

Village of East Dundee
PRESIDENT AND BOARD OF TRUSTEES
Committee of the Whole
Monday, April 14, 2014
06:00 PM

Call to Order

Roll Call

Public Comment: Agenda items only - Please keep comments to 5 minutes or less

Old Business

[A. Dundee Marathon TIF Request Follow Up](#)

New Business

A. Presentation by Robert "Buzz" Doyle: Blue BBQ

[B. Redevelopment Agreement with Iceberg Development Group, LLC](#)

Public Comment - Please keep comments to 5 minutes or less

Executive Session

Recess to Executive Session Executive Session, closed to the public and media under the provisions of the Illinois Open Meetings Act, 5ILCS, 120/2, (2) (21), Discussion of Minutes, (C) (6), Pending Litigation, 2 (C) (1), Personnel and 2 (C) (5) Acquisition of Property.

Adjournment

Dundee Marathon / Subway

Date: March 7, 2014

From: Jay Pastakia
Dundee Marathon / Subway
305 E. Main Street
East Dundee, IL 60118
(847) 426-3013

To: Mr. Robert Skurla
Village Administrator
120 Barrington Avenue
East Dundee, IL 60118

Mr. Doug Bergren
Economic Development Consultant
120 Barrington Avenue
East Dundee, IL 60118

RE: TIF Program for Economic Development

Dear Sirs:

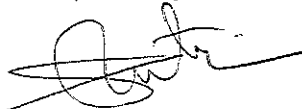
We are currently conducting due diligence on our property at 305 E. Main Street in order to make our business location more attractive and fashionable to the Village of East Dundee. Our objective is to install LED lights throughout the interior of our building in order to generate more visibility as well as to conserve on energy.

Our considerable improvements to our property will be in excess of \$10,000, an investment that will prove beneficial to our operations and to the Village of East Dundee. We will need your assistance in taking advantage of the TIF Economic Development Program in order to complete our project to install LED lights.

We believe this initiative to install LED lights will vastly improve our property in terms of visibility, curb appeal, safety and security, and are confident that this product will be mutually beneficial to our business and the Village.

Our goal is to move forward on this project immediately. We look forward to working with you, and would like to thank you in advance for your attention to this matter. Please do not hesitate to contact me with any further information that you will need.

Respectfully,



Jay Pastakia

305 East Main Street, East Dundee, IL 60118
847-426-3013

REDEVELOPMENT AGREEMENT

THIS AGREEMENT (this “*Agreement*”) is made and entered into this ____ day of _____, 2014, by and between the Village of East Dundee, Illinois, an Illinois municipal corporation (the “*Village*”), and Gardiner Senior Apartments, LP, , an Illinois limited partnership (the “*Developer*”).

PREAMBLES

WHEREAS, the Village is a home rule municipality pursuant to Article VII, Section 6(a) of the Constitution for the State of Illinois of 1970 with the power and authority to perform any function pertaining to its government and affairs; and

WHEREAS, the Developer has acquired and developed certain real estate located within the Village, which is legally described on *Exhibit A*, attached hereto and incorporated herein (the “*Subject Property*”), for use as an 80-unit affordable housing project for seniors aged 55 and over, known as Gardiner Place Senior Apartments (the “*Project*”), which Project was completed and ready for occupancy on _____, 2013; and

WHEREAS, as a result of the construction and operation of the Project, 200 to 250 full-time jobs were created during construction and three full-time employees are now required to manage, maintain and coordinate services for the Project; and

WHEREAS, in order to induce the Developer to proceed with the Project, the President and Board of Trustees of the Village (the “*Corporate Authorities*”) agreed to assist the Developer in creating new affordable housing opportunities in the Village for low-income senior citizens by establishing the “*Village of East Dundee Affordable Housing Program*” (the “*Affordable Housing Program*”), all as hereinafter provided and as initially described in the letter from the Village to Jim Bergman dated April 12, 2011.

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 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. The Project. The Project is a three-story, 80 unit apartment project for seniors aged 55 and up. The Project contains 27 one bedroom units, 53 two bedroom units, 80 underground, heated parking spaces and 35 exterior parking spaces. The second and third stories are served by two elevators. Project amenities include a community room with kitchen, an exercise room, a library, a multimedia room containing TVs and computers, sitting rooms on each floor, a beauty salon, an outdoor gazebo, a covered, drive-up entrance, balconies for each unit, National Green Building Standard Certification – Emerald, 30 year warranty shingles, Energy Star rated appliances, with a washer and dryer in each unit, and on-site management and maintenance staff. Currently, 70 of the 80 units are affordable units, meaning

those units will be both rent restricted and rented only to seniors meeting specified financial eligibility requirements. These requirements are imposed by law under the low-income housing tax credit program administered by the Illinois Housing Development Authority and Sec. 42 of the Internal Revenue Code. Currently, 10 of the 80 units are market-rate units, with rents that are subject to prevailing market conditions.

