

**Ordinance No. 2019-25**

**ORDINANCE APPROVING AN ECONOMIC INCENTIVE AGREEMENT  
BY AND BETWEEN THE VILLAGE OF WEST DUNDEE, KANE COUNTY, ILLINOIS,  
AND THE HALF FULL NEST VINTAGE MARKET, LLC**

**WHEREAS**, the Village of West Dundee, Kane County, Illinois (the "*Village*") is a home rule unit of local government pursuant to Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois and as such has the power and authority to perform any function pertaining to its government and affairs; and,

**WHEREAS**, the President and Board of Trustees of the Village (the "*Corporate Authorities*") have acknowledged that one of the primary goals of local government is to promote the health, safety and welfare of its citizens by encouraging private investment in business and industry in order to enhance the Village's tax base, ameliorate blight and provide job opportunities for its residents; and,

**WHEREAS**, the Corporate Authorities have also acknowledged that in order to accomplish its goal to promote the health, safety and welfare of its citizens, there is often a need for economic assistance to address some of the extraordinary measures required to induce and accomplish private investment in business and industry; and,

**WHEREAS**, The Half Full Nest Vintage Market, LLC, an Illinois limited liability company (the "*Developer*") has advised the Village of its acquisition of the real estate commonly known as 205 West Main Street, West Dundee, Illinois (the "*Subject Property*"), which is located in the Downtown District of the Village and has requested financial assistance from the Village in order to rehabilitate the façade of the Subject Property for the purpose of opening their retail vintage antiques market (the "*Project*"); and,

**WHEREAS**, the Developer has demonstrated to the Village that its acquisition of the Subject Property and the costs to proceed with façade rehabilitation at the Subject Property, as proposed, shall require an investment of approximately \$345,000; and,

**WHEREAS**, the Developer has invested substantial capital in the acquisition of the Subject Property and the Developer has approached the Village to request financial assistance in the form of an economic incentive grant; and,

**WHEREAS**, it is acknowledged by the Village that the Subject Property has not been improved for some time and the Developer's rehabilitation of the Subject Property would significantly improve the business community located in the Downtown District; and,

**WHEREAS**, after review of the Subject Property, its rehabilitation and retail use, the Corporate Authorities are prepared to enter into an Economic Incentive Agreement in the form attached hereto.

**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.** The foregoing preambles are hereby incorporated as if fully restated herein.

**Section 2.** That the Economic Incentive Agreement by and between the Village and The Half Full Net Vintage Market, LLC, in the form attached hereto, and made a part hereof is hereby approved, and the Village President and the Village Clerk are hereby authorized to execute said Agreement.

**Section 3.** This Ordinance shall be in full force and effect upon its passage and approval, as provided by law this 21st day of October, 2019.

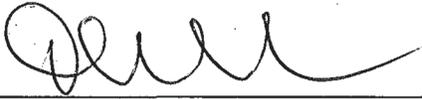
**AYES:** Trustees Yuscka, Anderley, Wilbrandt, Kembitzky, Price and Hanley

**NAYS:** None

**ABSENT:** None

**ATTEST:**

  
Barbara Traver, Village Clerk

  
Christopher Nelson, Village President

**ECONOMIC INCENTIVE AGREEMENT**  
*by and between*  
**THE VILLAGE OF WEST DUNDEE, KANE COUNTY, ILLINOIS**  
*and*  
**THE HALF FULL NEST VINTAGE MARKET, LLC**

**THIS ECONOMIC INCENTIVE AGREEMENT** (the "*Agreement*") by and between the Village of West Dundee, Kane County, an Illinois municipal corporation (the "*Village*"), and THE HALF FULL NEXT VINTAGE MARKET, LLC., an Illinois limited liability company (the "*Developer*") is entered into this 21st day of October, 2019.

**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 rehabilitate the premises commonly known as 205 West Main Street, West Dundee (the "*Premises*") for the purpose operating a vintage antique market (the "*Business*"); and,

**WHEREAS**, the Developer has advised the Village that in order to proceed, substantial façade rehabilitation of the Premises (the "*Project*") shall be required to permit its use as a vintage antique market and but for financial assistance from the Village, the Project cannot proceed; and,

**WHEREAS**, the Village is prepared to assist the Developer with financial assistance for costs to be incurred in connection with the Project, as hereinafter set forth thereby enhancing the Village's downtown district with a retail operation which would have a synergistic affect upon the surrounding businesses, would provide job opportunity and increase 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. Incorporation of Recitals.**

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. The Developer shall submit to the Village, for its approval, a detailed description of the Project as depicted on Exhibit A attached hereto and a budget for the Project which shall demonstrate an estimated investment of no less than \$40,000 to complete the Project and to commence operation of the Business at the Premises.

