

RESOLUTION NO. 2018-62

**RESOLUTION AUTHORIZING THE VILLAGE OF CALEDONIA TO
ENTER INTO A SECOND AMENDMENT TO DEVELOPMENT
AGREEMENT WITH WISPARK, LLC FOR THE DEVELOPMENT OF THE
DEBACK FARMS BUSINESS PARK IN
TAX INCREMENTAL DISTRICT NO. 4**

WHEREAS, the Village of Caledonia created Tax Incremental District No. 4 as a mixed use district to spur development near I94 in 2014 and amended the district in 2015 to include additional land and plans for infrastructure improvements and financial assistance for development (the “TID”); and

WHEREAS, the Village and WISPARK, LLC entered into that certain DeBack Farms Business Park Development Agreement pertaining to Village of Caledonia Tax Incremental District No. 4 dated as of July 27, 2016 (the “Development Agreement”) with respect to the land within the TID and amended the Development Agreement by the First Amendment to Development Agreement on September 29, 2016. The parties have agreed that the Development Agreement, as amended, should be further amended to modify certain sections of the agreement.

WHEREAS, the Second Amendment to Development Agreement between the Village of Caledonia and WISPARK, LLC and includes the following agreements and documents:

1. Agreement to Allow Private Construction of Utility Infrastructure by WISPARK, LLC by and between the Village of Caledonia, WISPARK, LLC, the Village of Caledonia Sewer Utility District, the Village of Caledonia Water Utility District and the Village of Caledonia Stormwater Utility District;
2. Temporary Construction Easement Agreement by and between the Village of Caledonia, WISPARK, LLC, the Village of Caledonia Sewer Utility District, the Village of Caledonia Water Utility District and the Village of Caledonia Stormwater Utility District;
3. Memorandum of Second Amendment to Development Agreement by and between the Village of Caledonia and WISPARK, LLC; and
4. Partial Release by and between the Village of Caledonia and WISPARK, LLC.

NOW, THEREFORE, BE IT RESOLVED by the Caledonia Village Board that the Second Amendment to Development Agreement between the Village of Caledonia and WISPARK LLC as set forth in Exhibit A attached hereto and incorporated herein, along with the four incorporated documents set forth above and included in Exhibit A, are hereby authorized and approved, and the Village President and Village Clerk are authorized to execute said document.

AGREEMENT TO ALLOW PRIVATE
CONSTRUCTION OF UTILITY
INFRASTRUCTURE BY WISPARK LLC

Document Number

Document Title

Recording Area

Name and Return Address

Attorney John M. Bjelajac
601 Lake Avenue
Post Office Box 38
Racine, Wisconsin 53401-0038

See Exhibit A attached hereto

Parcel Identification Number (PIN)

AGREEMENT TO ALLOW PRIVATE CONSTRUCTION OF
UTILITY INFRASTRUCTURE BY WISPARK LLC

This agreement (“Agreement”) is made and entered into as of the 16th day of July, 2018 (the “Effective Date”), by and between:

- a) WISPARK LLC, being a Wisconsin limited liability company with offices located at 231 West Michigan Street – P423, Milwaukee, Wisconsin 53203 (hereinafter referred to as “Developer”); and
- b) The VILLAGE OF CALEDONIA, being a municipal corporation and village created under the laws of the State of Wisconsin, with its Village Hall located at 5043 Chester Lane, Racine, Wisconsin 53402 (hereinafter referred to as the “Village”); and
- c) The VILLAGE OF CALEDONIA SEWER UTILITY DISTRICT and/or the VILLAGE OF CALEDONIA WATER UTILITY DISTRICT and/or the VILLAGE OF CALEDONIA STORMWATER UTILITY DISTRICT, being three separate utility districts established by the Village of Caledonia under the laws of the State of Wisconsin, with utility district offices located at 333 4½ Mile Road, Racine, Wisconsin 53402 (hereinafter jointly and severally referred to as the “District” in the singular tense, and/or the “Sewer Utility District” or the “Water Utility District” or the “Stormwater Utility District”, as may be appropriate).

Introduction

The Village is located in Racine County, Wisconsin. The Village, through the Utility District, owns and operates a municipal sanitary sewerage system, a municipal water system, and a stormwater system (hereinafter collectively referred to as the “District System” and/or separately as the “District Sewer System” or “District Water System” or “District Stormwater System”).

Developer is the sole record-title owner of the parcel of real property (hereinafter referred to as

the “Property”) located in the Village of Caledonia, Racine County, Wisconsin, that is described in attached Exhibit A.

Developer is creating a business park (the “Business Park”) on the Property. As a part of the creation of the Business Park, Developer wishes to contract directly with Ryan Incorporated Central (“Contractor”) for the purpose of constructing, in phases, the sanitary sewerage system, stormwater system, and watermain system in the Business Park (hereinafter collectively referred to as the “Business Park System” and/or separately as the “Business Park Sewer System” or “Business Park Water System” or “Business Park Stormwater System”).

The Business Park is being developed by Developer under and pursuant to a separate written agreement entitled “DeBack Farms Business Park Development Agreement/Village of Caledonia Tax Increment District No. 4” (the “Initial Agreement”), dated July 27, 2016, entered into by the Village and Developer, which Initial Agreement was then amended by the parties, through a written amendment entitled “First Amendment to Development Agreement”, dated September 29, 2016, and then further amended by the parties, through a written amendment entitled “Second Amendment to Development Agreement”, dated July 16, 2018. The Initial Agreement and the said two Amendments are hereinafter collectively referred to as the “Development Agreement”.

This present Agreement is being entered into by the above-named parties pursuant to the terms and provisions of the Development Agreement, to allow Developer and Contractor to construct the Business Park System (collectively, the “Construction Project”) on the Property. Additionally, this Agreement shall apply to, and be in effect for, each of the phases of the Construction Project(s) for the entire Business Park System.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES HEREINAFTER DESCRIBED, THE ABOVE-NAMED PARTIES HEREBY AGREE AS FOLLOWS:

1. Introduction is Correct. The foregoing “Introduction” is true and correct, and is hereby

incorporated into this Agreement by reference.

2. Consent of Village and District. The Village and District hereby grant permission to Developer and Contractor (through its contract with Developer) to undertake and perform the Construction Project for the Business Park System as a private project on private property.

3. Construction Project. The Construction Project shall be undertaken and performed by Contractor, and, except as set forth in the Development Agreement, Developer shall be solely responsible for the payment of all costs and expenses for the Construction Project. Developer expressly understands and agrees that the Village and the District will not be liable or responsible in any manner for any of the said costs and expenses of the Construction Project, except as may be provided for in the Development Agreement. Developer, through its contract with Contractor, will ensure that Contractor expressly understands and agrees that the Village and the District will not be liable or responsible to Contractor in any manner for any of the said costs and expenses of the Construction Project.

4. Compliance With Laws. The Construction Project shall be undertaken and performed in full compliance with:

- a) The terms and provisions of this Agreement and the Development Agreement;
- b) All applicable governmental laws, rules, regulations, statutes and ordinances; and
- c) All reasonable directives, rules and regulations of the Village and District, its officers, employees and consulting engineers; and
- d) All drawings, plans, specifications, blueprints, or diagrams reasonably required by and approved by the Village and/or District (such approval not to be unreasonably withheld).

