

ECONOMIC INCENTIVE AGREEMENT

This Agreement (“Agreement”) is entered into this _____ day of _____, 2024, by and between the Village of Romeoville, an Illinois Municipal Corporation (“Village”) and Sable Creek Winery, L.L.C. (“Developer”).

RECITALS

WHEREAS, the Village of Romeoville is a home rule unit of government pursuant to Article VII, Section 6(a) of the Illinois Constitution of 1970 and may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the Village has for the past several years experienced the rapid development of new commercial and retail businesses and a growth in population; and

WHEREAS, the additional needs and demands created by an increased population within the Village have created the need for additional retail businesses within the corporate limits of the Village, including but not limited to, the development of commercial uses including national retailers or retailers of nationally branded products that would provide goods and services to Village residents that are presently unavailable for purchase within the existing corporate limits of the Village; and

WHEREAS, the Village desires that any such new retail development should be capable of generating substantial retailers’ occupation tax revenues to assist the Village in conducting its operations without the necessity of resorting to property tax increases, and further that such retail development should proceed in as expeditious a fashion as possible; and

WHEREAS, while the Village recognizes the importance of free and open economic competition, and the healthy nature of increased competition resulting from the creation of new retail businesses within the Village, the Village likewise desires to maintain a healthy economic climate for all existing businesses within the Village; and

WHEREAS, the Village has determined that securing the location of retail operations is itself a highly competitive endeavor, and that the successful location of such retail operations at a particular location at a desired time may necessitate the use of a variety of incentives, including but not limited to the retailers’ occupation tax incentives permitted by 65 ILCS 5/8-11-20; and

WHEREAS, Developer is the owner and developer of an existing commercial building at the northeast corner of the intersection of Budler Road and Airport Road within the Village (the “Building”), all as depicted in Exhibit A; and

WHEREAS, Developer is actively engaged in redeveloping the Building to serve as and for a winery building for the production of wine on premises together with facilities for the sale and service of wine and other beverages for on and off premises consumption (the “Winery”), all within the property legally described in Exhibit A (the “Site”); and

WHEREAS, the Village has determined that proposed development of the Winery on the Site within the Building is eligible to be the subject of an economic incentive agreement as contemplated by 65 ILCS 5/8-11-20 and will satisfy the criteria set forth in 65 ILCS 5/8-11-20; and

WHEREAS, the Village finds pursuant to 65 ILCS 5/8-11-20:

- (a) That the Site has remained vacant for at least one year; and
- (b) That the proposed development is expected to create or retain job opportunities within the Village which job opportunities will consist of both construction-related jobs and permanent jobs; and
- (c) That the proposed development will serve to further the development of adjacent areas within the Village; and
- (d) That without this Agreement, securing the commitment of the Developer to develop the Winery within the Building would not be economically feasible at this time without the economic incentives provided in this Agreement; and
- (e) That the Developer meets high standards of credit worthiness and financial strength; and
- (f) That the development of the proposed Winery will strengthen the commercial sector of the Village; and
- (g) That the development of the proposed Winery will enhance the tax base of the Village; and
- (h) That this Agreement is made in the best interest of the Village.

WHEREAS, after due and careful consideration, the Corporate Authorities having determined that it is in the best interests of the Village to enter into this Agreement to provide economic incentives for the development of the proposed Winery pursuant to 65 ILCS 5/8-11-20 and pursuant to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the receipt and sufficiency of which is hereby mutually acknowledged by the parties, the Village and Developer hereby agree as follows:

1. Recitals. The foregoing recitals are hereby incorporated into this Agreement as if fully set forth herein.
2. Development Requirements. As a condition of the Village's obligation to make any payments, reimbursements, incentives or rebates hereunder, Developer shall be obligated to

redevelop the Building with the Winery in a manner consistent with the submittals made to the Village by Developer, which submittals shall comply fully with the applicable ordinances, codes and resolutions of the Village. Developer at all times shall comply in all respects with the applicable ordinances, codes and resolutions of the Village in connection with the development and use of the Site, Building and Winery.

