

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

BETWEEN

PUNZARELLA LLC d/b/a/ OAKSTONE RECREATIONAL FACILITY

AND

THE VILLAGE OF COTTAGE GROVE

This FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT, between PUNZARELLA LLC d/b/a/ OAKSTONE RECREATIONAL FACILITY with its principal offices located at 323 OAKBROOK DRIVE, Lake Mills, Wisconsin 53551 (DEVELOPER) and THE VILLAGE OF COTTAGE GROVE, a Wisconsin municipal corporation with its principal offices located at 221 East Cottage Grove Road, Cottage Grove, Wisconsin 53527 (VILLAGE) shall become effective as of _____ 2019.

WHEREAS, DEVELOPER and the VILLAGE previously executed the original DEVELOPMENT AGREEMENT, with an effective date of November 1, 2018, and

WHEREAS, the DEVELOPMENT AGREEMENT and this FIRST AMENDMENT, along with any subsequent amendments and any EXHIBITS to those documents shall be collectively referred to the AMENDED DEVELOPMENT AGREEMENT, and

WHEREAS, the FIRST AMENDMENT TO DEVELOPMENT AGREEMENT involves Property more particularly described as:

Lot Two (2), of Certified Survey Map No.11263, recorded in the Office of the Register of Deeds for Dane County, Wisconsin, in Volume 68 of Certified Survey Maps, pages 84-86, as Document NO 3991773, located in The Village of Cottage Grove, Dane County, Wisconsin (Parcel)

WHEREAS, in a transaction dated November 1, 2018 the DEVELOPER became fee owner after the purchasing the PARCEL from the VILLAGE

WHEREAS, DEVELOPER received a recommendation for approval with conditions from the VILLAGE ARCHITECTURAL REVIEW COMMITTEE, VILLAGE PLAN COMMISSION and the VILLAGE BOARD, on the Site Plan (with parking areas and other IMPROVEMENTS) for a bar/restaurant/volleyball facility to be located at the NE corner of Commerce Parkway and Erb Road, and recommendation for approval with conditions for a Conditional Use Permit to operate an Outdoor Commercial Entertainment (outdoor seating, bar and volleyball) accessory land use, and to operate an indoor commercial entertainment (restaurant, bar and volleyball courts) land use with a liquor license to be located at the NE corner of Commerce Parkway and Erb Road. (also see ARTICLE I, PARAGRAPH 4) and

WHEREAS, the DEVELOPER has received approval for a revised site plan, intended to address conditions from the previous approval while also reducing the cost of the PROJECT, These changes do not affect the approved CONDITIONAL USE permit, (also see SECTION I, Paragraph 5)

NOW THEREFORE, in consideration of the aforementioned recitals, the mutual agreements, benefits and responsibilities outlined herein, and for other good and valuable consideration, the existence and sufficiency of which is hereby acknowledged by the parties, the DEVELOPER and the VILLAGE agree as follows:

ARTICLE I

A. The representations and recitations set forth within this document are material to this FIRST AMENDMENT TO DEVELOPMENT AGREEMENT and are hereby incorporated into and made a part of the AMENDED DEVELOPMENT AGREEMENT as though fully set forth in this Paragraph.

B. The parties mutually agree DEVELOPER and the VILLAGE are

separate and distinct entities and unless expressly provided for herein, none of the parties shall be considered to be the agent of the other and shall not have any general authority to enter into any contract, assume or impose any obligation or make any warranties on behalf of the other.

C. DEVELOPER and the VILLAGE agree to use their best efforts to satisfy all the contingencies and obligations contained in this FIRST AMENDMENT TO DEVELOPMENT AGREEMENT.

D. DEVELOPER agrees to construct the BUILDINGS and IMPROVEMENTS on the PARCEL in accordance with:

1. All provisions of the AMENDED DEVELOPMENT AGREEMENT;
2. Any applicable regulations of any governmental entity with jurisdiction over the IMPROVEMENTS and the PARCEL;
3. The VILLAGE Ordinances, VILLAGE COMPREHENSIVE PLAN and the COMMERCE PARK COVENANTS; and
4. The approvals and conditions contained from the September 12, 2018 VILLAGE ARCHITECTURAL REVIEW COMMITTEE meeting, the September 12, 2018 VILLAGE PLAN COMMISSION meeting and the September 18, 2018 VILLAGE BOARD meeting as summarized in the VILLAGE ACTION REPORT dated September 19, 2018 which are hereby incorporated as if fully set forth (attached as EXHIBIT A). and
5. The approvals and conditions contained from the April 4, 2019 VILLAGE ARCHITECTURAL REVIEW COMMITTEE meeting, the April 10, 2019 VILLAGE PLAN COMMISSION meeting and the April 15, 2019 VILLAGE BOARD meeting as summarized in the VILLAGE ACTION REPORT dated April 16, 2019 which is hereby incorporated as if fully set forth (attached as EXHIBIT B).

ARTICLE II

PUBLIC POLICY CONSIDERATIONS

A. **PUBLIC PURPOSE**

The parties acknowledge a municipality's responsibility to create safeguards to ensure funding involving the VILLAGE is being utilized for a public purpose.

In fulfillment of that responsibility, the VILLAGE has, following review, concluded this DEVELOPMENT AGREEMENT is being implemented in satisfaction of various public purposes including:

1. Providing greater employment opportunities pursuant to Wisconsin Statutes 66.52(1), see eq. 66.52(1) (a) and 66.431(2);
2. Providing the broadening, preservation and enhancement of the VILLAGE'S tax base, see eq. 66.52(1), 66.52(1) (a).

B. **TIF**

The DEVELOPER is requesting TIF assistance from the VILLAGE. The parties acknowledge the PARCEL lies within the VILLAGE TAX INCREMENTAL FINANCING DISTRICT NUMBER 5 (TIF 5).

ARTICLE IV

FINANCIAL CONSIDERATIONS

A. The terms and conditions of ARTICLE IV of the original DEVELOPMENT AGREEMENT are hereby deleted and replaced with the following:

- (i). A material consideration of this FIRST AMENDMENT TO DEVELOPMENT AGREEMENT reliance on mutual obligations and representations which have been exchanged

between the parties.involves various promises, obligations and representations exchanged between the parties.

(ii). If the value of the PARCEL together with all improvements constructed by the DEVELOPER equals or exceeds TWO MILLION FIVE HUNDRED THOUSAND (\$2, 500,000.00) on or before January 1, 2021:

(a) , the requirements of ARTICLE X-B (Village's right to repurchase the property) of the Declaration of Protective Covenants and Restrictions of the Cottage Grove Interstate Commerce Park shall be automatically waived by the VILLAGE

b. The DEVELOPER would be eligible to receive a TIF INCENTIVE PAYMENT totaling THREE HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$375,000) after the eassessed value of the COMPLETED PROJECT has been verified and the applicable installment of taxes have been paid.

The TIF INCENTIVE PAYMENTS shall be paid as follows:

1. An installment equal to the payment of the first installment of taxes payable on or before the later of (a) January 31 of each year, and ten (10) days after the receipt by the VILLAGE of full payment of the first installment of taxes due on January 31, of each year, and

2. An installment equal to the payment of the second installment of taxes payable on or before the later of (a) July 31 of each year and ten (10) days after the receipt by the VILLAGE of full payment of the second installment of taxes due on July 31 of each year.

3. For any year in which the assessed value of the COMPLETED PROJECT does not meet or exceed the TWO MILLION FIVE HUNDRED THOUSAND DOLLAR (\$2,500,000) figure, the TIF INCENTIVE PAYMENTS for such tax year (payable in the year following such tax year) will be decreased proportionately (i.e., if the assessed value is ten percent (10%) less than \$2,500,000, then the TIF INCENTIVE PAYMENTS shall be 10% less than the figures stated above).

(4) For any year in which the assessed value of the COMPLETED PROJECT exceeds the TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000) figure, the TIF INCENTIVE PAYMENTS for such tax year (payable in the year following such tax year) will be increased proportionately (i.e., if the assessed value of the COMPLETED PROJECT for a particular year is 10% higher than the TWO MILLION FIVE HUNDRED THOUSAND DOLLAR (\$2,500,000) figure, then the TIF INCENTIVE PAYMENTS for that year will be increased by 10%). Provided, however, that the amount of increase of such payments shall be capped so that at no time shall the total amount of TIF INCENTIVE PAYMENTS exceed an amount equal to the number of years such payments have been made.

The TIF INCENTIVE PAYMENTS shall continue until the DEVELOPER is paid THREE HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$375,000.00) as set forth herein or upon closure of TID 5 in 2027, whichever occurs sooner.

