

RESOLUTION NO. 2018-107

**RESOLUTION AUTHORIZING THE VILLAGE OF CALEDONIA TO EXECUTE A
TEMPORARY CONSTRUCTION EASEMENT AT 13510 FOUR MILE ROAD
WITH WILLIAM & JUDITH HURTIENNE**

WHEREAS, the Village of Caledonia authorized its consulting engineering firm to review sanitary sewer extension options for serving lands adjacent to, and north of, Four Mile Road in the I-94 corridor and extending from the existing regional interceptor sanitary sewer located in DeBack Lane in the DeBack Farms Business Park up to Four Mile Road. The authorization included the review of a watermain extension for serving lands adjacent to, and north of, Four Mile Road in the I-94 corridor and extending from the existing watermain located in the East Frontage Road just north of DeBack Lane up to Four Mile Road and the authorization also included the review of the existing road conditions on Four Mile Road, which will be an additional truck route to the DeBack Farms Business Park serving the east end of the business park as well as those parcels of land along Four Mile Road; and

WHEREAS, the sanitary sewer analysis determined the best options for serving Four Mile Road and the I-94 corridor lands was to extend the existing regional interceptor sanitary sewer from the end of the DeBack Lane cul-de-sac east and north through the DeBack Farms Business Park to Four Mile Road in permanent easements, and also by extending a sanitary sewer due north from the end of the DeBack Lane cul-de-sac to Four Mile Road in permanent easements. Sanitary sewer will also be extended both easterly and westerly along the south side of Four Mile Road from the 2 locations, utilizing the Right of Way of Four Mile Road and various permanent and temporary construction easements; and

WHEREAS, the watermain analysis determined the best option for serving Four Mile Road and the I-94 corridor lands was to extend the existing watermain from the East Frontage Road just north of DeBack Lane, north to the intersection of Four Mile Road and the East Frontage Road along the east side of the East Frontage Road utilizing the Right of Way of the East Frontage Road and then extend watermain east to the eastern boundary of the DeBack Farms Business Park along the north side of Four Mile Road utilizing the Right of Way of Four Mile Road; and

WHEREAS, the existing road condition analysis determined that the existing right-of-way in Four Mile Road is substandard in road right-of-way cross section and that improvements are necessary to ensure that this route remains safe and viable for use by the parcels of land along Four Mile Road and for trucking to and from the business park; and

WHEREAS, the Village Board adopted Resolution Nos: 2018-44, 2018-46, and 2018-84 that were Relocations Orders related to the above projects and identified certain property interests that are necessary for the activities to properly complete the above projects; and

WHEREAS, the Village of Caledonia has retained the services of Southern Wisconsin Appraisal for appraisals of the 14 identified Temporary Construction Easements, Fee taking for Public Right of Way, and Permanent Easements required for the project; and

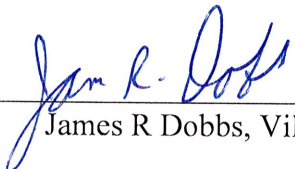
WHEREAS, the Utility Director & the Caledonia Utility District's Attorney have met and negotiated with William & Judith Hurtienne, property owners of 13510 Four Mile Road, to obtain one of the required Temporary Construction Easements required for the project; and

WHEREAS, the Owners, William & Judith Hurtienne, have executed said Temporary Construction Easement and the President and Secretary of the Caledonia Utility District and the Village President and Village Clerk need to execute the Temporary Construction Easement in order to allow it to be recorded.

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

Adopted by the Village Board of the Village of Caledonia, Racine County, Wisconsin,
this 5th day of ~~October~~, 2018.
November

VILLAGE OF CALEDONIA

By: 
James R Dobbs, Village President

Attest: 
Karie Torkilsen, Village Clerk

(JMB Draft: 9/26/18)

TEMPORARY CONSTRUCTION
EASEMENT AGREEMENT

This Agreement (“Agreement”) is made and entered into this ____ day of _____, 2018, by and between the following parties:

- a) WILLIAM J. HURTIENNE and JUDITH A. HURTIENNE, being adult residents of Racine County, Wisconsin, residing at 13510 Four Mile Road, Franksville, Wisconsin 53126 (hereinafter referred to as the “Owner”); and
- b) The VILLAGE OF CALEDONIA, being a municipal corporation and village created under the laws of the State of Wisconsin, with its Village Hall located at 5043 Chester Lane, Racine, Wisconsin 53402 (hereinafter referred to as the “Village”); and
- c) The VILLAGE OF CALEDONIA SEWER UTILITY DISTRICT and the VILLAGE OF CALEDONIA WATER UTILITY DISTRICT, being two separate utility districts established by the Village of Caledonia under the laws of the State of Wisconsin, with utility district offices located at 333 4½ Mile Road, Racine, Wisconsin 53402 (hereinafter jointly and severally referred to as the “Utility District” in the singular tense).

