

## **RESOLUTION NO. 2018-125**

### **RESOLUTION AUTHORIZING THE VILLAGE OF CALEDONIA TO EXECUTE 2 TEMPORARY CONSTRUCTION EASEMENTS AT 13448 DEBACK LANE WITH DNKC PROPERTY MANAGEMENT LLC**

**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 DNKC Property Management LLC, property owner of 13448 DeBack Lane, to obtain two of the required Temporary Construction Easements required for the project; and

**WHEREAS**, the Owner, DNKC Property Management LLC, has executed both said Temporary Construction Easements and the Village President and Village Clerk need to execute the Temporary Construction Easements in order to allow them to be recorded.

**NOW, THEREFORE, BE IT RESOLVED** by the Caledonia Village Board that the execution of the Temporary Construction Easements as set forth in Exhibit A and Exhibit B, which are attached hereto and incorporated herein by reference, are 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 19<sup>th</sup> day of November, 2018.

VILLAGE OF CALEDONIA

By: James R Dobbs  
James R Dobbs, Village President

Attest: Karie Torkilsen  
Karie Torkilsen, Village Clerk

TEMPORARY CONSTRUCTION  
EASEMENT AGREEMENT

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

- a) DNKC PROPERTY MANAGEMENT LLC, being a Wisconsin limited liability company, with offices located at 2713 West Nicholas 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.
- 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, and the Village/Utility District shall not be required to restore or replace such items, except, however, the Village/Utility District shall, at its own cost and expense, finish-grade and grass-seed the disturbed portion of the Temporary Construction Easement Area as described in above Paragraph No. 2 of this Agreement.

4. 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.

5. 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.

6. 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.

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

8. 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 Four Thousand Two Hundred Dollars (\$4,200.00). 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.

9. 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.

10. 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.

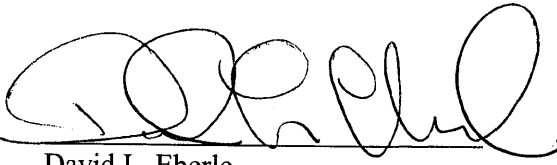
11. Amendments. This Agreement shall not be modified or amended except in a written document signed by the Village and the Owner, and then approved by the Village Board of the Village of Caledonia, Wisconsin.

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:  
DNKC Property Management LLC

By: \_\_\_\_\_  
James R. Dobbs  
Village President

By:   
\_\_\_\_\_ David L. Eberle  
President

Attest: \_\_\_\_\_  
Karie Torkilsen  
Village Clerk

AUTHENTICATION

Signatures of David L. Eberle, President of DNKC Property Management, LLC; 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)



EXHIBIT A  
Page 1 of 4  
**PLAT BEFORE ACQUISITION**

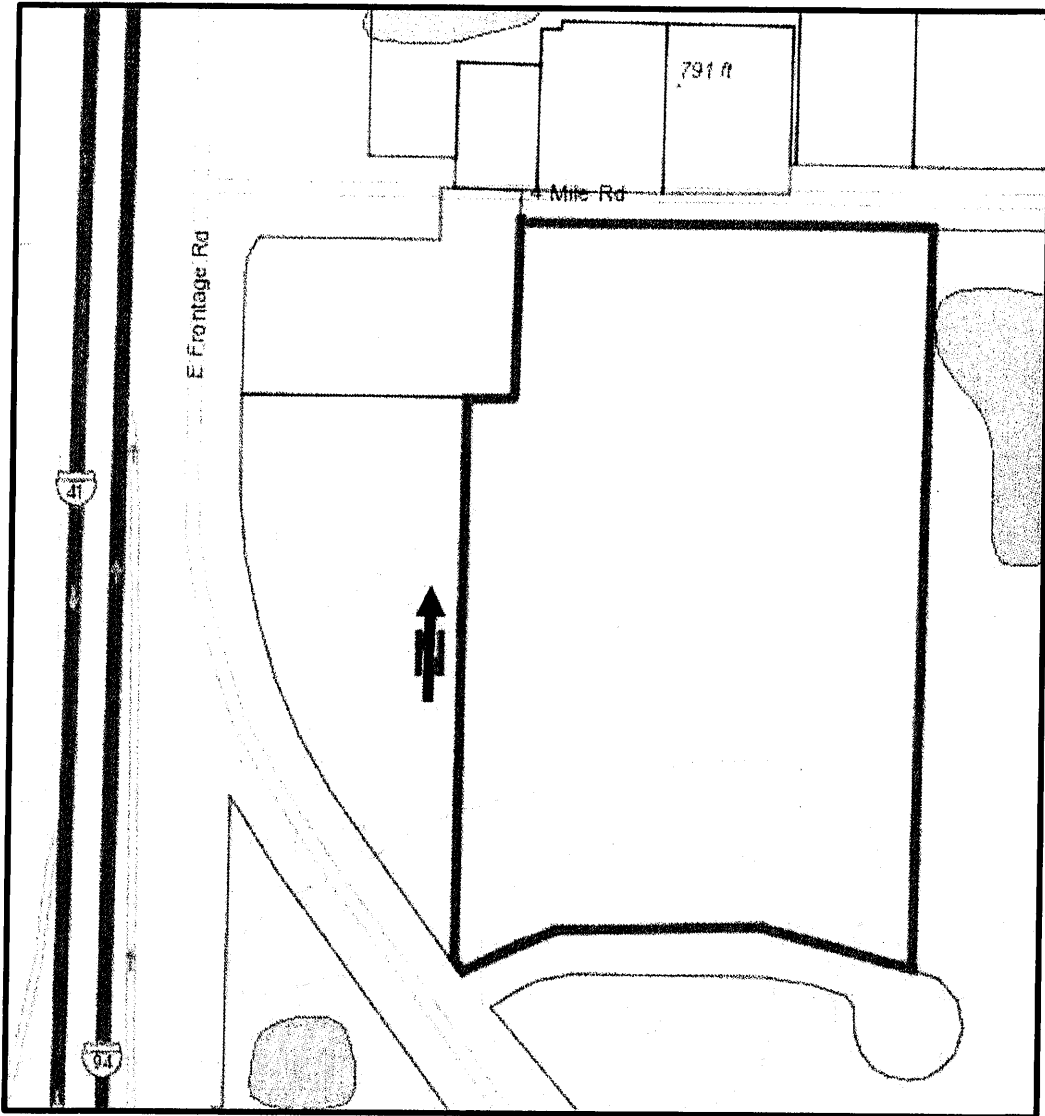
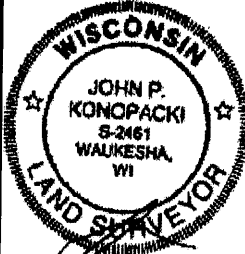


