

NOTICE

A meeting of the City of Evansville Plan Commission will be held on the date and time stated below. Notice is further given that members of the City Council and Historic Preservation Commission may be in attendance. Requests for persons with disabilities who need assistance to participate in this meeting should be made by calling City Hall at (608)-882-2266 with as much notice as possible.

City of Evansville Plan Commission
Special Meeting
City Hall, 31 S Madison St., Evansville, WI 53536
Tuesday, May 28th, 2024, 6:00 pm

AGENDA

1. Call to Order
2. Roll Call
3. Motion to Approve Agenda
4. Civility Reminder
5. Citizen appearances other than agenda items listed.
6. Action Items
 - A. Public Hearing, Review, and Action for Land Division Application LD-2024-04 for a preliminary and final plat on parcel 6-27-559.5403 (Outlot 3, Windmill Ridge)
 1. Review Staff Report and Applicant Comments
 2. Public Hearing
 3. Plan Commissioner Questions and Comments
 4. Motion with Conditions
 - B. Review and Motion to Recommend Land Divider's Agreement for Windmill Ridge First Addition.
7. Discussion Items
8. Upcoming Meeting: June 4th, 2024 at 6:00pm
9. Adjourn

-Mayor Dianne Duggan, Plan Commission Chair



APPLICATION FOR PRELIMINARY AND FINAL LAND DIVISION – STAFF REPORT

Application No.: LD-2024-04 Applicant: Grove Partners LLC

Parcel: 6-27-559.5403

Location: Outlot 3, Windmill Ridge

May 28, 2024

Prepared by: Colette Spranger Community Development Director
Direct questions and comments to: c.spranger@evansvillewi.gov or 608-882-2263



Description of request: An application for a preliminary and final land division to create a subdivision on parcel 6-27-559.5403, totalling 5.047 acres, has been submitted for consideration by Plan Commission. This subdivision would be named **Windmill Ridge First Addition**. A public hearing is scheduled for May 28, 2024. The applicant has met with City staff to discuss expectations for development in this area. A copy of the Preliminary and Final Plat plus development agreement follows this staff report.

Existing and Proposed Uses: Existing land is vacant. Proposed land use is residential.

The proposed plat shows six lots and three outlots. Three lots would be on either side of Windmill Ridge Road located in the southern half of Outlot 3. The entirety of Outlot 3 is currently zoned R-1 and the intention is for these six lots to remain in the R-1 Residential District One zoning district. All the lots as presented comply with the bulk requirements of the R-1 zoning district. The remaining land on the northern half of the plat is reserved for future development. Outlot 5 is reserved for a future extension of Windmill Ridge Road. Outlots 4 and 6 will be further subdivided at a later date.

City staff advised the applicant to provide a plat that subdivided the entirety of the developable land of Outlot 3, Windmill Ridge.

Based on the pace of building permits issued within the City and a low supply of available buildable lots, Staff believe that dividing the developable land now would save time down the road as well as saving the developer application fees for preliminary and final plats. Further division of Outlots 4 and 6 of the Windmill Ridge First Additional plat will require another land division application and likely another land divider's agreement. The applicant declined to make this change.

General Comments:

1. **Park land dedication.** Park land dedication has been satisfied by the original Windmill Ridge development agreement.
2. **Sidewalks.** Sidewalks will be required on each buildable lot.
3. **Multiuse/Recreational Trail.** The developer is providing a 15' easement for a future northern extension of the multiuse trail that currently ends at Porter Road. The developer has also worked with an adjacent landowner regarding a disputed area on the western edge of the plat. When added to the plat, this may be enough area to shift the location of the recreational trail easement. City staff will explore with the developer making this a dedicated outlot for recreation purposes.
4. **Stormwater management.** Stormwater needs for this land were factored into the original Windmill Ridge construction plans. Stormwater will be conveyed to the pond north of Porter Road by means of the City's storm sewer network. A stormwater and drainage easement has already been recorded along the eastern edge of Outlot 3.
5. **Developer obligations:** City approval of the land divider's agreement for Windmill Ridge First Addition will supersede and replace any remaining obligations of the original Windmill Ridge land divider's agreement, of which some of the developer partners are involved. As part of the approval for this plat, a letter of credit to cover the improvements outlined in the land divider's agreement will be required at the time of signing.
6. **Environmental checklist.** The applicant has submitted an environmental assessment checklist as required. Prior review of conditions on Outlot 3 indicated delineated wetlands. Further examination of this area suggests this is no longer the case, but the Surface Water Data Viewer from the DNR suggested there may be hydric soils on certain parts of Outlot 3. It should be noted that the same soil indicators are present on already developed portions of Windmill Ridge with little issue. There is nothing to indicate that additional information is required or that a more in-depth review is warranted. DNR approval will still be needed for erosion control and stormwater plans needed for construction.
7. **Traffic Circulation.** Access for the six buildable lots will be on an extension of Windmill Ridge Road.
8. **Future Housing Density on Outlots 4 and 6.** The City has a housing objective that new residential development shall exceed the City's overall average of 3.66 units per acre. The density of lots 34-39 does not meet this requirement. Therefore,

future development on Outlots 4 and 6 must yield at least 10 dwelling units to reach this goal.

