

VILLAGE OF THIENSVILLE
SPECIAL BOARD OF TRUSTEES
AGENDA

DATE: Monday, February 3, 2020

LOCATION: 250 Elm Street
Thiensville, WI

Time: Immediately following Committee of the Whole Meeting Scheduled at 6:00 PM

I. CALL TO ORDER

II. ROLL CALL

President:	Van Mobley
Trustees:	Samuel Azinger
	Kristina Eckert
	Ronald Heinritz
	Rob Holyoke
	Kenneth Kucharski
	David Lange
Administrator:	Colleen Landisch-Hansen
Staff:	Director of Community Services/Public Works Andy LaFond
	Police Chief Curt Kleppin
	Village Clerk Amy Langlois

III. PLEDGE OF ALLEGIANCE

President Mobley to lead the recitation of the Pledge of Allegiance.

IV. BUSINESS

- A. Review And Approval Of Development Agreement For The Orchard Street Development Located On The Northeast Corner Of Buntrock Avenue And Orchard Street, Between The Village Of Thiensville And Thiensville Enterprises LLC And Bonnilake Orchard Street LLC

Documents:

[DEVELOPMENT AGREEMENT TSS REVIEW PACKET.PDF](#)

- B. Review And Approval Of Final Plat For The Orchard Street Development

Documents:

[ORCHARD ST FINAL PLAT 1-22-2020.PDF](#)

- C. Review And Approval Of Mequon-Thiensville Gateway Promenade Contribution

V. ADJOURNMENT

Amy L. Langlois, Village Clerk
January 31, 2020

Please advise the Thiensville Municipal Hall, 250 Elm Street (242-3720) at least 24 hours prior to the start of this meeting if you have disabilities and desire special accommodations.

DEVELOPMENT AGREEMENT

The Orchard Street Development
Thiensville, Wisconsin

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is made as of the ____ day of January, 2020, by and between the VILLAGE OF THIENSVILLE, a Wisconsin municipal corporation (the “Village”) and THIENSVILLE ENTERPRISES LLC, a Wisconsin Limited Liability Company (“TE LLC”) and BONNILAKE ORCHARD STREET LLC (“Bonnilake”) (collectively TE LLC and Bonnilake are referred to as the “Developer”). Greg Devorkin (“Guarantor”) joins herein for purposes of the providing a personal guaranty on the Schedule of Values for Phase 1 of the project.

RECITALS

- 0.1 TE LLC owns the Property (as defined hereafter);
- 0.2 The Developer desires to subdivide and develop the Property as the Subdivision (as hereinafter defined);
- 0.3 Village approval of a Final Plat is conditioned upon compliance with the Village ordinances, pursuant to § 236.13(1) of the Wisconsin Statutes;
- 0.4 The Property is conditionally zoned as a mixed use Planned Development Overlay District and Village Ordinance §17.0316(E)(2) requires that the Village Plan Commission recommend and the Village Board approve a Developer’s Agreement which shall include, without limitation:
 - (a) Timetables for performance/completion of improvements;
 - (b) Performance requirements and standards and assurances for all improvements and/or modifications pertaining to the PDO;
 - (c) Inspection requirements;
 - (d) Prohibition on any division/combination of real estate lots included within the PDO District except as otherwise provided;
 - (e) Provisions for lapsing of specific plan approval and automatic reversion of the zoning status of the Property to non-PDO District status upon specific changes of circumstances or failure of the project to materialize as agreed to in the development agreement;
 - (f) Agreements, bylaws, provisions and/or covenants (notably a storm sewer easement agreement) or additional deed restrictions to be recorded against the lot(s) within the PDO District that will perpetually govern the organizational structure, use, maintenance and continued preservation and protection of the project and any of its common services, common open areas and/or other facilities;

- (g) Exhibits, drawings or other attachments that depict improvements, including but not limited to structures, fixtures and landscaping and their relative locations in the development area as well as design and engineering details as necessary to document to a reasonable degree of specificity the type, character and nature of improvements to be made within the development area.

0.4 Sections 17.0316(H)(3) of the Code of Ordinances of the Village (the “Code”) require that the Developer enter into this Agreement to establish that the Developer will pay the cost of Improvements, engineering services, and fees incurred by the Village for the Subdivision; and

0.5 The Village has caused engineering, planning and design services to be performed in preparation for construction of certain Improvements for the Subdivision and will cause additional such services to be performed as various phases of the Subdivision are developed; and

0.6 The Developer intends to contract for installation of certain other Improvements for the Subdivision.

0.7 Due to the quality and cohesiveness of the proposed development and the restrictions the Village is requiring of the development, the Village is willing to relax certain setback restrictions and will reimburse TE LLC an amount not more than \$350,000 for the demolition of existing structures and grading pursuant to the plan for the first phase of the project, and \$150,000.00 after completion of the remaining duties of the Bonnilake described herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitations, which are acknowledged to be true and correct, the mutual covenants, representations and warranties set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Article 1

DEFINITIONS

The following terms, whenever used in this Agreement, shall have the following meanings:

1.01 “Village Code” means the Village of Thiensville Code of Ordinances in effect at the time of this Agreement.

1.02 “Contract Documents” means all documents now or hereafter evidencing contracts with the Developer or its contractors, sub-contractors or affiliates for construction and installment of the required Improvements in the Final Plat and all addenda and amendments thereto.

1.03 “Improvements” means the improvements as described in § 4.02 of this Agreement below, to be installed for the benefit of the Final Plat by the Developer (or by contract with the Developer, whether under the Contract Documents as described in § 1.01 of this Agreement, or otherwise).

1.04 “Final Plat” means the Subdivision Plat presented to the Thiensville Village Board on January 20, 2020, and other pertinent authorities for final approval and recording with the Ozaukee County Register of Deeds Office. A true and complete copy of the Final Plat is attached hereto as **Exhibit A** and is incorporated herein by reference.

1.05 “Improvement, House, Grading and Landscape Plans” means the improvement, grading and landscape plans to be prepared by and submitted with the Final Plat and to be approved by the Village, along with any approved amendments or supplements. Such plans shall also include conceptual building plans for single family residences and adherence to such conceptual plans will be a factor in the approval process for architectural review, approval and/or recommendation by the Village Plan Commission and/or Village Board.

