

RESOLUTION NO. 2020-105

RESOLUTION OF THE VILLAGE BOARD OF THE VILLAGE OF CALEDONIA TO APPROVE A DEVELOPMENT AGREEMENT FOR BRIARWOOD CONDOMINIUM PLAT ON PARCEL ID 51-104-04-23-21-061-000; BRIARWOOD OF CALEDONIA, LLC, OWNER / NANCY WASHBURN, AGENT

The Village Board for the Village of Caledonia resolves as follows:

WHEREAS, in 2005 the Village approved the concept plan and preliminary condominium plat for a condominium comprised of 15 two-unit buildings for a total of 30 units on a parcel of land approximately 7.92 acres in size on parcel number 51-104-04-23-21-061-000 owned by Briarwood of Caledonia, LLC with Nancy Washburn as agent, and the Village of Caledonia extended the approvals over the past several years because of the downturn in the economy;

WHEREAS, the Village Plan Commission at its meeting on October 26, 2020 recommended approval of the extension of the preliminary condominium plat subject to certain conditions and the Village Board at its meeting on November 2, 2020 approved the extension of the preliminary condominium plat subject to those same conditions.

NOW, THEREFORE, BE IT RESOLVED by the Caledonia Village Board that the Development Agreement between the Village of Caledonia, Village of Caledonia Sewer Utility District, Village of Caledonia Water Utility District, Tri City National Bank, Reesman's Excavating and Grading, Inc. and Briarwood of Caledonia, LLC as set forth in **Exhibit A** attached hereto and incorporated herein (the "Development Agreement"), is hereby authorized and approved subject to the condition of the Plan Commission and Village Board approving the final condominium plat, and the Village President and Village Clerk are authorized to execute said agreement and Village staff are authorized to take all such actions necessary in furtherance of the Development Agreement.

Adopted by the Village Board of the Village of Caledonia, Racine County, Wisconsin, this 7th day of November, 2020.

VILLAGE OF CALEDONIA

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

Attest: Karie Pope
Karie Pope
Village Clerk

**DEVELOPMENT AGREEMENT
BRIARWOOD CONDOMINIUM**

THIS DEVELOPMENT AGREEMENT, (the “Agreement”), effective as of the date last executed by any Party hereto, is made and entered into by and between **Briarwood of Caledonia, LLC**, a Wisconsin Limited Liability Company, (the “Developer”), its successors and assigns, **TRI CITY NATIONAL BANK**, a Wisconsin financial institution, its successors and assigns, (the “Mortgagee”), the **VILLAGE OF CALEDONIA**, a municipal corporation located in Racine County, Wisconsin, its successors and assigns (the “Village”), 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 (herein jointly and severally referred to as the “Utility District” and/or “District” although more than one), and **REESMAN’S EXCAVATING & GRADING, INC.**, being a Wisconsin Corporation (the “Contractor”) (Developer, Mortgagee, Village, Utility District and Contractor are collectively referred to as “the Parties”);

INTRODUCTION

A. The Village is located in Racine County, Wisconsin. The Utility District (through the respective two utility districts noted above) owns and operates the District System.

B. Developer is the sole record title owner of the 30 Condominium Units located on their real property platted as the “Briarwood Condominium” (hereinafter referred to as the “Property”) located in the Village of Caledonia, Racine County, Wisconsin, and which is legally described on the attached **Exhibit A** and further depicted on the Condominium Plat attached as **Exhibit B**.

C. The Village has approved, subject to conditions, the Condominium plat of “Briarwood Condominium,” being a development of the Property (“the Condominium”), including compliance with the

ordinances of the Village, which require that the Developer enter into a suitable contract with the Village relative to the construction of the private roads and other improvements in the Condominium.

D. As a part of the creation of the Condominium, the Developer wishes to contract directly with the Contractor for the purpose of constructing the Condominium System.

E. Once constructed by the Contractor and upon acceptance by the Village and the District, the ownership of the Condominium System will then be transferred and conveyed by formal action to the Village and the District which may be by Resolution or motion and become a part of the municipal District System.

F. The ordinances of the Village allow and permit the Developer to directly contract with the Contractor to build and construct the Condominium System and the Storm Water Utilities (hereinafter collectively referred to as the "Construction Project"), provided that the Construction Project is undertaken and done pursuant to the terms and provisions of this Agreement. The above-named parties are entering into this Agreement for such purposes, and for such other purposes as set forth in this Agreement.

G. Any and all applications, the pre-development agreement, and accompanying plans, schedules, exhibits, and other documents filed with the Village with regard to the Project are incorporated by reference herein, as modified by any written or formal approvals of the Village and Utility District.

H. The Mortgagee will hold a mortgage interest in the Property and joins as a party to this Agreement solely for purposes of agreeing that this Agreement shall survive any foreclosure of the Mortgagee's mortgage.

I. This initial phase of the Condominium is comprised of a portion of the roadway and 5 Buildings of 2-units each for a total of 10 Units. Prior to recording of the Final Condominium Plat the Developer shall determine the exact number of units/buildings they wish to declare at Phase 1. Future

phases of the Condominium shall be governed by this Agreement and are subject to the Village Public Works Director authorizing the Developer to proceed with additional phases in accordance with Village Ordinances and this Agreement. The Developer shall amend the Condominium Declaration to account for each new phase of the Condominium. The total full build-out for the Condominium will be comprised of 15 two-unit buildings for a total of 30 Units.

J. The Developer desires to complete improvements and development of the Property located in the Village in the manner described herein, and for that purpose cause the installation of certain Public Improvements, hereinafter defined.

K. Wisconsin Statutes Section 236.13 and the applicable Village Ordinances provide that as a condition for final approval, the governing body of a municipality may require the Developer to make and install or have made and installed, any new Public Improvement, including the Condominium System, reasonably necessary to the Property, and the Developer may provide an irrevocable letter of credit or other security approved by the Village guaranteeing that the Developer will make and install or have made and installed those improvements to the Condominium within a reasonable time.

L. The Village believes that the orderly planned development of the Condominium will best promote the health, benefit, safety and general welfare of the community.

NOW THEREFORE, in consideration of the granting of approval by the Village of the development of the above described Property, and the covenants herein contained, and other good and valuable consideration, the adequacy and sufficiency which is acknowledged by all parties, it is mutually agreed as follows:

1. **Introduction is Correct.** The Parties agree that the foregoing "Introduction" is true and correct and is hereby incorporated into this Agreement by reference.

2. **Definitions.**

Condominium shall mean Briarwood Condominium as set forth on **Exhibit A.**

Condominium System shall mean the sanitary sewerage system and the watermain system in the Condominium to be constructed on the Property under this Agreement and in accordance with the Plans.

District System shall mean the Village's municipal sanitary sewerage system and the municipal water system operated by the Utility District.

Public Improvements shall mean all public improvements to be constructed on the Property pursuant to this Agreement and in accordance with the Plans, including grading, erosion control, drainage and all requisite public improvements, Storm Water Utilities and Condominium System.

Private Roads shall mean all roads to be built on the Property, including any required curb and gutter.

Storm Water Utilities shall mean the storm sewer utilities to be constructed on the Property under this Agreement and in accordance with the Plans.

3. **Consent of the Village and District.** The Village and District hereby grant permission to the Developer and the Contractor to undertake and do the Construction Project for the Property as a private project on private property (as opposed to a Village/District project requiring compliance with the public bidding statutes).

4. **Construction Project.** The construction of Public Improvements in the Condominium shall be undertaken and done by Contractor, and Developer shall be solely responsible for the payment of all costs and expenses for the construction of the Public Improvements in the Condominium. The Contractor and Developer expressly understand and agree that the Village and the District will not be liable or responsible in any manner for any of the said costs and expenses of the construction of the Public Improvements in the Condominium.

5. **Code of Ordinances Incorporated.** The Code of Ordinances of the Village, as amended from time-to-time, is hereby incorporated into this Agreement, and Developer and Contractor agree to perform all of the obligations imposed upon Developer and/or Contractor by the terms and provisions of such ordinances, as applicable. Without limitation, Developer specifically acknowledges that it must pay all applicable fees, which include, but are not limited to, applicable impact fees, land division fees, and others. Notwithstanding the foregoing, impact fees for the construction of a two-unit building in the Condominium shall be paid at the time a building permit for the construction of said building is obtained.

