

**AGREEMENT TO UNDERTAKE DEVELOPMENT
SHADY GROVE**

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 William Ryan Homes Wisconsin, Inc., a Wisconsin corporation or its assigns (the “Developer”).

RECITALS

WHEREAS, Developer proposes to develop the real property described in Attachment A in accordance with the approved plat; and

WHEREAS, the Village finds that the development of the Shady Grove 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 residential housing opportunities; 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. Conditions of Approval. The requirements and conditions related to the Project as described in the final village action report on the project, incorporated herein as Attachment G.

2. Shady Grove Property. The property to be developed by the Developer, and as more particularly described in Attachment A.

3. Plat. The final plat approved by the Village for the Shady Grove Property.

4. Project. Developer’s construction of the following:

a. Construction of 56 single family residential lots and 4 outlots. Construction of the 56 single family residential lots does not include the construction of the actual improvements on the lots (i.e., the houses). The Project does not include development of lots 1, and 60 through 63. The Village and Developer believe at the time of execution of this Agreement that the necessary Public Improvements for this Project will fully serve the future development of lots 1, and 60 through 63. In the event Public Improvements are necessary for development of lots 1, and 60 through 63, a separate agreement or amendment to this Agreement will be necessary.

b. All necessary Public Improvements to serve the development or otherwise deemed necessary by the Village as provided in the Plat and the Conditions of Approval.

5. Plans and Specifications. Written plans and specifications, prepared by Developer in accordance with Village Standards and approved by the Village Engineer for the design, construction, and installation of Public Improvements. The Village shall approve Plans and Specifications proposed by Developer if consistent with prior Village approvals as described in Attachment G.

6. 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 Plat, potentially including water and sewer utilities, stormwater management facilities, public roadways, and sidewalks.

7. 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. SECTION INTENTIONALLY LEFT BLANK

C. DEVELOPER OBLIGATIONS.

1. Timely Proceed With Private Development. Developer shall use good faith efforts to construct the Project during 2021 through 2024 such that the economic development and other benefits cited in this Agreement 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 Plat and in accordance with Plans and Specifications and the Conditions of Approval. The Developer's obligation to complete the Public Improvements will arise once all of the following have occurred: (a) execution of this Agreement; and (b) approval by the Village Engineer of Developer's Plans and Specifications. Developer's obligation will be independent of any obligations of the Village contained herein, and will not be conditioned on the commencement of construction or sale of any lots or Public Improvements.

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 seventeen (17) months after the approved start date except for the second lift of asphalt, which will be installed in compliance Section C2e(2)iv. Any work, except for the second lift of asphalt, which will be installed in compliance Section C2e(2)iv, which is not completed within seventeen (17) 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 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) *Street Public Improvements.*

- i. The Developer shall construct all streets, including gravel base, and install the curb and gutter in accordance with the construction standards of the Village. The Developer must apply for and obtain a right-of-way permit before any work is performed within the Village's or County's rights-of-way.
- ii. The Village Engineer shall determine whether the Developer will be required to remove unsuitable subbase material and to replace and compact such subbase material with suitable material, in order to insure the quality of the street construction.
- iii. Developer shall grade and surface those streets, install concrete curb and gutters and concrete driveway aprons.
- iv. Unless otherwise approved by the Village Engineer in writing, the second course of asphalt shall not be installed until construction has been completed on 75% of the buildable lots. The second course of asphalt shall be constructed no later than November 15 during the second calendar year following construction of the first course of asphalt. The Village shall have no responsibility to accept dedication of, plow, or otherwise maintain any street that has not been fully completed, including the final asphalt lift.
- v. Construction of pavement, concrete curb and gutters, and concrete aprons 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.
- vi. Developer shall convert the intersection of Fundamental Way and County Highway BB to a right in – right out only intersection.

(3) *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.

(4) *Sanitary Sewer Collection.*

- i. The Developer shall install sanitary sewer service laterals to serve each lot in the Project. Developer shall install main extensions, a lift station, and force mains to service the Project according to the Plans and Specifications.
- ii. All sanitary sewer main and lateral construction shall be completed prior to the application of aggregate base and the first course of asphalt street pavement.
- iii. No installation of sanitary sewer shall commence until Plans and Specifications have been approved by the Village Engineer and the Wisconsin Department of Natural Resources as it requires.

