

RESOLUTION NO. 2020-99

**RESOLUTION AUTHORIZING THE VILLAGE OF CALEDONIA TO
ENTER INTO AN ACCESS AGREEMENT WITH CCM-CALEDONIA, LLC
FOR PARCELS AT 5915, 5919 AND 5945 ERIE STREET**

WHEREAS, CCM-Caledonia, LLC and the Village have entered into a development agreement for a proposed residential condominium development within TID 5 that is consistent with the project plan for TID 5 and CCM-Caledonia, LLC and Cardinal Capital Management, Inc. have requested access to the parcels at 5915, 5919 and 5945 Erie Street for the purpose of conducting inspections and investigations in order to collect information and make estimates for the costs of razing existing improvements on the property, bluff stabilization, and redevelopment of the property and have agreed to indemnify the Village during such access and activities;

NOW, THEREFORE, BE IT RESOLVED by the Caledonia Village Board that the Access Agreement between the Village of Caledonia, CCM-Caledonia, LLC and Cardinal Capital Management, Inc. as set forth in **Exhibit A** attached hereto and incorporated herein (the "Access Agreement"), is hereby authorized and approved, and the Village President and Village Clerk are authorized to execute said agreement and the Village Administrator and Public Works Director are authorized to take such actions necessary in furtherance thereof.

Adopted by the Village Board of the Village of Caledonia, Racine County, Wisconsin, this 26th day of October, 2020.

VILLAGE OF CALEDONIA

By: James R. Dobbs
James R. Dobbs, President
Attest: Karie Pope
Karie Pope, Clerk

ACCESS AGREEMENT

This **ACCESS AGREEMENT** ("Agreement") is made and entered into as of October ____, 2020 (the "**Effective Date**"), by and between **Village of Caledonia** (the "**Village**"), Cardinal Capital Management, Inc. ("**Cardinal**") and CCM- Caledonia, LLC ("**CCM**").

WITNESSETH THAT:

WHEREAS, the Village owns certain real property legally described in Exhibit A attached hereto (the "**Property**").

WHEREAS, CCM, Cardinal and the Village are party to that certain Tax Incremental District No. 5 Development Agreement dated as of September 21, 2020 (the "**Development Agreement**") pursuant to which CCM will acquire and redevelop the Property. Cardinal is a member of CCM. Cardinal and CCM may be referred to collectively herein as the "**Developer**".

WHEREAS, the Developer has requested a right to access the Property for the purpose of conducting inspections and investigations in order to collect information and make estimates for the costs of razing existing improvements on the Property, bluff stabilization, and redevelopment of the Property (the "**Due Diligence Activities**").

WHEREAS, the Village desires to grant access to the Property to the Developer, subject to the terms, conditions and stipulations set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Right of Access**. Developer, upon reasonable advance notice to Village, which notice shall be transmitted to Village via email at tlazcano@caledonia-wi.gov and SSeymour@caledonia-wi.gov, shall have the right to access, and to provide its consultants, architects, engineers, surveyors, and contractors (collectively, "**Contractors**") with access to, the Property for the purpose of performing the Due Diligence Activities. Such access shall be at Developer's sole cost and expense. Notwithstanding anything to the contrary in this Agreement, neither Developer nor its Contractors shall perform any invasive testing (including, but not limited to any soil testing, any Phase II testing or testing for the presence of hazardous building materials) on the Property nor take any samples from the Property without the express written consent of the Village.

2. **Indemnification by Village**. Except to the extent of Village's negligence or willful misconduct, Developer shall indemnify, defend and hold Village, its officials, officers and employees, free and harmless from and against any damages or liability or claims of damages to person or property that might arise from any activity undertaken by Developer (including its employees, representatives and agents) or Contractors on the Property, or arising

out of or connected with Developer's exercise of its rights hereunder or Developer's breach of the terms of this Agreement. Developer shall maintain, or cause to be maintained, commercial general liability insurance against claims for bodily injury, loss of life or property damage arising from the exercise of Developer's rights or the performance of activities under this Agreement with combined single limit coverage of not less than Two Million Dollars (\$2,000,000.00). Developer shall cause Village to be named as an additional insured on such policy by specific endorsement, and will provide the Village a certificate of insurance and a copy of the endorsement demonstrating compliance with this Section 2.

3. **Term**. This Agreement shall automatically terminate upon CCM's acquisition of the Property, the termination of the Development Agreement. Except for the obligations that survive termination as set forth in Section 8, upon termination this Agreement shall be of no further force or effect.

4. **No Encumbrance of Title or Interest in Real Property**. Developer shall not suffer, permit or cause any mechanic's and materialman's or other similar liens or claims of lien to be filed against all or any portion of the Property. Notwithstanding anything to the contrary contained herein, the interest granted by Village to Developer hereunder constitutes a grant of a revocable license, not a grant of an easement or any other interest in real property.

5. **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

6. **Applicable Law**. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Wisconsin.

7. **Legal Fees**. In the event legal action is instituted by a party to enforce the terms of this Agreement or which arises out of the execution of this Agreement, the prevailing party in such legal action will be entitled to receive from the other party the prevailing party's reasonable attorneys' fees and court costs, including the costs of appeal as may be determined by the court in which the action is brought.

8. **Survival**. Notwithstanding anything to the contrary contained herein, the obligations set forth in Section 2 and Section 7 shall survive the termination of this Agreement.

9. **Waiver**. Failure of either Developer or Village to exercise any right given hereunder or to insist upon strict compliance with regard to any term, condition or covenant specified herein, shall not constitute a waiver of Developer's or Village's right to exercise such right or to demand strict compliance with any term, condition or covenant under this Agreement.

10. **Counterparts**. This Agreement may be signed in multiple counterparts which, when taken together, shall constitute one and the same document. An executed Agreement transmitted by facsimile machine or electronic mail shall be treated in all manner and respects as an original document and the signature of any party upon an Agreement transmitted by facsimile or electronic mail shall be considered an original signature.

11. **Captions.** All captions, headings, section and subsection numbers and letters are solely for reference purposes and shall not be deemed to be supplementing, limiting, or otherwise varying the test of this Agreement.

12. **Severability.** In the event any section of this Agreement shall be deemed to be invalid or unenforceable, this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted, and shall otherwise remain in full force and effect.

13. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the provision hereof and is binding upon Developer and Village and their respective heirs, successors, legal representatives and assigns.


[Signature page follows]


IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CCM – CALEDONIA, LLC

VILLAGE OF CALEDONIA

By: Cardinal Capital Management, Inc.,
Manager

By: 
Name: Erich Schwenker
Title: President

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

Attest: 
Name: Karie Pope, Village Clerk

CARDINAL CAPITAL MANAGEMENT,
INC.

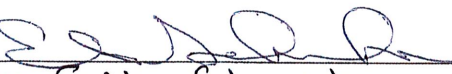
By: 
Name: Erich Schwenker
Title: President

EXHIBIT A

Property

That part of the Northeast 1/4 of Section 21, Township 4 North, Range 23 East, bounded as follows: Begin at the North 1/4 corner of said Section; run thence South 89° 58' 39" East 316.00 feet on the North line of said Section; thence South 00° 05' 51" West 299.37 feet; thence South 78° 30' 36" West 322.57 feet to the North-South 1/4 line of said Section 21; thence North 00° 05' 51" East, 363.75 feet on the said North-South 1/4 line to the point of beginning. Reserving therefrom the rights of the public in and to the Westerly 49.5 feet of the above described parcel for roadway purposes. Said land being in the Village of Caledonia, Racine County, Wisconsin.

5945 Erie Street

Tax Parcel I.D. No: 104-04-23-21-003-000

That part of the Northeast fractional 1/4 of Section 21, Township 4 North, Range 23 East, bounded: Begin at the North 1/4 corner of said Section 21; thence South along the North and South 1/4 line of said Section, 724.41 feet; thence East parallel with the North line of said Section 1861.6 feet to water's edge of Lake Michigan; thence Northwesterly along said water's edge to the North line of said Section; thence West along said North line of Section 21, 1088.5 feet to the place of beginning. EXCEPTING THEREFROM lands contained in Land Contract recorded November 10, 1975, in Volume 1290, page 349, as Document No. 966052. FURTHER EXCEPTING THEREFROM lands contained in Trustee's Deed of Real Estate recorded October 8, 1975, in Volume 1285, page 562, as Document No. 964286. FURTHER EXCEPTING THEREFROM lands contained in Quit Claim Deed recorded April 12, 1978, in Volume 1437, page 136, as Document No. 1024958. FURTHER EXCEPTING THEREFROM lands contained in Warranty Deed recorded September 7, 1979, in Volume 1527, page 184, as Document No. 1059987. Said land being in the Village of Caledonia, Racine County, Wisconsin.

5919 Erie Street

Tax Key No. 104-04-23-21-005-000

That part of the Northeast 1/4 of Section 21, Township 4 North, Range 23 East, described as follows: Commence at a standard Racine County monument marking the North 1/4 corner of said Section 21; run thence South 00 deg. 27' 09" East 391.48 feet to the point of beginning of this description; thence North 78 deg. 03' 39" East 280.93 feet; thence South 06 deg. 52' 21" East 356.68 feet; thence South 89 deg. 28' 51" West 315.19 feet; thence North 00 deg. 27' 09" West 298.87 feet to the point of beginning. Said land being in the Village of Caledonia, Racine County, Wisconsin.

5915 Erie Street

Tax Key No. 104-04-23-21-006-000