

**RESOLUTION NO. 2023-62
(6-13-2023)**

**RESOLUTION AUTHORIZING THE VILLAGE OF CALEDONIA TO EXECUTE A
STORM WATER DRAINAGE EASEMENT AGREEMENT WITH
BLUFFSIDE ESTATES LLC**

WHEREAS, the Caledonia Utility District has conditionally approved a Storm Water Management Plan and Infrastructure Improvement Plan for Bluffside Estates LLC for the construction of a storm water pond in Bluffside. As a condition of approval of the Storm Water Management Plan and Infrastructure Improvement Plan, a Storm Water Drainage Easement Agreement is required to be granted over the storm water pond.

WHEREAS, the Owner, Bluffside Estates LLC has executed said Storm Water Drainage Easement Agreement.

WHEREAS, the Caledonia Utility District has authorized the President & Secretary of the Caledonia Utility District to execute the Storm Water Drainage Easement Agreement at their June 7, 2023 meeting.

WHEREAS, the President and Clerk of the Village need to execute the Storm Water Drainage Easement Agreement in order to allow it to be recorded.

NOW, THEREFORE, BE IT RESOLVED by the Caledonia Village Board that the execution of the Storm Water Drainage Easement Agreement as set forth in Exhibit A, which is attached hereto and incorporated herein by reference, is approved and that the Village President and Village Clerk are authorized to execute said Storm Water Drainage Easement Agreement.

Adopted by the Village Board of the Village of Caledonia, Racine County, Wisconsin, this 13 day of June, 2023.

VILLAGE OF CALEDONIA

By: Thomas R Weatherston
Thomas Weatherston, Village President

Attest: Joslyn Hoeffert
Joslyn Hoeffert, Village Clerk

Document Number

**Storm Water Drainage Easement
Agreement:
BLUFFSIDE ESTATES, LLC**

Name and Return Address
**Mr. Anthony A. Bunkelman P.E.
Village of Caledonia
Engineering Department
5043 Chester Lane
Racine, Wisconsin 53402**

104-04-22-25-029-101
104-04-22-25-029-102
104-04-22-25-029-103
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104-04-22-25-029-105
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104-04-22-25-029-118
104-04-22-25-029-119
Parcel Identification Number (PIN)

STORM WATER DRAINAGE EASEMENT AGREEMENT:
BLUFFSIDE ESTATES, LLC

This Storm Water Drainage Easement Agreement ("Agreement") is made the 2nd day of June, 2023, by and between **BLUFFSIDE ESTATES, LLC (and its members)**, a Wisconsin limited liability company with offices located at 8338 Corporate Drive, Suite 300, Mount Pleasant, Wisconsin 53406, collectively referred to in this Agreement as "Owner", and the **VILLAGE OF CALEDONIA**, Racine County, Wisconsin, and the **VILLAGE OF CALEDONIA UTILITY DISTRICT**, a utility district of the Village of Caledonia, Racine County, Wisconsin. The Village of Caledonia and Village of Caledonia Utility District are collectively referred to in this Agreement as the "Grantees".

RECITALS

A. The Owner is the fee simple holder of certain real property in the Village of Caledonia, Racine County, State of Wisconsin, as more particularly described on Exhibit A. Attached hereto and incorporated herein. Said real property is referred in this Agreement as the "Property". Attached to this Agreement, as Exhibit A, is the Final Plat of Bluffside, prepared by Pinnacle Engineering Group, in Brookfield, Wisconsin, and recorded at the Register of Deeds office in Racine County for the real property described as follows:

Bluffside, being a part of Parcel 4 of Certified Survey Map No. 1879 and additional lands in the Southwest $\frac{1}{4}$ and the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 25 and in the Northeast $\frac{1}{4}$ and Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 25, all in Township 4 North, Range 22 East, Village of Caledonia, Racine County, Wisconsin (the "Property").

B. As a part of the approval by the Grantees of the improvement of the Property, the Owner is required to construct, at their own cost and expense, a storm water pond, that will serve as a part of the storm water drainage facilities on the Property described and depicted on Exhibit B attached hereto and incorporated herein. Said storm water pond is referred to in this Agreement as the "Retention Pond". The Grantees have further required as part of said approval that the Owner enter into an agreement with Grantees setting forth the Owner's responsibility to maintain the Retention Pond and provide Grantees with an access easement.

