RESOLUTION NO. 2019-107

RESOLUTION AUTHORIZING THE VILLAGE OF CALEDONIA TO EXECUTE A STORMWATER EASEMENT AGREEMENT WITH TOM4D INVESTMENTS LLC – MIDWEST FORMS & SUPPLY LLC – 3910 QUICK DRIVE

WHEREAS, the Caledonia Utility District has conditionally approved a Storm Water Management Plan and a Site Grading & Drainage Plan for Midwest Forms & Supply LLC for the construction of an +- 11,751 square foot Office/Storage Building with a loading dock located on the Northwest corner of Quick Drive & Industrial Drive with an address of 3910 Quick Drive. The Storm Water Management Plan and the Site Grading & Drainage Plan for the development required the installation of Drainage Facilities on the property. As a condition of approval of the Storm Water Management Plan and Site Grading Plan for Midwest Forms & Supply LLC, a Stormwater Easement Agreement shall be granted over the Drainage Facilities.

WHEREAS, the Owner, Tom4D Investments LLC has executed said Stormwater Easement Agreement.

WHEREAS, the Caledonia Utility District will be authorizing the President & Secretary of the Caledonia Utility District to execute the Stormwater Easement Agreement at their December 4, 2019 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 day of November, 2019.

VILLAGE OF CALEDONIA

James R Dobbs, Village President

ttest: Mall 1010

Karie Pope, Village Clerk

	Stormwater Easement Agreement: Tom4D Investments, LLC	
Document Number		
	•	
		Name and Return Address Mr. Anthony A. Bunkelman P.E. Village of Caledonia Engineering Department 6922 Nicholson Road Caledonia, Wisconsin 53108
		104-04-22-34-012-020 Parcel Identification Number (PIN)

(JMB Draft: 11/28/17)

STORMWATER EASEMENT AGREEMENT: TOM4D INVESTMENTS, LLC

This Stormwater Easement Agreement ("Agreement") is made the day of day of the week.

Town with the company with offices located at 1927 43rd Street, Caledonia, Wisconsin Salos, 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 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 in the Letter Report of Title attached hereto as Exhibit A, and 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 a development of the Property, the Grantees have required the Owner to construct, at Owner's own cost and expense, a storm water drainage plan within the area of the Property described and depicted on Exhibit B attached hereto and incorporated herein. Said stormwater drainage plan includes, in part, the Stormwater Retention/Detention Pond (the "Pond") described therein and herein, and is referred to in this Agreement as the "Plan". 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 Plan 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 "Stormwater Drainage Easement") over that portion of the Property described in attached Exhibit B, hereinafter referred to in this Agreement as the "Stormwater Drainage Easement Area". The location of the Stormwater Drainage 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 access easement (referred to in this Agreement as the "Ingress/Egress Easement") over certain portions of the Property (the "Ingress/Egress Easement Area") described and depicted on Exhibit B, that will grant to the Grantees, and their employees, officials, commissioners, contractors, consultants, and agents, pedestrian and/or vehicular ingress and egress to and from Quick Drive and the Stormwater Drainage Easement Area.
- E. The Stormwater Drainage Easement Area and the Ingress/Egress Easement Area are collectively referred to in this Agreement as the "Utility Easement Area".
- F. As used in this Agreement, the term "Drainage Facilities" shall mean the Plan (including the said Stormwater Retention/Detenion Pond), the Stormwater Drainage Easement Area, the Ingress/Egress Easement Area, the drainage swales, drainage ditches, pipelines, laterals, culverts, storm sewers and any other structures or improvements that are constructed or installed upon the Utility Easement Area 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 water 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 the Drainage Facilities. The Owner agrees to construct, use, operate, clean, maintain, alter, repair and replace the Drainage Facilities, and including, without limitation, mowing, control of weed and algae growth, and 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 Drainage Facilities, so that the Drainage Facilities function properly and to their design capacity for the 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 Drainage Facilities. Said obligations shall include the obligation to construct, use, operate, clean, maintain, alter, repair and replace the 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 Drainage Facilities from becoming a nuisance.
- Failure to Construct, Clean, Maintain, Alter, Repair and Replace the 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 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.
- 3. <u>Alteration or Changes of the Pond or Drainage Facilities</u>. The Owner shall not make or construct any alteration or change of the Drainage Facilities, including, without limitation, any alteration or change in the size, shape, capacity, rate of inflow or rate of outflow of the Drainage Facilities, unless the Grantees approve the alteration or change in writing prior to the making or construction of said alteration or change.
- 4. <u>Indemnification</u>. 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 (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. <u>Insurance</u>. Owner shall, at Owner's own cost and expense, and prior to the construction of the 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. <u>Grant of Easement.</u> The Owner hereby grants to the Grantees, and to the Grantees' employees, officials, commissioners, contractors, consultants, agents, successors, and assigns, the Ingress/Egress Easement over, across, under, and through the Ingress/Egress 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 Utility Easement Area, and (iii) for conveying and/or storing surface and storm waters in, over, across, under, and/or through the Utility 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 Utility Easement Area, and to cut down and remove or trim all trees, bushes and other vegetation located outside of the Utility Easement Area that interfere with (i) the construction, use, operation, cleaning, maintenance, alteration, repair and replacement of the Drainage Facilities within the Utility Easement Area, or (ii) ingress and egress through the Ingress/Egress Easement Area.
 - (b) Remove any fences, structures or improvements located within the Utility 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 Utility Easement Area, or (ii) maintain ingress and egress through the Ingress/Egress Easement Area.