5. Approval of Plans. Prior to any work being done on the Construction Project, (i) Developer shall first obtain the written approval from the District's engineers of all of the specifications, drawings, blueprints, diagrams and plans for the Construction Project (hereinafter collectively referred to as the "Plans"), and (ii) Contractor shall first have a Pre-construction meeting with the District's engineers regarding the Construction Project. The Plans shall be of a type and format, and have such content, as the District's engineers may reasonably require. Additionally, the Plans shall also be submitted to the

District's engineers in an electronic format approved by the District's engineers. Developer expressly understands and agrees that, in the event Developer does elect to undertake and perform the Construction Project, then the Business Park System shall then be constructed in compliance with the Plans approved by the District's engineers. The parties agree that the Plans may be submitted, reviewed and approved incrementally based upon the phases of the Business Park as mutually agreed by the Village and Developer in accordance with the Development Agreement.

6. Full Inspections. The Construction Project shall be inspected by the District's engineers, and all reasonable costs of such inspections shall be paid for by Developer. Developer shall provide the District with Contractor's work schedule (the "Work Schedule") for the Construction Project prior to any work on the Construction Project being undertaken, such Work Schedule (i) to specify the times, dates and type of work to be performed, and (ii) to have a format and content reasonably satisfactory to the District's engineers. Subject to Force Majeure, the Work Schedule shall not be increased or expanded in time or scope of work without first providing at least 48 hours prior written notice of such changes to the District's engineers. Developer and Contractor understand that it is the intent of the Village and District to have one or more inspectors at the construction site at all times during which work on the Construction Project is being performed. The District Engineers and/or their inspector(s) at the construction site shall have the full right and authority to stop work on the Construction Project whenever they believe that any such work or materials are not in compliance with the approved Plans for the Construction Project, and in such event Contractor shall then promptly cure any such failure of compliance before proceeding with any other work on the Construction Project. Notwithstanding the foregoing right and authority granted to the District's engineers (to stop the Construction Project in the event of a failure of compliance with the approved Plans), the parties to this Agreement expressly understand and agree that, as between the parties to this Agreement, Developer shall be the sole party responsible for (i) all safety measures required for the Construction Project, and (ii) the direction of all laborers and personnel doing the work on the Construction Project (except for the inspectors and engineers hired by the District or the Village), and (iii) all means and methods required to do the Construction Project. As used in this Agreement, the term

"Force Majeure" means a circumstance in which a party shall be delayed or hindered in, or prevented from, the performance of any work, service or other act required under this Agreement to be performed by such party and such delay or hindrance is due to: strikes, lockouts, or other labor disputes; inability to obtain labor or materials or reasonable substitutes therefor; or acts of God, governmental restrictions, delays of governmental approvals and projects outside of the control of the Village, enemy acts, civil commotion, terrorist acts, unusually severe weather, fire or other casualty, or other causes of a like nature beyond the control of the party so delayed or hindered.

7. Two-Year Guarantee. Developer shall, and hereby does, guarantee to the Village and the District that all work and materials furnished and performed on and for construction of the Business Park System shall be free from defects for a period of Two (2) Years from the date, as mutually determined by the parties, which is thirty (30) days after the Business Park System is substantially complete and capable of being operational. This two-year guarantee, however, shall not in any manner limit, change or amend any applicable statutes of limitation regarding Developer's duties under this Agreement to construct the Business Park System in compliance with the approved Plans for the same. In the event any defect(s) is discovered during such two-year time period, the District and/or Village shall notify Developer in writing, and, subject to Force Majeure, Developer shall cause such defect(s) to be corrected within Sixty (60) calendar days (or within such shorter period designated by the Village or District if the public health and safety so require). If Developer shall fail to do so within such 60-day time period (as may be extended for Force Majeure), or if the public safety requires the remedied work to be done sooner and Developer is not able to timely do so, then the District and/or Village may cause such defect(s) to be corrected, and Developer shall reimburse the District and/or Village for any reasonable costs incurred by the District and/or Village in doing so, including any construction, engineering, legal or administrative costs with respect to the said remedial work.

8. Transfer of Ownership. Upon the full completion of each phase of the Business Park System and upon the Village and the District then accepting the same in writing, the ownership of the completed phase of the Business Park System shall, effective as of the date of the said written acceptance

by the Village and District, be transferred and conveyed to the Village and the District. With respect to such transfer/conveyance of ownership to the Village and District:

- a) The said transfer/conveyance shall be deemed to occur and become effective immediately and automatically at the time of the written acceptance of each completed phase of the Business Park System by both the Village and the District, without any further documents being required; and
- b) The said transfer/conveyance of ownership, however, shall not include (i) any portion of the sewer laterals and/or water laterals that are located outside of the public right-of-way and/or outside of any Village/District easement area(s), and/or (ii) any uncompleted phases of the Business Park System.

9. Reimbursement for Costs. Developer shall, within Thirty (30) Days after receiving a written itemized invoice(s) from the District for the same, reimburse and pay to the Village and/or District all reasonable engineering, inspection, administrative and legal costs incurred by the Village and/or District with respect to the Construction Project (collectively, the "Reimbursable Costs"); provided, however, that in no event shall the aggregate Reimbursable Costs payable under this Agreement exceed \$25,000. The Reimbursable Costs shall expressly include, but not be limited to, all reasonable: (i) engineering costs incurred in the review of the Plans for the Construction Project, and (ii) inspection costs for the Construction Project, and (iii) legal costs of the District's attorney pertaining to the Construction Project and/or this Agreement, and (iv) costs incurred for the District's engineers to conduct any final survey(s) and drafting of as-built plans for the Business Park System.

10. Insurance. Developer shall, within Thirty (30) calendar days after the date of this Agreement, and prior to any work on the Construction Project(s) being commenced, procure and then maintain, or at a minimum cause Contractor to procure and maintain, during the entire Construction Project(s) (for each phase) the policies of insurance described in attached Exhibit B. The Village, the District, and the District's engineering firm shall, at the cost and expense of Developer, be named as additional insureds in such policies of insurance. Developer shall deliver to the Village and District,

within the said 30-day time period described above in this paragraph, a written certificate(s) from the insurer(s) showing such insurance policies to be in effect, including endorsements that specifically list the required additional insureds.

11. Indemnification. Developer agrees to INDEMNIFY AND HOLD HARMLESS the Village and District, and their respective officials, officers, employees, consultants, engineers and all agents (collectively, the "Indemnified Parties"), from and against any and all claims, judgments, damages, costs and expenses (including, but not limited to, reasonable actual attorney's fees) and any other liability that may arise, directly or indirectly, as a result of:

- a) Developer and/or Contractor undertaking and performing the Construction Project(s); and/or
- b) Developer failing to comply with the terms and provisions of this Agreement and/or the Development Agreement.

Such indemnification, however, shall not apply to any intentional acts or omissions and/or acts of negligence on the part of any of the Indemnified Parties.

