

RESOLUTION NO. 2022-35

RESOLUTION AUTHORIZING THE VILLAGE OF CALEDONIA TO ENTER INTO A DEVELOPMENT AGREEMENT WITH LIKewise DEBACK DEVELOPMENT, LLC FOR LOT 4 IN THE DEBACK FARMS BUSINESS PARK AND AUTHORIZING PARTIAL RELEASE(S) OF DEBACK FARMS BUSINESS PARK DEVELOPMENT AGREEMENT FOR INDIVIDUAL SITE DEVELOPMENT

WHEREAS, Likewise Deback Development, LLC ("Likewise") has proposed to construct a one phase development on a parcel of land in Tax Incremental District No. 4 in the Village with an approximately 188,000 square foot industrial facility building which received conditional building, site and operational plan approval from the Village on April 4, 2022 involving a capital investment of approximately \$12.2 Million for the primary building;

WHEREAS, in order to induce Likewise to develop and locate its new Facility at the Property, which Likewise would not do but for an incentive, and in order to render the Facility construction financially viable for Likewise, the Village is willing to extend to Likewise certain development incentives in exchange for Likewise's commitment to locate the Facility at the Property, all according to the terms and conditions set forth herein.

NOW, THEREFORE, BE IT RESOLVED by the Caledonia Village Board that the Development Agreement between the Village of Caledonia and Likewise as set forth in **Exhibit A**, attached hereto and incorporated herein (the "Development Agreement"), is hereby authorized and approved, and the Village President and Village Clerk are authorized to execute said agreement and the Village Administrator and Development Director are authorized to take such actions necessary in furtherance thereof; and

BE IT FURTHER RESOLVED, that the Village President and Village Clerk are authorized to execute such Partial Releases as are deemed necessary in accordance with the DeBack Farms Business Park Development Agreement, as amended, to allow for this individual site development to occur after review and approval by the Village Attorney.

4th Adopted by the Village Board of the Village of Caledonia, Racine County, Wisconsin, this
_____ day of April, 2022.

VILLAGE OF CALEDONIA

By: James R. Dobbs
James R. Dobbs, President

Attest: Joslyn Hoeffert
Joslyn Hoeffert, Clerk

DEVELOPMENT AGREEMENT TID#4 PARCELS

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”), effective as of the date last executed by any party below (“Effective Date”), is made and entered into between **LIKEWISE DEBACK DEVELOPMENT, LLC**, a Minnesota limited liability company qualified to do business in Wisconsin (“Developer”), and the **VILLAGE OF CALEDONIA**, a municipal corporation located in Racine County, Wisconsin (the “**Village**”);

RECITALS:

A. On July 21, 2014 the Village established Tax Incremental District No. 4 for the Village of Caledonia, Wisconsin and amended such district on September 21, 2015 (“**the District**” or “**TID #4**”), the boundaries of which include the Property, as defined below. The formation of the District and its project plan as amended, which were duly approved by the Joint Review Board, permit the Village to offer assistance in financing project costs, as permitted by Wis. Stat. Section 66.1105.

B. Developer is a privately held development firm headquartered in St. Louis Park, Minnesota and is a developer of Class A industrial buildings.

C. Developer secured control over one parcel of land within the District and TID #4 and expressed an interest in constructing one new Class A industrial building (“the Facility”) on that certain vacant parcel of land located in TID #4 (“Property”), which Property is more particularly described in **Exhibit A** attached hereto and incorporated by reference,

D. Developer intends to construct the Facility on the Property in such concept as shown on **Exhibit B** attached hereto and incorporated herein by reference (the “Concept Plan”), subject to the review and approval of required plans and specifications by the Village, and will sell or lease the Property, to an end user (a “Parcel User”) (overall the “Development”).

E. The Facility, as planned, would be constructed in one phase totaling approximately 188,000 square feet of building space on the Property involving a capital investment by Developer of approximately \$19,800,000 with a substantial completion date of December 31, 2024 including interior tenant improvements.

