

**AGREEMENT TO UNDERTAKE DEVELOPMENT IN
TAX INCREMENT DISTRICT NO. 5**

(Comfort Suites Development)

THIS AGREEMENT TO UNDERTAKE DEVELOPMENT entered into as of the ___ day of _____, 2020 (the “Agreement”), by and between the Village of Cottage Grove, a Wisconsin municipal corporation (the “Village”), and Badger Hotel Group, LLC a Wisconsin limited liability company (the “Developer”).

RECITALS

WHEREAS, the Village has created Tax Increment District No. 5 (the “District”) and approved a Project Plan (“Project Plan”) for the District; and

WHEREAS, the effective termination date of the District is December 31, 2027 (the “TID Closure Date”); and

WHEREAS, the Village desires to facilitate the development of certain property within the District; and

WHEREAS, Developer proposes to develop the real property described on Attachment A attached hereto (the "Comfort Suites Property"), and intends to undertake commercial development on the Comfort Suites Property in accordance with the Planned Unit Development District zoning; and

WHEREAS, the Village finds and determines that unless the Village provides the tax increment development incentive payments described in this Agreement, Developer will not develop the Comfort Suites Property, and the Village will not accomplish the objectives of the Project Plan for the District; and

WHEREAS, the Village finds that the development of the Comfort Suites Property and the fulfillment of the terms and conditions of this Agreement are in the vital and best interests of the Village and its residents, by expanding the tax base and creating commercial opportunities, thereby serving public purposes in accordance with state and local law; and

WHEREAS, as an inducement to Developer to develop the Comfort Suites Property and otherwise facilitate the development of the Comfort Suites Property, and in order to make the development financially feasible and to implement the Project Plan for the District, the Village finds it appropriate to provide tax increment development incentive payments for the development of the Comfort Suites Property as described in, and subject to the reservations contained in, this Agreement; and

NOW, THEREFORE, in consideration of the Recitals, and the mutual promises, obligations and benefits provided hereunder, the receipt and adequacy of which are hereby acknowledged, Developer and the Village agree as follows:

A. **DEFINITIONS.** As used in this Agreement, the following terms, when having an initial capital letter, shall mean:

1. Comfort Suites Property. The property, commonly known as 1607 Landmark Drive, Village of Cottage Grove, Wisconsin, and located in the District as more particularly described in Attachment A.

2. Comfort Suites Property Base Value. Shall be \$313,146, as assessed by the Village of Cottage Grove as of the date on which the District was created, of the following property: Lot 1, Certified Survey Map 12520, recorded in Volume 28 of Dane County Certified Survey Maps, pages 186-187, as Document No. 4460942.

3. Comfort Suites Property Tax Increment. The tax increment actually received by the Village from taxes levied on the Comfort Suites Property in a given year, as reasonably calculated by the Village. As of the effective date of this Agreement, the Department of Revenue calculates the combined tax increment generated by all tax increment districts in the Village, using a methodology reflected on Wisconsin Department of Revenue form PC-202. A copy of form PC 202, for 2019 taxes payable in 2020, is attached as Attachment B. The parties agree that the Village may reasonably calculate Comfort Suites Property Tax Increment by multiplying the total “interim rate” from form PC-202 for the applicable year by the Comfort Suites Property Value Increment for that year. The total interim rate is obtained by dividing the combined levies from each taxing jurisdiction (the sum of the apportioned levies in column A on form PC-202) by the total equalized value of all taxable property in the Village, excluding the value increment of all tax increment districts in the Village (the amount used in column B on form PC-202). If the Wisconsin Department of Revenue discontinues or modifies form PC-202, or otherwise modifies the manner in which it calculates tax increment, the Village may calculate Comfort Suites Property Tax Increment in such other reasonable manner as it determines appropriate. The Village may make such adjustments in calculating Comfort Suites Property Tax Increment needed so that, if tax increment is so calculated for all parcels in the District, the sum does not exceed the total tax increment received by the Village from taxes levied on all property in the District.

4. Comfort Suites Property Value Increment. The fair market value of the Comfort Suites Property in a given year, as shown on the real property tax bill for the Comfort Suites Property for that year, minus the Comfort Suites Property Base Value.

5. District. Village of Cottage Grove Tax Increment District No. 5.

6. Excess Tax Increment. Excess Tax Increment has the meaning given in Section B.3.(a).

7. Project. The construction of one, 57,000 square foot, 82 room commercial hotel building.

8. Village Administrative Costs. All costs, including engineering, legal, planning, and financial consultant costs, incurred by the Village relating to the creation and continuing and future administration this Agreement, the drafting and negotiation of this Agreement and other agreements relating to the Project, and other costs incurred by the Village in connection with the Project.

B. DEVELOPMENT INCENTIVE GRANTS.

1. Village Financed Grant. The Village shall provide a development incentive grant to Developer in the amount of Seven Hundred and Fifty Thousand Dollars (\$750,000) (the "Incentive Grant"). This grant shall be paid to Developer in three installments in accordance with the following schedule:

(a) One Hundred and Eighty-Seven Thousand Five Hundred Dollars (\$187,500) upon the Village issuing Developer a building permit for the Comfort Suites Property.

(b) One Hundred and Eighty-Seven Thousand Five Hundred Dollars (\$187,500) upon fifty percent (50%) completion of construction. For purposes of this subsection, fifty percent completion of construction shall mean when Developer has expended a total of \$4.7 million (\$4,700,000) on developing the Project. Developer shall provide the Village invoices, receipts, or other written documentation establishing that Developer has spent \$4.7 million on the Project.