Introduction

The Village is located in Racine County, Wisconsin. The Village, through the Utility District, owns and operates a municipal sanitary sewerage system and a municipal water system (collectively, the “District System”). The Village enters into this Agreement both on behalf of the Village of Caledonia, and on behalf of its Utility District.

Owner is the sole record-title owner of the parcel of real property (hereinafter referred to as the “Property”) located in the Village of Caledonia, Racine County, Wisconsin, that is described in attached Exhibit A.

The Village/Utility District is undertaking the construction project (the “Project”) described in attached Exhibit B. As a part of the Project, the Village/Utility District wishes to acquire from Owner the Temporary Construction Easement described in attached Exhibit C. This present Agreement is being entered into by the above-named parties for such purposes.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES HEREINAFTER DESCRIBED, THE ABOVE-NAMED PARTIES HEREBY AGREE AS FOLLOWS:

1. Introduction is Correct. The foregoing “Introduction” is true and correct, and is hereby incorporated into this Agreement by reference.
2. Temporary Easement Rights. Owner grants to the Village/Utility District the following Temporary Construction Easement and related easement rights on and over that portion of the Owner’s Property described in attached Exhibit C (the “Temporary Construction Easement Area”):

- A. The right to change the slopes and grades of the Temporary Construction Easement Area, so that the same blend in with and conform to the slopes and grades of the finished Project topography.
- B. The finished slopes and grades of the Temporary Construction Easement Area shall be finish-graded by the Village/Utility District, and further restored as described in below Paragraph No. 4.
- C. The Temporary Construction Easement described herein shall cease to exist once the Project is constructed and installed, through final completion.

3. Exercise of Easement Rights by the Village/Utility District. To the extent the Village/Utility District, in its sole discretion, deems it necessary for the exercise of its easement rights granted under this Agreement, the Village/Utility District may enter the Temporary Construction Easement Area at any time(s) as the Village/Utility District and its officials, employees, consultants, contractors, and/or agents or representatives may desire, and may remove from the Temporary Construction Easement Area any structure, object, material, or any other obstructions, and/or any trees, bushes, or other vegetation. The contractor(s) working on the Project will, from time to time, block or make inaccessible the driveway that provides vehicular ingress/egress to the Owner's Property. With respect to such blockage/inaccessibility of the driveway, the contractor(s) shall give advance notice to Owner (oral or written) of when the driveway may be blocked.

4. Restoration of the Easement Area. It is presently anticipated that the Temporary Construction Easement Area, including the driveway located on Owner's Property, will be disturbed for three of the phases of the Project.

- a) Phase One: Installation of watermains along Four Mile Road, presently scheduled for the remainder of 2018.
- b) Phase Two: Installation of sanitary sewer mains along Four Mile Road, presently scheduled for the summer of 2019.
- c) Phase Three: Repavement of Four Mile Road, presently scheduled for some time in 2020.

The driveway, when disturbed, in Phase One and Phase Two, will be temporarily repaired and made passable for vehicular ingress/egress to Owner's Property with gravel placed in the disturbed areas of the driveway. At the end of Phase Two, it is anticipated that the disturbed areas of the driveway will be temporarily repaired with asphalt. In Phase Three, the disturbed areas of the driveway will be removed by cross-cutting, and then repaved as a part of the repaving of Four Mile Road. Any areas of the Temporary Construction Easement Area not involving the driveway will be finish-graded with black dirt, and then seeded with grass seed. It shall be Owner's responsibility to properly water the seeded areas, to allow the grass to grow.

5. Indemnification by Village. The Village shall, and hereby does, indemnify and hold harmless Owner from and against all losses, damages, liabilities, demands, causes of action, judgments, and costs and expenses (including actual reasonable attorney fees and costs of litigation), arising, directly or indirectly, out of the use of, activities on, and/or entry onto the Temporary Construction Easement Area, whether by members of the public and/or the Village/Utility District (its officials, employees, consultants, contractors, and/or agents or representatives), except to the extent arising out of the negligent and/or intentional conduct of the Owner, and/or Owner's contractors, consultants, representatives, or agents.

