

RESOLUTION NO. 2021-55

**RESOLUTION OF THE VILLAGE BOARD OF THE VILLAGE OF CALEDONIA
APPROVING A DEVELOPMENT AGREEMENT WITH GIGI NORTH, LLC FOR THE
DEVELOPMENT TO BE LOCATED AT 4542 DOUGLAS AVENUE**

The Village Board of the Village of Caledonia, Racine County, Wisconsin do resolve as follows:

WHEREAS, On March 1, 2021, the Village of Caledonia approved a conditional use permit and building, site and operational plans for the construction of a new Culvers restaurant at 4542 and 4535 Douglas Avenue, including a drive thru for the property (the "Development"); and

WHEREAS, this Development at this location will result in the demolition, environmental remediation and redevelopment of a blighted, long vacant, gas station site in the Douglas Avenue corridor which is a main and important thoroughfare in the Village of Caledonia and primary focus of the Village's Community Development Authority; and

WHEREAS, to offset the cost of demolition and unexpected environmental remediation and to eliminate the blighted property which currently contains a long vacant gas station, the Village will provide a forgivable loan, subject to certain contingencies and requirements, in the amount of \$50,000. as further set forth in a Development Agreement in substantially the form attached hereto as **Exhibit A**, subject to final review and approval by the Village Administrator and the Village Attorney. The loan will support the Village's goal of reducing and eliminating blight along Douglas Avenue.

NOW, THEREFORE, BE IT RESOLVED THAT the Development Agreement in substantially the form attached hereto as **Exhibit A** is approved, and the Village President and Village Clerk are authorized to execute such agreement when approved and Village staff are authorized to take such actions as provided for under the agreement.

21 Adopted by the Village Board of the Village of Caledonia, Racine County, Wisconsin, this day of April 2021.

VILLAGE OF CALEDONIA

By: 

James R. Dobbs
Village President

Attest: 

Joslyn Hoeffert
Village Clerk

MEMORANDUM

TO: VILLAGE OF CALEDONIA BOARD

FROM: LAURA MILLION, RCEDC

RE: PROPOSED FORGIVABLE LOAN TO CULVERS OF RACINE

DATE: THURSDAY, APRIL 22, 2021

Introduction: This memorandum was prepared to provide an overview of a proposed \$50,000 forgivable loan from the Village of Caledonia to facilitate redevelopment of 4542 and 4534 Douglas Avenue by Culvers of Racine.

Project Overview: Culvers of Racine proposes redevelopment of the former gas station at 4542 Douglas Avenue into a 4,500 ± quick-service restaurant at the location. Total investment at the site is approximately \$2.8 million, which includes land acquisition, demolition of the long vacant gas station, remediation of environmental contamination at the site (\$200,000) and construction costs.

To offset the cost of demolition and unexpected environmental remediation, Culvers of Racine is seeking a \$50,000 forgivable loan from the Village. The loan will support the Village's goal of reducing and eliminating blight along Douglas Avenue.

Proposed Terms:

Forgivable

Loan Amount: \$50,000

Loan Term: 5-year term

Interest Rate: 0% if the Company makes the financial investment of \$1,800,000 in the property by April 2022 and the property owner pays all real property tax bills in full when due each year for five consecutive years following the year of the loan; otherwise an interest rate of 4.23% per year shall be charged retroactive to the date of the loan.

Use: Structure Demolition at 4542 Douglas Avenue

Targeted

Deliverables: Construction of a new Culvers restaurant at 4542 and 4535 Douglas Avenue, resulting in \$1,800,000 in capital investment and demolition of

the former gas station located at 4524 Douglas Avenue. Demolition is expected to take place by July 2021.

Compliance with all federal, state and local laws, rules and regulations.

Disbursement

Process:

The Company will be eligible to receive the loan of \$50,000 upon receipt of:

- Evidence of completed demolition of the former gas station at 4524 Douglas Avenue.
- Confirmation of executed main construction contract for building renovations and site improvements.

Fees:

- 1) One-time loan processing fee of 1.5% of the loan amount (\$750).
- 2) Out of pocket and reasonable legal expenses incurred by the Village of Caledonia in relation to this redevelopment will be charged through the Village's standard predevelopment agreement and development agreement.