Section 3. The Developer's Representations and Warranties. The Developer set forth in this Agreement, the Developer represents and warrants as follows:

(a) The Developer is a limited liability partnership duly organized and existing under the laws of the State of Illinois and is authorized to enter into, and by proper corporate action has been duly authorized to execute, deliver and perform this Agreement. The Developer is now and at all times hereafter shall be solvent, able to pay its debts as they mature and financially able to perform all of the terms of this Agreement. To the Developer's knowledge, there are no actions, suits or similar proceedings pending or threatened before any court or governmental or administrative body or agency affecting the Developer which would result in any material adverse change to the Developer's financial condition or which would materially and adversely affect the ability of the Developer to undertake and complete the Project.

(b) The Developer shall at all times, operate and maintain the Project in conformance with all applicable federal, state and local laws, regulations and ordinances, including, but not limited to, zoning, subdivision codes, building codes, environmental codes, life safety codes, property maintenance codes and any other applicable codes and ordinances of the Village (Collectively referred to as the "*Legal Requirements*").

(c) The Developer covenants that no officer, employee or agent of the Developer, or any other person connected with the Developer, has made, offered or given, either directly or indirectly, to the Corporate Authorities or any other person connected with the Village, except for payments for which adequate and fair consideration was received in return, any money or anything of value as a gift or bribe or other means of influencing his or her action in his or her official capacity with the Village.

Section 4. Village's Obligation. As long as no event described in Section 7 of this Agreement shall have occurred and be continuing beyond any applicable notice and cure period, the Village agrees to make payments to the Developer under the Affordable Housing Program for the purpose of reducing the rents of low-income tenants of the Project (such payments, as hereafter more fully described, are referred to as the "*Assisted Housing Payments*"). Commencing on the date of execution of this Agreement and thence annually on the anniversary of the date the Village issued its certificate of occupancy for the Project, the Village shall pay the sum of \$20,400 each year to the Developer, which the Developer shall apply against the rents of tenants of the Project as follows: each month, the Developer shall provide a rent credit in the amount of \$100 to seventeen (17) qualifying tenants of the Project until a total of \$20,400 has been credited toward tenants' rents for such year. Qualifying tenants are defined as any tenants whose annual income is at or below 60% of the area median income. At the request of the Village, the Developer shall report in writing to the Village on

an annual basis as to the implementation of Assisted Housing Payments. Assisted Housing Payment to the Developer of \$20,400 per year shall continue for a period of three (3) years, at which time it is expected that a total of \$61,200 (\$20,400 x 3 years) shall have been paid to the Developer for the purpose of reducing tenants' rents.

Section 5. No Discrimination.

(a) The Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. To the fullest extent permitted by law, 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. Notwithstanding the foregoing, the Developer may employ union labor hereunder pursuant to the rules, regulations and practices of applicable unions.

(b) There shall be no discrimination against or segregation of any person or group of persons on account of sex, race, color, creed, national original or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Subject Property. Neither the Developer nor any person claiming under or through the Developer shall establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of any portion of the Subject Property.

Section 6. 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 attorneys' fees) which may arise directly or indirectly from arising out of the construction, management or operation of the Project. 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, at its own expense, satisfy and discharge the same. This paragraph shall not apply, and 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, officials, agents, employees or contractors.

Section 7. Default – Remedies.

(a) If the Developer defaults in the performance of any material covenant, warranty, representation or obligation set forth in this Agreement, the Village shall provide the Developer with a written statement setting forth the default of the Developer. 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, said thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, as long as the Developer is diligently proceeding to cure such default. 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 or of any rights or remedies it may have as a result of such default or breach.

(b) If the Developer fails to cure any default after the expiration of the cure period described in subparagraph (a), the Village may elect to terminate this Agreement or 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 debts of the Developer, 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 the Developer's property, the Village may elect, to the extent such election is permitted by law, but is not required, with or without notice of such election, to terminate this Agreement. In the case of an involuntary petition, action or proceeding for the adjudication as a bankrupt or for the appointment of a trustee or receiver as set forth above, the Developer shall have sixty (60) days after the service of such petition or pleading or the commencement of such action or proceeding within which to obtain a dismissal of such petition, pleading, action or proceeding.

(c) If the Village defaults in the performance of any material covenant, warranty, representation or obligation set forth in this Agreement, the Developer shall provide the Village with a written statement setting forth the default. 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, as long as the Village is diligently proceeding to cure such default. A default not cured as provided above shall 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 or of any rights or remedies it may have as a result of such default or breach. Notwithstanding the foregoing, the sole remedy of the Developer in the event of a breach of this Agreement is to institute legal action for specific performance or injunctive against the Village. Under no circumstances shall the Village have any liability for monetary damages, whether compensatory, punitive or otherwise, under the provisions, terms and conditions of this Agreement.

(d) Upon any dispute between the parties under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs and expenses incurred in contesting such dispute.

