

PRE – ANNEXATION AGREEMENT
BETWEEN
THE VILLAGE OF COTTAGE GROVE
AND
HOMBURG EQUIPMENT, INC AND ELLERY & MARGARET JENSEN
ANNEXING PROPERTY TO THE VILLAGE OF COTTAGE GROVE
PURSUANT TO ORDINANCE 04-2019

This **PRE-ANNEXATION AGREEMENT BETWEEN THE VILLAGE OF COTTAGE GROVE and ALL PROPERTY OWNERS ANNEXING PROPERTY TO THE VILLAGE OF COTTAGE GROVE PURSUANT TO ORDINANCE 04-2019** (hereafter **AGREEMENT**) is made and entered into with an effective date to be determined by and between the **VILLAGE OF COTTAGE GROVE**, a Wisconsin Municipal Corporation (hereafter **VILLAGE**) and **HOMBURG EQUIPMENT, INC. AND ELLERY & MARGARET JENSEN** to the **VILLAGE** pursuant to **ORDINANCE 04-2019** (hereafter **OWNERS**).

WHEREAS, the **OWNERS** have petitioned the **VILLAGE** for the annexation and temporary zoning of certain real estate (hereafter **PROPERTY**) which is more particularly described in the attached **ORDINANCE NO. 04-2019 ANNEXING TERRITORY FROM THE TOWNSHIP OF COTTAGE GROVE TO THE VILLAGE OF COTTAGE GROVE, DANE COUNTY, WISCONSIN** (hereafter **ORDINANCE 04-2019**) which is attached hereto and incorporated herein as if fully set forth; and

WHEREAS, in recognition of the many advantages and benefits to themselves and the final users, some or all of the **OWNERS** may decide to develop and improve their portion of the **PROPERTY**; and

WHEREAS, the annexation and development of the **PROPERTY** will benefit the **VILLAGE** by increasing the tax base of the **PROPERTY** within the **VILLAGE**, extend the corporate limits and jurisdiction of the **VILLAGE**, permit the sound planning and development of the **PROPERTY** within and under the control of the **VILLAGE**, and otherwise promote the general welfare of the **VILLAGE**; and

WHEREAS, the **VILLAGE** requires that certain conditions and acts with respect to the annexation, zoning, land division, and development of the **PROPERTY** be performed in a manner which complies with all applicable **VILLAGE** ordinances, laws and regulations in order to insure the development of the **PROPERTY** is in the best interest of the public; and

WHEREAS, the **PROPERTY** is currently zoned as RR-1 and AT-35 under the Dane County Zoning Ordinance; and

WHEREAS, while the precise development of the **PROPERTY** is unknown at this time, Annexation and Development are projected to require that certain public improvements be planned and constructed to serve the **PROPERTY**; and

WHEREAS, after examination and study of the proposed Annexation, the **VILLAGE PLAN COMMISSION** has recommended to, and the **VILLAGE BOARD** adopted, ORDINANCE 04-2019 approving the Annexation of the **PROPERTY** subject to the completion of a form of **PRE-ANNEXATION AGREEMENT**, confirming the annexation and development of any portion of the **PROPERTY** shall be according to the applicable **VILLAGE** Ordinances and guidelines established by this **AGREEMENT**; and

WHEREAS, the **OWNERS** and the **VILLAGE** acknowledge they enter into this **AGREEMENT** in order to specify certain rights, obligations and liabilities which will arise in the event any of the **OWNERS** request the **VILLAGE** to proceed with development of any portion of the **OWNERS PROPERTY**.

NOW, THEREFORE, for and in consideration of the mutual promises and obligations set forth herein, the parties agree as follows:

1. In the event the **OWNER** of any **PROPERTY** outlined in ORDINANCE 04-2019, chooses to develop any portion of that **PROPERTY**, (hereafter **OWNER / DEVELOPER**), any such development shall be according to the applicable **VILLAGE** Ordinances and guidelines by this **AGREEMENT**.

The **VILLAGE** is not bound to approve any land division, rezone, conditional use permit or Urban Service Area Amendment for the **PROPERTY** which does not comply with all of the requirements of the **AGREEMENT**, other applicable provisions of the **VILLAGE'S SUBDIVISION** and **LAND DIVISION** Ordinance, **ZONING** Ordinance or other **VILLAGE** Ordinances or state or federal law.

