

## NOTICE

A meeting of the City of Evansville Plan Commission will be held via video and/or audio remotely 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. Submit Public Comments by email to [jason.sergeant@ci.evansville.wi](mailto:jason.sergeant@ci.evansville.wi), by leaving in the drop box in front of City Hall at 31 S Madison Street, or by mail to PO Box 529, Evansville, WI 53536.

City of Evansville **Plan Commission**  
Special Meeting  
Wednesday, May 12, 2021, 2:00 p.m.

**This meeting is being held virtually due to county and federal social distancing recommendations in response to COVID-19. Commission members, applicants, and members of the public will be required to participate via the virtual format. To participate via video, go to this website: <https://meet.google.com/fes-vcir-rfv>. To participate via phone, call this number: 1 608-764-9643 and enter PIN: 352 918 263# when prompted.**

## AGENDA

1. Call to Order
2. Roll Call
3. Motion to Approve Agenda
4. Motion to waive the reading of the minutes from the May 4, 2021 meeting and approve them as printed.
5. Civility Reminder
6. Citizen appearances other than agenda items listed
7. New Business
  - A. Discussion and Motion Regarding Subdivision Plat for Settlers Grove
    - i. Staff Report
    - ii. Applicant Comments
    - iii. Commission Discussion
    - iv. Motion
8. Next Virtual Meeting Dates: June 1, 2021 at 6:00pm; and July 6, 2021 at 6:00pm
9. Motion to Adjourn

*-Mayor Bill Hurtle, Plan Commission Chair*



*These minutes are not official until approved by the City of Evansville Plan Commission.*

**City of Evansville Plan Commission  
Regular Meeting  
May 4, 2021, 6:00 p.m.  
Meeting held virtually due to COVID-19 Guidelines**

**MINUTES**

1. **Call to Order** at 6:00 pm.

2. **Roll Call:**

<b>Members</b>	<b>Present/Absent</b>	<b>Others Present</b>
Mayor Bill Hurtley	P	Community Development Director Jason Sergeant
Aldersperson Rick Cole	P	Chad Renly, Municipal Services Director
Aldersperson Susan Becker	P	Dave Olsen, Applicant
Bill Hammann	P	Other members of the public
John Gishnock	P	
Mike Scarmon	P	
(Vacant)	-	

3. **Motion to approve the agenda, by Cole, seconded by Hammann. Approved unanimously.**

4. **Motion to waive the reading of the minutes from the April 6, 2021 Meeting and approve them as printed by Cole, seconded by Hammann. Approved unanimously.**

5. **Civility Reminder.** Hurtley noted the City's commitment to civil discourse.

6. **Citizen appearances other than agenda items listed.** None

7. **New Business**

**A. Public Hearing and Review of SP-2020-04 to construct a dog park at 535 S Madison on Parcel 6-27-982.1**

- i. **Staff and Applicant Comments.** Sergeant summarized the staff report.
- ii. **Public Hearing.** Sergeant shared a neighboring property owner asked about lighting and would like to see a condition added to the approval
- iii. **Plan Commissioner Questions and Comments.** Discussion about Dog Park Rules, landscaping and fencing. Gishnock would like to see additional landscape screening to the east.
- iv. **Motion. The Plan Commission approves the site plan that includes improvements as presented for a dog park at 535 S Madison Street on parcel 6-27-987, finding that the benefits of the use outweigh any potential adverse impacts, and that the proposed use is consistent with the required standards and criteria for issuance as set forth in Section 130-104(3)(a) through (e) of the Zoning Ordinance, subject to the following conditions:**

*These minutes are not official until approved by the City of Evansville Plan Commission.*

1. **Revised landscaping plan submitted with increased screening outside the east and south fence lines**
2. **Sidewalk added connecting north edge of parking lot to parcel 6-27-993**
3. **Any variation from presented plans are approved by Plan Commission**
4. **Any exterior lighting should be dark sky friendly and not cause glare or light-wash on neighboring parcels.**

*Motion by Cole, seconded Stuart. Approved unanimously.*

**B. Public Hearing and Review of SP-2020-03 preliminary plans to construct a new commercial retail building of approx. 9,200 SF on Parcel 6-27-870 at 255 N Union**

- i. **Staff Comments.** Sergeant shared his staff report, including discussion of exterior design changes
- ii. **Public Hearing.** Sergeant shared comments received by email in support of a walkable grocery store on the west side.
- iii. **Plan Commissioner Questions and Comments.** Commission discussed progress on design and likes the direction.

**C. Discussion of Settler's Grove Subdivision Agreement and Preliminary Plat.** Sergeant reviewed updates to preliminary and final plat. City Engineer is meeting with staff this week to discuss any necessary changes. Cole noted a few grammatical changes needed in the agreement. Renly clarified easements might be needed across the outlots if they aren't owned by the City.

**8. Monthly Reports**

**C. Community Development Report.** Sergeant shared his report.

**9. Next Virtual Meeting Dates: Tuesday, June 1, 2021 at 6:00pm**

**10. Motion to Adjourn by Cole, seconded by Gishnock. Approved Unanimously.**



**APPLICATION FOR PRELIMINARY and FINAL LAND DIVISION – STAFF REPORT**

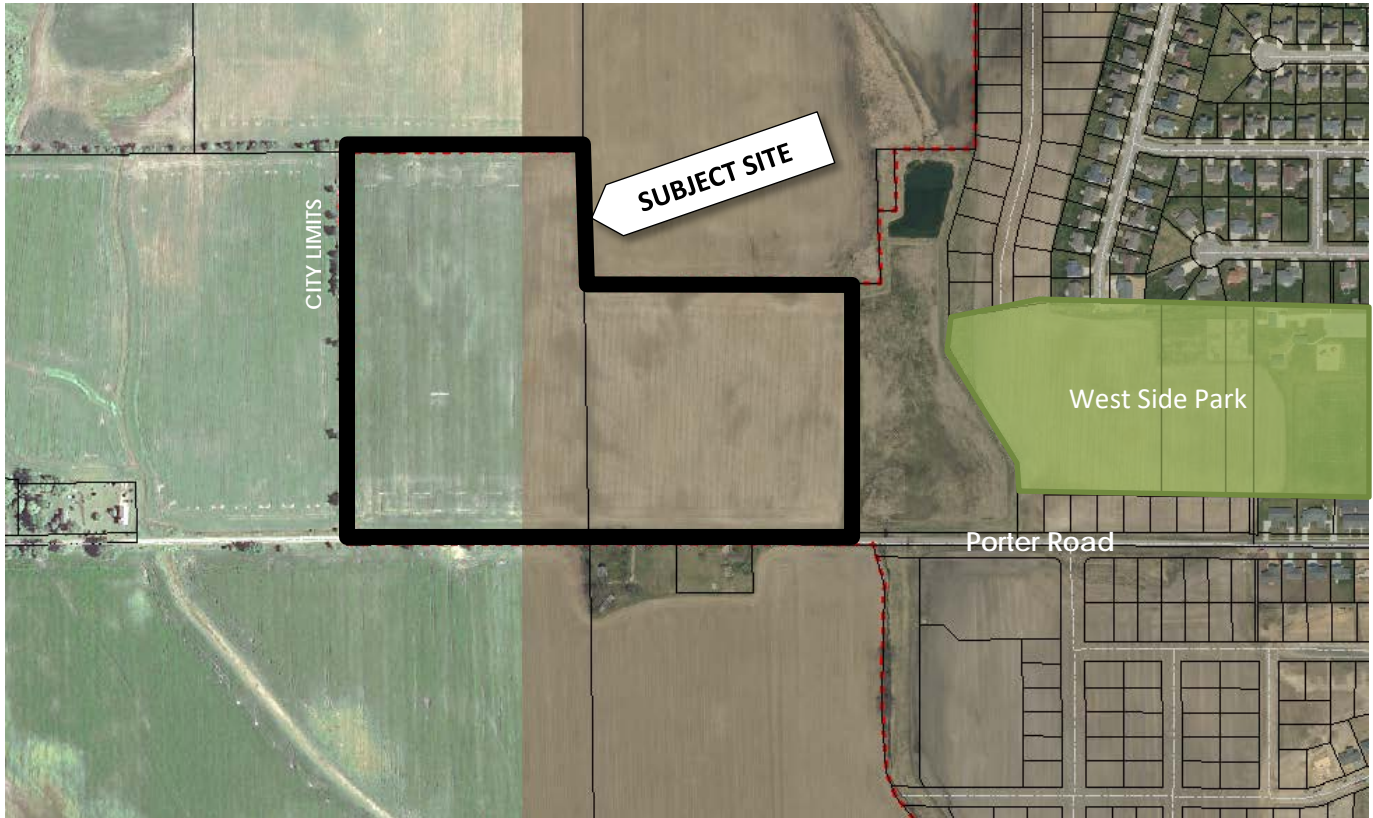
**Application No.:** LD-2020-02 **Applicant:** Grove Development LLC