EXHIBIT A  
Page 2 of 4  
**SUBJECT CERTIFIED SURVEY MAP**

**CERTIFIED SURVEY MAP NO. 3219**

Being a redivision of all of Outlot 1 of Certified Survey Map No. 3076 and additional lands all in the Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 and the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northwest 1/4 of Section 30, Township 4 North, Range 22 East, Village of Caledonia, Racine County, Wisconsin



SEPTEMBER 29, 2016

**LEGEND:**

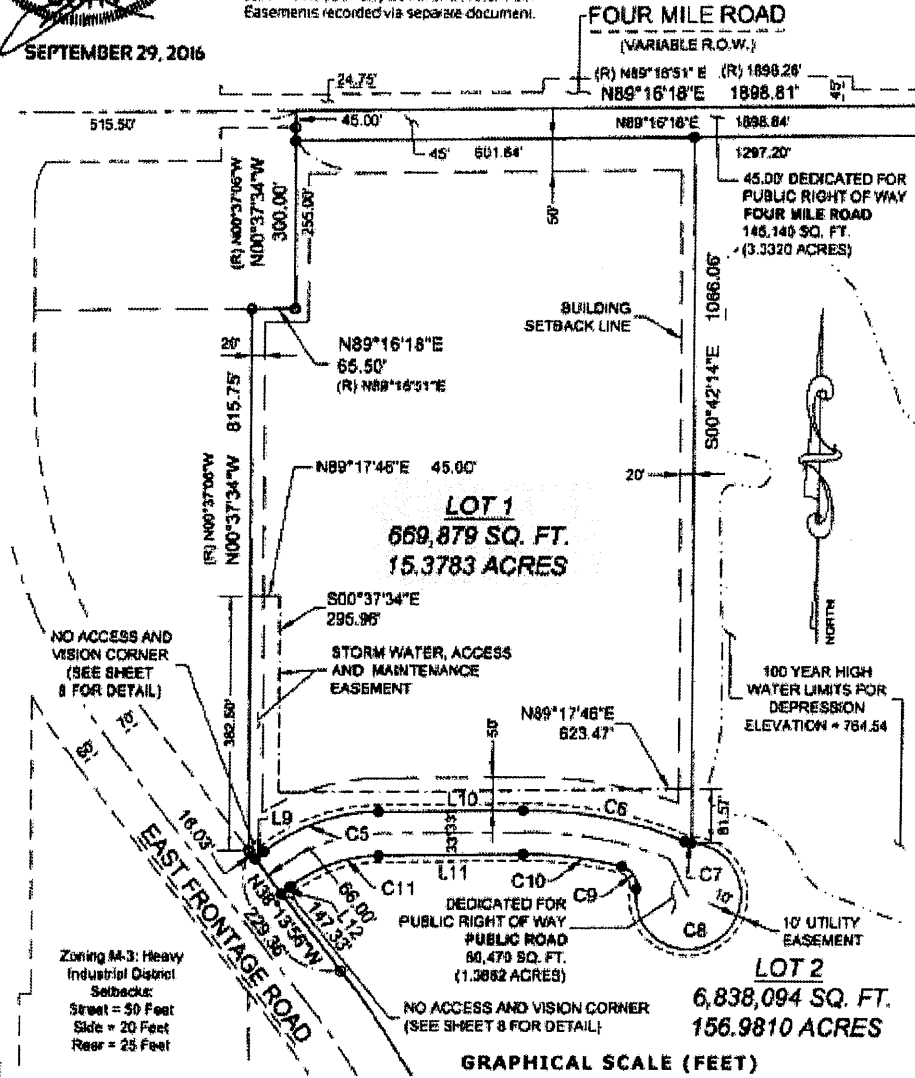
- - Denotes Found 1" Iron Pipe
- ⊗ - Denotes Found 3/4" Iron Pipe
- ⊙ - Denotes Found Capped 1/2" Iron Rebar
- ⊖ - Denotes Set 3/4" X 18" Iron Rebar, 15 LBS./FT.
- ⊕ - Denotes Set Mag Nail
- ⊗ - Denotes Set Chiseled Cross
- ⊙ - Denotes Well
- ⊗ - Denotes "Recorded As"
- ⊖ - Denotes No Access

