VILLAGE OF VERNON HILLS
RESOLUTION 2021-022

A RESOLUTION AUTHORIZING THE VILLAGE PRESIDENT AND VILLAGE CLERK TO EXECUTE AN ENGAGEMENT LETTER WITH CHAPMAN AND CUTLER LLP FOR LEGAL SERVICES RELATING TO THE HAWTHORN MALL REDEVELOPMENT AGREEMENT

WHEREAS, the Village of Vernon Hills ("Village") is a home rule unit of local government pursuant to Article 7, Section 6 of the Constitution of the State of Illinois; and

WHEREAS, on May 18, 2021 the Village approved a Redevelopment Agreement for the Hawthorn Mall Redevelopment Project ("Project") that includes TIF and Sales Tax incentives, to be issued in the form of Developer TIF and Sales Tax Notes in conjunction with completion of the various phases of the Project; and

WHEREAS, it is necessary to engage Chapman and Cutler LLP to perform bond counsel services relating to the issuance of the TIF and Sales Tax Notes, as well as assist in drafting TIF Note related documents and legislation in conformity with the Redevelopment Agreement.

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

SECTION 1: Incorporation. Each Whereas paragraph above is incorporated by reference into this Section and made a part hereof as material and operative provisions of this Resolution.

SECTION 2: Approval. The Board of Trustees of the Village of Vernon Hills approves, authorizes and directs the President and Clerk of the Village of Vernon Hills to execute the Engagement Letter with Chapman and Cutler attached hereto as **Exhibit A**.

SECTION 3: Authorization to Execute. The Village President and Village Clerk, or their designees, are authorized and directed to execute the Engagement Letter and such other documents as are necessary to fulfill the Village's obligations under the Engagement Letter.

SECTION 4: Conflicts. All resolutions, or parts of resolutions, in conflict with the provisions of this resolution, to the extent of such conflict, are repealed.

SECTION 5: Severability. Each section, paragraph, clause and provision of this resolution is separable, and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this resolution, nor any part thereof, other than that part affected by such decision.

SECTION 6: Effective Date. This Ordinance shall be in full force and effect from and after its adoption, approval and publication in the manner required by law.

Dated this 6th Day of July, 2021.

Adopted by roll call vote as follows:

AYES: 6 – Marquardt, Koch, Forster, Oppenheim, Takaoka, Schenk
NAYS: 0 - None
ABSENT AND NOT VOTING: 1 – Byrne

Thom Koch Jr., Village President Pro Tem

PASSED: 07/06/2021
APPROVED: 07/06/2021
ATTEST: 07/06/2021

Mark Fleischhauer, Village Clerk

VILLAGE OF VERNON HILLS
CORPORATE
SEAL
ILLINOIS

EXHIBIT A

Engagement Letter with Chapman and Cutler, LLP
Dated June 15, 2021

(attached)

Chapman and Cutler LLP
Attorneys at Law · Focused on Finance®

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June 15, 2021

Mr. Mark Fleischhauer
Village Manager
Village of Vernon Hills
290 Evergreen Drive
Vernon Hills, Illinois 60061

Re: Village of Vernon Hills, Lake County, Illinois (the *"Village"*)
Hawthorn Mall Redevelopment Project (the *"Redevelopment Project"*)

Dear Mark:

We are pleased to provide an engagement letter for our services in connection with the Redevelopment Project and the issuance of sales tax and tax increment financing revenue notes to reimburse various costs of the Redevelopment Project (collectively, the *"Notes"*). Specifically, we will act as Bond Counsel for the expected issuance of the Village's Taxable Sales Tax Revenue Notes (the *"Sales Tax Notes"*) in 2021 (with additional issuances in subsequent years) and issuance of the Village's Tax Increment Financing Revenue Notes (Hawthorn Mall Redevelopment Project) (the *"TIF Notes"*) in subsequent years. For convenience and clarity, we may refer to the Village in its corporate capacity and to you, the Village officers (including the governing body of the Village) and employees and general and special counsel to the Village, collectively as *"you"* (or the possessive *"your"*). You are retaining us for the limited purpose of rendering our customary approving legal opinions as described in detail below.

