

**AGREEMENT TO UNDERTAKE DEVELOPMENT
JEK CRE**

THIS AGREEMENT TO UNDERTAKE DEVELOPMENT entered into as of the ___ day of _____, 2021 (the “Agreement”), by and between the Village of Cottage Grove, a Wisconsin municipal corporation (the “Village”), and JEK CRE, 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 May 19, 2026, but TID disbursements may be made until 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 in Attachment A in accordance with the Site Plan; 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 JEK 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 JEK 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 JEK Property and otherwise facilitate the development of the JEK Property, 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 to reimburse project costs for the development of the JEK Property as described in, and subject to the reservations contained in, this Agreement; and

WHEREAS, the Village requires a development agreement to facilitate development of the Project; 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 shall mean:

1. JEK Property. The property to be developed by the Developer, and as more particularly described in Attachment A.

2. JEK Property Base Value. The JEK Property Base Value shall be \$1,000, as assessed by the Village of Cottage Grove when the JEK Property was added to the District.

3. JEK Property Tax Increment. The JEK Property Tax Increment is the tax increment actually received by the Village from taxes levied on the JEK 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 2020 taxes payable in 2021, is attached as Attachment B. The Village shall calculate the JEK Property Tax Increment by multiplying the total “interim rate” from form PC-202 for the applicable year by the JEK 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 Line 3 of 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 the JEK Property Tax Increment in such other reasonable manner as it determines appropriate. The Village may make such adjustments in calculating the JEK 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 or receivable by the Village from taxes levied on all property in the District; in all events, however, the calculation of the JEK Property Tax Increment shall not be reduced as a result of the failure of any party (other than the owner of the JEK Property) to timely pay taxes on any property in the District.

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

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

6. Excess Tax Increment. JEK Property Tax Increment minus any unreimbursed Village Administrative Costs.

7. Project. Developer's construction of the following:
 - a. Construction of an approximately 15,000 square foot retail and professional services building.
 - b. All necessary Public Improvements to serve the development or otherwise deemed necessary by the Village as provided in the Developer's approved Site Plan.
8. Plans and Specifications. Written plans and specifications, prepared by Developer in accordance with Village Standards, approved by the Village Engineer, and in conformance with the Site Plan, for the design, construction, and installation of Public Improvements.
9. Site Plan. The requirements and conditions related to the Project as described in the final village action report on an approved Site Plan for the Project, which will be incorporated herein as Attachment F upon the Village approving a Site Plan for the Project.
10. Public Improvements. Those on-site and off-site public improvements needed to serve the Project, or otherwise deemed necessary by the Village, as provided in the Site Plan.
11. Village Administrative Costs. All reasonable costs, including Village staff, engineering, legal, planning, inspection, and financial consultant costs, incurred by the Village relating to the creation and continuing and future administration of this Agreement, the drafting and negotiation of this Agreement and other agreements relating to the Project, and other reasonable 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 three hundred thousand dollars (\$300,000) purchase price credit at the closing of the sale of the JEK Property from the Village to the Developer, and a one hundred twenty-five thousand dollar up-front payment (collectively the "Incentive Grant"), which shall be paid to the Developer for use in connection with the development of the Project and the reimbursement of certain eligible project costs.
2. Payment of the up-front payment portion of the Incentive Grant shall occur within 30 days after issuance of an occupancy permit or a building permit is issued for the first tenant build-out, whichever occurs first, and Developer makes written request to the Village for payment. If the Village is unable to pay the up-front payment portion 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 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 conditions and makes written request for payment.

