

ORDINANCE 2021-06

AN ORDINANCE APPROVING A REDEVELOPMENT AGREEMENT BY AND BETWEEN THE VILLAGE OF WEST DUNDEE AND THE VILLAGE SQUIRE, INC.

WHEREAS, 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, the Village is engaged in the revitalization and development of its commercial, residential and vacant properties along Illinois Route 31 and Illinois Route 72 (Main Street) and includes the property commonly known as 125 Washington Street (the "*Subject Property*"); 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 President and Board of Trustees of the Village (collectively, the "*Corporate Authorities*") are empowered to undertake the development or the redevelopment of a designated area within its municipal boundaries in which existing conditions permit such area to be classified as a "blighted area" or a "conservation area" as such terms are defined in the TIF Act; and,

WHEREAS, to stimulate and induce development and redevelopment pursuant to the TIF Act, the Village, after giving all required notices, conducting a public hearing and making all findings required by law, on the 7th day of May, 2018, pursuant to Ordinance Nos. 2018-07, 2018-08 and 2018-09, approved a Redevelopment Plan and Program (the "*Redevelopment Plan*") for an area designated as the Main Street/Illinois Route 31 Tax Increment Financing District (the "*Project Area*") which Project Area includes the Subject Property, and adopted tax increment financing for the payment and financing of "Redevelopment Project Costs", as defined by the TIF Act, incurred within the Project Area as authorized by the TIF Act; and,

WHEREAS, The Village Squire, Inc., an Illinois corporation (the "*Developer*") has submitted a proposal to the Village to construct an outdoor dining area as a part of its English style pub restaurant at the Subject Property and has advised the Village that its proposal is contingent upon financial assistance to improve the Subject Property and has requested funds be available to the Village as a result of its adoption of the TIF Act; and,

WHEREAS, the Village believes the improvements to the Subject Property shall enhance the downtown district of the Village and is prepared to assist the Developer with certain costs associated with the project, subject to the terms of the Redevelopment Agreement attached hereto.

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

Section 1. That the preambles to this Ordinance are incorporated into this Section 1 as if fully set forth herein.

Section 2. That the Redevelopment Agreement between the Village of West Dundee, Kane County, Illinois and The Village Squire, Inc., attached hereto and made a part hereof, is hereby approved and the President and Village Clerk are hereby authorized to execute and deliver said Development Agreement and the Village Manager is hereby authorized to undertake any and all actions as may be required to implement its terms on behalf of the Village.

Section 3. This Ordinance shall be in full force and effect from and after its passage and approval as provided by law.

PASSED this 5th day of April, 2021, pursuant to a roll call vote as follows:

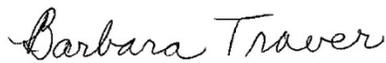
AYES: Trustees Anderley, Wilbrandt, Kembitzky, Price and Hanley
NAYS: None
ABSENT: Trustee Yuscka

APPROVED this 5th day of April, 2021.



Christopher Nelson, Village President

Attest:



Barbara Traver, Village Clerk

REDEVELOPMENT AGREEMENT BY AND BETWEEN THE VILLAGE OF WEST DUNDEE AND THE VILLAGE SQUIRE, INC.

THIS REDEVELOPMENT AGREEMENT (“*Agreement*”) is entered into as of the 5th day of April, 2021 by and between the Village of West Dundee, Lake County, Illinois, an Illinois municipal corporation (“*Village*”), and The Village Squire, Inc., an Illinois corporation (the “*Developer*”).

In consideration of the mutual covenants and agreements set forth in this Agreement, the Village and Developer hereby agree as follows:

ARTICLE 1: RECITALS

1.1 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.

1.2 The Village is engaged in the revitalization and development of its commercial, residential and vacant properties along Illinois Route 31 and Illinois Route 72 (Main Street) and includes the property commonly known as 125 Washington Street (the “*Subject Property*”).

1.3 The Village has the authority pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of its inhabitants, to prevent the spread of blight, to encourage private development in order to enhance the local tax base, to increase job opportunities, and to enter into contractual agreements with third parties for the purpose of achieving these goals.