**Parcel** 6-27-970C.2 & 6-27-970G (located west of West Side Park along north side of Porter Rd)

**May 12, 2021**

Prepared by: Jason Sergeant, Community Development Director

Direct questions and comments to: [Jason.sergeant@ci.evansville.wi.gov](mailto:Jason.sergeant@ci.evansville.wi.gov) or 608-882-2285



*Figure 1 Location Map*

**Description of request:** The applicant has submitted an application for a preliminary and final land division application to create a subdivision on parcels 6-27-970C.2 and 6-27-970G. The request is to create a subdivision north of Porter Road and west of West Side Park to accommodate more than 115 dwelling units. A public hearing was held in August of 2020, and the application has been preliminarily approved. A copy of the Preliminary and Final Plat is attached to this staff report.

**Existing and Proposed Uses:** The existing parcel is undeveloped and used for Agricultural.

**Staff Analysis of the Request:** The proposed land division is consistent with the Municipal Code subject to conditions. The plat is substantially in compliance with Chapter 110 of the Municipal Code. The City Engineer noted one area of variation:

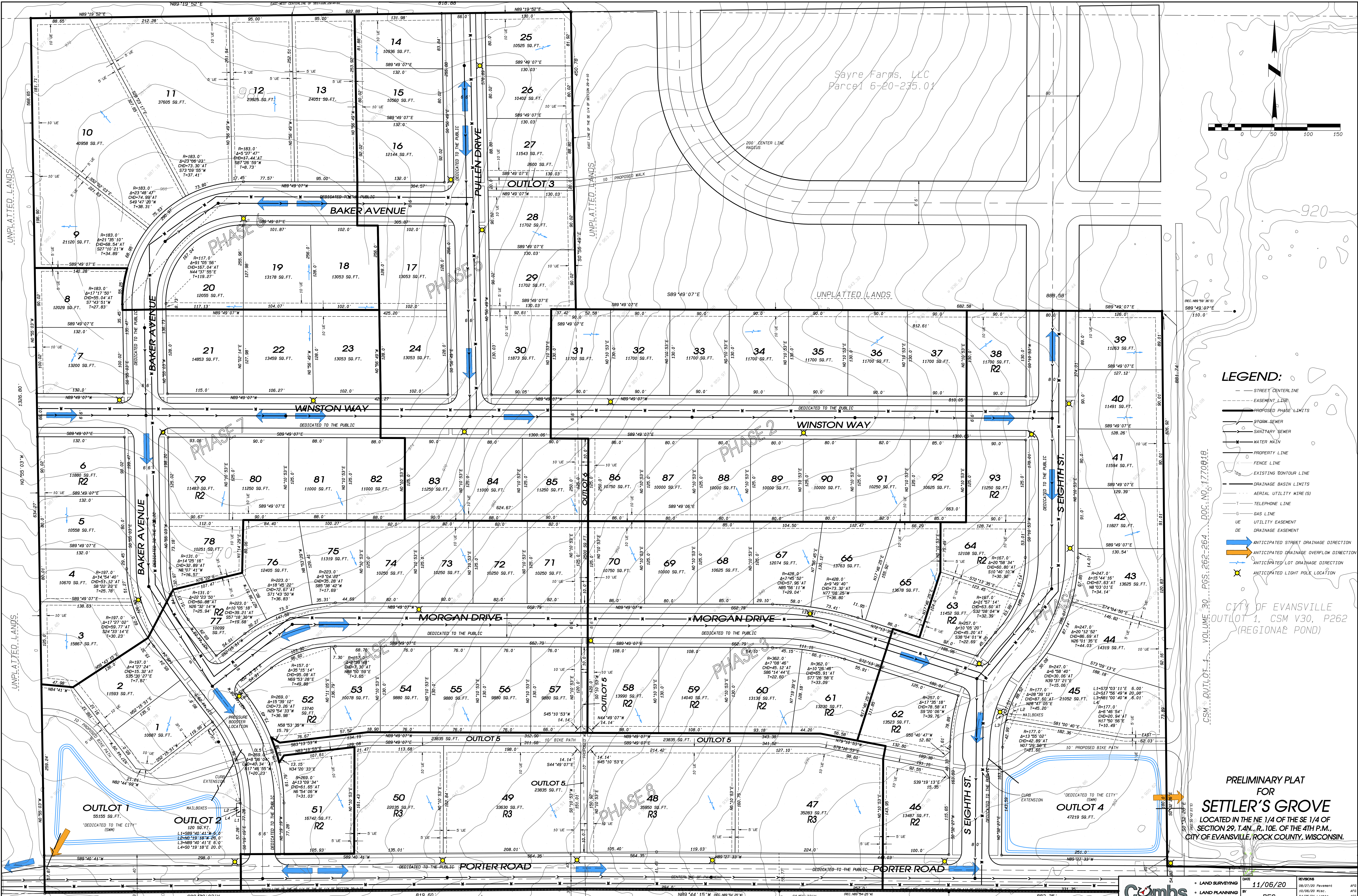
*"Section 110-153 of the City's ordinances requires that the minimum curve radius for local streets be 200 feet (we assume at the street centerline). On proposed Baker Avenue a curve exists with a lesser radius. This section also requires that on local streets there be a 100-foot tangent between reverse curves. On the proposed S. Eighth Street there is a reverse curve with no tangent. However, these street configurations were also shown on the Preliminary Plat, and we recommend these variances from the City's subdivision requirements be approved given the topography of the site."*

**Consistency with the City of Evansville Comprehensive Plan and Municipal Code:** The proposed land division is consistent with the Future Land Use Map of the Comprehensive Plan with the exception of future through streets. The Future Transportation Map should be updated to reflect the final format of this subdivision. The proposal also complies substantially with the design standards and environmental considerations as set forth in the Land Division Ordinance.

