

**TOWN OF WINDSOR
BOARD RESOLUTION 2015-74**

**APPROVAL OF FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT
FOR WINDSOR GARDENS AND FIELD OF DREAMS ADDITION TO
WINDSOR GARDENS – PHASE 3, IN THE TOWN OF WINDSOR,
RESTRICTION ON SALE AND TRANSFER OF LOTS, AND AMOUNT OF
LETTER OF CREDIT**

WHEREAS, Apple Apartments, LLC, Donald C. Tierney and Joanne K. Tierney (collectively, "**Developer**") has requested an amendment ("**Phase 3 Amendment**") to the Windsor Gardens and Field of Dreams Addition to Windsor Gardens Development Agreement, as previously amended ("**Development Agreement**") to provide for development of Phase 3, which includes Lots 1 through 9 (Inclusive) and 31 through 37 (Inclusive) of the Field of Dreams Addition to Windsor Gardens (collectively, the "**Phase 3 Lots**"); and

WHEREAS, the Developer's Engineer (Krista Sommerfeldt of MSA Professional Services) has provided data necessary for the Town Engineer to establish the amount of the letter of credit, including an opinion of probable costs and construction drawings for Phase 3, which has been reviewed by the Town Engineer; and

WHEREAS, the Town Engineer has no objection to the construction drawings and has determined that the letter of credit for Phase 3 should be \$176,820, which is 120% of the Developer's Engineer's opinion of probable cost; and

WHEREAS, the Town Engineer has received notice from Dane County Land & Water Resources (the "**County**") of a list of items that must be addressed prior to the County's review of Developer's soil and erosion control permit request including: (1) revision of application submitted on 8/31/15 to include the early start (i.e., USLE worksheets, permit fee, narrative, etc.); (2) payment of double permit fee (that is, twice the base fee and the disturbed area fee); and, (3) as-built plans for Phase 2 (as previously requested on 7/27/2015) (collectively, "**County Requirements**"); and

WHEREAS, the Town Attorney has not yet received confirmation of the recording of a Quit Claim Deed (or such other actions as may be necessary) to vacate the park that was to be vacated by Developer when the Plat of Field of Dreams Addition to Windsor Gardens was created by replatting a portion of Windsor Gardens (as previously requested on December 29, 2014, March 5, 2015, and August 31, 2015) (the "**Park Vacation Requirement**"); and

WHEREAS, the Town Attorney recommends that Developer execute the restriction prohibiting transfer of unimproved lots that are part of the Plats of Windsor Gardens and the Field of Dreams Addition to Windsor Gardens, all as required of other developers within the Town ("**Transfer Restriction**"); and

WHEREAS, the Town Board, at its regularly scheduled meeting on September 17, 2015, reviewed the above recitals and the documents attached hereto and wishes to proceed as set forth herein.

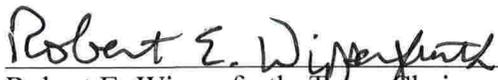
NOW, THEREFORE, BE IT RESOLVED by the Town Board of the Town of Windsor as follows:

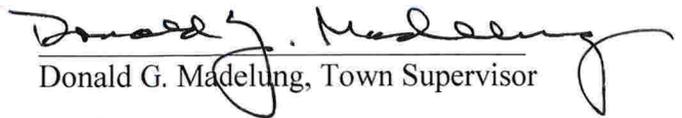
1. The Town Board **CONDITIONALLY APPROVES** amendment of the Development Agreement to allow for development of the Phase 3, subject to Developer's compliance with each and all of the following conditions:
 - a. Subject to proper execution by the Town and Developer of the Phase 3 Amendment and the Transfer Restriction, copies of which are attached and incorporated by reference.
 - b. Subject to Developer providing the Town with the fully executed original of the Phase 3 Amendment and the Transfer Restriction, with updated exhibits attached including verified Parcel Identification Numbers, so that the Town can execute same and submit fully executed originals for recording at the Dane County Register of Deeds Office on or before November 30, 2015.
 - c. Subject to Developer filing the letter of credit with the Town in the form and amount approved by the Town Engineer and Town Attorney, as described in the recitals above.
 - d. Subject to Developer developing Phase 3 in accordance with the construction drawings on file with the Town Engineer and providing Developer's Engineer's certification of such completion prior to issuance of building permits for the lots.
 - e. Subject to Developer meeting the County Requirements set forth in the recitals above and providing the Town Engineer with a copy of the properly issued permit required by the County prior to further land disturbing activity.
 - f. Subject to Developer satisfying the Park Vacation Requirement identified in the recitals above.
 - g. Subject to reimbursement to the Town of Windsor by the Developer for all costs and expenses incurred by the Town of Windsor in connection with the review and approval of this matter, including, but not limited to, the cost of professional services incurred by the Town of Windsor for the review and preparation of required documents, attendance at meetings or other related professional services.
2. The conditions set forth above must be satisfied prior to further work on the property. The Town Board's approval shall expire if the conditions set forth in this Resolution have not been met on or before November 30, 2015. Time is of the essence.
3. The documents to be recorded shall be returned to the Town of Windsor following recording. The Town shall provide electronic copies to the Developer, Developer's Attorney and Town Attorney.