(c) Three Hundred Seventy-Five Thousand Dollars (\$375,000) upon the Village issuing Developer an occupancy permit for the Comfort Suites Property.

Payments shall occur within 30 days after Developer satisfies the above corresponding condition and makes written request for payment. The Village shall not issue any payments until Developer has delivered to the Village verification that the conditions in Section D of this Agreement have been satisfied. If the Village is unable to pay any installment of the Incentive Grant to the Developer within 30 days due to an event or circumstances beyond the Village's reasonable ability to control, then the time for the Village to pay the installment of the Incentive Grant shall be extended until such time as the Village can make said payments, however in no event later than 60 days after Developer satisfies the above corresponding condition and makes written request for payment.

2. Municipal Revenue Obligation. Following the completion of and the issuance of an occupancy permit for the Project, and within forty-five (45) days after submittal of the written request for issuance of the Municipal Revenue Obligation, the Village shall issue a Municipal Revenue Obligation to Developer, in the principal amount up to Seven Hundred Six Thousand, Six Hundred Seventy Dollars (\$706,670), and only to the extent that the Project generates

sufficient Excess Tax Increment to make installment payments, in the form attached hereto as Attachment C, under the following terms and conditions:

(a) The Municipal Revenue Obligation shall not bear any interest.

(b) Any payment on the Municipal Revenue Obligation which is due on any Payment Date shall be payable solely from and only to the extent that the Village has received as of such Payment Date Excess Tax Increment. Any such Excess Tax Increment shall be appropriated by the Village Board to payment of the Municipal Revenue Obligation until paid in full or the TID Closure Date, whichever occurs first.

(c) For purposes of the Municipal Revenue Obligation, a "Payment Date" shall mean November 1 of each year until the TID Closure Date or the Municipal Revenue Obligation has been paid in full, whichever occurs first. On each Payment Date, the Village shall pay to Developer the Excess Tax Increment that has been appropriated for that purpose by the Village Board in accordance with the requirements for revenue obligations.

(d) The Village covenants and agrees that Excess Tax Increment held by the Village as of a given Payment Date shall not be appropriated for any other use, if not appropriated for the Municipal Revenue Obligation due as of such Payment Date, until said Municipal Revenue Obligation has been paid. The District shall not be terminated until the Municipal Revenue Obligation of \$706,670 has been paid, or until the TID Closure Date, whichever first occurs.

3. Allocation of Comfort Suites Property Tax Increment. Comfort Suites Property Tax Increment shall be applied as follows:

(a) Following issuance of a building permit for the Project through December 31, 2027, or until the Municipal Revenue Obligation is paid in full, whichever is sooner, Comfort Suites Excess Tax Increment shall be allocated each year for payment of the Municipal Revenue Obligation referred to in Section B.2 of this Agreement. For purposes of this Agreement, "Excess Tax Increment" shall mean the sum of (i) the Comfort Suites Property Tax Increment minus any unreimbursed Village Administrative Costs that Developer has not paid pursuant to the terms of the Cost Reimbursement Agreement (Attachment F), plus (ii) in 2020 through the TID Closure Date, or until the Municipal Revenue Obligation is paid in full, whichever is sooner, any Tax Payment Guarantee payments made to the Village under Section C.2.

4. Post Development Grant. Following the issuance of an occupancy permit to Developer, Village shall pay to Developer a grant equal to 30 percent (30%) of all room taxes paid by Developer to the Village for a period of ten years from the date of issuance of the occupancy permit, up to a maximum of Five Hundred Six Thousand Dollars (\$506,000). Village shall pay Developer annually for each year that payment is required. Payments shall be due to Developer annually on January 31. Payments due shall be calculated based on the amount of room tax collected from Developer in the previous year, with the first and last payments pro-rated based on the date of issuance of the occupancy permit.

C. DEVELOPER OBLIGATIONS.

1. Timely Proceed With Private Development. Developer shall use good faith efforts to construct the Project during 2020 and 2021, such that the tax increment, employment and other benefits cited in this Agreement and the Project Plan are actually derived by the Village and other taxing jurisdictions.

2. Tax Payment Guarantee. Developer estimates that the Comfort Suites Property will have a total assessed value, for real property tax purposes, of not less than Five Million Two Hundred Fifty Thousand Dollars (\$5,250,000) as of January 1, 2022 (the "Minimum Estimated Assessment"), and as of each January 1 thereafter. . If, in any year (the "Valuation Year") beginning with January 1, 2022, and until the Tax Payment Guarantee Termination Date, the total assessed value of the Comfort Suites Property is less than the Minimum Estimated Assessment, the Developer shall pay to the Village, in addition to the real property taxes owed on the Comfort Suites Property, an amount equal to the difference between (1) the amount of real property taxes that would have been payable for the Comfort Suites Property for the Valuation Year if the Comfort Suites Property had a total assessed value equal to the Minimum Estimated Assessment, and (2) the amount of real property taxes owed on the Comfort Suites Property for the Valuation Year based on the Comfort Suites Property's actual assessed value (the "Tax Payment Guarantee"). For purposes of this Agreement, the "Tax Payment Guarantee Termination Date" is the date on which the Village has been fully reimbursed for the Incentive Grant and Post Development Grant through the sum of (i) the Village's portion of real estate taxes paid by Developer on the portion of the assessed value of the Comfort Suites Property in excess of Comfort Suites Property Base Value, plus (ii) payments made under this Section. Any payments made to the Village under this section shall qualify as Excess Tax Increment for purposes of the Village satisfying its obligations under the Municipal Revenue Obligation until the Municipal Revenue Obligation has been paid in full or the TID Closure Date, whichever occurs first. Developer shall pay any amount due to the Village under this section in a single installment due on January 31 of the year in which real property taxes on the Comfort Suites Property are owed for the Valuation Year. Notwithstanding the foregoing, for each Valuation Year after the Tax Payment Guarantee Termination Date, the Tax Payment Guarantee shall no longer be applicable; but rather Developer shall be required only to make its annual real estate tax payments owed on the Comfort Suites Property as usual and customary.