F. The Property has sanitary sewer and municipal water utilities available within right-of-way or easements and the Developer shall be responsible for the connection of the Facility to such utilities and construction of all onsite infrastructure. All onsite sanitary sewer and municipal water utilities shall be constructed pursuant to plans to be submitted by Developer and subject to review and approval by the Village.

G. In order to induce the Developer to develop and locate its new Facility at the Property, which the Developer would not do but for incentives provided under this Agreement, and in order to render the Facility construction financially viable for the Developer, the Village is willing to extend to the Developer certain development incentives in exchange for the Developer's commitment to locate the Facility at the Property, all according to the terms and conditions set forth herein.

IT IS MUTUALLY AGREED AS FOLLOWS:

1. **Recitals and Defined Terms.**

(a) The above recitals are true and correct and are incorporated herein by reference.

(b) **Definitions.**

“Development Increment” shall mean the “estimated fair market value” of the Property (which in turn means the Property’s assessed value divided by the assessment ratio of all of the taxable property in the Village, as determined by the Wisconsin Department of

Revenue) in a given year, as shown on the tax bill issued by the Village that year, minus the Development Tax Incremental Base Value, as measured for the Property, and, after division into the Parcels, as measured for each Parcel, in the manner provided herein.

"Development Incentives" shall mean the Pay-Go Development Incentive and the Fee Rebate.

"Development Tax Incremental Base Value" shall mean \$396,101 (the "estimated fair market value" of the Property as of January 1, 2022.

"General Property Taxes" shall be as defined in Wis. Stat. §74.01.

"Guaranteed Minimum Investment" shall mean a capital investment on the Property of \$12,200,000 by July 1, 2024, which shall include costs for the construction of the building and other site improvements for the Facility on the Property by the time of Substantial Completion thereof, as well as the hard costs, including the cost of labor and materials for building and components, fixtures and utilities, and including soft costs of construction of the Facility, but will not include the cost of production machinery or equipment.

"Property Tax Increment" shall mean the gross amount of General Property Taxes levied and received by the Village on the Development Increment in a given year, including the mill rates for Village, County, school and all other taxing authorities.

"TID #4 Expenditure Period" shall mean the time during which expenses may be incurred for the implementation of the approved project plan for TID #4, as amended. The TID #4 Expenditure Period terminates on July 21, 2039.

2. **One Phase.** The Property is intended to be developed in one phase that will include the construction of one Class A industrial building Facility approximately as depicted on the Concept Plan totaling approximately 188,000 square feet and all infrastructure necessary to serve

the Facilities with an expected substantial completion date for the primary building of July 1, 2024 and of interior tenant improvements of December 31, 2024.

3. **Requirements; Contingencies.** The Developer shall perform the following:

(a) **Purchase the Property.** By December 31, 2022 purchase the Property;

(b) **Financing Commitments and Budget.** By December 31, 2022, written evidence of financing commitments shall be delivered to the Village including:

- a. Bank commitment letter.
- b. Developer equity/loan.
- c. Submittal of construction and development plans to the Village, including formal applications for all zoning and land division related approvals.

By December 31, 2022, the following shall be delivered to the Village: A detailed budget of the project source and use of funds that includes all deliverables (both public & private), schedules/milestones, assignments of responsibilities and final asset ownership.

(c) **Plans and Specifications; Entitlements.** Prior to proceeding with any on-site construction and obtaining building permits for the Facility, the Developer shall submit all plans and specifications, and comply with and/or obtain all necessary and applicable local, county, state, and federal laws, regulations, approvals, and permits required by Village ordinances, County ordinances or state or federal laws pertaining to the Facility, including, without limitation, any and all requisite approvals by the Village Plan Commission and/or Village Board with respect to zoning, site plan approval, architectural, engineering, grading, design, and/or construction plans and specifications as set forth in this Agreement. Developer shall complete all site grading, public and private utilities (including laterals for municipal water, sanitary sewer and storm water as per approved plans), lighting, hook-up and permit fees, sidewalks, as well as public and private driveways necessary for the Development. The Developer shall timely pay any and all fees