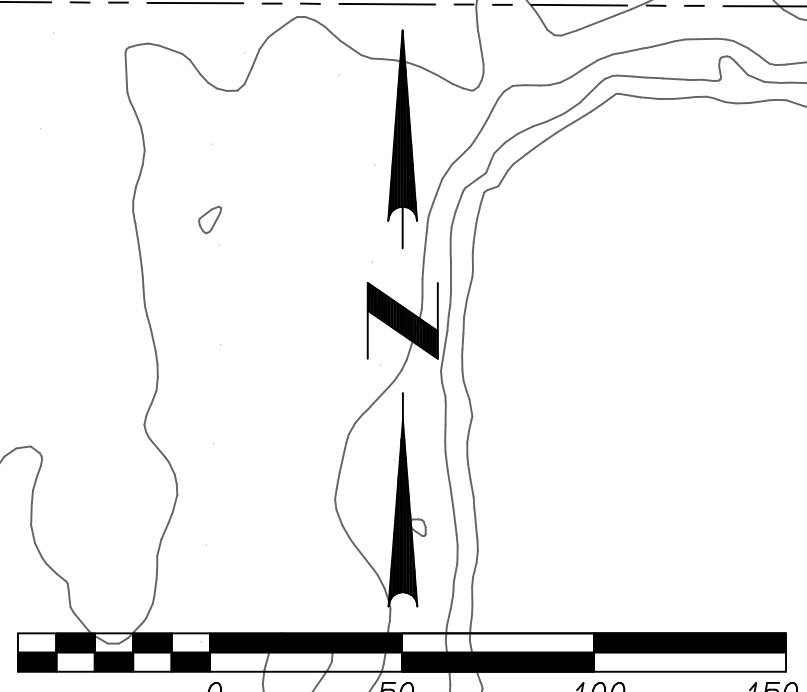
**Staff Recommended Motion:** *Motion to confirm that the Subdivision Plat for Settlers Grove Subdivision is in the public interests and substantially complies with Section 110 of the Municipal Code, and to approve the Plat after the following conditions are met:*

1. *Final Plat revised to add labels to each Outlot 1 and Outlot 4 that add "for pedestrian/bike trail" designation to the current designations of "Dedicated to Public" and "for stormwater and water utility purposes."*
2. *Final Plat revised to add a note at the north end of Pullen indicating "temporary tee-turnaround to be constructed within right-of-way" or something similar*
3. *Applicant verify lots 3 and 9 meet the requirement for 70 feet of width at the building setback line.*
4. *Applicant submits covenants and deed restrictions and the lot grading & drainage plan referenced on Sheet 1 of the proposed Final Plat for city approval prior to Final Plat approval.*
5. *Applicant computes, submits and completes blanks shown for minimum building opening elevations on Lots 1-3 and 39-44 on the Final Plat.*
6. *Applicant records a plat restriction, by adding suitable language to the face of the plat as approved by City Engineer, regarding prohibition of alterations of finished grades by more than six inches on utility easements and Stormwater drainage easements.*
7. *Applicant records, in consultation with City Engineer, a CSM or plat revision to adjust Porter Road right of way to align with south east edge of Outlot 4.*
8. *Final Developer's Agreement completed and executed by both City and Developer.*
9. *Applicant submits Irrevocable Letter of Credit for City Engineer approval.*





Sayre Farms, LLC  
Parcel 1 6-20-235.01



- LEGEND:**
- STREET CENTERLINE
  - - - EASEMENT LINE
  - PROPOSED PHASE LIMITS
  - STORM SEWER
  - SANITARY SEWER
  - WATER MAIN
  - PROPERTY LINE
  - FENCE LINE
  - - - EXISTING BOUNDARY LINE
  - - - DRAINAGE BASIN LIMITS
  - - - AERIAL UTILITY WIRE (S)
  - - - TELEPHONE LINE
  - - - GAS LINE
  - - - UTILITY EASEMENT
  - - - DRAINAGE EASEMENT
  - ANTICIPATED STREET DRAINAGE DIRECTION
  - ANTICIPATED DRAINAGE OVERTOP DIRECTION
  - ANTICIPATED LOT DRAINAGE DIRECTION
  - ⊙ ANTICIPATED LIGHT POLE LOCATION

CSM - OUTLOT 1 - VOLUME 30 - PGS. 262-264 - DOC. NO. 1770918

CITY OF EVANSVILLE  
OUTLOT 1, CSM V30, P262  
(REGIONAL POND)

PRELIMINARY PLAT  
FOR  
**SETTLER'S GROVE**  
LOCATED IN THE NE 1/4 OF THE SE 1/4 OF  
SECTION 29, T.4N., R.10E. OF THE 4TH P.M.,  
CITY OF EVANSVILLE, ROCK COUNTY, WISCONSIN.

<b>Combs &amp; Associates</b>	DATE	11/06/20	REVISIONS	
	BY	BFG	08/27/20 Pavement	AFG
	APPROVED	RJC	10/08/20 Misc.	AFG
			04/08/21 Lights	AFG

PROJECT NO. 120-080  
T: 608 752-0575  
F: 608 752-0234



# SETTLER'S GROVE SUBDIVISION

LOCATED IN THE NW 1/4 OF THE SW 1/4 OF SECTION 28 AND IN THE NE 1/4 OF THE SE 1/4 OF SECTION 29, ALL IN T.4N., R.10E. OF THE 4TH P.M., CITY OF EVANSVILLE, ROCK COUNTY, WISCONSIN.

NOTE: REFER TO "LOT GRADING & DRAINAGE PLAN" FOR PARTICULARS FOR LOT GRADING.

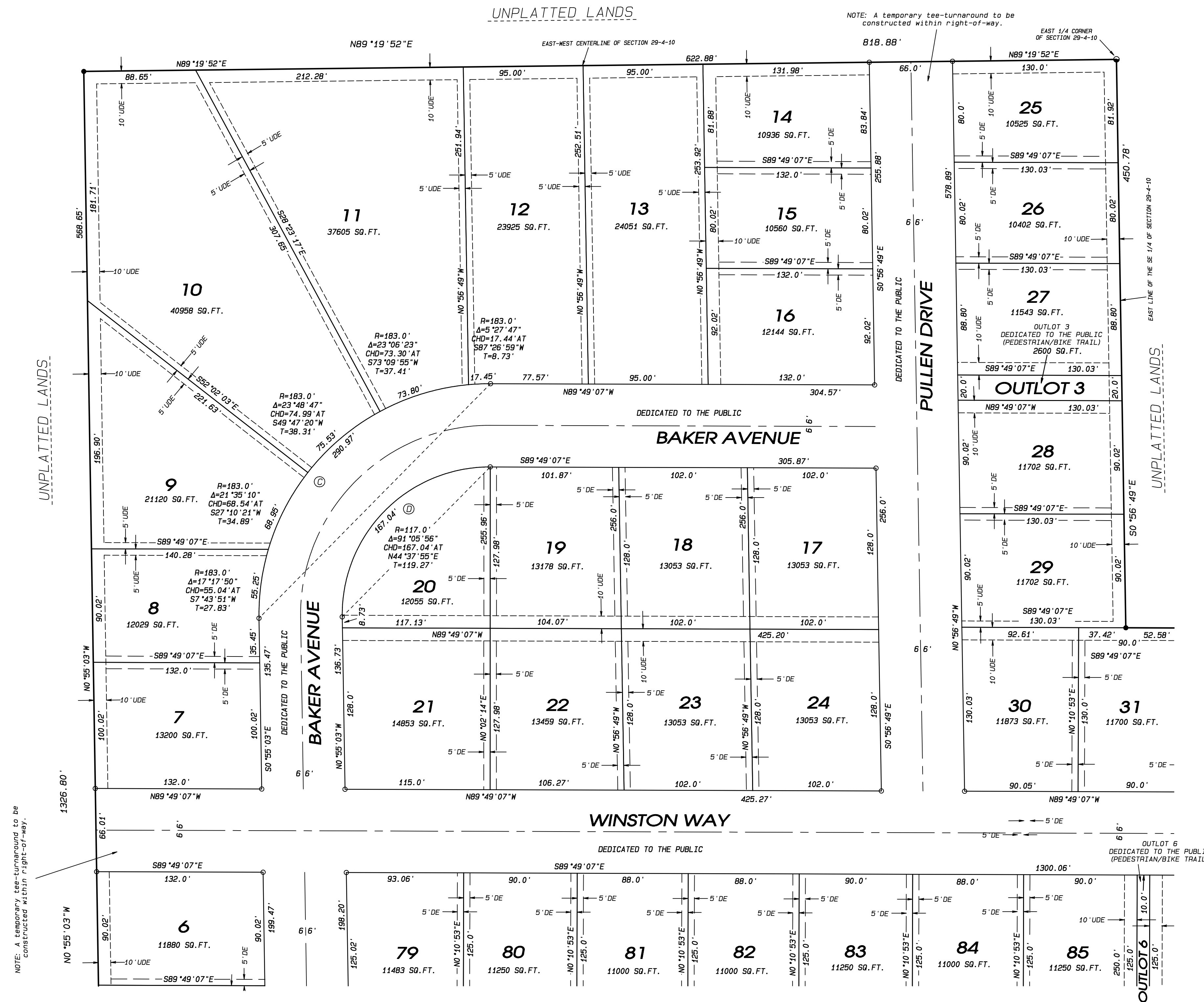
NOTE: ALL LINEAR MEASUREMENTS HAVE BEEN MADE TO THE NEAREST ONE-HUNDREDTH OF A FOOT. ALL ANGULAR MEASUREMENTS HAVE BEEN MADE TO THE NEAREST ONE SECOND.