(5) *Water Distribution.*

- i. Water distribution infrastructure shall be installed with mains, hydrants, tees, valves, crosses and related appurtenances and water service laterals.
- ii. The Developer shall install water service laterals to serve each lot in the Project.
- iii. All water main and lateral construction shall be completed prior to the application of aggregate base and the first course of asphalt street pavement.
- iv. No installation of water main shall commence until Plans and Specifications have been approved by the Village Engineer and the Wisconsin Department of Natural Resources as it requires.

(6) *Storm Sewer and Storm Water Management Facilities.*

- i. Developer shall design and construct all stormwater management infrastructure to be connected to the Village's existing public stormwater management system. If the Village's existing public stormwater management system lacks sufficient capacity for the added stormwater from the completed Project, the Developer shall upsize the existing system or construct new systems to accommodate the additional stormwater to the satisfaction of the Village Engineer.

The minor system of storm sewer pipes and inlets are required to be designed to safely convey peak flows from the 10-year 24-hour design rainfall event. The major system of stormwater collection and conveyance facilities are required to be designed to safely convey peak flows from the 100-year 24-hour design rainfall event. Depending on specific site conditions and other requirements as determined by the Village Engineer the capacities for either the minor or major system may be greater.

- ii. All storm sewer construction shall be done in accordance with construction standards of the Village and shall be completed prior to the application of the first course of asphalt street pavement.
- iii. All storm water management facilities shall be constructed as provided in the approved storm water management plan for the Project.

(7) *Easements and Utility Service.* All utilities serving the Project including, but not limited to, electric power, natural gas, communications facilities, telephone and cable, shall be installed underground. Except as otherwise provided in this Section, all utility equipment, appurtenances, conduits, lines and structures, electrical power, cable, communications facilities, and telephone shall be installed within the right of way or within easements alongside of rear lot lines and shall not be permitted in the front yard without written approval by the Village. Village utilities are permitted to be constructed within the Village Utility Easement located in the front yard of certain lots if approved by the Village Engineer.

(8) *Fencing and Debris Removal.* The Developer shall remove all interior fences and posts on the Project Property, and shall remove all man-made debris on lands to be dedicated to the public, or which are public at the time of execution of this Agreement.

(9) *Street Signs.* The Developer shall purchase and install street name identifier signs and traffic control signs.

(10) *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. Developer shall not plant street trees until eighty percent of the Public Improvements have been constructed and Developer has received authorization from the Village Director of Parks, Recreation and Forestry.

(11) *Street Lamps.* The Developer shall pay for the purchase and installation of street lamps. Street lamps shall be placed at intervals and in locations as set forth on a street lamp plan approved by the Director of Public Works and the local electric utility company. The type and specifications of the street lamps must be approved by the Director of Public Works prior to installation. The Village will not accept street lamps subject to a lease. The Village shall only be responsible for paying the ongoing electricity costs of street lamps. Street lamps must be owned by the local electric utility company, and the Village will not own any street lamps even after acceptance.

(12) *Survey Monuments.* The Developer shall install all survey monuments for the lands within the Plat in the manner required by law within the time required by law.

(13) *Bike Path.* The Developer shall construct an eight (8) foot wide bike path along Buss Road in accordance with Plans and Specifications and the Conditions of Approval.

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 60 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. 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 those contained in the Conditions of Approval.

5. 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 Public Improvements, with loss payable endorsements in favor of the Village, with provision that such coverage will not be terminated without 30 days prior written notice to the Village.

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; (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 reasonably 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. Notwithstanding anything otherwise set forth herein, the amount of surety required at any time shall comply with Wis. Stat. § 236.13.

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. Notwithstanding anything otherwise set forth herein, the amount of surety required at any time shall comply with Wis. Stat. § 236.13.

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 17 months except for the second lift of asphalt, which will be installed in compliance Section C2e(2)iv, 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. Fee in Lieu of Parkland Dedication and Park Improvement Fee. Developer shall pay all applicable fees in lieu of parkland dedication and park improvement fees. Developer shall pay these fees at the time of receipt of building permits for the Project.