12. Right of Village/District To Complete The Project. If Developer commences the Construction Project (by having Contractor commence actual excavation work and/or construction work on site) but then fails to complete the Construction Project in accordance with the Work Schedule (subject to extensions for Force Majeure), and if such failure to complete the Construction Project continues for sixty (60) days or more after Developer receives written notice of such failure from the Village or the District, then, in addition to any and all other remedies available to the Village and/or the District under the law:

- a) The Village and/or District may, at its option, complete the said Construction Project by doing such remaining work (the "Completion Work") as a publicly-bid Village project; and
- b) Developer shall reimburse the Village and/or District for all reasonable costs incurred by the Village/District in doing the Completion Work (such costs to be supported by paid

invoices and lien waivers reasonably acceptable to Developer); and

- c) Without in any manner limiting its available remedies under the law, the Village and/or District may obtain reimbursement of all such costs for the Completion Work through (i) a levy of special assessments and/or special charges (collectively referred to as the "Special Assessment") on the Property pursuant to the terms and provisions of Section 66.0703 of the Wisconsin Statutes and/or any other applicable statutes, and/or (ii) a reduction in the payments of TIF Incentive Funds (as may be applicable, and as that term is defined in the Development Agreement) to Developer. Developer hereby waives all procedural rights that Developer may have under the laws of the State of Wisconsin with respect to such an imposition of the Special Assessment on the Property for items required of Developer under this Section 12(c). This waiver includes, but is not limited to, the requirement of a written notice and a public hearing as required under Section 66.0703 of the Wisconsin Statutes and/or any other special assessment statutes.
- d) Additionally, the "Completion Work" described above may also consist of the following other types of work during the construction of the Business Park System should the Village and/or District so elect:
 - (i) Undertaking whatever work may be necessary to protect and maintain the Business Park System at its then-existing stage of completion; and/or
 - (ii) Removal of part or all of the Business Park System and restoration of the disturbed areas of the Business Park Property.

Notwithstanding the above procedures, if the public health, welfare and safety requires that any work be done to the Business Park System immediately to prevent imminent harm to the public health, safety or welfare and Developer is not able to timely do so as determined by the District and/or the Village, then the District and/or Village may cause such work to be accomplished, and Developer shall reimburse the District and/or Village for any reasonable costs incurred by the District and/or Village in doing so, including any construction, engineering, legal or administrative costs with respect to the said work.

13. Coordination with the Development Agreement. All as described in the above Introduction, this present Agreement is being entered into by the parties as part of, and pursuant to, the Development Agreement. In the event any conflict between the terms and provisions of this Agreement and the Development Agreement, the terms and provisions of the Development Agreement shall control.

14. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns, except, however, Developer may not assign its rights, duties and responsibilities under this Agreement to any other third party without first obtaining the prior written consent of the Village, which consent the Village may grant or deny in its respective sole and absolute discretion.

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

16. Default; Right to Cure. Developer shall not be in default hereunder and the Village and the District shall not have the right to pursue any remedies for default against Developer unless within sixty (60) days after written notice from the Village or the District to Developer setting forth such default Developer fails to commence and use commercially reasonable efforts to diligently pursue the cure of such default. Notwithstanding the above procedures, if the public health, welfare and safety requires that any work be done to the Business Park System immediately to prevent imminent harm to the public health, safety or welfare and Developer is not able to timely do so as determined by the District and/or the Village, then the District and/or Village may cause such work to be accomplished, and Developer shall reimburse the District and/or Village for any reasonable costs incurred by the District and/or Village in doing so, including any construction, engineering, legal or administrative costs with respect to the said work.

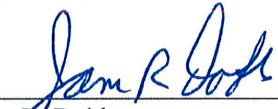
17. Sales of Parcels. So long as Developer is not in default under this Agreement after the expiration of applicable notice and cure periods, upon the sale or other conveyance of any portion of the

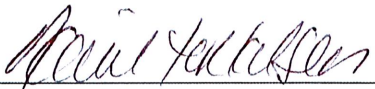
Property for individual site development for a Project, the Village and the District shall promptly provide Developer with an executed original release, in recordable form, of such portion of the Property from the terms, covenants and conditions of this Agreement. Such release shall be in form and content mutually agreeable to Developer and the Village. Such release shall not be given in the event of a Bulk Sale. Notwithstanding any such release(s), Developer shall remain bound by the terms, covenants and conditions of this Agreement and Developer shall remain responsible to construct the Business Park System so that such portion of the Property can be connected to the Business Park System.

18. Future Stormwater Agreement. The parties shall, in the future, enter into a Stormwater Easement Agreement, for the construction by Wispark, at Wispark's cost and expense, of a stormwater drainage system, designed by Wispark's consulting engineers and approved by the Village and the District. This Stormwater Easement Agreement (i) shall be entered into by the parties after "Pond 7" of the Business Park has been constructed, as-built and certified by the design engineer, and (ii) shall contain the terms and provisions reasonably required by the Village and the District, with the text to be in keeping with its standard terms and provisions historically used by the Village/District for such an agreement.

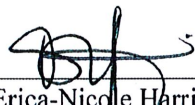
[Signatures appear on the following page.]

VILLAGE:
Village of Caledonia

By: 
James R. Dobbs
Village President

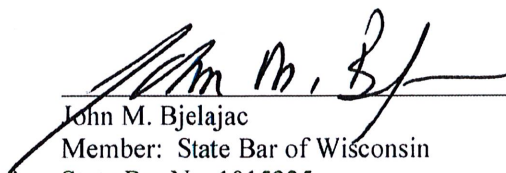
Attest: 
Karie Torkilsen
Village Clerk

DEVELOPER:
WISPARK LLC

By: 
Erica-Nicole Harris
Vice President

AUTHENTICATION

Signatures of Erica-Nicole Harris, on behalf of Developer, and James R. Dobbs and Karie Torkilsen, Village President and Village Clerk, respectively, of the Village of Caledonia, authenticated this 16th day of July, 2018.


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

This Agreement drafted by
Attorney John M. Bjelajac
601 Lake Avenue
Post Office Box 38
Racine, Wisconsin 53401-0038
Phone: (262)633-9800
FAX: (262)633-1209
(Attorney for the Village of Caledonia,
and the Village of Caledonia Water
Utility District, Sewer Utility District, and
Stormwater Utility District)

EXHIBIT A

Description of the Property

Lot 1 and Lot 2, Certified Survey Map No. 3302, recorded on July 13, 2018, in Volume 10 of Certified Survey Maps, pages 918-929, as Document No. 2498467, being a redivision of all of Lot 2 of Certified Survey Map No. 3219, 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 Keys: Lot 1 is 104-04-22-30-015-201
 Lot 2 is 104-04-22-30-015-202

Address: Adams Road

EXHIBIT B

Policies of liability insurance shall be reasonably satisfactory to the Village and District.

Memorandum of Second
Amendment to
Development Agreement

Document Number

Document Title

Recording Area

Name and Return Address

Elaine Sutton Ekes, Esq.
Pruitt, Ekes & Geary, S.C.
610 Main Street, Suite 100
Racine, WI 53403

See Exhibit A

Parcel Identification Number (PIN)

Memorandum of Second Amendment to Development Agreement

This Memorandum of Second Amendment to Development Agreement is made and entered into this ____ day of July, 2018, by and between the Village of Caledonia, Wisconsin (the "Village") and Wispark LLC ("Wispark").

RECITALS

A. The Village and Wispark entered into that certain Second Amendment to Development Agreement dated as of July ____, 2018 (the "Second Amendment"), amending that certain DeBack Farms Business Park Development Agreement pertaining to Village of Caledonia Tax Incremental District No. 4 dated as of July 27, 2016 and amended by that certain First Amendment to Development Agreement dated as of September 29, 2016 (as amended, the "Development Agreement") with respect to the land described on Exhibit A attached hereto and all improvements located and to be located thereon (collectively, the "Property").

B. The parties desire to place of record the Second Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. Notice is hereby given that the Village and Wispark have entered into the Second Amendment governing the development of the Property, the installation of public and private improvements thereon, the allocation of certain rights and responsibilities regarding Tax Incremental District No. 4 and the financing of certain development costs, and the obligations of Wispark vis-à-vis development of the Property and payment of certain project costs.