1.06 “Letter of Credit” means one or more letters of credit issued in conformity with the terms and conditions of this Agreement in the amount determined by the Schedule of Values for Letter of Credit with respect to the Property.

1.07 “Lot” means a distinct parcel of Property within the Final Plat that is depicted by a Lot Number.

1.08 “Plans” shall mean “Improvement, House, Grading and Landscape Plans,” collectively.

1.09 “Property” means all the real property as depicted and described on the **Exhibit “A”** Final Plat.

1.10 “Subdivision” means, at any time, Orchard Street Subdivision, a subdivision of the Village, as depicted on the Final Plat.

1.11 “Subdivision Regulations” means Chapter 236 of the State Statutes.

Article 2

TERM

The term of this Agreement shall commence upon due execution hereof by or on behalf of all parties.

Article 3

DEVELOPER’S REPRESENTATIONS AND WARRANTIES

The Developer represents and warrants that:

3.01 Good Title. TE LLC owns all of the Property free and clear of all liens and encumbrances other than mortgages for the purpose of developing the Subdivision, and that it has retained sufficient rights in and to the balance of the Property so as to make all provisions of this Agreement valid and enforceable against the Developer and all successors in interest.

3.02 Improvements Contract. The Developer has examined the Contract Documents, is familiar with the specifications set forth therein, and has determined that they are adequate and sufficient for the Developer's purposes.

3.03 Authority. The Developer has received all required approvals to enter into this Agreement and the signatures below shall bind the Developer. The Developer represents and warrants to the Village that the execution, delivery and performance of this Agreement and consummation of the transactions contemplated hereby constitutes a legal, valid and binding agreement of the Developer, enforceable against it. The Developer represents and warrants to the Village that there are no lawsuits filed or pending to the knowledge of the Developer or threatened against the Developer that may in any way jeopardize the ability of the Developer to perform its obligations hereunder.

Article 4

DUTIES OF THE DEVELOPER

4.01 Construction Duties of the Developer. The Developer shall construct or install the Subdivision Improvements in two phases (each a "Phase") and pay all costs therefore, pursuant to the applicable Contract Documents, Improvement, Grading, Housing and Landscape Plans and the respective sections of the Subdivision Regulations, as follows:

PHASE 1 (Upon Completion of Phase 1 in its entirety (a)-(d) the Village will reimburse Developer the sum of \$350,000.00 USD. Upon complete conveyance of the property from TE LLC to Bonnilake, notwithstanding anything in this Development Agreement to the contrary, TE LLC shall be released from all claims or actions of any kind under this Development Agreement other than the work in Phase 1 and other duties specifically related to TE LLC prior to the conveyance of such property.

- (a) Demolition. Developer shall raze the buildings as submitted on the Plans. A pre-demolition meeting shall be had with the Village Director of Community Services to approve a noise and dust mitigation plan prior to permit issuance and any work commencing.
- (b) Interim Lot Grading. Developer shall submit an interim grading plan to be approved by the Village Director of Community Services which shall include stockpiling of fill to reduce wear and tear on Village roads.
- (c) Historic Church Improvements. TE LLC shall be responsible for making all agreed upon improvements to the historic church as depicted in the Developer's Plan. For the sole purpose of reimbursement for the completion of Phase 1 by the Village, issuance of construction permits shall be deemed satisfactory.
- (d) Approvals. Developer shall be responsible for obtaining all approvals from all governmental approving bodies, including but not limited to Plan Commission for Final Plat Approval.

PHASE II (Upon Completion of Phase II (a) – (c), the Village will reimburse Developer \$100,000.00. Thereafter the sum of \$5,000 USD per lot will be reimbursed, upon issuance of each building permit and all remaining developer duties have been completed)

- (a) Connection to Sanitary Sewer System. Village agrees to waive connection fees in the event Developer connects all residences in one project which will mitigate infrastructure wear and tear. If Bonnilake connects the residences in separate projects, then customary connections fees will apply.
- (b) Water Supply Facilities. Developer will be responsible for obtaining a water services agreement with the City of Mequon and shall be responsible for all costs associated with such an agreement, including but not limited to, connection fees, construction, municipal approval.
- (c) Storm Water Drainage Facilities. Construct storm water drainage facilities, pursuant to the Plans as shown on Developer's Plans and as approved by the Village Engineer. All storm water, storm sewer and drainage facilities required to serve Orchard Street Development shall be considered "private" and shall be maintained at owner's expense. Simultaneous with the execution of this Agreement, Developer and Village, shall enter into a separate written Storm Water Management System Maintenance Agreement, in a form substantially similar to **Exhibit B**, attached hereto and incorporated herein by reference. If the plan is to use the existing storm water pipe, Developer shall pay for a CCTV condition report satisfactory to the Village Director of Community Services. The purpose of the Storm Water Management System Maintenance Agreement is to grant the Village, its employees, agents, contractors, successors and assigns access to and from all storm water facilities for purposes of access, inspection and maintenance, if necessary.
- (e) Other Utilities. File preliminary plans and install underground public and private gas mains and public and private electric, cable television and telephone cables, pursuant to the Village Code. All utilities-to be completed prior to commencement of the wearing course pavement roadwork.
- (g) Record Drawings. Prepare record drawings for the above work, pursuant to Village Code. Provide an electronic version in Auto Cad and GIS.
- (h) Curb and Gutter. Construct curb and gutter as shown on the Subdivision construction Plans approved by the Village and schedule approved by the Director of Community Services.
- (i) Sidewalks and Walking Paths. Developer shall construct a 5-foot wide concrete public sidewalk along the east side of Orchard Street across the full frontage of the Developer's Property which shall include the property located in the Village of Thiensville, as shown on the Developer's Plans and as approved by the Village Engineer Developer shall provide, within the Declaration of Restrictions for the Subdivision, that the public sidewalk abutting Orchard Street shall be maintained in perpetuity by the lot owners at the owner's expense, but that any maintenance, snow removal, repair or re-construction shall be subject to assessment to the

abutting property owner(s) pursuant to Chapter 66.0907, Wis. Stats., and any applicable statutes, Village ordinances, or other laws or regulations.