C. The Grantees have requested that the Owner grant a permanent easement over that portion of the Property described in attached Exhibit B, hereinafter referred to in this Agreement as the "Pond Easement Area". The location of the Pond Easement Area with respect to the Property is as shown and described in Exhibit B.

D. The Grantees have requested that the Owner grant a permanent easement (referred to in this Agreement as the "Access Easement") over the "Pond Easement Area" and Storm Water Drainage Easement Areas, as may be necessary for the Grantees to exercise their rights under this Agreement.

E. As used in this Agreement, the term "Drainage Facilities" shall mean the Retention Pond, Access Easement, drainage swales, drainage ditches, pipelines, laterals, culverts, storm sewers and any other structures or improvements that are constructed or installed upon the Pond Easement Area and/or other areas of the Property from time to time by the Owner or Grantees, or any other person or entity, or their contractors, successors and assigns, for the conveyance of surface and storm waters over, across, under and through the Property.

AGREEMENT

For \$1.00 and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Construction, Use, Operation, Cleaning, Maintenance, Altering, Repairs and Replacements of Retention Pond and Drainage Facilities. The Owner agrees to construct, use, operate, clean, maintain, alter, repair and replace the Retention Pond and Drainage Facilities, including, without limitation, mowing, control of weed and algae growth, repair of erosion, and the removal of trees, brush, vegetation and silt, and all other obstacles to the flow of surface water to and from the Retention Pond and Drainage Facilities, so that the Retention Pond and Drainage Facilities function properly and to their design capacity for the storage and conveyance of storm water and so that there are no obstructions interfering with the location, construction, use, operation, cleaning, maintenance, alteration, repair and replacement of the Retention Pond and Drainage Facilities. Said obligations shall include the obligation to construct, use, operate, clean, maintain, alter, repair, and replace the Retention Pond and Drainage Facilities both during the construction thereof and thereafter and in conformity with this Agreement and the Ordinances of the Village of Caledonia and any restrictive covenants applicable to the Property. The Owner shall prevent the Retention Pond and Drainage Facilities from becoming a nuisance.

2. Failure to Construct, Clean, Maintain, Alter, Repair and Replace Retention Pond and Drainage Facilities. The Grantees shall have the right, but not the responsibility, to enter upon the Property in order to perform construction, cleaning, maintenance, alterations, repairs and replacements of the Retention Pond and Drainage Facilities if the Owner fails to do so after receiving a written request from the Grantees. The Owner shall be given at least ten business days after the date of said written request to perform whatever construction, cleaning, maintenance, alterations, repairs, and replacements are deemed reasonable and necessary by the Grantees as stated in said notice. Provided, however, that in the event the Grantees determine that emergency action should be performed, then the Grantees may enter upon the Property immediately and perform said emergency action. The Owner shall reimburse Grantees for all costs incurred by the Grantees in performing said construction, cleaning, maintenance, alterations, repairs, replacements, and emergency action, including, without limitation, any construction, engineering, legal and administrative costs with respect to the same, upon receiving an invoice for said costs. If Owner fails to pay said costs, then said costs may be assessed upon the Property by the Grantees as a special charge as provided in Wisconsin Statutes Sections 66.0627 and 66.0703, and Owner consents to said assessments and waives notice and hearing with respect to the levying of said assessments in accordance with Wisconsin Statutes Section 66.0703 and/or 66.0627.

3. Alteration or Changes of Retention Pond or Drainage Facilities. The Owner shall not make or construct any alteration or change of the Retention Pond or Drainage Facilities, including, without limitation, any alteration or change in the size, shape, capacity, rate of inflow or rate of outflow of the Retention Pond or Drainage Facilities, unless the Grantees approve the alteration or change in writing prior to the making or construction of said alteration or change.

4. Indemnification. Owner shall, and hereby does, indemnify and hold harmless the Grantees, and their employees, officials, commissioners, contractors, consultants, and agents from and against any claims, actions, judgments, damages, costs, and expenses (including, but not limited to, reasonable actual attorney fees) and/or liability of any nature whatsoever, that may arise, directly or indirectly, as a result of (i) the existence, construction, use, operation,

cleaning, maintaining, alteration, repair, and/or replacement of the Drainage Facilities and/or the Pond Easement Area, and/or (ii) any property damage and/or bodily injury (including death) that may arise or occur as a result of the foregoing and/or at such locations except for negligence caused by the Grantees.