6. **Public Improvements: Dedication, Construction, Guaranty Period.**

(a) **Property Improvements Generally.** Developer shall prepare, at its expense and per applicable Village ordinances and the requirements of this Agreement, complete plans for construction of the Property's Public and Private Improvements, the Condominium System as further described under Section 7 of this Agreement, and Storm Water Utilities as shown on the approved plans prepared by Pinnacle Engineering that are described below. The Village and the Utility District have previously approved the plans for the Public and Private Improvements prepared by Pinnacle Engineering Group and dated and stamped by a professional engineer on August 27, 2020 which are incorporated herein by reference (the "Plans"). The design and Plans of the Public and Private Improvements, Condominium System and Storm Water Utilities shall conform to the Village's minimum standards for public utilities and private roads then in effect unless otherwise agreed to in writing by the Developer and the Village, and such plans and specifications shall be submitted to and approved by the Village. The standards for the Private Roads were approved by the Public Works Committee in January of 2019, the Plan Commission on February 24, 2020 and the Village Board on March 2, 2020 and the Public Works Committee on August 12, 2020 and have been incorporated in this Plan Set. In the event of any conflict between the minimum design standards in the Village's Code of Ordinances and the requirements of this Agreement, the more restrictive shall control except for the Private Road which was previously approved by the Village and as is expressly provided for in this Agreement. The Developer acknowledges and agrees that it is solely responsible for all costs of construction and installation of the Public Improvements.

(b) **Storm Water Utilities and Condominium System Construction.** Developer's design engineer shall stake the location of the Storm Water Utilities and Condominium System prior to construction. Developer shall be responsible for constructing the Storm Water Utilities and Condominium System at Developer's expense and per the approved Plans for the entire Condominium, including all phases. Developer's construction work shall be subject to inspection by the Village, or the Village's designee. Developer shall construct the Storm Water Utilities and the Condominium System utilizing granular backfill, as set forth in the approved Plans and as required by Village ordinances. The Condominium Plat is conditioned upon (i) the Village's acceptance of the Condominium's Public Improvements, (ii) the Property (and the units therein) being serviced with public sewer and water services by the Utility District, and (iii) the Developer entering into agreements to grant the Utility District, as appropriate, all easements, if applicable and deemed necessary for the furnishing of public sewer and water services to the units in said Condominium.

After the Storm Water Utilities and Condominium System have passed final inspection and testing, and after all lien waivers for the work completed on the Condominium System and the Storm Water Utilities have been provided to the Village, the Village shall accept ownership of the Condominium System and easements for access to the Storm Water Utilities and Condominium System.

(c) **Private Roads Construction.** After acceptance of the Storm Water Utilities and Condominium System by the Village, the Developer and Contractor shall thereafter construct, at Developer's expense, the Private Roads for Phase One, including asphaltting, in compliance with the Approved Plans for roads. Such construction, including asphaltting, will be completed by the Developer and Contractor, and tested. Certain items of the Developer's construction work shall be subject to inspection by the Village, or the Village's designee. These items include proof rolls of subgrade and base, concrete curb and gutter inspections and paving inspections. The Village shall also require subgrade and base verifications, in form of as-builts, prior to base and paving. It is anticipated that the construction of the Private Roads as described herein, except for surface asphaltting, shall be completed during 2021 for the first phase of the Condominium. If the construction thereof is delayed, the Developer and Contractor shall

be responsible for the maintenance, plowing, regrading and reshaping of the Property's Private Roads at the Developer's expense prior to the asphaltting work being done. After the Developer's construction of the stone base course of the Private Road, the Developer's asphaltting contractor shall fine grade the stone base and install two and one-half (2 ½) inches of binder asphalt, in two (2) layers per the specifications of the Village Director of Public Works, on the Private Road within the Condominium for each phase. The private road construction will be accomplished in phases as approved by the Village Public Works Director in accordance with this Agreement.

The surface asphalt of one and one-half (1 ½") inches and final work necessary to complete the Private Roads shall not be done until 80% of the units within the Condominium are constructed, unless otherwise required by the Village to be completed earlier, and all required Public Improvements have been installed and approved by the Village.

Prior to installation of the surface course of asphalt, the Contractor shall inspect the Private Road to determine whether any patching and repairs of the previously completed construction of the Private Road is necessary. When authorized to install the surface course of asphalt by the Developer, the Developer's asphaltting contractor shall perform any patching and repairs deemed necessary by the Developer, sweep the binder course prior to placing any tack coat and install one and one-half (1-1/2) inches of surface asphalt. Thereafter, the Developer and Contractor shall complete the final work necessary to complete the construction of the Private Roads including manhole and water box adjustments on the Private Roads subject to inspection by the Utility District. Developer agrees that it is financially responsible for the cost of installation and construction of the asphalt binder and surface courses and adjustments. In the event the private roads are not completed for the entire condominium for all phases within two (2) years from the date hereof, the Village Public Works Director shall have the right to review the plans in light of conditions then existing or expected in the area and to require modification of the plans to meet any such conditions.

The Declaration shall specify that the unit owners and the Condominium Association shall own and be responsible for the installation, construction, maintenance and reconstruction of all private roads in accordance with Village specifications.

7. **Subdivision System Construction Project.**

(a) **Approval of Construction Project Plans.** Prior to any work being done on the Construction Project, (i) the Developer shall first obtain the written approval from the District's engineers of all of the specifications, drawings, blueprints, diagrams and plans for the Construction Project (hereinafter collectively referred to as the "Plans"), and (ii) the Contractor shall first have a Pre-construction meeting with the District's engineers regarding the Construction Project. The Plans shall be of a type and format, and have such content, as the District's engineers may require. Additionally, the Plans shall also be submitted to the District's engineers in an electronic format approved by the District's engineers. Developer and Contractor expressly understand and agree that, in the event the Developer does elect to undertake and do the Construction Project, the Condominium System shall then be constructed and done in strict compliance with the Plans approved by the District's engineers.

(b) **Full Inspections.** The Condominium System portion of the Project shall be inspected by the District's engineers, and all costs of such inspections shall be paid for by Developer. The Contractor shall provide to the District its work schedule (the "Work Schedule") for the Construction Project prior to any work on the Construction Project being undertaken. The Work Schedule shall (i) specify the times, dates and type of work to be performed, and (ii) have a format and content satisfactory to the District's engineers. The Work Schedule shall not be increased or expanded in time or scope of work without first providing the District's engineers with at least 48 hours prior written notice of such changes to the Work Schedule. Developer and Contractor understand that it is the intent of the Village and District to have one or more inspectors at the construction site at all times that work on the Condominium System is

being performed and as deemed by the Village and/or District to be needed at other times while the work on the Construction Project is being performed. The District Engineers and/or their inspector(s) at the construction site shall have the full right and authority to stop work on the Construction Project whenever they believe that any such work or materials are not in compliance with the approved Plans for the Construction Project, and in such event the Contractor shall then immediately cure any such failure of compliance before proceeding with any other work on the Construction Project. Notwithstanding the foregoing right and authority granted to the District's engineers (to stop the Construction Project in the event of a failure of compliance with the approved Plans), the parties to this Agreement expressly understand and agree that, as between the parties to this Agreement, the Contractor and/or Developer shall be the sole parties responsible for (i) all safety measures required for the Construction Project, (ii) the direction of all laborers and personnel doing the work on the Construction Project (except for the inspector(s) hired by the District's engineers), and (iii) all means and methods required to do the Construction Project.

(c) **One-Year Guarantee.** Developer and Contractor shall, and hereby do, jointly and severally guarantee to the Village and the District that all work and materials furnished and performed on and for construction of the Condominium System shall be free from defects for a period of one (1) year after the date on which the Village and District accept ownership of the Condominium System in writing as described in subsection (d) below. This one-year guarantee, however, shall not in any manner limit, change or amend any applicable statutes of limitation regarding the Developer's and/or Contractor's duties under this Agreement to construct the Condominium System in strict compliance with the approved Plans for the same. In the event any defect(s) is discovered during such one year time period, the District and/or Village shall notify the Developer and Contractor in writing, and the Developer and Contractor shall cause such defect(s) to be corrected within sixty (60) calendar days (or within such shorter period designated by

the Village or District if the public health and safety so require). If the Developer and/or Contractor shall fail to do so within such 60 day time period (or if the public safety requires the remedial work to be done sooner and the Developer/Contractor are not able to timely do so), then the District and/or Village may cause such defect(s) to be corrected, and the Developer and Contractor shall be liable to the District and/or Village for any costs incurred by the District and/or Village in doing so, including any construction, engineering, legal or administrative costs with respect to the said remedial work.