2. Upon the conveyance of any portion of the Property for individual site development for a Project or Projects, such portion shall no longer be subject to the consents, obligations, waivers, and other requirements of Wispark as set forth in the Second Amendment or the Development Agreement (except for the Restrictive Covenant, as defined in the Development Agreement, which is the subject of a separate instrument being recorded against the Property). Within thirty (30) days after Wispark's request, the Village shall provide an original partial release of this Memorandum, in recordable form, at the time of the conveyance of any portion of the Property for individual site development for a Project or Projects, releasing such portion of the Property from this Memorandum. Notwithstanding this requirement, in the event of a Bulk Sale, the provisions of the Development Agreement, and all consents, obligations, waivers and other requirements thereof, shall continue to run with land in accordance with the Development Agreement provisions.

3. The terms, conditions and other provisions of the Second Amendment are set forth in the Second Amendment, express reference to which is made for greater particularity as to the terms, conditions and provisions thereof. A copy of the Second Amendment is available upon request from the Village at the offices of the Village Clerk. Capitalized terms used but not defined in this Memorandum shall have the meanings given to such terms in the Second Amendment or the Development Agreement.

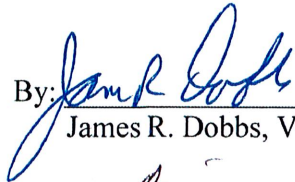
4. This Memorandum is not a complete summary of the Second Amendment. Provisions in this Memorandum shall not be used in interpreting the provisions of the Second


Amendment. In the event of conflict between this Memorandum and the unrecorded Second Amendment, the unrecorded Second Amendment shall control.

5. This Memorandum shall be binding upon the parties hereto and their successors and assigns and shall run with the Property.

IN WITNESS WHEREOF, this Memorandum is executed as of the date first above written.

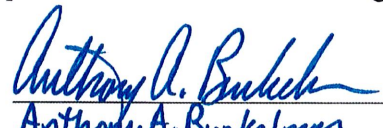
VILLAGE OF CALEDONIA

By: 
James R. Dobbs, Village President

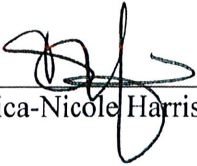
Attest: 
Karie Torkilsen, Village Clerk

STATE OF WISCONSIN }
 } SS
COUNTY OF RACINE }

Personally came before me this 16th day of July, 2018, the above named Village President and Village Clerk, to me known to be the persons who executed the foregoing instrument.



Anthony A. Bunkelmer
Notary Public, State of Wisconsin
My Commission: July 26, 2019

WISPARK LLC

By:  _____
Erica-Nicole Harris, Vice President

STATE OF WISCONSIN }
 Racine }
COUNTY OF ~~MILWAUKEE~~ } SS
 }

Personally came before me this 16th day of July, 2018, the above named Erica-Nicole Harris, the Vice President of Wispark LLC, to me known to be the person who executed the foregoing instrument on behalf of said limited liability company.



* Anthony A. Bunkelman
Notary Public, State of Wisconsin
My Commission: July 26, 2019

This instrument was drafted by:

Joseph E. Puchner, Esq.
Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Exhibit A

Legal Description of the Property

Lot 1 and Lot 2, Certified Survey Map No. 3302, recorded on July 13, 2018, in Volume 10 of Certified Survey Maps, pages 918-929, as Document No. 2498467, being a redivision of all of Lot 2 of Certified Survey Map No. 3219, 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 Keys: Lot 1 is 104-04-22-30-015-201
 Lot 2 is 104-04-22-30-015-202

Address: Adams Road

Second Amendment to Development Agreement

This Second Amendment to Development Agreement is made and entered into this 16th day of July, 2018, by and between the Village of Caledonia, Wisconsin (the “Village”) and Wispark LLC (the “Developer”) (the “Second Amendment”).

RECITALS

A. The Village and the Developer entered into that certain DeBack Farms Business Park Development Agreement pertaining to the development of the DeBack Farms Business Park (the “Business Park”) in the Village of Caledonia Tax Incremental District No. 4 dated as of July 27, 2016 (the “Development Agreement”) with respect to the land described on **EXHIBIT A** attached hereto and incorporated herein and all improvements located and to be located thereon (collectively, the “Property”). The Development Agreement was amended by the parties on September 29, 2016 to further address the Business Park.

B. The parties placed the Development Agreement of record by recording a Memorandum of Development Agreement with the Racine County Register of Deeds as Document No. 2441100 on August 1, 2016 to put the public on notice of the obligations and responsibilities of the Village and the Developer under the Development Agreement.

C. The parties have agreed that the Development Agreement, as amended, should be further amended by this Second Amendment to modify certain sections of the agreement to address Phase 3 of the Business Park.

Now, therefore, in consideration of the recitals and mutual agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Agreement

1. **Recitals.** The above recitals, which are incorporated herein by reference, are true and correct.

2. **Definitions.**

A. **Prior Definitions.** Capitalized terms used herein but not otherwise defined herein shall have the meaning ascribed to them in the Development Agreement.

B. **Revised Definitions.** For purposes of this Second Amendment, the following terms shall have the following meanings.

1) **Commence Construction.** Means when the Developer commences construction of a significant component of the Infrastructure Improvements that service Phase 3 of the Development (as described on **EXHIBIT B** attached hereto and incorporated herein), including by way of illustration only and not limitation, topsoil stripping and mass grading activities, the construction of underground facilities (such as storm water, sanitary sewers and water mains) and subgrade for internal roadways and roadway construction.

2) **Complete Construction.** Means when the Developer substantially completes construction of the Public Improvements on Phase 3 of the Development.

3) **Phase 3 Development Plan.** Means the general development plan for Phase 3 of the Property as approved by the Village, together with all modifications or amendments thereof, as approved by the Village. A modified Development Plan is attached as **EXHIBIT C** and incorporated herein by reference. The Development Plan consisted of three (3) phases which shall be referred to herein as “Phase 1”, “Phase 2” and “Phase 3” or collectively as the “Phases”. Upon the approval by the Village of the final Phase 3 development plan for the Property, the term “Phase 3 Development Plan” shall include the final development plan for the Property, together with all modifications or amendments thereof, as approved by the Village.

4) **Infrastructure Improvements.** Means roads, curb and gutter, site grading (including rough grading for parcel preparation and grading of the Property to provide a unified project stormwater system), storm water management facilities, drainage swales and pipes, and sanitary sewer and water main improvements to be constructed by the Developer and dedicated to and accepted by the Village for the Development, as set forth in **EXHIBIT B** attached hereto and incorporated herein.

5) **Property.** Means the property described in **EXHIBIT A** attached hereto and incorporated herein.

6) **Village Financing.** Means for purposes of this Second Amendment and for the purposes of the Development Agreement only the amount of Eleven Million Two Hundred Thousand Dollars (\$11,200,000.) for the TIF Incentive Funds and Village costs related to the Property and the Property as originally defined under the Development Agreement, including, but not limited to, capitalized interest and issuance costs and expenses. The Developer recognizes that the Village is incurring a significant amount of District eligible expenses to extend infrastructure to the Property beyond the amount in this definition.

7) **Village Projects.** Means the improvements to be made by the Village in accordance with competitive bidding law requirements, including but not limited to reconstructing a portion of the existing 4 Mile Road public right-of-way, constructing a sanitary sewer and water main in the 4 Mile Road public right-of-way, and constructing a sanitary sewer main on the Property in a permanent easement to be granted by the Developer, as shown on **EXHIBIT D** attached hereto.