5. Insurance. Owner shall, at Owner's own cost and expense, and prior to the construction of the Retention Pond, and any other Drainage Facilities, obtain and maintain a policy of general liability insurance, from a Wisconsin-licensed insurance carrier, that (i) has coverage and policy limits satisfactory to the Grantees, and (ii) has the Grantees named as additional insureds. Such insurance shall be kept and maintained by the Owner throughout the entire term of this Agreement.

6. Grant of Easement. The Owner hereby grants to the Grantees, and to the Grantees' employees, officials, commissioners, contractors, consultants, agents, successors, and assigns, a permanent easement and Right of Way over the Property, to and from Bluffside Drive, Old Orchard Boulevard and the Pond Easement Area, for the purposes of (i) performing its duties, responsibilities, and easement rights imposed upon and/or granted to the Grantees under this Agreement, and/or (ii) inspecting, monitoring, and/or testing the Drainage Facilities and/or the Pond Easement Area, and (iii) for conveying and/or storing surface and storm waters in, over, across, under, and/or through the Pond Easement Area and the Drainage Facilities.

7. Removal of Obstructions. Owner hereby grants to the Grantees, and to Grantees' employees, officials, commissioners, contractors, consultants, and agents the right to:

- (a) Cut down and remove or trim all trees, bushes or other vegetation existing within the Pond Easement Area, and to cut down and remove or trim all trees, bushes and other vegetation located outside of the Pond Easement Area that interfere with (i) the construction, use, operation, cleaning, maintenance, alteration, repair and replacement of the Drainage Facilities within the Pond Easement Area, or (ii) ingress and egress to the Pond Easement Area, Bluffside Drive and Old Orchard Boulevard.
- (b) Remove any fences, structures or improvements located within the Pond Easement Area to the extent necessary to (i) carry out the construction, use, operation, cleaning, maintenance, alteration, repair and replacement of the Drainage Facilities within the Pond Easement Area, or (ii) maintain ingress and egress to the Pond Easement Area, Bluffside Drive and Old Orchard Boulevard.

8. Further Owner Requirements.

- (a) No fences, structures or improvements will be erected, and no trees, bushes or other vegetation will be planted, within the Pond Easement Area without the written consent of the Grantees; and
- (b) The elevation of the existing ground surface within the Pond Easement Area will not be altered without the written consent of the Grantees.
- (c) Owner shall perform the drainage work in the manner described in attached Exhibit B.
- (d) Owner shall comply with (i) the provisions and requirements of the updated

Storm Water Management Plan for the Property, prepared by Pinnacle Engineering Group, dated and Professional Engineer Stamped December 6, 2021 and the Construction Plans for Bluffside, prepared by Pinnacle Engineering Group, dated and Professional Engineer Stamped July 25, 2022 as may be approved and/or amended from time to time by the Grantees.

9. Restoration of Surface. The Grantees shall reasonably restore the surface of the Property disturbed by the Grantees' (i) construction, use, operation, cleaning, maintenance, alteration, repair, and replacement of the Drainage Facilities within the Pond Easement Area or (ii) ingress and egress to the Pond Easement Area. Said restoration shall be to the condition that existed prior to the Grantees' entry on the Property; provided, however that the Grantees shall only be required to (i) restore any disturbed areas of soil with grass seed, and (ii) restore any disturbed paved portion or gravel portion of the Property with similar materials.

10. Non-Use. Non-use or limited use of the rights granted to the Grantees in this Agreement shall not prevent the Grantees from the later use of said rights to the fullest extent authorized in this Agreement.

11. Covenants Run With Land. All of the terms and conditions in this Agreement, including the benefits and burdens, shall run with the land that is the Property and shall be binding upon, inure to the benefit of, and be enforceable by the Owner and the Grantees and their respective successors and assigns.

12. Warranty. The Owner does hereby warrant and covenant that the Owner owns the Property in fee simple and is lawfully seized and possessed of the Property; that the Owner has a good and lawful right to grant the rights granted to the Grantees hereunder; that the Property is free and clear of all liens, encumbrances, except for recorded easements, mortgages, and recorded covenants, that the persons executing this Agreement on behalf of the Owner are fully authorized to execute this Agreement on behalf of the Owner; and that this Agreement is the binding obligation of the Owner.

13. Term. The term of this Agreement shall continue indefinitely, in full force and effect, unless and until amended and/or terminated with the written approval of the Grantees.