Collateral:

Loan to be secured by a corporate parent guarantee or other agreed upon collateral until the loan is paid in full/forgiven such as a mortgage. In consideration for the loan, the Company shall agree that if the Company does not meet contingencies and performance requirements as outlined herein, the Village will be authorized to impose a special charge/assessment upon the property for the full amount of the loan (or the unpaid balance) plus applicable interest and such charge/assessment shall be a lien upon the real property.

Performance:

Full loan repayment, plus interest, will be required if the Company does not complete the project as expected, namely project investment is less than 70% of the target minimum assessed value of \$1,250,000 by January 2023.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**"), effective as of the date last executed by any party below ("Effective Date"), is made and entered into between **GIGI NORTH, LLC** ("**DEVELOPER**"), a Wisconsin Limited Liability Company and the **VILLAGE OF CALEDONIA**, a municipal corporation located in Racine County, Wisconsin (the "**Village**");

RECITALS:

A. On March 1, 2021, the Village of Caledonia approved a conditional use permit and building, site and operational plans for the construction of a new Culvers restaurant at 4542 and a portion of 4534 Douglas Avenue, including a drive thru for the property as legally described on **Exhibit A** attached hereto (the "Development") pursuant to the approvals of the Village; and

B. The Development will result in a \$1,800,000 capital investment, including the demolition, remediation and redevelopment of a blighted, long vacant, gas station site in the Douglas Avenue corridor which is a main and important thoroughfare in the Village of Caledonia and a primary focus of the Village's Community Development Authority. The parcels will be combined via a lot line adjustment and the demolition of the former gas station located at 4542 Douglas Avenue is expected to take place by July 2021.

C. To offset the cost of demolition and unexpected environmental remediation and to eliminate this blighted property, the Village will provide a forgivable loan to Developer, subject to certain conditions, in the amount of \$50,000. This loan will support the Village's goal of reducing and eliminating blight along Douglas Avenue.

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. **Recitals**. The above recitals are true and correct and are incorporated herein by reference.
2. **Compliance with the Law**. The Developer shall comply with all necessary and applicable local, county, state, and federal laws, regulations, and apply for, obtain and comply with all required permits pertaining to the Development, and comply with any and all requisite approvals by the Village Plan Commission and/or Village Board with respect to architectural, engineering, grading, design, and/or construction plans and specifications. The Developer shall timely pay any and all fees required to be paid by the Developer to the Village pertaining to the Development. Additionally, during the term of this Agreement, the Developer shall have no delinquent fines, penalties, or financial obligations whatsoever, including, without limitation, taxes owed to the federal government, the State of Wisconsin, Racine County, the Village, or any other government agency or entity on a federal, state, or local level, which remain unpaid after thirty (30) days' notice of said delinquency has been given to the Developer, unless timely appealed in good faith by the Developer in the manner provided by law.
3. **Loan**. Subject to the terms and conditions of this Agreement, the Village agrees to lend to the Developer up to the amount of \$50,000 (Fifty Thousand Dollars) (the "Loan") in one (1) Advance to be drawn by the Developer on or before December 31, 2021, as more particularly set forth below (the "Advance").

a. **Advance.** The Advance shall be disbursed by the Village to the Developer after execution of this Agreement, subject to the fulfillment, to the Village's reasonable satisfaction, of: (a) all of the general conditions precedent set forth in Section 4 below; and (b) the following specific conditions precedent to the Advance: (i) execution of a promissory note payable to the Village in the amount of the intended Advance and in a form approved by the Village Administrator and Attorney; (ii) presentation by the Developer to the Village of evidence, including invoices, receipts and records showing proof of payment and the completed demolition of the former gas station at 4542 Douglas Avenue; and (iii) evidence of an executed main construction contract for the new building and site improvements. Amounts advanced to Developer and repaid to the Village may not be re-borrowed by Developer under this Agreement.

