

**TOWN OF WINDSOR
BOARD RESOLUTION 2015-52**

**RESOLUTION APPROVING
REQUIREMENTS FOR PATH MAINTENANCE AND
WAIVER OF RIGHT TO CONTEST SPECIAL ASSESSMENTS AND CHARGES
IN THE PLAT OF BEAR TREE FARMS**

WHEREAS, Bear Tree Farms, Inc. and Statz Bros., Inc. (collectively, the "**Owners**" or "**Petitioner**") has applied for and obtained conditional approval of the Final Plat of Bear Tree Farms ("**Plat**" or "**Property**") located in the Town of Windsor, Dane County, Wisconsin, all as set forth in Town Board Resolution 2015-54, which is incorporated herein by reference; and

WHEREAS, Bear Tree Farms, Inc. ("**Developer**") shall serve as the Developer of the Plat, and Steven D. Pederson is the President and authorized representative of the Developer; and

WHEREAS, to satisfy a condition in Board Resolution 2015-54, the Petitioner has agreed to the REQUIREMENTS FOR PATH MAINTENANCE AND WAIVER OF RIGHT TO CONTEST SPECIAL ASSESSMENTS AND CHARGES IN THE PLAT OF BEAR TREE FARMS ("**Path Maintenance Agreement**"), which Path Maintenance Agreement is attached hereto as Exhibit 1 and incorporated herein by reference; and

WHEREAS, the Town staff and consultants have reviewed the Path Maintenance Agreement and recommend approval of same by the Windsor Town Board; and

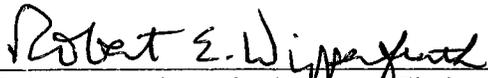
WHEREAS, the Windsor Town Board wishes to approve the Path Maintenance Agreement, as set forth in this Resolution.

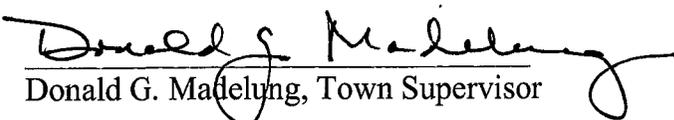
NOW, THEREFORE, BE IT RESOLVED by the Town Board of the Town of Windsor as follows:

1. The Windsor Town Board hereby approves the Path Maintenance Agreement, and authorizes execution and recording of the Path Maintenance Agreement with the Dane County Register of Deeds.
2. The condition set forth as item 5.e. of Board Resolution 2015-54 shall be deemed satisfied at such time as the Town Planning & Development Coordinator receives a copy of the fully executed and recorded Path Maintenance Agreement.
3. A copy of the recorded Path Maintenance Agreement shall be retained as a public record.

The above and foregoing Resolution was duly adopted at the regular meeting of the Town Board of the Town of Windsor on August 6, 2015, by a vote of 5 in favor, 0 opposed and 0 abstentions.

TOWN OF WINDSOR


Robert E. Wipperfurth, Town Chairperson

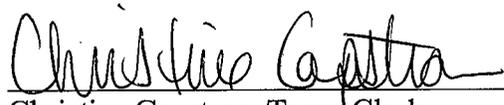

Donald G. Madelung, Town Supervisor


Bruce Stravinski, Town Supervisor


Alan Buchner, Town Supervisor


Monica M. Smith, Town Supervisor

Attested by:


Christine Capstran, Town Clerk

**PLAT OF BEAR TREE FARMS,
TOWN OF WINDSOR,
DANE COUNTY, WISCONSIN:**

**REQUIREMENTS FOR PATH MAINTENANCE
AND
WAIVER OF RIGHT TO CONTEST SPECIAL
ASSESSMENTS AND CHARGES**

This Agreement is by, between and among **BEAR TREE FARMS, INC.**, a Wisconsin corporation (the "**Developer**"), and **BEAR TREE FARMS, INC., PC FARMS HOLDING II, LLC**, a Wisconsin limited liability company, and **STATZ BROS., INC.**, a Wisconsin corporation, all as their respective ownership interests in the Property appear (collectively herein, "**Owners**"), **BEAR TREE FARMS HOMEOWNERS ASSOCIATION, INC.**, a Wisconsin corporation ("**Association**"), and the **TOWN OF WINDSOR**, a corporate body and politic located in Dane County, Wisconsin ("**Windsor**") and encumbers property located in the Town of Windsor, Dane County, Wisconsin, known as the **PLAT OF BEAR TREE FARMS** (the "**Property**" or the "**Plat**"). This Agreement shall bind the parties and the parties' heirs, successors and assigns, shall run with the land and shall be effective when executed by all parties.

