

**AGREEMENT FOR SUBDIVISION IMPROVEMENTS
IN ACCORDANCE WITH THE SUBDIVISION ORDINANCE OF THE
VILLAGE OF COTTAGE GROVE, WISCONSIN**

For

FIRST ADDITION TO QUARRY RIDGE ESTATES PLAT

THIS AGREEMENT FOR SUBDIVISION IMPROVEMENTS IN ACCORDANCE WITH THE SUBDIVISION ORDINANCE OF THE VILLAGE OF COTTAGE GROVE, WISCONSIN (this “**AGREEMENT**”) is dated as of June ____, 2019, by and between A&M MANAGEMENT LLC, a Wisconsin Limited Liability Company (herein referred to as “**SUBDIVIDER**” or “**DEVELOPER**”) and the VILLAGE OF COTTAGE GROVE, a Wisconsin municipal corporation (the “**VILLAGE**”).

WHEREAS, on December 6, 2002, the **VILLAGE** and SUSAN and WILLIAM PAULSON (identified individually or collectively referred to as “**PAULSONS**”) in their individual and corporate capacities executed the initial AGREEMENT FOR SUBDIVISION IMPROVEMENTS IN ACCORDANCE WITH THE SUBDIVISION ORDINANCE OF COTTAGE GROVE – QUARRY RIDGE ESTATES; and

WHEREAS, in approximately 2003, the **VILLAGE** and the **PAULSONS** discussed the possibility of additional construction in the QUARRY RIDGE ESTATES PLAT, however plans for this additional development were not finalized; and

WHEREAS, QUARRY RIDGE ESTATES, LLC subsequently transferred fee simple ownership of that certain real estate located in the Village of Cottage Grove as more particularly described on **EXHIBIT C** to **SUBDIVIDER** (the “**PROPERTY**”);and

WHEREAS, **SUBDIVIDER** and the **VILLAGE** have negotiated this **AGREEMENT** to develop a new subdivision known as the **FIRST ADDITION TO QUARRY RIDGE ESTATES**

(the “**SUBDIVISION**”) for the following purposes: RESIDENTIAL SINGLE FAMILY SR-4 of the VILLAGE CODE OF ORDINANCES; and

WHEREAS, **SUBDIVIDER** has expressed a desire to develop the **PROPERTY** in phases as outlined in the attached “PHASING PLAN FOR FIRST ADDITION TO QUARRY RIDGE ESTATES” as **EXHIBIT D**; and

WHEREAS, the **VILLAGE** seeks to protect the health, safety and welfare of the community through the enactment of various ordinances, including, but not limited to, the VILLAGE SUBDIVISION ORDINANCE which requires provisions be made for the installation of public sanitary sewer facilities, water mains and water service laterals, streets, the grading of public and private lands, erosion, flood and storm water runoff control (hereinafter referred to as **IMPROVEMENTS, SUBDIVISION IMPROVEMENTS** or **PUBLIC IMPROVEMENTS**) required to serve the **SUBDIVISION**; and

WHEREAS, the purpose of this **AGREEMENT** includes, but is not limited to, avoiding the harmful consequences of undertaking land development prior to satisfactory completion of **IMPROVEMENTS** or prior to the payment of **IMPROVEMENT** costs, which can lead to underdeveloped and/or unproductive land; and

WHEREAS, no third-party beneficiary shall derive any right, title or claim hereunder, either directly or indirectly, not by way of reliance, estoppel or implication, since this **AGREEMENT** is made for the sole benefit of the signatory parties and not for the benefit of any third party beneficiaries, material men, laborers, or others providing work, services or material to the **SUBDIVISION** or for the benefit of purchasers of lots within the **SUBDIVISION**, but is intended to protect the **VILLAGE** from the cost of completing required **IMPROVEMENTS** within the phase of the **SUBDIVISION** then being completed; and

WHEREAS, this **AGREEMENT** is made for the mutual benefit of **SUBDIVIDER** and the **VILLAGE** in order that land division requirements will be fully complied with; and

WHEREAS, the **VILLAGE** will be injured in the event of **SUBDIVIDER'S** failure to fully and completely perform the requirements of this **AGREEMENT** even if construction has not yet been commenced. Accordingly, the parties agree the terms and provisions of the **AGREEMENT** may be enforced by the **VILLAGE** even if construction has not begun; and

WHEREAS, the mutual promises, covenants, and obligations contained in this **AGREEMENT** are authorized by state law and the applicable **VILLAGE** ordinances including the **VILLAGE'S SUBDIVISION ORDINANCE**; and

WHEREAS, **SUBDIVIDER** agrees to develop **PHASE A** of the **PROPERTY** in accordance with this **AGREEMENT** and any applicable regulations of any governmental entity with jurisdiction and/or the **SUBDIVISION ORDINANCE** and/or any other applicable ordinances including the **VILLAGE COMPREHENSIVE PLAN** and other rules and regulations of the **VILLAGE**; and

WHEREAS, it is the intention of the parties this **AGREEMENT** specifically approves the terms and conditions governing the development of **PHASE A** the **SUBDIVISION**; and