A. Description of Services

As Bond Counsel, we will work with you and the following persons and firms: the developers of the Redevelopment Project who will purchase the Notes from the Village (all of whom are referred to as the *"Owners"*), counsel for the Owners, financial advisor, trustee, paying agent and registrar and their designated counsel (you and all of the foregoing persons or firms, collectively, the *"Participants"*). We intend to undertake each of the following (the *"Services"*) as necessary:

1. Review relevant Illinois law, including pending legislation and other recent developments, relating to the legal status and powers of the Village or otherwise relating to the issuance of the Notes.

2. Obtain information about the transactions and the nature and use of the Redevelopment Project.

3. Review the proposed timetable and consult with the Participants as to the issuance of the Notes in accordance with the timetable.

4. Consider the issues arising under the Internal Revenue Code of 1986, as amended, and applicable tax regulations and other sources of law relating to the issuance of certain of the Notes on a tax-exempt basis (the *"Tax-Exempt Notes"*); these issues include, without limitation, ownership and use of the Redevelopment Project, use and investment of Note proceeds prior to expenditure and security provisions or credit enhancement relating to the Notes.

5. Prepare or review major Note documents, including the redevelopment agreement, and with respect to the Tax-Exempt Notes, tax compliance certificates, if applicable.

6. Prepare or review all pertinent proceedings to be considered by the governing body of the Village, including ordinances authorizing the Notes and a related form of Indenture of Trust for the TIF Notes; confirm that the necessary quorum, meeting and notice requirements are contained in the proceedings and draft pertinent excerpts of minutes of the meetings relating to the financings.

7. Attend or host such drafting sessions and other conferences as may be necessary, including preclosings, if needed, and closings; and prepare and coordinate the distribution and execution of closing documents and certificates, opinions and document transcripts.

8. Render our legal opinions regarding the validity of the Notes, the source of payment for the Notes and the federal income tax treatment of interest on the Notes, which opinion (each, a *"Bond Opinion"*) will be delivered in written form on the date the Notes are issued (each, a *"Closing"*). The Bond Opinion will be based on facts and law existing as of its date. Please see the discussion below at Part D. Please note that our opinion represents our legal judgment based upon our review of the law and the facts so supplied to us that we deem relevant and is not a guarantee of a result.

B. LIMITATIONS; SERVICES WE DO NOT PROVIDE

Our Services as Bond Counsel are limited as stated above. Consequently, unless otherwise agreed pursuant to a separate engagement letter, our Services *do not* include:

1. Giving any advice, opinion or representation as to the financial feasibility or the fiscal prudence of issuing the Notes, including, without limitation, the undertaking of the Redevelopment Project, the making of any investigation of or the expression of any view as to the creditworthiness of the Redevelopment Project or of the Notes or the form, content, adequacy or correctness of any projections of revenues to be generated in connection with the Redevelopment Project. We will not offer you financial advice in any capacity beyond that constituting services of a traditionally legal nature.

2. Assisting in the preparation or review of any disclosure document with respect to the Notes or performing an independent investigation to determine the accuracy, completeness or sufficiency of any disclosure.

3. Independently establishing the veracity of certifications and representations of you or the other Participants.

4. Supervising any state, county or local filing of any proceedings held by the governing body of the Village incidental to the Notes.

5. Preparing any of the following — requests for tax rulings from the Internal Revenue Service (the "*IRS*"), blue sky or investment surveys with respect to the Notes, state legislative amendments or pursuing test cases or other litigation.

6. Opining on securities laws compliance or as to any continuing disclosure undertaking pertaining to the Notes; and, after the execution and delivery of the Notes, providing advice as to any Securities and Exchange Commission investigations or concerning any actions necessary to assure compliance with any continuing disclosure undertaking.

7. After Closing, providing continuing advice to the Village or any other party concerning any actions necessary to assure that interest paid on the Tax-Exempt Notes will continue to be tax-exempt; *e.g.*, we will not undertake rebate calculations for the Notes without a separate engagement for that purpose, we will not monitor the investment, use or expenditure of proceeds or the use of the Redevelopment Project, and we are not retained to respond to IRS audits.