6. Recording. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their successors or assigns. This Agreement shall be recorded by the Village at the Office of the Register of Deeds for Racine County, Wisconsin.

7. Initial Condemnation Proceedings. In May/June of 2018, the Village commenced eminent domain proceedings under the provisions of Section 32.05 of the Wisconsin Statutes for the acquisition of the easement rights described in this Agreement. After the Village took the initial procedural steps required under Section 32.05 for the acquisition of such easement rights, the Village/Utility District and Owner entered into negotiations regarding this transaction, all as provided for in Section 32.05. As a result of those negotiations, the Village/Utility District and Owner have agreed to the terms and provisions of this Agreement, making further eminent domain proceedings by the Village unnecessary. The Village shall, however, comply with the requirements for the certified mailing of a copy of this Agreement, as required under the provisions of Section 32.05(2a) of the Wisconsin Statutes. As also required by Section 32.05(2a) of the Wisconsin Statutes, the Village hereby gives to the Owner the information contained in attached Exhibit X.

8. Contingency: Village Board Approval. This Agreement is expressly contingent upon the Village Board for the Village of Caledonia, Wisconsin approving its terms and conditions.

9. Within Ten (10) Business Days (Mondays-Fridays) after (i) this Agreement is signed by all of the parties, and (ii) the Village Board of the Village of Caledonia, Wisconsin approves this Agreement, the Village/Utility District shall pay to Owner the amount of Three Hundred Dollars (\$300.00). This payment amount is the agreed-upon valuation of the easement rights being given by the Owner to the Village/Utility District. To the extent allowed under the

law, Owner hereby expressly waives any and all rights to any relocation benefits that the Owner may have otherwise been entitled to under Chapter 32 of the Wisconsin Statutes. This waiver is a part of the consideration being given by the Owner to the Village/Utility District in this transaction.

10. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Wisconsin. Venue for any legal action pertaining to and/or arising under this Agreement shall solely and exclusively be Racine County Circuit Court in Racine County, Wisconsin.

11. Entire Agreement. All negotiations, promises, discussions, understandings, and agreements heretofore made or had between the parties are merged in this Agreement, and this Agreement alone fully and completely expresses the final agreements of the parties.

12. Amendments. This Agreement shall not be modified or amended except in a written document signed by the Village and the Owner, and then approved by the Village Board of the Village of Caledonia, Wisconsin.

IN WITNESS WHEREOF, the above-named parties, either personally or through their duly authorized officers, have executed this Agreement as of the date indicated above.

VILLAGE:
Village of Caledonia, and the Village of
Caledonia Utility District

OWNER:

By: _____
James R. Dobbs
Village President



William J. Hurtienne

Attest: _____
Karie Torkilsen
Village Clerk



Judith A. Hurtienne

AUTHENTICATION

Signatures of William J. Hurtienne and Judith A. Hurtienne; and James R. Dobbs and Karie Torkilsen, Village President and Village Clerk, respectively, of the Village of Caledonia, authenticated this _____ day of _____, 2018.

John M. Bjelajac
Member: State Bar of Wisconsin
State Bar No. 1015325

This Agreement drafted by:
Attorney John M. Bjelajac
601 Lake Avenue
Post Office Box 38
Racine, Wisconsin 53401-0038
Phone: (262)633-9800
FAX: (262)633-1209
(Attorney for the Village of Caledonia/
Village of Caledonia Utility District)