WHEREAS, it is the further intention of the parties for this **AGREEMENT** to serve as a base for governing the development of all future **PHASES** together with an amendment specific to each future **PHASE**, with the understanding that the development of each separate **PHASE** shall commence only after notification to and approval by the **VILLAGE** in writing and be constructed and completed by **SUBDIVIDER** for the prior **PHASE** and after satisfaction of all applicable conditions of this **AGREEMENT** and any applicable municipal requirements in effect at the time the **PHASE** is approved; and

WHEREAS, SUBDIVIDERS as a further condition of approval and commensurate with the recording of the plat for the **FIRST ADDITION TO QUARRY RIDGE ESTATES PLAT** further agrees to record certain **COVENANTS RESTRICTING SALE OF LOTS (EXHIBIT P-1 and P-2)** acceptable to the **VILLAGE** restricting the sale of lots in future construction phases without prior approval of the **VILLAGE**; and

WHEREAS, SUBDIVIDER now wishes to proceed with the installation of public **IMPROVEMENTS** to serve the Lots of **PHASE A**, as indicated on **EXHIBIT D PHASING PLAN**; and

WHEREAS, this final plat has been approved by the **VILLAGE** contingent upon the execution of this **AGREEMENT** and submittal of all documents required by this **AGREEMENT**; and

WHEREAS, this **AGREEMENT** contains the following **EXHIBITS**, all of which are incorporated by reference as if fully set forth:

EXHIBIT A VILLAGE ENGINEER'S ESTIMATE OF PUBLIC IMPROVEMENT COSTS

EXHIBIT B PUBLIC IMPROVEMENT PLANS

EXHIBIT C LEGAL DESCRIPTION OF PROPERTY TO BE DEVELOPED

EXHIBIT D PHASING PLAN

EXHIBIT E STORMWATER EROSION CONTROL

EXHIBIT F DNR SANITARY PERMIT

EXHIBIT G DNR WATER EXTENSION PERMIT

EXHIBIT H PERMIT

EXHIBIT I CARPC APPROVAL OF SEWER

EXHIBIT J MMSD FEE SCHEDULE

EXHIBIT K MMSD RESOLUTION

EXHIBIT L STORMWATER CALCULATIONS

EXHIBIT M LOT DRAINAGE MAP

EXHIBIT N ENGINEER REVIEW COMMENTS

EXHIBIT O REIMBURSEMENT SCHEDULE FOR OVERSIZED PIPE

**EXHIBIT P -1 COVENANTS AND RESTRICTIONS FOR CERTAIN LOTS
WITHIN THE FIRST ADDITION TO QUARRY RIDGE
ESTATES PLAT**

**EXHIBIT P-2 DECLARATION OF COVENANTS, RESTRICTIONS AND
CONDITIONS FOR QUARRY RIDGE FIRST ADDITION**

**EXHIBIT Q VILLAGE STANDARD SPECIFICATIONS FOR PUBLIC WORKS
IMPROVEMENTS**

NOW THEREFORE, in consideration of the **VILLAGE** granting approval for the development of the **PROPERTY**, **SUBDIVIDER** agrees to develop the **PROPERTY** complete with all **IMPROVEMENTS** outlined herein, in accordance with terms and conditions of this **AGREEMENT** and any applicable regulations of any governmental entity with jurisdiction and/or the ordinances, rules and requirements imposed by the **VILLAGE BOARD** and regulations of the **VILLAGE**.

ARTICLE I - GENERAL CONDITIONS

A. IMPROVEMENTS

SUBDIVIDER shall construct and install, at its own expense, those on-site and off-site **SUBDIVISION IMPROVEMENTS** applicable to the PHASE then being completed listed on **EXHIBIT A** and/or shown or described on **EXHIBIT B—EXHIBIT N** which are attached hereto and incorporated herein by reference and the **VILLAGE STANDARD SPECIFICATIONS FOR PUBLIC WORKS IMPROVEMENTS (EXHIBIT Q)**. **SUBDIVIDER'S** obligation to complete the **IMPROVEMENTS** will arise upon final plat approval by the **VILLAGE**, will be independent of any obligations of the **VILLAGE** contained herein and will not be conditioned on the commencement of construction in the **SUBDIVISION** or sale of any lots or **IMPROVEMENTS** within the **SUBDIVISION**.

B. CONTRACTORS ENGAGED BY SUBDIVIDER

SUBDIVIDER agrees to engage Contractors/Subcontractors acceptable to **VILLAGE ENGINEER**, (all future references to the **VILLAGE ENGINEER** shall also include the right to designate entities and/or individuals including a **RESIDENT INSPECTOR** to act in the **VILLAGE ENGINEER'S** place), for all construction included in this **AGREEMENT** who shall perform such work to the standards of the **VILLAGE** and who shall comply with every requirement of the **VILLAGE'S** Municipal Code and standards in performing such work. **SUBDIVIDER** shall furnish the **VILLAGE ENGINEER** with the names of all contractors and their subcontractors, with the

classification of the work they will perform not less than seven (7) calendar days, prior to the commencement of any work.

C. VILLAGE APPROVAL OF STARTING DATES

SUBDIVIDER further agrees no work shall be scheduled for the above-mentioned **IMPROVEMENTS** without the **VILLAGE ENGINEER'S** approval of starting date and schedule which shall be submitted by **SUBDIVIDER** for approval by the **VILLAGE ENGINEER** a minimum of seven (7) calendar days before work is scheduled to commence. The tentative schedule is as shown in Article I, Section F.

