

RESOLUTION NO. 2023-38

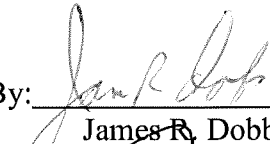
RESOLUTION AUTHORIZING THE VILLAGE OF CALEDONIA TO ENTER INTO AN ACCESS AGREEMENT WITH CORNERSTONE DEVELOPMENT OF S.E. WISCONSIN FOR PARCELS 104-04-23-21-021-000, 104-04-23-21-016-000, 104-04-23-21-016-010, AND 104-04-23-16-021-000.

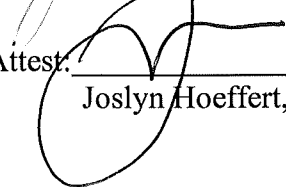
WHEREAS, Cornerstone Development of S.E. Wisconsin and the Village have entered into a development agreement for a proposed residential development within TID 5 that is consistent with the project plan for TID 5 and Cornerstone Development of S.E. Wisconsin have requested access to the parcels at 104-04-23-21-021-000, 104-04-23-21-016-000, 104-04-23-21-016-010, and 104-04-23-16-021-000 along Erie Street for the purpose of conducting inspections and investigations in order to collect information, to transplant healthy trees before it becomes harmful to the tree’s health, clearing and grubbing of the property, and general grading activities on the site and have agreed to indemnify the Village during such access and activities;

NOW, THEREFORE, BE IT RESOLVED by the Caledonia Village Board that the Access Agreement between the Village of Caledonia and Cornerstone Development of S.E. Wisconsin as set forth in **Exhibit A** attached hereto and incorporated herein (the “Access Agreement”), is hereby authorized and approved, and the Village President and Village Clerk are authorized to execute said agreement and the Village Administrator and Director of Public Services are authorized to take such actions necessary in furtherance thereof.

Adopted by the Village Board of the Village of Caledonia, Racine County, Wisconsin, this 11 day of APRIL, 2023.

VILLAGE OF CALEDONIA

By: 
James R. Dobbs, President

Attest: 
Joslyn Hoeffert, Clerk

ACCESS AGREEMENT

This **ACCESS AGREEMENT** (“Agreement”) is made and entered into as of April ____, 2023 (the “**Effective Date**”), by and between **Village of Caledonia** (the “**Village**”) and Cornerstone Development of S.E. Wisconsin (the Developer).

WITNESSETH THAT:

WHEREAS, the Village owns certain real property legally described in Exhibit A attached hereto (the “**Property**”).

WHEREAS, the Developer and the Village are party to that certain Tax Incremental District No. 5 Development Agreement dated as of July 22, 2022 (the “**Development Agreement**”) pursuant to which Cornerstone will acquire and develop the Property.

WHEREAS, the Developer has requested a right to access the Property for the purpose of grubbing and grading the Property.

WHEREAS, the Village desires to grant access to the Property to the Developer, subject to the terms, conditions and stipulations set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Right of Access.** Developer, upon reasonable advance notice to Village, which notice shall be transmitted to Village via email at rschmidt@caledonia-wi.gov and pwagner@caledonia-wi.gov, shall have the right to access, and to provide its consultants, architects, engineers, surveyors, and contractors (collectively, “**Contractors**”) with access to, the Property for the purpose of performing grubbing and grading activities. Such access shall be at the Developer’s sole cost and expense. Notwithstanding anything to the contrary in this Agreement, neither Developer nor its Contractors shall perform any invasive testing (including, but not limited to any soil testing, any Phase II testing or testing for the presence of hazardous building materials) on the Property nor take any samples from the Property without the express written consent of the Village.

2. **Indemnification by Village.** Except to the extent of Village’s negligence or willful misconduct, Developer shall indemnify, defend and hold Village, its officials, officers and employees, free and harmless from and against any damages or liability or claims of damages to person or property that might arise from any activity undertaken by Developer (including its employees, representatives and agents) or Contractors on the Property, or arising out of or connected with Developer’s exercise of its rights hereunder or Developer’s breach of the terms of this Agreement. Developer shall maintain, or cause to be maintained, commercial general liability insurance against claims for bodily injury, loss of life or property damage arising from the exercise of Developer’s rights or the performance of activities under this Agreement

with combined single limit coverage of not less than Two Million Dollars (\$2,000,000.00). Developer shall cause Village to be named as an additional insured on such policy by specific endorsement and will provide the Village a certificate of insurance and a copy of the endorsement demonstrating compliance with this Section 2.

