

***THIS DOCUMENT
PREPARED BY AND
AFTER RECORDING
RETURN TO:***

Village of Gilberts
Attn: Village Clerk
87 Galligan Road
Gilberts, IL 60136

Above space reserved for recorder's use

GILBERTS COMMERCIAL & INDUSTRIAL FAÇADE IMPROVEMENT PROGRAM

CENTRAL REDEVELOPMENT TIF

ECONOMIC INCENTIVE AGREEMENT

BY AND BETWEEN

THE VILLAGE OF GILBERTS

AND

(_____, Gilberts, Illinois)

ECONOMIC INCENTIVE AGREEMENT

THIS ECONOMIC INCENTIVE AGREEMENT (“*Agreement*”), is dated the _____ day of _____, 202__ (“*Effective Date*”), and is by and between the **VILLAGE OF GILBERTS**, an Illinois municipal corporation with offices located at 87 Galligan Road, Gilberts, Illinois (“*Village*”) and _____, an _____ with offices located at _____ (“*Recipient*”) (the Village and Recipient are collectively referred to as “*Parties*” and sometimes individually as a “*Party*”).

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth in this Agreement, the Parties agree as follows:

SECTION 1. RECITALS.

A. The Recipient holds legal title to the property commonly known as _____, Gilberts, Illinois, legally described in Exhibit A (“*Property*”).

B. The Recipient has operated a _____ (“*Business*”) on the Property for the last _____ years.

C. The Village is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, as amended, 65 ILCS 5/11-74.4-1, et seq. (“*Act*”), to finance redevelopment projects in accordance with and pursuant to the Act.

D. The Village is authorized under the provisions of the Illinois Municipal Code to make grants to commercial enterprises that are deemed necessary or desirable for the promotion of economic development within the Village, 65 ILCS 5/8-1-2.5.

E. Pursuant to Ordinance No. 08-22, Ordinance No.08-23, and Ordinance No. 08-24, each approved and adopted by the Corporate Authorities on October 22, 2008, the Village approved the Redevelopment Plan and Project for and the creation of the Central Redevelopment Project Area (“*Central Redevelopment TIF*”) and authorized the use of Tax Increment Financing pursuant to and in accordance with the Act.

F. The Property is located within the boundaries of the Central Redevelopment TIF.

G. The Village has established and administers the Commercial & Industrial Façade Improvement Program (“*CIFIP*”) allowing eligible property owners within the Central Redevelopment TIF to apply for and receive economic incentive grant funding for certain rehabilitative purposes.

H. The Recipient submitted the application attached as Exhibit B (“*Application Documents*”) seeking a CIFIP tax increment financing grant award (“*CIFIP Grant*”).

I. The Recipient specifically seeks the CIFIP Grant to improve the overall exterior appearance of the Business and Property, including, without limitation, making the improvements more fully described in Exhibit C (“*Improvements*”).

J. Pursuant to the Act, including, without limitation, 65 ILCS 5/11-74.4-3(q), the Village is authorized to appropriate and expend funds for reimbursement of certain development or redevelopment costs within tax increment financing districts, including, without limitation, costs of rehabilitation, reconstruction, or repair or remodeling of existing public or private buildings, fixtures, and leasehold improvements.

K. The Village finds and determines that providing the CIFIP Grant to the Recipient will (1) further the objectives of the Redevelopment Plan and Project for the Central Redevelopment TIF, (2) improve the overall image of the Central Redevelopment TIF and thereby increase the property values of commercial and industrial properties within the TIF; (3) strengthen the overall economy, equalized assessed value, and quality of life within the TIF and the Village as a whole; (4) remove and alleviate adverse conditions by providing an incentive to the Recipient to invest in the Property that would not otherwise occur but for the funding provided by the Gilberts CIFIP; (4) assist the Recipient with the rehabilitation and restoration of the visible exterior of the Property for the betterment of the TIF and the community; and (5) reduce blight and promote the overall health, safety, and welfare of the Village and its residents.

L. The Village Board find that it is necessary and desirable to provide the Recipient a CIFIP Grant in the amount of \$ _____, and that doing so is consistent with the Act and the CIFIP rules and regulations.

