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**ORDINANCE NO. 2013-14-07**  
*An Ordinance Authorizing an Economic Incentive Agreement  
by and between the Village of Johnsburg  
and Angelo's Market Inc.*

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AN ORDINANCE PASSED BY THE  
PRESIDENT AND BOARD OF TRUSTEES  
OF THE VILLAGE OF JOHNSBURG  
AT THEIR REGULAR MEETING ON JUNE 6, 2013  
PUBLISHED IN PAMPHLET FORM BY AUTHORITY OF THE  
PRESIDENT AND BOARD OF TRUSTEES  
OF THE VILLAGE OF JOHNSBURG

President

Edwin P. Hettermann

Board of Trustees

John Huemann  
Mary Lou Hutchinson  
Rich Janusz  
Greg Klemstein  
Kevin McEvoy  
Janice Sisk

Village Clerk

Claudett E. Peters

**ORDINANCE NO. 2013-14-07**  
***An Ordinance Authorizing an Economic Incentive Agreement***  
***by and between the Village of Johnsburg***  
***and Angelo's Market Inc.***

WHEREAS, pursuant to section 8-11-20 of the Illinois Municipal Code, the corporate authorities of a municipality may enter into an economic incentive agreement relating to the development of land within the municipality whereby it agrees to share or rebate a portion of any retailer's occupation or sales taxes received by the municipality that are generated by the development over a limited period of time subject to such corporate authorities making certain findings.

WHEREAS, the Village has been requested to consider such an agreement by Angelo's Market, Inc. ("Angelo's Market"), attached hereto as Exhibit A (the "Agreement"), providing for the rebate of such tax revenues from a certain portion of the property located at 4000 Johnsburg Road more particularly described in Exhibit A of the Agreement (the "Subject Property"), up to an amount of \$82,000 as follows:

Year One, 80% of the Retailer's Occupation Taxes collected by the Village resulting from sales generated from Angelo's Market, Inc. from the property.

Year Two, 80% of the Retailer's Occupation Taxes collected by the Village resulting from sales generated from Angelo's Market, Inc, from the property.

Year Three, 50% of the Retailer's Occupation Taxes collected by the Village resulting from sales generated from Angelo's Market, Inc. from the property.

Year Four, 20% of the Retailer's Occupation Taxes collected by the Village resulting from sales generated from Angelo's Market, Inc. from the property.

Year Five, 20% of the Retailer's Occupation Taxes collected by the Village resulting from sales generated from Angelo's Market, Inc. from the property.

Such Agreement would expire upon the earlier of i) the date on which all payments to Angelo's Market (equal to \$82,000) or ii) Five Years from the date of this agreement per the terms of the Agreement.

WHEREAS, the Village's corporate authorities hereby make certain findings as follows:

- A. The improvements to the parcel enabled Angelo's Market Inc. to open up a new retail market on the property.
- B. Angelo's Market, Inc created job opportunities within the Village;
- C. The improvements on the parcel will serve to encourage the further the development of adjacent areas;
- D. Without this Agreement, the improvements on the parcel would not be feasible;
- E. The improvements on the parcel will strengthen the downtown business sector of the Village;
- F. The improvements on the parcel have enhanced the tax base of the Village; and
- G. This Agreement is in the best interest of the Village.

NOW, THEREFORE, BE IT ORDAINED by the Board of Trustees of the Village of Johnsbury that the President and Clerk as follows:

SECTION 1: The Village hereby adopts the findings and determination set forth above. The President and Clerk are authorized and hereby directed to execute and attest the Economic Incentive Agreement.

SECTION 2: If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

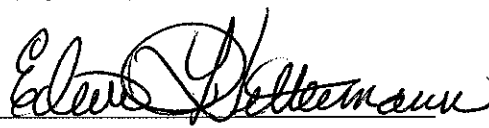
SECTION 3: All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4: A previous agreement entitled, Economic Incentive Agreement, Angelo's Market Inc approved by the board on April 5, 2012 is hereby repealed.

SECTION 5: This Ordinance shall be in full force and effect upon its passage, approval and publication in pamphlet form (which publication is hereby authorized) as provided by law.