- (j) Sidewalk Improvements. Construct a fully improved street entrance on Orchard Street with concrete curb and gutter, sidewalk and ADA sidewalk ramps in compliance with the Plans and the permit issued by the all required approving bodies. Said construction shall include, but not be limited to, curb and gutter for the entire length of Orchard Street, where abutting the Subdivision.
- (k) Landscaping. Install topsoil, trees and establish lawn turf in all parkways, and provide landscaping in accordance with the approved subdivision landscape Plans.
- (l) Erosion Control. Install and maintain erosion control using best management practices and pursuant to the Village Code. Developer must comply with all applicable DNR wetland permits, the Village's Erosion Control Permit, the Storm Water Management Permit and any associated fees.
- (n) Public Sidewalk Dedication. Developer hereby grants and dedicates to the public, all sidewalks adjacent to Orchard Street, to be used and accessed by the public for all uses allowed by applicable law, standard, or regulation. Such grant shall be expressly stated on the Final Plat for the Subdivision.
- (o) Preconstruction Meetings. Prior to commencement of any construction of any Improvement, the Developer is responsible for meeting with Public Works Director to develop a reasonable construction truck routes and to review noise and dust ordinances.
- (p) Environmental Approvals. Developer shall be responsible for the cost of obtaining any environmental reports, permits and remediation required by any approving authority.
- (q) Dedication of Property to Village. Developer shall be responsible for dedicating any property to the Village as depicted on the Developer's plans.

4.02 Time for Completion. Each of the items in § 4.02 above shall be completed on the dates specified in this Agreement.

4.03 Impact and Connection Fees. Prior to issuance of a building permit for a Lot, the following impact and connection fees will be due for such Lot:

Park Facilities Fee	\$500.00 per Lot
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Sanitary Sewer Connection Fee	Subject to 4.02(Phase II)(a)
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Bonnilake shall disclose the amount of impact fees due to prospective buyers at the time of Lot sale.

4.04 Homebuilding. Bonnilake will be responsible for constructing ten (10) single family residences, consistent with the as-built drawings included in the Developer's Plans which shall be approved by all approving authorities required by Village ordinance.

4.05 Developer Payments.

(a) Other Improvement Costs. Developer shall pay within 30 days of invoice for all engineering, administrative, and legal fees associated with the new Subdivision, and installation of public utilities, including the cost of construction inspection, materials testing, preparation of as-built drawings, and other fees associated therewith. Developer's responsibility for fees incurred by the Village for engineering and legal services shall be capped at \$2,000.00. Inspection fees shall not be capped.

(b) Recording Fees. Pay to the Register of Deeds for Ozaukee County all recording fees due for the recording of the Final Plat, any separate dedication instruments and grants of easements. Developer's check, payable to the Register of Deeds for Ozaukee County shall be delivered to the Village upon Final Plat approval.

4.06 Personal Guarantee Standby Letter of Credit. Greg Devorkin shall provide a personal guarantee for the 120% of the Phase 1 costs, less the Village's reimbursement not to exceed \$350,000.00, and Bonnilake shall provide an irrevocable Letter of Credit or an approved performance bond to the Village, which shall not expire prior to 14 months following the completion of all Phase 2 Improvements including erosion control, public roadway, utilities, sidewalks, legal and engineering fees. The Letter of Credit shall be reduced periodically upon the Bonnilake's written request as Improvements are completed, paid for by the Bonnilake, and approved by the Village so that the Letter of Credit equals one hundred-twenty percent (120%) of the total amount remaining for the Improvements that are not yet constructed, paid for, or approved by the Village. However, in no event shall the amount of the Letter of Credit be reduced below twenty percent (20%) of the Improvement's cost prior to the expiration of the guaranty period described in this Agreement. The Village shall be authorized from time to time to draw against the Letter of Credit for costs incurred and due the Village pursuant to this Agreement if the Bonnilake fails to complete required work in a timely manner as determined by this Agreement. The Village Director of Community Services or Village Administrator may agree to extend any Improvement date in his/her sole discretion. The Schedule of Values in § 4.07 of this Agreement reflects the Bids/Estimates/Contingencies for the Subdivision Improvements.

4.07 Schedule of Values for Letter of Credit and Personal Guaranty with Respect to the Subdivision. Greg Devorkin shall provide a personal guaranty for Phase 1 Improvements which shall be dated no later than commencement of any work at the site in amounts set forth in the Schedule of Values attached hereto. Bonnilake shall provide an Irrevocable Letter of Credit (or performance bond) for the Phase 2 Improvements which shall be dated no later than thirty (30) days after the completion of Phase 2, in the amounts set forth in the Schedule of Values attached hereto. The Letter of Credit is sufficient to cover the estimated costs to complete the Phase 1 Improvements based on § 4.02 and the Schedule of Values for the Subdivision which include, but are not limited to, sewer lateral, water service, sidewalk, curb and gutter. Prior to the commencement of construction of any Improvements in Phase 2 of the Subdivision, Bonnilake

shall provide an Irrevocable Letter of Credit (or performance bond) which shall be dated no later than thirty (30) days prior to the submission of said Letter of Credit to the Village, in the amounts set forth to be approved by the Village Administrator or Director of Community Services and attached to this Agreement as an Addendum. Each Phase of the Subdivision shall be defined as follows:

[SCHEDULE OF VALUES FOR LETTER OF CREDIT ON NEXT PAGE.]

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]

SCHEDULE OF VALUES FOR PHASE 1 PERSONAL GUARANTY

ITEM	ESTIMATED COST
Rough Grading (Lots & Street R/W) Including: Clearing and grubbing, topsoil stripping, subgrade rough cut/fill, drainage swales, utility spoil placement, lot & ditch topsoil replacement & rough grade, and construction of storm water ponds. Erosion Control Including: Silt fence, tracking pad, hay bale ditch checks, temporary sediment traps, outlet pipe, and rip-rap.	\$350,000.00
Demolition, Razing of existing Structures	Included in above amount
Sub Total of Construction and Related Costs	
Add 20% additional Contingency Per Wis. Stat 236:	\$420,000.00
Less \$350,000 of Village Reimbursement:	(\$350,000.00)
THE SCHEDULE OF VALUES FOR EACH LINE ITEM IS BASED ON ESTIMATES. ACTUAL LINE ITEM COSTS MAY VARY. THE TOTAL LETTER OF CREDIT IS AVAILABLE TO THE VILLAGE FOR COMPLETION OF EACH LINE ITEM. THE VILLAGE IS NOT ACTING IN A FIDUCIARY CAPACITY AS TO THE LETTER OF CREDIT.	