3. **Conditions Satisfied.** The conditions set forth under Section V(A) and (B) of the Development Agreement have been satisfied.

4. **Additional Developer Obligations.** The Developer shall develop the Property in accordance with this Second Amendment, and the Development Plan, including any conditions of approval reasonably required by the Village. The Developer and the Village acknowledge that the Developer has previously completed Phase 1 and the planned building pad for Phase 2 of the original Development Plan together.

A. **Other Approvals.** The Developer agrees to obtain all necessary local, county, state and federal approvals and permits for the Development, including without limitation approvals and permits for engineering grading, storm water, sewer and water,

design and construction plans and specifications. The Village agrees that its approval will not be unreasonably withheld, delayed or conditioned.

B. Commence Construction. The Developer shall Commence Construction within Sixty Days (60 days) after execution of this Second Amendment.

C. Infrastructure Improvements. The Developer shall submit plans and specifications for the Infrastructure Improvements for Phase 3 (collectively, the “Plans and Specifications”) for review and approval by the Village Public Works Director and the Village’s Utility Director; such approval will not be unreasonably withheld, delayed or conditioned. The Developer shall pay all costs to design and construct/install the Infrastructure Improvements described in **EXHIBIT B** in connection with the Development. The Infrastructure Improvements, except for Village Projects, shall be constructed by the Developer in substantial accordance with the Phase 3 Development Plan, Village ordinances and requirements, and the approved Plans and Specifications.

1) **Road Improvements.** With respect to internal roads within the Development, the following shall apply. The Village Public Works Director shall inspect the sub-base of the road prior to the installation and shall create a punch list of any repair or maintenance items related to sub-base road construction that shall be accomplished by the Developer prior to the installation. When the sub-base road construction has been completed by the Developer and approved by the Village, the Village shall inspect such sub-base road construction and other improvements for compliance with Village ordinances and standards prior to installation of the stone base. The Developer shall maintain the stone base road construction and associated improvements in accordance with the maintenance guarantees provided in the Village ordinances and this Agreement. The Developer shall be responsible for the maintenance, plowing and dust control measures of the roads at its expense until the asphalt binder courses are installed by the Developer and accepted by the Village. The Developer shall be responsible for re-grading and shaping the roads at its expense prior to the asphalt work being done. The Village Public Works Director shall inspect the stone base of the road prior to the installation of the binder course of asphalt and shall create a punch list of any repair or maintenance items related to the stone base road construction that shall be accomplished by the Developer prior to the installation. Once the stone base road construction is inspected and accepted by the Village, the asphalt binder course shall be installed by the Developer within a timeframe mutually determined by the Village Public Works Director and the Developer, taking into consideration any additional time that may be needed to allow for acceptable compaction (and taking into consideration the seasonal shutdown of asphalt production facilities). The Developer shall install the binder course of asphalt per Village Public Works Director specifications, on all such roads or parts thereof utilizing Stark Pavement Corp. After installation of the asphalt binder course, the Village Public Works Director shall inspect such work and the Developer shall correct any areas of asphalt that are defective. Before installation of the surface course of asphalt, the Developer shall notify the Village Public Works Director at least five (5) business days prior to the intended date of installation. The Village Public Works Director shall be allowed the opportunity to inspect the asphalted road prior to the installation of the surface course of asphalt and to create a punch list of any repair or maintenance items related to the binder course that shall be accomplished by the Developer at the Developer’s expense prior to the installation of the surface course of asphalt. Upon direction of the Village Public Works Director, the Developer shall also install the surface asphalt and complete the final work on such roads in utilizing the

same contractor that installed the binder course or other contractor reasonably acceptable to the Village. The surface asphalt and final work shall be done within a timeframe mutually determined by the Village Public Works Director and the Developer (taking into consideration the seasonal shutdown of asphalt production facilities). The Developer, and its contractors, shall also abide by the provision of Resolution 2000-26, relating to road barricades, which are incorporated herein by reference.

2) **Sewer, Water and Storm Water Improvements.** The Developer shall enter into a separate agreement with the Village and the Village of Caledonia Sewer Utility District, the Village of Caledonia Water Utility District and the Village of Caledonia Stormwater Utility District addressing and governing the requirements of the respective districts prior to commencing construction of any sewer, water and storm water improvements (the "Utility Agreement"). Further the Developer shall grant any and all such easements required by such Utility Agreement and in accordance with such Utility Agreement and without additional compensation.

3) **Schedule.** The Developer agrees that it shall diligently pursue the construction and completion of such Infrastructure Improvements in accordance with an overall schedule to be agreed upon by the Village and the Developer (the "Infrastructure Improvements Schedule"), and that, subject to conditions of Force Majeure, it shall Complete Construction within twelve months (12) after the date on which it has Commenced Construction (or within such longer period of time as is mutually agreeable to the Village and the Developer). Upon inspection and acceptance of the Infrastructure Improvements by the Village, the Developer shall transfer full ownership to the Village of the road rights-of-way, sanitary sewer, storm sewer and water utilities of the Infrastructure Improvements, as well as grant permanent and temporary easements for access to such Infrastructure Improvements and dedicate rights-of-way encompassing street and sidewalk improvements in areas mutually determined by the Village and the Developer. In the event that the Developer fails to complete the Infrastructure Improvements in accordance with the approved Plans and Specifications and the Infrastructure Improvements Schedule, the Village shall provide written notice of such failure to the Developer and the Developer shall have a period of sixty (60) days after receipt of such notice to cure the failure; provided, however, that if the Developer is unable to cure such failure within such 60-day period despite the Developer's diligent efforts, the time for cure shall be extended for so long as the Developer is using diligent efforts to effect such cure. In the event that the Developer is unable to cure the failure within the cure period described herein, then upon written notice to the Developer the Village shall have the right to enter upon the Property to complete the Infrastructure Improvements and specially assess the reasonable costs for such completion work against the Property. Any such special assessment shall bear interest at the rate of Four and One-Half Percent (4.5%) per annum until paid, and shall be payable in full with the next annual general property tax bill. The Developer hereby waives the procedural requirements and rights that the Developer has under the laws of the State of Wisconsin regarding such imposition of a special assessment on the Property (i.e., due to the Developer 's failure to complete the Infrastructure Improvements and the Village's cure of such failure, as set forth herein). Such legal rights being hereby waived include, but are not limited to, the requirement of a written notice and public hearing as required under Section 66.0703 of the Wisconsin Statutes, and/or any other special assessment statutes or Village ordinance. The Developer hereby consents and agrees to the imposition of such special assessment on the Property as described above, and the Developer further waives any right to appeal from such special assessment.

D. As-Built Plans. Upon written acceptance of all Infrastructure Improvements by the Village, the Village and District will prepare at the Developer's expense, a complete set of as-built plans. The Developer shall provide the Development's electronic drawings and associated files compatible with a computer-aided design (CAD) system for preparation of said as-built drawings. The as-built plans shall be prepared by modification of the construction drawings to reflect as-built data for streets, water mains, storm and wastewater collection systems, and all other relevant public improvements. This information must be provided in an electronic form approved by the Village Public Works Director prior to the issuance of an occupancy permit.

E. Guaranty. The Developer warrants and guarantees all Infrastructure Improvements installed on the Property against all defects in workmanship and materials, and shall be liable for the cost of maintenance, repair and/or reconstruction of any public improvements for a period of two (2) years after the substantial completion of such Infrastructure Improvements (the "Guaranty Period"). This Guaranty Period, however, shall not in any manner limit, change or amend any applicable statutes of limitation regarding the improvements.

