

Ordinance No. 14-05

**AN ORDINANCE APPROVING A REDEVELOPMENT AGREEMENT BY AND BETWEEN
THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS
AND DUNDEE-VELAZQUEZ, LLC**

WHEREAS, the Village of East Dundee, Kane and Cook Counties, Illinois (the “*Village*”) is a home-rule municipality pursuant to Article 7, Section 6(a) of the 1970 Constitution of the State of Illinois with the authority to exercise any power and perform any function pertaining to its government and affairs; and,

WHEREAS, pursuant to the Business District Development and Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.3-1 *et seq.*, as from time to time amended (the “*BDD Act*”), the President and Board of Trustees of the Village (the “*Corporate Authorities*”) are empowered to undertake the development and redevelopment of business districts within the municipal boundaries of the Village which are in need of revitalization if such business districts are deemed to be “blighted area” as defined in the BDD Act; and,

WHEREAS, pursuant to the BDD Act, on September 28, 2009, the Corporate Authorities, after public hearings, passed Ordinance No. 09-30 designating the Route 25 and Route 72 Business District (the “*BD District*”), and imposed a retailers’ occupation tax and service occupation tax in the amount of one-half of one percent (0.5%) on all commercial operations within the boundaries of this commercial district (the “*BD Taxes*”) to pay project costs incurred in connection with the planning, execution and implementation of the BD District (the “*BD Plan*”); and,

WHEREAS, the Village has been informed by Dundee-Velazquez, LLC, an Illinois limited liability company (the “*Developer*”) that it has acquired the property commonly known as 220 Dundee Avenue, East Dundee, Illinois (the “*Subject Property*”) and, thereafter,

substantially rehabilitate and renovate the building fronting Dundee Avenue for use as a grocery store (the “*Project*”); and,

WHEREAS, the Developer has also informed the Village that the ability to undertake the Project requires financial assistance from the Village for certain costs that would be incurred in connection with the Project, which costs would constitute “Redevelopment Project Costs” as such term is defined in the BDD Act and which costs would be in furtherance of the implementation of the BD Plan for the BDD District; and

WHEREAS, the Corporate Authorities have determined that the provision by the Village to the Developer of the assistance as hereinafter described in the Redevelopment Agreement attached hereto and made a part hereof is in the best interests of the Village and its residents and taxpayers, thereby providing for economic development and job opportunities for the inhabitants of the Village, enhance the tax base of the Village and other taxing districts and add to the welfare and prosperity of the Village and its inhabitants.

NOW, THEREFORE, BE IT ORDAINED, by the President and Board of Trustees of the Village of East Dundee, Cook and Kane Counties, Illinois, that the Redevelopment Agreement by and between this Village and Dundee-Velazquez, LLC, in the form attached hereto, is hereby approved and the President and Village Clerk hereby authorized to execute same authorized to execute said Agreement.

**REDEVELOPMENT AGREEMENT BY AND BETWEEN
THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS
AND DUNDEE-VELAZQUEZ, LLC**

THIS REDEVELOPMENT AGREEMENT is entered into this 3rd day of Mar, 2014, by and between the Village of East Dundee, Illinois, an Illinois municipal corporation (the “*Village*”) and Dundee-Velazquez, LLC, an Illinois limited liability company, 149 Madera Circle, Carpentersville, Illinois 60110 (the “*Developer*”).

PREAMBLES

WHEREAS, pursuant to the Business District Development and Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.3-1 *et seq.*, as from time to time amended (the “*BDD Act*”), the President and Board of Trustees of the Village (the “*Corporate Authorities*”) are empowered to undertake the development and redevelopment of business districts within the municipal boundaries of the Village which are in need of revitalization if such business districts are deemed to be “blighted area” as defined in the BDD Act; and,

WHEREAS, pursuant to the BDD Act, on September 28, 2009, the Corporate Authorities, after public hearings, passed Ordinance No. 09-30 designating the Route 25 and Route 72 Business District (the “*BD District*”), and imposed a retailers’ occupation tax and service occupation tax in the amount of one-half of one percent (0.5%) on all commercial operations within the boundaries of this commercial district (the “*BD Taxes*”) to pay project costs incurred in connection with the planning, execution and implementation of the BD District (the “*BD Plan*”); and,

