

PUBLISHED IN PAMPHLET FORM THE FOLLOWING:

ORDINANCE 4242

TITLED:

**AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT
BETWEEN THE VILLAGE OF VILLA PARK, DUPAGE COUNTY,
ILLINOIS, AND HAWTHORNE DEVELOPMENT CORPORATION**

**HOSANNA KORYNECKY
VILLAGE CLERK
VILLAGE OF VILLA PARK**

STATE OF ILLINOIS)
) ss
COUNTY OF DU PAGE)

I, Hosanna Korynecky, Village Clerk of the Village of Villa Park, Illinois, DO HEREBY CERTIFY that as such Village Clerk and keeper of the records of the Village of Villa Park, that the foregoing is a true and duplicate copy of:

**4242 – AN ORDINANCE APPROVING A DEVELOPMENT
AGREEMENT BETWEEN THE VILLAGE OF VILLA PARK,
DUPAGE COUNTY, ILLINOIS, AND HAWTHORNE
DEVELOPMENT CORPORATION**

Passed on and approved by the President and Board of Trustees of the Village of Villa Park on:

Dated August 23, 2021

IN WITNESS WHEREOF, I have subscribed my name and affixed my seal this 23rd day of August 2021.

Seal




Hosanna Korynecky, Clerk
Village of Villa Park

ORDINANCE NO. 4242

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE VILLAGE OF VILLA PARK, DUPAGE COUNTY, ILLINOIS AND HAWTHORNE DEVELOPMENT CORPORATION

WHEREAS, the Village of Villa Park, DuPage County, Illinois, an Illinois Municipal Corporation (the "*Village*"), is a non-home rule unit of local government organized under the Constitution of the State of Illinois of 1970 and the laws of this State and as such has authority to promote the health, safety and welfare of the Village and its citizens; authority to encourage private investment in industry, business, and housing in order to enhance the tax base of the Village; authority to ameliorate blight; and, authority to enter into contractual agreements with third persons to achieve these purposes; and,

WHEREAS, the Village has identified certain areas within its municipal boundaries where there is a need for economic assistance in order to address the extraordinary measures which must be undertaken to accomplish redevelopment and induce private investment; and

WHEREAS, pursuant to their powers and in accordance with the requirements of the Tax Increment Allocation Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.4-1, *et seq.*, as from time to time amended (the "*TIF Act*"), on September 22, 2014, the President and Board of Trustees of the Village (collectively, the "*Corporate Authorities*") adopted Ordinance Nos. 3826, 3827, and 3828, which approved a redevelopment plan and project (the "*Redevelopment Plan*") for the North Ardmore/Vermont Redevelopment Project Area (the "*Redevelopment Project Area*"), and adopted tax increment allocation financing for the Redevelopment Project Area; and

WHEREAS, pursuant to the TIF Act, the Corporate Authorities are empowered to undertake the redevelopment of a designated area within its municipal limits in which existing conditions permit such area to be classified as a "conservation area" as defined in Section 11.74.4-3 of the TIF Act; and,

WHEREAS, the Village has been informed by Hawthorne Development Corporation, an Illinois corporation (the "*Developer*"), that the Developer will acquire 2.91 acres located within the Redevelopment Project Area which is bordered by Vermont to the north, Beverly to the east, Ardmore to the west, and Terrace Street to the south, approximately 150 north feet of the Union Pacific railroad tracks (the "*Subject Property*"); and,

WHEREAS, the Developer proposes to develop a mixed use complex on the Subject Property with approximately 348 dwelling units, 8,653 square feet of commercial space, 440 parking spaces, a swimming pool, sundeck and other amenities to be known as Garden Station Development (the "*Project*"), which shall

result in an investment by the Developer of not less than \$119,000,000; and,

WHEREAS, the Village is authorized under the TIF Act to enter into development agreements with developers and reimburse them for redevelopment project costs as set forth in a development agreement; and,

WHEREAS, the Corporate Authorities have determined that the Project, when completed, shall eliminate the factors which qualified the Subject Property to be included in the Redevelopment Project Area as a "conservation area", and in order to induce the Developer to undertake the Project at the Subject Property, it is in the best interests of the Village, and the health, safety, morals, and welfare of the residents of the Village, for the Village to reimburse the Developer for certain eligible Redevelopment Project Costs in accordance with the terms and conditions set forth in the attached Development Agreement by and between the Village and the Developer.

NOW, THEREFORE, BE IT ORDAINED by the Village President and Board of Trustees of the Village of Villa Park, DuPage, Illinois, as follows:

Section 1. That the preambles of this Ordinance are hereby incorporated into this Section as if set out herein in full.

Section 2. That the Development Agreement by and between the Village of Villa Park, DuPage County, Illinois and Hawthorne Development Corporation, an Illinois Corporation, attached hereto and made a part hereof, is hereby approved and the Village President and Village Clerk are hereby authorized to execute and deliver said Agreement on behalf of the Village.

Section 3. That the Village President and Village Manager are hereby authorized and directed to undertake any and all actions as may be required to implement the terms of said Agreement.

Section 4. That this Ordinance shall be in full force and effect from and after its passage and approval as provided by law.