(d) **Transfer of Ownership.** Upon the full completion of the Condominium System and upon the Village and the District then accepting the same in writing, the ownership of the Condominium System shall, effective as of the date of the said written acceptance by the Village and District, be transferred and conveyed to the Village and the District by Resolution or Motion. With respect to such transfer/conveyance of ownership to the Village and District:

1) The said transfer/conveyance shall be deemed to occur and become effective immediately and automatically at the time of the written acceptance of each completed Condominium System by both the Village and the District, without any further documents being required.

2) The said transfer/conveyance shall include transfer of ownership of the Condominium System located in the dedicated Village and Village utility easements.

3) The said transfer/conveyance of ownership, however, shall not include any portion of the sewer laterals and/or water laterals that are located outside of the Village/Utility Easement area(s).

4) The Developer agrees to execute such documents as may be requested by the Village to transfer, convey and/or dedicate ownership of the Condominium System to the extent necessary to facilitate the Village's ownership thereof as set forth in this Section 7(d).

(e) **Reimbursement for Costs.** The Developer shall, within thirty (30) days after receiving a written itemized invoice(s) from the District for the same, reimburse and pay to the Village and/or District all engineering, inspection, administrative and legal costs incurred by the Village and/or District with respect to the Construction Project. This shall expressly include, but not be limited to, (i) all engineering costs incurred in the review of the Plans for the Construction Project, and (ii) all inspection costs for the Construction Project, and (iii) all legal costs of the District's attorney pertaining to the Construction Project and/or this Agreement.

(f) **Right of Village/District To Complete The Project.** If the Developer commences the Construction Project (by having the Contractor commence actual excavation work and/or construction work on site) but then fails for any reason to complete or finish the Condominium System portion of the Construction Project, then, in addition to any and all other remedies available to the Village and/or the District under the law:

1) The Village and/or District may, at its option, complete and finish the said Condominium System portion of the Construction Project by doing such remaining work (the "Completion Work") as a publicly-bid Village project; and

2) The Developer shall pay to the Village and/or District all costs incurred by the Village/District in doing the Completion Work; or

3) Without in any manner limiting its available remedies under the law, the Village and/or District may obtain payment of all such costs for the Completion Work

through a levy of special assessments and/or special charges (collectively referred to as the "Special Assessment") on the Property pursuant to the terms and provisions of Section 66.0703 of the Wisconsin Statutes and/or any other applicable statutes. Developer hereby waives all procedural rights that Developer may have under the laws of the State of Wisconsin with respect to such an imposition of the Special Assessment on the Property for the Completion Work. This waiver includes, but is not limited to, waiver of the requirement of a written notice and a public hearing as required under Section 66.0703 of the Wisconsin Statutes and/or any other special assessment statutes.

4) Additionally, the "Completion Work" described above may also consist of the following other types of work should the Village and/or District so elect:

- i) Undertaking whatever work may be necessary to protect and maintain the Condominium System at its then-existing stage of completion; and/or
- ii) Removal of part or all of the Condominium System and restoration of the disturbed areas of the Condominium.

(g) **Grant of Easements.** If for some reason any portion of the Condominium System is constructed outside of the Village rights-of-way that are transferred to the District under the provisions of above Section 7(d) of this Agreement, the Developer will grant to the Village and the District an easement (the "Easement") on private land located within the Condominium as reasonably determined by the Village and the District, of sufficient depth and width to the extent reasonably necessary to enable the Village and the District to access such portion of the Condominium System for the purpose of installing, operating, using, maintaining, modifying, improving, repairing, and/or replacing the Condominium System. If an easement is so determined to be reasonably necessary, the Developer will execute and deliver to the Village

and District a separate written easement agreement (the "Easement Agreement") that memorializes and confirms the easement rights of the Village and District to install, operate, use, maintain, modify, improve, repair, and/or replace (i) any sanitary sewer and watermain facilities already located within the easement area, and (ii) any other portion of Condominium System located within the easement area. The Easement Agreement shall identify and describe the location of all such sanitary sewer and watermain facilities. When the Construction Project and the final as-built drawings of the new Condominium System are completed, the said as-built drawings shall be included in the Easement Agreement to identify and describe the land subject to the easement pertaining to sanitary sewer and watermain facilities. (In this fashion, the final as-built easement areas will replace any initial easement areas that were originally based on the Plans, but vary from the final, as-built location of the sewer and watermain facilities.) Except as otherwise agreed to, the Developer shall provide, and no building permits for units within the Condominium shall be issued until the Village receives, a master easement exhibit from the Developer showing all easements, including WE Energies and other utility easements located in the Condominium . The Developer shall provide these documents in a format acceptable to the Village Director of Public Works and Village Utility Director.

(h) **Manhole/Valve Box Adjustment Costs.** The Developer will completely bear the costs of manhole/valve box/water box adjustments and will schedule an inspection with the Village's Utility District with at least 48 hour notice.

8. **Drainage Facilities.**

(a) **Construction.** Developer and Contractor agree to design, construct, and install, at its expense, all the Storm Water Utilities as specified and set forth in the Village-approved plans and specifications described in Section 6 hereof for the entire condominium. In the event the Storm Water

Utilities are not completed within two (2) years after the date hereof, the Village Board shall have the right to review the plans in light of conditions then existing or expected in the area and to modify the plans to meet any such conditions. The Developer and Contractor shall construct and complete the Storm Water Utilities pursuant to any such revised plans. All such work shall be subject to approval and acceptance by the Village Board and the Village's Utility Commission. Construction of all drainage facilities within the outlots located on the Property shall be completed prior to the issuance of any building permits for units within the Property. Any damage occurring to the Public Improvements or to any other drainage structures or appurtenances, including drainage tiles, shall be repaired, restored or rerouted by Developer in accordance with this Agreement.

(b) **Maintenance.** Except as provided below, Developer shall be liable and responsible for the proper maintenance of the storm water easements described on the attached **Exhibit C**, including any detention or retention basins if applicable. Such maintenance shall include the control of weed and algae growth. Such liability and responsibility shall continue with the Developer until such time as the ownership of each unit is transferred and such subsequent owner assumes such obligations through a "Maintenance and Easement Agreement" which shall be recorded as a separate agreement and which is attached as **Exhibit D** (the "Maintenance and Easement Agreement"), that sets forth the regular, routine and long term maintenance requirements. Such responsibility shall be delegated immediately to the Condominium homeowners association (the "Condominium's Association") through the Declaration of Condominium which shall be recorded and which is forthcoming and shall be submitted to the Village for approval by the Village Board. However, the Developer shall continue to have remaining obligations relating to the Developer's guarantees under Sections 7(c) and 9(b)). Such maintenance shall be carried out in conformity with applicable Village ordinances, the Condominium Declaration and any written directive for corrections or maintenance from the Village.

(c) **Grant of Easements.** The Developer shall grant to the Village an easement for the purpose of maintaining and repairing the Storm Water Utilities located in the Condominium. Developer will execute and deliver to the Village a separate written easement agreement that memorializes and confirms the easement rights of the Village to maintain and repair the Storm Water Utilities. Said easement agreement shall identify and describe the location of all such Storm Water Utilities and shall be recorded with the Racine County Register of Deeds.

(d) **Default.** In the event of any default in the obligations to properly repair damage caused during construction or to maintain the drainage easements, including any retention or detention basins, the Village may cause said maintenance to be performed and may charge the costs thereof to any of the following parties to the extent that each of the following parties is liable for said costs pursuant to this Agreement or the Condominium Declaration: (i) the Developer, (ii) any subsequent owner of any unit within the Condominium, or (iii) the Condominium Association. In addition, the Village, at its option, may cause all such costs including any engineering, legal, and administrative costs with respect to the same, to be assessed against the Property or the unit within the Condominium that is assigned responsibility for such drainage facility, all as provided in Sections 66.0627 and 66.0703, Wis. Stats., and applicable Village ordinances.

