



**REQUEST FOR BOARD ACTION
COMMITTEE OF THE WHOLE MEETING
May 29, 2018**

Subject:	Half Day Brewing Economic Incentive Agreement
Action Requested:	Consideration of Economic Incentive Agreement with Half Day Brewing, LLC and Direct Placement on the June 11, 2018 Regular Village Board Meeting Agenda for Approval (Half Day Brewing and Village of Lincolnshire)
Originated By/Contact:	Brad Burke, Village Manager
Referred To:	Village Board

Summary / Background:

For the past several months, staff has worked with Scott Ward and Mark Zych with Half Day Brewing Company (Half Day Brewing), located at 200 Village Green, Village Green Center, to discuss a possible Economic Incentive Agreement with the Village. Scott Ward initially inquired about the possibility of the Village lending \$500,000 to Half Day Brewing to free up capital for the restaurant/brew pub to expand brewery operations into the area of distribution. Half Day Brewing intends to increase brewing capacity, allowing for the distribution of kegs of Half Day Brewing products to the restaurant company's existing Tap House Grill franchises outside the Village. Additionally, Scott Ward indicated a long-term plan to can Half Day Brewing beers for distribution to other restaurants as well as liquor stores.

Scott Ward and Mark Zych met with staff, Mayor Brandt, and Trustee McDonough to explain their plans for distribution and their desire for some type of economic incentive from the Village. Mayor Brandt and Trustee McDonough expressed concern with the Village being put in the position to provide a loan for a restaurant operation.

Half Day Brewing revised their request to ask for consideration of a Tax Sharing Agreement with the Village. The purpose for the tax sharing request was to provide a sharing of sales and food and beverage tax revenue with the Village for a period of time to offset the costs to Half Day Brewing to expand brewing operations and distribution activities.

Half Day Brewing requests consideration of an Economic Incentive Agreement with the following parameters:

- Sharing of 50% of base Sales Tax (1%), Home Rule Sales Tax (1%), and Food & Beverage Tax (1%).
- Maximum rebate in any single year limited to \$100,000.00.
- Maximum rebate for life of Agreement not to exceed \$250,000.00.
- Reimbursement provided quarterly with Half Day Brewing's report of sales to the Village.



**Agenda Item
COW 3.22**

- If Half Day Brewing ceases operations during the term of the Agreement and fails to open a similar restaurant operation in Lincolnshire within 18 months after closure, or opens a similar establishment in a different community, the Agreement requires Half Day Brewing pay back a portion of the taxes shared.
- The Agreement also requires Half Day Brewing to find a Lincolnshire location for brewing/distribution operations if they outgrow their current location at 200 Village Green.

Budget Impact: Based upon the terms of the Agreement, Half Day Brewing is expected to pay \$96,000 annually in base Sales Tax, Home Rule Sales Tax, and Food and Beverage Tax. Based upon a 50%-50% Sharing Agreement, the Village estimates sharing approximately \$48,000 annually with Half Day Brewing. Based upon these assumptions, Half Day Brewing would reach the maximum provided in the Sharing Agreement within 5 to 6 years. If distribution operations grow as a result of Half Day Brewing's planned expansion, the amount of time for Half Day Brewing to reach the \$250,000 maximum share could be shorter.

Service Delivery Impact: None.

Recommendation: Staff recommends directing placement of the Agreement on the June 11, 2018 Regular Village Board meeting Consent Agenda for approval.

Reports and Documents Attached:

- Half Day Brewing Expansion Plans Related to Distribution.
- Proposed Economic Incentive Agreement, drafted by the Village Attorney.

Meeting History	
Village Board Committee of the Whole :	May 29, 2018



Half Day Brewing Distribution LLC

&

Village of Lincolnshire

Financial Review & Proposal

Please note:

The information contained herein is highly confidential financial information for your review only. It is strictly prohibited to copy the information contained in these documents. It is not to be shared with anyone unless prior consent of Half Day Distribution LLC ownerships grants you to do so.

HALF DAY BREWING COMPANY

200 Village Green

Lincolnshire, IL 60069

PHONE 847.934.4107 FAX 630.839.1318

www.halfdaybrewing.com



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Executive Summary

When we committed to doing the Brew Pub business in Lincolnshire back in January 2015, our business plan included beer distribution because we knew that a stand-alone restaurant that produced its own beer for sale on site would not be able to survive.

Our data was based on the local demographics, the size of the location, per square foot cost analysis and restaurant competition in the market place.

We understood from day one that to hit the sales and costs benchmarks/standards needed to be profitable, it was calculated that approximately 25% of our business would need to be brewery distribution income.

Currently we are collecting \$2.8MM in sales revenue, and we need to get it to \$3.55MM to hit the proper profitability benchmark to survive.

We are requesting a \$100,000 loan, and a Tax Share of 50% of total local sales tax/home rule & Food/Beverage tax for the purchase of machinery and the additional equipment needed to handle the production of beer manufactured on site for distribution to achieve the \$750,000 needed increase in sales revenue.

Our landlord/Baseline -Village Green/Mike Lotte is very supportive of the distribution of our beer in this space. This was one of the key selling points/discussion we had with him during negotiations in 2015. This component “excites” our landlord.