b. **Requirements for Forgiveness.** Full Loan repayment, plus interest, will be required if the Developer does not: (i) complete the project as expected for Substantial Completion, namely project investment is less than 70% of the target minimum assessed value of \$1,250,000 by January 1, 2023 and provided there is not then Developer Default under this Agreement or any other agreement with the Village; and (ii) present to the Village certified evidence in forms required by the Village (i.e. invoice and proof of payment) of \$1,800,000 in capital investment at the Property by Developer, including, site improvements and equipment purchases, together with any certification which may be required by the Village as to the expenditures. The failure of Developer to meet the requirements of this Agreement, shall make Developer ineligible for loan forgiveness. If the Developer meets these requirements, the Village will forgive the entire Loan balance prior to its due date.

c. **Collateral; Right to Assess.** The Loan to be secured by a promissory note payable to the Village and a corporate parent guarantee or other agreed upon collateral until the

loan is paid in full/forgiven such as a mortgage against the Property. In consideration for the Loan, the Developer shall agree that if the Developer does not meet contingencies and performance requirements as outlined herein, the Village will be authorized to impose a special charge/assessment upon the Property for the full amount of the Loan (or the unpaid balance) plus applicable interest and such charge/assessment shall be a lien upon the real property. Without in any manner limiting its available remedies under the law, the Village may obtain payment of all sums of money owed to it 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. 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.

d. **Fees.** A one-time loan processing fee of 1.5% of the loan amount (\$750) shall be paid by Developer at the time of the Advance on the Loan. Out of pocket and reasonable legal expenses incurred by the Village of Caledonia in relation to this redevelopment will be charged to and paid by the Developer through the Village's standard predevelopment agreement and this Agreement.

e. **Loan Term; Repayment; Interest.** This Agreement shall continue in full force and effect until such time as all indebtedness of Developer with respect to the Loan has been paid in full, including, without limitation, principal, interest, servicing fees, and costs of collection, or until the Loan is forgiven in accordance with this Agreement, and until the obligations under

the Agreement have been fulfilled. The Loan shall be and remain subject to the terms and conditions of this Agreement during the term hereof. The Loan shall be paid in full by Developer within 5 years of the Advance. The Developer shall make monthly payments, that includes principal and interest, in accordance with the schedule set forth in the required promissory note. Full or partial prepayment of the Loan is permitted at any time without penalty. The Loan terms are as follows which shall be incorporated into the promissory note payable to the Village:

Forgivable Loan Amount:	\$50,000
Loan Term:	5-year term
Interest Rate:	0% if the Developer makes the financial investment of \$1,800,000 in the property by April 30, 2022 and the property owner pays all real property tax bills in full when due each year for five consecutive years following the year of the loan; otherwise an interest rate of 4.23% per year shall be charged retroactive to the date of the loan.

4. **General Conditions Precedent to Advance.** In addition to the specific conditions precedent set forth in Section 3 above, the Village's obligation to make the Advance under this Agreement shall be subject to the fulfillment, to the Village's reasonable satisfaction, of all of the conditions set forth below:

a. **Loan Documents.** Developer shall provide to the Village fully executed originals of the following documents for the Loan: (1) the promissory note; (2) the unlimited corporate guarantee or other security of a mortgage; and (3) all such related documents as the Village may reasonably require for the Loan.

b. **Corporate Documents.** The Developer shall be current in its filings with the State of Wisconsin.

c. **Developer Authorization.** Developer shall have provided to the Village properly certified resolutions, duly authorizing the execution and delivery of this Agreement and the related documents.

d. **Other Documents.** Developer will provide Village with all other documents or agreements described in this Agreement and related documents.

e. **Payment of Fees and Expenses.** Developer shall have paid to Village all fees, charges, and other expenses which are then due and payable as specified in this Agreement and Village ordinances.

f. **Representations and Warranties.** The representations and warranties set forth in this Agreement, in the related documents, and in any document or certificate delivered to the Village under this Agreement or the related documents are true and correct in all material respects.

g. **No Event of Default.** There shall not exist at the time of the Advance a Developer Default under this Agreement, any related document or any other loan on the Property.

5. **Construction Schedule and Responsibility for Costs.** The Developer intends to commence onsite demolition, environmental remediation, design and construction of its Development as soon as reasonably possible after this Agreement has been executed. Except for the obligations of the Village to provide a Loan to the Developer, the Developer shall be solely responsible for all costs of demolition, environmental remediation, design and construction.

