

Ordinance No. 16-06

AN ORDINANCE APPROVING A REDEVELOPMENT AGREEMENT BETWEEN THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS, AND VCNA PRAIRIE, LLC, A DELAWARE LIMITED LIABILITY COMPANY

WHEREAS, the Village of East Dundee, Cook and Kane Counties, Illinois (the "*Village*") is a home-rule municipality pursuant to Article VII, Section 6(a) of the Constitution of the State of Illinois of 1970; and,

WHEREAS, pursuant to their powers and in accordance with the requirements of 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*"), on August 20, 2012, the President and Board of Trustees of the Village (collectively, the "*Corporate Authorities*") adopted Ordinance Nos. 12-68 and 12-69, which designated the Cook County Project Area (the "*Redevelopment Project Area*") as a "redevelopment project area," as that term is defined in the TIF Act, and approved tax increment allocation financing for the Redevelopment Project Area; and

WHEREAS, the existence of blighting factors in the Redevelopment Project Area, as described in the Redevelopment Plan, and the extraordinary costs necessary for development have prevented private developers from developing, redeveloping, and revitalizing the Redevelopment Project Area, which has, in turn, prevented the development and construction commercial enterprises within the Redevelopment Project Area; and

WHEREAS, VCNA Prairie, LLC, a Delaware limited liability company, an Illinois Corporation (the "*Developer*") owns property which is legally described on Exhibit A attached hereto (the "*Subject Property*") and which is located within the Redevelopment Project Area, and the Village has been informed that the Developer intends to undertake site preparation necessary for the future development the Subject Property (the "*Project*"); and,

WHEREAS, the Village has acquired a non-exclusive perpetual easement from Commonwealth Edison Company, an Illinois corporation (the "*Easement*") which will significantly improve ingress and egress to the Subject Property from a public right-of-way commonly known as Joliet Crystal Lake; and,

WHEREAS, the Developer has informed the Village that is prepared to pay the costs that the Village incurred to acquire the Easement on the condition that the Village reimburse the Developer for the amount it shall pay to the Village from a portion of the "Incremental Taxes" (as defined in the Redevelopment Agreement attached hereto) derived from the Redevelopment Project Area; and,

WHEREAS, the Village is authorized under the TIF Act to enter into redevelopment agreements and to reimburse developers for redevelopment project costs as set forth in a redevelopment agreement; and,

WHEREAS, the Corporate Authorities have determined that in order to induce the Developer to undertake the Project at the Subject Property, it is in the best interests of the

Village, and the health, safety, morals, and welfare of the residents of the Village, for the Village to reimburse the Developer for certain eligible Redevelopment Project Costs in accordance with the terms and conditions as set forth in the attached Redevelopment Agreement by and between the Village and the Developer.

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

Section 1. That the Redevelopment Agreement by and between the Village of East Dundee, Cook and Kane Counties, Illinois and VCNA Prairie, LLC, a Delaware limited liability company, an Illinois Corporation, attached hereto and made a part hereof, is hereby approved and the Village President and Village Clerk are hereby authorized to execute and deliver said Agreement on behalf of the Village.

Section 2. That the Village President and Village Administrator are hereby authorized and directed to undertake any and all actions as may be required to implement the terms of said Agreement.

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

Passed by the Village President and the Board of Trustees of the Village of East Dundee, Cook and Kane Counties, Illinois, this 7th day of March, A.D. 2016, pursuant to a roll call vote, as follows:

AYES: Trustees Gorman, Lynam, Selep, Wood and Hall


NAYS: 0

ABSENT: Trustee Skillicorn

APPROVED by me, as Village President of the Village of East Dundee, Cook and Kane Counties, Illinois, this 7th day of March, A.D. 2016.


Village President

Attest:


Village Clerk

REDEVELOPMENT AGREEMENT

THIS AGREEMENT (this "*Agreement*") is made and entered into this 7th day of March, 2016, by and between the Village of East Dundee, Illinois, an Illinois municipal corporation and a home rule unit of government pursuant to Section 6, Article VII of the Illinois Constitution of 1970 (the "*Village*"), and VCNA Prairie LLC, a Delaware limited liability company (the "*Developer*").

PREAMBLES

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 redevelopment of a designated area within its municipal limits in which existing conditions permit such area to be classified as a "blighted area," as such term is defined in the TIF Act; and,

WHEREAS, in accordance with the requirements of the TIF Act, on August 20, 2012, the Corporate Authorities adopted Ordinance No. 12-67, which approved a redevelopment plan and project, entitled the Redevelopment Project Plan and Eligibility Report for the Cook County Project Area (the "*Redevelopment Project Area*"); and,

WHEREAS, also in accordance with the requirements of the TIF Act, on August 20, 2012, the Corporate Authorities adopted Ordinances No. 12-68 and No. 12-69, which designated the Redevelopment Project Area as a "redevelopment project area," as that term is defined in the TIF Act, and approved tax increment financing for the purpose of implementing the Redevelopment Plan for the Redevelopment Project Area; and,