3. Tax Incentives. Developer and the Village acknowledge that Developer shall develop the Winery within the Building on the Site. Upon the issuance by the Village of a certificate of occupancy for the Winery, and the occurrence of the opening of the Winery for business, Developer shall become eligible, subject to the provisions of Section 3.A. hereof, to begin receiving retailers' occupation tax reimbursement incentives from the Village in an amount equal to fifty percent (50%) of the Illinois retailers' occupation tax payments arising from the operation of the Winery which are actually collected by the State of Illinois and thereafter actually distributed to the Village of Romeoville, subject to the provisions of Section 3.A. hereof. Retailers' occupation tax reimbursement incentives payable hereunder shall be payable from the Village's distributive share of the retailers' occupation tax payments required and collected by the State pursuant to 35 ILCS 120/3 and thereafter actually distributed to the Village pursuant to 30 ILCS 115/2, only to the extent that such retailers' occupation tax payments were collected from or generated by the Winery, and (ii) the Village Home Rule component of the retailers' occupation tax payments required and collected by the State pursuant to 35 ILCS 120/3 and thereafter actually distributed to the Village pursuant to 30 ILCS 115/2, to the extent that such retailers' occupation tax payments were collected from or generated by the Winery. The retailers' occupation tax reimbursement incentive is limited to the extent that the retailers' occupation tax payments are collected by the State from, and/or generated by, the retail sales activity of the Winery. As an additional and further tax incentive to the Developer, upon the issuance by the Village of a certificate of occupancy for the Winery, and the occurrence of the opening of the Winery for business, Developer shall further become eligible, subject to the provisions of Section 3.A. hereof to receive further tax incentives from the Village in an amount equal to fifty percent (50%) of the Village Home Rule Food and Beverage Tax payments imposed pursuant to Chapter 122.65 et. seq. of the Village Code of Ordinances, but only to the extent the Developer has actually collected such taxes and paid the same over to the Village in compliance with all applicable requirements of said Chapter 122.

A. Conditions on Incentive Payments. Notwithstanding anything herein to the contrary, the right of Developer to receive retailers' occupation tax reimbursement payments as otherwise contemplated in this Section 3 as well as the obligation of the Village to make any such payments shall be subject to the following conditions:

- i) The Village shall have no obligation under this Agreement to make any payments to Developer whatsoever with respect to taxes generated by or payable from the Winery on or after that date which is three (3) years from the date on which the Winery has opened for business to the public. The Village shall not have any obligation to make any payments hereunder from any fund or sources of funds or monies other than retailers' occupation tax payments and Home Rule Food and Beverage Tax Payments collected by the State and distributed to the Village and

which were initially generated and paid as a result of retail sales activity of the Winery.

- ii) In the event the Winery shall at any time thereafter cease to operate for any reason for a period of more than six (6) months (other than on account of an event of Force Majeure (as defined below), renovation, or remodeling) the right of Developer to receive any reimbursement of retailers' occupation tax incentive payments under this Agreement shall terminate as of the expiration of such six (6) month period.
- iii) Notwithstanding any other provision of this Agreement, Developer shall not be entitled to receive any payments whatsoever under this Agreement unless, on or before September 1, 2024, the Village has issued a certificate of occupancy for the Winery and the Winery has opened for business. The Village Manager shall be authorized (but not required) at her sole discretion to extend any of the deadlines set forth within this Section 3.A.iii by a letter bearing her signature, without the need for an amendment to this Agreement.
- iv) The conditions in this Section 3.A. are specifically subject to the following provision. "Force Majeure", for purposes of this Agreement, shall mean a delay or failure of performance, if and to the extent that such delay or performance is caused by occurrences beyond the reasonable control of Developer, its agents, employees, contractors, subcontractors and consultants, including but not limited to acts of God or the public enemy, fire or other casualty, acts of terrorism or threats of acts of terrorism, public disorders, sabotage, earthquakes, tornados, floods, other adverse weather events, strikes, labor or employment difficulties, delays in transportation, inability to obtain necessary materials or permits due to existing or future laws, rules or regulations of governmental authorities, or any other causes, whether direct or indirect. The delay or failure of performance shall not be within the reasonable control of Developer, or its respective agents, employees, contractors, subcontractors and consultants. This Force Majeure provision does not apply to delay or failure of performance which by the exercise of reasonable diligence Developer is able to prevent. Developer shall not be entitled to the benefits of this Force Majeure provision unless it gives the Village reasonably prompt written notice of the existence of any event, occurrence or condition which it believes constitutes an event of Force Majeure.
- v) In the event that the construction of the Winery and opening for business shall fail to satisfy the conditions of Section 3.A(iii), subject only to such delays as may be permitted under the Force Majeure provision, and considering any extensions of time granted by the Village Manager, any and all rights to tax reimbursement incentive payments contemplated by this Agreement with respect to the potential tax reimbursement incentives contemplated to be generated by the Winery shall immediately terminate and become null and void and of no further effect.

B. Timing of Incentive Payments; Required Documentation. Subject to the conditions of Section 3.A., all sharing of retailers' occupation tax incentive payments contemplated or required to be made hereunder by the Village to Developer shall be made within 30 days of the

last to occur of i) the receipt of the necessary documentation from the Illinois Department of Revenue to establish the amount of retailers' occupation tax collected and paid to the State by the Developer from the Winery during a given year within the initial or any renewal term of this Agreement, and ii) the actual receipt by the Village from the State of the total amount of the Village's periodic distributive share of such retailers' occupation tax collected and paid to the State by the Developer from the Winery during a given year within the initial or any renewal term of this Agreement. All determinations of the amount of any reimbursement of retailers' occupation tax incentive payments due or owing hereunder shall be made by the Village Finance Director based on the provisions of this Agreement, the documentation and information to be provided to the Village by the Illinois Department of Revenue as contemplated by this Section 3.B, and the amount of retailers' occupation tax monies actually paid to the Village arising from retailers' occupational taxes generated by the Winery within the Site, together with such other relevant retailers' occupation tax related information as may be made available to the Village from time to time by the State. Developer acknowledges that payments to the Village by the Illinois Department of Revenue may be months in arrears from when the taxes were generated by retail activity and paid to the State.