No building permits shall be issued until all necessary approvals have been made by the **VILLAGE** and utilities to serve the individual site are in place and inspected, a driveable year-round roadway with curb and gutter is in place and rough grading is complete on the lots over utilities.

D. CHANGE ORDER TO WORK

SUBDIVIDER further agrees the **VILLAGE** shall not be responsible for any costs or changes related to this project except those specifically enumerated and agreed to in this or other written **AGREEMENTS** between the **VILLAGE** and **SUBDIVIDER**. Said changes are to be in writing, executed by both parties, and are to be attached as exhibits and incorporated as if fully set forth herein.

E. **ACCEPTANCE OF WORK**

The **VILLAGE ENGINEER** shall view the **IMPROVEMENTS** and review the reports of the **RESIDENT INSPECTOR** as the work progresses. Within fourteen (14) days of a written notice by **SUBDIVIDER** requesting a reduction in the amount of **SURETY**, the **VILLAGE ENGINEER** shall inspect the **IMPROVEMENTS** and if deemed satisfactory shall issue a letter to acknowledge that, to the best of the **ENGINEER'S** knowledge and belief, the **IMPROVEMENTS** have been completed according to Article I.A.

The letter may also contain a statement recommending the amount of **SURETY** required to fully complete any **IMPROVEMENTS** reviewed and any pending. Before obtaining said letter regarding such **IMPROVEMENT**, the **SUBDIVIDER** shall present to the **VILLAGE** valid lien waivers from all persons providing materials or performing work on the **IMPROVEMENT(S)** for which review is sought. Review by the **VILLAGE ENGINEER** does not constitute a waiver by the **VILLAGE** of the right to draw funds under the **SURETY** on account of defects in or failure of any **IMPROVEMENT** that are detected or which occur following such review.

SUBDIVIDER further agrees the dedication of right-of-way **IMPROVEMENTS** and the required **PUBLIC IMPROVEMENTS** will not be accepted by the **VILLAGE** until they have been inspected and approved by the **VILLAGE ENGINEER** and furthermore until all outstanding **VILLAGE**-incurred **REIMBURSEMENT COSTS**, as outlined in **ARTICLE I.K**, including engineering and inspection charges indicated herein, have been paid in full and affidavits and lien waivers are received by the **VILLAGE** verifying that

the Contractors and Contractor's suppliers have been paid in full for all work and materials furnished under this **AGREEMENT**. The **PUBLIC IMPROVEMENTS** shall not be accepted until a complete breakdown of all quantities, construction, engineering and administrative costs incurred by **SUBDIVIDER** is submitted reviewed and approved by the **VILLAGE ENGINEER** and **VILLAGE CLERK**, respectively. (This is necessary to comply with GASB 34. This shall be done for each year's work and submitted by December 15, prior to year end.) The water system installation shall not be accepted until a bacteriologically safe sample is obtained by a certified testing agency. **SUBDIVIDER** shall be responsible to flush the main, obtain the samples, and have all tests completed as may be required for the **VILLAGE'S** acceptance. In addition, record drawings shall be provided by the **SUBDIVIDER** and shall include Bench Mark elevations on the tops of all hydrants.

SUBDIVIDER agrees to provide for maintenance and repair of all required **PUBLIC IMPROVEMENTS** until such **PUBLIC IMPROVEMENTS** are formally accepted by the **VILLAGE** through Resolution.

The **VILLAGE** will provide timely notice to **SUBDIVIDER** whenever inspection reveals that an **IMPROVEMENT** does not conform to the standards, details and specifications listed in Article I.A. and shown on **EXHIBIT B – PUBLIC IMPROVEMENT PLANS** or is otherwise defective under the terms of this **AGREEMENT**.

SUBDIVIDER shall have thirty (30) days from the receipt of such notice to correct or substantially correct the defect, or such other reasonable time as necessary if such defect

cannot be cured within thirty (30) days and **SUBDIVIDER**, upon receipt of such notice, promptly and diligently attempts to effect such cure.

The **VILLAGE** shall not declare a default under this **AGREEMENT** during the thirty (30) day correction period on account of any such defect unless, in the sole discretion of the **VILLAGE ENGINEER**, it is clear **SUBDIVIDER** does not intend to correct 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. **SUBDIVIDER'S** responsibility/right to correct defects after the **VILLAGE** accepts dedication of the **IMPROVEMENTS** shall also be governed by this provision.

F. **TIMETABLE FOR THE COMPLETION OF IMPROVEMENTS**

Subject to necessary approvals and economic conditions, completion of **IMPROVEMENTS** outlined herein shall be completed in accordance with the following estimated schedule:

- 1.** **Phase A** includes LOTS 41-51 and LOTS 100-107: within 12 months of obtaining all necessary approvals.
- 2.** **Phase B** includes LOTS 52-55, LOTS 82-89, and LOTS 92-99: within 12 months of obtaining all necessary approvals.
- 3.** **Phase C** includes LOTS 56-74 and LOTS 76-81: within 12 months of obtaining all necessary approvals.
- 4.** **Phase D** includes LOTS 166-180: within 12 months of obtaining all necessary approvals.

