
**VILLAGE OF SUGAR GROVE
BOARD REPORT**

TO: VILLAGE PRESIDENT & BOARD OF TRUSTEES
FROM: MATT ANASTASIA, FINANCE DIRECTOR
SUBJECT: RESOLUTIONS: AMENDING ECONOMIC DEVELOPMENT & INCENTIVE AGREEMENT WITH THREE BROTHERS & PAPOU, LLC. (BURNT BARREL)
AGENDA: OCTOBER 15, 2024
DATE: OCTOBER 7, 2024

ISSUE

Shall the Village Board approve an Amendment to the Economic Development and Economic Incentive Agreements with Three Brothers & Papou LLC. d/b/a Burnt Barrel II.

DISCUSSION

The Village Board discussed amending the Economic Development and Economic Incentive Agreements with Three Brothers & Papou LLC. d/b/a Burnt Barrel at the Board meeting on October 1st. The Developer requested an 8-month extension, with Staff recommendation of 6-month extension.

From the previous Board meeting:

The original economic development and incentive agreement with Three Brothers and Papou, LLC. was 100% remittance of only the Business District Sales Tax for 15-years, which would have begun on July 1, 2023, when IDOR made it effective. The new effective date of the Business District Tax after it was corrected is now January 1, 2024. Due to this, Three Brothers and Papou, LLC. have requested an extension of the Economic Development and Incentive Agreements. The attorney representing Three Brothers and Papou, LLC. have requested an extension of 8-months to the agreement, since they began business in May 2023, but would not receive any rebate of any paid taxes until January 2024.

After Board discussion with the attorney representing Three Brothers and Papou, LLC. it was agreed upon to amend the agreements by 7-months to account for the lost 6-months per IDOR and one additional month for January 2024 that was not received.

The attached Amendment to the agreements strictly just amends the commencement dates of the agreement from certificate of occupancy to be February 1, 2024.

COST

Approving the Amended Agreements does not have any effect on the Village revenues, as this request was approved for only the Business District Sales Tax, not the 1% Municipal Share of Sales Tax. The only cost associated is Legal fees to draft the amendment.

RECOMMENDATION

The Village Board approved:

- Resolution #20241015CC Authorizing an Amended Economic Development Agreement with Three Brothers and Papou LLC.
- Resolution #20241015CCEI Authorizing an Amended Economic Incentive Agreement with Three Brothers and Papou LLC.



VILLAGE OF SUGAR GROVE

KANE COUNTY, ILLINOIS

Resolution No. 20241015CCEI

**A Resolution Authorizing an Amended Economic Incentive Agreement
between the Village of Sugar Grove and
Three Brothers & Papou, LLC
Village of Sugar Grove
Kane County, Illinois**

Adopted by the
Village President and Board of Trustees
of the Village of Sugar Grove
Kane County, Illinois
this 15th day of October 2024

Published in Pamphlet Form
by authority of the Village President and Board of Trustees
of the Village of Sugar Grove
Kane County Illinois
this 15th day of October 2024

RESOLUTION NO. 20241015CCEI

**A RESOLUTION AUTHORIZING AN AMENDED ECONOMIC INCENTIVE AGREEMENT BETWEEN
THE VILLAGE OF SUGAR GROVE
AND THREE BROTHERS & PAPOU, LLC**

WHEREAS, the Village of Sugar Grove (“**Village**”) is not a home rule municipality within Article VII, Section 6A of the 1970 Constitution of the State of Illinois, and accordingly, seeks to act pursuant to the powers granted to it under 65 ILCS 5/1-1 *et seq.*; and,

WHEREAS, the Village desires to enter into an amended economic incentive agreement with regard to sales tax with Three Brothers & Papou, LLC; and,

WHEREAS, it is in the Village’s best interest to enter into said economic incentive agreement with regard to sales tax.

NOW, THEREFORE, BE IT RESOLVED, by the President and Board of Trustees as follows:

1. That the Village Board hereby authorizes the execution of *An Economic Incentive Agreement between the Village of Sugar Grove and Three Brothers & Papou, LLC*, attached hereto and made part hereof by this reference.
2. The Village President and Village Clerk are hereby directed to execute said agreement on behalf of the Village and to take any and all other actions necessary to effectuate the terms of this Agreement.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, on this 15th day of October 2024.