Voting Aye: Trustees Janusz, McEvoy, Sisk, Huemann, Klemstein, and Hutchinson  
Nay: None  
Absent: None  
Abstain: None

APPROVED:

  
\_\_\_\_\_  
Village President Edwin P. Hettermann

(SEAL)

ATTEST:

  
\_\_\_\_\_  
Village Clerk Claudett E. Peters

Passed: June 6, 2013

Approved: June 6, 2013

Published: June 6, 2013

## ECONOMIC INCENTIVE AGREEMENT

### ANGELO'S MARKET, INC., JOHNSBURG, ILLINOIS

THIS AGREEMENT is entered into on this 6th day of June, 2013, by and between the **VILLAGE OF JOHNSBURG**, an Illinois municipal corporation (the "Village"), and **ANGELO'S MARKET, INC.**

#### Recitals

A. Val-mar Center, LLC is the (owner) of property zoned B-2 General Business located at 4000 Johnsburg Road in Johnsburg, Illinois improved with a multi-use building (the "property"). The commercial parcel is legally described in Exhibit A attached hereto and incorporated herein by reference.

B. Angelo's Market, Inc. has leased the property to develop a retail food market and pursue building and infrastructure improvements on the subject parcel.

C. In order to open the retail food market on the property, Angelo's Market, Inc. completed numerous improvements at a cost of more than \$424,000. A substantial portion of the improvements are considered to be improvements eligible for reimbursement up to a maximum of \$82,000 as set forth herein ("eligible improvements" as defined herein) as they will enhance the property, increasing the property's assessed value and benefitting other businesses in the existing center, adjacent businesses and residents, and the community as whole. The "eligible improvements" are herein defined as: elevation improvements of \$7,000; replacement of both monument and wall signage on the property/building at a cost of \$12,000; and energy efficiency/refrigeration/electrical improvements to Angelo's Market at a cost of \$63,000. Additional façade and parking lot improvements not yet completed but estimated at an additional cost of \$250,000, shall be eligible for reimbursement for up to an additional \$68,000 if completed within two years from the date of this agreement. In no case shall the total reimbursed amount exceed a total of \$150,000.

D. Angelo's Market, Inc. advised the Village that improvements to the property were not feasible without a means for Angelo's Market, Inc. to be reimbursed for part of the cost of the improvements.

E. Recognizing that the sales tax and property tax revenues anticipated from the proposed Angelo's Market, Inc. will benefit the Village, McHenry County, the State of Illinois, as well as various special purpose units of government serving the residents of the Village, such as school districts, and library districts, the Village is willing to establish a structure under which Angelo's Market, Inc. would be reimbursed for the improvements identified above, only upon the terms and conditions precedent herein, and provided that the sales of taxable merchandise at the proposed retail food market are sufficient.

### Agreement

NOW, THEREFORE, in consideration of the foregoing Recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Village and Angelo's Market, Inc. hereby agree as follows:

1. **Findings of the Village.** The Village has investigated the proposed improvements on the property, and hereby makes the following findings:

A. The improvements to the parcel enabled Angelo's Market Inc. to open up a new retail market on the property.

B. Angelo's Market, Inc created job opportunities within the Village;

C. The improvements on the parcel will serve to encourage the further the development of adjacent areas;

D. Without this Agreement, the improvements on the parcel would not be feasible;

E. The improvements on the parcel will strengthen the downtown business sector of the Village;

F. The improvements on the parcel have enhanced the tax base of the Village;  
and

G. This Agreement is in the best interest of the Village.

2. **Conditions Precedent to the Undertakings of the Village.** All undertakings on the part of the Village pursuant to this Agreement are subject to the completion of the eligible improvements on the property as approved by the Village by Angelo's Market, Inc.; verification of costs of the improvements by the Village as set forth below; inspection of the façade improvements by the Village prior to the reimbursement of any eligible improvements; verification of the Retailer's Occupation Taxes generated by Angelo's Market, Inc.; and receipt of said taxes by the Village. . If Angelo's Market, Inc. seeks reimbursement from the Village on the terms and limitations herein, Angelo's Market Inc shall promptly send receipts, cancelled checks or other evidence of payment satisfactory to the Village, along with all appropriate releases of mechanics liens, up to a

total collective amount of \$82,000 (\$150,000 if additional façade and parking lot improvements are completed).

3. **Undertakings of the Village.** Upon satisfaction of all of the conditions set forth in Section 2 above, and provided that Angelo's Market, Inc. is not in breach of this Agreement in any respect, the Village agrees to reimburse Angelo's Market, Inc. as follows.

A. The Village agrees to pay to Angelo's Market, Inc. a total amount of up to \$82,000 (\$150,000 if additional façade and parking lot improvements are completed) (the "Reimbursement Amount") in the manner set forth below, and subject to the following conditions and restrictions:

Year One, 80% of the Retailer's Occupation Taxes collected by the Village resulting from sales generated from Angelo's Market, Inc. from the property.

