

**RESOLUTION 1831**

**A RESOLUTION APPROVING A PURCHASE AGREEMENT BETWEEN CASEY'S MARKETING COMPANY AND THE CITY OF WEST BRANCH.**

**WHEREAS**, the City and Casey's Marketing Company entered into a Development Agreement that was recorded in Book 1271 at page 12, Records of the Cedar County Recorder's Office (the "Agreement"); and

**WHEREAS**, the Agreement contemplates performance of certain actions that may or must be performed by the parties to the Agreement; and

**WHEREAS**, pursuant to the Agreement, as long as Casey's operated a convenience store at its current location, demolish, grade, and donate the old Casey's property with easement to continue to monitor and comply with any required environmental obligations, the City Council would decide to include 100% rebate of the incremental tax revenues for the property back to Casey's Marketing Company; and

**WHEREAS**, each of the possible rebate payments contemplated "shall be subject to annual appropriation of the City Council;" and

**WHEREAS**, this purchase agreement is the formalization of the remaining terms of the Development agreement currently accepted by the City of West Branch and Casey's Marketing Company;" and

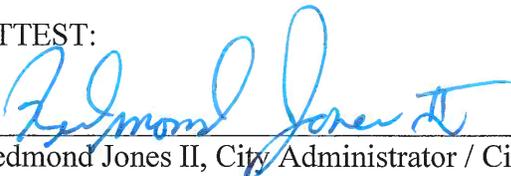
**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of West Branch, Iowa that the Council approves the aforementioned purchase agreement between Casey's Marketing Company and the City of West Branch.

\* \* \* \* \*

**Passed and approved this 5th day of August, 2019.**

  
\_\_\_\_\_  
Roger Laughlin, Mayor

ATTEST:

  
\_\_\_\_\_  
Redmond Jones II, City Administrator / City Clerk

## PURCHASE AGREEMENT

THIS AGREEMENT is hereby made this 5<sup>th</sup> day of August, 2019, by and between Casey's Marketing Company, an Iowa corporation having its principal place of business at One S.E. Convenience Boulevard, Ankeny, Iowa ("Seller"), and the City of West Branch, Iowa, a municipality ("Buyer").

WHEREAS, Seller is the owner of certain real estate in West Branch, Cedar County, Iowa, legally described as follows:

The South Ninety (90) feet of Lot Seventeen (17) in Block Twenty-two (22) of W.H. or Wm. H. Oliphant's Division of the town of Cameron, now the incorporated city of West Branch, Cedar county, Iowa, except the East Six (6) feet there;

(hereinafter the "Real Estate"), the street address of which is 311 East Main, West Branch, Iowa, which said Real Estate contains a vacant building and land; and

WHEREAS, the parties have reached an understanding and agreement pursuant to which the Seller shall donate the Real Estate to the Buyer on the terms and conditions herein provided.

NOW THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the parties agree as follows:

1. Property Conveyed. For and in consideration of the purchase price hereinafter provided, the Seller shall sell and the Buyer shall purchase, as of the date of Closing, the Real Estate hereinabove described, subject, however, to zoning, reservations, restrictive covenants and easements of record, and easements for public roads, highways, and existing utilities, but free and clear of all liens, claims, and encumbrances of every kind and nature, except as herein provided otherwise.

2. Price and payment. The purchase price shall be One Dollar (\$1.00) and other good and valuable consideration. In addition, Buyer agrees to pay all costs associated with closing the Real Estate transaction, including, but not limited to, recording costs, title commitment fees and closing costs, if any.

3. Taxes and Assessments. Seller shall pay all real estate taxes, personal property taxes, and special assessments which are a lien on the Real Estate as of the date of the Closing. No taxes in arrears will be prorated. All taxes and assessments that may be levied or imposed after the date of Closing shall be paid by the Buyer. Buyer understands that they will not be receiving a tax proration at the time of Closing.

4. Possession. Possession of the Real Estate shall be delivered to the Buyer as of the Closing.

5. Title Evidence. The Seller shall provide to Buyer the Abstract of Title to the Real Estate hereinabove described. The Buyer shall then have the responsibility to update the Abstract,

at Buyer's expense. The Seller shall have a further reasonable time to correct any title objections or deficiencies which may be found to exist. If Seller is unable to produce marketable title in conformity with this contract within a reasonable period of time, then in addition to any other remedies available under applicable law, the Buyer shall have the option to declare this agreement null and void.