SEE SHEET 6 FOR BOUNDARY CURVE & LINE TABLES

SEE SHEET 6 FOR NO ACCESS & VISION CORNER DETAIL AND STORM SEWER, ACCESS AND MAINTENANCE EASEMENT NOTE

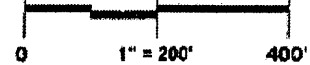
**NOTE:**

Storm Water, Sanitary Sewer and Water main Easements recorded via separate document.



Zoning M-3: Heavy Industrial District  
Setbacks:  
Street = 50 Feet  
Side = 20 Feet  
Rear = 25 Feet

**GRAPHICAL SCALE (FEET)**

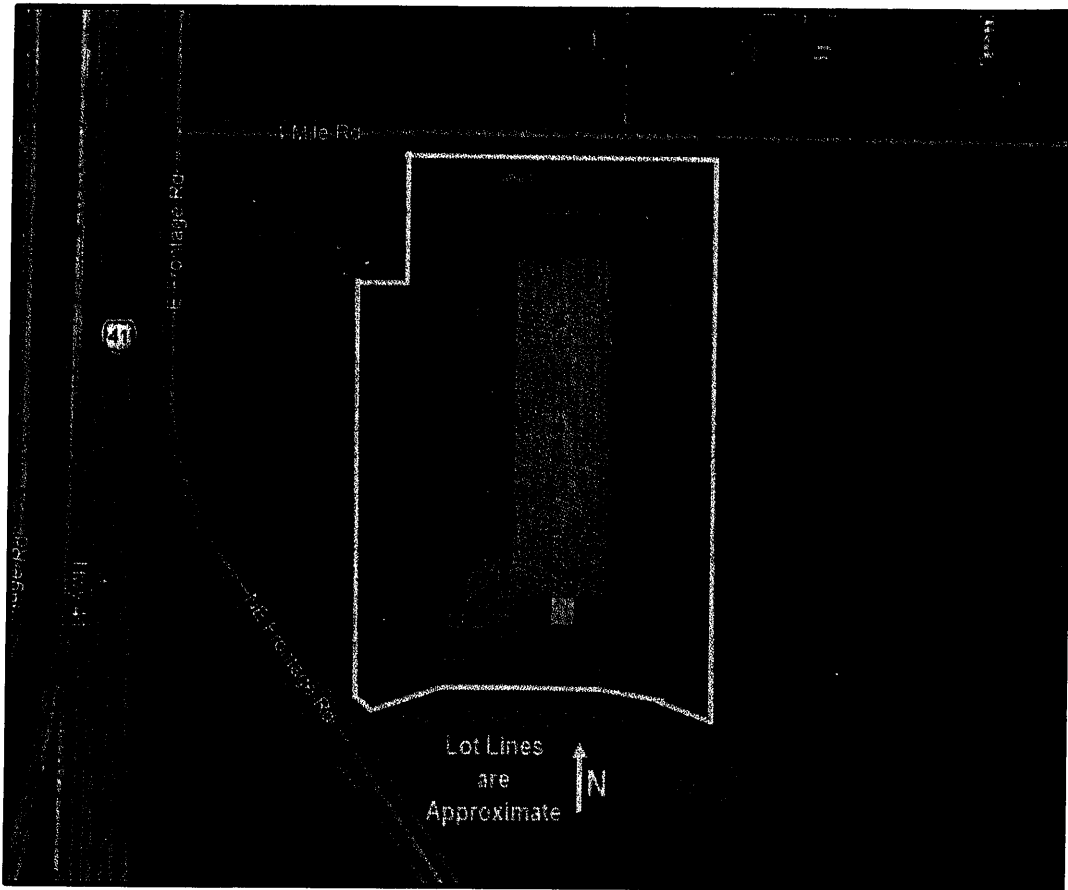


Prepared By:  
**PINNACLE ENGINEERING GROUP**  
15850 BLUEMOUND ROAD | SUITE 210  
BROOKFIELD, WI 53005  
OFFICE: (262) 754-8888

This instrument drafted by John P. Konopacki, PLS-License No. S-2461

PEG 103#390.01  
**SHEET 5 OF 9**

EXHIBIT A  
Page 3 of 4  
**AERIAL PHOTOGRAPH**



## LEGAL DESCRIPTION BEFORE ACQUISITION

Lot 1 of Certified Survey Map No. 3219, recorded in the office of the Register of Deeds for Racine County, Wisconsin on October 4, 2016, in Volume 10 of Certified Survey Maps, page 574, as Document No. 2446965, being a redivision of all of Outlot 1 of Certified Survey Map No. 3076 and Additional Lands all in the Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 and the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northwest 1/4 of Section 30, Township 4 North, Range 22 East. Said land being in the Village of Caledonia, County of Racine, State of Wisconsin.