Year Two, 80% of the Retailer's Occupation Taxes collected by the Village resulting from sales generated from Angelo's Market, Inc. from the property.

Year Three, 50% of the Retailer's Occupation Taxes collected by the Village resulting from sales generated from Angelo's Market, Inc. from the property.

Year Four, 20% of the Retailer's Occupation Taxes collected by the Village resulting from sales generated from Angelo's Market, Inc. from the property.

Year Five, 20% of the Retailer's Occupation Taxes collected by the Village resulting from sales generated from Angelo's Market, Inc. from the property.

For example, if \$82,000 (\$150,000 if additional façade and parking lot improvements are completed) is remitted to Angelo's Market, Inc. after only three years, this Agreement shall terminate and there shall be no further reimbursement by the Village for years three, four or five.

Retailer's Occupation Tax reimbursement in the applicable percentages set forth above, shall be made by the Village upon confirmation from the Illinois Department of Revenue (the "Department") of the Retailer's Occupation Taxes generated from Angelo's Market, Inc., and receipt of said taxes by the Village.

B. The Village shall provide for the payments required by this Agreement by annually adopting an appropriation therefore which shall be part of the Village's annual budget pursuant to the Budget Ordinance to be adopted for each fiscal year (or partial fiscal year) in which payments may be due hereunder.

C. The Reimbursement Amount shall not be construed to be a debt under the Local Government Debt Reform Act or any other statutory or Constitutional debt limitation.

D. As used in this Agreement, "Retailer's Occupation Tax" means all revenues that the Village is entitled to receive that are derived from retail sales taxes including, but not limited to, taxes imposed by the State of Illinois pursuant to the Illinois Use Tax Act, the Illinois Service Use Tax Act, the Illinois Service Occupation Tax, and the Illinois Retailers Occupation Tax Act which are remitted to and received by, the Village.

4. **Additional Undertakings.**

A. Upon written request from the Village, Angelo's Market, Inc. shall provide the Village with a Power of Attorney Letter addressed to, and in a form satisfactory to, the Department, authorizing the Department to release all gross revenue and retail occupation tax information to the Village relating to the Angelo's Market, Inc. operations, and shall authorize such information to be released to the Village as long as Angelo's Market, Inc. operations continue at the Subject Property. Such letter shall be in the form that the Department may from time to time require. In addition, in the event that the Department from time to time promulgates additional forms to be used for such purposes, Angelo's Market, Inc. agrees to execute and deliver such forms upon request. The obligations set forth in this Section 4B shall terminate upon five years from the date first above stated.

B. In the event that the Village is unable to obtain from the Department the revenue and tax data needed to compute the Reimbursement Amount up to a total of \$82,000 (\$150,000 if additional façade and parking lot improvements are completed), then Angelo's Market, Inc. shall, upon the written request of the Village, furnish copies of the Form ST-1, Sales and Use Tax Returns, to the Village Comptroller or his or her designee for informational purposes (it being understood that, absent manifest error, the Village Comptroller shall be entitled to rely on reports issued by the State of Illinois with its distributions of sales taxes to the Village). The Village acknowledges that there may be discrepancies between the sales reports as shown on the form ST-1 and the revenue reports of the State because of the discount Angelo's Market, Inc. receives for timely filing its reports with the Department. In the event that Angelo's Market, Inc. amends any Sales and Use Tax Returns that were previously submitted to the Village pursuant to this Agreement, then promptly upon the filing of the amended Sales and Use Tax Returns, a copy thereof shall be furnished to the Village, clearly identifying the document as amendments of Sales and use Tax Returns. Each party agrees that any amount owing by one party to the other due to the filing of amended Sales and Use Tax Returns shall be deducted from or added to (as the case may be) the next payment to Angelo's Market, Inc. In the event that the amended Sales and Use Tax Return reduces Angelo's Market, Inc.'s share of Sales Tax by more than the amount of such next payment, future payments shall be reduced or abated until the Village has received its proper share of Sales Taxes for the period or periods in question. For purposes of this Agreement, changes in the amount of Sales Tax owed by reason of Angelo's Market, Inc. Operations resulting from audits by the Department shall be treated in the same manner as payments occasioned by the filing of amended Sales and Use Tax Returns.

C. Each disbursement from the Village shall be accompanied by a statement, executed by the Village Comptroller or his designee, setting forth the calculations made



to determine the amount of such disbursement. The Village Comptroller or his or her designee shall also issue to Angelo's Market, Inc. a statement setting forth all disbursements made to date.

