

RESOLUTION 15-02

**RESOLUTION APPROVING
an
ECONOMIC INCENTIVE AGREEMENT
by and between
THE VILLAGE OF WEST DUNDEE
and
EMMETT'S WD, LLC**

THIS ECONOMIC INCENTIVE AGREEMENT (this "Agreement") is entered into by and between the Village of West Dundee, an Illinois municipal corporation located in Kane County, Illinois (the "Village") and Emmett's WD, LLC ("Emmett's"). The Village and Emmett's are collectively referred to as the Parties.

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

WHEREAS, the Village has adopted a resolution supporting the concept of economic incentives in order to encourage private investment and enhance the tax base of the Village and affected taxing districts through the reinvestment of tax dollars as permitted by state statute;

WHEREAS, Emmett's has been operating a successful restaurant in downtown West Dundee for the past fifteen years at 128 W. Main Street;

WHEREAS, Emmett's is desirous of completing exterior and interior renovations;

WHEREAS, the Village has been petitioned by the business owner to assist in the improvements of the business at this location provide economic assistance to aid in the financing of this project;

WHEREAS, the Village finds that the exterior and interior renovations of this business are in the best interests of the Village and will result in maintaining and improving sales tax

revenues for the Village, will further solidify this business's role as a strong anchor and presence in downtown West Dundee, and will spur additional retention and attraction of other businesses to the area, all of which are consistent with the Village's resolution supporting the concept of economic incentives;

WHEREAS, it is the desire of the Village to have Emmett's undertake the improvements subject to reasonable economic incentives as set forth herein;

WHEREAS, discussions have taken place between Emmett's and the Village and an accord has been reached;

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals:** The recitals set forth above are expressly incorporated into and made a part of this Agreement.
2. **Authority:** This Agreement is entered into by the Village pursuant to the Village's authority as a Home Rule unit of local government.
3. **Undertakings on the Part of Emmett's**
 - a. Within 90 days from the date of this Agreement, Emmett's hereby covenants and agrees to complete the proposed exterior and interior renovations depicted in Attachment A for an estimated cost of \$250,000. Such renovations are a condition precedent to the Village's obligations set forth in this Agreement.
 - b. Emmett's agrees to operate a restaurant at the subject property for a period of not less than seven (7) years from the date of this Agreement.

- c. Emmett's agrees that if their West Dundee establishment discontinues operation at this location within five (5) years from the date of this Agreement, Emmett's agrees to repay all economic incentive monies provided by the Village of West Dundee during this first five (5) year period including any remaining loan obligations. If the business shall cease operations during years six (6) through seven (7), the annual economic incentive payment from the Village will be discontinued and this contract will be null and void.
- d. Within ninety (90) days from the date of this Agreement, Emmett's hereby covenants and agrees that it will invest approximately \$250,000 to complete the proposed renovations which include new windows, new roofing, replacement awnings, and various interior improvements. Upon completion of this work, Emmett's shall submit documentation reasonable required to document expenses shown in this paragraph.
- e. Emmett's agrees to pay the monthly principle and interest of \$3,475.04 for the seven (7) year period to either the Village of West Dundee or First American Bank to meet its loan repayment obligation.
- f. Emmett's agrees to comply with all applicable ordinances and State and federal statutes to the extent required by law. Emmett's also agrees to conform to all requirements of the Illinois Department of Revenue Local Tax Collection Act.
- g. Emmett's hereby covenants and agrees that at all times it shall comply with all applicable local zoning ordinances and regulations, building code, fire code, and all other applicable Village ordinances, resolutions, and regulations. Emmett's shall bring itself into compliance with any applicable local zoning ordinances, building code, fire code, and all other applicable Village ordinances, resolutions, and

regulations within thirty (30) days after written notice from the Village of any violation of any of the foregoing.

- h. Emmett's hereby covenants and agrees to comply with all applicable laws, rules, and regulations of the State of Illinois, the United States, and all agencies of each of them having jurisdiction over the corporation or any business operation of Emmett's.

4. **Undertakings on the Part of the Village:**

- a. On the condition that there is no default on the part of Emmett's considering its undertakings in paragraph 3 under this Agreement, the Village covenants and agrees to rebate a portion of the interest paid by Emmett's for their loan to finance these improvements. It is understood that the loan will be in the amount of \$250,000 with a 4.5% interest rate. The Village agrees to absorb 1.5% of this interest as an economic incentive. To fulfill this economic incentive, the Village will make an annual payment in the amount of \$2,064 for a seven (7) year period to First American Bank.
- b. On the condition that there is no default on the part of Emmett's considering its undertakings in paragraph 3 under this Agreement, the Village covenants and agrees to provide Emmett's a rebate in the amount of fifty percent (50%) for the same seven (7) period of the loan, of its new local sales tax dollars generated to the Village, over that which was generated and reported to the state of Illinois ST-1 during the 2014 calendar year. This 50% shall be remitted back annually to Emmett's but is specifically earmarked for repayment of the loan obligation.
- c. On the condition that there is no default on the part of Emmett's considering its undertakings in paragraph 3 under this Agreement, the Village covenants and agrees to absorb the \$500 documentation fee charged by First American Bank at closing.

d. To secure the loan, the Village will record a lien on the property, commonly known as 128 W. Main Street, West Dundee and the loan will also be acknowledged as a liability of Emmett's WD, LLC.