The following is for informational purposes only:

Address: 13448 Deback Lane

Tax Key No. 104-04-22-30-015-100

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 2**

That part of Lot 1 of Certified Survey Map No. 3219 being a redivision of Outlot 1 of Certified Survey Map No. 3076 and additional lands all in the Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 and the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northwest 1/4 of Section 30, Township 4 North, Range 22 East, Village of Caledonia, Racine County, Wisconsin described as follows:

A Temporary Construction Easement 30.00 feet in width being the east 30 feet of Lot 1 of said Certified Survey Map No. 3219. Containing 31,846 square feet (0.73 acres), more or less.

Also, a Temporary Construction Easement 15.00 feet in width being the north 15.00 feet of said Lot 1 except for that portion of the north 15.00 feet that the above described easement falls within. Containing 8,575 square feet (0.20 acres), more or less.

Owner: DNKC Property Management, LLC  
Tax Parcel ID No.: 104-042230015100  
Physical Address: 13448 Deback Lane



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 May 30, 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 purchase of fee simple title of a certain portion of the Property, as described in the document to which this Exhibit X is attached]. The compensation paid by the Village to the Owner is a total of Four Thousand Two Hundred Dollars (\$4,200.00).
- 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-65339

### SCHEDULE A

1. Effective Date: May 30, 2018 at 08:00 AM
2. Policy or Policies to be issued: Amount
  - (a)  X  Owner's Policy ( ALTA Own. Policy (06/17/06) Revised 08/01/2016 )  
Proposed Insured:  
**DNKC Property Management, LLC** **\$ 15,000.00**
  - (b) \_\_\_\_\_ Loan Policy ( ALTA Loan Policy (06/17/06) Revised 08/01/2016 )  
Proposed Insured: **NONE**
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:

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

**Lot 1 of Certified Survey Map No. 3219, recorded in the office of the Register of Deeds for Racine County, Wisconsin on October 4, 2016, in Volume 10 of Certified Survey Maps, page 574, as Document No. 2446965, being a redivision of all of Outlot 1 of Certified Survey Map No. 3076 and Additional Lands all in the Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 and the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northwest 1/4 of Section 30, Township 4 North, Range 22 East. Said land being in the Village of Caledonia, County of Racine, State of Wisconsin.**

The following is for informational purposes only:

Address: 13448 Deback Lane

Tax Key No. 104-04-22-30-015-100

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-65339

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.
4. Taxes for the year 2017 in the net amount \$28,735.31 are being paid on the installment plan, balance due \$12,719.00.

First American Title Insurance Company

Commitment Number: LMT-65339

**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-65339

**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. Possible Transmission Line Easement from Wisconsin Electric Power Company, to American Transmission Company, LLC dated December 1, 2000 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on March 26, 2001 in Volume 3142 of Records, Page 599, as Document No. 1763585. Easement Assignment as contained in document recorded on March 26, 2001, as Document No. 1763586. Easement Assignment as contained in document recorded on March 26, 2001, as Document No. 1763587. Easement Assignment as contained in Document recorded March 26, 2001, as Document No. 1763588. Easement Assignment as contained in Document recorded March 26, 2001 as Document No. 1763589. Due to the generality of the Easement and poor copy quality, we are unable to determine the proper location.
11. Development Agreement as contained in document dated November 9, 2016 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on December 6, 2016 as Document No. 2452325.
12. Easement as contained in document dated August 31, 2017 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on November 28, 2017 as Document No. 2480869.
13. Easement as contained in document dated March 23, 1982 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on March 23, 1982 as Document No. 1104147.
- The foregoing Easement was re-recorded in the office of the Register of Deeds for Racine County, Wisconsin on April 19, 1982, as Document No. 1105316.
14. Access Easement as contained in document dated January 20, 2011 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on February 8, 2011 as Document No. 2276427.
15. Restrictions as contained in instrument dated September 29, 2016 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on October 4, 2016 as Document No. 2446964

First American Title Insurance Company

Commitment Number: LMT-65339

**SCHEDULE B - SECTION II**

**EXCEPTIONS**

(Continued)

Modification of Restrictions as contained in document dated September 30, 2016 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on October 7, 2016 as Document No. 2447307.

16. Restrictions as contained in instrument dated July 29, 2016 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on August 1, 2016 as Document No. 2441101
17. Caledonia Sewer and Water Utility District Assessments, if any.
18. Root River Storm Water Drainage District Assessments, if any.
19. Mortgage from DNKC Property Management, LLC to Wispark LLC in the amount of \$777,854.07 dated September 30, 2016 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on October 10, 2016 as Document No. 2447415.
20. Mortgage from DNKC Property Management, LLC to Johnson Bank in the amount of \$8,190,000.00 dated December 13, 2016 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on December 20, 2016 as Document No. 2453474.

(JMB Draft: 10/10/18)

TEMPORARY CONSTRUCTION  
EASEMENT AGREEMENT

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

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- 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).