PASSED this 23rd day of August, 2021, pursuant to a roll call vote as follows:

AYES:	6
NAYS:	1
ABSENT:	0

APPROVED by me, as Village President of the Village of Villa Park, DuPage County, Illinois, this 23rd day of August, 2021.

Neil Cypore
Village President

Attest:

Loisanna Kyprecky
Village Clerk



**DEVELOPMENT AGREEMENT BY AND BETWEEN THE
VILLAGE OF VILLA PARK AND HAWTHORNE DEVELOPMENT CORPORATION**

THIS REDEVELOPMENT AGREEMENT ("*Agreement*") is entered into as of the _____ day of _____, 2021 ("*Effective Date*") by and between the Village of Villa Park, DuPage County, Illinois, an Illinois municipal corporation ("*Village*"), and Hawthorne Development Corporation, an Illinois corporation (the "*Developer*").

In consideration of the mutual covenants and agreements set forth in this Agreement, the Village and Developer hereby agree as follows:

ARTICLE 1: RECITALS

1.1 The Village is a duly organized and validly existing non-home rule municipality created in accordance with the Constitution of the State of Illinois of 1970 and the laws of the State of Illinois.

1.2 The Village is engaged in the revitalization and development of certain properties zoned for a mixed-use transit oriented development (MX-1), comprising a total of 2.91 acres, bordered by Vermont to the north, Beverly to the east, Ardmore to the west and Terrace Street to the south, approximately 150 feet north of the Union Pacific railroad tracks, legally described on *Exhibit A* attached hereto (the "*Development Site*") and includes the property owned by the Village legally described on *Exhibit B* (the "*Village Parcel*").

1.3 The Village has the authority pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of its inhabitants, to prevent the spread of blight, to encourage private development in order to enhance the local tax base, to increase job opportunities, and to enter into contractual agreements with third parties for the purpose of achieving these goals.

1.4 Pursuant to the Tax Increment Allocation Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.4-1, *et seq.*, as from time to time amended (the "*TIF Act*"), the President and Board of Trustees of the Village (collectively, the "*Corporate Authorities*") are empowered to undertake the development or the redevelopment of a designated area within its municipal boundaries in which existing conditions permit such area to be classified as a "blighted area" or a "conservation area" as such terms are defined in the TIF Act.

1.5 To stimulate and induce development and redevelopment pursuant to the TIF Act, the Village, after giving all required notices, conducting a public hearing and making all findings required by law, on the 22nd day of September, 2014, pursuant to Ordinance Nos. 3826, 3827 and 3828, approved a Redevelopment Plan & Project (the "*Redevelopment Plan*") for an area designated as the North Ardmore/Vermont Redevelopment Project Area (the "*Project Area*") which Project Area includes the Development Site and the Village Parcel, and adopted tax increment financing for the payment and financing of "*Redevelopment Project Costs*", as defined by the TIF Act, incurred within the Project Area as authorized by the TIF Act.

1.6 The Developer on May 19, 2020, submitted a proposal to the Village to acquire and redevelop the Development Site and the Village Parcel as a mixed-use market rate residential project, to include approximately:

- (a) 348 residential units;
- (b) 8,653 square feet of commercial space;
- (c) 440 parking spaces; and,
- (d) Amenities, including but not limited to a swimming pool on a sundeck, resident lounge, business center, conference room, fitness center and pet spa.

All of the foregoing being the components of the development collectively, "*Components of the Development*").

1.7 The Developer has submitted a concept plan for the redevelopment of the Development Site and the Village Parcel with renderings of the Components of the Development, a copy of which is attached hereto as *Exhibit C*, and is prepared to proceed to demolish all structures currently located on the Development Site and the Village Parcel; construct all required infrastructure and site improvements including utilities, sidewalks and landscaping; and, construct all of the Components of the Development (collectively, the "*Project*") resulting in an investment of approximately \$ 119,000,000 in the Project Area.

1.8 The Developer advised the Village that its ability to undertake the Project is contingent upon financial assistance and requested the Village to consider the use of "Incremental Taxes", as hereinafter defined, to be generated by the Development Site and the Village Parcel to reimburse the Developer for certain costs in connection with the Project, as hereinafter provided.

1.9 The Village believes the redevelopment of the Development Site and the Village Parcel, as the Developer has proposed, would enhance the transit oriented district of the Village and therefore desires to have the Development Site and the Village Parcel redeveloped by the Developer which the Village believes would have a synergistic effect upon the local businesses; increase the tax base for the Village and taxing districts authorized to levy taxes upon the Development Site and the Village Parcel; and, provide job opportunities for its citizens and therefore is prepared to reimburse the Developer for certain eligible "redevelopment project costs", as hereinafter defined, through the issuance of revenue bonds secured solely by seventy percent (70%) of the Incremental Taxes generated from the Development Site and the Village Parcel and not secured by the full-faith and credit of the Village (the "*Bonds*") as provided in Section 3.5 hereof; and, to the extent not required to pay debt service on the Bonds, for reimbursement of eligible redevelopment project costs to the Developer ("*Pledged Revenues*").

1.10 For purposes of this Agreement, "Incremental Taxes" shall mean the amount of ad valorem taxes attributable to the increase in the equalized assessed value of the Development Site and the Village Parcel over the initial equalized assessed value of the Development Site and the Village Parcel as established by the DuPage County Assessor as of the designation of the Project Area.

