

VILLAGE OF VERNON HILLS

ORDINANCE NO. 2021-086

AN ORDINANCE AUTHORIZING A REDEVELOPMENT AGREEMENT BETWEEN THE VILLAGE OF VERNON HILLS; HAWTHORN LP; HAWTHORN SP, LLC; HAWTHORN CP, LLC; AND USEF CENTENNIAL FA HAWTHORN OWNER, LLC FOR THE REDEVELOPMENT OF THE HAWTHORN MALL COMPRISING A PART OF THE HAWTHORN MALL TIF DISTRICT OF THE VILLAGE OF VERNON HILLS, LAKE COUNTY, ILLINOIS

THE 18<sup>th</sup> DAY OF MAY 2021

Published in pamphlet form by the Authority of the President and Board of Trustees of the Village of Vernon Hills, Lake County, Illinois, this 18<sup>th</sup> Day of May, 2021

STATE OF ILLINOIS )  
                                  )  
COUNTY OF LAKE    )

CERTIFICATE

I, MARK FLEISCHHAUER, CERTIFY THAT I AM THE DULY APPOINTED AND ACTING VILLAGE CLERK OF THE VILLAGE OF VERNON HILLS, LAKE COUNTY, ILLINOIS. I FURTHER CERTIFY THAT ON MAY 18, 2021, THE CORPORATE AUTHORITIES OF SUCH MUNICIPALITY PASSED AND APPROVED ORDINANCE NO. 2021-086 AN ORDINANCE AUTHORIZING A REDEVELOPMENT AGREEMENT BETWEEN THE VILLAGE OF VERNON HILLS; HAWTHORN LP; HAWTHORN SP, LLC; HAWTHORN CP, LLC; AND USEF CENTENNIAL FA HAWTHORN OWNER, LLC FOR THE REDEVELOPMENT OF THE HAWTHORN MALL COMPRISING A PART OF THE HAWTHORN MALL TIF DISTRICT OF THE VILLAGE OF VERNON HILLS, LAKE COUNTY, ILLINOIS

THE PAMPHLET FOR ORDINANCE NO. 2021-086 INCLUDING THE ORDINANCE AND A COVER SHEET THEREOF, WAS PREPARED, AND A COPY DATED MAY 18, 2021 AND CONTINUING FOR AT LEAST TEN DAYS THEREAFTER. COPIES OF SUCH ORDINANCE WERE ALSO AVAILABLE FOR PUBLIC INSPECTION UPON REQUEST IN THE OFFICE OF THE VILLAGE CLERK.

DATED IN VERNON HILLS, ILLINOIS, THIS 18<sup>th</sup> DAY OF MAY 2021.

  
\_\_\_\_\_  
Mark Fleischhauer, Village Clerk

SEAL



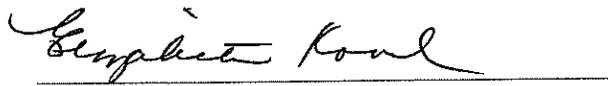
AFFIDAVIT OF SERVICE

STATE OF ILLINOIS        )  
  )  
COUNTY OF LAKE        )

I, MARK FLEISCHHAUER, BEING FIRST DULY APPOINTED, DEPOSES AND SAYS ON OATH THAT AS VILLAGE CLERK OF THE VILLAGE OF VERNON HILLS, HE DID CAUSE THE FOREGOING CERTIFICATE FOR ORDINANCE NO. 2021-086 AN ORDINANCE AUTHORIZING A REDEVELOPMENT AGREEMENT BETWEEN THE VILLAGE OF VERNON HILLS; HAWTHORN LP; HAWTHORN SP, LLC; HAWTHORN CP, LLC; AND USEF CENTENNIAL FA HAWTHORN OWNER, LLC FOR THE REDEVELOPMENT OF THE HAWTHORN MALL COMPRISING A PART OF THE HAWTHORN MALL TIF DISTRICT OF THE VILLAGE OF VERNON HILLS, LAKE COUNTY, ILLINOIS TO BE POSTED IN THE VILLAGE HALL AS REQUIRED BY LAW FROM MAY 18, 2021 TO MAY 28, 2021.

  
Mark Fleischhauer, Village Clerk

SUBSCRIBED AND SWORN TO BEFORE  
THIS 18<sup>th</sup> DAY OF MAY 2021

  
\_\_\_\_\_  
Notary Public



**VILLAGE OF VERNON HILLS  
ORDINANCE 2021-086**

**AN ORDINANCE AUTHORIZING A REDEVELOPMENT AGREEMENT BETWEEN THE VILLAGE OF VERNON HILLS; HAWTHORN LP; HAWTHORN SP, LLC; HAWTHORN CP, LLC; AND USEF CENTENNIAL FA HAWTHORN OWNER, LLC FOR THE REDEVELOPMENT OF THE HAWTHORN MALL COMPRISING A PART OF THE HAWTHORN MALL TIF DISTRICT OF THE VILLAGE OF VERNON HILLS, LAKE COUNTY, ILLINOIS**

BE IT ORDAINED, by the President and Board of Trustees of the Village of Vernon Hills, Lake County, Illinois, as follows:

SECTION 1: The President and Board of Trustees of the Village find as follows:

- A. The Village of Vernon Hills (hereinafter referred to as the "VILLAGE") is a home rule municipality pursuant to Section 6(a) of Article VII of the Constitution of the State of Illinois and is authorized to exercise and perform any function pertaining to its government and affairs.
- B. The State of Illinois has adopted tax increment financing pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq., as from time to time amended (hereinafter referred to as the "TIF ACT").
- C. Pursuant to its home rule powers and in accordance with the TIF ACT, on November 4, 2020, the Corporate Authorities of the VILLAGE adopted Ordinance Numbers 126, 127, and 128 in accordance with the TIF ACT and its home rule powers, approving a tax increment redevelopment plan and project, designating a tax increment redevelopment project area and adopting tax increment financing relative to the VILLAGE'S HAWTHORN MALL TIF DISTRICT (hereinafter referred to as the "HAWTHORN MALL TIF DISTRICT") for redevelopment and revitalization of a portion of the corporate limits of the VILLAGE, which property is legally described and depicted in EXHIBITS A-C attached hereto and made part hereof (hereinafter referred to as the "REDEVELOPMENT PROJECT AREA").
- D. HAWTHORN LP; HAWTHORN SP LLC; HAWTHORN CP, LLC; and USEF CENTENNIAL FA HAWTHORN OWNER, LLC (hereinafter collectively referred to as the "DEVELOPER") desire to redevelop the REDEVELOPMENT PROJECT AREA, (hereinafter referred to as the "SUBJECT PROPERTY") on which the DEVELOPER intends to construct a mixed use project including two luxury apartment buildings with high quality amenities and approximately 183,000 square feet of retail (hereinafter referred to as the "DEVELOPMENT").
- E. That attached hereto as EXHIBIT D and made part hereof is a Redevelopment Agreement, between the DEVELOPER and the VILLAGE, which sets forth the terms and conditions pursuant to which the DEVELOPER will proceed with the

DEVELOPMENT (hereinafter referred to as the "REDEVELOPMENT AGREEMENT").

- F. In accordance with the TIF ACT and the VILLAGE'S home rule powers it is in the best interest of the VILLAGE to approve the REDEVELOPMENT AGREEMENT, pursuant to the TIF ACT.

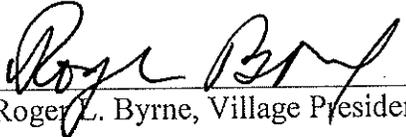
SECTION 2: Based upon the foregoing, and pursuant to the TIF ACT and the VILLAGE'S home rule powers, the REDEVELOPMENT AGREEMENT that is in substantial conformity with the REDEVELOPMENT AGREEMENT attached hereto as EXHIBIT D is hereby approved, with all final minor modifications subject to the approval of the Village Manager in consultation with those parties that he deems necessary. The President and Clerk of the VILLAGE are authorized and directed to execute and deliver such other instruments, required by the REDEVELOPMENT AGREEMENT once finalized, including said REDEVELOPMENT AGREEMENT attached hereto as EXHIBIT D.

SECTION 3: That this Ordinance shall be in full force and effect from and after its adoption, approval and publication in pamphlet form as provided by law.  
Dated this 18<sup>th</sup> day of May 2021.

Passed by roll call vote as follows:

AYES: 7 – Schenk, Marquardt, Forster, Koch, Oppenheim, Takaoka, Byrne  
NAYS: 0 – None  
ABSENT AND NOT VOTING: 0 – None

Adopted this 18<sup>th</sup> day of May 2021, by the President and Board of Trustees of the Village of Vernon Hills, Illinois.

  
Roger L. Byrne, Village President

PASSED: 05/18/2021  
APPROVED: 05/18/2021  
PUBLISHED IN PAMPHLET FORM: 05/18/2021  
ATTEST: 05/18/2021

  
Mark Fleischhauer, Village Clerk

**EXHIBIT A**

**Redevelopment Project Area Description**

**(Legal Description and Permanent Tax Index Numbers)**

HAWTHORN MALL REDEVELOPMENT PROJECT AREA (TIF) LEGAL DESCRIPTION

A PORTION OF LAND, LYING WITHIN SECTIONS 33 AND 34, TOWNSHIP 44 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALSO LYING WITHIN SECTION 4, TOWNSHIP 43 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN LAKE COUNTY, ILLINOIS,

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHERLY-MOST NORTHWEST CORNER OF LOT 2 IN HAWTHORN CENTER SUBDIVISION, BEING A SUBDIVISION OF PARTS OF SECTIONS 33 AND 34, TOWNSHIP 44 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 19, 1977 AS DOCUMENT NUMBER 1866654; SAID POINT ALSO BEING THE NORTHEAST CORNER OF LOT 6 IN SAID HAWTHORN CENTER SUBDIVISION; THENCE NORTHERLY 12.3 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF LOT 18 IN SADDLE BROOK RESUBDIVISION, BEING A SUBDIVISION OF PART OF SECTION 33, TOWNSHIP 44 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 5, 1998 AS DOCUMENT NUMBER 4216424; THENCE ALONG THE SOUTHERLY LINE OF LOT 18 AND OUTLOT D IN SAID SADDLE BROOK RESUBDIVISION, FOR THE FOLLOWING THREE (3) COURSES: (1) THENCE EASTERLY 28.12 FEET TO A BEND POINT; (2) THENCE EASTERLY 47.33 FEET TO A POINT OF CURVATURE; (3) THENCE NORTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 65.00 FEET AND AN ARC LENGTH OF 99.48 FEET TO A POINT OF TANGENCY; THENCE EASTERLY 80.2 FEET, MORE OR LESS, TO A POINT OF CURVATURE ON THE WESTERLY LINE OF LOT 1 IN AMLI AT MUSEUM GARDENS SUBDIVISION, BEING A SUBDIVISION OF PART OF SECTION 33, TOWNSHIP 44 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 5, 2003 AS DOCUMENT NUMBER 5215706; THENCE ALONG THE WESTERLY LINE OF LOT 1 IN SAID AMLI AT MUSEUM GARDENS SUBDIVISION FOR THE FOLLOWING TWO (2) COURSES: (1) THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 65.00 FEET AND AN ARC LENGTH OF 95.76 FEET TO A POINT OF TANGENCY; (2) THENCE EASTERLY 110.83 FEET TO A POINT ON THE NORTH LINE OF LOT 1 IN SAID HAWTHORN CENTER SUBDIVISION; THENCE SOUTH 89 DEGREES 25 MINUTES 30 SECONDS EAST (RECORD BEARING) ALONG THE NORTHERLY LINE OF LOT 1 IN SAID HAWTHORN CENTER SUBDIVISION 820 FEET, MORE OR LESS TO THE NORTHEAST CORNER OF SAID LOT 1, SAID POINT ALSO BEING ON THE WESTERLY RIGHT OF WAY LINE OF MILWAUKEE AVENUE AS SHOWN ON SAID HAWTHORN CENTER SUBDIVISION; THENCE SOUTHERLY AND

WESTERLY ALONG THE WESTERLY RIGHT OF WAY LINE OF MILWAUKEE AVENUE AND THE NORTHERLY RIGHT OF WAY LINE OF ILLINOIS STATE ROUTE 60, BOTH AS SHOWN ON SAID HAWTHORN CENTER SUBDIVISION, FOR THE FOLLOWING FOURTEEN (14) COURSES: (1) THENCE SOUTH 08 DEGREES 02 MINUTES EAST 22.86 FEET; (2) THENCE SOUTH 81 DEGREES 58 MINUTES WEST 5.00 FEET; (3) THENCE SOUTH 08 DEGREES 02 MINUTES EAST 415.00 FEET; (4) THENCE SOUTH 05 DEGREES 32 MINUTES 38 SECONDS EAST 230.22 FEET; (5) THENCE SOUTH 08 DEGREES 02 MINUTES EAST 305.00 FEET TO THE EASTERLY-MOST SOUTHEAST CORNER OF LOT 2 IN SAID HAWTHORN CENTER SUBDIVISION; (6) THENCE SOUTH 81 DEGREES 58 MINUTES WEST 5.00 FEET TO THE NORTHEAST CORNER OF LOT 9 IN SAID HAWTHORN CENTER SUBDIVISION; (7) THENCE SOUTH 08 DEGREES 02 MINUTES EAST 675.02 FEET; (8) THENCE SOUTH 00 DEGREES 13 MINUTES 25 SECONDS EAST 57.92 FEET; (9) THENCE SOUTH 39 DEGREES 18 MINUTES 54 SECONDS WEST 49.15 FEET; (10) THENCE SOUTH 77 DEGREES 52 MINUTES 19 SECONDS WEST 58.06 FEET; (11) THENCE SOUTH 86 DEGREES 39 MINUTES 34 SECONDS WEST 143.12 FEET; (12) THENCE NORTH 88 DEGREES 21 MINUTES 59 SECONDS WEST 230.81 FEET; (13) THENCE SOUTH 86 DEGREES 49 MINUTES 04 SECONDS WEST 238.65 FEET TO THE SOUTHWEST CORNER OF LOT 8 IN SAID HAWTHORN CENTER SUBDIVISION; (14) THENCE SOUTH 03 DEGREES 03 MINUTES 46 SECONDS EAST 5.00 FEET TO THE SOUTHEAST CORNER OF LOT 4 IN SAID HAWTHORN CENTER SUBDIVISION; THENCE CONTINUING SOUTH 03 DEGREES 03 MINUTES 46 SECONDS EAST ALONG THE SOUTHERLY EXTENSION OF THE EASTERLY LINE OF SAID LOT 4 TO THE SOUTHERLY RIGHT OF WAY LINE OF ILLINOIS STATE ROUTE 60; THENCE WESTERLY ALONG SAID SOUTHERLY RIGHT OF WAY LINE TO THE SOUTHERLY EXTENSION OF THE LINE BETWEEN LOTS 2 AND 3 IN SAID HAWTHORN CENTER SUBDIVISION; THENCE NORTH 02 DEGREES 03 MINUTES 40 SECONDS WEST ALONG THE LINE BETWEEN SAID LOTS 2 AND 3 TO THE SOUTHERLY-MOST SOUTHWEST CORNER OF LOT 2 IN SAID HAWTHORN CENTER SUBDIVISION, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF LOT 3 IN SAID HAWTHORN CENTER SUBDIVISION; THENCE ALONG THE LINE BETWEEN SAID LOTS 2 AND 3 FOR THE FOLLOWING SIXTEEN (16) COURSES: (1) THENCE NORTH 02 DEGREES 03 MINUTES 40 SECONDS WEST 175.26 FEET; (2) THENCE SOUTH 87 DEGREES 56 MINUTES 20 SECONDS WEST 159.72 FEET; (3) THENCE NORTH 02 DEGREES 03 MINUTES 40 SECONDS WEST 65.00 FEET; (4) THENCE NORTH 87 DEGREES 56 MINUTES 20 SECONDS EAST 159.72 FEET; (5) THENCE NORTH 02 DEGREES 03 MINUTES 40 SECONDS WEST 209.45 FEET; (6) THENCE NORTH 27 DEGREES 41 MINUTES 04 SECONDS WEST 102.76 FEET; (7) THENCE NORTH 62 DEGREES 18 MINUTES 56 SECONDS EAST 1.00 FEET; (8) THENCE NORTH 27 DEGREES 41 MINUTES 04 SECONDS WEST 73.71 FEET; (9) THENCE NORTH 62 DEGREES 18 MINUTES 56 SECONDS EAST 25.00 FEET; (10) THENCE NORTH 27 DEGREES 41 MINUTES 04 SECONDS WEST 127.58 FEET; (11) THENCE SOUTH 62 DEGREES 18 MINUTES 56 SECONDS WEST 25.00 FEET; (12) THENCE NORTH 27 DEGREES 41 MINUTES 04 SECONDS WEST 73.71 FEET; (13) THENCE SOUTH 62 DEGREES 18 MINUTES 56 SECONDS WEST 1.00 FEET; (14) THENCE NORTH 27 DEGREES 41 MINUTES 04 SECONDS WEST 40.00 FEET; (15) THENCE SOUTH 62 DEGREES 18 MINUTES 56 SECONDS WEST

39.74 FEET; (16) THENCE NORTH 64 DEGREES 58 MINUTES 00 SECONDS WEST 18.01 FEET TO THE EASTERLY-MOST CORNER OF LOT 7 IN SAID HAWTHORN CENTER SUBDIVISION, SAID POINT ALSO BEING A CORNER OF LOT 3 IN SAID HAWTHORN CENTER SUBDIVISION; THENCE ALONG THE LINE BETWEEN SAID LOTS 3 AND 7 FOR THE FOLLOWING FIVE (5) COURSES: (1) THENCE SOUTHWESTERLY ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 82.00 FEET, AN ARC LENGTH OF 52.66, A CHORD BEARING OF SOUTH 43 DEGREES 55 MINUTES 11 SECONDS WEST, AND A CHORD LENGTH OF 51.76 FEET TO A POINT OF TANGENCY; (2) THENCE SOUTH 62 DEGREES 18 MINUTES 57 SECONDS WEST 8.72 FEET; (3) THENCE NORTH 64 DEGREES 58 MINUTES WEST 268.49 FEET; (4) THENCE SOUTH 55 DEGREES 02 MINUTES WEST 31.75 FEET; (5) THENCE NORTH 64 DEGREES 58 MINUTES WEST 337.44 FEET TO THE WESTERLY-MOST SOUTHWEST CORNER OF SAID LOT 7; THENCE ALONG THE WESTERLY LINE OF LOTS 2 AND 7 IN SAID HAWTHORN CENTER SUBDIVISION FOR THE FOLLOWING THREE (3) COURSES: (1) THENCE NORTH 00 DEGREES 38 MINUTES 22 SECONDS WEST 113.53 FEET; (2) THENCE NORTH 30 DEGREES 14 MINUTES 04 SECONDS EAST 175.31 FEET; (3) THENCE NORTH 00 DEGREES 38 MINUTES 22 SECONDS WEST 196.00 FEET TO THE WESTERLY-MOST SOUTHWEST CORNER OF LOT 6 IN SAID HAWTHORN CENTER SUBDIVISION, SAID POINT ALSO BEING THE WESTERLY-MOST NORTHWEST CORNER OF LOT 2 IN SAID HAWTHORN CENTER SUBDIVISION; THENCE EASTERLY ALONG THE LINE BETWEEN SAID LOTS 2 AND 6 FOR THE FOLLOWING TWO (2) COURSES: (1) THENCE SOUTH 45 DEGREES 08 MINUTES 22 SECONDS EAST 172.78 FEET; (2) THENCE SOUTHWESTERLY ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 515.00 FEET, AN ARC LENGTH OF 11.08 FEET, A CHORD BEARING OF SOUTH 46 DEGREES 50 MINUTES 36 SECONDS WEST, AND A CHORD LENGTH OF 11.08 FEET TO THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN QUIT CLAIM DEED RECORDED JULY 10, 1997 AS DOCUMENT NUMBER 3991224; THENCE ALONG THE WESTERLY AND SOUTHERLY LINES OF SAID PARCEL FOR THE FOLLOWING EIGHT (8) COURSES: (1) THENCE SOUTH 64 DEGREES 58 MINUTES 01 SECOND EAST 137.66 FEET; (2) THENCE NORTH 05 DEGREES 00 MINUTES 07 SECONDS WEST 36.26 FEET; (3) THENCE SOUTH 64 DEGREES 58 MINUTES 01 SECONDS EAST 552.72 FEET; (4) THENCE SOUTHERLY ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 100.00 FEET, AN ARC LENGTH OF 7.23 FEET, A CHORD BEARING OF SOUTH 04 DEGREES 16 MINUTES 41 SECONDS WEST, AND A CHORD LENGTH OF 7.23 FEET, TO A POINT OF COMPOUND CURVATURE; (5) THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 25.00 FEET, AN ARC LENGTH OF 34.48 FEET, A CHORD BEARING OF SOUTH 33 DEGREES 10 MINUTES 04 SECONDS EAST, AND A CHORD LENGTH OF 31.82 FEET, TO A POINT OF TANGENCY; (6) THENCE SOUTH 72 DEGREES 41 MINUTES 04 SECONDS EAST 31.06 FEET TO A POINT OF CURVATURE; (7) THENCE EASTERLY ALONG A CURVE CONCAVE TO THE NORTH, HAVING A RADIUS OF 17.15 FEET, AN ARC LENGTH OF 13.47 FEET, A CHORD BEARING OF NORTH 84 DEGREES 48 MINUTES 56 SECONDS EAST, AND A CHORD LENGTH OF 13.13 TO A POINT OF TANGENCY; (8) THENCE NORTH 62 DEGREES 18 MINUTES 56 SECONDS EAST

60.14 FEET TO A POINT ON THE SOUTHERLY LINE OF LOT 6 IN SAID HAWTHORN CENTER SUBDIVISION, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN DOCUMENT NUMBER 3991225; THENCE ALONG THE SOUTHERLY AND EASTERLY LINES OF SAID PARCEL FOR THE FOLLOWING SIX (6) COURSES: (1) THENCE NORTH 62 DEGREES 18 MINUTES 56 SECONDS EAST 88.36 FEET; (2) THENCE SOUTH 27 DEGREES 41 MINUTES 04 SECONDS EAST 60.00 FEET; (3) THENCE NORTH 62 DEGREES 18 MINUTES 56 SECONDS EAST 67.00 FEET; (4) THENCE NORTH 27 DEGREES 41 MINUTES 04 SECONDS WEST 60.00 FEET; (5) THENCE NORTH 62 DEGREES 18 MINUTES 56 SECONDS EAST 253.50 FEET; (6) THENCE NORTH 27 DEGREES 41 MINUTES 04 SECONDS WEST 323.15 FEET TO A POINT ON THE LINE BETWEEN LOTS 2 AND 6 IN SAID HAWTHORN CENTER SUBDIVISION; THENCE NORTH 03 DEGREES 53 MINUTES 56 SECONDS EAST ALONG SAID LINE 267.01 FEET TO THE POINT OF BEGINNING.

Real Estate Property Tax Index Numbers of Property:

11-33-401-004  
11-33-401-006  
11-33-401-089  
11-33-401-088  
11-33-401-087  
11-33-401-086  
11-33-401-085  
11-33-401-013  
11-33-401-014  
11-33-401-015  
11-33-401-016

## **EXHIBIT B**

### GENERAL STREET LOCATION

#### HAWTHORN MALL REDEVELOPMENT PROJECT AREA (TIF)

The RPA consists of most of the Hawthorn Mall, located at the northwest corner of Milwaukee Avenue and Townline Road in Vernon Hills, Illinois, including the former Sears and Carson Pirie Scott store (excluding the Macy's and JC Penney's stores), the current 489,579 square feet of existing in line retail stores within the mall, and adjacent parking lots on the eastern and southern end of the property which are currently dedicated to the retail spaces. The RPA also includes the three commercial parcels at the northwest corner of Milwaukee Avenue and Townline Road.

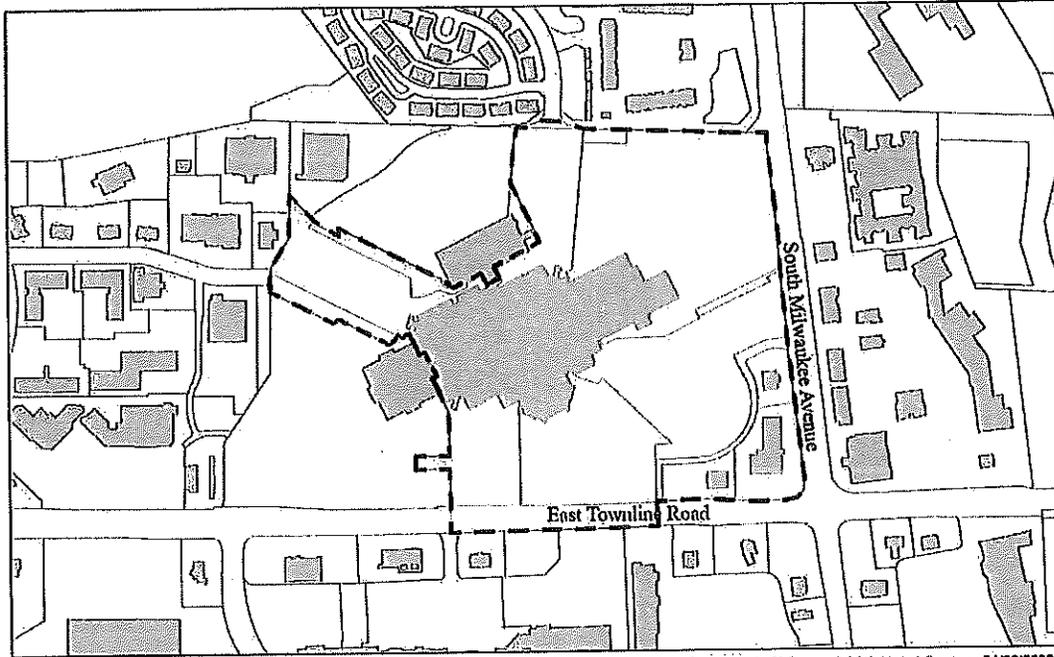
**EXHIBIT C**

MAP OF REDEVELOPMENT PROJECT AREA  
HAWTHORN MALL REDEVELOPMENT PROJECT AREA

**Exhibit C**

**Depiction of the TIF District Boundaries**

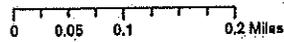
Village of Vernon Hills, Illinois Hawthorn Mall TIF  
Boundary Map



Prepared on 07/09/2020 by:

Sources: Geographic Information accessed from [maps.lakecountyil.gov](https://maps.lakecountyil.gov) on 04/29/2020

 Kane, McKenna  
and Associates, Inc.



**EXHIBIT D**

**REDEVELOPMENT AGREEMENT**

THIS INSTRUMENT HAS BEEN  
JOINTLY PREPARED BY:

Harold W. Francke  
Meltzer, Purtil & Stelle LLC  
1515 E. Woodfield Road, Suite 250  
Schaumburg, IL 60173  
(847) 330-6068  
[hfrancke@mpslaw.com](mailto:hfrancke@mpslaw.com)

and

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After Recording  
Return to Mr. Ferolo

**REDEVELOPMENT AGREEMENT**

**by, between, and among**

**THE VILLAGE OF VERNON HILLS**

**and**

**HAWTHORN, L.P.,  
HAWTHORN SP, LLC,  
HAWTHORN CP, LLC, and  
USEF CENTENNIAL FA HAWTHORN OWNER LLC**

**HAWTHORN MALL**

**REDEVELOPMENT AGREEMENT  
(HAWTHORN MALL)**

This Redevelopment Agreement ("**Agreement**") is made as of the 6<sup>th</sup> day of July, 2021 ("**Effective Date**"), by, between, and among the **VILLAGE OF VERNON HILLS**, an Illinois home rule municipal corporation ("**Village**"), on the one hand, and **HAWTHORN, L.P.**, an Illinois limited partnership ("**Hawthorn L.P.**"), **HAWTHORN SP, LLC**, a Delaware limited liability company ("**Hawthorn SP**"), **HAWTHORN CP, LLC**, a Delaware limited liability company ("**Hawthorn CP**") and **USEF CENTENNIAL FA HAWTHORN OWNER LLC**, a Delaware limited liability company ("**Hawthorn Venture Owner**") (Hawthorn L.P., Hawthorn SP, Hawthorn CP, and Hawthorn Venture Owner being hereinafter sometimes collectively referred to as the "**Owners**"), on the other hand.

**IN CONSIDERATION OF** the recitals and the mutual covenants and agreements set forth in this Agreement, and pursuant to the Village's home rule powers and all other applicable authority, including the TIF Act, the Parties hereby agree as follows:

**Section 1. RECITALS<sup>1</sup>.**

A. Hawthorn L.P., Hawthorn SP, and Hawthorn CP are the owners of certain portions of the Hawthorn Mall, as depicted on **Exhibit A** attached hereto. After the Effective Date of this Agreement, Hawthorn Venture Owner is to become the owner of a resubdivided portion of the Mall Property, upon which a portion of the Phase I Project is to be constructed.

B. On August 13, 2019, the Corporate Authorities adopted the Inducement Resolution to recognize the fact that, prior to such date, some of the Owners had begun to invest monies in the redevelopment and rehabilitation of the Mall Property, and to induce the Owners to invest significant additional dollars in such redevelopment and rehabilitation after the date of adoption of the Inducement Resolution.

C. On November 4, 2020, the Corporate Authorities adopted the TIF Approval Ordinances approving a redevelopment plan and project for a redevelopment project area, designating a tax increment financing district, and adopting tax increment allocation financing for the TIF District. The boundaries of the TIF District are depicted on **Exhibit B-1** attached hereto. The Permanent Index Numbers of the tax parcels comprising the TIF District are listed on **Exhibit B-2** attached hereto.

D. On December 8, 2020, the Corporate Authorities adopted the Plan Approval Ordinances for the Redevelopment Project. The Redevelopment Project is to be constructed on various portions of the Mall Property.

E. The TIF Act authorizes the Village to incentivize redevelopment within the TIF District in accordance with the conditions and requirements of the TIF Act.

F. The Redevelopment Project is generally described in **Exhibit D** attached hereto.

G. The Parties have determined that the portions of the Mall Property upon which the Redevelopment Project is to be constructed are well-suited for the construction of the Redevelopment Project in the manner contemplated by the Plan Approval Ordinances.

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<sup>1</sup> All capitalized words and phrases throughout this Agreement have the meanings set forth in the preamble above, in Section 2, or in the other provisions of this Agreement. If a word or phrase is not specifically defined in this Agreement, it has the meaning ascribed to it in the Zoning Code, Development Ordinance, or Village Code.

H. As of the Effective Date, Hawthorn L.P. has substantially completed the Mall Renovation Project and Hawthorn SP has substantially completed the demolition of the Sears building that previously existed on the Mall Property, both elements being components of the Phase I Project.

I. After the Effective Date, Hawthorn Venture Owner intends to proceed with the construction of those portions of the Phase I Project that are generally described in sub-paragraphs (iii), (iv) and (v) on **Exhibit D** attached hereto, and Hawthorn SP intends to proceed with the construction of those portions of the Phase I Project that are generally described in sub-paragraphs (vi), (vii) and (viii) on **Exhibit D**.

J. The Village and the Owners seek to provide for the construction of the portions of the Phase I Project which remain to be constructed, and the Village and Hawthorn L.P., Hawthorn SP and Hawthorn CP seek to provide for the construction of the Phase II Project and the Phase III Project.

K. The Owners seek to provide for the reimbursement to them of Eligible Costs and other redevelopment costs they have incurred or will incur in constructing the Phase I Project; and Hawthorn L.P., Hawthorn SP and Hawthorn CP seek to provide for the reimbursement to them, or their Affiliates or other Developer Parties, of Eligible Costs and other redevelopment costs such Persons incur in constructing the Phase II Project and the Phase III Project.