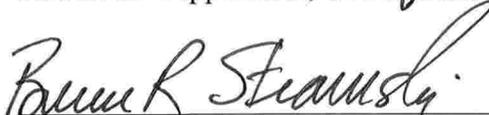
4. It is the Developer's obligation to timely satisfy the conditions established by the Town Board, and to provide satisfactory verification of compliance to the Town. Any necessary or requested reviews or submissions to the Town for determinations of compliance with this Resolution shall be made at least ten (10) business days prior to the date upon which verification of compliance is required.

The above and foregoing Resolution was duly adopted at the regular meeting of the Town Board of the Town of Windsor on the 17th day of September, 2015, by a vote of 5 in favor, 0 opposed, and 0 abstain.

TOWN OF WINDSOR

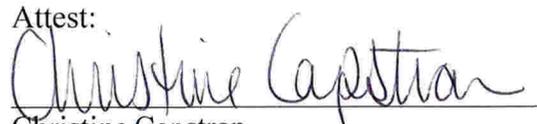

Robert E. Wipperfurth, Town Chairman


Donald G. Madelung, Town Supervisor


Bruce Stravinski, Town Supervisor


Alan Buchner, Town Supervisor


Monica M. Smith, Town Supervisor

Attest:

Christine Capstran
Clerk

Exhibits Attached and Incorporated by Reference:

- Phase 3 Amendment
- Transfer Restriction
- County Stop Work Order / Photos

**PLAT OF WINDSOR GARDENS AND
PLAT OF FIELD OF DREAMS ADDITION TO
WINDSOR GARDENS,
TOWN OF WINDSOR,
DANE COUNTY, WISCONSIN:**

**FOURTH AMENDMENT TO DEVELOPMENT
AGREEMENT**

This Fourth Amendment to Development Agreement (the "**Fourth Amendment**") regarding the Windsor Gardens Subdivision and Field of Dreams Addition to Windsor Gardens Subdivision (the "**Development**") is entered into by and between the Town of Windsor, a Wisconsin municipal corporation ("**Town**") and Apple Apartments, LLC, Donald C. Tierney and Joanne K. Tierney (collectively, "**Developer/Owner**") to be effective when signed by the parties.

RECITALS

WHEREAS, the Town and Developer/Owner entered into a Development Agreement dated November 15, 2007 (the "**Original Agreement**"), a First Amendment to Development Agreement dated July 16, 2009 (the "**First Amendment**"), and a Second Amendment to Development Agreement approved October 17, 2013 (the "**Second Amendment**"), and a Third Amendment approved August 7, 2014 (the "**Third Amendment**"); and

WHEREAS, the Developer/Owner wishes to further amend the Original Agreement, First Amendment, Second Amendment and Third Amendment to begin Phase 3 of the Development, and the Town has agreed to do so pursuant to this Fourth Amendment, all on the terms set forth more fully herein; and

WHEREAS, the Original Agreement, the First Amendment, the Second Amendment the Third Amendment and the Fourth Amendment shall be collectively referred to herein as the "**Development Agreement**" and shall hereafter apply to the Windsor Gardens Subdivision and Field of Dreams Addition to Windsor Gardens Subdivision (the "**Development**").