SECTION 2. CIFIP TAX INCREMENT FINANCING GRANT AWARD.

A. Subject to this Agreement’s terms, the Village agrees to provide to the Recipient an award in the amount of _____ and [no]/100ths (\$ _____) dollars (“*Award*”) to allow the recipient to invest in the Business and to support the Business’s success in the Village and to further implement the Redevelopment Plan and Project for the Central Redevelopment TIF. This Award will only be provided to the Recipient to reimburse the Recipient for TIF eligible costs.

B. Upon completing installing the Improvements and the Village’s completion of a final inspection of the Property for the permitted work in accordance with this Agreement and all Village codes, rules, and regulations, as amended, the Recipient shall submit to the Village: (1) a letter requesting reimbursement pursuant to this Agreement; (2) a report of the final inspection for permitted work; (3) a report of the final inspection verifying the work has been completed in accordance with the proposed project; (4) copies of all final invoices showing the cost of services concerning the Improvements; (5) signed and notarized final lien waivers from all of Recipient’s contractors, subcontractors, employees, or individuals providing any services concerning the Improvements; and (6) proof of payment of all costs associated with the Improvements (collectively, “*Recipient Documents*”).

C. Within sixty (60) days of receiving a complete set of Recipient Documents, the Village will issue a check to the Recipient in the amount of the Award. In no case shall the Village's payment exceed the Award amount, regardless of the amount of any costs incurred by the recipient.

D. The Award will be payable to the Recipient only from available increment funds from the Central Redevelopment TIF and from no other source. The Recipient will have no recourse against the Village's general fund or other Village revenues.

SECTION 3. MAINTENANCE.

A. Upon Recipient's completion of the Improvements pursuant to this Agreement and at all times during this Agreement's term, the Recipient shall be responsible for preserving and maintaining the Improvements in the condition and state set forth in Exhibit C and in full compliance with all Village codes, rules, and regulations, as amended, including, without limitation, this Agreement and CIFIP rules and regulations.

B. The Village Administrator or his designee ("**Administrator**") may, upon reasonable notice, periodically review the progress and condition of the Improvements. Such inspections shall not replace or be a substitute for any required inspection by the Village or other entity with jurisdiction over the Property. All improvements the Village finds not to be in compliance with Exhibit C shall be immediately remedied by the Recipient and deficient or improper improvements shall promptly be replaced and made to comply with Exhibit C.

SECTION 4. DEFAULT; CLAWBACK; REMEDIES.

A. If, within three (3) years of the date the Village delivers the Award to the Recipient, the Recipient relocates its business outside of the Village, ceases business operations, fails to comply with the terms of this Agreement, fails to comply with CIFIP rules and regulations, or fails to maintain the Improvements in the condition and state set forth in Exhibit C (collectively, "**Default Event**"), the Recipient must refund the Village in accordance with the following:

<u>Timing of Default Event</u>	<u>Percentage of Award that must be refunded</u>
Within 1 year of Award payment	100%
Within 2 years of Award payment	67%
Within 3 years of Award payment	33%

B. If the Recipient fails for any reason whatsoever to: (1) apply for and obtain all permits and approvals necessary to construct the Improvements within 6 months of the Effective Date; and (2) apply for and receive from the Village a full and binding occupancy certificate within 12 months of the Effective Date this Agreement and the Parties' rights and obligations hereunder will automatically terminate, and the Recipient shall not be entitled to receive any Award.

C. If the Recipient fails for any reason whatsoever to complete the Improvements in conformity with Exhibit C and the terms of this Agreement, then upon written notice given by the

Administrator to the Recipient, this Agreement shall terminate and all the Village's obligations and duties under this Agreement, including, without limitation, the payment of the Award to the Recipient, shall become null and void.

D. In the event that the Recipient fails for any reason whatsoever to pay any amount owed pursuant to Section 4.A., or otherwise violates any provision of this Agreement or CIFIP rules and regulations, the Village may pursue, and hereby reserves, any and all remedies, including, without limitation, all remedies available at law or in equity. This Section 4.D. shall survive the voluntary or involuntary termination of this Agreement.