3. Personal Guaranty. Developer's obligations under this Agreement shall be secured by a guaranty to be provided by each member of Developer owning greater than 20% membership interest in Developer, in the form attached as Attachment D. Such guaranty or guaranties shall cover 100% of the (i) Tax Payment Guarantee, (ii) the full repayment through the annual real estate tax payments owed on the Comfort Suites Property of the total amount of the Incentive Grant and the Post Development Grant, and (iii) any payments required under Section C.4. and Attachment E, and shall be provided to the Village on or before the execution of this Agreement. Developer represents and covenants that Joseph Wagner is the only member owning greater than a 20% membership interest in Developer and that Developer is the sole owner of the Comfort Suites Property.

4. Tax Agreement. Developer shall execute and deliver to the Village for recording with the Dane County Register of Deeds the Tax Agreement attached as Attachment E.

5. Payments Made Under Sections C.2 Amounts paid to the Village under Section C.2 of this Agreement shall, during the life of the District, be used and allocated in the same way that Comfort Suites Property Tax Increment is used and allocated pursuant to this Agreement.

6. Insurance. Developer shall maintain in effect and furnish to the Village evidence of insurance and proof of payment of premiums as follows:

(a) *During Construction.* During the process of construction of the Project, policies of builder's risk completed value non-reporting form of fire and extended coverage, vandalism and malicious mischief hazard insurance in favor of the Village and covering the Project in at least the amount of the estimated cost of replacement of the Project, with loss payable endorsements in favor of the Village with provision that such coverage will not be terminated without 30 days prior written notice to the Village.

(b) *After Completion.* After completion of construction of the Project, Developer, and its successors and assigns, shall keep the Project adequately insured against loss or damage occasioned by fire, extended coverage perils (to specifically include coverage for wind, storm and similar natural disaster and hazards) as Developer's first mortgage lender(s) may require, which shall remain in effect for the life of the District. All insurance policies obtained to satisfy this requirement shall include a provision that they shall not be terminated, amended or canceled without at least 30 days prior written notice to the Village. If any portion of the Project is substantially damaged or destroyed by fire, wind, storm, mold, bacteria or any other cause during the life of the District, Developer shall promptly rebuild or repair the damaged or destroyed portions of the Project. Developer shall provide the Village with a certificate of insurance from its insurance carrier evidencing the required coverage not later than 30 days after the initial effective date thereof and upon each renewal.

7. Developer is responsible for obtaining all licenses, permits and authority necessary to perform its obligations under this agreement and abiding by any conditions placed upon those approvals. If the Village approves rezoning the Comfort Suites Property to Planned Unit Development, the Project shall be in accordance with Planned Unit Development District zoning for the Comfort Suites Property.

D. CONDITIONS PRECEDENT TO AGREEMENT OBLIGATIONS.

All of the following must occur before either party's obligations under this Agreement shall become effective.

1. The Village and Developer must approve and execute this Agreement.
2. Developer shall provide commitment letters demonstrating it has secured sufficient financing to pay for the Project.

3. Developer shall execute and deliver to the Village for recording with the Dane County Register of Deeds, a Tax Agreement in the form attached as Attachment E.

4. Developer and listed individuals must deliver to the Village the fully executed guaranties required by Section C.2 and C.3 of this Agreement.

5. The Village must approve rezoning the Comfort Suites Property to Planned Unit Development.

6. Developer must obtain all necessary licenses, permits, and approvals from the Village required for development of the Comfort Suites Property and construction of the Project, such as, but not limited to, site plan approval and a stormwater approval.

If the events described in this Section D are not satisfied by December 31, 2020, then this Agreement shall be null and void.

E. REPRESENTATIONS AND WARRANTIES.

1. Authorization. Developer warrants that Developer's execution, delivery and performance of this Agreement have been duly authorized and do not conflict with, result in a violation of, or constitute a default under any provision of Developer's articles of organization or membership agreements, or any agreement or other instrument binding upon Developer, or any law, governmental regulation, court decree, or order applicable to Developer or to the Comfort Suites Property.

F. GENERAL CONDITIONS.

1. No Vested Rights Granted. Except as provided by law, or as expressly provided in this Agreement, no vested rights to develop the Project shall inure to Developer by virtue of this Agreement. Nor does the Village warrant that Developer is entitled to any other approvals required for development of the Comfort Suites Property or construction of the Project as a result of this Agreement.

2. Binding Effect / Assignment. The obligations of Developer and the Village under this Agreement shall be binding on their respective successors and assigns. Developer may not assign its benefits or obligations under this Agreement without the express prior written approval of the Village, and any unapproved assignment is void. However, no assignment of Developer's benefits consented to in this subsection shall constitute a release of Developer from the obligations and liabilities under this Agreement. Developer may, in its discretion, require that any subsequent owner of all or part of the Comfort Suites Property assume all or part of Developer's obligations under Section C.2 of this Agreement. No such assumption, however, and no act of the Village, shall release Developer or Guarantor from any obligation or liability under this Agreement, unless and to the extent that the Village expressly agrees in writing to release Developer. The Village

shall have the sole discretion to release or not release Developer from the obligations and liabilities under this Agreement.