WHEREAS, the Village has been informed by the Developer that it has acquired the property commonly known as 220 Dundee Avenue, East Dundee, Illinois (the “*Subject*”

Property”) which is improved with two (2) commercial buildings. The Developer intends to substantially rehabilitate and renovate the building fronting on Dundee Avenue (the “*Project*”) which has remained vacant and unused for two (2) years for use as a grocery store and to utilize the rear building for a trucking operation; and,

WHEREAS, the Subject Property is located within the BD District and is legally described on *Exhibit A* attached hereto and made a part hereof; and,

WHEREAS, the Developer has also informed the Village that the ability to undertake the Project on the Subject Property requires financial assistance from the Village for certain costs that would be incurred in connection with said renovation and rehabilitation, which costs are in furtherance of the implementation of the BD Plan for the BDD District; and

WHEREAS, the Corporate Authorities have determined that the blighting factors now present on the Subject Property are detrimental to the public and impair development and growth in the BDD District and will continue to impair growth and development but for the use of the retailers’ occupation tax and service occupation tax as imposed pursuant to the BDD Act to assist the Developer to pay certain costs to be incurred by the Developer to undertake the Project; and,

WHEREAS, the existence of the blighting factors and the extraordinary costs necessary for redevelopment have prevented developers from redeveloping and revitalizing the Subject Property which has, in turn, limited the development and construction of commercial and industrial enterprises within the BD District; and,

WHEREAS, the Developer’s proposal calls for the Developer to redevelop the Subject Property in accordance with all applicable Village ordinances and the Village has determined

that the Developer has the necessary qualifications, expertise and background to undertake the Project; and,

WHEREAS, the Village is authorized under the BDD Act to incur costs and to make and enter into all contracts necessary or incidental to the implementation of the plans for the BD District; and,

WHEREAS, the Corporate Authorities have determined that the provision by the Village to the Developer of the assistance hereinafter described and the renovation and rehabilitation by the Developer of the Subject Property pursuant to this Agreement are in the best interests of the Village and its residents and taxpayers, thereby helping to provide for economic development and job opportunities for the inhabitants of the Village, enhance the tax base of the Village and other taxing districts and add to the welfare and prosperity of the Village and its inhabitants.

NOW, THEREFORE, the parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

Section 1. Incorporation of Recitals

The Parties agree that all of the recitals contained in the Preambles to this Agreement are true and correct and are hereby incorporated into this Agreement as though they were fully set forth in this Section 1.

Section 2. Developer's Obligations

(a) The Developer acquired the Subject Property and delivered a plan for the renovation and rehabilitation of one of the buildings on the Subject Property including an estimate of all costs to be incurred by the Developer in connection with the renovation of the Subject Property.

(b) The Developer covenants and agrees that upon completion of the Project there shall have been invested a minimum sum of \$745,000.

(c) The Developer has commenced construction and on or before December 31, 2014, the Developer shall have completed the Project in accordance with all approved plans and specifications, laws of the State and federal government, ordinances, resolutions and regulations of the Village and all other agencies or governmental bodies having jurisdiction over the Subject Property (the “*Legal Requirements*”).

Section 3. Developer Payments

In consideration for the renovation and rehabilitation by the Developer of the front building on the Subject Property in accordance with the terms of this Agreement, so long as no event described in Section 15 of this Agreement shall have occurred and be continuing, the Village shall reimburse the Developer for certain costs to be incurred by the Developer in connection with the redevelopment of the Subject Property as itemized on *Exhibit B* (the “*Redevelopment Project Costs*”) subject to the limitations and authorization of the BDD Act and this Agreement in an amount not to exceed the lesser of (i) thirty percent (30%) of total costs to complete the Project which costs are estimated to be approximately \$100,000; or (ii) \$30,000 (the “*Incentive*”). The Developer shall have the right to reallocate items among line items on *Exhibit B*, when seeking reimbursement therefore pursuant to this Agreement. For purposes of this Agreement, “Redevelopment Project Costs” shall mean and include all costs defined as “business district project costs” as defined in Section 11-74.3-5 of the BDD Act as from time to time amended.