TOTAL LETTER OF CREDIT : \$ \$70,000

I, Greg Devorkin, represent that I have not less than \$70,000 of unencumbered assets to provide as security for this agreement and hereby personally provide a personal guaranty to the Village for the purposes expressed herein, not to exceed \$70,000.00.

Greg Devorkin

SCHEDULE OF VALUES FOR PHASE 2 LETTER OF CREDIT

ITEM	ESTIMATED COST
Rough Grading (Lots & Street R/W) Including: Clearing and grubbing, topsoil stripping, subgrade rough cut/fill, drainage swales, utility spoil placement, lot & ditch topsoil replacement & rough grade, and construction of storm water ponds. Erosion Control Including: Silt fence, tracking pad, hay bale ditch checks, temporary sediment traps, outlet pipe, and rip-rap.	Phase 1 N/A
Demolition, Razing of existing Structures	Phase 1 N/A
Sanitary Sewer Laterals	30,000
Water Main	78000
Storm sewer	5000
Fine Grading of Street	n/a
Concrete Curb and Gutter	16000
Road Base and Asphalt Pavement Binder Course	n/a
Asphalt Pavement Patching	53,000
Concrete Sidewalk	18,000
Fine Grading, Topsoil, Seeding and Mulching	2700
Asphalt Pavement Patching	N/A
Street Lighting	n/a
Landscaping	N/A
Street Signs	n/a
Lot Piping (n/a – Private)	
Legal Fees and engineering fees(Village)	\$2,000.00
Inspection Fees (including but not limited to Village Administration fees)	3000
Sub Total of Construction and Related Costs	160,000
Add 20% additional Contingency Per Wis. Stat 236:	32,000
Less \$150,000 of Village Reimbursement:	(\$150,000.00)
THE SCHEDULE OF VALUES FOR EACH LINE ITEM IS BASED ON ESTIMATES. ACTUAL LINE ITEM COSTS MAY VARY. THE TOTAL LETTER OF CREDIT IS AVAILABLE TO THE VILLAGE FOR COMPLETION OF EACH LINE ITEM. THE VILLAGE IS NOT ACTING IN A FIDUCIARY CAPACITY AS TO THE LETTER OF CREDIT.	

TOTAL LETTER OF CREDIT : \$42,000

4.09 Completion Schedule. Developer shall complete the Improvements for the Subdivision listed below as follows:

1. PHASE 1 not later than 9/1/2020. If PHASE 1 fails to commence by June 1, 2020, the PDO zoning overlay shall lapse and revert to the underlying zoning.
2. PHASE 2 not later than 12/31/2020

Specific timeline for elements of PHASE 2: See attached Schedule

4.10 Quality of Work.

- (a) All work performed under the provisions of this Agreement shall be done in a workmanlike manner in accordance with prevailing standards in the construction industry and the Subdivision Regulations of the Village as directed by the Village Engineer.
- (b) The Village shall have the right during the course of construction of Improvements required under this Agreement to direct the issuance of contract change orders to be paid by Developer, and to amend the Plans and specifications, but only to the extent required to assure that construction will conform to Village's Subdivision Regulations. All contract change orders proposed by Developer involving public rights of way or easements shall be approved by the Village.
- (c) Developer's Guaranty. Bonnilake guaranties that all materials and workmanship furnished by Bonnilake pursuant to this Agreement, for all Improvements, including, but not limited to, public roadways and potential public utilities, shall meet or exceed all state, federal and local requirements and specifications and that the public roadways and Improvements are and will remain in good and sound condition for and during a period of twelve (12) months from the date of final acceptance of dedication of those public Improvements identified herein, by the Village. The Letter of Credit, described and identified herein, shall remain open and active, during the guaranty period described herein.
- (d) Obligation to Repair. Bonnilake shall make or cause to be made, at its own expense, any and all repairs which may become necessary under and by virtue of Bonnilake's guaranty, and shall leave the potential public Improvements and public roadways in good and sound condition, satisfactory to the Village and Village Engineer, at the expiration of the Guaranty period.; provided, however, Bonnilake's obligation to repair shall not extend to repairs necessitated by or related to any act, omission, neglect or misconduct of the Village, its agents, employees, or contractors, (and the Letter of Credit may not be drawn against in such instances).
- (e) Notice of Repair. If, during the Guaranty period, the Improvements or public roadways shall, in the reasonable opinion of the Village Engineer, require any

repairs or replacements, which in his judgment are necessitated by reason of settlement of structure or backfill, or other defective workmanship or materials, Bonnillake shall, upon written notification by the Village Administrator of the necessity for such repairs, make such repairs within a reasonable time after written notice has been sent. Failure to start work within one (1) month after such written notice, weather permitting, shall grant the Village the authority, at its sole discretion, to cause such work to be commenced and done, either by contract or otherwise, and the Village may assess the Bonnillake for any costs and expenses incurred therein, including, but not limited to engineering, construction, and legal costs. Bonnillake shall pay any such assessment within 30 days of being invoiced for same. Failure by the Bonnillake to timely pay shall grant the Village authority to immediately draw on the Letter of Credit described herein.

Article 5

Indemnification

5.01 Indemnification Agreement.

- (a) In addition to, and not to the exclusion or prejudice of, any other provision of this Agreement, the TE LLC shall indemnify and hold harmless the Village, its officers, agents and employees (collectively, the “Village Indemnitees”), and shall defend the same, from and against any and all liability, claims, loss, damages, interest, action, suits, judgments, costs, expenses, attorneys’ fees and the like, to whomsoever owed and by whomsoever and whenever brought or obtained, which may in any manner result from the work performed or the responsibilities of TE LLC for phase 1 under this Agreement, expressly including, though not limited to, negligence and the breach of any duty whether imposed by statutes, ordinances, regulations, order, decree or law of any other sort or by contract, on the part of the TE LLC or its officers, employees, agents or independent contractors, in carrying out the work and in supervising and safeguarding the same in any respect whatever, and including claims arising under any federal, state or local law, including Worker's Compensation laws and including negligence and the breach of any duty whether imposed by statutes, ordinances, regulations, order, decree or law of any other sort or by contract, on the part of the TE LLC or its officers, employees, agents or independent contractors, in carrying out the work and in supervising and safeguarding the same in any respect. This indemnity does not apply to any claims arising out of any willful acts or bad faith of any of the Village Indemnitees.
- (b) In addition to, and not to the exclusion or prejudice of, any other provision of this Agreement, Bonnillake shall indemnify and hold harmless the Village, its officers, agents and employees (collectively, the “Village Indemnitees”), and shall defend the same, from and against any and all liability, claims, loss, damages, interest, action, suits, judgments, costs, expenses, attorneys’ fees and the like, to whomsoever owed and by whomsoever and whenever brought or obtained, which may in any manner result from the work performed or the responsibilities of the Bonnillake under this Agreement, expressly including, though not limited to, negligence and the breach of any duty whether imposed by statutes, ordinances, regulations, order, decree or law of any other sort or by contract, on the part of the

