

ORDINANCE NO. 12-43

An Ordinance Authorizing the Execution of an Annexation Agreement Between the Village of East Dundee and Michael B. Kessler

WHEREAS, Michael B. Kessler (the "Owner"), is the sole owner of record of property consisting of 0.53 acres, more or less, commonly known as 14N859 Route 25, Dundee, assigned property index numbers of 03-35-228-003 and 03-35-228-009 and is legally described as follows:

Parcel 1: Lot 3 in Fox River Bluffs Unit No. 3, a subdivision of part of Sections 35 and 36, Township 42 north, Range 8 east of the Third Principal Meridian, in the Township of Dundee, Kane County, Illinois; and

Parcel 2: That part of the northwest quarter of Section 35, Township 42 north, Range 8 east of the Third Principal Meridian, lying between the southerly extension of the east and west lines of said Lot 3 described as follows: commencing at the point of intersection of the north line of the northeast quarter of said Section 35 with the center line of State Route 25; thence south 08 degrees 03 minutes west along said center line, 708.15 feet to the southerly line extended westerly of said Lot 3 of Fox River Bluffs Unit No. 3 for the point of beginning; thence south 08 degrees 03 minutes west along said center line 49.34 feet; thence south 79 degrees 10 minutes east, 400.33 feet; thence northerly 68.86 feet to the southeast corner of Lot 7 of said Fox River Bluffs Unit No. 3; thence north 82 degrees 02 minutes west along the southerly line and southerly line extended of said Fox River Bluffs Unit No. 3, 400.0 feet to the point of beginning, (excepting therefrom the westerly 50 feet, as measured at right angles from the center line of State Route No. 25) in the Township of Dundee, Kane County, Illinois (together, the "Property").

WHEREAS, the Property is not located within the corporate boundaries of any municipality, has not been annexed to any municipality, is contiguous to the corporate boundaries of the Village of East Dundee ("Village") and may be annexed to the Village; and

WHEREAS, the Village desires to enter into that certain Annexation Agreement dated on the date hereof and attached hereto and incorporated herein as Exhibit "A" (the "Agreement"); and

WHEREAS, the Owner and the Village are ready, willing and able to enter into the Agreement and perform the obligations as required therein; and

WHEREAS, pursuant to 65 ILCS 5/11-15.1-1, *et seq.*, a public hearing has been held before the President and Board of Trustees pursuant to lawful notice and the Owner and the Village have otherwise complied fully with all laws and ordinances applicable to the Agreement; and

WHEREAS, the President and Board of Trustees have determined that it is in the best interest of the Village to approve and execute the Agreement.

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

SECTION 1: Upon receipt from the Owner of four executed copies of the Agreement, the Village President is hereby authorized and directed to immediately execute, and the Village Clerk is hereby authorized and directed to immediately attest, such four copies of the Agreement.

SECTION 2: If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

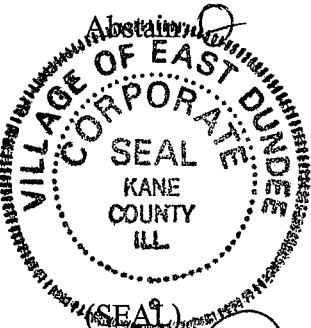
SECTION 3: All ordinances or parts of ordinances in conflict herewith are hereby repealed, to the extent of such conflict.

SECTION 4: This Ordinance shall be in full force and effect upon its passage, approval and publication in pamphlet form (which publication is hereby authorized) as provided by law.

Ayes: *Justices Ruffolo, Gorman, Lynam, Miller, VanOstrowski, Skellitorn & Pres. Bartels*

Nays: *0*

Absent: *0*



APPROVED:

Jerald Bartels
Village President Jerald Bartels

ATTEST: *Jennifer Reiberg*
Village Clerk Jennifer Reiberg

Passed: 6/30/12

Approved: 6/30/12

Published: 7/7/12

Prepared by/Mail to:
Michael J. Smoron
Zukowski Rogers Flood & McArdle
50 Virginia Street
Crystal Lake, IL 60014
815.459.2050
Z:\E\East Dundee\Kessler annexation\Ordinance.AA.doc

CERTIFICATION

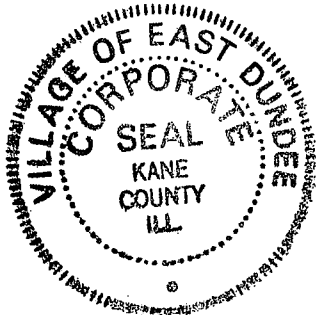
I, JENNIFER REHBERG, do hereby certify that I am the duly appointed, acting and qualified Clerk of the Village of East Dundee, Kane County, Illinois, and that as such Clerk, I am the keeper of the records and minutes and proceedings of the President and Board of Trustees of said Village.