3. No Waiver. No waiver of any provision of this 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 amendment to this Agreement signed by both the Village and Developer, nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults. Either party's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the other party hereto.

4. Amendment/Modification. This Agreement may be amended or modified only by a written amendment approved and executed by the Village and Developer.

5. Remedies upon Default. A default is defined herein as a party's breach of, or failure to comply with, the terms of this Agreement and the failure to cure such breach within thirty (30) days after the date of written notice from the non-defaulting party. The parties reserve all remedies at law or in equity necessary to cure any default or remedy any damages or losses under this Agreement. Rights and remedies are cumulative, and the exercise of one or more rights or remedies shall not preclude the exercise of other rights or remedies. Remedies include, but are not limited to, charging Developer, on all amounts due to the Village not paid by the due date, interest at the rate of 2 percent over the rate then payable by the Village under the Village borrowing, from the due date until the date the unpaid amounts are paid in full.

6. Entire Agreement/Appendices Incorporated. This written Agreement and the attachments hereto, shall constitute the entire Agreement between Developer and the Village as of the date hereof.

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

8. Immunity. Nothing contained in this Agreement constitutes a waiver of the Village's sovereign immunity under applicable law.

9. Other Approvals/Requirements Apply. This Agreement is intended only to address those special concerns related to implementation of the Project Plan for the District, substantially in accordance with the Project Plan. Nothing in this Agreement relieves Developer from any obligations to obtain all necessary approvals and to follow all applicable local, state and federal requirements in order to proceed with the Project.

10. Notice. Any notice required or permitted by this Agreement shall be deemed effective given in writing and personally delivered or mailed by U.S. Mail as follows:

To Developer: Joseph Wagner
Badger Hotel Group, LLC
c/o Greywolf Partners, Inc.
115 South 84th St. Suite 275
Milwaukee, WI 53214

To the Village: Village Clerk
Village of Cottage Grove
221 E Cottage Grove Road
Cottage Grove, WI 53527

11. Recordation. The Village may record a copy of this Agreement, or a memorandum thereof, in the office of the Dane County Register of Deeds.

12. Personal Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by either party arising out of this Agreement shall be deemed to be proper only if such action is commenced in Circuit Court for Dane County unless it is determined that such Court lacks jurisdiction. Developer hereby consents to personal jurisdiction in Dane County. Developer also expressly waives the right to bring such action in, or to remove such action to, any other court whether state or federal, unless it is determined that the Circuit Court for Dane County lack jurisdiction.

13. Ratification. Developer hereby approves and ratifies all actions taken to date by the Village, its officers, employees and agents in connection with the District, and in connection with the zoning and other approvals relating to the Comfort Suites Property and the Project.

14. Compliance with Laws. Developer shall comply with all federal, state and local laws with respect to the Project, including but not limited to laws governing building and construction, the environment, nondiscrimination, and employment and contracting practices, to the extent they are applicable.

15. No Partnership. The Village does not, in any way or for any purpose, become a partner, employer, principal, agent or joint venturer of or with Developer.

16. Good Faith. Both parties to this Agreement shall exercise good faith in performing any obligation that party has assumed under the terms of this Agreement including, but not limited to, the performance of obligations that require the exercise of discretion and judgment.

17. Applicable Law. This Agreement shall be construed under the laws of the state of Wisconsin.

18. No Private Right or Cause of Action. Nothing in this Agreement shall be interpreted or construed to create any private right or any private cause of action by or on behalf of any person not a party hereto.

19. Effective Date. This Agreement shall be effective as of the date and year first written above.

20. Term. Except as provided in Section D, this Agreement shall continue in full force and effect until such time as Developer's obligations under Section C of this Agreement, including any payments required to be made by Developer member(s) or other persons as required by Attachment D, and the Village's obligations under Section B of this Agreement, have been fully satisfied, at which point this Agreement shall terminate and be of no further force or effect. At that time, if this Agreement has been recorded the parties shall jointly execute and record a release of the Agreement.

21. Construction of Agreement. Each party participated fully in the drafting of each and every part of this Agreement. This Agreement shall not be construed strictly in favor of or against either party. It shall be construed simply and fairly to each party.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the year and date first set forth above, and by so signing this Agreement, certify that they have been duly authorized by their respective entities to execute this Agreement on their behalf.

VILLAGE:

VILLAGE OF COTTAGE GROVE
Dane County, Wisconsin

By _____
John Williams, Village President

ATTEST:

Lisa Kalata, Village Clerk

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this _____ day of _____, 2020, the above-named John Williams, Village President, and Lisa Kalata, Village Clerk, of the Village of Cottage Grove, to me known to be the persons and officers who executed the foregoing instrument and acknowledged that they executed the same as such officers by the Village's authority.

Subscribed and sworn to before me
This _____ day of _____, 2020.

Notary Public, State of Wisconsin
Print Name: _____
My Commission: _____

DEVELOPER:

BADGER HOTEL GROUP, LLC.

By _____
Joseph Wagner, Managing Member

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this _____ day of _____, 2020 the above named Joseph Wagner to me known to be the person who executed the foregoing instrument and acknowledged the same.

Subscribed and sworn to before me
This _____ day of _____, 2020.