THIS SPACE RESERVED FOR RECORDING DATA

RETURN TO:
Amy Anderson Schweppe
Town of Windsor
4084 Mueller Road
DeForest, WI 53532

DRAFTED BY:
Constance L. Anderson, Town Attorney
Anderson Consults, LLC
Madison, WI 53704
Connie@AndersonConsultsWI.com

PARCEL IDENTIFICATION NUMBERS:
SEE EXHIBIT A

AGREEMENT

IN WITNESS WHEREOF, in consideration of the above recitals, which are incorporated herein by reference, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and Developer /Owner agree as follows:

1.) Phase 3 Lots. The Original Agreement includes a phasing schedule. The Phase 3 Lots are hereby amended to include Lots 1-9 and 31-37 of the Field of Dreams Addition to Windsor Gardens ("Field of Dreams") as Phase 3 of the Development. (See Exhibit A.)

2.) Security. The security for performance of Phase 3 shall be by means of a letter of credit. The amount escrowed or the amount of the letter of credit shall be equal to \$176,820 which is 120% of the costs of the required public improvements in Phase 3. The form of the letter of credit shall be subject to approval by the Town Engineer and Town Attorney.

3.) Conditions for Construction on Phase 3 Lots. By execution of this Fourth Amendment, the Developer/Owner agrees to and shall fully comply with each and all of the conditions set forth herein and in Town Board Resolution 2015-74. In addition to other consequences provided by law, which are not limited hereby, Developer/Owner acknowledges and agrees that:

a. Developer/Owner shall obtain soil and erosion control permits and comply with the requirements established by Dane County prior to engaging in or allowing any further land disturbing activity within the Development.

b. Neither a building permit nor an occupancy permit shall issue for any lots in Phase 3 until Developer satisfies each and all of the conditions set forth in Town Board Resolution 2015-74.

c. Phase 3 shall be developed in accordance with the construction drawings on file with the Town Engineer and Developer's Engineer shall provide certification of such completion prior to issuance of building permits for the Phase 3 Lots.

4.) Ratification. Except as expressly modified hereby, the Original Agreement, First Amendment and Second Amendment and Third Amendment are hereby ratified and reaffirmed by the Town and the Developer/Owner as if set forth in full herein.

EXHIBIT A

LEGAL DESCRIPTION OF PHASE 3 LOTS
AND PARCEL IDENTIFICATION NUMBERS

The following Lots in the Plat of Field of Dreams Addition to Windsor Gardens, Town of Windsor, Dane County, Wisconsin, which plat is recorded as Document # 4782736 in Vol. 59-094A Plats, at Page 439 in the Dane County Register of Deeds Office.

FIELD OF DREAMS LOT NUMBER	PARCEL IDENTIFICATION NO.
1	0910-254-2501-0
2	0910-254-2512-0
3	0910-254-2523-0
4	0910-254-2534-0
5	0910-254-2545-0
6	0910-254-2556-0
7	0910-254-2567-0
8	0910-254-2578-0
9	0910-254-2589-0
31	0910-254-2831-0
32	0910-254-2842-0
33	0910-254-2853-0
34	0910-254-2864-0
35	0910-254-2875-0
36	0910-254-2886-0
37	0910-254-2897-0

**PLAT OF WINDSOR GARDENS
AND
PLAT OF FIELD OF DREAMS
ADDITION TO WINDSOR GARDENS,
TOWN OF WINDSOR, DANE COUNTY, WISCONSIN:**

**DEED RESTRICTION PROHIBITING SALE OR
TRANSFER OF CERTAIN LOTS AND PROVIDING
FOR PHASED DEVELOPMENT OF THE PROPERTY**

This Deed Restriction is by, between and among Apple Apartments, LLC, Donald C. Tierney and Joanne K. Tierney, as developers and owners (collectively herein, "**Developer/Owner**") and the Town of Windsor, a corporate body and politic located in Dane County, Wisconsin ("**Windsor**") and encumbers property (the "**Restricted Lots**") located in the Town of Windsor, Dane County, Wisconsin, that is part of the Plat of Windsor Gardens ("**Windsor Gardens**") and the Plat of Field of Dreams Addition to Windsor Gardens ("**Field of Dreams**"). This Deed Restriction 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.