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

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- 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.
- 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, and the Village/Utility District shall not be required to restore or replace such items, except, however, the Village/Utility District shall, at its own cost and expense, finish-grade and grass-seed the disturbed portion of the Temporary Construction Easement Area as described in above Paragraph No. 2 of this Agreement.

4. 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.

5. 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.

6. 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.

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

8. 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 Five Hundred Dollars (\$500.00). 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.

9. 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.

10. 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.


11. 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:  
DNKC Property Management LLC

By: \_\_\_\_\_  
James R. Dobbs  
Village President

By:   
David L. Eberle  
President

Attest: \_\_\_\_\_  
Karie Torkilsen  
Village Clerk

AUTHENTICATION

Signatures of David L. Eberle, President of DNKC Property Management, LLC; 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)

EXHIBIT A  
Page 1 of 4  
**PLAT BEFORE ACQUISITION**

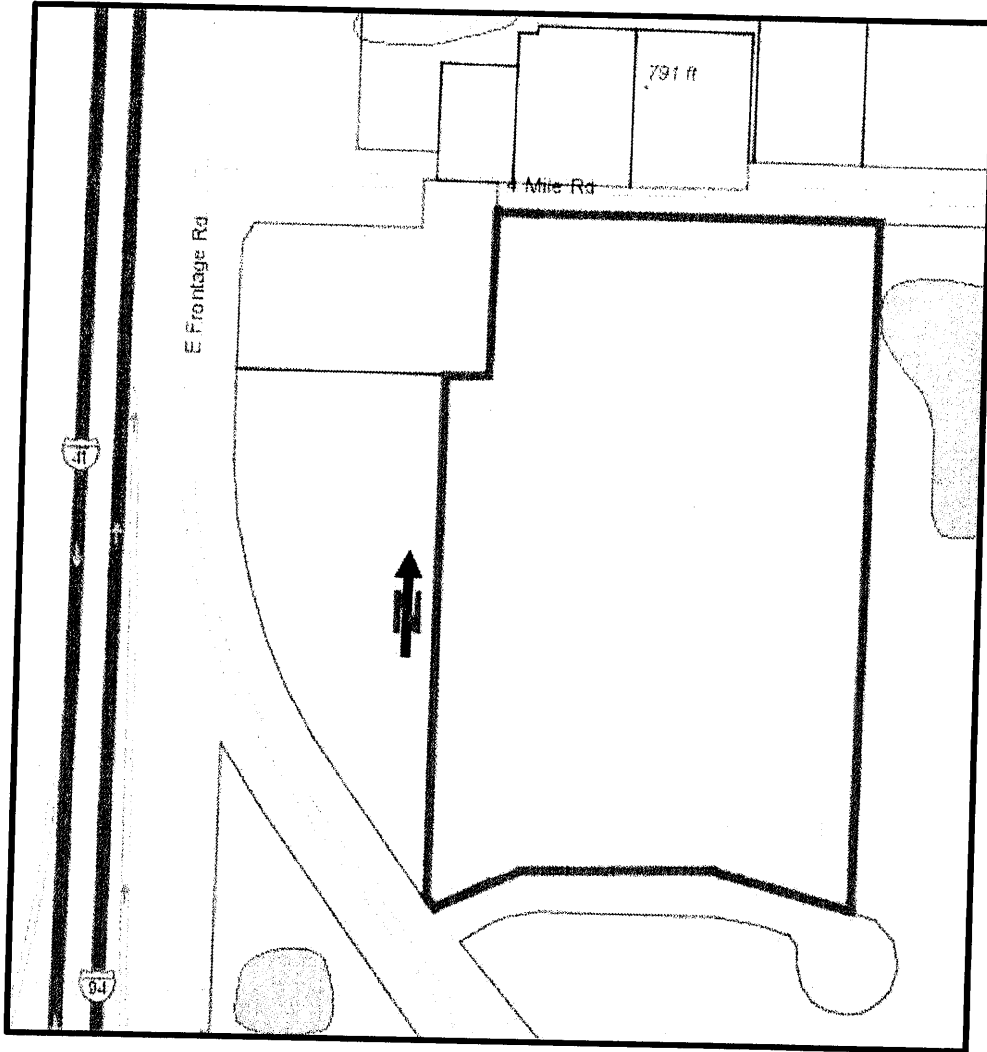
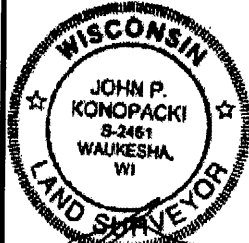


EXHIBIT A  
Page 2 of 4  
**SUBJECT CERTIFIED SURVEY MAP**

**CERTIFIED SURVEY MAP NO. 3219**

Being a redivision of all of Outlot 1 of Certified Survey Map No. 3076 and additional lands all in the Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 and the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northwest 1/4 of Section 30, Township 4 North, Range 22 East, Village of Caledonia, Racine County, Wisconsin