We started this spring with ordering and installation of equipment and getting small distribution going at our Tap House Grill locations for market presence and penetration. We will then get our product into the marketplace attending the many beer festivals and competitions/events taking place almost every week. This summer we started “some” expansion into other Lake County restaurant locations.

The next step is the installation of the fermenters and bright tanks needed to take our production from 2,000 BBL’s a year to 10,000.

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In 2019/2020 we will purchase the building & land that we currently lease, using our cash reserves from the manufacturing as a down payment and then structure a real estate based SBA with Bridgeview bank.

We will be maintaining the location as a “Brew Pub”, and not change the floor plan as it currently operates, and keep the sales ratio of 75% Brew Pub, 25% Distribution. The brewery currently utilizes about 2300 sf of the property.

IF demand is that high for our beer, then we would find a manufacturing space in the area, and move a majority of the brewing/canning/bottling off-site. We would keep our distribution at that location at 6,000 BBL per year, and/or total revenues for the entire location at or exceeding \$3.8MM, to meet/beat industry benchmarks.

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PHASE I

Begin local distribution with up to 4 line items (SKU's)

Order the equipment necessary to handle distribution for 2018-2020.

Local distribution equipment needs:

Keg Washer	\$25,000	Hoses and fillers	\$2,000
Air compressor	\$1,000	Pallet wrap equipment	\$1,000
Canning line	\$125,000	Fork Lift	\$25,000
Fittings	\$1,000	Kegs	\$5,000

Total: \$185,000

Equipment needed to handle distribution for 2018-2020

3 – 30BBL Fermenters	\$67,000	2 – 30BBL Brite Tank	\$40,000
Fittings	\$8,000	Walk in Cooler	\$18,000
Installation of Equipment	\$25,000	Barrels and Barrel racks	\$15,000

Total: \$173,000

Grand Total: \$358,000

Timing

- Immediately purchase equipment/materials to begin implementation of distribution
- Purchase/Order Tanks & equipment with 9 month lead time for spring installation, for phase II

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Town & Country/Kozal/Euclid distribution to all Tap House Grill's 7 locations (current) throughout the suburban market

- 2 Tap Handles per location with some special releases
- 4 new THG franchise units opening up in 2017/2018
- Hanover Park (June), Wheeling (Fall), Elmhurst, Aurora
- Limited keg delivery to other restaurant/retail locations based on supply
 - Begin September 2017
- Keg distribution penetration into Lake County winter 2017/2018
- Limited canning distribution for Binny's
 - Begin Spring/Summer 2018

2017 Estimates

Estimated Keg movement through current open Tap House Grill Location	300 (kegs)
Estimated Keg movement new THG franchise locations	20 (kegs)
Estimated Keg movement OTHER restaurant/retail	100 (kegs)
Estimated 6 pack movement	<u>0 (6packs)</u>
Total Keg/Keg equivalents	420

2017 Distribution Sales \$45,000

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PHASE II

Installation of the new brewery equipment necessary to handle distribution for 2018-2020

Expand distribution to more retail outlets

Continue to promote the brand and the beer through numerous beer and food festivals in and around the area.

Timing

- Installation of Walk in Cooler – spring 2018
- Secure off-site storage (empty's/printed materials/pallets) December 2017
- Installation of Fermenters - Spring 2018
- Installation of Bright Tanks - Spring 2018
- Ramp up production of beer - Spring 2018
- Expand distribution - February/March 2018

2018 Estimates

Estimated Keg movement Tap House Grill Location (10)	500 (kegs)
Estimated Keg movement new THG franchise locations (2)	50 (kegs)
Estimated Keg movement OTHER restaurant/retail (50)	2500 (kegs)
Estimated 6 pack movement	<u>1000 (6packs)</u>
Total Keg/Keg equivalents	4,050

2018 Distribution Sales \$425,000

We have verbal commitments from numerous restaurant groups to sell our beer

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Distribution Verbal Commitment List

Bar Louie

Bulldogs

Ala Carte

Prime Bar

Village Tavern

Rocks Group

Beer Bistro

Coopers Hawk

Gianis

Tina G's/Tavern 60

Sovereign

Binny's

Pub 83

Four Corners

Francesca

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Distribution & Tax Revenue Forecasts

Sales		Kegs
○ 2017	\$45,000	425
○ 2018	\$425,000	3,850
○ 2019	\$700,000	6,350
○ 2020	\$900,000	7,800
○ 2021	\$1,100,000	9,500

“Butter-Fly Effect”

- Large brand awareness from distribution throughout the northern Illinois marketplace
- Increased customer traffic to the brewery, increased sales revenues
- Location becomes a mini tourist attraction/potential hotel & other spends in and around village

Sales Tax Breakdown (state/local/home rule/F&B)

Year	Restaurant Tax	Dist. Tax	Total Sales Tax
2016	\$210,000	\$0.00	\$210,000
2017	\$213,000	\$4,000	\$217,000
2018	\$225,000	\$38,500	\$263,500
2019	\$232,500	\$63,000	\$295,500
2020	\$243,000	\$81,000	\$324,000
2021	\$250,000	\$99,000	\$349,000

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Financial Breakdown Summary

Project cost	\$2,560,100
2016 loss	\$ 146,000
Total	\$2,706,100

Landlord TI	\$1,040,000	
Mark Zych	\$ 458,614	
Scott Ward	\$ 465,728	
Tap House Grill	\$ 273,758	(scott & mark)
Tetra Loan	\$ 352,000	
Gibraltar Loan	\$ 116,000	

We have reached out to over a dozen other private institutions and through the SBA for this project, including:

- Hanmi Bank - \$800K to \$1.2MM
- Bridgeview Bank - \$800K to \$1.2MM
- American Express financial services - \$800K to \$1.6MM
- Barring Bank & Trust (our bank) - \$800K to \$1.0MM

Banks & the SBA will not loan money on “non real-estate” ventures for a new business. They consider Half Day Brewing a “new Business”, even though we have 5 Tap House Grill, and 2 franchised locations.