I do hereby further certify that at a regular meeting of the President and Board of Trustees of the Village of East Dundee, held on the 30th day of June, 2011, the foregoing Ordinance entitled *An Ordinance Authorizing the Execution of an Annexation Agreement Between the Village of East Dundee and Michael B. Kessler*, was duly passed by the President and Board of Trustees of the Village of East Dundee.

The pamphlet form of Ordinance No 12-43, including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was posted in the East Dundee Village Hall, 120 Barrington Avenue, East Dundee, IL, commencing on the 7th day of July, 2011, and continuing for at least 10 days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the Village Clerk.

I do further certify that the original, of which the attached is a true and correct copy, is entrusted to me as the Clerk of said Village for safekeeping, and that I am the lawful custodian and keeper of the same.

IN WITNESS WHEREOF, I have affixed my name as Clerk and caused the seal of said Village to be affixed hereto this 7th day of July, 2011.



(SEAL)

Jennifer Rehberg
Jennifer Rehberg, Village Clerk
Village of East Dundee,
Kane County, Illinois

ANNEXATION AGREEMENT

by and between

**the VILLAGE OF EAST
DUNDEE**

and MICHAEL B. KESSLER

This Annexation Agreement (the "Agreement") is made and entered into this 21st day of May, 2012 by and between the Village of East Dundee, an Illinois municipal home rule corporation located in Kane and Cook counties (the "Village"), by and through its President and Board of Trustees (together, the "Corporate Authorities") and Michael B. Kessler (the "Owner"). The Village and the Owner are together referred to herein as "the Parties" and individually as a "Party."

RECITALS:

WHEREAS, the Owner represents and warrants to the Village that i) the Owner is the sole owner of record of a certain tract of real property situated in an unincorporated area of Kane County and assigned the property identification numbers of 03-35-228-003 and 03-35-228-009, commonly known as 14N859 Route 25 and legally described as follows:

Parcel 1: Lot 3 in Fox River Bluffs Unit No. 3, a subdivision of part of Sections 35 and 36, Township 42 north, Range 8 east of the Third Principal Meridian, in the Township of Dundee, Kane County, Illinois; and

Parcel 2: That part of the northwest quarter of Section 35, Township 42 north, Range 8 east of the Third Principal Meridian, lying between the southerly extension of the east and west lines of said Lot 3 described as follows: commencing at the point of intersection of the north line of the northeast quarter of said Section 35 with the center line of State Route 25; thence south 08 degrees 03 minutes west along said center line, 708.15 feet to the southerly line extended westerly of said Lot 3 of Fox River Bluffs Unit No. 3 for the point of beginning; thence south 08 degrees 03 minutes west along said center line 49.34 feet; thence south 79 degrees 10 minutes east, 400.33 feet; thence northerly 68.86 feet to the southeast corner of Lot 7 of said Fox River Bluffs Unit No. 3; thence north 82 degrees 02 minutes west along the southerly line and southerly line extended of said Fox River Bluffs Unit No. 3, 400.0 feet to the point of beginning, (excepting therefrom the westerly 50 feet, as measured at right angles from the center line of State Route No. 25) in the Township of Dundee, Kane County, Illinois (together, the "Property").

and

WHEREAS, the Owner represents that no registered voters reside on the Property; and
WHEREAS, the Property is not included within the corporate limits of any municipality; and

WHEREAS, the Property is anticipated to soon become territory which is contiguous to and may be annexed to the Village of East Dundee as provided in Article 7 of the Illinois Municipal Code (65 ILCS 5/7-1-1 et. seq.); and

WHEREAS, the President and Village Board of Trustees of the Village (the "Corporate Authorities") have duly set a date, time, and place for a public hearing on this Annexation Agreement and have caused due notice to be made of said public hearing through publication in the [REDACTED] News, a newspaper of general circulation in the community, and the Village has held such public hearing; and

