

## DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, between the Village of Pecatonica, 405 Main Street, Pecatonica, Illinois 60163 (hereinafter referred to as the "Village") and the NuVoRealtyGroupLLC., an Illinois Limited liability company, 420 5<sup>th</sup> Street, Wilmette, Illinois 60091 (hereinafter referred to as "NuVo").

### WITNESS

WHEREAS, Village is the owner of real Property commonly known as 3123 N Pecatonica Road, Pecatonica, Illinois, consisting of approximately 13.08 acres; and

WHEREAS, the Village desires to develop the real estate for commercial uses;

WHEREAS, the Village desires to engage NuVo in connection with the development of the land; upon the terms and conditions hereinafter set forth; and

WHEREAS, the principals of NuVo are experienced in the development of commercial properties.

NOW, THEREFORE, pursuant to the terms and conditions contained herein and other good and valuable consideration the receipt of which is hereby acknowledged, the parties agree as follows:

1. **Incorporation by Reference:** The above recitals are hereby incorporated as though fully set forth herein.
2. **Monthly Period:** Shall mean each calendar month during the term of this agreement.
3. **NuVo Supervision:** The Village hereby retains NuVo to manage and supervise development of the property to make said property pad ready for development. Said shall include pursuant to the terms and conditions contained below:
  - (a) Prepare economic and financial analysis for the use of the Village and development.
  - (b) Prepare marketing programs and materials.
  - (c) To negotiate sales and lease agreements with recommendations to be submitted to the Village for their approval.
  - (d) To initiate with the Village, undertake indirectly all entitlements necessary to render the property suitable for the purpose intended.
  - (e) To initiate additional services at the request of the Village.
4. **Outside Consultants:** With the prior approval of the Village to retain other professional entities or consultants, included but not limited to engineers,

architects, surveyors, lawyers, the cost of employment of such parties shall be borne by the Village.

5. **Ordinary Expenses:** The ordinary expenses of NuVo incurred in connection with the development, (including, without limitation, administrative and overhead expenses, and employee compensation) shall be compensated solely by payment of the fees described in Section 3 and Section 4 hereof; however, NuVo shall be reimbursed for its out of pocket expenses, which shall be submitted for approval by Village. The expenses for outside or independent consultants, included but limited to engineers, wetlands, soil borings, documents and fees for zoning shall be paid by the Village.
6. **Force Majeure:** NuVo shall be excused for the period of delay in the performance of any obligations hereunder when such delay is occasioned by causes beyond the reasonable control of NuVo, and the time for performance shall be automatically extended for a like period. Such causes shall include, without limitation, weather conditions, strikes, labor disputes, civil commotion, war, warlike operations, sabotage, governmental or judicial regulation, legislation, controls shortages, rationing or other moratoria, including construction bans, inability to obtain any necessary materials or services or supplies, pandemics or acts of God.
7. **Development Services Fees:** As its compensation for the development services to be performed by NuVo hereunder, Village shall pay NuVo a fee ("Developer Fee") of Thirty Thousand Dollars (\$30,000.00). The developer fee shall be paid in 6 equal installments on or before the first day of each month commencing upon the execution date of this agreement.
8. **Project Management Fee ("PM Fee"):**
  - a. It shall be the obligation of NuVo to prepare the parcel shown as Exhibit A to be pad ready for the sale to third parties for end users. These duties shall include, but not be limited to, final engineering, budgets for development, Preliminary Plat if required, final plat of subdivision, grading, installation of streets and sewer and water services to the proposed pad. The fee shall be equal to 3.5% of the total Village approved costs to make the parcel usable for third party purchasers or strip retail center development. The PM Fee shall be paid as follows 25% of the total PM Fee due upon receipt of a construction permit after all approvals. The balance of 75% of the PM Fee is due and payable in 3 equal monthly installments commencing on the first day of the month after receipt of the construction permit.
  - b. The Broker's fee for sale of the pad to 3<sup>rd</sup> party users shall be 5% of the sale price to be paid by the seller upon closing per a separate exclusive listing agreement. Brokers shall participate with all cooperating brokers.