SECTION 5. INSURANCE AND INDEMNIFICATION.

A. Insurance. Recipient will procure and deliver to the Village evidence of such insurance policies, at the Recipients cost and expense, and shall maintain in full force and effect through the term of this Agreement, a policy or policies of commercial general liability insurance and, during any period of constructing the Improvements, contractor's liability insurance, with liability coverage under the commercial general liability insurance to be not less than one million and [no]/100 (\$1,000,000.00) dollars each occurrence and two million and [no]/100 (\$2,000,000.00) dollars aggregate. All such policies shall in such form and issued by such companies as shall be reasonably acceptable to the Village Attorney to protect the Village and the Recipient against any liability incidental to the use of or resulting from any claim for injury or damage occurring in or about the Property. Each such policy shall name the Village as an additional insured. Any insurance carried by the Village for like risks shall be secondary and in excess of the insurance required hereunder. The Village shall be given written notice at least thirty (30) days prior to any cancellation or material amendment of any policy required hereunder.

B. Village Review. The Recipient acknowledges and agrees that the Village is not, and shall not be, in any way liable for damages or injuries that may be sustained as the result of the Villages review and approval of any plans for the Property, including, without limitation, the issuance of any approvals, permits, certificates, or acceptances for the Property or the Village's approval of this agreement, that the Village's review and approval of those plans and issuance of those approvals, permits, certificates, or acceptances does not, and shall not, in any way, be deemed to insure the Recipient, or any of its heirs, successors, assigns, tenants, and licensees, or any other Person, against damages or injury of any kind at any time.

C. Village Procedure. The Recipient acknowledges and agrees that notices, meetings, and hearings have been properly given and held by the Village with respect to the approval of this Agreement and agrees not to challenge the Village's approval on the grounds of any procedural infirmity or of any denial of any procedural right.

D. Indemnity. The Recipient releases the Village from, and covenants and agrees that the Village shall not be liable for, and covenants and agrees to defend, indemnify, and hold harmless the Village and its elected and appointed officials, officers, employees, and agents from and against any and all losses, claims, damages, liabilities, investigations, or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from or in any way connected with directly or indirectly with the Improvements, the Property, or the Agreement,

including, without limitation, actions or claims arising from or related to the Prevailing Wage Act (820 ILCS 30/0.01, *et seq.*) (“*Act*”). The Recipient further covenants and agrees to pay for or reimburse the Village and its elected and appointed officials, officers, employees, and agents for any and all costs, reasonable attorney’s fees, liabilities, and expenses incurred in connection with investigating, defending against, or otherwise in connection with any such losses, claims, damages, liabilities, investigations, or causes of action. The Village shall have the right to select legal counsel and to approve any settlement in connection with such losses, claims, damages, liabilities, or causes of action. The provisions of this section shall survive this Agreement’s voluntary or involuntary termination.

The Recipient understands and acknowledges that, depending on how the Recipient uses the Award, the Award and any work or labor the Recipient purchases with the Award may become subject to the Act. The Recipient covenants and agrees to comply, and to contractually obligate and cause its construction manager, any general contractor, each subcontractor or other applicable entity or person to comply with the applicable requirements of the Act. All contracts subject to the Act shall list the specified rates to be paid to all laborers, workers and mechanics for each craft or type of worker or mechanic employed pursuant to such contract. If the prevailing wage rates are revised, the revised rates shall apply to all such contracts. The Recipient shall provide the Village with copies of all such contracts entered into by the Recipient or others to evidence compliance with this Section. The Recipient together with its contractors, subcontractors, agents, employees and others may be obligated to provide such documents, information and certifications, including appropriate payroll certifications, as are necessary to comply with the Act. The Recipient will maintain segregated accounting records detailing expenses incurred and paid for with public and private funds.

SECTION 6. RECIPIENT’S OBLIGATIONS.

