

Ordinance No. 17-10

**AN ORDINANCE OF THE VILLAGE OF WEST DUNDEE, KANE COUNTY,
ILLINOIS APPROVING AN ECONOMIC INCENTIVE AGREEMENT BY AND
BETWEEN THE VILLAGE OF WEST DUNDEE, KANE COUNTY, ILLINOIS AND
BRICKS OF WEST DUNDEE, LLC**

WHEREAS, the Village of West Dundee, Kane County, 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, Bricks of West Dundee, LLC, an Illinois Limited Liability Company (the "*Developer*") has proposed to enter into a lease of the premises commonly known as 999 West Main Street, West Dundee (the "*Premises*") for the purpose of operating a Bricks Wood Fired Pizza Cafe (the "*Business*"); and,

WHEREAS, the Developer has advised the Village that in order to proceed, substantial renovation, rehabilitation and upgrading of the Premises shall be required including the installation of a copper clad wood oven, kitchen equipment, ice cream cases, and the construction of the restaurant seating area (the "*Project*") and, but for financial assistance from the Village, the Project cannot proceed; and,

WHEREAS, the President and Board of Trustees of the Village have reviewed the Developer's proposal and have determined that it is in the best interests of the Village to provide assistance to the Developer under terms and conditions as set forth in an economic incentive agreement in order to retain the Business within the Village thereby retaining job opportunity and increasing the tax base of the Village.

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

Section 1. That the Economic Incentive Agreement by and between the Village of West Dundee, Kane County, Illinois and Bricks of West Dundee, LLC, attached hereto and made a part hereof, is hereby approved and the President and Village Clerk are hereby authorized to execute and deliver and undertake any and all actions as may be required to implement its terms.

Section 2. This Ordinance shall be in full force and effect upon its passage and approval, as provided by law.

PASSED this 10th day of April, 2017.

AYES: Trustees Kembitzky, Price, Hanley, Yuscka, Pflanz and Wilbrandt

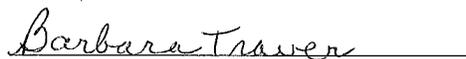
NAYS: None

APPROVED:



Christopher Nelson, Village President

Attest:



Barbara Traver, Village Clerk

ECONOMIC INCENTIVE AGREEMENT
by and between
THE VILLAGE OF WEST DUNDEE, KANE COUNTY, ILLINOIS
and
BRICKS OF WEST DUNDEE, LLC

THIS ECONOMIC INCENTIVE AGREEMENT (the “*Agreement*”) by and between the Village of West Dundee, Kane County, an Illinois municipal corporation (the “*Village*”), and Bricks of West Dundee, LLC, an Illinois Limited Liability Company (the “*Developer*”) is entered into this ____ day of April, 2017.

PREAMBLES

WHEREAS, the Village is a home rule municipality pursuant to Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois with power and authority to perform any function pertaining to its government and affairs; and,

WHEREAS, the Developer proposes to lease approximately 2,900 square feet at the premises commonly known as 999 West Main Street, West Dundee (the “*Premises*”) for the purpose of operating Bricks Wood Fired Pizza Cafe (the “*Business*”); and,

WHEREAS, the Developer has advised the Village that in order to proceed, substantial build out and upgrading of the Premises shall be required including the installation of a copper clad wood oven, kitchen equipment, ice cream cases, and the construction of the restaurant seating area (the “*Project*”) and that financial assistance from the Village is necessary, without which the Project cannot proceed; and,

WHEREAS, the Village is prepared to assist the Developer by rebating a portion of the sales taxes generated from the Business all as hereinafter set forth thereby retaining job opportunity and increasing the tax base of the Village.

NOW, THEREFORE, the parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

Section 1. Conditions Precedent to Village's Obligations.

All of the recitals contained in the Preambles hereinabove set forth are hereby incorporated into this Agreement as if fully restated herein.

Section 2. Developer's Obligation.

In order to be eligible for the financial assistance to be provided by the Village as hereinafter set forth in Section 3, the Developer shall perform the following:

A. Within five (5) days of the execution of this Agreement, the Developer shall deliver to the Village a copy of a fully executed lease for the Premises for a term of no less than five (5) years.

B. Within thirty (30) days of the execution of this Agreement, the Developer shall have submitted to the Village a detailed description of all work required to upgrade and install all equipment at the Premises deemed necessary to operate the Business and a list of each cost to be incurred to complete the Project which shall demonstrate an investment of no less than \$290,000 for improvements deemed necessary to operate the Business at the Premises.

C. The Developer shall construct the Project in accordance with all applicable Village Codes and in accordance with all of the terms and conditions as set forth in the lease for the Premises.

D. The Developer shall pay all costs incurred in connection with the Project as and when due.

E. The Developer agrees to operate the Business throughout the term of this Agreement without interruption in accordance with all applicable Village Codes and ordinances.

