

KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS

DOCUMENT #
5449969
10/24/2018 09:04 AM
Trans Fee:
Exempt #:
Rec. Fee: 30.00
Pages: 8

**DEED RESTRICTION
Lot 46**

THIS DEED RESTRICTION (the "Agreement") is made this 23 day of October, 2018, between Middleton Community Church (the "Church") and Chapel View Development Company Inc., a Wisconsin corporation (the "Property Owner," together with Church, the "Parties").

RECITALS:

WHEREAS, Property Owner acquired from the Church the property commonly known as Outlot 1 of Certified Survey Map No. 14935, as more particularly described on Exhibit A attached hereto (the "Parcel #1");

WHEREAS, Property Owner intends to acquire from a third party the property described on Exhibit B attached hereto (the "Parcel #2");

WHEREAS, the Church owns the property described on Exhibit C attached hereto ("Church Property");

WHEREAS, Property Owner intends to record a plat for a subdivision of Parcel #1 and Parcel #2 to be known as Chapel View, which will consist of approximately 46 lots (the "Plat");

WHEREAS, the Parties desire to place certain restrictions on that portion of Parcel #1 that will be known as Lot 46 of the Plat, as depicted on Exhibit D attached hereto (the "Property"); and

WHEREAS, upon the Property Owner's acquisition of Parcel #2, the Parties desire to place certain restrictions on that portion of Parcel #2 that will be known as part of Lot 46 of the Plat, as depicted on Exhibit D.

NOW, THEREFORE, the Parties agree as follows:

1. Recitals. The Recitals are incorporated into this Agreement.
2. Use Restrictions. The Property shall be restricted to the following uses: (i) intergenerational learning and care centers; and/or (ii) school/educational uses including, by way of example, but not limited to, day care, child care center, special care, nursery schools, pre-

Drafted by and Return Address

Attorney Robert C. Procter
Axley Brynson, LLP.
2 E. Mifflin Street
Madison, WI 53703

See Exhibit A

Parcel Identification Numbers:

2897593

school, public or private schools, including ordinary accessory buildings for such school/educational uses, provided that any such accessory building is in addition to another building whose principal use conforms to the restricted uses defined in this paragraph.

3. Materials/Design. Property Owner shall use materials and design in the construction of any improvements located on the Property that are complementary to or similar to the materials and design used in the single-family development known as the Plat of Chapel View located in the City of Madison, Wisconsin. The orientation on the site, scale, massing, materials and design of any building or parking lot on the Property shall minimize the visual impact of such building or parking lot as viewed from the West.

4. Review. The Church shall retain the right to review preliminary construction plans to ensure compliance with this Agreement, provided that the Property Owner retains sole discretion to construct any building on the Property in a manner consistent with this Agreement.

5. Right to Repurchase. In the event that Property Owner does not commence Development within two (2) years from the date of this Agreement ("Development Period"), the Church shall have the right to repurchase the Property. The Church may exercise its option to repurchase the Property by delivering written notice of such intent to the Property Owner within ninety (90) days after expiration of the Development Period. The repurchase price shall be determined by the average of two appraisals, with one appraisal from an appraiser selected by Property Owner and the other appraisal from an appraiser selected by the Church, with the Property being valued as of the date of the expiration of the of the Development Period. In the event Property Owner elects to proceed with the purchase after the repurchase price is determined, closing shall occur within sixty (60) days of the determination of the purchase price. The purchase price shall be payable in cash or other method acceptable to the Property Owner. Title to the Property shall be conveyed by the Property Owner to the Church by warranty deed, subject to matters shown on title to which Church does not object. Property Owner shall pay for the cost of the Church's title insurance policy and any transfer taxes.

In the event of repurchase as provided in this section, Property Owner shall also be liable to the Church for all reasonable costs and expenses incurred in retaking and restoring the Property to marketable condition, and such costs and expenses shall be deducted from the amount of the purchase price paid to the Property Owner. Property Owner shall be deemed to consent to enforcement of the repurchase right described in this Section 5 on the above terms by specific performance.