Bonnilake or its officers, employees, agents or independent contractors, in carrying out the work and in supervising and safeguarding the same in any respect whatever, and including claims arising under any federal, state or local law, including Worker's Compensation laws and including negligence and the breach of any duty whether imposed by statutes, ordinances, regulations, order, decree or law of any other sort or by contract, on the part of the Bonnilake or its officers, employees, agents or independent contractors, in carrying out the work and in supervising and safeguarding the same in any respect. This indemnity does not apply to any claims arising out of any willful acts or bad faith of any of the Village Indemnitees

- (c) Subject to subparagraph's a and b above, if a claim is made against the Village related to work performed by the Developer or the responsibilities of the Developer under this Agreement, the Village agrees that it shall, within ten (10) days of its notice thereof, notify the Developer and any liability insurance carrier, which has been designated by the Developer. The Developer shall thereafter provide full cooperation in defense of the claim. The Developer shall, at the option of the Village, defend any claim on behalf of the Village in which case the Developer or its insurer is authorized to act on behalf of the Village in responding to any claim to the extent of this indemnity. Such authorization includes the right to investigate, negotiate, settle and litigate any such claim and control of the defense thereof subject to the approval of the Village.

5.02 Extent of Damages. In every case, but not as a limitation on the liability of the Developer to the Village, where judgment is recovered against the Village on any such claim as provided in this Article 5, if notice has been given to Developer under § 5.01 above, any judgment thereon shall be conclusive upon the Developer as to the amount of damages and as to its liability therein; provided, however, notwithstanding anything to the contrary contained herein, the Village shall reserve and maintain all of its rights and remedies to pursue recovery of all legal and equitable remedies.

5.03 Limitations as to Letter of Credit or Performance Bond. It is expressly understood and agreed by the Village, unless specifically directed and authorized by the TE LLC and/or Bonnilake, that the Letter of Credit as required of the each of TE LLC and/or Bonnilake is not subject to any draw by the Village, or any other party or person, to pay for any, or all, claims for personal injury and property damage arising from the construction or installation of such Improvements, but that the Letter of Credit is exclusively limited to the payment for the Improvements not provided for by the TE LLC and/or Bonnilake pursuant to the terms their respective duties hereof, and for no other purposes.

Article 6

Compliance

6.01 Compliance With Law and Regulations. The Developer shall, in the performance of this Agreement, comply with, and give all stipulations and representations required by all applicable federal, state and local laws, ordinances and regulations. The Developer shall also require such compliance, stipulations and representations with respect to any contract entered into by Developer with others (pertaining to the work covered by this Agreement).

Article 7

Conditions and Waivers

Except as otherwise provided in this Agreement, the Village shall have no duty to issue building permits for construction of residences or reimburse the developer within any Phase unless and until the Developer duties in Article 4.02 are completed within the time limit outlined in Article 4.09.

Article 8

Additional Terms

8.01 Time is of Essence. The times of performance of the terms and requirements of this Agreement and of the satisfaction and waiver of the conditions hereof are essential to the whole of this Agreement.

8.02 No Waiver: Remedies. No failure on the part of either party to exercise, and no delay in exercising any right, power, or remedy under this Agreement or the Contract Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement or the Contract Documents preclude any other or further exercise thereof or the exercise of any other right. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

8.03 Notices. All notices and other communications provided for under this Agreement shall be in writing (including telefax communications) and mailed (certified), sent by facsimile, or personally delivered:

If to the Village, as follows:

Colleen Landisch-Hansen
Village Administrator
Thiensville Village Hall
250 Elm St.
Thiensville, WI 53092
Fax (262) 242-4743

With a copy to:

Attorney Timothy S. Schoonenberg
Houseman and Feind, LLP
Assistant Village Attorney
1650 9th Avenue
Grafton, WI 53024
Fax (262) 377-6080

If to Developer, as follows:

With a copy to:

Thiensville Enterprises LLC
Greg Devorkin
11518 N. Port Washington Rd. Suite 103
Mequon, WI 53092

Bonnilake Orchard Street LLC
Fred Bersch
592 W. Bonniwell Rd.
Mequon, WI 53097-1712

or, as to each party, at such other address as shall be designated by such party in a written notice to the other party in accordance herewith. Delivery of all such notices and communications shall be deemed complete, (a) if mailed, when deposited in the mails for certified mail, return receipt requested, postage prepaid, or (b) if sent by facsimile, when confirmed as being received by the party to whom faxed or delivered, or (c) when personally delivered.

8.04 Force Majeure. The obligations of either of the parties hereunder shall be suspended to the extent that it is hindered or prevented from complying therewith because of labor disturbances, including strikes and lockouts, acts of God, fires, storms, accidents, or any cause whatsoever beyond the control of the parties.

8.05 Amendments. No amendment, modification, termination, or waiver of any provision of this Agreement, nor consent to any departure from this Agreement shall in any event be effective unless the same shall be in writing and signed by both parties, and it shall be effective only in the specific instance and for the specific purpose for which given.

8.06 Assignment. This Agreement, and the interests hereunder, shall not be assigned except with the prior, written consent of the Village, which consent will not be unreasonably withheld or delayed.

8.07 Permits. The Village shall, subject to all applicable laws and regulations, and acting within its authority, act in good faith when considering the issuance of such permits, adoption of such resolutions, and execution of such documents as may be necessary to permit Developer to construct the Improvements upon Developer's payment of the Village's fees in accordance with the Subdivision Regulations. The Village shall cooperate in good faith with Developer in obtaining similar permits, resolutions, and documents as may be necessary from other authorities having jurisdiction over the Subdivision.