Mark and I continually invest and reinvest our personal income as well as any profits made from the Tap House Grill brand BACK into our business that includes Half Day Brewing.

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Previous village funding support:

St Charles	\$35,000 Grant	Non TIF
Oswego:	\$375,000 Loan	Non TIF
Des Plaines:	\$90,000 Grant	Non TIF
Lemont:	\$30,000 Grant	Non TIF
Palatine:	\$500,000 Grant	TIF
	\$250,000 Loan	TIF

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Business Plan

Short Term Plan (1-2 years)

2017

- Ordering of Keg washing equipment, fork lift, kegs, fittings etc etc
- Ordering of the additional brewing equipment needed
- Start small distribution at our Tap House Grill locations
- Attend beer festivals and competitions/events taking place almost every other week
- Expand distribution to “some” restaurant outlets
- Enter the Great American Beer Festival again
- Continue our commitment to community events and charitable causes

2018

- Installation of the fermenters and bright tanks
- Increase brewing & expand distribution to more restaurants
- Begin to produce Root Beer, Ginger Beer and Cola products for sale in the brew pub
- Repaint restrooms
- Attend beer festivals and competitions/events taking place almost every other week
- Enter the Great American Beer Festival again
- Expand our SKU’s to 20 items
- Introduce the Bourbon Barrel Aged Stout
- Brew another Bourbon Barrel batch
- Ordering of Food Truck and Keg Trailer
- Find off site storage of nonperishable items
- Continue our commitment to community events and charitable causes
- Installation of approved Monument Signage on Old Half Day road

Distribution Sales

Sales		Kegs
○ 2017	\$45,000	425
○ 2018	\$425,000	3,850

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Mid Term Plan (2-5 years)

2019

- Ordering and Installation of 3 more serving tanks for serving cooler
- Ordering and Installation of final 30BBL Fermenter and two 30BBL Bright Tanks
- Increase brewing & expand distribution to more restaurants
- Install covering for patio, to better utilize patio for 3 seasons and more events
- Attend beer festivals and competitions/events taking place almost every other week
- Enter the Great American Beer Festival again (and getting medals)
- Expand our SKU's to 25 items (this includes pop)
- Brew another Bourbon Barrel batch
- Continue our commitment to community events and charitable causes

Distribution Sales

Sales		Kegs
○ 2019	\$700,000	6,350

2020

- We will approach the landlord regarding the **purchase of the building/land** that we currently lease, which we discussed in 2016 at a sales price of around \$3.0MM, structure a real estate based SBA with Bridgeview bank.
- Get our own monument sign for Milwaukee road
- Begin sales of soda into retail/package
- Increase brewing & expand distribution to more restaurants
- Attend beer festivals and competitions/events taking place almost every other week
- Enter the Great American Beer Festival again
- Brew another Bourbon Barrel batch
- Continue our commitment to community events and charitable causes

Distribution Sales

○ 2020	\$900,000	7,800
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Long Term Plan (5+ years)

Continue each year to:

- Attend beer festivals and competitions/events
- Great American Beer Festival again (and getting medals)
- Commitment to community events and charitable causes

2021

- Replace carpeting
- Re furbish bar tops
- Update booths/chairs
- Expand patio, expand wall height of brick walls, add better fire features
- Add an outdoor patio island bar, turn martini bar into the “Tap Room”
- All tap handles in Tap Room are only Half Day Brewing
- Re configure “Tap Room”, and that dividing wall
- Maxed out on Brewing Capability/Storage
- Offer partnership opportunity to Jeff (gm) & Brandon (brew master)

2022

- IF demand is that high for our beer, then we would find a manufacturing space in the area, and move a majority of the brewing/canning/bottling off-site. We would keep our distribution at that location at 6,000 BBL per year, and/or total revenues for the entire location at or exceeding \$3.8MM, to meet/beat industry benchmarks.
- Re spray entire interior of building
- Re configure Pizza production area, and move toward main kitchen line
- Replace patio furniture
- Replace/Update kitchen equipment

2023-2025

- Complete remodel of private dining room, add exterior private entrance
- Replace front doors
- Re configure host desk/retail area
- Replace windows
- Add parking lot lights

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ECONOMIC INCENTIVE AGREEMENT

THIS ECONOMIC INCENTIVE AGREEMENT is made and entered into as of _____, by and between the VILLAGE OF LINCOLNSHIRE an Illinois home rule municipal corporation ("Village") and HALF DAY BREWING, LLC, ("Half Day Brewing" or "Company").