All work shall be completed in accordance with the approved construction schedule as submitted and approved by the **VILLAGE ENGINEER**.

G. **INDEMNIFICATION AND INSURANCE REQUIRED OF PRIVATE CONTRACTORS**

SUBDIVIDER hereby expressly agrees to indemnify and hold the **VILLAGE** and its agents harmless from and against all claims, costs and liability of every kind and nature, arising from injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the development site and elsewhere pursuant to this **AGREEMENT**, provided that the foregoing indemnification shall not be effective for any willful or grossly negligent acts of the **VILLAGE**. Except for any willful or grossly negligent acts by the **VILLAGE**, **SUBDIVIDER** further agrees to aid and defend the **VILLAGE** or its agents (at no cost to the **VILLAGE** or its agents) in the event they are named as a defendant in an action concerning the performance of work pursuant to this **AGREEMENT** except where such suit is brought by **SUBDIVIDER**.

SUBDIVIDER shall inform and require all Contractors engaged in the construction of this project to comply with the requirements of this **AGREEMENT** pertaining to damage claims, indemnification of the **VILLAGE** and **VILLAGE ENGINEER** and providing insurance coverages established by the **VILLAGE**. **SUBDIVIDER** shall also require Contractors engaged in the construction of this project to maintain a current Certificate of Insurance on file with the **VILLAGE CLERK**. Said Certificate shall indicate that the **VILLAGE** and the **VILLAGE ENGINEER** are insured or additional insured.

H. **GUARANTEE OF THE WORK**

SUBDIVIDER agrees to guarantee and warrant all work performed under this contract for a period of one year from the date of final acceptance by the **VILLAGE BOARD**, following the recommendation of the **VILLAGE ENGINEER** of the **IMPROVEMENTS** in the PHASE currently being completed against defects in workmanship or materials. If any such defect should appear during the guarantee period, **SUBDIVIDER** agrees to make required replacement or acceptable repairs of the defective work at their own expense. This expense includes total and complete restoration of any disturbed surface or component of the **IMPROVEMENT** to the standard provided in the plans and specifications, regardless of **IMPROVEMENTS** on lands where the repairs or replacement are required. The **SURETY** (as outlined in **SECTION I (L)**) shall remain in force for the full length of time that any **IMPROVEMENT** in the current PHASE remains to be completed; in addition, a portion of the **SURETY** deemed adequate by the **VILLAGE ENGINEER** shall remain in force for a minimum of the one-year guarantee period.

All guarantees or warranties for materials or workmanship which extend beyond the above one-year guarantee period shall be assigned by **SUBDIVIDER** to the **VILLAGE** (as beneficiary).

I. **COMPLIANCE WITH LAW**

SUBDIVIDER shall comply with all relevant laws, ordinances, and regulations in effect at the time of final **SUBDIVISION** plat approval when fulfilling obligations under this

AGREEMENT. When necessary to protect public health, **SUBDIVIDER** shall be subject to laws, ordinances and regulations that become effective after final plat approval.

J. **SPECIFICATIONS FOR IMPROVEMENTS**

SUBDIVIDER shall be required to fully comply with any and all provisions of the **VILLAGE SUBDIVISION ORDINANCE** and the **VILLAGE STANDARD SPECIFICATIONS FOR PUBLIC WORKS IMPROVEMENTS (EXHIBIT Q)** whether or not specifically addressed in this **AGREEMENT** including but not limited to:

1. **GRADING, EROSION CONTROL, BARRICADES AND ACCESS:**

- a. **SUBDIVIDER** shall furnish, install, and maintain during construction and until the **IMPROVEMENTS** of the PHASE then being completed are accepted by the **VILLAGE**, all barricades and signs as reasonably specified by the **VILLAGE ENGINEER** at all points where new rights-of-way extend or intersect existing streets and all street ends. Signs and barricades shall be required, furnished and installed so as to conform with the Manual of Uniform Traffic Control Devices.
- b. **SUBDIVIDER** shall obtain and adhere to the direction and approval of the **VILLAGE ENGINEER** or the **VILLAGE EROSION CONTROL OFFICER** for erosion and runoff control measures as required by the **VILLAGE ORDINANCES** prior to grading, utility installation or any other land disturbance activity. In addition, **SUBDIVIDER** shall provide and maintain erosion control at curb inlets and sweep streets at least bi-

monthly (or more often if so directed by the **VILLAGE ENGINEER**) until the streets are formally accepted by the **VILLAGE**. Separate approvals shall be obtained for each construction **PHASE**. **SUBDIVIDER** further grants the right-of-entry within the **SUBDIVISION** to designated personnel of the **VILLAGE** to inspect and monitor compliance with this requirement. Erosion Control measures shall comply with the “Wisconsin Construction Site Best Management Practice Handbook” and Chapter 163, Erosion, Sediment and Water Runoff Control, of **VILLAGE** Ordinances.