NOTE: UTILITY EASEMENTS AS SET FORTH ARE FOR THE USE OF PUBLIC BODIES AND PRIVATE UTILITIES HAVING RIGHTS TO SERVE THE PLATTED AREA. THIS INCLUDES INSTALLATION OF WATER MAINS, STORM SEWER AND SANITARY SEWER IN THE EASEMENT AREAS.

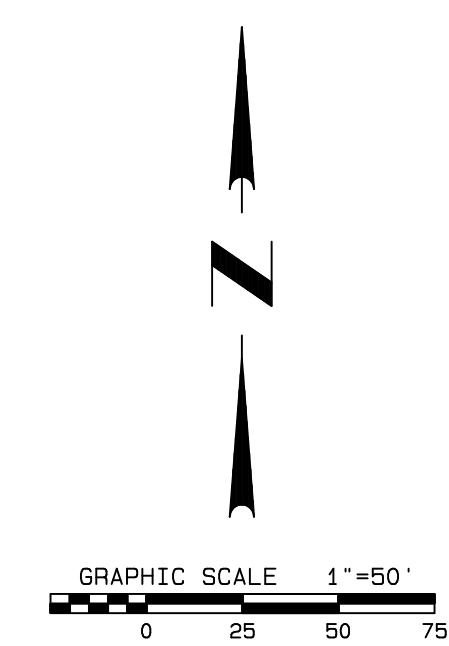
NOTE: SETTLER'S GROVE SUBDIVISION CREATES 92 LOTS AND 5 OUTLOTS FROM 42.90 ACRES.

NOTE: THE LOWEST FOUNDATION OPENING ELEVATIONS SHALL BE AS FOLLOWS:

LOT	MINIMUM ELEVATION
1	_____
2	_____
3	_____
39	_____
40	_____
41	_____
42	_____
43	_____
44	_____
45	_____



NOTE: BEARINGS ARE REFERENCED TO THE EAST LINE OF THE SE 1/4 OF SECTION 29-4-10, HAVING AN ASSUMED BEARING OF S0°56'49"E.



- LEGEND:**
- SET 1-1/4"x18", ROUND IRON ROD, WEIGHING 4.17 LBS./LIN.FT.
  - FOUND 3/4" IRON REBAR
  - ⊙ FOUND 4" CAST IRON MONUMENT
  - FOUND 6"x6" SQUARE STONE MONUMENT
- ALL OTHER LOT AND OUTLOT CORNERS ARE STAKED WITH 3/4" x 24" ROUND IRON REBAR, WEIGHING 1.5 LBS./LIN.FT.
- UDE UTILITY EASEMENT & DRAINAGE EASEMENT  
DE DRAINAGE EASEMENT

SHEET ONE OF FOUR SHEETS

109 W. Milwaukee St. Janesville, WI 53549 www.combsurvey.com	• LAND SURVEYING	DATE	05/11/21	REVISIONS
	• LAND PLANNING	BY	sll	
	• CIVIL ENGINEERING	PROJECT NO.	120-080	
		CLIENT	OLSEN	

- SEE SHEET 2 -



# SETTLER'S GROVE SUBDIVISION

LOCATED IN THE NW 1/4 OF THE SW 1/4 OF SECTION 29 AND IN THE NE 1/4 OF THE SE 1/4 OF SECTION 29, ALL IN T.4N., R.10E. OF THE 4TH P.M., CITY OF EVANSVILLE, ROCK COUNTY, WISCONSIN.

- SEE SHEET 1 -



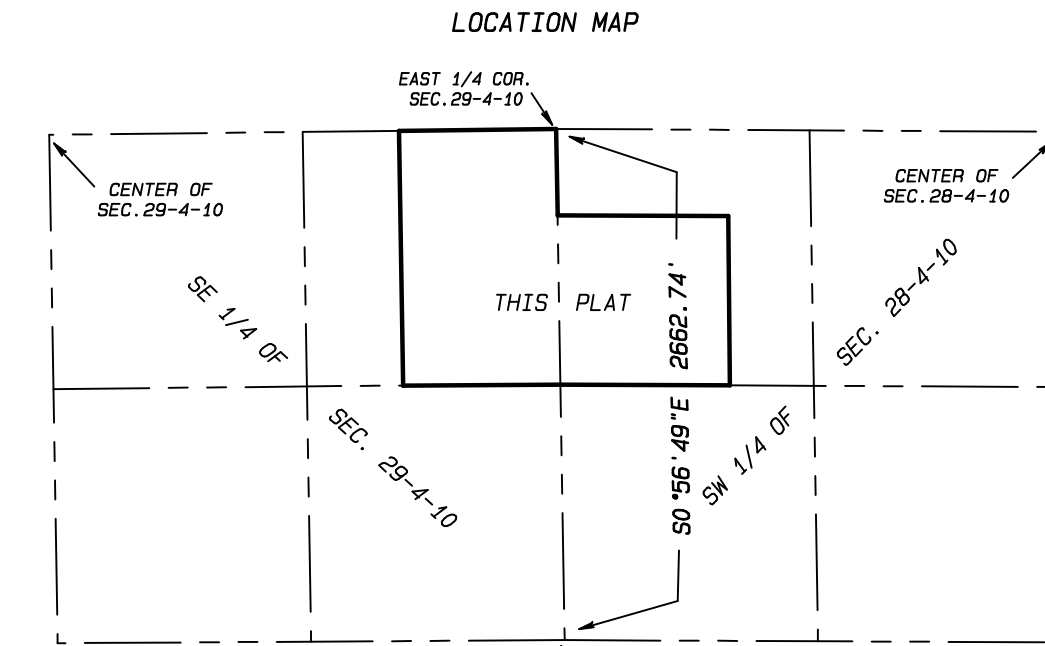
NOTE: A temporary tee-turnaround to be constructed within right-of-way.