F. Building Pad F. The development of Building Pad F, as depicted on EXHIBIT C, may require a separate development agreement with the Village for the development of such land to address any needed infrastructure necessary to serve Building Pad F or as may otherwise be required by the Village's Code of Ordinances.

5. **Village Obligations.**

A. Village Projects. The Village shall design and construct improvements to road, sanitary sewer and water infrastructure within the public rights-of-way of Four Mile Road, subject to Village specifications and requirements and in compliance with competitive bidding laws. The Village and the Developer shall mutually determine when such Village Projects shall be constructed. The base cost for the Village Projects construction shall be in an amount to be agreed upon by the Village and the Developer as part of the Project Costs Budget and shall be deducted from the TIF Incentive Funds for the Phase in which they are constructed and retained by the Village. The anticipated locations of the Village Projects are shown on EXHIBIT D.

B. Prospective Development at Building Pad D. The Developer has reached a purchase and sale agreement with a prospective purchaser for Building Pad D and has submitted a request to divide the Property to create Lot 1 encompassing Building Pad D to be sold to the prospective purchaser (the "Prospective Development"). If prior to December 1, 2018 (i) the Village has not completed the sanitary sewer infrastructure required to service the Prospective Development (the "Sanitary Sewer Improvements") and (ii) construction of the principal building located within the Prospective Development is substantially complete, then the Village at its cost will provide a temporary sanitary sewer system to the Prospective Development on or before December 1, 2018 so that the Prospective Development can obtain an occupancy permit. If prior to December 1, 2018 the Village has not completed the Sanitary Sewer Improvements but the construction of the principal building located within the Prospective Development is not yet substantially complete, then the Village at its cost will provide a temporary sanitary sewer system to the Prospective Development within thirty (30) days after substantial completion of such principal building, so that the Prospective Development can

obtain an occupancy permit. The Village shall provide one of two options for a temporary sanitary sewer:

1. Installation of a temporary holding tank (which will be installed in a location determined by the Village, maintained and pumped by the Village) until the Sanitary Sewer Improvements have been completed for connection by lateral at Four Mile Road; or
2. Installation of a temporary grinder pump system to connect to a sanitary manhole of the Village's choosing until the Sanitary Sewer Improvements have been completed for connection by lateral at Four Mile Road.

The Village shall, at the Village's expense, convert the foregoing temporary sanitary solution to the permanent system within thirty (30) days after the completion of the Sanitary Sewer Improvements, and (a) if the temporary sanitary solution is a holding tank, remove such tank and restore the surrounding property by June 1, 2019 after the completion of the Sanitary Sewer Improvements, and (b) if the temporary sanitary solution is the installation of a grinder pump system, remove such system and cut off and seal all piping connecting to such system within sixty (60) days after the completion of the Sanitary Sewer Improvements.

If the Village implements one of these two options, the Developer and its Prospective Development shall grant any and all necessary easements to the Village without additional compensation in locations necessary for the installation of such options.

6. **Section VI(I)(2) of the Development Agreement.** Section VI(I)(2) of the Development Agreement is modified to read as follows with respect to Phase 3 of the Development:

(2) **Costs Sharing for Phase 3 Public Sanitary Sewer and Water Improvements.**

a. **Developer Costs.** The Developer shall pay all costs for sewer, water and storm water infrastructure installed by it on the Property in accordance with the Agreement to Allow Private Construction of Utility Infrastructure between the parties entered into contemporaneously with this Second Amendment.

b. **Special Assessments.** The Developer acknowledges that the Village will, as a part of a uniform assessment against benefitted properties of certain costs for the Village's construction of a 36" sanitary sewer extension that traverses the Property along the westerly boundary line of the Property, a 16" water main and a 30" sanitary sewer interceptor in the Four Mile Road right-of-way, as well as laterals providing service to adjacent properties, assess against the Property certain costs in accordance with a special assessment report to be issued by the Village. The Developer agrees that the Property will be benefitted by the construction and installation of such improvements. The Developer hereby consents and agrees to the imposition of such special assessments on the Property

as described above. The estimated special assessments to be imposed by the Village against the Property for water main improvements is \$110,077.32. The estimated special assessment to be imposed by the Village against the Property for sewer main improvements is \$282,561.43. The Developer shall pay such special assessments to the Village in accordance with the terms and conditions of a Village resolution approving a special assessment report to be filed by the Village Engineer and setting forth the terms of payment for those property owners specially assessed.

7. **Memorandum of Second Amendment.** The Parties hereto agree to record a memorandum of this Second Amendment (the "Second Amendment Memorandum") against title to the Property. The form and substance of such Second Amendment Memorandum shall be mutually agreeable to the Village and the Developer. Within ten (10) days after the Developer's request, the Village shall provide an original partial release of the Second Amendment Memorandum, in recordable form, for individual site development, releasing such portion of the Property from this Second Amendment and the Second Amendment Memorandum (provided that the released parcel remains subject to the Declaration and the Restrictive Covenant).

8. **Counterparts.** This Second Amendment may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same agreement. Facsimile signatures shall be deemed original signatures for all purposes of this Second Amendment.

9. **Severability.** Any provision of this Second Amendment that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Second Amendment in such jurisdiction or affecting the validity or enforceability of any provision in any other jurisdiction.

10. **Time.** Time is of the essence of each and every obligation or agreement contained in this Second Amendment.

11. **Headings.** The headings in this Second Amendment are for reference only and are not intended to modify any of the terms and conditions of this Second Amendment.

12. **Compliance.** Nothing herein is intended to or has the effect of releasing the Developer from compliance with all applicable laws, rules, regulations and ordinances in addition to compliance with all terms, conditions and covenants contained in this Second Amendment, and the Development Agreement, and all other documents executed in connection therewith.

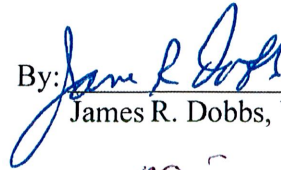
13. **Scope.** Except as set forth in this Second Amendment, the Development Agreement, as amended, shall remain in full force and effect. The parties hereby reaffirm their obligations in accordance with the terms and provisions of the Development Agreement, as amended, and this Second Amendment.

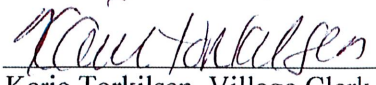
[Signatures appear on the following pages]

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IN WITNESS WHEREOF, this Second Amendment is executed as of the date first above written.

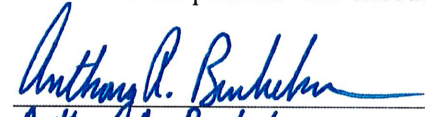
VILLAGE OF CALEDONIA

By: 
James R. Dobbs, Village President

Attest: 
Karie Torkilsen, Village Clerk

STATE OF WISCONSIN }
 } SS
COUNTY OF RACINE }

Personally, came before me this 16th day of July, 2018, the above named Village President and Village Clerk, to me known to be the persons who executed the foregoing instrument.


Anthony A. Bunkelman
Notary Public, State of Wisconsin
My Commission: July 26, 2019

WISPARK LLC

By: [Signature]
Scott J. Lauber, President

By: [Signature]
Erica-Nicole Harris, Vice President

STATE OF WISCONSIN }
COUNTY OF MILWAUKEE } SS

Personally, came before me this 16 day of July, 2018, the above named Scott J. Lauber, the President of Wispark LLC, to me known to be the person who executed the foregoing instrument on behalf of said limited liability company.