A. Construction of Improvements.

1. Construction. The Recipient shall construct and install the Improvements on the Property in substantial compliance with the project scope, site plans, architectural plans and elevations, engineering plans, and plats, as appropriate, submitted to and approved by the Village. Further, the Recipient will at all times operate and maintain the Improvements, Business, and Property in compliance with all applicable Village, state, and federal laws, ordinances, rules, and regulations, including, without limitation, all applicable zoning ordinances, building codes, environmental codes, life safety codes, and tax ordinances, rules, and regulations of the Village, as the same may be amended from time to time.
2. Construction Permits. No construction, improvement, or development of any kind shall be permitted on any portion of the Property unless and until the Recipient has received approval from all necessary Village commissions, boards, and departments, and has been issued valid and binding building permits. Further, no business operation or occupancy of the Property may occur prior to the issuance of a full and binding occupancy certificate.

3. Fees, Costs, and Expenses. The Recipient shall be responsible for and pay all Village imposed fees on the construction and operation of the Business, including, without limitation: a) all Village costs incurred administering CIFIP and the Agreement; b) all Village costs incurred drafting and negotiating this Agreement, including legal fees and expenses; and c) the Village's costs and fees incurred enforcing this Agreement, including reasonable legal fees, expenses, and appeal costs and fees.
4. Modifications to Improvements. For the time period beginning on the Effective Date and ending on the third anniversary of the date the Village delivers the Award to the Recipient, the Recipient shall not enter into any Agreement or contract or take any action or inaction to alter, change or remove the Improvements, or the approved design thereof, nor shall Recipient undertake any other changes, by contract or otherwise, to the Improvements unless such changes are first submitted to the Administrator, and any additional review body designated by the Administrator, for approval. Such approval shall not be unreasonably withheld if the proposed changes do not substantially alter the original design concept of the improvements as specified in Exhibit C.

B. Certificate of Assistance. The Recipient agrees to place a certificate, in a form provided by the Village, indicating the Recipient is a participant in CIFIP, in the front window or other location on the premises that is visible to the public during this Agreement's term.

SECTION 7. TERM.

Except as otherwise provided herein, this Agreement's term shall begin on the Effective Date and end on the third anniversary of the date the Village delivers the Award to the Recipient.

SECTION 8. GENERAL PROVISIONS.

A. Recordation. This Agreement shall be recorded with the office of the Kane County Recorder at the Recipient's expense. All contracts and deeds of conveyance relating to the property, or any part thereof, and all contracts conveying an ownership interest in the Business, shall be subject to the provisions of this Agreement.

B. No Third-Party Beneficiaries. This Agreement is for the sole and exclusive benefit of the Parties hereto and their respective successors and permitted assigns and no third party is intended to or shall have any rights hereunder.

C. Assignment. No part of this Agreement may be assigned by any of the Parties hereto without prior written consent of the other Parties.

D. CIFIP. The recipient represents and warrants that the statements and representations in the Application Documents are true, accurate, and complete. Recipient's failure

to provide truthful, accurate, or complete Application Documents, shall constitute a Default Event and will relieve the Village of its duties and obligations under this Agreement, including, without limitation, payment of the Award.

E. Entire Agreement. This Agreement shall constitute the entire agreement of the Parties hereto. All prior agreements between the Parties, whether written or oral, are merged herein and shall be of no force and effect.

F. Amendments and Modifications. No modification, addition, deletion, revision, alteration, or other change to this Agreement shall be effective unless and until such change is reduced to writing and executed by the Parties pursuant to all applicable statutory procedures.

G. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies, and benefits allowed by law.

H. Non-Waiver. The Village shall be under no obligation to exercise any of the rights granted to it in this Agreement except as it shall determine to be in its best interest from time to time. The failure of the Village to exercise at any time any such rights shall not be deemed or construed as a waiver thereof, nor shall such failure void or affect the Village's right to enforce such rights or any other rights.

I. Notice. All notices required or permitted to be given under this Agreement shall be in writing and shall be (i) personally delivered, or (ii) delivered by a reputable overnight courier, or (iii) delivered by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid.