Return to:
Town Clerk, Town of Windsor
4084 Mueller Road
DeForest, WI 53532
Parcel Nos:
See attached Exhibit C

RECITALS

WHEREAS, as of the effective date of this Agreement, PC Farms Holding II, LLC holds a land contract vendor's interest and Bear Tree Farms, Inc. holds a land contract purchaser's interest in the portion of the Plat of Bear Tree Farms described on Exhibit A, which is attached hereto and incorporated by reference (the "**BTF Property**"), and the Statz Bros., Inc. own an approximately ten (10) acre portion of the Plat of Bear Tree Farms described on Exhibit B, which is attached hereto and incorporated by reference (the "**Statz Property**");

WHEREAS, the BTF Property and the Statz Property, taken together, are the property now described as the Plat of Bear Tree Farms (the "**Plat**");

WHEREAS, the Owners willingly and voluntarily enter this Agreement as a covenant running with the land and binding on the Plat;

WHEREAS, the Developer has obtained from Windsor the authority to construct necessary public infrastructure on the Plat and market the Plat in phases, all pursuant to a Development Agreement and other agreements with Windsor, each and all of which were executed concurrently with this Agreement and recorded in the Dane County Register of Deeds office on or about the date of recording of the Plat;

WHEREAS, Developer shall construct paths within the Plat (the "**Paths**") in accordance with the Plan agreed to by and between Developer and Windsor (the "**Plan**"), which Plan is described



with particularity in the Development Agreement for the Plat recorded at the Dane County Register of Deeds office; and,

WHEREAS, Windsor and Developer acknowledge that, following construction, the Paths will require maintenance and wish to set forth in this Agreement the terms and conditions for maintenance of the Paths.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals set forth above, which are incorporated herein by reference, the covenants herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer, Owners and Windsor agree as follows:

1. **Paths: General Overview of Purposes and Requirements.** The Paths are an important component of the Plat. For that reason:
 - a. **No person shall place or permit an improvement or obstruction to be located or remain on the Paths.** Examples of impermissible obstructions are buildings, sheds, fences, trees, shrubs, gardens, plantings of other than grass or prairie-type landscaping, and moveable or temporary items.
 - b. Developer shall construct and maintain the Paths in a manner that is consistent with the Plan, this Agreement, and the Development Agreement.
 - c. At such time as Developer's responsibility for maintenance of a particular portion of the Paths ends, Windsor and the lot owner, respectively and as detailed in this Agreement, shall maintain the Paths.
 - d. The Windsor Engineer is hereby granted exclusive authority to determine whether the Paths meet the standards required by this Agreement. (See Definitions section below for description of standards.)

2. **Construction and Initial Maintenance by Developer.** As indicated above, Developer shall be responsible for the construction of all required Paths located on the Property and, prior to completion of construction of each phase of the Plat as required by the Development Agreement, for maintenance of the Paths.

Construction shall be completed in accordance with the Plan, and completion in accordance with the Plan shall be certified to Windsor by Developer's Engineer. Developer's obligations for completion of construction of the Paths in a particular phase shall be deemed satisfied when Windsor's Engineer confirms in writing no objection to the construction and/or to Developer's Engineer's certification for that particular phase.

Following such completion, and until maintenance responsibility ends as set forth in this Agreement, Developer shall maintain the Paths in good condition. (See Definitions section below for description of standards for maintenance in good condition.)

All construction and maintenance described in this Section of the Agreement shall be at the sole cost and expense of Developer.