[Signature]
* Susan L. Warzala
Notary Public, State of Wisconsin
My Commission: 2/2/2021

STATE OF WISCONSIN }
COUNTY OF Milwaukee } SS

Personally, came before me this 16 day of July, 2018, the above named Erica-Nicole Harris, the Vice President of Wispark LLC, to me known to be the person who executed the foregoing instrument on behalf of said limited liability company.

[Signature]
* Susan L. Warzala
Notary Public, State of Wisconsin
My Commission: 2/2/2021

This instrument was drafted by:

Elaine S. Ekes
Pruitt, Ekes & Geary, S.C.
610 Main St. Suite 100
Racine, WI 53402
State Bar No. 1028252

EXHIBIT A

Description of the Property

Lot 1 and Lot 2, Certified Survey Map No. 3302, recorded on July 13, 2018, in Volume 10 of Certified Survey Maps, pages 918-929, as Document No. 2498467, being a redivision of all of Lot 2 of Certified Survey Map No. 3219, 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 Keys: Lot 1 is 104-04-22-30-015-201
 Lot 2 is 104-04-22-30-015-202

Address: Adams Road

EXHIBIT B

Infrastructure Improvements

The Infrastructure Improvements shall be determined by mutual agreement of the Village and the Developer and shall generally consist of the following improvements:

1. Street improvements;
2. Site work for roadway and detention ponds including landscaping in the right of way;
3. Sanitary sewer, storm and water utilities;
4. Street lighting to be within the right of way;
5. Site grading, including rough grading for parcel preparation and grading of the Property to provide for a unified stormwater system for the Development; and
6. Other public infrastructure improvements to be constructed by the Developer and dedicated to and accepted by the Village.

EXHIBIT C

Phase 3 Development Plan

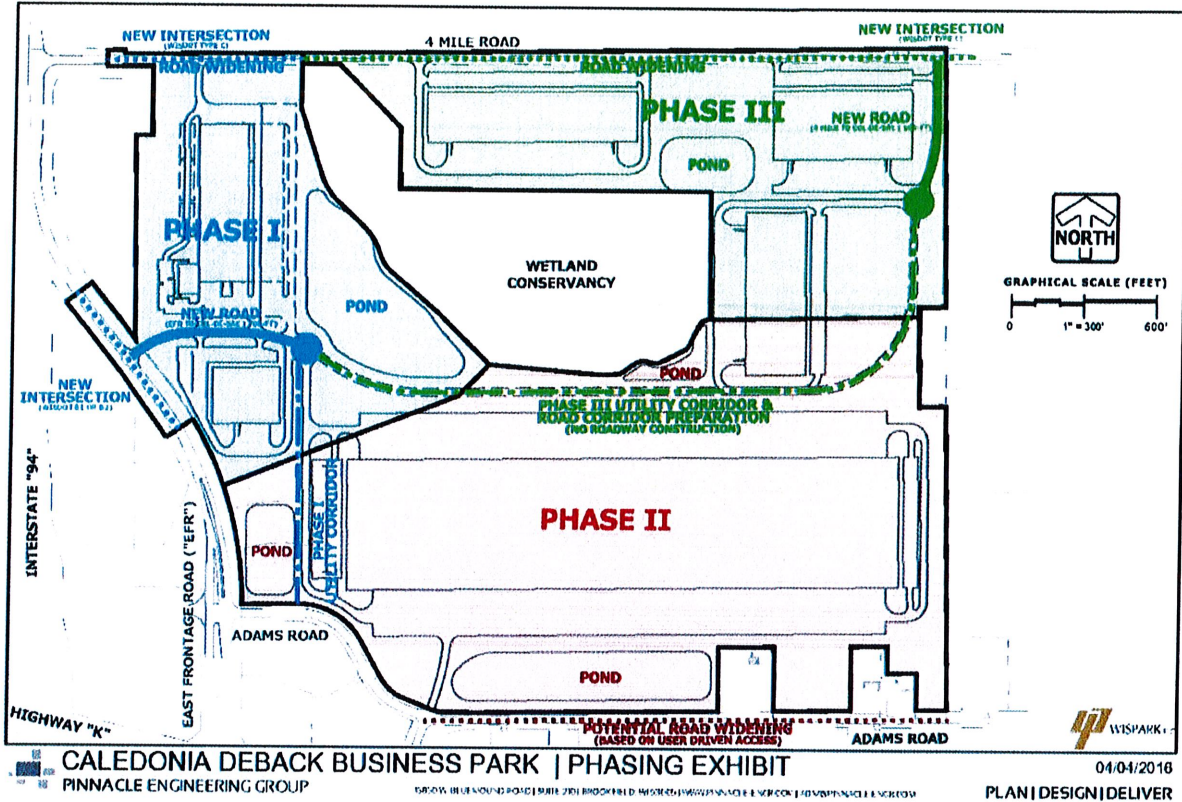
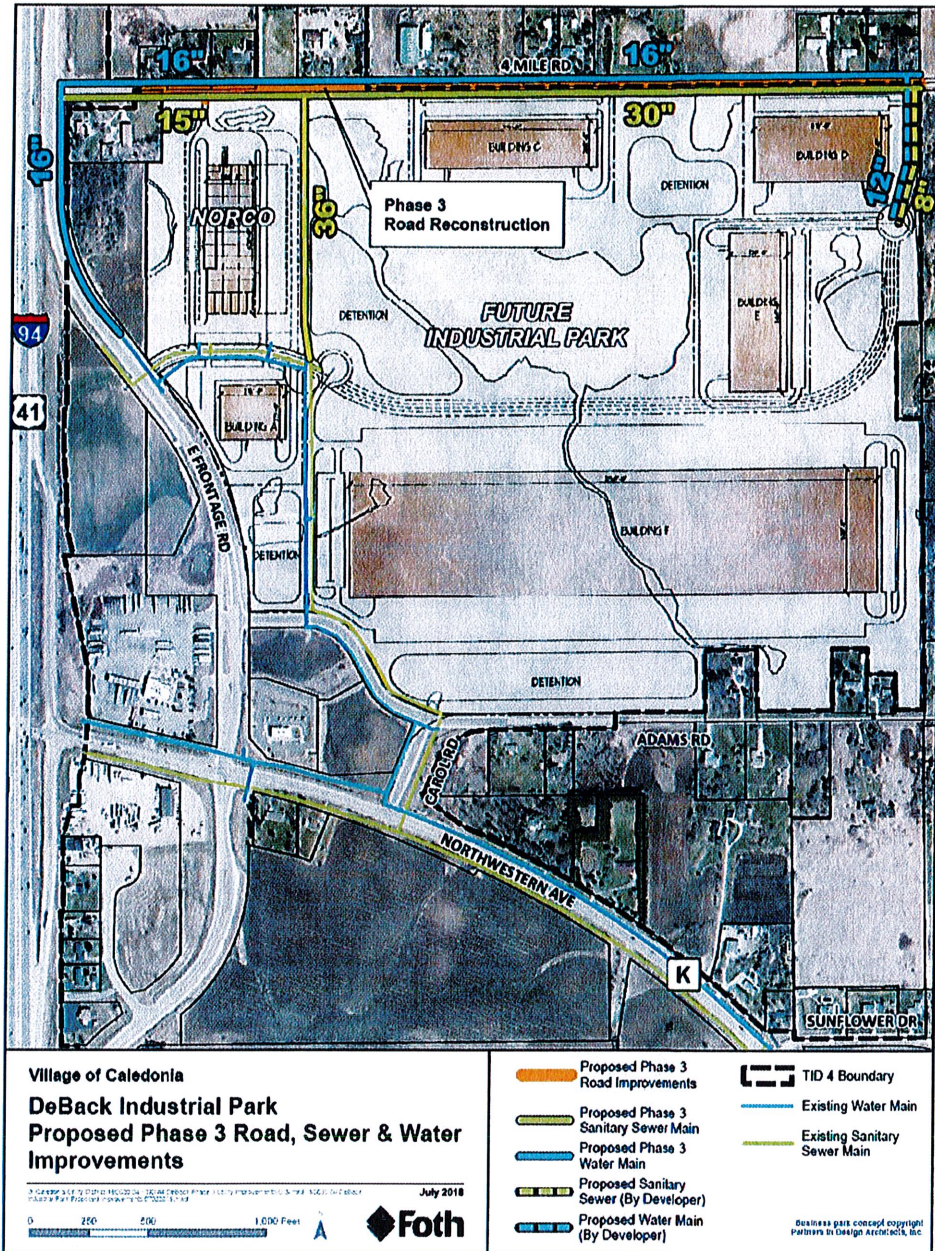