14. Home Owners' Association & Maintenance. Except as provided below, the Owner shall be liable and responsible for the proper maintenance of the Retention Pond and Drainage Facilities described on the attached Exhibit B. Such maintenance shall include the control of weed and algae growth. Each lot in the Property is encumbered or subject to certain restrictive covenants (the "Restrictive Covenants") that will be recorded with the Racine County Register of Deeds. The Restrictive Covenants provide that each lot owner in Bluffside is a member of the Bluffside Estates Home Owners Association, Inc. (the "Homeowners Association"), a nonstock Wisconsin corporation, and that as each lot is sold by the Owner, the Homeowners Association becomes liable and responsible to perform the proper maintenance of the Retention Pond and Drainage Facilities that is assigned to each lot owner by the Restrictive Covenants. Accordingly, as to each lot located on the Property, the Developer's liability and responsibility for proper maintenance of the Retention Pond and Drainage Facilities shall continue until such time as 75% of the lots are conveyed to a third party or the Developer turns over all responsibility to the Home Owners Association. At the time that all lots have been conveyed, or the Home Owners Association assumes control, the Developer shall have no further liability or responsibility for proper maintenance of the Retention Pond and Drainage Facilities (provided, however that the Developer shall continue to have any remaining obligations relating to the Developers guarantees under the Development Agreement entered into with the Village). All maintenance shall be carried out in conformity with applicable Village

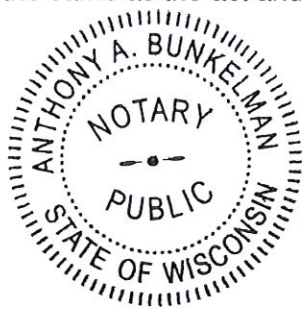
VILLAGE OF CALEDONIA UTILITY DISTRICT

By: Howard Stacey
Howard Stacey, President

Attest: Robert Kaplan
, Secretary

STATE OF WISCONSIN)
) SS:
COUNTY OF RACINE)

Personally came before me this 7th day of June 2023,
Howard Stacey and Robert Kaplan, President and Secretary of the Village of
Caledonia Utility District, to me known to be the persons who executed the foregoing instrument,
and acknowledged the same as the act and deed of said District.



Anthony A. Bunkelman
Notary Public, Racine County, WI

Name: Anthony A. Bunkelman

My Commission: July 26, 2023

This Instrument Was Drafted By:
Anthony A. Bunkelman P.E.
Village of Caledonia
5043 Chester Lane
Racine, WI 53402

LEGAL DESCRIPTION:

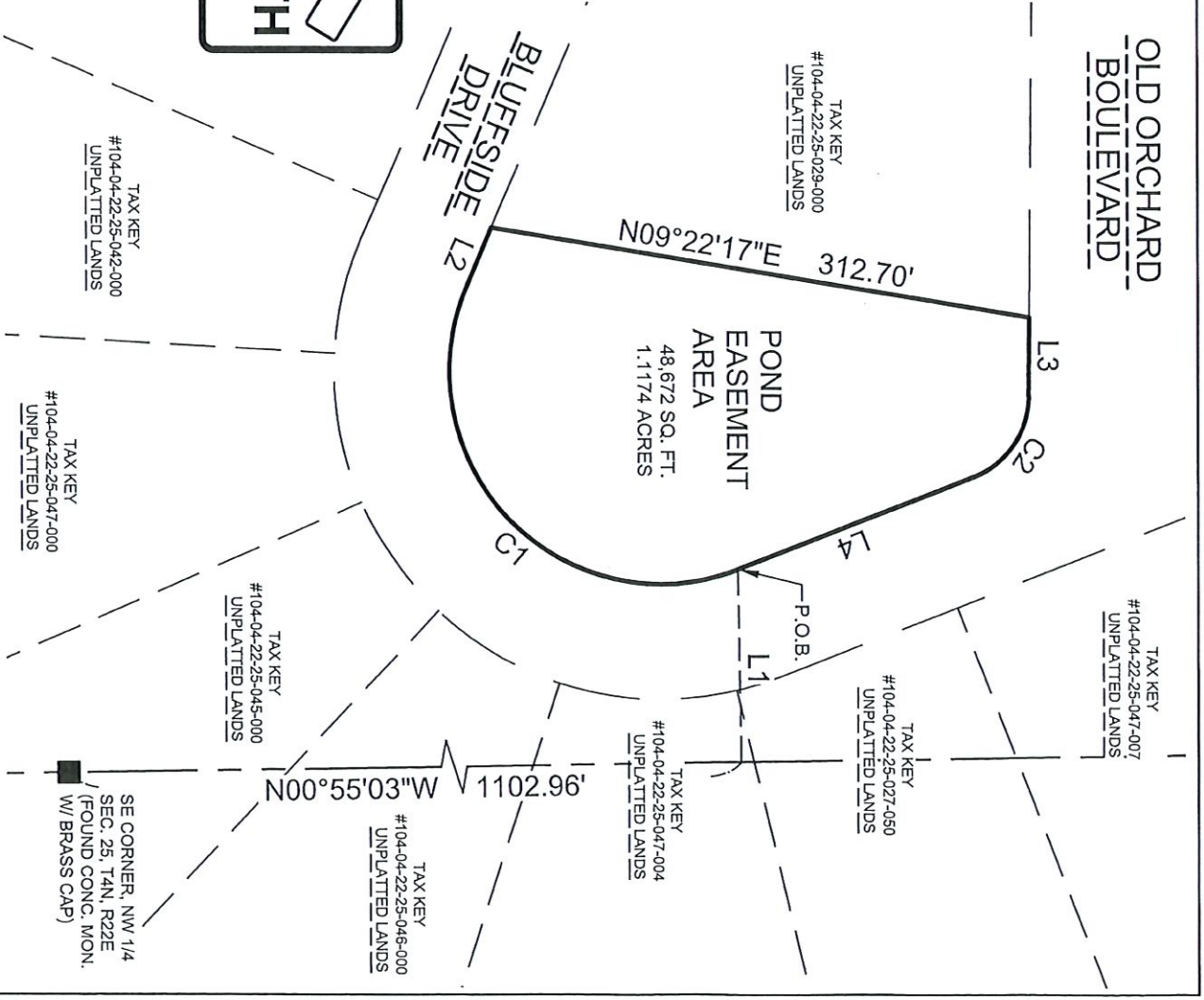
Being a part of the Southeast 1/4 of the Northwest 1/4 of Section 25, Township 4 North, Range 22 East, Village of Caledonia, Racine County, Wisconsin, described as follows:

Commencing at the Southeast corner of the Northwest 1/4 of said Section 25; thence North 00°55'03" West along the east line of said Northwest 1/4, 1102.96 feet; thence South 89°04'57" West, 110.26 feet to a point on a curve on the westerly right of way line of Bluffs Drive and point of beginning;

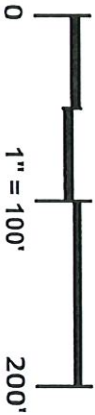
Thence southerly 285.46 feet along the arc of said curve to the right and said westerly right of way line, whose radius is 121.34 feet and whose chord bears South 45°57'13" West, 224.04 feet; thence North 66°39'02" West along said north right of way line, 36.82 feet; thence North 09°22'17" East, 312.70 feet to the southerly right of way line of said Old Orchard Boulevard; thence South 89°24'38" East along said south right of way line, 44.80 feet to a point of curvature; thence Southeasterly 59.31 feet along arc of said curve to the right, whose radius is 50.00 feet and whose chord bears South 55°25'35" East, 55.90 feet to the westerly right of way line of aforesaid Bluffs Drive; thence South 21°26'32" East along said right of way line, 145.23 feet to the point of beginning.

OLD ORCHARD BOULEVARD

BLUFFSIDE DRIVE



GRAPHICAL SCALE (FEET)



LINE NO.	BEARING	DISTANCE
L1	S89°04'57"W	110.26'
L2	N66°39'02"W	36.82'
L3	S89°24'38"E	44.80'
L4	S21°26'32"E	145.23'



CURVE TABLE				
CURVE NO.	LENGTH	RADIUS	CHORD BEARING	CHORD LENGTH
C1	285.46'	121.34'	S45°57'13"W	224.04'
C2	59.31'	50.00'	S55°25'35"E	55.90'

EXHIBIT

PINNACLE ENGINEERING GROUP
20725 WATERTOWN ROAD | SUITE 100 | BROOKFIELD, WI 53186

PLAN | DESIGN | DELIVER
WWW.PINNACLE-ENGR.COM PEGJOB#1543.00

12/07/2022

EXHIBIT B