6. Landscape Screening. The Property Owner agrees to install and maintain a continuous year-round landscape screen ("Landscape Screen") along the west side of the Property abutting the Church Property. The Landscape Screen shall include a combination of evergreen and deciduous trees and shrubs, with not more than thirty percent being deciduous, initially at least two-gallon size and eighteen inches high at the time of planting and maintained to a minimum height of twelve (12) feet within three (3) years of planting, planted at a density of five per two hundred square feet of planting area, together with other living ground cover planted to attain a coverage of ninety percent within three years of planting. The plantings and the location of the plantings shall be agreed to by Property Owner and the Church within ninety (90)

days of the date of this Agreement. The Landscape Screen shall be installed no later than July 15, 2019.

7. Walkway Easement. The Property Owner hereby grants to the Church, its members and invitees (collectively, the "Church Parties") a perpetual right of way and easement for a walkway on the Property, as may exist in the future and as may be relocated from time to time, to allow for pedestrian access between the Church Property and the Property (the "Walkway Easement"). The use of the Walkway Easement by the Church Parties shall be subject to such reasonable rules and requirements that the Property Owner applies to all persons using the Walkway Easement, including the Property Owner's employees, guests, invitees and customers. Any changes to the Walkway Easement shall require the Church's written consent.

8. Amendment to Agreement.

(a) Upon Property Owner's acquisition of Parcel #2, the parties shall record an amendment to this Agreement amending the definition of Property to include that portion of Parcel #2 that will be known as part of Lot 46.

(b) Upon the recording of the Plat, the Parties agree to amend this Agreement by replacing Exhibit D with the legal description of the Property, as amended.

(c) In the event amendments to this Agreement are not promptly filed on account of Property Owner's action or inaction, title to Parcel #1 shall revert to the Church and all but One Hundred Thousand Dollars (\$100,000) of the purchase price of the Property shall be refunded to the Property Owner.

9. Covenants Running with the Land. This Deed Restriction shall burden the Property and shall run with the land and shall be for the benefit of the Church and its successors and assigns and be binding upon the Property Owner and its successors and assigns. This Deed Restriction shall be governed by, and construed in accordance with, the laws of the State of Wisconsin. Any changes to this Deed Restriction must be approved in writing by the Church.

10. Expiration. This Agreement shall expire ten years from the date of execution and shall automatically renew for additional periods of ten years each. Notwithstanding the foregoing, either party may terminate Sections 2, 3, 4 and/or 5 of this Agreement effective as of the end of the then-current ten-year period by written notice to the other party no later than sixty (60) days prior to the end of the then-current ten-year period. To be effective, the notice terminating Sections 2, 3, 4 and/or 5 shall be recorded by the party providing such notice within thirty (30) days of providing such notice to the other party.

11. Waiver. No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.

[Signature Page and Acknowledgement Next Page Following]

IN WITNESS WHEREOF, THE parties have executed this Deed Restriction as of the date first above written.

MIDDLETON COMMUNITY CHURCH

By: Susan I. Brauer
Susan Brauer, Moderator

**CHAPEL VIEW DEVELOPMENT
COMPANY, INC.**

By: Chad D. Wuebben
Chad D. Wuebben, President

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

The foregoing was acknowledged before me this October 23, 2018 by Susan Brauer, as the Moderator of Middleton Community Church, and to me known to be the person who executed the foregoing instrument and acknowledged the same on behalf of Middleton Community Church.

Mindi M. Perrich
Notary Public, State of Wisconsin
My Commission: 11/28/19



STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

The foregoing was acknowledged before me this October 23, 2018 by Chad D. Wuebben, the President of Chapel View Development Company, Inc., a Wisconsin corporation, to me known to be the person who executed the foregoing instrument and acknowledged the same on behalf of the company.

Mindi M. Perrich
Notary Public, State of Wisconsin
My Commission: 11/28/19



EXHIBIT A

Parcel #1 Legal Description

Outlot One (1) of Certified Survey Map No. 14935, recorded in the Dane County Register of Deeds Office in Volume 105 of Certified Survey Maps, pages 94-101, as Document No. 5444639, in the City of Madison, Dane County, Wisconsin.

Part of 251/0708-212-0101-2

EXHIBIT B

Parcel #2 Legal Description

Lot Two (2), Certified Survey Map No. 6407, recorded in the Office of the Register of Deeds for Dane County, Wisconsin, on May 21, 1991, in Volume 31 of Certified Survey Maps, Pages 120, 121, and 122, as Document No. 2263459, now located in the City of Madison, Dane County, Wisconsin.

