

RESOLUTION NO. 2018-97

**RESOLUTION AUTHORIZING THE VILLAGE OF CALEDONIA TO EXECUTE A
DEPOSIT AGREEMENT WITH CASEY'S MARKETING COMPANY
FOR CASEY'S GENERAL STORE**

WHEREAS, the Caledonia Utility District has conditionally approved a Storm Water Management Plan and a Site Grading & Drainage Plan for Casey's Marketing Company for the construction of a Casey's General Store located on the Northeast corner of 4 Mile Road and Charles Street. The Storm Water Management Plan and the Site Grading & Drainage Plan for the development requires the installation Drainage Facilities on the property. To guarantee the completion and construction of the Drainage Facilities, in conformity with the approved Plans and Specifications, the Owner is required to enter into the Deposit Agreement prior to the construction of the Drainage Facilities. The Deposit Agreement is to be entered into by the Owner, the Caledonia Utility District and the Village of Caledonia; and

WHEREAS, the Owner, Casey's Marketing Company has executed said Deposit Agreement and made the required deposit with the Village of Caledonia.

WHEREAS, the President and Secretary of the Caledonia Utility District and the President and Clerk of the Village need to execute the Deposit Agreement in order to allow it to be recorded.

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

Adopted by the Village Board of the Village of Caledonia, Racine County, Wisconsin, this 15th day of October, 2018.

VILLAGE OF CALEDONIA

By: 

James R Dobbs, Village President

Attest: 

Karie Torkilsen, Village Clerk

DEPOSIT AGREEMENT

This Deposit Agreement (referred to as the "Agreement") is made the _____ day of _____ 2018, by and between **CASEY'S MARKETING COMPANY**, being an Iowa corporation, with offices located at One SE Convenience Blvd., Ankeny, Iowa, hereafter referred to in this Agreement as "Owner", and the **VILLAGE OF CALEDONIA**, Racine County, Wisconsin, and **VILLAGE OF CALEDONIA STORM WATER UTILITY DISTRICT**, a utility district of the Village of Caledonia, Racine County, Wisconsin. The Village of Caledonia and Village of Caledonia Storm Water Utility District are collectively referred to in this Agreement as "Caledonia".

RECITALS

A. Owner is the fee simple holder of certain real property in the Village of Caledonia, Wisconsin, described in attached Exhibit A. Said real property is referred to in this Agreement as the "Property".

B. As a part of the approval by Caledonia of Owner's desired development of the Property, Caledonia has required Owner to construct storm water drainage facilities on the Property. Said storm water drainage facilities are referred to in this Agreement as the "Drainage Facilities", and are a part of a stormwater drainage plan (the "Plan") approved by Caledonia and which Owner shall follow and comply with.

C. Because Caledonia has made a determination that it is important that the Plan and Drainage Facilities be constructed at the Property in a timely manner in order to lessen the impact of the Owner's desired development of the Property on other property owners in the Village of Caledonia, the approval by Caledonia of the Owner's desired development of the Property was conditioned upon:

(1) Owner completing construction of the Plan and Drainage Facilities, in conformity with the Plan, prior to September 30, 2019, subject to an extension in the event of force majeure as defined below (the "Completion Date"); and

(2) Owner entering into an agreement with Caledonia requiring Owner to deposit the sum of Ten Thousand Dollars (\$10,000.00) with Caledonia in order to guarantee the completion of construction by Owner of the Plan and Drainage Facilities, in conformity with the Plan, prior to the Completion Date. Owner is required to enter into said agreement prior to commencement of construction of the Plan and Drainage Facilities.

D. Owner has indicated that it agrees to all of Caledonia's conditions of approval for the Owner's desired development of the Property.

AGREEMENT

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

1. The recitals set forth above are hereby incorporated herein as part of the agreement of the parties.

2. Owner shall deposit the sum of Ten Thousand Dollars (\$10,000.00) (referred to in this Agreement as the "Deposit") with Caledonia on or before _____. Caledonia is not required to set up a separate account for the Deposit and may commingle the Deposit with its other funds.

3. Owner agrees that prior to the Completion Date, it will:

(a) Complete the construction of the Plan and Drainage Facilities in conformity with the Plan;

(b) Provide Caledonia with as-built drawings of the Plan and Drainage Facilities that are stamped by a registered engineer and indicate that the Drainage Facilities were constructed in conformity with the Plan. Caledonia shall review the as-built drawings to confirm conformity with the Plan; and

(c) Pay for any direct damage caused to Village of Caledonia roads and rights-of-way and any other property of Caledonia on the Property as a result of said construction.

The Owner's agreement to complete construction of the Plan and Drainage Facilities as described above in Section 3(a), provide as-built drawings as described above in Section 3(b) and pay for any damage as described above in Section 3(c) are collectively referred to as the "Owner's Obligations".

4. The Completion Date shall be extended if an event of force majeure occurs. As used herein, the term "force majeure" shall mean an event that causes Owner to be delayed in completing construction of the Drainage Facilities by reason of the inability to procure materials, failure of power, riots, insurrection, war or other reason of a like nature not the fault of the Owner. If an event of force majeure occurs, then the Completion Date shall be extended for the period of the delay. Owner shall give Caledonia written notice as soon as possible of its claim of right to such extension and the reasons therefor.

