

## **AMENDMENT TO REDEVELOPEMENT AGREEMENT**

This Amendment to Redevelopment Agreement (the "Amendment") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018, (the "Effective Date") by and between the Village of Pecatonica, an Illinois municipal corporation (the "Village"), and Pecatonica Pavilion, LLC, an Illinois Limited Liability Company (the "Developer"). (The Village and Developer are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties").

### **PREAMBLES**

**WHEREAS**, on January 19, 2010 the Village did adopt Ordinance 2010-1 authorizing the Village President to execute a Redevelopment Agreement for the Sumner Road/Grove Street TIF Development Project (the "Agreement"); and

**WHEREAS**, said Agreement was executed by the then Village President for the Village and Mr. George Anderson for the Developer; and

**WHEREAS**, pursuant to Paragraph 13, "Amendment", of the Agreement the Agreement may be amended as evidenced by a written document signed by both parties; and

**WHEREAS**, the Parties deem it in their mutual best interest to amend Sections 4(a), 4(b), 4(c), 4(d), 4(e), 5, 10, 11, 12, 22, and 25 of the Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree to amend only those provisions of the Agreement referenced below as follows:

#### **Section 4. Reimbursement to the Parties.**

(a) The Village has made it known during open meetings to the Public and to the Developer, that the Village's financial budget is in crisis and therefore extremely limited, affecting many of its financial decisions including the Village's ability to pay for publications, engineering fees, attorney fees, continued Village TIF consulting fees and like ongoing expenses related to the TIF process for the Redevelopment Plan and Project herein. The Developer and the Village mutually agree that this Project is important to the welfare of the local citizenry, as well as providing employment opportunities and other matters as enumerated in this Agreement. Based upon these considerations, and the considerations as set forth below, the Developer and Village have reached the following agreement which shall allow for the TIF process to progress and which shall assist the Village's budget in relation to what is expended for the process:

The Developer and the Village have agreed that upon approval and establishment and execution of all of the following: Annexation Agreement; zoning and rezoning of the

Subject Property to a permitted Commercial use; and the adoption and establishment of a TIF District; execution and adoption of this Amendment to Redevelopment Agreement; Developer agrees to reimburse all the Village's unpaid expenditures incurred to date within 75 days of the execution of this Amendment or upon the Developer's financing approval whichever occurs first. The Village shall provide the Developer with proof of actual expenditures, including but not limited to: receipts, invoices, and billing statements, which shall not include general overhead or administrative costs of the Village that would still have been incurred by the Village had it not designated a Redevelopment Project Area or approved a Redevelopment Plan ("Reimbursable Expenditures"). Thereafter, the Developer shall reimburse the Village for any future Reimbursable Expenditures within 60 days of the Village presenting proof of said expenses.

That in consideration for the Developer's payment, and including but not limited to, the fact Developer is incurring interest costs on said amount; the Village does not have to await reimbursement until receipt of the first TIF incremental taxes; the Village's water/sewer usage formula; the size of the facility and water/sewer usage by the facility, the Village has therefore agreed that Developer's payments (as set forth in the preceding paragraph) to the Village will be contingent upon the Village providing performance of the following:

- (i) The Village approving Ordinance 2018-03 and issuing a Developer's Note ("Tax Increment Note").
- (ii) That the Village agreement to reduce the Subject Property's total water/sewer hook-up/connection fees by the same exact amount paid by the Developer as set forth in Section 4a; and
- (iii) The Village shall provide the Developer with a twenty percent (20%) reduction in the Subject Property's water/sewer usage fees for the first fifteen (15) years after construction is completed or the life of the TIF, whichever comes first, regardless of whether the Village uses Residential or Commercial formulas, with the issue of reduction subject to negotiation thereafter.