1.11 For purposes of this Agreement, "Redevelopment Project Costs" shall mean and include all costs and expenses as defined as "redevelopment project costs" in Section 11-74.4.3(q) of the TIF Act.

ARTICLE 2: DEVELOPER'S OBLIGATION

2.1 The Developer covenants and agrees to acquire fee simple title of the Development Site and the Village Parcel from the current owners, on the date on which the Bonds are issued (the "Bond Closing Date") but no later than September 30, 2021, and provide the Village with proof of financing in an amount required to pay the total cost of the Project.

2.2 It is understood and agreed that the Village is prepared to convey the Village Parcel (a portion of which is currently used to provide 55 parking spaces and light accessible spaces for commuters of Metra upon proof of the acquisition by the Developer of the properties commonly known as 403-405 North Beverly and 407-409 North Beverly, and legally described on *Exhibit D* (the "*Parking Area*"); receipt by the Village of a performance bond for the purposes as hereinafter provided; proof of acquisition of the Development Site; and, proof of financing for the Project as provided in Section 2.1. For and in consideration of the conveyance of the Village Parcel, the Developer covenants and agrees to the following:

- (a) To submit to the Village; an application for demolition of all structures currently on the Parking Area on or before the Bond Closing Date ; and,
- (b) To provide the Village with a performance bond guaranteeing that the Developer shall complete the construction of improvements to the Parking Area, as provided in Section 2.4 including permeable pavers, eight (8) foot privacy fence, parking lot storm inlets, landscaping, and, lighting as depicted on *Exhibit F* and striping of no less than 53 parking spaces, not including accessible spaces, in accordance with the requirements of Village Code; and convey title to the Parking Area to the Village with all required improvements as provided in Section 2.4 on or before March 1, 2022

2.3 The Developer shall have received all required permits to commence construction of the Project on or before December 31, 2021, and shall have commenced construction of the Project on or before March 31, 2022.

2.4 The Developer shall have completed the demolition of all structures on the Parking Area in accordance with all applicable ordinances and, thereafter, constructed a parking lot, in substantial compliance with the plans prepared by Jones & Jones dated May 6, 2021, in addition to the components in Section 2.2, and submitted to the Village, with no less than 61 parking spaces, including spaces along the Beverly right-of-way, resulting in 53 net new spaces, after changes are made to the existing Metra lot to the south, not including accessible spaces, as shown on Exhibit F, on or before March 1, 2022, the Village hereby authorizes the Developer to modify the lot to the south of the Parking Area, as shown on Exhibit F. The Developer shall, upon completion of construction of the Parking Area as a parking lot for commuters, convey the Parking Area to the Village in exchange for the conveyance of the Village Parcel to the Developer as hereinafter provided.

2.5 The Developer covenants and agrees to complete construction of the Project substantially in accordance with Exhibit C which is anticipated to occur on or before December 31, 2023, but in no event later than 3 years from the Bond Closing Date, and shall have received certificates of occupancy by such date for all Components of the Development, to the extent required by applicable law.

ARTICLE 3: VILLAGE OBLIGATIONS

3.1 The Village shall convey the Village Parcel to the Developer upon proof that the Developer has secured all financing to complete the Project and components of the Project pursuant to Section 2.1, on or before the Bond Closing Date and the establishment of an escrow

into which proceeds from the Bonds will be deposited and used for the purchase of the Development Site.

3.2 The Village also agrees:

- (a) To deliver the February 7, 2000, letter from the Illinois Environmental Protection Agency specifying no further remediation is required on the western portion of the Village Parcel;
- (b) To provide title insurance for the Village Parcel at the sole cost of the Developer, insuring title in the name of the Developer; and,
- (c) To provide a right of entry and easement to the Developer to re-stripe parking spaces on the Metra parking lot to replace accessible parking spaces.

3.3 Commencing on the Bond Closing Date, the Village shall annually apply seventy percent (70%) of the Incremental Taxes generated by the Development Site and the Village Parcel for payment of debt service on the Bonds, and to the extent any funds from the seventy percent (70%) after payment of the debt service, to the Developer as reimbursement of eligible Redevelopment Project Costs.

3.4 The Village acknowledges that the Developer has requested the Village to issue the Bonds payable solely from Incremental Taxes, a debt service reserve fund, and other amounts on deposit in certain funds and accounts created by and as described in a Trust Indenture pursuant to which the Bonds are to be issued (the "Indenture") the proceeds of which shall be used to finance Redevelopment Project Costs. The Village agrees to use commercially reasonable effort to issue the Bonds, the interest on which will be federally tax exempt and shall be at an annual rate necessary to allow for their sale in the marketplace. The issuance of the Bonds shall be subject to the following conditions:

- (a) The principal amount of the Bonds shall be determined by a bond underwriter approved by the Village and payable solely from seventy percent (70%) of the Incremental Taxes generated by the Development Site and the Village Parcel, the proceeds of which shall fund a debt service reserve fund not to exceed 10% of the par amount of the Bonds, and other funds and accounts as described in the Indenture, it being understood that the Bonds shall not, in any way, obligate the full-faith and credit of the Village or other funds of the Village;
- (b) The term of the Bonds shall not exceed the term of the Redevelopment Plan and the expiration of the Project Area which is December 31, 2038;
- (c) All costs of issuance of any kind incurred as a result of the issuance of the Bond, shall be paid from Bond proceeds on the date of issuance of the Bonds;
- (d) To the extent the Incremental Taxes generated by the Project are in excess of the amount required to pay the debt service on the Bonds in any calendar year, such excess shall be transferred to a Surplus Fund created under the Indenture and used to reimburse the Developer for Redevelopment Project Costs not funded by Bond proceeds;
- (e) The Developer has delivered or will deliver to the Village proof of Redevelopment Project Costs incurred in connection with the Project including executed closing statements on the acquisition of the Development Site and the Village Parcel, paid invoices, bills or receipts of any kind for such Project Costs which qualify as Redevelopment Project Costs under the TIF Act;

- (f) The Bonds may be issued prior to the issuance of certificates of occupancy but only to the extent all Bond purchasers are fully informed of the status of the Project as described in an offering document describing the Bonds and submitted to the Village; and,
- (g) The Village shall pay the school districts any amounts owed from the 30% share of Incremental Taxes that it retains pursuant to the terms of a certain Intergovernmental Agreement by and between the Village and School District 45 and an Intergovernmental Agreement with School District 88, and no such payments shall be made from the Garden Station Subaccount of the STAF (as defined below) or from amounts pledged to pay debt service on the Bonds under the Indenture.

ARTICLE 4. PROCEDURES TO REIMBURSE THE DEVELOPER

The Village has established a special tax allocation fund solely for the Project Area (the “STAF”) into which the Village shall deposit Incremental Taxes, as hereinafter defined, generated from the Project Area. On January 1 of each year commencing January 1, 2022 [or, if later, that date which is ten (10) days following the date upon which the Village receives Incremental Taxes from the final installment of real estate taxes (the “STAF Allocation Date”)], seventy percent (70%) of the Incremental Taxes with respect to the Development Site and the Village Parcel during the period from the immediately preceding STAF Allocation Date to but not including, the current STAF Allocation Date shall be transferred and deposited into the Garden Station Subaccount of the STAF (which Subaccount was automatically created by the ordinance approving this Agreement) and used to pay debt service owed on the Bonds as provided in the Indenture, and to reimburse the Developer for Project Costs which qualify as Redevelopment Project Costs under the Act. The Incremental Taxes deposited to the Garden Station Subaccount shall be held by a trustee under the Indenture and pledged to payment of debt service owed on the Bonds.

Payments of debt service on the Bonds shall be in accordance with the Indenture. Construction draws for Redevelopment Project Costs shall be funded from the proceeds of the Bonds in accordance with a Disbursement Request in the form set forth in the Indenture. Reimbursements to the Developer after payment of debt service, as hereinafter provided, shall be pursuant to a Request for Reimbursement in the form attached hereto as *Exhibit E*, but only to the extent the costs itemized therein constitute Redevelopment Project Costs and have not been funded by Bond proceeds and only after amounts have been set aside for the payment of any debt service due on the Bonds in such calendar year. The reimbursements to the Developer, after payment of debt service owed on the Bonds, as provided for herein shall cease upon the termination of this Agreement for any reason.

THE VILLAGE’S OBLIGATION TO PAY DEBT SERVICE ON THE BONDS AND TO REIMBURSE THE DEVELOPER FOR REDEVELOPMENT PROJECT COSTS UNDER THIS AGREEMENT IS A LIMITED OBLIGATION PAYABLE SOLELY FROM SEVENTY PERCENT (70%) OF THE INCREMENTAL TAXES DEPOSITED IN THE GARDEN STATION SUBACCOUNT OF THE STAF FROM TIME TO TIME AND SHALL NOT BE SECURED BY THE FULL FAITH AND CREDIT OF THE VILLAGE.

ARTICLE 5. REPRESENTATIONS, WARRANTIES, AND COVENANTS

5.1 To induce the Village to enter into this Agreement, the Developer represents, covenants, warrants, and agrees that:

- (a) All representations and agreements made in Article 1 are true, complete, and accurate in all respects.
- (b) The Project shall be maintained in accordance with all applicable Village codes and other laws.
- (c) All fees, fines, utility bills and taxes due to the Village, State of Illinois, federal government and all taxing districts having the Development Site and the Village Parcel within their respective jurisdictions, including but not limited to all real estate taxes, shall be paid when due; provided that the Developer shall have the right to contest any such taxes in accordance with applicable law.
- (d) Developer is a duly formed and existing corporation organized under the laws of the State of Illinois and is authorized to do business in Illinois, and has the power to enter into, and by proper action has been duly authorized to execute, deliver, and perform, this Agreement. The Developer will do, or cause to be done, all things necessary to preserve and keep in full force and effect its existence and standing as an entity authorized to do business in the State of Illinois while this Agreement is in full force and effect.
- (e) The execution, delivery, and performance of this Agreement by the Developer, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement shall not conflict with or result in a violation or breach of any of the terms, conditions, or provisions of any offering or disclosure statement made, or to be made, on behalf of Developer, or any restriction, organizational document, or any material agreement, or instrument to which the Developer, is now a party or by which the Developer, is bound, or constitute a default under any of the foregoing.
- (f) There are no actions at law or similar proceedings either pending or, to the best of Developer's knowledge, threatened against the Developer that would materially or adversely affect:
 - (i) The Developer's financial condition;
 - (ii) The level or condition of the Developer's assets as of the date of this Agreement; or
 - (iii) The Developer's ability to perform its obligations hereunder.