UNPLATTED LANDS

UNPLATTED LANDS

PORTER ROAD

- SEE SHEET 3 -



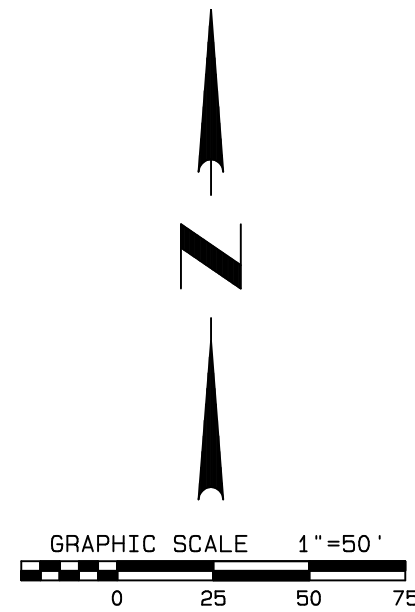
SCALE: 1" = 1000'

### CURVE DATA CHART

CURVE A	R=203.0'	Δ=37°25'50"	CHD=130.22' AT S19°01'44"E	T=68.74'
CURVE B	R=197.0'	Δ=36°49'06"	CHD=124.43' AT S19°19'36"E	T=65.57'
CURVE C	R=183.0'	Δ=91°05'56"	CHD=261.22' AT S44°37'55"W	T=186.54'
CURVE D	R=269.0'	Δ=37°24'50"	CHD=172.55' AT N19°01'44"W	T=91.09'
CURVE E	R=157.0'	Δ=37°55'02"	CHD=102.01' AT N71°13'22"E	T=53.93'
CURVE F	R=223.0'	Δ=37°55'02"	CHD=144.90' AT S71°13'22"E	T=76.60'
CURVE G	R=131.0'	Δ=36°49'06"	CHD=82.74' AT N19°19'36"W	T=43.60'

NOTE: THE LOWEST FOUNDATION OPENING ELEVATIONS SHALL BE AS FOLLOWS:

LOT	MINIMUM ELEVATION
1	14.14'
2	14.14'
3	14.14'
4	14.14'
5	14.14'
6	14.14'
7	14.14'
8	14.14'
9	14.14'
10	14.14'
11	14.14'
12	14.14'
13	14.14'
14	14.14'
15	14.14'
16	14.14'
17	14.14'
18	14.14'
19	14.14'
20	14.14'
21	14.14'
22	14.14'
23	14.14'
24	14.14'
25	14.14'
26	14.14'
27	14.14'
28	14.14'
29	14.14'
30	14.14'
31	14.14'
32	14.14'
33	14.14'
34	14.14'
35	14.14'
36	14.14'
37	14.14'
38	14.14'
39	14.14'
40	14.14'
41	14.14'
42	14.14'
43	14.14'
44	14.14'



### LEGEND:

- SET 1-1/4"x18" ROUND IRON ROD, WEIGHING 4.17 LBS./LIN.FT.
  - FOUND 3/4" IRON REBAR
  - FOUND 4" ROUND CAST IRON MONUMENT
  - FOUND 6"x6" SQUARE STONE MONUMENT
- ALL OTHER LOT AND OUTLOT CORNERS ARE STAKED WITH 3/4" x 24" ROUND IRON REBAR, WEIGHING 1.5 LBS./LIN.FT.
- UDE UTILITY EASEMENT & DRAINAGE EASEMENT  
DE DRAINAGE EASEMENT

SHEET TWO OF FOUR SHEETS

DATE	REVISIONS
05/11/21	
BY s11	
PROJECT NO. 120-080	
CLIENT OLSEN	

109 W. Milwaukee St.  
Janesville, WI 53548  
www.combsurvey.com

tel: 608 752-0575  
fax: 608 752-0534

# SETTLER'S GROVE SUBDIVISION

LOCATED IN THE NW 1/4 OF THE SW 1/4 OF SECTION 28 AND IN THE NE 1/4 OF THE SE 1/4 OF SECTION 29, ALL IN T.4N., R.10E. OF THE 4TH P.M., CITY OF EVANSVILLE, ROCK COUNTY, WISCONSIN.

CURVE DATA CHART

CURVE E	R=247.0'	Δ=42°55'48"	CHD=180.78'	AT N21°38'47"E	T=97.12'
CURVE F	R=177.0'	Δ=42°34'14"	CHD=128.51'	AT N21°49'34"E	T=68.96'
CURVE I	R=362.0'	Δ=17°35'32"	CHD=110.71'	AT S81°01'21"E	T=56.02'
CURVE L	R=167.0'	Δ=42°55'48"	CHD=122.22'	AT S21°38'47"W	T=65.67'
CURVE M	R=428.0'	Δ=17°35'32"	CHD=130.90'	AT N81°01'21"W	T=66.23'
CURVE E TANGENT BEARING	= N43°06'41"E				
CURVE F TANGENT BEARING	= N43°06'41"E				
CURVE J TANGENT BEARING	= S18°07'45"W				
CURVE K TANGENT BEARINGS	= S43°06'41"W & S33°01'21"W				
CURVE L TANGENT BEARING	= S43°06'41"W				

NOTE: THE LOWEST FOUNDATION OPENING ELEVATIONS SHALL BE AS FOLLOWS:

LOT	MINIMUM ELEVATION
1	_____
2	_____
3	_____
39	_____
40	_____
41	_____
42	_____
43	_____
44	_____

**LEGEND:**

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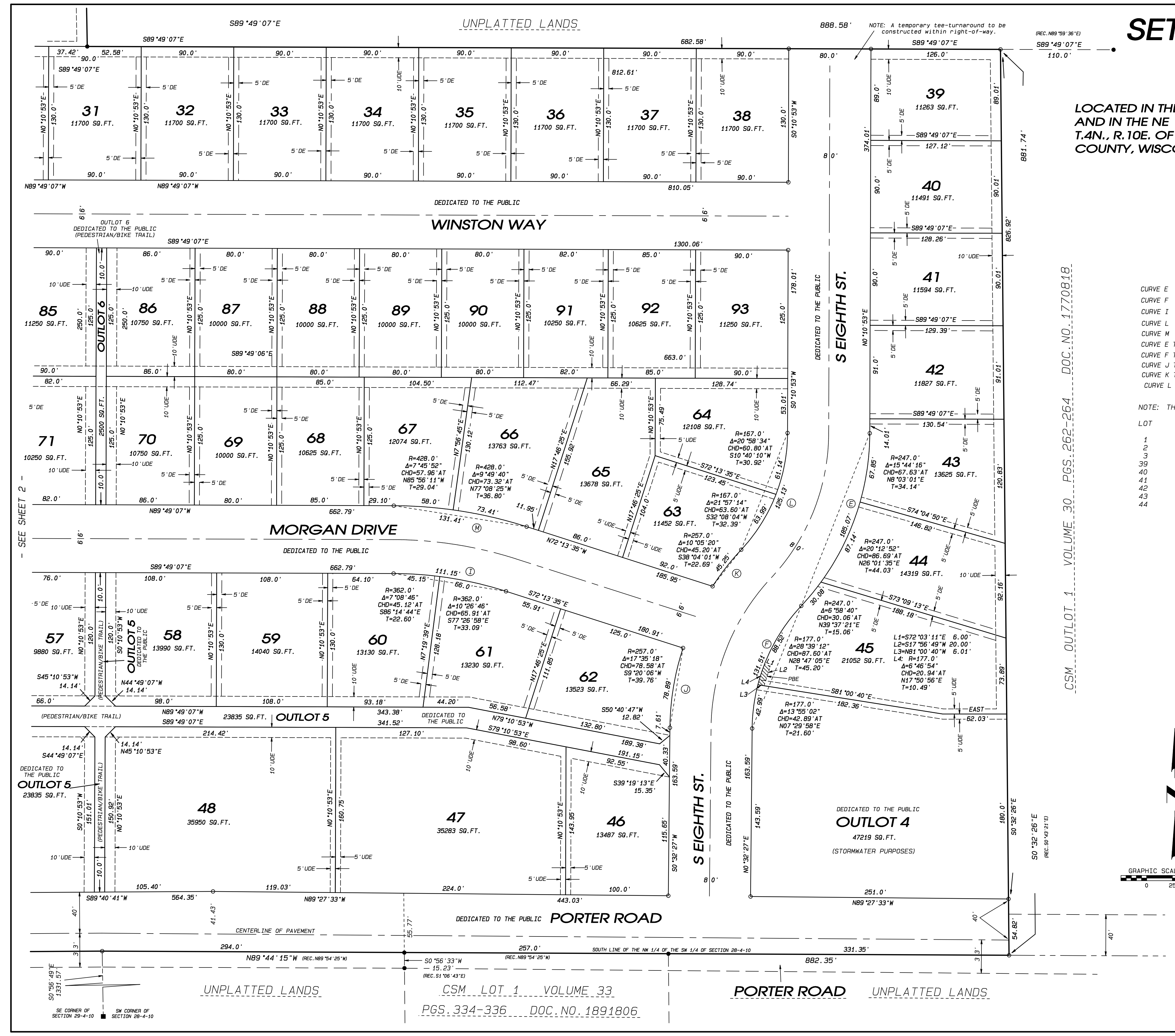
ALL OTHER LOT AND OUTLOT CORNERS ARE STAKED WITH 3/4" x 24" ROUND IRON REBAR, WEIGHING 1.5 LBS./LIN.FT.

