

RESOLUTION NO. 2019-27

RESOLUTION AUTHORIZING THE VILLAGE OF CALEDONIA TO EXECUTE A DEPOSIT AGREEMENT WITH DR INVESTMENTS 5231 LLC & IN AUTO INC. FOR IN AUTO INC. – 4730 STATE TRUNK HIGHWAY 41

WHEREAS, the Caledonia Utility District has conditionally approved a Storm Water Management Plan and a Site Grading & Drainage Plan for In Auto Inc. for the construction of a multi – tenant commercial building located on the West side of the East Frontage Road (State Trunk Highway 41). 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 Owners, DR Investments 5231 LLC and In Auto Inc. have executed said Deposit Agreement and made the required deposit with the Village of Caledonia; and

WHEREAS, the Caledonia Utility District has authorized the President & Secretary of the Caledonia Utility District to execute the Deposit Agreement at their March 13, 2019 meeting.

WHEREAS, the President and Clerk of the Village need to execute the Deposit Agreement.

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 approved and that the Village President and Village Clerk are authorized to execute said Deposit Agreement.

Adopted by the Village Board of the Village of Caledonia, Racine County, Wisconsin, this 18th day of March, 2019.

VILLAGE OF CALEDONIA

By: James R Dobbs
James R Dobbs, Village President

Attest: Karie Torkilsen
Karie Torkilsen, Village Clerk

DEPOSIT AGREEMENT

This Deposit Agreement (referred to as the "Agreement") is made the 21st day of March, 2019, by and between **DR INVESTMENTS 5231 LLC**, a Wisconsin limited liability company with offices located at 7228 South 27th Street, Oak Creek, Wisconsin 53154, with Dragan Radeta as a Member, and **IN Auto Inc.**, a Wisconsin corporation with offices located at 7228 South 27th Street, Oak Creek, Wisconsin 53154, with Dragan Radeta as its Registered Agent, said two entities collectively hereafter referred to, in the singular tense, 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 further described in a separate written agreement of even date entitled "Stormwater Easement Agreement", such further description hereby incorporated herein.

C. Owner has provided Caledonia with a Storm Water Management Plan, dated September 7, 2018, stamp dated September 11, 2018, and Site Grading & Drainage Plans, dated September 7, 2018, stamp dated September 10, 2018, prepared by Nielsen Madsen & Barber, S.C., having offices at 1458 Horizon Boulevard, Suite 200, Racine, Wisconsin 53406, for the Drainage Facilities to be constructed on the Property (referred to in this Agreement as the "Plan"). The areas of the Owner's Property affected by the Drainage Facilities are described in attached Exhibit B, and include a Stormwater Retention Pond. Caledonia has approved the Plan (in accordance with recommendations of Utility Director Anthony A. Bunkelman P.E.).

D. 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 15, 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 \$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.

E. 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 \$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 \$10,000.00 (referred to in this Agreement as the "Deposit") with Caledonia on or before March 29, 2019. 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 Detention Pond and 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).

DR Investments 5231 LLC
IN Auto Inc.
c/o Dragan Radeta
7228 South 27th Street
Oak Creek, Wisconsin 53154

Village of Caledonia, Wisconsin
Village of Caledonia Storm Water Utility District
5043 Chester Lane
Racine, Wisconsin 53402

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:
DR Investments LLC

CALEDONIA:
Village of Caledonia

BY: 
Dragan Radeta, Member

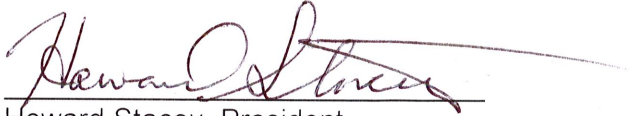
BY: 
James Dobbs, President

IN Auto Inc.

Attest: 
Karie Torkilsen, Village Clerk

By: 
Dragan Radeta, Registered Agent

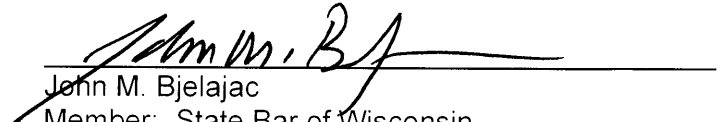
**Village of Caledonia Storm Water
Utility District**

BY: 
Howard Stacey, President

Attest: 
Harry Garnette, Secretary

AUTHENTICATION

Signatures of Dragan Radeta; 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 21ST day of March, 2019.