- c. **SUBDIVIDER** shall clean all silt and debris from the detention basin (sides and bottoms) at times ordered by the **VILLAGE ENGINEER** and prior to acceptance. All damaged grading and seeding shall also be restored after each cleaning.
- d. **SUBDIVIDER** shall install all storm water management facilities including related storm sewers and drainage channels as shown on the plans and specifications approved by the **VILLAGE ENGINEER** for the **PHASE** then being completed, and prior to acceptance.
- e. **SUBDIVIDER** shall coordinate with and obtain approval of **VILLAGE DIRECTOR OF PUBLIC WORKS**, such approval not to be unreasonably withheld, for haul routes/truck traffic in and out of the **SUBDIVISION**.

2. **SANITARY SEWER FACILITIES AND LATERALS:**

SUBDIVIDER shall install sanitary sewer mains and laterals to serve all lots within the **PHASE** then being completed to the limits shown on **EXHIBIT B PUBLIC IMPROVEMENT PLANS**. No installation of underground utilities shall commence until:

- a. Plans and specifications have been approved by the **VILLAGE ENGINEER** and the State of Wisconsin Department of Natural Resources, in addition to the other approvals required by this **AGREEMENT**. When required by the **VILLAGE ENGINEER** the sanitary sewer shall be provided in locations, sizes, and depths necessary to serve future **SUBDIVISIONS** and **PHASES**.
- b. The incremental cost for pipe sizes greater than the eight inch (8") in diameter will be borne by the **VILLAGE** and either credited or reimbursed to the **SUBDIVIDER** upon written demand from **SUBDIVIDER** to **VILLAGE**, but in any event, within forty-five (45) days following recommendation by the **VILLAGE ENGINEER** and approval by the **VILLAGE BOARD**. The increment shall be based on the approximate cost of the pipe material only for the different pipe sizes and will be made in accordance with the amounts indicated in **EXHIBIT O, "TABLE OF REIMBURSEMENTS FOR OVERSIZING PIPE."**

Any claim by **SUBDIVIDER** for reimbursement of the incremental cost for pipe sizes greater than eight (8) inches shall be submitted in a format acceptable to the **VILLAGE ENGINEER** within ten (10) years of the effective date of the underlying DEVELOPMENT AGREEMENT or be considered null and void and forever barred.

- c. **SUBDIVIDER** shall be responsible for submitting any required documentation to become a part of and for payment of any required fees by the MADISON METROPOLITAN SEWERAGE DISTRICT (M.M.S.D.) contemporaneous with the execution of this **AGREEMENT**.

Fee payments shall be made to the **VILLAGE**.

3. **WATER MAINS AND SERVICE PIPES:**

- a. **SUBDIVIDER** shall install water mains, including pipe, hydrants, tees, valves, crosses and related appurtenances and water service laterals to serve all lots within the **PHASE** then being completed and as required by the plans, specifications, and requirements of the Water Utility and approved by the State of Wisconsin Department of Natural Resources (**DNR**), in addition to the other approvals required by this **AGREEMENT**. All hydrants shall include an attached Radon Corp. 5-foot hydrafinder fiberglass marker. All water service laterals two (2) inches in diameter and smaller shall be completed with a curb stop and box. These shall not be placed in any driveway apron or sidewalk. All

materials used shall conform to the **VILLAGE STANDARD SPECIFICATIONS FOR WATERMAIN CONSTRUCTION (EXHIBIT Q)**.

- b. The incremental cost for pipe sizes greater than the 8” in diameter (“oversizing”) will be borne by the **VILLAGE** and either credited or reimbursed to the **SUBDIVIDER** upon written demand from **SUBDIVIDER** to **VILLAGE**, but in any event, within forty-five (45) days following recommendation by the **VILLAGE ENGINEER** and approval by the **VILLAGE BOARD**. The reimbursement is based on the approximate cost of pipe material only for the different pipe sizes and will be made in accordance with the amounts indicated in **EXHIBIT O, “TABLE OF REIMBURSEMENTS FOR OVERSIZING PIPE.”**
- c. Any claim by **SUBDIVIDER** for reimbursement of the incremental cost for pipe sizes greater than eight (8) inches shall be submitted in a format acceptable to the **VILLAGE ENGINEER** within ten (10) years of the effective date of the underlying **DEVELOPMENT AGREEMENT** or be considered null and void and forever barred.
- d. The **WATERMAIN** in the **SUBDIVISION** shall be completed by or at the direction of **SUBDIVIDER**.

4. **STREETS, STORM SEWERS AND SIDEWALKS:**

- a. **SUBDIVIDER** shall install Curb and Gutter, Storm Sewer, Inlets and Leads, and Pavement on all streets within the **PHASE** then being completed, to the established standards and/or specifications of the **VILLAGE**. Sidewalks shall be installed on both sides of all streets. All costs for said facilities shall be borne by the **SUBDIVIDER** with no reimbursement from the **VILLAGE**.
- b. **SUBDIVIDER** shall install stop signs and street name signs at all intersections in the current **PHASE** prior to issuance of building permits. Plans, specifications and installation shall be approved by the **VILLAGE PUBLIC WORKS DEPARTMENT**.