Jennifer Konen, Village President

ATTEST: _____

Tracey R. Conti, Village Clerk

	Aye	Nay	Absent	Abstain
Trustee Heidi Lendi	_____	_____	_____	_____
Trustee Matthew Bonnie	_____	_____	_____	_____
Trustee Sean Herron	_____	_____	_____	_____
Trustee James F. White	_____	_____	_____	_____
Trustee Sean Michels	_____	_____	_____	_____
Trustee Michael Schomas	_____	_____	_____	_____
Village President Jennifer Konen	_____	_____	_____	_____

AMENDMENT TO AN ECONOMIC INCENTIVE AGREEMENT

THREE BROTHERS & PAPOU, LLC (BURNT BARREL II)

THIS AMENDMENT TO AN ECONOMIC INCENTIVE AGREEMENT (“**Amendment**”) is entered into this 15th day of October, 2024, by and between the **VILLAGE OF SUGAR GROVE**, an Illinois Municipal Corporation (“**Village**”) and **THREE BROTHERS & PAPOU, LLC**, d/b/a Burnt Barrel II, an Illinois Limited Liability Company (“**Developer**”), as each may individually be referred to as a “**Party**” and collectively referred to as the “**Parties.**”

WITNESSETH:

WHEREAS, the Parties entered into a certain Economic Incentive Agreement on January 17, 2023, which was approved by the Village pursuant to Resolution No. 20230117CC (“**Agreement**”); and,

WHEREAS, due to a clerical error pertaining to discrepancies in the property index numbers for the subject property, the Illinois Department of Revenue’s acceptance of the sales tax forms was delayed; and,

WHEREAS, this delay resulted in the sales tax rebates not being paid to Developer in the manner originally contemplated by the Agreement; and,

WHEREAS, the Parties now wish to change the commencement date of the Agreement from the date of the Village’s issuance of a Certificate of Occupancy to February 1, 2024, to allow Developer to obtain a sales tax rebate for the term originally contemplated by the Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

SECTION 1. INCORPORATION

The Preambles to this Agreement are hereby declared to be the findings of the Parties and are incorporated by reference as though fully set forth in this Section 1.

SECTION 2. AMENDMENTS

Section 3.b.i of the Agreement shall be amended to read as follows:

Each amount will be due and payable solely from the proceeds of BID Sales Tax Revenues received by the Village from the Project and shall not be a general obligation of the Village. If the Village ever becomes a home rule municipality and levies a sales tax pursuant to its home rule powers that replaces in whole or in part the current sales tax, it is understood and agreed that such replacement sales tax revenue shall be available for payment of the amounts provided in this Agreement. It is acknowledged and understood by the Parties hereto that the Village receives BID Sales Tax revenue monthly, and that the taxes generated by sales in any one (1) month are distributed to the Village approximately four (4) months later (e.g. taxes generated by sales in

January are typically received in May) and any monthly installment of BID Sales Tax due by the Village in any quarterly payment hereunder shall only be remitted by the Village if said amount is received by the Village at least one (1) month prior to said quarterly remittance, otherwise to be included in the next remittance.

The period during which a portion of the BID Sales Tax paid by the end user of the Subject Property (“User”) shall be paid as described in this Agreement shall commence on February 1, 2024.

The initial payment (“Initial Payment”) date for User shall be on the first day of the seventh month of that User’s first year (e.g., if the first day of the initial 12-month period is January 1 and the Village has received BID Sales Tax revenue from the Project by June 30, the Initial Payment shall be made on July 1 of the same year) and then quarterly thereafter. User’s first year shall be measured from February 1, 2024. During the payment term, the Developer shall be entitled to receive and the Village shall pay one hundred percent (100%) of the BID Sales Tax revenues paid by such User until the end of the fifteenth (15th) year (“End Date”), or, 2) the cessation of use of the Subject Property by the User for the uses and purposes set forth herein (i.e., open for business on a consistent and regular basis) for a continuous period in excess of three (3) months. Upon the End Date being reached, or the Subject Property ceasing being used by User for the uses and purposes set forth herein, the Village shall have no further obligation to pay any amounts under this Agreement.

Upon reaching the End Date of this Agreement, the Village will retain all BID Sales Tax revenues thereafter collected.

