

RESOLUTION NO. R-14-26

A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT
WITH MICHAEL VANZANDT REGARDING
THE REIMBURSEMENT OF LEGAL EXPENSES

BE IT RESOLVED by the Village President and Board of Trustees of the Village of Clarendon Hills, DuPage County, Illinois, that the Village President and Board of Trustees hereby approve the "Agreement with Michael Van Zandt Regarding the Reimbursement of Legal Expenses" attached hereto as EXHIBIT 1 and made part hereof.

BE IT FURTHER RESOLVED that the Village President and Village Clerk are hereby authorized and directed to execute EXHIBIT 1 on behalf of the Village, as well as execute any and all additional documents necessary to carry out the terms and provisions of said EXHIBIT 1.

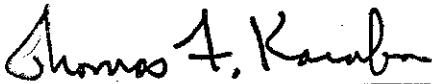
ADOPTED this 20th day of October, 2014, pursuant to a roll call vote as follows:

AYES: Trustees Flood, Hall, Knoll, Pedersen, Reid, and Stach

NAYS: None

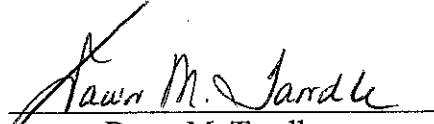
ABSENT: None

APPROVED by me this 20th day of October, 2014.



Thomas F. Karaba
Village President

ATTEST:


Dawn M. Tandle

Village Clerk



AGREEMENT TO REIMBURSE COSTS

THIS AGREEMENT TO REIMBURSE COSTS (the "Agreement") is made and entered into as of the 20 day of October, 2014, by and between the Village of Clarendon Hills, an Illinois municipal corporation ("Village") and Michael Van Zandt, ("Mr. Van Zandt"), in his individual capacity. Mr. Van Zandt is the principle of 88 Park Avenue, LLC, an Illinois Limited Liability Company ("88 Park Avenue"). The Village and Mr. Van Zandt are sometimes referred to herein collectively as the "Parties" or individually as a "Party".

RECITALS

WHEREAS, Susan Hanlon and Philip Altvater filed a lawsuit ("the Lawsuit") against the Village, and 88 Park Avenue was added as a defendant, in the Circuit Court of DuPage County, as Case No. 2013 CH 003370. The Village and 88 Park Avenue are co-defendants in the Lawsuit; and

WHEREAS, the Village and 88 Park Avenue are represented by Klein, Thorpe & Jenkins, LTD., in the Lawsuit; and

WHEREFORE, the Village and Mr. Van Zandt desire to enter into the Agreement in order to provide for payment of the costs of the Lawsuit; and

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mr. Van Zandt and the Village hereby agree as follows:

ARTICLE I
PAYMENT AMOUNT

- I. The Village will pay all costs of the Lawsuit, including, without limitation, court costs, attorneys' fees, expert witness fees, consultant fees, copying costs, postage costs, trial exhibit preparation fees, court reporter and transcript fees ("Costs"), when they become due, in a timely manner.
- II. The Costs subject to reimbursement in this Agreement shall only pertain to Costs incurred from May 13, 2014 to conclusion of the Lawsuit, including any appeal that may be filed in this case. All Costs incurred by the Village prior to May 13, 2014 shall be the sole responsibility of the Village.
- III. At the conclusion of the Lawsuit, the Village will then seek reimbursement from Mr. Van Zandt and Mr. Van Zandt agrees to pay the amount of the reimbursement, if any, as follows:
 - 1) If the Parties prevail in the Lawsuit, Mr. Van Zandt will reimburse the Village for 50% of the total Costs of the Lawsuit. The Parties will be considered to have prevailed in the Lawsuit for purposes of this Agreement if, at the conclusion of the trial court proceedings, and any appeal that is filed with the Illinois Second District Appellate

Court and/or the Illinois Supreme Court, challenging the decision of the trial court, the PUD Ordinance at issue in the Lawsuit is upheld.

- 2) If the Parties do not prevail in the Lawsuit, the Village will pay 100% of the Costs of the Lawsuit, and Mr. Van Zandt will not be required to reimburse the Village for any Costs.
- 3) If the Village unilaterally withdraws from the Lawsuit at any time, including during the pendency of any appeal of the trial court's decision, and the PUD Ordinance at issue is invalidated, then the Village will pay 100% of the Costs, and Mr. Van Zandt will not contribute any money.
- 4) If Mr. Van Zandt unilaterally withdraws from the Lawsuit on behalf of 88 Park Avenue at any time, including during the pendency of any appeal of the trial court's decision, without the Village's express written consent, then Mr. Van Zandt will reimburse the Village for 100% of the Costs of the Lawsuit.
- 5) If, prior to conclusion of the Lawsuit, Mr. Van Zandt desires to hire a lawyer or law firm, other than Klein, Thorpe & Jenkins, LTD., to represent 88 Park Avenue, Mr. Van Zandt agrees to reimburse the Village for 50% of the Costs incurred from May 13, 2014 to the date that substitute counsel files an appearance for 88 Park Avenue.
- 6) If the Lawsuit is settled by the Parties at any time prior to its conclusion and the settlement terms are cost neutral to Mr. Van Zandt, Mr. Van Zandt agrees to reimburse the Village for 50% of the Costs of the Lawsuit incurred through the date a settlement agreement is executed by all necessary parties. If the Lawsuit is settled by the Parties at any time prior to its conclusion and the settlement terms are not cost neutral to Mr. Van Zandt, then Mr. Van Zandt shall reimburse the Village for the percentage of Costs of the Lawsuit agreed to by the Parties in any such settlement agreement.

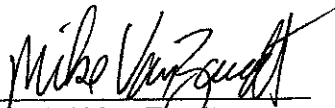
ARTICLE II **PAYMENT DUE**

Mr. Van Zandt shall make any reimbursement owed to the Village under this Agreement within thirty (30) days of a written statement from the Village demanding payment. Any amounts not reimbursed within said thirty (30) day period shall accrue interest at the of the prime rate as published from time to time in *The Wall Street Journal*, per month, with the minimum interest payment being for a one (1) month period. If either Party to this Agreement files suit to enforce the terms of this Agreement, the prevailing party in the suit shall be entitled to a judgment for its court costs and attorneys fees in prosecuting the suit.

IN WITNESS WHEREOF, the Village and Mr. Van Zandt have duly executed this Agreement pursuant to all requisite authorizations as of the Effective Date.

Mr. Van Zandt:

Village of Clarendon Hills

By: 
Mike Van Zandt
In his individual capacity

By: 
Village Manager