9. **Public Improvements Cost and Security.**

(a) **Public Improvements Costs and Security.** In order to secure Developer's satisfactory completion of the Public Improvements including, but not limited to, the Storm Water Utilities, Public Roads and Condominium System, Developer has opted to post with the Village a letter of credit, in a form and from an issuer satisfactory to the Village, in the amount of \$1,196,050.90 (the "Security"), which amount equates to 120% of the estimated total cost of the Public Improvements (excluding the cost

for asphaltting) as set forth on **Exhibit E** which is incorporated herein by reference. Developer shall post the Security with the Village prior to commencing the staking that is required of the Developer. After completion satisfactory to the Village as set forth in this Agreement of the Storm Water Utilities and Condominium System, the Village shall release that portion of the Security that is attributable to the estimated cost of the completed work upon receipt by the Village of lien waivers, as shown on **Exhibit E**. Releases of the Security shall be accomplished incrementally as portions of the work are completed and accepted by the Village. Only that portion of the Security necessary to secure the warrantee period for the Condominium System shall be retained by the Village as security for an additional fourteen (14) months (“Guaranty Period”) to secure the Developer’s obligations during the Guaranty Period and to ensure completion of the remaining Public Improvements. In consideration for, and to ensure the long term integrity of the binder course of asphalt and to reduce Developer’s costs under the Guaranty Period, if the letter of credit posted for the Security expires prior to the end of the Guaranty Period, the Developer agrees to renew the letter of credit for the remaining Guaranty Period even if the letter of credit extends beyond, and notwithstanding, the fourteen (14) month period set forth in Section 236.13, Wis. Stats. In calculating the retention amount of the Security, such amount shall not include the original 20% contingency. Developer may, at its option, substitute a cash bond or cash deposit for the remaining amount on the letter of credit for the remaining Public Improvements work, plus 10% of the original Security.

If Developer fails to complete the Public Improvements, within eight months after initial staking, the Village shall draw on the Security without further notice to Developer to complete the remaining Public Improvements of the Condominium System.

(b) **General Inspections.** The Public Improvements shall be inspected by the Village’s Director of Public Works, or his designee or the Village’s consulting engineers, and all costs of such inspections shall be paid for by Developer. The Contractor shall provide its work schedule for Public

Improvements to the Village prior to any work being undertaken. Such work schedule shall (i) specify the times, dates and type of work to be performed, and (ii) have a format and content satisfactory to the Village's Director of Public Works. Developer and Contractor understand that it is the intent of the Village to have one or more inspectors present as needed while the work on the Public Improvements is being performed. The designated inspectors at the construction site shall have the full right and authority to stop work on the Public Improvements whenever they believe that any such work or materials are not in compliance with the approved Plans and Specifications, and in such event the Contractor shall then immediately cure any such failure of compliance before proceeding with any other work. Notwithstanding the foregoing right and authority granted to the Village's inspectors (to stop the work in the event of a failure of compliance with the approved Plans and Specifications), the parties to this Agreement expressly understand and agree that, as between the parties to this Agreement, the Contractor and/or Developer shall be the sole parties responsible for (i) all safety measures required for the work, and (ii) the direction of all laborers and personnel doing the work (except for the inspector(s) hired by Village), and (iii) all means and methods required to do the work.

10. **Common Area/Open Space Restrictions.** Pursuant to the Condominium Declaration, the developer of the Condominium agrees to manage the use of the Common Area/Open Space and require the maintenance and protection of the same in the recorded Condominium Declaration. The Common Area/Open Space located in the Condominium are subject to the Condominium Declaration and the easement agreement required under Section 7(c) above. Developer shall ensure that the Common Area/Open Space located in the Condominium comply with the Condominium Declaration and said easement agreement. Thereafter, the Condominium Association shall be responsible for the maintenance and management of the Common Area/Open Space. The Village shall have no ownership interest in, nor any responsibility, for the Common Area/Open Space except to the extent necessary to exercise its easement

rights to ensure proper maintenance of any drainage facilities by the Condominium Association.

11. **Street Lights.** The Developer shall be liable for the costs of purchasing and installing street lights in areas deemed necessary in the judgment of the Village's Director of Public Works. Said lights must be approved by the Village and WE Energies. The street lighting plan, including the type of street light to be permitted, shall be submitted to the Village's Director of Public Works for approval, is incorporated herein by reference. The installation of the street light shall be the sole responsibility of the Developer until that part of the public street is transferred and conveyed to the Village. The Developer shall also be responsible for payment of the applicable street light fee of **\$550.00** per light for each standard light, which fee represents the cost of operating each light for the three year period following the execution of this Agreement per Village of Caledonia Resolution 2007-21.

12. **Street Markings and Signage.** The Developer shall be responsible for the costs of procuring and installing all pavement markings and street signage adjacent to the Condominium. Pavement markings, if any, may include stop lines at intersections, striping for right turn lanes, and any other pavement markings required by the Village's Director of Public Works. Signage shall include all stop signs, street signs and other signs required by the Village's Director of Public Works. The street sign and pavement marking plan, which shall be created by the Village Director of Public Works, is incorporated herein by reference. The Developer authorizes the Village to install the necessary Public Roads markings and signs and shall reimburse the Village on a time and material basis for the cost thereof.

13. **Sale of Units.** Developer or its successors in title shall not sell, convey or transfer any portion of the Property abutting upon a street or portion thereof that is depicted on the Condominium plat until the following have occurred: (1) this Agreement is executed and recorded; 2) the Condominium Plat is recorded; 3) the Condominium Declaration in a form approved by the Village is recorded; 4) all Security has been deposited with the Village (by such time as is herein provided); (5) the Storm Water Utilities and

Condominium System have been installed and accepted by the Village.

14. **Sewer and Water.** The approval of the Condominium Plat was conditioned upon the Condominium being serviced with public sewer and water service by the Village's Utility Districts. Except as otherwise set forth in this Agreement, the sewer and water system within the Condominium shall be designed, constructed, and installed at the sole expense of the Developer pursuant to plans submitted to and approved by the Village and the Utility District. All fees applicable to the connection and service of the Property to the public sewer and water systems shall be borne by Developer or individual unit owners, and any use of such systems shall be subject to all applicable use restrictions. All such work shall be pursuant to plans and specifications approved by the Utilities and the Village.

15. **Reimbursement of Costs.** The Developer acknowledges and agrees that it is solely responsible for all costs related to the installation of Condominium's Public Improvements. In addition, the Developer agrees to reimburse the Village for its costs related to the Condominium including costs incurred by the Village to review conceptual, preliminary and final plans associated with the Condominium and to review, revise and/or draft any agreements, easements, deed restrictions or other documents associated with the Condominium. Such costs shall also include the costs of Village's retained engineers, attorneys, inspectors, agents, and subcontractors. Developer understands that legal, engineering, and all other consultants retained by the Village are acting exclusively on behalf of the Village and not Developer. Developer entered into a pre-development agreement with the Village and paid to the Village the sum of \$3,000 as a deposit for such reimbursements. This Section supersedes the pre-development agreement, provided, however, the parties intend that the reimbursement account and process set up by the pre-development agreement shall continue uninterrupted as needed to cover expenses incurred under this Agreement. If at any time said deposit becomes insufficient to pay expenses incurred by the Village, Developer shall deposit additional amounts required by the Village within fifteen (15) days after written

demand by the Village. If Developer does not deposit a required additional amount within the time required, the Village may suspend additional work or review of the plans and specifications under consideration until the additional deposit is received. Within sixty (60) days after completion of all construction contemplated under this Agreement, the Village shall furnish Developer with a statement of all such costs incurred by it with respect to such Property. Any excess funds shall be remitted to Developer, and any costs in excess of such deposit shall be paid by Developer upon demand. Any interest earned on said deposit shall remain the property of the Village to partially offset administrative expenses associated with planning and development.

16. **Land Division Fee.** Pursuant to Section 14-3-3(c), the Developer shall be responsible for a land division fee in the amount of \$3,000 (30 Units @ \$100 per parcel) to be included as a cash payment to the Village upon execution of this document.

17. **Utilities and Utility Laterals.** Developer is responsible for all costs associated with all private utilities servicing the Condominium including, without limitation, the cost of underground installation of cables, wires, pipes, laterals, etc. for electric, gas, telephone, and cable television services, if any. Developer shall fully restore, at its expense, any Village right-of-way that has been disturbed due to its installation of utilities, lighting or landscaping. The Village shall not take ownership of any utility laterals.

18. **As-Built Plans.** Upon written acceptance of all improvements by the Village, the Developer's engineer, at the Developer's expense, shall provide to the Village one complete set of Grading and Stormwater facilities as-built plans and profile sheets, and shall prepare and provide to the Village one complete set of Sanitary Sewer and Water Main plans on reproducible mylar or similar material as agreed by the Village Public Works Director, two sets of prints indicating actual constructed locations and elevations, and one set of electronic drawings (PDF) and associated files compatible with a computer-aided

design (CAD) system maintained by the Village. The as-built plans shall be prepared by modification of the construction drawings to reflect as-built data for streets, water mains, storm and wastewater collection systems, site grading, and all other relevant public improvements. The Village will be reimbursed by the Developer for the cost of changes to the base and other maps and official drawings not provided by the Developer's as-built drawings, but necessitated by actions of the Developer, whether or not such items are enumerated in this Agreement.