WHEREAS, the Corporate Authorities of the Village, after due and careful consideration, have concluded that the annexation of the Property to the Village on the terms and conditions hereinafter set forth is in the best interests of the Village; and

WHEREAS, pursuant to notice as required by statute and ordinance public hearings were held by the Planning and Zoning and Historic Commission of the Village on the requested zoning of the Property; and

WHEREAS, this Agreement is made pursuant to and in accordance with the provisions of Section 11 of the Illinois Municipal Code (65 ILCS 5/11-15.1-1 et. seq., 1991), and in the exercise of the home rule power of the Village.

NOW, THEREFORE, in consideration of the promises, mutual covenants and agreements herein set forth and for good and valuable consideration, the Parties agree as follows:

1. **Recitals.** The recitals set forth above are hereby made a part of this Agreement and incorporated herein.
2. **Annexation and Zoning.** Upon the Property becoming contiguous to the Village boundaries, the Village shall give written notice thereof to the Owner (the "Village Contiguity Notice"). Within 30 days following its receipt of the Village Contiguity Notice, the Owner shall present to the Village a validly executed petition for annexation with respect to the Property (the "Petition for Annexation"). The Parties agree that within 30 days of the Owner presenting to the Village the Petition for Annexation, the Village shall annex the Property to the Village and zone the Property B-3-General Service Business District with a Special Use for Planned Unit Development (the "B-3 PUD") in accordance with this Agreement. The ordinance created the B-3 PUD shall be in the form attached hereto as **Exhibit A**. As to the zoning and development of the Property it is further agreed as follows:

(a) Any existing building and other site improvements on the Property as of the date of this Annexation Agreement will be considered a lawful, permitted structure.

(b) For clarification, the minimum yard requirement with respect to the Property shall be interpreted as follows:

Front-yard building setback from West line: 35 feet

Side-yard building setback from North and South lines: The total combined side yard for both the northerly and southerly side yards shall be not less than an

aggregate of 20 feet, and so long as one of the said side yards is 12 feet or greater, the other side yard may be 8 feet or less, including zero (0) feet.

Rear-yard building set back from East line: 20 feet for principle structures and 10 feet for any accessory garages and /or private storage buildings.

Vehicle use (parking lot) set-back: from West line, 10 feet (except as noted in paragraph (I)(2), below, for temporary display); from North line, 5 feet; from East line, 10 feet; and from South line, 0.0 feet (a zero-set back from South line)

Transition yards: none required.

(c) Currently neither side nor rear lot lines of the Property coincide with an adjacent residential district. It is agreed that if the said adjacent properties were ever rezoned to a residential district, then notwithstanding same, there shall be no transition yards required with respect to the Property as might otherwise have been imposed under the provisions of 157.053(G)(e).

(d) It is hereby agreed that the parking spaces on the existing and any future parking lots on the Property shall fulfill the requirement for off-street loading that might otherwise have been required under Section 157.120 of the Village Code of Ordinances.

(e) It is hereby agreed that the size of the current parking spaces, as striped on the Property shall be deemed to be in compliance with the requirements of Section 157.146 of the Village Code of Ordinances.

- (f) Signage shall be permitted as follows:
- i. Free standing signs shall be allowed under either of the following alternatives:

Alternative One: One double-sided, illuminated or non-illuminated monument or pylon sign, with maximum width of 8 feet and maximum height of 10 feet, shall be allowed for each business operating on the premises, limited to not more than two (2) such monument signs. Such monument signage may be located within the front yard of the Property up to within one (1) foot of the West property line;

Alternative Two: One pole sign up to 20 feet high; 15 feet wide; with 125 square feet of sign face per side and a front setback of 10 feet.

It is acknowledged that the Property is situated within the Village's "East Side Commercial Overlay District." It is further agreed that if the current, and any future multi-building upon the Property, is used for multi-tenant purposes (whether such use is for office, retail, or other commercial use, or a

combination thereof) then one free standing signage serving the Property shall be entitled to electronic message display as contemplated in Section 156.04(E)(3) of the Village of East Dundee Code of Ordinances.

- ii. Up to four (4) wall signs, each having a maximum of eight (8) square feet, shall be allowed on the face of the buildings with a maximum of one wall sign per business located on the Property.