G. The Developer covenants and agrees to maintain its status as a limited liability company of Illinois in good standing throughout the term of this Agreement.

H. The Developer covenants and agrees to make all payments, when due, of bills, invoices, taxes, fees, fines and any other lawful assessment of the Village resulting from the operation of the Business at the Premises.

Section 3. Village's Obligations.

For and in consideration of satisfaction of all of the obligations of the Developer as set forth in Section 2 above, and so long as no notice of default is outstanding as set forth in Section 14 hereof, the Village agrees to undertake the following:

A. Commencing on the first anniversary of the date on which the Business is open and operating and continuing annually thereafter until the first to occur: (i) receipt by the Developer of a total of \$35,000; or, (ii) the fifth (5th) anniversary of the date on which the Business began operations, the Village agrees to rebate to the Developer fifty percent (50%) of the sales tax generated from the Business for the prior twelve (12) month period, on the condition that the Developer provides the Village Finance Director with copies of the ST-1 Form filed for the Business with the Illinois Department of Revenue.

Section 4. Procedures for Rebate of Sales Taxes.

To establish a right to receive the rebates under this Agreement, the Developer shall submit to the Village a written statement in the form attached to this Agreement as *Exhibit A* (a "*Request for Rebate*") setting forth the costs for which the rebate is sought accompanied by such paid bills, contracts, invoices, lien waivers, or other evidence as the Village shall reasonably require to evidence the right of the Developer to the rebate as set forth above. The Village shall have ten (10) days after receipt of any Request for Rebate from the Developer to recommend

approval or disapproval of such Request for Rebate and, if disapproved, to provide the Developer in writing and in detail with an explanation as to why it is not prepared to pay any rebates. The only reason for disapproval of any expenditure for which the rebate is sought shall be that such expenditure is that it was not incurred and completed by the Developer in accordance with all applicable Village Code requirements, permits and the provisions of this Agreement.

Section 5. Term.

Unless earlier terminated pursuant to Section 14, the term of this Agreement shall commence on the date of execution and end upon the earlier of (i) receipt by the Developer of a total rebate of \$35,000; or (ii) the fifth (5th) anniversary of the date on which the Business began operations (the “*Termination Date*”).

Section 6. No Liability of Village to Others for Developer’s Expenses.

The Village shall have no obligations to pay costs of the Project or to make any payments to any person other than the Developer, or its successors or assigns nor shall the Village be obligated to pay any contractor, subcontractor, mechanic, or materialman providing services or materials to the Developer for the construction of the Project.

Section 7. Time; Force Majeure.

Time is of the essence of this Agreement; provided, however, a party shall not be deemed in material breach of this Agreement with respect to any of such party’s obligations to be performed under this Agreement, if such party fails to timely perform the same and such failure is due in whole or in part to any strike, lock-out, labor trouble (whether legal or illegal), civil disorder, inability to procure materials, wet soil conditions, failure or interruptions of power, restrictive governmental laws and regulations, condemnations, riots, insurrections, war, fuel shortages, accidents casualties, floods, earthquakes, fires, acts of God, epidemics, quarantine

restrictions, freight embargoes, acts caused directly or indirectly by the other party (or the other party's agents, employees or invitees) or similar causes beyond the reasonable control of such party ("*Force Majeure*"). If one of the foregoing events occurs or either party claims that such an event occurred, the party to whom such claim is made shall investigate and consult with the party making such claim, and the party to whom such claim is made shall grant any extension for the performance of the unsatisfied obligation equal to the period of the delay, which period shall commence to run from the time of the commencement of the Force Majeure; provided that the failure of performance was reasonably caused by such Force Majeure.

Section 8. Assignment.

This Agreement may not be assigned by the Developer without the prior written consent of the Village.

Section 9. 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 attorney's fees) which may arise directly or indirectly from the failure of the Developer, or any contractor, subcontractor, agent, or employee thereof (so long as such contractor, subcontractor, agent, or employee thereof is hired by the Developer) to timely pay any contractor, subcontractor, laborer, or materialman, from any default or breach of the terms of this Agreement by the Developer; or from any negligence or reckless or willful misconduct of the Developer or any contractor, subcontractor, agent, or employee thereof (so long as such contractor, subcontractor or agent or employee is hired by the Developer). 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 have no obligation whatsoever, with respect to any acts of negligence or reckless or willful misconduct on the part of the Village or any of its officers, agents, employees, or contractors.

Section 10. Waiver.

Any party to this Agreement may elect to waive any remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless the party waiving such right or remedy does so in writing. No such waiver shall obligate such party to waive any right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided said party pursuant to this Agreement.

Section 11. Severability.

If any section, subsection, term, or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of said section, subsection, term, or provision of this Agreement, or the application of same to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

Section 12. Notices.