5.2 To induce the Developer to enter into this Agreement and to undertake the performance of its obligations under this Agreement, the Village represents, covenants, warrants and agrees as follows:

- (a) All representations and agreements made in Article 1 are true, complete, and accurate in all respects.

- (b) The Village has the power to enter into and perform its obligations under this Agreement and by proper action has duly authorized the Village President and Village Clerk to execute and deliver this Agreement.
- (c) The execution, delivery, and performance of this Agreement by the Village, the consummation of the transactions contemplated hereby and the fulfillment of or compliance with the terms and conditions of this Agreement shall not conflict with or result in a violation or breach of the terms of any order, agreement, or other instrument to which the Village is a party or by which the Village is now bound.
- (d) There are no actions at law or similar proceedings either pending or to the best of the Village's knowledge being threatened against the Village that would materially or adversely affect the ability of the Village to perform its obligations under this Agreement.

ARTICLE 6: ENFORCEMENT AND REMEDIES

6.1 The parties may enforce or compel the performance of this Agreement, in law or in equity, by suit, action, mandamus, or any other proceeding, including specific performance. Notwithstanding the foregoing, the parties hereto agree that they will not seek, and do not have the right to seek, to recover a judgment for monetary damages against the other or any elected or appointed officials, officers, employees, agents, representatives, engineers, consultants, or attorneys thereof, on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement.

6.2 In the event of a breach of this Agreement, the parties agree that the party alleged to be in breach shall have, unless specifically provided otherwise by any other provision of this Article 6, 30 days after notice of any breach delivered in accordance with Article 9 to correct the same prior to the non-breaching party's pursuit of any remedy provided for in Section 6.4 and 6.7 provided, however, that the 30-day period shall be extended, but only (i) if the alleged breach is not reasonably susceptible to being cured within the 30-day period, and (ii) if the defaulting party has promptly initiated the cure of the breach, and (iii) if the defaulting party diligently and continuously pursues the cure of the breach until its completion. If any party shall fail to perform any of its obligations under this Agreement, and if the party affected by the default shall have given written notice of the default to the defaulting party, and if the defaulting party shall have failed to cure the default as provided in this Section 6.2, then, except as specifically provided otherwise in the following sections of this Article 6 and in addition to any and all other remedies that may be available either in law or equity, a party affected by the default shall have the right (but not the obligation) to take any action as in its discretion and judgment shall be necessary to cure the default. In any event, the defaulting party hereby agrees to pay and reimburse the party affected by the default for all costs and expenses reasonably incurred by it in connection with action taken to cure the default, including reasonable attorney's fees and court costs.

6.3 Events of Default by the Developer. Any of the following events or circumstances shall be an event of default by the Developer with respect to this Agreement:

- (a) If any material representation made by the Developer in this Agreement, or in any certificate, notice, demand to the Village, or request made by the Village in

connection with any of the documents, shall prove to be untrue or incorrect in any material respect as of the date made.

- (b) Default by the Developer in the performance or breach of any material covenant contained in this Agreement concerning the existence, structure, or financial condition of the Developer.
- (c) The Developer in the performance or breach of any material covenant, warranty, or obligation contained in this Agreement, including, but not limited to the Developer's failure to maintain the Development Site and the Village Parcel in accordance with applicable laws or pay any tax or fee when due as required by Section 5.1(c), respectively.
- (d) The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the Developer 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 the Developer 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 un-stayed and in effect for a period of 90 consecutive days. There shall be no cure period for this event of default.
- (e) The commencement by the Developer 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 the Developer to the appointment of or taking possession, by a receiver, liquidator, assignee, trustee, custodian, sequestrator, or similar official of the Developer or of any substantial part of the Developer's respective property, or the making by any such entity of any assignment for the benefit of creditors or the failure of the Developer generally to pay such entity's debts as such debts become due or the taking of action by the Developer in furtherance of any of the foregoing. There shall be no cure period for this event of default.
- (f) The determination that the Developer did not, in fact, complete the obligations as set forth in Article 2.

6.4 Remedies for Default by Developer.

- (a) Subject to the provisions of this Agreement, in the case of an event of default by the Developer, the Village may terminate this Agreement, other than the obligation to pay debt service on the TIF Bonds from Available Incremental Taxes which shall survive any default or termination of the other obligations set forth in this Agreement and any and all other obligations hereunder shall be null and void or, pursuant to Section 6.1, may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including proceedings to compel specific performance of the Developer's obligations under this Agreement.

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

6.5 Indemnification by the Developer's Agreement to Pay Attorneys' Fees and Expenses. The Developer agrees to indemnify the Village, and all of its elected and appointed officials, officers, employees, agents, representatives, engineers, consultants, and attorneys, against any and all claims that may be asserted at any time against any of such parties in connection with or as a result of (i) Developer's development, construction, maintenance, or use of the Development Site and Village Parcel; or, (ii) the Developer's default under the provisions of this Agreement. Such indemnification obligation, however, shall not extend to claims asserted against the Village or any of the aforesaid parties in connection with or as a result of (i) the performance of the Village's representations, warranties and covenants under Article 6 of this Agreement; (ii) the Village's default under the provisions of this Agreement; or (iii) the act, omission, negligence or misconduct of the Village or any of the aforesaid parties. If the Developer shall commit an event of default and the Village should employ an attorney or attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the Developer herein contained, the Developer, on the Village's demand, shall pay to the Village the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Village.