L. To incentivize and induce the Owners to complete, or cause the completion of, the Phase I Project, and to incentivize and induce Hawthorn L.P., Hawthorn SP and Hawthorn CP to complete, or cause the completion of, the Phase II Project and the Phase III Project, the Village has agreed to reimburse Developer Parties the aforesaid Eligible Costs and other redevelopment costs by using Pledged TIF Funds and Municipal Sales Tax Pledged Funds and to evidence such obligation by issuing TIF Notes and Sales Tax Notes, all in accordance with the terms and provisions of the TIF Act and this Agreement.

M. The Corporate Authorities, after due and careful consideration, have concluded that incentivizing the Owners and other Developer Parties to undertake the construction of the Redevelopment Project, or to cause it to be undertaken, pursuant to this Agreement will: (i) enhance the Village's ability to control the redevelopment of the Redevelopment Property; (ii) eliminate certain factors and characteristics found on the Redevelopment Property that cause, in part, the TIF District to be a blighted area; (iii) produce increased tax revenues for the Village and other taxing districts authorized to levy taxes within the TIF District; and (iv) otherwise serve the best interests of the Village.

N. The Corporate Authorities, after due and careful consideration, have also concluded that, but for their approval of this Agreement and its execution by the Village, the Owners would not proceed with, or cause other Developer Parties to proceed with, the portions of the Redevelopment Project which remain to be constructed.

### **Section 1. DEFINITIONS: RULES OF CONSTRUCTION.**

A. **Definitions.** Whenever used in this Agreement, the following terms have the following meanings unless a different meaning is required by the context:

**"Accounting"** and **"Accounting Date"**: On November 1, 2021 and on the first day of every succeeding November (each, an **"Accounting Date"**), the Village shall commence an accounting (each, an **"Accounting"**) to determine the amount of the Incremental Property Taxes the Village has received. In addition, on November 1 of the calendar year in which a Certificate of

Completion is issued for the Phase I Project, and on the first day of every succeeding November (each, an "**Accounting Date**"), the Village shall commence an Accounting to determine the amount of Sales Tax Revenues the Village has received. The first Accounting will encompass the period commencing with the Effective Date and ending on October 31, 2021. Each subsequent Accounting will encompass the period commencing on every succeeding first day of November and ending on October 31 of the following year (an "**Accounting Year**"). The Owners shall assist the Village in completing the Accounting by providing, or causing to be provided, on each February 1, May 1, August 1 and November 1 of each Accounting Year: (i) current tenant rolls which identify each tenant of a leased space within the portions of the Mall Property that are owned by Owners or Persons Controlled by one or more of the Owners or the Persons that Control Owners, and the respective date their lease term commenced, (ii) to the extent reasonably possible, tenant Illinois Business Tax numbers, and (iii) such other information as the Village may reasonably request to assist it in determining the amounts of Incremental Property Taxes and Sales Tax Revenues that have been generated during the period that is the subject of such Accounting. The Village shall promptly cause the Pledged TIF Funds and Municipal Sales Tax Pledged Funds after each Accounting to be forwarded to the Trustee no later than December 31st of such Accounting Year.

**"Administrative Allocation"**: As defined in Section 9.G.2 below.

**"Administrative Costs"**: As defined in Section 7.A.1 below.

**"Affiliate"**: As to a Person, any other Person that, directly or indirectly, is in Control of, is Controlled by, or is under common Control with, such first Person.

**"Available Incremental Property Tax TIF Notes"**: The Phase I Tax-Exempt TIF Notes, Phase I Taxable TIF Note 1, the Phase III Tax-Exempt TIF Notes, and Phase III Taxable TIF Note 1, collectively.

**"Available Incremental Property Taxes"**: The Incremental Property Taxes that are generated by the parcels listed on **Exhibit B-3** attached hereto, less Administrative Costs and any amounts due to school districts and other taxing districts pursuant to this Agreement, the TIF Act or the Intergovernmental Agreement.

**"Bond Counsel"**: shall mean Chapman and Cutler LLP, or any other nationally recognized bond counsel acceptable to the Village.

**"Budget Savings"**: As defined in Section 11 below.

**"Building(s)"**: Any above grade, enclosed or partially enclosed structure intended for occupancy of persons or parking of vehicles to be constructed upon the Redevelopment Property.

**"Certificate of Completion"**: As defined in Section 5.E.3 below.

**"Certificate of Expenditure"**: As defined in Section 9.I.4 below

**"Certification Request"**: As defined in Section 9.I.1 below.

**"Change in Sales Tax Law"**: As defined in Section 10.G.2 below.

**"Control"**: The possession by a Person, directly or indirectly, of the power to direct or cause the direction of the management, activities, and policies of another Person (even if such

power is subject to, or becomes subject to, the right of other equity holders to exercise (i) veto rights over major decisions, (ii) removal rights upon a material default in the Controlling Person's obligations, or (iii) a forced sale or purchase right upon the occurrence of specified events), whether through the ability to exercise voting power, by contract or otherwise. "Controlled" and "Controlling" each have the meanings correlative thereto.

**"Corporate Authorities"**: The President and Board of Trustees of the Village of Vernon Hills, Illinois.

**"CTM Plan"**: The Construction and Traffic Management Plan defined in Section 5.C.1 below.

**"Declaration"**: The Declaration of Cross Easements and Cost Sharing Agreement described in Section 2.C.2.a below.

**"Developer Parties"**: Collectively, the Owners, Affiliates of the Owners, and any other Person who has sought any rights or assumed any obligations with respect to the construction of a Redevelopment Project Phase, or a portion thereof, pursuant to either a Transferee Assumption Agreement, after the applicable transfer limitation periods hereinafter specified have been met, or an amendment to this Agreement. The Developer Parties may be hereinafter sometimes individually referred to as a **"Developer Party"**.

**"Development Ordinance"**: The Village's Development Ordinance, Article I of Appendix B of the Village Code, in effect as of the Effective Date.

**"Effective Date"**: The effective date of this Agreement, as set forth in the first sentence on Page 1 of this Agreement.

**"Eligible Costs"**: All qualifying redevelopment project costs that are: (i) authorized and defined by the TIF Act (65 ILCS 5/11-74.4-3(q)) and the Redevelopment Plan; and (ii) incurred by the Developer Parties in the construction of the Redevelopment Project and listed on Exhibit E hereto.

**"Events of Default"**: As defined in Section 16 below.

**"Existing Incentive Agreement"**: The Economic Incentive Agreement dated June 4, 2013, by and between Hawthorn L.P. and the Village pursuant to which the Village agreed to reimburse Hawthorn L.P. up to \$10,000,000 in redevelopment costs using sales taxes generated by certain tenants at the Mall Property.

**"Final Plans"**: Collectively, the final site plans, plats of subdivision, engineering plans, landscape plans, lighting and photometric plans, architectural plans, plaza and streetscape plans, signage plans, and all other final plans, plats, and specifications for the Redevelopment Project approved (i) by the Corporate Authorities by virtue of adoption of the Plan Approval Ordinances; or (ii) by the Corporate Authorities or by any officer, board, or commission of the Village pursuant to this Agreement, the Plan Approval Ordinances (including the Plan Approval Conditions), or the Village Code.

**"Future Subdivision"**: A future horizontal and vertical subdivision of the Redevelopment Property that will cause each Retail/Commercial Building and Residential Building to be located on a separate lot of record.

**"Guarantee"**: The security for certain Improvements required by the Village Code including Article III, Section 1.09 of the Development Ordinance.

**"District 73"**: Hawthorn Community Consolidated School District 73.

**"Home Rule Sales Tax"**: The sales tax imposed on all gross receipts resulting from the sale of tangible personal property at retail in the Village pursuant to: (i) the Village's Home Rule Municipal Retailers' Occupation Tax (Village Code Chapter 21, Article IX); (ii) the Home Rule Municipal Retailers' Occupation Tax Act (65 ILCS 5/8-11-1); (iii) the Village's Home Rule Municipal Service Occupation Tax (Village Code Chapter 21, Article X); and (iv) the Home Rule Municipal Service Occupation Tax Act (65 ILCS 5/8-11-5).

**"Home Rule Sales Tax Revenues"**: The revenues collected and received by the Village as a result of the imposition of the Home Rule Sales Tax on the retailers located within the portions of the Mall Property that are owned by the Owners or Persons Controlled by one or more of the Owners or the Persons that Control Owners. For purposes of this Agreement, the Home Rule Sales Tax Revenues, which shall be used to pay debt service on the Sales Tax Notes and the Village's 10% Pledge, shall equal, but not exceed, one-quarter of one percent (0.25%) of the amount of all taxable sales on the retailers located within the portions of the Mall Property that are owned by Owners or Persons Controlled by one or more of the Owners or the Persons that Control Owners, regardless of the actual Home Rule Sales Tax the Village may impose and collect from time to time.

**"Improvements"**: The improvements the Developer Parties are to construct on the Redevelopment Property in connection with the construction of the Redevelopment Project, as provided in Section 4 below, including the improvements identified and depicted in the Final Plans, but excluding any newly constructed Buildings.

**"Incentive Payments"**: Payments to Developer Parties under the TIF Notes and/or Sales Tax Notes.

**"Incremental Property Taxes"**: The incremental *ad valorem* taxes that are assessed against properties in the TIF District, collected by the Lake County Treasurer, and paid to the Village Chief Financial Officer for deposit into the TIF Fund.

**"Inducement Resolution"**: Village Resolution 2019-040, entitled "A Resolution of Inducement and to Express Official Intent Regarding Certain Expenditures to be Reimbursed from a Special Tax Allocation Fund the Village May Establish for a Proposed Tax Increment Financing District to be Commonly Described as the Hawthorn Mall Redevelopment Project Area.

**"Intergovernmental Agreement"**: The intergovernmental agreement between the Village and District 73, approved by Village Ordinance 2020-129, a copy of which is attached hereto as **Exhibit F**.

**"Mall Property"**: The property commonly known as the Hawthorn Mall, situated at the northwest corner of the intersection of Illinois State Route 60 and Illinois State Route 21 (Milwaukee Avenue) in Vernon Hills, Illinois, and depicted on **Exhibit A** attached hereto.

**"Mall Renovation Project"**: That portion of the Phase I Project that is described as such in **Exhibit D** attached hereto.

**"Maximum Reimbursement Amount"**: As defined in Section 9(D)(1) below.

**"Municipal Sales Tax Pledge"**: The Village's pledge of 40% of its State Sales Tax Revenues and 40% of its Home Rule Sales Tax Revenues, less any amounts paid first towards the (i) Annual Sales Tax Deficiency Amount (as such term is defined in Section 11.E below), and then (ii) the Village's 10% Pledge.

**"Municipal Sales Tax Pledged Funds"**: The monies available to the Village to pay: (i) first, the Annual Sales Tax Deficiency, if any, (ii) second, the Village's 10% Pledge, and (iii) third, principal and interest obligations coming due on the Sales Tax Notes pursuant to the Municipal Sales Tax Pledge and this Agreement.

**"New Sales Tax Note"**: As defined in Section 10.B below.

**"Non-Retail Use"**: Any use that is highlighted on **Exhibit G** attached hereto.

**"Note(s)"**: Individually or collectively, any TIF Note(s) and/or Sales Tax Note(s).

**"Outlots"**: The three lots that are to be platted on the Redevelopment Property to the west of the western boundary of the Milwaukee Avenue right-of-way, as described on **Exhibit D** attached hereto.

**"Owner Indemnified Parties"**: As defined in Section 12.B.1 below.

**"Parties"**: Collectively, the Village, Hawthorn L.P., Hawthorn SP, Hawthorn CP and Hawthorn Venture Owner.

**"Perimeter Sidewalks"**: The sidewalks Hawthorn SP intends to construct, or to cause to be constructed, pursuant to the Sidewalk Easements at the request of the Village.

**"Person"**: Any corporation, partnership, individual, joint venture, limited liability company, trust, estate, association, business, enterprise, proprietorship, government or any bureau, department, or agency thereof, or other legal entity of any kind, either public or private, and any legal successor, agent, representative, authorized assign, or fiduciary acting on behalf of any of the above.

**"Phase"**: As defined in **Exhibit D** attached hereto.

**"Phase I Parking Garage"**: As defined in **Exhibit D** attached hereto.

**"Phase I Project"**: As defined in **Exhibit D** attached hereto.

**"Phase I Project Cost"**: As defined in Section 11A below.

**"Phase I Retail/Commercial Space"**: As defined in **Exhibit D** attached hereto.

**"Phase I Residential Building(s)"**: As defined in **Exhibit D** attached hereto.

**"Phase II Project"**: As defined in **Exhibit D** attached hereto.

**"Phase II Residential Building"**: As defined in **Exhibit D** attached hereto.

**"Phase III/Phase III Project Cost"**: As defined in **Exhibit D** attached hereto.

**"Phase III Project"**: As defined in **Exhibit D** attached hereto.

**"Phase III Retail/Commercial Space"**: As defined in *Exhibit D* attached hereto.

**"Plan Approval Conditions"**: Collectively, (i) the "Terms and Conditions of Approval" listed in Exhibit B to Village Ordinance 2020-134; and (ii) the "Terms and Conditions of Approval" listed in Exhibit B to Village Ordinance 2020-135, as the same may be amended by the Village upon application therefor by a Developer Party.

**"Plan Approval Ordinances"**: The following Village ordinances adopted December 8, 2020 granting certain preliminary and final site plan, landscape plan, and architectural plan approvals, special use permit approval, final subdivision plat approval, and certain variations from the Village Zoning Ordinance, Sign Ordinance, and Building Code with respect to the Redevelopment Project, as such ordinances may be amended by the Village upon application therefor by a Developer Party:

1. Ordinance 2020-134 entitled *An Ordinance Amending Ordinance 2013-013 and 2013-014 to Amend the Special Use Permit for a Planned Unit Development and Certain Other Approvals for Property Commonly Known as Hawthorn Mall, in the Village of Vernon Hills, Lake County.*

2. Ordinance 2020-135 entitled *An Ordinance Approving a Plat of Subdivision, Site, Landscape and Architectural Plans, Zoning, Sign and Building Code Variations and Certain Other Approvals for Property Commonly Known as Lot 4 at the Hawthorn Mall, in the Village of Vernon Hills, Lake County.*

**"Planning and Zoning Commission"**: The Planning and Zoning Commission of the Village, established by Section 2-313 of the Village Code.

**"Pledged TIF Funds"**: As defined in Section 9.G(1).

**"Prohibited Use"**: Any use listed on *Exhibit H* attached hereto.

**"Project Budget"**: As defined in Section 15.B(1) below.

**"Qualified Institutional Buyer"**: Entities defined by Rule 144A of the 1933 Securities Act.

**"Qualified Purchaser"**: A Person that is either: (i) an Affiliate of one of the Owners; or (ii) a Person that: (a) either has at least fifteen years of experience in owning and/or managing at least three properties similar in size and type to the asset being purchased, or has assets of at least \$100,000,000; (b) does not appear on any list of persons, entities and governments issued by the Office of Foreign Assets Control of the United States Department of Treasury pursuant to Executive Order 13224; and (c) is not, to the best of such Person's knowledge, in violation of any code or ordinance within the Village Code.

**"Redevelopment Plan"**: The Redevelopment Plan and Project for the TIF District adopted pursuant to Village Ordinance No. 2020-126.

**"Redevelopment Project"**: The project generally described in *Exhibit D*, attached hereto, including all Phases thereof.

**"Redevelopment Property"**: Those portions of the Mall Property upon which all elements of the Redevelopment Project, other than the Mall Renovation Project, are to be constructed. Depictions of the Redevelopment Property, as it exists as of the Effective Date and as it is proposed to be subdivided, are depicted on *Exhibit C* attached hereto.

**"Remaining Municipal Sales Tax Pledged Funds"**: The Municipal Sales Tax Pledged Funds remaining after payment of (i) the Annual Sales Tax Deficiency, if any, and (ii) the Village's 10% Pledge, the same being the amount available to pay principal and interest obligations coming due on the Sales Tax Notes.

**"Requirements of Law"**: All applicable federal, state, and Village laws, statutes, codes, ordinances, resolutions, rules, and regulations, as well as judicial decisions and orders binding on the Parties or the Redevelopment Project.

**"Residential Buildings"**: Collectively, the Phase I Residential Buildings and the Phase II Residential Building.

**"Residential Parcel(s)"**: The portions of the Redevelopment Property that will contain the Residential Buildings, which portions are to be designated as separate lots in the Future Subdivision.

**"Residential Substantial Completion"**: For that portion of the Phase I Project that is to contain the Phase I Residential Buildings and for the Phase II Project, satisfaction of the following criteria:

(i) The Developer Party constructing the Phase I Residential Buildings or the Phase II Residential Building, as applicable, has completed the construction of, respectively, the Phase I Residential Building and the Phase I Parking Garage, or the Phase II Residential Building; all residential units within the Residential Building constructed qualify for the issuance of a conditional or final certificate of occupancy under the Village Code; and such Developer Party has delivered to the Village appropriately redacted executed leases for not less than 25% of the residential units within, respectively and as applicable, the first constructed Phase I Residential Building and the Phase II Residential Building; and

(ii) Such Developer Party has completed the construction of, and the Village has inspected and approved, all infrastructure Improvements, including all required internal drives, surface parking areas, and water, sanitary sewer, storm drainage, and landscaping improvements (with the understanding that landscaping may be installed and completed only when weather conditions permit), the Developer Party was then to have constructed.

**"Retail/Commercial Spaces"**: Collectively, the Phase I Retail/Commercial Space and the Phase III Retail/Commercial Space. As depicted in the Final Plans, the Retail/Commercial Spaces will comprise the ground floor space situated below Residential Buildings.

**"Retail/Commercial Parcel(s)"**: The portions of the Redevelopment Property that will contain the Retail/Commercial Spaces, which are to be designated as separate lots in the Future Subdivision.

**"Retail/Commercial Project"**: That portion of the Redevelopment Project to be constructed on the Retail/Commercial Parcels consisting of Retail/Commercial Buildings.

**"Retailers' Occupation Tax Act"**: The Illinois Retailers' Occupation Tax Act, 35 ILCS 120/1 *et seq.*, as the same has been, and may, from time-to-time hereafter, be amended.

**"Retail Substantial Completion"**: For each Retail/Commercial Space, satisfaction of the following criteria:

(i) The Developer Party constructing the Retail/Commercial Space has completed the construction of, and the Village has inspected and approved all infrastructure Improvements, including all required internal drives, surface parking areas, and water, sanitary sewer, storm drainage, and landscaping improvements (with the understanding that landscaping may be installed and completed only when weather conditions permit), the Developer Party was then to have constructed; and

(ii) Such Developer Party, with respect to the Retail/Commercial Space constructed, has: (a) delivered to the Village appropriately redacted executed leases for not less than 62.5% of the gross leasable square footage of such Retail/Commercial Space, (b) completed such space to the point where it qualifies for issuance of a conditional or final certificate of occupancy under the Village Code; and (c) completed the "exterior core and shell" of the Building containing the balance of such space which remains to be leased. For purposes hereof, the foregoing shall mean that the Buildings are weather-tight construction with exterior walls in substantial conformance with the architectural plans referenced in the Final Plans, roof and storefront windows and doors (but excluding concrete floors, and HVAC, and interior plumbing and electrical systems and fixtures).

**"Sales Tax Note(s)"**: Individually or collectively, the New Sales Tax Note, the Phase I Sales Tax Note, and/or the Phase III Sales Tax Note.

**"Sales Tax Note Authorizing Ordinance"**: The ordinance the Corporate Authorities have adopted pursuant to Section 10.A below to authorize the issuance of the Sales Tax Notes.

**"Sales Tax Revenues"**: The State Sales Tax Revenues and the Home Rule Sales Tax Revenues, collectively.

**"Service Occupation Tax Act"**: The Illinois Service Occupation Tax Act, 35 ILCS 115/1 *et seq.*, as the same has been, and may, from time-to-time hereafter, be amended.

**"Sidewalk Easements"**: The easements Hawthorn L.P. and Hawthorn SP granted or will grant to the Village so that it can construct new sidewalks on the Redevelopment Property along the western boundary of the Milwaukee Avenue right-of-way.

**"State Sales Tax Revenues"**: The revenues collected and received by the Village as a result of the imposition of taxes by the State of Illinois and received by the Village pursuant to the Retailer's Occupation Tax Act and the Service Occupation Tax Act on the retailers located within the portions of the Mall Property that are owned by the Owners or Persons Controlled by one or more of the Owners or the Persons that Control Owners; and, subject to Section 10.G below, any other "sales tax" or successor tax that may be enacted by the State of Illinois that the Village is able to verify as being generated from the retailers located within the portions of the Mall Property that are owned by Owners or Persons Controlled by one or more of the Owners or the Persons that Control Owners.

**"Structure"**: Anything constructed or erected, the use of which requires more or less permanent location on the ground, or anything attached to something having a permanent location on the ground, but not including paving or surfacing of the ground. "Structure" shall in all cases be deemed to include Buildings.

**"Substantial Completion"**: For a component of either the Phase I Project or the Phase III Project that is other than a Residential Building or one of the Retail/Commercial Spaces, satisfaction of the following criteria:

(i) The Developer Party constructing such component has completed the construction of, and the Village has inspected and approved, all infrastructure Improvements, including all required internal drives, surface parking areas, and water, sanitary sewer, storm drainage, and landscaping improvements (with the understanding that landscaping may be installed and completed only when weather conditions permit), the Developer Party was then to have constructed; and

(ii) If applicable, the Developer Party has received a conditional or final certificate of occupancy for such component pursuant to applicable provisions of the Village Code.

**"Tax-Exempt TIF Note(s)"**: Individually or collectively, the Phase I Tax-Exempt TIF Note and/or the Phase III Tax-Exempt TIF Note, as such terms are defined in Section 9.E below.

**"Taxable TIF Note(s)"**: Individually or collectively, Phase I Taxable TIF Note 1, Phase I Taxable TIF Note 2, Phase III Taxable TIF Note 1, and/or Phase III Taxable TIF Note 2, as such terms are defined in Section 9.E below.

**"TIF"**: Tax increment financing, as further defined and described in the TIF Act.

**"TIF Act"**: The Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., as it may be amended from time to time.

**"TIF Approval Ordinances"**: The following Village ordinances adopted November 4, 2020:

1. Ordinance 2020-126 entitled *An Ordinance of the Village of Vernon Hills, Lake County, Illinois, Approving a Tax Increment Redevelopment Plan and Redevelopment Project for the Hawthorn Mall Redevelopment Project Area.*
2. Ordinance 2020-127 entitled *An Ordinance of the Village of Vernon Hills, Lake County, Illinois, Designating the Hawthorn Mall Redevelopment Project Area of Said Village a Redevelopment Project Area Pursuant to the Tax Increment Allocation Redevelopment Act.*
3. Ordinance No. 2020-128 entitled *An Ordinance of the Village of Vernon Hills, Lake County, Illinois, Adopting Tax Increment Allocation Financing for the Hawthorn Mall Development Project Area.*

**"TIF District"**: The Hawthorn Mall Redevelopment Project Area designated by the Corporate Authorities pursuant to Ordinance No. 2020-127. The Permanent Index Numbers of the parcels located in the TIF District are listed on **Exhibit B-2** attached hereto.

**"TIF Fund"**: The special tax allocation fund established for the TIF District in accordance with the TIF Act and the TIF Approval Ordinances.

**"TIF Note(s)"**: Individually or collectively, a or the Tax-Exempt TIF Note(s) and a or the Taxable TIF Note(s).

**"TIF Note Authorizing Ordinance"**: The ordinance identified in Section 9.A below which the Corporate Authorities adopted to authorize the issuance of the TIF Notes and approve the Trust Indenture.

**"Transferee Assumption Agreement"**: As defined in Section 13.B.3 below.

**"Trust Indenture"**: An Indenture of Trust entered into between the Village and the Trustee, as it may be amended or supplemented from time to time in accordance with its terms, in furtherance of the issuance of the TIF Notes, administration of the TIF Fund and the satisfaction of payment obligations under the TIF Notes, as described in Section 9.B below. Additionally, the Sales Tax Notes may be included within the Indenture of Trust referred to in the previous sentence, or may be included in a separate Indenture of Trust with respect to the Sales Tax Notes, each as described in Section 10.B below.

**"Trustee"**: A national banking institution or state-chartered banking institution authorized to act as trustee pursuant to the Trust Indenture which is acceptable to the Village.

**"Uncontrollable Circumstance"**: Any of the following events and circumstances that materially change the costs or ability of a Party to carry out its obligations under this Agreement:

1. a change in the Requirements of Law;
2. insurrection, riot, civil disturbance, sabotage, act of public enemy, explosion, nuclear incident, war, or naval blockade;
3. epidemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary weather condition, or other similar act of God;
4. governmental condemnation or taking; or
5. strikes or labor disputes, other than those caused by the unlawful acts of one of the Developer Parties or its partners or affiliated entities.

The Parties acknowledge and agree that, as of the Effective Date, as a result of Covid-19 and the resulting governmental orders and directives for stay-at-home, shelter-in-place, or similar orders, it may not be possible at any moment in time for the Developer Parties, or their general contractors or their employees, contractors, consultants and/or agents, to perform some or all of the work required for the Redevelopment Project, and that such governmental orders or directives may affect the timeliness of performance, as well as the ability to perform at all. For purposes of this Agreement, therefore, governmental orders and directives for stay-at-home, or shelter-in-place due to Covid-19 that require the construction of the Project to cease shall be deemed an Uncontrollable Circumstance to the extent it causes or results in a delay in the performance of any work or an inability to perform or complete any work.

Uncontrollable Circumstance does not include economic hardship, impracticability of performance, commercial, economic, or market conditions, or a failure of performance by a contractor of one of the Developer Parties (except as caused by events which are Uncontrollable Circumstances as to the contractor).

**"Vertical Construction"**: The construction of any portion of a Building above grade level.

**"Village's 10% Pledge"**: The amount the Village must annually deposit into the TIF Fund pursuant to Section 11-74.4-8 of the TIF Act as a result of the generation of Incremental Property Taxes by the parcels listed on **Exhibit B-3** attached hereto.

**"Village's 10% Pledge TIF Notes"**: Phase I Taxable TIF Note 2 and Phase III Taxable TIF Note 2, collectively.

**"Village Attorney"**: The duly appointed Village Attorney of the Village.

**"Village Clerk"**: The duly appointed Village Clerk of the Village.

**"Village Code"**: The Code of Ordinances of the Village of Vernon Hills, Illinois in effect as of the Effective Date.

**"Village Director of Community Development"**: The duly appointed Village Director of Community Development.

**"Village Engineer"**: The duly appointed Village Director of Public Works/Village Engineer.

**"Village Indemnified Parties"**: As defined in Section 12.A.3 below.

**"Village Manager"**: The duly appointed Village Manager of the Village, or his or her designee, as appointed by the Village Manager.

**"Village Share of Sales Tax Revenues"**: 60% of its State Sales Tax Revenues, 60% of its Home Rule Sales Tax Revenues and the Annual Sales Tax Deficiency Amount.

**"Zoning Code"**: Appendix C (Zoning) of the Village Code in effect as of the Effective Date.

B. **Rules of Construction.**

1. **Grammatical Usage and Construction.** In construing this Agreement, pronouns include all genders, and the plural includes the singular and *vice versa*. Whenever the terms "including" or "excluding" are used in this Agreement, they shall be presumed to be followed by the phrases, "but not limited to" or "without limitation", as the context may require.

2. **Headings.** The headings, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

3. **Calendar Days.** Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" means calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.

Section 2. PLAN APPROVAL ORDINANCES/PLAN APPROVAL CONDITIONS/  
ADDITIONAL APPROVAL CONDITIONS.

A. **Plan Approval Ordinances.** The Parties acknowledge and agree that the Plan Approval Ordinances have been duly adopted and are in full force and effect as of the Effective Date. For so long as this Agreement remains in effect and no Developer Event of Default exists hereunder and the Owners remain in compliance with the Plan Approval Ordinances, the Zoning Code and the Development Ordinance, the Village will not amend or repeal the Plan Approval Ordinances without the prior written consent of the Owners.

B. **Plan Approval Conditions.** The Owners, in their construction of the Phase I Project, shall comply at all times with the applicable Plan Approval Conditions.

C. **Additional Conditions.** In addition to the Plan Approval Conditions, the following additional conditions must be satisfied by every Developer Party undertaking the construction of a Phase of the Redevelopment Project:

1. **Approvals from Outside Agencies.** A Developer Party undertaking the construction of a Redevelopment Project Phase, at the Village's request, shall submit evidence that all agencies or political subdivisions with jurisdiction over such Phase have granted all necessary approvals and consents to commence and complete construction of such Phase, including, as applicable, the following: the Lake County Department of Public Works, the Lake County Stormwater Management Commission, and the Illinois Environmental Protection Agency.

2. **Declaration of Cross Easements and Cost Sharing Agreement.**

a. Prior to the issuance of a conditional or final certificate of occupancy for the Phase 1 Project, the Owners shall submit to the Village Attorney, for his review and approval, a declaration of cross easements and cost sharing agreements ("**Declaration**"). The Declaration will clearly define the rights and responsibilities of the owners and occupants of the Retail/Commercial Parcels and the Residential Parcels, and all of their respective successors and assigns, with regard to the following "**Declaration Access/Maintenance Obligations**": (a) cross access between and among the Retail/Commercial Parcels, the Residential Parcels, and other portions of the Mall Property and maintenance of access drives, loading docks, and other commonly used features in connection with such cross access; (b) maintenance, cleaning, and operation of all on-site Improvements serving the Phase I Project and other Phases of the Redevelopment Project that may be subsequently added to the Declaration, including, specifically, the landscaping in accordance with the Final Plans; (c) snow removal and storage on the portions of the Redevelopment Property upon which the Phase I Project, and other Phases of the Redevelopment Project that may be subsequently added to the Declaration, are constructed; and (d) the granting of one or more licenses to the Village providing for public access, during time periods that are generally consistent with the time periods during which the improvements existing on the Mall Property are open to the general public, to the following Improvements or portions of Buildings, that will be constructed on the Retail/Commercial Parcels or the Residential Parcels, as the case may be, as part of the Redevelopment Project: elevators and restrooms that will be available for public use, lawns and other outdoor areas that will be open to the general public, and streetscape improvements and landscaping that will be available for public use.

b. The Declaration must include the following provisions:

i. The Declaration will bind and be recorded against all portions of the Redevelopment Property, and if applicable, other portions of the Mall Property;

ii. The Village must be given the right, but not the obligation, to enforce all covenants contained in the Declaration regarding the Declaration Access/Maintenance Obligations; and

iii. The Village must be given the right, but not the obligation, after 15 days' written notice to the owner or owners of the applicable lot or lots within the Redevelopment Property, as may be appropriate (i) to perform any Declaration Access/Maintenance Obligations that the owner(s) of the applicable lot(s) has neglected to perform (or to commence and diligently pursue completion of such maintenance work within such 15-day period if such maintenance work is not reasonably capable of being completed within such 15-day period); (ii) to assess the owner(s) of the applicable lot(s) for such work; and (iii) to have a lien placed against the affected lot(s) belonging to an owner(s) failing to pay such assessment if such assessment is not paid within 30 days after written notice from the Village.

c. The Declaration may contemplate the addition of several "add-on" parcels by way of amendments that are recorded as various Phases of the Redevelopment Project are completed.

3. **Future Subdivision.** The Village acknowledges that the Owners intend to further subdivide, or cause the subdivision of, the Redevelopment Property, both horizontally and vertically, to create separate lots of record for the Retail/Commercial Buildings, the Residential Buildings, and other portions of the Redevelopment Project. All such future subdivisions will be processed pursuant to applicable provisions of the Development Ordinance or other applicable provisions of the Village Code, subject to any variations or departures therefrom as may be set forth in the Plan Approval Ordinances or as may be hereafter applied for by the Owners and granted by the Village.