Section 22 shall be amended to read as follows:

This Agreement for the Project shall be in effect for a term commencing February 1, 2024 and terminating on the date that the last payment due to Developer pursuant to Paragraph 3(b) hereof has been paid.

All other provisions of the Agreement not specifically amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date and year first above written, and by so executing this Agreement, they mutually represent and warrant to one another that they have full power and authority to enter into this Agreement.

VILLAGE OF SUGAR GROVE

Jennifer Konen, Village President

ATTEST: _____
Tracey R. Conti, Village Clerk

THREE BROTHERS & PAPOU, LLC
d/b/a Burnt Barrel II

By: _____

Its: _____

ATTEST: _____

By: _____

Its: _____

ECONOMIC INCENTIVE AGREEMENT

THREE BROTHERS & PAPOU, LLC (BURNT BARREL II)

THIS ECONOMIC INCENTIVE AGREEMENT ("Agreement") is entered into this 17th day of January, 2023, by and between the **VILLAGE OF SUGAR GROVE**, Kane County, Illinois, an Illinois municipal corporation ("**Village**") and **THREE BROTHERS & PAPOU, LLC., d/b/a BURNT BARREL II**, an Illinois Limited Liability Company ("**Developer**"), as each may sometimes be individually referred to as a "Party" or collectively as the "Parties".

WITNESSETH:

In consideration of the Preliminary Statements set forth below, the mutual covenants herein contained, and other good valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

1. Preliminary Statements

Among the matters of mutual inducement which has resulted in this Agreement are the following:

- a) College Corner, LLC is the owner of the real estate described on Exhibit A attached hereto and made a part of hereof ("**College Corner Parcels**").
- b) Developer is the owner and developer of a certain parcel located within the Business Improvement District, commonly known as 799 Heartland Drive and identified by PIN 14-08-253-004 ("**Subject Property**"). The Subject Property shall be developed into a restaurant to be known as Burnt Barrel II. Developer's obligations shall include building improvements, site improvements, the conversion of the existing drive-through to a sheltered dining area, opening and operating the Subject Property as a restaurant, and obtaining a final certificate of occupancy on or before June 30, 2023 (all collectively referred to as the "**Project**"). The Project shall be constructed in accordance with the Development Plan, which shall be submitted to and approved by the Village.
- c) The Village is desirous of having Developer pursue the Project in order to service the needs of the Village and its residents. The Village further finds that the Project, if completed, will increase employment opportunities in the Village, improve economic conditions existing in the Village, stimulate commercial growth and increase and stabilize the tax base of the Village, and, in furtherance thereof, the Village contemplates certain incentives and continuing incentives under the terms and conditions hereinafter set forth to assist in the development of the Subject Property.
- d) The Parties hereto acknowledge, and Developer represents and warrants, that the Project requires economic assistance from the Village in order to acquire and complete the same, and, but for the economic assistance to be given by the Village, the Project, as contemplated, would not be economically viable nor eligible for funding necessary for its completion.

- a) Pursuant to Resolution No. 20230117CCED, the Corporate Authorities of the Village have made the following findings, as required by 65 ILCS 5/8-11-20 (“**Enabling Statute**”):
- i. That the building on the Subject Property has remained less than significantly unoccupied or underutilized for a period of at least one year;
 - ii. The Project is expected to create or retain job opportunities within the Village;
 - iii. The development of the Subject Property will serve to further the development of adjacent areas;
 - iv. But for this Agreement, the development of the Subject Property would not be possible;
 - v. Developer meets the high standards of creditworthiness as demonstrated by one or more of the following:
 - a. Corporate debenture ratings of BBB or higher by Standard & Poor’s Corporation or Baa or higher by Moody’s Investor Services, Inc.
 - b. A letter from a financial institution with assets of \$10,000,000 or more attesting to the financial strength of Developer, and/or
 - c. Specific evidence of equity financing for not less than 10% of the total project costs.
 - vi. The development of the Subject Property will strengthen the commercial sector of the Village;
 - vii. The development of the Subject Property will enhance the tax base of the Village; and,
 - viii. This Economic Incentive Agreement is in the best interest of the Village.
- b) For purposes of this Agreement, the use of the terms “**Business Improvement District Sales Tax**”, “**Business Improvement District Sales Tax revenue**”, and “**BID Sales Tax**” shall be construed to refer to that net portion of taxes collected by the State of Illinois for distribution to the Village pursuant to the Business District Retailers’ Occupation Tax and Business District Service Occupation Tax (as acts may be amended) and which are collected by the State and distributed to the Village, but specifically excludes and separate sales tax revenue received by the Village, specifically the Village’s current non-home rules sales tax (or any future such sales tax levies) or a separate home rule sales tax is if the Village ever becomes a home rule municipality and levies such as tax under home rule powers that does not replace in part or in whole the current sales tax, or any other sales tax, or property tax levy that the Village may in the future enact.