UDE UTILITY EASEMENT & DRAINAGE EASEMENT  
 DE DRAINAGE EASEMENT  
 PBE POSTAL BOX EASEMENT FOR CLUSTER MAIL SERVICE

GRAPHIC SCALE 1"=50'  
 0 25 50 75

SHEET THREE OF FOUR SHEETS

DATE	05/11/21	REVISIONS
BY	s11	
PROJECT NO.	120-080	
CLIENT	OLSEN	



CSM OUTLOT 1 VOLUME 30 PGS. 262-264 DOC. NO. 1770818

SEE SHEET 2

UNPLATTED LANDS  
 CSM LOT 1 VOLUME 33  
 PGS. 334-336 DOC. NO. 1891806

PORTER ROAD UNPLATTED LANDS



**FINAL LAND DIVIDER'S AGREEMENT – Settler's Grove**

This Agreement made this [REDACTED] day of \_\_\_\_\_, 2020, between \_\_\_\_\_, 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 42.99 acres of land in the City of Evansville that is legally described in Appendix A;

WHEREAS, the above-described land is presently zoned A Agricultural District;

WHEREAS, Developer desires to subdivide and develop the above-described land for residential purposes to be known as Settler's Grove Subdivision, hereinafter called the "Subdivision", which will be zoned R-1, R-2, and R-3;

WHEREAS, on \_\_\_\_\_, 2020, the City's Plan Commission recommended to the City's Common Council approval of a preliminary plat for the Subdivision subject to certain conditions, and on \_\_\_\_\_, 2020, the Common Council approved a preliminary 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.

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 dedication of Outlot [REDACTED], construction of Recreational trail on Outlot [REDACTED] (as described in \_\_\_\_\_), construction of recreational trail on city owned stormwater and park parcels (as described in [REDACTED]), **(WILL NOT EXCEED \$122,000)**
- 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 and this agreement 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 unless in accordance with municipal and zoning ordinances, within the Subdivision; that there shall be no residential development on outlots without the consent of the City 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.
- E. 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.
- F. 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.
- G. 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 Administrative Code, Commerce, Section 21.125, 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.

H. 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.

I. Development Type and Density. Developer intends to construct or cause the construction of multi-family housing on lots 47, 78, 49, and 50 with 6-8 units on each lot. All other lots will be single-family homes.

## ARTICLE II. Phases and Development.

A. Construction of Public Improvements. Developer shall complete installation of the Public Improvements described in Article III in \_\_\_ phases of not less than six lots, 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 \_\_\_ through \_\_\_.
2. Phase II shall be comprised of Lots \_\_\_ through \_\_\_.
3. Phase III shall be comprised of Lots \_\_\_ through \_\_\_.
4. Phase...
5. Phase...
6. Phase...

C. Timing of Phases. Developer may begin the installation of the Public Improvements described in Article III for each phase of the Subdivision as follows:

1. For Phase I, as soon as 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 and construction drawings have been submitted and approved.

2. For Phase II, after the latter of completion of either Phase I, or completion of the first lift of asphalt referenced in Article III, Section G, for all public streets within Phase I of the Subdivision, and as-built drawings have been submitted as referenced in Article V, Section A and B.
3. For Phase III, after the latter of completion of either Phase I or II, or completion of the first lift of asphalt referenced in Article III, Section G, for all public streets within Phase II of the Subdivision and as-built drawings have been submitted as referenced in Article V, Section A and B..

DRAFT



**ARTICLE III. Public Improvements.**

- A. Public Improvements. As used in this Agreement, the term “Public Improvements” shall mean the water distribution system, sanitary sewer system, public street; sidewalks, trails, 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, and water pressure boosting system with standby generator (as needed) 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.
  4. Developer shall construct a water boosting station (including standby generator) designed to the standards and requirements of the City to service lots above elevation 960. An extended warranty of \_\_\_\_ years shall be furnished to the City upon acceptant of the station or \$ \_\_\_\_\_ escrowed for anticipated \_\_\_\_ years of maintenance.

E. Sanitary Sewer System.

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.

1. 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.
2. 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.
3. 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, on-site ponds, off-site ponds 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 modify the off-site storm water pond if necessary to satisfy current State and City storm water requirements as part of the first sub-phase of the Subdivision.
3. Developer shall maintain roads free from mud and dirt from construction of the Subdivision. Any mud or dirt remaining after 48 hours of initial deposit, shall be cleaned and removed by the City, with all costs and penalties billed to developer.
4. 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
5. City shall issue no occupancy permits for any lots in a phase until the storm water management features for that particular phase have been accepted by the City.



6. 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.
7. 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.
8. 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.
9. Developer shall guarantee the healthy 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.
10. 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 approved construction plans. After approval by City, the developer shall record those elevation numbers with each lot. Proof of such recording shall be provided to the City from the Rock County Register of Deeds. After building permits are issued and at foundation and footing inspections, the Building Inspector shall be provided verification of the top of foundation and the elevation of 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. All streets shall be constructed to the furthest extents of the subdivision and shall be presented them for preliminary acceptance by the City.
4. 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.

5. 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.
6. Developer shall dip the curb as indicated on construction plans at the entrance to each driveway
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.
9. Developer shall fully improve Porter Road for the extent of the subdivision and eastward to \_\_\_\_\_. Evansville Development Group is expected to improve porter road to City standards from city outlots to Westfield Meadows.

#### H. Sidewalks/Pathways.

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.at the same time as curb and gutter.