Part of 251/0708-212-0106-2

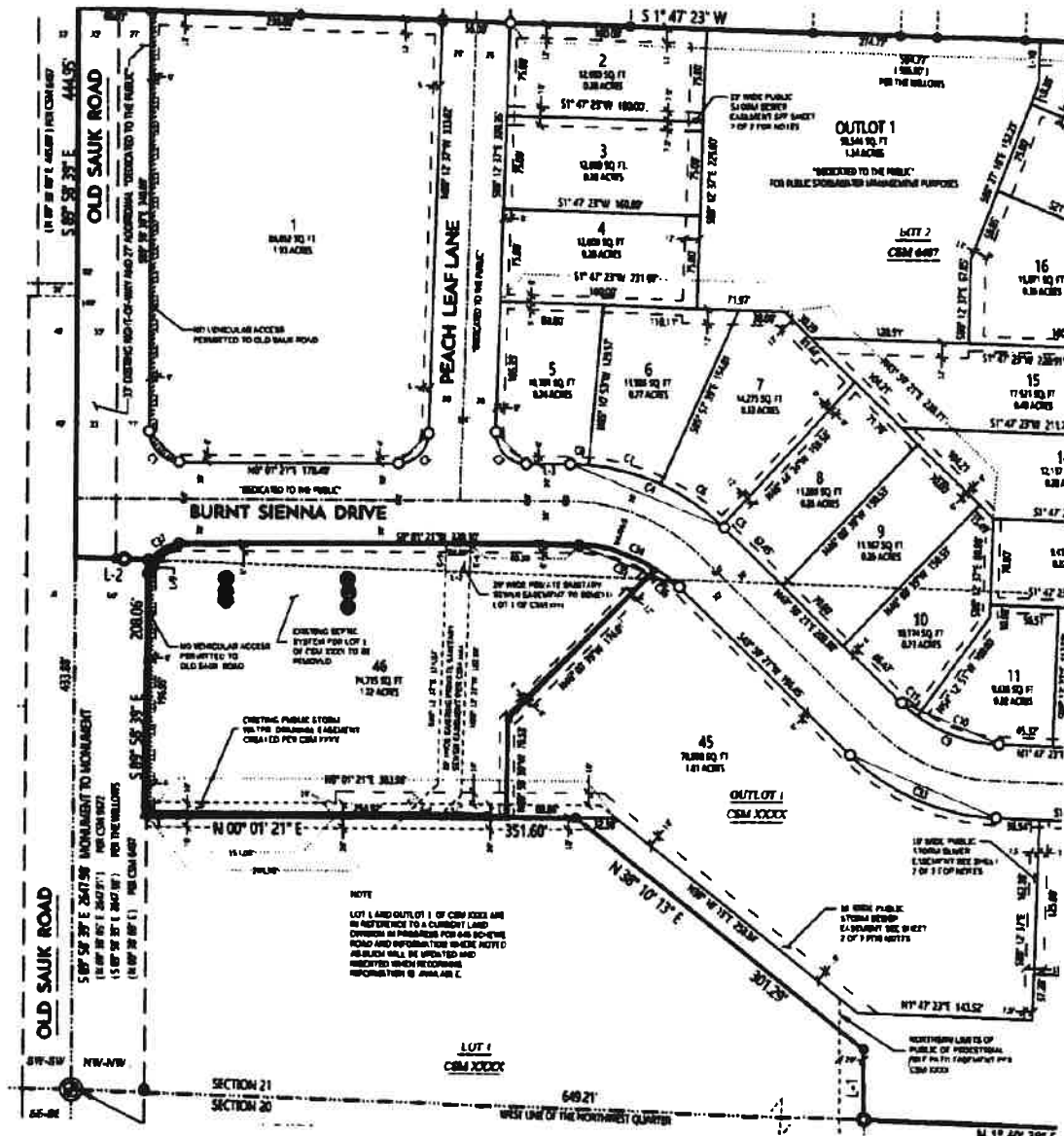
EXHIBIT C

Church Property Legal Description

Lot One (1) of Certified Survey Map No. 14935, recorded in the Dane County Register of Deeds Office in Volume 105 of Certified Survey Maps, pages 94-101, as Document No. 5444639, in the City of Madison, Dane County, Wisconsin.