3. Municipal Revenue Obligation. Following the completion of construction and the issuance of an occupancy permit for the first portion of the Project to be occupied, and within forty-five (45) days after submittal of a written request for issuance of the Municipal Revenue Obligation, the Village shall issue a Municipal Revenue Obligation to Developer as a development incentive in the principal amount of up to three hundred thousand dollars (\$300,000). The Municipal Revenue Obligation shall be payable to Developer in annual installments and solely from Excess Tax Increment generated by the Project. The Municipal Revenue Obligation shall be in the form incorporated herein as Attachment C. The Village's obligations under this Section shall be subject to the following terms and conditions:

a. Any payment on the Municipal Revenue Obligation shall be payable solely from and only to the extent that the Village has received, as of such Payment Date and after the date of issuance of the Municipal Revenue Obligation, 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.

b. For purposes of the Municipal Revenue Obligation, a "Payment Date" shall mean November 1 of each year until the TID Closure Date or until the Municipal Revenue Obligation has been paid in full, whichever occurs first. On each Payment Date, the Village shall make a payment on the Municipal Revenue Obligation, but the Village shall not have any obligation to make any Municipal Revenue Obligation payment in any year in an amount in excess of the Excess Tax Increment. In the event that there is no Excess Tax Increment to make a Municipal Revenue Obligation payment to the Developer in any year, it shall not be a default by the Village.

c. 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. The District shall not be terminated prior to the TID closure date unless the Municipal Revenue Obligation of \$300,000, has been paid.

d. The Developer's Lender may require the Developer to execute a Collateral Assignment of this Agreement and the Municipal Revenue Obligation. Such

assignment shall require the consent of the Village, and the Village's consent may not be unreasonably withheld.

e. The Municipal Revenue Obligation nor the Excess Tax Increment shall be used or applied, in whole or in part, to the payment or reimbursement of any real, personal or other property taxes.

f. The Municipal Revenue Obligation payments shall not be included in the computation of the Village's constitutional debt limitation, because the Municipal Revenue Obligations payments are limited and conditional, and no taxes have been or will be levied for its payment or Excess Tax Increment or other taxes pledged to its payment. Nothing in this Agreement shall be deemed to change the nature of Village's obligation from a limited and conditional obligation to a general obligation.

C. DEVELOPER OBLIGATIONS.

1. Timely Proceed With Private Development. Developer shall use good faith efforts to commence construction of the Project during 2021, such that the economic development and other benefits cited in this Agreement and the Project Plan are actually derived by the Village and other taxing jurisdictions.

2. Public Improvements. The Developer shall design, construct, and install all Public Improvements as shown in the Site Plan and in accordance with Plans and Specifications. The Developer's obligation to complete the Public Improvements will arise once all of the following have occurred: (a) execution of this Agreement; (b) approval by the Village Engineer of Developer's Plans and Specifications; and (c) upon the closing of the real estate transaction between the Village and Developer for the JEK Property. Developer's obligation will be independent of any obligations of the Village contained herein.

a. *Village Approval of Starting Dates.* No land disturbance or work on the Project property shall begin until approved by the Village Engineer. Following that approval, the Developer shall submit a starting date and schedule to the Village Engineer for approval a minimum of seven (7) calendar days before work is scheduled to begin. A starting date will not be approved until the Financial Security Instrument (defined below) required by this Agreement has been furnished to the Village. Notwithstanding the foregoing, the Village Engineer may authorize commencement of clearing and grading activities prior to approval of a start date if an erosion control plan has been approved and erosion control measures are in place. Any grading work commenced prior to approval of a start date is at Developer's risk, and may need to be changed based on final approved Plans and Specifications. No early commencement of land disturbing activities will be allowed unless permission is issued in writing by the Village Engineer.

b. *Time of Completion.* All Public Improvements shall be completed within twelve (12) months after the approved start date. Any work which is not completed within twelve (12) months of commencement may be completed by the Village at the Village's option and charged to the Developer's Financial Security Instrument.

c. *Costs of Project.* The Public Improvements will be designed, constructed, and installed by the Developer at the Developer's sole expense. The Village shall not be responsible for any costs or charges relating to the Project or this Agreement, except those specifically enumerated and agreed upon in this or subsequent written, signed agreements between the Developer and the Village.

d. *Contractors Engaged by Developer.* The Developer shall perform all work on the Public Improvements to the standards required by the Village, and shall comply with every requirement of the Village's Code of Ordinances and standards of construction in performing such work. The Developer shall furnish the Village Engineer with the names of all known contractors and subcontractors, with the classification of work they will perform, at or before a preconstruction meeting between Developer and the Village, and shall update such information as construction progresses.

e. *Specifications for Public Improvements.*

(1) *Grading Plan.*

- i. Grading for the Project shall be in conformity with a grading plan approved by the Village Engineer.
- ii. Upon completion of grading, the Developer shall submit to the Village Engineer a record drawing identifying the grades as established by the Developer. The Developer shall provide the Village with the general contractor's certification that the grades on the record drawing are in conformance with the final approved grading plan.
- iii. The Developer shall obtain an erosion control permit pursuant to the Village's Code of Ordinances prior to grading, excavating, or other land disturbing activities.