EXHIBIT D

Village Projects

The Village Projects shall be as set forth on the plans below.



PARTIAL RELEASE

Document Number

Document Title

Recording Area

Name and Return Address

Joseph E. Puchner
Quarles & Brady LLP
411 E. Wisconsin Avenue
Milwaukee, WI 53202

104-04-22-30-015-200

Parcel Identification Number (PIN)

PARTIAL RELEASE

THIS PARTIAL RELEASE ("Partial Release") is made as of July ___, 2018, by and between **VILLAGE OF CALEDONIA**, Wisconsin, a Wisconsin municipal corporation (the "Village"), and **WISPARK LLC**, a Wisconsin limited liability company ("Wispark").

RECITALS:

WHEREAS, the Village and Wispark entered into that certain DeBack Farms Business Park Development Agreement pertaining to the Village of Caledonia Tax incremental District No. 4 dated as of July 27, 2016, as amended by that certain First Amendment to Development Agreement dated as of September 29, 2016 and that certain Second Amendment to Development Agreement dated as of July ___, 2018 (as amended, the "Development Agreement") with respect to the land described on Exhibit A attached hereto and all improvements located and to be located thereon (collectively, the "Property"). A Memorandum of Development Agreement was recorded with the Register of Deeds for Racine County ("Register of Deeds") on August 1, 2016, as Document No. 2441100, which document encumbers land which includes the Property, and a Memorandum of Second Amendment to Development Agreement was recorded with the Register of Deeds on July ___, 2018, as Document No. _____, which document encumbers the Property. A Partial Release of Development Agreement and Utility Agreement was recorded with the Register of Deeds on October 7, 2016 as Document No. 2447306, releasing a portion of the land that includes the Property, as set forth therein.

WHEREAS, the Village and Wispark entered into an agreement addressing the construction of sanitary sewer and water mains dated September 29, 2016 (the "Original Utility Agreement") which was recorded with the Register of Deeds on September 29, 2016, as Document No. 2446496, which document encumbers land that includes the Property.

WHEREAS, the Village and Wispark entered into a separate agreement addressing the construction of sanitary sewer and water mains dated July ___, 2018 (the "New Utility Agreement") which was recorded with the Register of Deeds on July ___, 2018, as Document No. _____, which document encumbers the Property.

WHEREAS, Wispark legally divided a portion of the Property by recording Certified Survey Map No. 3302 with the Register of Deeds on July 13, 2018 as Document No. 2498467, which created, among other things, Lot 1 as described on Exhibit B attached hereto;

WHEREAS, Wispark is prepared to sell such Lot 1 for individual site development for a Project (the "Excluded Parcel"); and

WHEREAS, Village and Wispark desire to release the Excluded Parcel from the Development Agreement, as amended, the Original Utility Agreement and the New Utility Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. Capitalized Terms. Capitalized terms used but not defined in this Partial Release shall have the meaning given to such terms in the Development Agreement.

2. Partial Release. The Excluded Parcel is hereby released from the Development Agreement (including, without limitation, all amendments thereto and memoranda for recording thereof), the Original Utility Agreement and the New Utility Agreement, and the partial release provided in this Section 2 shall apply to events occurring after the date of this Partial Release. The Excluded Parcel shall remain subject to the Restrictive Covenants and the Declaration. Notwithstanding this partial release of the Excluded Parcel for individual site development for a Project, Wispark shall remain bound by the terms, covenants, and conditions of the Development Agreement, as amended, the Original Utility Agreement and the New Utility Agreement.

3. Effect of Partial Release. Except as expressly modified herein, the Development Agreement, as amended, the Original Utility Agreement and the New Utility Agreement shall remain as executed in full force and effect.

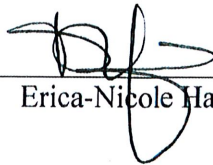
4. Counterparts. This Partial Release may be executed in any number of counterparts, each counterpart for all purposes being deemed an original, and all such counterparts shall together constitute only one and the same agreement.

5. Successors and Assigns. This Partial Release shall be binding upon and shall inure to the benefit of the undersigned and their respective successors and assigns as to the Excluded Parcel.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

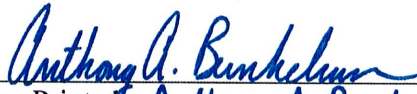
IN WITNESS WHEREOF, the parties hereto have executed this Partial Release as of the day, month and year first written above.

WISPARK LLC

By:  _____
Erica-Nicole Harris, Vice President

STATE OF WISCONSIN)
 Racine) SS
MILWAUKEE COUNTY)

Personally came before me on July 16, 2018, the above-named Erica-Nicole Harris, as Vice President of Wispark LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same on behalf of Wispark LLC.

By:  _____
Name Printed: Anthony A. Bunkelman

Notary Public, State of Wisconsin
My Commission Expires: July 26, 2019

VILLAGE OF CALEDONIA

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

Attest: Karie Torkilsen
Karie Torkilsen, Village Clerk

STATE OF WISCONSIN)
) SS
RACINE COUNTY)

Personally came before me on July 26, 2018, the above-named James R. Dobbs and Karie Torkilsen, on behalf of the Village of Caledonia, to me known to be the persons who executed the foregoing instrument and acknowledged the same on behalf of the Village of Caledonia.

By: Anthony A. Bunkelmun
Name Printed: Anthony A. Bunkelmun

Notary Public, State of Wisconsin
My Commission Expires: July 26, 2019

This document was drafted by:

Elaine Sutton Ekes
Pruitt, Ekes & Geary, S.C.
State Bar No. 1028252

EXHIBIT A

THE PROPERTY

Lot 1 and Lot 2, Certified Survey Map No. 3302, recorded on July 13, 2018, in Volume 10 of Certified Survey Maps, pages 918-929, as Document No. 2498467, being a redivision of all of Lot 2 of Certified Survey Map No. 3219, 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 Keys: Lot 1 is 104-04-22-30-015-201
 Lot 2 is 104-04-22-30-015-202

Address: Adams Road

EXHIBIT B

EXCLUDED PARCEL

Lot 1, Certified Survey Map No. 3302, recorded on July 13, 2018, in Volume 10 of Certified Survey Maps, pages 918-929, as Document No. 2498467, being a redivision of all of Lot 2 of Certified Survey Map No. 3219, 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.

Part of Tax Key: 104-04-22-30-015-200

Address: Adams Road