Part of 251/0708-212-0101-2

EXHIBIT D **The Property**



Part of Tax Parcel Nos. 251/0708-212-0101-2 and 251/0708-212-0106-2
19443994.16

Viewers are advised to ignore the illegible text on this map. It is presented to show spatial relationships only.

Authorized by:

[Signature]

SHARED DRIVEWAY AGREEMENT

KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS

DOCUMENT #
5513669
08/15/2019 10:05 AM
Trans Fee:
Exempt #:
Rec. Fee: 30.00
Pages: 9

Drafted by and return to:

Robert C. Procter
Axley Brynson, LLP
2 East Mifflin Street #200
Madison, WI 53703

070821201096; 070821201088

Parcel Numbers

THIS SHARED DRIVEWAY AGREEMENT (the "*Agreement*") is executed by Chapel View Development Company, Inc. ("*CVD*"), and Chapel View Cottages, LLC ("*CVC*"). CVD and CVC may be referred to individually as a "*Party*" and collectively as the "*Parties*".

RECITALS:

A. CVD is the fee simple owner of Lot 46, Plat of Chapel View (the "*Plat*"), as recorded on November 1, 2018, in the office of the Dane County Register of Deeds, Volume 61-003A of Plats, Pages 9-10, Document Number 5451966, located in the Town of Middleton, Dane County, Wisconsin.

B. CVC is the owner of a vendee's interest in Lot 45, Plat of Chapel View, pursuant to that certain Land Contract between CVD as the vendor and CVC as the Purchaser, dated August 7, 2019, and CVD consents to this Agreement as said vendor. Lots 45 and 46 may be referred to individually as a "*Lot*" and collectively the "*Lots*".

C. Lots 45 and 46 are abutting lots, and will share a driveway that are located partially on each lot to access Burnt Sienna Drive (the "*Shared Driveway*") as shown on Exhibit A."

D. Lot 45 shall have the right to mark the northwest portion of the Shared Driveway as shown on Exhibit A, page 2, as parking stalls (the "*Parking Stalls*") for the exclusive use of Lot 45.

E. The Parties desire to set forth the terms and conditions relating to the use of the Shared Driveway now and in the future when Lots 45 and 46 are owned by different Parties.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Easement.

(A) *Grant.* The owners of Lots 45 and 46 each grant the other a nonexclusive easement and right-of-way to use the portion of the Shared Driveway located on its Lot for ingress and egress to Burnt Sienna Drive excluding the Parking Stalls as shown on Exhibit A, and legally described on Exhibit B. The owner of Lot 46 grants the owner of Lot 45 an exclusive easement to mark and use the portion of the Parking Stalls located on Lot 46 as shown on Exhibit A, page 2 for the parking of vehicles. There shall not be any storage of vehicles or other items in the Parking Stalls.

(B) *Construction and Location of Shared Driveway.* The Shared Driveway shall be constructed, repaired, replaced and maintained consistent with all City of Madison Ordinances, and shall be located on the area specifically shown on Exhibit A.

2. Permitted Users. The easement granted in Section 1, above, may be used by the fee simple owners of the Lots, and their tenants, employees, customers, and invitees. The Parties acknowledge and agree that each Party intends to develop its Lot, and that the future developed uses on the Lots may use the Shared Driveway for ingress and egress to Burnt Sienna Drive. The Parties acknowledge that such use may be more intensive than the current planned uses, and that the zoning of the Lots may change in the future to allow for even more intensive uses.

3. Equal Rights of Use. The owners of the Lots shall have equal rights of ingress and egress over the Shared Driveway and shall take no action to prevent the other Party's enjoyment of such rights.

4. Maintenance, Repair, and Replacement Costs. The owner (or the condominium association if in existence) of Lot 45 shall be responsible for the maintenance, repair, and replacement of the Shared Driveway, and shall pay the entire cost attributable to the Parking Stalls, and then charge one-half of the costs for the balance of the Shared Driveway to the owner of Lot 46 to be paid within 30 days of receipt of a statement setting forth the costs with receipts. Repairs, maintenance and replacement shall be performed at such times and in such a manner as necessary to ensure the safety and proper use of the Shared Driveway.

5. Disputes. If the owners of the Lots are unable to agree to a proposed expenditure or action for the maintenance, repair or replacement of the Shared Driveway, the matter shall be submitted to arbitration. The owners of the Lots may jointly select an arbitrator; provided, however, that if the owners of the Lots cannot agree on an arbitrator, any owner of the Lots may apply to the Circuit Court of Dane County for the appointment of an arbitrator pursuant to Wis. Stat. § 788.04. The arbitrator shall have the authority to set forth the procedures and rules governing the arbitration. If an owner refuses to arbitrate a dispute consistent with this provision, the other owner or owners may petition the Dane County Circuit Court under Wis. Stat. § 788.03 to enforce this provision. If an owner or owners successfully petition the Dane County Circuit Court for an order under Wis. Stat. § 788.03 directing the other owner or owners to proceed with the arbitration, the owner or owners that successfully petitioned the court shall be entitled to his or her attorneys' fees and other costs incurred to obtain such order from the owner that refused to arbitrate the dispute.

5. Covenants Run with Land. All of the terms and conditions in this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by the owners of the Lots and their respective successors and assigns. The easement granted under Section 1 of this Agreement is an easement appurtenant to the Lots and may not be transferred separately from, or severed from, title to Lots. Furthermore, the benefits of the easements granted under this Agreement shall not be extended to any properties other than the Lots without the consent of all of the owners of the Lots. The Parties and each of their respective successors and assigns as fee simple owners of the Lots, respectively, shall cease to have further liability under this Agreement with respect to facts or circumstances first arising after the Party has transferred its fee simple interest in a Lot, respectively, except, however, for obligations that accrued during the Party's period of ownership of title.

6. Non-Use. Non-use or limited use of the easement rights granted in this Agreement shall not prevent the owners of the Lots from later use of the easement rights to the fullest extent authorized in this Agreement.

7. Entire Agreement. This Agreement sets forth the entire understanding of the Parties and may not be changed except by a written document executed and acknowledged

by all Parties to this Agreement and duly recorded in the office of the Register of Deeds of Dane County, Wisconsin.

8. Notices. All notices to either Party to this Agreement shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the other Party at that Party's last known address. If the other Party's address is not known to the Party desiring to send a notice, the Party sending the notice may use the address to which the other Party's property tax bills are sent. Either Party may change its address for notice by providing written notice to the other Party.

9. Invalidity. If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

10. Waiver. No delay or omission by any Party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a Party of any of the obligations of the other Party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.

11. Enforcement. Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Agreement, either to restrain or prevent the violation or to obtain any other relief. If a suit is brought to enforce this Agreement, the prevailing Party shall be entitled to recover its costs, including reasonable attorney fees, from the non-prevailing Party.

12. No Public Dedication. Nothing in this Agreement shall be deemed to be a gift or dedication of any portion of the easement granted under this Agreement to the general public or for any public purpose whatsoever. The owners of the Lots agree to cooperate with each other and to take such measures as may be necessary to prevent the dedication to the public of the Driveway, whether by express grant, implication, or prescription, including, without limitation, the posting of "Private Drive" or "No Trespassing" signs. Such measures shall not, however, unreasonably interfere with the easement rights granted under this Agreement.

17. Entire Agreement. This Agreement is the entire agreement relating to the Easement Area between the Parties and any and all prior written agreements are hereby terminated.

EXECUTION PAGE

Dated: August 14, 2019

**CHAPEL VIEW DEVELOPMENT
COMPANY, INC.**

By: _____

Chad Wuebben, President

CHAPEL VIEW COTTAGES, LLC

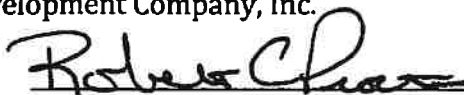
By: _____

Chad Wuebben, Member

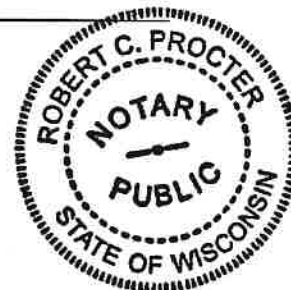
ACKNOWLEDGEMENTS

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

This instrument was acknowledged before me on this August 14, 2019, by Chad Wuebben, President of Chapel View Development Company, Inc.



Robert C. Procter
Notary Public, State of Wisconsin
My commission is permanent.

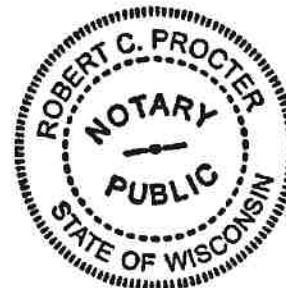


STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

This instrument was acknowledged before me on this August 14, 2019, by Chad Wuebben, Member of Chapel View Cottages, LLC.



Name: Robert C. Procter
Notary Public, State of Wisconsin
My commission is permanent.



EXECUTION PAGE

EXHIBIT A

ATTACHED MAP OF SHARED DRIVEWAY EASEMENT AREA

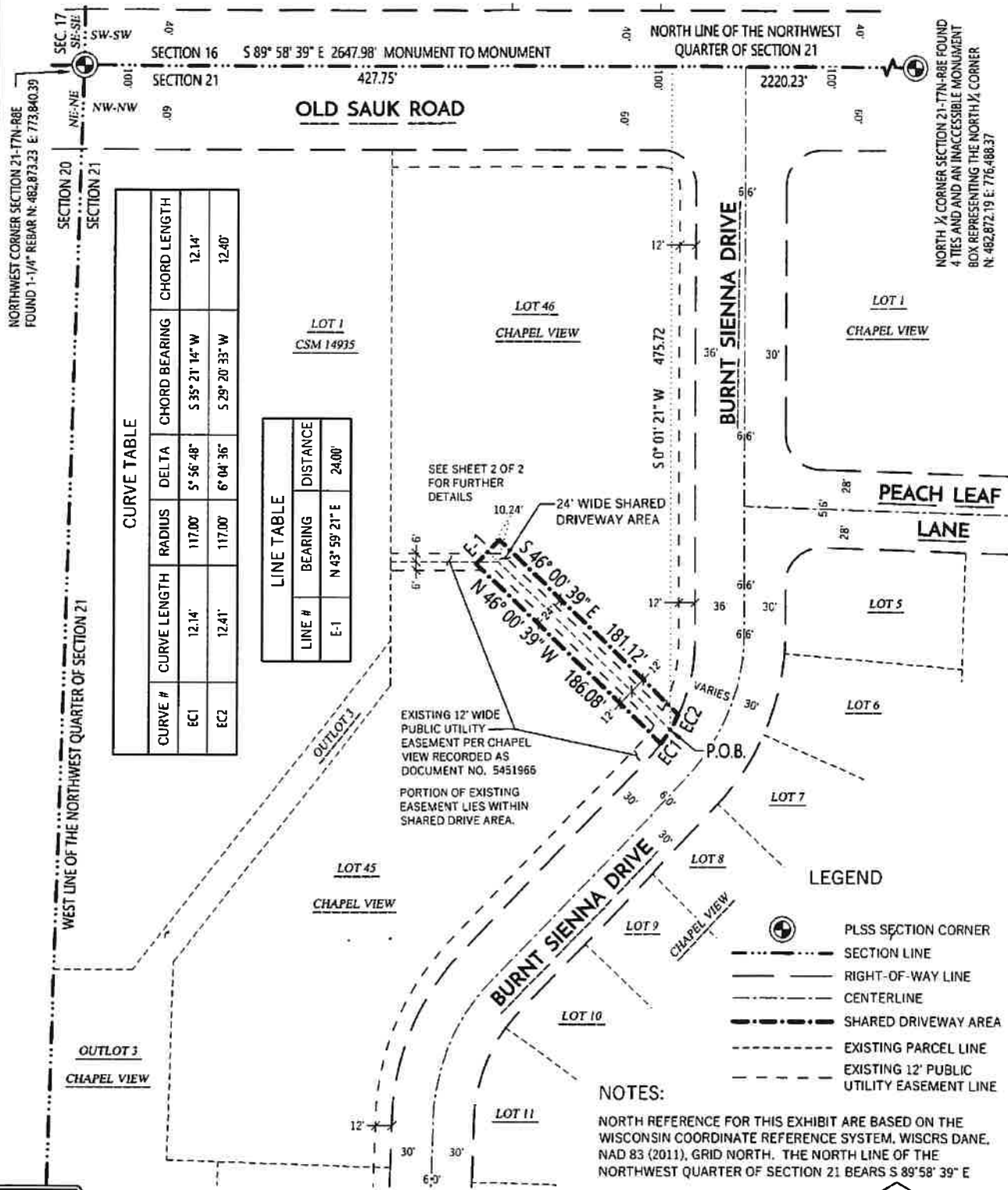
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EXHIBIT A

EXHIBIT A

SHARED DRIVEWAY AGREEMENT EXHIBIT

A PART OF LOTS 45 AND 46 OF CHAPEL VIEW, RECORDED IN THE DANE COUNTY OFFICE OF THE REGISTER OF DEEDS ON NOVEMBER 1, 2018 IN VOLUME 61-003A OF PLATS, ON PAGES 9-10, AS DOCUMENT NUMBER 5451966, BEING A PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWN 7 NORTH, RANGE 8 EAST, CITY OF MADISON, DANE COUNTY, WISCONSIN.



File: W:\2017\170455_Encore Homes - Old Sauk RD\DWG\17055_Lot 45 Shared Drive Exhibit.dwg Layout: Drive Exhibit User: Julo Plotted: Aug 14, 2019 - 10:26am



PREPARED BY:
312 EAST MAIN STREET
MOUNT HOREB, WI 53572
www.wyserengineering.com

PREPARED FOR:
ENCORE HOMES, INC
6840 SCHNEIDER ROAD
MIDDLETON, WI 53562

SURVEYED BY:
DRAWN BY: JWS
APPROVED BY: JWS

PROJECT NO: 170455
SHEET NO: 1 of 2

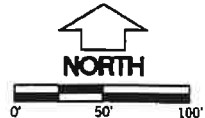
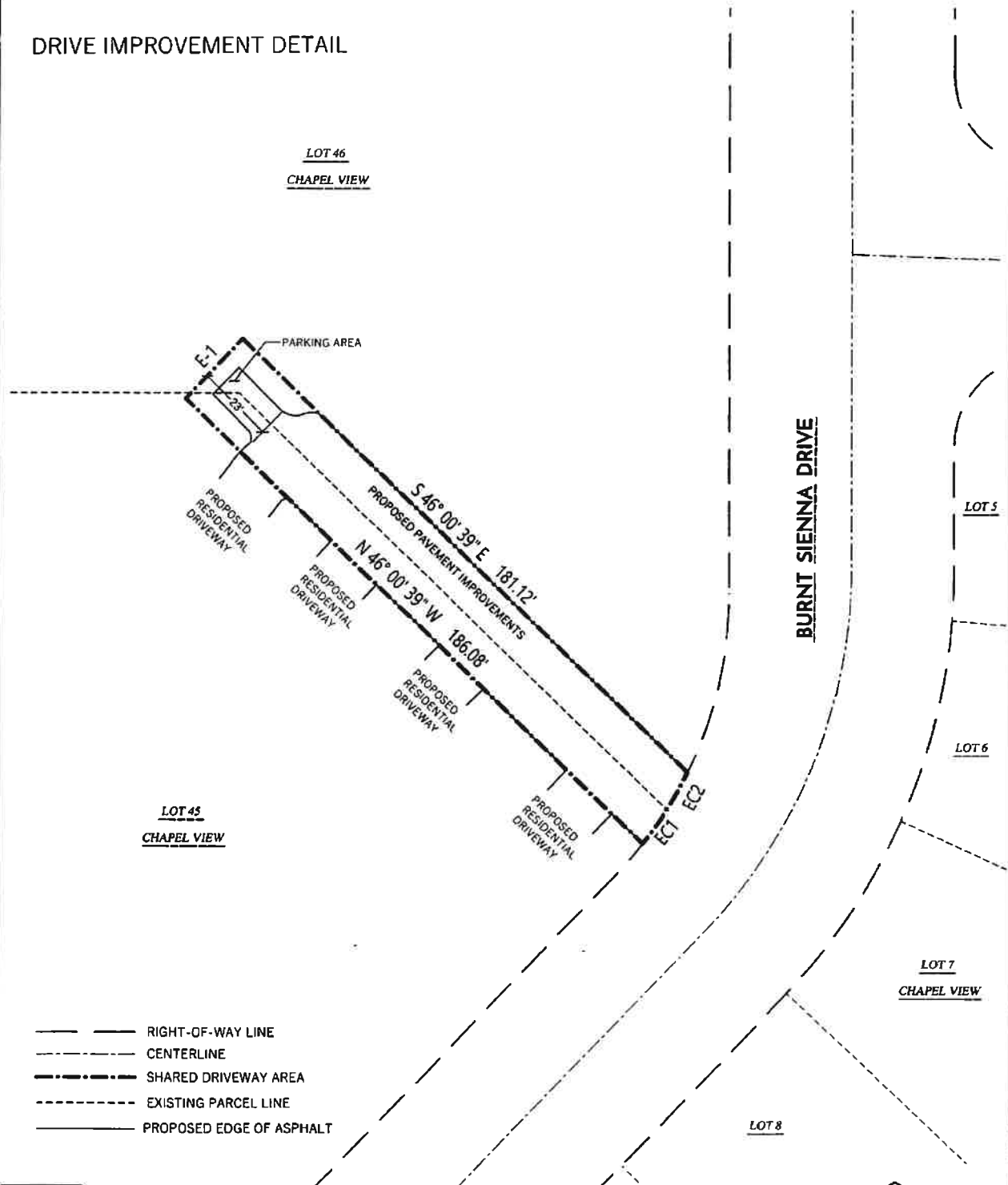