19. **Building Permits and Unit Construction.** Until the Public Improvements provided herein to be installed to service the Condominium have been installed to the reasonable satisfaction of the Village's Utility Director and Director of Public Works, no building permits shall issue as to units in the Condominium; provided, however, that building permits may issue as to Units fronting on streets within the Condominium if the Storm Sewer System has been installed and accepted by the Village and the private road for that phase has been constructed and accepted by the Village. Finished yard grades and grading plans must be approved by the Village's Director of Public Works before construction may commence and the unit owner shall be responsible for the costs of any review at the time of building permit review.

20. **Hydrants.** The Developer shall, at its expense, provide pre-painted hydrants of a design and construction satisfactory to Village staff and consistent with the Village's color code system in those areas of the Property specified by the Village.

21. **Laws To Be Observed.** The Developer and Contractor shall at all times observe and comply with all federal, state and local laws, regulations and ordinances (collectively, the "Laws") which are in effect or which may be placed in effect and impact the conduct of the work to be accomplished under this Agreement to construct the Public Improvements and private improvements, inclusive of repairs, replacements and alterations (collectively for the purposes of this Section and Section 22 the "Work"). The

Developer and Contractor shall indemnify and hold harmless the Village and its agents, officers and employees, against any claims or liabilities directly arising from or based on the violation of any such Laws with regard to the Work by the Developer or its principals, agents, employees or contractors, except to the extent that such claims or liabilities arise by virtue of the negligence or willful misconduct of the Village or any of its agents, contractors, officers or employees. The Developer and Contractor shall procure all permits and licenses and pay all charges and fees and give all notices necessary and incident to the lawful prosecution of the Work.

22. **Public Protection and Safety.** The Village shall not be responsible for any damage, bodily injury or death arising out of the Work whether from maintaining an “attractive nuisance” or otherwise, except as caused by the negligence or willful misconduct of the Village or any of its agents, contractors, officers or employees. Where apparent or potential hazards actually known by the Developer and Contractor that occur incident to the conduct of the Work, the Developer and Contractor shall provide reasonable safeguards. Developer shall, however, still be solely responsible for the means and the methods used for the construction of the Work. The Village, Developer and Contractor do not waive, and shall retain, all defenses to third party claims pursuant to applicable law.

23. **Survey Monuments.** The Developer and Contractor shall exercise all reasonable efforts to assure that all survey or other monuments required by statute or ordinance will be properly placed and installed. Any monuments disturbed during construction of improvements shall be restored by Developer and Contractor.

24. **Drain Tile.** Any drain tile or other drainage structure or appurtenance damaged during construction in the reasonable opinion of the Village Utility Director or Director of Public Works shall be repaired and restored to its condition prior to such construction, or rerouted or replaced, if necessary, by Developer and Contractor, and Developer shall provide a permanent record of such work to the Village.

25. **Erosion Control.** During the course of the development of the Condominium, the Developer shall be responsible to ensure that reasonable steps are taken to prevent erosion from lands within the Condominium and the siltation therefrom being carried into streets rights-of-way, street-side ditches, drainage ditches, easements, culverts, drains, waterways, lakes and streams. To prevent such erosion and siltation, the Developer shall conform to the practices set forth in the erosion control plan located in the Construction Plans and all Construction Site Storm Water Permits issued by the Department of Natural Resources. In the event of any such erosion or siltation, the Developer and Contractor shall be responsible for removing all such siltation from and restoring all such rights-of-way, ditches, easements, culverts, drains, waterways, lakes and streams. All such compliance and work hereunder shall be done without cost to the Village. The Developer shall be responsible for ensuring that its contractors utilize construction means and methods that minimize, to the extent possible, nuisance-type impacts to the surrounding landowners. Prior to the start of construction, the Developer shall obtain a land disturbance permit from the Village.

26. **Personal Liability of Public Officials.** In carrying out any of the provisions of this Agreement or in exercising any power or authority granted to them thereby, there shall be no personal liability of the Village officers, agents or employees, it being understood and agreed that in such matters they act as agents and representatives of the Village.

27. **Indemnification/Hold Harmless Agreement.** The Developer hereby does, jointly and severally, expressly agree to indemnify and hold the Village, Utility District, and their respective elected and appointed officers, employees, engineers and agents harmless from and against all claims, judgments, damages, costs, expenses and liability of every kind and nature, including but not limited to any reasonable actual fees for attorneys and experts retained by the Village and/or Utility District in conjunction with this Agreement, for any injury or damage received or sustained by any person or entity in connection with, on

account of, or in any way relating to the Property, Construction Project, and Condominium System including Developer's performance of work relating thereto, or this Agreement and any other liability of any nature whatsoever, that may arise directly or indirectly as a result of:

- a) The Village and District entering into this Agreement; and/or
- b) The Developer and Contractor undertaking and doing the Construction Project(s);
and/or
- c) The Developer and/or Contractor failing to comply with the terms and provisions of this Agreement and/or the Development Agreement.

Provided, however, that the above indemnification and hold harmless obligations of the Developer shall not apply to any claims, judgments, damages, costs, expenses and liability for any injury or damage that may arise directly or indirectly as a result of, in whole or in part, any intentional torts, negligence and/or willful misconduct by the Village, Utility District, or any of their respective elected and appointed officers, employees, engineers, contractors and agents. The Developer further agrees to aid and defend the Village or its agents (at no cost to the Village or its agents) in the event they are named as a defendant in an action concerning or relating in any way to the Property or Condominium or this Agreement, except where such suit is brought by the Developer or due to the negligence, willful neglect or misconduct of the Village, Utility District, or any of their respective elected and appointed officers, employees, engineers, contractors and agents. The Developer and Contractor are not agents or employees of the Village. All work or obligations to be performed by the Developer and Contractor pursuant to the terms of this Agreement shall be done in accordance with (i) all applicable state, federal and local laws, rules, ordinances and regulations; and (ii) the terms and provisions of this Agreement.

28. **Indemnification for Environmental Contamination.** The Developer, Contractor or Condominium Association, as applicable, shall indemnify, defend, and hold the Village, Utility District,

and their respective elected and appointed officers, employees, and agents harmless from any claims, judgments, damages, penalties, fines, costs, or loss (including reasonable actual fees for attorneys and consultants) that arise as a result of the presence in or on property owned by the Village or Utility District or any Village right-of-way ("Village Parcels") of any toxic or hazardous substances in excess of the minimum levels allowed by applicable law (collectively, the "Substance") arising from any activity conducted by the Developer, Contractor, or any third parties, or by the Developer's respective employees, agents or contractors at or under the Property, except as to injury or damage arising, in whole or in part, due to the negligence or willful misconduct of the Village, Utility District or any of their agents, contractors, officers or employees. Without limiting the generality of the foregoing, this indemnification shall specifically include any costs incurred by the Village in connection with any remedial, removal, or restoration work required by any local, state, or federal agencies because of the presence of the Substances on or in the parcels within the Property that are conveyed to the Village (the "Village Parcels"), whether in the soil, groundwater or air unless its due to the Village's negligence, willful neglect or misconduct.

The Village and Utility District agree that they will immediately deliver written notice to the Developer and Contractor of the Village's or Utility District's discovery of the Substances in or on the Village Parcels. Following delivery to the Developer and Contractor of written notice of the Village's or Utility District's claim as required under this Section, the Village and Utility District shall make all reasonable accommodations to allow the Developer, Contractor or Condominium Association to examine the Village Parcels and conduct such clean-up operations as may be required by appropriate local, state, or federal agencies to comply with applicable laws.

In the event the Developer and Contractor is obligated to indemnify the Village and Utility District against claims arising under this Section, Developer and Contractor shall take all necessary steps to ensure that the Village and Utility District receive written confirmation from the appropriate

governmental authority of the satisfactory completion of the required remediation, removal or restoration work including, without limitation, a no further action letter, final case closure letter or confirmation that the presence of such toxic or hazardous substances affecting the Village Parcels migrated from an offsite source (the "Closure Documents"). The Closure Documents may be predicated upon any contingency or restriction approved by the appropriate governmental authority for groundwater or any use or as a deed restriction or registration in any registry including, without limitation, the GIS Registry. Developer and Contractor shall be responsible for any continuing obligation imposed by any appropriate governmental authority as a continuing indemnity for the Village and the Utility District.