4. Village Building Permit Fees. In connection with all building permit applications and submittals made by the Developer on or before the issuance by the Village of a certificate of occupancy for the Winery, the Village shall waive the otherwise applicable basic building permit fee payable to the Village Community Development Department in connection with the issuance, review or administration of building permits or inspections pursuant to Chapter 43.02 of the Village Code of Ordinances, provided, however, the building permit fee waiver provided for herein shall be limited solely to building permit fees due and payable with respect to building permits applied for in connection with interior buildout work, renovation work or remodeling work done by the Developer on or prior to the issuance by the Village of a certificate of occupancy for the Winery. Furthermore, nothing in this Section 4.A shall be deemed to reduce or modify in any way the Developer's obligation under Chapter 43.02 to pay any fees, charges or expenses of any kind to the Village where such fees, charges or expenses arise or result from out-of-pocket expenditures made by the Village to third-party consultants or service providers in connection with the receipt, review, approval or administration of applications or submittals made in connection with building permits or inspections, or to reduce or modify in any way the obligation of the Developer to pay any fees imposed by Chapter 43.02 that are not expressly set forth and identified in this Section 4.A. Nothing herein shall be deemed to limit in any way the Village's ability to amend all or any fees due under Chapter 43.02 from time to time, at its sole discretion.

5. Miscellaneous.

A. The parties acknowledge and agree that the individuals who are members of the group constituting the corporate authorities of the Village are entering into this Agreement in their corporate capacities as members of such group and shall have no personal liability in their individual capacities.

B. This Agreement is valid and binding and shall continue to be valid and be binding from and after the date of this Agreement until Developer has received all incentives to which it is

entitled under the terms hereof, unless terminated for lack of performance of any conditions set forth in Section 3.

C. The failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreement, 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. No action taken by any party to this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any party at law or equity.

D. This Agreement shall be binding and inure to the benefit of the parties hereto and their respective successors and assigns. Developer may assign this Agreement to (i) any other person or entity acquiring the lease of the Winery from Developer or acquiring ownership of the Building and/or the Site provided that such assignee assumes all of Developer's obligations hereunder and (ii) to any lender providing financing to Developer as collateral for such loan; provided that in either case Developer may retain the right to receive the Incentive Payments payable by the Village under Section 3 of this Agreement.

E. This Agreement sets forth all agreements, understandings, and covenants between and among the parties. This Agreement supersedes all prior agreements, negotiations and understandings, written and oral, and is a full integration of the entire Agreement of the parties.

F. If any provision, clause, word, or designation of this Agreement is held to be invalid by any court of competent jurisdiction, such provision, clause, word or designation shall be deemed to be excised from this Agreement and the invalidity thereof shall not affect any other provision, clause, word, or designation contained herein.

G. This Agreement may be executed in multiple counterparts, all of which when taken together shall constitute one Agreement.

H. The headings of the Sections of this Agreement are for convenience and reference only and do not form a part hereof and do not modify, interpret or construe the understandings of the parties hereto.

I. This Agreement may be reproduced. Each such reproduction, if manually executed by the parties, shall for all purposes be deemed, and the same is hereby declared, to be a duplicate original of this Agreement.

J. Terms used in this Agreement shall be read in the singular or the plural as may be appropriate to the context in which they are used.

K. Notices, including Notice to effect a change as to the persons hereinafter designated to receive Notice(s), or other writings which any party is required to or may wish to serve upon any other party in connection with this Agreement shall be in writing and shall be delivered

personally or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Village, or the corporate authorities:

Village of Romeoville
1050 W. Romeo Road
Romeoville, Illinois 60446
Attn: Village Manager Dawn Caldwell

With a copy to:

Richard E. Vogel
Tracy, Johnson & Wilson
2801 Black Road, 2nd Floor
Joliet, Illinois 60435

If to Developer:

Sable Creek Winery, L.L.C.
1876 W Airport Rd
Romeoville, Illinois 60446

With a copy to:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers duly authorized to execute the same, the day and year first above written.

“Village”

VILLAGE OF ROMEOVILLE,
a municipal corporation,

By: _____
Village President

ATTEST:

By: _____
Village Clerk

“Developer”

Sable Creek Winery, L.L.C.

By: _____
Its Manager

EXHIBIT A
Depiction/Description of Center

EXHIBIT B
Depiction/Description of Site