

**VILLAGE OF VERNON HILLS
ORDINANCE 2022-076**

**AN ORDINANCE AUTHORIZING A FIRST AMENDMENT TO THE
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 .
- D. On July 6, 2021, the Village executed 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.”
- E. The DEVELOPER has requested that the Village consent to the DEVELOPER’S collateral assignment of the New Sales Tax Note under the Redevelopment Agreement to its mortgagee, JP Morgan Chase.
- F. The Corporate Authorities of the Village have considered such request and concluded that they have no objection to a collateral assignment of the New Sales Tax Note to JPMorgan Chase, as Administrative Agent for the ratable benefit of itself and the other Lenders, for security purposes relating to the loan and other indebtedness secured by

the JPMorgan Mortgage or to additional assignments of the New Sales Tax Note that current or future holders of the New Sales Tax Note may elect to undertake after the Effective Date of this First Amendment. The Village's obligation under the New Sales Tax Note will not be modified as a result of the Collateral Assignment.

- G. 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 FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT (attached hereto as EXHIBIT A), 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 attached FIRST AMENDMENT TO THE REDEVELOPMENT AGREEMENT attached hereto as EXHIBIT A is hereby approved and the Village Manager is authorized to execute the same.

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 7th day of June, 2022.

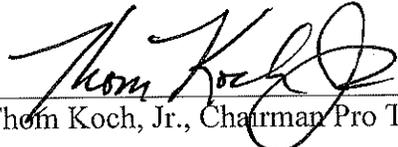
Dated the 7th of June, 2022

Adopted by roll call votes as follows:

AYES: 6 – Schenk, Marquardt, Forster, Oppenheim, Koch, Takaoka

NAYS: 0 – None

ABSENT AND NOT VOTING: 1 – Byrne


Thom Koch, Jr., Chairman Pro Tem

PASSED: 06/07/2022

APPROVED: 06/07/2022

ATTEST: 06/07/2022


Kevin Timony, Village Clerk



EXHIBIT A

FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT

THIS INSTRUMENT HAS BEEN
JOINTLY PREPARED BY:

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Meltzer, Purtill & Stelle LLC
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and

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After Recording
Return to Mr. Ferolo

FIRST AMENDMENT TO 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

**FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT
(HAWTHORN MALL)**

This **FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT** ("**First Amendment**") is made as of the ____ day of May, 2022 ("**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. The Village and the Owners are hereinafter collectively referred to as the "**Parties**".

RECITALS¹

A. The Owners are collectively the owners of the portions of the Hawthorn Mall in Vernon Hills, Illinois that are legally described on **Exhibit A** attached hereto and made a part hereof (collectively, the "**Property**").

B. On July 6, 2021, the Parties entered into a Redevelopment Agreement (the "**Redevelopment Agreement**") to provide for the construction of a redevelopment project on the Property (the "**Redevelopment Project**").

C. In the Redevelopment Agreement, the Village agreed to reimburse the Owners for certain costs they incurred in constructing the Redevelopment Project by using Pledged TIF Funds and Municipal Sales Tax Pledged Funds. The Village also agreed to evidence such obligation by issuing tax increment financing-backed notes and sales tax-backed notes as and to the extent set forth in the Redevelopment Agreement.

D. In addition, in the Redevelopment Agreement, the Village and Hawthorn L.P. agreed to terminate a 2013 economic incentive agreement the Village had entered into with Hawthorn L.P.'s predecessor-in-interest and replace it with a new sales tax note which would provide for the ongoing payment of Municipal Sales Tax Pledged Funds to Hawthorn L.P. (the "**New Sales Tax Note**").

E. On June 15, 2021, the Village adopted Ordinance 2021-094 Authorizing the Village's issuance of TIF Sales Tax Notes and the New Sales Tax Note (the "**Sales Tax Note Authorizing Ordinance**"). Attached to the Sales Tax Note Authorizing Ordinance was a note form the Village would use for issuance of the TIF Sales Tax Notes (the "**TIF Sales Tax Note Form**").

F. The TIF Sales Tax Note Form included a provision which was to govern a future assignment of a TIF Sales Tax Note to a third party. This provision, which mirrored an applicable note assignment provision in the Redevelopment Agreement, was and would be inapplicable to an assignment of the New Sales Tax Note and is herein referred to as the "**Inapplicable Note Assignment Clause**".

G. There are other provisions in the Redevelopment Agreement which generally govern a future assignment of both the TIF Sales Tax Notes and the New Sales Tax Note, but those provisions do not contemplate the possibility of a collateral assignment of the New Sales Tax Note to a lender that has a mortgage or other security interest in the Property, or a portion thereof, unless such lender has provided construction financing for a portion of the Redevelopment Project.

H. JPMorgan Chase Bank, N.A., a national banking association ("**JPMorgan Chase**"), acting in its capacity as Administrative Agent for the ratable benefit of itself and for the other Lenders (as such capitalized terms are defined in the "Loan Agreement" defined in the mortgage described below) (together with each and every successor Administrative Agent for the Lenders or any assignee of the loan and

¹ All capitalized words in this First Amendment not otherwise defined herein shall have the meanings ascribed to them in the Redevelopment Agreement.

indebtedness secured by the Mortgage described below), is the mortgagee under the provisions of a Mortgage, Assignment of Leases and Rents and Security Agreement dated December 17, 2015, and recorded against the Mall portion of the Property in the Recorder's Office of Lake County, Illinois on December 21, 2015, as Document Number 7256280 (as amended, modified, renewed, extended, supplemented or rearranged, the "**JPMorgan Chase Mortgage**").

I. Subsequent to the Effective Date of the Redevelopment Agreement, JPMorgan Chase, as Administrative Agent, asked Hawthorn L.P. to execute and deliver a collateral assignment of the New Sales Tax Note as security for the loan and other indebtedness which are secured by the JPMorgan Chase Mortgage, and Hawthorn L.P. was and is willing to do so, but the terms of the New Sales Tax Note, due to its inclusion of the Inapplicable Note Assignment Clause and the aforesaid note assignment provisions of the Redevelopment Agreement, do not allow for such a collateral assignment. For that reason, JPMorgan Chase, as Administrative Agent, and Hawthorn L.P. have requested that the Village confirm its consent to Hawthorn L.P.'s collateral assignment of the New Sales Tax Note to JPMorgan Chase, as Administrative Agent for the ratable benefit of itself and the other Lenders, notwithstanding the inclusion of the Inapplicable Note Assignment Clause in the New Sales Tax Note and notwithstanding the aforesaid note assignment provisions of the Redevelopment Agreement.

J. The Corporate Authorities of the Village have considered such request and concluded that they have no objection to a collateral assignment of the New Sales Tax Note to JPMorgan Chase, as Administrative Agent for the ratable benefit of itself and the other Lenders, for security purposes relating to the loan and other indebtedness secured by the JPMorgan Mortgage or to additional assignments of the New Sales Tax Note that current or future holders of the New Sales Tax Note may elect to undertake after the Effective Date of this First Amendment.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

Section 1. RECITALS.

The Parties acknowledge the accuracy of the foregoing recitals and do hereby incorporate them into this First Amendment as if restated in their entirety in this Section 1.

Section 2. CONSENT TO COLLATERAL ASSIGNMENT OF NEW SALES TAX NOTE TO JPMORGAN CHASE AS A ADMINISTRATIVE AGENT AND TO EXECUTION OF AN ALLONGE TO NEW SALES TAX NOTE AND TO THE EXERCISE OF RIGHTS AND REMEDIES CREATED THEREUNDER.

The Village hereby consents to Hawthorn L.P.'s collateral assignment of the New Sales Tax Note to JPMorgan Chase, as Administrative Agent for the ratable benefit of itself and the other Lenders, to Hawthorn L.P.'s execution of an allonge to the New Sales Tax Note which collaterally assigns Hawthorn L.P.'s interest in the New Sales Tax Note to JPMorgan Chase, as Administrative Agent for the ratable benefit of itself and the other Lenders, for security purposes, and to Hawthorn L.P.'s performance of its obligations under any duly-executed collateral assignment of the New Sales Tax Note, notwithstanding the inclusion of the Inapplicable Note Assignment Clause in the New Sales Tax Note, the fact that such collateral assignment does not satisfy the conditions for assignment established by the Inapplicable Note Assignment Clause, and the fact that such collateral assignment does not satisfy the conditions for the assignment of such a note currently included in the Redevelopment Agreement. The Village hereby further consents to any other party becoming the owner and holder of the collateral assignment of the New Sales Tax Note (as assignee of JPMorgan, as Administrative Agent, or any successor administrative agent to the Lenders) or the owner and holder of the New Sales Tax Note as a result of the exercise of the rights and remedies under the referenced collateral assignment of and allonge to the New Sales Tax Note by JPMorgan, as Administrative Agent, any successor administrative agent to the Lenders or any future owner of the loan and indebtedness secured by the JPMorgan Chase Mortgage and the collateral assignment of and allonge to the New Sales Tax Note and the successors and assigns of any such owner and holder of the New Sales Tax Note.

Section 3. AMENDMENT TO SALES TAX NOTE ASSIGNMENT PROVISIONS IN REDEVELOPMENT AGREEMENT.

Section 10(F)(5) of the Redevelopment Agreement is hereby amended to read as follows:

F. **Terms of the Sales Tax Notes.** Each Sales Tax Note will (*added language highlighted in bold italics*):

....

(5) allow such Sales Tax Note to be assigned to or pledged as collateral to *any lender having a mortgagee interest in any portion of the Mall Property, including a lender providing financing for the Redevelopment Project; and*

Section 4. GENERAL PROVISIONS.