8.08 Survival. All of the terms, conditions, and provisions of this Agreement, including but not limited to, all indemnification provisions, shall survive the completion of this Agreement.

8.09 Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement.

8.10 Headings. Article and Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

8.11 Integration of Terms. This Agreement represents the entire agreement of the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective authorized officers or agents as of the date first above written.

VILLAGE OF THIENSVILLE

By: _____
Van Mobley, Village President

Countersigned:

Amy Langlois, Village Clerk

STATE OF WISCONSIN)
) ss
COUNTY OF OZAUKEE)

Personally came before me this ____ day of _____ 20____, the above-named Van Mobley, Village President and Amy Langlois, Village Clerk, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin
My Commission: _____

Developer: THIENSVILLE ENTERPRISES LLC

By: _____
Greg Devorkin, Member

STATE OF WISCONSIN) ss
COUNTY OF OZAUKEE)

Personally came before me this ____ day of _____, 20__, the above-named _____, to me known to be the person(s) who executed the foregoing instrument and acknowledged the same on behalf of _____, by its authority.

Notary Public, State of Wisconsin
My commission: _____

BONNILAKE ORCHARD STREETLLC

STATE OF WISCONSIN)
COUNTY OF OZAUKEE) ss

Notary Public, State of Wisconsin
My commission: _____

After recording, please return to:
Amy Langlois, Village Clerk
Village of Thiensville
250 Elm Street
Thiensville, Wisconsin 53092

EXHIBIT A
Final Plat and Improvement, House, Grading and Landscape Plans

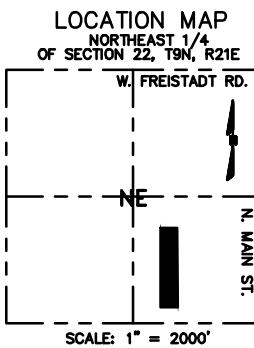
EXHIBIT B
Storm Water Management System Maintenance Agreement

ORCHARD STREET SUBDIVISION

Lot 1 of Certified Survey Map No. 3941, being a part of the Southeast 1/4 of the Northeast 1/4 of Section 22, Township 9 North, Range 21 East, Village of Thiensville, Ozaukee County, Wisconsin.
ALSO:
The South Sixty-Eight (68) feet of Lot 15 and all of Lots 16 and 17 in Block 2 in Village Heights, being a part of the Southeast 1/4 of the Northeast 1/4 of Section 22, Township 9 North, Range 21 East, Village of Thiensville, Ozaukee County, Wisconsin.

LEGEND

- INDICATES NO. 10 (1.27") REBAR, FOUND.
- INDICATES NO. 10 (1.27") REBAR, WT. 4.303 LBS PER LINEAL FOOT AT LEAST 18" IN LENGTH, SET. UNLESS NOTED.
- ALL OTHER LOT & OUTLOT CORNERS HAVE 1" O.D. IRON PIPE, 18" IN LENGTH, WT. 1.68 LBS. PER LINEAL FOOT, SET.
- ① INDICATES "DEDICATED TO THE PUBLIC FOR ROAD PURPOSES".
- INDICATES BUILDING SETBACK LINE