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

Document #: **2476500**
Date: 10-05-2017 Time: 04:01 PM Pages: 1
Fee: \$30.00 County: RACINE State: WI
Requesting Party: Milwaukee Title, Inc.
Register of Deeds: TYSON FETTES
RACINE COUNTY REGISTER OF DEEDS
Transfer Fee: \$228.00
**The above recording information verifies
this document has been electronically
recorded and returned to Milwaukee Title, Inc.**

This deed, made between **Harold R. DeBack**, as Trustee of **Harold R DeBack and Carol J DeBack Revocable Trust**("Grantor," whether one or more), and **IN Auto INC**("Grantee," whether one or more) Grantor conveys to Grantee, without warranty, the following described real estate, together with the rents, profits, fixtures and other appurtenant interests, in the following described real estate in Racine County, State of Wisconsin:

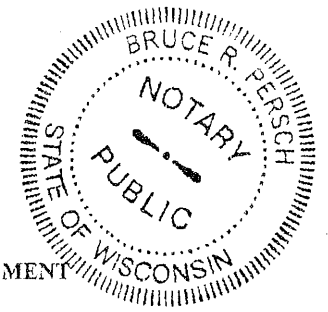
Name and Return Address
IN Auto INC
PO Box 28827
MILWAUKEE WI 53228
104-04-22-30-020-001
Parcel Identification Number (PIN)
This is ~~NOT~~ homestead property.

THAT PART OF NORTHWEST 1/4 OF SECTION 30, TOWNSHIP 4 NORTH, RANGE 22 EAST, IN THE VILLAGE OF CALEDONIA, RACINE COUNTY, WISCONSIN, DESCRIBED AS FOLLOWS: BEGIN AT THE SOUTHEAST CORNER OF SAID LOT 2; RUN THENCE N00°37'06"W 606.82 FEET ALONG THE EAST LINE OF SAID LOT 2 TO THE WESTERLY RIGHT-OF-WAY OF THE EAST FRONTAGE ROAD; THENCE S38°13'28"E 60.67 FEET ALONG SAID RIGHT-OF-WAY TO THE POINT OF CURVATURE OF A CURVE OF NORTHEASTERLY CONVEXITY WHOSE RADIUS IS 1290.00 FEET AND WHOSE CHORD BEARS S29°54'19"E 372.51 FEET; THENCE SOUTHERLY 373.82 FEET ALONG THE ARC OF SAID CURVE AND SAID RIGHT-OF-WAY; THENCE S22°22'38"W 254.05 FEET; THENCE S89°22'54"W 120.00 FEET TO THE POINT OF BEGINNING.

Dated this 5th day of June 2017

Harold R. DeBack and Carol J. DeBack Revocable Trust

Harold R. DeBack
By: Harold R. DeBack, Trustee



AUTHENTICATION

ACKNOWLEDGMENT

Signature(s) _____
Authenticated this _____ day of _____

STATE OF WISCONSIN)
Waukesha COUNTY ss.

TITLE: MEMBER STATE BAR OF WISCONSIN
(If not, _____
Authorized by § 706.06, Wis. Stats.)

Personally came before me this 5th day of June 2017
the above named, Harold R. DeBack, to me known to be
the person(s) who executed the foregoing instrument and
acknowledge the same.

THIS INSTRUMENT WAS DRAFTED BY
Harold R. DeBack

Harold R. DeBack
Bruce R. Persch

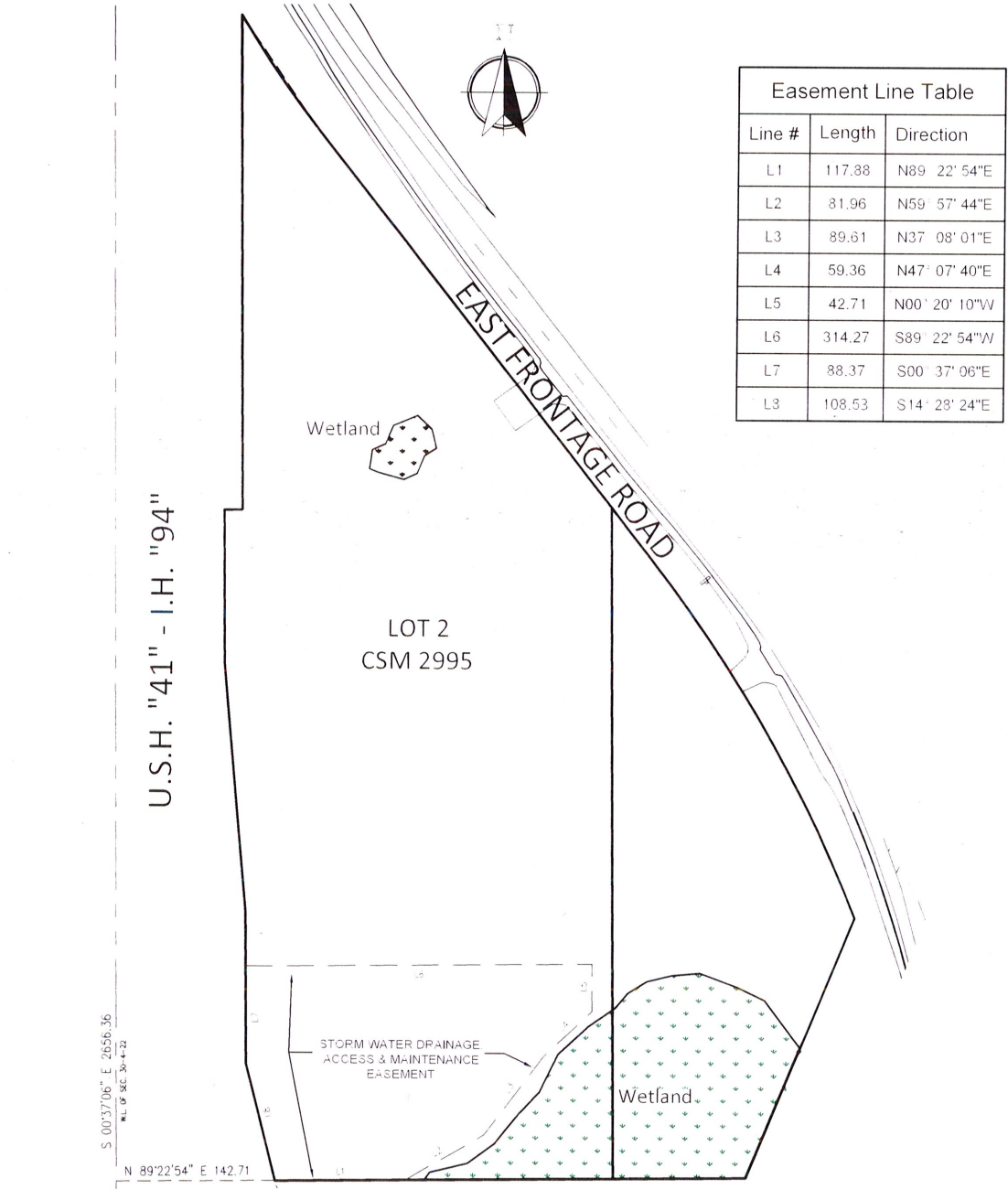
(Signatures may be authenticated or acknowledged. Both are not necessary.)