8. <u>Further Owner Requirements</u>.

- (a) No fences, structures or improvements will be erected, and no trees, bushes or other vegetation will be planted, within the Utility Easement Area without the written consent of the Grantees; and
- (b) The elevation of the existing ground surface within the Utility Easement Area will not be altered without the written consent of the Grantees.
- (c) Owner shall construct and comply with the provisions and requirements of (i) the Plan, being the Storm Water Management Plan for the Property, prepared by Nielsen Madsen & Barber, S.C., dated November 7, 2017, as may be approved and/or amended from time to time by the Grantees, and (ii) the Memorandum (and its attached review letter) dated September 7, 2017, from Anthony A. Bunkelman, P.E., to Owner, attached hereto as Exhibit C.

- 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 Utility 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. <u>Non-Use</u>. 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. <u>Covenants Run With Land</u>. 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. <u>Warranty</u>. 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. <u>Term.</u> 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.
- 14. <u>Subordination by Mortgage Holder</u>. Attached Exhibit A indicates that Citizens Bank, with offices located at 2109 Corporate Drive, Waukesha, Wisconsin 53187, is the holder of a mortgage encumbering the Property, as described in Exhibit A. Citizens Bank shall, and hereby does, agree that its interest in the Property through the said mortgage is junior to, and subordinate to, this Agreement and any future amendments thereto. Citizens Bank is executing this Agreement for that sole purpose, and is not assuming any of the duties and obligations imposed upon the Owner under this Agreement.

OWNER: Tom4D Investments, LLC	GRANTEES: Village of Caledonia		
BY: Mark A. Thomforde, Member	BY:		
MORTGAGE HOLDER: Citizens Bank	Attest: Karie Torkilsen, Village Clerk		
BY: Printed Name: James R. Bodendorfor Title: VICC President	Village of Caledonia Storm Water Utility District		
	BY: Tony W. Minto, President		
	Attest:		
AUTHENTICATION			
Signatures of Mark A. Thomforde, Sole Member of Tom4D Investments, LLC;, as an officer of Citizens Bank of Waukesha, Wisconsin; James Dobbs, Village President, and Karie Torkilsen, Village Clerk, of the Village of Caledonia; and Fony W. Minto, President, and Jeremy Hinds, Secretary, of the Village of Caledonia Storm Water Utility District, authenticated this day of, 2017.			
Membe	M. Bjelajac er: State Bar of Wisconsin Bar No. 1015325		

This document drafted by:
Atty. John M. Bjelajac
State Bar No. 1015325
601 Lake Avenue
Racine, Wisconsin 53403
Attorney for the Village of Caledonia
Storm Water Utility District



LANDMARK TITLE OF RACINE, INC.