WHEREAS, the Village is a Home Rule Municipality in the State of Illinois operating under and by virtue of the Constitution and laws of the State of Illinois; and

WHEREAS, the Village has determined that it is in the best interests of the Village to enter into this Agreement; and

WHEREAS, the additional funds projected accruing to the Village from the addition and expansion of Half Day Brewing's point of sale by reason of Half Day Brewing's brewing business will assist the Village in its economic development and strengthen the commercial base of the Village; and

WHEREAS, the expenditure of the funds and benefits from this Agreement serves a valid public purpose; and

WHEREAS, Half Day Brewing has determined that it is desirous to its business to enter into this Agreement;

NOW, THEREFORE, in consideration of the recitals and mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Village and Company hereby agree as follows:

IN CONSIDERATION OF the recitals and mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Village and Half Day Brewing hereby agree as follows:

SECTION 1. FINDINGS OF FACT:

- A. Half Day Brewing has been operating its brew pub business at 200 Village Green in Lincolnshire (the "Development") since the spring of 2016.
- B. Half Day Brewing is in the process of implementing and expanding its beer brewing and distribution operations at the Development to generate additional sales revenue needed to continue the operation of the brew pub at this location.
- C. Half Day Brewing's landlord, Village Green Baceline LLC, is supportive of the brew pub adding and expanding into beer brewing and distribution activities at the Development.

- D. The expansion of the brewing and distribution operations will enable Half Day Brewing to enter into discussions with the landlord regarding the possible purchase of the Development within the next two to three years.
- E. The expansion of the brewing and distribution operations has a goal of ultimately maintaining a sales ratio resulting in the restaurant/brew pub being the primary operation and distribution being the secondary operation.
- F. Depending upon demand, Half Day Brewing may require additional brewing/canning/bottling facilities at a location other than the Development.

SECTION 2. DEFINITIONS:

Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context:

"Commencement Date": _____.

"Force Majeure": An Act of God or other event or cause not reasonably within the control of Company or the Village including, without limitation, delays by the State of Illinois or Illinois Department of Revenue, fires or other casualty, strikes, building material supply shortages, vendor problems not caused by Company, embargoes, civil riot, floods, or natural catastrophe.

"Gross Taxable Receipts": The term "Gross Taxable Receipts" shall have the same meaning as that which is ascribed to "Gross Receipts" in the Retailers' Occupation Tax Act.

"Food and Beverage Tax": The food and beverage tax authorized by the Village of Lincolnshire, as outlined in Ordinance #17-3752-180 and codified as Title 3, Chapter 1, Section 13, et seq., at such rates as may be in effect from time to time.

"Home Rule Sales Tax": The sales taxes authorized for home rule units pursuant to the Home Rule Municipal Retailers' Occupation Tax Act, 65 ILCS 5/8-11-1, and the Home Rule Municipal Service Occupation Tax, 65 ILCS 5/8-11-5, inclusive, and adopted by the Village by Ordinance 10-3164-41, as amended, at such rates as may be in effect from time to time.

"Municipal Sales Tax": That portion or component of the Sales Taxes the Village actually receives from the State of Illinois pursuant to the Sales Taxes arising from or generated by Half Day Brewing's Gross Taxable Receipts.

"Municipal Taxes": The Municipal Sales Tax and Food and Beverage Tax arising from or generated by Half Day Brewing's operation at the Development, or a substitute location within the Village boundaries.

"Retailers' Occupation Tax Act": The Illinois Retailers' Occupation Tax Act, 35 ILCS 120/1 *et seq.*, as the same has been and may, from time to time hereafter, be amended.

"Sales Taxes" or "Sales Tax": Any and all taxes collected by the State of Illinois pursuant to the Home Rule Sales Tax, the Retailers' Occupation Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, and the Use Tax Act or any other local retailers' occupation tax, service occupation tax, use tax or equivalent sales and/or use tax authorized by Illinois law.

"Tax Rebate": That portion of the Municipal Sales Tax and Food and Beverage Tax that the Village is required to pay to Company pursuant to this Agreement.

"Tax Year": The first Tax Year shall start on the Commencement Date and shall end on December 31st of the same calendar year in which the Commencement Date occurred, and thereafter each subsequent Tax Year shall start on January 1 and end on December 31 of each such subsequent calendar year during the term of this Agreement.

"Service Occupation Tax Act": The Illinois Service Occupation Tax Act, 35 ILCS 115/1 *et seq.*, as the same has been and may, from time to time hereafter, be amended.

"Service Use Tax Act": The Illinois Service Use Tax Act, 35 ILCS 110/1 *et seq.*, as the same has been and may, from time to time hereafter, be amended.

"Taxable Sales Point": The geographic location and point at which certain sales made shall be considered complete and accepted and Sales Taxes are incurred for such sales for the purpose of determining which municipality is due the local distributive share of the Sales Tax from the Illinois Department of Revenue.

"Use Tax Act": The Illinois Use Tax Act, 35 ILCS 105/1 *et seq.*, as the same has been, and May, from time to time hereafter, be amended.