SEPTEMBER 29, 2016

**LEGEND:**

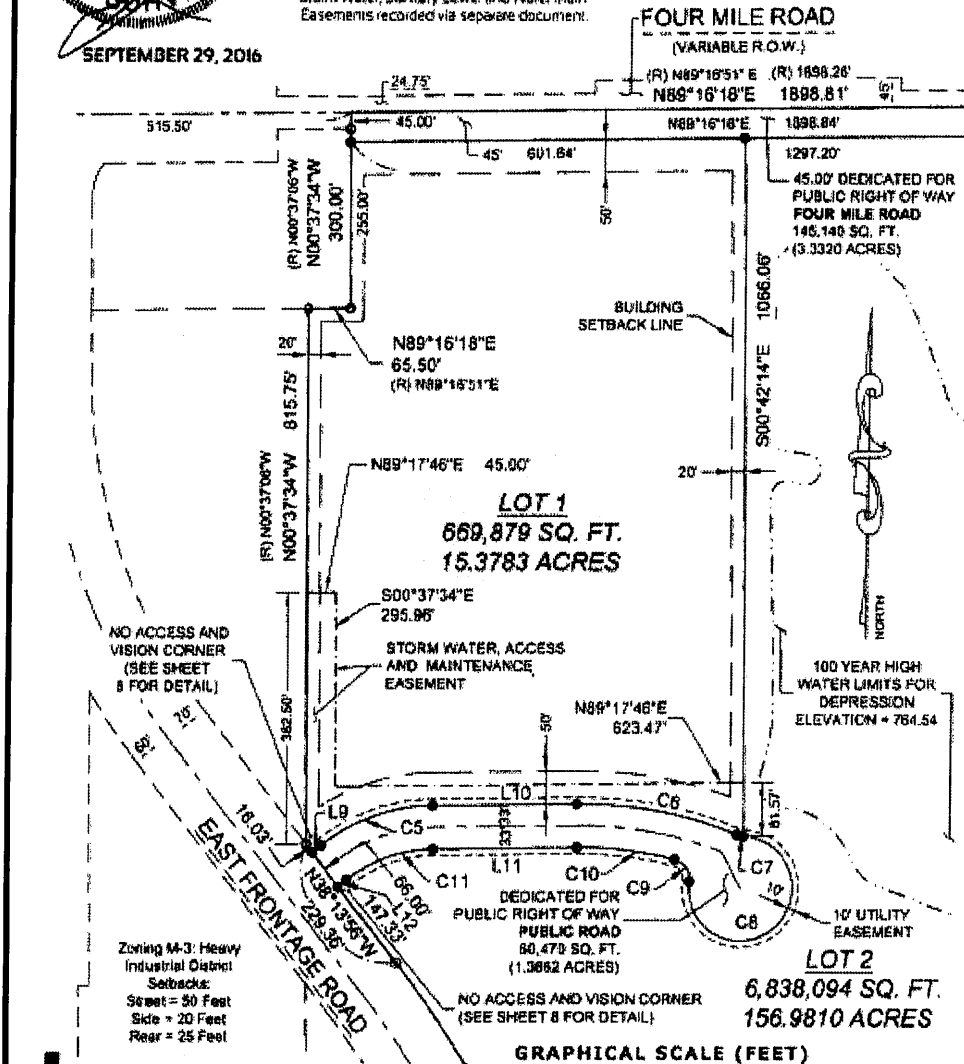
- Denotes Found 1" Iron Pipe
- ⊗ Denotes Found 3/4" Iron Pipe
- ⊙ Denotes Found Capped 1/2" Iron Rebar
- ⊗ Denotes Set 3/4" X 18" Iron Rebar, 15 LBS./FT.
- ⊙ Denotes Set Mag Nail
- ⊗ Denotes Set Chiseled Cross
- ⊙ Denotes Wet
- ⊗ Denotes "Recorded As"
- ⊗ Denotes No Access

SEE SHEET 8 FOR BOUNDARY CURVE & LINE TABLES

SEE SHEET 8 FOR NO ACCESS & VISION CORNER DETAIL AND STORM SEWER, ACCESS AND MAINTENANCE EASEMENT NOTE

**NOTE:**

Storm Water, Sanitary Sewer and Water main Easements recorded via separate document.