1. R-1 zoning standards require 70 feet of lot width at the front yard setback line and at least 8,000 square feet for a lot containing a single family home. Both Outlots 4 and 6 can be further subdivided to yield 5 single family lots each. Parking could be achieved by placing side loading garages on the rear of the building or building detached garages.
 2. Alternatively, future lots could be rezoned to the R-2 zoning district and developed into duplexes. Duplexes are also possible in the R-1 zoning district by conditional use permit.
9. **Obligations and Timing of Windmill Ridge Road extension on Outlot 5.** City and developers agree that Outlot 5 will eventually become dedicated to the public as right-of-way for a northerly extension of Windmill Ridge Road. Infrastructure and improvements to extend the road to the edge of the plat are expected to occur along with further subdivision of Outlots 4 and 6. Per the Transportation Map of the Comprehensive Plan, Windmill Ridge Road is planned to be extended up to County Highway C.
10. **Public Comments at May 7, 2024 Plan Commission Meeting.** A handful of residents spoke regarding traffic issues and concerns along Windmill Ridge Road and Wyler Drive, particularly with the opening of the Aquatic Center at Larson Acres Park, which has entrances at the end of both Wyler. Staff has included language regarding traffic control sign placement in the land divider's agreement.

Consistency with the City of Evansville Comprehensive Plan and Municipal Code:

- In order to meet the City's goals that aim to expand the City's stock of housing types, densities, designs, and price ranges, the parameters regarding future development on Outlots 4 and 6 must be upheld.
- The proposed land division is consistent with the Future Land Use Map and Transportation Map of the Comprehensive Plan.
- The proposal also complies substantially with the design standards and environmental considerations as set forth in the Land Division Ordinance.

Staff Recommended Motion for Plan Commission: *Motion to recommend Common Council approve the Preliminary and Final Plat Application for the Windmill Ridge First Addition subdivision, finding that is in the public interests and substantially complies with Chapter 110 of the Municipal Code, subject to the following conditions.*

1. *Land Divider's Agreement completed and executed by both City and Developer.*
2. *Applicant submits Irrevocable Letter of Credit for City Engineer approval.*
3. *Applicant submits to City amended preliminary and final plats showing additional area acquired for recreational trail easement along west edge of plat prior to recording. Such an area may be made into a fourth outlot dedicated to the public for recreational purposes, pending agreement between the Developer and City.*

Staff Recommended Motion for Common Council: *Motion to approve the Preliminary and Final Plat Application for the Windmill Ridge First Addition subdivision, finding that is in the public interests and substantially complies with Chapter 110 of the Municipal Code, subject to the following conditions.*

- 1. Land Divider's Agreement completed and executed by both City and Developer.***
- 2. Applicant submits Irrevocable Letter of Credit for City Engineer approval.***
- 3. Applicant submits to City amended preliminary and final plats showing additional area acquired for recreational trail easement along west edge of plat prior to recording. Such an area may be made into a fourth outlot dedicated to the public for recreational purposes, pending agreement between the Developer and City.***

FINAL LAND DIVIDER'S AGREEMENT- Windmill Ridge, First Addition

This Agreement made this ____ day of _____, 2024, between Grove Partners, LLC, hereinafter called the "Developer," and the City of Evansville, a municipal corporation of the State of Wisconsin, located in Rock County, hereinafter called the "City."

WHEREAS, Developer owns approximately 5.04 acres of land in the City of Evansville that is legally described in Appendix A;

WHEREAS, the above-described land is presently zoned R-1 Residential District One;

WHEREAS, Developer desires to subdivide and develop the above-described land for residential purposes to be known as Windmill Ridge Subdivision, hereinafter called the "Subdivision"

WHEREAS, on the 28th of May, 2024, the City's Plan Commission recommended to the City's Common Council approval of a preliminary and final plat for the Subdivision subject to certain conditions, and on the Common Council approved a preliminary and final plat for the Subdivision subject to certain conditions;

WHEREAS, the Plan Commission and the City Council have reviewed this final land divider's Agreement for the Subdivision;

WHEREAS, the parties believe it to be in their mutual best interest to enter a written development agreement, hereinafter called the "Agreement," which sets forth the terms of understanding concerning said Subdivision;

WHEREAS, all elements of the " Windmill Ridge Land Dividers Agreement" and any amendments are incorporated into this agreement. If any term of the Agreement shall conflict with terms in the "Windmill Ridge Land Dividers Agreement for any reason, terms in this agreement shall govern;

NOW, THEREFORE, in consideration of the recitals, the terms and conditions contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I. Land; General Conditions

- A. Easements. Developer hereby grants a temporary easement over all areas not platted as public to the City for access and inspection during construction of the Public Improvements described in Article III.
- B. Fee-in-lieu of Parkland. The Developer's obligations for the dedication of parkland and/or fees in lieu of Parkland have been satisfied by the Final Land Divider's Agreement and any addendums for Windmill Ridge, signed January 9th, 2015 and incorporated by a reference in its entirety herein. If any term of this Agreement shall conflict with terms in the "Final Land Dividers Agreement – Windmill Ridge" for any reason, terms in this agreement shall govern.
- C. Survey Monuments. Developer shall properly place and install all survey or other monuments required by statute or ordinance prior to any particular phase being accepted. Internal survey monuments shall be installed after the Public Improvements described in Article III are completed.