(b) In the event the Project is completed on or before December 31, 2014, the Village shall reimburse the Developer on December 31, 2014, an amount equal to one-third (1/3) of the Incentive in accordance with the terms and procedures as set forth in Section 4 hereof. The balance of the Incentive shall be paid in two equal installments on December 31, 2015 and December 31, 2016.

Section 4. Procedures for and Application of Reimbursement to the Developer

(a) The Developer shall advance all funds and all costs necessary to construct and complete the Project.

(b) To be eligible for reimbursement of any eligible Redevelopment Project Costs, the Project shall have been constructed and completed in accordance with the Legal Requirements.

(c) To establish a right of reimbursement for specific Redevelopment Project Costs under this Agreement, the Developer shall submit to the Village President or his or her designated officer or employee, a written statement in the form attached to this Agreement as *Exhibit C* (a “*Request for Reimbursement*”) setting forth the specific Redevelopment Project Costs for which the reimbursement is sought. Each Request for Reimbursement shall be accompanied by such bills, contracts, invoices, lien waivers or other evidence as the Village President or his designee shall reasonably require to evidence the right of the Developer to reimbursement under this Agreement. The Village President or his or her designee shall have twenty (20) days after receipt of any Request for Reimbursement from the Developer to recommend approval for immediate payment or disapproval of such Request and, if disapproved, to provide the Developer in writing and in detail with an explanation as to why he or she is not

prepared to recommend such reimbursement. The only reasons for disapproval of any expenditure for which reimbursement is sought shall be that such expenditure is not an eligible Redevelopment Project Cost under the BDD Act; that it is not itemized on *Exhibit B* attached hereto as a Redevelopment Project Cost; or that the cost was not incurred and the construction was not completed by the Developer in accordance with the Legal Requirements and the provisions of this Agreement. The parties acknowledge that the determination of Redevelopment Project Costs and qualification for reimbursement under this Agreement are subject to the BDD Act and all amendments to the BDD Act before and after the date of this Agreement, and administrative rules and judicial interpretations rendered during the term of this Agreement. The Village has no obligation to the Developer to attempt to modify said rules or decisions but will cooperate with the Developer in obtaining approval of Redevelopment Project Costs.

Section 5. Term

Unless earlier terminated pursuant to Section 15, the term of this Agreement shall commence on the date of execution and end December 31, 2024.

Section 6. No Liability of Village to Others for Developer's Expenses

The Village shall have no obligation to pay any cost relating to the renovation and rehabilitation of the Subject Property or to make any payment to any person other than the Developer, nor shall the Village be obligated to pay any contractor, subcontractor, mechanic, or materialman providing services or materials to the Developer for the renovation and rehabilitation of the Subject Property.

Section 7. Assignment

This Agreement may not be assigned by the Developer without the prior written consent of the Village, which consent shall not be unreasonably withheld.

Section 8. Developer Indemnification

The Developer shall indemnify and hold harmless the Village, its agents, officers and employees against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses (including any liabilities, judgments, costs and expenses and reasonable attorney's fees) which may arise directly or indirectly from the failure of the Developer or any contractor, subcontractor or agent or employee thereof (so long as such contractor, subcontractor or agent or employee thereof is hired by the Developer) to timely pay any contractor, subcontractor, laborer or materialman; from any default or breach of the terms of this Agreement by the Developer; or from any negligence or reckless or willful misconduct of the Developer or any contractor, subcontractor or agent or employee thereof (so long as such contractor, subcontractor or agent or employee is hired by the Developer). The Developer shall, at its own cost and expense, appear, defend and pay all charges of attorneys, costs and other expenses arising therefrom or incurred in connection therewith. If any judgment shall be rendered against the Village, its agents, officers, officials or employees in any such action, the Developer shall have no obligation whatsoever, with respect to any acts of negligence or reckless or willful misconduct on the part of the Village or any of its officers, agents, employees or contractors.

Section 9. Waiver

Any party to this Agreement may elect to waive any remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless the party waiving such right or

remedy does so in writing. No such waiver shall obligate such party to waive any right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided said party pursuant to this Agreement.

