

Ordinance No. 17-48

AN ORDINANCE OF THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS, APPROVING A FIRST AMENDMENT TO THE REDEVELOPMENT AGREEMENT BY AND BETWEEN THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS AND CUCCI AUTO GROUP, LLC

WHEREAS, the Village of East Dundee, Cook and Kane Counties, Illinois (the "*Village*") is a duly organized and validly existing home-rule municipality created in accordance with the Constitution of the State of Illinois of 1970 and the laws of the State; and,

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 and 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*"); found the BD District to be a "blighted area" pursuant to the BDD Act; and, imposed a retailers' occupation tax and service occupation tax in the amount of one-half of one percent (0.5%), which has since been increased to three quarters of one percent (.75%), 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, 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

Corporate Authorities are empowered to undertake the development or redevelopment of a designated area within the boundaries of the Village in which existing conditions permit such area to be classified as a “blighted area” as defined in Section 11.74.4-3(a) of the TIF Act; and,

WHEREAS, in accordance with the requirements of the TIF Act, the Corporate Authorities, pursuant to Ordinances Nos. 06-40, 06-41, and 06-42, adopted on September 18, 2006, approved a Redevelopment Project Plan and Eligibility Report (the “*Redevelopment Plan*”) for an area designated as the Route 25 and Route 72 Tax Increment Redevelopment Project Area (the “*Project Area*”), and adopted tax increment financing for the payment and financing of redevelopment project costs incurred within the Project Area; and,

WHEREAS, Cucci Auto Group, LLC, an Illinois limited liability company (the “*Developer*”) owns and operates a Ford auto dealership at 800 Dundee Avenue in the Village (the “*Subject Property*”) which property is located within the Project Area; and,

WHEREAS, the Village was informed by the Developer that it was required by Ford to renovate its facility at the Subject Property in order to meet the new standards of Ford dealerships (the “*Project*”) and that the ability to undertake the Project required financial assistance from the Village for certain costs which would constitute “Redevelopment Project Costs” as such term is defined in the TIF Act and the BDD Act and which costs would be in furtherance of the implementation of the Redevelopment Plan and the BD Plan; and,

WHEREAS, the Corporate Authorities determined that the Project was consistent with the Redevelopment Plan and BD Plan and approved a Redevelopment Agreement by and between the Village and Developer setting forth the terms for the completion of the Project by the Developer and reimbursement of certain eligible Redevelopment Project Costs (the “*Original Agreement*”); and,

WHEREAS, the Developer has completed the Project in accordance with the Original Agreement and, due to unforeseen circumstances, it has become apparent to the Village and Developer that the terms set forth in the Original Agreement for the reimbursement to the Developer of certain Redevelopment Project Costs is insufficient to adequately reimburse the Developer; and,

WHEREAS, in order to continue its business within the Village, the Developer has requested that the provisions set forth in the Original Agreement relating to reimbursement for Redevelopment Project Costs incurred in connection with the Project be amended so that reimbursement may occur as originally contemplated therein; and,

WHEREAS, the Corporate Authorities believe it to be in the best interests of the Village and its residents to grant the Developer's request and amend the Original Agreement subject to the terms and conditions as set forth in an amendment to the Original Agreement.

NOW, THEREFORE, BE IT ORDAINED by the Village President and Board of Trustees of the Village of East Dundee, Cook and Kane Counties, Illinois, as follows:

Section 1. That the First Amendment to the Redevelopment Agreement by and between the Village of East Dundee, Cook and Kane Counties, Illinois and Cucci Auto Group, LLC, attached hereto and made a part hereof, is hereby approved and the President and Village Clerk are hereby authorized to execute and deliver and undertake any and all actions as may be required to implement the terms of said Amendment on behalf of the Village.

Section 2. This Ordinance shall be in full force and effect from and after its passage and approval as provided by law.


ADOPTED this ____ day of _____, 2017 pursuant to a roll call vote as follows:

AYES: Trustees Lynam, Selep, Wood, Hall, Mahony and Andresen


NAYS: 0

ABSENT: 0

APPROVED by me this 11th day of Sep, 2017.



Village President

Attest:


Village Clerk

**FIRST AMENDMENT TO THE REDEVELOPMENT AGREEMENT BY AND BETWEEN
THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS
AND CUCCI AUTO GROUP, LLC**

This First Amendment to the Redevelopment Agreement by and between the Village of East Dundee, Cook and Kane Counties, Illinois and Cucci Auto Group, LLC (the "*First Amendment*"), is made and entered into this 11th day of Sep, 2017, by and between the Village of East Dundee, Illinois, an Illinois municipal corporation (the "*Village*"), and Cucci Auto Group, LLC, a limited liability company of the State of 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 and redevelopment of business districts within the municipal boundaries of the Village which are in need of revitalization and to levy additional taxes as hereinafter described if such business districts are deemed to be a "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 (0.50%) 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, on March 21, 2016, the Corporate Authorities increased the BD Taxes to three-quarters of one percent (.75%) pursuant to Ordinance No. 1609; and,

WHEREAS, 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 Corporate Authorities are empowered to undertake the development or redevelopment of a designated area within the municipal boundaries of the Village in which existing conditions permit such area to be classified as a “blighted area” as defined in Section 11.74.4-3(a) of the TIF Act; and,

WHEREAS, pursuant to its powers and in accordance with the requirements of the TIF Act, on September 18, 2006, the Corporate Authorities, pursuant to Ordinances Nos. 06-40, 06-41, and 06-42, approved a Redevelopment Project Plan and Eligibility Report (the “*Redevelopment Plan*”) for an area designated as the Route 25 and Route 72 Tax Increment Redevelopment Project Area (the “*Project Area*”), and adopted tax increment financing for the payment and financing of redevelopment project costs incurred within the Project Area, pursuant to the TIF Act; and,

WHEREAS, the Developer owns and operates a Ford auto dealership at 800 Dundee Avenue in the Village (the “*Subject Property*”) which property is located within the Project Area and the Village was informed by the Developer that it was required by Ford to renovate its facility at the Subject Property in order to meet the new standards of Ford dealerships (the “*Project*”); and,

WHEREAS, the Developer informed the Village that the ability to undertake the Project on the Subject Property required financial assistance from the Village for certain costs that would be incurred in connection with said rehabilitation and renovation, which costs would constitute “Redevelopment Project Costs” as such term is defined in the TIF Act and the BDD Act and

which costs would be in furtherance of the implementation of the Redevelopment Plan and the BD Plan; and,

WHEREAS, the Corporate Authorities determined that the Project was consistent with the Redevelopment Plan and BD Plan and in the best interests of the Village, and by Ordinance No. 16-30 adopted on September 6, 2016, approved a Redevelopment Agreement by and between the Village and Developer setting forth the terms for the completion of the Project by the Developer and reimbursement of certain eligible Redevelopment Project Costs (the “*Original Agreement*”); and,

WHEREAS, the Developer has completed the Project in accordance with the Original Agreement and, due to unforeseen circumstances, it has become apparent to the Village and Developer that the terms set forth in the Original Agreement for the reimbursement to the Developer of certain Redevelopment Project Costs is insufficient to adequately reimburse the Developer; and,

WHEREAS, in order to continue its business within the Village, the Developer has requested that the provisions set forth in the Original Agreement relating to reimbursement for Redevelopment Project Costs incurred in connection with the Project be amended so that reimbursement may occur as originally contemplated therein; and,

WHEREAS, the Corporate Authorities have determined that the loss of the dealership at the Subject Property would seriously impede the growth and development of the Project Area and find it to be in the best interests of the Village to grant the Developer’s request and amend the Original Agreement subject to the terms and conditions as hereinafter set forth.

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

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

Section 2. Section 3 of the Original Agreement is hereby amended to read as follows:

(a) In consideration of the redevelopment by the Developer of 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 “Redevelopment Project Costs”, as hereinafter defined, in an amount not to exceed \$395,000.00 as hereinafter provided. For purposes of this Agreement, reimbursement shall only be made to the extent the costs to be reimbursed are “Redevelopment Project Costs” or such 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 and in Section 11-74.4-3(q) of the TIF Act, as from time to time amended.

(b) The Village has established a special tax allocation fund pursuant to the requirements of the BDD Act into which all of the BD Taxes derived from the BD District are deposited (the “*BD Fund*”) and also has established a special tax allocation fund pursuant to the TIF Act into which all incremental taxes, as hereinafter defined, from the Project Area are deposited (the “*TIF STAF*”). The Village has also established a special sub-account designated the Cucci Sub-Account into which the Village shall deposit sums in accordance with the terms set forth in parts (i) and (ii) below.

(i) The Village hereby covenants and agrees to deposit into the Cucci Sub-Account one hundred percent (100%) of all BD Taxes derived from the operation of the Developer’s business at the Subject Property (the “*BD Tax Reimbursement*”); and, commencing in 2018, the Village hereby covenants and

agrees to deposit into the Cucci Sub-Account any and all amounts above \$300,000.00 remitted to the Village by the State of Illinois as the Village's share of Retailers' Occupation Taxes and Service Occupation Taxes collected from the operation of the Developer's business at the Subject Property in accordance with the Retailers' Occupation Tax Act, 35 ILCS 120/1 *et seq.*, and the Service Occupation Tax Act, 35 ILCS 115/1 *et seq.* (the "*State-Shared Sales Tax Reimbursement*"). Payments made under the State-Shared Sales Tax Reimbursement shall be for the prior fiscal year, which commences on May 1st and ends on April 30th, such that the first payment to the Cucci Sub-Account under the State-Shared Sales Tax Reimbursement shall be for the fiscal year commencing May 1, 2017 and ending April 30, 2018. The BD Tax Reimbursement and State-Shared Sales Tax Reimbursement shall terminate upon the earlier of (i) the Developer's receipt of \$295,000.00 under the BD Tax Reimbursement and State-Shared Sales Tax Reimbursement and (ii) December 31, 2031; and,

(ii) The Village hereby covenants and agrees to deposit into the Cucci Sub-Account one hundred percent (100%) of all Incremental Taxes, as hereinafter defined, generated by the Subject Property (the "*TIF Reimbursement*"). The TIF Reimbursement shall terminate upon the earlier of (i) the Developer's receipt of \$100,000.00 under the TIF Reimbursement and (ii) December 31, 2031.

(c) For purposes of determining the amounts to be deposited into the Cucci Sub-Account in accordance with the BD Tax Reimbursement, State-Shared Sales Tax Reimbursement and TIF Reimbursement, the Developer shall submit copies of real estate tax

bills and authorize the Illinois Department of Revenue to release the Developer's sales tax reports as provided in Section 6 of this Agreement. Payments to the Cucci Sub-Account in accordance with this Agreement shall be made by December 31st of each year following the Village's receipt of all information required to determine the amount of the BD Tax Reimbursement, State-Shared Sales Tax Reimbursement and TIF Reimbursement.

(d) THE VILLAGE'S OBLIGATION TO REIMBURSE THE DEVELOPER UNDER THIS AGREEMENT IS A LIMITED OBLIGATION PAYABLE SOLELY FROM THE AMOUNTS DEPOSITED INTO THE CUCCI SUB-ACCOUNT FROM TIME TO TIME IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT AND SHALL NOT BE SECURED BY THE FULL FAITH AND CREDIT OF THE VILLAGE. For purposes of this Agreement, "Incremental Taxes" shall mean the amount equal to the amount of ad valorem taxes, if any, paid to the Village in respect of the Subject Property and its improvements which is attributable to the increase in the equalized assessed value of the Subject Property and its improvements over the initial equalized assessed value of the Subject Property and its improvements over the initial equalized assessed value of the Subject Property.

Section 3. Section 4 of the Original Agreement is hereby amended by deleting subsection (d) thereof in its entirety.

Section 4. Section 5 of the Original Agreement is hereby amended to read as follows:

Unless earlier terminated pursuant to Section 15, the term of this Agreement shall commence on the date of execution and end on the earlier of (i) the date upon which no further reimbursement is due to Developer under the terms of Section 2 of the First Amendment or (ii) December 31, 2031.

Section 5. Section 8 of the Original Agreement is hereby amended to read as follows:

This Agreement may not be assigned by the Developer without the written consent of the Village nor may the Subject Property, or dealership, be conveyed without the prior written consent of the Village. The decision to consent as provided herein shall be in the Village's sole and absolute discretion.


Section 6. Section 15(a) of the Original Agreement is hereby amended to read as follows:

(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 so that the Developer will have the opportunity to cure any claimed material default within such thirty (30) day period. 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.

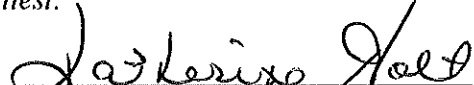
Section 7. All other terms and conditions of the Original Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment 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

Cucci Auto Group, LLC, an Illinois limited liability company

Its President