**Section 3. DEVELOPMENT, USE, OPERATION, AND MAINTENANCE OF THE REDEVELOPMENT PROJECT.** The Owners and other Developer Parties who proceed with the construction of the various Phases of the Redevelopment Project shall (and shall have the right to) use, develop, operate, and maintain such Phases pursuant to, and in accordance with, the terms and provisions of the Plan Approval Ordinances, the Plan Approval Conditions, the additional conditions set forth in Section 2, other applicable provisions of this Agreement, and the following provisions:

A. **Development Schedule.** The Parties acknowledge that, as of the Effective Date, construction of the remaining portions of the Phase I Project (that is, those portions which are other than the Mall Renovation Project) has commenced with the demolition of the Sears building that previously existed on the Redevelopment Property. The construction of the balance of the Redevelopment Project shall be undertaken in accordance with the following development schedule:

1. Not later than 120 days after the Effective Date, the Owners shall deliver, or cause to be delivered, to the Village, in a form reasonably satisfactory to the Village, financing commitments and evidence of an ability to pay the costs of constructing the Phase I Residential Buildings, the Phase I Parking Garage and the Phase I Retail/Commercial Space, as itemized in the Project Budget. Prior to the commencement of the Phase II Project and the Phase III Project, one or more of Hawthorn L.P., Hawthorn SP or Hawthorn CP shall deliver, or cause to be delivered, to the Village, in a form reasonably satisfactory to the Village, financing commitments and evidence of an ability to pay the costs of constructing the Phase II Project and the Phase III Project, as itemized in the Project Budget.
2. Subject to Uncontrollable Circumstances, not later than the 48-month anniversary of the Effective Date, Hawthorn SP and Hawthorn Venture Owner shall achieve Retail Substantial Completion of the Phase I Retail/Commercial Space, Residential Substantial Completion of the Phase I Residential Buildings, and Substantial Completion of the Phase I Parking Garage and all other components of the Phase I Project, other than the Outlots, the Substantial Completion of which will be achieved once the Persons who intend to occupy the Outlots are known to the Village and Hawthorn SP.
3. Subject to Uncontrollable Circumstances, not later than the 60-month anniversary of the Effective Date, one or more of Hawthorn L.P., Hawthorn SP or Hawthorn CP shall achieve, or cause another Developer Party to achieve, Residential Substantial Completion of the Phase II Residential Building.

4. Subject to Uncontrollable Circumstances, one or more of Hawthorn L.P., Hawthorn SP or Hawthorn CP shall achieve, or cause another Developer Party to achieve, Retail Substantial Completion of the Phase III Retail/Commercial Space not later than the Phase III Final Issuance Date (as hereinafter defined).

B. **Non-Retail Uses.**

1. From and after the Phase I TIF Notes Issuance Date (as hereinafter defined), no more than 15% of the aggregate leasable retail square footage in: (a) the Phase I Retail/Commercial Space and the components of the Phase I Project described in paragraphs (vii) and (viii) in **Exhibit D** attached hereto, and (b) the Phase III Retail/Commercial Space, as those leasable areas may be adjusted or established pursuant to either Paragraph H below, an amendment to the Plan Approval Ordinances or a newly adopted ordinance for the Phase III Project, may be occupied by Non-Retail Uses without the prior written approval of the Village, the issuance or denial of which shall be in the Village's sole discretion. Hawthorn L.P., Hawthorn SP and Hawthorn CP shall be jointly and severally liable for the payment of a penalty to the Village on an annual basis ("**Penalty**") for each violation of this restriction they fail to cure within 30 days of notice from the Village, which Penalty shall be in the amount of Six Dollars and 25/xx (\$6.25) per square foot for each square foot of leasable retail square footage that has been leased to and remains occupied by a Non-Retail Use.

2. The determination of whether Non-Retail Uses have been established in the Retail Commercial Spaces shall be made annually from and after the Phase I TIF Notes Issuance Date, and the determination as to whether a Penalty is due in any given Accounting Year shall be made by the Village on the Accounting Date for such year.

3. The Penalty shall be paid by way of a dollar-for-dollar reduction in the amounts coming due under, first, the Sales Tax Notes, and if a deficiency exists, then by way of a dollar-for-dollar reduction in the amounts coming due under the Taxable TIF Notes, and, if a deficiency still exists, then by way of a cash payment to the Village by one or more of Hawthorn L.P., Hawthorn SP or Hawthorn CP, with such entities being jointly and severally liable for such payment. For purposes of the Internal Revenue Code of 1986 (the "**Internal Revenue Code**"), the Penalty payment is treated as a payment for the use of the property and shall first be allocated to the payment of debt service on the New Sales Tax Note and will reflect all or a portion of the debt service on the New Sales Tax Note. The incentives provided by the Village under this Agreement are to encourage retail development and construction within the Village. Any Penalty payments that are in excess of the amount allocated to the payment of principal and interest on the New Sales Tax Note will be treated as a repayment of the incentives granted by the Village for the Redevelopment Project as evidenced by the Phase I Taxable TIF Notes, the Phase III Taxable TIF Notes, the Phase I Sales Tax Note and the Phase III Sales Tax Note. Hawthorn L.P., Hawthorn SP and Hawthorn CP represent that they do not currently reasonably expect that they will incur Penalty amounts in excess of the amount of penalty that can be allocated to the payment of debt service on the New Sales Tax Note.

4. The Village acknowledges and agrees that these provisions shall become null and void if the Village ever elects to adopt one or more ordinances extending an *ad valorem* tax arising from levies on taxable real property in the Village or if the Village never issues the Phase I TIF Notes.

C. **Prohibited Uses.** From and after the Effective Date of this Agreement through its termination, no Prohibited Use shall be established in the Retail/Commercial Spaces without the

express prior written consent of the Village, which consent the Village may issue or deny in its sole discretion. In the event a Prohibited Use is established without such consent, the Penalty provided in Section 3.B above shall apply.

D. **No Conveyances or Leases to Certain Entities.** To support the Village's goal of the development of retail establishments of certain types on the Redevelopment Property and the continuation of such uses, from and after the Effective Date of this Agreement and for so long as the TIF District is in existence, no conveyance or lease of any portion of the Phase I Retail/Commercial Space or the Phase III Retail/Commercial Space may be made to the following types of entities without the Village's prior written approval, which approval may be granted in its sole discretion: (i) the Federal government, (ii) organizations described in Section 115 of the Internal Revenue Code, (iii) other units of State or local government, (iv) organizations described in Section 501(c) of the Internal Revenue Code, and (iv) entities seeking to establish a Prohibited Use.

E. **Maintenance.** The Developer Parties shall each be responsible for the maintenance and operation in a first-rate condition of the Redevelopment Project Phase they construct or own. This obligation shall extend to all Improvements located on or within such Phase.

F. **General Use and Development Restrictions for the Redevelopment Property.** The development and use of the Redevelopment Property, except for minor alterations due to final engineering and site work approved by either the Village's designated representative, who may be either the Village Manager, the Village Director of Community Development, the Village Engineer or other designee of the Village Manager, as appropriate, shall comply, and be in accordance, with the following:

1. This Agreement;
2. The Plan Approval Ordinances;
3. The Final Plans;
4. The Zoning Code;
5. The Development Ordinance; and
6. The Requirements of Law (including other codes and ordinances within the Village Code).

Unless otherwise provided in this Agreement, either specifically or in context, in the event of a conflict between or among any of the plans or documents, the plan or document that provides the greatest control and protection for the Village, as determined by the Village Manager, will control. All of the above plans and documents will be interpreted so that the duties and requirements imposed by any one of them are cumulative among all of them, unless otherwise provided in this Agreement either specifically or in context.

G. **No Obligation to Commence Construction of the Redevelopment Project.** Nothing in this Agreement will be deemed or construed to obligate the Owners to proceed with the construction of the Redevelopment Project. Such parties acknowledge and agree, however, that: (1) the issuance by the Village of the TIF Notes and the Sales Tax Notes is conditioned on the completion of the Phases of the Redevelopment Project, as and to the extent provided for in Sections 9 and 10 of this Agreement; (2) certain of the Plan Approval Ordinances may expire if such construction is not commenced within the time periods established by the Requirements of Law; and (3) if and when the Developer Parties do undertake the construction of a Phase of the

Redevelopment Project, they must do so in accordance with the provisions of this Agreement and the Requirements of Law.

Specifically, the Owners acknowledge and agree that: (1) the Village may terminate this Agreement if the Owners fail to satisfy the development schedule requirement set forth in Section 3.A(1) above; (2) the Village may terminate its obligation to issue the Phase I TIF Notes and the Phase I Sales Tax Note if the Owners fail to satisfy the development schedule requirement set forth in Section 3.A(2) above; and (3) the Village may terminate its obligation to issue the Phase III TIF Notes and the Phase III Sales Tax Note if one or more of Hawthorn L.P., Hawthorn SP or Hawthorn CP fail to satisfy the development schedule requirements set forth in Sections 3.A(3) and (4) above.

H. **Evidence of Financing for Future Phases.** Prior to commencing construction on the Phase II Project and the Phase III Project, one or more of Hawthorn L.P., Hawthorn SP or Hawthorn CP shall provide, or cause another Developer Party to provide, at the request of and to the reasonable satisfaction of the Village Manager, proof of sufficient equity and construction financing to complete such Phase.

I. **Changes to the Project.** Any changes in the scope or character of any Phase of the Redevelopment Project, or any portion of a Phase, that results in an increase or decrease of more than 15% of the residential density or gross leasable retail/commercial square footage of such Phase, or portion of such Phase, will require the prior written approval of the Corporate Authorities, which approval the Developer Parties will be required to obtain pursuant to applicable provisions of this Agreement, the Plan Approval Ordinances, and the Village Code. Any change in the scope or character of any Phase, or any portion of a Phase, that results in an increase or decrease of less than 15% of the residential density or gross leasable retail/commercial square footage of such Phase, or portion of such Phase, that does not necessitate additional relief under the Plan Approval Ordinances or the Village Code, will be deemed a minor change that does not require the approval of the Corporate Authorities but may instead be approved by the Village Manager or his or her designee. This Section 3.I does not relieve the Developer Parties from reductions of Incentive Payments as a result of reductions in the Project Budget, as contemplated by Section 11.A below.

J. **No Impermissible Agreements.** It is the intent of the Parties that no impermissible agreements related to the payment of taxes by the Developer Parties will be entered into between the Parties. To the extent Phase I Tax-Exempt TIF Notes and/or the Phase III Tax-Exempt TIF Notes are issued, the Village covenants not to enter into or enforce any agreements with any taxpayers, including specifically, the Developer Parties, that would modify the obligations of taxpayers under general law without first obtaining the advice of nationally recognized bond counsel. The Village and the Owners recognize that payments from Developer Parties to the Village, other than payments made by Developer Parties of taxes of general applicability, may be deemed to be private payments under the Internal Revenue Code and, to the extent that any such payments cannot be allocated to the payment of debt service on Taxable TIF Notes, such payments may cause the inability to issue TIF Notes as Tax-Exempt Obligations (as hereinafter defined).

#### **Section 4. IMPROVEMENTS.**

A. **Description of Phase I Project Improvements.** The Owners, at their sole cost and expense, shall construct and install, or cause the construction and installation of, all of the Phase I Project Improvements depicted on the Final Plans, including the following specific Improvements:

1. Storm sewers which are to be privately owned;
2. Sanitary sewer mains and service lines;
3. Water mains and service lines;
4. Landscaping;
5. The Perimeter Sidewalks; and
6. Any other Improvements identified on the Final Plans.

**B. Construction of the Phase I Improvements.**

1. **General Standards.** All Improvements related to the Phase I Project shall be constructed pursuant to and in accordance with the Final Plans and the Plan Approval Ordinances and be subject to inspection and approval by the Village Engineer, the Village Director of Community Development or any other designee of the Village Manager, in accordance with applicable provisions of the Village Code. All work performed on the Improvements shall be conducted in a good and workmanlike manner, with due dispatch, and within any deadlines provided in this Agreement or in the permits issued by the Village for the construction of such Improvements. All materials used in the construction of such Improvements shall be new and of first-rate quality.

2. **Contract Terms; Prosecution of the Work.** The Owners shall include in every contract they enter into after the Effective Date in furtherance of the construction of the Phase I Project Improvements terms requiring the contractor to prosecute the work diligently and continuously, in full compliance with, and as required by or pursuant to, this Agreement, the Plan Approval Ordinances, the Final Plans, and the Requirements of Law (including the Illinois Prevailing Wage Act, if applicable), until the work is properly completed, and providing that the Owners may take over and prosecute the work if the contractor fails to do so in a timely and proper manner.

3. **Engineering Services; Construction Management.** The Owners shall provide, at their sole cost and expense, all engineering services for the construction of the Phase I Project Improvements, by a professional engineer responsible for overseeing such construction. Such parties, upon application for each building permit, shall provide the Village with the name of the construction project manager and a telephone number or numbers at which the construction project manager can be reached at all times.

4. **Village Inspections and Approvals.** All work on the Improvements shall be subject to inspection and approval by Village representatives at all times.

5. **Other Approvals.** Where the construction and installation of any Phase I Project Improvement requires the consent, permission, or approval of any public agency or private party, the Owners shall promptly file all applications, enter into all agreements, post all security, pay all fees and costs, and otherwise take all steps that may be required to obtain such consent, permission, or approval.

6. **Perimeter Sidewalks.** The Village shall reimburse Hawthorn SP the costs it incurs in constructing the Perimeter Sidewalks promptly following its production to the Village, and the Village's approval of, contractor invoices, proof of payment and waiver of liens. Hawthorn SP shall provide the Village with a proposal detailing the cost and scope of work for construction of the Perimeter Sidewalks and shall obtain the Village Manager's approval of such proposal prior to commencing such construction. The

reimbursement obligation provided for in this paragraph shall be independent of and not governed by the provisions of this Agreement which govern the reimbursement to Developer Parties of Eligible Costs.

C. **Completion of the Phase I Project Improvements.** The Village may refuse to issue a final certificate of occupancy for any Building constructed as part of the Phase I Project until the Improvements necessary to serve that Building are completed by the party constructing such Improvements and approved by the Village. The foregoing shall not preclude the Village from issuing, but the Village shall not be required to issue, conditional certificates of occupancy for such Building pursuant to applicable provisions of the Village Code. The issuance of any building permit or certificate of occupancy by the Village at any time prior to completion of all of said Improvements by the Owners, and the approval of said Improvements by the Village will not confer on said parties any right or entitlement to any other building permit or certificate of occupancy.

D. **Inspection, Approval and Maintenance of the Project Improvements.**

1. **Inspection and Approval.** The Owners shall notify the Village when they believe that any or all of the Improvements on the parcel they have improved have been fully and properly completed and shall request final inspection and approval of such Improvements by the Village Engineer. The notice and request shall be given far enough in advance to allow the Village Engineer time to inspect the Improvements and to prepare a punch list of items requiring repair or correction and to allow the Owners time to make all required repairs and corrections prior to the scheduled completion date (as may be established pursuant to this Agreement or in the permits issued by the Village for completion of such Improvements). The Owners shall promptly make all necessary repairs and corrections as specified on the punch list. The Owners acknowledge that the Village Engineer shall not be required to approve any of the Improvements until: (a) all of the Improvements as may be required pursuant to Section 4.A above, including all punch list items, have been fully and properly completed; and (b) the Village Engineer, the Village Director of Community Development, or other designee of the Village Manager has determined that the Improvements have been constructed to completion, in accordance with the Final Plans, the Plan Approval Ordinances, and the Requirements of Law.

2. **Private Ownership and Maintenance; Public Easements.**

a. The Parties acknowledge and agree that none of the Improvements the Owners are going to construct are to be conveyed to the Village as a "public improvement".

b. Except as may be specifically noted otherwise on the Final Plans, all water mains, sanitary sewer mains, and storm sewer mains constructed on the Redevelopment Property shall be and remain the property and responsibility of the Owners and/or one or more Affiliates of such parties. The Owners shall provide the Village easement rights to access and repair such Improvements in the event the owner of the parcel upon which the Improvements are located has failed to do so. Such easement rights shall be established either on a final plat of subdivision for the Redevelopment Property, in the Declaration, or by separate instrument, which easement rights shall require the Village to provide the owner reasonable notice and opportunity to cure and shall grant the Village the right to lien any parcel for any costs it incurs in repairing an Improvement.

**Section 5. CONSTRUCTION.**

A. **Phasing of Construction.**

1. Unless the Owners and the Village agree otherwise in writing, which writing may or may not be an amendment to this Agreement, the construction of the Redevelopment Project shall take place in Phases as generally described on ***Exhibit D*** attached hereto.

2. In addition to any other applicable provision of this Agreement and the Requirements of Law, the Owners may not commence any Vertical Construction unless the Village Manager has determined that the construction of the following Improvements is complete as required by this Agreement and the Requirements of Law, except as may be authorized in writing by the Village Manager in his or her sole discretion:

- a. Functioning storm sewer mains; and
- b. Functional water systems that can deliver water to all proposed fire hydrants in the manner required by the Village Code.

B. **Diligent Pursuit of Construction.** Once commenced, a Developer Party who undertakes the construction of a Redevelopment Project Phase shall pursue, or cause to be pursued, all required development, demolition, construction, and installation of Structures, Buildings, and Improvements required for such Phase in a diligent and expeditious manner, and in strict compliance with the Requirements of Law.

C. **Construction Traffic.**

1. **Construction and Traffic Management Plan.** Developer Parties who undertake the construction of a Redevelopment Project Phase shall prepare and submit, for review and approval by the Village Director of Community Development, a Construction and Traffic Management Plan ("***CTM Plan***") for such Phase. The CTM Plan will govern: (i) the location, storage, and traffic routes for construction equipment and construction vehicles; and (ii) the location of alternative off-street parking during the construction. The Village shall have no obligation to issue a building permit for any Structure or Improvement within such Phase, and no construction may be commenced with respect to any Structure or Improvement within such Phase, unless and until the Village Director of Community Development, the Village Police Chief or any designee of the Village Manager has approved, in writing, the CTM Plan. The Village agrees to cause the CTM Plan to be promptly and expeditiously reviewed by the Village Director of Community Development; provided, however, that nothing in this Agreement shall be deemed or interpreted to require approval of the CTM Plan. The CTM Plan shall include the following:

- a. The schedule and traffic routes for construction traffic accessing the Mall Property;
- b. The designation of machinery and construction material storage areas on the Redevelopment Property or the Mall Property;
- c. Provisions for the screening of construction areas within the Mall Property;
- d. The hours of operation and schedule for construction on the Mall Property;
- e. The location of areas on the Redevelopment Property or the Mall Property for the parking of construction vehicles and vehicles operated by construction employees;

- f. The location of alternative off-street parking to replace any parking temporarily lost due to construction; and
- g. The location of temporary and durable off-street parking on the Redevelopment Property or the Mall Property for construction employees.

2. **Designated Routes of Access.** The Village reserves the right to designate certain prescribed routes of access to the Mall Property for construction traffic to provide for the protection of pedestrians and to minimize disruption of traffic and damage to paved street surfaces; provided, however, that the designated routes shall not: (a) be unreasonably or unduly circuitous; nor (b) unreasonably or unduly hinder or obstruct direct and efficient access to the Mall Property for construction traffic.

3. **Maintenance of Routes of Access.** At all times during the construction of the Structures and Improvements, the Developer Party undertaking the construction of such Redevelopment Project Phase shall: (a) keep all routes used for construction traffic free and clear of mud, dirt, debris, obstructions, and hazards; and (b) repair any damage caused by construction traffic.

D. **Parking and Stormwater Management During Construction.** During construction of any of the Structures or Improvements related to a given Redevelopment Project Phase, the Developer Party undertaking the construction of such Phase shall:

1. Make available, or cause to be made available, existing surface off-street parking on the Redevelopment Property or Mall Property for the parking of construction employee vehicles, as necessary; and

2. Temporarily divert or control any heavy accumulation of storm water away from or through the Redevelopment Property in a manner approved in advance by the Village Manager, which method of diversion may include early installation of storm drains to collect water and convey it to a safe discharge point.

E. **Issuance of Building Permits and Certificates of Occupancy.**

1. **The Village's General Right to Withhold Issuance.** In addition to every other remedy permitted by law for the enforcement of this Agreement, if an act or omission of a Developer Party of a given Phase of the Redevelopment Project is an uncured Developer Event of Default, the Village shall the right to withhold the issuance of any building permit or certificate of occupancy for the portion of such Phase as to which the Developer Event of Default pertains.

2. **Final Certificates of Occupancy.** The Village shall have the right to withhold the issuance of a final certificate of occupancy for a newly constructed Building on the Redevelopment Property until all requirements of a previously issued conditional certificate of occupancy for such Building have been completed, including: (1) the grading of the street parkways across the frontage of such Building, final grading and installation of top soil, seeding/sod, and landscaping on the parcel upon which such Building has been constructed have been completed, and (2) sidewalks across the frontage of such parcel and street lights and surface course of all street pavements serving such Building have been installed.

3. **Certificates of Completion.** The Village shall issue a certificate of completion ("**Certificate of Completion**") for each of the Phase I Project, Phase II Project and the Phase III Project upon the satisfaction of the following criteria:

a. With respect to the Phase I Residential Buildings and the Phase I Retail/Commercial Space, Hawthorn SP and Hawthorn Venture Owner have achieved, respectively, Residential Substantial Completion of the Phase I Residential Buildings and Retail Substantial Completion of the Phase I Retail/Commercial Space, and there is then no Developer Event of Default outstanding pertaining to the Phase I Project;

b. With respect to the Phase II Project, the Developer Party that has undertaken the construction of such Phase has achieved Residential Substantial Completion of the Phase II Residential Building, and there is then no Developer Event of Default outstanding pertaining to the Phase II Project; and

c. With respect to the Phase III Project, the Developer Party that has undertaken the construction of such Phase has achieved Retail Substantial Completion of the Phase III Retail/Commercial Space, and there is then no Developer Event of Default outstanding pertaining to the Phase III Project.

F. **As-Built Plans.** After completion of construction of any new Improvement on the Redevelopment Property, the Developer Party that owns such Improvement, directly or indirectly, shall submit to the Village Engineer final "as-built" plans: (1) related to drainage, grading, storm sewer, sanitary sewer and water mains, and associated Improvements; and (2) for other final construction documents (in paper and, for Improvements, electronic format) as required and approved by the Village Engineer.

G. **Damage to Public Property.** One or more of Hawthorn L.P., Hawthorn SP or Hawthorn CP shall maintain the Mall Property and all streets, sidewalks, and other public property in and adjacent to the Mall Property, or cause the Mall Property and such improvements to be maintained, in a good and clean condition at all times during the construction of the Redevelopment Project. Further, such parties shall: (1) promptly clean all mud, dirt, or debris deposited on any street, sidewalk, or other public property in or adjacent to the Mall Property by a Developer Party or any agent of or contractor hired by, or on behalf of, a Developer Party, or cause such cleaning to be undertaken; and (2) repair any damage that may be caused by the activities of a Developer Party or any agent of or contractor hired by, or on behalf of, a Developer Party, or cause such repair to be undertaken.

H. **Commitment to Fair Employment Practices and Affirmative Action; Prevailing Wage.** The Village and the Developer Parties shall comply with the requirements pertaining to fair employment practices and affirmative action described in Section VIII.B of the Redevelopment Plan and the Illinois Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*), as and to the extent such requirements and laws are applicable.

**Section 6. CONTRIBUTIONS AND IMPACT FEES.**

A. **Fees in Lieu of Land Contributions.** The Owners will, and do hereby agree to, pay, or cause to be paid, all applicable fees in lieu of land contributions required by the Development Ordinance. The fees required pursuant to this Section 6 and the Development Ordinance shall be based on the number of dwelling units constructed in the Residential Buildings in the manner provided in the Development Ordinance, with the exception of the Countryside Fire Protection District. Such fees shall be paid to the Vernon Hills Park District and High School District 128 at the time of, and as a condition of, the issuance of each certificate of occupancy for each Residential Building, in accordance with the Village Code. The Owners shall satisfy their obligation to pay such fees to District 73 pursuant to Paragraph B below.

B. **District 73 Impact Payments.** The Owners will pay to District 73, or cause to be paid to District 73, the Village Impact Fees set forth in the Intergovernmental Agreement, as and when they are required to be paid pursuant to such agreement. The Owners acknowledge that the Village will be paying the amounts of Incremental Property Taxes (as such term is defined in the Intergovernmental Agreement) due District 73 as specified and required in the Intergovernmental Agreement.

C. **Countryside Fire Protection District Special Impact Fee.** Hawthorn L.P. Hawthorn SP and/or Hawthorn CP will pay to the Countryside Fire Protection District, or cause to be paid to such district, a special impact fee in the amount of \$500,000, one-half (1/2) of which will be due and payable upon Residential Substantial Completion of the first Phase I Residential Building and one-half (1/2) of which will be due and payable upon Residential Substantial Completion of the Phase II Residential Building.

**Section 7. PAYMENT OF VILLAGE FEES AND COSTS.**

A. **Administrative Costs.**

1. **As of the Effective Date.** Prior to the execution of this Agreement, one or more of Hawthorn L.P., Hawthorn SP or Hawthorn CP shall reimburse the Village for the reasonable costs and expenses the Village has incurred as of the Effective Date in preparing, reviewing, and negotiating this Agreement; establishing and administering the TIF District; preparing and adopting the Redevelopment Plan; approving tax increment financing for the TIF District; reviewing plats, plans, easements, instruments of security, and other documents relating to the Redevelopment Project; considering, adopting, and administering the Plan Approval Ordinances; and other costs and expenses relating to the Redevelopment Project, including costs incurred by the Village for engineering, financial consulting, and legal services and all other costs incurred by the Village for outside consultant services, and all miscellaneous out-of-pocket expenses incurred by the Village, such as legal publication costs, recording fees, and copying expenses related to the Redevelopment Project (collectively, "**Administrative Costs**"). The Village agrees that 100% of such costs constitute Eligible Costs under this Agreement and the TIF Act. Prior to the issuance of the TIF Notes, one or more of Hawthorn L.P., Hawthorn SP or Hawthorn CP agree to reimburse the Village for any costs related to their issuance, including, and all applicable Trustee fees, Bond Counsel fees and Village Attorney fees and feasibility consultant fees. The Village agrees that all of such costs constitute Eligible Costs under this Agreement and the TIF Act. One or more of Hawthorn L.P., Hawthorn SP or Hawthorn CP further agree to reimburse the Village for any costs related to the issuance of the Sales Tax Notes.

2. **After the Effective Date.** Hawthorn L.P., Hawthorn SP and Hawthorn CP acknowledge that, after the Effective Date, the Village shall be entitled to reimbursement of Administrative Costs through the Administrative Allocation as set forth in Section 9.G(2) below. The Village agrees that such Administrative Costs shall be deemed Eligible Costs to the fullest extent permitted by the TIF Act. To that end, the Village further agrees: (a) to deliver to Hawthorn L.P., Hawthorn SP and Hawthorn CP, and cause its engineering, financial and legal consultants to deliver to Hawthorn L.P., Hawthorn SP and Hawthorn CP, from time to time such invoices, evidences of payment, and other records and documents as Hawthorn L.P., Hawthorn SP and Hawthorn CP may reasonably request in order to establish the reasonableness of incurred Administrative Costs and the fact that they constitute Eligible Costs under the TIF Act; and (b) to cooperate, and to direct its engineering, financial and legal consultants to cooperate, with Hawthorn L.P., Hawthorn SP and Hawthorn CP in the production of such invoices, evidences of payment, and other records and documents as Hawthorn L.P., Hawthorn SP and Hawthorn CP may reasonably so that Hawthorn L.P., Hawthorn SP and Hawthorn CP can achieve the foregoing objectives.

B. **Other Village Fees.** In addition to all other costs, payments, fees, charges, contributions, or dedications required by this Agreement, each Developer Party of a Redevelopment Project Phase shall pay to the Village all application, inspection, and permit fees, all water and sewer general and special connection fees, tap-on fees, charges, and contributions, and all other fees, charges, and contributions required to be paid for such Phase by the Village Code.

## **Section 8. PERFORMANCE SECURITY.**

A. **General Requirements.** The Developer Parties shall post Guarantees for the Improvements they are to construct in accordance with the provisions of Appendix I to Appendix B (Development Regulations) of the Village Code, and the Village shall administer the Guarantees in accordance with said provisions. Each Developer Party may post a separate Guarantee for the Improvements it is to construct on the portion of the Redevelopment Property it is developing.

B. **Village Use of Guarantee Funds.** If a Developer Party fails or refuses to complete the Improvements that it is required to complete in accordance with this Agreement, or fails or refuses to correct any defect or deficiency in the Improvements as required by this Agreement, and such failure or refusal is a Developer Event of Default, then the Village in its reasonable discretion may draw on and retain all or any of the funds remaining in the Guarantee which secure such completion or correction of such Improvements and are necessary to remedy such failure or refusal. The Village thereafter shall have the right, subject to an additional 30 days' notice and opportunity for cure, to cause such Improvements to be completed or corrected, and subject to the terms of the immediately preceding sentence, to reimburse itself from the proceeds of the Guarantee for all of its costs and expenses, including legal fees and administrative expenses, resulting from, or incurred as a result of the Developer Party's failure or refusal. If the funds remaining in the Guarantee are insufficient to repay fully the Village for all costs and expenses, then the Developer Party shall upon demand of the Village therefor deposit with the Village any additional funds of Guarantees as the Village determines are necessary, within 30 days of a request therefor, to fully repay such costs and expenses.

C. **Maintenance Guarantee.** Immediately after any approval by the Village Engineer of the Improvements described above, the Developer Party constructing such Improvements shall post a new Guarantee in the amount of 10% of the actual total cost of constructing such Improvements (each, a "***Maintenance Guarantee***"). The Maintenance Guarantee shall be held by the Village until the date that is two years after the approval of the Improvements secured by the

Maintenance Guarantee pursuant to this Agreement. If the Village is required to draw on a Maintenance Guarantee by reason of the Developer Party's failure to fulfill its maintenance obligations under this Section 8.C, then the Developer Party shall within 10 days thereafter cause its Maintenance Guarantee to be increased to its full original amount.

**Section 9. ADOPTION OF TIF NOTE AUTHORIZING ORDINANCE/ISSUANCE OF TIF NOTE INDENTURE/THE VILLAGE'S 10% PLEDGE/REIMBURSEMENT TO DEVELOPER PARTIES OF ELIGIBLE COSTS.**

A. **Adoption of TIF Note Authorizing Ordinance.** Prior to the Effective Date of this Agreement, the Corporate Authorities have adopted Ordinance 2021-095 authorizing the issuance of the TIF Notes ("***TIF Note Authorizing Ordinance***") and the execution by the Village of the Trust Indenture. For so long as this Agreement remains in effect and no Developer Event of Default exists hereunder, the Village will not amend or repeal the TIF Note Authorizing Ordinance without the prior written consent of Hawthorn L.P., Hawthorn SP and Hawthorn CP.

B. **Issuance of TIF Note Trust Indenture.** After the Effective Date, the Village may enter into the Trust Indenture in a form that is acceptable to Bond Counsel. Hawthorn L.P., Hawthorn SP and Hawthorn CP agree to cooperate with the Village and Bond Counsel in the preparation of the Trust Indenture and to provide such parties such information and documentation as they may reasonably request in furtherance thereof. The Village agrees that Hawthorn L.P., Hawthorn SP and Hawthorn CP shall have a reasonable right to review the form and content of the Trust Indenture, and any supplements or amendments thereto, before they are finalized so they can confirm that their provisions are consistent with the provisions of this Agreement.