5. **STORM WATER MANAGEMENT STRUCTURES**
(also see **EXHIBITS E, L, M**)

SUBDIVIDER shall provide and install all storm water management facilities required by **VILLAGE ORDINANCE** including related storm sewers in accordance with the plans and specifications approved by the **VILLAGE ENGINEER** for the **PHASE** then being completed. All costs for said facilities shall be borne by the **SUBDIVIDER** with no reimbursement from the **VILLAGE**, except in the case where the **VILLAGE** requests “oversized” facilities, in which case the **VILLAGE** shall reimburse the **SUBDIVIDER** upon written demand from **SUBDIVIDER** to **VILLAGE**, but in any event, within

forty-five days following recommendation by the VILLAGE ENGINEER and approval by the VILLAGE BOARD.

6. Where standards and/or specifications have not been established by the **VILLAGE**, all work shall be made in accordance with established engineering practices as designated and approved by the **VILLAGE ENGINEER**.

7. **OTHER IMPROVEMENTS REQUIRED:**
 - a. **SUBDIVIDER** shall landscape all right-of-way land in the PHASE then being completed with topsoil, seed and mulch.

 - b. **SUBDIVIDER** shall, in accordance with Section 274-60 of the VILLAGE CODE, plant **STREET TREES** in the terraces of the **PHASE** of the **SUBDIVISION** then being completed every 50 feet. The **STREET TREES** shall be of a species indicated in Section 294-5 and Section 294-7 of the VILLAGE CODE and shall be a minimum 2-inch caliper, 6 feet tall or taller, and planted in accordance with instruction and oversight from the **VILLAGE PUBLIC WORKS DIRECTOR** or **DESIGNEE**. **STREET TREES** shall be guaranteed for at least one year past a winter or until one year after acceptance of the **PUBLIC IMPROVEMENTS**, whichever is longer.

- d. **SUBDIVIDER** shall install permanent markers at all property irons surrounding dedicated public property. Markers shall be WIS DOT alternate 1 / flexible marker posts per Standard Detail Drawing 15 A 3-1.
 - e. **SUBDIVIDER** shall have the responsibility to coordinate, pay for, and arrange service to lots, street lighting, and utility relocations with power, gas, and communication utilities.
8. **PUBLIC IMPROVEMENT PLANS and SPECIFICATIONS** are attached as **EXHIBIT B** and incorporated herein as if fully set forth.

9. **SATISFACTION OF PARKLAND REQUIREMENTS:**

In order to satisfy the applicable VILLAGE ORDINANCE, the **SUBDIVIDER** has received endorsement from the **DEPARTMENT OF PARKS & RECREATION** and is awaiting approval from the **VILLAGE BOARD** to dedicate a portion of the **PROPERTY** in lieu of payment of either the **DEDICATION FEE** or the **PARK IMPROVEMENT FEE** for PHASES A & B. Should the **SUBDIVIDER**, together with the **VILLAGE BOARD** and **DEPARTMENT OF PARKS & RECREATION**, not reach agreement on the dedication of land, or if the necessary approvals of all jurisdictional authorities are not obtained, the **SUBDIVIDER** agrees to:

- a. Make the **PAYMENT IN LIEU OF PARKLAND DEDICATION FEE** payment of ONE THOUSAND THREE HUNDRED EIGHTY-TWO DOLLARS (\$1,382) PER UNIT;
- b. Make the **PARK IMPROVEMENT FEE** payment of TWO HUNDRED FIFTY-FIVE DOLLARS (\$255) PER UNIT; and
- c. SUBDIVIDER shall pay amounts due and owing as lots are released for sale.

K. **SUBDIVIDER TO REIMBURSE THE VILLAGE FOR COSTS SUSTAINED**

- 1. **SUBDIVIDER** shall reimburse the **VILLAGE** for its actual cost of review and drafting of this **AGREEMENT**, design, inspection, testing, construction and associated, legal, engineering, accounting, and real estate fees for the required **PUBLIC IMPROVEMENTS** (hereafter referred to as **REIMBURSEMENT COSTS**). The **VILLAGE'S** costs shall be determined as follows:
 - a. The cost of **VILLAGE** employees' time engaged in any way with the required public **IMPROVEMENTS** based on the hourly rate paid to the employee multiplied by a factor determined by the **VILLAGE** representing the **VILLAGE'S** cost for expenses, benefits, insurance, sick leave, holidays, overtime, vacation, and similar benefits.
 - b. The cost of **VILLAGE** equipment employed.
 - c. The cost of mileage reimbursed to **VILLAGE** employees which is attributed to the land division.

- d. The actual costs of **VILLAGE** materials incorporated into the work including transportation costs plus a restocking and or handling fee not to exceed ten (10) percent of the costs of the materials.
- e. The costs incurred by the **VILLAGE** in connection with the review and approval of the final plat of **SUBDIVISION** as well the cost for review and approval of other related documents including deed restrictions.
- f. All consultant fees including legal and engineering fees associated with the public **IMPROVEMENTS** at the invoiced amount plus administrative costs.
- g. A sum of two percent (2%) of the **IMPROVEMENT** costs as estimated by the **VILLAGE ENGINEER** shall be deposited with the **VILLAGE TREASURER** to be placed in escrow as an initial payment to partially cover costs.