2. Conditions Precedent to the Undertakings on the Part of the Village

All undertakings on the part of the Village pursuant to this Agreement are subject to satisfaction of the following conditions by the Developer for the Project on or before the date of the Initial Payment provided for in Paragraph 3 below, or such other date specifically hereinafter stated:

- a) The Developer shall have obtained approval of its Development Plan for the Project by the Village.
- b) Prior to any disbursement of BID Sales Tax revenue funds hereunder, the Developer and/or its assignees shall have:
 - i. Obtained such approvals from the Village as are reasonably required for issuance of building permits;
 - ii. Obtained final approval of the Development Plan from any other governmental unit or agency which has jurisdiction or authority over any portion of the Project, and/or Development Plan;
 - iii. Obtained a final Certificate of Occupancy for the Project from the Village by June 30, 2023, provided however, that if there is an event that delays the issuance of a final Certificate of Occupancy by June 30, 2023, which event has not been caused by the actions of the Developer, that the Village and Developer shall work together to extend the time to obtain a final Certificate of Occupancy to a date reasonably necessary to complete the construction of the restaurant on the Subject Property and obtain occupancy of same. The grant of any such extension shall be in writing.
 - iv. Certified to the Village that there exists no material default under this Agreement, and Developer has not received any notice of any violation of any Village ordinance, rules and regulations or any applicable law of the State of Illinois and any agency thereof, as well as any ordinances and resolutions of the Village pertaining to the Project which by their respective terms are to have been complied with prior to the commencement of construction of the Project.
- c) Developer may at any time assign, sell or lease any or all of the Subject Property to another person, firm or corporation, in which case such assignee, purchaser or lessee shall become the Developer for that portion of the Subject Property; provided, however, no assignment of the right to receive BID Sales Tax revenues shall accompany such assignment, sale or lease unless approved by Resolution of the Corporate Authorities.

Notwithstanding the foregoing, Developer may also assign, mortgage or pledge its interests hereunder for financing purposes and shall notify the Village of the same within thirty (30) days after the completion of any financing transaction. No sale, assignment, or lease of any

portion of the Subject Property shall effect an assignment of the economic incentive payments provided for in Paragraph 3(b) of this Agreement unless it is specifically provided for as part of such assignment, sale or lease transaction and until the Village has been notified of the assignment of such revenue.

3. Undertakings on the Part of the Village

- a) Upon satisfaction by the Developer of all conditions set forth in Paragraph 2 hereof, the Village hereby undertakes to make the payments set forth in Subparagraph 3(b) below.
- b) Subject to Subparagraph 3(a) hereof, the Village hereby agrees to pay the Developer the inducement costs (“**Inducement Costs**”) as are hereinafter defined in Section 4(a) by quarterly installments payable over the Term of this Agreement (as hereinafter defined in Section 22), subject to and in accordance with the following conditions and restrictions:
 - i. Each amount will be due and payable solely from the proceeds of BID Sales Tax Revenues received by the Village from the Project and shall not be a general obligation of the Village. If the Village ever becomes a home rule municipality and levies a sales tax pursuant to its home rule powers that replaces in whole or in part the current sales tax, it is understood and agreed that such replacement sales tax revenue shall be available for payment of the amounts provided in this Agreement. It is acknowledged and understood by the Parties hereto that the Village receives BID Sales Tax revenue monthly, and that the taxes generated by sales in any one (1) month are distributed to the Village approximately four (4) months later (e.g. taxes generated by sales in January are typically received in May) and any monthly installment of BID Sales Tax due by the Village in any quarterly payment hereunder shall only be remitted by the Village if said amount is received by the Village at least one (1) month prior to said quarterly remittance, otherwise to be included in the next remittance.