Notary Public, State of Wisconsin
Print Name: _____
My Commission: _____

ATTACHMENTS

- A. Legal Description of Comfort Suites Property
- B. Form PC 202
- C. Municipal Revenue Obligation
- D. Guaranty
- E. Tax Agreement
- F. Cost Reimbursement Agreement
- G. Village Action Report (will become an attachment upon Village approving the Village Action Report)

ATTACHMENT A
LEGAL DESCRIPTION OF PROPERTY

Lot 1, Certified Survey Map 12520, recorded in the Office of the Register of Deeds for Dane County, Wisconsin, in Volume 78 of Certified Survey Maps, pages 186-187, as Document No. 4460942.

ATTACHMENT B FORM PC 202

ATTACHMENT B

| | | |
|----------------|-------------------------------------|-----------------------|
| Form PC-202 | 2019 Tax Increment Worksheet | WI Dept of Revenue |
|----------------|-------------------------------------|-----------------------|

| | | | | | |
|------------------------|-----------------------|---|---------------------|---|--|
| Report Type AMENDED | Co-muni Code 13112 | County DANE Muni Type VILLAGE Municipality COTTAGE GROVE | Account No. 0375 | Total Equalized TID Value Increment 100,661,900 | This worksheet is for all TIDs in this municipality |
|------------------------|-----------------------|---|---------------------|---|--|

| Taxing Jurisdiction | Col. A | Col. B | Col. C | Col. D | Col. E | Col. F |
|--|--------------------|--|------------------|--|-----------------|-----------------------|
| | Apportioned Levy / | Equalized Value (less TID value Increment) | = Interim Rate X | Equalized Value (with TID value Increment) | = Levy Amount | E - A = Tax Increment |
| 1. County | | | | | | |
| DANE | \$2,295,578.63 / | 698,056,700.00 = | 0.003288527 X | 798,718,600.00 = | \$2,626,607.68 | \$331,029.05 |
| 2. Special District (metro, sanitary, lake) | | | | | | |
| MADISON METRO SEWER DISTRICT | \$0.00 / | 684,872,571.00 = | 0.000000000 X | 785,420,571.00 = | \$0.00 | \$0.00 |
| 3. Tax District (city, village, town) | | | | | | |
| COTTAGE GROVE | \$4,220,470.00 / | 698,056,700.00 = | 0.006046027 X | 798,718,600.00 = | \$4,829,074.22 | \$608,604.22 |
| 4. School District(s) | | | | | | |
| SCH D OF MONONA GROVE | \$9,137,471.44 / | 695,029,458.00 = | 0.013146884 X | 795,578,458.00 = | \$10,459,377.70 | \$1,321,906.26 |
| SCH D OF SUN PRAIRIE AREA | \$39,548.00 / | 3,027,242.00 = | 0.013064037 X | 3,140,142.00 = | \$41,022.93 | \$1,474.93 |
| 5. Technical College District(s) | | | | | | |
| MADISON AREA TECHNICAL COLLEGE MADN | \$616,579.28 / | 698,056,700.00 = | 0.000883280 X | 798,718,600.00 = | \$705,492.17 | \$88,912.89 |
| 6. Total for Tax Increment | | | | | | |
| | \$16,309,647.35 | | | \$18,661,574.70 | | \$2,351,927.35 |

ATTACHMENT C

**AGREEMENT TO UNDERTAKE DEVELOPMENT IN
TAX INCREMENT DISTRICT NO. 5**

MUNICIPAL REVENUE OBLIGATION

**VILLAGE OF COTTAGE GROVE
MUNICIPAL REVENUE OBLIGATION SERIES 20-01
\$706,670.00**

THIS MUNICIPAL REVENUE OBLIGATION (the “Obligation”) is issued pursuant to Wis. Stat. § 66.0621 this _____ day of _____, 2020 by the Village of Cottage Grove, Dane County, Wisconsin (the “Village”) to Badger Hotel, LLC, a Wisconsin limited liability company, its successors and assigns (“Developer”).

WITNESSETH:

I. The Village and Developer have entered into an Agreement to Undertake Development in Tax Increment District No. 5 dated _____, 2020 (the “Development Agreement”).

II. This Obligation is issued by the Village pursuant to the Development Agreement.

III. Terms that are capitalized in this Obligation that are not defined in this Obligation and that are defined in the Development Agreement shall have the meanings assigned to such terms by the Development Agreement.

IV. *Promise to Pay.* The Village shall pay to Developer the principal amount of \$706,670.00 solely from Excess Tax Increment. Beginning on November 1 in the first calendar year after the year this Obligation is issued, and on each subsequent November 1, the Village shall pay all Excess Tax Increment that has been received in that calendar year and appropriated to payment of this Obligation to Developer, until the principal amount of this Obligation has been paid in full, or until the TID Closure Date. To the extent that on any November 1 the Village is unable to make a payment from Excess Tax Increment as a result of having received, as of such date, insufficient Excess Tax Increment, or as the result of the Village Board not having appropriated Excess Tax Increment to payment of this Obligation, such failure shall not constitute a default under this Obligation. Any payments on this Obligation shall be payable solely from and only to the extent that, as of a given November 1, the Village has received Excess Tax Increment. In no case shall the term of this Obligation and the Village’s obligation to make payments hereunder, extend beyond the TID Closure Date. Nor shall the Village be obligated to pay any amount not appropriated for such purpose by the Village Board. This Obligation shall terminate and the Village’s obligation to make any payments under this Obligation shall be discharged, and the Village shall have no obligation and incur no liability to make any payments hereunder, after the TID Closure Date.

V. *Limited Obligation of Village.* This Obligation shall not constitute a charge against the Village's general credit or taxing power. The Village shall not be subject to any liability hereunder, or be deemed to have obligated itself to pay Developer any amounts from any funds except from the Excess Tax Increment, and then only to the extent and in the manner herein specified.