- D. Deed Restrictions. Developer shall execute and record deed restrictions in a form as will be separately approved by the City prior to the sale of any lots in the subdivision. Such restrictions shall include, but are not limited to, covenants as follows: that there shall be no further division or subdivision of lots within the Subdivision unless in accordance with municipal subdivision and zoning ordinances; that there shall be no residential development on Outlots 4 and 6 without the consent of the City; that Outlot 5 shall be dedicated to the public for road right-of-way at a future date; that easements for utilities and recreational trail within the subdivision are permanent; and that this final land divider's Agreement has been entered into between Developer and the City, a copy of which is on file in the City Clerk's office. This final land divider's Agreement shall be recorded by the Developer with the Rock County Register of Deeds.
- E. Housing Type and Density.
1. It is the intent of all parties that Lots 34 through 39 be single family residences and not duplexes. Net housing unit density of Lots 34 through 39 is 3.11 dwelling units per acre.
 2. Developer acknowledges that in order to meet the minimum standard for housing density in new development as prescribed in the Housing Element of the City's Smart Growth Comprehensive Plan (adopted September 2022), Outlots 4 and 6 must yield at least 10 dwelling units at build out or be rezoned to the R-2 Residential District Two zoning district prior to issuance of any building permits.
- F. Advertising Signs. Developer agrees that any temporary signs placed anywhere in the Subdivision to advertise the Subdivision shall comply with Article X of Chapter 130 of the Evansville Municipal Code.
- G. Construction Trailers. Small construction trailers may be located at the Subdivision on a temporary basis during the construction of the improvements described in Article III of this Agreement.
- H. Grading, Erosion and Silt Control.
1. Developer agrees to submit a plan for the maintenance and disposition of on-site topsoil.
 2. Prior to commencing site grading, Developer shall submit for approval by the City Engineer a grading plan. The plan shall provide sufficient control of the site to prevent siltation downstream from the site. Developer shall provide to the City written certification from the Developer's engineer that the plan, in its execution, shall meet all federal, state, county and local regulations, guidelines, specifications, laws and ordinances, including provision for notification of land disturbance to the State of Wisconsin Department of Natural Resources.
 3. Developer shall cause all grading, excavation, open cuts, and site slopes and other land surface disturbances to be mulched, seeded, sodded or otherwise protected so that erosion, siltation, sedimentation and washing are prevented in accordance with the plans and specifications on file with the City Clerk's office.
 4. Developer shall immediately place effective erosion control procedures along downslope areas and along sideslope areas as required to prevent or reduce erosion where erosion during construction will result in a loss of soil to waters of the state, public sewer inlets or off-site. During the period of construction at a site, all erosion control procedures necessary to meet the performance standards of Wisconsin Statutes Chapter SPS 321.125, shall be properly implemented, installed and maintained by Developer, building permit applicants, and the subsequent landowners. If erosion occurs after building construction

activities have ceased, some or all of the erosion control procedures shall be maintained by Developer until the site has been stabilized.

5. Developer shall restore all disturbed areas and re-grade any areas not allowing the flow of surface water as specified in the grading plan.
- I. Applicability. The requirements of this Article I apply to the construction and installation of sanitary sewers, water mains, public streets (including signage), private streets, electrical systems, landscaping and storm water management facilities and shall remain in effect until the acceptance, by resolution adopted by the Common Council, of all Public Improvements required by this Agreement.
- J. Should someone other than the developer referenced in this agreement complete any of the public improvements contemplated herein, the existence of this agreement is not intended to bind the named developer to be financially responsible to any other developer doing such work.

ARTICLE II. Phases and Development.

- A. Construction of Public Improvements. Developer shall complete installation of the Public Improvements described in Article III as part of Phase I if the Developer notifies the city at least 30 days in advance and obtains approval of the same. Developer shall install as part of a phase or sub-phase any Public Improvements which are not physically located within said phase or sub-phase but are necessary to serve the lots within it.
- B. Phases Identified. Phasing for the Subdivision shall be as follows:
 1. Phase I shall be comprised of Lots 1-6.
 2. Phase II shall be comprised of development on Outlots 4 and 6, which will be submitted as a plat for future City approval.
- C. Timing of Phases. Developer shall begin installation of the Public Improvements described in Article III for each phase of the Subdivision as follows:
 1. For Phase I, as soon a Developer has obtained all necessary approvals of the Plans and Specifications described in Article III and has filed with the City Clerk all required documents, including but not limited to the irrevocable letter of credit referenced in Article IV, Section C.

ARTICLE III. Public Improvements.

- A. Public Improvements. As used in this Agreement, the term "Public Improvements" shall mean the water distribution system, sanitary sewers and lift station, public street; sidewalks, surface water drainage system and retention pond, electrical system. and street lights, landscaping, street signs and traffic control signs described in this Article III to be dedicated to the City under Article V.
- B. Plans and Specifications. Developer shall file with the City Clerk's office, a complete set of the plans and specifications for the Public Improvements for the entire Subdivision, as approved by the City Engineer, hereinafter called "Plans and Specification." Said Plans and Specifications are hereby made a part of this Agreement by reference and including those standard specifications as the City may have adopted at the time of construction.
- C. Method of Improvement. Developer agrees to engage contractors for all Public Improvements included in this Agreement who are qualified to perform the work and who shall be approved as qualified for such work by the City Engineer. The Developer shall have all such contractors execute an agreement as to liability/indemnity and insurance pursuant to the format set forth in

Appendix B to this Agreement and file executed document with the city. Developer further agrees to use materials and make the various installations in accordance with the approved Plans and Specifications. Developer further agrees to require all such contractors to pay wages as required by the Wisconsin Department of Workforce Development.:

D. Water Distribution System.

1. Developer shall construct, install, furnish, and provide a complete system of water distribution including, but not limited to, piping, valves, fittings, fire hydrants, throughout the entire Subdivision all in accordance with the Plans and Specifications and all applicable federal, state and local ordinances, specifications, regulations and guidelines for the construction of water systems in the City of Evansville and as approved by the City Engineer.
2. Upon completion of each phase or sub-phase, Developer shall pressure test, leakage test, and bacteria test according to City and State requirements the entire water distribution system, and repair any defects as determined by the City Engineer, prior to acceptance by the City.
3. City shall issue no building permit for any lot until the portion of the water distribution system serving such lot has been accepted by the City.