Notary Public, State of Wisconsin
My Commission is permanent. (If not, state expiration date)
3/14/2018

DESCRIPTION OF A STORM WATER DRAINAGE, ACCESS & MAINTENANCE EASEMENT

That part of Lot 2 of Certified Survey Map No. 2995 (C.S.M. No. 2995), a map recorded in the office of the Register of Deeds for Racine County, Wisconsin on August 13, 2010 as Document No. 2258141, and being a part of the West 1/2 of the Northwest 1/4 of Section 30, Township 4 North, Range 22 East of the Fourth Principal Meridian, bounded and described as follows: Beginning at a point on the Easterly right-of-way line of United States Highway "41" - Interstate Highway "94" (U.S.H. "41" - I.H. "94"), and being the Southwest corner of Lot 2 of said C.S.M. No. 2995; run thence N89°22'54"E, 117.88 feet along the South line of Lot 2 of said C.S.M. No. 2995; thence N59°57'44"E, 81.96 feet; thence N37°08'01"E, 89.61 feet; thence N47°07'40"E, 59.36 feet; thence N00°20'10"W, 42.71 feet; thence S89°22'54"W, 314.27 feet parallel with the South line of Lot 2 of said C.S.M. No. 2995 to the Easterly right-of-way line of said U.S.H. "41" - I.H. "94" and the Westerly line of Lot 2 of said C.S.M. No. 2995; thence S00°37'06"E, 88.37 feet along the Easterly right-of-way line of said U.S.H. "41" - I.H. "94" and the Westerly line of Lot 2 of said C.S.M. No. 2995; thence S14°28'24"E, 108.53 feet along the Easterly right-of-way line of said U.S.H. "41" - I.H. "94" and the Westerly line of Lot 2 of said C.S.M. No. 2995 to the Southwest corner of Lot 2 of said C.S.M. No. 2995 and the point of beginning of this description. Said land being in the Village of Caledonia, County of Racine and State of Wisconsin. Containing 1.105 acres.

10-18-2018



Easement Line Table		
Line #	Length	Direction
L1	117.88	N89 22' 54"E
L2	81.96	N59 57' 44"E
L3	89.61	N37 08' 01"E
L4	59.36	N47 07' 40"E
L5	42.71	N00 20' 10"W
L6	314.27	S89 22' 54"W
L7	88.37	S00 37' 06"E
L8	108.53	S14 28' 24"E

Tuesday, November 13, 2018 2:09:43 PM

W 1/4 CORNER SEC. 30-4-22

S 00°37'06" E 2656.36
P.L. OF SEC. 30-4-22

N 89°22'54" E 142.71

P.O.B.



Nielsen Madsen + Barber
 CIVIL ENGINEERS AND LAND SURVEYORS
 1458 Horizon Blvd. Suite 200, Racine, WI. 53406
 Tele: (262)634-5588 Website: www.nmbssc.net

Scale: 1" = 100'
 Drawn By: SCB/FTH
 DATE: 10-18-2018
 2016.0070.02
 Storm Water Drainage, Access &
 Maintenance Easement Exhibit Drawing
 M&M Express, Inc.
 Caledonia, Wisconsin