SECTION 3. CREATION AND APPROVAL OF EXCLUSIVE AND ONLY TAXABLE SALES POINT: Upon execution of this Agreement, Half Day Brewing will undertake immediately such internal corporate measures necessary to maintain within the Village the Development as its Exclusive and Only Taxable Sales Point for all Half Day Brewing sales. Half Day Brewing shall promptly seek a Private Letter Ruling from the Illinois Department of Revenue ("IDOR") seeking IDOR's concurrence that the Development is Half Day Brewing's Exclusive and Only Taxable Sales Point.

SECTION 4. INTERNET SALES:

As soon as is practical after Illinois law and/or federal law, and/or appropriate regulations are promulgated to permit internet sales of beer, Half Day Brewing shall use its best efforts to designate the Village as the Taxable Sales Point for all internet sales so that the Municipal Taxes associated with those sales shall be credited to the Village. In the event that the Village receives Municipal Taxes from Half Day Brewing's Internet sales, or any other Half Day Brewing Illinois sales outside the Village, or any interstate sales, such Municipal Taxes shall for purposes of this Agreement be included as in the calculation of the Tax Rebate pursuant to the terms of this Agreement.

SECTION 5. EXCLUSIVE AGREEMENT; AFFILIATES:

A. During the term of this Agreement, Half Day Brewing agrees not to enter into any other Municipal Tax (i.e., revenue sharing) or economic incentive agreements with any other municipalities regardless of where located.

B. The Village and Half Day Brewing intend for this Agreement to apply to all sales which occur from the Development or a substitute or supplemental location in the Village, regardless of whether the sales are made by a parent, affiliate or subsidiary of Half Day Brewing. For the purpose of implementing such intent, Half Day Brewing agrees to:

1. Identify to the Village all parent, affiliate or subsidiary companies organized for the purpose of operating any brewing or distribution business;
2. File all documents and perform all actions to cause the exclusive Taxable Sales Point for each parent, affiliate or subsidiary company to be located within the Village;
3. File all documents required for the Illinois Department of Revenue to share tax information for such parent, affiliate or subsidiary companies with the Village for the purpose of implementing this Agreement; and
4. Amend this Agreement to the extent necessary to add such parent, affiliate or subsidiary companies as parties to this Agreement.

C. Nothing herein shall be construed to change the Rebate Percentage Formula or the maximum Rebate for which the Village shall be liable, regardless of the number of parent, affiliate or subsidiary companies added as parties to this Agreement.

SECTION 6. TAX REBATE:

- A. **Tax Rebate.** For each Quarter (defined below) of each Tax Year under this Agreement, the Village shall pay to Half Day Brewing a Tax Rebate in an amount equal to fifty percent (50%) of the Municipal Taxes generated by Half Day Brewing during such Quarter, provided,

however, in no event shall the Village be required to pay, in the aggregate, more than \$100,000.00 per Tax Year ("**Rebate Percentage Formula**"). The maximum aggregate of all payments made by the Village to Half Day Brewing under the Rebate Percentage Formula during the Term of this Agreement shall not exceed \$250,000.00.

B. Village Payment.

1. **Tax Quarters.** Each Tax Year under this Agreement shall be divided into quarters ("**Quarter**"), such that (1) the first quarter of each Tax Year shall commence on January 1 (or, in the case of the first Tax Year, the Commencement Date provided the Commencement Date occurs after January 1 and on or before March 31) and end on March 31, (2) the second quarter of each Tax Year shall commence on April 1 (or, in the case of the first Tax Year, the Commencement Date provided the Commencement Date occurs after April 1 and on or before June 30) and end on June 30, (3) the third quarter of each Tax Year shall commence on July 1 (or, in the case of the first Tax Year, the Commencement Date, provided the Commencement Date occurs after July 1 and on or before September 30) and end on September 30, and (4) the fourth quarter of each Tax Year shall commence on October 1 (or, in the case of the first Tax Year, the Commencement Date provided the Commencement Date occurs after October 1 and before December 31) and end on December 31.
2. **Payment Date and Calculation of Quarterly Payments.** On or before the day that is ninety (90) days after the end of each Quarter of each Tax Year ("**Payment Date**"), the Village shall pay to Company the applicable Tax Rebate for that particular Quarter pursuant to the Rebate Percentage Formula.

- C. Additional Sales Tax or Food & Beverage Tax.** If, at any time during any Tax Year, the Village or the State is, or becomes able to, and does, increase the rate of Sales Tax or Food and Beverage Tax imposed within the Village, then the Tax Rebate for the increase shall be calculated and paid based upon the increased amount, pursuant to the Rebate Percentage Formula and on the same terms as are set forth in Subsections B(1) and B(2) of this Section.

- D. Records.** The Village may, up to two times for any Tax Year, review the account books and records of Half Day Brewing in order to verify the dollar amount of sales made, the dollar amount of Sales Taxes collected and paid to the State, and the point of sale of Half Day Brewing's Illinois sales.

- E. **No Indebtedness.** In the event Half Day Brewing is delinquent to the Village for any or all of the fees and charges due for any municipal utility services supplied by the Village to the Development, Half Day Brewing shall not be entitled to the Tax Rebate or the issuance of any building permits, real estate transfer tax stamps, certificates of occupancy, permits or licenses of any kind whatsoever by the Village while any such delinquency remains.