E. Sanitary Sewers.

1. Developer shall construct, furnish, install, and provide a complete sewerage system throughout the entire Subdivision all in accordance with the Plans and Specifications and all applicable federal, state and local ordinances, specifications, regulations and guidelines for the construction of sewerage systems in the City of Evansville and as approved by the City Engineer.
2. Upon completion of each phase or sub-phase, developer shall pressure test, leak test, and mandrel test according to City and State requirements the entire sanitary sewer system and repair any defects as determined by the City Engineer prior to acceptance by the City. Developer shall provide copies of all tests conducted to the City.
3. Upon completion of each phase or sub-phase, Developer shall clean all sanitary sewers, televise the sanitary sewer system, provide a copy of the televised video to the City and shall repair any defects as determined by the City Engineer prior to presenting the Public Improvements for acceptance by the City.
4. City shall issue no building permit for any lot until the sanitary sewer serving such lot has been accepted by the City.

F. Surface Water Drainage System.

1. Developer shall construct, install, furnish, and provide adequate facilities for storm and surface water drainage including, but not limited to: piping, inlets, junction structures, and storm water appurtenances, throughout the entire Subdivision and to perform the grading plan all in accordance with the approved Plans and Specifications and all applicable federal, state and local ordinances, specifications, regulations and guidelines for the construction of storm and surface water drainage systems in the City of Evansville and approved by the City Engineer.
2. Developer shall maintain roads free from mud and dirt from construction of the Subdivision.

3. City will issue no building permit for any lot until the finish grading of the entire phase, including that lot, has been accepted by the City. Finish grade shall be defined as spot elevations at lot corners.
4. City shall retain the right to require Developer to install additional storm and surface water drainage measures and erosion control measures as needed in accordance with generally accepted engineering standards prior to acceptance by the City of the storm and surface water drainage improvements.
5. Upon completion of each phase or sub-phase, Developer shall clean all storm sewers and shall repair any defects as determined by the City Engineer prior to presenting the improvements for acceptance by the City.
6. Developer shall re-grade areas as directed by the City if contractors who grade individual lots do so in a way that interferes with the flow of surface water as specified in the grading plan.
7. Developer shall guarantee the establishment of vegetative cover planted within storm water basins, swales or green ways for a period of three (3) years from the date of the City's acceptance.
8. Developer agrees that the top of foundation and the minimum elevation in the lowest opening in the foundation for any future structure built on any Lot in the subdivision should be listed on the final recorded plat, attached to this agreement as Appendix C. After building permits are issued and at foundation and footing inspections, the City Engineer shall be provided verification of the top of foundation and the minimum elevation in the lowest opening in the foundation by a registered surveyor.

G. Public Streets.

1. Developer shall grade and surface all streets in the Subdivision in accordance with the plat of said subdivision and the Plans and Specifications and all applicable local ordinances, specifications, regulations and guidelines for the construction of roads in the City of Evansville and as approved by the City Engineer.
2. Developer agrees to furnish to the City a copy of the plan showing the street grades in front of each lot and finished yard grade. This information shall be provided prior to the issuance of building permits.
3. Developer shall complete the streets by phase or sub-phase through installation of road base, curbs and gutters and shall present them for preliminary acceptance by the City.
4. City shall issue no building permits for lots on a street until the street has been preliminarily accepted by the City.
5. Developer shall clearly identify streets, lots and addresses within the subdivision with temporary signage before building permits for lots in the subdivision are issued by the City.
6. Developer shall complete the first lift of asphalt on all the streets in a phase or sub-phase no later than one (1) year after the initial commencement of construction of Public Improvements for the phase or sub-phase, unless extended by the Common Council.
7. Developer shall complete the final lift of asphalt after at least one (1) winter

season, but no later than two (2) years after the initial commencement of construction of Public Improvements for the phase or sub-phase, unless extended by the Common Council.

8. Developer shall maintain the streets in the Subdivision until accepted by the City.

H. Sidewalks/Pathways.

1. Developer shall construct, furnish, install and provide five-foot wide concrete sidewalks within the public rights-of-way on both sides of all public streets.
2. Sidewalks may be installed on a lot-by-lot basis as houses are constructed; however, Developer shall install all sidewalk on a block face where sidewalk is specified within one (1) year of when 80% of the lots on the block face are occupied by completed houses
3. Developer shall remain obligated to construct, furnish, install, and provide sidewalks as specified in this Agreement even if Developer enters into agreements with lot purchasers obligating lot purchasers to install the sidewalks.
4. Should Developer acquire additional land west of the area as depicted on the final plat, City will vacate and adjust its recreational trail easement to reflect the addition. If said area is acquired prior to recording the plat, Developer and City may choose to depict this area as an outlot dedicated to the public for recreation purposes.

I. Electrical System.

1. Developer shall pay, in advance, the Evansville municipal electric utility the amount of the utility's estimate of the cost of installing the electrical system in the Subdivision including, but not limited to, the bases for transformers, but not including the transformers themselves, within ten (10) days of receiving the estimate from the utility. Installation will be done in sub-phases as close as practical to the sub-phases for the other Public Improvements.
2. In the event the utility's actual cost to install electrical system is less than the estimate, the utility shall refund the difference to the Developer.
3. In the event the utility's actual cost to install the electrical system is greater than the estimate, Developer shall pay the difference to the utility within thirty (30) days of billing.
4. City shall have the Evansville municipal electric utility install all street lighting in the subdivision. The Developer shall pay the municipal utility's cost thereof including, but not limited to, the cost of labor provided by utility employees to install such street lighting, and the cost of materials, within thirty (30) days of billing.