29. **Insurance Requirements.**

(a) **General.** The Developer and Contractor shall obtain insurance reasonably acceptable to the Village as required under this section and such insurance which shall, by specific endorsement to said policy, name the Village and Utility District, their employees, officers and officials on a primary and noncontributory basis, as an additional insured or loss payee as the Village shall direct. The Developer and Contractor shall maintain all required insurance under this section until the Village has accepted dedication of all Public Improvements and for the duration of the Guaranty Period. Insurance required under this Agreement shall be carried with an insurer authorized to do business in Wisconsin by the Wisconsin Office of the Commissioner of Insurance. The Village reserves the right to reasonably disapprove any insurance company.

(b) **Minimum Limits of Insurance.** Where the Village does not specify other limits for liability insurance, the minimum limits of insurance coverage shall be as follows:

Employer's Liability	\$100,000 per occurrence
Comprehensive Motor Vehicle Liability	\$1,500,000 combined single limit for bodily injury and property damage
Comprehensive General Liability	

for Bodily Injury and Property Damage	\$1,500,000 per occurrence \$2,000,000 general aggregate
Worker's Compensation	Statutory Limits
Builder's Risk (as deemed applicable by the Village)	All Risk Type; Total Value of Project
Installation Floater	All Risk Type; Total Value of Project
Umbrella	\$2,000,000 Aggregate

The Developer and Contractor may furnish coverage for bodily injury and property damage for Comprehensive Motor Vehicle Liability and Comprehensive General Liability through the use of primary liability policies or in a combination with an umbrella excess third party liability policy.

(c) Contractor and Owner's Protective Liability (Independent Contractor Insurance). The Contractor's Contractor and Owner's Protective Liability Policy shall have the same coverage limits as the Comprehensive General Liability Policy.

(d) **Condominium Association Insurance.** The Condominium Association shall provide liability insurance for the Common Area/Open Space, including private roads, and the Condominium Declaration shall contain a covenant governing this requirement.

30. **Special Assessments.** Developer agrees, for itself and its successors in interest in the Condominium, that the Condominium is specially benefitted by this Agreement and by the Public Improvements provided for by this Agreement. If Developer and/or the Condominium Association defaults on any obligations under this Agreement, including but not limited to any financial obligation, Developer agrees, for itself and its successors in interest in the Property, that, in addition to any other remedy at law or in equity that the Village may pursue, the Village shall be entitled to specially assess all its costs relating to such default against the Property, pro rata based on acreage, without need of any procedures that are otherwise required by state statute or Village ordinance before a special assessment may be imposed. Developer, for itself and its successors in interest in the Property, hereby waives any and all rights to any

hearings and to challenge any such special assessment.

31. **Miscellaneous Provisions.**

(a) **Incorporation of Attachments.** All exhibits and other documents attached hereto or referred to herein are hereby incorporated in and shall become a part of this Agreement.

(b) **Non-waiver of Approvals.** Nothing herein shall be construed or interpreted in any way to waive any obligation or requirement of the Developer to obtain all necessary approvals, licenses, and permits from the Village in accordance with its usual practices and procedures, nor limit or affect in any way the right and authority of the Village to approve or disapprove any plans and specifications, or any part thereof, or to impose reasonable limitations, restrictions, and requirements on the Property, construction, and use of the Property as a condition of any such approval, license, or permit, including without limitation, requiring any and all other and further development and similar agreements. The Village will act diligently to review all necessary approvals, licenses, and permits duly requested by the Developer.

(c) **Compliance with Laws.** The Property construction shall be undertaken and done in full compliance with:

- i. The terms and provisions of this Developers Agreement; and
- ii. All applicable governmental laws, rules, regulations, statutes and ordinances; and
- iii. All directives, rules and regulations of the Village and District, and its officers, employees and agents (including, but not limited to, the engineers of the District); and
- iv. All drawings, plans, specifications, or diagrams required by and approved by the Village and/or District.

(d) **Time of the Essence.** Time is deemed to be of the essence with regard to all dates and time periods set forth herein and incorporated herein.

(e) **Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

(f) **Entire Agreement.** This Agreement and all other documents and agreements expressly referred to herein contain the entire agreement between the Developer and the Village with respect to the matters set forth herein.

(g) **Venue and Law Applicable.** This Agreement shall be governed, controlled, interpreted and construed in accordance with the internal laws of the State of Wisconsin. The venue of any legal action arising under and/or pertaining to this Agreement shall solely and exclusively be Racine County Circuit Court in Racine, Wisconsin.

(h) **Originals and Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original.

(i) **Amendments to Agreement.** This Agreement shall not be amended orally but only by the written agreement of the Parties signed by the appropriate representatives of each Party and with the actual authority of each Party, provided, however, that the signatures of the Contractor or Mortgagee shall not be required for any amendment that does not affect the respective rights of the Contractor or Mortgagee.

(j) **Agreement Runs with the Land.** This Agreement and the provisions hereof shall be covenants running with the land and shall be binding upon the present owners of the Property for so long as they own the Property or any part thereof, and upon their successors in title and assigns. This Agreement shall be recorded with the Racine County Register of Deeds. Wherever an obligation herein is designated as that of the Developer or Condominium Association or others, the obligation shall be joint and several

hereunder; provided, however, that Developer shall not be liable hereunder for any defaults occurring after the sale of all units in the Property; all Public Improvements and the Condominium System have been constructed and accepted by the Village for all phases; and all guarantees have expired. The Condominium Association has been created and is in existence and shall assume such obligations hereunder. The "Condominium Declaration." shall be submitted for review and approval by the Village Public Works Director.

(k) **Notices.** All notices permitted or required by this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the party or person intended or a successor designated by a party to this Agreement, or upon facsimile transmission to the fax numbers set forth herein or a successor number or numbers designated by the party, or via email with acknowledgement of receipt or one business day after deposit with a nationally recognized overnight commercial courier service, air bill prepaid, or forty-eight (48) hours after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed by name and address to the party or person intended as follows, or a successor party or address or both:

To Developer:

Briarwood of Caledonia, LLC
8338 Corporate Drive, Suite 300
Racine, Wisconsin 53406
rayleffler@hotmail.com

To the Village and Utility District:

Village Clerk
Village of Caledonia
5043 Chester Lane
Racine, Wisconsin 53402
Fax: 262-835-2388
kpope@Caledonia-wi.gov

And to:

Director of Public Works
Village of Caledonia
5043 Chester Lane
Racine, Wisconsin 53402
Fax: 262-835-2388
tlazcano@caledonia-wi.gov

To the Mortgagee:

Tri City National Bank
2704 Lathrop Avenue
Racine, Wisconsin 53405
Fax: 262-554-5866

To the Contractor:

Reesman's Excavating & Grading, Inc.
28815 Bushnell Road
Burlington, Wisconsin 53105
Fax: 262-539-2665
chris@reesmans.com

(l) **Successors and Assignment.** This Agreement is binding and enforceable against the Parties' respective successors and permitted assigns. The Village and Utility District may assign its interest in this Agreement to any successor entity or entities, including any municipality or municipalities established under Wisconsin law with jurisdiction over part or all of the area now occupied by the Village. The Developer and Contractor may not assign its interest in this Agreement without the express written approval of the Village and Utility District.

(m) **Severability.** The provisions of this Agreement are severable. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall be binding on all parties.

(n) **Subordination.** The Mortgagee joins in this Agreement for the sole purpose of agreeing that in the event of the foreclosure of its mortgage interest in the Property, this Agreement shall survive such foreclosure and the Property shall remain subject to this Agreement.

(o) **The Contractor.** Reesman's Excavating & Grading, Inc. is the general contractor for construction of the Project, being hired and retained by Developer to construct the Property. Reesman's Excavating & Grading, Inc., however, as the general contractor, shall be responsible and obligated to the Village and the District to perform all of the duties imposed upon the "Contractor" under this Agreement.

p. **Force Majeure.** For purposes of this Agreement, the term "Force Majeure" means events or circumstances beyond a Party's reasonable control, including, without limitation, "acts of God," fire, flood, other natural calamities, accidents, unusual delays in deliveries, unavoidable casualties, labor disputes, strikes, lockouts or picketing (legal or illegal), wars, riots, acts of terrorism, changes in or unexpected interpretations of applicable statutes, laws, ordinances or regulations, adverse weather conditions, condemnation or other actions of governmental authorities or utility companies or shortages of labor, fuel, power or materials. In the event that any party hereto shall be delayed or hindered in or prevented from the performance of any work or act required hereunder by reason of a Force Majeure, then performance of such work or act shall be excused for the period of the delay and the period for the performance of such work or act shall be extended for a period equivalent to the period of such delay.