SECTION 7. CHANGE IN LAW:

- A. The Village and Half Day Brewing acknowledge and agree that the Village's obligation to pay the Tax Rebate for Municipal Sales Tax to Half Day Brewing is predicated on existing State law, including, without limitation, the Retailer's Occupation Tax Act. The Village and Half Day Brewing further acknowledge that the General Assembly of the State has, from time to time, considered proposals to modify or eliminate the distribution of Sales Taxes to Illinois municipalities. The Village and Half Day Brewing desire in Paragraph B of this Section to make express provision for the effect of any such change upon the operation of this Agreement.
- B. In the event that the State of Illinois amends or repeals the Retailer's Occupation Tax Act or makes any other promulgation, enactment or change in law ("Change in Law") that eliminates the distribution of Sales Taxes to the Village, or otherwise alters the distribution formula in a manner that prevents the Village and Half Day Brewing from determining with a reasonable degree of certainty the precise amount of the Municipal Sales Tax, those provisions of this Agreement with regard to the rebate of Municipal Sales Tax generated from the Development on or after the effective date of the Change in Law shall automatically terminate and become null and void and be of no further force or effect, and the Village shall have no obligation whatsoever to pay to Half Day Brewing any of the Municipal Sales Tax generated on or after the effective date of the Change in Law, provided the provisions of this Agreement with regard to rebate of the Food and Beverage Tax shall remain in full force and effect to the extent permitted by law. However, if a Change In Law results in replacement taxes for the Sales Taxes directly resulting from Gross Receipts of Half Day Brewing as contemplated hereunder, then, for purposes of the Agreement, such replacement taxes shall be defined as Sales Taxes, subject in all respects to the Village's actual receipt of its portion of such replacement taxes as well as the Village's authority under state law to provide for rebate of such replacement taxes, as contemplated herein.

SECTION 8. NO GUARANTEE:

The parties acknowledge and agree that none of the terms, conditions, or provisions of this Agreement shall be construed, deemed, or interpreted as a guarantee that the Village will receive any Municipal Taxes as a result of Half Day Brewing's operation.

SECTION 9. LIMITED LIABILITY:

Notwithstanding any other provision of this Agreement to the contrary, the Village's obligation to pay the Tax Rebate shall not be a general debt of the Village, nor shall it be a charge against its general credit or taxing powers, but shall be a special, limited obligation payable solely out of the Municipal Sales Tax and Food and Beverage Tax received by the Village, as specifically defined in Section 2 of this Agreement. Without prejudice to its right to enforce the terms of this Agreement against any amounts receivable out of Municipal Taxes, Half Day Brewing shall have no right to, and agrees that it shall not, compel any exercise of the taxing power of the Village to pay the Tax Rebate to Half Day Brewing even if the Village is in violation of this Agreement, and no execution of any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or other property of the Village (unless the Village refuses to make such payment to Half Day Brewing in violation of this Agreement). No recourse shall be had for any payment pursuant to this Agreement against any past, present, or future director, member, elected or appointed officer, official, agent, attorney or employee of the Village in his or her individual capacity.

SECTION 10. REFUND OF REBATE:

In the event that, at any time during the term of this Agreement, Half Day Brewing abandons, closes or terminates the Development without substituting therefor, within 18 months (subject to extensions due to Force Majeure) after such abandonment, closure, or termination, another development that is intended and expected, with a reasonable degree of certainty, to generate at least the same amount of Municipal Taxes as the Development that was abandoned, closed, or terminated ("Closure"), then (1) the provisions of this Agreement with regard to the Municipal Taxes generated from the Development shall, as of the date of the Closure, automatically terminate and become null and void and be of no further force or effect, and the Village shall have no obligation whatsoever to perform the Tax Rebate obligation set forth in Section 6 of this Agreement; (2) Half Day Brewing shall have no further obligation under Sections 3, 4 and 5 of this Agreement; and (3) Half Day Brewing shall be required to refund to the Village the entire amount of the Sales Taxes and Food and Beverage Taxes rebated to and received by Half Day Brewing in the Tax Year immediately prior to the date of Closure, provided if Half Day Brewing, or its owners or affiliates, open a substantially similar substitute development outside the boundaries of the Village within 2 years after such Closure, the refund/rebate owed to the Village shall be equal to the Tax Rebate for the three Tax Years immediately prior to the date of Closure.

Half Day Brewing agrees to use its best effort to open any additional or supplemental brewing and distribution operations within the Village. In the event Half Day Brewing opens an additional or supplemental brewing and distribution operation within the Village during the term of this Agreement, the term "Development" shall be amended to include all locations within the Village from which Half Day Brewing performs sales subject to the Municipal Taxes.

SECTION 11. FORCE MAJEURE:

Whenever a period of time is provided for in this Agreement for either Half Day Brewing or the Village to perform any act or obligation, and Half Day Brewing or the Village, as the case may be, is unable to perform or complete such act or obligation because of a Force Majeure, then upon the occurrence of any such Force Majeure, the time period for the performance and completion of such act or obligation shall be extended for a reasonable time to accommodate the delay caused by the Force Majeure.