D. Angelo's Market, Inc. shall have the right to contest any of the calculations or information contained in any statements of the Village upon written notice delivered to the other party within ninety (90) days following receipt. If, within ninety (90) days of receipt of such written notice, Angelo's Market, Inc. can show to the reasonable satisfaction of the Village, that any statement or the amount disbursed to Angelo's Market, Inc. was incorrect, the Village shall disburse to Angelo's Market, Inc. such additional amount as may be owing, or Angelo's Market, Inc. shall return to the Village any overpayment that may have been made. The procedure described in this Section 4F shall not apply to amended Sales and Use Tax Returns, it being agreed that payments related to such amended returns shall be governed by Section 4C above.

5. **Representations and Warranties of Angelo's Market, Inc.** represents and warrants as follows:

A. Angelo's Market, Inc. has the power to enter into this Agreement and carry out its obligations hereunder and has duly authorized the execution, delivery and performance of this Agreement. This Agreement is a legal, valid and binding obligation of Angelo's Market, Inc., enforceable against Angelo's Market Inc. in accordance with its terms.

B. The execution, delivery and performance of this Agreement by Angelo's Market, Inc. does not and will not conflict with or result in a violation of organizational documents or any judgment, order or decree of any court, any arbitrator or any contract to which Angelo's Market, Inc. is a party.

6. **Default.**

A. The occurrence of any of the following shall constitute a breach of this Agreement:

(i) Failure to comply with any term, provision or condition of this Agreement; or

(ii) The failure of any representation or warranty of a party set forth in this Agreement to be true and correct.

B. In the event that either party to this Agreement believes that the other party has breached this Agreement, the party alleging the breach shall notify the other party, which notice shall be in writing and shall state with particularity the alleged breach. If the breach is not cured within thirty (30) days after receipt of notice of an alleged breach, then the breach shall constitute an "Event of Default" hereunder; provided, however, that if the default is not for the failure to pay money and can not by its nature reasonably be cured within said thirty (30) day period, a party shall not be deemed in default hereunder

as long as the party commences to cure such breach within said thirty (30) day period and continues diligently to effect a cure.

C. Upon the occurrence of an Event of Default, the non-defaulting party shall have all rights and remedies at law or in equity available under applicable law.

D. In any litigation relating to this Agreement (whether to an Event of Default or otherwise) each party shall pay its own attorneys' fees and costs.

7. **Notices.** All notices under this Agreement shall be in writing and shall be given either by personal delivery, by United States mail, or by a recognized national "overnight" courier service, such as Fed Ex or UPS. If personally delivered, notices shall be deemed given on the actual date of delivery. If sent by "overnight" courier service, notices shall be deemed given one (1) business day after the notice is deposited with the courier service, with all charges prepaid. If sent by United States mail, notices shall be deemed given two (2) business days after the notice is deposited in a mailbox or otherwise given to the U.S. Postal Service for delivery. Notices shall be given at the following addresses; provided, however, that either party shall have the right from time to time to change the address for such deliveries by giving a notice to the other party in the manner prescribed herein:

If to the Village:

Village President  
Village of Johnsburg  
Village Hall  
1515 Channel Beach Drive  
Johnsburg, IL 60050

If to Angelo's Market, Inc.

Angelo's Market, Inc.  
c/o Angelo Ingraio  
4000 Johnsburg Road  
Johnsburg, IL 60051

This Section 7 shall not apply to payments made by the Village to Angelo's Market, Inc. under this Agreement, which shall be sent in accordance with Section 3 above.

#### 8. **Miscellaneous.**

A. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Illinois. Venue for all litigation under this Agreement shall be exclusively in the Circuit Court of McHenry County, Illinois.

B. Time is of the essence of this Agreement. If the time for performance of any obligation hereunder falls on a Saturday, Sunday or legal holiday, such time for performance shall automatically be deemed extended to the next succeeding day that is not a Saturday, Sunday or legal holiday.

C. No recourse under or upon any obligation, covenant, representation, warranty or agreement under this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against the Village in excess of any amount agreed by the Village to be paid to Angelo's Market, Inc. hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or be incurred by (i) the Village in excess of such amounts, or (ii) the officers, agents and employees of the Village. Any such claims and rights of Angelo's Market, Inc. against the Village in excess of such amounts or against its officers, agents and employees personally are hereby waived and released as a condition of, and as consideration for, the execution of this Agreement by the Village. No recourse under or upon any obligation, covenant or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against (i) Angelo's Market, Inc., in excess of its obligations to the Village hereunder, (ii) the directors, officers, agents and employees of Angelo's Market, Inc., and no liability, right or claim at law or in equity shall attach to or be incurred by (i) Angelo's Market, Inc. in excess of such amounts, or (ii) the officers, agents and employees of Angelo's Market, Inc. Any such claims and rights of the Village against Angelo's Market, Inc. in excess of such amounts or against its officers, agents and employees personally are hereby waived and released as a condition of, and as consideration for, the execution of this Agreement by Angelo's Market, Inc.

D. Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

E. All section headings or other headings in this Agreement are for general aid of the reader and shall not limit the meaning or application of any of the provisions thereunder, whether covered or relevant to such heading or not.

F. This Agreement contains the entire agreement of the parties regarding the subject matter hereof, and all prior verbal or written agreements between the parties regarding the subject matter hereof are merged herein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless contained in a written instrument duly executed by both parties hereto.

G. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

H. If any provision of this Agreement is ruled invalid by a court of competent jurisdiction or in the event such a court shall determine that the Village does not have the power to perform any such provision, such provision shall be deemed excised herefrom

and the invalidity thereof shall not affect any other provisions contained herein, and such judgment or decree shall relieve the Village from performance under such invalid provision of this Agreement; provided, however, if the judgment or decree relieves the Village of all or any portion of its monetary obligations under Section 3 of this Agreement, then Angelo's Market, Inc. shall be relieved of all of its obligations under this Agreement.

I. When the term "Village" is used in this Agreement, it shall be construed as referring to the Corporate Authorities of the Village unless the context clearly indicates otherwise.

J. This Agreement shall remain in effect for a term commencing as of the date of this Agreement, and terminating on the first to occur of (i) date the last payment due to Angelo's Market, Inc. under Section 3 of this Agreement has been made, (ii) the receipt by Angelo's Market, Inc. of the full amount provided for in Section 3, (iii) the execution of an agreement by the Village and Angelo's Market, Inc. expressly terminating this Agreement.

**9. DISCLAIMER.**

The Village makes no representations or warranties to Angelo's Market, Inc. regarding the validity of this Agreement. Angelo's Market, Inc.'s sole recourse against the Village under this Agreement is limited to those funds received by the Village from Sales Tax actually received by the Village and Angelo's Market, Inc. waives any consequential damages. The Angelo's Market, Inc. understands and agrees that this Agreement shall not constitute a joint venture between the Village and Angelo's Market, Inc.. In the event of litigation relating directly or indirectly to this Agreement, there shall be no obligation upon the Village whatsoever to contest any action relating directly or indirectly to this Agreement and the applicable ordinance. The extent to which the Village may wish to contest such matter, if any, shall lie in the sole discretion of the Village. The Angelo's Market, Inc. has had the opportunity to review this Agreement with its own counsel and is relying solely upon his own counsel's opinion regarding the validity of this Agreement. The parties agree that there are no third party beneficiaries to this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement.

VILLAGE OF JOHNSBURG,  
an Illinois municipal corporation

By: \_\_\_\_\_  
Village President

Attest:

\_\_\_\_\_  
Village Clerk

ANGELO'S MARKET, INC, an Illinois corporation

## CERTIFICATION

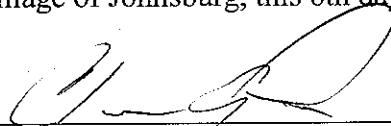
I, CLAUDETT E. PETERS, do hereby certify that I am the duly appointed, acting and qualified Clerk of the Village of Johnsburg, McHenry County, Illinois, and that as such Clerk, I am the keeper of the records and minutes and proceedings of the President and Board of Trustees of said Village of Johnsburg.

I do further certify that at a regular meeting of the President and Board of Trustees of the Village of Johnsburg, held on the 6th day of June, 2013, the foregoing Ordinance entitled *An Ordinance Authorizing an Economic Incentive Agreement by and between the Village of Johnsburg and Angelo's Market, Inc.*, was duly passed by the President and Board of Trustees of the Village of Johnsburg.

The pamphlet form of Ordinance No. 2013-14-07, including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was available in the Village Hall, commencing on the 6th day of June, 2013, and continuing for at least 10 days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the Village Clerk.

I do further certify that the original, of which the attached is a true and correct copy, is entrusted to me as the Clerk of said Village for safekeeping, and that I am the lawful custodian and keeper of the same.

Given under my hand and seal of the Village of Johnsburg, this 6th day of June, 2013.



\_\_\_\_\_  
Claudett E. Peters, Village Clerk  
Village of Johnsburg,  
McHenry County, Illinois

(SEAL)