5. **Mutual Agreements:**

a. This Agreement incorporates all agreements and understandings of the parties hereto as of the date of its execution. Each party acknowledges that no representations or warranties have been made which have not been set forth herein.

b. Time is of the essence.

c. All notices and requests, if any, required pursuant to this Agreement shall be sent by certified mail as follows:

To Emmett's

Emmett's WD, LLC
Attention: Andy Burns
128 W. Main Street
West Dundee, IL 60118

To the Village:

Village of West Dundee
Joseph Cavallaro, Manager
102 S. Second Street
West Dundee, IL 60118

d. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.

e. Emmett's shall not assign this Agreement to any person or entity without written consent of the Village, which consent shall not be unreasonably held. All obligations of Emmett's shall remain in full force and effect until such time as the assignee to which the Village has consented has assumed all such obligations. The terms and

conditions of this Agreement are binding upon the successors and assigns of all parties hereto.

- f. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any provision hereof.
- g. No recourse under or upon any obligation, covenant, or provision of this Agreement, or for any claim based thereon or otherwise in respect thereof shall be had against the Village, its officers, agents, and employees, in any amount or in excess of any specific sum agreed by the Village to be paid to Emmett's under this agreement. No liability, right or claim at law or in equity shall attach to or shall be incurred by the Village, its officers, agents and employees in excess of such amounts; and all and any such rights or claims against the Village, its officers, agents and employees are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village.

6. **Defaults:**

- a. Failure on the part of Emmett's to comply with any term, representation, warranty, provision, or condition of this Agreement within thirty (30) days after written notice thereof from the Village shall constitute an event of the default. Upon an occurrence of an event of default, the Village shall be relieved of any and all of its obligations arising pursuant to this Agreement, and such obligations shall be immediately canceled and without any force or effect, and the Village may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance and observance of any obligation understanding, covenant, or agreement as aforesaid,

including, but not limited to, costs incurred by use of its employees, officers, and attorneys.

- b. In the event Emmett's fails to complete the renovations to the Subject Property as required by the terms and conditions of the Agreement or in the event that Emmett's terminates its business operations before the term of this Agreement has expired, this Agreement shall be null and void.

7. **Term:**

- a. The term of this Agreement shall commence as of the date of its execution after approval by the corporate authorities of the Village. This Agreement will terminate seven years after the date of commencement.

PASSED AND APPROVED by the President and Board of Trustees of the Village of West Dundee, Kane County, Illinois on this 16th day of February, 2015.

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

NAYS: None

ABSENT: Trustee Pflanz

ATTEST:

Barbara Traver

Barbara Traver

Village Clerk

Christopher Nelson

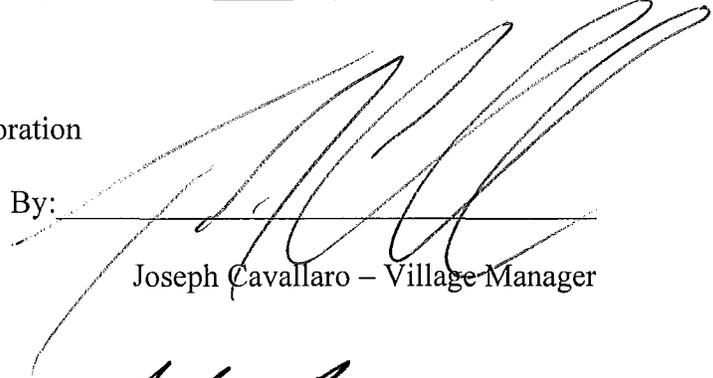
Christopher Nelson

Village President

IN WITNESS WHEREOF, the Village has caused this Agreement to be executed by its duly authorized officer, and Emmett's has executed this Agreement this 18 day of February, 2015.

VILLAGE OF WEST DUNDEE, an Illinois Corporation

By: _____

A large, stylized handwritten signature in black ink, appearing to read 'J. Cavallaro', written over a horizontal line.

Joseph Cavallaro – Village Manager

EMMETT'S WD, LLC

By: _____

A handwritten signature in black ink, appearing to read 'Andrew Parris', written over a horizontal line.

Owner