2. **OWNERS / DEVELOPERS RESPONSIBILITIES:**

As a further condition, precedent for the implementation of this **AGREEMENT**, and as a supplement to the applicable **VILLAGE** ordinances any **OWNER / DEVELOPER** further agrees:

1. **OWNER / DEVELOPER** shall hold as many open houses with the Community as determined by the Village starting with the conceptual planning stages and on through all stages of development prior to submitting a preliminary plat, final plat or development plans (Example: PUD) to insure the following:
 - (a) The open house(s) shall be for the purpose of explaining the **OWNERS / DEVELOPERS** concept(s) and answering the Public's questions regarding the proposed development.

The OPEN HOUSE PRESENTATION shall include information relative to traffic, storm water, environmental corridors and any other matters impacting upon **VILLAGE** resources.

2. The **OWNER / DEVELOPER(S)** preliminary plat, final plat and/or the development plan shall include the following:

(a) Bike Trails and Pedestrian Ways are to be constructed contemporaneous with streets within the plat and shall be built to a standard which meets or exceeds **VILLAGE**, County or DNR standards. Compliance shall be determined by the **VILLAGE ENGINEER** and shall be subject to review by the necessary **VILLAGE** committees, commissions and approved by the **VILLAGE BOARD**.

(b) Area used for detention, retention, infiltration or storm water facilities or designated wetlands shall not be included in any required Parkland calculations.

(c) Any parks to be donated by the **OWNER(S) / DEVELOPER(S)** in lieu of Parkland fees shall be constructed according to standards determined by the **VILLAGE**.

The acceptance of any such park shall be subject to review by the **VILLAGE ENGINEER AND/OR VILLAGE PLANNER** and subject to review by the necessary committees, commissions and approved by the **VILLAGE BOARD**.

3. The **DEVELOPMENT AGREEMENT** entered into between the **VILLAGE** and **OWNER / DEVELOPER** shall be in the form determined by the **VILLAGE** and shall contain the following additional provisions:

(a) The **DEVELOPMENT AGREEMENT** must include the phases of development which are subject to approval by the **VILLAGE BOARD**.

All phases are to be separately reviewed and approved by the **VILLAGE BOARD** prior to additional construction occurring.

(b) No development shall exclude the ability of the general public to purchase and construct their home with the builder of their choice or by themselves as builder/general contractor.

3. **ZONING AND LAND USES.**

Upon the adoption of an annexation ordinance for the **PROPERTY**, the **VILLAGE BOARD** will temporarily zone the **PROPERTY** under the **VILLAGE** Zoning Ordinance 325-304(A) as RURAL HOLDING.

The parties agree that, upon submission of the required application for zoning and satisfaction of all requirements for such zoning by the **OWNERS / DEVELOPERS**, the **VILLAGE** will enact further amendments to the **VILLAGE** Zoning Ordinance permanently zoning the **PROPERTY** in permanent zoning classifications which are in general conformity to the concept plan for the **PROPERTY**, prepared by the **OWNERS / DEVELOPERS** in conformity with the **VILLAGE** Ordinances.

5. RESPONSIBILITY FOR UTILITY IMPROVEMENTS

OWNERS / DEVELOPERS shall be responsible for the cost of application for urban service area annexation and Madison Metropolitan Sewerage District annexation, including reimbursement to the Village for all consultant fees expended in the preparation of an urban service area and MMSD application and approval process, and if deemed necessary, planning, design and construction of all infrastructure improvements required by the **VILLAGE'S** Subdivision and Land Division Ordinance which are directly related to the development or in order to facilitate the continued orderly development or extension of **VILLAGE** infrastructure.

The connection of the sanitary sewer service or other municipal services to the **PROPERTY** is contingent upon the annexation of the **PROPERTY** becoming final and upon the approval of an Urban Service Area amendment, as provided above. The parties to this **AGREEMENT** agree that such service obligation shall not arise until the expiration of the annexation ordinance challenge period provide by law, or if a lawsuit challenging the validity of the annexation is filed, until after the lawsuit concludes and annexation becomes final and all review and appeal periods provided by law have expired.

6. RESPONSIBILITY FOR POTENTIAL LEGAL COSTS

The **OWNERS** are petitioning for Direct Annexation by Unanimous Approval, as regulated by Wis. Stat. 66.0217(2). Wis. Stat. 66.0217(6)(d) describes certain specific scenarios in which a township may challenge a petition for Direct Annexation by Unanimous Approval.