C. **The Village's 10% Pledge.** The Village shall satisfy its obligations under Section 11-74.4-8 of the TIF Act for so long as the TIF District remains in existence, Village obligations under this Agreement and the TIF Notes remain outstanding, and the Village is not extending an *ad valorem* tax that arises from levies on taxable real property in the Village. The Village will have the right to draw upon the Municipal Sales Tax Pledged Funds to satisfy its obligations relative to the Village's 10% Pledge, provided, however, that such right shall terminate if the Village ever elects to adopt an ordinance extending an *ad valorem* tax arising from levies on taxable real property in the Village and such taxes are received by the TIF Fund.

D. **Reimbursement of Eligible Costs.**

1. **Reimbursement.** The Village acknowledges that the Owners have paid some of the Eligible Costs related to the Redevelopment Project prior to the Effective Date, and that they will pay additional Eligible Costs after the Effective Date. To provide for the reimbursement for certain of those Eligible Costs, the Corporate Authorities will execute and deliver to the Owners and one or more other Developer Parties the TIF Notes described below. The TIF Notes will be issued in one or more series as set forth herein. The Owners acknowledge that: (a) the reimbursement of Eligible Costs pursuant to any TIF Note and this Section 9 will not commence until after the issuance date of such TIF Note, as contemplated by this Section 9; and (b) under no circumstances shall the maximum amount of the Eligible Cost reimbursement provided for herein (but excluding annual interest on the TIF Notes) exceed the sum of \$43,000,000 (the "***Maximum Reimbursement Amount***").

2. **Eligible Costs.** Subject to the Village's review and approval of Certification Requests as provided for in this Agreement, the Village shall reimburse the Owners and one or more other Developer Parties, on a Phase-by-Phase basis, for Eligible Costs they

have incurred prior to the Effective Date since June 13, 2019 (the date which is 60 days prior to the date of the Inducement Resolution), and all Eligible Costs they will incur after the Effective Date, in constructing the Redevelopment Project up to the Maximum Reimbursement Amount. Such Eligible Costs are listed on **Exhibit E** attached hereto, and include all demolition, site preparation, environmental remediation, rehabilitation and other eligible redevelopment projects costs under the TIF Act the Owners have incurred or expect to incur in constructing the Redevelopment Project. The Parties acknowledge that the individual line items and cost ranges of Eligible Costs listed on **Exhibit E** are estimates only, and that (i) the final Eligible Costs to be reimbursed shall be established by, and shall only be reimbursable subject to, the Developer Parties' submission of Certification Requests to the Village, and the Village's issuance of Certificates of Expenditure, as both are defined in Section 9.I below, and (ii) the amount of Eligible Costs that are reimbursed for any particular category of Eligible Cost listed on **Exhibit E** may be equal to, more, or less than the cost range identified on **Exhibit E** so long as the total amount reimbursed pursuant to all TIF Notes (but excluding annual interest on the TIF Notes) does not exceed the Maximum Reimbursement Amount.

E. **TIF Notes.** Subject to the provisions and conditions in this Section 9, the Village will issue TIF Notes as described in this Section. The Village shall not be required to issue any TIF Notes as tax-exempt obligations pursuant to Section 103 of the Internal Revenue Code (the "**Tax-Exempt Obligations**") unless the requirements under the Internal Revenue Code for the exclusion of the interest on the note from the income of the holders thereof for federal income tax purposes are met, and the Village receives an opinion of Bond Counsel that the interest paid and received on such TIF Notes is not includible in the gross income of the registered owners thereof under the Internal Revenue Code for federal income tax purposes, subject to customary qualifications and exceptions. In order to assist the Village in obtaining such opinion, the Owners or one or more of the other Developer Parties agree in good faith to provide any information, representations and certifications as Bond Counsel may reasonably request be provided. The Village shall use good faith efforts to obtain such opinion so that the Tax-Exempt TIF Notes described below can be issued as and when contemplated by the provisions of this Agreement. The Owners acknowledge and agree that the Village's inability to issue any TIF Notes as Tax-Exempt Obligations shall not be a Village Event of Default. The Village will issue TIF Notes for the Redevelopment Project as follows:

1. **Phase I.** The Village, provided the conditions in Section 9.F below have been satisfied, will issue Phase I TIF Notes (as such term is hereinafter defined) pursuant to the TIF Note Authorizing Ordinance, the Trust Indenture and the following provisions:

a. **Phase I Tax-Exempt TIF Notes.** The Village will issue a series of TIF Notes as Tax-Exempt Obligations with respect to the Phase I Project (individually, a "**Phase I Tax-Exempt TIF Note**" and collectively, the "**Phase I Tax-Exempt TIF Notes**") to Developer Parties. The Phase I Tax-Exempt TIF Notes may be issued as one or more notes as determined by the Developer Parties requesting such Phase I Tax-Exempt TIF Notes. The Owners agree that the Phase I Tax-Exempt TIF Notes, Phase I Taxable TIF Note 1 (as hereinafter defined) and Phase 1 Taxable TIF Note 2 (as hereinafter defined) (collectively, the "**Phase I TIF Notes**") must be issued on the same date (the "**Phase I TIF Notes Issuance Date**"). The Village agrees to engage Bond Counsel with respect to the issuance of the Phase I Tax-Exempt TIF Notes no later than five days after it receives a written request from Hawthorn SP to issue the Phase I Tax-Exempt TIF Notes, and to proceed with due diligence to issue the Phase I Tax-Exempt TIF Notes thereafter. The form of the Phase I Tax-Exempt TIF Notes shall be set forth in the Trust Indenture. The Phase I Tax-Exempt TIF Notes shall have an initial principal amount which, in the aggregate, totals no more than \$23,220,000.

Interest on each Phase I Tax-Exempt TIF Note will accrue from and after the Phase I TIF Notes Issuance Date at the rate of six percent (6.0%) per annum (the "**Tax-Exempt TIF Note Interest Rate**") and compound annually. The Village will begin to make payments on the Phase I Tax-Exempt TIF Notes on February 1 of the year following the Phase I TIF Notes Issuance Date. The Phase I Tax-Exempt TIF Notes will be payable solely from and have a first lien on the Available Incremental Property Taxes on a parity with the Phase III Tax-Exempt TIF Notes (as hereinafter defined). The Village will not be entitled to prepay a Phase I Tax-Exempt TIF Note for a period of five years from the Phase I TIF Notes Issuance Date without the prior written consent of the holder of such Phase I Tax-Exempt TIF Note. Concurrently with the issuance of each Phase I Tax-Exempt TIF Note, the Village will issue an amortization schedule for such Note and establish annual payment dates for such Note pursuant to such schedule.

b. **Phase I Taxable TIF Notes.** The Village will issue two series of taxable TIF Notes, the same being "**Phase I Taxable TIF Note 1**" and "**Phase I Taxable TIF Note 2**" (together the "**Phase I Taxable TIF Notes**"), each of which will not be Tax-Exempt Obligations, with respect to the Phase I Project. The Village agrees to engage Bond Counsel with respect to the issuance of the Phase I Taxable TIF Notes no later than five days after it receives a written request from Hawthorn SP to issue the Phase I Taxable TIF Notes, and to proceed with due diligence to issue the Phase I Taxable TIF Notes thereafter. Each series of the Phase I Taxable TIF Notes may be issued as one or more notes as determined by Hawthorn SP. The respective principal amounts of Phase I Taxable TIF Note 1 and Phase I Taxable TIF Note 2 will be determined by Hawthorn SP subject to the following requirements: (i) the principal amount of the Phase I Tax-Exempt TIF Notes shall be established prior to the determination of the principal amounts of the Phase I Taxable TIF Notes, (ii) the aggregate initial principal amount of the Phase I Taxable TIF Notes and the Phase I Tax-Exempt TIF Notes will be equal to or less than the amount of Eligible Costs the Developer Parties have incurred as of the Phase I TIF Notes Issuance Date in constructing the Phase I Project, as confirmed by the Village's issuance of one or more Certificates of Expenditure, (iii) the aggregate initial principal amount of the Phase I Taxable TIF Notes and the Phase I Tax-Exempt TIF Notes does not exceed \$32,250,000 (the "**Phase I TIF Notes Aggregate Principal Limitation**"), and (iv) the principal amount of Phase I Taxable TIF Note 2 does not exceed \$3,225,000. The Owners agree that the Phase I Taxable TIF Notes must be issued on the Phase I TIF Notes Issuance Date.

More specifically, the Village will issue the Phase I Taxable TIF Notes, as follows:

i. **Phase I Taxable TIF Note 1.** The Village will issue Phase I Taxable TIF Note 1 with an aggregate initial principal amount as determined by Hawthorn SP as described in Section 9.E(1)(b) above, which aggregate initial principal amount shall not exceed \$5,805,00. Interest on Phase I Taxable TIF Note 1 will accrue from and after the Phase I TIF Notes Issuance Date at the rate of six percent (6.0%) per annum (the "**Taxable TIF Note Interest Rate**") and compound annually. The Village will begin to make payments on Phase I Taxable TIF Note 1 on February 1 of the year following the Phase I Taxable TIF Note Issuance Date, and it will continue to make such payments on each subsequent anniversary of such date. There will be no amortization schedule issued for this Note and no limit on the Village's right to prepay this Note. Phase I Taxable TIF Note 1 will be payable solely from the Available Incremental Property Taxes. Phase I Taxable TIF Note 1 will have a second lien on the Available Incremental

Property Taxes, subordinate in lien to the Phase 1 Tax-Exempt TIF Notes and the Phase III Tax-Exempt TIF Notes (together, the "**Senior Lien Available Incremental Property Tax TIF Notes**") and on a parity with Phase III Taxable TIF Note 1 (as hereinafter defined) (together, Phase 1 Taxable TIF Note 1 and Phase III Taxable TIF Note 1 are hereinafter referred to as the "**Junior Lien Available Incremental Property Tax TIF Notes**"). All remaining Available Incremental Property Taxes after payment of the Senior Lien Available Incremental Property Tax TIF Notes due on February 1 of each year will be applied to pay the principal of and interest due on the Junior Lien Available Incremental Property Tax TIF Notes, in accordance with Section 9.E(4)(e) below, until such Junior Lien Available Incremental Property Tax TIF Notes have been paid in full. In short, Phase I Taxable TIF Note 1 will be a "cash flow" Note. The form of Phase I Taxable TIF Note 1 shall be set forth in the Trust Indenture.

ii. **Phase I Taxable TIF Note 2.** The Village will issue Phase 1 Taxable TIF Note 2 to a Developer Party in a principal amount determined by the Hawthorn SP as described in Section 9.E(1)(b) above, such principal amount not to exceed \$3,225,000. Interest on Phase I Taxable TIF Note 2 will accrue upon issuance at the Taxable TIF Note Interest Rate and compound annually. The Village will begin to make payments on Phase I Taxable TIF Note 2 on February 1 of the year following the Phase I TIF Notes Issuance Date, and it will continue to make such payments on each subsequent anniversary of such date. Phase I Taxable TIF Note 2 will be payable solely from, and have a first lien on, the Village's 10% Pledge, on a parity with Phase III Taxable TIF Note 2 (as hereinafter defined). The Village's 10% Pledge will be applied to pay the principal of and interest due on Phase I Taxable TIF Note 2 and Phase III Taxable TIF Note 2, in accordance with Section 9.E(4)(e) below, until such Notes have been paid in full. There will be no amortization schedule issued for Phase I Taxable TIF Note 2 and no limit on the Village's right to prepay Phase I Taxable TIF Note 2. In short, Phase I Taxable TIF Note 2 will be a "cash flow" Note. The form of Phase 1 Taxable TIF Note 2 shall be set forth in the Trust Indenture

c. **Village's 10% Pledge Deficiency.** If, after any Accounting, the Municipal Sales Tax Pledged Funds are insufficient to provide for the Village 10% Pledge ("**Village's 10% Pledge Deficiency**"), the Village shall have the right to recover the Village's 10% Deficiency by (i) first, reducing the principal balance of Phase I Taxable TIF Note 1; (ii) then, if necessary, reducing the principal balance of Phase I Taxable TIF Note 2; (iii) then, if necessary, reducing the principal balance of Phase III Taxable TIF Note 1, if it has then been issued; and (iv) then, if necessary, by reducing the principal balance of Phase III Taxable TIF Note 2, if it has then been issued.

2. **Phase II.** The Village will issue no Notes to the Developer Parties as a result of the construction of the Phase II Project.

3. **Phase III.** The Village, provided the conditions of Section 9.F have been satisfied, will issue the Phase III TIF Notes (as such term is hereinafter defined) pursuant to the TIF Note Authorizing Ordinance, the Trust Indenture and the following provisions:

a. **Total Amount of Certification Requests/Certificates of Expenditure.** If the aggregate amount of the Certification Requests the Developer Parties submit to the

Village, or the aggregate amount of the Certificates of Expenditure the Village issues, for the Phase I Project total less than \$32,250,000 ("**Phase I Project Cost Shortfall**"), the aggregate initial principal amount of the Phase III TIF Notes will be increased to the extent of the Phase I Project Cost Shortfall, provided however that under no circumstances shall the sum of the aggregate initial principal amount of the Phase I TIF Notes plus the aggregate initial principal amount of the Phase III TIF Notes exceed the Maximum Reimbursement Amount. If the aggregate amount of the Certification Requests the Developer Parties submit to the Village, or the aggregate amount of the Certificates of Expenditure the Village issues, for the Phase I Project exceed \$32,250,000, the aggregate initial principal amount of the Phase III TIF Notes shall be as set forth below so that, at all times, the sum total of the aggregate initial principal amount of the Phase I TIF Notes plus the aggregate initial principal amount of the Phase III TIF Notes does not exceed the Maximum Reimbursement Amount. The Village acknowledges that certain Eligible Costs the Developer Parties incur in constructing the Phase I Project will also benefit and constitute Eligible Costs for the Phase II Project and the Phase III Project. Under no circumstances, however, shall a specified amount of Eligible Costs be included in both the principal balance of a Phase I TIF Note and the principal balance of a Phase III TIF Note.

b. **Phase III Tax-Exempt TIF Note.** The Village will issue a series of TIF Notes as Tax-Exempt Obligations with respect to the Phase III Project (individually, a "**Phase III Tax-Exempt TIF Note**", and collectively, the "**Phase III Tax-Exempt TIF Notes**") to Developer Parties. The Phase III Tax-Exempt TIF Notes may be issued as one or more notes as determined by the Developer Parties requesting such Phase III Tax-Exempt TIF Notes. The Owners agree that all of the Phase III Tax-Exempt TIF Notes, Phase III Taxable TIF Note 1 and Phase III Taxable TIF Note 2 (collectively, the "**Phase III TIF Notes**") must be issued on the same date (the "**Phase III TIF Notes Issuance Date**"). The Village agrees to engage Bond Counsel with respect to the issuance of the Phase III Tax-Exempt TIF Notes no later than five days after it receives a written request from Hawthorn CP to issue the Phase III Tax-Exempt TIF Notes, and to proceed with due diligence to issue the Phase III Tax-Exempt TIF Notes thereafter. The form of the Phase III Tax-Exempt TIF Notes shall be set forth in the Trust Indenture. The Phase III Tax-Exempt TIF Notes shall have initial principal amounts which, in the aggregate, total no more than either: (i) \$7,600,000, provided that, as of such date, Developer Parties have then incurred Eligible Costs in constructing the Redevelopment Project of at least \$32,250,000; or (ii) \$7,600,000 plus the amount of the Phase I Project Cost Shortfall if, as of such date, Developer Parties have then incurred less than \$32,250,000 in Eligible Costs (minus any budget savings calculated pursuant to Section 11(a)) in constructing the Redevelopment Project, provided Bond Counsel then determines that such Phase III TIF Notes can be issued as Tax-Exempt Obligations. Interest on the Phase III Tax-Exempt TIF Notes will accrue from and after the Phase III TIF Notes Issuance Date at the Tax-Exempt TIF Note Interest Rate and shall compound annually. The Village will begin to make payments on the Phase III Tax-Exempt TIF Notes on February 1 of the year following the Phase III TIF Notes Issuance Date. The Phase III Tax-Exempt TIF Notes will have a first lien on the Available Incremental Property Taxes that is on a parity with the Phase I Tax-Exempt TIF Notes. The Village will not be entitled to prepay a Phase III Tax-Exempt TIF Note for a period of five years from the Phase III TIF Notes Issuance Date without the prior written consent of the holder of such Phase III Tax-Exempt TIF Note. Concurrently with the issuance of each Phase III Tax-Exempt TIF Note, the Village will issue an amortization schedule for such Note and establish annual payment dates for such Note pursuant to such schedule.

c. **Phase III Taxable TIF Notes.** The Village will issue two series of taxable TIF Notes, the same being "***Phase III Taxable TIF Note 1***" and "***Phase III Taxable TIF Note 2***" (together, the "***Phase III Taxable TIF Notes***"), each of which will not be Tax-Exempt Obligations, with respect to the Phase III Project. The Village agrees to engage Bond Counsel with respect to the issuance of the Phase III Taxable TIF Notes no later than five days after it receives a written request from Hawthorn CP to issue the Phase III Taxable TIF Notes, and to proceed with due diligence to issue the Phase III Taxable TIF Notes thereafter. Each series of the Phase III Taxable TIF Notes may be issued as one or more notes as determined by Hawthorn CP. The respective principal amounts of Phase III Taxable TIF Note 1 and Phase III Taxable TIF Note 2 will be determined by Hawthorn CP subject to the following requirements: (i) the principal amount of the Phase III Tax-Exempt TIF Notes shall be established prior to the determination of the principal amounts of the Phase III Taxable TIF Notes, (ii) the aggregate initial principal amount of the Phase III Tax-Exempt TIF Notes, Phase III Taxable TIF Note 1 and Phase III Taxable TIF Note 2 will be equal to or less than the amount of Eligible Costs the Developer Parties have incurred as of the Phase III TIF Notes Issuance Date in constructing the Phase III Project, as confirmed by the Village's issuance of one or more Certificates of Expenditure, plus the Phase I Project Cost Shortfall, (iii) the aggregate initial principal amount of the TIF Notes does not exceed the Maximum Reimbursement Amount, and (iv) the principal amount of Phase III Taxable TIF Note 2 does not exceed \$1,250,000. Hawthorn L.P., Hawthorn SP and Hawthorn CP agree that the Phase III Taxable TIF Notes must be issued on the Phase III TIF Notes Issuance Date.

More specifically, the Village will issue the Phase III Taxable TIF Notes, as follows:

i. **Phase III Taxable TIF Note 1.** The Village will issue Phase III Taxable TIF Note 1 to a Developer Party with an aggregate initial principal amount as determined by Hawthorn CP as described in Section 9.E(3)(c) above. Interest on Phase III Taxable TIF Note 1 will accrue from and after the Phase I TIF Notes Issuance Date at the Taxable TIF Note Interest Rate and compound annually. The Village will begin to make payments on Phase III Taxable TIF Note 1 on February 1 of the year following the Phase III TIF Note Issuance Date, and it will continue to make such payments on each subsequent anniversary of such date. There will be no amortization schedule issued for this Note and no limit on the Village's right to prepay this Note. Phase III Taxable TIF Note 1 will be payable solely from the Available Incremental Property Taxes. Phase III Taxable TIF Note 1 will have a second lien on the Available Incremental Property Taxes, subordinate in lien to the Senior Lien Available Incremental Property Tax TIF Notes and on a parity with Phase I Taxable TIF Note 1. All remaining Available Incremental Property Taxes after payment of the Senior Lien Available Incremental Property Tax TIF Notes due on February 1 of each year will be applied to pay the principal of and interest due on the Junior Lien Available Incremental Property Tax TIF Notes, in accordance with Section 9.E(4)(e) below, until such Junior Lien Available Incremental Property Tax TIF Notes have been paid in full. In short, Phase III Taxable TIF Note 1 will be a "cash flow" Note. The form of Phase III Taxable TIF Note 1 shall be set forth in the Trust Indenture.

ii. **Phase III Taxable TIF Note 2.** The Village will issue Phase III Taxable TIF Note 2 to a Developer Party in a principal amount determined

by Hawthorn CP as described in Section 9.E(3)(c) above, such principal amount not to exceed \$1,250,000. Interest on Phase III Taxable TIF Note 2 will accrue upon issuance at the Taxable TIF Note Interest Rate and compound annually. The Village will begin to make payments on Phase III Taxable TIF Note 2 on February 1 of the year following the Phase III TIF Notes Issuance Date, and it will continue to make such payments on each subsequent anniversary of such date. Phase III Taxable TIF Note 2 will be payable solely from, and have a first lien on, the Village's 10% Pledge, on a parity with Phase I Taxable TIF Note 2. The Village's 10% Pledge will be applied to pay the principal of and interest due on Phase I Taxable TIF Note 2 and Phase III Taxable TIF Note 2 in accordance with Section 9.E(4)(e) below, until such Notes have been paid in full. There will be no amortization schedule issued for Phase III Taxable TIF Note 2 and no limit on the right of the Village to prepay Phase III Taxable TIF Note 2. In short, Phase III Taxable TIF Note 2 will be a "cash flow" Note. The form of Phase III Taxable TIF Note 2 shall be set forth in the Trust Indenture.

4. **Terms of TIF Notes.** Each TIF Note issued to a Developer Party will:
- a. evidence the Village's obligation to reimburse the Developer Party for Eligible Costs, subject to and in accordance with the provisions of this Agreement, the Trust Indenture and the terms of such TIF Note;
  - b. mature 20 years from the date of the issuance thereof, unless the TIF District will expire prior to such date, in which case, the TIF Notes will mature on the expiration date of the TIF District;
  - c. be secured solely by and payable from (i) with respect to the Available Incremental Property Tax TIF Notes, the Available Incremental Property Taxes, and (ii) with respect to the Village's 10% Pledge TIF Notes, the Village's 10% Pledge, each as provided in, and subject to the limitations set forth in, this Agreement and the Trust Indenture;
  - d. provide that the Village will have no obligation whatsoever to make any payments in excess of the Eligible Costs that have been: (i) incurred by the Developer Party; and (ii) certified by the Village by issuance of Certificates of Expenditure;
  - e. provide that each payment will be applied first to accrued but unpaid interest, second to current interest, and third to principal and that, with respect to the Available Incremental Property Tax TIF Notes, each payment will be applied first to the Senior Lien Available Incremental Property Tax TIF Notes until all interest and principal then due in accordance with the established amortization schedules is paid, and then such payment will be applied to the Junior Lien Available Incremental Property Tax TIF Notes;
  - f. for the TIF Notes issued as Tax-Exempt Obligations and if requested by the Developer Party, provide for the capitalization of interest, a debt service reserve fund, and any other features reasonably necessary or desirable to make such TIF Notes issued as Tax-Exempt Obligations marketable;

g. be assignable to or pledged as collateral to any lender providing financing for the Redevelopment Project; and

h. be saleable or assignable to: (i) a Qualified Investment Buyer; (ii) a purchaser of that Phase; (iii) another Developer Party; (iv) a Person that Controls that Developer Party, or (ii) a Person in which the majority equity interest in such Person is Controlled by one or more Persons that have a majority equity interest in that Developer Party.

F. **Conditions to TIF Note Issuance.** Each TIF Note issuance will occur only upon the satisfaction of each of the following conditions:

1. With respect to the issuance of the Phase I TIF Notes, (i) issuance of Certificates of Completion for the Phase I Residential Buildings and Phase I Retail/Commercial Space; (ii) identification by Hawthorn SP of: (x) the principal amount of each of the Phase I TIF Notes, which amounts shall not exceed the amounts identified in Section 9.E above, and in any event the total principal amount of such Phase I TIF Notes shall not exceed the Phase I TIF Notes Aggregate Principal Limitation; and (y) the Developer Parties to which such TIF Notes are to be issued; and (iii) no Developer Event of Default is then outstanding with respect to the Phase I Project;

2. With respect to the Phase III TIF Notes, (i) issuance of a Certificate of Completion for the Phase III Retail/Commercial Space; (ii) identification by either Hawthorn L.P., Hawthorn SP or Hawthorn CP of: (x) the principal amount of each of the Phase III TIF Notes, which amounts shall not exceed the amounts identified in Section 9.E above, and in any event the total principal amount of such Phase III TIF Notes shall not exceed the Phase III TIF Notes Aggregate Principal Limitation, and (y) the Developer Parties to which such TIF Notes are to be issued; and (iii) no Developer Event of Default is then outstanding with respect to either the Phase II Project or the Phase III Project;

3. The payment of all fees related to the issuance of any TIF Notes, including Trustee fees, Bond Counsel fees, feasibility consultant fees and Village Attorney fees;

4. The execution of the Trust Indenture;

5. The issuance of an opinion of Bond Counsel or Village Counsel that such TIF Note is a valid and binding obligation of the Village; and

6. With respect to the issuance of the Phase I Tax-Exempt TIF Notes and the Phase III Tax-Exempt TIF Notes, the issuance of an opinion of Bond Counsel that the interest paid or received on such TIF Note is not includible in the gross income of the registered owners thereof under the Internal Revenue Code or federal income tax purposes.

G. **Pledge and Use of Pledged TIF Funds/Trust Indenture.**

1. **Pledge of TIF Funds.** The Village pledges, for repayment of Eligible Costs, all Available Incremental Property Taxes and the Village's 10% Pledge (the "***Pledged TIF Funds***"). The Available Incremental Property Taxes will be irrevocably pledged to and

used by the Village only for the payment of amounts due under the Available Incremental Property Tax TIF Notes, as provided in this Agreement, the Trust Indenture and such TIF Notes. The Village's 10% Pledge will be irrevocably pledged to and used only for the payment of amounts due under the Village's 10% Pledge TIF Notes, as provided in this Agreement, the Trust Indenture and such TIF Notes.

2. **Deposit of Pledged TIF Funds in TIF Fund.** The Village shall deposit the Pledged TIF Funds into the TIF Fund on an annual basis and take such actions as may be necessary to ensure that they are paid in accordance with the terms of the Trust Indenture and the TIF Notes. Payments from the TIF Fund shall be made, and the Trust Indenture shall provide for payments from the TIF Fund to be made, as follows: (a) first, to reimburse the Village for (i) any fees related to the administration of the Trust Indenture, and (ii) up to \$30,000 annually (subject to an inflationary increase of three percent (3%) per year) for costs it incurs in administering the TIF District in compliance with the TIF Act, including costs of audits, legal review, and staff time for preparation of annual reports ("**Administrative Allocation**"); and (b) second, to the payment of sums due under the TIF Notes. For the purpose of paying the sums due under the TIF Notes, there will be created in the TIF Fund held by the Trustee separate accounts for the Available Incremental Property Taxes (the "**Available Incremental Property Taxes Account**") and the Village's 10% Pledge (the "**Village's 10% Pledge Account**"). The principal of and interest on the Available Incremental Property Tax TIF Notes will be paid solely and only from amounts on deposit in the Available Incremental Property Taxes Account, and the principal of and interest on the Village's 10% Pledge TIF Notes will be paid solely and only from amounts on deposit in the Village's 10% Pledge Account.

3. **Excess Incremental Tax Revenues.** If there are funds contained in the TIF Fund in excess of the Pledged TIF Funds, or in excess of the amounts required to be paid pursuant to the TIF Notes and the Trust Indenture, then the Village may (i) use such funds for prepayment of one or more of the TIF Notes that are prepayable as provided in this Section 9, or (ii) if all TIF Notes have been paid in full, use such funds for any lawful purpose permitted under the TIF Act, including calculation and distribution of "surplus" in accordance with Sections 11-74.4-7 and 11-74.4-8a of the TIF Act. Because the TIF Fund is a special fund, the amounts in the fund will be disbursed in accordance with this Agreement, the TIF Approval Ordinances, the Trust Indenture, and the TIF Notes without further action by the Corporate Authorities.

H. **Non-Recourse Obligation.** The Owners, for their own account and on behalf of other Developer Parties, acknowledge that the Available Incremental Property Taxes may be insufficient to provide for the payment of all principal and interest coming due on the Available Incremental Property Tax TIF Notes, and that the Village's 10% Pledge may be insufficient to provide for the payment of all principal and interest coming due on the Village's 10% Pledge TIF Notes, and that:

1. the Village's obligation to make any payments of principal and interest due under the TIF Notes, or otherwise to reimburse the Developer Parties for Eligible Costs, is not and will not be a general debt of the Village or a charge against its general credit or taxing powers, but is and will be a special limited obligation payable solely out of, as applicable, the Available Incremental Property Taxes or the Village's 10% Pledge;

2. the Available Incremental Property Taxes may be insufficient to provide for the payment of all principal and interest due on the Available Incremental Property Tax TIF Notes, and the Village's 10% Pledge may be insufficient to

provide for the payment of all principal and interest coming due on the Village's 10% Pledge TIF Notes;

3. if the Available Incremental Property Taxes are insufficient to pay all principal and interest due under the Available Incremental Property Tax TIF Notes or the Village's 10% Pledge is insufficient to pay all principal and interest due under the Village's 10% Pledge TIF Notes, they shall have no recourse against the Village, other than enforcing the Village's obligations to use the Pledged TIF Funds to pay such amounts, as required by this Agreement;

4. the Developer Parties will have no right to, and agree that they will not, compel any exercise of the taxing power of the Village to pay any principal or interest coming due on the TIF Notes, or to reimburse any Eligible Cost, and no execution of any claim, demand, cause of action or judgment may be levied upon or collected from the general credit, general funds or other property of the Village (unless the Village fails or refuses to make payments due a holder of a TIF Note in violation of the terms of this Agreement or such TIF Note); and

5. no recourse may be had for any payment due pursuant to this Agreement or a TIF Note against any past, present, or future elected or appointed officer, official, agent, representative, employee, or attorney of the Village in his or her individual capacity.

I. Payments to a Developer Party.

1. Submission of Certification Requests. To obtain reimbursement of Eligible Costs, in accordance with the TIF Notes, a Developer Party shall submit to the Village Manager written requests for reimbursement which are in the form attached hereto as **Exhibit M** ("**Certification Request**"), provided, however, that no Developer Party may submit more than one Certification Request to the Village Manager per calendar quarter. Each Certification Request shall be accompanied by: (i) evidence that the Developer Party has actually incurred and paid the Eligible Costs for which it seeks reimbursement; (ii) sworn statements and lien waivers from the Developer Party's general contractor for any material, fixtures, apparatus, machinery, services, or labor provided by any contractor, subcontractor, or other person or entity entitled to file a lien under the Mechanics Lien Act, 770 ILCS 60/1, included in the Eligible Costs for which reimbursement is sought; and (iii) a sworn statement from the Developer Party that it remains in full compliance with all applicable provisions of this Agreement. If the Developer Party does not fulfill its obligations under the preceding sentence, the Village will have no obligation to certify or reimburse the Developer Party for such Eligible Costs unless and until it does fulfill them.

2. Eligibility for Payment. Notwithstanding any other provision of this Agreement, a Developer Party will be entitled to be reimbursed for Eligible Costs only if:

- a. It actually incurs such Eligible Costs;
- b. Such Eligible Costs are certified pursuant to Section 9.1.4 below;
- c. Reimbursement is permitted pursuant to this Agreement, the Redevelopment Plan, and the TIF Act; and

d. Its acts and omissions do not constitute a Developer Event of Default at and as of the time the Certification Request is submitted to the Village.

3. **Review of Certification Requests.** The Village Manager will approve or disapprove each Certification Request, or, if the Village Manager finds an error or deficiency in the Certification Request, the Village Manager will give written notice to the Developer Party, identifying such error or deficiency in reasonable detail, within 30 days after the date that the Village receives the Certification Request. The process of submission, identification of errors or deficiencies, and resubmission shall continue in good faith until the Village and said Developer Party agree on the content and compliance of the Certification Request. If the Village Manager does not approve, disapprove, or give written notice as provided above within the 30-day period identified above, the Village Manager will be deemed to have approved the Certification Request.