6.6 Events of Default by Village. Any of the following events or circumstances shall be an event of default by the Village with respect to this Agreement:

- (a) A default of any term, condition, or provision contained in any agreement or document relating to the Project (other than this Agreement), that would materially and adversely impair the ability of the Village to perform its obligations under this Agreement, and the failure to cure such default within the earlier of 30 days after the Developer's written notice to the Village of such default or in a time period reasonably required to cure such default or in accordance with the time period provided therein.
- (b) Failure to comply with any material term, provision, or condition of this Agreement within the time herein specified and failing to cure such noncompliance within 30 days after written notice from the Developer of such failure or in a time period reasonably required to cure such default.
- (c) A representation or warranty of the Village contained herein is not true and correct in any material respect for a period of 30 days after written notice to the Village by the Developer. If such default is incapable of being cured within 30 days, but the Village begins reasonable efforts to cure such default within 30 days, then such default shall not be considered an event of default hereunder for so long as the Village continues to diligently pursue its cure.

6.7 Remedies for Default by Village. Subject to the provisions of this Agreement, in the case of an event of default by the Village, the Developer, pursuant to Section 6.1, may institute

such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including proceedings to compel the Village's specific performance of its obligations under this Agreement; provided, however, no recourse under any obligation contained herein or for any claim based thereon shall be had against the Village, its officers, agents, attorneys, representatives in any amount in excess of the specific sum agreed to be paid by the Village hereunder, and no liability, right or claim at law or in equity shall be attached to or incurred by the Village, its officers, agents, attorneys, representatives or employees in any amount in excess of specific sums agreed by the Village to be paid hereunder and any such claim is hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village.

ARTICLE 7: GENERAL PROVISIONS

7.1 Liability and Indemnity of Village.

- (a) The Developer acknowledges and agrees that (i) the Village is not, and shall 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 or improvements or as a result of the issuance of any approvals, permits, certificates, or acceptances for the development or use of any portion of the Development Site and the Village Parcel or the improvements thereon and (ii) the Village's review and approval of any plans and the issuance of any approvals, permits, certificates, or acceptances does not, and shall not, in any way be deemed to insure the Developer, or any of its successors, assigns, tenants, or licensees, or any third party, against violations or damage or injury of any kind at any time.
- (b) The Developer shall hold harmless the Village, and all of its elected and appointed officials, employees, agents, representatives, engineers, consultants, and attorneys from any and all claims that may be asserted at any time against any of such parties in connection with (i) the Village's review and approval of any plans or improvements or (ii) the Village's issuance of any approval, permit or certificate. The foregoing provision, however, shall not apply to claims made against the Village as a result of a Village event of default under this Agreement, claims that are made against the Village that relate to one or more of the Village's representations, warranties, or covenants under Article 5 and claims that the Village, either pursuant to the terms of this Agreement or otherwise explicitly has agreed to assume.

7.2 **No Implied Waiver of Village Rights.** The Village shall be under no obligation to exercise rights granted to it in this Agreement except as it shall determine to be in its best interest from time to time. Except to the extent embodied in a duly authorized and written waiver of the Village, no failure to exercise at any time any right granted herein to the Village shall be construed as a waiver of that or any other right.

7.3 **Force Majeure.** Time is of the essence of this Agreement, provided, however, a party shall not be deemed in material breach of this Agreement with respect to any of its obligations under this Agreement on such party's part to be performed if such party fails to timely perform the same and such failure is due in whole or in part to any strike, lock-out, labor trouble (whether legal or illegal), civil disorder, weather conditions, failure or interruptions of power, restrictive governmental laws and regulations, condemnations, riots, insurrections, acts of terrorism, war, fuel

shortages, supply chain shortages, accidents, casualties, floods, earthquakes, fires, acts of Gods, epidemics, quarantine restrictions, including restrictions on evictions of tenants, freight embargoes, acts caused directly or indirectly by the other party (or the other party's agents, employees or invitees) or similar causes beyond the reasonable control of such party ("*Force Majeure*"). If one of the foregoing events shall occur or either party shall claim that such an event shall have occurred, the party to whom such claim is made shall investigate same and consult with the party making such claim regarding the same and the party to whom such claim is made shall grant any extension for the performance of the unsatisfied obligation equal to the period of the delay, which period shall commence to run from the time of the commencement of the Force Majeure; provided that the failure of performance was reasonably caused by such Force Majeure.

ARTICLE 8. TERM

Term. Unless otherwise terminated as provided herein, this Agreement shall be in full force and effect upon its execution by the parties and terminate December 31, 2038.

ARTICLE 9. NOTICES

Notices. All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof (a) when delivered in person on a business day at the address set forth below, or (b) on the third business day after being deposited in any main or branch United States post office, for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below, or (c) by facsimile or email transmission, when transmitted to either the facsimile telephone number or email address set forth below, when actually received.