(q) **Use of Further Subcontractor.** In the event Contractor elects to use a further Subcontractor(s) to do part and/or all of the construction of the Property or Condominium System, then:

- i. Such further Subcontractor must be pre-approved by the Developer; and
- ii. Such further Subcontractor must be pre-approved and pre-qualified by the Village, which approval shall not be unreasonably withheld, conditioned, or delayed; and
- iii. Such further Subcontractor shall agree to perform all of the duties and

obligations imposed upon the Contractor in this Agreement relative to that portion of the duties and obligations of the work they are taking over; and

iv. The Contractor shall still remain a party to this Agreement, and still be responsible for fully performing all of the duties and obligations imposed upon any subcontractor(s) under this Agreement.

(r) **Legal Action.** In addition to the provisions set forth in this Agreement, the Village and Utility District may take any and all other appropriate action at law or equity to enforce compliance with the provisions of this or any other agreement they may have with the Developer and Contractor pertaining to this project, and in the event of a legal action in which the final determination is in favor of the Village and/or Utility District, the Village and/or Utility District shall be entitled to collect from the Developer and Contractor statutory costs and disbursements, plus its actual reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in the day and year set forth below.

BRIARWOOD OF CALEDONIA, LLC

By: _____
Raymond C. Leffler
Member

STATE OF WISCONSIN)
) SS:
COUNTY OF _____)

Personally came before me this _____ day of _____, 2020, Raymond C. Leffler, Member of Briarwood of Caledonia LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same as the act and deed of said limited liability company.

Notary Public, _____ County, Wisconsin
My Commission Expires: _____

Exhibit A to Briarwood Developers Agreement

Examination of title of record to the following described premises:

The North 10 acres of the following described parcel of land. That part of the Southeast 1/4 of the Southwest 1/4 of Section 21, Township 4 North, Range 23 East, bounded as follows: Begin at a point in the South line of said Section, located 1026.78 feet West of the South 1/4 corner of said Section 21, run thence North 1° 04' 42" East 175 feet; thence West parallel to the South line of said Section 300 feet to the West line of the Southeast 1/4 of the Southwest 1/4; thence North along said West line, 1146 feet to the Northwest corner of the Southeast 1/4 of the Southwest 1/4 of Section 21; thence East along the North line of the Southeast 1/4 of the Southwest 1/4, 726 feet to the East line of the West 22 acres of the Southeast 1/4 of the Southwest 1/4; thence South Parallel to the East line of said Southwest 1/4, 1320 feet to the South line of said Section; thence West along the South line of said Section, 426 feet to the place of beginning. Excepting therefrom that part of the North 10 acres of the West 22 acres of the Southeast 1/4 of the Southwest 1/4 of Section 21, Township 4 North, Range 23 East, described as follows: Commence at a point in the South line of said Section 21, that is located South 88° 55' 20" West 596.58 feet from the South 1/4 corner of said Section 21; run thence North 00° 06' 20" East 726.09 feet parallel to the East line of said Section 21 along the East line of said West 22 acres of the Southeast 1/4 of the Southwest 1/4 of said Section 21 to the Northeast corner of Club View Subdivision (a recorded Subdivision) and to the point of beginning of this description; run thence South 88° 56' 20" West 150.00 feet along the North line of said Club View Subdivision; thence North 00° 06' 20" East 596.93 feet to the North line of the Southeast 1/4 of the Southwest 1/4 of said Section 21; thence North 88° 56' 20" East 150.00 feet along the North line of said Southeast 1/4 of the Southwest 1/4 of Section 21 to the Northeast corner of said West 22 acres of the Southeast 1/4 of the Southwest 1/4 of said Section 21; thence South 00° 06' 20" West 596.97 feet along the East line of said West 22 acres to the Northeast corner of said Club View Subdivision and to the point of beginning of this description. Said land being in the Village of Caledonia, County of Racine, State of Wisconsin.