6. Environmental Matters. The Buyer acknowledges that the Real Estate has heretofore been used for the retail sale of gasoline and other motor fuels from underground storage tanks ("USTs"). The parties agree that the Seller shall have no responsibility for any contamination arising after the Date of Closing. With regard to any contamination existing prior to the Date of Closing, Seller's only responsibility shall be to conform to any requirements of governmental regulatory entities, pursuant to state or federal law. This provision shall survive the Closing hereunder.

The Seller and Buyer acknowledge that the sale by Seller and acceptance by Buyer of the tract of land and any improvements is "AS IS" and "WITH ALL FAULTS," and EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE SELLER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE ABSENCE OR PRESENCE OF ENVIRONMENTAL HAZARDS, INCLUDING BUT NOT LIMITED TO CHEMICALS, HAZARDOUS WASTES, AND HAZARDOUS SUBSTANCES, WHICH MAY BE ON, IN OR UNDER THE TRACT OF LAND, PERSONAL PROPERTY, AND INVENTORY, AND THE SELLER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE COMPLIANCE OF PRIOR USES ON OR PRESENT CONDITIONS OF THE TRACT OF LAND, PERSONAL PROPERTY, AND INVENTORY UNDER APPLICABLE FEDERAL, STATE, AND LOCAL ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et. seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et. seq., the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et. Seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et. Seq., the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et. Seq., and any applicable state or local laws.

A. Seller and Buyer acknowledge and agree that Buyer will be given the opportunity to make reasonable investigation of the prior uses and existing conditions of the tract of land and that Seller will make a good faith and full disclosure of such prior uses and existing conditions of which Seller is aware. Seller agrees to provide open access to Seller's records regarding the property and any environmental issues.

As a result of the above-described investigation and/or disclosures, if Buyer decides, in its sole discretion and judgment, not to proceed with the sale and purchase, Buyer may cancel this Agreement by providing written notice to the Seller prior to the closing, and Buyer and Seller shall promptly refund any earnest money deposit and down payment to Buyer, and this Agreement shall be null, void, and of no effect.

- B. Buyer acknowledges that it has been given the opportunity to make reasonable investigation of the prior uses and existing conditions of the tract of land and that Seller has made a good faith disclosure of such prior uses and existing conditions of which Seller is aware. Seller has provided open access to Seller's records regarding the property and any environmental issues.
- C. For good and valuable consideration, the receipt of which is acknowledged, and subject to Seller's obligations as set forth in the first paragraph of Section 11, the Seller and Buyer hereby agree with respect to the tract of land as follows:
- (1). That for said consideration, Buyer hereby agrees, warrants, and covenants to RELEASE, ACQUIT and FOREVER DISCHARGE Seller from any and all claims, demand, causes of action of whatsoever nature, including without limitation all claims, demands, and causes of action for contribution, indemnity, strict liability, or negligence on the part of the Seller, relating to or in any way arising out of any noncompliance under environmental laws of the tract of land or out of any property damage or personal injury alleged to be caused by environmental conditions of the tract of land, personal property, and inventory, or the payment of any amounts whether by judgment or by settlement in such suits.
  - (2). That for the same consideration, Buyer now warrants, agrees, and covenants not to sue Seller upon any cause of action for indemnity, contribution, strict liability, or negligence on the part of Seller, that in any way relates to or arises out of any noncompliance under environmental laws of the tract of land or out of any property damage or personal injury alleged to be caused by environmental conditions of the tract of land or the payment of any amounts whether by judgment or by settlement in such suits.
  - (3). That for the same consideration, Buyer hereby agrees to HOLD HARMLESS Seller from any and all claims, demands, and causes of action of whatsoever nature, including without limitation all claims, demand, and causes of action for contribution, indemnity, strict liability, or negligence on the part of the Seller, and also including without limitation, all costs, expenses, and legal fees in defending same that in any way relate to or arise out of any noncompliance under environmental laws of the tract of land or out of any property damage or personal injury alleged to be caused by environmental conditions of the tract of land, personal property, and inventory, or the payment of any amounts whether by judgment or by settlement in such suits.

**This provision shall survive the Closing hereunder.**

7. Closing. The parties shall close this transaction on September 20, 2019, or such other date as the parties may mutually agree, which date shall be known as the "Date of Closing."

At the Closing, Seller shall convey the Real Estate to the Buyer by Warranty Deed, free and clear of all liens, restrictions, and encumbrances, except as herein provided.

8. Condition of Property Conveyed. The Real Estate, as defined in paragraph 1 of this Agreement, is conveyed by Seller and accepted by Buyer "AS IS, WHERE IS", and Seller makes no warranties concerning the condition of the same. The Buyer shall have the right at any time prior to the closing to inspect the Real Estate in order to verify the condition of the same. Should Buyer, upon performing the inspection above, determine that the cost of clean-up or repairs is such that it would be impractical to proceed with the purchase, then Buyer shall notify Seller of their election to cancel this Agreement and Buyer shall immediately be refunded its earnest money payment.