In the event the affected township commences an action to challenge the annexation, the owners shall reimburse the Village for any and all costs incurred by the Village to defend against the town's legal action.

In the further event any Court rules to uphold the towns challenge, the owner shall reimburse the Village for all court costs and reasonable attorneys fees awarded pursuant to Wisconsin statutes 66.0217 (6) (d).

7. **AUTHORITY OF VILLAGE.**

A. Nothing in this **AGREEMENT** is intended to relieve, nor should it be construed as relieving, or in any way satisfying other obligations, procedures or requirements of **OWNERS / DEVELOPERS** pertaining to the future development and/or division of the **PROPERTY**. Furthermore, this **AGREEMENT** does not bind the **VILLAGE** to approve any rezoning, land division, Urban Service Area amendment or other development activity for the **PROPERTY** which is not in compliance with **VILLAGE** ordinances or plans or state or federal law. At the time of any subsequent land division or development, the **OWNERS / DEVELOPERS** agree to comply with all applicable procedures then required by **VILLAGE** ordinances, including, but not limited to, entering into a separate development **AGREEMENT** in a form acceptable to the **VILLAGE**.

B. All **VILLAGE** ordinances shall apply to the **PROPERTY**. The **VILLAGE** reserves its right to amend any such ordinance(s) including the Zoning Ordinance, Subdivision and Land Division Ordinance, and all other ordinances, and adopt new ordinances affecting the development of the **PROPERTY** at any time as may be reasonably necessary for the protection of the public health, welfare, and safety, by general ordinance amendments applicable to the development of all real **PROPERTY** in the **VILLAGE**, but no such ordinance shall be discriminatory in its effect upon the development of the **PROPERTY**.

8. **BINDING EFFECT.**

This **AGREEMENT** shall bind the heirs and successors and assigns of the **OWNERS / DEVELOPERS** and the **VILLAGE**, and shall be enforceable in the manner provided by law. Nothing herein shall in any way prevent alienation or sale of the **PROPERTY** or any portion thereof, except that such sale shall be subject to the provisions hereof and of the **VILLAGE** ordinances and Wisconsin law and the new owners shall be both benefited and bound by the conditions and restrictions herein expressed. Furthermore, nothing in this **AGREEMENT** shall affect or change any other **AGREEMENTS** entered into between the **VILLAGE** and **OWNERS / DEVELOPERS**.

9. **PAYMENT OF ALL FEES.**

The **OWNERS / DEVELOPERS** shall be responsible for all costs and fees associated with the development. This shall include but not be limited to the payment of all required **VILLAGE** fees and/or costs pursuant to **VILLAGE** ordinances related to the **PROPERTY** within the times established by this **AGREEMENT** or **VILLAGE** ordinances and to execute any required documentation needed to implement said fees.

Failure to timely pay any fees or costs associated with the development shall result in no additional work being performed until such outstanding balances are paid in full.

10. **IMMUNITY**

Nothing contained within this **AGREEMENT** constitutes a waiver of the **VILLAGE’S** sovereign immunity under applicable law.

11. **AMENDMENT.**

This **AGREEMENT** may be amended or modified only by a written amendment approved and agreed to by the **VILLAGE AND OWNER / DEVELOPER.**

12. **SEPARABILITY.**

It is understood that in the event any provisions of this **AGREEMENT** shall be deemed invalid, then the invalidity of said provisions shall not affect the validity of any other provisions hereof.

13. **AUTHORITY.**

The parties agree and represent that the undersigned signatories to this **AGREEMENT** have full power and authority to execute this **AGREEMENT** and that all necessary and enabling resolutions have been duly enacted to approve this **AGREEMENT** and authorize its execution.

14. **ASSIGNMENT.**

No assignment of rights and liabilities under this **AGREEMENT** shall be made without the prior written approval of the **VILLAGE** which approval shall not be unreasonably withheld.

15. **EFFECTIVE DATE.**

This **AGREEMENT** shall be effective commencing on the date indicated in the first paragraph above.

IN WITNESS WHEREOF, the parties have caused this **AGREEMENT** to be executed by individuals and officers who are duly authorized as of the date set forth above.

VILLAGE OF COTTAGE GROVE

By: _____
VILLAGE PRESIDENT

Attest: _____
VILLAGE CLERK
LISA KALATA

ANNEXING OWNERS

By: _____

Date: _____
Date: _____
Date: _____
Date: _____