4. **Issuance of Certificates of Expenditure.** Upon approval of a Certification Request, the Village Manager shall issue a certificate of expenditure ("**Certificate of Expenditure**") to the Village's Director of Finance in an amount corresponding to the approved Certification Request authorizing the approved Eligible Costs to be included in the principal for the appropriate TIF Note as provided in Section 9.B above. Each Developer Party shall provide the Village written notice when it has submitted its final Certification Request to the Village.

#### **Section 10. SALES TAX NOTES.**

A. **Adoption of Sales Tax Note Authorizing Ordinance.** Prior to the Effective Date of this Agreement, the Corporate Authorities have adopted Ordinance 2021-094 authorizing the issuance of the Sales Tax Notes ("**Sales Tax Note Authorizing Ordinance**"). For so long as this Agreement remains in effect and no Developer Event of Default exists hereunder, the Village will not amend or repeal the Sales Tax Note Authorizing Ordinance without the prior written consent of the Owners.

B. **New Sales Tax Note to Replace the Existing Incentive Agreement.** Hawthorn L.P. and the Village acknowledge and agree that, as of the date (the "**New Sales Tax Note Issuance Date**") the Village executes and delivers the New Sales Tax Note (as hereinafter defined) to Hawthorn L.P., the Existing Incentive Agreement shall terminate and no longer be of force or effect, and that all amounts due and owing on the Existing Incentive Agreement as of the New Sales Tax Note Issuance Date shall be extinguished. The Village, promptly following the adoption of the Sales Tax Note Authorizing Ordinance, shall issue and deliver to Hawthorn L.P. a new sales tax note in the form attached to the Sales Tax Note Authorizing Ordinance having an initial principal amount of \$4,000,000 and bearing interest at the Taxable TIF Note Interest Rate ("**New Sales Tax Note**"). The Reimbursable State Sales Tax (as such term is defined in the Existing Incentive Agreement) remaining unpaid pursuant to the Existing Incentive Agreement as of the New Sales Tax Note Issuance Date will be deposited into the fund of the Village established in the Sales Tax Note Authorizing Ordinance for the payment of the New Sales Tax Note and shall be used to pay principal and interest due on the New Sales Tax Note. The Village will begin to make payments on the New Sales Tax Note annually on February 1 of the first year following the New Sales Tax Note Issuance Date, and it will continue to make payments on the New Sales Tax Note on the first day of every subsequent February 1 thereafter. There will be no amortization schedule issued for the New Sales Tax Note and no limit on the Village's right to prepay the New Sales Tax Note. The Remaining Municipal Sales Tax Pledged Funds will be pledged to the payment of the New Sales Tax Notes, and payment on the New Sales Tax Notes therefrom will be on a parity with the hereinafter-defined Phase I Sales Tax Note and the Phase III Sales Tax Note. The Village will use the Remaining Municipal Sales Tax Pledged Funds to

satisfy principal and interest payment obligations coming due on the New Sales Tax Note until all of such obligations have been paid in full. In short, the New Sales Tax Note will be a "cash flow" Note.

C. **Phase I Sales Tax Note.** Upon the issuance of the Phase I TIF Notes on the Phase I TIF Notes Issuance Date, the Village will issue a taxable sales tax note (the "***Phase I Sales Tax Note***") to a Developer Party identified by Hawthorn SP in the form included in the Sales Tax Note Authorizing Ordinance. The Phase I Sales Tax Note will be issued in a principal amount not to exceed \$1,750,000 (the "***Phase I Sales Tax Note Maximum Amount***"), provided Developer Parties, as of such date, have incurred costs in constructing the Phase I Project that are equal to or greater than the estimate of Phase I Project Costs that is set forth on the Project Budget. The Phase I Sales Tax Note will begin to accrue interest on the Phase I TIF Notes Issuance Date at the Taxable TIF Note Interest Rate and compound on an annual basis thereafter. The Village will begin to make payments on the Phase I Sales Tax Note on the first February 1 following an Accounting Date following the Phase I TIF Notes Issuance Date and it will continue to make such payments on each February 1 thereafter. The Remaining Municipal Sales Tax Pledged Funds will be pledged to the payment of the Phase I Sales Tax Note, and payment on the Phase I Sales Tax Note therefrom will be on a parity basis with the New Sales Tax Note and the Phase III Sales Tax Note. There will be no amortization schedule issued for the Phase I Sales Tax Note and no limit on the Village's right to prepay the Phase I Sales Tax Note. The Village will use the Remaining Municipal Sales Tax Pledged Funds to satisfy principal and interest payment obligations coming due on the Phase I Sales Tax Note until all of such obligations have been paid in full. In short, the Phase I Sales Tax Note will be a "cash flow" Note.

D. **Phase III Sales Tax Note.** Upon the issuance of the Phase III TIF Notes on the Phase III TIF Notes Issuance Date, the Village will issue a taxable sales tax note (the "***Phase III Sales Tax Note***") to a Developer Party who has requested its issuance. The Phase III Sales Tax Note will be in the form included in the Sales Tax Note Authorizing Ordinance. The Phase III Sales Tax Note, which will also be payable from the Remaining Municipal Sales Tax Pledged Funds, will be issued in an initial principal amount of \$1,750,000, provided Developer Parties, as of such date, have incurred costs in constructing the Phase III Project that are equal to or greater than the estimate of Phase III Project Costs that is set forth on the Project Budget, provided, however, that if the par amount of the Phase I Sales Tax Note when initially issued was less than the Phase I Sales Tax Note Maximum Amount, then the initial principal amount of the Phase III Sales Tax Note will be increased at the time of the issuance thereof by the difference between the Phase I Sales Tax Note Maximum Amount and the principal amount of the Phase I Sales Tax Note as issued up to a maximum amount of \$3,500,000. The Phase III Sales Tax Note will begin to accrue interest on the Phase III TIF Notes Issuance Date at the Taxable Note Interest Rate and compound on an annual basis thereafter. The Village will begin to make payments on the Phase III Sales Tax Note on the first February 1 following an Accounting Date following the Phase III TIF Notes Issuance Date and it will continue to make such payments on each February 1 thereafter. The Remaining Municipal Sales Tax Pledged Funds will be pledged to the payment of the Phase III Sales Tax Note, and payment on the Phase III Sales Tax Note therefrom will be on a parity basis with the New Sales Tax Note and the Phase I Sales Tax Note. There will be no amortization schedule issued for the Phase III Sales Tax Note and no limit on the Village's right to prepay the Phase III Sales Tax Note. The Village will use the Remaining Municipal Sales Tax Pledged Funds to satisfy principal and interest payment obligations coming due on the Phase III Sales Tax Note until of such obligations have been paid in full. In short, the Phase III Sales Tax Note will be a "cash flow" Note.

E. **Execution of Sales Tax Note Trust Indenture.** After the Effective Date and on or prior to the Phase I TIF Notes Issuance Date, the Village may enter into a Trust Indenture with respect to the Sales Tax Notes in a form that is acceptable to Bond Counsel. Hawthorn L.P.,

Hawthorn SP and Hawthorn CP agree to cooperate with the Village and Bond Counsel in the preparation of the Trust Indenture and to provide such parties such information and documentation as they may reasonably request in furtherance thereof. The Village agrees that Hawthorn L.P., Hawthorn SP and Hawthorn CP shall have a reasonable right to review the form and content of the Trust Indenture, and any supplements or amendments thereto, before they finalized so they can confirm their provisions are consistent with the provisions of this Agreement. Hawthorn L.P. Hawthorn SP and Hawthorn CP acknowledge that, if a Trust Indenture is entered into by the Village in connection with the issuance of the Phase I Sales Tax Note and the Phase III Sales Tax Note, the Village may cancel the New Sales Tax Note and issue a replacement Note to the holder of the New Sales Tax Note pursuant to the Trust Indenture. Such replacement New Sales Tax Note shall not modify any terms of the New Sales Tax Note as originally issued but will bear only such changes as necessary to reflect the issuance thereof pursuant to the Trust Indenture.

F. Terms of the Sales Tax Notes. Each Sales Tax Note will:

1. evidence the Village's obligation to annually remit to the holder of such Sales Tax Note the Remaining Municipal Sales Tax Pledged Funds, subject to and in accordance with the terms of such Sales Tax Note, this Agreement and the Trust Indenture, if applicable;

2. mature on the earlier of 20 years from the date of the issuance thereof or December 31, 2043, after which time the Village shall have no further obligation to pay the holder of the Sales Tax Note any sums of principal and interest, even if any portion of the principal amount of such Sales Tax Note remains unpaid;

3. provide that the payments of principal and interest will "sweep" all available Remaining Municipal Sales Tax Pledged Funds that have been received by the Village and accrued as of each Accounting Date;

4. provide that each payment will be applied first to accrued but unpaid interest, second to current interest, and third to principal;

5. allow such Sales Tax Note to be assigned to or pledged as collateral to any lender providing financing for the Redevelopment Project; and

6. after the Village issues a Certificate of Completion for a given Phase, allow such Sales Tax Note to be sold or assigned to: (i) a Qualified Investment Buyer; (ii) a purchaser of that Phase; (iii) a Developer Party that is other than the Developer Party which is the holder of the Note; (iv) an Affiliate of such Developer Party or of another Developer Party; or (v) a Person in which the majority equity interest in such Person is Controlled by one or more Persons that have a majority equity interest in the Developer Party which is the holder of the Note.

All payments made by the Village will be conducted through an automated clearing house (ACH) direct deposit or by check as directed by the owner of the New Sales Tax Note (the "**New Sales Tax Note Owner**"), by the owner of the Phase I Sales Tax Note with respect to the Phase I Sales Tax Note (the "**Phase I Sales Tax Note Owner**") and by the owner of the Phase III Sales Tax Note with respect to the Phase III Sales Tax Note (the "**Phase III Sales Tax Note Owner**"), provided that the Village shall not be required to issue a manual check outside of its normal warrant list approval process. The New Sales Tax Note Owner, the Phase I Sales Tax Note Owner and the Phase III Sales Tax Note Owner will provide to the Village and maintain current, or cause to be provided and maintained current, all pertinent account information to ensure

successful processing of payments on, respectively, the New Sales Tax Note, the Phase I Sales Tax Note and the Phase III Sales Tax Note.

G. **Change in the Law.**

1. The Village, Hawthorn L.P., Hawthorn SP and Hawthorn CP acknowledge and agree that the Village's obligation to make payments under the Sales Tax Notes is predicated on existing State law governing the distribution of Sales Tax Revenue to the Village, including the Retailers' Occupation Tax Act and the Service Occupation Tax Act. Such parties further acknowledge that the General Assembly of the State of Illinois has, from time to time, considered proposals to modify or eliminate the distribution of Sales Tax Revenue to Illinois municipalities, and for that reason they are making express provision for the effect of any change upon the operation of this Agreement in this Section 10.G.

2. In the event: (i) the State of Illinois amends or repeals the Retailers' Occupation Tax Act or makes any other promulgation, enactment, or change that eliminates or reduces the distribution of Sales Tax Revenue to the Village, or otherwise alters the distribution formula in a manner that prevents the Village and Hawthorn L.P., Hawthorn SP and/or Hawthorn CP from determining with a reasonable degree of certainty the amount of Municipal Sales Tax Pledge Funds, or (ii) the Village reduces its Home Rule Sales Tax or Home Rule Service Tax ("***Change in Sales Tax Law***"), the Village and Hawthorn L.P., Hawthorn SP and/or Hawthorn CP will cooperate with each other to accomplish the intent of this Agreement as set forth in this Section 10 and to satisfy their reasonable expectations as of the Effective Date, which cooperation will include utilizing any Change in Sales Tax Law that either results in the distribution of Sales Tax Revenue to the Village or provides for a "replacement tax," as a substitute for the Municipal Sales Tax Pledge, with the mutual goal of paying the holders of the Sales Tax Notes over their full respective terms, up to the aggregate initial principal amounts of the Sales Tax Notes, plus interest. The Village and Hawthorn L.P., Hawthorn SP and/or Hawthorn CP Parties agree to amend or release the Sales Tax Notes to account for any Changes in Sales Tax Law.

3. **No Guarantee.** The Village and Hawthorn L.P., Hawthorn SP and Hawthorn CP acknowledge and agree that none of the terms, conditions, or provisions of this Agreement shall be construed, deemed, or interpreted as (a) a guarantee that the Village will receive any Sales Tax Revenue as a result of the operation of commercial uses on the Mall Property; or (b) a requirement or obligation by Developer Parties to generate Sales Tax Revenue from the Mall Property.

H. **Limited Liability.** The Village's obligation to make payments on the Sales Tax Notes shall not be a general debt or general obligation of the Village, be a charge against its general credit or taxing powers, or be secured by its full faith and credit, but shall be a special limited obligation payable solely out of the Remaining Municipal Sales Tax Pledged Funds. Neither Hawthorn L.P., Hawthorn SP, Hawthorn CP or any other Developer Party will have the right to, and such parties agree that they may not, compel any exercise of the taxing power of the Village to make payments on the Sales Tax Notes, and no execution of any claim, demand, cause of action or judgment may be levied upon or collected from the general credit, general funds, or other property of the Village (unless the Village refuses to make payment to such parties from Remaining Municipal Sales Tax Pledged Funds as and when it is required to do so pursuant to this Agreement or one or more of the Sales Tax Notes). No recourse may be had for any payment pursuant to this Agreement or any Sales Tax Note against any past, present, or future director, member, elected or appointed officer, official, agent, representative, employee, or attorney of the Village in his or her individual capacity. Hawthorn L.P., Hawthorn SP and

Hawthorn CP acknowledge that the Remaining Municipal Sales Tax Pledged Funds may be insufficient to provide for the payment of all principal and interest coming due on the Sales Tax Notes, and that they shall have no recourse against the Village if the Remaining Municipal Sales Tax Pledged Funds are insufficient to pay all of such principal and interest.

I. **Pre-conditions to Sales Tax Note Issuance.** Issuance of the Phase I Sales Tax Note and the Phase III Sales Tax Note will occur only upon the satisfaction of each of the following conditions:

1. With respect to the Phase I Project, Hawthorn SP and Hawthorn Owner Venture have achieved Residential Substantial Completion of the Phase I Residential Buildings and Retail Substantial Completion of the Phase I Retail/Commercial Space, the Village has issued a Certificate of Completion for such components of the Phase I Project, and there is then no Developer Event of Default outstanding pertaining to the Phase I Project; and

2. With respect to the Phase III Project, the Developer Parties that have undertaken the construction of the Phase II Project and the Phase III Project have achieved Residential Substantial Completion of the Phase II Residential Building and Retail Substantial Completion of the Phase III Retail/Commercial Space, the Village has issued Certificates of Completion for the Phase II Project and the Phase III Project, and there is then no Developer Event of Default outstanding pertaining to, respectively, the Phase II Project or the Phase III Project.

J. **Cancellation of Sales Tax Notes and "Claw back" Provisions.** If no Developer Party has received a Certificate of Completion for the Phase III Project by the earlier to occur of ("**Phase III Final Issuance Date**"): (i) the 60-month anniversary of the Phase I Issuance Date, or (ii) January 1, 2028; or by such later date as the Corporate Authorities, in the exercise of their discretion, may establish as the Phase III Final Issuance Date, then the Village's obligation to issue the Phase III Sales Tax Note will terminate and become null and void and the following shall occur:

1. Hawthorn L.P. will return the New Sales Tax Note and cause the holder of the Phase I Sales Tax Note to be returned to the Village, each marked "CANCELLED", and no further payments will be due on such Sales Tax Notes; and

2. Within 30 days, Hawthorn L.P. and the holder of the Phase I Sales Tax Note will remit, or cause to be remitted, to the Village all amounts of principal and interest paid on the New Sales Tax Note and the Phase I Sales Tax Note for the 24-month period preceding the Phase III Final Issuance Date. The failure of such parties to timely remit such payment, or to cause such payment to be remitted, to the Village shall result in the reduction of the principal balances of the Phase I Taxable TIF Notes; followed, if necessary, by the reduction of the principal balances of the Phase III Taxable TIF Notes.

Section 11. BUDGET SAVINGS / ANNUAL SALES TAX BASE / ANNUAL SALES TAX DEFICIENCY AMOUNT.

A. **Budget Savings.** The Owners estimate the total cost of constructing the Redevelopment Project, including all land acquisition costs and all hard costs and soft costs, at \$252,000,000. Broken down by Phase, they estimate the total cost of constructing the Phase I Project ("**Phase I Project Cost**") at approximately \$152,000,000, and the total cost of constructing the Phase II/Phase III Project ("**Phase II/Phase III Project Cost**") at approximately \$100,000,000. The Owners acknowledge that the Project Budget remains subject to confirmation by the Village and its consultants. The Owners agree to have their Redevelopment Project expenditures audited upon completion of the Phase I Project and the Phase III Project. To the extent the total Phase I Project Cost is determined to be less than \$152,000,000 or the total Phase II/Phase III Project Cost is determined to be less than \$100,000,000 ("**Budget Savings**"), the Village shall have the right, provided they exercise such right prior to the issuance of, respectively, the Phase I Tax-Exempt TIF Notes and the Phase III Tax-Exempt Notes, to reduce the total incentive for, respectively, the Phase I Project and the Phase II/ Phase III Project by a dollar amount that is proportionately based on the percentage reduction in the Phase I Project Cost and the Phase II/Phase III Project Cost, as determined on or around the date of issuance of a Certificate of Completion for, respectively, the Phase I Project and the Phase III Project, versus the estimated expenditures for, respectively, the Phase I Project, the Phase II Project, and the Phase III Project, as set forth in the Project Budget. For example purposes only, if the proposed total incentive for the Phase I Project is \$38,000,000, and the Project Budget for the Phase I Project is \$152,000,000, but the actual Phase I Project Cost, determined on or around the date of issuance of a Certificate of Completion for the Phase I Project, is \$142,000,000, then the percentage reduction in actual Phase I Project Costs versus estimated Phase I Project Costs is  $\$10,000,000/\$152,000,000 = 6.5\%$ . The Phase I Project incentive, in this example, would then be reduced by 6.5% to \$35,530,000 (i.e.,  $\$38,000,000 - (.065 \times \$38,000,000) = \$35,530,000$ ). The total Redevelopment Project expenditures shall be established by documents reasonably requested by the Village proving the expenditure and payment therefor. The Redevelopment Project's incentive reduction will be deducted from the Taxable TIF Notes and Sales Tax Notes issued upon issuance of Certificates of Completion for each of the Phase I Project and the Phase III Project.

B. **Cooperation/Budget Documents.** Within 30 days of the request by the Village to audit the Phase I Project books and records or Phase II/III Project books and records ("**Budget Documents**"), the Owners and/or Developer Parties will make available all books and records reasonably requested by the Village and deemed necessary to confirm the Total Project Costs for, respectively, the Phase I Project and the Phase II/Phase III Projects.

C. **Dispute Resolution.** Any dispute arising out of, in connection with, or in relation to Section 11.A or Section 11.B or their interpretation or any breach thereof shall be determined and settled by arbitration in Lake County, Illinois by a sole arbitrator pursuant to the rules and regulations then obtaining of the American Arbitration Association and any award rendered therein shall be final and conclusive upon the Parties. The service of any notice, process, motion or other document in connection with an arbitration award under this Agreement or for the enforcement of an arbitration award hereunder may be effectuated by either personal service or by certified or registered mail to the respective addresses provided in or pursuant to this Agreement.

D. **Annual Sales Tax Base.** In entering into this Agreement, the Village and Hawthorn L.P., Hawthorn SP and Hawthorn CP have assumed that the Village Share of Sales Tax Revenues in each Accounting Year of the 20-year period that follows the issuance of a Certificate of Completion for the Phase I Project and the 20-year period that follows the issuance

of a Certificate of Completion for the Phase III Project, will be no less than the amounts identified in **Exhibit N** attached to this Agreement (each an **"Annual Sales Tax Base Amount"**).

E. **Annual Sales Tax Deficiency Amount.** Hawthorn L.P., Hawthorn SP and Hawthorn CP acknowledge that on each Accounting Date in each Accounting Year of the 20-year period that follows the issuance of a Certificate of Completion for the Phase I Project and the 20-year period that follows the issuance of a Certificate of Completion for the Phase III Project, the Village will determine whether the amount of the Village Share of Sales Tax Revenues for such Accounting Year was less than the Annual Base Sales Tax Amount for such Accounting Year. In the event the Village Share of Sales Tax Revenues for such Accounting Year was less than the Annual Base Sales Tax Amount for such Accounting Year, the Village will calculate the difference between the Annual Sales Tax Base Amount for such Accounting Year and the Village Share of Sales Taxes received during such Accounting Year (an **"Annual Sales Tax Deficiency Amount"**). The Annual Sales Tax Deficiency shall be paid to the Village annually from the Municipal Sales Tax Pledged Funds.

## Section 12. LIABILITY, INDEMNIFICATION PROVISIONS AND INSURANCE.

### A. Indemnification of the Village

1. **Village Review.** The Owners acknowledge and agree that the Village is not, and will not be, in any way liable for any damages or injuries that may be sustained as the result of the Village's review and approval of any plans for the Redevelopment Property or the Redevelopment Project, or the issuance of any approvals, permits, certificates, or acceptances, for the development or use of the Redevelopment Property or the Redevelopment Project, and that the Village's review and approval of any such plans and the Redevelopment Project and issuance of any such approvals, permits, certificates, or acceptances does not, and will not, in any way, be deemed to ensure the Owners or any other Developer Parties, or any of their respective successors, assigns, tenants, and licensees, or any third party, against damage or injury of any kind at any time.

2. **Village Procedure.** The Owners acknowledge and agree that, to the best of their knowledge, all notices, meetings, and hearings have been properly given and held by the Village with respect to the approval of this Agreement, the TIF Approval Ordinances, and the Plan Approval Ordinances and agree not to challenge such approvals on the grounds of any procedural infirmity or of any denial of any procedural right.

3. **Indemnity.** The Owners shall jointly and severally defend, hold harmless, and indemnify the Village, the Corporate Authorities, and all Village elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys (**"Village Indemnified Parties"**), from any and all claims that may be asserted at any time by any Person that is not a Party to this Agreement against any of the Village Indemnified Parties contesting the legality of this Agreement, or any of the TIF Approval Ordinances or Plan Approval Ordinances. In addition, with respect to each Phase of the Redevelopment Project, the Developer Parties who are undertaking the construction of such Phase shall, or shall cause their contractors or their contractors' subcontractors to, defend, hold harmless, and indemnify the Village Indemnified Parties from any and all claims for personal injury, property damage, or death that may be asserted at any time by any Person that is not a Party to this Agreement against any of the Village Indemnified Parties alleged to arise out of the negligence of such Developer Parties, their contractors, or their contractors' subcontractors in the construction of such Phase of the Redevelopment Project. The foregoing indemnification obligations shall not extend to claims which are alleged to have

arisen out of the Village's own negligence or willful misconduct or the negligence or willful misconduct of one or more of the Village Indemnified Parties.

4. **Defense Expenses**. The Owners shall pay all expenses, including legal fees and administrative expenses, incurred by the Village in defending itself with regard to any claim identified in Section 12.A(3) above if the Owners are obligated to defend the Village against such claim and have failed to do so.

B. **Indemnification by the Village**

1. **Indemnity**. The Village shall defend, hold harmless, and indemnify the Owners, and each of their respective Affiliates, officers, partners, members, employees, agents, representatives, successors, assigns, purchasers, guests and invitees (collectively, the "***Owner Indemnified Parties***"), from and against any and all claims that may be asserted at any time by any Person against the Owners or any of the other Owner Indemnified Parties as a result of the Village's maintenance of the Perimeter Sidewalks pursuant to the Sidewalk Easements. The foregoing shall extend to claims based on the act or omission of the Village, and its contractors and their subcontractors, but it shall not extend to claims which are alleged to have arisen out of the negligence or willful misconduct of either the Owners or one of the other Owner Indemnified Parties.

2. **Defense Expenses**. The Village shall pay all expenses, including legal fees and administrative expenses, incurred by the Owners or one or more of the other Owner Indemnified Parties in defending themselves with regard to any claim identified in Section 12.B(1) above if the Village is obligated to defend the Owners or said other Owner Indemnified Parties against such claim and has failed to do so.

C. **Insurance**

1. **Required Insurance**. Prior to the commencement of construction of a Phase of the Redevelopment Project, for so long as such construction is proceeding, and until the Village has issued a certificate of occupancy for such Phase, the Owners or successor Developer Parties shall obtain and continuously maintain the following insurance:

a. Builder's risk insurance, written on the so-called "Builder's Risk - Completed Value Basis", in an amount equal to one hundred percent (100%) of the insurable value of the Phase at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.

b. Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's/Contractor's Policy naming the Village, its officials, employees and agents as an additional insured on a primary non-contributory basis, with limits against bodily injury and property damage of not less than \$1,000,000 for each occurrence/\$2,000,000 aggregate (with an umbrella excess liability policy of \$5,000,000), written on an occurrence basis.

c. Workers compensation insurance, with statutory coverage.

In addition, the Owners or successor Developer Parties shall obtain and continuously maintain the insurance described in clause (i) above until the Village has fully paid all amounts due under the Notes.

2. **Proof of Insurance.** From time to time, at the request of the Village, the Owners or successor Developer Parties shall furnish proof to the Village that the premiums for the above-described insurance have been paid and that the insurance is in effect. All insurance required by this Section 12.C shall be obtained from reputable insurance companies selected by the Owners or successor Developer Parties that are authorized under the laws of the State to assume the risks covered by such policies. Unless otherwise provided in this Section 12.C, each policy must contain a provision that the insurer will not cancel nor modify the policy without giving written notice to the insured and the Village at least 30 days before the cancellation or modification becomes effective. Not less than 15 days prior to the expiration of any policy, the Owners or such successor Developer Parties must renew the existing policy or replace the policy with another policy conforming to the provisions of this Section 12.C. In lieu of separate policies, the Owners or such successor Developer Parties may maintain a single policy, blanket or umbrella policies, or a combination thereof, providing the coverage required herein.

### **Section 13. NATURE SURVIVAL AND TRANSFER OF OBLIGATIONS.**

A. **Binding Effect.** Except as hereinafter set forth, the obligations assumed by, and the rights that accrue to, the Owners under this Agreement shall run with the land and be binding upon and inure to the benefit of each of the Owner's successors and assigns (excluding any lessees or tenants of the Redevelopment Property), and each future successor legal or beneficial owner of all or any portion of the Redevelopment Property. Notwithstanding the foregoing, under no circumstances shall Hawthorn Venture Owner or its operating member be liable for the performance of: (a) Hawthorn L.P.'s obligations pertaining to the construction of the Mall Renovation Project; (b) Hawthorn L.P.'s, Hawthorn SP's, Hawthorn CP's, or any other Developer Party's obligations pertaining to the development or improvement of the Outlots; (c) Hawthorn L.P.'s, Hawthorn SP's, Hawthorn CP's, or any other Developer Party's obligations pertaining to, or the construction of, either the Phase II Project or the Phase III Project; (d) Hawthorn L.P.'s, Hawthorn SP's, Hawthorn CP's, or any other Developer Party's obligations pertaining to the payment of any Penalty, as hereinabove described; or (e) Hawthorn L.P.'s obligations under Section 10.1 above pertaining to the cancellation of the Sales Tax Notes and the payment of the "Clawback" sum.

B. **Successors and Transferees.** To assure that all grantees, successors, assigns, and successor owners have notice of this Agreement and the obligations created by it, and as a condition to the Village's issuance of a Certificate of Completion for the Phase I Project, the Owners, no later than 30 days after the Effective Date, shall deposit with the Village Clerk, concurrent with the Village's approval of this Agreement, any consents or other documents necessary to authorize the Village to record this Agreement in the office of the Lake County Recorder of Deeds. In addition, the Owners shall:

1. notify the Village in writing at least 30 days prior to transferring a legal or beneficial interest in any portion of the Redevelopment Property to any Person not a Party to this Agreement (excluding any lessees or tenants of the Redevelopment Property). In the case of a transfer of a legal or beneficial interest to an Affiliate of a Party, the Party shall provide notice to the Village no later than 30 days after the transfer;

2. incorporate, by reference, this Agreement into any and all real estate sales contracts entered into for the transfer of all or any portion of the Redevelopment Property to any Person not a Party to this Agreement; and

3. except as provided in Section 13.C below, require, prior to the transfer of all or any portion of the Redevelopment Property, or any legal or equitable interest therein, or of any Phase of the Redevelopment Project, or portion thereof, to any Person not a Party to this Agreement (excluding any lessees or tenants of the Redevelopment Property), the transferee of the Redevelopment Property, of said portion of or interest in the Redevelopment Property, or of said Phase, or portion thereof, to execute an enforceable written agreement, in substantially the form attached to this Agreement as **Exhibit O**, in which such Person agrees to be bound by the provisions of this Agreement ("**Transferee Assumption Agreement**") and, if Substantial Completion has not occurred with respect to the Phase or portion thereof being transferred, to provide the Village, with reasonable evidence that the transferee either (a) has the financial ability to complete the Phase or such portion, or (b) has senior personnel or representatives that have, in the aggregate, developed at least three assets similar in size, type, and scope as the Phase or portion, within the 15-year period prior to the transfer. The Village will determine in its sole discretion whether the transferee of a Phase not yet completed is acceptable and whether upon a successor becoming bound to the obligation created in the manner provided in this Agreement and providing the financial assurances required pursuant to this Agreement, the liability of the transferor Developer Party will be released to the extent of the transferee's assumption of the liability. If the Village approves of such a transfer, the failure of the Developer Party to provide the Village with a copy of a Transferee Assumption Agreement fully executed by the transferee, and with the transferee's proposed assurances of financial ability to meet the any remaining obligations of the Developer Party under this Agreement, before completing any transfer, will result in the Developer Party remaining fully liable for all of its obligations under this Agreement but will not relieve the transferee of its liability for all such obligations as a successor to the Developer Party.

C. **Transfer Defined.** For purposes of this Agreement, the term "transfer" includes any assignment, sale, transfer to a transfer in trust, or other disposition of the Redevelopment Property, or any beneficial interest in the Redevelopment Property, in whole or in part, by voluntary sale, sale and leaseback, consolidation, or otherwise. "Transfer" does not include any of the following, which shall not be deemed to be unpermitted transactions: involuntary sale, foreclosure, transfer to a receiver or a trustee in bankruptcy, mortgage, or collateral assignment in connection with financing, lease, license, or occupancy agreement, easement, transfer by operation of law, or a transfer pursuant to Paragraph (F) below.

D. **Mortgagees of Redevelopment Property.** This Agreement is and will be binding on all mortgagees of the Redevelopment Property or other secured parties automatically upon such mortgagee assuming title to the Redevelopment Property, in whole or in part, by a foreclosure or a deed in lieu of foreclosure without the necessity of entering into a Transferee Assumption Agreement. Until such time, however, a mortgagee or other secured party will not be so bound or have any liability hereunder.

E. **General Restrictions on Adverse Transfers.** Notwithstanding any of the foregoing provisions of this Section 13 to the contrary, until the Village issues a Certificate of Completion for the Phase III Project or January 1, 2028, whichever occurs first, the Owners may not, without the Village's prior written consent in the Village's sole discretion, which consent may be granted by the Corporate Authorities by motion at any regularly scheduled or special meeting of that body:

1. merge, liquidate or consolidate their development entities in a manner that would adversely affect their ability to finance the Redevelopment Project, other than adding or replacing joint venture partners or other parties providing equity financing;
2. enter into any transaction outside the ordinary course of business that would materially and adversely impact their ability to finance the Redevelopment Project;
3. assume or guarantee the obligations of any other persons or entities which would materially and adversely affect their ability to finance the Redevelopment Project; or
4. enter into a transaction that would cause a material and detrimental change to their respective financial conditions.