SECTION 12. LITIGATION AND DEFENSE OF AGREEMENT:

- A. Litigation. If, during the term of this Agreement, any lawsuits or proceedings are filed or initiated against either party before any court, commission, board, bureau, agency, unit of government or sub-unit thereof, arbitrator, or other instrumentality, that may materially affect or inhibit the ability of either party to perform its obligations under, or otherwise to comply with, this Agreement ("Litigation"), the party against which the Litigation is filed or initiated shall promptly deliver a copy of the complaint or charge related thereto to the other party and shall thereafter keep the other party fully informed concerning all aspects of the Litigation.
- B. Defense. The Village and Half Day Brewing do hereby agree to use their respective best efforts to defend the validity of this Agreement, and all ordinances and resolutions adopted and agreements executed pursuant to this Agreement, including every portion thereof and every approval given, and every action taken, pursuant thereto. Each party shall have the right to retain its own independent legal counsel, at its own expense, for any matter. The Village and Half Day Brewing do hereby agree to reasonably cooperate with each other to carry out the purpose and intent of this Agreement.

C. Village's Reservation of Rights.

1. Permitted Action and Non-Village Agreements. Without being deemed to be in violation of Subsection B of this Section, the Village reserves the right, in its own discretion, to bring an action ("Permitted Action") to challenge a proposed or executed economic incentive agreement, other than this Agreement, that is between another Illinois municipality and another business entity ("Non-Village Agreement").
2. Permitted Circumstances. Permitted Actions challenging the rebate of Municipal Sales and Food and Beverage Taxes under Non-Village Agreements that provide for the rebate of Municipal Sales and Food and Beverage Taxes in a manner substantially the same as is provided under this Agreement shall only be brought under the following specific circumstances ("Permitted Circumstances"):
 - a. If a Lincolnshire business with annual Gross Receipts no less than \$200,000 is reliably reported to the Village to be actively considering relocating to another municipality as a result of a Non-Village Agreement or directly threatens the Village by a communication (oral or written) to a member of the Village staff or the Village's corporate authority that it will relocate to another municipality as the result of the offer of a Non-Village Agreement; or
 - b. If two or more Lincolnshire businesses, each with annual Gross Receipts no less than \$100,000, are each reliably reported to the Village to be actively considering relocating to another municipality as a result of respective Non-Village Agreements or each directly threatens the Village by communications (oral or written) to a member of the Village staff or the Village's corporate authority that each will relocate to another municipality as the result of the offer to each of respective Non-Village Agreements.
3. Non-Waiver. The failure of the Village to Initiate a Permitted Action under a particular Permitted Circumstance, shall not be deemed to be a waiver of the Village's right to bring another Permitted Action at a later date under another or the same Permitted Circumstance.
4. Challenge to Agreement. In no event shall either the Village or Half Day Brewing bring an action to challenge the validity of this Agreement.

SECTION 13. INDEMNITY:

- A. General. Half Day Brewing agrees to, and does hereby, hold harmless and indemnify the Village, its corporate authorities, all Village elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any such parties in connection with (i) the Village's review and approval of any plans, or the issuance of any approvals, permits, certificates, or acceptances relating to the Development; (ii) the development, construction, and maintenance of the Development; and (iii) the performance by Half Day Brewing of its obligations under this Agreement and all related ordinances, resolutions, or other agreements. Half Day Brewing shall, and does hereby agree to, pay without protest, all expenses incurred by the Village in defending itself with regard to any and all claims identified in the first sentence of this Section. These expenses shall include all out-of-pocket expenses, such as attorneys' and expert fees, and shall also include the reasonable value of any services rendered by any employees of the Village, not to exceed their actual salaries.
- B. Consumer Fraud. Should an action be initiated against the Village on any theory by a customer of Half Day Brewing for consumer fraud or like statutory or common law cause of action arising out of the payment by the customer of Sales Tax without notice that some of the Sales Tax being paid is rebated to Half Day Brewing by the Village, then Half Day Brewing shall and hereby agrees and warrants that it shall accept the defense of the Village, pay all judgment, penalty, interest and/or other financial effects of the suit, holding the Village completely harmless in any such action.

SECTION 14. REMEDIES:

- A. Remedies. In the event of a breach or an alleged breach of this Agreement by either party, either party may, by suit, action, mandamus or any other proceeding, in law or in equity, including specific performance, enforce or compel the performance of this Agreement. In addition, if the Village fails or refuses to pay all undisputed amounts due under this Agreement for a period of six (6) months from any applicable Payment Date, or twice in any twenty-four (24) month period fails or refuses to pay all undisputed amounts due under this Agreement for a period of sixty (60) days, then, without prejudice to any other rights or remedies it may have, Half Day Brewing may elect to terminate this Agreement, whereupon Half Day Brewing shall have no further obligation under Sections 3, 4 and 5 of this Agreement.
- B. Notice and Cure. Neither party may exercise the right to bring any suit, action, mandamus or any other proceeding, or obtain any other form of relief, pursuant to Paragraph A of this Section without first providing

written notice to the other party of the breach or alleged breach and allowing a period of 15 days for the curing of said breach or alleged breach; provided, however, that in the event such violation or failure cannot be cured within said 15 day period notwithstanding diligent and continuous effort by the party receiving notice and said party shall have promptly commenced to cure the violation or failure and shall have thereafter prosecuted the curing of same with diligence and continuity, then the period for curing such violation or failure shall be extended for such period as may be reasonably necessary for curing such violation with diligence and continuity.