WHEREAS, the Corporate Authorities have determined that the blighting factors described in the Redevelopment Plan are detrimental to the public and impair development and growth in the Redevelopment Project Area, with the result that it is necessary to incur extraordinary costs in order to develop the Redevelopment Project Area; and,

WHEREAS, the blighting factors in the Redevelopment Project Area will continue to impair growth and development but for the use of tax increment financing to pay Redevelopment Project Costs (as defined in the TIF Act), which necessarily must be incurred to implement the aforesaid program of redevelopment; and,

WHEREAS, the Village has acquired an non-exclusive perpetual easement from Commonwealth Edison Company, an Illinois corporation (the "*Easement*") for purposes of ingress and egress to certain property legally described on *Exhibit A* attached hereto which is owned by the Developer and located within the Redevelopment Project Area ("*Prairie Land*") from a public right-of-way commonly known as Joliet Crystal Lake; and,

WHEREAS, the Easement will significantly improve ingress and egress to Prairie Land thereby enabling the Developer to undertake site preparation (the "*Project*") necessary for the future development of Prairie Land; and,

WHEREAS, the Developer is prepared to pay the Village for the costs it has incurred to acquire the Easement on the condition that the Village reimburse the Developer the amount it shall pay to the Village from a portion of the "Incremental Taxes" (as hereinafter defined) derived from the Redevelopment Project Area; and,

WHEREAS, the Village is authorized under the TIF Act to enter into redevelopment agreements and to reimburse developers for redevelopment project costs as set forth in a redevelopment agreement; and,

WHEREAS, the Village is also authorized under the TIF Act to exercise any and all other powers necessary to effectuate the purposes of the TIF Act; and,

WHEREAS, in order to induce the Developer to proceed with the Project, the Corporate Authorities have determined that it is in the best interests of the Village and the health, safety, morals and welfare of the residents of the Village to reimburse the Developer as stated above pursuant to the terms and subject to the conditions hereinafter set forth; and,

WHEREAS, the Corporate Authorities have determined that the completion of the Project by the Developer pursuant to this Agreement thereby enabling future development of Prairie Land is in the best interests of the Village and the health, safety, morals and welfare of its residents and taxpayers and will be in furtherance of the Redevelopment Plan, thereby providing for economic development, enhancing the tax base of the Village and other taxing districts.

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 into this Agreement as though they were fully set forth in this Section 1.

Section 2. Term. Unless earlier terminated pursuant to Section 9 hereof, the term of this Agreement shall commence on the date of execution and terminate on the first to occur of (i) payment in full to the Developer of fifty-one thousand dollars (\$51,000.00); or (ii) December 31st of the year following the twenty-third (23rd) year from the date of designation of the Redevelopment Project Area.

Section 3. Developer's Obligation.

Upon execution of this Agreement, the Developer shall pay to the Village the sum of \$51,000 whereby the Developer shall be entitled to sharing in the Village's right and interest in the Easement for so long as the Village holds such right and interest in the Easement.

Section 4. Developer Payments.

(a) As long as no notice of an event described in Section 9 of this Agreement shall have been issued to the Developer and be continuing, and the Developer has paid the Village the amount as stated in Section 3 hereof, the Village shall reimburse the Developer from amounts on deposit from time to time in the Prairie Subaccount (as defined below) in the Special Tax Allocation Fund of the Village (the "*Special Tax Allocation Fund*" or the "*STAF*"), established by the Village pursuant to Ordinance No. 12-69 will be used for the following purposes:

- (i) On October 1 of each year [or, if later, that date which is ten (10) days following the date upon which the Village receives Incremental Taxes (as defined below) from the second installment of real estate taxes (the "*STAF Allocation Date*")], twenty-percent (20%) of the monies credited to the STAF with respect to the Redevelopment Project Area during the period from the immediately preceding STAF Allocation Date to, but not including, the current STAF Allocation Date shall be transferred and deposited into the PRAIRIE Subaccount of the STAF (which Subaccount shall be automatically created by the ordinance approving this Agreement) and used solely to reimburse the Developer for Redevelopment Project Costs in accordance with this Agreement. Notwithstanding anything to the contrary in this Agreement, beginning in the fifth (5th) year from the date of execution of this Agreement, in no event shall the Village's annual reimbursement payment to Developer total less than Five Thousand Dollars (\$5,000.00).
- (ii) Distribution to the Developer shall be made annually within thirty (30) days of the deposit into the Prairie Sub-Account.

THE VILLAGE'S OBLIGATION TO REIMBURSE THE DEVELOPER UNDER THIS AGREEMENT IS A LIMITED OBLIGATION PAYABLE SOLELY FROM INCREMENTAL TAXES DEPOSITED IN THE PRAIRIE SUB-ACCOUNT FROM TIME TO TIME AND SHALL NOT BE SECURED BY THE FULL FAITH AND CREDIT OF THE VILLAGE. As used in this Agreement, "Incremental Taxes" shall mean the amount in the STAF equal to the amount of ad valorem taxes, if any, paid in respect of the Redevelopment Project Area which is attributable to the increase in the equalized assessed value of the Redevelopment Project Area and its improvements over the initial equalized assessed value of the Redevelopment Project Area.

Section 5. Compliance with Applicable Laws.