(2) *Sidewalks and Pathways.*

- i. Sidewalks and pathways in the right-of-way shall be constructed in full compliance with Public Right-of-Way Accessibility Guidelines (PROWAG) and sidewalks and pathways outside the right-of-way shall be in full

compliance with the Americans with Disabilities Act (ADA).

- ii. The Developer must apply for a right-of-way permit before any work is performed within the Village's rights-of-way. Construction of sidewalks and pathways shall not occur at any time when the outside temperature is such that construction of such work would not be in conformance with the latest edition of the Standard Specifications for Highway and Structure Construction in Wisconsin.

(3) *Street Trees.* The Developer shall plant trees within the terrace area of public rights-of-way. The species and size of trees and locations where trees are to be planted shall be approved by the Village's Director of Parks, Recreation and Forestry. Developer shall maintain trees in a healthy condition for one year after planting and shall replace any trees that die or are not healthy within the one year period.

3. Developer to Reimburse Village Administrative Costs. The Developer shall reimburse the Village for Village Administrative Costs. The Village shall bill the Developer monthly for Village Administrative Costs. Bills outstanding for more than 30 days shall accrue interest at the rate of 1 and 1/2 percent per month. Bills outstanding for more than 90 days may be forwarded to the Developer's Financial Security Instrument agency for payment. The Village may order the suspension of work on the Project if bills are outstanding for more than 60 days. Upon request and subject to any applicable limitations of privilege, the Developer may inspect the books and records of the Village relating to invoices.

4. Tax Payment Guarantee. Developer estimates that the JEK Property will have a total assessed value, for real property tax purposes, of not less than four million dollars (\$4,000,000) as of January 1, 2023 (the "Minimum Estimated Assessment"), and as of each January 1 thereafter until the Tax Payment Guarantee Termination Date. If, in any year (the "Valuation Year") beginning with January 1, 2023, and until the Tax Payment Guarantee Termination Date, the total assessed value of the JEK 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 JEK Property, an amount equal to the difference between (1) the amount of real property taxes that would have been payable for the JEK Property for the Valuation Year if the JEK Property had a total assessed value equal to the Minimum Estimated Assessment, and (2) the amount of real property taxes owed on the JEK Property for the Valuation Year based on the JEK Property's actual assessed value (the "Tax Payment Guarantee").

For purposes of this Agreement, the “Tax Payment Guarantee Termination Date” is the later of (i) five years after the TID Closure Date or (ii) the date on which the Village has received payments from Developer in an amount equal to the Incentive Grant and the Municipal Revenue Obligation through the sum of all of the following, paid to the Village beginning after the Village’s final payment to Developer under the Municipal Revenue Obligation: (i) the Village’s portion of the real estate taxes paid by Developer on the portion of the assessed value of the JEK Property in excess of the JEK Property Base Value, plus (ii) payments made under this Section.

Any Tax Payment Guarantee payments made by the Developer to the Village under this Section shall qualify as JEK Property 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. Village shall submit to Developer an invoice reflecting any amounts due under this Section and Developer shall make the Tax Payment Guarantee payment within thirty (30) days thereafter.

5. Personal Guaranty. Developer’s obligations under this Agreement shall be secured by a guaranty to be personally provided to the Village by JEK at the time of or before the execution of this Agreement, in the form incorporated herein as Attachment E. Such guaranty or guaranties shall guarantee payment of 1) 100% of the Tax Payment Guarantee, 2) full payment of annual real estate taxes on the JEK Property until the Tax Payment Guarantee Termination Date, and 3) any payments required under the Tax Agreement.