2. Sewer and Water Impact Fees. In accordance with Chapter 198 of The Village Ordinances, Developer shall pay the Village all applicable sewer and water impact fees. Developer shall pay these fees at the time of receipt of building permits for the Project.

3. Madison Metropolitan Sewerage District ("MMSD") Fees. Developer shall pay, at the time of or prior to issuance of the building permit, MMSD fees in the amount invoiced to the Village by MMSD.

4. Building Permits. The Village shall not issue building, occupancy, or other permits or approvals unless Developer has complied with the provisions of this Agreement; provided, however, that Developer may obtain building permits prior to substantial completion of the Public Improvements if all Public improvements related to public safety, as determined by the Village, are complete and all other obligations under the Agreement are met; provided, however, that Developer shall construct any improvements on a Lot at its own risk related to completion and acceptance of Public Improvements necessary to obtain Occupancy Permits.

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

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. Developer shall provide commitment letters demonstrating it has secured sufficient financing to pay for the Project.
3. Developer must obtain all necessary licenses, permits and approvals from the Village required for the commencement of construction of the Public Improvements.

If the events described in this Section are not satisfied by September 1, 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 itself 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 Shady Grove 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. Notwithstanding anything to the contrary set forth herein, in no event will either party be liable under or in connection with this Agreement to the other party for any consequential, incidental, indirect, exemplary or punitive damages. This section does not limit in any way Developer's indemnification obligations under section I.1 of this Agreement.

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: William Ryan Homes, Inc.
Deborah A. Beaver, Vice President
5989 Monona Drive
Monona, WI 53716

With a copy to:

Ryan Building Group, Inc.
John E. Rushin, President & COO
2700 Patriot Blvd., Ste. 430

Glenview, IL 60026

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, 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.

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:

WILLIAM RYAN HOMES WISCONSIN, INC.

By _____
Deborah A. Beaver, Vice President

By: RYAN BUILDING GROUP, INC.

By: _____
John E. Rushin, President & COO

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: _____

STATE OF WISCONSIN

COUNTY OF _____

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.

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

ATTACHMENTS

- A. Property Description
- B. through F. (Intentionally omitted)
- G. Conditions of Approval - Village Action Report

**ATTACHMENT A
LEGAL DESCRIPTION OF PROPERTY**

[add]

ATTACHMENT G

**CONDITIONS OF APPROVAL
VILLAGE ACTION REPORT**



VILLAGE ACTION REPORT

PROJECT: Shady Grove Final Plat
APPLICANT: Shady Grove LLC
PROJECT LOCATION: 2863 County Highway BB
REPORT DATE: APRIL 16, 2021

PROJECT DESCRIPTION: The applicant is seeking approval of a Final Plat for the Shady Grove subdivision, which has 56 single family residential lots, 6 multi-family or duplex lots, and 4 outlots. Zoning was approved in April 2019 for the single-family lots and outlots conditioned upon the approval of a revised preliminary plat based on the concept plan presented at that meeting. The proposed plat conforms with that concept plan.

PLAN COMMISSION MEETING: August 14, 2019

STAFF REPORT PROVIDED BY: X Planner, X Engineer, Public Works

MOTION: by Jushchyshyn (1st), Ratcliff (2nd)

The Final Plat was APPROVED WITH CONDITIONS, with the conditions as follows:

Planning

1. Correct Note #2 on Sheet 1 to reflect current lot numbering (Lot 59 should be Lot 58 and Lots 61 to 63 should be Lots 60 to 62).
2. Provide final edit of neighborhood covenants and deed restrictions prior to recording.
3. Provide proof of recording of neighborhood covenants and deed restrictions.
4. Single-family residential (SR-4) zoning on Lots 2 to 57 and Park and Open Space zoning on Outlots 1 to 4 shall take effect upon recording of the of the Final Plat.
5. (Added by Plan Commission) Sidewalk shall be omitted on the west side of Buss Road adjacent to Outlot 1, and fence shall be omitted adjacent to cemetery since there will be no sidewalk.