F. **Other Restrictions on Transfer.**

2. **Transfers Prior to Issuance of a Certificate of Completion.** Without the Village's prior written consent, which may be withheld in the Village's sole discretion, the Owners may not transfer the Phase I Residential Buildings, the Phase I Retail/Commercial Space, the Phase II Residential Building, or the Phase III Retail/Commercial Space, or the portions of the Redevelopment Property upon which such components of the Redevelopment Project are to be constructed, to a Person that is not Party to this Agreement or an Affiliate of one of the Owners until the Village has issued a Certificate of Completion for such component of the Redevelopment Project, or such portion of the Redevelopment Property.

3. **Transfers After Issuance of a Certificate of Completion.**

a. The Owners may, without the Village's consent, transfer either the Phase I Residential Buildings, the Phase I Retail/Commercial Space, the Phase II Residential Building, or the Phase III Retail/Commercial Space after a Certificate of Completion has been issued for those components of the Redevelopment Project provided: (i) such component is being transferred to a Qualified Purchaser; and (ii) the Owners give the Village notice of such transfer promptly following its occurrence and such information as the Village may then reasonably request to establish that such Person is in fact a Qualified Purchaser.

b. A transfer of either the Phase I Residential Buildings, the Phase I Retail/Commercial Space, the Phase II Residential Building, or the Phase III Retail/Commercial Space after a Certificate of Completion has been issued to a Person that is neither a Party to this Agreement nor a Qualified Purchaser shall require the Village's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, and which consent may be granted by the Corporate Authorities by motion at any regularly scheduled or special meeting of that body.

**Section 14. TERM.**

The Term of this Agreement ("**Term**") shall commence on the Effective Date and end on the earlier to occur of: (i) November 3, 2043, which is the date of expiration of the TIF District; or (ii) the date upon which all Parties have satisfied all their obligations under this Agreement. The expiration of the Term will not bar any claim for an Event of Default under this Agreement that

accrued prior to such expiration; nor shall it affect the Village's obligation to make payments due on the Notes in the year following such expiration upon its receipt of Available Incremental Property Taxes for the final year of the TIF District from the County Treasurer. In addition, the indemnity and defense obligations set forth in Section 12.A and Section 12.B above will survive the expiration of the Term with respect to any claim for which an indemnification and defense obligation accrues prior to such expiration. If any of the privileges or rights created by this Agreement would otherwise be unlawful or void for violation of: (i) the rule against perpetuities or some analogous statutory provision; (ii) the rule restricting restraints on alienation; or (iii) any other statutory or common law rules imposing time limits, then the affected privilege or right will continue only until 21 years after the death of the last survivor of the now living lawful descendants of Michael Jordan, former member of the NBA World Champion Chicago Bulls, or for any shorter period that may be required to sustain the validity of the affected privilege or right.

**Section 15. REPRESENTATIONS, COVENANTS, AND WARRANTIES.**

A. **The Owners.** The Owners represent, warrant and covenant that, as of the Effective Date:

1. They are duly organized, validly existing and authorized to conduct business in the State of Illinois;

2. They have the authority to enter into, execute, deliver and perform their respective obligations under this Agreement;

3. Their execution, delivery and performance of their obligations under this Agreement have been duly authorized by all necessary corporate action, and do not and will not violate their organizational documents, as amended and supplemented, or any applicable Requirements of Law, or constitute a breach of or default under, or require any consent under, any agreement, instrument, or document to which they now are a party or by which they now are or may become bound;

4. There are no actions or proceedings by or before any court, governmental commission, board, bureau, or any other administrative agency pending, threatened, or affecting them which would impair their ability to perform their respective obligations under this Agreement;

5. They will apply for and maintain all government permits, certificates, and consents (including appropriate environmental approvals) necessary to conduct their businesses and perform their respective obligations under this Agreement;

6. They have or intend to obtain sufficient financial resources to perform their respective obligations under this Agreement;

7. They have no knowledge of any financial liabilities, contingent or otherwise, which might have a material adverse effect upon their ability to perform their respective obligations under this Agreement; and

8. The information they have provided in support of their request to the Village for economic incentive assistance for the Redevelopment Project is true and correct in all material respects, and they acknowledge that the Village has entered into this Agreement in reliance on this information and the representation and warranty by them that this information is true and correct in all material respects.

B. Additional Developer Party Warranties and Covenants.

1. Open Book Development. The Village acknowledges that, prior to the Effective Date, the Owners have shared with the Village their budget of estimated costs for the construction of the Redevelopment Project ("**Project Budget**"). The Owners acknowledge and agree that the Redevelopment Project shall be an "open book" project, meaning that the Developer Parties and their general contractors will assure continuing access to the Village's agents for the purpose of reviewing and auditing the Project Budget and the Owners' respective books and records to the extent necessary to determine the actual costs the Owners incurred in constructing the Redevelopment Project. The Owners further acknowledge and agree that all Developer Parties must make available to the Village for inspection by the Village Manager, or his or her designees, within seven days after receipt of notice from the Village, any documents relating to the Project Budget, including partnership agreements, limited liability company operating agreements or joint venture agreements pertaining to the Redevelopment Project to which they are parties. The Village shall treat the Project Budget and such books, records, and agreements, and the information they contain, as confidential and proprietary business information under the Illinois Freedom of Information Act, the disclosure of which would cause competitive harm to the businesses of the Owners and said Developer Parties. The foregoing Village review rights shall terminate one year after the date on which a certificate of occupancy is issued for the Phase III Project unless (at the time of certificate of occupancy issuance) such parties have failed to make available to the Village any such books, records or agreements after the Village has requested them, in which case the Village's review rights shall continue until the requested books, records and agreements are provided.

2. Reputable Contractors. The Owners shall exercise prudence and good faith in attempting to contract with Persons who are reputable and experienced in their respective areas for the provision of services or material for the design and construction of the Redevelopment Project at costs not in excess of market rates. The obligations set forth in the foregoing sentence shall terminate with respect to the Owners upon the issuance of the certificates of occupancy for the Phase I Project. The Owners, in furtherance of the construction of the Phase II Project and the Phase III Project, shall also exercise prudence and good faith, and cause other Developer Parties who are intending to undertake such construction to exercise prudence and good faith, in attempting to contract with Persons who are reputable and experienced in their respective areas for the provision of services or material for the design and construction of such Redevelopment Project Phases at costs not in excess of market rates. The Owners' obligations in the foregoing sentence shall terminate upon the issuance of a certificate of occupancy for the Phase III Retail/Commercial Space.

C. The Village. The Village represents warrants and agrees as the basis for the undertakings on its part contained in this Agreement that:

1. The Village is a home rule municipal corporation duly organized and validly existing under the law of the State of Illinois and has all requisite corporate power and authority to enter into this Agreement.

2. The execution, delivery and the performance of this Agreement and the consummation by the Village of the transactions provided for herein and the compliance with the provisions of this Agreement: (1) have been duly authorized by all necessary corporate action on the part of the Village, (2) require no other consents, approvals or authorizations on the part of the Village in connection with the Village's execution and delivery of this Agreement, and (3) will not, by lapse of time, giving of notice or

otherwise result in any breach of any term, condition or provision of any indenture, agreement or other instrument to which the Village is subject.

3. To the best of the Village's knowledge, there are no proceedings pending against or affecting the Village in any court or before any governmental authority that involves the possibility of materially or adversely affecting the ability of the Village to perform its obligations under this Agreement.

4. To the best of the Village's knowledge, which knowledge is based exclusively on the reports received by the Village from the Illinois Department of Revenue, the sales originating at the Mall Property during calendar year 2020 totaled approximately \$4,285,564.

**Section 16. DEFAULT.**

A. **Events of Default by a Developer Party.** The following events are "***Developer Events of Default***" (and, individually, a "***Developer Event of Default***") under this Agreement, but only with respect to the Developer Party to which the event applies:

1. If (i) any representation made by the Owners or a Developer Party in this Agreement, or in any certificate, notice, demand or request made by the Owners or a Developer Party in writing and delivered to the Village pursuant to or in connection with this Agreement, proves to be untrue or incorrect in any material respect as of the date made, (ii) such untruth or incorrect statement is capable of being corrected or withdrawn, and (iii) such untruth or incorrect statement is not corrected or withdrawn within 15 days after the Developer Party receives written notice from the Village of such untruth or incorrect statement.

2. Subject to an Uncontrollable Circumstance, failure by any Developer Party for a period of 30 days after written notice thereof in the performance or breach of any covenant, warranty or obligation contained in this Agreement, including the failure to meet any timeframe in the Development Schedule set forth in Section 3.A above or a failure to cooperate and provide Budget Documents pursuant to Section 11.B above, provided, however, that such failure will not constitute a Developer Event of Default if such failure cannot reasonably be cured within said 30 days and the Developer Party, within said 30 days, initiates and diligently pursues appropriate measures to remedy the failure and in any event cures such failure within 90 days after such notice.

3. The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of a Developer Party in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of a Developer Party for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days.

4. The commencement by a Developer Party of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Developer Party to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of a Developer Party or of any substantial part of the Redevelopment Property, or the making by any such entity of any assignment for the

benefit of creditors or the failure of a Developer Party generally to pay its debts as such debts become due or the taking of action by a Developer Party in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others that is not dismissed within 60 days after filing.

5. Any transfer of any portion of the Redevelopment Property or of a Redevelopment Project Phase in violation of the provisions of either Section 13.B, Section 13.E or Section 13.F above, but only if, with respect to Section 13.B, within 90 days after receiving written notice of such failure from the Village, the assignee or transferee fails to execute a Transferee Assumption Agreement in which the transferee agrees to be bound by the provisions of this Agreement, and if, at the time such notice is received (a) there has not occurred Residential Substantial Completion of the Phase I Residential Buildings, the transferee provides the Village reasonable evidence that it either (a) has the financial ability to Substantially Complete the Phase I Residential Buildings, or (b) has senior personnel or representatives that have, in the aggregate, developed at least three assets similar in size, type, and scope as the Phase I Residential Buildings, within the 15-year period preceding the date of the transfer, or (b) there has not occurred Retail Substantial Completion of the Phase I Retail/Commercial Space, the transferee provides the Village reasonable evidence that it either (a) has the financial ability to Substantially Complete the Phase I Retail/Commercial Space, or (b) has senior personnel or representatives that have, in the aggregate, developed at least three assets similar in size, type, and scope as the Phase I Retail/Commercial Space, within the 15-year period preceding the date of the transfer.

6. A Developer Party abandons the construction of a Redevelopment Project Phase after it has initiated its construction. Abandonment will be deemed to have occurred when work stops on such Phase for more than 90 days (plus one day for each day upon which work is limited because of Uncontrollable Circumstances), unless otherwise permitted by this Agreement, but only if the Developer Party does not re-commence work within 90 days after receiving written notice of such event from the Village. The failure of a Developer Party to secure any other approvals required for the development or construction of a Phase (other than a failure resulting from an Uncontrollable Circumstance) will not be a valid defense to abandonment.

7. A Developer Party fails, for 90 days after written notice, to comply with the Requirements of Law in relation to the construction and maintenance of the Buildings and Improvements it has undertaken to construct pursuant to this Agreement.

B. Events of Default by the Village. The following are "*Village Events of Default*" under this Agreement:

1. If any representation made by the Village in this Agreement, or in any certificate, notice, demand, or request made by the Village, in writing and delivered to a Developer Party, pursuant to or in connection with any of said documents, proves to be untrue or incorrect in any material respect as of the date made.

2. Subject to an Uncontrollable Circumstance, failure by the Village for a period of 60 days after written notice thereof in the performance or breach of any covenant, warranty or obligation contained in this Agreement; provided, however, that such failure will not constitute a Village Event of Default if such failure cannot be reasonably cured within said 60 days and the Village, within said 60 days, initiates and diligently pursues appropriate measures to remedy the failure and in any event cures such failure within 120 days after such notice.

C. **Remedies for Default.** In the case of a Party's Event of Default under this Agreement:

1. Except as otherwise provided in this Agreement, the non-defaulting Party may institute such proceedings in law or in equity, by suit, action, mandamus, or any other proceeding, as may be necessary or desirable in its opinion to cure or remedy such Event of Default, including proceedings to compel specific performance of the defaulting Party's obligations under this Agreement.

2. In addition to every other remedy permitted by law for the enforcement of the terms of this Agreement, if an act or omission of a Developer Party is an uncured Developer Event of Default, the Village shall be entitled to withhold the issuance of building permits or certificates of occupancy for any and all Structures for any portion of the Redevelopment Project then being constructed by such Developer Party; except that the Village shall not withhold the issuance of any building permit or certificate of occupancy if there exists a good faith dispute, as determined by the Village, between said Developer Party and the Village as to whether the acts or omissions of the Developer Party constitute a Developer Event of Default.

3. In case the Village has proceeded to enforce its rights under this Agreement and such proceedings have been discontinued or abandoned for any reason, then, and in every such case, the Developer Parties and the Village will be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Developer Parties and the Village will continue as though no such proceedings had been taken.

4. If a Developer Party undertaking the construction of a Phase of the Redevelopment Project commits a Developer Event of Default before a Certificate of Completion is issued for such Phase, the Village, at its option and upon notice to such Developer Party, may terminate its obligation to reimburse such Developer Party the Eligible Costs it has incurred in constructing such Phase and its obligation to issue the TIF Notes and the Sales Tax Note it would have otherwise issued as a result of the construction of such Phase pursuant to Section 9 and Section 10 of this Agreement.

D. **Remedies under the Village Code.** Nothing in this Agreement shall prohibit or limit the Village from exercising any remedy available to it under the Village Code, including the Zoning Code and the Development Ordinance, if a Developer Party commits a Developer Event of Default in connection with the construction of any Redevelopment Project Phase.

E. **Limitations.** Notwithstanding anything to the contrary contained in this Agreement, including the provisions of this Section 16, the Developer Parties agree that they will not seek, and that they do not have the right to seek, to recover a judgment for monetary damages against the Village or any elected or appointed officials, officers, employees, agents, representatives, engineers, or attorneys of the Village, on account of the negotiation, execution or breach of any of the terms and conditions of this Agreement; however, in no event shall the foregoing limitation prohibit any Developer Party from pursuing (i) all rights and remedies to which it is entitled under Section 16.B above if the Village fails to pay an amount due on a Note or any other monetary amount due to such Developer Party (although any monetary damages for such failure will be limited to the amount of the amount or amounts due and unpaid, together with attorneys' fees and other costs of collection) and (ii) its reimbursement rights, if any, under Section 16.F. The Parties hereby waive any right to pursue consequential or punitive damages against one another.

F. **Prevailing Party.** If a judicial proceeding is brought by one Party against another Party, the prevailing Party in the judicial proceeding will be entitled to reimbursement from the unsuccessful Parties of all costs and expenses, including reasonable attorneys' fees, incurred in connection with the judicial proceeding.

**Section 17. GENERAL PROVISIONS.**

A. **Notice.** All notices required or permitted to be given under this Agreement shall be given by the Parties by: (1) personal delivery; (2) deposit in the United States mail, enclosed in a sealed envelope with first class postage thereon sent certified return receipt confirmation; or (3) deposit with a nationally recognized overnight delivery service, addressed as stated in this Section 17.A with signature required for delivery confirmation. The address of any Party may be changed by written notice to the other Parties. Any mailed notice will be deemed to have been given and received within three days after the same has been mailed and any notice given by overnight courier will be deemed to have been given and received within 24 hours after deposit and receipt is confirmed. Notices and communications to the Parties shall be addressed to, and delivered at, the following addresses:

Notices and communications to the Village shall be addressed to, and delivered at, the following address:

Village of Vernon Hills  
290 Evergreen Drive  
Vernon Hills, IL 60061  
Attention: Village Manager  
E-mail: [ktimony@vhills.org](mailto:ktimony@vhills.org)

With a copy to:

James V. Ferolo  
Klein, Thorpe & Jenkins, Ltd.  
20 N. Wacker Dr. Suite 1660  
Chicago, IL 60606  
E-mail: [jvferolo@ktjlaw.com](mailto:jvferolo@ktjlaw.com)

Notices and communications to Hawthorn L.P., Hawthorn SP and/or Hawthorn CP shall be addressed to, and delivered at, the following addresses:

Centennial Real Estate Company  
8750 N. Central Expressway, Suite 1740  
Dallas, Texas 75231  
Attention: Executive Vice President, Development & Construction  
E-mail: [orobinson@centennialrec.com](mailto:orobinson@centennialrec.com)

With copies to:

Centennial Real Estate Company  
8750 N. Central Expressway, Suite 1740  
Dallas, Texas 75231  
Attention: Chief Legal Counsel  
E-mail: [gschmidt@centennialrec.com](mailto:gschmidt@centennialrec.com);

and

Harold W. Francke  
Meltzer, Purtill & Stelle, LLC  
1515 E. Woodfield Road, Suite 250  
E-mail: [hfrancke@mpslaw.com](mailto:hfrancke@mpslaw.com)

Notices and communications to Hawthorn Venture Owner shall be addressed to, and delivered at, the following addresses:

Hawthorn Venture Partners LLC  
c/o Focus Development, Inc.  
100 South Wacker, Suite 2100  
Chicago, IL 60606  
Attention: Tim Anderson  
E-mail: [tima@workwithfocus.com](mailto:tima@workwithfocus.com)

With copies to:

USAA Real Estate Company  
9830 Colonnade Boulevard, Suite 600  
San Antonio, Texas 78230-2239  
Attention: Legal Department  
E-mail: [notice@usrealco.com](mailto:notice@usrealco.com)

and

Goodwin Procter LLP  
100 Northern Avenue  
Boston, MA 02210  
Attention: James M. Broderick, Esq.  
E-mail: [jbroderick@goodwinlaw.com](mailto:jbroderick@goodwinlaw.com)

and

Katten Muchin Rosenman LLP  
525 West Monroe Street  
Chicago, IL 60661  
Attention: Alvin Katz, Esq.  
E-mail: [Alvin.Katz@katten.com](mailto:Alvin.Katz@katten.com)

B. **Time of the Essence.** Time is of the essence in the performance of all terms and provisions of this Agreement.

C. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes any and all prior agreements and negotiations between and among the Parties, whether written or oral, relating to the subject matter of this Agreement.

D. **Exhibits/Conflicts.** Exhibits A through O attached to this Agreement are, by this reference, incorporated in and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement will control.

E. Amendments and Modifications.

1. Subject to the provisions set forth below, no amendment or modification to this Agreement will be effective unless and until it is reduced to writing and approved and executed by all Parties to this Agreement in accordance with all applicable statutory procedures.

2. Amendments or modifications to Plan Approval Ordinances may be considered and acted on by the Corporate Authorities without the same being deemed an amendment or modification to this Agreement, provided all applicable requirements of the Zoning Code and Development Ordinance are complied with and satisfied.

3. The Parties may agree to modify the exhibits to this Agreement or extend the time for the performance of a Party's obligation under this Agreement without amending or modifying this Agreement, subject to the Requirements of Law.

4. Applications for an amendment to this Agreement which reference only a given portion of the Redevelopment Property or a given Phase need only be signed by the Person that owns such portion of the Redevelopment Property or Phase. The Village shall have the right to approve such amendment without the consent of the Persons who own the other portions of the Redevelopment Property and other Phases.

F. Governing Law. This Agreement is governed by, and will be enforced in accordance with, the internal laws, but not the conflicts of laws rules, of the State of Illinois.

G. Changes in Laws. Unless otherwise explicitly provided in this Agreement, any reference to any Requirements of Law includes any modifications of, or amendments to such Requirements of Law as may, from time to time, hereinafter occur.

H. Non-Waiver. No Party is under any obligation to exercise any of the rights granted to it in this Agreement. The failure of a Party to exercise at any time any right granted to such Party will not be deemed or construed to be a waiver of that right, nor will the failure void or affect such Party's right to enforce that right or any other right.

I. Severability. It is hereby expressed to be the intent of the Parties hereto that should any provision, covenant, agreement, or portion of this Agreement or its application to any Person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any Person or property will not be impaired thereby, but the remaining provisions will be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

J. Assignments. Except as provided in Section 13 above, the Owners may not assign this Agreement, in whole or in part, or any of their rights or obligations under this Agreement, without the express written approval of the Village, which approval may be given or withheld in the sole and unfettered discretion of the Village.

K. No Third-Party Beneficiaries. No claim as a third-party beneficiary under this Agreement by any Person may be made, or will be valid, against any Party hereto.

L. Interpretation. This Agreement is to be construed without regard to the identity of the Party who drafted the various provisions of this Agreement. Each provision of this Agreement is to be construed as though both parties to this Agreement participated equally in

the drafting of this Agreement. Any rule or construction that a document is to be construed against the drafting Party is not applicable to this Agreement.

M. **Headings**. The table of contents, heading, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

N. **Recording**. The Village will record this Agreement against the Mall Property, at the sole cost and expense of the Owners, with the Office of the Lake County Recorder of Deeds promptly following the execution of this Agreement by the Parties.

O. **Counterparts**. This Agreement may be executed in counterparts, each of which will constitute an original document and together will constitute the same instrument.

**[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.  
SIGNATURE PAGES FOLLOW.]**

**IN WITNESS WHEREOF**, the Parties have affixed their signatures to this Agreement, to be effective as of the Effective Date.

**VILLAGE:**

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

By: \_\_\_\_\_  
Its: Village President

**ATTEST:**

By: \_\_\_\_\_  
Its: Village Manager

**OWNERS:**

**HAWTHORN SP, LLC**, a Delaware limited liability company

By: US Centennial Malls JV II, LLC, a Delaware limited liability company, its Sole Member

By: Centennial/USEF Manager, LLC, a Delaware limited liability company, its Managing Member

By: \_\_\_\_\_  
Name: Steven H. Levin  
Title: President

**HAWTHORN CP, LLC**, a Delaware limited liability company

By: US Centennial Malls JV II, LLC, a Delaware limited liability company, its Sole Member

By: Centennial/USEF Manager, LLC, a Delaware limited liability company, its Managing Member

By: \_\_\_\_\_  
Name: Steven H. Levin  
Title: President

**HAWTHORN, L.P.**, an Illinois limited partnership

By: WEA Hawthorn Shopping Center GP, LLC, a Delaware limited liability company, its General Partner

By: US Centennial Malls JV, LLC, a Delaware limited liability company, its Sole Member

By: Centennial/USEF Manager, LLC, a Delaware limited liability company, Its Managing Member

By: \_\_\_\_\_  
Name: Steven H. Levin  
Title: President

**USEF CENTENNIAL FA HAWTHORN OWNER LLC**, a Delaware limited liability company

By: USEF Centennial FA Hawthorn Venture LLC, a Delaware limited liability company, its sole member

By: Hawthorn Venture Partners, LLC, a Delaware limited liability, Its Operating Member

By: \_\_\_\_\_  
Name: Tim Anderson  
Title: Manager

IN WITNESS WHEREOF, the Parties have affixed their signatures to this Agreement, to be effective as of the Effective Date.

**VILLAGE:**

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

By: [Signature]  
Its: Village President

**ATTEST:**

By: [Signature]  
Its: Village Manager

**OWNERS:**

**HAWTHORN SP, LLC**, a Delaware limited liability company

By: US Centennial Malls JV II, LLC, a Delaware limited liability company, its Sole Member

By: Centennial/USEF Manager, LLC, a Delaware limited liability company, its Managing Member

By: \_\_\_\_\_  
Name: Steven H. Levin  
Title: President

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By: Centennial/USEF Manager, LLC, a Delaware limited liability company, its Managing Member

By: \_\_\_\_\_  
Name: Steven H. Levin  
Title: President

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By: US Centennial Malls JV, LLC, a Delaware limited liability company, its Sole Member

By: Centennial/USEF Manager, LLC, a Delaware limited liability company, its Managing Member

By: \_\_\_\_\_  
Name: Steven H. Levin  
Title: President

**USEF CENTENNIAL FA HAWTHORN OWNER LLC**, a Delaware limited liability company

By: Hawthorn Venture Partners, LLC, a Delaware limited liability, Its Operating Member

By: \_\_\_\_\_  
Name: Tim Anderson  
Title: Manager

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**VILLAGE:**

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

By: \_\_\_\_\_  
Its: Village President

**ATTEST:**

By: \_\_\_\_\_  
Its: Village Manager

**OWNERS:**

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By: Centennial/USEF Manager, LLC, a Delaware limited liability company, its Managing Member

By: \_\_\_\_\_  
Name: Steven H. Levin  
Title: President

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By: \_\_\_\_\_  
Name: Steven H. Levin  
Title: President

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By: US Centennial Malls JV, LLC, a Delaware limited liability company, its Sole Member

By: Centennial/USEF Manager, LLC, a Delaware limited liability company, its Managing Member

By: \_\_\_\_\_  
Name: Steven H. Levin  
Title: President

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By: USEF Centennial FA Hawthorn Venture LLC, a Delaware limited liability company, its sole member

By: Hawthorn Venture Partners, LLC, a Delaware limited liability, its Operating Member

By: \_\_\_\_\_  
Name: Tim Anderson  
Title: Manager

State of Illinois            )  
                                      ) SS  
County of Lake            )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Roger Byrne and Mark Fleischhauer, personally known to me to be the Village President and Village Manager, respectively, of the **VILLAGE OF VERNON HILLS**, and personally known to me to be the same persons whose names are subscribed to the foregoing agreement, appeared before me this day in person and severally acknowledged that, as such Village President and Village Manager, they signed said agreement pursuant to authority duly given by the Corporate Authorities of said Village.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public

State of Texas            )  
                                      ) SS  
County of \_\_\_\_\_)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Steven H. Levin, personally known to me to be the same person whose name is subscribed to the foregoing agreement, appeared before me this day in person and acknowledged that he signed said agreement.

Given under my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2021.

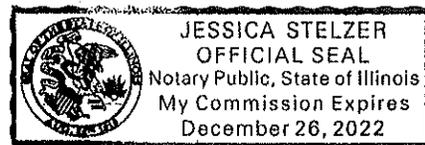
\_\_\_\_\_  
Notary Public

State of Illinois        )  
                                      ) SS  
County of COOK        )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Tim Anderson, personally known to me to be the same person whose name is subscribed to the foregoing agreement, appeared before me this day in person and acknowledged that he signed said agreement.

Given under my hand and Notarial Seal this 14 day of July, 2021.

Jessica Stelzer  
Notary Public



State of Illinois )  
 ) SS  
County of Lake )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Roger Byrne and Mark Fleischhauer, personally known to me to be the Village President and Village Manager, respectively, of the **VILLAGE OF VERNON HILLS**, and personally known to me to be the same persons whose names are subscribed to the foregoing agreement, appeared before me this day in person and severally acknowledged that, as such Village President and Village Manager, they signed said agreement pursuant to authority duly given by the Corporate Authorities of said Village.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public

State of Texas )  
 ) SS  
County of Dallas )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Steven H. Levin, personally known to me to be the same person whose name is subscribed to the foregoing agreement, appeared before me this day in person and acknowledged that he signed said agreement.

Given under my hand and Notarial Seal this 20 day of July, 2021.

Kristle Klescewski  
Notary Public



State of Illinois )  
 ) SS  
County of \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Tim Anderson, personally known to me to be the same person whose name is subscribed to the foregoing agreement, appeared before me this day in person and acknowledged that he signed said agreement.

Given under my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public

State of Illinois )  
 ) SS  
County of Lake )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Roger Byrne and Kevin Timony, personally known to me to be the Village President and Village Manager, respectively, of the **VILLAGE OF VERNON HILLS**, and personally known to me to be the same persons whose names are subscribed to the foregoing agreement, appeared before me this day in person and severally acknowledged that, as such Village President and Village Manager, they signed said agreement pursuant to authority duly given by the Corporate Authorities of said Village.

Given under my hand and official seal this 20<sup>th</sup> day of July, 2021.



Elizabeth Koehl  
Notary Public

State of Texas )  
 ) SS  
County of \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Steven H. Levin, personally known to me to be the same person whose name is subscribed to the foregoing agreement, appeared before me this day in person and acknowledged that he signed said agreement.

Given under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public

State of Illinois )  
 ) SS  
County of \_\_\_\_\_ )

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Given under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public



Exhibit A

Depiction of the Mall Property / Ownership Map

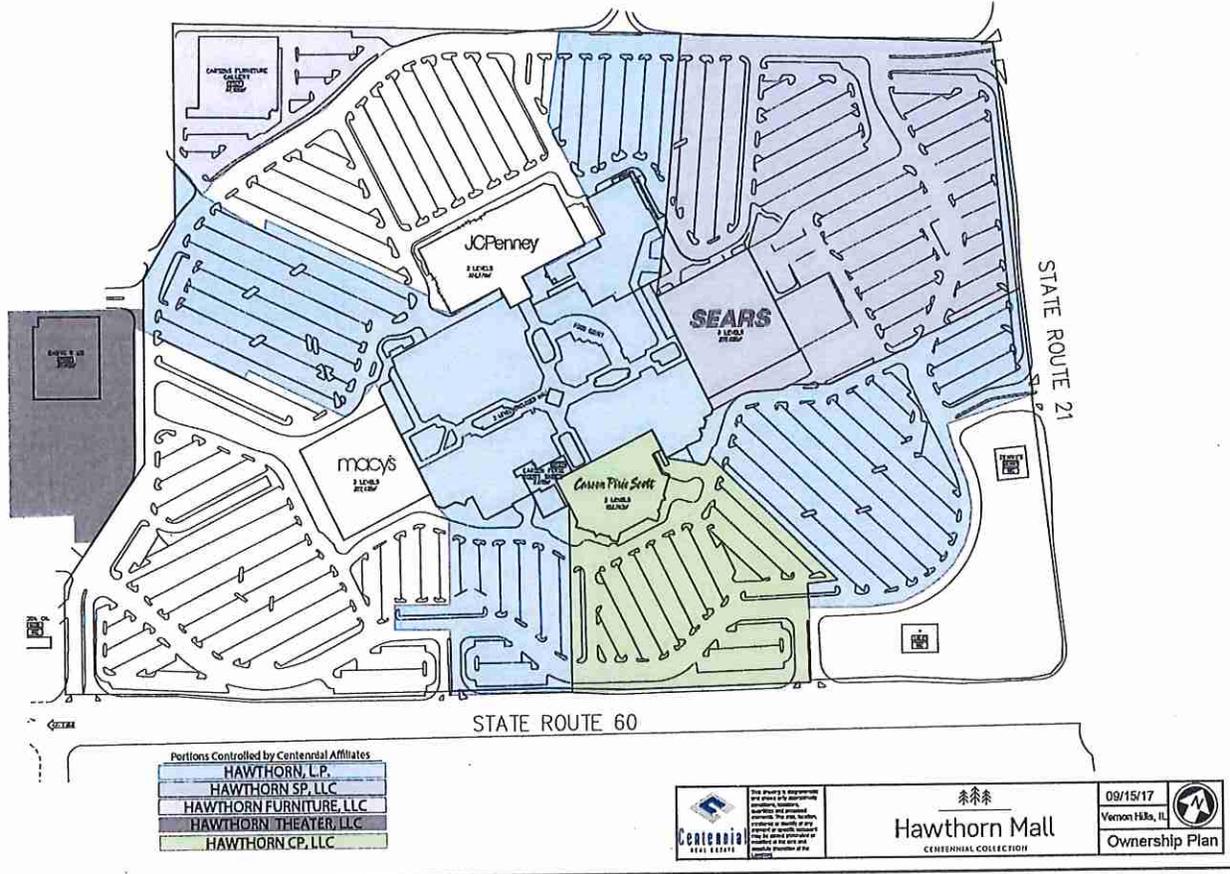
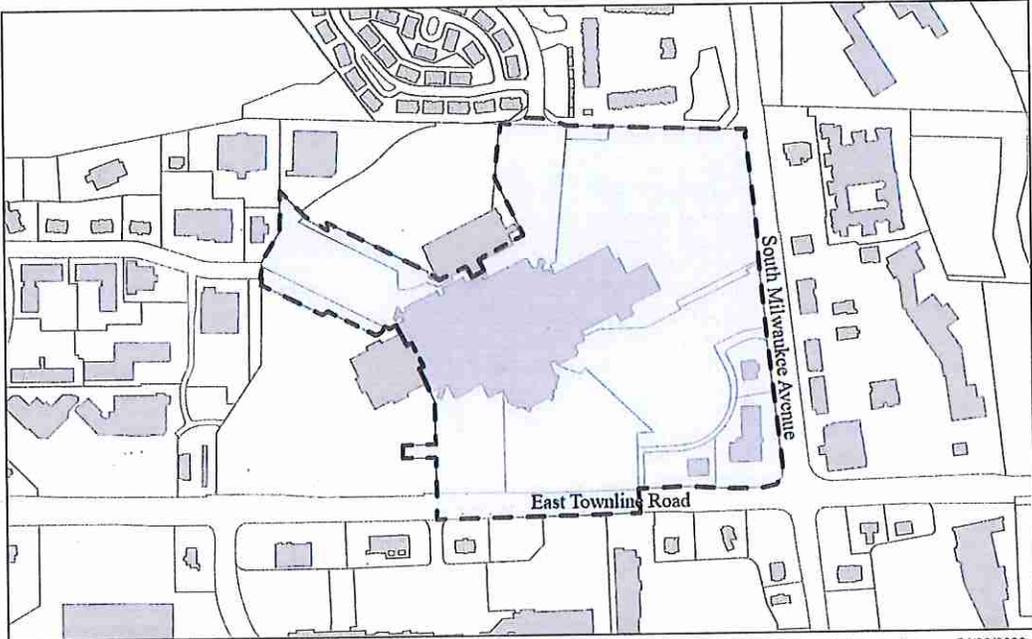


Exhibit B-1

Depiction of the TIF District Boundaries

Village of Vernon Hills, Illinois Hawthorn Mall TIF  
Boundary Map



Prepared on 07/09/2020 by:

Sources: Geographic information accessed from maps.lakecountyl.gov on 04/29/2020

 **Kane, McKenna**  
and Associates, Inc.

0 0.05 0.1 0.2 Miles



EXHIBIT B-2

Permanent Index Numbers of TIF District Parcels

11-33-401-004

11-33-401-006

11-33-401-089

11-33-401-088

11-33-401-087

11-33-401-086

11-33-401-085

11-33-401-013

11-33-401-014

11-33-401-015

11-33-401-016

and any Permanent Index Numbers created by the division of such parcels into new tax parcels.