C. The Developer shall pay all costs to construct and complete the Project as and when due and upon completion, submit to the Village, a certified list of all costs required to construct and complete the Project evidenced by paid bills, invoices or receipts confirming that the Developer has invested no less than \$40,000 for the Project in addition to the cost of acquisition.

D. The Developer agrees to operate the Business throughout the term of this Agreement without interruption.

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

F. The Developer covenants and agrees to make pay all fees and other lawful assessments 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 13 hereof, the Village agrees to undertake the following:

A. Upon completion of the Project, the Village agrees to reimburse the Developer \$10,000 for costs incurred in connection with the Project.

B. Within thirty (30) days of the first anniversary of the date on which the Business is open and operating (the "*Commencement Date*"), the Village agrees to rebate to the Developer twenty-five percent (25%) of all Sales Taxes, as hereinafter defined, received by the Village from the Illinois Department of Revenue ("IDOR") from the Commencement Date to the first anniversary of the Commencement Date and twenty-five percent (25%) of the Sales Taxes received from the date of the first anniversary to the second anniversary from the Commencement Date (the "*Rebates*").

For purposes of this Agreement, Sales Taxes shall mean the Municipal Retailers' Occupation Tax of one percent (1%) and imposed upon the operations of the Business.

***Section 4. Term.***

Unless earlier terminated pursuant to Section 13, the term of this Agreement shall commence on the date of execution and after payment of the Village of the Rebates as set forth in Section 3 (the "*Termination Date*").

***Section 5. 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 6. 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 7. Assignment.***

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

***Section 8. 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 9. 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 10. 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 11. 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 (3<sup>rd</sup>) 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:** THE HALF FULL NEST VINTAGE MARKET, LLC  
205 West Main Street  
West Dundee, Illinois 60118

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

**With a copy to:** Kathleen Field Orr  
2024 Hickory Road, Suite 205  
Homewood, Illinois 60430

***Section 12. 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 13. 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 Note shall become immediately due and payable in full and the Village may 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 14. 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 15.** In the event of default pursuant to Section 13 hereof, in the event the Developer discontinues the operation of the Business at the Premises or relocates its operations outside of the Village or opens another business operation outside the Village during the term of this Agreement, the Developer shall repay to the Village all Sales Taxes rebated to the Developer as follows:

- 100% if discontinuation or relocation within the first year of the opening of the Business;
- 50% if discontinuation or relocation within the second year;

**Section 16. 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.

*Exhibit A – Façade Rehabilitation Plan - Itemized Expenses*

*Exhibit A – Façade Rehabilitation Plan - Itemized Expenses*

*Masonry:* \$11,700

Stone and brick foundation restored; chimney cut and capped

*Windows:* \$10,164.46

Original Gothic, arched-top windows restored; other windows replaced

*Painting:* \$14,501.82

Materials, lift rental, and labor to comprehensively re-paint the exterior

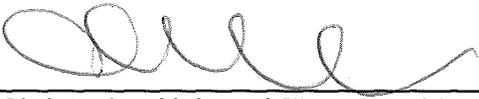
*Electrical:* \$1,158.91

Materials (new fixtures) and labor

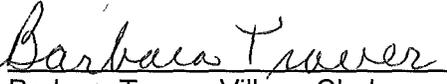
*Miscellaneous:* \$3,134.82

Door glass, porch door, lattice trim, and rotted wood replacement

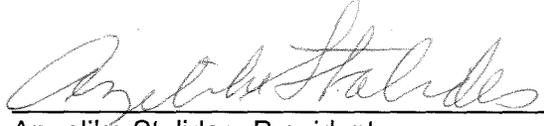
Village of West Dundee, Kane County, an Illinois  
municipal corporation

By:   
Christopher Nelson, Village President

Attest:

  
Barbara Traver, Village Clerk

THE HALF FULL NEXT VINTAGE MARKET, LLC

By:   
Angelike Stalides, President