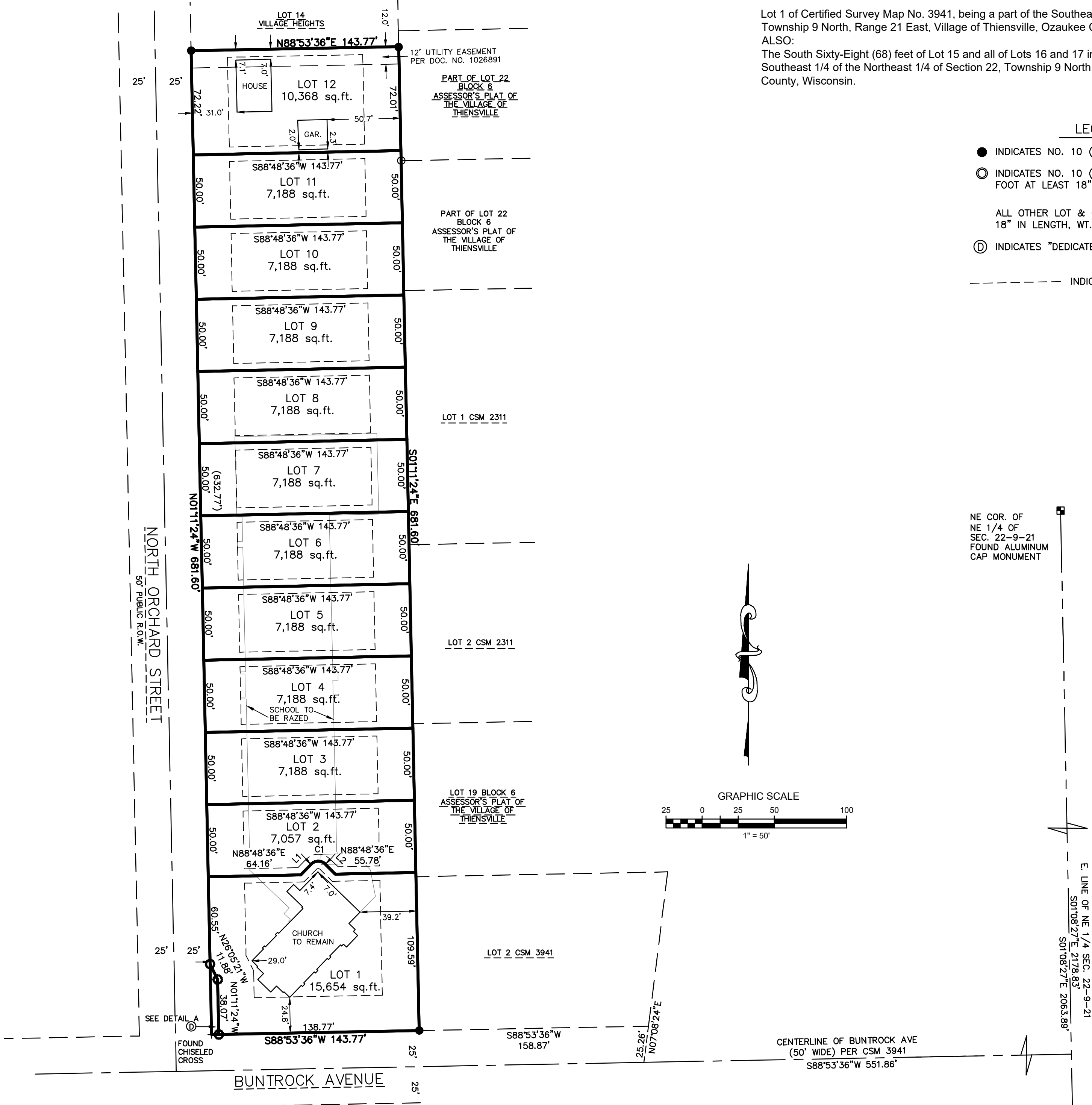
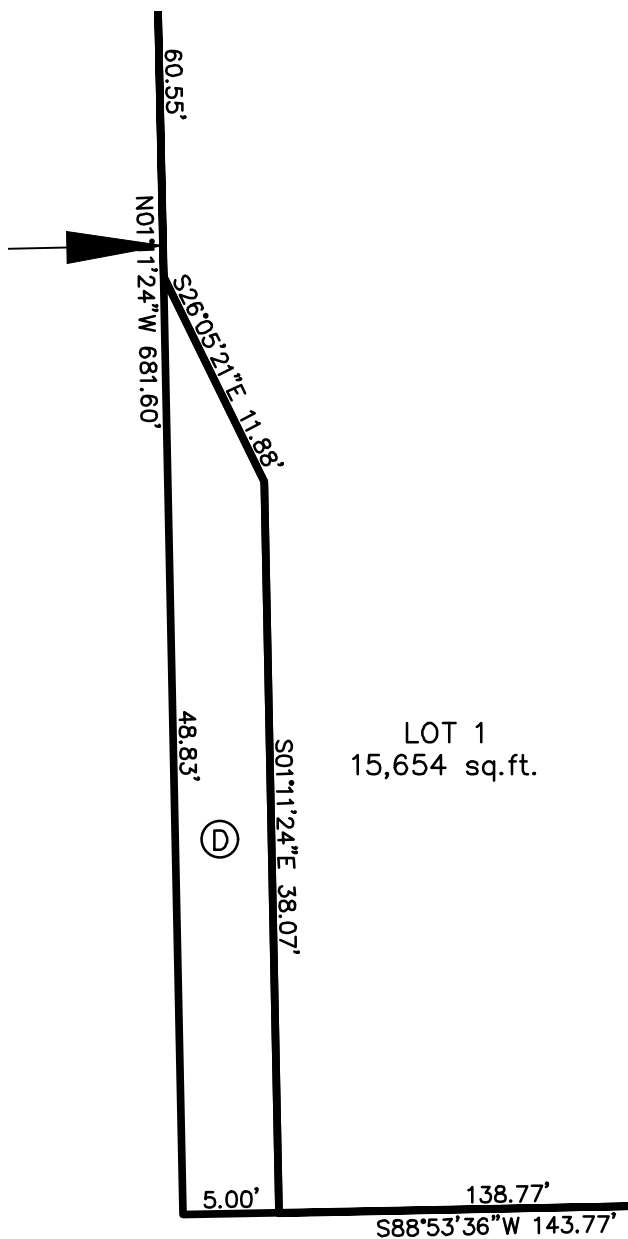


- Notes:
- All bearings are referenced to the East line of the Northeast 1/4 of Section 9, Township 9 North, Range 21 East, which bears North 01° 08' 27" West and is referenced to the Wisconsin State Plane Coordinate System, South Zone (NAD -27). All measurements were made to the nearest hundredth of a foot.
 - This development will be served by public sewers. Building permits shall not be issued without the availability of said public sewers.
 - Building setbacks are 25' front yard, 25' rear yard, 5' side yard.

APPLICANT & OWNER
Thiensville Enterprises LLC
Gregory Devorkin
11518 North Port Washington Road
Suite 103
Mequon, WI., 53092

SURVEYOR
R.A. Smith, Inc.
John P. Casucci
16745 West Bluemound Road
Brookfield, WI., 53005

DETAIL A
1" = 10'



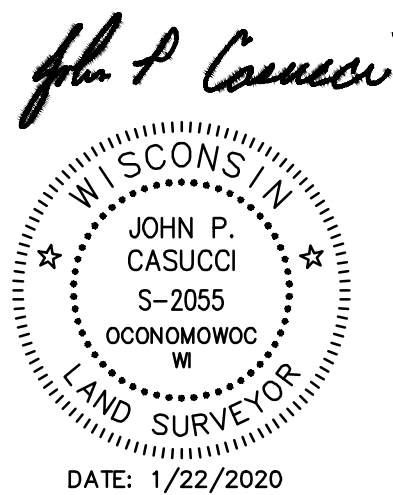
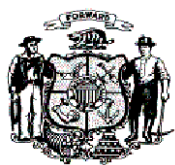
raSmith
CREATIVITY BEYOND ENGINEERING

16745 W. Bluemound Road
Brookfield, WI 53005-5938
(262) 781-1000
rasmith.com

There are no objections to this plat with respect to
Secs. 236.15, 236.16, 236.20 and 236.21(1) and (2),
Wis Stats. as provided by s. 236.12, Wis. Stats.

Certified _____, 20____

Department of Administration



Curve Table							
Curve #	Length	Radius	Chord Bearing	Chord	Tangent In	Tangent Out	Delta
C1	10.98	7.00	N89°15'47"E	9.89	N44°20'23"E	S45°48'49"E	89°50'48"

Line Table		
Line #	Direction	Length
L2	S45°48'49"E	9.71

WITNESS MONUMENT FOR
SE COR. OF
NE 1/4 OF
SEC. 22-9-21
FOUND BRASS
CAP MONUMENT

SE COR. OF
NE 1/4 OF
SEC. 22-9-21
NO MONUMENT
FOUND

ORCHARD STREET SUBDIVISION

Lot 1 of Certified Survey Map No. 3941, being a part of the Southeast 1/4 of the Northeast 1/4 of Section 22, Township 9 North, Range 21 East, Village of Thiensville, Ozaukee County, Wisconsin.
ALSO:
The South Sixty-Eight (68) feet of Lot 15 and all of Lots 16 and 17 in Block 2 in Village Heights, being a part of the Southeast 1/4 of the Northeast 1/4 of Section 22, Township 9 North, Range 21 East, Village of Thiensville, Ozaukee County, Wisconsin.