J. Landscaping.

1. Developer shall remove and lawfully dispose of all outbuildings, destroyed trees, bush, tree trunks, shrubs, and other natural growth and all left over construction materials, construction debris and rubbish from each phase or sub-phase of the Subdivision after the completion of improvements in each phase or sub-phase. The Developer shall not bury any of the materials described in this paragraph in any

portion of this Subdivision.

2. Developer shall require all purchasers of lots to plant at least one street tree in the terrace of each lot of a variety and caliper size approved by the City's Municipal Services Director in the fall or spring immediately following completion of the house on each lot and to plant any and all street trees required by this paragraph if any purchasers of lots fail to do so in a timely fashion. The location of said planting shall be approved by the Municipal Services Director to assure that the plantings will not impact underground utilities.
- K. Street Signs. City shall purchase and install all street signs in the subdivision. The Developer shall pay the city's cost thereof including, but not limited to, the cost of labor provided by city employees to install street signs, and cost of materials, within thirty (30) days of billing.
- L. Traffic Control Sign
1. City shall provide and apply pavement striping at each crosswalk within the Subdivision and at intersections and approaches outside but near the Subdivision.
 2. Developer shall pay the City the cost of purchasing and installing all traffic control signs including, but not limited to, the cost of labor provided by City employees to install such signs, and cost of materials, within thirty (30) days of billing.
 3. Traffic control sign locations to be indicated on construction plans submitted to the City Engineer.
- M. Correction of Defects. Developer shall correct defects due to faulty materials or workmanship in any Public Improvement which appear within a period of one (1) year from the acceptance of the Public Improvements for each phase or sub-phase of development is released, and shall pay for any damages resulting therefrom to City property. The City may refuse to accept the Public Improvements unless and until they conform to generally accepted industry standards. This correction period does not affect or bar claims for negligence discovered at a later date. Wisconsin law on negligence shall govern negligent workmanship.
- N. Additional Improvements. Developer agrees that if modifications to the Plans and Specifications including, but not limited to, additional drainage ways, sanitary sewers, water mains, erosion control measures, and storm and surface water management facilities are necessary in the interest of public safety or are necessary for the implementation for the original intent of the Plans and Specifications, the City is authorized to order Developer, at Developer's sole expense, to implement the same, provided such order is made in writing to Developer not later than one (1) year after the City's acceptance of the Public Improvements installed by Developer in the final phase of the Subdivision. Such modifications or additional improvement shall be deemed necessary to the extent they meet or conform to generally accepted engineering standards or change in any regulation, law, or code.

ARTICLE IV. Obligation to Pay Costs.

- A. Reimbursement of Professional and Out-of-Pocket Expenses. Developer agrees to reimburse the City for any costs due to the use of professional staff, including, but not limited to, City Engineer, City Planner and City Attorney, in connection with this Agreement. Costs shall be based on invoices or actual out-of-pocket expenses incurred by the City with no overhead added by the City.

- B. Developer's Obligation to Pay Costs. Developer agrees that it is obligated to construct, furnish, install, and provide all public improvements in the Subdivision or necessary for the Subdivision at its own expense or to pay the City's or municipal utility's costs of constructing. furnishing. installing. and providing such public improvements. If it is necessary to incur an additional cost not explicitly mentioned in this Agreement in order for Developer to be able to perform any obligation of the Developer under this Agreement, Developer agrees the Developer is obligated to pay such cost.
- C. Irrevocable Letters of Credit.
1. For each phase or sub-phase, Developer shall file with the City Clerk (i) a letter describing the scope of the phase or sub-phase that Developer intends to construct and (ii) an irrevocable letter of credit in favor of the City from a lending institution approved by the City in a form approved by the City in an amount sufficient, determined by the City Engineer, to pay the costs the City would incur to complete all Public Improvements for the phase or sub-phase.
 2. No construction of Public Improvements for a phase or sub-phase shall begin until Developer has filed with the City Clerk an irrevocable letter of credit that meets the requirements of the preceding paragraph.
 3. The City Engineer shall determine the amount of each irrevocable letter of credit based on the scope of the Public Improvements for the phase or sub- phase.
 4. The irrevocable letter of credit for each phase or sub-phase shall not expire until 18 months from the date on which Public Improvements as described in Article III are accepted by the City.
 5. Developer shall provide an extension of the duration of such irrevocable letter of credit, upon demand by the City, if not all of the Public Improvements for the phase or sub-phase have been completed and accepted prior to its expiration.
 6. Such irrevocable letter of credit shall stand as security for the reimbursement of costs the city expends under this agreement and for the completion of Public Improvements for the phase or sub-phase until the City accepts the Public Improvements for the phase or sub-phase pursuant to Article V.
 7. The lending institution providing the letter of credit shall pay to the City any draw upon demand, and upon its failure to do so, in whole or in part, the City shall be empowered in addition to its other remedies, without notice or hearing, to impose special assessments in the amount of said demand, or satisfaction cost, upon each and every lot in the subdivision payable in the next succeeding tax year.
 8. The City, in its sole discretion, shall permit the amount of each letter of credit to be reduced by an amount reasonably proportionate to the cost of the Public Improvements that are paid for by Developer and accepted by the City, provided that the remaining letter of credit is sufficient to secure payment for any remaining Public Improvements required. through the issuance of a letter from the City Administrator to the lending institution that issued such letter of credit agreeing to such reduction.
- D. City Costs. The City will be responsible for any development fees and costs applicable to City-owned land.