(g) It is hereby agreed that the current landscaping and screening existing on the Property shall be deemed compliant with the requirements of Chapter 158 of the Village Code of Ordinances.

(h) The Village approves the sufficiency of 8 parking spaces for the business use of the existing building on the Property.

(i) If an automotive sales lot is established on the Property, that lot may be separated from the existing parking lot.

(j) One or more garages and/or private storage buildings shall be permitted on the Property subject to compliance with the accessory building setbacks specified in Section 2(b) above. .

(k) The Owner shall not be charged a fee for the annexation, zoning or PUD application or public hearing process (including, without limitation, filing fees, publication fees, court reporter's fees, etc.).

3. **Sewer and Water Tap On.**

(a) The Owner shall be entitled to continue his use of the private well (the "Private Well") on the Property, even after such time that the Property is annexed to the Village and could otherwise be connected to the Village's potable water. The Owner may repair or replace the Private Well.

(b) At such time, if the Owner elects to connect the Private Well to the Village water main, the Village shall grant the Owner a domestic or residential tap on for potable water at no cost to the Owner, and with no requirement or obligation to any impact, recapture or reimbursement fees or charges to the Village or to any third party. If the connection is for commercial purposes, the Village shall charge the standard commercial connection / tap-on fee minus an amount equal to the standard domestic or residential tap-on fee. Upon connection to the Village water main, the Owner shall be responsible to pay for all water usage charges as are otherwise generally charged to and become payable by other residents of the Village.

(c) As generally provided in the Easement Agreement dated March 12, 2012 between the Owner and the Village, on or before ~~2012~~ 2012 the Village shall, at its expense, (i) cause the existing building on the Property to be disconnected from the current private sanitary septic system on the Property and connected to the Village's sanitary sewer main in the easement within the westerly 20 feet of the Property and (ii) lawfully abandon the said private septic system. Upon such connection to the Village sanitary sewer main, the Owner shall be responsible to pay monthly sanitary treatment charges (i) at a monthly rate not to exceed ten dollars (\$10.00) per month until the Owner's building on the Property is connected to the Village water main and (ii) after the Owner's building on the Property is connected to the Village water main, then at those rates as are otherwise generally charged to and become payable by other residents of the Village who are connected to its sanitary sewer system.

4. **Utility Easement.** The Owner has heretofore or shall promptly hereafter at the request of the Village convey, upon the approval of this Agreement by the Village, at no cost to the Village, a 20-foot wide exclusive municipal utility easement to the Village, executed and notarized by the Owner, as set forth in **Exhibit B** attached hereto (the "Utility Easement"). No equipment or materials shall be staged on the Property or driven on the Owner's existing asphalt surfaces. If the Village damages or brings about the death of any tree on the Property through the exercise of the Utility Easement, the Village shall bear the cost of repair / tree removal.
5. **Tax Increment Allocation Financing ("TIF") District.** In the event that the Village establishes a TIF District that is adjacent to the Property, the Property will be incorporated into such TIF District to the extent permitted by law at no cost or charge to the Owner.
6. **Binding Effect and Term.** This Agreement shall be binding upon and inure to the benefit of the Parties, their successors and assigns, for a period of 20 years from date this Agreement is approved by the Corporate Authorities.
7. **Disconnection of the Property by the Owner.** Notwithstanding any rights that Owner may have to disconnect from the Village pursuant to the Illinois Municipal Code, including, without limitation, pursuant to 65 ILCS 5/7-3-6, the Owner hereby waives any right he may otherwise have by statute or otherwise to disconnect the Property from the Village.

8. **Miscellaneous.**

(a) The Village shall not impose any development impact or other impact or recapture fees on the Property for any reason whatsoever;

(b) If during the term of this Agreement and after final plat or planned development approval, any existing, amended, modified or new ordinances, codes or regulations of general applicability throughout the community to a land developer or subdivider affecting the installation of land improvements (streets, underground utilities, sidewalks, curbs and gutters) upon the Property are amended or modified in any manner to impose additional requirements on the installation of land improvements within the Village, the burden of such

additional requirements shall not apply to the Property. This section shall not apply to any changes in fees imposed by the Village. Village agrees that there shall be no unreasonable or discriminatory changes in the method of calculation of fees applicable to the Property.