Engineering – Site Layout Plan

1. Label and dimension all easements on plan sheets, including easements for drainage.
2. Show location of all curb stops on plan sheets.
3. Provide intersection detail sheets for clarification of drainage patterns and ADA compliance at curb ramps.
4. Provide landscape/planting plan sheet.
5. Provide pavement marking and signage sheet.
6. Coordination with Village/MSA required for proper grade and alignment of Fundamental Way and Buss Road for future expansion of CTH BB (Cottage Grove Road). Temporary pavement may be necessary to currently match existing CTH BB.

7. Note, current edition of Village of Cottage Grove Standard Specification for Public Works improvements shall supersede.
8. Sheet C0.0 – a.) update contact information for Frontier Communications: Jerry Moore; Construction Detailer; Jerald.Moore@ftr.com, 2222 W. Wisconsin St., Portage, WI 53901; phone (608) 742-9507; cell (608) 346-0353; fax (608) 742-1612
9. Sheet C1.0 – a.) Revise paving note 4.1, 2' x 5' Neenah truncated dome panel or equal, natural patina (no color).
10. Sheet C1.1 – a.) Revise utility note 4, Village of Cottage Grove “Standard Specifications for Public Works Improvements.”
11. Sheet C3.0 – a.) Label all easements.
12. Sheet C4.0 – a.) Add typical sections for Fundamental Way; b.) Correct reject curb size to match dimensioning, 24” labeled 30”; c.) revise note, concrete sidewalk to be 5” thick.
13. Sheet 6.0 – a.) Add ramps crossing Fundamental Way, temporary end of median can stop prior to ramp crossing for future tie-in to CTH BB.

Engineering – Grading Plan

1. Sheet C6.1 – a.) SW corner Fundamental/Drumlin Ridge ramp exceeds maximum cross slope of 2% for controlled intersection, revise; b.) clarify labeling, rim at inlets = flowline or top of curb; c.) clarify labeling, EC at ramps = flowline or back of curb; d.) Add drainage arrows to determine drainage pattern.
2. Sheet C6.2 – a.) revise ramp grades to comply with ADA guidelines, several exceed 12:1 maximum (8.33%); b.) (left detail) west curb line and center line of Morning Star Way if flat for approx. 15 feet, is there a high point between? If not, revise for minimum 0.5% slope; c.) Add drainage arrows to determine drainage pattern.
3. Sheet C6.3 – a.) revise ramp grades to comply with ADA guidelines, 12:1 maximum (8.33%); b.) add high point and drainage arrows to determine drainage pattern.
4. Sheet C6.4 – a.) revise ramp grades to comply with ADA guidelines, 12:1 maximum (8.33%).
5. Sheet C6.5 – a.) revise ramp grades to comply with ADA guidelines, 12:1 maximum (8.33%); b.) add drainage arrows to determine drainage patterns.
6. Sheet C6.6 – a.) revise ramp grades to comply with ADA guidelines, 12:1 maximum (8.33%).
7. Sheet C6.7 – a.) revise ramp grades to comply with ADA guidelines, 12:1 maximum (8.33%).

Engineering – Master Utility Plan

1. Dimension horizontal separation between utilities.
2. Sanitary manhole plug shall be installed in the downstream manhole in the outlet pipe until the project has been accepted. The plug must be installed in the presence of the engineer and may be removed only in the presence of the engineer. Water that has accumulated in the downstream manhole must be pumped out prior to removal of the plug. Add note to plans.
3. All manhole castings to be R-1710, Neenah, type B self-sealing, gasket non-rocking lids with concealed pick holes, revise on structure table Sheets C8-14 and C9-15.
4. All C900 watermain requires tracer wire with termination boxes, show locations on plan.
5. All water services on C900 pipe require saddle connections.
6. Storm sewer design to match at crown of pipes.