required by Village ordinances or codes to be paid by the Developer to the Village pertaining to the Facility. Additionally, during the term of this Agreement, if the Developer has any delinquent fines, penalties, or financial obligations whatsoever, including, without limitation, delinquent taxes owed to the federal government, the State of Wisconsin, Racine County, or the Village, regarding this Development, which remain unpaid after thirty (30) days' written notice of said delinquency has been given to the Developer, the Village may withhold permits until such amounts are paid in full, unless the Developer is timely appealing such amounts in good faith in the manner provided by law. Once an Occupancy Permit has been issued for a Facility, this paragraph shall be deemed to be satisfied, as to that Facility.

4. **Construction Schedule and Responsibility for Costs.** The Developer intends to commence design and construction of the necessary improvements on the Property and its Facility as soon as reasonably possible after receipt of all building and applicable permits and approvals as set forth in Section 2. Except for the obligations of the Village, described below in Section 6 of this Agreement, the Developer shall be solely responsible for all costs of design, procurement and construction for all improvements on the Property. Nothing in this Agreement shall be construed or cause the Village to release the Developer or Property Owner from any obligation to pay any special assessments on the Property.

5. **Substantial Completion.** Subject to the force majeure provisions of Section 17 and other matters defined as "Excusable Delays," the Developer agrees that it shall improve the Property as set forth in Section 2 of this Agreement in compliance with Village-approved plans, and shall achieve Substantial Completion of the primary building construction of the Facility by July 1, 2024 and interior tenant improvements by December 31, 2024. "**Substantial Completion**" means that the work is sufficiently complete to enable the Developer or its Parcel User to legally

occupy and utilize the Facility for its intended use, as evidenced by the issuance of an occupancy permit for the Facility. Notwithstanding the foregoing, Developer shall not be in default of this Agreement if it fails to complete interior tenant improvements by December 31, 2024, provided, for purposes of calculating the capital investment amount by Developer required to satisfy the Guaranteed Minimum Investment, only those tenant improvement dollars expended by July 1, 2024 shall go toward satisfying such Guaranteed Minimum Investment Amount.

6. **Development Incentives: Pay-As-You-Go Development Incentive; Fee Rebate; Tax Increment Project Revenue Bond.**

(a) **General Pay-As-You-Go Parameters.** Subject to the terms and conditions of this Agreement, if the Developer achieves certain capital investments on the Property, the parties shall share the Property Tax Increment generated by the Property for a period of ten years for the Development, beginning with property taxes levied in 2024 and collected in 2025 (“Pay-Go Development Incentive”), in the amounts set forth in this Section. The ten year period for Pay-Go Development Incentive (based on the expected substantial completion date) shall terminate with Property Taxes Due/Paid in Year 2034.

(i) **Amounts of Pay-Go Development Incentive.**

a. Property Tax Increment generated from the first \$250,000 per acre of Development Increment on the Property shall be paid to the Village, and used by the Village to pay for Village expenses and fee rebates as set forth below in this Section of the Agreement.

b. If Developer achieves the Guaranteed Minimum Investment on the Property, then Property Tax Increment generated from Development Increment exceeding \$250,000 per acre on the Property shall be shared by the Developer and the Village on a 50/50

basis, with the Village paying 50% of that tranche of Property Tax Increment to the Developer and retaining 50%.

c. If Developer achieves a total capital investment of \$19,550,000 by December 31, 2024 (through its own investment or the investment by a Parcel User as to tenant improvements), Property Tax Increment generated from any Development Increment in excess of \$500,000 per acre on the Property shall be shared by the Developer and the Village on an additional 25% of that tranche of Property Tax Increment (the "Step-Two Pay-Go").

d. By way of example only, sample projections are provided in **Exhibit C**.

e. Regardless of any other provision in this Agreement, Developer shall not receive any Pay-Go Development Incentives unless developer has paid all payments due to the Village including General Property Taxes on the Property; provided, if there is any delinquency in any such payment of General Property Taxes on the Property, upon making full payment of General Property Taxes on the Property, the Village shall promptly make payment of the Pay-Go Development Incentives that had been previously withheld, minus any interest and penalties for delinquent payments.