1.4 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 President and Board of Trustees of the Village (collectively, the “*Corporate Authorities*”) are empowered to undertake the development or the redevelopment of a designated area within its municipal boundaries in which existing conditions permit such area to be classified as a “blighted area” or a “conservation area” as such terms are defined in the TIF Act.

1.5 To stimulate and induce development and redevelopment pursuant to the TIF Act, the Village, after giving all required notices, conducting a public hearing and making all findings required by law, on the 7th day of May, 2017, pursuant to Ordinance Nos. 2018-07, 2018-08 and 2018-09, approved a Redevelopment Plan and Program (the “*Redevelopment Plan*”) for an area designated as the Main Street/Illinois Route 31 Tax Increment Financing District (the “*Project Area*”) which Project Area includes the Subject Property, and adopted tax increment financing for the payment and financing of “Redevelopment Project Costs”, as defined by the TIF Act, incurred within the Project Area as authorized by the TIF Act.

1.6 The Village Squire, Inc., a corporation of the State of Illinois (the “*Developer*”) owns and operates an English style pub casual dining restaurant (the “*Business*”) at the Subject Property and has submitted a proposal to the Village to construct an outdoor dining area to include a pergola and a brick fire pit with perimeter fencing of the area which shall require an investment of approximately \$95,000 (the “*Project*”).

1.7 The Developer has advised the Village that its proposal is contingent upon financial assistance to undertake the Project and has requested the Village for funds available

to it as a result of its adoption of the TIF Act from "Incremental Taxes" (as hereinafter defined) generated by the Subject Property.

1.8 The Village believes the Project would enhance the downtown district of the Village and would have a synergistic effect upon the surrounding businesses and, in addition, would increase the tax base for the Village and taxing districts authorized to levy taxes upon the Subject Property and provide job opportunities for its citizens; and, therefore, is prepared to assist the Developer with certain costs associated with the Project, subject to the terms of this Agreement, the TIF Act and all other applicable provisions of law.

ARTICLE 2: OBLIGATION OF THE DEVELOPER

2.1 The Developer agrees to undertake the Project at the Subject Property and complete the Project in accordance with all permits, codes and laws of the Village and the State of Illinois.

2.2 Upon completion of the Project, the Developer shall submit to the Village all paid invoices, receipts and any of the documentation deemed necessary to evidence an investment by the Developer no less than Ninety-Five Thousand Dollars (\$95,000) to complete the Project.

2.3 For purposes of this Agreement, "Incremental Taxes" shall mean the amount of ad valorem taxes attributable to the increase of the equalized assessed value of the Project Area over the initial equalized assessed value of the Project Area as of the date of the adoption of the TIF Act by the Village.

ARTICLE 3: OBLIGATIONS OF THE VILLAGE

3.1 Upon completion of the Project; satisfaction of the Developer's obligations as set forth in Article 2 above; and, so long as no event described in Article 5 of this Agreement shall have occurred and be continuing, the Village shall reimburse the Developer for Redevelopment Project Costs incurred in connection with the Project in the amount of thirty thousand dollars (\$30,000), from the source as hereinafter provided. In addition, on the first and second anniversary of the issuance of a certificate of occupancy for the Project, the Village shall reimburse the Developer five thousand dollars (\$5,000) on each of said anniversary dates for a total of an additional ten thousand dollars (\$10,000).

3.2 In connection with the establishment and ongoing administration of the Redevelopment Project Area, the Village has established a special tax allocation fund pursuant to the requirements of the TIF Act (the "STAF"), into which the Village shall deposit all "Incremental Taxes" (as hereinafter defined) generated by the Project Area. The Village shall reimburse the Developer pursuant to this Agreement from Incremental Taxes on deposit in the STAF.

3.3 THE VILLAGE'S OBLIGATION TO REIMBURSE THE DEVELOPER UNDER ARTICLE 3 OF THIS AGREEMENT IS A LIMITED OBLIGATION PAYABLE SOLELY FROM INCREMENTAL TAXES DEPOSITED IN THE WT PROPERTIES SUBACCOUNT OF THE STAF AND SHALL NOT BE SECURED BY THE FULL FAITH AND CREDIT OF THE VILLAGE.