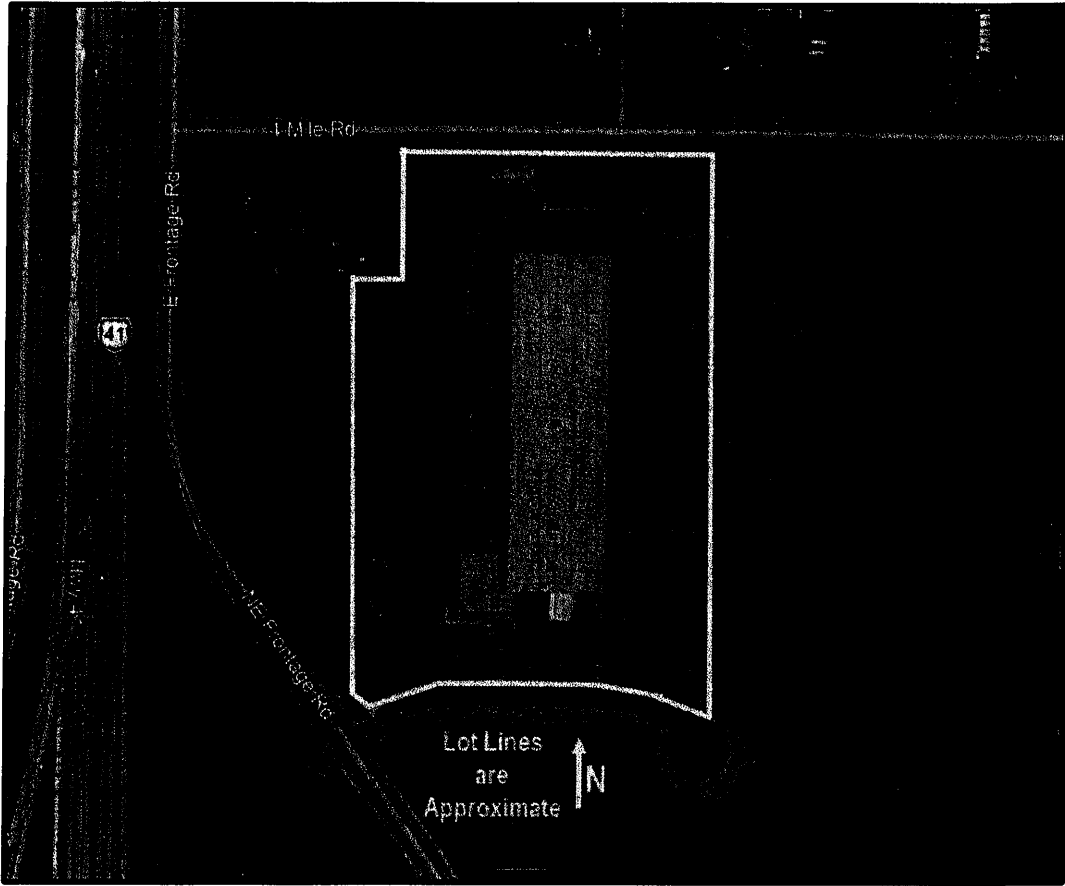


Prepared By:  
**PINNACLE ENGINEERING GROUP**  
15850 BLUEMOUND ROAD | SUITE 210  
BROOKFIELD, WI 53005  
OFFICE: (262) 754-3888

This instrument drafted by John P. Konopacki, PLS - License No. S-2461

PEG JOB # 390.01  
SHEET 5 OF 9

EXHIBIT A  
Page 3 of 4  
**AERIAL PHOTOGRAPH**



## LEGAL DESCRIPTION BEFORE ACQUISITION

Lot 1 of Certified Survey Map No. 3219, recorded in the office of the Register of Deeds for Racine County, Wisconsin on October 4, 2016, in Volume 10 of Certified Survey Maps, page 574, as Document No. 2446965, being a redivision of all of Outlot 1 of Certified Survey Map No. 3076 and Additional Lands all in the Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 and the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northwest 1/4 of Section 30, Township 4 North, Range 22 East. Said land being in the Village of Caledonia, County of Racine, State of Wisconsin.

The following is for informational purposes only:  
Address: 13448 Deback Lane  
Tax Key No. 104-04-22-30-015-100

## 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 4**

**Temporary Limited Easement (TLE):**

That part of Lot 1 of Certified Survey Map No. 3219 being a redivision of Outlot 1 of Certified Survey Map No. 3076 and additional lands all in the Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 and the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northwest 1/4 of Section 30, Township 4 North, Range 22 East, Village of Caledonia, Racine County, Wisconsin described as follows:

The north 20.00 feet of the east 217.00 feet of said Lot 1. Containing 4,340 square feet (0.10 acres), more or less.

Owner: DNKC Property Management, LLC  
Tax Parcel ID No.: 104-042230015100  
Physical Address: 13448 Deback Lane

**PARCEL 4**



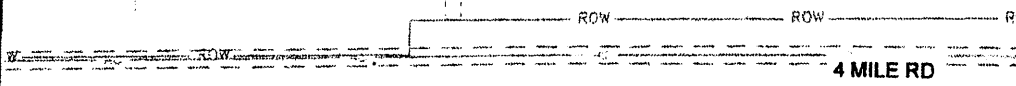
MICHAEL DWYER HOLDING LLC  
4 MILE RD  
104042219063030

ROBERT PATRICK DOWDEN  
13410 4 MILE RD  
104042219063010

SHAWN UTPHALL  
TRACY JOHANNECK  
13332 4 MILE RD  
104042219063020

MILLER 2014 JOINT  
REV TRUST, DATED  
FEBRUARY 28, 2014  
13420 4 MILE RD  
104042219065000

DEMP TRANSITION  
TRUST, DATED  
NOVEMBER 13, 2013  
13414 4 MILE RD  
104042219066000



NORTH LINE OF NW QUARTER OF SECTION 30, T4N, R22E

4 MILE RD

NE CORNER  
LOT 1 CSM 3219

TEMPORARY LIMITED  
EASEMENT  
4,340 S.F. (0.10 Ac)

WSPARK LLC  
ADAMS RD  
104042230015200

LOT 2  
CSM 3219

LOT 1  
CSM 3219

DNKC PROPERTY MANAGEMENT, LLC  
13448 DEBACK LN  
104042230015100

May 31, 2018 - 5472en.spl @Caledonia Utility District\Projects\TID 4\Delkuch Phase 3 Utility Improvements\DW3219\Display\TID 4 EASEMENT.dwg



**Foth Infrastructure & Environment, LLC**  
2814 S. 102nd Street  
Suite 278, Lincoln Center II  
West Allis, WI 53227  
Phone: 414-398-7800 Fax: 414-338-7801

RELEASE OF DOCUMENTS  
THIS DOCUMENT HAS BEEN DEVELOPED FOR A SPECIFIC APPLICATION AND  
IS NOT TO BE USED FOR ANY OTHER PURPOSE. THE USER SHALL BE  
RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.  
UNAPPROVED USE IS THE SOLE RESPONSIBILITY OF THE UNAPPROVED USER.