SECTION 15. TERM:

This Agreement shall be in full force and effect from and after its execution until the date on which the Village has made all payments required pursuant to this Agreement, but in no case more than 10 years; provided, however, that if such term shall, for any reason, be held invalid, the term shall be the maximum term permitted by applicable law as of the date of this Agreement or such longer term as may be subsequently allowed.

SECTION 16. RELEASE OF INFORMATION:

Half Day Brewing agrees to sign all documentation necessary to cause the Illinois Department of Revenue to release to the Village the records of the Sales Taxes generated by Half Day Brewing from the Development during each of the Tax Years.

SECTION 17. GENERAL PROVISIONS:

- A. Complete Agreement; Supersedence. This Agreement constitutes the complete agreement of the parties regarding the rebate of Municipal Sales Tax and Food and Beverage tax to Half Day Brewing and shall supersede and nullify all prior drafts and agreements concerning such matters.
- B. Amendments. No amendment to, or modification of, this Agreement shall be effective unless and until it is in writing and is approved by the authorized representative of Half Day Brewing and by the corporate authorities of the Village by resolution duly adopted, and executed and delivered by the authorized representatives of each party.
- C. Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing, and shall be deemed delivered to and received by the addressee thereof when delivered in person at the address set forth below, or three business days after deposit thereof in any main or branch United States Post Office, certified or registered mail, return receipt requested, postage prepaid, properly addressed to the parties, respectively, as follows:

For notices and communications to the Village:

Village of Lincolnshire
One Olde Half Day Road
Lincolnshire, Illinois 60069
Attention: Village Manager

with a copy to:

Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C.
140 South Dearborn, Suite 600
Chicago, Illinois 60603
Attn: Adam Simon

For notices and communications to Half Day Brewing:

Half Day Brewing
200 Village Green
Lincolnshire, IL 60069

with a copy to:

Donald B. Leventhal
Chittenden, Murday & Novotny, LLC
303 West Madison, Suite 1400
Chicago, IL 60607

By notice complying with the foregoing requirements of this Paragraph, each party shall have the right to change addresses or both for all future notices and communications to such party, but no notice of change of address shall be effective until actually received.

- D. Governing Law. This Agreement and the rights of the parties hereunder shall be governed by, and construed, interpreted, and enforced in accordance with, the internal laws, and not the conflict of law rules, of the State of Illinois.
- E. Interpretation. This Agreement has been negotiated by all parties and shall not be Interpreted or construed against the party drafting the Agreement.
- F. Change in Laws. Except as otherwise explicitly provided in this Agreement, any reference to laws, ordinances, rules, or regulations of any kind shall include such laws, ordinances, rules, or regulations of any kind as they may be amended or modified from time to time hereafter.

- G. Headings. The headings of the sections, paragraphs, and other parts of this Agreement are for convenience and reference only and in no way define, extend, limit or describe the meaning, scope, or intent of this Agreement, or the meaning, scope, or intent of any provision hereof.
- H. Time of Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.
- I. Assignment. Half Day Brewing may not assign this Agreement, nor shall Half Day Brewing assign the amounts, in whole or part, to be reimbursed hereunder without the Village's prior written consent, which consent shall not be unreasonably withheld. The Village acknowledges that this Agreement is an obligation which runs to Half Day Brewing and is not a covenant running with the land.
- J. No Third Party Beneficiaries. Except as expressly provided herein, nothing in this Agreement shall create, or be construed to create, any third party beneficiary rights in any person or entity not a signatory to this Agreement.
- K. Counterparts. This Agreement may be executed in any number of multiple identical counterparts and all of said counterparts shall, individually and taken together, constitute this Agreement.
- L. Severability. It is the express intent of the parties hereto that should any provision, covenant, agreement, or portion of this Agreement in its application to any person, entity, or property be held void, invalid, or unenforceable by a court of competent jurisdiction, such action shall not affect the remainder of this Agreement, which shall continue in full force and effect.

SECTION 18. REPRESENTATIVES AND WARRANTIES:

- A. In order to induce the Village to enter into this Agreement and to adopt the ordinances and grant the rights herein provided for, Half Day Brewing hereby warrants and represents to the Village as follows:
 - 1. Half Day Brewing has the authority and the legal right to make, deliver, and perform this Agreement and has taken all necessary corporate actions to authorize the execution, delivery, and performance of this Agreement.
 - 2. All necessary consents of any owners, manager, Board of Directors and/or shareholders regarding the execution and delivery of this Agreement have been obtained.

3. The individuals executing this Agreement on behalf of Half Day Brewing have the power and authority to execute and deliver this Agreement on behalf of Half Day Brewing.
- B. In order to induce Half Day Brewing to enter into this Agreement and to adopt the ordinances and grant the rights herein provided for, the Village hereby warrants and represents to Half Day Brewing as follows:
1. The Village has the authority and the legal right to make and deliver this Agreement and has taken all necessary action to authorize the execution, delivery, and performance of this Agreement.
 2. The individuals executing this Agreement on behalf of the Village have the power and authority to execute and deliver this Agreement on behalf of the Village.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

VILLAGE OF LINCOLNSHIRE,
an Illinois municipal corporation,

Elizabeth J. Brandt, Mayor

ATTEST:

Barbara Mastandrea, Village Clerk

HALF DAY BREWING, LLC,

By: _____

Its: Manager