Notices and communications to the Recipient shall be addressed to, and delivered at, the following address:

Notices and communications to the Village shall be addressed to, and delivered at, the following address:

Village of Gilberts
87 Galligan Road
Gilberts, Illinois 60136
Attn: Brian Bourdeau

With a copy to:

Ancel Glink, P.C.
140 South Dearborn Street, 6th Floor
Chicago, Illinois 60603
Attn: Kurt S. Asprooth

J. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the internal laws, but not the conflict of laws rules, of the State of Illinois. Venue for any dispute relating to this Agreement shall be in the Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois.

K. Severability. If any provision of this Agreement is construed or held to be void, invalid, illegal, or unenforceable in any respect, the remaining part of that provision and the remaining provisions of this Agreement shall not be affected, impaired, or invalidate thereby, but shall remain in full force and effect. The unenforceability of any provision of this Agreement shall not affect the enforceability of that provision in any other situation.

L. Interpretation. This Agreement shall be construed without regard to the identity of the Party who drafted the various provisions of this Agreement. Each and every provision of this Agreement shall be construed as though all Parties to this Agreement participated equally in the drafting of this Agreement, and any rule or construction that a document is to be construed against the drafting Party shall not be applicable to this Agreement.

M. Exhibits. Exhibits A – C attached to this Agreement are, by this reference, incorporated in and made a part of this Agreement. Any conflict between the terms of this Agreement and its exhibits shall be resolved in favor of this Agreement.

N. Authority to Execute.

1. The Village. The Village hereby represents to the Recipient that the persons executing this Agreement on its behalf have been properly authorized to do so by its Village Board.
2. The Recipient. The Recipient hereby warrants and represents to the Village (i) that it has the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement and to bind the Property as set forth in this Agreement, (ii) that all legal actions needed to authorize the execution,

delivery, and performance of this Agreement have been taken, and (iii) that neither the execution of this Agreement nor the performance of the obligations assumed by the Recipient will (a) result in a breach or default under any agreement to which the Recipient is a party or to which it or the Property is bound or (b) violate any statute, law, restriction, court order, or agreement to which the Recipient or the Property are subject, and to which the Recipient has actual or constructive knowledge.

O. Freedom of Information Act Compliance. The Recipient agrees to maintain, without charge, all records and documents concerning or relating to this Agreement and the Property in accordance with the Freedom of Information Act 5 ILCS 140/1, *et seq.* (“**FOIA**”). Upon Village’s request, the Recipient shall produce all records requested by Village within the timeframe requested by Village, and if additional time is needed to compile the requested records, the Recipient shall promptly notify the Village. In the event that either party is found to have not complied with FOIA due to the other party’s failure to produce documents or otherwise appropriately respond to a request under FOIA, then the party failing to produce and/or respond shall indemnify and hold harmless the other party, and pay all amounts determined to be due, including, but not limited to, fines, costs, attorneys’ fees and penalties.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have set their hands and seals as of the date first written above.

VILLAGE OF GILBERTS,
an Illinois municipal corporation

By: _____
Guy Zambetti, Village President

ATTEST:

By: _____
Kelly Mastera, Village Clerk

Dated: _____

_____ ,

an _____

By: _____

Name: _____

Title: _____

Dated: _____

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, **DO**
HEREBY CERTIFY THAT _____, the _____ of
_____, an _____, is personally
known to me to be the same persons whose name is subscribed to the foregoing instrument, and
appeared before me this day in person, and acknowledged that he signed, sealed and delivered the
said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this ____ day of _____, 202__.

Signature of Notary

Seal

My Commission expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, **DO HEREBY CERTIFY THAT** Guy Zambetti and Kelly Mastera, the Village President and Village Clerk, respectively, of the **VILLAGE OF GILBERTS**, an Illinois municipal corporation, are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act on behalf of said municipal corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this _____ day of _____, 202__.

Signature of Notary

Seal

My Commission expires:_____

Exhibit A

Property's Legal Description

P.I.N.: _____

Commonly Known As: _____, Gilberts, Illinois

Exhibit B

Application

[Attached]

Exhibit C

Description and Depiction of Improvements

[Attached]