The **VILLAGE TREASURER** shall draw against such escrow deposit for payment of all administrative, engineering, legal and other costs incurred by the **VILLAGE**. If at any time the escrow deposit shall be insufficient to reimburse the **VILLAGE** for its expenses, **SUBDIVIDER** shall deposit additional security within thirty (30) business days of receiving written notice from the **VILLAGE TREASURER**. Each time the **VILLAGE TREASURER** makes a draw against such escrow deposit, the **VILLAGE TREASURER** shall provide **SUBDIVIDER** with written notice of the amount and detailed bases for the draw.

After the construction of the **IMPROVEMENTS** has been completed and accepted by **VILLAGE**, the actual costs shall be totaled and the difference, if any, shall be paid by or remitted to **SUBDIVIDER**.

L. **SURETY**

1. **SUBDIVIDER** agrees to furnish the **VILLAGE**, on or before the effective date of this **AGREEMENT** in the form of certified checks, irrevocable letter of credit, contractors performance bonds, or other such form as deemed acceptable by the **VILLAGE** (previously and hereafter generally referred to as the **SURETY**), in the minimum amount of EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$850,000.00) to secure performance of **PHASE A** of the **SUBDIVISION** in accordance with the **VILLAGE'S ORDINANCES**. The **SURETY** shall be performable on demand by the **VILLAGE** and will bear an expiration date not earlier than October 15, 2020. The amount of **SURETY** required for each subsequent **PHASE** shall be 100% of the amount determined necessary to cover the cost of **IMPROVEMENTS** for that **PHASE** by the **VILLAGE ENGINEER** in conjunction with the approval and release of each **PHASE** by the **VILLAGE BOARD**. The **SURETY** provider shall give notice to the **VILLAGE** sixty (60) days prior to the expiration date and the **VILLAGE** will indicate to **SUBDIVIDER** the required amount of continuing **SURETY** to be extended for another period. Failure to renew the **SURETY** prior to the thirty (30) days before expiration is grounds for the **VILLAGE** to declare a default and to make a claim for the full amount of the **SURETY**. The **SURETY** will be payable to the

VILLAGE at any time upon presentation of: (i) a sight draft drawn on the issuing bank in the amount to which the **VILLAGE** is entitled to draw pursuant to the terms of this **AGREEMENT**; (ii) an affidavit executed by an authorized **VILLAGE** official stating that **SUBDIVIDER** is in default under this **AGREEMENT**; and (iii) the original of the **SURETY**.

2. As work progresses on installation of **IMPROVEMENTS** constructed as part of the **AGREEMENT**, the **VILLAGE ENGINEER**, upon written request from **SUBDIVIDER** from time to time, is authorized to recommend a reduction in the amount of **SURETY** as hereinafter provided. When portions of construction (water, sanitary sewer, street, sidewalk, greenway or other **IMPROVEMENTS**) are completed by **SUBDIVIDER**, and determined acceptable by the **VILLAGE ENGINEER**, the **VILLAGE PRESIDENT** is authorized following approval by the **VILLAGE BOARD** and upon submission of lien waivers by **SUBDIVIDER'S** contractors, to reduce the amount of **SURETY**.

3. Upon acceptance by the **VILLAGE BOARD** of the **IMPROVEMENTS** constructed as part of this **AGREEMENT**, the **VILLAGE** agrees to reduce the **SURETY** to an amount equal to an estimate by the **VILLAGE ENGINEER** to secure performance of the **GUARANTEE** described in this **AGREEMENT (SECTION I (H))**, subject to the approval, and recommendation of the **VILLAGE ENGINEER** and **VILLAGE ATTORNEY**.

M. **SUBDIVIDER'S DESIGNATED PROJECT MANAGER**

SUBDIVIDER hereby appoints NATE SNYDER as the **PROJECT MANAGER**; said individual shall act as **SUBDIVIDER'S** representative during the construction phase of the installation of these **IMPROVEMENTS**. The **PROJECT MANAGER** shall be available during construction hours on the job site or available by telephone. During non-construction hours, the **PROJECT MANAGER** shall be available for emergency situations at the following telephone number: 608-807-9777. The mailing address for this construction project shall be as follows: A&M MANANAGEMENT LLC, 4312 VILAS HOPE ROAD, COTTAGE GROVE, WISCONSIN 53527

N. **ENGINEER OF RECORD AND RESIDENT PROJECT REPRESENTATIVE**

The **ENGINEER OF RECORD**, who designed and sealed the **PUBLIC IMPROVEMENT PLANS and SPECIFICATIONS**, is BRIAN ARCAND, SNYDER ASSOCIATES INC. The **SUBDIVIDER** hereby agrees that the **RESIDENT PROJECT REPRESENTATIVE (RPR)** shall be either the **VILLAGE ENGINEER** or a designee. The **RPR** will conduct on-site observations of the Construction in progress in order to assist the **VILLAGE ENGINEER** in determining if the Construction is proceeding in accordance with the **EXHIBIT B PUBLIC IMPROVEMENT PLANS**.

ARTICLE II - SUPPLEMENTAL GENERAL CONDITIONS

A. **RELATIONSHIP**

Neither party shall be considered the agent of the other and absent further written authorization, neither party has general authority to enter into contracts, assume any obligation or make any warranties or representations on behalf of the other.

B. **NO VESTED RIGHTS GRANTED**

Except as provided by law, or as expressly provided in this **AGREEMENT**, no vested right in connection with this project shall inure to **SUBDIVIDER**. Nor does the **VILLAGE** warrant by this **AGREEMENT SUBDIVIDER** shall be entitled to any other approvals required.