(a) The Developer shall utilize the Easement in accordance with all applicable federal, state and local laws, regulations and ordinances (collectively referred to as the "*Legal Requirements*").

(b) The Developer shall abide by all of the terms, conditions, restrictions and limitations imposed by Commonwealth Edison Company pursuant to the Grant for Public Roadway and Sub-Surface and Grading Facilities dated July 20, 2015, by and between the Village and Commonwealth Edison Company, a copy of which is attached hereto as *Exhibit B* (the "*Grant of Easement*").

(c) The Developer shall pay, when due, all undisputed amounts due and owing to the Village, including but not limited to, permit fees, taxes, transfer taxes, licensing fees and any other tax or fee assessed against the Developer by the Village (collectively, "*Village Fees*").

Section 6. The Developer's Representations and Warranties.

In addition to the other representations, warranties, covenants and agreements of the Developer set forth in this Agreement, the Developer represents and warrants as follows:

(a) The Developer is a Delaware limited liability company duly organized and existing under the laws of the State of Delaware, 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 complete the Project and operate its Business.

(b) 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 7. The Village's Representations and Warranties.

In addition to the other representations, warranties, covenants and agreements of the Village set forth in this Agreement, the Village represents and warrants as follows:

(a) The Village is an Illinois municipal corporation and a home rule unit of government pursuant to Section 6, Article VII of the Illinois Constitution of 1970, and is authorized to enter into, and by proper municipal action has been duly authorized to execute, deliver and perform this Agreement.

(b) The Village is aware of Developer's plan to construct a new access point to the Prairie Land off of Healy Road at approximately the location shown on the attached *Exhibit C*. The Village shall grant to the Developer any permits, licenses, or other Village approvals

required for the construction of such project, provided that Developer reasonably complies with the Village's established application processes for such permits, licenses, or other approvals.

Section 8. 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 (i) its use of the Easement; (ii) the failure of the Developer to comply with any Legal Requirements; or (iii) failure to comply with the terms of the Grant of Easement. 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 on the part of the Village or any of its, officers, officials, agents, employees or contractors.

Section 9. 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) then the Village's sole remedy shall be to terminate this Agreement and if the Developer's failure to cure is with respect to its failure to complete the Project, once commenced, then the Village's exclusive remedies shall be to terminate this Agreement and terminate the Developer's right to utilize the Easement.

Section 10. 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 the 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 the Developer: Ann Straw
VCNA Prairie LLC
7601 West 79th Street
Bridgeview, Illinois 60445

With a copy to: General Manager, Aggregates
VCNA Prairie LLC
7601 West 79th Street
Bridgeview, Illinois 60445

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. Amendments.

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. Assignment.

The Developer may not assign its rights or obligations under this Agreement without the express written consent of the Village, which consent shall not be unreasonably withheld, unless such assignment is of the Developer's entire right contained herein and is made in connection with and simultaneous with a fee simple conveyance of the Prairie Land.

Section 18. No Personal Liability of Officials of the Village.

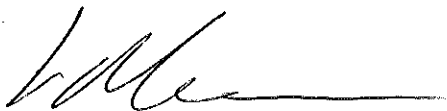
No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any member of the Corporate Authorities or any official, officer, agent, employee or attorney of the Village, in his or her individual capacity, and no official, officer, agent, employee or attorney of the Village shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement.

[SIGNATURE PAGE FOLLOWS]

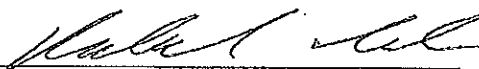
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the above date at East Dundee, Illinois.

VILLAGE OF EAST DUNDEE, ILLINOIS,
an Illinois municipal corporation

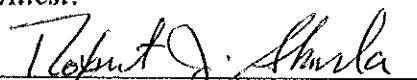
VCNA Prairie LLC,
a Delaware limited liability company



President

By 
Its GENERAL MANAGER

Attest:



Village Administrator

Robert J. Skurka

Exhibit A

Legal Description

(See Attached)

Heinz Drive Extension

East Dundee, IL

Easement Description

Part of the West Half of Section 30, Township 42 North, Range 8 East of the Third Principal Meridian, Cook County, Illinois, described as follows: Beginning at a point on the East line of Commonwealth Drive, as recorded on Rock Road Business Park in the Kane County Recorder's Office as document 2004K09309, said point being North 00 degrees 15 minutes 46 seconds West (assumed bearing) a distance of 804.68 feet from the intersection of said East line of Commonwealth Drive and the North line of Higgins Road (Illinois 72); thence North 89 degrees 29 minutes 39 seconds East a distance of 190.00 feet to the East line of the Commonwealth Edison Company Right of way; thence North 00 degrees 15 minutes 46 seconds West on and along last named line a distance of 80.00 feet; thence South 89 degrees 29 minutes 39 seconds West a distance of 190.00 feet to said East line of Commonwealth Drive; thence South 00 degrees 15 minutes 46 seconds East on and along last named line a distance of 80.00 feet to the Point of Beginning, containing 0.35 acres, more or less.

Exhibit B

Easement

(See Attached)

Exhibit C
Healy Rd. Access