(b) Further, in consideration of the Developer's completion of the Project, and as long as no event described in Section 11 of this Agreement shall have occurred and be continuing, the Village shall reimburse the Developer for Redevelopment Project Costs (as defined below) actually incurred by the Developer set forth in Exhibit B attached herein obtained from Ehler's Redevelopment Plan ("Eligible Redevelopment Project Costs Schedule") and apply Incremental Taxes to make payments due on the Tax Increment Note, in accordance with the provisions of this Section 4. For the purposes of the Agreement, "Redevelopment Project Costs" shall mean and include all costs defined as "redevelopment costs" in Section 11-74.4-3(q) of a TIF Act which are eligible for reimbursement under the TIF Act and this Agreement and to the extent permitted by law, the Developer shall have the right to adjust and transfer budgeted amounts within the

Total Eligible Redevelopment Project Costs (as set forth in Exhibit B) among Eligible Redevelopment Project Costs.

(c) In connection with the establishment and ongoing administration of the Redevelopment Project Area, the Village shall establish a special tax allocation fund pursuant to the requirements of the TIF Act (“STAF”) into which the Village shall deposit all Incremental Taxes (defined below) generated by the Subject Property. The Village shall further establish, upon execution of this Amendment, a segregated special subaccount of the STAF designated as the “Pecatonica Pavilion, LLC Assisted Living Facility Sub-Account.” Upon receipt of Incremental Taxes generated by the Subject Property received each year, the Village shall deposit said taxes as follows:

- (i) The Village shall first receive full reimbursement from the annual Incremental Taxes generated by the Subject Property received each year for expenses related to the Village’s administration of the STAF & the TIF (“Annual Administrative Costs”), and any and all other outstanding Reimbursable Expenditures.
- (ii) Following payment to the Village of its Annual Administrative Expenses, the Village shall deposit the remaining balance of all Incremental Taxes generated by the Subject Property Received each year, into the “Pecatonica Pavilion, LLC Assisted Living Facility Sub-Account”.

The Village shall reimburse the Developer for eligible Redevelopment Project Costs actually incurred by the Developer from amounts on deposit in the “Pecatonica Pavilion LLC Assisted Living Facility Sub-Account”, as hereinafter set forth. Developer reserves the right to adjust and transfer budgeted items within the Total Redevelopment Project Budget among eligible Redevelopment Project Costs.

(d) Incremental taxes deposited in the “Pecatonica Pavilion LLC Assisted Living Facility Sub-Account” shall be used for the following purposes and in the following order of priority:

- (i) On DECEMBER 1<sup>st</sup> (the First) of each year (or, if later, the date which is ten (10) days following the date which the Village receives the final installment of annual real estate taxes from Winnebago County, Illinois) (the “STAF allocation date”), the Incremental Taxes credited to the “Pecatonica Pavilion LLC Assisted Living Facility Sub-Account”, during the period from the immediately preceding STAF Allocation Date (or the date of this Agreement in the case of the period from the date of this Agreement to STAF Allocation Date) to, but not including, the current STAF Allocation Date, shall be paid to or at the direction of the Developer to reimburse it for the Redevelopment Project Costs and make payments due on the Tax Increment Note in accordance with Section 4 (e), and subject to the limitations set forth in Sections 4(b) - 4 (d).

- (ii) Any amounts on deposit in the “Pecatonica Pavilion LLC Assisted Living Facility Sub-Account” in excess of (a) the amount required to reimburse the Developer for Redevelopment Project Costs and (b) pay in full principal, interest due under the Tax Increment Note shall be transferred by the Village to the STAF and utilized by the Village in its sole and absolute discretion in accordance with the TIF Act, once Developer is paid all of its reimbursable TIF related expenses as set forth on attached Exhibit B.