Section 10. Severability

If any section, subsection, term or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of said section, subsection, term or provision of this Agreement or the application of same to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

Section 11. Notices

All notices, demands, requests, consents, approvals or other instruments required or permitted by this Agreement shall be in writing and shall be executed by the party or an officer, agent or attorney of the party, and shall be deemed to have been effective as of the date of actual delivery, if delivered personally, or as of the third (3rd) day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows:

To the Developer:

Dundee-Velazquez, LLC
149 Madera Circle
Carpentersville, Illinois 60110
Attn: Jaime Velazquez

To the Village:

Village of East Dundee
Village Administrator
120 Barrington Avenue
East Dundee, Illinois 60118

With a copy to:
Kathleen Field Orr
Kathleen Field Orr & Associates
53 West Jackson Blvd., Suite 964
Chicago, Illinois 60604

Section 12. No Joint Venture, Agency or Partnership Created

Neither anything in this Agreement nor any acts of the parties to this Agreement shall be construed by the parties or any third person to create the relationship of a partnership, agency, or joint venture between or among such parties.

Section 13. No Discrimination and Prevailing Wage Act compliance

(a) The Developer, for itself and its successors and assigns, agrees that in the construction of the improvements on the Subject Property provided for in this Agreement the Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Developer shall take affirmative action to require that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising and solicitations or advertisements for employees; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices, which may be provided by the Village, setting forth the provisions of this nondiscrimination clause. The Developer shall comply with all applicable laws regarding rate of pay or other forms of compensation.

(b) *Prevailing Wage Act.*

1. The Developer, its contractors and subcontractors shall be responsible to determine if the Project is a “public work” within the meaning of the Illinois Prevailing Wage Act (the “Act”) (820 ILCS 130/0.01 *et seq.*) requiring it to pay workers performing services on this Project no less than the “prevailing rate of wages” in the county where the work is performed. For information regarding the applicability of the Act contact your attorney or the Illinois Department of Labor (the “IDOL”). For the current prevailing wage rates, contact the Village or see the listing of rates or at www.state.il.us/agency/idol/rates/rates. The IDOL makes the final determination of whether this Project is subject to the Act.

2. The Developer agrees to indemnify and hold harmless the municipality, its agents, officers and employees as provided for in this Redevelopment Agreement for any violation by the Developer or its contractors and subcontractors’ failure to comply with any provision of the Act if applicable.

Section 14. Repayment Obligation. In the event the Owner ceases to operate either the truck operation or a retail store with sales of no less than \$250,000 at the Subject Property, or both (the “Businesses”) during the term of this Agreement, the Developer shall repay all Redevelopment Project Costs reimbursed by the Village for the Project, reduced by ten percent (10%) for each year (twelve (12) calendar months) of uninterrupted operation of the Businesses.

Section 15. Remedies – Liability

(a) If, in the Village’s judgment, the Developer is in material default of this Agreement the Village shall provide the Developer with a written statement indicating any failure on the Developer’s part to fulfill its obligations under this Agreement. Except as required

to protect against further damages, the Village may not exercise any remedies against the Developer in connection with such failure until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, such thirty (30) days period shall be extended for such time as is reasonably necessary for the curing of the same, so long as the Developer diligently proceeds with such cure; if such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. A default not cured as provided above shall constitute a breach of this Agreement. Any failure or delay by the Village in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

(b) If the Developer materially fails to fulfill its obligations under this Agreement after notice is given by the Village and any cure periods described in paragraph (a) above have expired, the Village may elect to terminate its obligations under this Agreement or exercise any right or remedy it may have at law or in equity, including the right to specifically enforce the terms and conditions of this Agreement. If any voluntary or involuntary petition or similar pleading under any section or sections of any bankruptcy or insolvency act shall be filed by or against the Developer, or any voluntary or involuntary proceeding in any court or tribunal shall be instituted to declare the Developer insolvent or unable to pay the Developer's debts, or the Developer makes an assignment for the benefit of its creditors, or a trustee or receiver is appointed for the Developer or for the major part of any of the Developer's property, the Village may elect, to the extent such election is permitted by law and is not unenforceable under applicable federal bankruptcy laws, but is not required, with or without notice of such election

and with or without entry or other action by the Village, to forthwith terminate this Agreement. To effect the Village's termination of this Agreement under this Section, the Village's sole obligation shall be to record, in the Office of the Kane County Recorder, a Certificate of Default, executed by the President of the Village or such other person as shall be designated by the Village, stating that this Agreement is terminated pursuant to the provisions of this Section, in which event this Agreement, by virtue of the recording of such certificate, shall *ipso facto* automatically become null and void and of no further force and effect.

(c) If, in the Developer's judgment, the Village is in material default of this Agreement, the Developer shall provide the Village with a written statement indicating in adequate detail any failure on the Village's part to fulfill its obligations under this Agreement. The Developer may not exercise any remedies against the Village in connection with such failure until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, so long as the Village diligently proceeds with such cure; if such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. Any failure or delay by the Developer in asserting any of its rights or remedies as to any default or any alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

(d) In addition to any other rights or remedies, a party may institute legal action against the other party to cure, correct or remedy any default, or to obtain any other remedy consistent with the purpose of this Agreement, either at law or in equity, including, but not limited to the equitable remedy of an action for specific performance; provided, however, no

recourse under or upon any obligation contained herein or for any claim based thereon shall be had against the Village, its officers, agents, attorneys, representatives or employees in any amount or in excess of any 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 any 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. Notwithstanding the foregoing, in the event either party shall institute legal action against the other party because of a breach of any agreement or obligation contained in this Agreement, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred in connection with such action.

(e) The rights and remedies of the parties are cumulative and the exercise by a party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or for any other default by the other party. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Illinois. Any legal proceedings shall be commenced in the current Court of Kane County.

Section 16. Developer's Covenants

The Developer covenants and agrees to promptly pay, when due, any and all fees, charges, taxes and any other financial obligation the Developer owes to the Village throughout the term of this Agreement.

Section 17. 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, accidents, casualties, floods, earthquakes, fires, acts of God, epidemics, quarantine restrictions, 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.

Section 18. Amendment

This Agreement, and any exhibits attached to this Agreement, may be amended, only in writing, signed by all parties with the adoption of any ordinance or resolution of the Village approving said amendment, as provided by law, and by execution of said amendment by the parties or their successors in interest. Except as otherwise expressly provided herein, this

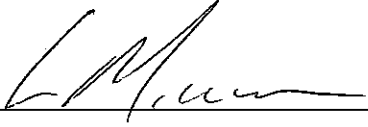
Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof.

Section 19. Counterparts

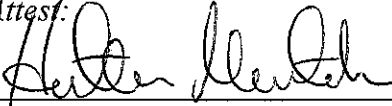
This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the above date at East Dundee, Illinois.

Village of East Dundee, an Illinois municipal corporation

By: 

President

Attest:


Village Clerk

Dundee-Velazquez, LLC

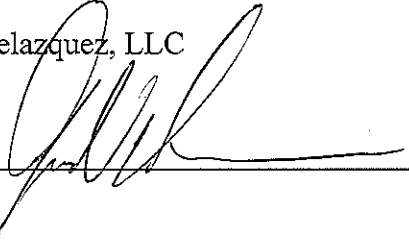
By: 

Exhibit A

Legal Description of Subject Property

220 South Route 25 (Dundee Avenue), East Dundee, IL 60118

PIN # 03-24-302-021

Exhibit B

Redevelopment Project Costs

Demo	\$ 8,000.00
Construction of new walls	\$ 4,200.00
Electrical	\$ 9,750.00
New Electrical Service	\$ 2,850.00
Automatic Front Entry Door/Windows	\$19,186.00
Wall Prep/Painting	\$ 4,250.00
Acoustical Ceiling Grid/Tiles	\$ 1,950.00
Light Fixtures	\$ 800.00
Vinyl Flooring/Wall base	\$ 6,894.00
Duct Work	\$ 3,238.00
Emergency/Exit Lighting	\$ 1,420.00
Exterior Painting/Sign Concrete	\$ 6,000.00
Dressing Rooms	\$ 850.00
Existing light fixture repairs	\$ 450.00
Roof	<u>\$40,000.00</u>
<i>Total</i>	\$109,838.00