The period during which a portion of the BID Sales Tax paid by the end user of the Subject Property (“**User**”) shall be paid as described in this Agreement shall commence on the date of the issuance of a final Certificate of Occupancy by the Village to User.

The initial payment (“**Initial Payment**”) date for User shall be on the first day of the seventh month of that User’s first year (e.g., if the first day of the initial 12-month period is January 1 and the Village has received BID Sales Tax revenue from the Project by June 30, the Initial Payment shall be made on July 1 of the same year) and then quarterly thereafter. User’s first year shall be measured from the date of issuance of the final Certificate of Occupancy for the Subject Property. During the payment term, the Developer shall be entitled to receive and the Village shall pay one hundred percent (100%) of the BID Sales Tax revenues paid by such User until the end of the fifteenth (15th) year (“**End Date**”), or, 2) the cessation of use of

the Subject Property by the User for the uses and purposes set forth herein (i.e., open for business on a consistent and regular basis) for a continuous period in excess of three (3) months. Upon the End Date being reached, or the Subject Property ceasing being used by User for the uses and purposes set forth herein, the Village shall have no further obligation to pay any amounts under this Agreement.

Upon reaching the End Date of this Agreement, the Village will retain all BID Sales Tax revenues.

- ii. In the event of a change of law with regard to the BID Sales Tax revenues generated as the result of the sales activities from the User to be paid to the Village, and if any successor or substitute tax revenue is made available to the Village as the result of such change in law, including without limitation, with regard to BID Sales Tax revenues, the Village agrees to share such successor or substitute tax revenues on the same proportion as set forth above to the extent that such successor or substitute tax revenues are equal to or less than the BID Sales Tax revenues that the Village otherwise would have received from the User if the law had not changed (i.e. if the successor substitute tax revenues are in excess of the BID Sales Tax revenues that would have been received from the User, then the Village shall be entitled to all of any such excess). If there is any such change in state law and if the Village becomes a home rule municipality at any time during the Term of this Agreement and at any time adopts a Home Rule Sales Tax, then to the extent Developer has not received the BID Sales Tax revenue that it would have otherwise received but for the change in the law (“**Deficiency**”), the Home Rule Sales Tax revenue generated from the User shall be paid first to the Developer in order to pay the amount of the Deficiency to the Developer and any amounts in excess thereof shall be retained by the Village. The Parties agree that in the event of any such change in law that they will meet and attempt to agree on a specific amendment to this Agreement relating to and resulting from such change in law.
- iii. The calculation of the quarterly payment amount due to the Developer shall be determined quarterly by the Village based upon this Agreement and the information and BID Sales Tax revenues received by the Village from the Illinois Department of Revenue (“**IDOR**”). Such quarterly calculation shall be prepared using the IDOR Form setting forth the amount of monthly BID Sales Tax that is generated from the User or from other information as set for in Section 4(d). If either the Village or the Developer questions the amount of BID Sales Tax revenue received by the Village and/or paid to the Developer, each shall have the right to challenge the amount of such BID Sales Tax revenue that it is entitled to pursuant to Illinois law and this Agreement. The Village and Developer will cooperate with one another in obtaining access to the necessary books and records evidencing the BID Sales Tax revenue generated as result of the sales activities from the Project

and the information used by IDOR to calculate the BID Sales Tax revenue payable to the Village pursuant to Illinois law. Each of the Village and Developer agree to hold such information as confidential, except to the extent required under applicable law. The Village agrees that, to the extent necessary, it will join in any action by the Developer or assign (to the extent applicable) to the Developer any of its rights to permit the Developer to bring a good faith challenge to the amount of BID Sales Tax revenue due to the Village pursuant to Illinois law and/or the amount due to the Developer pursuant to Paragraph 3(b) hereof.