THE VILLAGE’S OBLIGATIONS TO REIMBURSE THE DEVELOPER UNDER THIS AGREEMENT IS A LIMITED OBLIGATION PAYABLE SOLELY FROM INCREMENTAL TAXES DEPOSITED IN THE “PECATONICA PAVILION LLC ASSISTED LIVING FACILITY SUB-ACCOUNT” FROM TIME TO TIME AND SHALL NOT BE A GENERAL OBLIGATION OF THE VILLAGE OR SECURED BY FULL FAITH AND CREDIT OF THE VILLAGE. As used in this Agreement, “Incremental Taxes” shall mean the amount of ad valorem taxes, if any, paid in respect to the Subject Property and its improvements which is attributable to the increase in the equalized assess value of the Subject Property and its improvements over the initial equalized assessed value of the Subject Property, all as determined in accordance with the TIF Act. The initial equalized assess value of the Subject Property is \$\_\_\_\_\_.

(e) To establish a right of reimbursement for a specific Redevelopment Project Cost under this Agreement, the Developer shall submit to the Village Clerk a written statement in the form attached to this Agreement as Exhibit C (a “Request for Reimbursement”) setting forth the amount of reimbursement and the specific Redevelopment Project Costs for which reimbursement is sought. Each Request for Reimbursement shall be accompanied by such bills, paid receipts, contracts, invoices, lien waivers or other evidence as the Village shall reasonably require to evidence the right of the Developer to reimbursement under this Agreement. The Village Clerk shall have thirty (30) days after receipt of the Request for Reimbursement from the Developer to recommend to the Corporate Authorities approval or disapproval of any of the expenditures for which reimbursement is sought. If said Request for Reimbursement or any portion thereof is not approved, the Village Clerk shall provide to the Developer a written explanation setting forth the reason or reasons for the denial. However, the only reasons for disapproval of any expenditure for which reimbursement is sought shall be (i) such expenditure is not contained in the Eligible Redevelopment Project Cost Schedule; (ii) there are not sufficient funds in the “Pecatonica Pavilion, LLC Assisted Living Facility Sub-Account” to reimburse such request; however, the Village shall reimburse so much of those eligible costs as there are funds in the Sub-Account; (iii) such expenditure was not incurred by the Developer in accordance with the Village Code, the Legal Requirements or the provisions of Agreement; and (iv) the Developer is delinquent in its obligation to reimburse Village expenses as required in Sections 4(a) and/or 4(c) herein. Reimbursement of Redevelopment Project Costs shall be made annually on each STAF Allocation Date only to the extent money is available in the “Pecatonica Pavilion, LLC Assisted Living Facility Sub-Account”, of the STAF. To the extent money in the Sub-Account is insufficient to fully reimburse the Developer for Eligible Redevelopment Project Costs submitted in a Request for Reimbursement, such remaining Eligible

Redevelopment Project Costs shall be reimbursed on the next succeeding STAF Allocation Date on which there are available monies in the "Pecatonica Pavilion, LLC Assisted Living Facility Sub-Account". Developer shall not be required to resubmit those Eligible Redevelopment Project Costs that were not previously reimbursed due to lack of sufficient funds in the Sub-Account.

To the extent money in the Sub-Account is insufficient to reimburse the Developer for its approved Redevelopment Project Costs, such Redevelopment Project Costs shall be certified as approved and be added to the principal amount of the Tax Increment Note as of the date of such approval. Following submission and review of the final Reimbursement Request, which request shall be submitted within 90 days of completion of the Project, the Village shall certify the final principal amount due and payable on the Tax Increment Note. Such principal amount(s) shall bear interest from the date they are approved by the Village as eligible for reimbursement and thereby added to the principal amount of the Tax Increment Note. All incremental taxes then held in the STAF or thereafter received by the Village, net of the retention by the Village of its Annual Administrative Costs, shall be applied in the following order:

- (1) to the payment of interest then due on the Tax Increment Note;
- (2) to the payment of the outstanding principal on the Tax Increment Note.

Except as to delinquent unreimbursed Village costs identified in Sections 4(a) and 4(c), the Parties agree that 100% of the Incremental Taxes generated by the Subject Property received each year shall go to the Developer until such time as the Developer's Redevelopment Project Costs, all amounts payable on the Tax Increment Note in accordance with the TIF Act, have been repaid or until the expiration of the TIF, whichever occurs first.