PLAT BEFORE ACQUISITION

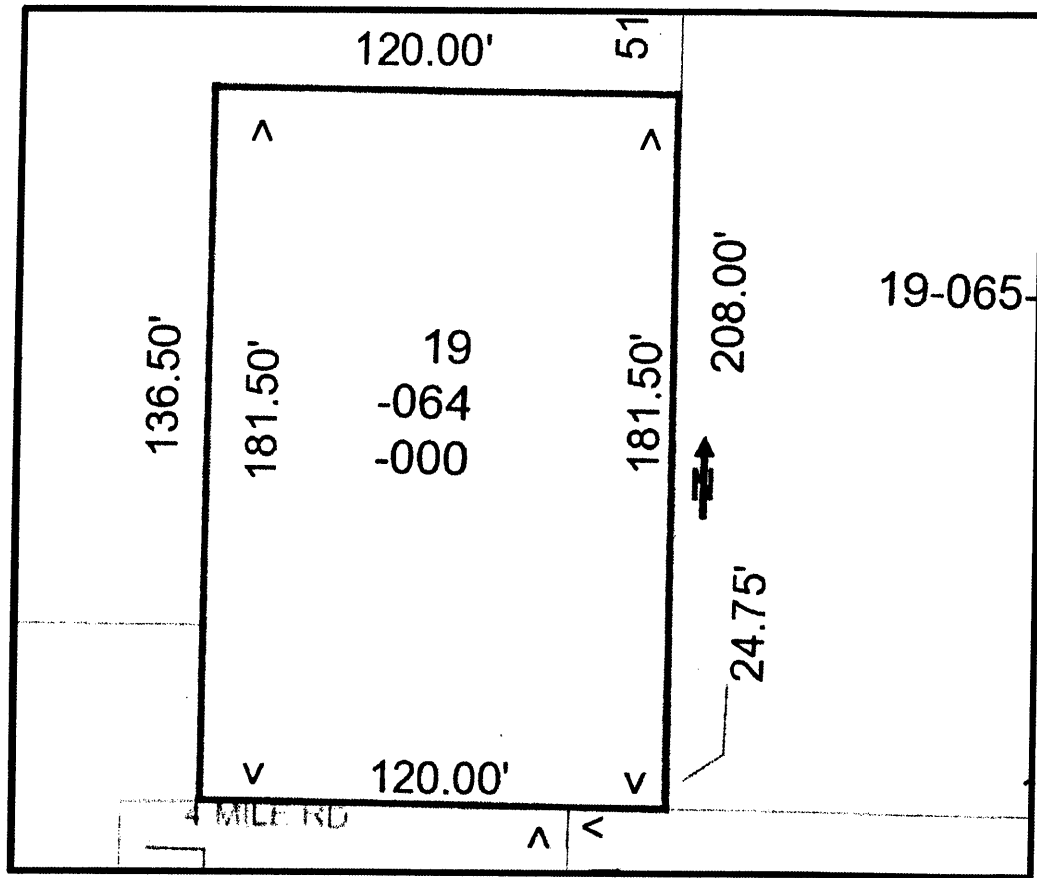
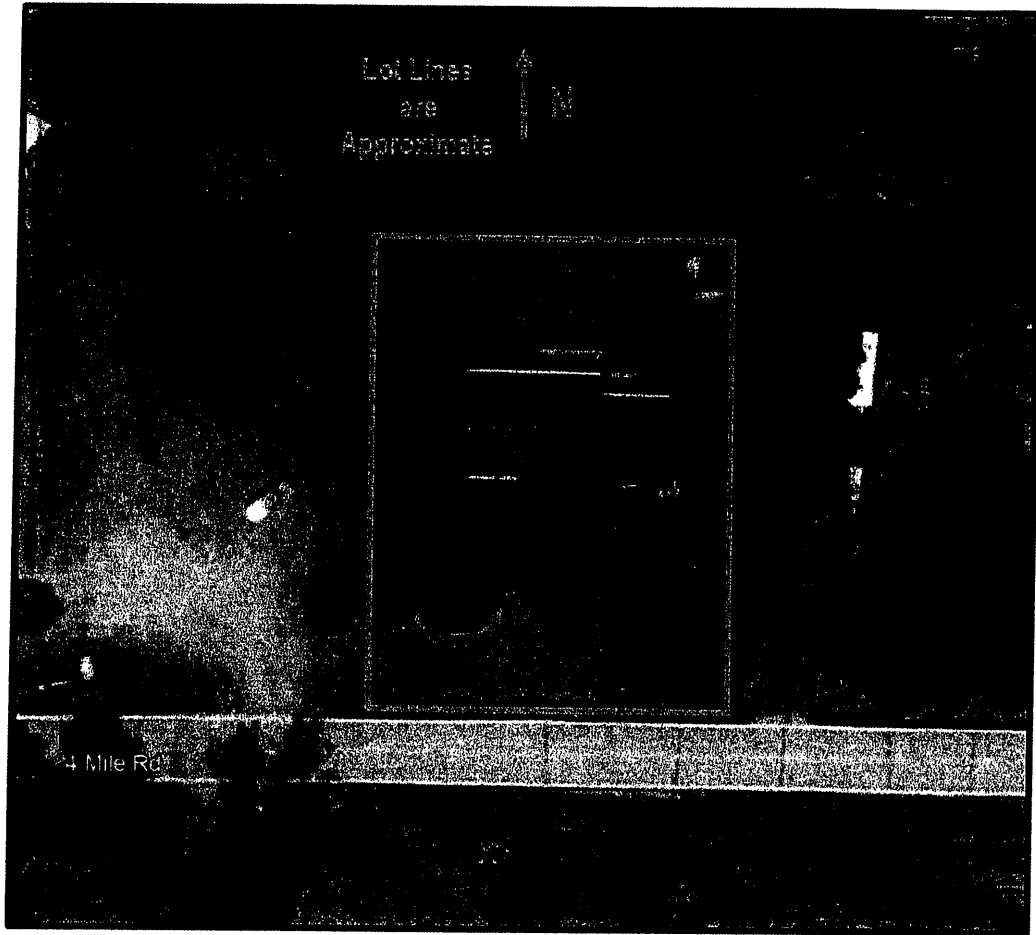