SURVEYOR'S CERTIFICATE

State of Wisconsin }
:SS
Waukesha County }

I, John P. Casucci, Professional Land Surveyor, certify:

That I have surveyed, divided and mapped Lot 1 of Certified Survey Map No. 3941, being a part of the Southeast 1/4 of the Northeast 1/4 of Section 22, Township 9 North, Range 21 East, Village of Thiensville, Ozaukee County, Wisconsin.
ALSO:
The South Sixty-Eight (68) feet of Lot 15 and all of Lots 16 and 17 in Block 2 in Village Heights, being a part of the Southeast 1/4 of the Northeast 1/4 of Section 22, Township 9 North, Range 21 East, Village of Thiensville, Ozaukee County, Wisconsin, bounded and described as follows:

COMMENCING at the Northeast corner of the Northeast 1/4 of said Section 22; thence South 01° 08' 27" East along the East line of said 1/4 Section a distance of 2063.89 feet to a point; thence South 88° 53' 36" West 551.86 feet to a point; thence North 07° 08' 24" East 25.26 feet to a point; thence South 88° 53' 36" West 158.87 feet to the Southwest corner of Lot 2 of Certified Survey Map No. 3941, said point also the point of beginning of lands to be described; thence Continuing South 88° 53' 36" West along the North line of Buntrock Avenue 143.77 feet to a point in the East line of North Orchard Street; thence North 01° 11' 24" West along said East line 681.60 feet to the Southwest corner of Lot 14 in Village Heights Subdivision; thence North 88° 53' 36" East along the South line of said lot 143.77 feet to a point; thence South 01° 11' 24" East along the West line of Certified Survey Map 2311, 3941 and their extensions 681.60 feet to the point of beginning.

Said land contains 97,994 square feet or 2.2496 acres.

That I have made such survey, land division and plat by the direction of Thiensville Enterprises LLC, owner of said land.

That such plat is a correct representation of all the exterior boundaries of the land surveyed and the land division thereof made.

That I have fully complied with the provisions of chapter 236 of the Wisconsin statutes and the subdivision regulations of the Village of Thiensville in surveying, dividing and mapping the same.

Date: 1/22/2020

John P. Casucci
Professional Land Surveyor
Registration No. 2055

CORPORATE OWNER'S CERTIFICATE

Thiensville Enterprises LLC, a limited liability company duly organized and existing under and by virtue of the laws of the State of Wisconsin, as owner, certifies that said company has caused the land described on this Plat to be surveyed, divided, dedicated and mapped as represented on this Plat.

Thiensville Enterprises LLC does further certify that this map is required by S.236.10 or S.236.12 to be submitted to the following for approval or objection:

Village of Thiensville
Wisconsin Department of Administration

IN Witness Whereof, Thiensville Enterprises LLC, has caused these presents to be signed by it's

Managing Member on this _____ day of _____, 2020.

By: _____
Gregory Devorkin

State of Wisconsin }
:SS
_____ County }

Personally came before me this ____ day of _____, 2020, _____,

Gregory Devorkin, of Thiensville Enterprises LLC, to me known to be the person who executed the foregoing instrument and acknowledged that they executed the foregoing instrument as such officers as the deed of Thiensville Enterprises LLC, by their authority.

Notary Public, State of Wisconsin

My commission expires _____

CONSENT OF CORPORATE MORTGAGEE

_____, a national banking association, mortgagee of that portion of the above-described land identified in this Certified Survey Map, does hereby consent to the surveying, dividing, dedicating and mapping of the land described in the foregoing affidavit of John P. Casucci, Surveyor, and does hereby consent to the certificate of said owner.

In witness whereof, the said _____, has caused these presents to be signed by

_____, its _____, and by _____, its _____
(name) (title) (name) (title)

at _____, and its corporate seal to be hereunto affixed.

this ____ day of _____, 2020.

STATE OF }
:SS
COUNTY OF }

PERSONALLY came before me this _____ day of _____, 2020,
_____, _____ and _____ of the
(name) (title) (name) (title)

above named organization, to me known as the person(s) who executed the foregoing instrument, and to me

known to be the _____ and the _____ of the organization, and acknowledged that they executed the foregoing instrument as such officer(s) as the deed of the organization, by its authority.

(SEAL)

Notary Public, State of _____
My commission expires _____

COUNTY TREASURER'S CERTIFICATE

State of Wisconsin }
:SS
Ozaukee County }

I, Joshua Morrison, being the duly elected, qualified and acting treasurer of the County of Ozaukee, do hereby certify that the

records in my office show no unredeemed tax sales or unpaid special assessments as of _____, 2020, affecting the lands included in the Plat of Orchard Street Subdivision

Date: _____
Joshua Morrison, County Treasurer

VILLAGE OF THIENSVILLE PLAN COMMISSION APPROVAL

This Certified Survey Map is hereby approved by the Village Planning Commission of the

Village of Thiensville and adopted on this _____ day of _____, 2020

_____, VILLAGE PRESIDENT _____, VILLAGE CLERK

_____, VILLAGE ADMINISTRATOR

VILLAGE OF THIENSVILLE BOARD APPROVAL

This Certified Survey Map is hereby approved by the Village Board of the Village of Thiensville

and adopted on this _____ day of _____, 2020

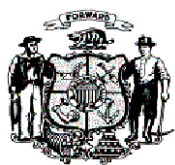
_____, VILLAGE PRESIDENT _____, VILLAGE CLERK

_____, VILLAGE ADMINISTRATOR

There are no objections to this plat with respect to Secs. 236.15, 236.16, 236.20 and 236.21(1) and (2), Wis Stats. as provided by s. 236.12, Wis. Stats.

Certified _____, 20 ____

Department of Administration



raSmith
CREATIVITY BEYOND ENGINEERING

16745 W. Bluemound Road
Brookfield, WI 53005-5938
(262) 781-1000
rasmith.com