9. Environmental Matters. Buyer acknowledges that the Real Estate has heretofore been used for the retail sale of gasoline and other motor fuels from underground storage tanks (hereinafter the "USTs"), and that the USTs, as well as underground product lines and fuel dispensers, have been removed from the Real Estate. With regard to any contamination existing prior to the Date of Closing, Seller's only responsibility shall be to conform to any requirements of the Iowa Department of Natural Resources (DNR), pursuant to state or federal law. **This provision shall survive Closing hereunder.**

10. Restrictive Covenant. In further consideration hereof, Buyer covenants and agrees for itself, its successors and assigns that, for a period of fifteen (15) years from and after the date the Real Estate is conveyed, the Real Estate will not be used for, or in conjunction with, any business that includes the retail sale of gasoline or other motor fuels; cigarettes, including all electronic cigarettes and other tobacco products; groceries; alcoholic beverages; or, prepared foods, including sub sandwiches, pizza and donuts. This covenant shall run with the land and shall be binding upon all assignees, transferees, and successors-in-interest to the Real Estate for the said term of fifteen (15) years. **This provision shall survive Closing hereunder and shall be included in the warranty deed to be delivered at Closing.**

11. Seller's Remedies. If the Buyer fails to timely perform this Agreement then the Seller, in addition to any other rights or remedies at law or in equity available under applicable law, shall be entitled to rescind this Agreement and refund any monies paid by the Buyer hereunder.

12. Buyer's Remedies. If the Seller fails to timely perform this Agreement, then the Buyer, in addition to any other rights and remedies at law or in equity available under applicable law, shall be entitled to rescind this agreement and be refunded any monies paid by the Buyer hereunder.

13. Time of the Essence. The Buyer and Seller agree that time is of the essence of this agreement and all payments must be made promptly in accordance with the terms hereof.

14. No Assignments of Rights. Prior to the Closing, neither party hereto shall sell, assign, or transfer this agreement or any interest acquired hereunder in or to the Real Estate, without the written consent of the other party.

15. Exclusive Agreement. The Buyer and Seller agree that all understandings and agreements hereto had between them are merged in this agreement which alone fully and completely expresses their agreement and this agreement is entered into after full investigation, neither Buyer nor Seller relying upon any statement or representation not embodied in this agreement by the other. This agreement may not be changed or altered orally.

16. Construction. In the construction of this agreement, the use of the singular shall include the plural, and the use of masculine shall include the feminine.

17. Successors Bound. This agreement shall be binding on the Buyer and Seller hereto, their heirs, executors, administrators, devisees, legatees, successors and assigns.

18. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date and year first above written.

**BUYER**

CITY OF WEST BRANCH

By:



**SELLER**

CASEY'S MARKETING COMPANY

By:

\_\_\_\_\_  
Megan Elfers, President

**ADDENDUM TO PURCHASE AGREEMENT**

This Addendum, consisting of two pages, is an integral part of the Purchase Agreement between, the City of West Branch, Buyer, and Casey's Marketing Company, Seller, dated \_\_\_\_\_, 2019, with respect to the property known as 311 E. Main, West Branch, Cedar County, Iowa.

**ADDITIONAL PROVISIONS:**

19. Demolition. Seller shall demolish and clear all structures on the Real Estate. Seller's demolition obligations shall include the securing of all permits for demolition; the removal and proper disposal of existing building and structures (including any asbestos remediation); the removal and proper disposal of foundations and basement slabs, the removal and proper disposal of contaminated soils and the backfill and compaction of areas where foundations/basement slabs of contaminated soils are removed; the disconnecting, capping and plugging of all utilities.
20. Site Grading. Upon completion of the demolition described in paragraph ~~18~~<sup>19</sup>, Seller, on the prior building site, shall lay gravel and seal coat, level with the slab foundation and/or ground. (RL)
21. Easement. Buyer shall grant to Seller upon the transfer of 311 East Main, West Branch, Iowa, any necessary easements Seller may require for continued monitoring and compliance with environmental standards as delineated herein. Buyer and Seller shall cooperate in the execution of any and all necessary easement and monitoring agreements.

**BUYER**

CITY OF WEST BRANCH

By: Roger Taylor 8-14-19  
(date)

**SELLER**

CASEY'S MARKETING COMPANY

By: \_\_\_\_\_  
Megan Elfers, President (date)