ARTICLE V. Dedication and Acceptance.

- A. Digital File of Final Plat. Developer shall furnish the City with a copy of the digital file of the drawing of the final plat, and the City may make any use it believes is appropriate of this file including, but not limited to, furnishing this file to the City Engineer and to Rock County to update digital parcel maps of the City.
- B. "As Built" Plans. Developer agrees to furnish the City with "as built" plans of the entire system of Public Improvements in each phase or sub-phase upon completion and acceptance thereof. All "as built" plans shall be submitted by Developer to the City in both paper and digital forms. All "as built" plans shall include, but not be limited to, the horizontal and vertical locations of curb stops, water valves, water bends, water fittings, hydrants, sewer wyes, sewer laterals, sewer manholes, storm sewer inlets, storm sewer pipe ends, and storm sewer manholes. Locations shall be given in the Rock County coordinates system and dimensioned from permanent structures.
- C. Statement of Costs. Developer shall furnish, within 30 days of City's request, the City with a statement of the total costs of Public Improvements in the Subdivision in each of the following categories: (1) streets (including signage) and sidewalks, (2) sanitary sewers and lift station, (3) water distribution system, (4) surface water drainage system, (5) electrical system, (6) landscaping, and, if requested to do so by the City, to furnish a statement of such information for each phase or sub-phase. This information is required for the City's accounting records and reports to state agencies such as the Public Service Commission.
- D. City Responsibility. The City shall perform no repairs or maintenance on the Public Improvements until accepted by the City. Trash and garbage removal service and snow removal will be provided by the City for each phase or sub-phase upon the issuance of the first occupancy permit in each such phase or sub-phase.
- E. Dedication. Developer shall, without charge to the City, upon completion by phases or sub-phases of all Public Improvements, unconditionally give, grant, convey and fully dedicate the same to the City, its successors and assigns, forever, free and clear of all encumbrances whatever, together with, all structures, mains, conduits, pipes, lines, equipment and appurtenances which may in any way be part of or pertain to such Public Improvements and together with any and all necessary easements for access thereto. After such dedication, the City shall have the right to connect or integrate other sewer or water facilities with those facilities provided hereunder as the City decides, with no payment or award to, or consent required of, Developer. Dedication by Developer shall not constitute acceptance of any improvements by the City; Developer shall be responsible for all maintenance of Public Improvements serving the phase or sub-phase until accepted by the City.
- F. Acceptance. The City or its representatives shall provide the Developer with a letter of acceptance of all Public Improvements required to be constructed in this Agreement upon acceptable completion thereof in each phase or sub-phase subject to the reasonable approval of the City Engineer. The City or its representatives shall provide such letter accepting or rejecting Developer's request for acceptance of such Public Improvements within forty-five (45) days of submission of such request in writing to the City Engineer. If such request is rejected, the City or its representatives shall enclose with the notification letter a letter from the City Engineer specifying the reasons for such rejection. As soon as practical after the issuance of such letters of acceptance, the Common Council will adopt resolutions accepting the dedications of Public Improvements in each phase or sub-phase.

ARTICLE VI. Issuance of Building Permits/Occupancy Permits.

- A. No building permits shall be issued by the City for any lot in the Subdivision until the Common Council has approved this Agreement and the final plat of the Subdivision. Additionally, no building permit shall be issued until the Developer has paid in full all sums that are required to be paid within ten (10) days of approval of this agreement by the Common Council, the City Clerk/Treasurer has signed the final plat and the final plat has been recorded.
- B. No building permits shall be issued until the developer has completed the installation of survey monuments.
- C. No building permits shall be issued by the City for any lot on a street until the road base, curb and gutter have been completed and preliminarily accepted by the City.
- D. No building permit shall be issued by the City for any lot until the sanitary sewer and water system serving such lot have been completed and accepted by the City.
- E. No building permit shall be issued by the City for any lot in a phase or sub-phase until all site grading for the phase or sub-phase has been completed and accepted by the City.
- F. No building permit shall be issued by the City for any lot until Appendix C has been submitted to the Inspector signed by the purchaser.
- G. No occupancy permit shall be issued by the City for any lot until the first lift of asphalt has been installed on the street adjoining said lot.
- H. No occupancy permit shall be issued by the City for any lot until the stormwater management practices serving such lot have been completed and accepted by the City.
- I. The City reserves the right to withhold issuance of any and all building and/or occupancy permits if Developer is in violation of this Agreement.

ARTICLE VII. Default and Remedies.

- A. Events of Default. As used in this Agreement, the term "Event of Default" shall include, but not be limited to any of the following:
 - 1. Failure by the Developer to pay the City any fees, charges or reimbursement required to be paid under this Agreement.
 - 2. Failure by the Developer to commence and complete the construction of any Public Improvements pursuant to the terms of this Agreement.
 - 3. Failure by the Developer to maintain an irrevocable letter of credit adequate to complete the Public Improvements of any phase or sub-phase pursuant to Article IV.
 - 4. Failure by the Developer or the City to observe or perform or cause to be observed or performed any covenant, condition, obligation or agreement on its part to be observed or performed as set forth in this Agreement.
- B. Remedies on Default. Whenever any Event of Default occurs the non-defaulting party may suspend its performance under this Agreement and, upon thirty (30) days written notice of the

right to cure such default, may pursue any legal or administrative action, including the authority to draw upon the irrevocable letter of credit described in Article IV, which appears necessary or desirable to compel the defaulting party to comply with this Agreement and/or to seek an award of monetary damages

- C. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City or the Developer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City or the Developer to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice in this Article VII
- D. No Additional Waiver Implied by One Waiver. In the event that any agreement contained in this Agreement should be breached by another party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

ARTICLE VIII. Miscellaneous.