8. Any other services not specifically set forth above in Part A.

C. ATTORNEY-CLIENT RELATIONSHIP; REPRESENTATION OF OTHERS

Upon execution of this engagement letter, the Village will be our client, and an attorney-client relationship will exist between us. However, our Services as Bond Counsel are limited as set forth in this engagement letter, and your execution of this engagement letter will constitute an acknowledgment of those limitations. Also please note that the attorney-client privilege, normally applicable under state law, may be diminished or non-existent for written advice delivered with respect to Federal tax law matters.

This engagement letter will also serve to give you express written notice that from time to time we represent in a variety of capacities and consult with most underwriters, investment bankers, credit enhancers such as bond insurers or issuers of letters of credit, ratings agencies, investment providers, brokers of financial products, financial advisors, banks and other financial institutions and other persons who participate in the public finance market on a wide range of issues. We may represent the Owners in other matters not related to these transactions. Prior to execution of this engagement letter we may have consulted with one or more of such firms regarding the Notes including, specifically, the Owners. We are advising you, and you understand that the Village consents to our representation of it in this matter, notwithstanding such consultations, and even though parties whose interests are or may be adverse to the Village in this transaction are clients in other unrelated matters. Your acceptance of our services constitutes consent to these other engagements. Neither our representation of the Village nor such additional relationships or prior consultations will affect, however, our responsibility to render an objective Bond Opinion.

Your consent does not extend to any conflict that is not subject to waiver under applicable Rules of Professional Conduct (including Circular 230 discussed below), or to any matter that involves the assertion of a claim against the Village or the defense of a claim asserted by the Village. In addition, we agree that we will not use any confidential non-public information received from you in connection with this engagement to your material disadvantage in any matter in which we would be adverse to you.

Circular 230 as promulgated by the U.S. Department of Treasury (*"Circular 230"*) provides rules of professional conduct governing tax practitioners. Circular 230 includes provisions regarding conflicts of interest and related consents that in some respects are stricter than applicable state rules of professional conduct which otherwise apply. In particular, Circular 230 requires your consent to conflicts of interest be given in writing within 30 days of the date of this letter. If we have not received all of the required written consents by this date, we may be required under Circular 230 to "promptly withdraw from representation" of the Village in this matter.

Further, this engagement letter will also serve to give you express notice that we represent many other municipalities, school districts, park districts, counties, townships, special districts and units of local government both within and outside of the State of Illinois and also the State itself and various of its agencies and authorities (collectively, the *"governmental units"*). Most but not all of these representations involve bond or other borrowing transactions. We have assumed that there are no controversies pending to which the Village is a party and is taking any position which is adverse to any other governmental unit, and you agree to advise us promptly if this assumption is incorrect. In such event, we will advise you if the other governmental unit is our client and, if so, determine what actions are appropriate. Such actions could include seeking waivers from both the Village and such other governmental unit or withdrawal from representation.

We anticipate that the Village will have its general or special counsel available as needed to provide advocacy in these transactions and has had the opportunity to consult with such counsel concerning the conflict consents and other provisions of this letter; and that other Participants will retain such counsel as they deem necessary and appropriate to represent their interests.

D. Other Terms of the Engagement; Certain of Your Undertakings

Please note our understanding with respect to this engagement and your role in connection with the issuance of the Notes.

1. In rendering the Bond Opinion and in performing any other Services hereunder, we will rely upon the certified proceedings and other certifications you and other persons furnish us. Other than as we may determine as appropriate to rendering the Bond Opinion, we are not engaged and will not provide services intended to verify the truth or accuracy of these proceedings or certifications. We do not ordinarily attend meetings of the governing body of the Village at which proceedings related to the Notes are discussed or passed unless special circumstances require our attendance.

2. The factual representations contained in those documents which are prepared by us, and the factual representations which may also be contained in any other documents that are furnished to us by you are essential for and provide the basis for our conclusions that there is compliance with State law requirements for the issue and sale of valid Notes and with the Federal tax law for the tax exemption of interest paid on the Tax-Exempt Notes. Accordingly, it is important for you to read and understand the documents we provide to you because you will be confirming the truth, accuracy and completeness of matters contained in those documents at the issuance of the Notes.

3. If the documents contain incorrect or incomplete factual statements, you must call those to our attention. We are always happy to discuss the content or meaning of the transaction

documents with you. Any untruth, inaccuracy or incompleteness may have adverse consequences affecting either the tax exemption of interest paid on the Tax-Exempt Notes or the adequacy of disclosures made by the Village under the State and Federal securities laws, with resulting potential liability for you. During the course of this engagement, we will further assume and rely on you to provide us with complete and timely information on all developments pertaining to any aspect of the Notes and their security. We understand that you will cooperate with us in this regard.