RECITALS

WHEREAS, as of the effective date of this Agreement, the Developer/Owner has obtained from Windsor the authority to construct necessary public infrastructure in the Field of Dreams and Windsor Gardens, and shall continue to develop and market Field of Dreams and Windsor Gardens in phases, all pursuant to a Development Agreement and other agreements with Windsor, each and all of which are or shall be recorded in the Dane County Register of Deeds office; and,

WHEREAS, the Developer/Owner's authority to proceed with phased construction is subject to, among other things, the Developer recording this Deed Restriction prohibiting the sale or transfer of certain lots included in future construction phases without first obtaining and recording written prior approval from Windsor.

AGREEMENT

NOW THEREFORE, in consideration of the above recitals, which are incorporated herein by reference, and other valuable consideration, the sufficiency of which is hereby acknowledged, the Developer and Windsor agree as follows:

- 1. THIS DEED RESTRICTION PROHIBITS THE SALE, CONVEYANCE OR TRANSFER OF THE RESTRICTED LOTS, EXCEPT AS PROVIDED HEREIN.**

THIS SPACE RESERVED FOR
RECORDING DATA

RETURN TO:

Amy Anderson Schweppe
Town of Windsor
4084 Mueller Road
DeForest, WI 53532

DRAFTED BY:

Constance L. Anderson, Town Attorney
Anderson Consults, LLC
Madison, WI 53704
Connie@AndersonConsultsWI.com

PARCEL IDENTIFICATION NUMBERS:

See **Exhibit A**

None of the Restricted Lots shall be sold, conveyed or transferred to a third party until such time as Windsor approves, executes and records a **RELEASE FROM DEED RESTRICTION** in the Dane County Register of Deeds Office specifying release of lots thereby made available for sale, conveyance or transfer.

Any transfer in violation of this Deed Restriction shall be deemed null and void and shall have no legal force or effect.

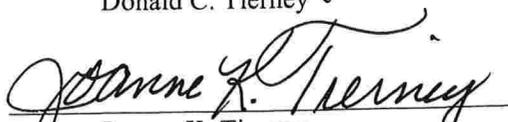
This Deed Restriction restricts the sale, conveyance or transfer of ownership interests (such as by deed, land contract or ground lease), but does not restrict or otherwise limit encumbrances related to the Development. Such encumbrances may include: mortgages; collateral assignments; waivers and notices of special assessments and charges; covenants; easements; and/or, utility, stormwater, and path maintenance agreements.

2. **RESTRICTED LOTS; PHASING PLAN.** The lots encumbered by this Deed Restriction (the "**Restricted Lots**") are described with particularity on **Exhibit A**, which is attached and incorporated by reference. Development of the Restricted Lots shall occur in the phases identified and described in the **Phasing Plan**, which is attached as **Exhibit B**, and incorporated by reference.
3. **BINDING ON SUCCESSORS AND ASSIGNS.** This Deed Restriction shall be binding on the parties' heirs, successors and assigns. If Windsor's governmental structure changes as a result of incorporation, merger or consolidation, this Deed Restriction shall continue in force and the new government entity shall be considered Windsor's successor with respect to this Deed Restriction, without the need for further action by the parties.
4. **AUTHORIZED TO BIND.** Each person signing this Deed Restriction personally warrants and represents that he or she has been duly authorized to bind the party for whom he or she is signing, and shall indemnify the parties hereto from harm caused by the failure to have authority to bind as represented by his or her signature below.

IN WITNESS WHEREOF, the Donald C. Tierney, Joanne K. Tierney and Apple Apartments, LLC have caused this Deed Restriction to be signed in Dane County, Wisconsin, as of this 23 day of September, 2015.