Engineering – Plan and Profile Sheets

1. All water crossings (including main and services) with storm having less than 5' of vertical separation require insulation. Show insulation on plan sheets.
2. When watermain profile does not follow street profile, (typical 6.5' bury and 7' bury on cul-de-sacs) provide top of pipe elevations in profile.
3. Provide complete lot numbers on all plan/profile sheets.
4. Revise watermain profile on Fundamental Way to minimize extreme depth.
5. Please darken line weights in plan/profile for ease of readability.
6. Clarify need for 1-1/2 inch water service.
7. Sheets C8.0-8.13 – a.) storm sewer constructability will be reviewed after adjustments made per storm water comments.
8. Sheet C8.10 – a.) coordinate centerline profile build with MSA/Village for proposed CTH BB. Match point to be 100+00. Temporary pavement may be required to match existing CTH BB grade.
9. Sheet C8.14 – a.) revise structure table, all manhole castings to be R-1710 Type B, self-sealing, non-rocking, with concealed pick holes, per Village of Cottage Grove Standard Specification 502.7.
10. Sheet C9.0 – a.) revise centerline profile to build per above note. Currently proposed centerline profile for CTH BB at Fundamental Way is 940.5. Match point to be 151+00. Temporary pavement is required to match existing CTH BB grade; b.) no sanitary stub allowed, construct to next upstream manhole; c.) add hydrant on SW corner of CTH BB and Fundamental Way intersection; d.) extend sidewalk 5 feet beyond ROW and add ramp crossings at end, crossing Fundamental Way; e.) extend San. MH B-2 south if needed to avoid conflict with ramp crossing; f.) water vales to have minimum 10 ft. separation for ability to compact area around valves; g.) show insulation at all storm/water crossings, including water services; h.) revise watermain profile to limit extreme depth, if depth is greater than 6.5 foot bury top of pipe elevations are required in profile; i) revise location for Lot 2 sanitary lateral, should be perpendicular to main.
11. Sheet C9.1 – a.) revise watermain profile for 6.5' bury, if depth is greater than 6.5 foot bury top of pipe elevations are required in profile; b.) add 8-inch valve on main at hydrant tee.
12. Sheet C9.2 – a.) clarify need for sanitary and water services to Outlot 2 (stormwater management) as shown on plan sheet, delete if not needed; b.) revise watermain profile for 6.5 ft. bury top of pipe elevations are required in profile; c.) add 8-inch valve on main hydrant tee.
13. Sheet C9.3 – a.) revise watermain profile for 6.5 ft. bury, if depth is greater than 6.5 ft. bury top of pipe elevations are required in profile; b.) add 8-inch valve on main at hydrant tee.
14. Sheet C9.4 – a.) revise water main profile for 6.5 ft. bury, if depth is greater than 6.5 ft. bury top of pipe elevations are required in profile.
15. Sheet C9.5 – a.) clarify depth of vertical offset, (18-inch separation) if needed, provide top of pipe elevations for top and bottom of vertical offset (sta. 175+43 – 175+71).
16. Sheet C9.6 – a.) revise water main profile for 6.5 ft. bury, if depth is greater than 6.5 ft. bury top of pipe elevations are required in profile. Verify need for extreme depth; b.) relocate sanitary and water services for Lot 61 out of intersection, curb stop would be in ramp; c.) correct lot number for lot at NW corner of Fundamental/Drumlin intersection (Lot 62).