ARTICLE V SUPPLEMENTAL GENERAL CONDITIONS

A. WAIVER

No Waiver of any provision of this DEVELOPMENT AGREEMENT shall be deemed or constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written agreement to this default under this DEVELOPMENT AGREEMENT be deemed a waiver of any subsequent default or defaults of the same type. The VILLAGE'S failure to exercise any right under this DEVELOPMENT AGREEMENT shall not constitute the approval of any wrongful act by DEVELOPER or the acceptance of any improvement.

B. **AMENDMENT/MODIFICATION**

This DEVELOPMENT AGREEMENT may be amended or modified only by a written amendment approved and executed by the parties.

C. **DEFAULT**

A default is defined herein as either party's breach of, or failure to comply with, the terms of this DEVELOPMENT AGREEMENT.

D. **ENTIRE AGREEMENT**

This written DEVELOPMENT AGREEMENT and written amendments, and any referenced attachments thereto, shall constitute the entire DEVELOPMENT AGREEMENT between the parties.

E. **DISPUTE RESOLUTION**

Any disputes between the parties shall be submitted to mediation. In the event mediation is unsuccessful, either party may then commence litigation.

F. **ASSIGNMENT**

DEVELOPER shall have the right to assign its rights but not its obligations as set forth herein.

G. **SEVERABILITY**

If any part, term, or provision of this DEVELOPMENT AGREEMENT is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability shall not effect the validity of any other part, term or provision and the rights of the parties will be construed as if the part, term or provision was never part of the DEVELOPMENT AGREEMENT.

H. **BENEFITS**

The benefits of this DEVELOPMENT AGREEMENT to DEVELOPER shall not be assigned without the express written approval of the VILLAGE. Such approval may not be unreasonably withheld, but any unapproved assignment is void. The burdens of this DEVELOPMENT AGREEMENT shall run with the land shall be binding on the heirs, successors and assigns of DEVELOPER. There is no prohibition on the right of the VILLAGE to assign its rights under this DEVELOPMENT AGREEMENT. However, no act of the VILLAGE shall constitute a release of DEVELOPER from its liability under this DEVELOPMENT AGREEMENT.

I. **IMMUNITY**

Nothing contained in this DEVELOPMENT AGREEMENT constitutes a waiver of the VILLAGE'S sovereign immunity under applicable law.

J. **NOTICE**

Any notice required or permitted by this DEVELOPMENT AGREEMENT shall be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified and return receipt requested, and addressed as follows:

TO: VILLAGE OF COTTAGE GROVE
ATTN: VILLAGE ADMINSTRATOR
221 E. COTTAGE GROVE ROAD
COTTAGE GROVE, WI 53527

WITH COPY TO: VILLAGE ATTORNEY
LEIGHTON W. BOUSHEA
2945 TRIVERTON PIKE DRIVE
MADISON, WI 53711

TO: PUNZARELLA LLC
323 Oakbrook Dr.
Lake Mills, Wisconsin 53551

K. **RECORDATION**

The VILLAGE may record a copy of this DEVELOPMENT AGREEMENT or Affidavit indicating the existence of this DEVELOPMENT AGREEMENT in the Register of Deeds office.

L. **REPRESENTATION**

The parties acknowledge this DEVELOPMENT AGREEMENT was drafted by Leighton W. Boushea who serves as the attorney for the Village of Cottage Grove. DEVELOPER acknowledges Attorney Leighton W. Boushea cannot and has not provided any legal counsel to DEVELOPER.

THE PARTIES AFFIRMATIVELY REPRESENT THEY HAVE THE AUTHORITY TO COMPLETE THIS TRANSACTION, AND HEREBY AGREE TO ENTER INTO AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS DEVELOPMENT AGREEMENT.

VILLAGE

VILLAGE OF COTTAGE GROVE
DANE COUNTY, WISCONSIN

DATE

By: _____
Village President John Williams

DATE

Attest: _____
Village Clerk Lisa Kalata

DEVELOPER

PUNZARELLA LLC d/b/a OAKSTONE Recreational Facility

DATE

By: _____

DATE

By: _____

This instrument drafted by:
Village Attorney Leighton W. Boushea
BOUSHEA, SEGALL and KLIMINSKI LAW OFFICES
2945 Triverton Pike Drive, Suite 101
Madison, WI 53711
608/221-0079