

ORDINANCE NUMBER 11- 48

AN ORDINANCE OF THE VILLAGE OF EAST DUNDEE APPROVING A REDEVELOPMENT AGREEMENT BETWEEN THE VILLAGE OF EAST DUNDEE AND COZZI DISCOUNT GROCERS, LLC (River Valley Shopping Center)

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 between the Village of East Dundee and Cozzi Discount Grocers LLC, as presented to this meeting of the Village Board and attached hereto and made a part hereof by reference, is hereby approved and the Village President and Village Clerk are hereby authorized to execute and deliver the Redevelopment Agreement.

BE IT FURTHER ORDAINED by the President and Board of Trustees of the Village of East Dundee, Cook and Kane Counties, Illinois, that Ordinance No. 11-28 adopted May 16, 2011, approving a Redevelopment Agreement by and between the Village and Cozzi Discount Grocers, LLC, is hereby repealed and all of the terms thereof are hereby replaced by the Redevelopment Agreement hereinabove approved.

Section One. Severability. If any section, paragraph or provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this ordinance.

Section Two. Repeal. All ordinances or parts thereof in conflict herewith be and the same are hereby repealed and this ordinance shall be in full force and effect forthwith upon its adoption, approval and publication as provided by law.

Section Three. Publication. That a full, true and complete copy of this ordinance shall be published within ten (10) days after passage in pamphlet form by authority of the Board.

Adopted this 17th day of October, 2011, pursuant to a roll call vote as follows:

- AYES: 5 - Trustees Gorman, Lynam, Miller, VanOstenbridge & President Bartels
NAYES: 1 - Trustee Skillicom
ABSENT: 1 - Trustee Ruffalo

Approved by me this 17<sup>th</sup> day of October, 2011.

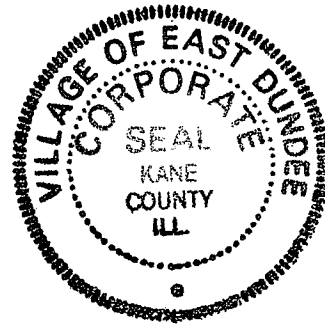
Jerald Bartels  
Jerald Bartels, President

Published in pamphlet form this 22<sup>nd</sup> day of October, 2011, under the authority of the President and Board of Trustees.

**ATTEST:**

Jennifer Rehberg  
JENNIFER REHBERG, Village Clerk

Recorded in the Village Records on October 22<sup>nd</sup>, 2011.



**REDEVELOPMENT AGREEMENT BY AND BETWEEN  
THE VILLAGE OF EAST DUNDEE, ILLINOIS AND COZZI DISCOUNT GROCERS, LLC**

**THIS DEVELOPMENT AGREEMENT** is entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the Village of East Dundee, Illinois, an Illinois municipal corporation (the "*Village*"), and Cozzi Discount Grocers, LLC of Stone Park, Illinois (the "*Developer*").

**PREAMBLES**

**WHEREAS**, pursuant to the Business District Development and Redevelopment Law 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 or redevelopment of business districts within the municipal boundaries of the Village which are in need of revitalization; 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 the BD District to pay project costs incurred in connection with the planning, execution and implementation of the BD District (the "*BD Plan*"); and,

**WHEREAS**, the Corporate Authorities have determined that the blighting factors in the BD District, as described in the BD Plan, are detrimental to the public and impair development and growth in the BD District; and,

**WHEREAS**, the existence of the blighting factors in the BD District and the extraordinary costs necessary for redevelopment have prevented private developers from

developing, redeveloping, and revitalizing the BD District, which has, in turn, prevented the development and construction of commercial enterprises within the BD District; and,

**WHEREAS**, the Developer desires to lease property for the purpose of operating a grocery store in the River Valley Shopping Center (the "*Subject Property*"), which property is also located within the boundaries of the Dundee Gateway BD District; and,

**WHEREAS**, in order to convert the Subject Property in the River Valley Shopping Center into a grocery store, certain improvements must be made, including, but not limited to, updated doorways, new signs, electrical upgrades, installation of a new walk-in cooler, installation of cardboard bailer and upgrades to existing coolers (the "*Project*"); and,

**WHEREAS**, the operation of a new grocery store in a vacant tenant space by the Developer will eliminate blighting factors which impair the development and would be in the best interest of the Village and the health and welfare of its residents and taxpayers and would be in furtherance of the BD Plan; and,

**WHEREAS**, in order to induce the Developer to develop and operate a grocery store, the Corporate Authorities have determined that it is in the best interests of the Village and the residents of the Village, for the Village to reimburse the Developer for a portion of the tenant renovation costs conditioned upon the terms hereinafter set forth; and,

**WHEREAS**, the development of the Subject Property is consistent with the approved BD Plan for the BD District and this Project shall further the goals and objectives of the BD Plan for the adjacent properties; 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 redevelopment 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 inducing economic development, providing job opportunities for the inhabitants of the Village, enhancing the tax base of the Village and other taxing districts; and, adding to the welfare and prosperity of the Village and its residents.

**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 herein as though they were fully set forth in this Section 1.

***Section 2. Developer's Obligations.***

(a) On or before October 31, 2011, the Developer shall have executed a lease for the Subject Property for a period of not less than five (5) years from the date of commencement of operation of a grocery store.

(b) The Developer covenants to undertake and complete any and all renovation and improvements as deemed necessary to complete the Project on or before March 1, 2012, and commence the operation of a grocery store on or before May 1, 2012.

(c) The Developer covenants to operate a discount grocery store selling basic food and dairy products as well as household commodities for a period of not less than sixty (60) months with only interruptions in service as deemed necessary to repair or remodel the Subject Property, which interruptions in no event shall exceed seven (7) calendar days.

(d) The Developer covenants to operate a discount grocery store open for business seven (7) days each week for not less than twelve (12) hours per day.

(e) The Developer covenants at all times to comply with all applicable laws of the Village, the State of Illinois and the United States governing and regulating the labeling and sales of food and household goods.

(f) The Developer covenants and agrees to pay all applicable taxes, fees or assessments as such become due whether imposed by State, local or federal government.

***Section 3. Developer Payments.***

(a) *Reimbursement.*

(i) In consideration for the construction and operation of the Project by the Developer at the Subject Property in accordance with the terms of this Agreement, the Village shall reimburse the Developer for certain costs to be incurred by the Developer as itemized on *Exhibit A* (the “*Redevelopment Project Costs*”) subject to the limitations and authorization of the BDD Act, and this Agreement in an amount not to exceed \$30,000.00.

(ii) The Developer shall have the right to reallocate items among line items on *Exhibit A*, 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” in Section 11-74.3-5 of the BDD Act as from time to time amended.

***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 all applicable laws and the Developer shall have commenced operation of a grocery store.

(c) To establish a right of reimbursement for Redevelopment Project Costs under this Agreement, the Developer shall submit to the Village or its designated officer or employee, a written statement in the form attached to this Agreement as *Exhibit B* (a “*Request for Reimbursement*”) setting forth the specific Redevelopment Project Costs for which 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 the reimbursement. 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 reimbursement is not recommended. 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 contained on *Exhibit A* attached hereto as a Redevelopment Project Cost, or that the cost was not incurred and

the construction completed by the Developer in accordance with all applicable law and the provisions of this Agreement, including without limitation all permits issued by the Village. The parties acknowledge that the determination of Redevelopment Project Costs and qualification for reimbursement under this Agreement are subject to the BDD Act, all amendments to the BDD Act both 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 14, the term of this Agreement shall commence on the date of execution and end five (5) years from the date of the commencement of operation of a grocery store.

***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 development 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 development 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 (3<sup>rd</sup>) 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:***

Cozzi Discount Grocers, LLC  
1600 North Mannheim Road  
Stone Park, Illinois 60165  
Attn: Fred Thompson, President

***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 935  
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 Project 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*

(i) 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](http://www.state.il.us/agency/idol/rates/rates). The IDOL makes the final determination of whether this Project is subject to the Act.

(ii) 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. 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 Developer shall repay the Village for all monies paid as reimbursement of Redevelopment Project Costs under this Agreement or may exercise any other 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 and demand repayment of any or all Redevelopment Project Costs for which the Developer has received reimbursement.

(c) 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.

(d) 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 15. Developer's Covenants.*** The Developer hereby covenants and agrees to repay to the Village any and all sums paid by the Village to the Developer pursuant to this Agreement in the event the Developer ceases to operate its discount grocery store at the Subject Property within five (5) years from the date of this Agreement which amount shall be reduced by twenty percent (20%) for every consecutive twelve (12) month period the discount grocery store is in operation.

**Section 16. Amendment.**

(a) This Agreement, and any exhibits attached to this Agreement, may be amended only in a 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.

(b) This Agreement replaces all of the terms of the Redevelopment Agreement by and between the Village and the Developer dated May 16, 2011, approved pursuant to Ordinance No. 11-28, adopted May 16, 2011, which Ordinance has been repealed.

**Section 17. 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

Cozzi Discount Grocers, LLC

\_\_\_\_\_  
Fred Thompson, Its President

*Exhibit A*

*Redevelopment Project Costs*

1. Double door in the hall with a ramp to roll in pallets:	\$5,300.00
2. Sign on façade in raised block letters:	\$7,180.00
3. Electrical outlets on north wall to accommodate 10 doors of the cooler & increase capacity	\$4,870.00
4. Install a walk-in cooler in the back room for refrigerated back stock product:	\$9,700.00
5. Install a bailer to recycle cardboard:	\$4,600.00
6. Convert 13 glass door beer cooler with back area for storage:	
a. Install insulated floor and walls	
b. Install electric heaters in the glass door frames so they won't frost over	
c. Replace compressors	
d. Clean recharge system	\$22,660.00
7. Miscellaneous work on floors, painting, and plumbing, etc.	<u>\$ 6,000.00</u>
<i>Estimated Total Renovation:</i>	<u>\$60,310.00</u>



Exhibit C

REQUEST FOR REIMBURSEMENT

[Date]

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

Re: **Redevelopment Agreement dated \_\_\_\_\_, by and between the Village of East Dundee, Illinois, and Cozzi Discount Grocers, LLC (the "Developer")**

Dear Sir:

You are requested to reimburse the Developer described above in the amount of \$ \_\_\_\_\_ for the purpose(s) set forth in this Request for Reimbursement.

1. The amount of \$ \_\_\_\_\_ requested to be disbursed pursuant to this Request for Reimbursement will be used to reimburse the Developers for those Redevelopment Project Costs detailed in Schedule 1 attached to this Request for Reimbursement.
2. The undersigned certifies that:
  - (i) the amounts were made or incurred in accordance with the construction contracts, and building permits heretofore in effect;
  - (ii) the amounts paid or to be paid, as set forth in this Request for Reimbursement, represents a part of the funds due and payable for Redevelopment Project Costs;
  - (iii) the expenditures for which amounts are requisitioned represent proper Redevelopment Project Costs identified in the Redevelopment Project Costs Exhibit C described in the Redevelopment Agreement have not been included in any previous Request for Reimbursement;
  - (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 amount of Redevelopment Project Costs to be reimbursed in accordance with this Request for Reimbursement, together with all amounts reimbursed to the Developer pursuant to the Agreement, is not in excess of \$30,000;
  - (vi) the Developer is not in default under the Agreement and nothing has occurred to the knowledge of the Developer that would prevent the performance of its obligations under the Agreement.
3. Attached to this Request for Reimbursement is Schedule 1, together with copies of invoices or bills of sale and Mechanic's Lien Waivers covering all items for which reimbursement is being requested, on which it has been noted all Redevelopment Project Costs heretofore reimbursed to the Developer.

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

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

APPROVED:

Village of East Dundee, an Illinois municipal corporation

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

\_\_\_\_\_