A. **Entire Agreement/Interpretation.** The Redevelopment Agreement and this First Amendment constitute the entire agreement of the Parties relative to the construction and financing of the Redevelopment Project, superseding any and all prior agreements and negotiations between and among the Parties, whether written or oral, relating to the subject matter of the Redevelopment Agreement and this First Amendment. From and after the Effective Date of this First Amendment, all references in the Redevelopment Agreement to the term "Redevelopment Agreement" or "Agreement" shall be deemed to mean the Redevelopment Agreement, as amended by this First Amendment.

B. **Conflicts.** In the event of a conflict between the provisions of the Redevelopment Agreement and the provisions of this First Amendment, the latter shall govern and control.

C. **Severability.** If any provision in this First Amendment is held invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed stricken herefrom and the remaining provisions shall remain in effect without regard to such invalid or unenforceable provision so that the intent of the Parties, as expressed by the remaining provisions of this First Amendment, may be given effect to the greatest extent possible.

D. **Headings.** The section and paragraph headings in this First Amendment have been inserted only for convenience and in no way define or limit the scope of this First Amendment or the Parties' intentions, as expressed by the provisions of this First Amendment.

E. **Recording.** Hawthorn L.P. will record this First Amendment against the Property, at its expense, with the Office of the Lake County Recorder of Deeds promptly following its execution by the Parties.

F. **Counterparts.** This First Amendment may be executed in counterparts, each of which will constitute an original document and together will constitute the same instrument. Emailed exchanges of signed copies of this First Amendment shall be the equivalent of exchanged original signature copies of the First Amendment.

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

VILLAGE:

VILLAGE OF VERNON HILLS, an Illinois home rule municipal corporation

By: _____
Kevin Timony, Village Manager

ATTEST:

By: _____
Its: Jon Petrillo, Assistant 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

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 Kevin Timony Jon Petrillo, personally known to me to be the Village Manager and Assistant 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 First Amendment, appeared before me this day in person and severally acknowledged that, as such Village President and Village Manager, they signed said First Amendment pursuant to authority duly given by the Corporate Authorities of said Village.

Given under my hand and official seal this ____ day of _____, 2022.

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 First Amendment, appeared before me this day in person and acknowledged that he signed said First Amendment.

Given under my hand and Notarial Seal this ____ day of _____, 2022.

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 First Amendment, appeared before me this day in person and acknowledged that he signed said First Amendment.

Given under my hand and Notarial Seal this ____ day of _____, 2022.

Notary Public

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

(To be attached)

VILLAGE OF VERNON HILLS

ORDINANCE 2022-076

AN ORDINANCE AUTHORIZING A FIRST AMENDMENT TO THE 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 7th Day of June 2022

Published in pamphlet form by the Authority of the President and Board of Trustees of the Village of Vernon Hills, Lake County, Illinois, this 7th day of June, 2022.

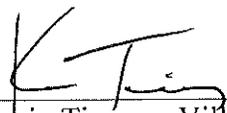
STATE OF ILLINOIS)
)
COUNTY OF LAKE)

CERTIFICATE

I, KEVIN TIMONY, CERTIFY THAT I AM THE DULY APPOINTED VILLAGE CLERK OF THE VILLAGE OF VERNON HILLS, LAKE COUNTY, ILLINOIS. I FURTHER CERTIFY THAT ON JUNE 7, 2022, THE CORPORATE AUTHORITIES OF SUCH MUNICIPALITY PASSED AND APPROVED ORDINANCE 2022-076 AN ORDINANCE OF THE VILLAGE OF VERNON HILLS, LAKE COUNTY, ILLINOIS, AUTHORIZING A FIRST AMENDMENT TO THE 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 2022-076, INCLUDING THE ORDINANCE AND A COVER SHEET THEREOF, WAS PREPARED, AND A COPY OF SUCH ORDINANCE WAS POSTED IN THE VILLAGE HALL, COMMENCING JUNE 7, 2022 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 7th DAY OF JUNE, 2022



Kevin Timony, Village Clerk

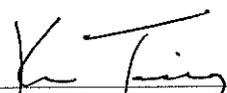
SEAL



AFFIDAVIT

STATE OF ILLINOIS)
)
COUNTY OF LAKE)

I, KEVIN TIMONY, BEING FIRST DULY APPOINTED, DEPOSES AND SAYS ON OATH THAT AS VILLAGE CLERK OF THE VILLAGE OF VERNON HILLS, I DID CAUSE THE FOREGOING CERTIFICATE AND ORDINANCE 2022-076 AN ORDINANCE OF THE VILLAGE OF VERNON HILLS, LAKE COUNTY, ILLINOIS AUTHORIZING A FIRST AMENDMENT TO THE 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 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 JUNE 7, 2022 TO JUNE 17, 2022.



Kevin Timony, Village Clerk

Subscribed and sworn to before
me this 7th day of June, 2022

Notary Public