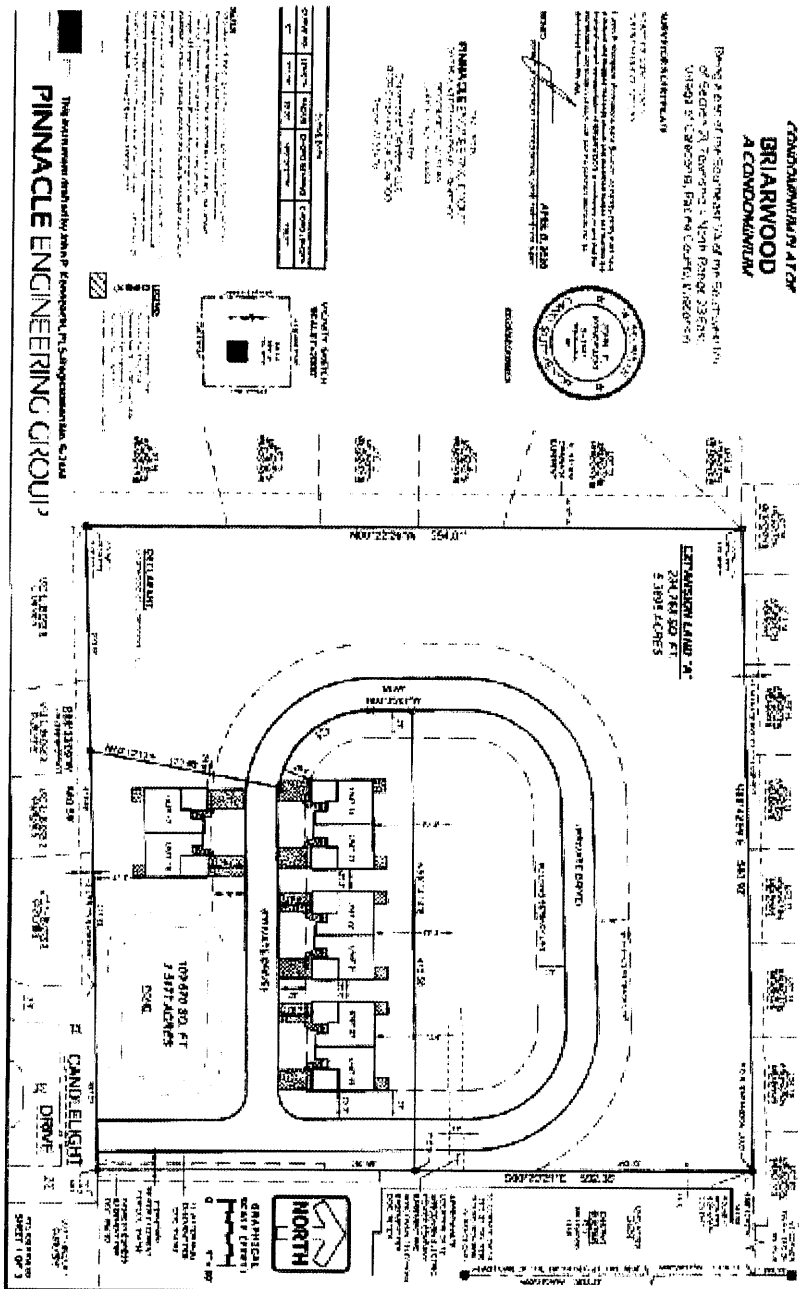
Owner: BRIARWOOD OF CALEDONIA, LLC

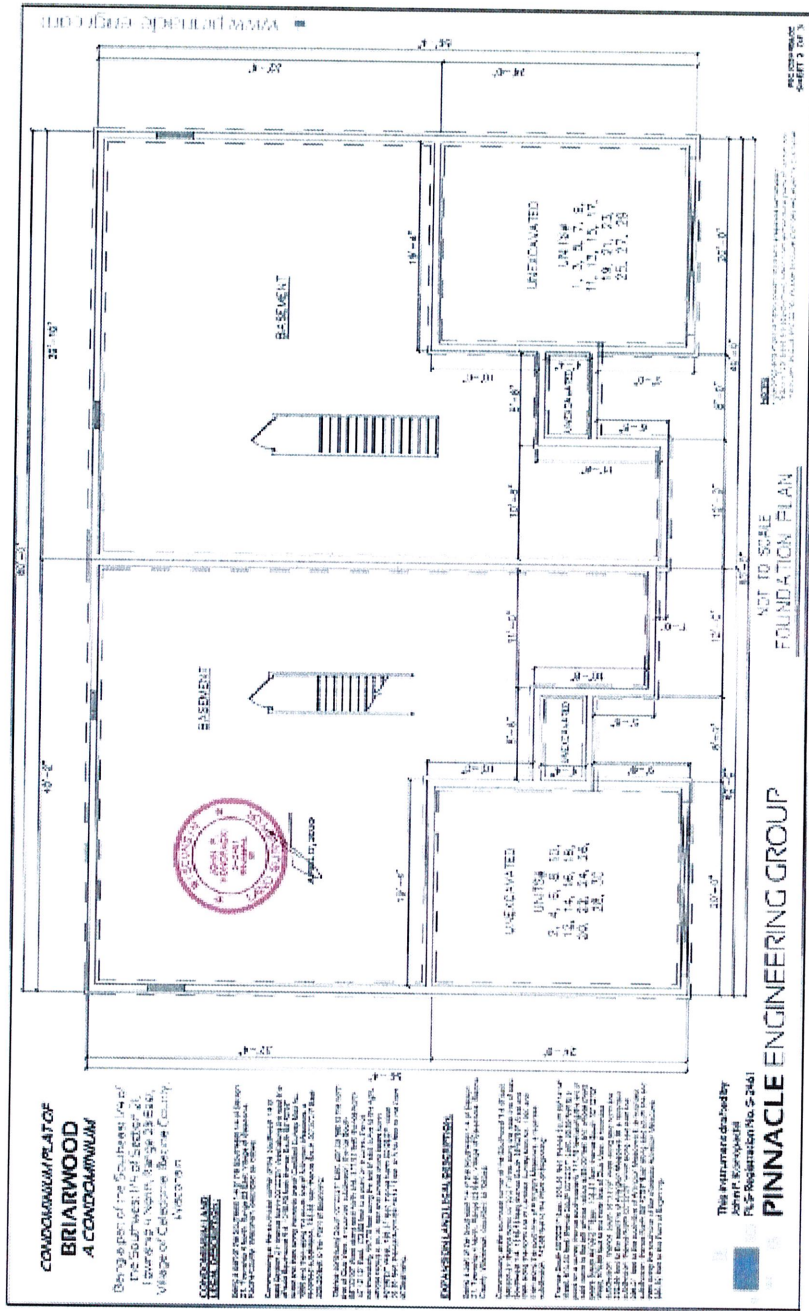
NOTE: CURRENT OWNERS TITLE POLICY MUST BE PROVIDED FOR REISSUE CREDIT

Address: 5102 BRIARWOOD LANE

Tax Parcel Number 51-104-04-23-21-061-000

Exhibit B to the Developers Agreement For Briarwood Condominiums





**CONDOMINIUM PLAN OF
BRIARWOOD
A CONDOMINIUM**

Being a part of the Condominium of
The Southwick Hills of Section 21,
Township of North Berwick, York County,
Maine, as defined in the Condominium
Declaration.

**CONDOMINIUM UNIT
IDENTIFICATION**

THIS UNIT IS IDENTIFIED BY THE UNIT NUMBER
21, as shown on the Condominium Declaration.
The Condominium Declaration is a legal document
that describes the boundaries of the unit and the
rights and responsibilities of the unit owner. It is
a part of the Condominium Declaration and is
subject to the terms and conditions of the
Declaration.

The Condominium Declaration is a legal document
that describes the boundaries of the unit and the
rights and responsibilities of the unit owner. It is
a part of the Condominium Declaration and is
subject to the terms and conditions of the
Declaration.

EXPLANATION OF LEGAL RESERVATIONS

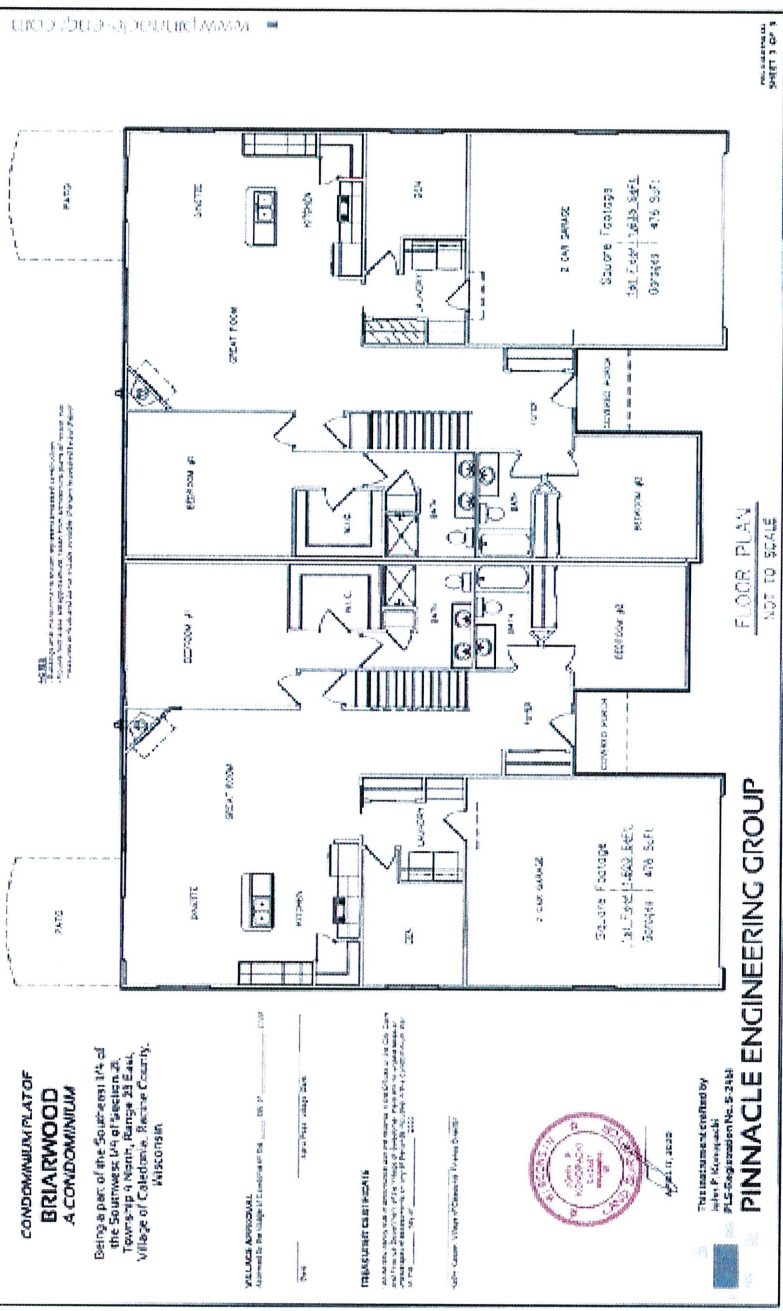
Being a part of the Condominium of The Southwick Hills of Section 21,
Township of North Berwick, York County, Maine, as defined in the
Condominium Declaration, the Condominium Declaration is a legal document
that describes the boundaries of the unit and the rights and responsibilities
of the unit owner. It is a part of the Condominium Declaration and is
subject to the terms and conditions of the Declaration.

This instrument is prepared by
John P. Koppelman
P.E. Registration No. 9-28461

PINNACLE ENGINEERING GROUP

NOT TO SCALE
FOUNDATION PLAN

PROJECT NO. 2018-001
SHEET 3 OF 3



**CONDOMINIUM PLAT OF
BRIARWOOD
A CONDOMINIUM**

Being a part of the Southern 1/4 of
the Southwest 1/4 of Section 26,
Township 4 North, Range 23 East,
Village of Caladonia, Racine County,
Wisconsin.

VILLAGE APPROVAL
Approved by the Village of Caladonia on _____, 2017.

DATE _____

PREPARED BY
Pinnacle Engineering Group, Inc.
1000 North Lincoln Street, Suite 200
Caladonia, WI 53110
Phone: 262.781.1234

SCALE
As Shown Unless Otherwise Noted



This structure created by
John P. Gumpach
Professional No. 52164

PINNACLE ENGINEERING GROUP

FLOOR PLAN
NOT TO SCALE

CONDOMINIUM
SHEET 1 OF 3

Exhibit C
Stormwater Easements

Exhibit D

Maintenance and Easement Agreement

Exhibit E

Public Improvements Cost Estimate

1. Roadway and Site Work	\$240,263.25
2. Erosion Control	49,497.32
3. Sanitary Sewer	217,417.29
4. Water Main	199,180.54
5. Storm Sewer	173,682.28
6. Year 1	81,038.91
7. Year 2	10,629.51
8. Foth Inspections	25,000.00
Total:	\$996,709.10
120% (for total Letter of Credit)	\$1,196,050.90