When Developer completes construction of a particular phase in accordance with the Development Agreement, Developer's responsibilities for maintenance of the Paths shall end as to those Paths serving and located on lots within that phase. At that time, the responsibility for maintenance shall be transferred to Windsor and lot owners, respectively, as set forth in this Agreement.

3. **Continued Maintenance by Windsor; Lot Owner's Responsibility.** After such time as responsibility for maintenance is transferred to Windsor, Windsor shall maintain the Paths in good condition. (See Definitions section below for description of standards for maintenance in good condition.)

The lot owner has an ongoing responsibility to keep the Path located on his or her lot free from obstructions. Windsor's assumption of maintenance of the Paths does not relieve the lot owner from this responsibility.

All costs and expenses incurred by Windsor in maintaining the Paths shall be charged or assessed to the lot owner as a special charge, by placing the amount of the special charge on the tax roll for the lot in accordance with Wis. Stat. s. 66.0627, or by such other method allowed by Wisconsin statutes and Windsor Ordinances. **Developer and Owners, for themselves, and their heirs, successors and assigns, hereby waive the right to contest any and all such charges or assessments imposed for maintenance of the Paths.**

4. **Easement and Right of Access Granted to Windsor for Maintenance of Paths.** Owners hereby irrevocably grant to Windsor the perpetual right to access and enter the Paths and maintain the Paths. The access granted hereby shall include the right of access across such portions of the Property as deemed reasonably necessary by Windsor to access the Paths, and shall include the right to bring repair trucks and other machinery and equipment as Windsor deems necessary to maintain the Paths. This perpetual easement and right of access burdens the Paths and such portions of the Plat deemed by Windsor to be necessary to access the Paths.

The obligation for restoration as a result of access to or maintenance of Paths shall be limited to grass seeding, fertilizer and mulch only.

5. **Absolute Waiver of Right to Contest Special Assessments and Charges for Maintenance of Paths.** The Owners hereby fully and forever waive the right to contest the assessment or charge imposed against the lots for costs that Windsor incurs for maintenance of the Paths within the Plat. The Owners acknowledge that waiver of this right includes, but is not limited to, the right to contest: (1) that maintenance of the Paths confers a *benefit* on the lots in the Plat; (2) that the lot on which maintenance of a Path occurs shall be one appropriate *assessment area* for costs associated with repair and patching of the Path; (3) that a per lot basis for all lots within the Plat is one appropriate *assessment area* and acceptable *method* of assessing the costs for maintenance of the Paths; and, (4) that the actual costs and expenses incurred by Windsor are the *reasonable amount* for the assessment or special charge. Windsor has

approved development of the Property with express reliance on this Agreement and waiver, and shall have the right to rely on this waiver as a defense against claims made against Windsor related to the special charges or assessments imposed by this Agreement.

6. **Term/Termination.** The term of this Agreement shall commence on the date that this Agreement is recorded with the Register of Deeds for Dane County, Wisconsin, and except as otherwise herein specifically provided, shall continue in perpetuity. Notwithstanding the foregoing, this Agreement may be terminated by recording with the Register of Deeds for Dane County, Wisconsin, a written instrument of termination signed by Windsor and all of the then-owners of the Property.
7. **Definitions.** When used herein, the following terms shall be defined and are used as follows:
 - a. The standard for maintenance of the Paths shall be determined following consideration of all of the factors that impact the condition of the Paths. For example, asphalt paths may become uneven, crack or develop potholes over time. The party responsible for maintenance under this Agreement shall use reasonable efforts to identify, repair or cold patch significant cracks or potholes on a reasonable basis. The party responsible for maintenance under this Agreement shall use reasonable efforts to plow, sand and/or salt so that the Paths are reasonably free of snow during the winter. Developer, Owners and Windsor acknowledge that, in Wisconsin, snow, ice and wet areas are to be expected and that it is likely that there will be slippery patches on the Paths during winter months, much as there are slippery patches on roadways. *Users of the Paths are advised to take all reasonable precautions when using the Paths, particularly during inclement weather that may adversely impact the condition of the Paths.*
 - b. Developer's and Owners' heirs, successors and assigns are included when the term Developer and/or Owner(s) is used in this Agreement. More specifically, a buyer of a lot within the Plat is a successor to this Agreement and is bound hereby as the Owners are.
 - c. A party's agents, staff, consultants, independent contractors and permittees are included when the party's name is used in this Agreement. For example, Windsor's agents, staff, consultants, independent contractors and permittees are included when the terms Windsor or Town are used in this Agreement.
 - d. The terms Windsor or Town shall also mean any successor governmental entity to Windsor that has primary local government jurisdiction over the Property.
 - e. Costs and expenses associated with maintenance of the Paths shall include associated materials, equipment, labor, inspection, administrative, staff, engineering, legal and consulting fees incurred for services determined by Windsor to be prudent and necessary for the evaluation and/or maintenance of the Paths.
 - f. Development Agreement shall mean the development agreement executed by and between Windsor and Developer, as recorded in the Dane County Register of Deeds office.

8. Miscellaneous.

- a. Notices. Any notice, request or demand required or permitted under this Agreement shall be in writing and shall be deemed given on the date personally served or the date four (4) days after the same has been addressed as indicated below and deposited with the United States Post Office, postage prepaid.

If to Developer: Bear Tree Farms, Inc.
Notice to the Developer shall be to the registered agent, as currently on record with the Department of Financial Institutions.

If to Owners: Bear Tree Farms, Inc., PC Farm Holdings II, LLC, and Statz Bros., Inc.
Notice to the Owners shall be to the registered agent, as currently on record with the Department of Financial Institutions.

If to Lot Owner: Notice to the lot owner shall be to the person(s) and address listed as the owner of the lot on the real estate tax roll, as currently maintained by the County.

If to Windsor: Town Clerk
Town of Windsor
4084 Mueller Road
DeForest, Wisconsin 53532

Any party may change its address for the receipt of notice by written notice to the other parties. All parties are deemed to be given notice of changes to the Windsor address(es) when the local government units so referenced move to a new location. If the parties are unsure of the location, notice shall be given to the Clerk of Windsor.

- b. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.
- c. Amendments to be in Writing. This Agreement may not be modified in whole or in part unless such agreement is in writing and signed by all parties bound hereby.
- d. Covenants Running with the Land. All of the easements, restrictions, covenants and agreements set forth in this Agreement are intended to be and shall be construed as covenants running with the land, binding upon, inuring to the benefit of, and enforceable by the parties hereto and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, PC Farms Holding II, LLC has caused this Agreement to be signed by its authorized representatives, as of this 9th day of September, 2015.

PC FARMS HOLDING II, LLC

By: Steven D. Pederson
Signature

Steven D. Pederson - President
Print name and title

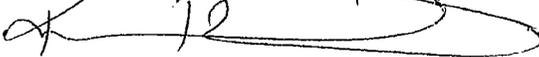
By: Dwight E. Ziegler
Signature
Win & Son Associates, Ltd., Member
Dwight E. Ziegler, President
Print name and title



ACKNOWLEDGMENT

STATE OF WISCONSIN)
)ss.
COUNTY OF DANE)

Personally came before me this ___ day of September, 2015, the above-named Steven D. Pederson, as President of PC Farms Holding II, LLC, and the above-named Dwight E. Ziegler, as Member & President of PC Farms Holding II, LLC, to me known to be the persons who executed the foregoing instrument and acknowledged the same on behalf of such entity.

Kimberly K. Pederson 
Notary Public, State of Wisconsin
My Commission: 03/20/2018

IN WITNESS WHEREOF, Statz Bros., Inc. has caused this Agreement to be signed by its authorized representatives, as of this 15th day of September, 2015.

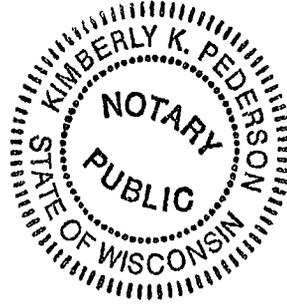
STATZ BROS., INC.

By: Wesley A. Statz
Signature

Wesley A. Statz - President
Print name and title

By: _____
Signature

Print name and title



ACKNOWLEDGMENT

STATE OF WISCONSIN)
)ss.
COUNTY OF DANE)

Personally came before me this 15th day of September, 2015, the above-named Wesley A. Statz, as President of Statz Bros., Inc., and the above-named _____, as _____ of Statz Bros., Inc., to me known to be the persons who executed the foregoing instrument and acknowledged the same on behalf of such entity.

Kimberly K. Pederson 
Notary Public, State of Wisconsin
My Commission: 03/20/2018

IN WITNESS WHEREOF, the Town of Windsor, has caused this Agreement to be signed by Robert E. Wipperfurth, Town Chairperson and its authorized representative, and attested to by Christine Capstran, Town Clerk, as of this 18 day of September, 2015.

TOWN OF WINDSOR

By: Robert E. Wipperfurth
Robert E. Wipperfurth, Town Chairperson

Attest: Christine Capstran
Christine Capstran, Town Clerk

ACKNOWLEDGEMENT

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this 18 day of September, 2015, the above-named Robert E. Wipperfurth and Christine Capstran, known to me as the Town Chairperson and Town Clerk of the Town of Windsor, and who executed the foregoing instrument and acknowledged the same.

[Signature]

Notary Public, State of Wisconsin
My Commission is ~~Permanent~~/Expires: May 23, 2017



Attachments Incorporated by Reference:

- Exhibit A: BTF Property
- Exhibit B: Statz Property
- Exhibit C: Plat Lots and Parcel Identification Numbers

This Instrument Drafted By:

Constance L. Anderson
Anderson Consults, LLC
P.O. Box 3004
Madison, WI 53704-0004
Connie@AndersonConsultsWI.com

EXHIBIT A

**LEGAL DESCRIPTION OF BTF PROPERTY
PC FARMS HOLDING II, LLC, AS LAND CONTRACT VENDOR, TO
BEAR TREE FARMS, INC., AS LAND CONTRACT PURCHASER**

PARCEL A:

The Northeast 1/4 of the Southwest 1/4 of Section 28, Township 9 North, Range 10 East, in the Town of Windsor, Dane County, Wisconsin, excluding Warranty Deed recorded in Volume 406 of Records, Page 112, excluding Certified Survey Map No. 1257 and excluding Certified Survey Map No. 11197.

Tax Parcel No: 068/0910-283-8002-0

PARCEL B:

The Southeast 1/4 of the Southwest 1/4 of Section 28, Township 9 North, Range 10 East, in the Town of Windsor, Dane County, Wisconsin, excluding Certified Survey Map No. 13080.

Tax Parcel No: 068/0910-283-9503-0

PARCEL C:

The Northwest 1/4 of the Southeast 1/4 of Section 28, Township 9 North, Range 10 East, in the Town of Windsor, Dane County, Wisconsin, excluding Certified Survey Map No. 7006, excluding Certified Survey Map No. 11197 and excluding Certified Survey Map No. 11425.

Tax Parcel No: 068/0910-284-8554-0

PARCEL D:

The Southwest 1/4 of the Southeast 1/4 of Section 28, Township 9 North, Range 10 East, in the Town of Windsor, Dane County, Wisconsin.

Tax Parcel No: 068/0910-284-9002-0

PARCEL E:

The Northwest 1/4 of the Northeast 1/4 of Section 33, Township 9 North, Range 10 East, in the Town of Windsor, Dane County, Wisconsin.

Tax Parcel No: 068/0910-331-8502-0

PARCEL F:

The Northeast 1/4 of the Northwest 1/4 of Section 33, Township 9 North, Range 10 East, in the Town of Windsor, Dane County, Wisconsin, excluding Certified Survey Map No. 13080.

Tax Parcel No: 068/0910-332-8003-0

PARCEL I:

Lot 2 of Certified Survey Map No. 13076, described as Section 28, Township 9 North, Range 10 East and part of the Northwest 1/4 of the Southwest 1/4 and part of the Southwest 1/4 of the Southwest 1/4 of in the Village of DeForest, Dane County, Wisconsin, excluding parts to the Department of Transportation in Document No. 4852827.

Tax Parcel No: 118/0910-283-9940-1

PARCEL J:

Lot 1 of Certified Survey Map No. 13076, described as part of Section 28, Township 9 North, Range 10 East and part of the Northwest 1/4 of the Southwest 1/4 and part of the Southwest 1/4 of the Southwest 1/4 in the Village of DeForest, Dane County, Wisconsin, excluding parts to the Village of DeForest in Document No. 4803490 and excluding part to the Department of Transportation in Document No. 4852827.

Tax Parcel No: 118/0910-283-8560-1

EXHIBIT B

**LEGAL DESCRIPTION OF STATZ PROPERTY OWNED BY STATZ BROS., INC. AND
SUBJECT TO PURCHASE CONTRACT WITH BEAR TREE FARMS, INC.**

Statz Property

Legal description:

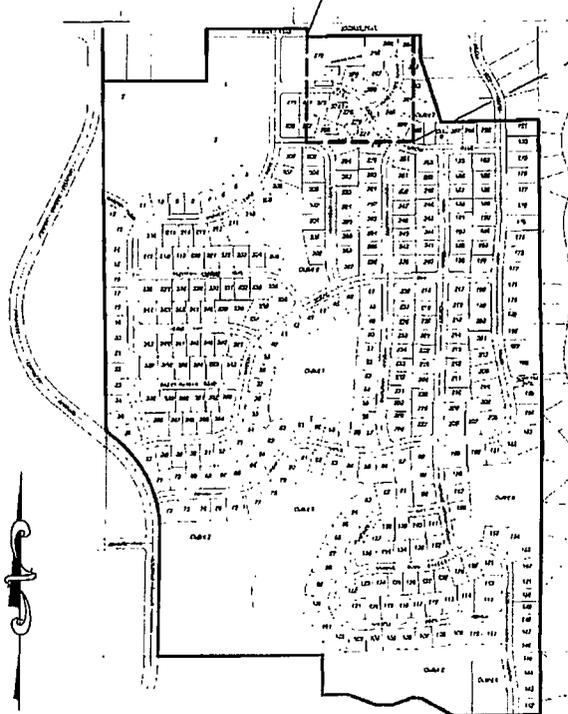
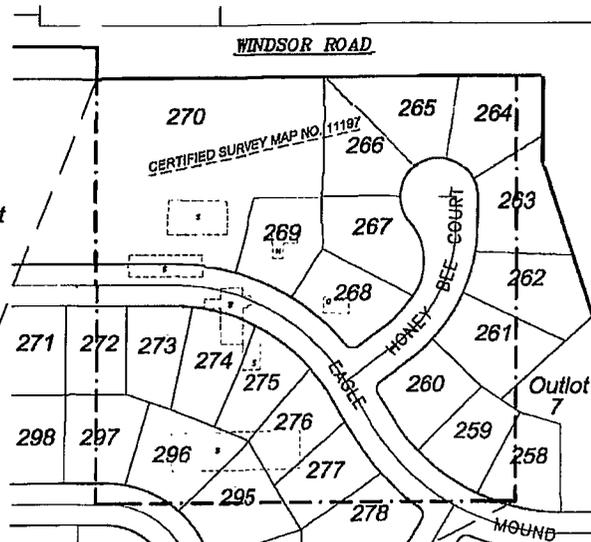
Lot 1, Certified Survey Map No. 11197, as recorded in Vol. 67, Pg. 258-259 of Certified Survey Maps of Dane County, being part of the Northwest 1/4 of the Southeast 1/4 and part of the Northeast 1/4 of the Southwest 1/4, Section 28, T9N, R10E, Town of Windsor, Dane County, Wisconsin.

Parcel No.:

0910-284-8601-0

Owner:

Statz Bros., Inc.



**BEAR
TREE
FARMS**

August 14, 2015

EXHIBIT C
PLAT OF BEAR TREE FARMS
LOT NUMBERS AND PARCEL IDENTIFICATION NUMBERS
[PROVIDED BY DEVELOPER'S SURVEYOR]