Title Insurance Abstracts Escrows Closing Service

PO Box 726 Racine, WI 53401 262-632-6262 FAX 262-632-6243

LML-64522

November 3, 2017

LETTER REPORT SCHEDULE A

We have examined the records relative to the premises described in Schedule B below and find that as of the date of this report the recorded title to said premises subject to the encumbrances and other matters set forth in Schedule B below appears in: Tom4D Investments LLC

SCHEDULE B

Description of Property situated in the County of Racine, State of Wisconsin:

Lot 1 of Certified Survey Map No. 2223, recorded in the Office of the Register of Deeds for Racine County, Wisconsin, on March 9, 2000, in Volume 6, of Certified Survey Maps, as Page 825, as Document No. 1720058, being part of the Northeast 1/4 of the Northwest 1/4 of Section 34, Town 4 North, Range 22 East, in the Village of Caledonia, Racine County, State of Wisconsin.

The following is for informational purposes only:

Address: Industrial Drive - Vacant Land Tax Key No. 104-04-22-34-012-020

- 1. Mortgages, Liens, Agreements, Stipulations:
 - Mortgage from Tom4D Investments LLC to Citizens Bank in the amount of \$57,850.00 dated June 24, 2017 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on June 28, 2017 as Document No. 2468284.
- 2. Construction Liens (for past two years only):
- 3. Land Contracts, Leases, or Notices of Lis Pendens:
- Unpaid real estate taxes up to and including those for the year 2016: NONE (Special Assessments Not Examined)

NOTE: Taxes for the year 2016 in the amount of \$2,174.00, have been paid in full.

 No Money Judgments, State Income Tax Liens, State Sales and Use Tax Warrants or Federal Tax Liens -Docketed in Racine County, against the following parties only: Tom4D Investments LLC

Dated: October 27, 2017 at 08:00 AM

LANDMARK TITLE OF RACINE, INC.

Michael P. Starck

This report does not represent a detailed examination of, or an opinion as to the title to the above described premises. It is a report based on a search of the records of the Register's Office for Racine County. Liability is limited to the amount charged for this search.