The Parties acknowledge that the determination of Redevelopment Project Costs and qualification for reimbursement under this Agreement are subject to the TIF Act, and all amendments of the Act after the date of this Agreement, and administrative rules and judicial interpretations rendered during the term of this Agreement. The Village has no obligation to the Developer to attempt to modify said rules or decisions.

**Section 5. Verification of Tax Increment.** – Deleted in its entirety.

**Section 10. No Liens.**

In connection with the construction of the Project, and excluding encumbrances of the Subject Property due to Developer financing, the Developer shall neither cause or permit any mechanic's or other liens to attach or encumber the Project or the Subject Property. The Developer hereby agrees and covenants to indemnify and hold the Village harmless in the event that any liens are filed against the Project or the Subject Property as a result of the acts of the Developer, its agents, independent contractors or assigns. In the event a mechanic's or other lien is filed which attaches to or encumbers the Project

or Subject Property, the Developer shall immediately take such action or institute such proceedings necessary to have the lien claim removed. The Developer shall pay within ten (10) days any final judgment awarded to a lien claimant so as to prevent a foreclosure sale.

### **Section 11. Default – Remedies.**

(a) If the Developer defaults in the performance of any material covenant, warranty, representation or obligation set forth in this Agreement, the Village shall provide the Developer with a written statement setting forth the default of the Developer. Except as required to protect against further damages, the Village may not exercise any remedies against the Developer in connection with such default until forty-five (45) days after giving such notice ("Performance Deadline"). If such default cannot be cured within such forty-five (45) day period, said forty-five (45) day period shall be extended for such time as is reasonably necessary for the curing of same, as long as Developer is diligently proceeding to cure such default and the Developer has provided prior written notice and statement of the same and providing a reasonable timeline to cure to the Village. Additionally, the Developer shall be required to provide the Village a written report detailing the remedial steps taken and/or to be taken by the Developer to cure any and all such defaults. A default not cured as provided above shall constitute a breach of this Agreement. Any failure or delay by the Village in asserting any of its rights or remedies as to any default or alleged breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach. Further, the Performance Deadline shall not be subject to the cure rights contained in this Section.

### **Section 12. Cancellation.**

In the event the Developer does not procure financing for the Project and if the Village does not duly enact the Village proceedings and ordinances authorizing the approval and execution of Annexation (Annexation Agreement incorporated herein), zoning & rezoning of the Subject Property, the adoption and establishment of the TIF District and approval by the Village of Developer's building permits and the execution and adoption of this Agreement and any Amendments to this Agreement reasonably necessary to reflect that such ordinances and TIF District has been approved and established, all of which being considered a material impairment to this Agreement, then the Developer may at its election, cancel or terminate this Agreement by giving written notice thereof to the Village. Otherwise, in the event that (i) the Village or the Developer shall be prohibited, in any material respect, from performing the covenants and agreements or enjoying rights and privileges herein contained by the final, non-appealable order of any court of competent jurisdiction or by any applicable changes to the TIF Act or (ii) all or any part of the TIF Act or any ordinance adopted by the Village in connection with the Redevelopment Plan shall be declared invalid or unconstitutional by the final, non-appealable order of any court of competent jurisdiction and such declaration shall materially impair the ability of either party to perform its obligations under the Redevelopment Plan or the covenants and agreement or rights and privileges of either the Village or the Developer, then the party so materially impaired may, at its election,

cancel or terminate this Agreement by giving written notice thereof to the other party within sixty (60) days after such court order has been issued. However, the termination of this Agreement hereunder shall have no effect on any of (i) the authorizations granted to the Developer for buildings permitted and under construction to the extent allowed by such order, (ii) perpetual easements contained in any recorded document, and (iii) Developer's reimbursement of Reimbursable Expenditures under Section 4(a) of this Agreement.