OWNER/DEVELOPER


Donald C. Tierney


Joanne K. Tierney

APPLE APARTMENTS, LLC

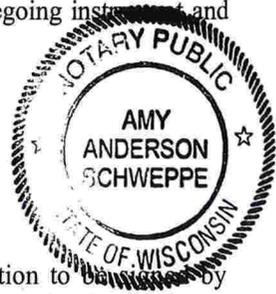
By: *Donald C. Tierney*
Donald C. Tierney
Its: President

ACKNOWLEDGMENT

STATE OF WISCONSIN)
)ss.
COUNTY OF DANE)

Personally came before me this 23 day of September, 2015, the above-named Joanne K. Tierney and Donald C. Tierney to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Amy Anderson Scheppe
Notary Public, State of Wisconsin
My Commission: expires May 23, 2017



IN WITNESS WHEREOF, the Town of Windsor, has caused this Deed Restriction to be signed by Robert E. Wipperfurth, Town Chairperson and its authorized representative, and attested to by Christine Capstran, Town Clerk, as of this 21 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 21 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.

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



EXHIBIT A

RESTRICTED LOTS
LEGAL DESCRIPTION AND PARCEL IDENTIFICATION NUMBERS

Windsor Gardens Parcels

Lot No.	Parcel No.	Lot No.	Parcel No.	Lot No.	Parcel No.
Lot 1	0910-253-4001-0	Lot 101	0910-254-2408-0	Lot 141	0910-253-6309-0
Lot 2	0910-253-4012-0	Lot 102	0910-254-2419-0	Lot 142	0910-253-6320-0
Lot 3	0910-253-4023-0	Lot 103	0910-254-4254-0	Lot 143	0910-253-6331-0
Lot 4	0910-253-4034-0	Lot 104	0910-254-4265-0	Lot 144	0910-254-0045-0
Lot 5	0910-253-4045-0	Lot 105	0910-254-4276-0	Lot 145	0910-254-0056-0
Lot 6	0910-253-4056-0	Lot 106	0910-254-4287-0	Lot 146	0910-254-0067-0
Lot 7	0910-253-4067-0	Lot 107	0910-254-4298-0	Lot 147	0910-254-0078-0
Lot 8	0910-253-4078-0			Lot 148	0910-254-0089-0
Lot 9	0910-253-4089-0	Lot 109	0910-254-4320-0	Lot 149	0910-254-0100-0
Lot 10	0910-253-4100-0	Lot 110	0910-254-4331-0		
Lot 11	0910-253-4111-0	Lot 111	0910-254-4342-0	Lot 171	0910-254-0155-0
Lot 12	0910-253-4122-0	Lot 112	0910-254-4353-0	Lot 172	0910-254-0166-0
Lot 13	0910-253-4133-0	Lot 113	0910-254-4364-0	Lot 173	0910-254-0177-0
Lot 14	0910-253-4144-0	Lot 114	0910-254-4375-0		
Lot 15	0910-253-4155-0	Lot 115	0910-254-4386-0	Lot 177	0910-254-0210-0
Lot 16	0910-253-4166-0	Lot 116	0910-254-4397-0	Lot 178	0910-254-0221-0
Lot 17	0910-253-4177-0	Lot 117	0910-253-6089-0		
Lot 18	0910-253-4188-0	Lot 118	0910-253-6100-0		
Lot 19	0910-253-4199-0	Lot 119	0910-253-6111-0		
Lot 20	0910-253-4210-0	Lot 120	0910-253-6122-0		
Lot 21	0910-253-4221-0	Lot 121	0910-253-6133-0		
Lot 22	0910-253-4232-0	Lot 122	0910-253-6144-0		
Lot 23	0910-253-4243-0	Lot 123	0910-253-6155-0		
Lot 24	0910-253-4254-0	Lot 124	0910-253-6166-0		
Lot 25	0910-253-4265-0	Lot 125	0910-253-6177-0		
Lot 26	0910-253-4276-0	Lot 126	0910-253-4309-0		
Lot 27	0910-253-4287-0	Lot 127	0910-253-4320-0		
Lot 28	0910-253-4298-0	Lot 128	0910-253-4331-0		
Lot 29	0910-253-6001-0	Lot 129	0910-253-4342-0		
Lot 30	0910-253-6012-0	Lot 130	0910-253-6188-0		
Lot 31	0910-253-6023-0	Lot 131	0910-253-6199-0		
Lot 32	0910-253-6034-0	Lot 132	0910-253-6210-0		
Lot 33	0910-253-6045-0	Lot 133	0910-253-6221-0		
Lot 34	0910-253-6056-0	Lot 134	0910-253-6232-0		
Lot 35	0910-253-6067-0	Lot 135	0910-253-6243-0		
Lot 36	0910-253-6078-0	Lot 136	0910-253-6254-0		
Lot 37	0910-254-4001-0	Lot 137	0910-253-6265-0		
Lot 38	0910-254-2001-0	Lot 138	0910-253-6276-0		
Lot 39	0910-254-2012-0	Lot 139	0910-253-6287-0		
Lot 40	0910-254-2023-0	Lot 140	0910-253-6298-0		