6. **Substantial Completion.** Subject to the force majeure provisions of Section 16 and other matters defined as "Excusable Delays," the Developer agrees that it shall improve the Property by making a financial investment of \$1,800,000 in the Property by April 30, 2022 with a minimum assessed value of \$1,250,000 by January 1, 2023. "**Substantial Completion**" means

that the work is sufficiently complete to enable the Developer to legally occupy and utilize the Property for its intended use, as evidenced by the issuance of an occupancy permit for the Development.

7. **Legal Action.** In addition to the provisions set forth in this Agreement, the Village and the Developer may take any and all other appropriate action at law or equity to enforce compliance with the provisions of this Agreement.

8. **Utilities and Site Grading.** The Developer is responsible for all costs associated with on-site utilities required for its construction of the Facility. The Developer shall fully restore, at its expense, any Village right-of-way that has been disturbed due to the installation of utilities, lighting or landscaping by the Developer. The Developer shall also restore or reroute any drain tiles that are damaged during construction of the Facility. The Village shall grant to the Developer customary access to the right of way of any road, street or highway adjacent to and contiguous to the Property over which the Village has jurisdiction necessary for the installation of any utilities not currently serving the Property. To the extent that any utilities that serve the Property or parcels of land adjacent to the Property run over, in or under portions of the Property or adjacent parcels of land, the Developer and associated property owners shall be required to enter into certain easement and access agreements for such utilities that also indemnify and hold the Village harmless in the event of any repair, replacement or maintenance to such utilities that may result in interruption to business operations or use by such parcel owners, the owner of the Property and the Developer. The form of the easement and access agreements shall be submitted for review and approval by the Village.

9. **Reimbursement of Costs.** The Developer acknowledges and agrees that it is solely

responsible for all costs related to the installation of Property Improvements. In addition, the Developer agrees to reimburse the Village for its costs related to the Property including costs incurred by the Village to review conceptual, preliminary and final plans associated with the Property and to review, revise and/or draft any agreements, easements, deed restrictions or other documents associated with the Property and to conduct any necessary inspections. 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 predevelopment 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.

10. **Laws To Be Observed.** The Developer shall at all times observe and comply with

all federal, state and local laws, regulations and ordinances which are in effect or which may be placed in effect and impact site preparation, construction, occupancy and activities on or use of the Property, and the exercise of its rights and obligations hereunder.

11. **Personal Liability.** 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 Developer or Village officers, agents or employees, it being understood and agreed that in such matters they act as agents and representatives of the Developer or Village respectively.

12. **Indemnification/Hold Harmless.**

a. **General.** The Developer hereby expressly agrees to indemnify and hold the Village and its agents, consultants, officers and employees harmless from and against all claims, judgments, damages, penalties, injunctive relief, fines, costs or loss (including reasonable fees for attorneys and consultants) and liability of every kind and nature, including without limitation any such liability relating to state or federal environmental laws, for any injury (including death) or damage received or sustained by any person, entity or property in connection with, or on account of or in any way related to this Agreement, the construction, ownership, or occupancy of the Property or any unlawful or willful misconduct or negligence of the Developer related to this Agreement, except to the extent as such claims or liability arise by virtue of the negligence, unlawful or willful misconduct of the Village or any of its agents, contractors, officers or employees. The Developer further agrees to aid and defend the Village or its agents (at no cost to the Village or its agents, consultants and employees) in the event they are named as a defendant in any action concerning this Agreement related to the construction, ownership or occupancy of the Property or any unlawful or willful misconduct or negligence of the Developer related to this Agreement, except to the extent as such suit asserts claims or liability alleged to arise by virtue of the negligence,

unlawful or willful misconduct of the Village or any of its agents, contractors, officers or employees. The Developer acknowledges that it is not an agent, employee or independent contractor of the Village, and that this Agreement does not constitute, and shall not be construed as, creating a partnership or joint venture between the Developer and the Village.

b. **Environmental Indemnification.** Developer shall indemnify, defend, and hold the Village, and their respective elected and appointed officers, employees, and agents harmless from any claims, judgments, damages, penalties, fines, costs, or loss (including reasonable fees for attorneys and consultants) that arise as a result of the presence in or on property of which ownership is retained by the Village or any Village right-of-way (“Village Retained 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, or by the Developer's respective employees, agents or contractors, except as to injury or damage arising, in whole or in part, due to negligence or willful misconduct of the Village, or any of its agents, contractors, officers or employees. Developer shall immediately deliver written notice to the Village of Developer discovery of any Substance on the Village Retained Parcels. 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 Village Retained Parcels, whether in the soil, groundwater or air, except as to Substances or damages arising, in whole or in part, due to negligence or willful misconduct of the Village, or any of its agents, contractors, officers or employees.