Notices and communications to Developer shall be addressed to, and delivered at, the following addresses:

with a copy to:

Hawthorne Development Corporation
100 Tower Drive, #238
Burr Ridge, IL 60527
Attn: Ganesan Visvabharathy

Gregory Mizen
Mizen Law
111 East Jefferson Avenue
Naperville, IL 60540

Notices and communications to the Village shall be addressed to and delivered at these addresses:

with a copy to:

Village of Villa Park
20 South Ardmore
Villa Park, IL 60181
Attention: Village Administrator

Kathleen Field Orr
Kathleen Field Orr & Associates
2024 Hickory Road, Suite 205
Homewood, IL 60430

By notice complying with the requirements of this Section, each party shall have the right to change the address or addressee, or both, for all future notices and communications to such party, but no notice of a change of address or addressee shall be effective until actually received.

ARTICLE 10. IN GENERAL

10.1 Amendments and Waiver. No modification, addition, deletion, revision, alteration, or other change to this Agreement shall be effective unless and until the change is reduced to writing and executed and delivered by the Village and the Developer. No term or condition of this Agreement shall be deemed waived by any party unless the term or condition to be waived, the circumstances giving rise to the waiver and, where applicable, the conditions and limitations on the waiver are set forth specifically in a duly authorized and written waiver of such party. No waiver by any party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition of this Agreement, nor shall waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provisions of this Agreement.

10.2 Entire Agreement. This Agreement shall constitute the entire agreement of the Parties; all prior agreements between the Parties, whether written or oral, are merged into this Agreement and shall be of no force and effect.

10.3 Counterparts. This Agreement is to be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below their respective signatures, to be effective as of the Commencement Date.

Village of Villa Park, an Illinois municipal corporation

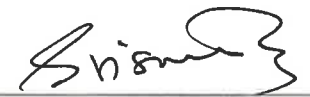
By: 
Village President

Date: 8/24, 2021

Attest:

By: 
Village Clerk

Hawthorne Development Corporation

By: 
President

Attest:

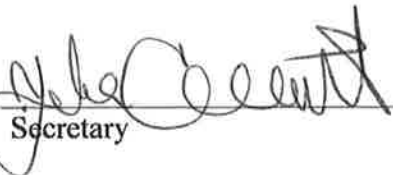
By: 
Secretary

EXHIBIT A

LEGAL DESCRIPTION OF THE DEVELOPMENT SITE

LOTS 89 THRU 97, BOTH INCLUSIVE IN GEORGE M. COLLINS VILLA PARK, BEING A SUBDIVISION IN THE NORTHWEST QUARTER OF SECTION 3 TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 7, 1923 AS DOCUMENT 172335, AND LOTS 1 THROUGH 11, BOTH INCLUSIVE, IN TOWNLEY'S VILLA PARK HIGHLANDS, BEING A SUBDIVISION IN THE SOUTHWEST 1/4 OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 28, 1925 AS DOCUMENT 196958, AND THAT PART OF A PUBLIC ALLEY DEDICATED IN SAID SUBDIVISION LYING NORTHERLY OF THE SAID LOTS AND EASTERLY OF THE SOUTHERLY EXTENSION OF LOT 94 IN SAID GEORGE M. COLLINS VILLA PARK AND THAT PART OF A VACATED PUBLIC ALLEY, (PREVIOUSLY DEDICATED IN TOWNLEY'S VILLA PARK HIGHLANDS SUBDIVISION LYING WESTERLY OF THE SOUTHERLY EXTENSION OF LOT 94 IN SAID GEORGE M. COLLINS VILLA PARK, IN DUPAGE COUNTY, ILLINOIS.

PINs: 06-03-122-001
06-03-122-008
06-03-122-009
06-03-122-010
06-03-122-012
06-03-122-013
06-03-122-014
06-03-122-015
06-03-122-016
06-03-300-005
06-03-301-001

EXHIBIT B

LEGAL DESCRIPTION OF VILLAGE PARCEL

Lots 1 through 11, both inclusive, in Townley's Villa Park Highlands, being a subdivision in the Southwest 1/4 of Section 3, Township 39 North, Range 11, east of the Third Principal Meridian, according to the plat thereof recorded July 28, 1925 as document number 196958 and that part of a public alley dedicated in said subdivision lying northerly of the said lots and easterly of the southerly extension of lot 94 in George M. Collins Villa Park, being a Subdivision in the Northwest Quarter of Section 3 Township 39 North, Range 11, East of the Third Principal Meridian, according to the Plat thereof recorded December 7, 1923 as document 172335, in DuPage County Illinois.

PINs: 06-03-300-005
06-03-301-001

EXHIBIT C
CONCEPT PLAN

JONES & JONES ASSOCIATES / ARCHITECTS PC

GARDEN STATION

 Jones + Jones Associates
ARCHITECTS




CONCEPTUAL ELEVATION
CORNER OF ARDMORE & VERMONT



CONCEPTUAL ELEVATION
CORNER OF ARDMORE & VERMONT

GARDEN STATION

 Jones + Jones Associates
ARCHITECTS P.C.