All notices, demands, requests, consents, approvals, or other instruments required or permitted by this Agreement shall be in writing and shall be executed by the party, or an officer, agent, or attorney of the party, and shall be deemed to have been effective as of the date of actual delivery, if delivered personally, or as of the third (3rd) day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows:

To the Developer: Bricks of West Dundee, LLC
999 West Main Street
West Dundee, Illinois 60118
Attn: Richard G. Gruber, Jr.

To the Village: Joseph A. Cavallaro, Village Manager
Village of West Dundee
102 South Second Street
West Dundee, Illinois 60118

With a copy to: Kathleen Field Orr
Kathleen Field Orr & Associates
53 West Jackson Boulevard
Suite 964
Chicago, Illinois 60604

Section 13. No Joint Venture, Agency, or Partnership Created.

Neither anything in this Agreement nor any acts of the parties to this Agreement shall be construed by the parties or any third person to create the relationship of a partnership, agency, or joint venture between or among such parties.

Section 14. Remedies – Liability.

A. If, in the Village's judgment, the Developer is in material default of this Agreement, the Village shall provide the Developer with a written statement indicating any failure on the Developer's part to fulfill its obligations under this Agreement. 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, such period shall be extended for such time as is reasonably necessary for the curing of the same, so long as the Developer diligently proceeds with such cure; if such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. 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 of any rights or remedies it may have as a result of such default or breach.

B. If the Developer materially fails to fulfill its obligations under this Agreement after notice is given by the Village and any cure periods described in paragraph (a) above have expired, the Village may elect to terminate this Agreement or exercise any right or remedy it may have at law or in equity, including the right to specifically enforce the terms and conditions of this Agreement.

C. If prior to completion of the Project, any voluntary or involuntary petition or similar pleading under any section of any bankruptcy or insolvency act shall be filed by or against the Developer; or any voluntary or involuntary proceeding in any court or tribunal shall be instituted to declare the Developer insolvent or unable to pay the Developer's debts; or the Developer makes an assignment for the benefit of its creditors; or a trustee or receiver is appointed for the Developer or for the major part of the Developer's property; the Village may elect, but is not required to, terminate this Agreement with or without notice, to the extent permitted by law and enforceable under applicable federal bankruptcy laws.

D. In addition to any other rights or remedies, a party may institute legal action against the other party to cure, correct, or remedy any default, or to obtain any other remedy consistent with the purpose of this Agreement, either at law or in equity, including, but not limited to, the equitable remedy of an action for specific performance; provided, however, no recourse for any claim under or upon any obligation contained in this Agreement shall be had against the Village, its officers, agents, attorneys, representatives, or employees, in any amount or in excess of any specific sum agreed to be paid by the Village pursuant to this Agreement; and

no liability, right, or claim at law or in equity shall be attached to or incurred by the Village, its officers, agents, attorneys, representatives, or employees in any amount in excess of any specific sums agreed by the Village to be paid hereunder, and any such claim is hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village.

E. The rights and remedies of the parties are cumulative and the exercise by a party of one or more such rights or remedies shall not preclude the exercise, at the same time or different times, of any other rights or remedies for the same default or for any other default by the other party.

Section 15. Amendment.

This Agreement, and any exhibits attached to this Agreement, may be amended only in a writing signed by all parties with the adoption of any ordinance or resolution of the Village approving the amendment, as provided by law, and by execution of the amendment by the parties or their successors in interest. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations, and discussions relative to the Project.

Section 16. In the event the Business discontinues its operation at the Premises or during the term of this Agreement, the Developer shall repay to the Village all sales taxes rebated to the Developer pursuant to this Agreement.

Section 17. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

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

Village of West Dundee, Kane County, an Illinois
Municipal Corporation

By: _____
Christopher Nelson Village President

Attest:

Barbara Traver Village Clerk

Bricks of West Dundee, LLC an Illinois Limited
Liability Company

By: _____
President

Exhibit A

REQUEST FOR REBATE

Village of West Dundee
102 South Second Street
West Dundee, Illinois 60118

Re: Economic Incentive Agreement, dated April 10, 2017, by and between the Village of West Dundee, Kane County, Illinois, and Bricks of West Dundee, LLC(the "Developer")

Dear Sir:

You are requested to disburse funds pursuant to the Economic Incentive Agreement described above in the amount(s) and for the purpose(s) set forth in this Request for Rebate. The terms used in this Request for Rebate shall have the meanings given to those terms in the Agreement.

1. The undersigned certifies that:
 - (i) all costs itemized herein above were made or incurred and were necessary for the construction of the Project at the Premises; and,
 - (ii) the Developer is not in default under the Agreement.
2. Attached to this Request are copies of all invoices, bills or contracts covering all items for which the rebate is being requested.

Bricks of West Dundee, LLC

Date: _____

By: _____

APPROVED:

Village of West Dundee, an Illinois Municipal Corporation

Date: _____

By: _____

Joseph Cavallaro Village Manager