1. 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.
2. Developer shall construct a 10' wide paved asphalt recreation trail in Outlot \_\_\_\_\_, connecting to West Side Park, connecting to Westfield Meadows, and adjacent to the subdivision allowing for a connection to the north and the other paths and mid-block sidewalks by the earlier of: A.) no later than when 50% of lots are completed in the subdivisions or B.) No later than December 31, 2025 or C.) Completion of Phases \_\_\_\_\_.

#### I. Electrical System.

1. Developer shall request an estimate for the cost of installing the electrical system from the Water and Light Superintendent a phase or sub-phase at least 45 days in advance of expected installation date.
2. Developer shall pay, in advance, to 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.

3. In the event the utility's actual cost to install the electrical system is less than the estimate, the utility shall refund the difference to Developer.
4. 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.
5. 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, 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 a tree on each lot and the greater of A) at least two street trees, or B) one street tree per dwelling unit 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 identified on construction drawings and approved by the Municipal Services Director to assure that the plantings will not impact underground utilities.

K. Street Signs.

1. 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, within thirty (30) days of billing.

L. Traffic Control Signs.

1. City shall provide and apply pavement striping at each crosswalk within the Subdivision and at intersections and approaches outside but near 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 pavement striping, within thirty (30) days of billing.



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, within thirty (30) days of billing.
- 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 date the letter of credit referenced in Article IV, Section C, 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.
1. 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 two (2) years 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.
  2. Developer shall identify the design of, location on outlots or easements, and perpetual maintenance plans for USPS approved cluster mailbox facilities. No building permits shall be issued until USPS approval of mail delivery for the subdivision is submitted to the City. Costs to install and maintain mail delivery services to the subdivision are the responsibility of the Developer, and will not be the responsibility of the City.
  3. Developer shall agree to develop all lots in the subdivision with dwelling units or residential structures that contain the following on the front facade: A) front porches and B) garages no more than 50% of the front facade width.

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, on-site monitor, 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, as 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 two (2) years from the date on which the irrevocable letter of credit is issued.
  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. Statement of Costs. Developer shall furnish, within 60 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.
- C. 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.
- D. 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.
- E. Acceptance of Work.
  1. The Municipality shall provide a Resident Inspector, at the developer's sole expense, to inspect the underground Improvements required by this



Agreement as they are constructed and upon completion for compliance with local and state codes. The City may, at its discretion, allow the Developer to provide a Resident Inspector that will perform the same function. The Resident Inspector shall certify to the Municipal Engineer that all underground improvements have been properly installed. The Municipal Engineer shall inspect the above ground Improvements, and if acceptable to the Municipal Engineer, the Municipal Engineer shall certify such underground and above ground Improvements as being in compliance with the standards and specifications of the Municipality. Such inspection and certification, if appropriate, will occur as soon as possible upon written notice by the Developer to the Municipal Engineer that Developer desires to have the Municipality inspect an Improvement.

2. After the Developer has installed all required Improvements, the Developer shall notify the Municipal Engineer in writing that the work is complete and ready for final inspection. The Municipal Engineer shall inspect the Improvements and forward a letter to the Developer indicating his approval or disapproval. When the Improvements have been approved by the Municipal Engineer, the Municipal Administrator/Clerk (“Administrator”) shall prepare a final billing for any engineering, inspection, administrative, and legal fees remaining due and shall submit it to the Developer for payment. In addition, the Developer and all general contractors and subcontractors shall file lien waivers or affidavits in a form acceptable to the Municipality and approved by the Municipal Attorney, evidencing that there are no claims, actions or demands for damages, arising out of or in any way related to the project and that no moneys are owed to any surveyor, mechanic, subcontractor, materialmen or laborer. When the remaining engineering, inspection and legal fees have been paid and when the necessary lien waiver affidavits have been filed, and Municipality has been provided with proof that the covenants and restrictions for the plat have been recorded a Resolution accepting the Improvements constructed pursuant to this Development Agreement will be prepared and presented to the Village Board for final approval. Upon approval of the Resolution, the Improvements will be accepted by the Municipality.
3. The sanitary sewer, water mains, and any respective service lateral shall not be accepted for a permitted phase until as built plans and a complete breakdown of all construction, engineering and administrative costs incurred by the Developer is submitted to the City. Further, the water system installation shall not be accepted until bacteriologically safe samples are obtained by a certified agency. The Developer shall be responsible for flushing the mains, obtaining the samples and have all tests completed as may be required for the Municipality’s acceptance.

4. Developer agrees to provide for maintenance and repair of all Improvements until such Improvements are formally accepted by the Municipality by Resolution of the Village Board.
  5. The Municipality will provide timely notice to the Developer whenever inspection discloses that an improvement does not conform to the standards and specifications shown on the Plans and Specifications or is otherwise defective. The Developer shall have 20 days from the issuance of such notice to correct the defect. The Municipality shall not declare a default under this Agreement during the 20 day correction period on account of any such defect unless it is clear the Developer does not intend to correct the defect or unless the Municipality determines that immediate action is required in order to remedy a situation which poses an imminent health or safety threat.
  6. Prior to final acceptance, the Developer shall provide Municipality with as-built plans. As-built plans shall be provided in both an electronic format and in hard copy. As-built plans in electronic format and readable by AutoCAD must be provided showing all horizontal and vertical locations of public sanitary, water, and storm water utilities i.e. manholes, hydrants, water main bends and tee's, valves, sanitary and water lateral curb boxes, inlets, endwalls, etc. All vertical information shall be on NAVD88 datum. The profile drawings must also show the diameter, length and slope of all pipes. In addition, Developer shall provide Municipality as-built-plans showing the finished surface elevations at all lot corners demonstrating positive drainage between lot corners, and also showing the finished surface elevation of all stormwater management ponds, swales and infiltration areas for the Phase in question. The horizontal location of all water and sewer services shall be located as follows:
    - a. Sewer laterals shall be located by the distance to the sewer 'wye' from the downstream manhole.
    - b. The ends of stubbed sewer laterals for future connection shall be located and the elevations determined and shown.
    - c. Water laterals shall be located by the distance from the nearest hydrant or valve on the main (whichever is closest) to the corporation stop.
    - d. The distance to the curb stop from the main shall also be provided.
- B. Any bends in the water main shall be indicated by the length from the nearest main-line valve. For mapping purposes, a single electronic point file of the

- entire development describing the as-built surface features of the new sanitary sewer, water system and storm sewer system, i.e. manholes, hydrants, water main bends, lateral curb boxes, valves, inlets, endwalls, etc., on the Dane County Coordinate system must be provided. This point file must include; northing, easting, elevation (NAVD88), and a point description. The Municipal Engineer can obtain the electronic file for the surface features, at the Developer's cost, when requested by either the Municipality or the Developer, provided that the Developer locates these features in the field. The Municipal Engineer will update all applicable Municipal maps and computer water and stormwater models. The cost of updating of Municipal maps and computer water and stormwater models to incorporate this development shall be borne by the Developer.
- C. All sanitary sewer mains shall be televised in accordance with the Municipality's standard specifications. A colored digital recording of the televising as well as a written report of the location of laterals and lengths of pipe shall be provided to the Municipality before final acceptance of the sewer.

ARTICLE VI. Issuance of Building Permits/Occupancy Permits.

- D. 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.
- E. No building permits shall be issued until the developer has completed the installation of survey monuments.
- F. No building permits shall be issued by the City for any lot on a street until the road base, sidewalk, curb and gutter have been completed and preliminarily accepted by the City.
- G. 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.
- H. No building permit shall be issued by the City for any lot in a phase or sub-phase until all rough site grading for the phase or sub-phase has been completed to within 6" of final grade and accepted by the City.
- I. 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.
- J. No occupancy permit shall be issued by the City for any lot until the final grade is complete and stormwater management practices serving such lot have been completed and accepted by the City.