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

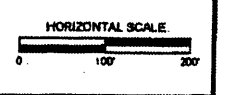
NO.	BY	DATE	REVISIONS

RECORD DRAWING OF COMPLETED CONSTRUCTION BY  
RECORD DRAWINGS OF COMPLETED CONSTRUCTION  
CONFORMING TO CONTRACTOR AND/OR OWNERS RECORDS.  
BY \_\_\_\_\_ DATE \_\_\_\_\_

Date of Preparation: MAY 18, 2018

	BY	DATE
SURVEYED	JAH	03/27/2018
DRAWN	AJM	05/30/2018
DESIGNED	TMS	05/18/2018
CHECKED	AHS	05/30/2018

**PARCEL 4**



PROJECT ID: 18C030 04  
**PARCEL 4**

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 May 30, 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 purchase of fee simple title of a certain portion of the Property, as described in the document to which this Exhibit X is attached]. The compensation paid by the Village to the Owner is a total of Five Hundred Dollars (\$500.00).
- 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-65339

### SCHEDULE A

1. Effective Date: May 30, 2018 at 08:00 AM
2. Policy or Policies to be issued: Amount
  - (a)   X   Owner's Policy ( ALTA Own. Policy (06/17/06) Revised 08/01/2016 ) **\$ 15,000.00**  
Proposed Insured:  
**DNKC Property Management, LLC**
  - (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:

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

**Lot 1 of Certified Survey Map No. 3219, recorded in the office of the Register of Deeds for Racine County, Wisconsin on October 4, 2016, in Volume 10 of Certified Survey Maps, page 574, as Document No. 2446965, being a redivision of all of Outlot 1 of Certified Survey Map No. 3076 and Additional Lands all in the Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 and the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northwest 1/4 of Section 30, Township 4 North, Range 22 East. Said land being in the Village of Caledonia, County of Racine, State of Wisconsin.**

**The following is for informational purposes only:**

**Address: 13448 Deback Lane**

**Tax Key No. 104-04-22-30-015-100**

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)

ALTA Commitment  
Schedule A (6/17/06)

cc: Foth Infrastructure & Environm

First American Title Insurance Company

**SCHEDULE B - SECTION I  
REQUIREMENTS**

Commitment Number: LMT-65339

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.
4. Taxes for the year 2017 in the net amount \$28,735.31 are being paid on the installment plan, balance due \$12,719.00.

First American Title Insurance Company

Commitment Number: LMT-65339

**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-65339

**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. Possible Transmission Line Easement from Wisconsin Electric Power Company, to American Transmission Company, LLC dated December 1, 2000 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on March 26, 2001 in Volume 3142 of Records, Page 599, as Document No. 1763585. Easement Assignment as contained in document recorded on March 26, 2001, as Document No. 1763586. Easement Assignment as contained in document recorded on March 26, 2001, as Document No. 1763587. Easement Assignment as contained in Document recorded on March 26, 2001, as Document No. 1763588. Easement Assignment as contained in Document recorded March 26, 2001 as Document No. 1763589. Due to the generality of the Easement and poor copy quality, we are unable to determine the proper location.

11. Development Agreement as contained in document dated November 9, 2016 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on December 6, 2016 as Document No. 2452325.

12. Easement as contained in document dated August 31, 2017 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on November 28, 2017 as Document No. 2480869.

13. Easement as contained in document dated March 23, 1982 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on March 23, 1982 as Document No. 1104147.

The foregoing Easement was re-recorded in the office of the Register of Deeds for Racine County, Wisconsin on April 19, 1982, as Document No. 1105316.

14. Access Easement as contained in document dated January 20, 2011 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on February 8, 2011 as Document No. 2276427.

15. Restrictions as contained in instrument dated September 29, 2016 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on October 4, 2016 as Document No. 2446964

First American Title Insurance Company

Commitment Number: LMT-65339

**SCHEDULE B - SECTION II**

**EXCEPTIONS**

(Continued)

Modification of Restrictions as contained in document dated September 30, 2016 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on October 7, 2016 as Document No. 2447307.

16. Restrictions as contained in instrument dated July 29, 2016 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on August 1, 2016 as Document No. 2441101
17. Caledonia Sewer and Water Utility District Assessments, if any.
18. Root River Storm Water Drainage District Assessments, if any.
19. Mortgage from DNKC Property Management, LLC to Wispark LLC in the amount of \$777,854.07 dated September 30, 2016 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on October 10, 2016 as Document No. 2447415.
20. Mortgage from DNKC Property Management, LLC to Johnson Bank in the amount of \$8,190,000.00 dated December 13, 2016 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on December 20, 2016 as Document No. 2453474.