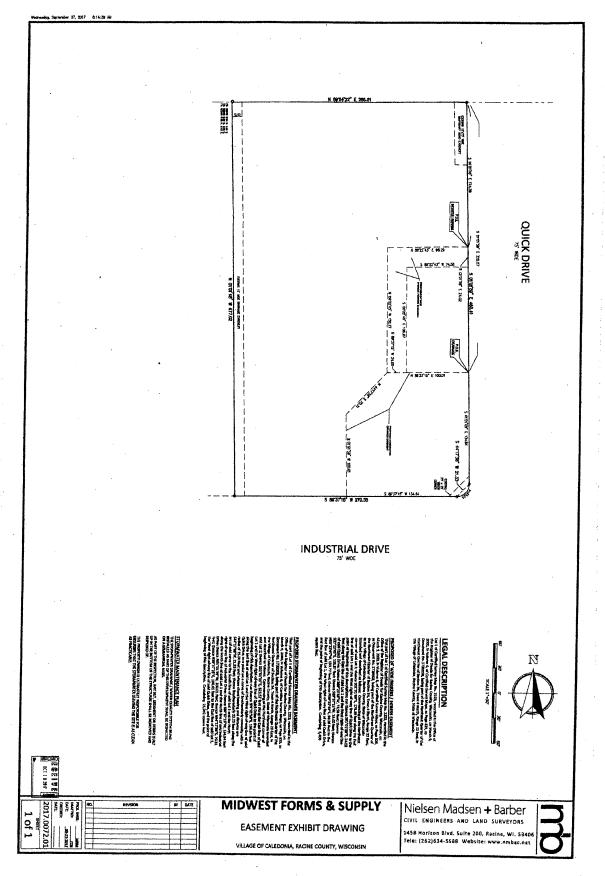
PROPOSED STORMWATER DRAINAGE EASEMENT

That part of Lot 1 of Certified Survey Map No. 2223, recorded in the Office of the Register of Deeds for Racine County, Wisconsin, on March 9, 2000, in Volume 6, of Certified Survey Maps, as Page 825, as Document No. 1720058, being part of the Northeast Quarter of the Northwest Quarter of Section 34, Town 4 North, Range 22 East, in the Village of Caledonia, Racine County, State of Wisconsin bounded and described as follows: Commencing at the Northeast corner of said Lot 1; thence S 01°01'59" E, 325.57 feet along the East line of said Lot 1 and the West right-of-way line of Quick Drive to the point of beginning of this description; run thence S 01°01'59" E, 134.84 feet along the East line of said Lot 1 and the West right-of-way line of said Quick Drive; to a point on a curve of Southeasterly convexity with a radius of 15.00 feet and whose chord bearing and distance are S 44°17'38" W, 21.33 feet; thence Southwesterly 23.73 feet along the arc of said curve to the South line of said Lot 1 and the North right-of-way line of Industrial Drive; thence S 89°37'15" W, 134.84 feet along the South line of said Lot 1 and the North line of said Industrial Drive; thence N 01°'01'59" W, 100.01 feet; thence N 44°17'38" E, 70.31 feet; thence N 89°37'15" E, 100.01 feet to the East line of said Lot 1, the West right-ofway line of said Quick Drive, and the point of beginning of this description. Containing 21,202 square feet.

PROPOSED 24' WIDE INGRESS/ EGRESS EASEMENT

That part of Lot 1 of Certified Survey Map No. 2223, recorded in the Office of the Register of Deeds for Racine County, Wisconsin, on March 9, 2000, in Volume 6, of Certified Survey Maps, as Page 825, as Document No. 1720058, being part of the Northeast Quarter of the Northwest Quarter of Section 34, Town 4 North, Range 22 East, in the Village of Caledonia, Racine County, State of Wisconsin bounded and described as follows: Commencing at the Northeast corner of said Lot 1; thence S01 "01'59"E, 174.39 feet along the East line of said Lot 1 and the West right-of-way line of Quick Drive to the point of beginning of this description; run thence 501 "01'59"E, 24.02 feet along the East line of said Lot 1 and the West right-of-way line of said Quick Drive; thence 589"22'43"W, 74.56 feet; thence

S00"22'45"E, 126.87 feet; thence S89"37'15"W, 24.00 feet; thence N00"22'45"W, 150.77 feet; thence N89'22'43"E, 98.29 feet to the East line of said Lot 1, the West right-of-way line of said Quick Drive, and the point of beginning of this description. Containing 5,406 square feet.



MEMORANDUM

DATE: Thursday, September 7, 2017

TO: Village of Caledonia Storm Water Utility District

FROM: Anthony A. Bunkelman P.E.

Village Engineer

RE: Midwest Forms & Supply – Site Grading & Drainage Plan –

Conditional Approval

BACKGROUND INFORMATION

Mark Madsen of Nielsen Madsen & Barber S.C. has submitted a Site Grading & Drainage Plan for Midwest Forms & Supply in the Caledonia Business Park.

The Midwest Forms & Supply site is located at the Northwest corner of Industrial Drive and Quick Drive. The site is approximately 3.10 acres in size and drains to the regional detention basin for the Caledonia Business Park. Midwest Forms & Supply has proposed to construct approximately an 11,320 square foot building with a gravel pad with future plans to construct another 9,600 square foot building.

The Engineering Department has reviewed the Site Grading & Drainage Plan and recommend it for conditional approval. A review letter from the Village Engineer has been sent to Nielsen Madsen & Barber S.C. for plan revisions. The review letter is attached to this memo. It is recommended that the conditional approval be subject to the satisfactory resolution of all of the comments in the review letter.

RECOMMENDATION

Recommend conditional approval of the Site Grading & Drainage Plan for Midwest Forms & Supply subject to the following:

- 1. All comments on the Village Engineer's September 6th Review Letter for the Site Grading & Drainage Plan be addressed as necessary.
- 2. The Design Engineer determines that the plans approved by the Village of Caledonia Storm Water Utility District and the Village Board are technically adequate and are stamped by the Design Engineer.
- 3. A financial guarantee (Deposit Agreement) be executed by the owners to ensure that the storm water management pond is installed (properly) asbuilted, and certified by the Design Engineer.
- 4. Storm Water Easements and Liability/Maintenance Agreements will be required over the storm water management pond and the outlet structures. Design Engineer to provide legal descriptions and exhibits for the entire property and the storm water easements.