- iv. Upon receipt of the BID Sales Tax revenue generated from sales activities from the User, the Village will place the portion of such revenue that is due to the Developer pursuant to paragraph 3(b) hereof in separate liability account on the books solely relating to that User. As security for the payment of the amount due to the Developer under Paragraph 3(b) herein, the Village hereby pledges to the Developer that portion of the BID Sales Tax revenue received by the Village and which is due and payable to the Developer pursuant to Subparagraph 3(b) hereof.
- c) To the extent permitted by law, the Village shall provide for payments required under Subparagraph 3(b) by adopting at this time this Agreement is approved, a continuing appropriation therefore which shall be part of the Village's annual appropriation pursuant to the budget ordinance to be adopted for each fiscal year in which payments may be due hereunder.
- d) In the event the conditions to payment as provided in Paragraph 2 hereof have not been satisfied or waived by the Village, then in such event, the Village shall have no obligation to make any current payment to the Developer and such payment shall be suspended until such time as all of such conditions have been satisfied or waived, by the Village, and all rights of the Developer to demand BID Sales Tax payment from the Village shall be deemed suspended until such conditions have been satisfied or waived by the Village.

4. Undertaking on the Part of the Developer

- a) The Developer shall construct and operate a full-service restaurant known as Burnt Barrel II. Developer's obligations shall include the rehabilitation of an existing structure, building improvements, site improvements, the conversion of the existing drive-through to a sheltered dining area, opening and operating the Subject Property as a restaurant, and obtaining a final certificate of occupancy on or before June 30, 2023 (all collectively referred to as the "**Project**"). The Project shall be constructed in accordance with the Development Plan, which shall be submitted to and approved by the Village. If the Developer complies with all the provisions of this Agreement, the Village shall pay the inducement cost amount until the End Date ("**Inducement Cost**").

- b) The Developer recognizes and agrees that the Village has the sole authority with regard to all approvals and permits relating to the Project, including but not limited to approval of the final Development Plan, grading permit, building permit and occupancy permit, and failure on the part of the Village to grant any required approval or issue any required permit shall not be deemed as the cause of a default by the Village under this Agreement or give rise to any claim against or liability to the Village pursuant to this Agreement.
- c) In the event Developer sells or transfers any interest in any portion of the Subject Property, and the Corporate Authorities approve the assignment of this Agreement by Resolution, the Developer shall require, under the provisions of the contract of sale or transfer, the buyer to provide the Village with a power of attorney letter addressed to IDOR authorizing the release of the BID Sales Tax information. No business license and/or certificate of occupancy shall be issued by the Village to any tenant or owner of the Project until such power of attorney letter is received by IDOR and approved by it for release of such information to the Village. At the request of the Developer and subject to any legal restriction on distributing such information that are binding on the Village by any applicable law, the Village shall share with the Developer any BID Sales Tax information concerning the User that the Village receives from any source. The obligations set forth in this subparagraph shall apply only during the Term of this Agreement. **It is agreed that the Village's obligation to distribute BID Sales Tax pursuant to this Agreement is limited to those funds attributable to the Project and the User and which are identified on or may be compiled from any return, list or break down from IDOR,** or its successor or agent, or records supplied by the Developer which are reasonably acceptable to the Village, of the BID Sales Tax from the User, and the Village shall not be required to distribute the BID Sales Tax for a User of the Project for a month until receipt of the User's return, list or breakdown (or such return, list or break down that contains such user's information) for such monthly BID Sales Taxes.
- d) Nothing in this Agreement shall be construed as an express or implied covenant by Developer to construct, open or operate a business on the Subject Property; provided, however, that if Developer does not satisfy the conditions set forth in this Agreement, including without limitation those set forth in Paragraph 2, the Village shall have no obligation to make the payments set forth in Paragraph 3.

5. **Representation and Warranties of the Developer.** The Developer represent and warrant as follows:

- a) The Project required economic assistance from the Village in order to complete the construction of the Project in accordance with the final approved Development Plan, and, but for the economic assistance to be given by the Village as heretofore stated, the Project, as contemplated, would not be economically viable nor eligible for the financing necessary for its completion.

- b) At all times Developer shall comply with all applicable local zoning ordinances and regulations, and all building and fire code regulations, and all other applicable Village ordinances, resolutions and regulations.
- c) The Developer shall comply with all applicable laws, rules and regulations of the State of Illinois, County of Kane and the United States and all agencies thereof. This provision shall not preclude any challenge by Developer to the applicability or reasonableness of any law, rule or regulation.
- d) The Developer shall comply with all terms, provisions and conditions and shall not default or permit a default under this Agreement.
- e) The Developer is qualified to conduct business in the State of Illinois. The Developer has the power to enter into this Agreement and carry out its obligations hereunder and is duly authorized to execute, deliver and perform all of the provisions of this Agreement. The Agreement is a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms.
- f) The execution, delivery and performance of this Agreement by the Developer does not conflict with or result in a violation of the Developer's organizational documents or any judgement, order or decree of any court or arbiter or any contract to which the Developer is a party.
- g) The Developer shall develop and operate the Project pursuant to the terms and conditions of this Agreement.