9. **Term and Termination:** The term of this Agreement shall commence on the date both parties sign this Agreement (“execution date”) and expire twenty four (24) months from the execution date. Village shall have the right to terminate this Agreement upon written notice thereof to NuVo, in the event of (1) dissolution of NuVo or its assignee or (2) a breach by NuVo in the performance of or compliance to the covenants or obligations of NuVo contained in this Agreement. NuVo shall have 30 days after receipt of notice from the Village to cure any breach so identified by the Village, or if said breach cannot be cured in 30 days, shall provide the Village with written commitment of a reasonable date certain to cure the breach, after which if the breach is not cured the Agreement shall be terminated.
10. **Return of Records:** Upon the expiration or termination (for any reason) of this Agreement, NuVo shall deliver to Village all records, documents and similar materials maintained by NuVo with respect to its supervision of the Development. Notwithstanding the above where upon the agreement is terminated by the Village the internal work product of NuVo shall remain its property.
11. **No Liability:** Neither NuVo nor Village shall, in their performance of this Agreement, be liable to the other for any act or omission, negligent, tortuous or otherwise, of any agent or employee of NuVo or Village unless such act or omission constitutes fraud, gross negligence or willful misconduct.
12. **Indemnity:** Village and NuVo each agree to indemnify and hold the other harmless from all liability, loss, damage, cost and expense (including reasonable counsel fees) by reason of any act or omission except for fraud, gross negligence or willful misconduct and each shall, at the non-offending party’s request or demand, assume the defense of any legal proceeding arising out of the allegation of any such act or omission.
13. **No Partnership:** Nothing in this Agreement shall be construed as creating a partnership or joint venture between Village and NuVo with respect to the development, use, or sale of all or any portion of the Property.
14. **No Waiver:** Neither party shall be deemed to have consented to waive any provisions of this Agreement unless any purported consent or waiver is expressly set forth in writing and signed by that party. No consent or waiver by a party to or of any breach of covenant, condition or duty of the other party shall be construed or implied as a consent to or waiver of any subsequent breach of the same or breach of any other covenant, condition or duty.
15. **Approvals:** Village shall act promptly and reasonably in exercising its rights to approve or disapprove any document, proposal, report, etc. submitted to it for approval under the terms of this Agreement.
16. **Assignment of Agreement:** NuVo shall have the right to assign this agreement to another entity with the same ownership interest without regard to permission of

the Village. The assignee shall have the same rights and obligations under this Agreement as NuVo.

17. **Counterparts:** This agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.
18. **Notice:** Any notice to be given to either party hereto under this Agreement shall be in writing and shall be deemed received (a) on the date delivered if hand delivered by receipted hand delivery and (b) two (2) days after postmark if sent postage prepaid by certified or registered mail, return receipt requested (3) E Mail pursuant to the descriptions below with confirmation. Notwithstanding any described herein all notices shall also be E Mail to the respective party.

**Notice to NuVo:**

NuVo Development Group LLC  
c/o Kenneth A. Rawson  
Attorney at Law  
141 West Jackson, Suite  
Chicago, Illinois 60604 with copies  
E Mail: [Kenneth.Rawson1@GMail.com](mailto:Kenneth.Rawson1@GMail.com)  
Phone: 312-203-7556

**Notice to the Village:**

Village of Pecatonica  
c/o President Bill Smull  
405 Main Street  
PO Box 730  
Pecatonica, IL 61063-0730  
E Mail: [bsmullviallgeofpec@gmail.com](mailto:bsmullviallgeofpec@gmail.com)  
Phone: 815-703-9817

**With a copy to:**

Douglas R. Henry  
Barrick, Switzer, Long, Balsley & Van Evera, LLP  
6833 Stalter Drive  
Rockford, IL 61108  
E Mail: [DHenry@bslbv.com](mailto:DHenry@bslbv.com)  
Phone: 815-962-6611

18. **Governing Law and Venue:** This Agreement shall be governed by and construed with the laws of the State of Illinois. Jurisdiction and venue shall be the Seventeenth Judicial Circuit Court, Winnebago County, Illinois.
19. **Amendments:** This Agreement may not be amended, modified, discharged or changed in any respect whatsoever, except by a further agreement in writing duly executed by the parties hereto.

- 20. **Invalidation:** Invalidation or enforceability or any one or more of the provisions of this Agreement shall in no way affect any of the provisions hereof, which shall remain in full force and effect.
- 21. **Captions:** The captions or headings of this Agreement are for conveniences of reference only, and in no way define, describe, extend or limit the scope of intent of this Agreement of the meaning or intent of any provisions hereof.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed as of the day and year first above.

Village of Pecatonica

NuVoRealtyGroupLLC.

\_\_\_\_\_  
By: Mr. William Smull

\_\_\_\_\_  
By: Kenneth A. Rawson  
Attorney at Law

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Title: Village President

Title: Manager

**Exhibit A**

Development Agreement

between Village of Pecatonica and NuVoRealtyGroupLLC

