

ORDINANCE NO. 21-20

AN ORDINANCE AUTHORIZING A FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS AND SPEEDWAY LLC FOR THE DEVELOPMENT OF PART OF LOT 5 IN TERRA BUSINESS PARK (SPEEDWAY LLC)

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 Speedway LLC for the Development of Part of Lot 5 in Terra Business Park (Speedway LLC)” on April 17, 2017, in Ordinance 17-21 (“Agreement”), by and between the Village and Speedway LLC (“Developer”); and

WHEREAS, due to delays in approvals from State agencies for certain roadwork called for in the Agreement, there have been delays in the completion of the “Project” as defined in the Agreement; and

WHEREAS, the Village desires to adjust certain timelines in the Agreement on the terms and conditions set forth in the “First Amendment to Development Agreement” 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 That all ordinances, resolutions, motions or parts thereof in conflict herewith shall be and the same are hereby repealed.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 17th day of May, 2021 pursuant to a roll call vote as follows:

AYES: Trustees Mahony, Andresen, Kunze, Brittin, Saviano and Treiber

NAYES: None

ABSENT: None

APPROVED by me this 17th day of May, 2021.



Jeffrey J. Lynam, Village President

ATTEST:

Katherine Diehl
Katherine Diehl, Village Clerk

Published in pamphlet form this 18th day of May, 2021, under the authority of the Village President and Board of Trustees.

Recorded in the Village records on May 18, 2021.

EXHIBIT A

Amendment

(attached)

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the “First Amendment”) is made effective as of the 17 day of May, 2021 (the “Effective Date”), by and between the Village of East Dundee, Illinois (the "Village") and Speedway LLC (the “Developer”) a Delaware limited liability company with an address of c/o Real Estate Department, 500 Speedway Dr., Enon, OH 45323; both may hereafter be referred to as a “Party” or the “Parties.”

WITNESSETH:

WHEREAS, Developer is the owner of certain real property commonly known and numbered as Speedway #7764, situated on the northwest corner of Christina Drive and Route 72, East Dundee, Illinois (the “Subject Property”); and

WHEREAS, the Village and Developer entered into that certain DEVELOPMENT AGREEMENT dated April 17, 2017 regarding the development of a fueling station and convenience store on the Subject Property and partial reimbursement for the same (the “Agreement”); and

WHEREAS, Developer developed said Subject Property in accordance with the terms of the Agreement, with construction ending August 2019; and

WHEREAS, due to circumstances outside of the Parties’ control, namely the delay to the construction and improvement of the intersection of Christina Dr. and SR 72, the Speedway Development has not been able to open and operate as intended as of the date of this Amendment, necessitating an update to the dates and relevant provisions contained in the Agreement;

WHEREAS, the Parties now intend to amend said Agreement to accurately reflect updated dates and provisions;

NOW THEREFORE, in consideration of the mutual covenants and the respective representations, warranties, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree that the foregoing recitals are incorporated herein by reference and as follows:

1. AMENDMENTS: The following provisions originally set forth in said Agreement are deleted in their entirety, and hereby replaced and supplemented as follows:

Section 2. Developer's Obligations

(e) Within ten (10) days following the later of the completion of the roadwork improvements to Christina Drive and Route 72 in the vicinity of the Subject Property to serve the Subject Property (the "Roadwork"), acceptance thereof by the Illinois Department of Transportation, and the operation of a fully-functioning signalized intersection ~~(the "Roadwork Completion Date")~~, the Developer shall be in full operation at the Subject Property, as a state of the art fueling station with ten (10) gasoline pumps, four (4) diesel fuel lanes, and a 4,600 square foot convenience store with a "Speedy Café" (the "Businesses"). Upon commencement of operation, the Developer shall submit to the Village an itemization of all costs incurred in connection with the construction of the Project at the Subject Property with copies of all paid invoices, bills or receipts evidencing such costs exclusive of inventory, equipment, commissions, if any, and furniture and furnishings but including acquisition and construction of all components of the Project (the "Project Costs").

Section 3. Developer Payments

(a) In consideration of the acquisition and development by the Developer of the Subject Property in accordance with the terms of this Agreement, so long as no event described in *Section 15* hereof shall have occurred and be continuing, the Village shall reimburse the Developer for business district project costs, as hereinafter defined and as set forth on *Exhibit C* attached hereto and made a part hereof by this reference, in an amount equal to the lesser of \$200,000.00 or forty-one percent (41%), but in no event less than the Adjusted Reimbursement divided by fifteen (15) years, of the Taxes generated by the operation of the Businesses for the prior twelve (12) calendar months at the Subject Property commencing on the first anniversary following the commencement of operation after the Roadwork Completion Date and annually thereafter until the first to occur: (i) receipt by the Developer of ~~the lesser of (y) twenty five percent (25%) of the Project Costs or (z)~~ \$1,381,058.00 (calculated as \$2,500,000.00 less the amount of the grant from the State of Illinois for the Roadwork of \$1,118,942.00) (both the "Reimbursement" and the "Adjusted Reimbursement"); or (ii) the fifteenth (15th) anniversary of the date on which the Developer began operations after the Roadwork Completion Date of the Businesses at the Subject Property. For purposes of this Agreement, Reimbursement shall only be made to the extent the costs to be reimbursed are such costs defined as "Business District Project Costs" in Section 11-74.3-5 of the BDD Act as from time to time amended. The Village shall pay to the Developer the portion of any State of Illinois grant for the Roadwork received by the Village within thirty (30) calendar days of the Village's receipt thereof, in the not to exceed amount of \$1,118,942.00.

(b) [INTENTIONALLY OMITTED]

Section 5. Term

Unless earlier terminated pursuant to Section 15, the term of this Agreement shall commence on the date of execution and end on the earlier of: (i) the fifteenth (15th) anniversary of the date on which the Developer began operations at the Subject Property of the Businesses after the Roadwork Completion Date; or (ii) payment to the Developer of the Adjusted Reimbursement.

Section 8. Assignment

This Agreement may be assigned by the Developer upon thirty (30) days' notice to the Village.

Section 16. Developer's Covenants

The Developer hereby covenants and agrees to repay to the Village any and all sums paid by the Village to the Developer pursuant to this Agreement in the event the Developer or any approved successor of the Businesses ceases to operate the Businesses at the Subject Property at any time during the term of this Agreement; provided that the obligation to refund shall be reduced by twenty percent (20%) of the sums paid by the Village on each anniversary of the date on which the Developer began operations at the Subject Property of the Businesses after the Roadwork Completion Date.

2. CONFLICTS. In all other respects, the Agreement shall remain in effect as previously set forth. In the event of any conflict between the terms and provisions of this First Amendment and terms and provisions of the Agreement, the terms and provisions of this First Amendment shall prevail.

3. DEFINITIONS. Any terms not defined herein shall have the same meaning as specified in the Agreement.


4. COUNTERPARTS. This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this First Amendment on the day and year last set forth below, to be inserted as the Effective Date herein above.

DEVELOPER

SPEEDWAY LLC

By: 
Tom Lefevers, Jr.

Title: Sr. Director – Real Estate

APPROVED
AS TO FORM
Sam
JC

Date: 5/3/2021

VILLAGE

Village of East Dundee, Illinois

By: 

Title: Village President

Date: May 17, 2021