(b) Prerequisite of Minimum Investment Test. No payment of any Pay-Go Development Incentive hereunder shall be made to the Developer (other than the Fee Rebate) until the Developer has demonstrated to the Village's reasonable satisfaction, as determined by the Developer submitting to the Racine County Economic Development Corp. ("RCEDC") such documentation as is reasonably required by RCEDC in order to document the Developer's satisfaction of the Guaranteed Minimum Investment and qualification for the Step-Two Pay-Go, as applicable ("Minimum Investment Test"). Village agrees to provide a certificate to the

Developer when it has met this Minimum Investment Test, in order to provide evidence that this condition has been satisfied.

(c) Fee Rebate. As an additional development incentive, the Village shall reimburse the Developer for the actual cost of Village connection and impact fees that it is required to pay for the Facility, up to a total maximum of \$125,000 for the Development (the "Fee Rebate"). The Fee Rebate shall be paid by the Village to the Developer from the taxes received by the Village from the first \$250,000 per acre of Development Increment each year, in the first year or years in which the Village's share of the Property Tax Increment is adequate to pay the Fee Rebate. No payment of any Fee Rebate for any Facility shall be made until the Developer has satisfied the Guaranteed Minimum Investment, but the Village shall collect such funds and hold them for payment to the Developer as soon as the Developer has satisfied the Guaranteed Minimum Investment.

(d) Duration of Payments. The Pay-Go Development Incentive shall be paid over no more than 10 years for the Development. For example, the Facility has an expected substantial completion date of December 31, 2023, which would be assessed as of January 1, 2024, with taxes due in 2025, and a scheduled maximum Pay-Go term of years 2025 through 2034.

(e) No Interest. There shall be no interest paid to the Developer on any Development Incentives.

(f) Strictly Pay as you Go. The Village shall only be obligated to make Pay-Go Development Incentive payments from Property Taxes it has actually received for the Property, regardless of who bears the responsibility for payment.

(g) Not TIF Default. The Village may suspend making a Pay-Go Development Incentive payments only during the time when any TIF Default shall have been declared and is outstanding but shall pay any suspended payment as soon as such TIF Default is waived or cured.

(h) Evidence of Obligation. The Developer understands and agrees that the Pay-Go Development Incentive payments shall continue for up to ten years and which will terminate prior to the expiration of the TID #4 Expenditure Period. If necessary, the Pay-Go Development Incentive shall be memorialized by a formal Municipal Revenue Obligation (“MRO”) containing the essential terms and conditions of this Agreement, as well as the procedures for collection and payment. If necessary, the MRO that shall be issued by the Village as of the Effective Date of this Agreement as may be modified by Village Bond Counsel and in accord with this Agreement’s terms and conditions. Pay-Go Development Incentive and Fee Rebate payments to the Developer shall be made within sixty (60) days of Village receipt of the full tax payment for that tax year. Any payments on the MRO which are due on any payment date shall be payable solely, subject to annual appropriation, from, and only to the extent that the Village shall have received Property Tax Increment. The MRO shall not constitute a “general obligation bond” of the Village.

7. Reimbursement of Village’s Costs. The Developer will execute a Predevelopment Reimbursement Agreement with the Village regarding engineering review and inspection fees, including third party consultant fees incurred by the Village in reviewing, processing and inspecting permitted projects and improvements required by approved plans and submittals. The Village does require reimbursement for reasonable costs for professional fees, including legal and engineering fees, incurred by the Village in conjunction with the preparation of this Agreement, including Agreement drafting and pre-execution legal fees. Any subsequent

Development-related or other professional fees the Village reasonably incurs in connection with this Agreement to the extent permitted by the Predevelopment Reimbursement Agreement. The Predevelopment Reimbursement Agreement, shall remain in effect, for purposes of the reimbursements required thereunder during the course of this Development.

8. **Legal Action.** Except as specifically set forth herein, 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.

9. **Utilities and Site Grading; Subsequent Agreements.** The Developer is responsible for all costs associated with on-site utilities required for its construction of the Facility in the Development. The Developer shall fully restore, at its expense, any Village right-of-way or easement area 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 on the Property 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 after receipt of applicable permits. On-site infrastructure includes, private driveways, site grading and erosion controls, stormwater improvements, sanitary sewer and water services in accordance with the Village's Code of Ordinances. All such work shall be pursuant to plans and specifications approved by the Village and Utility Districts and the Village. The Developer acknowledges and agrees that it is responsible for all costs of on-site construction and installation of improvements required by the Village and Utility Districts in accordance with the Village's Code of Ordinances.

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.** 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 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.

13. **Environmental Indemnification.** The 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. 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 Retained Parcels” shall include any easement area of the Village and any disturbed Village right-of-way. The Village agrees that it will immediately deliver written notice to the Developer, as applicable, of the Village’s discovery of the Substances in or on the Village Retained Parcels. Following delivery to the Developer of written notice of the Village’s

claim as required under this paragraph, the Village shall make all reasonable accommodations to allow the 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 the Developer is obligated to indemnify the Village against claims arising under this paragraph, the 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. The Developer shall be responsible for any continuing obligation imposed by any appropriate governmental authority as a continuing indemnity for the Village.

14. **Taxability.** Developer agrees that it will not sell, lease, assign or otherwise transfer or convey any interest in the Development to a person or entity exempt from general property taxation in a manner which would cause all or any portion of the Development to be exempt from general property taxation (the “**Tax-Exempt Covenant**”). The Tax-Exempt Covenant shall remain in effect at the termination of this Agreement. 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 Development. 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 Development taxable, and by the same date that the first installment tax payment on the Development would have been due were the entire Development taxable. During the term of this Agreement, the Village shall be obligated to pay to the Developer the same Pay-Go Development Incentive and Fee Rebate amounts out of such payment in lieu of taxes as the Developer would have been entitled to receive under this Agreement if such payments were General Property Taxes.

15. **Developer Default.**

(a) In the event the Developer fails to timely perform any one or more of its obligations under this Agreement, other than a TIF Default as defined below (a “**Company 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 set forth in the preceding section 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 Company 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. However, the Village shall not have the remedy of specific performance as the same concerns the completion of the contemplated Facility.

(b) **TIF Default**. It is the nature of this Agreement that it is intended to reflect the long term nature of the relationship between the parties, and the reliance on the Development Incentives without which this development would not have occurred. The Village has many other remedies sufficient for smaller defaults without delaying or terminating this Agreement or the payment of the Development Incentives hereunder. Therefore, upon the occurrence of an event of Default, the Village may pursue all of the rights and remedies available to the Village at law and/or in equity against the Developer including, but not limited to, injunctive relief or specific performance, but, notwithstanding anything to the contrary contained herein, except for a TIF Default, as defined below, no such Default shall cause the termination of this Agreement, or the termination or postponement of the payment of any Fee Rebate or payment of any Development Incentives, provided the Developer promptly commences activities to cure the Default in good faith and diligently pursues such activities to fully cure the Default. The only Defaults hereunder which can terminate the Village's obligations to make payments of the Development Incentives, whether Pay-Go Development Incentive or Fee Rebate, shall be any one or more of the following, which shall be known as "**TIF Defaults:**" (i) the failure to purchase the Property within 1 year after the effective date of this Agreement; (ii) the failure to commence construction of the Facility within 1 year after the effective date of this Agreement; (iii) any failure to meet the Guaranteed Minimum Investment by December 31, 2023; (iv) the nonpayment of all fees due the Village and/or General Property Taxes on the Property or Parcel when due, regardless of who bears responsibility for such payment. In the event of a TIF Default, the Village may, at its option, suspend its obligation to make any further payments on the Fee Rebate and Pay-Go Development Incentive (dependent on the specified deadline for each type of Pay-Go Development Incentive) until such TIF Default is cured. No failure or delay on the part of the Village in exercising any

right or remedy shall operate as a waiver thereof nor shall any single or partial exercise of any right preclude other or further exercise thereof or the exercise of any other right or remedy.

16. **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 thirty (30) 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 eighty (180) days from the date of the Developer’s 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.

17. **Force Majeure and Excused Delay.** In the event that Developer or Village shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of epidemics, outbreaks, or pandemics, strikes, lockouts, labor troubles, inability to procure materials, delay in supply or delivery of materials or equipment, failure of power, fire, earth quake, flood, terrorism, war, acts of God, outbreak, local, state or federal order, or other reason beyond Developer’s or Village’s reasonable control, then performance of such act shall be excused for the period of delay and the date for the performance of any such act shall be extended for a period equivalent to the period of such delay, prevention, or stoppage. Any such excused delay, while

not constituting a breach of this Agreement, shall nevertheless allow the Village to avail itself of the Security provisions of Section 2(b). Force Majeure shall never excuse the failure to perform a financial obligation of either party except that the Village shall not be obligated to provide the Development Incentives hereunder when a Force Majeure event results in a TIF Default. In no case shall a Force Majeure event cause the payment of Pay-Go Development Incentive to exceed more than 10 years. In no case shall a Force Majeure event cause a payment to extend beyond the TID#4 Expenditure Period.

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); pandemic, local, federal or state orders, the declaration of war; any act or acts of God (“Act of God”). 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.

18. **Successors and Assignment.** This Agreement is binding upon and enforceable against the respective successors and assigns of the parties to this Agreement (“Parties”). Except for assignments of this Agreement between entities under the same or similar control to The Developer, this Agreement may not be assigned prior to satisfying the Guaranteed Minimum Investment and 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. After Substantial Completion and satisfying the Guaranteed Minimum Investment, however, the Developer shall be free to assign the right to receive the Development Incentives without the Village's consent, to a Parcel User of that Parcel. The Developer may only assign its right to receive a Development Incentive by providing written notice to the Village, affirmatively assigning such rights to a third party, by certified mail to the Village Administrator and Clerk and to the Village Attorney at least thirty (30) days in advance of the time for the Village to make any such payments hereunder.

19. **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.

20. **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:

Likewise Deback Development LLC
1600 Utica Ave. S., 9th Floor
St. Louis Park, MN 55416
Attn: Steven Buss

With copy to:

Barna, Guzy & Steffen, Ltd.
200 Coon Rapids Blvd. NW, Suite 400
Coon Rapids, MN 55433
Attn: Thomas Wentzell

To the Village:

Village of Caledonia
5043 Chester Lane
Racine, WI 53402
Attn: Village Administrator and Village Clerk

and with copy to:

Elaine Sutton Ekes
Pruitt, Ekes & Geary, S.C.
245 Main St. Suite 245
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.

21. **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.

22. **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.

23. **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.

24. **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]

VILLAGE OF CALEDONIA

By: James R. Dobbs
James Dobbs, Village President

Attest: Joslyn Hoeffert
Joslyn Hoeffert, Village Clerk

STATE OF WISCONSIN)
) SS:
COUNTY OF RACINE)

Personally came before me this 4 day of April, 2022, the above-named James Dobbs and Joslyn Hoeffert, President and Clerk, respectively, of the Village of Caledonia, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Unleena O'Brien
Notary Public, Racine County, Wisconsin
My Commission: 07-12-2025

- List of Exhibits:**
Exhibit A – Legal Description
Exhibit B – Concept
Exhibit C -- Pay-as-you-go Sample Calculation

EXHIBIT A

Legal Description for Property

Lot 4 of Certified Survey Map No. 3437, recorded in the Office of the Register of Deeds for Racine County, Wisconsin, on March 26, 2021, as Document No. 2586090, being a redivision of all of Lot 2, Certified Survey Map. 3302, located in the Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 and the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northwest 1/4 of Section 30, Township 4 North, Range 22 East, Village of Caledonia, Racine County, Wisconsin.

Tax Parcel I.D. No: 104-04-22-30-015-240

EXHIBIT B

Concept Plan

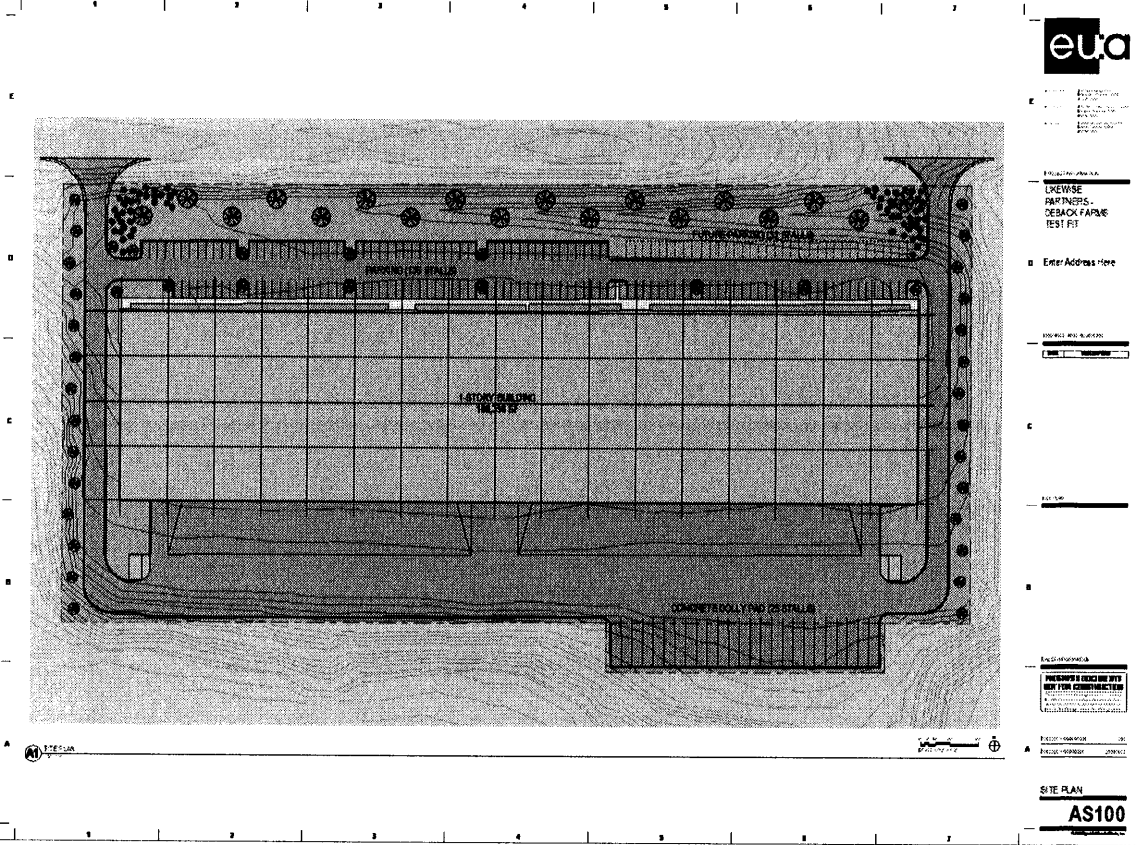


EXHIBIT C SAMPLE CALCULATION

DRAFT EXHIBIT Village of Caledonia Agreement with Likewise Pad C Development in DeBack Farms

Phase	Estimated Building Sq. Ft.	Estimated Developable Acres	Development Tax Incr. Base Value*	Substantially Complete by	\$65.00 sq. ft. Building Est. EV
Phase I	188,000	11.65	396,101	12/31/2023	12,220,000

* Stated Purchase Price by Developer

Phase I Development		Real Estate Taxes Paid (1)				
Assessment / Levy Year	Taxes Due / Incentive Paid Year	Fair Market Value Land	Fair Market Value Improvements	Fair Market Value Real Estate	Fair Market Value Tax Rate	Real Estate Taxes
			\$65.00 sq. ft.			
2023	2024	\$396,101	\$3,666,000	\$4,062,101	17.50	\$71,087
2024	2025	396,101	12,220,000	12,616,101	17.50	220,782
2025	2026	396,101	12,220,000	12,616,101	17.50	220,782
2026	2027	396,101	12,220,000	12,616,101	17.50	220,782
2027	2028	396,101	12,220,000	12,616,101	17.50	220,782
2028	2029	396,101	12,220,000	12,616,101	17.50	220,782
2029	2030	396,101	12,220,000	12,616,101	17.50	220,782
2030	2031	396,101	12,220,000	12,616,101	17.50	220,782
2031	2032	396,101	12,220,000	12,616,101	17.50	220,782
2032	2033	396,101	12,220,000	12,616,101	17.50	220,782
2033	2034	396,101	12,220,000	12,616,101	17.50	220,782
Taxes Paid on Phase I:						2,278,904

Assessment / Levy Year	Taxes Due / Incentive Paid Year	Fair Market Value R.E.	Less: Development Tax Incr. Base Value	Value for Incentive Payment Fair Market	Value/Acre for Incentive Payment Fair Market	Gross or TID Fair Market Tax Rate (2)	TID Gross Increment Revenue	50% Development Incentive > \$250k/ac.	25% Development Incentive > \$500k/ac.	\$150,000 Maximum Fee Refund	Total Development Incentive & Fee Refund
2023	2024	\$4,062,101	(396,101)	\$3,666,000	\$314,678	19.22	\$70,461	\$2,912,500	\$5,825,000	63,219	\$70,461
2024	2025	12,616,101	(396,101)	12,220,000	1,048,927	19.22	234,868	89,445	30,728	86,781	206,954
2025	2026	12,616,101	(396,101)	12,220,000	1,048,927	19.22	234,868	89,445	30,728	--	120,173
2026	2027	12,616,101	(396,101)	12,220,000	1,048,927	19.22	234,868	89,445	30,728	--	120,173
2027	2028	12,616,101	(396,101)	12,220,000	1,048,927	19.22	234,868	89,445	30,728	--	120,173
2028	2029	12,616,101	(396,101)	12,220,000	1,048,927	19.22	234,868	89,445	30,728	--	120,173
2029	2030	12,616,101	(396,101)	12,220,000	1,048,927	19.22	234,868	89,445	30,728	--	120,173
2030	2031	12,616,101	(396,101)	12,220,000	1,048,927	19.22	234,868	89,445	30,728	--	120,173
2031	2032	12,616,101	(396,101)	12,220,000	1,048,927	19.22	234,868	89,445	30,728	--	120,173
2032	2033	12,616,101	(396,101)	12,220,000	1,048,927	19.22	234,868	89,445	30,728	--	120,173
2033	2034	12,616,101	(396,101)	12,220,000	1,048,927	19.22	234,868	89,445	30,728	--	120,173
Development Incentive Fee Phase I:								901,692	307,280	150,000	1,358,972

(1) Source: Property Tax Bills

(2) Source: DOR Form PC 202

* DeBack Farms Base Value calculated as follows for 2021 (\$4,106,700 AV / 120.785 acres = \$34,000 per acre)