

Ordinance No. 13-55

**AN ORDINANCE OF THE VILLAGE OF EAST DUNDEE, KANE AND COOK COUNTIES,
ILLINOIS APPROVING LEASE AGREEMENT WITH RIGHT OF FIRST REFUSAL**

BE IT ORDAINED, by the President and Board of Trustees of the Village of East Dundee, Kane and Cook Counties, Illinois (the "*Village*"), a home-rule municipality of the State of Illinois, that the Lease Agreement With Right of First Refusal by and between the Village and DeLoris Doederlein of East Dundee is hereby approved in the form attached to this Ordinance and made a part hereof and the Village President and Village Clerk are hereby authorized to execute.

BE IT FURTHER ORDAINED that the Village President and the Village Manager are hereby authorized to take any and all action as required by the term of said Lease Agreement with Right of First Refusal.

This Ordinance shall be in full force and effect immediately upon its passage by the Corporate Authorities and approval as provided by law.

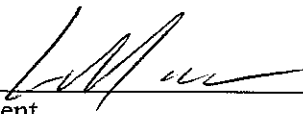
PASSED this 16 day of December 2013, pursuant to a roll call vote as follows:

AYES: Trustees Skillicorn, Lynam, Selep and Wood

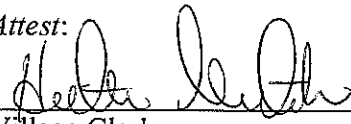
NAYS: Ø

ABSENT: Trustees Ruffulo and Gorman

APPROVED:



President

Attest:


Village Clerk

LEASE AGREEMENT WITH RIGHT OF FIRST REFUSAL

THIS AGREEMENT is entered into this 16 day of December, 2013, between the Village of East Dundee, an Illinois home rule municipal corporation (hereinafter referred to as the "Village") and DeLoris Doederlein of East Dundee (hereinafter referred to as the "Owner").

RECITALS

WHEREAS, Owner is the owner of real property commonly known as the "Doederlein Lumber Yard" located on Railroad Street, East Dundee, Illinois and legally described on *Exhibit A* attached hereto and made a part hereof by reference (the "Subject Property"); and,

WHEREAS, the Village and Owner have entered into discussions regarding a lease with a right of first refusal for a portion of the Subject Property; and,

WHEREAS, the Village desires to lease a portion of the Subject Property for public parking and has agreed to undertake the installation of a new fence and additional landscaping as the lesser; and,

WHEREAS, the Village and the Owner have come to an agreement which are the terms of this Agreement for the leasing of a portion of the Subject Property.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and agreements contained herein, the Village and Owner agree as follows:

1. *Recitals.* The above recitals are incorporated herein by reference as though fully set forth.
2. *Lease of Property.* The Owner, for and in consideration of the payment of rent as hereinafter provided and the additional agreements, covenants and conditions contained in this Agreement, agrees to lease to the Village the east ninety (90) feet of the Subject Property, legally described on *Exhibit B* attached hereto and made a part hereof by reference (the "Leased Property") with the remaining portion of the Subject Property hereinafter referred to as the "Retained Property".
3. *Commemorative Plaque.* In the event this Agreement is executed, on or before December 15, 2013, the Village agrees to install a commemorative plaque at the Depot in the Village, approved by the Owner, listing all of the volunteers who helped build the Depot and listing Fred Doederlein as the "1st Station Master".
4. *Use of the Leased Property.* The Village during the term of this Agreement shall use the Leased Property for public parking, and the installation of fencing and landscaping as generally shown on the Concept Plan created by Vandewalle & Associates Inc. dated August 2, 2013 attached hereto and made a part hereof as *Exhibit C* (the "Concept Plan").

5. *Use of Retained Property.* The parties hereto agree that the Owner shall have the right to use the Retained Property for parking, storage and businesses as the property currently exists and is currently used and the Owner shall not be required to pave the Retained Property or any driveways on the Retained Property.
6. *Term.* The term of this lease for the Leased Property shall begin no later than June 1, 2014, provided, however, that the Village receives no less than thirty (30) days prior notice. The "Term" shall be fifteen (15) years commencing on the first of the month following delivery of possession to the Village.
7. *Rent.* During the term of this Agreement, Owner shall pay the real estate taxes in installments, the first installment on or before June 1st, and the second installment on or before September 1st, and send proof of each payment to the Village for the Leased Property and the Retained Property. Upon receipt of proof of each payment, the Village shall pay Owner \$500.00, plus the amount paid for the first installment, on or before July 1, and \$500.00, plus the amount paid for the second installment on or before October 1st.
8. *Improvements.*

The Village shall:

- A. Within five (5) months of possession of the Leased Property by the Village, present a "Final Plan" showing all proposed improvements (including those to be demolished) (the "Improvements") to Owner for her review and approval, which approval shall not be unreasonably withheld.
- B. The Improvements shall include of the following:
 - i. Demolition of Building #1 as shown on the Concept Plan.
 - ii. Demolition of the Building #2 as shown on the Concept Plan and repair any damage to Building B as a result of the demolition, including the roof.
 - iii. Removal of the fence along the boundary of the Leased Property.
 - iv. Removal of existing paving on the Leased Property.
 - v. Regrading the Leased Property and regarding and replacement of gravel on the Retained Property.
 - vi. Construction of a parking lot with driveways onto Railroad Avenue and Hill Street which shall remain intact in the event of termination of this Agreement.
 - vii. Erection of a solid fence to separate the Leased Property from the Retained Property which shall remain intact in the event of termination of this Agreement. The Village will not remove the western rows of poles running north to south on the Retained Property but agrees to cut such poles to the level of the fence or slightly lower, in order that the poles do not protrude above the fence nor visible from River Street.

- viii. Construction of two (2) curb cuts on Hill Street on or before June 1, 2014, for the existing gates and provide a driveway and parking lot graveled for the existing lawn service business on the curb cut closest to the bike path.
 - ix. Seeding/sodding and landscaping of open areas on the Leased Property.
 - x. Removal and/or demolish all property, including structure and contents, in the glass shop, coal bins, machine shop, ice house, stable overhang extension, and in and under the pole barn at no cost to Owner.
 - xi. Adjustment of the west property line of the Leased Property as necessary so that all portions of the office building on Railroad Street (Building A) and the garage building in the south central part of the lumberyard (Building B) are fully contained on the Retained Property, with no damage to either building.
- C. The Village agrees that the Improvements constructed by the Village shall meet all of the Village's requirements for storm water control and that there shall be no additional storm water impact to the remaining Subject Property from the Leased Property. The Village shall be responsible to take any and all action as deemed necessary to correct any storm water drainage problem on the Leased Property whether or not caused from water flow from the Retained Property. In addition, the Village will ensure that any development on the Leased Property will include appropriate drainage to ensure that water run-off will be directed away from and will not negatively impact the Retained Property. The Village further agrees to make every reasonable attempt to correct the water run-off from Railroad Street to the existing lumberyard building and the pooling or ponding of water in the graveled portion of the property on the east side of the existing lumberyard building. Corrective measures may include: landscaping, above-ground swales or drainage, repair of existing drainage system, connection to existing Village drainage, or any other drainage system installed on the Leased Property or any other measure as recommended by the Village's Director of Public Works.
- D. The final plan shall be in substantial conformity with the attached site plan in terms of the general types and location of the Improvements.
- E. Within six (6) months of possession of the Leased Property, the Village agrees to initiate demolition of all structures to be removed as shown on the approved Final Plan, subject to Force Majeure as hereinafter defined.
- F. The Village agrees to complete the Improvements as stated in this Section 8 on or before eighteen (18) months after commencement of the Term of this Agreement, subject to Force Majeure as hereinafter defined.
- G. The Village agrees to maintain the Village catch basins in order to prevent any obstruction to water drainage.
9. *Maintenance.* The Village agrees to maintain all Improvements to the Leased Property at its own expense to the same standards it maintains similar improvements in its other public parking areas but not less than in compliance with the ordinances of the Village.

In addition, the Village agrees to clear all drain pipes and catch basins and keep them in good repair. The Village agrees to have the catch basins serving the Subject Property jetted out no less than once each year during the term of this Agreement.

10. *Binding Agreement – Assignment.* The Owner and Village agree that the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the heirs, administrators and assigns of the Owner and the successors in office of the Village; and this Agreement shall not be assigned without written consent of the other party.
11. *Insurance.*
 - A. The Village shall provide a certificate of coverage to the Owner showing its current coverage with limits no less than:
 - (1) General Liability: \$5,000,000 combined single limit for bodily injury, personal injury, and property damage.
 - (2) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
 - (3) Worker's Compensation and Employee's Liability: Worker's compensation coverage with statutory limits and employee's liability limits of \$1,000,000 per accident.
 - B. Village shall furnish the Owner with certificates of insurance naming the Owner as additional insured.
12. *Indemnification.* To the fullest extent permitted by law, the Village hereby agrees to defend all injuries, deaths, loss, damages, claims, patent claims, suits, liabilities, judgments, costs, and expenses, which may accrue against the Owner, arising from the negligence, recklessness, or intentional wrongful conduct of the Village, its officers, agents, employees, volunteers, contractors, subcontractors, vendors, or of anyone acting on behalf of the Village, or which may result therefore, except to the extent attributable to the negligence, recklessness, or intentional wrongful conduct of the Owner or anyone acting on behalf of the Owner. The Village shall, at its own expense, appear, defend, and pay all charges of attorneys and all costs and other expenses arising therefore or incurred in connections therewith, and, if any judgment shall be rendered against the Owner, in any such action, the Village shall, at its own expense, satisfy and discharge the same.
13. *Force Majeure.* The Village shall not be deemed in material breach of this Agreement with respect to any of its obligations pursuant to this Agreement to be performed if the Village 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, inability to procure materials, weather conditions, wet soil conditions, failure or interruptions of power, restrictive governmental laws and regulations, condemnations, riots, insurrections, 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 the Village shall have an 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.

14. *Severability of Provisions.* The invalidity of any provisions of this Agreement shall not render invalid any other provision herein. If for any reason any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, that provision shall be deemed severed and this agreement shall remain in full force and effect with that provision severed or modified by court order.
15. *Notice.* Any notice required herein shall be in writing and shall be served personally or by registered or certified mail, return receipt requested, sent postage prepaid as follows:

VILLAGE: Village of East Dundee
 120 Barrington Avenue
 East Dundee, Illinois 61239

 Attention: Village President

Owner: Attorney Rita J. Thomas
 30 North Western Avenue
 Carpentersville, Illinois 60110

16. This Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and entity who is not a party to this Agreement, or to acknowledge, establish, or impose any legal duty to any third party.
17. *Grant of Right of First Refusal.* The Owner does hereby grant unto the Village the exclusive and irrevocable right, during the term of this Agreement, of first refusal and first option to purchase, upon the terms and conditions of any bona fide offer to purchase the Subject Property or any portion thereof submitted to the Owner.
18. *Exercise of First Option.* This right of first refusal or first option to purchase may only be exercised by the Village within twenty-one (21) days from notification by Owner that Owner desires to sell or has received a bona fide offer to sell either the Leased Property or the Retained Property. Owner is obligated to provide such notice to the Village prior to offering either the Leased Property or the Retained Property to a third party or responding to an offer from a third party. If Seller wishes to sell and has not yet received a bona fide offer, the purchase price shall be based on the average of two appraisals one selected by the Village and one selected by the Owner.

19. *Title.* Within thirty (30) days after the Village has exercised its right of first refusal, the Owner shall deliver to the Village a Certificate of Title or title commitment covering the Subject Property which shall reflect that marketable fee simple title to the Subject Property is vested in Seller and that same is insurable by a title insurance company licensed to do business in the State of Illinois. Said Certificate or commitment shall be subject only to taxes for the current year, easements and rights of way of record and this Agreement. Should said Certificate or commitment reflect any other exceptions to the title unacceptable to the Village, the Village shall notify the Owner in writing of any defects within fifteen (15) days (the title review period) and the Owner shall have a reasonable time (but not more than 25 days) in which to make the title good and marketable or insurable, and shall use due diligence in an effort to do so. If after using due diligence the Owner is unable to make the title acceptable to the Village within such reasonable time, it shall be the option of the Village either to accept the title in its existing condition with no further obligation on the part of the Owner to correct any defect, or to cancel this Agreement. If title is acceptable to Purchaser, the closing shall occur within thirty (30) days after expiration of the "title review period". At closing Owner shall convey title to the Village by Warranty Deed subject only to exceptions acceptable to the Village.

20. *Survey.*

A. Seller agrees to furnish not less than two (2) business days prior to closing to Purchaser a survey for the Property which meets ALTA Minimum Standard Detail Requirements for Land Title Surveys per latest date ALTA/ACSM Standards (the "Survey").

The Survey shall be certified by the licensed surveyor, or Civil Engineer, preparing the Survey, to Seller, Purchaser, and the Title Company, as follows: (i) to be in compliance with the specified ALTA/ACSM minimum standards for land title surveys; (ii) show the boundary lines of the Property; and the length of each boundary line; (iii) show the location and course of all visible and recorded easements and rights of way; (iv) show access from the Property to public rights of way; (v) show any utilities, including water, sanitary sewer, storm sewer, and gas lines to the point of connection with the public system, if any such connection exists, or else access to such systems, if any, from the Property; and (vi) certify the number of square feet and portions thereof lying within the boundary lines of the Property.

B. If the legal description of the Property, as set forth on the Survey, varies from the legal description set forth on *Exhibit A* the legal description from the Survey shall prevail and shall be used by the Seller for the Deed and by the Title Insurer for the Title Commitment.

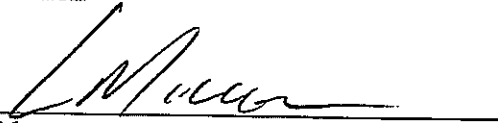
21. *Expenses.* At the Closing the expenses shall be paid as follows:
- A. Upon execution of this Agreement, the Village shall pay the Owner's attorney's fees for the negotiations of this Agreement in an amount not to exceed \$1,500.00.
 - B. In the event the Subject Property, or any portion thereof, is conveyed to the Village, the Village agrees to pay all closing costs including title insurance and survey.
22. *Representations, Warranties and Covenants of Owner for Sale.* Owner hereby makes the following representations, warranties and covenants to the Village, each of which representations, warranties and covenants are material and true as of the date of the Closing and shall where applicable survive the Closing:
- A. There is not pending or, to the best of Owner's knowledge any threatened, litigation or proceedings before any court, tribunal or other governmental agency respecting the Subject Property, or the ownership of the Subject Property by Seller.
 - B. There is no pending or, to the best of Seller's knowledge, any threatened, condemnation or eminent domain proceedings against the Subject Property, or any part thereof. Seller will advise Purchaser of any notice of condemnation or eminent domain proceedings which Seller receives. Further, there are no claims or causes of action, nor is there any other litigation or proceeding or pending threatened with respect to the ownership, occupancy or development of the Subject Property, or any part thereof.
 - C. There are no leases affecting any portion of the Subject Property and there exists no contracts, verbal or written, including without limitation, service contracts or maintenance contracts, affecting the Subject Property, which will survive the Closing.

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



Owner

By:



EXHIBIT A
Legal description of Subject Property

110 Railroad Street, East Dundee, IL 60118
PIN #s 03-23-314-001 & 03-23-314-007

EXHIBIT B
Legal description of Leased Property

110 Railroad Street, East Dundee, IL 60118
PIN # 03-23-314-007

EXHIBIT C
Vandewalle Concept Plan

DODERLEIN PROPERTY CONCEPT PLAN

East Dundee, Illinois

DRAFT

RAILROAD STREET

BLDG A

BLDG #1
16

Splash
Plaza

Public
Parking

New fence

Great
Lawn

BLDG #3

Buildings to be
demolished

BLDG #2

BLDG B
16

Existing fence to remain

~90'

HILL STREET

Potential
Residential

Revised: August 16, 2013
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ASSOCIATES INC
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