VI. *Subject to Annual Appropriations.* Each payment under this Obligation shall be subject to annual appropriation by the Village in accordance with the requirements for revenue obligations and in a manner approved by the Village's bond counsel and in accordance with the Development Agreement.

VII. *Prepayment Option.* To satisfy in full the Village's obligations under this Obligation, the Village shall have the right to prepay all or a portion of the outstanding principal balance of this Obligation at any time, at par and without penalty.

VIII. *Miscellaneous.* This Obligation is subject to the Tax Increment Law and to the Development Agreement.

Dated this _____ day of _____, 2020.

VILLAGE OF COTTAGE GROVE

By _____
John Williams, Village President

ATTEST:

Lisa Kalata, Village Clerk

ATTACHMENT D

PERSONAL GUARANTY

In Consideration of the agreement of the Village of Cottage Grove (Village) to enter the Agreement to Undertake Development in Tax Increment District No. 5 (Comfort Suites Development) (the "Agreement") with Badger Hotel Group, LLC, (the "Developer"), the undersigned individual (the "Guarantor") hereby guarantees to the Village the full, prompt and unconditional payment, when due to the Village, of the (i) Tax Payment Guarantee (ii) the full repayment through the annual real estate tax payments owed on the Comfort Suites Property of the total amount of the Incentive Grant and the Post Development Grant, (iii) any unreimbursed Village Administrative Costs, and (iv) payments required under Attachment E of the Agreement (together, the "Obligations"). Terms that are capitalized in this Guaranty that are not defined in this Guaranty and that are defined in the Agreement shall have the meanings assigned to such terms by the Agreement.

Upon any default by Developer in the payment of any of the Obligations, the joint and several liability of the Guarantor shall be effective immediately. Such joint and several liability hereunder shall be absolute, unconditional and unlimited and shall continue regardless of any reduction or increase of the Obligations until all of the Obligations have been paid or otherwise discharged.

The undersigned shall be responsible for all reasonable attorney's fees and expenses incurred by the Village in enforcing this Guaranty. This Guaranty shall be unaffected by any amendment or modification of the Agreement or any waiver by any party thereto of any rights thereunder.

This Guaranty shall remain in full force and effect for the Term of the Agreement, at which point this Guaranty shall terminate and be of no further force and effect. The undersigned waives notice of acceptance of this Guaranty, notice of default under the Agreement, proceedings to enforce the Agreement against Developer or others, and all diligence of collection and presentment, demand, notice and protest as well as notices of any nature. The Village may, from time to time, fail to proceed against Developer, accept partial performance, and settle or compromise the obligations due from Developer, but none of these actions or omissions will affect the obligation of the undersigned to pay the Obligations under this Guaranty. There are no conditions to the effectiveness of this Guaranty, which is absolute, unconditional and irrevocable.

Dated: _____

By: _____

Joseph Wagner
Managing Member
Badger Hotel Group, LLC

ATTACHMENT E

TAX AGREEMENT

THIS AGREEMENT is entered into as of the _____ day of _____, _____ (the Agreement), by and between the Village of Cottage Grove, a Wisconsin municipal corporation (the “Village”), and Badger Hotel Group, LLC (the “Owner”).

RECITALS

A. Owner is the sole owner of the following described property (the “Property”) in the Village of Cottage Grove:

Lot 1, Certified Survey Map 12520, recorded in the Office of the Register of Deeds for Dane County, Wisconsin, in Volume 78 of Certified Survey Maps, pages 186-187, as Document No. 4460942.

B. The Village and Owner have entered into a development agreement relating to the development of the Property.

C. The development agreement provides that it shall not take effect unless an agreement relating to the preservation of the taxable status of the Property that is satisfactory to the Village and the owners of the Property, has been signed by all of the owners of the Property and the Village.

D. Owner and the Village have entered into or are simultaneously entering into an Agreement to Undertake Development in Tax Increment District No. 5 (the “Development Agreement”).

E. Owner and the Village wish to enter into this Agreement concerning preservation of the taxable status of the Property.

F. The Village and other taxing jurisdictions have provided and shall continue to provide public health, safety, fire and police protection, streets and street maintenance, snow removal, and other governmental services (“Municipal Services”) that are funded by property taxes.

NOW, THEREFORE, in consideration of the Recitals, and the mutual promises, obligations and benefits provided under this Agreement and the Development Agreement, the receipt and adequacy of which are hereby acknowledged, Owner and the Village agree as follows:

1. **Recitals Incorporated.** The recitals stated above are incorporated in this Agreement by reference.

2. **Representations and Warranties by Owner.** Owner represents and warrants that Owner: (1) is a limited liability company organized and existing under the laws of the State of Wisconsin; (2) has taken all actions necessary to enter into this Agreement; (3) has duly authorized the individual signers of this Agreement to do so; (4) is the sole owner of the Property, in fee simple; and (5) the Property is not encumbered by any lien, other than as shown on Title Commitment No. _____, a copy of which has been provided to the Village, and that Owner will not allow any lien to be placed upon or taken against the Property prior to the recording of this Agreement with the Register of Deeds for Dane County.

3. **Tax Status of the Comfort Suites Property.** The Property shall be subject to property taxation in perpetuity and shall not be exempt from property taxation, in full or in part, except as required by law. Owner shall take all reasonable actions to assure that the Property shall not be exempt from property taxation, in full or in part, except as required by law. Owner shall not submit any request or application for property tax exemption of the Property, in full or in part, challenge the status of the Property as fully subject to property taxation, or seek any ruling by a

court or any statutory change that would entitle the Property to exemption, in full or part. Nothing herein shall be construed as preventing Owner from challenging the Property's assessed value or the amount of property tax claimed due. Nothing herein shall be construed as preventing Owner from conveying all or part of the Property, subject to the terms and conditions of this Agreement.

4. **Payment for Municipal Services If Property Becomes Tax Exempt.** If in any year (the "Valuation Year") the Property is exempt from property taxation, in full or in part, Owner shall pay the Village, as a payment for Municipal Services provided by the Village with respect to the Property ("Payment for Municipal Services"), the difference between (1) the amount of property taxes, if any, on the Property, actually received by the Village from Owner for the Valuation Year, and (2) the amount of property taxes on the Property that the Village would have received for the Valuation Year if the Property were fully subject to property taxation. The Village shall send Owner an invoice for the Payment for Municipal Services due. One-half of the Payment for Municipal Services shall be due on January 31 of the year after the Valuation Year. The balance of the Payment for Municipal Services shall be due on July 31 of the year after the Valuation Year. Each payment shall be deemed made when actually received by the Village. Any amount due that is not paid on time shall bear interest in the same manner and at the same rate as provided by law for unpaid property taxes. The Payment for Municipal Services shall constitute payment for Municipal Services provided with respect to the Property during the Valuation Year. The Village and Owner acknowledge and agree that this Payment for Municipal Services would constitute a reasonable and appropriate means of carrying out the intent of the parties and would fairly and reasonably compensate the Village for the Municipal Services provided during the Valuation Year.

5. **Calculation of Property Taxes as If Property Were Not Exempt.** If, for purposes of this Agreement, it becomes necessary to calculate the amount of property taxes on the Property that the Village would have received if the Property were fully subject to property taxation, this amount shall be calculated as follows: (1) The fair market value of the Property as of January 1 of the Valuation Year shall be determined, in the same manner as provided by law for property that is fully taxable, by the Village Assessor or, if the Village Assessor is unable or unwilling to do so, by a competent and impartial appraiser selected by the Village in its sole discretion. (2) The fair market value, as so determined, shall be divided by the average assessment ratio for the Valuation Year for property in the Village, as determined by the Wisconsin Department of Revenue. (3) The resulting amount shall be multiplied by the mil rate at which taxable property in the Village is taxed to levy taxes for all taxing jurisdictions to which the Property is subject for the Valuation Year. That amount shall be deemed the amount of property taxes on the Property that the Village would have received for the Valuation Year if the Property were fully taxable. Following the termination of Tax Increment District No. 5, the Village shall allocate any Payments for Municipal Services made pursuant to this Agreement to all taxing jurisdictions in which the Property is located or to which the Property is subject for the Valuation Year, based on each taxing jurisdiction's mil rate.

6. **Binding Effect of Calculation; Dispute Resolution.** The amount of any Payment for Municipal Services, determined as provided in this Agreement, shall be binding on the parties unless determined to be excessive in an arbitration proceeding conducted in accordance with chapter 788, Wisconsin Statutes, or any successor statute, by a single arbitrator, chosen by mutual agreement of the Parties or, if they do not agree, by the Circuit Court for Dane County, Wisconsin, on application of either party. The arbitrator shall be an assessor or appraiser licensed by the State

of Wisconsin with at least ten years experience in the valuation of commercial property. Any demand for arbitration shall be made within thirty days after an invoice for Payment of Municipal Services is sent by the Village to Owner. If a demand for arbitration is not made within that time, the parties shall be deemed to have waived arbitration. The non-prevailing party shall pay the costs of arbitration, but each party shall be responsible for its own attorneys' fees and expert witness expenses. Chapter 788, Wisconsin Statutes, or any successor statute, shall govern the arbitration proceeding, except that Owner and the Village each waive any right to trial by jury. Any other dispute between the parties arising out of, related to, or connected with this Agreement shall be arbitrated in the same manner.

7. **Special Assessment If Any Required Payment For Municipal Services Is Not Timely Made.** Any Payment for Municipal Services that is not made when due shall entitle the Village to levy a special assessment against the Property for the amount due, plus interest. Owner hereby consents to the levy of any such special assessment, and pursuant to Wis. Stat. § 66.0703(7)(b), waive any right to notice of or any hearing on any such special assessment.

8. **Indemnification.** Owner shall indemnify the Village for all amounts of attorneys' fees and expenses and expert fees and expenses incurred in enforcing this Agreement. This paragraph shall not be applicable to cases where Owner has, in good faith, disputed the Village's valuation.

9. **Remedies.** The Village shall have all remedies provided by this Agreement, and provided at law or in equity, necessary to cure any default or remedy any damages under this agreement. Remedies shall include, but are not limited to, special assessments under section 7 of this Agreement, indemnification under section 8 of this Agreement, and all remedies available at law or in equity.

10. **Term of Agreement.** The term of this Agreement shall begin on the date the Agreement is signed by both parties and shall continue unless terminated by mutual written agreement.

11. **Successors and Assigns.** This Agreement shall run with the land and is binding on the successors and assigns of the parties, including, but not limited to, any subsequent owner of the Property, any part of the Property, or any real property interest in the Property or any part of the Property. If at any time the Property has more than one owner, any Payment for Municipal Services due under this Agreement for any Valuation Year shall be allocated among the owners in proportion to the fair market value of their property interests as of January 1 of the Valuation Year, as determined under section 5 of this Agreement. Notwithstanding the foregoing or anything else set forth herein, if Owner shall sell or otherwise convey its interest in the Property, Owner shall be deemed released from all obligations hereunder and the Village shall look solely to successors in interest for the performance of all of the obligations imposed on Owner by this Agreement.

12. **Recording.** This Agreement shall be recorded with the Register of Deeds for Dane County as soon as practicable following execution by Owner and the Village.

13. **Entire Agreement; Amendments.** This Agreement encompasses the entire agreement of the parties regarding its subject-matter. Any amendment hereto shall be made in writing, signed by all parties.

14. **Severability.** If any part of this Agreement is determined to be invalid or unenforceable, the rest of the Agreement shall remain in effect.

15. **Waiver.** No waiver of any breach of this Agreement shall be deemed a continuing waiver of that breach or a waiver of any other breach of this Agreement.

16. **Interpretation of Agreement.** The parties acknowledge that this Agreement is the product of joint negotiations. If any dispute arises concerning the interpretation of this Agreement, neither party shall be deemed the drafter of this Agreement for purposes of its interpretation.

17. **Notices.** Any notice required to be given under this Agreement shall be deemed given when deposited in the United States mail, postage prepaid, to the party at the address stated below or when actually received by the party, whichever is first. The addresses are:

If to Village: Village Clerk
 Village of Cottage Grove
 221 E Cottage Grove Road
 Cottage Grove, WI 53527

If to Owner: Joseph Wagner
 Badger Hotel Group, LLC
 c/o Greywolf Partners, Inc.
 115 South 84th St. Suite 275
 Milwaukee, WI 53214

Addresses may be changed by notice given in the manner provided in this section.

18. **Governing Law.** This Agreement has been negotiated and signed in the State of Wisconsin and shall be governed, interpreted, and enforced in accordance with the laws of the United States and the State of Wisconsin.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

VILLAGE:

Village of Cottage Grove

By _____
John Williams, Village President

By _____
Lisa Kalata, Village Clerk

ACKNOWLEDGMENT

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this _____ day of _____, _____, the above-named John Williams and Lisa Kalata, to me known to be the persons and officers who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin
My Commission: _____

OWNER:

BADGER HOTEL GROUP, LLC

By _____
Joseph Wagner, Managing Member

ACKNOWLEDGMENT

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this _____ day of _____, _____, the above-named Joseph Wagner, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin
My Commission: _____

CONSENT OF LIENHOLDERS AND MORTGAGE SUBORDINATION

For value received and to induce the Village to enter the Tax Agreement with Owner, _____, as holder of a mortgage dated _____ and recorded _____ as document _____, made by _____, to _____, to secure an indebtedness in the amount of \$ _____ ("Mortgage"), hereby consents to the execution and delivery of the foregoing Tax Agreement by Owner, and hereby subordinates its Mortgage (and any other liens that it may obtain with respect to the Property) to any and all claims of the Village, its successors and assigns under the Tax Agreement. Lienholder acknowledges that the Village is relying on the consent of Lienholder and Lienholder's agreement to subordinate its Mortgage to the claims of the Village under the Tax Agreement when agreeing to enter the Tax Agreement with Owner. Lienholder acknowledges that the execution and delivery of the Tax Agreement by Owner and the Village is in Lienholder's best interest. Lienholder's agreement to consent to the Tax Agreement and subordinate the Mortgage to the Village's claims under the Tax Agreement are binding on the assigns and successors of Lienholder.

Dated: _____, 2020.

By: _____
Name: _____
Title: _____

Attest:

Name: _____
Title: _____

STATE OF WISCONSIN
COUNTY OF _____

Personally came before me this _____ day of _____, 2020, the above-named _____ and _____, of _____, to me known to be the _____ and _____ of _____ who executed the foregoing instrument as such officers of _____.

Print name: _____
Notary Public, State of Wisconsin
My Commission: _____

**ATTACHMENT F
COST REIMBURSEMENT AGREEMENT**

Attachment F

AGREEMENT TO REIMBURSE VILLAGE FOR COSTS INCURRED

PETITIONER / DEVELOPER / SUBDIVIDER (APPLICANT):

APPLICANT agrees to reimburse the actual costs the VILLAGE incurs to review the submittal which shall include but not be limited to costs of notice, publication, building and design construction, inspection, any required testing and associated administrative, legal, engineering, planning, accounting, financial, public safety, and staff time (collectively referred to as COSTS).

APPLICANT shall deposit an escrow amount per the Village of Cottage Grove Development Fee Schedule.

VILLAGE staff shall draw against such deposit for payment of all COSTS incurred by the VILLAGE.

If at any time the deposit shall be insufficient to reimburse the VILLAGE for these COSTS, APPLICANT shall deposit an additional amount with ten (10) days notice from the VILLAGE.

After the VILLAGE has completed review of the SUBMITTAL/PROJECT, the actual COSTS will be totaled and the difference, if any, shall be paid by or refunded to the APPLICANT.

The VILLAGE shall not commence review of any SUBMITTAL/PROJECT until the required deposit has been made.

FOR INFORMATIONAL PURPOSES ONLY a Summary of Fees currently charged to the VILLAGE by its Consultants is attached as EXHIBIT A and incorporated herein as if fully set forth.

FEES shall be billed as invoiced to the VILLAGE.

Dated this 19th day of JUNE 2018

Applicant Name (print): Joe Wagner

Mailing Address: 804 Liberty Blvd Suite 204 Sun Prairie, WI 53590

Email Address: joe@greywp.com

Phone Number: (414) 840-0098

Applicant Signature: 

4/12/16