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- K. No occupancy permit shall be issued by the City for any lot until required street trees and sidewalks are installed or costs of such installations have been escrowed with the City.
- L. 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 terms 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.

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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 and 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 Development LLC  
 Attn: Dave Olsen 5 Maple  
 Street  
 Evansville, WI 53536

To City:  
 Evansville Community Development Director  
 31 S. Madison St.

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PO 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 Development LLC**

By: \_\_\_\_\_  
\_\_\_\_\_  
(print name and title)

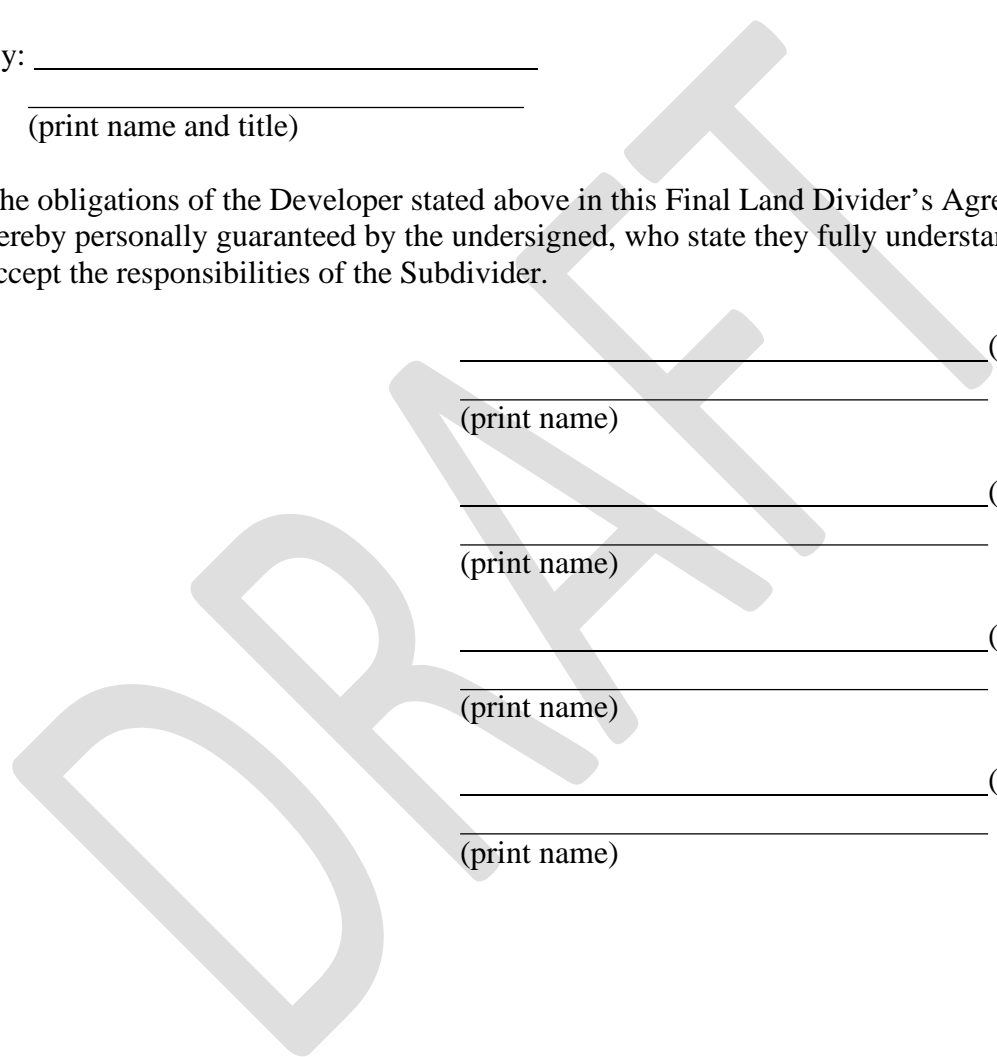
The obligations of the Developer stated above in this Final Land Divider’s Agreement are hereby personally guaranteed by the undersigned, who state they fully understand and accept the responsibilities of the Subdivider.

\_\_\_\_\_  
\_\_\_\_\_  
(print name) (SEAL)

\_\_\_\_\_  
\_\_\_\_\_  
(print name) (SEAL)

\_\_\_\_\_  
\_\_\_\_\_  
(print name) (SEAL)

\_\_\_\_\_  
\_\_\_\_\_  
(print name) (SEAL)





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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date stated.

CITY OF EVANSVILLE:

\_\_\_\_\_  
William Hurtley, Mayor

Date: \_\_\_\_\_

\_\_\_\_\_  
Darnisha Haley, City Clerk

Date: \_\_\_\_\_

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**APPENDIX A**

**Property Descriptions**

, 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 Settler’s 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, specifications, and Municipal Codes 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 injury 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

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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: \_\_\_\_\_

\_\_\_\_\_  
(print name and title)

By: \_\_\_\_\_

\_\_\_\_\_, Secretary  
(print name)

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**APPENDIX C**

The undersigned purchaser of Lot(s) \_\_\_\_\_ in the Settler's Grove 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 Development 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 sidewalk, 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 previous phase or sub-phase has been completed and accepted by the City.
- E. No building 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.
- H. No building a building permit shall be issued if building design does not conform to a 55 % maximum garage frontage of the total building facing the street on R-1 and R-2 zoned lots any single family dwelling; non-conforming construction may be required to be reconstructed into conformance or be subject to a maximum fine of \$25,000
- I. Builder is required to identify locations on the construction drawings and plant a minimum of two trees, of a variety, caliper size and location approved by the City Municipal Services Director; one per dwelling unit in the terrace of each lot and one in the yard; planting must be completed in the fall or spring immediately following construction completion of the house on each lot; upon builder's receipt of notice, failure to satisfy this requirement after will result in a minimum fine of \$50 per day until such plantings have been completed; fines and penalties may

**increase if delay extends beyond 30 days**

- J. Builder shall maintain roads free from mud and dirt during construction in the Subdivision; any mud or dirt remaining after 48 hours of deposit may be cleaned and removed by the city or the developer with all costs and penalties billed to the builder
- K. Builder will report the as-built top of foundation and minimum elevation in the lowest opening in the foundation to the city building inspector to ensure conformance with city code, development plans, and agreements
- L. Builder will inform the city building inspector 24 hours in advance of pouring concrete sidewalks allowing for an inspection of the location and elevations of the concrete forms
- M. Builder shall remove and lawfully dispose of all leftover construction materials, construction debris and rubbish from each lot and construction site; burying materials described in this paragraph anywhere within the Subdivision is strictly prohibited and the builder may be required to remedy such action or be subject to fines and/or penalties as deemed fair to cover city or developer costs to do so
- N. Builder will ensure their excavation contractor final grades their lot(s) in a manner such that it will not interfere with the flow of surface water as specified in the grading plan

The undersigned purchaser acknowledges the City requires the purchaser of each lot to plant at least one yard tree and two street tree in the terrace of a variety and caliper size approved by the City's Superintendent of Municipal Services in the fall or spring immediately following completion of the house. The location of said planting shall be approved by the Superintendent 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 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.

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Acknowledged by:

Date:

\_\_\_\_\_

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**EXHIBIT 1**

**Settler's Grove Subdivision**

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**EXHIBIT 2**

\_\_\_\_\_ **Land Dividers Agreement and Amendments**

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