EXHIBIT A

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DRIVE IMPROVEMENT DETAIL



File: W:\2017\170455_Encore Homes - Old Soul RD\DWG\170455_Lot 45 Shared Drive Exhibit.dwg Legend: Drive Dotted User: Jule Plotted: Aug 14, 2019 - 10:29am

	PREPARED BY: 312 EAST MAIN STREET MOUNT HOREB, WI 53572 www.wyserengineering.com	PREPARED FOR: ENCORE HOMES, INC 6840 SCHNEIDER ROAD MIDDLETON, WI 53562	SURVEYED BY: JWS APPROVED BY: JWS	PROJECT NO: 170455 SHEET NO: 2 of 2
	<div style="text-align: right;"> NORTH </div>			

EXHIBIT B

24' Wide Shared Drive Agreement Legal Description

A part of Lots 45 and 46 of Chapel View, Recorded in the Dane County Register of Deeds on November 1, 2018, in Volume 61-003A of Plats, on Pages 9-10, as Document No. 5451966, being a part of the Northwest Quarter of the Northwest Quarter of Section 21, Town 7 North, Range 8 East, City of Madison, Dane County, Wisconsin. More particularly described as follows:

Commencing at Northwest Corner of aforesaid Section 21; thence South 89 degrees 58 minutes 39 seconds East along the North line of the Northwest Quarter of said Section 21, a distance of 427.75 feet; thence South 00 degrees 01 minutes 21 seconds West, 475.27 feet to the southerly most corner of aforesaid Lot 46 of Chapel View located on the westerly side of the curving Right-of-Way of Burnt Sienna Drive, also being the Point of Beginning; Thence along said westerly side of the curving Right-of-Way of Burnt Sienna Drive 12.14 feet on the arc of a curve to the right, having a Radius 117.00 feet and a long chord that bears South 35 degrees 21 minutes 14 seconds West, for 12.14 feet to a non-tangent line parallel to the easterly segment of the southerly line of said Lot 46; thence along said parallel line North 46 degrees 00 minutes 39 seconds West, 186.08 feet to a line perpendicular to said easterly segment of the southerly line of Lot 46 ; thence along said perpendicular line North 46 degrees 59 minutes 21 seconds East, 24.00 feet to line parallel with said easterly most segment of the southerly line of Lot 46; thence along said parallel line South 46 degrees 00 minutes 39 seconds East, 181.12 feet to the aforesaid westerly side of the curving Right-of-Way of Burnt Sienna Drive; thence along said westerly side of the curving Right-of-Way of Burnt Sienna Drive 12.41 feet on the arc of a curve to the right, having a Radius 117.00 feet and a long chord that bears South 29 degrees 20 minutes 33 seconds West, for 12.40 feet back to the Point of Beginning.

Above described area contains 4,417 Square Feet or 0.10 Acres more or less