EXHIBIT A
Page 2 of 3
AERIAL PHOTOGRAPH



LEGAL DESCRIPTION BEFORE ACQUISITION

That part of the Southwest 1/4 of Section 19, Township 4 North, Range 22 East, bounded as follows: Begin at the Southwest corner of the Southwest 1/4 of Section 19; run thence North 89° 45' 45" East 420.00 feet to the point of beginning of this description; continue thence North 89° 45' 45" East 120.00 feet; thence North 00° 14' 15" West 181.50 feet; thence South 89° 45' 45" West 120.00 feet; thence South 00° 14' 15" East 181.50 feet to the point of beginning. Reserving the South 24.75 feet for highway purposes. Said land being in the Village of Caledonia, Racine County, Wisconsin.

The following is for informational purposes only:
Address: 13510 4 Mile Road
Tax Key No. 104-04-22-19-064-000

EXHIBIT B

The Village proposes to rebuild Four Mile Road from the East I-94 Frontage Road to County Trunk Highway V (CTH V). As a part of this municipal improvement project, the Village will be extending sanitary sewer service and municipal water into this area. It is to be installed within the right-of-way of Four Mile Road and will service the parcels along Four Mile Road as well as lands to the south of Four Mile Road.

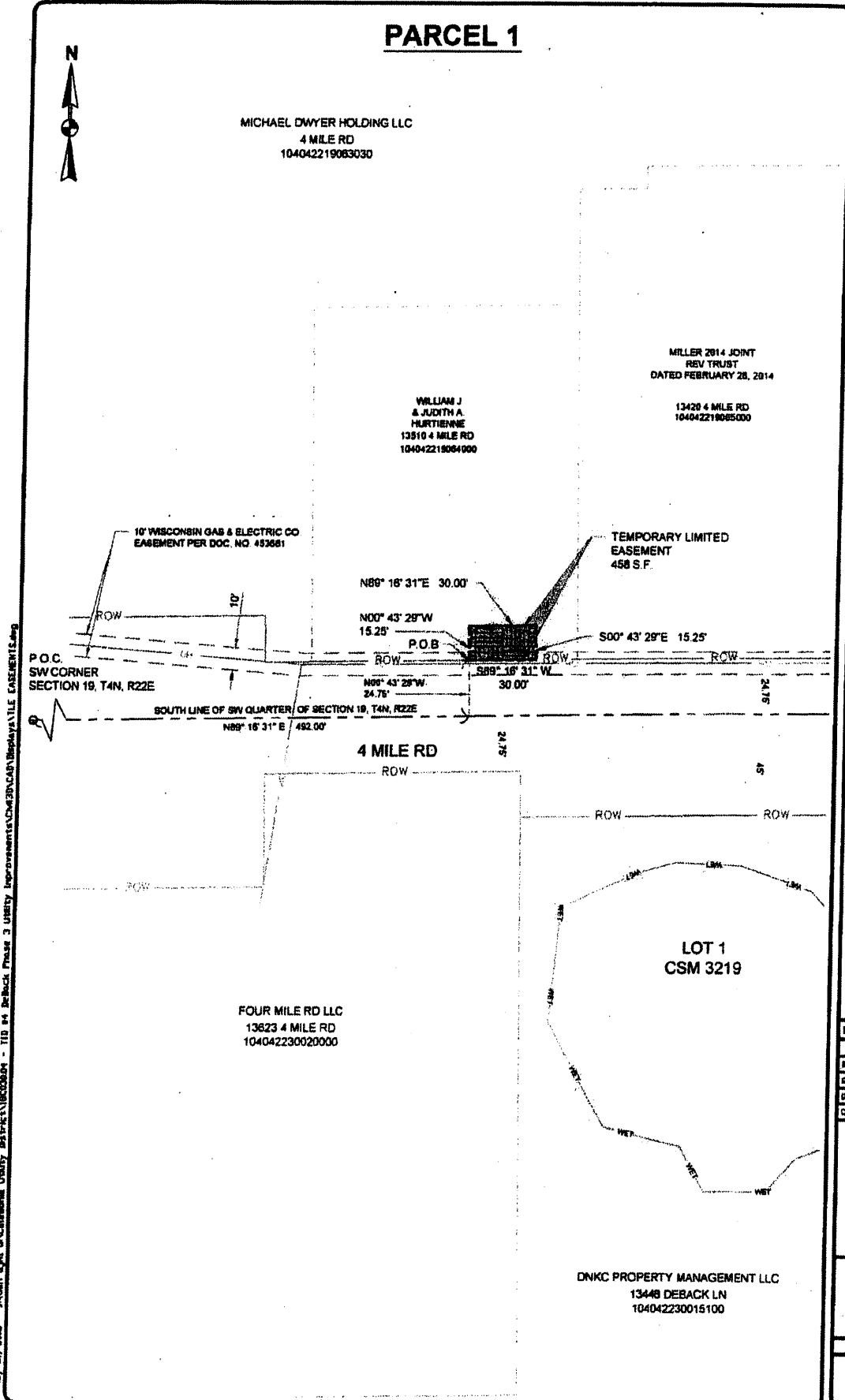
Parcel 1

Temporary Limited Easement (TLE):

That part of the Southwest 1/4 of the Southwest 1/4 of Section 19, Township 4 North, Range 22 East, Village of Caledonia, Racine County, Wisconsin described as follows:

Commencing at the southwest corner of said Section 19; thence N89°16'31"E along the south line of said Southwest 1/4, 492.00 feet; thence N00°43'29"W, 24.75 feet to the north right of way of Four Mile Road and the point of beginning; thence continuing N00°43'29"W, 15.25 feet; thence N89°16'31"E, 30.00 feet, thence S00°43'29"E, 15.25 feet to said north right of way; thence S89°16'31"W along said north right of way, 30.00 feet to the point of beginning. Containing 458 square feet, more or less.

Owner: William J. and Judith A. Hurtienne
Tax Parcel ID No.: 104-042219064000
Physical Address: 13510 Four Mile Road



PARCEL 1

MICHAEL DWYER HOLDING LLC
4 MILE RD
104042219063030

MILLER 2014 JOINT
REV TRUST
DATED FEBRUARY 28, 2014

WILLIAM J
& JUDITH A.
MURTIENNE
13510 4 MILE RD
104042218064000

13428 4 MILE RD
104042218065000

10' WISCONSIN GAS & ELECTRIC CO
EASEMENT PER DOC. NO. 453661

TEMPORARY LIMITED
EASEMENT
458 S.F.

P.O.C.
SW CORNER
SECTION 19, T4N, R22E

SOUTH LINE OF SW QUARTER
OF SECTION 19, T4N, R22E
N89° 16' 31" E 492.00'

4 MILE RD

LOT 1
CSM 3219

FOUR MILE RD LLC
13823 4 MILE RD
104042230020000

DNKC PROPERTY MANAGEMENT LLC
13448 DEBACK LN
104042230015100

May 31, 2018 - Section 3, 4th Edition, Wisconsin Utility Districts - TID #4 Deback Phase 3 Utility Improvements\DWYER\BISHAY\TILE EASEMENTS.dwg



Foth
Foth Infrastructure & Environment, LLC
2814 S. 102nd Street
Suite 274, Lincoln Center II
Phoenix, AZ 85027
Phone: 480-352-7800 Fax: 480-352-7801

