

ORDINANCE NO. 21-02

AN ORDINANCE AUTHORIZING A FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS AND 811 MAIN ST APTS LLC (855 E. MAIN STREET DEVELOPMENT)

WHEREAS, the Village of East Dundee ("Village") approved a "Development Agreement By And Between The Village Of East Dundee, Cook And Kane Counties, Illinois And 811 Main St Apts LLC (855 E. Main Street Development)" on March 2, 2020 in Ordinance 20-05 ("Agreement"), by and between the Village and 811 Main St Apts LLC, an Illinois limited liability company ("Developer"); and

WHEREAS, due to the extraordinary impacts of COVID-19 the Developer has been delayed in meeting deadlines in the Agreement for development of the "Project" as defined in the Agreement; and

WHEREAS, the Village desires to allow the Developer to have additional time to meet certain of its obligations in the Agreement on the terms and conditions set forth in the "First Amendment To Development Agreement By And Between The Village Of East Dundee, Cook And Kane Counties, Illinois And 811 Main St Apts LLC (855 E. Main Street Development)" attached hereto as EXHIBIT A and made part hereof ("Amendment"); and

WHEREAS, the Developer desires to continue with the Project on the terms set forth in the Amendment; and

WHEREAS, the President and Board of Trustees find that the public's health, safety and welfare are best served by the Village entering into the Amendment;

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: Incorporation. That each Whereas paragraph above is incorporated by reference into this Section 1 and made a part hereof as material and operative provisions of this Ordinance.

SECTION 2: Approval. The Amendment is hereby approved, and the President and Clerk of the Village are hereby authorized and directed to execute and deliver such other instruments as may be necessary or convenient to carry out the terms of the Amendment.

SECTION 3: Severability. That if any Section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or

unenforceability of such Section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 4: Repeal. That all ordinances, resolutions, motions or parts thereof in conflict herewith shall be and the same are hereby repealed.

SECTION 5: Effect. That this Ordinance shall be in full force and effect forthwith upon its adoption, approval and publication in pamphlet form as provided by law.

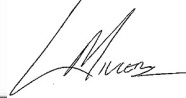
ADOPTED this 4th day of January, 2021 pursuant to a roll call vote as follows:

AYES: Trustees Lynam, Selep, Wood, Mahony, Andresen and Kunze

NAYES: NONE

ABSENT: NONE

APPROVED by me this 4th day of January, 2021.



Lael Miller, Village President

ATTEST:



Katherine Diehl, Village Clerk

Published in pamphlet form this 4th day of January, 2021, under the authority of the Village President and Board of Trustees.

Recorded in the Village records on January 5th, 2021.

EXHIBIT A
Amendment
(attached)

EXHIBIT A

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS AND 811 MAIN ST APTS LLC (855 E. MAIN STREET DEVELOPMENT)

**THIS FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND
BETWEEN THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES,
ILLINOIS AND 811 MAIN ST APTS LLC (855 E. MAIN STREET DEVELOPMENT)**
("Amendment") is entered into this 4th day of January, 2021 ("Effective Date"), by and
between the Village of East Dundee, Illinois, an Illinois municipal corporation ("Village"),
and 811 Main St Apts LLC, an Illinois limited liability company ("Developer").

PREAMBLES

WHEREAS, the Village and the Developer entered into a "Development Agreement By And Between The Village Of East Dundee, Cook And Kane Counties, Illinois And 811 Main St Apts LLC (855 E. Main Street Development)" on March 2, 2020 ("Agreement"), regarding the conveyance and development of the "Property" as defined in the Agreement; and

WHEREAS, due to the extraordinary impacts of COVID-19 the Developer has been delayed in meeting deadlines in the Agreement for development of the "Project" as defined in the Agreement; and

WHEREAS, the Village desires to allow the Developer to have additional time to meet certain of its obligations in the Agreement on the terms and conditions set forth in this Amendment; and

WHEREAS, the Developer desires to continue with the Project on the terms set forth in the Agreement, as amended by this Amendment; and

WHEREAS, it is in the best interests of the Village and the Developer to amend the Agreement on the terms set forth in this Amendment;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, representations and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Village and the Developer, the parties hereto agree as follows:

Section 1. Incorporation of Recitals

The parties agree that all of 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. Amendments to Agreement

The Agreement is hereby amended as follows, with additions underlined and deletions struck through:

- (a) Section 2(b) of the Agreement is amended as follows:
- (1) On or before March 31, 2021 ~~June 1, 2020~~, the Developer shall have acquired the Property.
 - (2) On or before April 30, 2021 ~~March 1, 2020~~, the Developer shall apply for all zoning relief needed for the construction, operation and maintenance of the Project.
 - (3) On or before June 30, 2021 ~~May 1, 2020~~, the Developer shall have applied for all permits as may be required to undertake and complete the construction for all aspects of the Project.

- (4) Within thirty (30) calendar days of the Developer having received all permits as may be required to undertake and complete the construction of all aspects of the Project, the Developer shall have commenced construction of all aspects of the Project.
- (5) Within one (1) calendar year of the date on which construction of the Project is commenced as set forth in Section 2(b)(4) above, the Developer shall have obtained a temporary certificate of occupancy for all aspects of the Project, in accordance with the Legal Requirements, which shall be issued by the Village in accordance with the Legal Requirements, and the Developer shall be actively engaged in the leasing of the Project, and shall otherwise be maintaining, managing, and operating the Project. The date the Project receives a final certificate of occupancy for all aspects of the Project shall be the "Commencement Date."
- (b) Section 2(e) of the Agreement is amended as follows:

The Developer's obligations under this Agreement are contingent upon the Developer obtaining, on or before March 31, 2021 ~~June 1, 2020~~, a firm construction loan commitment for the Project in an amount and under terms acceptable to the Developer and Developer's legal counsel. In the event the Developer is unable to procure such firm construction loan commitment within the stated

time, and the Developer notifies the Village in writing of such failure on or before March 31, 2021 ~~June 15, 2020~~, as of the date of the Developer's written notice, this Agreement shall be null and void and of no further effect, and the Developer shall receive a full refund of any amounts deposited by the Developer pursuant to the Trust and Agency policy not obligated to be paid to, used by, or owed to, the Village related thereto. If the Developer fails to notify the Village of its failure to obtain a firm construction loan commitment for the Project on or before March 31, 2021 ~~June 15, 2020~~, this Agreement shall remain valid and binding and this Section 2(e) shall be of no further force or effect.

Section 3. Continuing Effect

All parts of the Agreement not amended herein shall remain in full force and effect. In the event of any conflict between the terms of this Amendment and the Agreement, the terms of this Amendment shall prevail and control.

Section 4. Effective Date

The Effective Date of this Amendment shall be the date on which the last of the parties executes this Amendment.

[THIS SPACE INTENTIONALLY LEFT BLANK]

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.

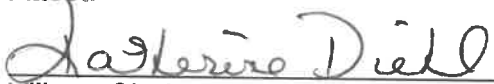
VILLAGE:

Village of East Dundee, an Illinois municipal corporation

By: 

President

Attest:



Village Clerk

DEVELOPER:

811 Main St Apts LLC, an Illinois limited liability company

By: 

Joseph Bilitteri
Its Manager

Attest:

