

**ANNEXATION AGREEMENT BETWEEN  
THE VILLAGE OF COTTAGE GROVE AND  
HOEKSTRA & ELIZABETH FREDENBERG**

This Agreement (“Agreement”) is made and entered into by the Village of Cottage Grove, a Wisconsin municipal corporation (the “Village”), and David Hoekstra & Elizabeth Fredenberg (collectively, “Property Owner”).

**RECITALS**

- A. Property Owner has petitioned or will petition the Village for the annexation of certain real property located in the Town of Sun Prairie and Town of Cottage Grove, as further described and depicted on Exhibit A and Exhibit B attached hereto (the “Subject Property”), into the Village.
- B. Property Owner acknowledges that Property Owner is voluntarily and of their own accord requesting annexation of the Subject Property to the Village and that the Village has not initiated or required the annexation.
- C. Annexation of the Subject Property is consistent with the Village’s Comprehensive Plan and is necessary in order to provide urban services to the Subject Property.
- D. The annexation and development of the Subject Property are beneficial to the Village if accomplished in accordance with the terms of this Agreement in that such annexation and development will increase the Village’s tax base; provide lands for needed growth of the Village; permit the sound planning and development of the Subject Property; and otherwise promote the public welfare.
- E. The Village desires that the Subject Property be developed in a manner that complies with the Village’s Comprehensive Plan, the Village’s Official Map, and all Village ordinances, and that minimizes the cost of the annexation and development to Village taxpayers.
- F. The Village and Property Owner acknowledge that they enter into this Agreement for their mutual benefit and in order to specify certain rights, obligations, conditions and liabilities that will arise in the event the annexation is approved by the Village.
- G. Property Owner has indicated that, following the annexation of the Subject Property, Property Owner intends to develop or convey the Subject Property for purposes of development.

## AGREEMENT

In consideration of the recitals and the mutual covenants and agreements set forth in this Agreement, the parties agree as follows:

### *1. Water Main Improvements.*

- A. The annexation of the Subject Property will require extension of an 8-inch water main from Erb Road to Gaston Road (the "Water Main"). Prior to or at the time of the initial development of the Subject Property, the Property Owner shall install or shall cause for the installation of the Water Main on the Subject Property necessary to service the proposed development. The design, construction, and installation of the Water Main shall be in accordance with plans and specifications approved by the Village Engineer, and at the Property Owner's sole cost and expense. Upon completion of installation of the Water Main, and the certification by the Village Engineer that the Water Main has been installed in accordance with approved plans and specifications, the Property Owner shall dedicate to the Village (i) the Water Main, including any valves, hydrants, or other appurtenances, and (ii) a public utility easement where the Water Main is located ("Utility Easement"). The Utility Easement shall be in a form mutually acceptable to the Village and Property Owner. The Village will not issue an occupancy permit for the Subject Property unless and until the Property Owner has dedicated the Water Main and the Utility Easement as required by this Agreement. The dedication of the Water Main under this Agreement does not include private service laterals or private fire hydrants, and the Village will not take ownership of private laterals, private fire hydrants, or appurtenances.
- i. Before acceptance of the Water Main, the Property Owner shall: (1) present to the Village executed, fully paid and unconditional lien waivers from all contractors and suppliers providing materials or performing work on the Water Main; (2) provide electronic as-built drawings to the Village Engineer in file formats reasonably acceptable to the Village Engineer; (3) provide to the Village all reasonable information regarding the Water Main that the Village requests to comply with GASB 34.
  - ii. The Water Main will not be accepted by the Village until all outstanding Village costs owed under the Reimbursement Agreement (as hereinafter defined) have been paid in full. Prior to acceptance, the Village Engineer will require pressure testing to ensure the Water Main complies with all requirements of this Agreement. The Water Main shall not be accepted until a complete breakdown of all construction, engineering, and administrative costs incurred by the Property Owner is submitted to the Village Engineer. The Water Main shall not be accepted until a bacteriologically safe water sample is obtained and tested by a certified agency. The Property Owner shall be responsible for flushing the Water Main, obtaining the samples, and completing all reasonable tests as may be reasonably required for the Village's acceptance, under the direct supervision of the Village Engineer. Upon the Property Owner's completion of the Water Main and acceptance thereof by the Village, the ownership and control of the Water

Main (except ownership of sewer laterals and the private part of water laterals) shall be conveyed by Property Owner without any restrictions to the Village. The Property Owner shall be responsible for the maintenance and repair of the Water Main until the Water Main is formally accepted by the Village.

- B. The parties acknowledge that the Water Main dedicated to the Village during development of the Subject Property will necessitate the need for creation of a water main loop between Gaston Road and Erb Road through the Subject Property. As a condition to the Village's approval of a site plan for the proposed development, the Property Owner shall dedicate a water main easement to the Village ("Connection Easement") to allow the Village to loop its water system through the Subject Property. The Connection Easement and water main loop shall be in a location that will not unreasonably disrupt the development and construction plans for the Subject Property. The Connection Easement shall begin at the end point where Property Owner has installed the Water Main, and end at a location to be determined on East Gaston Road, as determined by the Village Engineer and Property Owner. The exact location of the Connection Easement to be granted to the Village shall be in a location mutually agreeable to the Village and the Property Owner. The Village shall be responsible for all costs and expenses of installing the water main loop within the Connection Easement area granted under this Section 1.B. and acknowledges that the Reimbursement Agreement shall not include any obligation for Applicant (as such term is defined in the Reimbursement Agreement) to reimburse the Village for any costs in connection with the water main loop within the Connection Easement.

## ***2. Reimbursement of Village Expenses.***

- A. Reimbursement of Village Costs. Property Owner shall pay all costs in accordance with the Cost Reimbursement Agreement dated \_\_\_\_\_. (the "Reimbursement Agreement").
- B. Town Taxes. The Property Owner shall reimburse the Village for all reasonable amounts the Village agrees to pay to the Towns of Sun Prairie and Cottage Grove pursuant to Wis. Stat. § 66.0217(14)(a)1. Any such reimbursements shall be paid within 30 days after the Village requests payment.

## ***3. Development of the Subject Property.***

- A. Compliance with Plans and Regulations. Any development of the Subject Property shall be pursuant to and in accordance with this Agreement, the Village's Comprehensive Plan, the Village's land division, zoning, stormwater, building and all other regulations relating to the development of the Subject Property; provided, however, nothing in this Agreement shall prohibit Property Owner from apply for any conditional use, permit or variance reasonably required in connection with any development of the Subject Property or Village unreasonably withholding its approval of the same.

- B. Other Requirements Apply. This Agreement does not bind the Village to approve any land division, zoning, or other application or development activity for the Subject Property. At the time of any future land division or development, Property Owner shall comply with all applicable procedures then required by the Village Code.

4. ***Nature, Survival, and Transfer of Obligations.*** Except as otherwise set forth in this Agreement, all obligations assumed by Property Owner under this Agreement shall run with the Subject Property and shall be binding on the owner of the Subject Property, their heirs, successors, and assigns. A copy of this Agreement may be recorded against the Subject Property with the office of the Dane County Register of Deeds. The Village shall record a release the recorded Agreement with the Dane County Register of Deeds upon full compliance by the Subject Owner.

5. ***Duration; Assignment; Third Party Beneficiary.***

- A. Expiration. If the Village has not adopted an ordinance annexing the Subject Property on or before **July 30, 2025**, then this Agreement shall automatically become null and void, except that Property Owner shall pay any costs for which it is responsible under Section 2.

- B. Duration. This Agreement shall continue until a written release is signed by the Village and the Property Owner, or until it automatically terminates under Sections 5.A. If the Property Owner conveys the Subject Property to a successor owner, then this Agreement shall automatically be fully assigned to and assumed by the successor owner by acceptance and recording of the transfer deed (except for the Property Owner's obligation set forth in Section 2(b), which shall remain the sole obligation of the Property Owner) and the Property Owner shall have no further rights or obligations under this Agreement and this Agreement shall continue for the benefit of the successor owner.

6. ***General Provisions.***

- A. Recording. The Village, at its sole cost and expense, may record a copy of this Agreement or a notice of this Agreement with the Register of Deeds for Dane County.

- B. Governing Law. This Agreement shall be governed by and enforced in accordance with the laws of the State of Wisconsin. Any claim arising under this Agreement shall be brought in Dane County Circuit Court, Dane County, Wisconsin.

- C. Amendments and Modifications. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by the Village and the Property Owner.
- C. Interpretation. This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.
- D. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements and negotiations between the parties, whether written or oral, relating to the subject matter of this Agreement.
- E. Severability. If any part of this Agreement or its application to any person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement shall not be impaired thereby, and the remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of the Agreement to the greatest extent permitted by applicable law.
- F. Non-Waiver. The Village shall be under no obligation to exercise any of the rights granted to it in this Agreement. The failure of the Village to exercise at any time any right granted to the Village shall not be deemed or construed to be a waiver of that right, nor shall the failure void or affect the Village's right to enforce that right or any other right.
- G. Default. If any party fails to perform any obligation imposed on them by this Agreement (the "Defaulting Party"), the other party (the "Non-Defaulting Party"), shall forward written notice to the Defaulting Party outlining such default. The Defaulting Party shall cure such default within thirty (30) days after the giving of such written notice, except that the cure period shall be extended to a reasonable time to cure any default that cannot reasonably be cured within the thirty (30)-day period, provided the Defaulting Party has commenced the cure within the thirty (30)-day period and diligently pursues a cure at all times thereafter until the default is cured. If the Defaulting Party shall fail or refuse to cure such default within the applicable cure period, the Non-Defaulting Party may attempt to cure the default and shall be reimbursed by the Defaulting Party for all reasonable, actual costs incurred in so doing, and the Non-Defaulting Party can take any action allowed by law or equity to enforce its rights.
- H. Indemnification. The Village shall indemnify, defend and hold Property Owner (including any successor owner) and their officers, members, agents, representatives, lenders, successors and assigns, harmless from and against all claims, loss, costs (including reasonable attorney's fees), injury, death or damage

to persons or property, and liability in connection with, relating to, or arising out of the Village and its successors, assigns, invitees, agents, members and contractor's use of the Utility Easement, Connection Easement, and the Village's activities conducted by the Village upon any portion of the Subject Property, except to the extent caused by the negligence or willful misconduct of Property Owner (and successor owner).

[Signature pages follow]

**IN WITNESS WHEREOF**, the parties have executed this Annexation Agreement.

**PROPERTY OWNER:**

By \_\_\_\_\_  
David Hoekstra

By \_\_\_\_\_  
Elizabeth Fredenberg

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025, the above named, to me known to be the persons who executed the foregoing instrument and acknowledge the same.

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission: \_\_\_\_\_

(SEAL)

**VILLAGE:**

**VILLAGE OF COTTAGE GROVE**

By \_\_\_\_\_  
Cindi Kelm-Nelson, Village President

By \_\_\_\_\_  
Lisa Kalata, Village Clerk

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025, the above named Cindi Kelm-Nelson, Village President, and Lisa Kalata, Village Clerk of the Village of Cottage Grove, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission: \_\_\_\_\_

(SEAL)

ATTACHMENTS

- Joinder to Annexation Agreement
- Exhibit A – Description of the Subject Property
- Exhibit B – Depiction of Subject Property

**NON-OBJECTION TO ANNEXATION AGREEMENT**

Creed Indoor, LLC, the buyer of the subject property under a contingent offer to purchase with the Property Owner dated February 7, 2025, executes and delivers this non-objection to this Agreement and understands that it will be bound by the terms thereof as the successor owner (except Section 2.B which as between Property Owner and successor owner shall remain the responsibility of the Property Owner).

**CONTINGENT SUCCESSOR OWNER:**

**CREED INDOOR, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF WISCONSIN

COUNTY OF \_\_\_\_\_

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025, the above named \_\_\_\_\_, to me known to be the persons who executed the foregoing instrument and acknowledge the same.

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission: \_\_\_\_\_

(SEAL)

This instrument drafted by and to be returned to:  
Attorney Rick Manthe  
Stafford Rosenbaum LLP  
P.O. Box 1784  
Madison, WI 53701-1784

EXHIBIT A

Description of the Subject Property

EXHIBIT B

Depiction of the Subject Property

32937417.6