6. Tax Agreement. Developer shall execute and deliver to the Village for recording with the Dane County Register of Deeds the Tax Agreement incorporated herein as Attachment D.

7. Permits and Approvals. Developer is responsible for obtaining all licenses, permits, and authority necessary to perform its obligations under this Agreement, and for abiding by any conditions placed upon those approvals, including the conditions imposed by the Site Plan.

8. 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, Developer shall obtain policies of builder's risk completed value non-reporting form of fire and extended coverage, vandalism and malicious mischief hazard insurance naming the Village as an additional insured and covering the Project in at least the amount of the estimated cost of replacement of the Project, 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 at all times during the term of this Agreement. 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. 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.

D. ACCEPTANCE AND GUARANTEE OF PUBLIC IMPROVEMENTS.

1. Acceptance. After Public Improvements have been installed and completed, and within forty-five (45) days after receiving written notice that the Developer desires the Village to inspect such Public Improvements, the Village Engineer shall inspect the Public Improvements. If the Public Improvements comply with all state and Village requirements, the Village Board may accept dedication of the Public Improvements. Before acceptance of any such Public Improvements, the Developer shall: (1) present to the Village valid lien waivers from all persons providing materials or performing work on the Public Improvements for which acceptance is sought, subject to any retainage permitted by the contract for such Public Improvements; (2) provide electronic as-built drawings to the Village Engineer in file formats acceptable to the Village Engineer; (3) provide to the Village all information regarding such Public Improvements that the Village requests to comply with GASB 34. Acceptance by the Village does not constitute a waiver by the Village of the right to draw funds under the Financial Security Instrument because of defects in or failure of any Public Improvements that are detected or which occur following such acceptance.

Public Improvements will not be accepted by the Village until all outstanding Village Administrative Costs have been paid in full. Sanitary sewer and water main and service laterals shall not be accepted until a complete breakdown of all construction, engineering, and administrative costs incurred by the Developer is submitted to the Village Engineer. Water system infrastructure shall not be accepted until a bacteriologically safe water sample is obtained and tested by a certified agency. The Developer shall be responsible to flush the mains, obtain the samples, and have all tests completed as may be required for the Village's acceptance, under the direct supervision of the Village Engineer. In addition, the Developer shall clean the sanitary sewers in accordance with the directives of the Village Engineer. Upon completion of the mains, hydrants, valves, appurtenances,

and service laterals and acceptance of the system by the Village, ownership and control of the system (except ownership of sewer laterals and the private part of water laterals) shall be turned over without any restrictions to the Village.

The Developer shall be responsible for maintenance and repair of all Public Improvements until such Public Improvements are formally accepted by the Village.

2. Public Improvement Guarantee. The Developer guarantees all Public Improvements against defects which appear within a period of one (1) year from the date of acceptance by the Village as herein provided and shall pay for any damages resulting therefrom to Village property. If any defect appears during this guarantee period, the Developer shall upon written notice and, at its expense, install replacements or perform repairs to the standard provided in Plans and Specifications approved by the Village Engineer. The Developer shall have thirty (30) days from the issuance of such notice (or such longer period as may be acceptable to the Village Engineer as may be required due to weather or climatic conditions) to cure the defect. The Village shall not declare a default under this Agreement during the 30-day cure period for any such defect unless it is clear that the Developer does not intend to cure the defect, or unless the Village determines that immediate action is required in order to remedy a situation which poses an imminent health or safety threat. All guarantees or warranties for materials or workmanship which extend beyond the above Public Improvement guarantee period shall be assigned by the Developer to the Village (as beneficiary).

E. FINANCIAL SECURITY INSTRUMENT.

Before a starting date will be approved, the Developer shall provide the Village with a Financial Security Instrument in a form acceptable to the Village in the amount of 120% of the estimated costs of Public Improvements (the "Financial Security Instrument"). The Financial Security Instrument may not expire less than 12 months after issuance. The form and substance of the Financial Security Instrument must be reviewed and deemed acceptable by the Village attorney. The Financial Security Instrument shall allow for the Village to draw upon it for unreimbursed Village Administrative Costs.