ARTICLE 4. REPRESENTATIONS, WARRANTIES, AND COVENANTS

4.1 Developer's Representations Warranties and Covenants. To induce the Village to enter into this Agreement, Developer represents, covenants, warrants, and agrees that:

- (a) Recitals. All representations and agreements made by Developer in Article 1 are true, complete, and accurate in all respects.
- (b) Organization and Authorization. Developer is an Illinois limited liability company duly formed and existing under the laws of the State of Illinois authorized to do business in Illinois, and Developer has the power to enter into, and by proper action has been duly authorized to execute, deliver, and perform, this Agreement. Developer will do, or cause to be done, all things necessary to preserve and keep in full force and effect its existence and standing as a limited liability company authorized to do business in the State of Illinois for so long as Developer is developing and constructing the Project.
- (c) Non-Conflict or Breach. The execution, delivery, and performance of this Agreement by Developer, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement shall not conflict with or result in a violation or breach of any of the terms, conditions, or provisions of any offering or disclosure statement made, or to be made, on behalf of the Developer, or any restriction, organizational document, agreement, or instrument to which Developer, or any of its partners or venturers, is now a party or by which Developer, or any of its partners or venturers, is bound, or constitute a default under any of the foregoing.
- (d) The Developer has the financial ability to construct and complete the Project.
- (e) Pending Lawsuits. There are no actions at law or similar proceedings either pending or, to the best of the Developer's knowledge, threatened against Developer that would materially or adversely affect:
 - (i) The ability of the Developer to proceed with the construction and development of the Subject Property;
 - (ii) Developer's financial condition;
 - (iii) The level or condition of the Developer's assets as of the date of this Agreement; or
 - (i) Developer' s reputation

4.2 Village Representations, Warranties and Covenants. To induce Developer to enter into this Agreement and to undertake the performance of its obligations under this Agreement, the Village represents, covenants, warrants and agrees as follows:

- (a) Recitals. All representations and agreements made by the Village in Article 1 are true, complete, and accurate in all respects.
- (b) Authorizations. The Village has the power to enter into and perform its obligations under this Agreement and by proper action has duly authorized the Village President and Village Clerk to execute and deliver this Agreement.

- (c) Non-Conflict or Breach. The execution, delivery, and performance of this Agreement by the Village, the consummation of the transactions contemplated hereby and the fulfillment of or compliance with the terms and conditions of this Agreement shall not conflict with or result in a violation or breach of the terms of any order, agreement, or other instrument to which the Village is a party or by which the Village is now bound.
- (d) Pending Lawsuits. There are no actions at law or similar proceedings either pending or to the best of the Village's knowledge being threatened against the Village that would materially or adversely affect:
 - (i) The ability of the Developer to proceed with the construction of the Development.
 - (ii) The ability of the Village to perform its obligations under this Agreement.

ARTICLE 5: ENFORCEMENT AND REMEDIES

5.1 Enforcement: Remedies. Enforcement: Remedies. The City may enforce or compel the performance by the Developer of this Agreement, in law or in equity, by suit, action, mandamus, or any other proceeding, including specific performance. Notwithstanding the foregoing, the Developer agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against the Village or any elected or appointed officials, officers, employees, agents, representatives, engineers, consultants, or attorneys thereof, on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement.

5.2 Notice; Cure; Self-Help. In the event of a breach of this Agreement by the Developer, the City agrees that, unless specifically provided otherwise by any other provision of this Article 5, the Developer shall have thirty (30) days after notice of any breach delivered in accordance with Article 8 to correct the same prior to the pursuit of any remedy provided for in Section 5; provided, however, that the 30-day period shall be extended, but only (i) if the alleged breach is not reasonably susceptible to being cured within the 30-day period, and (ii) if the Developer has promptly initiated the cure of the breach, and (iii) if the Developer diligently and continuously pursues the cure of the breach until its completion. If the Developer shall fail to perform any of its obligations under this Agreement, and if the City shall have given written notice of the default to the Developer, and if the Developer shall have failed to cure the default as provided in this Section 5.2, then, except as specifically provided otherwise in the following sections of this Article 5 and in addition to any and all other remedies that may be available either in law or equity, the City shall have the right (but not the obligation) to take any action as in its discretion and judgment shall be necessary to cure the default. In any event, the Developer hereby agrees to pay and reimburse the City for all costs and expenses reasonably incurred by it in connection with action taken to cure the default, including attorney's fees and court costs.

5.3 Events of Default by the Developer. Any of the following events or circumstances shall be an event of default by the Developer with respect to this Agreement:

- (a) If any material representation made by the Developer in this Agreement, or in any certificate; notice, demand to the Village; or request made by the Village in connection with any of documents, license acquisitions shall prove to be untrue or incorrect in any material respect as of the date made.
- (b) Default by the Developer in the performance or breach of any agreement, material covenant, or warranty contained in this Agreement concerning the existence, structure, or financial condition of the Developer.
- (c) The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the Developer involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency, or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official of the Developer for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order un-stayed and in effect for a period of 60 consecutive days. There shall be no cure period for this event of default.
- (d) The commencement by the Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency, or other similar law, or the consent by the Developer to the appointment of or taking possession, by a receiver, liquidator, assignee, trustee, custodian, sequestrator, or similar official of the Developer or of any substantial part of the Developer's property, or the making by any such entity of any assignment for the benefit of creditors or the failure of the Developer generally to pay such entity's debts as such debts become due or the taking of action by Developer in furtherance of any of the foregoing. There shall be no cure period for this event of default.
- (e) Developer's failure to operate the Business throughout the term of this Agreement.

5.4 Remedies for Default by Developer.

Subject to the provisions of this Agreement, in the case of an event of default by the Developer after notice as required by Section 5.2 has been sent, the Village shall institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including proceedings to compel specific performance by the Developer of its obligations under this Agreement.

- 5.5 Indemnification by the Developer: Agreement to Pay Attorneys' Fees and Expenses. The Developer agrees to indemnify the Village, and all of its elected and appointed officials, officers, employees, agents, representatives, engineers, consultants, and attorneys, against any and all claims that may be asserted at any time against any of such parties in connection with or as a result of (i) Developer's development, construction, maintenance, or use of the Subject Property; or, (ii) the Developer's default under the provisions of this Agreement. Such indemnification obligation, however, shall not extend to claims asserted against the Village or any of the aforesaid parties in connection with or as a result of any act, omission, negligence or misconduct of the Village or any of the

aforesaid parties. If Developer shall commit an event of default and the Village should employ an attorney or attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the Developer herein contained, Developer, on the Village's demand, shall pay to the Village the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Village.

ARTICLE 6: GENERAL PROVISIONS

6.1 Maintain Improvements in Good and Clean Condition:

- (a) The Developer shall maintain the Subject Property in reasonably good and clean condition at all times during the construction of the Project by the Developer at the Subject Property, which shall include promptly removing all mud, dirt, and debris that is deposited on any street, sidewalk, or other public property in or adjacent to the Subject Property by the Developer or any agent of or contractor hired by, or on behalf of the Developer and repair any damage to any public property that may be caused by the activities of the Developer or any agent of or contractor hired by, or on behalf of, the Developer.
- (b) The Developer covenants and agrees to maintain the Subject Property in accordance with all applicable ordinances of the Village and to operate its commercial business in accordance with the ordinances of the Village and the laws of the State of Illinois and the United States.

6.2 Liability and Indemnity of Village.

- (a) No liability for Village Review. The Developer acknowledges and agrees that (i) the Village is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the Village's review and approval of any plans or improvements or as a result of the issuance of any approvals, permits, certificates, or acceptances for the development or use of any portion of the Subject Property or the improvements and (ii) the Village's review and approval of any plans and the issuance of any approvals, permits, certificates, or acceptances does not, and shall not, in any way be deemed to insure the Developer, or any of its successors, assigns, tenants, or licensees, or any third party, against violations or damage or injury of any kind at any time.
- (b) Hold Harmless and Indemnification. The Developer shall hold harmless the Village, and all of its elected and appointed officials, employees, agents, representatives, engineers, consultants, and attorneys from any and all claims that may asserted at any time against any of such parties in connection with (i) the Village's review and approval of any plans or improvements or (ii) the Village's issuance of any approval, permit or certificate. The foregoing provision, however, shall not apply to claims made against the Village as a result of a Village event of default under this Agreement, claims that are made against the Village that relate to one or more of the Village's representations, warranties, or covenants under Article 3 and claims that the Village, either pursuant to the terms of this Agreement or otherwise explicitly has agreed to assume.

- (c) Defense Expenses. The Developer shall pay all expenses, including legal fees and administrative expenses, incurred by the Village in defending itself with regard to any and all of the claims identified in the first sentence of Subsection (b) above.

6.3 Force Majeure. Time is of the essence of this Agreement, provided, however, a party shall not be deemed in material breach of this Agreement with respect to any of its obligations under this Agreement on such party's part to be performed if such party fails to timely perform the same and such failure is due in whole or in part to any strike, lock-out, labor trouble (whether legal or illegal), civil disorder, weather conditions, failure or interruptions of power, restrictive governmental laws and regulations, condemnations, riots, insurrections, acts of terrorism, war, fuel shortages, accidents, casualties, floods, earthquakes, fires, acts of Gods, restrictions, freight embargoes, acts caused directly or indirectly by the other party (or the other party's agents, employees or invitees) or similar causes beyond the reasonable control of such party ("Force Majeure"). If one of the foregoing events shall occur or either party shall claim that such an event shall have occurred, the party to whom such claim is made shall investigate same and consult with the party making such claim regarding the same and the party to whom such claim is made shall grant any extension for the performance of the unsatisfied obligation equal to the period of the delay, which period shall commence to run from the time of the commencement of the Force Majeure; provided that the failure of performance was reasonably caused by such Force Majeure.

6.4 The Developer covenants and agrees to pay, when due, all taxes, fees and fines including real estate taxes as assessed upon the Subject Property.

ARTICLE 7. TERM

7.1 Term. This Agreement shall be in full force upon its execution and terminate upon the second anniversary of the issuance of a certificate of occupancy for the Project.

ARTICLE 8. NOTICES

8.1 Notices. All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof (a) when delivered in person on a business day at the address set forth below, or (b) on the third business day after being deposited in any main or branch United States post office, for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below, or (c) by facsimile or email transmission, when transmitted to either the facsimile telephone number or email address set forth below, when actually received.

Notices and communications to Developer shall be addressed to, and delivered at, the following addresses:

with a copy to:

The Village Squire
125 West Washington Street
West Dundee, Illinois 60118
Attn:

Notices and communications to the Village shall be addressed to and delivered at these addresses:

with a copy to:

Village of West Dundee
102 South 2nd Street
West Dundee, IL 60118

Kathleen Field Orr
2024 Hickory Road, Suite 205
Homewood, IL 60430

By notice complying with the requirements of this Section, each party shall have the right to change the address or addressee, or both, for all future notices and communications to such party, but no notice of a change of address or addressee shall be effective until actually received.

ARTICLE 9. IN GENERAL

9.1 Amendments and Waiver. No modification, addition, deletion, revision, alteration, or other change to this Agreement shall be effective unless and until the change is reduced to writing and executed and delivered by the Village and the Developer. No term or condition of this Agreement shall be deemed waived by any party unless the term or condition to be waived, the circumstances giving rise to the waiver and, where applicable, the conditions and limitations on the waiver are set forth specifically in a duly authorized and written waiver of such party. No waiver by any party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition of this Agreement, nor shall waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provisions of this Agreement.

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

9.3 Entire Agreement. This Agreement shall constitute the entire agreement of the Parties; all prior agreements between the Parties, whether written or oral, are merged into this Agreement and shall be of no force and effect.

9.4 Counterparts. This Agreement is to be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below their respective signatures, to be effective as of the Commencement Date.

Village of West Dundee, an Illinois
municipal corporation

By: _____
Village President

Attest:

Village Clerk

The Village Squire, Inc., an
Illinois limited liability company

By: _____
President