17. Sheet C9.7 – a.) relocate hydrant (sta. 125+26) to temporary hydrant at end of Morning Star Way; b.) relocate sanitary lateral for Lot 53 out of ramp; c.) tee intersection to have minimum 2 8-inch valves spaced a minimum of 10 ft. apart, add 1 valve; d.) extend road base 10 ft. beyond end of pavement; e.) label Type III barricades at end of Morning Star Way; f.) SDR 26 PVC required between sanitary MH A-2.9 and MH A-2, MH A-2 and MH A-2.1, depth over 15 feet.
18. Sheet C9.8 – a.) revise watermain profile for 6.5 ft. bury, if depth is greater than 6.5 ft. top of pipe elevations are required in profile; b.) SDR 26 PVC required between sanitary MH A-2 and MH A-2.1, depth over 15 feet; c.) extend sanitary sewer MH A-2.1 to approx. sta. 131+30 and eliminate MH A-2.2, parallel to watermain to sanitary eliminating several bends, sta. 131+19, 131.65, 134+55, and 135_08, replace with (1) 45 degrees by each MH; d.) add possible water and sewer services to OL 3 – park for future build.
19. Sheet C9.9 – a.) eliminate water and sanitary service to OL 2 (stormwater management).
20. Sheet C9.10 – a.) verify/clarify water and sanitary extension west to OL 1; b.) add temporary hydrant on end of watermain north side of CTH BB; c.) revise watermain profile for 6.5 ft. bury, if depth is greater than 6.5 ft. bury top of pipe elevations are required in profile. Verify need for extreme depth; d.) add 8-inch valve on main hydrant tee; e.) SDR 26 PVC required between sanitary MH A-7 and MH A-6, depth over 15 ft.
21. Sheet C9.11 – a.) 18-inch separation required between bottom of storm sewer and top of watermain, revise watermain depth at approx. sta. 104+80 – 105+36; b.) SDR 26 PVC required between sanitary MH A-6 and MH A-3, depth over 15 ft.
22. Sheet C9.12 – a.) SDR 26 PVC required between sanitary MH A-3 and MH A-1, depth over 15 ft.
23. Sheet C9.13 – a.) SDR 26 PVC required between sanitary MH A-2.9 and MH A-2.9.1, depth over 15 ft.; b.) revise watermain profile for 7 ft. bury on cul-de-sacs, if depth is greater than 7 ft. bury top of elevations are required in profile. Verify need for extreme depth; c.) relocate service connection to watermain for Lot 48 off hydrant lead, not allowed.
24. Sheet C9.14 – a.) SDR 26 PVC required between sanitary connection and MH B-1, depth over 15 ft., Note: contractor to verify invert elevation and material prior to connection; b.) coordination with Village/MSA required for grade of future extension of CTH BB (Cottage Grove Rd.). Temporary casting height may be necessary.
25. Sheet C9.15 – a.) all manhole castings to be R-1710, Neenah, type B self-sealing, gasket non-rocking lids with concealed pick holes, revise on structure table sheet C9.15.

Engineering - Stormwater Management

1. The designs submitted for the Chapter 163 requirements appear to work within the platted land. There are issues with the functionality of the proposed design.
2. MSA is requiring revisions to the south detention basin and infiltration area and associated storm sewer design in the vicinity of the pond. JSD has agreed to make adjustments per MSA's comments.
3. The land disturbance permit will become an exhibit to the Developers Agreement. Execution of both documents and all permitting is required prior to the start of construction.

Engineering – Lift Station & Forcemain

1. Lift station and forcemain shall comply with all provisions of Section 505-519 of the Village of Cottage Grove Standard Specifications for Public Works improvements (called standard specifications herein). The review included herein does not comment specifically on all requirements included in that section. Plans shall provide enough detail to verify that they are consistent with the standard specifications.
2. Hydromatic model S4NVX is acceptable. However, design should be based upon the full/untrimmed 8.0" impeller, which will also require a 7.5 HP rated motor. Flow will likely range from 145-200 gpm depending on the assumed C factor (120 – 200 used for MSA's analysis).
3. It is likely that a 7' minimum diameter wet well is necessary to comply with the 12" hatch clearance requirement (comment #10 on preliminary review). In addition, a larger wet well will provide better compliance with detention and cycle times. See comment #4.
4. With the larger pump (145 – 200 gpm), the wet well operating volume will need to increase to limit the number of starts/hour. Based on MSA's hydraulic modeling, a 7' diameter wet well with a 1.5' operating depth will provide a cycle time of approximately 8.5 minutes (7 starts/hour) at 200 gpm, and 19 minutes (3 starts/hour) at 145 gpm. It is our understanding that the motor is rated for approximately 10 – 12 starts/hour. In addition, it appears a <30 minute detention time can still be maintained.
5. The electrical design appears to be incomplete and not applicable to this project. Examples of nonapplicable items: bubbler level control system, forcemain pressure transducer, and 10 HP pump motors. Designer should review the electrical and control system specifications for requirements. Particularly, Section 507 and 508.
6. The 4" flanged pipe with quick connect in valve vault shall extend vertical to just below the bottom of the hatch. The plans do not clearly indicate this.
7. Provide a spare case of vent scrubbers to the Village.
8. Per Sheet C9.12, the hydrant is currently planned for the terrace near the roadway. Fire hydrant lead shall be extended so the hydrant is located on the lift station site.
9. Wall supports are called out as epoxy coated. However, floor supports are not. Update as appropriate.