(c) If, during the term of this Agreement, any existing, amended, modified or new ordinances, codes or regulations affecting the zoning, subdivision, development, construction of improvements, buildings or appurtenances or other regulatory ordinances regarding the public health, safety and welfare are amended or modified in any manner to impose less restrictive requirements on the development of, or construction upon, properties within the Village, then the benefit of such less restrictive requirements shall inure to the benefit of Owner, and anything to the contrary contained herein notwithstanding, Owner may elect to proceed with respect to the development of, or construction upon, the Property upon the less restrictive amendment or modification applicable generally to all properties within Village.

(d) The B-3 PUD zoning ordinance with special use for Planned Unit Development may be amended at request of the Owner, after due consideration by the Village, without the requirement that this Annexation Agreement must also be amended as a condition thereto;

(e) The Village shall not use its powers of eminent domain to take any portion of the Property under any circumstances whatsoever.

(f) The Village hereby approves all improvements currently situated on the Property (as shown on the attached Plat of Survey) and shall not require the installation of any sprinkler system, fire escape, or elevator in connection with the current structure and any permitted use thereof.

(g) In the event that the existing building is destroyed, partially or wholly, then the building may be re-built in a similar manner to its present existence. Further, in the event that the Owner decides to modify the interior, including complete gutting the interior, then he may do so and remodel in a different format on the interior without substantially changing the exterior, as long as other Village ordinances are complied with, including fire and safety codes. This does not preclude any modifications to the exterior or interior that same are permitted by the B-3 PUD Zoning attached hereto and incorporated herein as Exhibit A.

Notices or other writings which any Party is required or may wish to serve upon any other Party in connection with this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier, prepaid, addressed as follows:

If to the Village or to the Corporate Authorities:

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

Attention: Village Clerk

If to Owner:

Michael B. Kessler
14N859 Route 25
East Dundee, Illinois 60118

With a copy to:

Peter C. Bazos, Esq.
Bazos, Freeman, Kramer, Schuster, Vanek & Kolb, LLC
1250 Larkin Ave., Suite 100
Elgin, IL 60123

(h) This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, the successors in title of the Owner, and his successors, grantees, lessees, and assigns, and upon successor corporate authorities of the Village and successor municipalities.

(i) This Agreement may be executed in any number of counterparts and duplicate originals, each of which shall be deemed an original, but all of which shall constitute one and the same instruments.

(j) This Agreement supersedes any and all prior annexation agreements between the Parties.

(k) This Agreement shall have a term commencing as of the date hereof and ending twenty (20) years thereafter.

[signature pages follow]

IN WITNESS WHEREOF, the Corporate Authorities and the Owner have caused this Agreement to be executed by their respective proper officials duly authorized to execute the same on the day and year first above written and that shall be the date on which this Agreement is deemed approved and executed by the Parties.

THE VILLAGE OF EAST DUNDEE,
an Illinois home rule municipal corporation

By: Jerald Bartels
Village President Jerald Bartels

ATTEST:

Jennifer Rehberg
Jennifer Rehberg
Village Clerk

STATE OF ILLINOIS)
) ss
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Jerold Bartels, President of the Village of East Dundee, Illinois, and Jennifer Rehberg, Clerk of the Village of East Dundee, each personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument, as their free and voluntary act, and as the free and voluntary act of the Village, for the uses and purposes therein set forth

Given under my hand and notarial seal, this 21st day of May, 2012.

(seal)



Heather Maieritsch
Notary Public

IN WITNESS WHEREOF, the Corporate Authorities and the Owner have caused this Agreement to be executed by their respective proper officials duly authorized to execute the same on the day and year first above written and that shall be the date on which this Agreement is deemed approved and executed by the Parties.

OWNER




Michael B. Kessler

STATE OF ILLINOIS)
) ss
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Michael B. Kessler, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument, as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 21st day of May, 2012.

(seal)



Notary Public

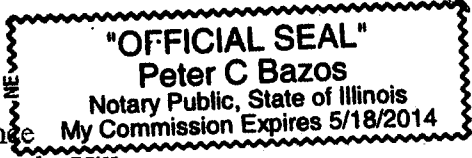


EXHIBIT LIST:

- Exhibit A: B-3 PUD Ordinance
- Exhibit B: Utility Easement to the Village
- Exhibit C: Plat of Survey / Site Plan