizing resolution adopted by the OCIDA Board. The Final Authorizing Resolution cannot be approved until a public hearing is held.

The OCIDA Board has been advised of this Family Dollar proposal, at least in general terms. Conceptually, they are in agreement with the idea of restructuring the PILOT agreement to reflect the parties' original intent as long as the deal can be done in a way, which minimizes the impact on the taxing jurisdictions. OCIDA transactions where PILOT abatements have been granted have come under closer scrutiny. In particular, the Rome City School District has taken closer look at all PILOT agreements for projects at Griffiss. This transaction is complicated and requires a great deal of discussion and negotiation with the involved parties in order to secure approval.

While OCIDA has so far indicated that it is supportive of some sort of revised PILOT structure at this point, I cannot represent that OCIDA and/or the taxing jurisdictions will ultimately support any changes to the current PILOT Agreement or a modification of the current PILOT Allocation Agreement.

Of the two options outlined, Option 2 may be the easier of the two options to secure approval for as we could avoid having to go before the taxing jurisdictions to obtain their consent on the modified PILOT Allocation Agreement as the GLDC PIF financing would be extinguished as of December 31, 2015. However, if OCIDA decides to move forward on this matter, it is entirely possible that OCIDA may ask the parties to pursue Option 1 first to secure taxing jurisdiction support for the modification.

Please review the attached documents and I will be happy to arrange a conference call to review and discuss.