(e) It is hereby agreed by the Developer that no recourse for any claim under or upon any obligation contained in the Agreement shall be had against the Village, its officers, agents, attorneys, representatives, or employees, in any amount in excess of any specific sum agreed to be paid by the Village pursuant to this Agreement; 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 in consideration for the execution of this Agreement by the Village.

Section 8. Notices. All notices, demands, requests, consents, approvals or other communications required or permitted by this Agreement shall be given in writing at the addresses set forth below and shall be deemed to have been given (i) on the day of actual delivery if delivered personally, (ii) on the day immediately following deposit with overnight courier, or (iii) as of the third (3rd) day from and including the date of posting if mailed by registered or certified first class mail, postage prepaid, return receipt requested. The parties, by notice hereunder, may designate any further or different addresses to which subsequent notices, demands, requests, consents, approvals or other communications shall be sent.

If to Village: Village of East Dundee
c/o Village Administrator
120 Barrington Ave.
East Dundee, Illinois 60118

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

If to Developer:
c/o Jim Bergman
20 Sandstone Court
LeClaire, Iowa 52753

With a copy to: Ward, Murray, Pace & Johnson, P.C.
202 E. 5th St., P.O. Box 400
Sterling, Illinois 61081

Section 9. Designated Representative. Unless applicable documents or procedures require action by the Developer in a different manner, the Developer hereby designates Jim Bergman as its authorized representative, who shall individually have the authority to make or grant supplemental agreements, certifications, requests, demands, approvals, consents, notices and other actions, and do all things required or described in this Agreement, for and on behalf of the Developer and with the effect of binding the Developer in connection therewith.

Section 10. Time is of the Essence; 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 obligations of 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, 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 either party shall claim that such an event shall have occurred, the party to whom such claim is made shall investigate the 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 11. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

Section 12. Severability. If any provision of this Agreement, or any Section, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held to be invalid, the remainder of this Agreement shall be construed as if such invalid part were never included herein, and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

Section 13. Choice of Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois with venue lying in the Circuit Court for Kane County, Illinois.

Section 14. Terms; Amendments. The Terms of this Agreement shall commence upon its execution and terminate upon the third payment by the Village to the Developer pursuant to Section 4 hereof. This Agreement (together with the Exhibits attached hereto) constitutes the entire agreement between the Village and the Developer and supersedes all prior agreements, negotiations and discussions between them relating to the subject matter hereof. This Agreement may not be modified or amended except by a written instrument executed by all the parties or their permitted successors or assigns.

Section 15. Third Parties. Except as specifically set forth in this Agreement, nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the parties, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party, nor shall any provision give any third parties any rights of subrogation or action over or against any party.

Section 16. Waiver. Any party may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

Section 17. Cooperation and Further Assurances. The parties covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and

delivered, such agreements, instruments and documents supplemental hereto and such further acts as may be reasonably required to carry out the terms, provisions and the intent of this Agreement.

Section 18. Effective Date. This Agreement shall be effective on the day on which this Agreement is fully executed pursuant to duly enacted Village proceedings authorizing the execution of and adoption of this Agreement.

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, ILLINOIS,
an Illinois municipal corporation

By _____
President

ATTEST:

By _____
Village Administrator

GARDINER SENIOR APARTMENTS,
LP, an Illinois limited partnership

By Gardiner Senior Development, LLC,
an Illinois limited liability company, its
general partner

By Iceberg Development Group, LLC, an
Illinois limited liability company, its
managing member

By _____
James N. Bergman, its Sole Member

Exhibit A

(Legal Description)

PARCEL 1:

LOT 4 OF RIVER HAVEN, BEING A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 23 AND THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 42 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED APRIL 26, 2012 AS DOCUMENT 2012K26783, IN KANE COUNTY, ILLINOIS; IN THE VILLAGE OF EAST DUNDEE, KANE COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT IN FAVOR OF PARCEL 1 FOR INGRESS AND EGRESS AS CONVEYED BY CROSS ACCESS AND UTILITY EASEMENT AGREEMENT RECORDED AUGUST 3, 2006 AS DOCUMENT NUMBER 2006K84902.

PARCEL 3:

EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR STORMWATER DETENTION AND MANAGEMENT RECORDED APRIL 26, 2012 AS DOCUMENT NUMBER 2012K026787 OVER THE FOLLOWING DESCRIBED LAND:

LOT 1 OF RIVER HAVEN, BEING A SUBDIVISION OF PART OF THE SOUTHEASTQUARTER OF SECTION 23 AND THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 42 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN
IN THE VILLAGE OF EAST DUNDEE, KANE COUNTY, ILLINOIS.

AND:

THE SOUTH 505.00 FEET OF THE EAST 278.95 FEET OF LOT 3 OF RIVER HAVEN, BEING A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 23 AND THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 42 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN IN THE VILLAGE OF EAST DUNDEE, KANE COUNTY, ILLINOIS.