CONCEPTUAL
POOL DECK



CONCEPTUAL
WALKING TRAIL



CONCEPTUAL
JACUZZI



CONCEPTUAL
COURTYARD

GARDEN STATION



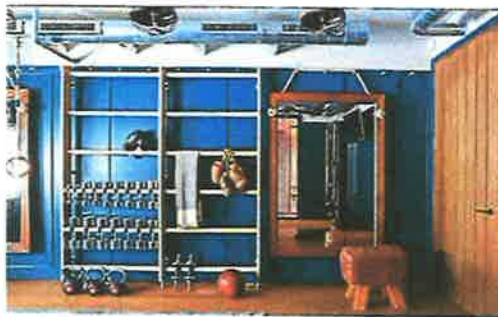
CONCEPTUAL
COMMUNITY ROOM



CONCEPTUAL
FISH TANK



CONCEPTUAL
RESTAURANT



CONCEPTUAL
FITNESS ROOM



CONCEPTUAL
BUSINESS LOUNGE



CONCEPTUAL
LOUNGE

EXHIBIT D

LEGAL DESCRIPTION of 403 N. BEVERLY and 407-09 N. BEVERLY

Legal Description

LOT 157 IN GEORGE M. COLLINS VILLA PARK, BEING A SUBDIVISION IN THE NORTHWEST 1/4 OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 7, 1923 AS DOCUMENT NUMBER 172335 IN DUPAGE COUNTY, ILLINOIS.

PINs: 06-03-123-007

CKA: 403 North Beverly Ave., Villa Park, IL, 60181-2117

Legal Description

LOT 158 IN GEORGE M. COLLINS VILLA PARK, BEING A SUBDIVISION OF PART OF THE SOUTH HALF OF LOT 1 OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 7, 1923 AS DOCUMENT 172335, IN DUPAGE COUNTY, ILLINOIS.

PINs: 06-03-123-006

CKA: 407-09 North Beverly Ave., Villa Park, IL, 60181-2117

EXHIBIT E
Form of Request for Reimbursement

Request for Reimbursement- Pay as you Go

Village of Villa Park
20 South Ardmore
Villa Park, Illinois 60181

Re: Development Agreement, dated _____, 2021, by and among the Village of Villa Park, Illinois; Hawthorne Development Corporation (the “Developer”)

Dear Village Manager:

You are requested to disburse funds pursuant to the Redevelopment Agreement described above in the amount(s), and for the items set forth in this Request for Reimbursement. The terms used in this Request for Reimbursement shall have the meanings given to those terms in the Redevelopment Agreement.

1. Request for Reimbursement No.: _____
2. The amount requested to be disbursed in this Request for Reimbursement will be used to reimburse the Developer for Redevelopment Project Costs attached to this Request for Reimbursement.
4. The undersigned certifies that:
 - (i) the amounts included in 2 above were made or incurred or financed in accordance with approved plans, permits and specifications of the Project as defined in the Redevelopment Agreement;
 - (ii) the amounts paid or to be paid, as set forth in this Request for Reimbursement, represent a part of the reimbursement due and payable as Redevelopment Project Costs;
 - (iii) the expenditures for which amounts are requisitioned represent eligible Redevelopment Project Costs have not been included in any previous Request for Reimbursement, including requests funded with proceeds of TIF Bonds, with paid invoices attached for all sums for which reimbursement is requested;
 - (iv) the moneys requisitioned are not greater than those necessary to meet obligations due and payable or to reimburse the Developer for its funds actually advanced for Redevelopment Project Costs;
 - (v) the Developer is not in default under the Redevelopment Agreement and nothing has occurred to the knowledge of the Developer that would prevent the performance of its obligations under the Redevelopment Agreement.

Hawthorne Development Corporation

Date: _____

By: _____

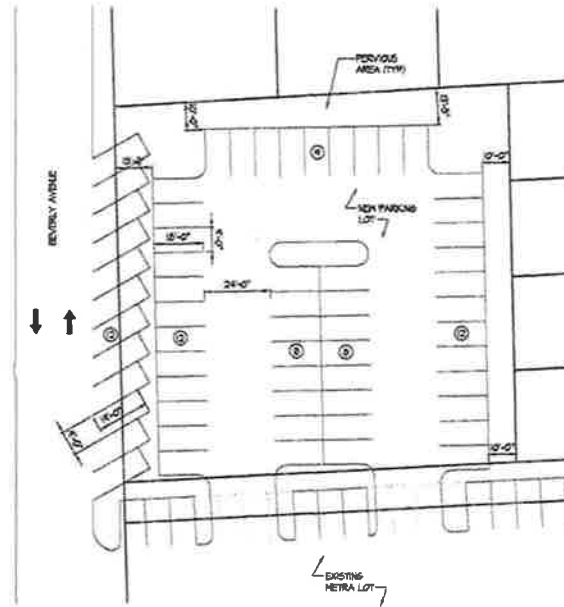
APPROVED:

Village of Villa Park, an Illinois municipal corporation

Date: _____

Village Manager

EXHIBIT F
PARKING PLAN FOR PARKING AREA



SITE PLAN - PARKING LOT
SCALE 1" = 20'-0"

NOTE
NEW PARKING SPACES = 35 (SEE)

EXISTING METRA
LOT

GARDEN STATION APARTMENTS
ARMORE AVENUE / VERMONT STREET
VILLA PARK, ILLINOIS

PROJECT: ARCHITECT
RE: J. J.
TECHNICALS
J. J.
CONSULTING
DATE
10 MAY 2022

SK1.2