The Village agrees that it will immediately deliver written notice to Developer, as applicable, of the Village’s discovery of the Substances in or on the Village Retained Parcels.

Following delivery to Developer of written notice of the Village's claim as required under this paragraph, the Village shall make all reasonable accommodations to allow Developer to examine the Village Retained 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 Developer is obligated to indemnify the Village against claims arising under this paragraph, Developer shall take all necessary steps to ensure that the Village receives 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 Retained 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 shall be responsible for any continuing obligation imposed by any appropriate governmental authority as a continuing indemnity for the Village.

13. **Taxability.** Until the Developer has met all of its obligations under this Agreement and termination of this Agreement, the Developer agrees that it will not sell, lease, assign or otherwise transfer or convey any interest in the Property to a person or entity exempt from general property taxation or in a manner which would cause all or any portion of the Property to be exempt from general property taxation (the "**Tax-Exempt Covenant**"). This Agreement shall be recorded by the Village and the Developer agrees that the Tax-Exempt Covenant will run with the land and will bind all present and future owners of the Property. In the event any court finds the Tax-Exempt Covenant is not valid or enforceable or if for any reason the Tax-Exempt Covenant is

terminated, then the Developer, or its successors and assigns, shall make payments in lieu of taxes to the Village in an amount equal to the amount of property taxes that would have been collected were the Property taxable, and by the same date that the first installment tax payment on the Property would have been due were the entire Property taxable.

14. **The Developer Default.** In the event the Developer fails to timely perform any one or more of its obligations under this Agreement (a "**Developer Default**"), the Village shall promptly provide written notice to the Developer to the extent known by the Village of the action or omission constituting the basis for the default. The notice shall provide the Developer at least twenty (20) days from the date of the notice to cure any payment default and at least sixty (60) days to cure any other default not related to payment obligations. However, the sixty (60) day period may be extended to the period of time reasonably necessary to cure the default if the Developer promptly commences activities to cure the default and in good faith diligently pursues such activities to fully cure the default, but in no event shall the period of time to cure the default exceed one-hundred and twenty (120) days from the date of the Village's notice. In the event a Developer Default is not fully and timely cured by the Developer, the Village shall have all of the rights and remedies available at law and in equity.

15. **Village Default.** In the event the Village fails to timely perform any one or more of its obligations under this Agreement (a "**Village Default**"), the Developer shall promptly provide written notice to the Village to the extent known by the Developer of the action or omission constituting the basis for the Village Default.

The notice set forth in the preceding section shall provide the Village at least twenty (20) days from the date of the notice to cure any payment default and at least sixty (60) days to cure any other default not related to payment obligations. However, the sixty (60) day period may

be extended to the period of time reasonably necessary to cure the default if the Village promptly commences activities to cure the default and in good faith diligently pursues such activities to fully cure the default, but in no event shall the period of time to cure the default exceed one-hundred and twenty (120) days from the date of the Developer' notice.

In the event a Village Default is not fully and timely cured by the Village, the Developer shall have all of the rights and remedies available at law and in equity.

16. **Force Majeure and Excused Delay.** In the event that the Developer or Village shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, fire, earthquake, flood, terrorism, war, acts of God, pandemics or other reason beyond the Developer's or Village's reasonable control, then performance of such act shall be excused for the period of delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, prevention or stoppage. Force Majeure shall never excuse the failure to perform a financial obligation of either party.

