

RESOLUTION NO. 2020-17

**RESOLUTION AUTHORIZING THE VILLAGE OF CALEDONIA TO EXECUTE A
STORMWATER EASEMENT AGREEMENT WITH CARLA FREEMAN AND JAY
BENKOWSKI – 5645 COUNTY TRUNK HIGHWAY V**

WHEREAS, the Caledonia Utility District has conditionally approved a Storm Water Management Plan and a Site Grading & Drainage Plan for Carla Freeman and Jay Benkowski for the construction of a pond located at 5645 County Trunk Highway V. As a condition of approval of the Storm Water Management Plan and Site Grading Plan for Carla Freeman & Jay Benkowski a Stormwater Easement Agreement shall be granted over the pond.

WHEREAS, the Owners, Carla Freeman and Jay Benkowski have executed said Stormwater Easement Agreement.

WHEREAS, the Caledonia Utility District has authorized the President & Secretary of the Caledonia Utility District to execute the Stormwater Easement Agreement at their March 4, 2020 meeting.

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

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

Adopted by the Village Board of the Village of Caledonia, Racine County, Wisconsin, this 16th day of March, 2020.

VILLAGE OF CALEDONIA

By: James R Dobbs
James R Dobbs, Village President

Attest: Karie Pope
Karie Pope, Village Clerk

Document Number

**Stormwater Retention Pond and
Easement Agreement: Carla
Freeman and Jav Benkowski**

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

104-04-22-20-010-002; 104-04-22-20-009-010;
104-04-22-20-009-020; 104-04-22-20-008-000
Parcel Identification Number (PIN)

STORMWATER RETENTION POND AND EASEMENT AGREEMENT:
CARLA FREEMAN and JAY BENKOWSKI

This Stormwater Retention Pond and Easement Agreement ("Agreement") is made the ¹² day of ~~FEBRUARY~~, 2020, by and between **CARLA FREEMAN and JAY BENKOWSKI**, being adult residents of Racine County, Wisconsin, residing at 5645 Highway V, Caledonia, Wisconsin 53108, referred to in this Agreement, jointly and severally, in the singular tense, as "Owner", and the **VILLAGE OF CALEDONIA**, Racine County, Wisconsin, and **VILLAGE OF CALEDONIA UTILITY DISTRICT**, a utility district of the Village of Caledonia, Racine County, Wisconsin. The Village of Caledonia and Village of Caledonia Utility District are collectively referred to in this Agreement as the "Grantees".

RECITALS

A. The Owner is the fee simple holder of certain real property in the Village of Caledonia, Racine County, State of Wisconsin, as more particularly described and depicted in attached Exhibit A, which is hereby incorporated herein by reference. Said real property is referred to in this Agreement as the "Property".

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

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

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

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

AGREEMENT

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

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

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

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

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

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

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

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

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

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

8. Further Owner Requirements.

(a) No fences, structures or improvements will be erected, and no trees, bushes or other vegetation will be planted, within the Pond Easement Area without the written consent of the Grantees; and

(b) The elevation of the existing ground surface within the Pond Easement Area will not be altered without the written consent of the Grantees.

(c) Owner shall perform the other drainage work in the manner described in attached Exhibit B.

(d) Owner shall comply with (i) the provisions and requirements of the Storm Water Management Plan for the Property, prepared by VPI Engineering, LLC, dated July 14,

2019, and Professional Engineer Stamped July 22, 2019, as may be approved and/or amended from time to time by the Grantees, and (ii) the conditions of approval by the Village of Caledonia, at its meeting held on June 12, 2019, and the Utility District's review letter, dated June 11, 2019.

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

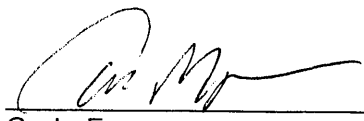
10. Non-Use. Non-use or limited use of the rights granted to the Grantees in this Agreement shall not prevent the Grantees from the later use of said rights to the fullest extent authorized in this Agreement.

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

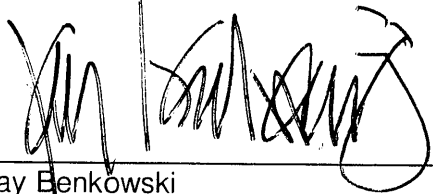
12. Warranty. The Owner does hereby warrant and covenant that the Owner owns the Property in fee simple and is lawfully seized and possessed of the Property; that the Owner has a good and lawful right to grant the rights granted to the Grantees hereunder; that the Property is free and clear of all liens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

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

OWNER:

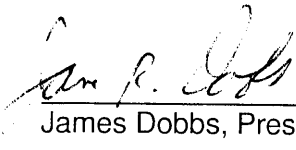


Carla Freeman



Jay Benkowski

**GRANTEES:
Village of Caledonia**


BY: 

James Dobbs, President

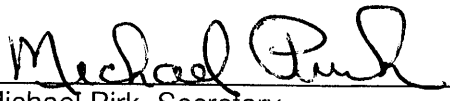
Attest: 

Karie Pope, Village Clerk

Village of Caledonia Utility District

BY: 

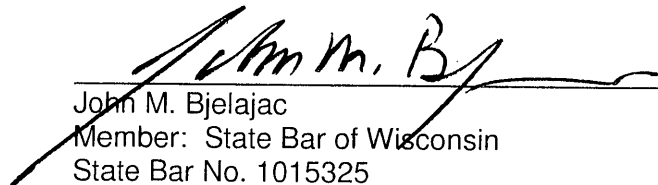
Howard Stacey, President

Attest: 

Michael Pirk, Secretary

AUTHENTICATION

Signatures of Carla Freeman and Jay Benkowski; James Dobbs, Village President, and Karie Pope, Village Clerk, of the Village of Caledonia; and Howard Stacey, President, and Michael Pirk, Secretary, of the Village of Caledonia Utility District, authenticated this 20~~1~~ day of March, 2020.



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

This document drafted by:
Atty. John M. Bjelajac
State Bar No. 1015325
601 Lake Avenue
Racine, Wisconsin 53403
Phone: (262)633-9800
Attorney for the Village of Caledonia
and the Village of Caledonia Utility District

LEGAL DESCRIPTION

Plat of a survey for JAY BENKOWSKI and CARLA FREEMAN of lands described as follows:

Parcel 1: A tract of land in the Northwest 1/4 of Section 20, Township 4 North, Range 22 East, bounded and described as follows: Commence at the Northwest corner of said Section; thence South 00 deg. 57'46" East for a distance of 341.71 feet, along the West line of said 1/4 Section to the point of beginning; thence South 89 deg. 55'19" East for a distance of 1313.14 feet, to a point; thence South 01 deg. 02'44" East for a distance of 553.85 feet, along the East line of the West 1/2 of said 1/4 Section, to a point; thence North 89 deg. 55'17" West for a distance of 1313.94 feet, to a point; thence North 00 deg. 57'46" West for a distance of 553.82 feet, along the West line of said 1/4 Section, to the point of beginning. Reserving the Westerly 33.00 feet for Public Road purposes. Said land being in the Village of Caledonia, County of Racine and State of Wisconsin.

Parcel 2: That part of the Northwest 1/4 of the Northwest 1/4 of Section 20, Township 4 North, Range 22 East, bounded as follows: Commence at a Standard Racine County Monument marking the Northwest corner of said Northwest 1/4; run thence South 00 deg. 57'45" East on the West line of said Section 20, 33.00 feet; thence South 89 deg. 55'18" East parallel with the North line of said Section 20, 33.00 feet to a 3/4" diameter iron pipe stake; thence continue South 89 deg. 55'18" East 175.71 feet to a 3/4" diameter iron pipe marking the beginning of this description; run thence South 89 deg. 55'18" East parallel with the North line of said Section 20, 1103.94 feet to a 3/4" diameter iron pipe stake; thence South 01 deg. 02'44" East 308.71 feet to a 3/4" diameter iron pipe stake; thence North 89 deg. 55'18" West parallel with the North line of Section 20, 1280.15 feet to a 3/4" diameter iron pipe stake; thence continue North 89 deg. 55'18" West 33.00 feet to a point on the West line of Section 20; thence North 00 deg. 57'45" West 100.00 feet along said West line; thence South 89 deg. 55'18" East parallel with the North line of Section 20, 33.40 feet to a 3/4" diameter iron pipe stake; continue thence South 89 deg. 55'18" East 175.31 feet to a 3/4" diameter pipe stake; thence North 00 deg. 57'45" West, parallel with the West line of said Section 20, 208.71 feet to the point of beginning. Said land being in the Village of Caledonia, County of Racine and State of Wisconsin.

Parcel 3: A tract of land in the Northwest 1/4 of Section 20, Town 4 North, Range 22 East, in the Village of Caledonia, County of Racine and State of Wisconsin, bounded and described as follows: Commence at the Northwest corner of said Section; thence South 00 deg. 57'46" East along the West line of said One Quarter Section 895.53 feet to the point of beginning; thence South 89 deg. 55' 18" East for a distance of 1313.94 feet, parallel to the North line of said 1/4 Section, to a point; thence South 1 deg. 2'43" East for a distance of 21.59 feet, along the East line of the West 1/2 of said 1/4 Section, to a point; thence South 89 deg. 58'37" East for a distance of 1056.00 feet, to a point; thence South 1 deg. 2'44" East for a distance of 412.50 feet, to a point; thence North 89 deg. 58'37" West for a distance of 1056.00 feet, along the South line of the Northeast 1/4 of said 1/4 Section, to a point; thence South 1 deg. 2'44" East for a distance of 797.18 feet, to a point; thence North 89 deg. 55'18" West for a distance of 1115.72 feet, to a point; thence N 0 deg. 57'45" West for a distance of 125.00 feet, to a point; thence North 89 deg. 55'18" West for a distance of 200.00 feet, to a point; thence North 0 deg. 57'46" West for a distance of 1105.24 feet, along the West line of said 1/4 Section, to the point of beginning. Together with and subject to covenants, easements and restrictions of record. EXCEPTING Therefrom premises conveyed in Warranty Deed recorded in Volume 2377 of Records, Page 396, Document No. 1468806.

Parcel 4: That part of the Northwest 1/4 of Section 20, Township 4 North, Range 22 East, described as follows: Begin at a standard Racine County cast iron monument with a brass cap marking the West 1/4 corner of said Section in the centerline of C.T.H. "V"; run thence North 00 deg. 57'45" West 535 feet along said West line; thence South 89 deg. 55'18" East 1315.72 feet to a point on the East line of the West 1/2 of said Northwest 1/4; run thence South 01 deg. 02'44" East 535 feet, more or less, along said East line of the West 1/2 of said Northwest 1/4 to a point on the South line of said Section; run thence South 89 deg. 58'04" West 1316 feet, more or less, along said South line to the point of beginning. Said land being in the Village of Caledonia, County of Racine, State of Wisconsin.

The above described properties are subject to the rights of the public in and to Bell Road and County Trunk Highway "V". Containing 77.708 acres inclusive.

POND EASEMENT LEGAL DESCRIPTION

That part of the Northwest 1/4 of the Northwest 1/4 of Section 20, Township 4 North, Range 22 East, bounded as follows: Commencing at a Standard Racine County Monument marking the Northwest corner of said Northwest 1/4; run thence South 00°57'45" East on the West line of said Section 20, 2126.77 feet; thence South 89°55'18" East, 540.40 feet to the point of beginning of the lands to be described; thence North 01°02'43" West, 200.00 feet; thence North 63°41'29" East, 552.88 feet; thence North 01°02'43" West, 401.16 feet; thence South 89°58'37" East, 200.03 feet; thence South 01°02'43" East, 847.12 feet; thence North 89°55'18" West, 700.13 feet to the point of beginning. Containing 330,841 square feet (7.595 acres) of land, said lands being in the Village of Caledonia, County of Racine and State of Wisconsin.