4. You should carefully review all of the representations you are making in the transaction documents. We are available and encourage you to consult with us for explanations as to what is intended in these documents. To the extent that the facts and representations stated in the documents we provide to you appear reasonable to us, and are not corrected by you, we are then relying upon your signed certifications for their truth, accuracy and completeness.

5. Issuing the Notes as "securities" under State and Federal securities laws and the Tax-Exempt Notes on a tax-exempt basis is a serious undertaking. As the issuer of the Notes, the Village is obligated under the State and Federal securities laws and the Federal tax laws to disclose all material facts. The Village's lawyers, financial advisers and bankers can assist the Village in fulfilling these duties, but the Village in its corporate capacity, including your knowledge, has the collective knowledge of the facts pertinent to the transaction and the ultimate responsibility for the presentation and disclosure of the relevant information. Further, there are complicated Federal tax rules applicable to tax-exempt bonds. The IRS has an active program to audit such transactions. The documents we prepare are designed so that the Notes will comply with the applicable rules, but this means you must fully understand the documents, including the representations and the covenants relating to continuing compliance with the federal tax requirements. Accordingly, we want you to ask questions about anything in the documents that is unclear.

6. As noted, the members of the governing body of the Village also have duties under the State and Federal securities and tax laws with respect to these matters and should be knowledgeable as to the underlying factual basis for the issue size, use of proceeds and related matters.

7. We are also concerned about the adoption by the Village of the gift ban provisions of the State Officials and Employees Ethics Act, any special ethics or gift ban ordinance, resolution, bylaw or code provision, any lobbyist registration ordinance, resolution, bylaw or code provision or any special provision of law or ordinance, resolution, bylaw or code provision relating to disqualification of counsel for any reason. We are aware of the provisions of the State Officials and Employees Ethics Act and will assume that you are aware of these provisions as well and that the Village has adopted proceedings that are only as restrictive as such Act. However, if the Village has stricter provisions than appear in such Act or has adopted such other special ethics or lobbyist provisions, we assume and are relying upon you to advise us of same.

E. FEES

As is customary, we will bill our fees as Bond Counsel on a transactional basis instead of hourly. Factors which affect our billing include: (a) the amount of the Notes; (b) an estimate of the time necessary to do the work; (c) the complexity of the issues (number of parties, timetable, type of financings, legal issues and so forth); (d) recognition of the partially contingent nature of our fee, since it is customary that in the case no financings are ever completed, we render a greatly reduced statement of charges; and (e) a recognition that we carry the time for services rendered on our books until the financings are completed, rather than billing monthly or quarterly. The continuation of this agreement is dependent upon our fee as Bond Counsel being mutually agreeable to you and to us.

Based upon our current understanding of the terms, structure, size and schedule of the proposed financings, the duties we will undertake pursuant to this engagement letter, the time we estimate will be necessary to effectuate the transactions and the responsibilities we will assume, we expect that our fees will be as follows:

When the Redevelopment Agreement is executed:	$139,096.50
At the time of the issuance of the Sales Tax Note:	$25,000
At the time of the issuance of the Phase I TIF Notes:	$25,000
At the time of the issuance of the Phase III TIF Notes:	$25,000

If at any time, we believe that circumstances require an adjustment of our original fee estimates, we will consult with you and prepare an amendment to this engagement letter.

If, for any reason, the Notes are not issued or are issued without the rendition of our Bond Opinion as bond counsel, or our services are otherwise terminated, we expect to negotiate with you a mutually agreeable compensation.

The undersigned, along with Kent Floros and Sarah Breitmeyer, will be the attorney primarily responsible for the firm's services on these Note issues, with assistance as needed from other members of our bond, securities and tax departments.