EXHIBIT B-3

Permanent Index Numbers of TIF District Parcels  
which will Serve as the Basis for Establishing Available Incremental Property Taxes

11-33-401-004

11-33-401-089

11-33-401-088

11-33-401-087

11-33-401-086

11-33-401-085

11-33-401-013

and any Permanent Index Numbers created by the division of such parcels into new tax parcels.

Exhibit C

Depictions of the Redevelopment Property, as it Exists as of the Effective Date and as it is Proposed to be Subdivided

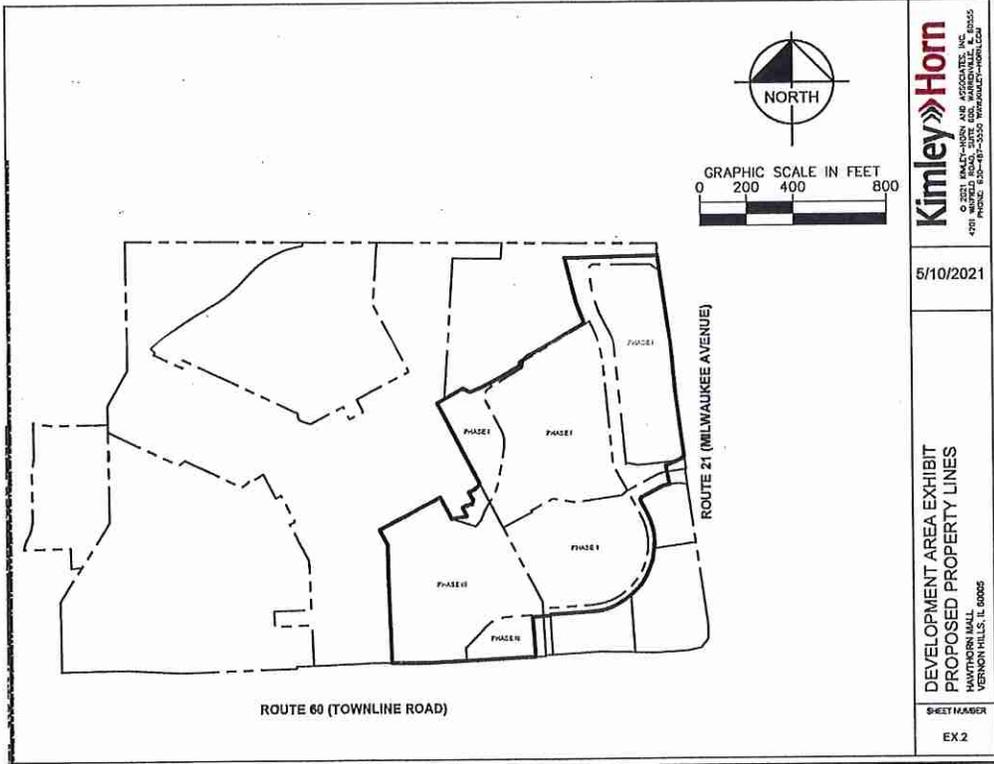
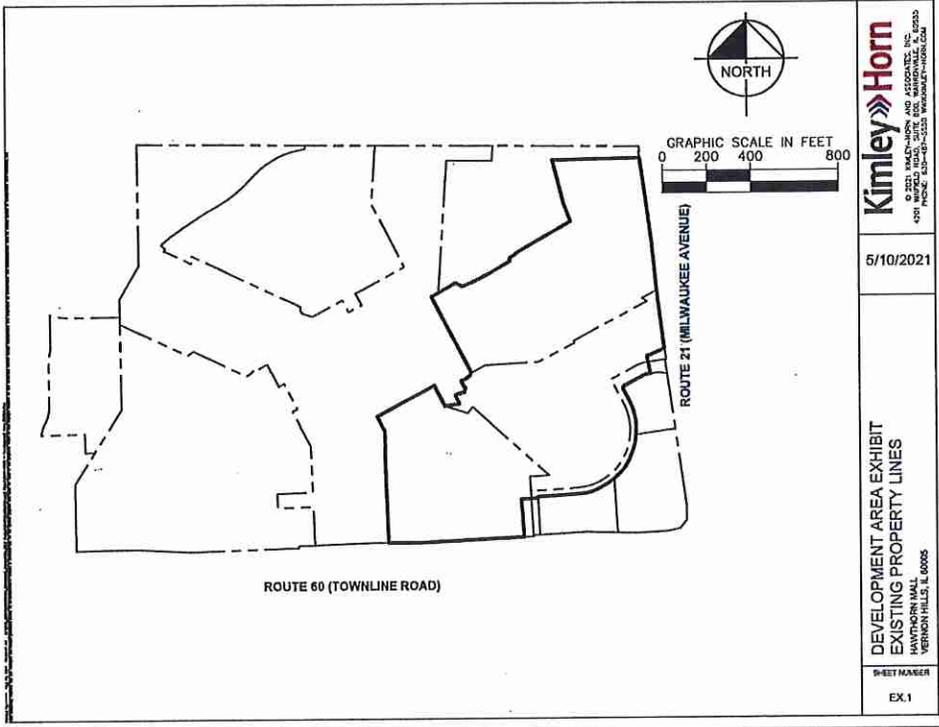


Exhibit D

Description of the Redevelopment Project

As of the Effective Date, the "**Redevelopment Project**" encompasses the following three general phases of development (individually, a "**Phase**" and collectively, the "**Phases**"):

The first Phase (the "**Phase I Project**") is to consist of the following:

- (i) The interior renovation of the space within the main mall building that Hawthorn, L.P. owns (the "**Mall Renovation Project**");
- (ii) The demolition of the Sears store that existed on the Mall Property;
- (iii) The construction of two four-story, mixed-use buildings containing approximately 46,507 square feet of new gross leasable first-floor Retail/Commercial space, and a maximum of 313 upper-story luxury residential units with a high-quality amenity package (which Retail/Commercial space is hereinafter referred to as the "**Phase I Retail/Commercial Space**", and which upper-story residential components of the Phase I Project are hereinafter referred to individually as a "**Phase I Residential Building**" and collectively as the "**Phase I Residential Buildings**");
- (iv) The construction of a new 570-stall parking garage to serve the Phase I Retail/Commercial Space and the Phase I Residential Buildings (the "**Phase I Parking Garage**");
- (v) The construction of a new "Main Street" with urban streetscape boulevard and promenade;
- (vi) The construction of a public plaza in an area adjacent to the main mall building;
- (vii) The construction of approximately 13,925 square feet of new gross leasable outward facing Retail/Commercial space fronting on the public plaza, and
- (viii) The construction of approximately 23,000 square feet of new gross leasable Retail/Commercial space on three newly platted outlots adjacent to the western boundary of Milwaukee Avenue (Route 21)(the "**Outlots**").

The Developers estimate the total cost of the Phase I Project at approximately \$152,000,000 (the "**Phase I Project Cost**"), approximately \$7,000,000 of which pertains to the Mall Renovation Project.

The second Phase (the "**Phase II Project**") is to consist of the following:

- (i) The construction of a four-story building containing a maximum of 249 Class A residential units Class A luxury residential units with high end finishes and a quality amenity package (which building is hereinafter referred to as the "**Phase II Residential Building**"); and
- (ii) The construction of a new 460-stall parking garage to serve the Phase II Residential Building.

The third Phase (the "**Phase III Project**") is to consist of the following:

- (i) The construction of a new retail store on a portion of the Mall Property that is owned by Hawthorn CP (the "**Sleep Number Building**").
- (ii) The demolition, renovation, or rehabilitation of the existing Carson's Store;
- (iii) The construction, renovation or rehabilitation of building improvements containing approximately 100,000 square feet of new gross leasable Retail/Commercial space (which Retail/Commercial space is hereinafter referred to as the "**Phase III Retail/Commercial Space**"), and
- (iv) The construction of new gathering and open spaces.

The Developers estimate the total cost of the Phase II Project and Phase III Project, in the aggregate, at approximately \$100,000,000 ("**Phase II/Phase III Project Cost**").

Exhibit E

Eligible Costs

<u>CATEGORY</u>	<u>ESTIMATED BUDGET<sup>1</sup></u>
1. Land Acquisition and Assembly	\$4,000,000-\$5,000,000
2. Site Preparation and Demolition	\$20,000,000-\$35,000,000
3. Rehabilitation, reconstruction or repair or remodeling of Existing Buildings, Fixtures and Leasehold Improvements	\$7,000,000-\$15,000,000
4. <u>Eligible Soft Costs</u>	<u>\$3,500,000-\$5,000,000</u>
TOTAL	\$35,500,000-\$60,000,000 <sup>2</sup>

Including:

A. Costs of studies, surveys, development of plans, including, site planning; geotechnical engineering; civil engineering design; traffic engineering design and geometrics; environmental consultant fees and remediation costs incurred to remove any contamination found on the Redevelopment Property, subject to the limitation that these services do not relate to the design of any buildings or any vertical construction of Buildings on the Redevelopment Property.

B. Legal and financial consultant fees and third party costs relating to all aspects of the land use entitlement process, the creation of the TIF District; and the negotiation and implementation of the Redevelopment Agreement, provided, however, that this shall not include legal fees relating to construction contracts for the construction of the on-site Improvements or the construction of Buildings on the Redevelopment Property or legal fees relating to the leasing of the residential and commercial components of the Redevelopment Project.

C. On-site construction hard costs including pavement removal and reconstruction, earth moving, erosion control, and site grading.

D. Permit, inspection, water and sewer connection and other fees payable to the Village, Lake County and other units of local government, including the fees payable pursuant to Section 6 of the Agreement but not including fees related to any vertical construction of Buildings on the Redevelopment Property (except for the aforesaid Section 6 fees) or the construction of individual utility service lines to any Building.

<sup>1</sup> These figures are intended to provide an estimate and summary of the Eligible Costs the Developer Parties have incurred as of the Effective Date of this Agreement and may incur after the Effective Date in the construction of the Redevelopment Project. They are not intended to establish a minimum amount of Eligible Costs that are to be reimbursed to Developer Parties in the construction of the Redevelopment Project; nor are they intended to suggest or authorize a reimbursement to Developer Parties of Eligible Costs in excess of the Maximum Reimbursement Amount (that is, \$43,000,000). In addition, the Parties agree that: (1) Eligible Costs may be reimbursed to Developer Parties even if they do not fall within one of the above-specified categories, provided they constitute eligible redevelopment project costs under the TIF Act; and (2) adjustments to the above line items of cost are expected and may be made within the total without an amendment to this Agreement, by way of either increasing or decreasing the identified amounts, provided the total amount of Eligible Costs reimbursed does not exceed the Maximum Reimbursement Amount.

<sup>2</sup> The cost categories and amounts identified above do not include interest amounts payable on any TIF Notes.

Exhibit F

Village-District 73 Intergovernmental Agreement

[See attached]

**AN INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE VILLAGE OF VERNON HILLS AND HAWTHORN COMMUNITY  
CONSOLIDATED SCHOOL DISTRICT 73 REGARDING THE  
HAWTHORN MALL TAX INCREMENT FINANCING DISTRICT**

This INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF VERNON HILLS AND HAWTHORN COMMUNITY CONSOLIDATED DISTRICT 73 REGARDING THE HAWTHORN MALL TAX INCREMENT FINANCING DISTRICT ("Agreement") is by and between the VILLAGE OF VERNON HILLS, an Illinois home rule municipal corporation ("Village"), and HAWTHORN COMMUNITY CONSOLIDATED SCHOOL DISTRICT 73, an Illinois public school district ("District 73"). The Village and District 73, are individually referred to in this Agreement as a "Party" and collectively referred to as the "Parties."

**RECITALS**

**WHEREAS**, the Village pursued, and intends to further pursue, private and public investment, development and redevelopment of properties within the vicinity of the Hawthorn Mall area in the Village; and

**WHEREAS**, the Village, to further such investment, development and redevelopment, may approve and create a tax increment redevelopment plan and project, designated the tax increment redevelopment project area and adopted tax increment financing relative to the Village's proposed Hawthorn Mall Tax Increment Financing District ("Hawthorn Mall TIF District"), which includes the property legally described and depicted in **EXHIBITS A-1** and **A-2**, respectively, attached hereto and made a part hereof, in accordance with the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.* ("TIF Act"); and

**WHEREAS**, the Village and the owners of certain portions of the Hawthorn Mall (collectively, "Developer") have been negotiating the terms of a redevelopment agreement to redevelop the Hawthorn Mall within the Hawthorn Mall TIF District ("Redevelopment Agreement"), including significant private investment and the construction of several new buildings, including two apartment buildings which have been planned to contain 303 units in one building (such building and the land associated with such building being collectively herein referred to as the "First Building"), and 240 units in a second building (such building and the land associated with such building being collectively herein referred to as the "Second Building"); and

**WHEREAS**, District 73 has threatened to contest the establishment of the Hawthorn Mall TIF District and the use of tax increment financing by the Village within the Hawthorn Mall TIF District, including pursuant to the Redevelopment Agreement, and the Village believes there is no legitimate basis for such contest, hence there is a dispute between the Parties ("Dispute");

**WHEREAS**, District 73 has agreed to refrain from contesting the establishment of the Hawthorn Mall TIF District and the Village's use of tax increment financing within the Hawthorn Mall TIF District provided the Parties enter into this Agreement and perform their respective obligations hereunder; and

**WHEREAS**, the Constitution of the State of Illinois, 1970, Article VII, Section 10, authorizes units of local government and school districts to contract or otherwise associate among themselves in any manner not prohibited by law or by ordinance; and

**WHEREAS**, the Intergovernmental Cooperation Act, 5 ILCS 220/1, *et seq.*, provides that any power or powers, privileges or authority exercised or which may be

exercised by a unit of local government or school district may be exercised and enjoyed jointly with any other units of local government or school districts; and

**WHEREAS**, Section 4(b) of the TIF Act, 65 ILCS 5/11-74.4-4(b), authorizes municipalities to enter into contracts with overlapping taxing bodies necessary or incidental to implementing or maintaining a tax increment financing redevelopment plan and/or project; and

**WHEREAS**, the Parties desire to resolve the issues presented by the Dispute pursuant to the terms of this Agreement; and

**WHEREAS**, the Parties and Developer have determined that it is in their respective best interests, and the best interests of their constituents, to enter into this Agreement;

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

1. **RECITALS.** The recitals set forth above are hereby incorporated herein by reference as though fully set forth herein.

2. **DEFINITIONS.** The following words and phrases in this Agreement have the following meanings, whether the words and phrases are used in the singular or plural:

A. "Incremental Property Taxes" means that portion of the *ad valorem* real estate taxes, if any, arising from the taxes levied upon the property in question, which taxes are actually collected and paid to the Village, and which

are attributable to the increase in the equalized assessed valuation ("EAV") of the property in question over and above the EAV of the property in question at the time of the formation of the Hawthorn Mall TIF District, all as determined by the Lake County Clerk, pursuant to and in accordance with the TIF Act and the ordinances creating the Hawthorn Mall TIF District.

B. "Intends" means a Party shall use its reasonable good faith efforts to comply with the obligation or covenant to which the word "intends" relates.

C. "Shall" means a Party is required to comply with the obligation or covenant to which the word "shall" relates.

**3. VILLAGE OBLIGATIONS.** Provided the Village establishes the Hawthorn Mall TIF District and the Redevelopment Agreement is approved by the Village Board and Developer:

A. The Village shall:

i. pay to District 73 an amount equal to twenty seven percent (27%) of the Incremental Property Taxes, if any, attributable to, respectively, the First Building and the Second Building after final certificates of occupancy have been issued for, respectively, the First Building and the Second Building, so that District 73 is able to pay a portion of District 73's capital costs resulting from the development of, respectively, the First Building and the Second Building, under Section 3(q)(7) of the TIF Act, 65 ILCS 5/11-74.4-3(q)(7), and in full satisfaction of the student tuition assistance to District 73 owed under Section 3(q)(7.5) of the TIF Act, 65 ILCS 5/11-74.4-3(q)(7.5);

ii. declare as surplus ("Surplus") one hundred percent (100%) of the incremental property taxes attributable to the properties described by the property identification numbers ("PINs") listed in EXHIBIT B attached hereto and made a part hereof, which declaration of surplus shall be made under Section 7 of the TIF Act, 65 ILCS 5/11-74.4-7, and the Village shall pay the Surplus to the Lake County Collector. After payment of the Surplus to the Lake County Collector, the Parties anticipate that, pursuant to Section 7 of the TIF Act, 65 ILCS 5/11-74.4-7, the Lake County Collector will distribute the Surplus as set forth in the TIF Act; and

iii. include in the Redevelopment Agreement a requirement that Developer pay District 73 impact fees pursuant to the Village of Vernon Hills Village Code ("Village Code") and a Developer contribution such that the impact fees paid by Developer and the Developer contribution together equal Four Hundred Thousand and No/100 Dollars (\$400,000.00), which sum Developer shall pay on the following terms and conditions:

a. upon issuance of a Village-issued final certificate of occupancy for the First Building, Developer shall pay District 73: (y) the impact fees required to be paid for such building pursuant to the Village Code and (z) the difference, if any, between Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) and the impact fees paid by Developer for the First Building pursuant to the Village Code; and

b. upon issuance of a Village-issued final certificate of occupancy for the Second Building, Developer shall pay District 73: (y) the impact fees required to be paid for such building pursuant to the Village Code and (z) the difference, if any, between One Hundred Sixty Thousand and No/100 Dollars (\$160,000.00) and the impact fees paid by Developer for the Second Building pursuant to the Village Code.

B. During years three (3) through twenty-three (23) of the term of the Hawthorn Mall TIF District, the Village intends to:

i. annually analyze non-committed incremental property taxes generated within the Hawthorn Mall TIF District and consider whether to declare some or all of such incremental property taxes as surplus revenue pursuant to Section 7 of the TIF Act, 65 ILCS 5/11-74.4-7; and

ii. consider the early termination of the Hawthorn Mall TIF District (x) after payment of all amounts owed under the Redevelopment Agreement and other contractual obligations related to the Hawthorn Mall TIF District, (y) after payment of all eligible redevelopment project costs per the redevelopment plan and project for the Hawthorn Mall TIF District, and (z) after payment of all administrative costs of the Hawthorn Mall TIF District.

**4. DISTRICT 73 OBLIGATIONS AND COVENANTS.** Regarding the Hawthorn Mall TIF District, District 73 shall not file litigation to challenge, or otherwise challenge, contest or dispute, the validity or enforceability of ordinances adopted by the

Village in furtherance of the establishment and implementation of the Hawthorn Mall TIF District, the Redevelopment Agreement or the Village's or Developer's actions related to the Hawthorn Mall TIF District and/or the Redevelopment Agreement.

**5. MUTUAL OBLIGATIONS.** After the Effective Date (as hereinafter defined):

A. The Parties shall meet and confer at the request of the other Party regarding this Agreement and any matter related to this Agreement.

B. No Party shall initiate legal action in court against the other Party regarding this Agreement or any matter related to this Agreement without first participating in good faith mandatory mediation regarding the dispute. Mediation shall be conducted as follows:

i. A Party may initiate mediation by requesting the other Party to agree to a mediator and a site for the mediation. If, within five (5) business days after a Party makes this request, the Parties cannot agree on a mediator or the site of the mediation, each Party shall select a mediator, and the mediators thus selected shall select a mediator who shall mediate the dispute. The mediation shall begin as promptly as reasonably possible after the selection of the mediator. The site of the mediation shall be as determined by the mediator.

ii. Rules governing the mediation, including any rule as to whether the Parties may use attorneys in the mediation, shall be decided by the Parties with the assistance of the mediator. Each Party shall bear

the Party's own expenses of the mediation, except that the Parties shall be equally liable for the fees charged by the mediator.

iii. The date of termination of a mediation shall be decided by the mediator. Promptly after this termination, in the case of failure to resolve completely any dispute, the mediator shall draft a notice of mediation to the Parties. This notice shall bear a current date and shall briefly state the issues that, in the mediator's view, are in dispute between the Parties but have not been resolved in mediation. If the dispute between the Parties has not been resolved in mediation, the Party initiating the mediation may initiate a legal action in court regarding the subject matter of the mediation, provided that mediation shall not prejudicially or unduly delay the legal rights of any Party to seek a legal remedy.

6. **CONSENT, APPROVAL AND WAIVER.** A Party may consent to different terms than set forth in this Agreement, approve any matter which this Agreement allows a Party to approve of, or waive any of its rights under this Agreement. A Party's consent, approval or waiver shall be made in writing, be signed by the chief administrative officer of the Party, or his or her designee, and sent to the other Party.

7. **SUCCESSORS.** This Agreement shall be binding upon the Parties hereto, Developer and their successors (including, without limitation, successor corporate authorities of the Village and successor members of District 73's School Board).

8. **INTEGRATION.** This Agreement represents the entire agreement between the Village and District 73 regarding the subject matters hereof. No amendment, waiver or modification of any term or condition of this Agreement shall be

binding or effective for any purpose unless expressed in writing and adopted by each of the Parties as required by law. No express or implied covenants or representations have been made concerning the subject matter of this Agreement unless expressly stated herein. Any prior written or oral negotiations not contained in this Agreement are of no force or effect whatsoever. In signing this Agreement, the Parties have not and do not rely on any statements, inducements, promises, or representations made by any other Party hereto or the agents, representatives, or attorneys or any Party with regard to the subject matter, basis, or effect of this Agreement, except those specifically set forth in this Agreement.

**9. RELEASES AND WAIVERS.**

A. Except for obligations arising under this Agreement, District 73, and its successors, assigns, insurers and representatives of any kind and all other persons, firms, or corporations that may claim a right in the Dispute on behalf of District 73 unconditionally release and forever discharge the Village, Developer, and their respective agents, employees, partners, members, elected and appointed officials, and attorneys, who are liable or who might be claimed to be liable, from any and all claims, demands, damages, attorney's fees, expenses, costs, actions, causes of action or suits of any kind or nature whatsoever that could have been alleged by District 73 related to the Dispute and with regard to the actions of a Party under this Agreement that are consistent with the terms of this Agreement. The release given by District 73 herein includes all past, present, and future claims, whether known or unknown, relating in any manner to the subject matter of the Dispute and with regard to the actions of a Party under this Agreement that are consistent with the terms of this Agreement. District 73

intends that the releases given by it herein be construed as broadly as possible, in accordance with the terms above.

B. Except for obligations arising under this Agreement, the Village, and its successors, assigns, insurers and representatives of any kind and all other persons, firms, or corporations that may claim a right in the Dispute on behalf of the Village unconditionally release and forever discharge District 73, and its agents, employees, elected and appointed officials, and attorneys, who are liable or who might be claimed to be liable, from any and all claims, demands, damages, attorney's fees, expenses, costs, actions, causes of action or suits of any kind or nature whatsoever that could have been alleged by the Village in the dispute and with regard to the actions of a Party under this Agreement that are consistent with the terms of this Agreement. The release given by the Village herein includes all past, present, and future claims, whether known or unknown, relating in any manner to the subject matter of the Dispute and with regard to the actions of a Party under this Agreement that are consistent with the terms of this Agreement. The Village intends that the releases given by it herein be construed as broadly as possible, in accordance with the terms above.

**10. SEVERABILITY AND NO WAIVER.** If any section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this Agreement. The failure of any Party to enforce any provision in this Agreement shall not be construed as a waiver of any such provision or prevent such Party thereafter from enforcing such provision or any other provision of this Agreement.

**11. EFFECTIVE DATE.** This Agreement shall be effective after approval by the Village President and Board of Trustees of the Village and the Board of Education of District 73, and on the date the last of the Parties executes this Agreement ("Effective Date").

**12. LIMITED JOINDER.** Developer joins this Agreement for the sole and limited purpose of confirming Developer's agreement to pay the sums specified in Section 3(A)(iii) of this Agreement pursuant to the terms of the Redevelopment Agreement.

**13. TERM.** This Agreement shall remain in effect until the dissolution of the Hawthorn Mall TIF District or until such other time as the Parties may mutually agree in writing.

**14. COUNTERPARTS.** This Agreement may be executed by the Parties in multiple counterparts which, when taken together, shall be deemed on and the same instrument.

**15. DEFENSE BY VILLAGE.** In the event the Agreement, or any provision thereof, is challenged by a party other than District 73, and District 73 is named as a party to the litigation, the Village shall provide representation in such litigation.

**IN WITNESS WHEREOF,** the Parties have caused this Agreement to be duly executed by their authorized officials.

VILLAGE:

VILLAGE OF VERNON HILLS

By: *Roger Papp*  
President

Date: 12/9/20

ATTEST:  
*[Signature]*  
Clerk

DISTRICT 73:

HAWTHORN COMMUNITY  
CONSOLIDATED SCHOOL DISTRICT 73

By: *Adam Clark*  
President

Date: 12/10/20

ATTEST:  
*[Signature]*  
Secretary

**LIMITED JOINDER**

The undersigned, being collectively the owners of certain properties proposed to be included in the Hawthorn Mall TIF District, in consideration of District's 73 covenants contained in Section 4 of this Agreement and the release contained in Section 9(A) of this Agreement, do hereby join in the execution of this Agreement to confirm their agreement to pay the sums specified in Section 3(A)(iii) of this Agreement pursuant to the terms of the Redevelopment Agreement.