3. **Term.** This Agreement shall automatically terminate upon developer's acquisition of the Property, the termination of the Development Agreement. Except for the obligations that survive termination as set forth in Section 8, upon termination this Agreement shall be of no further force or effect.

4. **No Encumbrance of Title or Interest in Real Property.** Developer shall not suffer, permit or cause any mechanic's and materialman's or other similar liens or claims of lien to be filed against all or any portion of the Property. Notwithstanding anything to the contrary contained herein, the interest granted by Village to Developer hereunder constitutes a grant of a revocable license, not a grant of an easement or any other interest in real property.

5. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

6. **Applicable Law.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Wisconsin.

7. **Legal Fees.** In the event legal action is instituted by a party to enforce the terms of this Agreement or which arises out of the execution of this Agreement, the prevailing party in such legal action will be entitled to receive from the other party the prevailing party's reasonable attorneys' fees and court costs, including the costs of appeal as may be determined by the court in which the action is brought.

8. **Survival.** Notwithstanding anything to the contrary contained herein, the obligations set forth in Section 2 and Section 7 shall survive the termination of this Agreement.

9. **Waiver.** Failure of either Developer or Village to exercise any right given hereunder or to insist upon strict compliance with regard to any term, condition or covenant specified herein, shall not constitute a waiver of Developer's or Village's right to exercise such right or to demand strict compliance with any term, condition or covenant under this Agreement.

10. **Counterparts.** This Agreement may be signed in multiple counterparts which, when taken together, shall constitute one and the same document. An executed Agreement transmitted by facsimile machine or electronic mail shall be treated in all manner and respects as an original document and the signature of any party upon an Agreement transmitted by facsimile or electronic mail shall be considered an original signature.

11. **Captions.** All captions, headings, section and subsection numbers and letters are solely for reference purposes and shall not be deemed to be supplementing, limiting, or otherwise varying the test of this Agreement.

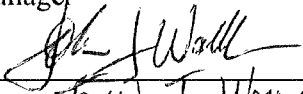
12. **Severability.** In the event any section of this Agreement shall be deemed to be invalid or unenforceable, this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted and shall otherwise remain in full force and effect.


13 **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the provision hereof and is binding upon Developer and Village and their respective heirs, successors, legal representatives and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CORNERSTONE DEVELOPMENT OF SE WI VILLAGE OF CALEDONIA

By: Cornerstone Development of S.E. WI
Manager

By: 
Name: JOHN J. WAHLEN
Title: OWNER, MEMBER

By: 
Name: James R. Dobbs
Title: Village President

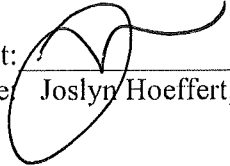
Attest: 
Name: Joslyn Hoeffert, Village Clerk

EXHIBIT A

Property

All that part of the Southwest 1/4 and Southeast 1/4 of the Southwest 1/4 of Section 16 and the Northeast 1/4 of the Northwest 1/4 of Section 21, all in Town 4 North, Range 23 East, in the Village of Caledonia, Racine County, Wisconsin, now being more particularly bounded and described as follows: Commencing at the South 1/4 Corner of said Section 16; Thence South 89°21'20" West and along the South line of the said Southwest 1/4 of said Section 16, 33.00 feet to a point on the West Right-of-Way line of "Erie Street" and the place of beginning of lands hereinafter described; Thence South 00°27'09" East and along the said West Right-of-Way line, 328.53 feet to a point; Thence South 89°21'20" West and along the North line of "Arlington Heights No. 4" (A Subdivision Plat of Record), 444.96 feet to a point; Thence North 00°27'09" West and along the East line of "Arlington Heights No. 5" (A Subdivision Plat of Record), 328.53 feet to a point on the said South line of the said Southwest 1/4 of said Section 16; Thence South 89°21'20" West and along the said South line of the said Southwest 1/4 Section, 933.93 feet to a point; Thence North 00°24'34" West and along the East line of "Lake Charles Estates" (A Subdivision Plat of Record), 528.00 feet to a point on the South line of Lot 1 of Certified Survey Map No. 3089; Thence North 89°21'20" East and along the said South line and the Easterly extension thereof, 975.73 feet to a point; Thence South 00°28'13" East, 200.00 feet to a point; Thence North 89°21'20" East, 435.60 feet to a point on the East line of the said Southwest 1/4 of said Section 16; Thence South 00°28'13" East and along the said East line, 328.00 feet to the point of beginning of this description.

Said Parcel contains 804,389 Square Feet (or 18.4662 Acres) of land, more or less.