REUSE OF DOCUMENTS
THIS DOCUMENT HAS BEEN PREPARED FOR A SPECIFIC APPLICATION AND NOT FOR GENERAL USE. IT IS THE USER'S RESPONSIBILITY TO OBTAIN THE WRITTEN APPROVAL OF FOTH INFRASTRUCTURE AND ENVIRONMENT, LLC BEFORE REUSE. UNAUTHORIZED REUSE OR MODIFICATION OF THIS DOCUMENT IS PROHIBITED. FOTH INFRASTRUCTURE AND ENVIRONMENT, LLC ASSUMES NO RESPONSIBILITY FOR THE UNAUTHORIZED USE OF THIS DOCUMENT.

**TID 4 PHASE 3 IMPROVEMENTS
TEMPORARY LIMITED EASEMENT**
VILLAGE OF CALEDONIA UTILITY DISTRICT
RACINE COUNTY
VILLAGE OF CALEDONIA, WISCONSIN

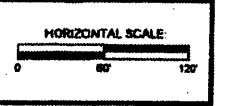
NO.	BY	DATE	DESCRIPTION

RECORD DRAWING OF COMPLETED CONSTRUCTION BY
DATE: _____
CONTRACTOR'S TO CONTRACTOR AND/OR OWNER'S RECEIVED
BY: _____ DATE: _____

Date of Preparation: MAY 16, 2018

	BY	DATE
SURVEYED	AJM	02/27/2018
DRAWN	AJM	05/30/2018
DESIGNED	TMS	05/15/2018
CHECKED	AHS	06/05/2018

PARCEL 1



PROJECT ID 19C030 04
PARCEL 1

EXHIBIT X

STATUTORY NOTICE PURSUANT TO SECTION 32.05(2a)
OF THE WISCONSIN STATUTES, INCLUDING THE RIGHT TO APPEAL

Pursuant to the provisions of Section 32.05(2a) of the Wisconsin Statutes, the Village of Caledonia (the "Village") hereby gives to the Owner the following information:

- a) The person(s) and/or entity(ies) having an interest of record in the Property are described in the Letter Report of Title (the "Report"), dated April 13, 2018, prepared by Landmark Title of Racine, Inc. for the Property.
- b) The legal description for the entire Property owned by Owner is described in the Report.
- c) The interest being acquired by the Village is a temporary construction easement. The compensation paid by the Village to the Owner is a total of Three Hundred Dollars (\$300.00).
- d) The Owner has the right to appeal the amount of the compensation under Section 32.05(2a) of the Wisconsin Statutes. Any person named in this conveyance and/or attached Report having an interest in the Property may, within six (6) months after the date of the recording of this document, appeal from the amount of the compensation stated in this conveyance document, in the manner set forth in Subsections (9) to (12) of Section 32.05 and Chapters 808 and 809 for appeals from an award under Subsection (7) of Section 32.05, all being Wisconsin Statutes. For the purposes of any such appeal, the amount of compensation stated in this conveyance shall be treated as the award and the date that this conveyance is recorded shall be treated as the date of taking and the date of evaluation.

First American Title Insurance Company

Commitment Number: LMT-65132

SCHEDULE A

1. Effective Date: April 13, 2018 at 08:00 AM
2. Policy or Policies to be issued: Amount
 - (a) Owner's Policy (ALTA Own. Policy (06/17/06) Revised 08/01/2016) \$ 15,000.00
Proposed Insured:
William J. Hurtienne and Judith A. Hurtienne, husband and wife
 - (b) Loan Policy (ALTA Loan Policy (06/17/06) Revised 08/01/2016) NONE
Proposed Insured:

3. The estate or interest in the land described or referred to in this Commitment is Fee Simple.

4. Title to the Fee Simple estate or interest in the land is at the Effective Date vested in:

William J. Hurtienne and Judith A. Hurtienne, husband and wife

5. The land referred to in the Commitment is described as follows:

That part of the Southwest 1/4 of Section 19, Township 4 North, Range 22 East, bounded as follows: Begin at the Southwest corner of the Southwest 1/4 of Section 19; run thence North 89° 45' 45" East 420.00 feet to the point of beginning of this description; continue thence North 89° 45' 45" East 120.00 feet; thence North 00° 14' 15" West 181.50 feet; thence South 89° 45' 45" West 120.00 feet; thence South 00° 14' 15" East 181.50 feet to the point of beginning. Reserving the South 24.75 feet for highway purposes. Said land being in the Village of Caledonia, Racine County, Wisconsin.