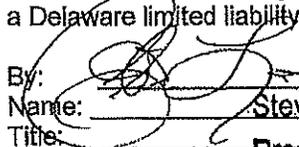
Signed this 11 day of March 2021 

**HAWTHORN, L.P.**, an Illinois limited partnership

By: WEA Hawthorn Shopping Center GP, LLC,  
a Delaware limited liability company, its General Partner

By: US Centennial Malls JV, LLC,  
a Delaware limited liability company, its Sole Member

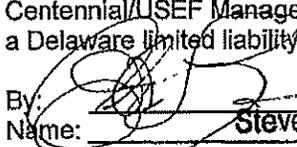
By: Centennial/USEF Manager, LLC,  
a Delaware limited liability company, its Managing Member

By:   
Name: Steven Levin  
Title: President

**HAWTHORN SP, LLC**, a Delaware limited liability company

By: US Centennial Malls JV II, LLC,  
a Delaware limited liability company, its Sole Member

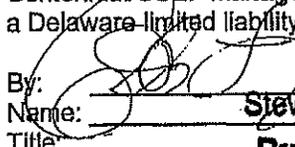
By: Centennial/USEF Manager, LLC,  
a Delaware limited liability company, its Managing Member

By:   
Name: Steven Levin  
Title: President

**HAWTHORN CP, LLC**, a Delaware limited liability company

By: US Centennial Malls JV II, LLC,  
a Delaware limited liability company, its Sole Member

By: Centennial/USEF Manager, LLC,  
a Delaware limited liability company, its Managing Member

By:   
Name: Steven Levin  
Title: President

**EXHIBIT A-1**

**HAWTHORN MALL TIF DISTRICT LEGAL DESCRIPTION**

(attached)

A PORTION OF LAND, LYING WITHIN SECTIONS 33 AND 34, TOWNSHIP 44 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALSO LYING WITHIN SECTION 4, TOWNSHIP 43 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN LAKE COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHERLY-MOST NORTHWEST CORNER OF LOT 2 IN HAWTHORN CENTER SUBDIVISION, BEING A SUBDIVISION OF PARTS OF SECTIONS 33 AND 34, TOWNSHIP 44 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 19, 1977 AS DOCUMENT NUMBER 1866654; SAID POINT ALSO BEING THE NORTHEAST CORNER OF LOT 6 IN SAID HAWTHORN CENTER SUBDIVISION; THENCE NORTHERLY 12.3 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF LOT 18 IN SADDLE BROOK RESUBDIVISION, BEING A SUBDIVISION OF PART OF SECTION 33, TOWNSHIP 44 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 5, 1998 AS DOCUMENT NUMBER 4216424; THENCE ALONG THE SOUTHERLY LINE OF LOT 18 AND OUTLOT D IN SAID SADDLE BROOK RESUBDIVISION, FOR THE FOLLOWING THREE (3) COURSES: (1) THENCE EASTERLY 28.12 FEET TO A BEND POINT; (2) THENCE EASTERLY 47.33 FEET TO A POINT OF CURVATURE; (3) THENCE NORTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 65.00 FEET AND AN ARC LENGTH OF 99.48 FEET TO A POINT OF TANGENCY; THENCE EASTERLY 80.2 FEET, MORE OR LESS, TO A POINT OF CURVATURE ON THE WESTERLY LINE OF LOT 1 IN AMLI AT MUSEUM GARDENS SUBDIVISION, BEING A SUBDIVISION OF PART OF SECTION 33, TOWNSHIP 44 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 5, 2003 AS DOCUMENT NUMBER 5215706; THENCE ALONG THE WESTERLY LINE OF LOT 1 IN SAID AMLI AT MUSEUM GARDENS SUBDIVISION FOR THE FOLLOWING TWO (2) COURSES: (1) THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 65.00 FEET AND AN ARC LENGTH OF 95.76 FEET TO A POINT OF TANGENCY; (2) THENCE EASTERLY 110.83 FEET TO A POINT ON THE NORTH LINE OF LOT 1 IN SAID HAWTHORN CENTER SUBDIVISION; THENCE SOUTH 89 DEGREES 25 MINUTES 30 SECONDS EAST (RECORD BEARING) ALONG THE NORTHERLY LINE OF LOT 1 IN SAID HAWTHORN CENTER SUBDIVISION 820 FEET, MORE OR LESS TO THE NORTHEAST CORNER OF SAID LOT 1, SAID POINT ALSO BEING ON THE WESTERLY RIGHT OF WAY LINE OF MILWAUKEE AVENUE AS SHOWN ON SAID HAWTHORN CENTER SUBDIVISION; THENCE SOUTHERLY AND WESTERLY ALONG THE WESTERLY RIGHT OF WAY LINE OF MILWAUKEE AVENUE AND THE NORTHERLY RIGHT OF WAY LINE OF ILLINOIS STATE ROUTE 60, BOTH AS SHOWN ON SAID HAWTHORN CENTER SUBDIVISION, FOR THE FOLLOWING FOURTEEN (14) COURSES: (1) THENCE SOUTH 08 DEGREES 02 MINUTES EAST 22.86 FEET; (2) THENCE SOUTH 81 DEGREES 58 MINUTES WEST 5.00 FEET; (3) THENCE SOUTH 08 DEGREES 02

MINUTES EAST 415.00 FEET; (4) THENCE SOUTH 05 DEGREES 32 MINUTES 38 SECONDS EAST 230.22 FEET; (5) THENCE SOUTH 08 DEGREES 02 MINUTES EAST 305.00 FEET TO THE EASTERLY-MOST SOUTHEAST CORNER OF LOT 2 IN SAID HAWTHORN CENTER SUBDIVISION; (6) THENCE SOUTH 81 DEGREES 58 MINUTES WEST 5.00 FEET TO THE NORTHEAST CORNER OF LOT 9 IN SAID HAWTHORN CENTER SUBDIVISION; (7) THENCE SOUTH 08 DEGREES 02 MINUTES EAST 675.02 FEET; (8) THENCE SOUTH 00 DEGREES 13 MINUTES 25 SECONDS EAST 57.92 FEET; (9) THENCE SOUTH 39 DEGREES 18 MINUTES 54 SECONDS WEST 49.15 FEET; (10) THENCE SOUTH 77 DEGREES 52 MINUTES 19 SECONDS WEST 58.06 FEET; (11) THENCE SOUTH 86 DEGREES 39 MINUTES 34 SECONDS WEST 143.12 FEET; (12) THENCE NORTH 88 DEGREES 21 MINUTES 59 SECONDS WEST 230.81 FEET; (13) THENCE SOUTH 86 DEGREES 49 MINUTES 04 SECONDS WEST 238.65 FEET TO THE SOUTHWEST CORNER OF LOT 8 IN SAID HAWTHORN CENTER SUBDIVISION; (14) THENCE SOUTH 03 DEGREES 03 MINUTES 46 SECONDS EAST 5.00 FEET TO THE SOUTHEAST CORNER OF LOT 4 IN SAID HAWTHORN CENTER SUBDIVISION; THENCE CONTINUING SOUTH 03 DEGREES 03 MINUTES 46 SECONDS EAST ALONG THE SOUTHERLY EXTENSION OF THE EASTERLY LINE OF SAID LOT 4 TO THE SOUTHERLY RIGHT OF WAY LINE OF ILLINOIS STATE ROUTE 60; THENCE WESTERLY ALONG SAID SOUTHERLY RIGHT OF WAY LINE TO THE SOUTHERLY EXTENSION OF THE LINE BETWEEN LOTS 2 AND 3 IN SAID HAWTHORN CENTER SUBDIVISION; THENCE NORTH 02 DEGREES 03 MINUTES 40 SECONDS WEST ALONG THE LINE BETWEEN SAID LOTS 2 AND 3 TO THE SOUTHERLY-MOST SOUTHWEST CORNER OF LOT 2 IN SAID HAWTHORN CENTER SUBDIVISION, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF LOT 3 IN SAID HAWTHORN CENTER SUBDIVISION; THENCE ALONG THE LINE BETWEEN SAID LOTS 2 AND 3 FOR THE FOLLOWING SIXTEEN (16) COURSES: (1) THENCE NORTH 02 DEGREES 03 MINUTES 40 SECONDS WEST 175.26 FEET; (2) THENCE SOUTH 87 DEGREES 56 MINUTES 20 SECONDS WEST 159.72 FEET; (3) THENCE NORTH 02 DEGREES 03 MINUTES 40 SECONDS WEST 65.00 FEET; (4) THENCE NORTH 87 DEGREES 56 MINUTES 20 SECONDS EAST 159.72 FEET; (5) THENCE NORTH 02 DEGREES 03 MINUTES 40 SECONDS WEST 209.45 FEET; (6) THENCE NORTH 27 DEGREES 41 MINUTES 04 SECONDS WEST 102.76 FEET; (7) THENCE NORTH 62 DEGREES 18 MINUTES 56 SECONDS EAST 1.00 FEET; (8) THENCE NORTH 27 DEGREES 41 MINUTES 04 SECONDS WEST 73.71 FEET; (9) THENCE NORTH 62 DEGREES 18 MINUTES 56 SECONDS EAST 25.00 FEET; (10) THENCE NORTH 27 DEGREES 41 MINUTES 04 SECONDS WEST 127.58 FEET; (11) THENCE SOUTH 62 DEGREES 18 MINUTES 56 SECONDS WEST 25.00 FEET; (12) THENCE NORTH 27 DEGREES 41 MINUTES 04 SECONDS WEST 73.71 FEET; (13) THENCE SOUTH 62 DEGREES 18 MINUTES 56 SECONDS WEST 1.00 FEET; (14) THENCE NORTH 27 DEGREES 41 MINUTES 04 SECONDS WEST 40.00 FEET; (15) THENCE SOUTH 62 DEGREES 18 MINUTES 56 SECONDS WEST 39.74 FEET; (16) THENCE NORTH 64 DEGREES 58 MINUTES 00 SECONDS WEST 18.01 FEET TO THE EASTERLY-MOST CORNER OF LOT 7 IN SAID HAWTHORN CENTER SUBDIVISION, SAID POINT ALSO BEING A CORNER OF LOT 3 IN SAID HAWTHORN CENTER SUBDIVISION; THENCE ALONG

THE LINE BETWEEN SAID LOTS 3 AND 7 FOR THE FOLLOWING FIVE (5) COURSES: (1) THENCE SOUTHWESTERLY ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 82.00 FEET, AN ARC LENGTH OF 52.66, A CHORD BEARING OF SOUTH 43 DEGREES 55 MINUTES 11 SECONDS WEST, AND A CHORD LENGTH OF 51.76 FEET TO A POINT OF TANGENCY; (2) THENCE SOUTH 62 DEGREES 18 MINUTES 57 SECONDS WEST 8.72 FEET; (3) THENCE NORTH 64 DEGREES 58 MINUTES WEST 268.49 FEET; (4) THENCE SOUTH 55 DEGREES 02 MINUTES WEST 31.75 FEET; (5) THENCE NORTH 64 DEGREES 58 MINUTES WEST 373.44 FEET TO THE WESTERLY-MOST SOUTHWEST CORNER OF SAID LOT 7; THENCE ALONG THE WESTERLY LINE OF LOTS 2 AND 7 IN SAID HAWTHORN CENTER SUBDIVISION FOR THE FOLLOWING THREE (3) COURSES: (1) THENCE NORTH 00 DEGREES 38 MINUTES 22 SECONDS WEST 113.53 FEET; (2) THENCE NORTH 30 DEGREES 14 MINUTES 04 SECONDS EAST 175.31 FEET; (3) THENCE NORTH 00 DEGREES 38 MINUTES 22 SECONDS WEST 196.00 FEET TO THE WESTERLY-MOST SOUTHWEST CORNER OF LOT 6 IN SAID HAWTHORN CENTER SUBDIVISION, SAID POINT ALSO BEING THE WESTERLY-MOST NORTHWEST CORNER OF LOT 2 IN SAID HAWTHORN CENTER SUBDIVISION; THENCE EASTERLY ALONG THE LINE BETWEEN SAID LOTS 2 AND 6 FOR THE FOLLOWING TWO (2) COURSES: (1) THENCE SOUTH 45 DEGREES 08 MINUTES 22 SECONDS EAST 172.78 FEET; (2) THENCE SOUTHWESTERLY ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 515.00 FEET, AN ARC LENGTH OF 11.08 FEET, A CHORD BEARING OF SOUTH 46 DEGREES 50 MINUTES 36 SECONDS WEST, AND A CHORD LENGTH OF 11.08 FEET TO THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN QUIT CLAIM DEED RECORDED JULY 10, 1997 AS DOCUMENT NUMBER 3991224; THENCE ALONG THE WESTERLY AND SOUTHERLY LINES OF SAID PARCEL FOR THE FOLLOWING EIGHT (8) COURSES: (1) THENCE SOUTH 64 DEGREES 58 MINUTES 01 SECOND EAST 173.66 FEET; (2) THENCE NORTH 05 DEGREES 00 MINUTES 07 SECONDS WEST 36.26 FEET; (3) THENCE SOUTH 64 DEGREES 58 MINUTES 01 SECONDS EAST 552.72 FEET; (4) THENCE SOUTHERLY ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 100.00 FEET, AN ARC LENGTH OF 7.23 FEET, A CHORD BEARING OF SOUTH 04 DEGREES 16 MINUTES 41 SECONDS WEST, AND A CHORD LENGTH OF 7.23 FEET, TO A POINT OF COMPOUND CURVATURE; (5) THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 25.00 FEET, AN ARC LENGTH OF 34.48 FEET, A CHORD BEARING OF SOUTH 33 DEGREES 10 MINUTES 04 SECONDS EAST, AND A CHORD LENGTH OF 31.82 FEET, TO A POINT OF TANGENCY; (6) THENCE SOUTH 72 DEGREES 41 MINUTES 04 SECONDS EAST 31.06 FEET TO A POINT OF CURVATURE; (7) THENCE EASTERLY ALONG A CURVE CONCAVE TO THE NORTH, HAVING A RADIUS OF 17.15 FEET, AN ARC LENGTH OF 13.47 FEET, A CHORD BEARING OF NORTH 84 DEGREES 48 MINUTES 56 SECONDS EAST, AND A CHORD LENGTH OF 13.13 TO A POINT OF TANGENCY; (8) THENCE NORTH 62 DEGREES 18 MINUTES 56 SECONDS EAST 60.14 FEET TO A POINT ON THE SOUTHERLY LINE OF LOT 6 IN

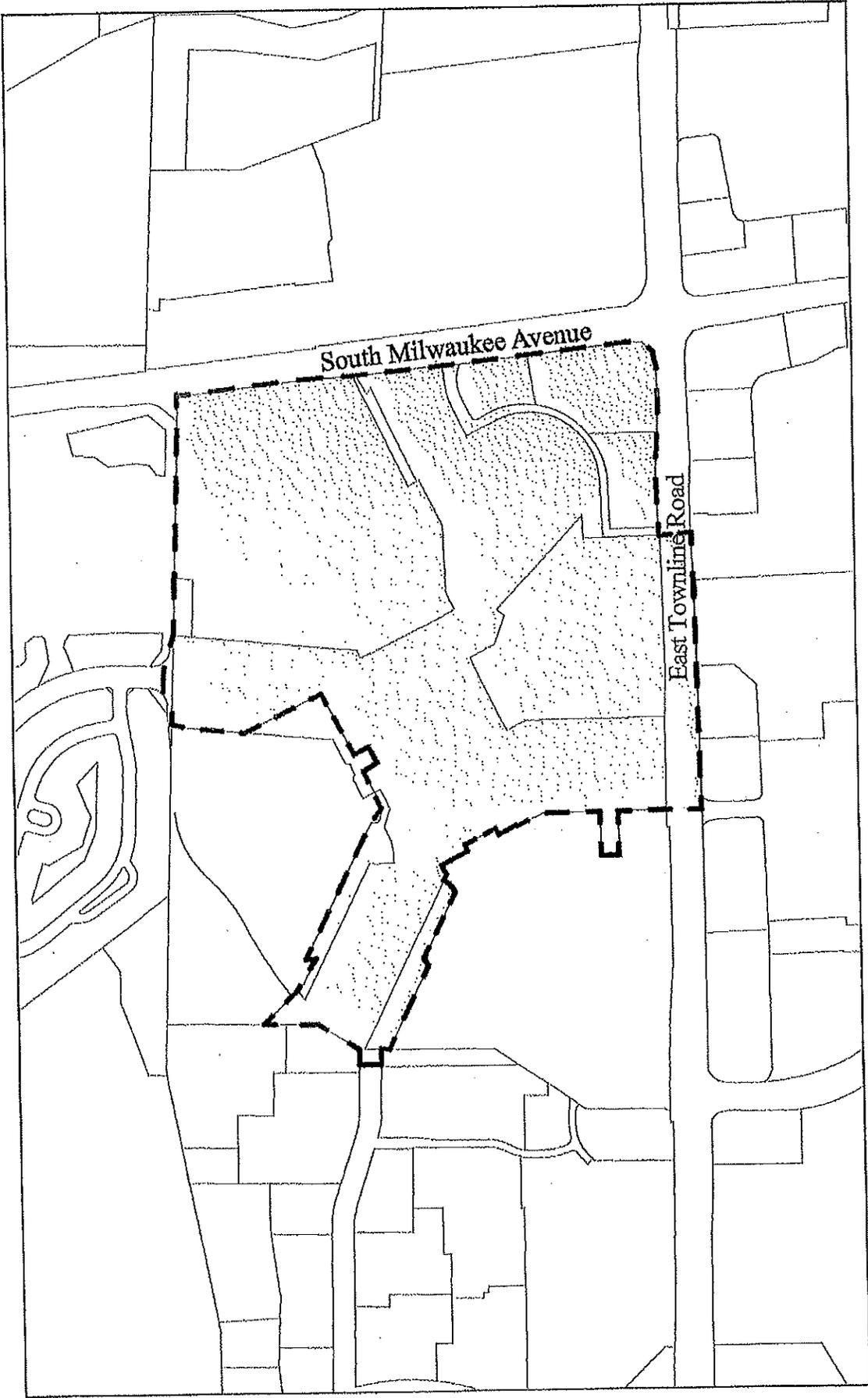
SAID HAWTHORN CENTER SUBDIVISION, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN DOCUMENT NUMBER 3991225; THENCE ALONG THE SOUTHERLY AND EASTERLY LINES OF SAID PARCEL FOR THE FOLLOWING SIX (6) COURSES: (1) THENCE NORTH 62 DEGREES 18 MINUTES 56 SECONDS EAST 88.36 FEET; (2) THENCE SOUTH 27 DEGREES 41 MINUTES 04 SECONDS EAST 60.00 FEET; (3) THENCE NORTH 62 DEGREES 18 MINUTES 56 SECONDS EAST 67.00 FEET; (4) THENCE NORTH 27 DEGREES 41 MINUTES 04 SECONDS WEST 60.00 FEET; (5) THENCE NORTH 62 DEGREES 18 MINUTES 56 SECONDS EAST 253.50 FEET; (6) THENCE NORTH 27 DEGREES 41 MINUTES 04 SECONDS WEST 323.15 FEET TO A POINT ON THE LINE BETWEEN LOTS 2 AND 6 IN SAID HAWTHORN CENTER SUBDIVISION; THENCE NORTH 03 DEGREES 53 MINUTES 56 SECONDS EAST ALONG SAID LINE 267.01 FEET TO THE POINT OF BEGINNING.

P.I.Ns.: 11-33-401-004-0000, 11-33-401-006-0000, 11-33-401-089-0000, 11-33-401-088-0000, 11-33-401-087-0000, 11-33-401-086-0000, 11-33-401-085-0000, 11-33-401-013-0000, 11-33-401-014-0000, 11-33-401-015-0000 and 11-33-401-016-0000.

EXHIBIT A-2

HAWTHORN MALL TIF DISTRICT MAP

(attached)



**EXHIBIT B**

**SURPLUS PINs**

The following PINs in Lake County, Illinois:

1. 11-33-401-014
2. 11-33-401-015
3. 11-33-401-016
4. Or any successor PINs to #s 1 – 3 above.

Exhibit G

Non-Retail Uses

[See attached]

Sec. 13.2. - Permitted uses. Non-sales tax generating uses that are to be considered for purposes of implementing the provisions of Section 3.B **are highlighted below in yellow**. Notwithstanding the foregoing, the uses listed in Sections 13.3.4 and 13.3.5 shall not be included in the calculation of aggregate leasable square footage that has been leased to non-sales tax generating uses. For example, a branch post office or utility company service office, although non-sales tax generating, shall not to be included in the calculation the parties are to make each year.

13.2.1. All permitted uses in the B-1 General Business District shall be for the retail sale only of tangible personal property, or provision of services to the consumer, and except for accessory off-street parking and loading, shall be conducted within a wholly enclosed building.

13.2.2. The following uses are permitted in a B-1 General Business district subject to the regulations contained in ~~Section 4.14 et Seq.~~

13.2.2.1. Antique shops;

13.2.2.2. Art and school supply stores;

13.2.2.3. Art galleries;

13.2.2.4. Bakeries, provided that all goods produced on the premises are sold at retail on the premises;

13.2.2.5. **Banks and savings and loan associations, but not including drive-in facilities;**

13.2.2.6. Barber and beauty shops;

13.2.2.7. Bicycle shops;

13.2.2.8. Book and stationery stores;

13.2.2.9. Camera and photographic supply stores;

13.2.2.10. Candy, confectionery and ice cream stores;

13.2.2.11. Carpet, flooring and rug stores;

13.2.2.12. China and glassware stores;

13.2.2.13. **Clothes pressing establishments;**

13.2.2.14. Coin and philatelic stores;

13.2.2.15. Drugstores and pharmacies;

13.2.2.16. **Dry cleaners and laundries, but not a central plant serving more than one retail**

13.2.2.17. Electrical and household appliance stores;

13.2.2.18. Florist shop;

13.2.2.19. Foodstores, delicatessens, grocery stores, supermarkets; 13.2.2.20. Furniture stores;

13.2.2.21. Furrier shops;

- 13.2.2.22. Gift shops;
  - 13.2.2.23. Hardware stores;
  - 13.2.2.24. Hobby and craft stores;
  - 13.2.2.25. Interior decorating shops;
  - 13.2.2.26. Jewelry stores, including watch, clock and jewelry repair;
  - 13.2.2.27. Leather goods and luggage stores;
  - 13.2.2.28. Locksmith shop;
  - 13.2.2.29. Meat markets;
  - 13.2.2.30. **Medical and/or dental offices;**
  - 13.2.2.31. Music stores;
  - 13.2.2.32. Office supply stores;
  - 13.2.2.33. Optical shops;
  - 13.2.2.34. Paint and wallpaper stores;
  - 13.2.2.35. Photographic studios;
  - 13.2.2.36. Health club;
  - 13.2.2.37. **Professional and general offices;**
  - 13.2.2.38. Radio, T.V., hi-fi and record stores;
  - 13.2.2.39. Restaurants, including fast food and carry-out, but excluding dancing, the serving of alcoholic beverages, drive-thru and drive-in restaurants;
  - 13.2.2.40. **Schools; music, dancing, business, martial arts studios;** 13.2.2.41. Shoe, clothing and hat repair shops;
  - 13.2.2.42. Shoe stores;
  - 13.2.2.43. Sporting goods stores;
  - 13.2.2.44. Retail tailor and dressmaking shops;
  - 13.2.2.45. Toy stores;
  - 13.2.2.46. Travel bureaus;
  - 13.2.2.47. Variety stores;
  - 13.2.2.48. Wearing apparel shops;
-

13.2.2.49. Accessory uses, subject to the provisions of Article Four;

13.2.2.50. Off-street parking facilities as required or permitted by Article Nineteen;

13.2.2.51. Coffee shops;

13.2.2.52. Health or day spa.

(Ord. No. 2010-064, § I(Exh. B), 12-7-10; Ord. No. 2012-036, § 1(Exh. A), 6-19-12)

### Sec. 13.3. - Special uses.

Upon recommendation by the planning and zoning commission, after public hearing on a petition pertaining thereto, in accordance with the requirements set forth for hearing in section 21.6, the corporate authorities of the village may, by special use permit, allow the following uses in the B-1 General Business district subject to the regulations contained in section 4.14 et seq.

13.3.0. Amusement, recreation and training for adults.

[Subject to the following:]

1. All activities must be conducted indoors.
2. No such activities in this use will be listed under any other special use in the Vernon Hills Zoning Ordinance.
3. All activities in this special use will be in the B-1, General Business District.
4. Alcohol may be provided, subject to receipt of the necessary permits and licenses.

13.3.1. Arcade for electronic games;

13.3.2. **Animal clinic;**

13.3.3. **Animal hospital;**

13.3.4. **Any public building erected or leased by any department of a municipality, county, state or federal government;**

13.3.5. **Any building erected or leased by any public utility (light, gas, telephone, water, sewer) for use as a branch office and distribution center;**

13.3.6. **Automobile service station and/or mini-mart and/or automobile laundry;**

13.3.7. Cocktail lounge or package liquor store;

13.3.8. **Convalescent care facility;**

13.3.9. **Day care centers and nursery schools;**

13.3.10. **Drive-in banks, savings and loan associations, and currency exchanges;**

13.3.11. Equipment rental;

- 13.3.12. Funeral parlors;
- 13.3.13. General retail sales;
- 13.3.14. Gunsmiths and gun shops;
- 13.3.15. Hotels or motor hotels;
- 13.3.16. Reserved;
- 13.3.17. Reserved;
- 13.3.18. Pet shops;
- 13.3.19. Restaurants serving alcoholic beverages;
- 13.3.20. Restaurants: drive-in, drive-thru;
- 13.3.21. Day camps and overnight camps operated in conjunction with a day camp;
- 13.3.22. Commercial picnic grounds, including the serving, but not sale, of alcoholic beverages, and related activities;
- 13.3.23. Bowling facilities;
- 13.3.24. Landscape, construction and architectural offices and yard provided [proper] screening for storage areas is provided and that no retail sales of material or related products shall take place on said premises;
- 13.3.25. Children's recreation and fitness facilities;
- 13.3.26. Entertainment uses, with or without alcohol service and including movie theaters, concert or music halls;
- 13.3.27. Reserved;
- 13.3.28. Warehouse retail facility;
- 13.3.29. Billiard facilities;
- 13.3.30. Houses of worship, convents, rectories, parsonages, parish houses and monasteries, including nursery schools sponsored by and operated within the sponsor's buildings;
- 13.3.31. Hourly drop-off childcare facilities operated within an enclosed retail shopping center, where parents or custodians of the supervised children remain on the premise and are readily available;
- 13.3.32. Automobile rental/leasing establishment;
- 13.3.33. Temporary use of a trailer or modular units to accommodate a financial institution with or without drive-through facilities, subject to the standards set forth in Article Eighteen;

**13.3.34. Medical cannabis cultivation centers;** subject to the regulations contained in Section 4.15.  
et seq.

**13.3.35. Automobile repair service establishment.**

(Ord. No. 91-32, § I, 6-4-91; Ord. No. 92-10, § I, 3-3-92; Ord. No. 92-26, § I, 5-5-92; Ord. No. 93-72, § I, 10-5-93; Ord. No. 99-02, § I, 1-5-99; Ord. No. 2003-45, § I, 7-15-03; Ord. No. 2003-73, § I, 11-4-03; Ord. No. 2004-112, §§ IX, X, 12-7-04; Ord. No. 2010-064, § I(Exh. B), 12-7-10; Ord. No. 2012-036, § I(Exh. A), 6-19-12; Ord. No. 2014-042, § II(Exh. B), 11-18-14)

**Editor's note**— Ord. No. 650, § 2, adopted June 28, 1988, amended the Code by adding provisions designated as App. C, § 13.3.21. Inasmuch as there already exist provisions so designated, the provisions of Ord. No. 650, § 2, have been redesignated as § 13.2.23 by the editor. Subsequently, Ord. No. 675, § 1, adopted Oct. 25, 1988, amended App. C by adding provisions to § 13.3, but did not specify the manner of inclusion. Hence, said provisions have been included herein as § 13.3.24 at the discretion of the editor. Likewise, Ord. No. 91-32, § I, adopted June 4, 1991, added provisions to 13.3, but did not specify a subsection number. Thus, such provisions have been included herein as 13.3.25 at the discretion of the editor.

Exhibit H

Prohibited Uses

Unless approved by the Corporate Authorities in writing, which approval the Corporate Authorities may grant or deny in their sole discretion, the following uses shall not be established by the Owners on the portions of the Mall Property they own or Control:

1. -automobile/motor vehicle repair shops
2. -billiard/pool halls
3. -consignment shops
4. -currency exchanges
5. -retailers primarily selling merchandise that consists of "irregular", "factory-second" or other imperfect goods
6. hosiery stores
7. -laundromats
8. -pay day loan stores
9. -pawn shops
10. -sign shops
11. -teen recreation and dance center
12. -vehicle/equipment rental stores

It is the intent that the above-listed categories of prohibited uses are to be liberally construed such that a use which arguably falls into one of the categories is prohibited.

Exhibit I

Reserved

Exhibit J

Reserved

Exhibit K

Reserved

Exhibit L

Reserved

Exhibit M

Form of Certification Request

**To:** Village of Vernon Hills  
290 Evergreen Drive  
Vernon Hills, IL 60061  
Attention: Village Manager

**From:** **[DEVELOPER]**

**Subject:** Redevelopment Agreement dated May 18, 2021 by, between, and among the Village of Vernon Hills, Hawthorn L.P., Hawthorn SP, LLC, Hawthorn CP, LLC and USEF Centennial FA Hawthorn Owner, LLC (the "Redevelopment Agreement")

**Date:** \_\_\_\_\_

This represents Certification Request No. \_\_\_\_\_ requesting the Village Manager authorize a Certificate of Expenditure approving the certification of the Eligible Costs detailed in the attached schedule. The undersigned hereby certifies that:

- i. The Developer actually incurred such Eligible Costs;
- ii. To the best of the Developer's knowledge, such Eligible Costs qualify as "redevelopment project costs" under the TIF Act;
- iii. For any Eligible Costs relating to public or private improvements, the Village Engineer has determined that, based upon an inspection, these improvements have been completed in accordance with the Final Plans and the Agreement;
- iv. Reimbursement is permitted pursuant to the Redevelopment Agreement, the Redevelopment Plan, and the TIF Act; and
- v. No Developer Event of Default under the Redevelopment Agreement has occurred or is outstanding as of the date of this Certification Request.

Terms capitalized herein have the meanings specified in the Redevelopment Agreement, the terms of which are incorporated herein by reference.

**[DEVELOPER]**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Exhibit N****Annual Sales Tax Base Amounts**

Accounting Date*	Phase I Annual Base Sales Tax Amount	Accounting Date**	Phase III Annual Base Sales Tax Amount
Year 1	\$ 557,793	Year 1	\$ 146,378
Year 2	\$ 862,389	Year 2	\$ 342,454
Year 3	\$ 946,278	Year 3	\$ 398,889
Year 4	\$ 1,005,794	Year 4	\$ 408,862
Year 5	\$ 1,065,861	Year 5	\$ 419,083
Year 6	\$ 1,126,492	Year 6	\$ 429,560
Year 7	\$ 1,163,092	Year 7	\$ 440,299
Year 8	\$ 1,192,169	Year 8	\$ 451,307
Year 9	\$ 1,221,973	Year 9	\$ 462,589
Year 10	\$ 1,252,522	Year 10	\$ 474,154
Year 11	\$ 1,283,836	Year 11	\$ 486,008
Year 12	\$ 1,315,931	Year 12	\$ 498,158
Year 13	\$ 1,348,830	Year 13	\$ 510,612
Year 14	\$ 1,382,550	Year 14	\$ 523,377
Year 15	\$ 1,417,114	Year 15	\$ 536,462
Year 16	\$ 1,452,542	Year 16	\$ 549,873
Year 17	\$ 1,488,856	Year 17	\$ 563,620
Year 18	\$ 1,526,077	Year 18	\$ 577,711
Year 19	\$ 1,564,229	Year 19	\$ 592,153
Year 20	\$ 1,603,335	Year 20	\$ 606,957

\*Commencing with the first Accounting Date after the Phase I Tax Exempt Note Issuance Date

\*\*Commencing with the first Accounting Date after the Phase III Tax Exempt Note Issuance Date

Exhibit O

Form of Transferee Assumption Agreement

TRANSFEEE ASSUMPTION AGREEMENT

THIS TRANSFEEE ASSUMPTION AGREEMENT ("**Agreement**") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by, between and among the **VILLAGE OF VERNON HILLS**, an Illinois home rule municipal corporation ("**Village**"), \_\_\_\_\_, a \_\_\_\_\_ ("**Owner**"), and \_\_\_\_\_ ("**Transferee**").

WITNESSETH:

**WHEREAS**, pursuant to that certain real estate sale contract dated \_\_\_\_\_, 20\_\_\_\_, the Transferee agreed to purchase from [**NAME OF ENTITY TRANSFERRING ITS PROPERTY**] ("**Transferor**") certain real property situated in Lake County, Illinois and legally described in **Exhibit A** attached to and, by this reference, made a part of this Agreement ("**Transferred Property**"); and

**WHEREAS**, following the conveyance of the Transferred Property by Transferor, the Transferee will be the legal owner of the Property; and

**WHEREAS**, as a condition to the conveyance of the Transferred Property by Owner, the Village and Owner require that the Transferee agree to comply with all the terms, requirements, and obligations set forth in that certain Redevelopment Agreement, dated as of \_\_\_\_\_, 2021, and in the office of the Lake County Recorder of Deeds on \_\_\_\_\_, 2021, as Document No. \_\_\_\_\_ ("**Redevelopment Agreement**") as and to the extent they pertain to the Transferred Property;

**NOW, THEREFORE**, in consideration of the agreement of Transferor to convey the Transferred Property to the Transferee, and of the Village to accept the transfer of obligations as provided herein and to grant the releases granted herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed by, between, and among the Village, Owner, and the Transferee as follows:

1. **Recitals.** The foregoing recitals are by this reference incorporated herein and made a part hereof as substantive provisions of this Agreement.
2. **Assumption of Obligations.** The Transferee, on its behalf and on behalf of its successors and assigns, hereby agrees, at its sole cost and expense, to comply with all of the terms, requirements, and obligations of the Redevelopment Agreement, including all exhibits and attachments thereto, as and to the extent they pertain to the Transferred Property regardless of whether such terms, requirements, and obligations are to be performed and provided by, or are imposed upon, Owner.
3. **Payment of Village Fees and Costs.** In addition to any other costs, payments, fees, charges, contributions, or dedications required by this Agreement, the Redevelopment Agreement or by applicable Village codes, ordinances, resolutions, rules, or regulations, the Transferee will pay to the Village, immediately upon presentation of a written demand or demands therefor, all legal, engineering, and other consulting or administrative fees,

costs, and expenses incurred in connection with the negotiation, preparation, consideration, and review of this Agreement.

4. **Acknowledgment and Release of Owner.** The Village hereby acknowledges its agreement to the Transferee's assumption of the obligation to comply with the terms, requirements, and obligations of the Redevelopment Agreement, including all exhibits and attachments thereto, as and to the extent they pertain to the Transferred Property, and the Village hereby releases Owner from any personal liability for failure to comply with the terms, requirements, and obligations of the Redevelopment Agreement as and to the extent they pertain to the Transferred Property.

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

ATTEST:

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

\_\_\_\_\_  
Village Clerk

By: \_\_\_\_\_  
Its: Village President

**OWNER**

\_\_\_\_\_, a \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**TRANSFeree**

\_\_\_\_\_, a \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

ACKNOWLEDGMENTS

STATE OF ILLINOIS        )  
                                  ) SS.  
COUNTY OF LAKE        )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the Village President of the **VILLAGE OF VERNON HILLS**, an Illinois municipal corporation, and by \_\_\_\_\_, the Village Clerk of said municipal corporation.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

SEAL

\_\_\_\_\_

STATE OF \_\_\_\_\_        )  
                                  ) SS.  
COUNTY OF \_\_\_\_\_        )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

SEAL

\_\_\_\_\_

STATE OF \_\_\_\_\_        )  
                                  ) SS.  
COUNTY OF \_\_\_\_\_        )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

SEAL