- A. Captions. Any captions of the several parts of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- B. Severability. If any term of this Agreement shall, for any reason and to any extent, be invalid or unenforceable, the remaining term shall be in full force and effect.
- C. Entire Agreement. This Agreement contains all of the terms, promises, covenants, conditions and representations made or entered into by or between City and Developer and supersedes all prior discussions and agreements whether written or oral between the parties. This Agreement constitutes the sole and entire Agreement between City and Developer and may not be modified or amended unless set forth in writing and executed by City and Developer with the formalities hereof.
- D. Status of City. Nothing herein shall be deemed to create or establish the City as a copartner or joint venturer with Developer in the design, construction, ownership or operation of the Subdivision; nor shall the City be entitled to proceeds or revenues derived from the ownership or operation of the Subdivision.
- E. Good Faith. Any actions taken pursuant to this Agreement will be measured by an implied covenant of good faith and fair dealing.
- F. Ordinances and Municipal Code. All provisions of the City's ordinances and Municipal Code are incorporated herein by reference, and all such provisions shall bind the parties hereto and be part of this Agreement as fully as if set forth at length herein. This Agreement and all work and the Public Improvements herein shall be performed and carried out in strict accordance with and subject to the provisions of said ordinances.
- G. Acknowledgement from Lot Purchasers. Developer agrees to deliver the purchaser of any lot within the Subdivision, before closing, a copy of Appendix C and agrees to obtain from each lot

purchaser, at or before closing of the purchasers lot, acknowledgment of the receipt of a notice in the form attached hereto as Appendix C, and Developer shall provide a copy of such acknowledgment to the City.

- H. General Indemnity. In addition to, and not to the exclusion or prejudice of, any provisions of this Agreement, or documents incorporated herein by reference., Developer shall indemnify and save harmless the City, its trustees, officers, agent, independent contractors, and employees, and shall defend the same from and against any and all liability, claims, losses, damages, interests, action, suits, judgment, costs, expenses, attorney fees and the like to whomever owned and by whomever and whenever brought or maintained which may in any manner result from or arise *in* the cause of, out of, or as a result of the following acts or omissions of Developer:
1. Negligent performance of this Agreement.
 2. Negligent construction or operation of improvements covered under this Agreement.
 3. Violation of any law or ordinance.
 4. The infringement of any patent trademark, trade name or copyright.
 5. Use of public street improvements prior to their dedication and formal acceptance by the City.
 6. In any case where judgment is recovered against the City for any one or more of the foregoing acts or omissions of Developer, if notice and opportunity to defend has been delivered to Developer of the pendency of the suit, within ten (10) days after the City has been served with the same, the judgment shall be conclusive of Developer and not only as to the amount of damages, but also as its liability to the City, provided such judgment has become final and all rights of appeal have been exhausted, or if no appeal has been filed, all appeal periods have expired.
 7. Developer shall name as additional insured on its general liability insurance the City, its trustees, officers, agents, employees an independent contractors hired by the City (including without limitation the City Engineer) to perform services with respect to this Agreement and give the City evidence of the same upon request by the City.
 8. Developer shall furnish a completed Appendix B prior to start of construction by any entity retained by or used by the Developer to fulfill the Developer's obligations under the Agreement.
- I. Heirs and Assigns. This Agreement is binding upon Developer, owners. guarantors, their respective heirs, successors and assigns, and any and all future owners of the subject lands.
- J. No Assignment. Developer shall not assign its rights under this Agreement without the written consent of the City.
- K. Amendments. The City and Developer, by mutual consent, may amend this Agreement at any regularly scheduled meeting of the City's Common Council, if properly noticed pursuant to the open meeting law. The Common Council shall not, however, consent to an amendment until after first having received a recommendation from the City's Plan Commission.
- L. Notice. All notices, demands or consents provided for in this Agreement shall be in writing and shall be delivered to the parties hereto by hand or by United States mail. All such communications shall be addressed at the following, or other such address as either may specify to the other in writing:

To Developer:
Grove Partners, LLC Attn: Roger Berg
129 North Madison St.

Evansville, WI 53536

To City:
City Administrator
31 S. Madison St.
P.O. Box 529
Evansville, WI 53536

M. Binding Effect. This Agreement shall be permanent and run with the property described in Appendix A. and the rights granted and responsibilities assumed thereby shall inure to, and be binding upon, the parties, their heirs, successors and assigns. Developer's obligations under this Agreement cannot be assigned without prior consent of City; such consent shall not be unreasonably withheld.

Grove Partners LLC

By: _____

(print name and title)

The obligations of the Developer stated above in this Final Land Divider's Agreement are hereby personally guaranteed by the undersigned, who state they fully understand and accept the responsibilities of the Subdivider.

(SEAL)

(print name)

(SEAL)

(print name)

(SEAL)

(print name)

(SEAL)

(print name)

APPENDIX A

OUTLOT 3, WINDMILL RIDGE AND BEING LOCATED IN THE SE ¼ OF THE N2 ¼ OF SECTION 28, T. 4N. R. 10E. OF THE 4TH P.M., CITY OF EVANSVILLE, ROCK COUNTY, WISCONSIN.