The following is for informational purposes only:

Address: 13510 4 Mile Road

Tax Key No. 104-04-22-19-064-000

By: Michael P. Staech

Authorized Officer or Agent

Landmark Title of Racine, Inc. 719 Washington Avenue Racine, WI 53403
PH262-632-6262 FAX262-632-6243

(any provisions to the contrary notwithstanding, this policy is valid without a countersignature)

First American Title Insurance Company

**SCHEDULE B - SECTION I
REQUIREMENTS**

Commitment Number: LMT-65132

The following are the requirements to be complied with:

1. Pay the full consideration to, or for the account of, the grantors or mortgagors.
2. Pay all taxes, charges, assessments, levied and assessed against subject premises, which are due and payable.
3. Satisfactory evidence should be had that improvements and/or repairs or alterations thereto are completed; that contractor, sub-contractors, labor and materialmen are all paid; and have released of record all liens or notice of intent to perfect a lien for labor or material.

First American Title Insurance Company

Commitment Number: LMT-65132

**SCHEDULE B - SECTION II
EXCEPTIONS**

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.

NOTE: Exception 1 of Schedule B-II will be removed only if a gap endorsement is attached to this commitment and the requirements for the issuance of gap coverage as described in the endorsement are met, including the payment of the premium

2. Special taxes or assessments and special charges, if any, payable with the taxes levied or to be levied for the current and subsequent years.
3. Liens, hook-up charges or fees, deferred charges, reserve capacity assessments, impact fees, or other charges or fees due and payable on the development or improvement of the Land, whether assessed or charged before or after the Date of Policy.

The company assures the priority of the lien of the insured mortgage over any such lien, charge or fee.

NOTE: Exception 3 of Schedule B-II will be removed only if the Company receives (1) written evidence from the municipality that there are no deferred charges, hookup fees, or other fees or charges attaching to the property; (2) evidence that the Land contains a completed building; and (3) statement showing that the Land has a water and sewer use account. If the Land is vacant, this exception will not be removed.

4. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

NOTE: Contact the Company for information on the deletion of this exception.

5. Rights or claims of parties in possession not shown by the public records.

NOTE: Exception 5 of Schedule B-II will be removed only if the Company receives a Construction Work and Tenants Affidavit on a form prepared by the Company. If the affidavit shows that there are tenants, Exception 5 will be replaced by an exception for the rights of the tenants disclosed by the Affidavit.

6. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
7. Easements or claims of easements not shown by the public records.

First American Title Insurance Company

Commitment Number: LMT-65132

SCHEDULE B - SECTION II

EXCEPTIONS

(Continued)

8. Any claim of adverse possession or prescriptive easement.

NOTE: Exceptions 6, 7, and 8 of Schedule B-II will be removed only if the Company receives an original survey which (i) has a current date, (ii) is satisfactory to the Company, and (iii) complies with current ALTA/NSPS Minimum Survey Standards or Wisconsin Administrative Code Chapter AE-7 together with the certification agreed on between the Wisconsin Land Title Association and the Wisconsin Society of Land Surveyors on April 1, 1974. If the survey shows matters, which affect the title to the property, Exceptions 6, 7 and 8 will be replaced by exceptions describing those matters.

9. General taxes for the year 2018 and subsequent years, not yet due or payable.
10. Public or private rights, if any, in such portion of the subject premises as may be presently used, laid out or dedicated in any manner whatsoever, for street, highway or road purposes.
11. The following appears of record but if the owner shown in Schedule A herein is living, does not currently affect title to the subject premises. Designation of TOD Beneficiary by William J. Hurtienne and Judith A. Hurtienne, husband and wife to Holly A. Luerssen and Matthew W. Hurtienne, dated November 18, 2010 and recorded on December 8, 2010 as Document No. 2270720.
12. Root River Storm Water Drainage District Assessments, if any.
13. Caledonia Sewer and Water Utility District Assessments, if any.
14. Easement as contained in document dated (Month not legible 21, 1941) recorded in the office of the Register of Deeds for Racine County, Wisconsin on September 6, 1941 as Document No. 453661.
15. NOTE: Taxes for the year 2017 in the amount of \$2,923.68, have been paid in full.