## **Section 22. Cooperation and Further Assurances.**

The Parties agree to take such actions, including the execution, acknowledgment and delivery of such documents, instruments, petitions, and certifications (and in the Village's case, the adoption of such ordinances and resolutions), as may be necessary and appropriate, from time to time, to carry out the terms, provisions, and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions, and intent. Further, and except stated herein, the Village agrees that it will not revoke or amend any ordinances or resolutions adopted by the Village relating to the Redevelopment Project Area, the Redevelopment Plan, or this Agreement without the prior written consent of the Developer. In addition to those Village ordinances and resolutions Developer is bound by and obligated to follow as previously agreed to in the original Redevelopment Agreement or Annexation Agreement, Developer hereby agrees to comply with and be subject to Village Ordinances 2015-12, entitled "*An Ordinance adding Article 16 to the Village Code of the Village of Pecatonica to establish regulation of Illicit Discharge of Non-Storm Water, Erosion and Sediment Control, and Storm Water Discharge Management*", and Ordinance 2015-13, entitled "*An Ordinance adding Chapter Two, entitled Erosion and Sediment Control, to Article Sixteen of the Village Code of the Village of Pecatonica.*"

The parties shall cooperate fully with each other in seeking from any or all appropriate governmental bodies all approvals (whether federal, state, county, or local) required or useful for the construction or improvement of property and facilities in and on the Property or for the provision of services to the Property, including, without limitation, gas, telephone, and electric utility services, roads, highways, and rights-of-way, water and sanitary sewerage facilities, irrigation well, and storm water disposal facilities. The Village shall further promptly process and consider reasonable requests of the Developer for relief or variances from any Village ordinances, applicable building permits, or other permits necessary for the construction of the Project. The parties understand and agree that the obligations of the Village with respect to the construction of the Redevelopment Project are expressly limited to those set forth in the Agreement. The Village will cooperate with the Developer in seeking any additional funding from other governmental sources that may be available to assist in developing the project.

## **Section 25. Personal Liability.**

No covenant or agreement contained in this Agreement shall be deemed to be a covenant or agreement of any member of the Corporate Authorities or any official, officer, agent employee or attorney of the Village, in his or her individual capacity, and no official,

officer , agent, member, employee or attorney of the Village shall be liable personally under this Agreement or be subject to an personal liability or accountability by reason of or connection with or arising out of the execution, delivery and performance of this Agreement.

Except as stated to the contrary herein, no covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any member of Pecatonica Pavilion, LLC or any official, officer, agent, employee or attorney of Pecatonica Pavilion, LLC, in his or her individual capacity, and no official, officer, agent, member, employee or attorney of Pecatonica Pavilion, LLC, shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement.

Any member, manager, trustee of a trust, official, officer, agent, employee or attorney having more than a ten percent (10%) interest in Pecatonica Pavilion, LLC shall execute a personal guaranty whereby he or she shall personally guaranty, in his or her individual capacity, the reimbursement of all past and future Village expenses, as required by Sections 4(a) and 4(c)(i), incurred by the Village and arising out of the subject Redevelopment Area, this Redevelopment Agreement and amendments thereto, and the subject TIF, and any expenses, liens, settlements and/or judgments against the Village arising out of Developer's duty to indemnify the Village under Sections 9 and 10.

**Restatement of All Other Provisions.**

ALL OTHER TERMS AND CONDITIONS OF THE REDEVELOPMENT AGREEMENT BETWEEN THE VILLAGE AND DEVELOPER AS APPROVED BY THE VILLAGE IN ORDINANCE 2010-1 WHICH ARE NOT IN CONFLICT WITH THE AMENDMENTS HEREIN REMAIN IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to the Agreement to be executed by their duly authorized officers on the above date at Pecatonica, Illinois.



Village of Pecatonica, Illinois,  
an Illinois Municipal Corporation

By: \_\_\_\_\_  
William Smull, Village President

Attest: \_\_\_\_\_  
Gwenn Shirley, Village Clerk

Developer: Pecatonica Pavilion. LLC

By: \_\_\_\_\_  
George Anderson, President