C. **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 default under this **AGREEMENT** be deemed a waiver of any subsequent default or defaults of the same type. The **VILLAGE'S** failure to exercise any right under this **AGREEMENT** shall not constitute the approval of any wrongful act by **SUBDIVIDER** or the acceptance of any **IMPROVEMENT**.

D. **AMENDMENT/MODIFICATION**

This **AGREEMENT** may be amended or modified only by a written amendment approved and executed by the **VILLAGE** and **SUBDIVIDER**.

E. **FUTURE CONSTRUCTION PHASES**

Future construction phases of this plat, shall proceed only after execution of a written amendment regarding construction of each **PHASE** which shall include the approval of additional security and other documents as required.

F. **DEFAULT**

Except as otherwise provided herein, a default is defined herein as **SUBDIVIDER'S** breach of, or failure to comply with, the terms of this **AGREEMENT**. The **VILLAGE** reserves to itself the right to draw on the **SURETY** provided hereunder in addition to pursuing any other available remedies. Remedies shall include, but not be limited to, stopping all construction in the approved final plat and prohibiting the transfer or sale of lots or not issuing building permits.

G. **ENTIRE AGREEMENT**

This written **AGREEMENT**, and written amendments, and any referenced attachments thereto, shall constitute the entire **AGREEMENT** between **SUBDIVIDER** and the **VILLAGE**.

H. **ATTORNEYS' FEES**

Except as otherwise provided herein, the parties will be responsible for their own costs and attorneys' fees in the event of litigation, arbitration, or mediation unless otherwise ordered by the court.

I. **TIME**

For the purpose of computing the commencement, abandonment, and completion periods, and time periods provided herein, such times in which war, civil disasters, acts of God, or extreme weather conditions occur or exist shall not be included if such times can be shown to the satisfaction of the **VILLAGE ENGINEER** to have prevented **SUBDIVIDER** or **VILLAGE** from performing his/its obligations under the **AGREEMENT**.

J. **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 part, term, or provision was never part of the **AGREEMENT**.

K. **BENEFITS**

The benefits of this **AGREEMENT** to **SUBDIVIDER** are personal and shall not be assigned without the express written approval of the **VILLAGE**. Such approval may not be unreasonably withheld but any unapproved assignment is void. The burdens of this **AGREEMENT** are personal obligations of **SUBDIVIDER** and also shall be binding on the heirs, successors and assigns of **SUBDIVIDER**. There is no prohibition on the right of the **VILLAGE** to assign its rights under this **AGREEMENT**. The **VILLAGE** shall release the original **SUBDIVIDER'S SURETY** if it accepts a new surety from any subdivider or lender who obtains the **PROPERTY**, provided however, the **SUBDIVIDER** shall remain liable for the remainder of any one-year guarantee of work then applicable.

L. **IMMUNITY**

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

M. **NOTICE**

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

if to **SUBDIVIDER**: A&M MANAGEMENT
4312 VILAS HOPE ROAD
COTTAGE GROVE WISCONSIN 53527

if to **VILLAGE**: Village of Cottage Grove
221 Cottage Grove Road
Cottage Grove, WI 53527
Attn: Village Clerk LISA KALATA

N. **RECORDATION**

The **VILLAGE** may record a copy of this **AGREEMENT** or Affidavit indicating the existence of this **AGREEMENT** in the Register of Deeds Office. All cost of recording shall be paid by **SUBDIVIDER**.

O. **PERSONAL JURISDICTION AND VENUE**

Personal jurisdiction and venue for any civil action commenced by either party to this **AGREEMENT** whether arising out of or relating to the **AGREEMENT** or **SURETY** shall be deemed to be proper only if such action is commenced in District Court for Dane County. **SUBDIVIDER** expressly waives the right to bring such action in or to remove such action to any other court whether state or federal.

P. **REPRESENTATION**

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

Q. **EFFECTIVE DATE**

This **AGREEMENT** shall be effective as of the date and year first written above.

SIGNATURES TO FOLLOW ON THE NEXT PAGE

VILLAGE OF COTTAGE GROVE
DANE COUNTY, WISCONSIN

By: _____

Village President Jack Henrich

Attest: _____

Village Clerk Lisa Kalata

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me this ____ day of _____, _____, the above-named Jack Henrich, Village of Cottage Grove President, and Lisa Kalata, Village of Cottage Clerk, 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.

Notary Public, State of Wisconsin

My Commission: _____

A&M Management LLC

By: _____

Nate Snyder, in his corporate capacity

STATE OF WISCONSIN)

) ss.

COUNTY OF DANE)

Personally came before me this ____ day of _____, _____, the above-named Nate Snyder, to me known to be the person who executed the foregoing instruments as an officer of A&M MANAGEMENT LLC acknowledging the same as the properly authorized act of said corporation.

Notary Public, State of Wisconsin

My Commission: _____

This instrument drafted by:

Village Attorney Leighton W. Boushea

BOUSHEA, SEGALL and JOHNSTON LAW OFFICES

2945 Triverton Pike Drive, Suite 101

Madison, WI 53711

608/221-0079