6. **Representations and Warranties of the Village.** The Village represents and warrants as follows:

- a) The Village is a public body corporate and politic duly organized and existing under the laws of the State of Illinois. The Village 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 the Village, enforceable against the Village in accordance with its terms.
- b) The execution, delivery and performance of this Agreement by the Village does not conflict with or result in a violation of the Village's organizational documents or judgement, order or decree of any court or arbiter or any contract to which the Village is a party.
- c) The Village shall comply with all terms, provisions and conditions and shall not default or permit in a default under this Agreement.

- d) The Village has held all public meetings or hearings required by law in connections with the approval of this Agreement.
- e) The Village will reasonably cooperate with the Developer with regard to the development and operation of the Project.

7. Defaults

- a) The occurrence of any one of the following shall constitute a default by the Village or the Developer under this Agreement:
 - i. Failure to comply with any term, provision or condition of this Agreement;
or
 - ii. A representation or warranty of the Developer or the Village contained herein is not true and correct.
- b) In the event of any default under or violation of this Agreement, the Party not in default or violation shall serve written notice upon the part or Parties in default or violation, which notice shall be in writing or shall specify the particular violation or default. All Parties hereto reserve the right to cure any violation of this Agreement or default by hereunder within thirty (30) days from written notice of such default. If a non-monetary default under this Agreement cannot be reasonably cured within said thirty (30) days, then so long as the defaulting Party has commenced such cure within the said thirty (30) day period and is proceeding diligently thereafter to cure such default, the time period within which the default must be cured shall be extended until the default has been cured. If the default has not been cured within the applicable grace period as hereinbefore provided, then an “**Event of Default**” shall have occurred under this Agreement.
- c) Upon an occurrence of an Event of Default by the Developer, or the Village, as the case may be, hereinabove set forth, the non-defaulting Party may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance of any obligations, undertaking, covenant, or agreement of the defaulting Party set forth in this Agreement. Either Party may bring an action for specific performance for any Event of Default under this Agreement within six (6) months of the Event of Default or exercise any other remedy in equity.
- d) If an Event of Default occurs and a legal action is commenced to enforce the terms of this Agreement, each Party shall pay its own attorneys’ fees and costs.

8. Notices

All notices, demands and requests required pursuant to this Agreement shall be sufficiently given or delivered if it is the dispatched by registered or certified mail, postage pre-paid, return receipts requested or personally delivered as follows:

For the Village:

Village of Sugar Grove
160 S. Municipal Dr., Suite 110
Sugar Grove, IL 60554
Attention: Village Administrator and Village Clerk

With a copy to:

Mickey, Wilson, Weiler, Renzi, Lenert & Julien, P.C.
140 S. Municipal Dr.
Sugar Grove, IL 60554
Attention: Laura Julien

For the Developer:

Three Brothers & Papou, LLC.
d/b/a Burnt Barrel II
3150K Cannonball Trail
Yorkville, Illinois 60560-1040

For the Owner:

College Corner, LLC

With a copy to:

Daniel J. Kramer
Attorney at Law
1107A S. Bridge St.
Yorkville, Illinois 60560

Or at such other addresses as the Parties may indicate in writing to the other either by personal delivery or by certified or registered mail, return receipt requested, with proof of delivery thereof. Notice shall be deemed to be effective two (2) days after mailing registered or certified mail, postage pre-paid, return receipt requested or upon delivery if delivered personally.

9. Law Governing

This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois. Proper venue for any controversies arising under this Agreement shall be in the Sixteenth Judicial Circuit, Kane County, Illinois.

10. Time

Time is off the essence and all time limits set forth in this Agreement are mandatory and cannot be waived except by a lawfully authorized and executed written waiver by the Party excusing such timely performance or unless otherwise specified herein.

11. Binding Effect

This Agreement shall inure to the benefit of and shall be binding upon the Village, the Developers, and their respective successors and assigns, subject however to the provisions of Paragraph 2(e) hereof.