Office of the Village Engineer
Anthony A. Bunkelman P.E.
5043 Chester Lane

Racine, WI 53402 email: abunkeln www.caledoniawi.com caledoniawi.com

office: 262-835-6416 fax: 262-835-2388 email: abunkelman@ caledoniawi.com

Wednesday, September 6, 2017

Nielsen, Madsen, & Barber S.C. c/o Al Jeske & Mark Madsen P.E. 1458 Horizon Boulevard, Suite 200 Racine, WI 53406

RE: Midwest Forms & Supply Site Grading & Drainage Plan

Dear Mr. Jeske & Mr. Madsen:

The Village of Caledonia has performed an initial review of the Site Grading & Drainage Plan for Midwest Forms & Supply on the Northwest corner of Industrial Drive and Quick Drive. Below is a summary of the review comments.

- Will need to submit an abbreviated Storm Water Management Plan for the Water Quality Basin located in the Southeast corner of the lot.
 - This plan should show that the site will meet the Storm Water Quality portion of the Ordinance. 80% removal of Total Suspended Solids.
 - This plan should also show that the pond will not overtop the banks in the 100 year storm event and in the plugged outlet condition.
- The plans call for a 3" temporary orifice for trapping sediment during construction, the final plan calls out a 5" orifice for storm water management purposes. How will this be done? Will both holes be in the structure and one will be plugged, will the 5" hole have a 3" hole in a plate over it, or will the hole be drilled larger when the site is stabilized.
- Is there a reason why the treeline is **not being brushed out?** Reason being there are some very tight slopes in the Northwest corner and along the West side that could use the extra area.
- Install a note on the Utility page for the installation of an Anti-Seep collar.
- The swale that starts in the Northwest corner of the lot will need to start a minimum of 8" below the FYG. It would be recommended that the swale start 1' below the FYG if possible due to the slope coming at the building.
- The building should have gutters and downspouts on it to control the discharge of roof runoff.
- Will need to supply a set of building plans to identify the locations of service doors and overhead doors. This may effect some of the grading on the immediate exterior of the building.
- Provide a detail for the retaining walls for the loading dock.
- Submit a turn template analysis for the loading dock for vehicles to be used. It appears that it may be difficult to maneuver a large vehicle into the loading dock.

- Recommend looking at a potential revision to the 12.5% slope along the front of the building. Is there potential to revise the retaining wall or potentially drop the FYG of the building?
- Recommend erosion matting for the swale between the buildings that discharges to the rear yard swale.
- For the driveway access, the driveway shall follow the 2% cross slope of the road for the width of the shoulder. From that point the drive may come up to match into the parking lot area.
- Does the site balance or is there material that will need to be imported or exported?
- Provide notes on the Storm Sewer connection. Cut manhole, brick, mortar, and fabric connection.

General Comments

- A Storm Water Easement/Maintenance Agreement will need to be granted by the Owner to
 encompass the Water Quality Basin and the Outlet Structure. The Design Engineer shall provide the
 following: an Exhibit of the entire property, a Legal Description of the entire property, an Exhibit of
 the Storm Water Easement, a Legal Description of the Storm Water Easement, and maintenance
 schedule for the Water Quality Basin.
- A Financial Guarantee Agreement will need to be executed and a Cash Deposit to the Village is
 made by the Owner. The Design Engineer shall provide the following: an estimate of the
 construction cost of the Storm Water Management Basin.
- Will need to Submit/Obtain a Land Disturbance Permit for Disturbance of greater than 1 acre.
- Submit an NOI and any other necessary permits from the Wisconsin DNR.
- The sanitary sewer and water lateral information will need to be reviewed by the Caledonia Utility District.
- A Road Opening Permit and Inspection will need to be performed on the Storm Sewer Connection.
- The Building will require State Approved Building Plans.
- Recommend contacting the Fire Department for any concerns with the building and fire protection.
- This site has yet to be in front of the Caledonia Plan Commission for a conditional use permit. See the Zoning Administrator for information.

I have attached a copy of the plan review to assist in revising the plans.

Sincerely;

Anthony A. Bunkelman P.E.

Village Engineer
Village of Caledonia

H:\Village of Caledonia\LETTERS\2017\Midwest Forms & Supply Site Grading & Drainage Plan Review 09062017.docx