1. Financial Security Instrument Requirements.

a. *Payment.* A Financial Security Instrument shall be payable to the Village at any time upon presentation of (1) a sight draft drawn on the issuer of the Financial Security Instrument in the amount to which the Village is entitled to draw pursuant to the terms of this Agreement; (2) an affidavit executed by an authorized Village official stating that the Developer is in default under this Agreement; and (3) the original

Financial Security Instrument.

b. *Reduction of Financial Security Instrument.* As work progresses on installation of the Public Improvements, the Village Engineer, upon written request from the Developer from time to time, is authorized to recommend a reduction in the amount of the Financial Security Instrument as hereinafter provided. When portions of the Public Improvements are completed by the Developer, and determined acceptable by the Village Engineer, the Village Engineer is authorized to reduce the amount of the Financial Security Instrument after receiving: (1) copies of pay requests approved by the Developer's engineer; (2) a statement from the Developer's Engineer certifying the estimated cost of the total amount of work remaining to complete the Public Improvements, including all approved or anticipated change orders; and, (3) partial lien waivers from the general contractor, subcontractors, and material suppliers for the total amount paid to date. The amount of the reduced Financial Security Instrument shall be not less than 120% of the estimated cost of the total work remaining to complete the Public Improvements, including approved and anticipated change orders, plus 10 percent of the cost of the completed Public Improvements, and including the cleaning of stormwater management measures prior to acceptance of such measures, as certified by the Developer's Engineer, and approved by the Village Engineer.

c. *Reduction after Acceptance.* Upon acceptance by the Village of all Public Improvements, the Village agrees to reduce the Financial Security Instrument to ten (10) percent of the total cost of the Public Improvements. The Village shall return any unused funds drawn from a Financial Security Instrument to Developer or the institution that provided the Financial Security Instrument after Developer's Improvement guarantee obligations of this Agreement have been satisfied.

d. *Accounting.* The Developer may inspect the Village records of payments made using a Financial Security Instrument upon request at reasonable times. However, the Village retains the exclusive right to determine, among other things, questions of design, specifications, construction cost, performance, contract compliance, and payment in connection with this work. In the absence of fraud on the part of the Village, the Village's decisions on all such matters shall control and shall be final.

e. *Insufficient Security Instrument Amount.* If the amount provided by a Financial Security Instrument is at any time not sufficient to secure the Developer's performance of this Agreement, then the Village shall notify the Developer of the necessary increase in the Financial Security Instrument, or the additional amounts due, and the Developer shall increase the Financial Security Instrument amount or pay the Village for such additional costs within thirty (30) days of receipt of notification.

f. *Notice of Expiration.* The Financial Security Instrument shall require the issuer to provide written notice of the expiration of any Financial Security Instrument not less than sixty (60) days before its expiration by sending written notice to the Village. The Financial Security Instrument shall be renewed at least thirty (30) days before its expiration date, or any renewal date, until the completion of the Improvement guarantee period.

2. Preservation of Assessment Rights. Any work which is not completed within 12 months of the Village approved start date may be completed by the Village at the Village's option and charged to lots in the Project as a special assessment.

F. PERMITS AND FEES.

1. Building Permits. The Village shall not issue building, occupancy, or other permits or approvals unless Developer has complied with the provisions of this Agreement.

2. Occupancy Permits. The Village will not issue any occupancy permits for the Project until all Public Improvements are complete and accepted by the Village.

3. Conditional Use Permit. The Developer must obtain a conditional use permit from the Village, and abide by all of the associated conditions, prior to any use involving a drive through, as may be required by applicable law.

G. LEGAL REQUIREMENTS AND PUBLIC RESPONSIBILITY.

1. Laws To Be Observed. The Developer shall at all times observe and comply with all federal, state, and local laws, regulations, and ordinances which are in effect or which may be placed in effect which may affect the Project. All applicable provisions of the Village's Code of Ordinances, and any other applicable laws shall be adhered to with respect to the design, construction, and installation of the Project and the Public Improvements except as variances to or waivers of those requirements have been granted. Developer shall pay all charges and fees and give all notices necessary and incident to the lawful construction of the Public Improvements to be completed under this Agreement.

2. Public Protection and Safety. During construction of the Public Improvements, the Developer shall be responsible for all damage, bodily injury, or death relating to the construction of the Public Improvements whether from maintaining an "attractive nuisance" or otherwise. Where apparent or potential hazards occur incident to its conduct of construction and installation of Public Improvements, the Developer shall provide reasonable safeguards.

3. Developer's Responsibility for Work. Construction and installation of Public Improvements shall be under the charge and care of the Developer until all Public Improvements have been accepted by the Village. If prior to acceptance, the Village is required to take any measure to maintain, protect, or guard any completed Public Improvements that have not yet been accepted by the Village, the costs of doing so shall be billed to Developer as Village Administrative Costs.

4. Personal Liability of Public Officials. In carrying out any of the provisions of this Agreement or in exercising any power or authority granted to them thereby, there shall be no personal liability of the Village's officers, agents, or employees, it being understood and agreed that in such matters they act as agents and representatives of the Village.

H. 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. The Village must approve a Site Plan for the Project that is acceptable to the Developer.
3. Developer shall provide commitment letters demonstrating it has secured sufficient financing to pay for the Project.
4. Developer must acquire title to the JEK Property from the Village.
5. Developer shall execute and deliver to the Village for recording with the Dane County Register of Deeds, a Tax Agreement.
6. Developer must obtain all necessary licenses, permits and approvals from the Village required for the commencement of construction of the Public Improvements.

If this Agreement is not executed by the closing date on the JEK Property real estate transaction, then this Agreement and the contract for sale of the JEK Property by the Village to Developer shall be null and void. If the remaining conditions precedent in this section are not satisfied by September 30, 2021, then this Agreement shall be null and void.

I. GENERAL CONDITIONS.

1. Indemnification. The Developer shall indemnify and hold harmless the Village, its officers, agents, and employees from and against all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from the Project,

provided, however, that such indemnification shall not extend to directions to Developer by the Village or its employees to perform acts if the acts are performed in accordance with such direction. Developer shall indemnify and hold harmless the Village and all its agents, officers, and employees against any claim or liability arising from or based on the violation of any law, ordinance, regulation, or order, whether by Developer or its agents, employees, or contractors.

In any and all claims against the Village, its officers, agents, or employees, by any employee of the Developer, its contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Developer, the contractor, or any subcontractor under Worker's Compensation Acts, disability benefit acts, or other employee benefit acts.

2. 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 the Project as a result of this Agreement. This Agreement is intended only to address those special concerns related to implementation of the Project. 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.

3. 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. No assignment of Developer's benefits consented to by the Village in this subsection shall constitute a release of Developer from the obligations and liabilities under this Agreement. Developer may, in its discretion, require by contract that any subsequent owner of all or part of the JEK Property assume all or part of Developer's obligations. No such assumption, however, and no act of the Village, shall release Developer 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.

4. 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.

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

6. 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. The Village shall be allowed to withhold any payments due under this Agreement if the Developer is in breach of this Agreement and has failed to cure the breach within 30 days after notice thereof. In addition to other remedies provided to the Village by this Agreement, the Village shall have the right, without notice or hearing, to impose special assessments or special charges on lots within the Property for any amount to which the Village is entitled by virtue of this Agreement. This provision constitutes the Developer's acknowledgment of special benefit and the Developer's consent to, and waiver of notice and hearing on all proceedings imposing such special assessments or special charges.

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

8. Severability. If any part, term, or provision of this Agreement is held by a court of competent jurisdiction 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.

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

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, return receipt requested, as follows:

To Developer: JEK CRE, LLC
Attn: _____

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. Developer will pay the costs of any such recording.

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 lacks 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 Property and the Project.

14. No Partnership. Under this Agreement, the Village does not, in any way or for any purpose, become a partner, employer, principal, agent, or joint venturer of or with Developer.

15. Good Faith. All 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.

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

17. 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.

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

19. Term. Except as provided in Section H, this Agreement shall continue in full force and effect until such time as Developer's obligations under this Agreement have been fully satisfied, but no later than the Tax Payment Guarantee period, 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. The Tax Agreement shall survive termination of this Agreement.

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

21. 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 Property.

[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 _____, _____, 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 _____, _____.

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

DEVELOPER:
JEK CRE, LLC

By _____
(ADD Name and Title)

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this _____ day of _____, _____ the above named _____ 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 _____, _____.

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

ATTACHMENTS

- A. Property Description
- B. Form PC 202
- C. Municipal Revenue Obligation
- D. Tax Agreement
- E. Personal Guaranty
- F. Site Plan (to be added upon approval by the Village)

**ATTACHMENT A
LEGAL DESCRIPTION OF PROPERTY**

[add]

ATTACHMENT B FORM PC 202

Form PC-202	2020 Tax Increment Worksheet				WI Dept of Revenue
Report Type ORIGINAL	Co-muni Code 13112	County DANE Muni Type VILLAGE Municipality COTTAGE GROVE	Account No. 0375	Total Equalized TID Value Increment 118,334,600	This worksheet is for all TIDs in this municipality

Taxing Jurisdiction	Col. A Apportioned Levy /	Col. B Equalized Value (less TID Value Increment) =	Col. C Interim Rate X	Col. D Equalized Value (with TID Value Increment) =	Col. E Total Levy Amount (use on Mill Rate Worksheet)	Col. F Col. E - A = Tax Increment
1. County						
DANE	\$2,356,748.50 /	724,294,100.00 =	0.003253856 X	842,628,700.00 =	\$2,741,792.45	\$385,043.95
2. Special Districts (metro, sanitary, lake)						
MADISON METRO SEWER DISTRICT	\$0.00 /	712,197,712.00 =	0 X	828,552,812.00 =	\$0.00	\$0.00
3. Tax District (town, village, city)						
COTTAGE GROVE	\$4,410,900.00 /	724,294,100.00 =	0.006089929 X	842,628,700.00 =	\$5,131,548.96	\$720,648.96
4. School Districts						
SCH D OF MONONA GROVE	\$9,018,229.00 /	722,960,250.00 =	0.012474032 X	839,315,350.00 =	\$10,469,646.53	\$1,451,417.53
SCH D OF SUN PRAIRIE AREA	\$17,004.00 /	1,333,850.00 =	0.012748060 X	3,313,350.00 =	\$42,238.78	\$25,234.78
5. Technical College Districts						
MADISON AREA TECHNICAL COLLEGE MADN	\$625,859.85 /	724,294,100.00 =	0.000864096 X	842,628,700.00 =	\$728,112.09	\$102,252.24
6. Tax Increment Total						
	\$16,428,741.35				\$19,113,338.81	\$2,684,597.46

Preparer Information

Name Deb Winter

Title Village Treasurer

Email dwinter@village.cottage-grove.wi.us

Phone 608-839-4704

Comments

Signature Statement

Under penalties of law, I declare this form and all attachments are true, correct and complete to the best of my knowledge and belief.

Do you agree with the statement above?

YES NO

Submission Information

You successfully submitted your worksheet. Print a copy for your records.

Co-muni code: 13112

Submission date: 12-02-2020 04:05 PM

Confirmation: TIW20200375O1606946153264

Submission type: ORIGINAL

ATTACHMENT C

MUNICIPAL REVENUE OBLIGATION

**VILLAGE OF COTTAGE GROVE
MUNICIPAL REVENUE OBLIGATION SERIES (2021-04)
\$300,000**

THIS MUNICIPAL REVENUE OBLIGATION (the “Obligation”) is issued pursuant to Wis. Stat. § 66.0621 this _____ day of _____, 20__ by the Village of Cottage Grove, Dane County, Wisconsin (the “Village”) to JEK CRE, LLC, a Wisconsin limited liability company (“Developer”).

WITNESSETH:

I. The Village and Developer have entered into an Agreement to Undertake Development in Tax Increment District No. 5 dated _____, _____ (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 \$300,000, solely from Excess Tax Increment under the terms and conditions provided in the Development Agreement.

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 and in the Development Agreement.

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 laws of the State of Wisconsin governing tax incremental financing and to the Development Agreement.

Dated this _____ day of _____, 20____.

VILLAGE OF COTTAGE GROVE

By _____
John Williams, Village President

ATTEST:

Lisa Kalata, Village Clerk

ATTACHMENT D

TAX AGREEMENT

THIS AGREEMENT is entered into as of the _____ day of _____, 20____ (the Agreement), by and between the Village of Cottage Grove, a Wisconsin municipal corporation (the “Village”), and JEK CRE, LLC (the “Owner”).

RECITALS

A. The Village, and Owner have entered into a Development Agreement dated _____, _____, relating to the development of the Property (the “Development Agreement”).

B. Owner is the sole owner of the property described in Attachment A of the Development Agreement **as set forth on Exhibit A hereto** (the “Property”) in the Village of Cottage Grove, Wisconsin.

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 the Village and all of the owners of the Property.

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

E. 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 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 and the Development 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 on the Property that the Village would have received for the Valuation Year if the Property were fully subject to property taxation, and (2) the amount of property taxes, if any, on the Property actually received by the Village from Owner for the Valuation Year. 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. **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), waives any right to notice of or any hearing on any such special assessment.

7. **Attorneys' Fees.** The prevailing party in any legal action commenced to enforce the terms of this agreement shall be entitled to recover all amounts of attorneys' fees and expenses and expert fees and expenses incurred in such legal action from the non-prevailing party. This paragraph shall not be applicable to cases where Owner has, in good faith, disputed the Village's valuation.

8. **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 5 of this Agreement, indemnification under section 6 of this Agreement, and all other remedies available at law or in equity.

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

10. **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 jointly and severally. 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.

11. **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.

12. **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.

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

14. **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.

15. **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.

16. **Notices.** Any notice required to be given under this Agreement shall be deemed given when deposited in the United States mail, postage prepaid, return receipt requested, 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:

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

17. **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.

[SIGNATURES ON FOLLOWING PAGES]

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 _____, 20____, 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:

By _____
(ADD Name and Title)

ACKNOWLEDGMENT

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this _____ day of _____, _____, the above-named _____ 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: _____, _____.

By: _____

Name: _____

Title: _____

Attest:

Name: _____

Title: _____

STATE OF WISCONSIN
COUNTY OF _____

Personally came before me this _____ day of _____, 20____ the
above-named _____, of _____, to me known to be the
_____ of _____ who executed the foregoing instrument as such
officer of _____.

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

ATTACHMENT E PERSONAL GUARANTY

In Consideration of the agreement of the Village of Cottage Grove (“Village”) to enter the (Agreement to Undertake Development JEK CRE) (the "Development Agreement") with JEK CRE, LLC (the "Developer"), the undersigned individual(s) (each a "Guarantor") hereby personally guarantee to the Village the full, prompt, and unconditional payment, when due to the Village, of the following pursuant to the Development Agreement: 1) 100% of the Tax Payment Guarantee, 2) full payment of annual real estate taxes on the JEK Property until the Tax Payment Guarantee Termination Date, and 3) any payments required under the Tax Agreement (together, the “Obligations”).

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

Upon any default by Developer in the payment of any of the Obligations, the joint and several liability of the Guarantors 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 Development 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 Development Agreement, at which point this Guaranty shall terminate and be of no further force and effect.

If Developer shall sell or otherwise convey its interest in the JEK Property, and the Village consents in writing to assignment of the Developer’s obligations under the Development Agreement and the Guarantors’ obligations under this Guarantee, which consent shall not be unreasonably withheld, Developer and the undersigned Guarantors 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 Developer and Guarantor by the Development Agreement, Attachment D to the Development Agreement, and this Guaranty.

The undersigned waives notice of acceptance of this Guaranty, notice of default under the Development Agreement, proceedings to enforce the Development 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, not proceed against Developer, accept partial performance, or 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 and unconditional.

Dated: _____

By: _____

ATTACHMENT F

VILLAGE ACTION REPORT – SITE PLAN