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APPENDIX B

Agreement as to Liability, Indemnity and Insurance

1. FOR VALUABLE CONSIDERATION _____ (CONTRACTOR), hereinafter referred to as "Contractor," acknowledges that the work to be performed for construction of improvements (the "Work") in the Stonewood Grove located in the City of Evansville, hereinafter referred to as "City," will be conducted in accordance with the latest edition of the project plans and specifications as reviewed by the City Engineer and as approved by the City and any other agencies having jurisdiction and on file in the City Clerk's office.

2. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and furnished and will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance furnishing of the Work and CONTRACTOR's other obligations under the Contract Documents, for the Work whether it is to be performed or furnished by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable.

- A. Claims under worker's compensation, disability benefits and other similar employee benefits acts;
- B. Claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;
- C. Claims for damages because of bodily injury, sickness, or disease, or death of any person other than CONTRACTOR's employees;
- D. Claims for damages insured by customary personal Jury liability coverage which are sustained: (1) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (2) by any other person for any other reason;
- E. Claims for damages, other than the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
- F. Claims for damages because of bodily injury or death or any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

The policies of insurance so required by this paragraph 2 to be purchased and maintained by CONTRACTOR shall include by endorsement as additional insureds (subject to any customary exclusion in respect of professional liability) the City and City Engineer and include coverage for the respective officers and employees of all such additional insureds. A certificate of insurance shall be provided to the City along with the endorsements listed above. Failure to procure adequate insurance shall not relieve the CONTRACTOR of its obligation under this Indemnity/Hold Harmless Agreement.

3. Indemnification. To the fullest extent permitted by laws and regulations, CONTRACTOR shall indemnify and hold harmless the City and the City Engineer, and the officers, directors and employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages (including, but not limited to all fees and charges for engineers, architects, attorneys and other professionals and all court or arbitration or other dispute, resolution costs) caused by, arising out of or resulting from the performance of the Work, provided that any such claims, cost, loss or damage: (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable regardless of whether or not caused in part by any

negligence or omission of a person or entity indemnification hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity.

4. In any and all claims against the City or the City Engineer or any of their respective consultants, agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 3 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier or other person or organization under worker's compensation acts, disability benefit acts or other employee benefit acts.

5. The indemnification obligations of CONTRACTOR under paragraph 3 shall not extend to that portion of liability of the City Engineer, and its officers, directors, employees or agents caused by the professional negligence, errors, or omissions of any of them.

6. CONTRACTOR further understands and agrees that the City, its officers, agents, employees and the City Engineer are not responsible for the CONTRACTOR's means and methods of construction and that the CONTRACTOR has the sole responsibility and liability for project safety.

Dated:

(print name of CONTRACTOR), a Wisconsin Corporation

By: _____

By: _____

(print name and title)

APPENDIX C

The undersigned purchaser of Lot(s) in the Windmill Ridge First Addition Subdivision (the "Subdivision") hereby acknowledges that the City of Evansville will not issue a building permit/occupancy permit until the following conditions are met:

- A. No building permits shall be issued by the City of Evansville (the "City") for any lot in the Subdivision until the Common Council has approved the Final Land Divider's Agreement (the "Agreement") between Grove Partners LLC, (the "Developer") and the City, the City has approved the final plat of the Subdivision, Developer has paid in full all sums that are required to be paid within ten (10) days of approval of the Agreement by the Common Council, the City Clerk/Treasurer has signed the final plat, and the final plat has been recorded.
- B. No building permits shall be issued by the City for any lot on a street until the road base, curb and gutter have been completed and preliminarily accepted by the City.
- C. No building permit shall be issued by the City for any lot until the sanitary sewer and water system serving such lot have been completed and accepted by the City.
- D. No building permit shall be issued by the City for any lot in a phase or. sub- phase until all final site grading for the phase or sub-phase has been completed and accepted by the City.
- E. No occupancy permit shall be issued by the City for the purchased lot until this Appendix C has been signed and submitted to the Building Inspector
- F. No occupancy permit shall be issued by the City for any lot until the first lift has been installed on the street adjoining said lot.
- G. No occupancy permit shall be issued by the City for any lot until a five-foot wide concrete sidewalk within the public right of way has been installed pursuant to municipal ordinances.

The undersigned purchaser acknowledges the City requires the purchaser of each lot to plant at least one street tree in the terrace of a variety and caliper size approved by the City's Director of Municipal Services in the fall or spring immediately following completion of the house. The location of said planting shall be approved by the Director of Municipal Services to assure that the planting will not impact underground utilities.

The undersigned purchaser acknowledges that there will be restrictions on the minimum elevations of the lowest opening of the foundation and waterproofing or pumping may be necessary to protect structures from ground water. Lowest opening and top of foundation will be shown on the final plat.

The undersigned purchaser understands that there are deed restrictions associated with this plat and those restrictions are recorded with the Rock County Register of Deeds.

The undersigned purchaser acknowledges that this "Appendix C" shall be delivered to the person or entity initially occupying the dwelling on the lot if the undersigned purchaser is anyone other than the person or entity initially occupying the dwelling.

The undersigned purchaser acknowledges that the lots in the Subdivision are subject to zoning that requires each single-family dwelling to contain a minimum total number of square feet on the first floor and above, that the City has no obligation to change the zoning or grant a conditional use permit if such zoning makes it difficult to re-sell any lot in the Subdivision, and that the undersigned purchaser knowingly accepts such risk.

Acknowledged by:

Date:

DRAFT