EXHIBIT B
PHASING PLAN

Phase 1

Lots 62 - 83 and Lot 108	Windsor Gardens Plat
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Phase 2

Lots 10 - 30	Field of Dreams Addn To Windsor Gardens Plat
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Phase 3 A

Lots 1 - 9 & Lots 31 - 37	Field of Dreams Addn To Windsor Gardens Plat
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Phase 3 B

Lots 150 - 170 & Lots 174 - 176 & Lots 179 - 188	Windsor Gardens Plat
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Future Phase

Lots 1 - 40 & Lots 101 - 107 & Lots 109 - 149 & Lots 171 - 173 & Lots 177 - 178	Windsor Gardens Plat
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August 31, 2015

Don Tierney
3564 Egge Rd
DeForest, WI 53532

Dear Mr. Tierney:

Re: Windsor Gardens Phase 3 Construction

During our telephone conversation on August 20, 2015, I told you that before you could proceed with construction on Windsor Gardens Phase 3, you would need to have an approved amended development agreement. Today we received a request from your attorney, Michael Lawton to prepare an amendment for the remaining lots in the Field of Dreams Addition to Windsor Gardens.

On August 27, 2015, I received a copy of a letter to Dane County Land and Water Resources Department sent on your behalf, showing that you intend to start work on Windsor Gardens Phase 3 on September 2, 2015. Work cannot proceed on Windsor Gardens Phase 3 without the amended development agreement, a letter of credit in the amount of 120% of the public improvements and a letter of no objection to the design drawings for the construction of public improvements.

Town Attorney Constance Anderson will prepare the amendment to the development agreement for your review. Please have your engineer prepare an opinion of cost for the letter of credit amount and submit the opinion of cost and construction drawings for my review. I look forward to working with you on this project.

Sincerely,
Town of Windsor

A handwritten signature in black ink, appearing to read "K. Richardson", written over a horizontal line.

Kevin W. Richardson, PE, BCEE
Town Engineer

Cc: Robert Wipperfurth, Town Chair
Tina Butteris, Finance Director
Amy Anderson Schwappe, Planning and Development Coordinator
Constance Anderson, Town Attorney
Michael Lawton, Boardman & Clark

Windsor Gardens
Florence Ruth Lane
September 2, 2015



West



East

East



South

Windsor Gardens
Florence Ruth Lane
September 2, 2015



North



Water Resource Engineering Division

Dane County Land & Water Resources Department

Jeremy Balousek, P.E., Division Manager

STOP WORK ORDER

Date: 9/4/2015 Location: Windsor Gardens, Field of Dreams
Parcel #: 091025425780 Address: _____
Owner(s): Donald Tierney Permit #: None

A stop work order has been placed on the project for:

- Land disturbing activity in excess of 4,000 square feet without a permit.
- Land disturbing activity in the shoreland zone without a permit.
- Land disturbing activity involving more than 100 lineal feet of ditch or channel.
- Construction of a road or access drive exceeding 125 feet in length.
- Violating or failing to comply with conditions of an existing permit as described below:

All work on this project shall cease until appropriate permits and approvals have been obtained and the Stop Work Order has been removed by a representative of the Dane County Water Resource Engineering Division.