F. RISK OF AUDIT BY INTERNAL REVENUE SERVICE

The IRS has an ongoing program of auditing tax-exempt obligations to determine whether, in the view of the IRS, interest on such tax-exempt obligations is excludable from gross income of the owners for federal income tax purposes. We can give no assurances as to whether the IRS might commence an audit of the Tax-Exempt Notes or whether, in the event of an audit, the IRS would agree with our opinions. If an audit were to be commenced, the IRS may treat the Village as the taxpayer for purposes of the examination. As noted in Paragraph 7 of Part B above, the scope of our representation does not include responding to such an audit. However, if we were separately engaged at the time, and subject to the applicable rules of professional conduct, we may be able to represent the Village in the matter.

G. END OF ENGAGEMENT AND POST-ENGAGEMENT; RECORDS

Our representation of the Village and the attorney-client relationship created by this engagement letter will be concluded upon the issuance of the Notes. Nevertheless, subsequent to the Closing, we will prepare and provide the Participants a transcript in a CD-ROM format pertaining to the Notes and make certain that a Federal Information Reporting Form 8038-G is filed for the Tax-Exempt Notes.

Please note that you are engaging us as special counsel to provide legal services in connection with a specific matter. After the engagement, changes may occur in the applicable laws or regulations, or interpretations of those laws or regulations by the courts or governmental agencies, that could have an impact on your future rights and liabilities. Unless you engage us specifically to provide additional services or advice on issues arising from this matter, we have no continuing obligation to advise you with respect to future legal developments.

This will be true even though as a matter of courtesy we may from time to time provide you with information or newsletters about current developments that we think may be of interest to you. While we would be pleased to represent you in the future pursuant to a new engagement agreement, courtesy communications about developments in the law and other matters of mutual interest are not indications that we have considered the individual circumstances that may affect your rights or have undertaken to represent you or provide legal services.

At your request, to be made at or prior to Closing, any other papers and property provided by the Village will be promptly returned to you upon receipt of payment for our outstanding fees and client disbursements. All other materials shall thereupon constitute our own files and property, and these materials, including lawyer work product pertaining to the transaction, will be retained or discarded by us at our sole discretion. You also agree with respect to any documents or information relating to our representation of you in any matter which have been lawfully disclosed to the public in any manner, your website, newspaper publications, filings with a County Clerk or Recorder or with the Secretary of State, or otherwise, that we are permitted to make such documents or information available to other persons in our reasonable discretion. Such documents might include (without limitation) legal opinions, official statements, resolutions or ordinances, or like documents as assembled and made public in a governmental securities offering.

In addition, we employ cloud-based applications to transmit and to store some or all information concerning this engagement, including the confidential or personal information you provide us. This means that the information you provide with respect to this engagement will not necessarily be stored within our firm or our network, but rather on a third-party's servers, which is commonly referred to as being stored in the cloud. We have reviewed the terms of use, policies, procedures and security practices of each cloud provider we use and your information will be encrypted while in transit to that third party's servers and while at rest in the cloud. While we cannot provide any type of guarantee about the security of the information stored in the cloud, we have concluded the respective cloud providers' practices are compatible with our professional obligations regarding confidential treatment of your information. If you have any concerns about the cloud applications we use please contact us and we will be glad to discuss them further with you.

We call your attention to the Village's own record keeping requirements as required by the IRS. Answers to frequently asked questions pertaining to those requirements can be found on the IRS' website under frequently asked questions related to tax-exempt bonds at www.irs.gov (click on "Tax Exempt Bond Community", then "Frequently Asked Questions"), and it will be your obligation to comply for at least as long as any of the Tax-Exempt Notes (or any future bonds issued to refund the Tax-Exempt Notes) are outstanding, plus three years.

H. YOUR SIGNATURE REQUIRED

If the foregoing terms are acceptable to you, please so indicate by returning the enclosed copy of this engagement letter dated and signed by an authorized officer not later than 30 days after the date of this letter, retaining the original for your files. Please note that if we perform Services prior to your executing this engagement letter, this engagement letter shall be effective as of the date we have begun rendering the Services. We will provide copies of this letter to certain of the Participants to provide them with an understanding of our role. We look forward to working with you.

Very truly yours,

CHAPMAN AND CUTLER LLP

By Kelly K. Kost
Kelly K. Kost

Accepted and Approved:

VILLAGE OF VERNON HILLS,
LAKE COUNTY, ILLINOIS

By: Mark Fleischhauer

Title: Village Manager

Date: June 15, 2021

KK:kd
Enclosure

cc: Jim Ferolo
Zoran Milutinovic