12. Limitation of Liability

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) the Village in excess of any amount agreed by the Village to be paid to the Developer hereunder, subject to the terms and conditions herein, or (ii) the officers, agents and employees of the Village and no liability, right or claim at law or in equity shall attach to or shall be incurred by (i) the Village in excess of such amounts or (ii) the officers, agents and employees of the Village and all and any such rights or claims of Developer against the Village in excess of the amounts as herein provided or against its officers, agents and employees are hereby expressly waived and released as a condition of an 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) Developer, in excess of its obligation to the Village hereunder, or (ii) directors, officers, agents and employees of Developer, and no liability, right or claim at law or in equity shall attach to or shall be incurred by the (i) Developer, in excess of its obligations hereunder or (ii) directors, officers, agents and employees of Developer, and all and any such rights or claims of the Village against Developer, in excess of its obligations hereunder, or against its officers, agents and employees are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by Developer.

13. No Waiver or Relinquishment of Right to Enforce Agreement

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 rights thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

14. Village Approval or Direction

Where Village approval or direction is required by this Agreement, such approval or direction means the approval or direction of the Corporate Authorities, as defined by the Code, unless otherwise expressly provided or required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met unless such requirements are inconsistent with this Agreement.

15. Section Headings and Subheadings

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

16. Authorization to Execute

The officers of the Developer who have executed this Agreement warrant that they have been lawfully authorized by the Developer to execute this Agreement on behalf of the Developer. The President and Clerk of the Village hereby warrant that they have been lawfully authorized by the Corporate Authorities of the Village to execute this Agreement. The Developer and the Village shall deliver, upon request, to each other at the respective time such entities cause their authorized agents to affix their signatures hereto copies of all articles of incorporation, bylaws, resolutions, partnership agreements, ordinances or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective Parties.

17. Amendment

This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between the Developer and the Village relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than herein set forth. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

18. Counterparts

This Agreement may be executed in two or more counterparts, each of which taken together, shall constitute one and the same instrument.

19. Conflict Between the Text and Exhibits

In the event of a conflict in the provisions of the text of this Agreement and the Exhibits attached hereto, the text of the Agreement shall control and govern.

20. Severability

If any provision of this Agreement is held 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 to be excised herefrom, and the invalidity thereof shall not affect any of the other provisions contained herein, and such judgement or decree shall relieve the Village from performance under such invalid provisions of this Agreement, provided, however, if the judgement or decree relieves the Village of all or any portion of its monetary obligations under Paragraph 3(b) of this Agreement, then the Developer will be relieved of all of its obligations under this Agreement, including, without limitation, its obligation to develop and operate the Project.

21. Definition of Village

When the term Village is used herein it shall be construed as referring to the Corporate Authorities of the Village unless the context clearly indicates otherwise.

22. Term of Agreement

This Agreement for the Project shall be in effect for a term commencing as the date of issuance of the final Certificate of Occupancy for Burnt Barrel II (i.e., commencement of User's first year) and terminating on the date that the last payment due to Developer pursuant to Paragraph 3(b) hereof has been paid.

23. Execution of Agreement

This Agreement shall be signed last by the Village and the President of the Village shall affix the date on which they sign this Agreement on Page 1 hereof which date shall be the effective date of this Agreement.

IN WITNESS WHEREOF, this Agreement as of the date and year first written above.

ATTEST:

By: 

Alison Murphy, Village Clerk

VILLAGE OF SUGAR GROVE
A municipal corporation

By: 

Jennifer Konen, Village President

THREE BROTHERS & PAPOU, LLC.
d/b/a Burnt Barrel II

ATTEST:

By: _____

Its: _____

By: James D. Rato

Its: Manager

EXHIBIT A

(Legal Description)

COLLEGE CORNER PARCELS:

- 14-08-251-003*
- 14-08-251-031*
- 14-08-251-033*
- 14-08-251-034*
- 14-08-251-035*

*Denotes parcel eligible for Economic Incentive Agreement for Future Project

SUBJECT PROPERTY:

14-08-253-004

LOT 11 IN SUGAR GROVE RESEARCH PARK, ACCORDING TO THE PLAT THEREOF
RECORDED ON MARCH 21, 1990 AS DOCUMENT NO. 90K14321, IN THE VILLAGE OF SUGAR
GROVE, KANE COUNTY, ILLINOIS.