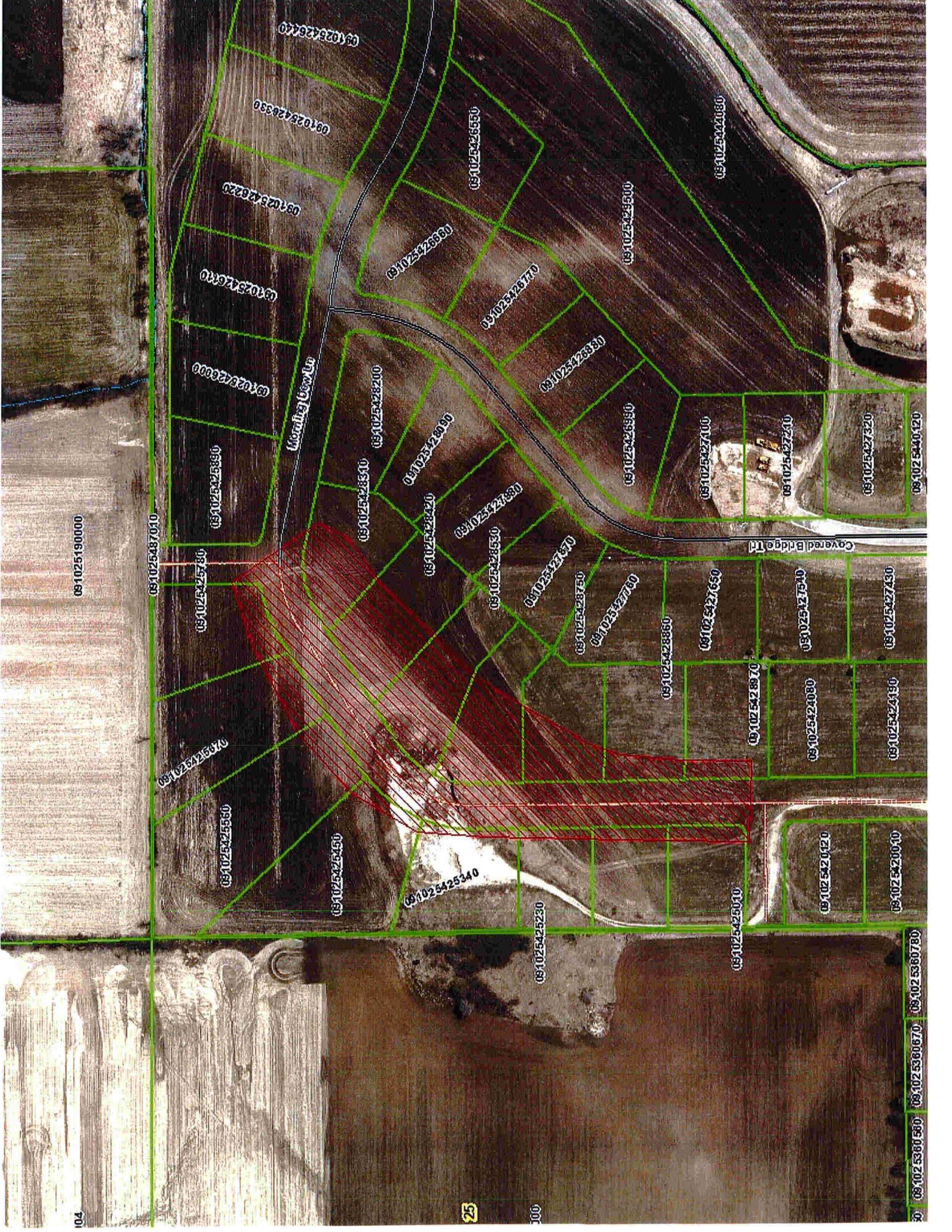
You must submit any required materials or perform the necessary installations/repairs by _____ at 4:00 P.M.

The only exception to this Stop Work Order is for the immediate installation of erosion and sediment control measures. Continuation of project work will result in further enforcement action. Please contact our office at the number below concerning this stop work order. Thank you for your attention to this matter.

Respectfully,

Jason Tuggle

Digitally signed by Jason Tuggle
DN: cn=Jason Tuggle, o=Dane County Land &
Water Resources, ou=Water Resource
Engineering,
email=tuggle.jason@countyofdane.com, c=US
Date: 2015.09.04 10:44:11 -05'00'



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091025426370

091025426330

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091025427240

091025427320

091025440120

Covered Bridge Rd

Wending Over Ln

091025360580 091025360670 091025360730