VOTE: 6 Aye, 0 Nay, 0 Abstain

APPLICANT COMMENTS:

- (Robert Procter – Developer's attorney) – provided an overview of the project; conditions on preliminary plat have been met; the applicant accepts the conditions in the staff reports. Noted the only substantive change from the preliminary plat is the reduction of one single-family parcel.

PLAN COMMISSION COMMENTS:

- (Jushchyshyn) – appreciates the clear accounting of changes made to address preliminary plat comments.
- (Ratcliff) – asked about the fence along the cemetery that had been previously discussed. Procter noted that there was only six inches between the sidewalk and the property line, likely not enough space for a fence. Ruth noted the sidewalk may not be

necessary along Outlot 1 and adjacent to the cemetery. If the sidewalk is removed, there is more room for the fence. Ratcliff asked if the fence would still be needed if there was no sidewalk. It was generally agreed that there would be less need for a fence if nobody is walking in front of the cemetery, and the cemetery would be more attractive without the fence.

STAFF COMMENTS:

- See staff reports and as noted above.

VILLAGE BOARD MEETING: August 19, 2019

STAFF REPORT PROVIDED BY: X Planner, X Engineer, _____ Public Works

MOTION: by Murphy (1st), Lennberg (2nd)

The Final Plat was APPROVED WITH CONDITIONS, with the conditions as follows:

Planning

1. Correct Note #2 on Sheet 1 to reflect current lot numbering (Lot 59 should be Lot 58 and Lots 61 to 63 should be Lots 60 to 62).
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15. Sheet C9.5 – a.) clarify depth of vertical offset, (18-inch separation) if needed, provide top of pipe elevations for top and bottom of vertical offset (sta. 175+43 – 175+71).
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6. The 4" flanged pipe with quick connect in valve vault shall extend vertical to just below the bottom of the hatch. The plans do not clearly indicate this.
7. Provide a spare case of vent scrubbers to the Village.
8. Per Sheet C9.12, the hydrant is currently planned for the terrace near the roadway. Fire hydrant lead shall be extended so the hydrant is located on the lift station site.
9. Wall supports are called out as epoxy coated. However, floor supports are not. Update as appropriate.

VOTE: 6 Aye, 0 Nay, 0 Abstain

APPLICANT COMMENTS:

- (Robert Procter – Developer's attorney) – provided an overview of the project; conditions on preliminary plat have been met; the applicant accepts the conditions in the staff reports. Noted the only substantive change from the preliminary plat is the reduction of one single-family parcel.

VILLAGE BOARD COMMENTS:

- (Murphy) – asked about the resolution of the fence by the cemetery. Project engineer Tomas Toro replied that the Plan Commission recommended not requiring the fence since there won't be a sidewalk on that side of the street.
- (Murphy) – asked about phasing. Procter replied they hope to finish the build-out next year.

STAFF COMMENTS:

- See staff reports and as noted above.

VILLAGE BOARD MEETING: February 15, 2021

STAFF REPORT PROVIDED BY: Planner, Engineer, X Public Works

MOTION: by Valencia (1st), Allen (2nd)

The Village Board APPROVED the following additional conditions to the Shady Grove project:

1. The bike path along Buss Road may be reduced to 8' width instead of 10' asphalt.
2. Replace overflow pipes on stormwater pond with weirs, as long as the design still meets requirements for stormwater management.
3. Reduce the level of gravel subgrade from 12" to 10" on all streets except Buss Road (which will remain 12"). Proof rolling will be required.
4. Reduce asphalt depth from 4" to 3.5" on all streets except Buss Road (which will remain 4").
5. Reduce service laterals from 1.5" to 1".
6. The intersection of Fundamental Way and CTH BB shall be changed to a right in – right out.
7. Reduce Buss Road from planned four-lane to two-lane at 200' south of the north property line; developer to build the outside lanes, installing curb and gutter along the limits of what will ultimately be the full boulevard width and leave the median shouldered with a grass median.

VOTE: 7 Aye, 0 Nay, 0 Abstain