5. Owner shall provide Caledonia with a written notice of completion after Owner believes that it has completed Owner's Obligations. Caledonia shall make a determination as to whether Owner has completed Owner's Obligations within thirty (30) days after Caledonia's receipt of said notice.

(a) If Caledonia determines that Owner has completed Owner's Obligations, Caledonia shall return the Deposit to Owner within ten (10) days after the making of said determination.

(b) If Caledonia determines that Owner has not completed the Owner's Obligations, Caledonia shall provide a written notice to Owner specifying which of Owner's Obligations have not been completed.

Owner shall thereafter have a cure period of forty-five (45) days from the date of said notice to complete Owner's Obligations and provide Caledonia with a notice of such completion. Caledonia shall make another determination as to whether Owner has completed Owner's obligations within thirty (30) days after Caledonia's receipt of said notice.

(a) If Caledonia determines that Owner has completed Owner's Obligations, Caledonia shall return the Deposit to Owner within ten (10) days after the making of said determination.

(b) If Caledonia determines that Owner has not completed Owner's Obligations, Caledonia shall provide written notice of said determination to Owner, and the Deposit shall be retained by Caledonia and paid to and kept by Caledonia as compensation for Owner's failure to complete Owner's Obligations as required herein, and as reimbursement for any expense incurred by Caledonia because of Owner's failure to complete Owner's Obligations as required herein. Accordingly, Owner shall not have any right to the Deposit if it fails to complete Owner's Obligations as required herein. Caledonia's retention of the Deposit shall not: (i) release Owner of its obligations to complete Owner's Obligations, or (ii) be in lieu of, or foreclose, any other rights or remedies that Caledonia may have in law or equity regarding Owner's failure to complete Owner's Obligations as required herein, it being the intent of the parties that Caledonia shall continue to possess all such rights and remedies in addition to retaining the Deposit.

6. All notices, demands and requests which may be given or which are required to be given by either party to the other shall be in writing and shall be deemed effective either: (a) on the date personally delivered to the address indicated below, or (b) three (3) business days after mailed via certified mail, return receipt requested, addressed to such party at the address set forth below (unless changed by similar notice in writing given by the party whose address is to be changed), or (c) at 4:00 p.m. Central Time on the next business day (Monday-Friday) after the date on which the said document is sent via e-mail to the other party.

Casey's Marketing Company
One SE Convenience Blvd.
P.O. Box 3001
Ankeny, Iowa 50021
E-mail: sarah.phillippi@caseys.com
Sarah Phillippi, RE Site Project Admin.

Village of Caledonia, Wisconsin
Village of Caledonia Storm Water Utility District
5043 Chester Lane
Racine, Wisconsin 53402
E-mail: abunkelman@caledoniawi.com
Anthony Bunkelman, Utility District Director


7. This Agreement may not be altered, changed or amended except by an instrument in writing signed by the parties.

8. The time of the performance of all the terms, conditions and covenants of this Agreement is of the essence.

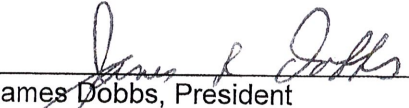
9. This Agreement shall be governed, controlled, and construed by and under the laws of the State of Wisconsin. Venue for any legal action arising under and/or pertaining to this Agreement shall solely and exclusively be Racine County Circuit Court in Racine County, Wisconsin.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

OWNER:
Casey's Marketing Company

BY: 
Michael R. Richardson, President

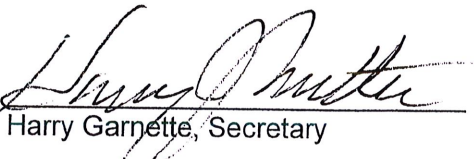
CALEDONIA:
Village of Caledonia

BY: 
James Dobbs, President

Attest: 
Karie Torkilsen, Village Clerk

**Village of Caledonia Storm Water
Utility District**

BY: 
Howard Stacey, President

Attest: 
Harry Garnette, Secretary

AUTHENTICATION

Signatures of Michael R. Richardson, as President of Casey's Marketing Company; James Dobbs, Village President, and Karie Torkilsen, Village Clerk, of the Village of Caledonia; and Howard Stacey, President, and Harry Garnette, Secretary, of the Village of Caledonia Storm Water Utility District, authenticated this _____ day of _____, 2018.

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

VDR 270596 CK NO 3059849

Memo	Invoice Date	Invoice Number	Amount	Discount	Net Amount
0039 CALEDONIA,	09/21/18	WI-CA-3026	10,000.00	.00	10,000.00
			10,000.00	.00	10,000.00

Detach Before Depositing

WARNING: ORIGINAL DOCUMENT IS PRINTED IN BLUE INK.

Date
09/24/18



CASEY'S GENERAL STORES
P.O. BOX 3001
ANKENY, IOWA 50021-8045



36-1901
1012

Check No.
3059849

Amount
\$10,000.00

PAY ***TEN THOUSAND DOLLARS & NO CENTS

TO THE ORDER OF
VILLAGE OF CALEDONIA
UTILITY DISTRICT
333 4 1/2 MILE RD
RACINE WI 53402

Julia T. Gaskowski

WARNING: ORIGINAL DOCUMENT HAS AN ARTIFICIAL WATERMARK ON REVERSE SIDE.

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