In the event of an "Excused Delay" as shall be any of the matters noted below, the time for performance shall be extended for a commercially reasonable period of time thereafter:

(a) concealed or unknown conditions; should either party encounter conditions that are (i) subsurface or otherwise concealed physical conditions that differ materially from those anticipated when designing the improvements; and/or (ii) unknown physical conditions that differ from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for sites similar to the Property or the type of improvements to be constructed;

(b) the discovery of archeological or historical sites, burial markers, natural species habitat, environmental or wetlands not indicated in the prior study of the Property or beyond expected degree and remediation of such areas are required or deemed necessary on a commercially reasonable basis;

(c) delays due to labor disputes or labor strikes; rebidding contracts due to lack of responsible bidders; shortage of materials; actions or inactions of the other party hereto which cause delay in performance to the performing party; unusual delays in deliveries of materials or equipment; unavoidable casualties; delays due to weather conditions; government restrictions or regulation of materials and component parts of the improvement installations (whether or not deemed a shortage thereof); the declaration of war; any act or acts of God or pandemics. Whenever performance is required of either party hereunder, such party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however that if completion of performance shall be delayed at any time by reason of any of the following, such delay shall be deemed individually or collectively an "Excused Delay" and the time for performance shall be extended for a commercially reasonable period of time thereafter:

(d) the anticipated project is the subject of litigation or the reasonable threat thereof, or the approval of the site and building plans, permit applications, variances or conditions are delayed or objected to by any third party; or a party in good faith initiates litigation against a third party who objects or may object to any part of the project as a defensive measure related to proceeding in good faith to complete the project; then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused; and

(e) a delay by the Village and any state or federal governmental agency, department or division issuing any construction permit, operating permit, license or other approval required for the construction of the improvements.

17. **Successors and Assignment.** This Agreement is binding upon and enforceable against the respective successors and assigns of the parties to this Agreement ("**Parties**"). This Agreement may not be assigned prior to achieving Substantial Completion of the Development, without the prior, written permission of the Village; provided that the Developer may collaterally assign its right, title, and interest in and to this Agreement to any mortgage lender.

18. **Agreement Runs with the Land.** This Agreement shall be binding upon all owners of the Property, and their successors in title or assigns, and the provisions hereof shall be covenants running with the land, and the Village shall cause a copy of this Agreement to be recorded against the Property in the Racine County Register of Deeds Office.

19. **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 one business day after deposit with a nationally recognized overnight commercial courier service, air bill prepaid, or two (2) business days 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 The Developer:
GIGI NORTH, LLC
722 S. Sylvania Dr.
Sturtevant, WI 53177

To the Village:
Village of Caledonia
5043 Chester Lane

and a copy to:
Elaine S. Ekes
Pruitt, Ekes & Geary, S.C.

Caledonia, WI 53402 245 Main St. Suite 404
Attn: Village Administrator Racine, WI 53403

A "business day," for purposes of this Agreement, shall be Monday through Friday, except for any holiday recognized by the state or federal government.

20. **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.

21. **Venue and Governing Law.** This Agreement shall be governed, controlled, interpreted and construed by and under the laws of the State of Wisconsin (without regard to its conflicts of law rules). The venue for any legal action arising under and/or pertaining to this Agreement shall solely and exclusively be Racine County Circuit Court in Racine, Wisconsin.

22. **Construction.** The Parties acknowledge and agree that this Agreement is the result of mutual negotiation and drafting and that both Parties were represented during such process by attorneys of their own choosing. Accordingly, this Agreement shall not be construed against any Party, due to drafting or any other reason.

23. **Time is of the Essence.** Time is of the essence as to all dates and deadlines in this Agreement.

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

[SIGNATURE PAGES FOLLOW]

GIGI NORTH, LLC

By: Jane Adams

Jacob Haman Part 5th Member
Name Title

Attest: Alisa Hozard

Alisa Hozard Part Owner
Name Title

STATE OF WISCONSIN)
) SS:
COUNTY OF RACINE)

Personally came before me this 30th day of Apr: 1, 2021, the above-named Jacob Haman and Alisa Hozard of Gigi North, LLC to me known to be the persons who executed the foregoing instrument and acknowledged the same as the act and deed of said Developer.

Daniel J. Pettit
Notary Public, Racine County
My Commission: is permanent

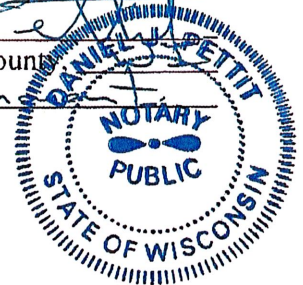


EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY