

**DEVELOPMENT AGREEMENT  
BY AND AMONG  
THE CITY OF DUBUQUE, IOWA,  
WALTER DEVELOPMENT, LLC,  
BAS DEVELOPMENT, LLC, AND  
UNISON SOLUTIONS, INC.**

THIS DEVELOPMENT AGREEMENT (the Agreement) dated for reference purposes the \_\_\_\_ day of \_\_\_\_\_, 2019 is made and entered into by and among the City of Dubuque, Iowa (City), Walter Development, LLC (Developer), BAS Development, LLC (Expansion Property Purchaser), and Unison Solutions, Inc. (Employer).

WHEREAS, Developer is the owner of the following described real estate (Developer's Property):

**LOT 2-1 WALTER ADD; locally known as 5301 CHAVENELLE RD;** and

WHEREAS, Expansion Property Purchaser is the owner of the following described real estate:

**LOT 1 WALTER SECOND ADD; locally known as 5451 CHAVENELLE RD;** and

WHEREAS, Developer's Property is located in the Dubuque Industrial Center Economic Development District (District) which has been so designated by City Council Resolution 130-88, as subsequently amended, as an economic development area (the Project Area) defined by Iowa Code Chapter 403 (Urban Renewal Law); and

WHEREAS, Employer leases a part of Developer's Property for its operations; and

WHEREAS, Employer has determined that it may require an expanded facility to maintain and expand its operations and employment in the Project Area (the Facility); and

WHEREAS, the Facility will be part of the home office for a multistate business; and

WHEREAS, Expansion Property Purchaser is the owner of LOT 1 WALTER SECOND ADD, locally known as 5451 Chavenelle Road (Expansion Property Purchaser's Property) adjacent to Developer's Property, and has requested that City sell to Expansion Property Purchaser 1.90 acres of land, adjacent to Expansion Property Purchaser's Property and Developer's Property, of which 0.67 acres are usable, legally described as LOT 2-2 OF MCFADDEN FARM PLACE in the City of Dubuque, Iowa, together with all easements, tenements, hereditaments, and appurtenances belonging thereto (the Expansion Property ); and

WHEREAS, Developer, Expansion Property Purchaser, Employer and City agree

that upon approval of the Plat (as defined in Section 1.9 of this Agreement) this Agreement will be amended to include the legal description of the Expansion Property; and

WHEREAS, Developer may undertake the expansion of a building located on Developer's Property for the Facility; and

WHEREAS, Developer may make a capital investment in building improvements, equipment, furniture and fixtures in the Facility (the Project); and

WHEREAS, Expansion Property Purchaser may construct a road over Expansion Property Purchaser's Property and the Expansion Property; and

WHEREAS, Developer and Employer may enter into an agreement under which Developer will redevelop and sell or lease the Facility to the Expansion Property Purchaser; and

WHEREAS, in furtherance of the objectives of Chapter 403 of the Code of Iowa, the City has undertaken a program for the development of an area in the City, and in this connection is engaged in carrying out urban renewal project activities in an area known as the Dubuque Industrial Center Economic Development District ("Urban Renewal Area"), which is described in the Dubuque Industrial Center Urban Renewal Plan approved for such area on May 2, 1988 and subsequently amended various times through the date hereof ("Urban Renewal Plan"), a copy of which is on file in the records of the Dubuque County Auditor and in the office of the City Clerk of the City; and

WHEREAS, the Dubuque City Council believes it is in the best interests of the City to encourage Developer, Expansion Property Purchaser and Employer in the development of the Property by providing certain incentives as set forth herein.

NOW, THEREFORE, the parties to this Agreement, in consideration of the promises, covenants and agreements made by each other, do hereby agree as follows:

**SECTION 1. CONVEYANCE OF PROPERTY TO EXPANSION PROPERTY PURCHASER**

1.1 Purchase Price. The purchase price for the Expansion Property (the Purchase Price) shall be the sum of Eighty Thousand Four Hundred Dollars (\$80,400) [One Hundred Twenty Thousand Dollars (\$120,000) per usable acre for 0.67 net usable acres] with a total acquisition of 1.90 acres, which shall be due and payable by Expansion Property Purchaser in immediately available funds in favor of City, on or before October 31, 2019, or on such other date as the parties may mutually agree (the Closing Date).

1.2 Title to Be Delivered. City agrees to convey good and marketable fee simple title in the Expansion Property to Expansion Property Purchaser subject only to easements,

restrictions, conditions and covenants of record as of the Closing Date hereof to the extent not objected to by Expansion Property Purchaser as set forth in this Agreement, and to the conditions subsequent set forth in Section 5.3, below:

(1) City, at its sole cost and expense, shall deliver to Expansion Property Purchaser an abstract of title to the Expansion Property continued through the date of this Agreement reflecting merchantable title in City in conformity with this Agreement and applicable state law. The abstract shall be delivered together with full copies of any and all encumbrances and matters of record applicable to the Expansion Property, and such abstract shall become the property of Expansion Property Purchaser when the Purchase Price is paid in full in the aforesaid manner.

(2) Expansion Property Purchaser shall have until time of the Closing Date to render objections to title, including any easements or other encumbrances not satisfactory to Expansion Property Purchaser, in writing to City. Expansion Property Purchaser agrees, however, to review the Abstract promptly following Expansion Property Purchaser's receipt of Expansion Property Purchaser's land survey and the Abstract and to promptly provide City with any objections to title identified therein. Nothing herein shall be deemed to limit Expansion Property Purchaser's rights to raise new title objections with respect to matters revealed in any subsequent title examinations and surveys and which were not identified in the Abstract provided by the City. City shall promptly exercise its best efforts to have such title objections removed or satisfied and shall advise Expansion Property Purchaser of intended action within ten (10) days of such action. If City shall fail to have such objections removed as of the Closing Date, or any extension thereof consented to by Expansion Property Purchaser, Expansion Property Purchaser may, at its sole discretion, either (a) terminate this Agreement without any liability on its part, and any sums previously paid to City by Expansion Property Purchaser (or paid into escrow for City's benefit) shall be returned to Expansion Property Purchaser with interest, or (b) take title subject to such objections. City agrees to use its best reasonable efforts to promptly satisfy any such objections.

1.3 Rights of Inspection, Testing and Review. Expansion Property Purchaser, its counsel, accountants, agents and other representatives, shall have full and continuing access to the Expansion Property and all parts thereof, upon reasonable notice to City. Expansion Property Purchaser and its agents and representatives shall also have the right to enter upon Property at any time after the execution and delivery hereof for any purpose whatsoever, including, but not limited to, inspecting, surveying, engineering, test boring, and performing environmental tests, provided that Expansion Property Purchaser shall hold City harmless and fully indemnify City against any damage, claim, liability or cause of action arising from or caused by the actions of Expansion Property Purchaser or its agents, or representatives upon the Property (except for any damage, claim, liability or cause of action arising from conditions existing prior to any such entry upon the Expansion Property), and shall have the further right to make such inquiries of governmental agencies and utility companies, etc. and to make such feasibility studies and analyses as they consider appropriate.

1.4 Representations and Warranties of City. In order to induce Developer, Expansion Property Purchaser, and Employer to enter into this Agreement, City hereby represents and warrants to Developer, Expansion Property Purchaser, and Employer that to the best of City's knowledge:

(1) As of the Closing, City will have obtained all necessary approvals and consents for its execution, delivery and performance of this Agreement and that it will have full power and authority to execute, deliver and perform its obligations under this Agreement. City's attorney shall issue a legal opinion to Developer, Expansion Property Purchaser, and Employer at time of closing confirming the representation contained herein, in the form attached hereto as Exhibit A.

(2) City shall exercise its best efforts to cooperate with Developer, Expansion Property Purchaser, and Employer in the development process.

(3) City shall exercise its best efforts to resolve any disputes arising during the development process in a reasonable and prompt fashion.

(4) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of, the terms, conditions or provisions of the charter of City, any evidence of indebtedness, agreement or instrument of whatever nature to which City is now a party or by which it or its property is bound, or constitute a default under any of the foregoing.

(5) There are no actions, suits or proceedings pending or threatened against or affecting City in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the financial position or operations of City or which affects the validity of the Agreement or City's ability to perform its obligations under this Agreement or which might result in any adverse change in the Expansion Property being conveyed or the possession, use or enjoyment thereof by Expansion Property Purchaser, including, but not limited to, any action in condemnation, eminent domain or public taking.

(6) All leases, contracts, licenses, and permits between City and third parties in connection with the maintenance, use, and operation of the Expansion Property have been provided to Expansion Property Purchaser and City has provided true and correct copies of all such documents to Expansion Property Purchaser.

(7) City has good and marketable fee simple title interest in the Expansion Property.

(8) The Expansion Property has a permanent right of ingress or egress to a public roadway for the use and enjoyment of the Expansion Property.

(9) There are no notices, orders, suits, judgments or other proceedings relating to fire, building, zoning, air pollution, health violations or other matters that have not been corrected. City has notified Expansion Property Purchaser in writing of any past notices, orders, suits, judgments or other proceedings relating to fire, building, zoning, air pollution or health violations as they relate to the Expansion Property of which it has actual notice. The Expansion Property is in material compliance with all applicable zoning, fire, building, and health statutes, ordinances, and regulations. The Expansion Property is currently zoned PUD; the intended use of the Expansion Property as a corporate office and manufacturing facility is a permitted use in such zoning classification.

(10) Payment has been made for all labor or materials that have been furnished to the Expansion Property or will be made prior to the Closing Date so that no lien for labor performed or materials furnished can be asserted against the Expansion Property.

(11) The Expansion Property will, as of the Closing Date, be free and clear of all liens, security interests, and encumbrances.

(12) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement do not and shall not result in any material breach of any terms or conditions of any mortgage, bond, indenture, agreement, contract, license, or other instrument or obligation to which City is a party or by which either the City or the Expansion Property being conveyed are bound, nor shall the execution, delivery and performance of this Agreement violate any statute, regulation, judgment, writ, injunction or decree of any court threatened or entered in a proceeding or action in which City may be bound or to which either City or the Expansion Property being conveyed may be subject.

(13) City has duly obtained all necessary approvals and consents for its execution, delivery and performance of this Agreement, and has full power and authority to execute, deliver and perform its obligations under this Agreement. City's attorney shall issue a legal opinion to Developer, Expansion Property Purchaser, and Employer at time of closing confirming the representation contained herein, in the form attached hereto as Exhibit C.

(14) The Expansion Property is free and clear of any occupants, and no party has a lease to or other occupancy or contract right in the Expansion Property that shall in any way be binding upon the Expansion Property and Expansion Property Purchaser.

(15) City represents and warrants that any fees or other compensation which may be owed to a broker engaged directly or indirectly by City in connection with the purchase and sale contemplated in this Agreement are the sole responsibility and obligation of City and that City will indemnify Expansion Property Purchaser and hold Expansion Property Purchaser harmless from any and all claims asserted by any broker engaged directly or indirectly by City for any fees or other compensation related to the subject matter of this Agreement.

(16) With respect to the period during which City has owned or occupied the Expansion Property, and to City's knowledge after reasonable investigation with respect to the time before City owned or occupied the Expansion Property, no person or entity has caused or permitted materials to be stored, deposited, treated, recycled, or disposed of on, under or at the Expansion Property, which materials, if known to be present, would require cleanup, removal or some other remedial action under environmental laws.

(17) All city utilities necessary for the development and use of the Expansion Property as manufacturing space adjoin the Expansion Property and Developer, Expansion Property Purchaser and/or Employer shall have the right to connect to said utilities, subject to City's connection fees.

(18) No ordinance or hearing is now before any local governmental body that either contemplates or authorizes any public improvements or special tax levies, the cost of which may be assessed against the Expansion Property. To the best of City's knowledge, there are no plans or efforts by any government agency to widen, modify, or re-align any street or highway providing access to the Expansion Property and there are no pending or intended public improvements or special assessments affecting the Expansion Property which will result in any charge or lien be levied or assessed against the Expansion Property.

(19) The representations and warranties contained in this article shall be correct in all respects on and as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of the Closing Date.

(20) As of the date of this Agreement there has been prepared and approved by City an Urban Renewal Plan for the Project Area consisting of the Urban Renewal Plan for the Dubuque Industrial Center Economic Development District, most recently approved by City Council of City on December 17, 2018, and as subsequently amended through and including the date hereof, attached as Exhibit E (the Urban Renewal Plan). A copy of the Urban Renewal Plan, as constituted on the date of this Agreement and in the form attached hereto, and a copy of which is on file with the City of Dubuque City Clerk.

1.5 Representations and Warranties of Developer, Expansion Property Purchaser, and Employer. Developer, Expansion Property Purchaser, and Employer make the

following representations and warranties:

(1) Developer, Expansion Property Purchaser, and Employer are duly organized and validly existing or authorized under the laws of the State of Iowa and have all requisite power and authority to own and operate their properties, to carry on their respective business as now conducted and as presently proposed to be conducted, and to enter into and perform their obligations under the Agreement.

(2) This Agreement has been duly authorized, executed and delivered by Developer, Expansion Property Purchaser, and Employer, and assuming due authorization, execution and delivery by City, is in full force and effect and is a valid and legally binding instrument of Developer, Expansion Property Purchaser, and Employer enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally. Developer's counsel, Expansion Property Purchaser's counsel, and Employer's counsel shall issue legal opinions to the City, at time of closing, confirming the representations contained herein, in the form attached hereto as Exhibit B and Exhibit G.

(3) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of, the terms, conditions or provisions of the articles of incorporation or the bylaws of Developer, Expansion Property Purchaser, or Employer or any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which Developer, Expansion Property Purchaser, or Employer is now a party or by which it or its property is bound, or constitute a default under any of the foregoing.

(4) There are no actions, suits or proceedings pending or threatened against or affecting Developer, Expansion Property Purchaser, or Employer in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business, financial position or result of operations of Developer, Expansion Property Purchaser, or Employer or which affects the validity of the Agreement or Developer's, Expansion Property Purchaser's, or Employer's ability to perform its obligations under this Agreement.

(5) Developer, Expansion Property Purchaser, and Employer will perform its obligations under this Agreement in accordance with the material terms of this Agreement, the Urban Renewal Plan and all local, State and federal laws and regulations.

(6) Developer, Expansion Property Purchaser, and Employer will use its best efforts to obtain, or cause to be obtained, in a timely manner, all material

requirements of all applicable local, state, and federal laws and regulations which must be obtained or met.

(7) Developer and Expansion Property Purchaser have firm commitments for permanent financing for the Project and all of their respective obligations under this Agreement in an amount sufficient, together with equity commitments, to successfully complete the requirements of this Agreement and shall provide evidence thereof to City prior to the Closing Date, and Expansion Property Purchaser shall provide a statement from an officer of the Company that the Company has sufficient assets to complete this transaction.

1.6 Closing. The Closing shall take place on the Closing Date which shall be the 31st day of October, 2019, or such other date as the parties shall agree in writing but in no event shall the Closing Date be later than the 31st day of December, 2019. Consummation of the Closing shall be deemed an agreement of the parties to this Agreement that the conditions of Closing shall have been satisfied or waived.

1.7 Conditions to Closing. The Closing of the transaction contemplated by this Agreement and all the obligations of Developer, Expansion Property Purchaser, and Employer under this Agreement are subject to the following conditions:

(1) The representations and warranties made by City in Section 1.4 and by Developer, Expansion Property Purchaser and Employer in Section 1.5, shall be correct as of the Closing Date with the same force and effect as if such representations were made at such time. At the closing, City shall deliver a certificate to that effect in the form of Exhibit C.

(2) Developer, Expansion Property Purchaser, and Employer shall have the right to terminate this Agreement at any time prior to the consummation of the closing on the Closing Date if Developer, Expansion Property Purchaser, or Employer determine that conditions necessary for the successful completion of the Project contemplated herein have not been satisfied in Developer's, Expansion Property Purchaser's, or Employer's sole discretion. Upon the giving of notice of termination by Developer, Expansion Property Purchaser, or Employer to City, this Agreement shall be deemed null and void.

(3) Developer, Expansion Property Purchaser, Employer, and City shall be in material compliance with all the terms and provisions of this Agreement.

(4) Developer's counsel, Expansion Property Purchaser's counsel, and Employer's counsel, shall issue a legal opinion to City confirming the representations contained herein in the form attached hereto as Exhibit B and Exhibit G.

(5) Employer shall have received binding commitments for such State of Iowa incentives as Employer determines are necessary to make the Project feasible to



Employer in its sole and exclusive discretion.

1.8 City's Obligations at Closing. At or prior to the Closing Date, City shall deliver to Developer, Expansion Property Purchaser, and Employer such other documents as may be required by this Agreement, all in a form satisfactory to Developer, Expansion Property Purchaser, and Employer.

1.9 Consolidation of Property. Following the Closing, Expansion Property Purchase shall replat Expansion Purchaser's Property and the Expansion Property as one parcel.

## **SECTION 2. DEVELOPMENT ACTIVITIES.**

2.1 Roadway Over Expansion Property. Expansion Property Purchaser may, but is not required to, construct a roadway over the Expansion Property. If Expansion Property Purchaser elects to construct such a roadway, the plans and specifications with respect to the roadway shall be in conformity with the Urban Renewal Plan, this Agreement, and all applicable state and local laws and regulations, including, but not limited to, any covenants, conditions, restrictions, reservations, easements, liens and charges, recorded in the records of Dubuque County, Iowa. Expansion Property Purchaser shall submit to City, for approval by City, plans, drawings, specifications and related documents with respect to the roadway to be constructed. All work with respect to the construction of the roadway shall be in substantial conformity with the construction plans approved by the City.

2.2 Minimum Improvements. If elected by the Expansion Property Purchaser (the Expansion Election), Developer will make a capital investment of approximately One Million Four Hundred Thousand Dollars (\$1,400,000.00) to improve the Facility for the creation of an additional 20,000 square feet of manufacturing space for Employer's increased operations (the Minimum Improvements). The Minimum Improvements shall consist of the expansion of the building at 5301 Chavenelle Road (the Building). Expansion Property Purchaser must exercise the Expansion Election by delivering written notice thereof to City within two (2) years of the Closing Date (the Expansion Election Date), or the Expansion Election lapses.

2.3 Plans for Construction of Minimum Improvements. Plans and specifications with respect to the construction of the Minimum Improvements (the Construction Plans) shall be in conformity with the Urban Renewal Plan, this Agreement, and all applicable state and local laws and regulations, including but not limited to any covenants, conditions, restrictions, reservations, easements, liens and charges, recorded in the records of Dubuque County, Iowa. Developer shall submit to City, for approval by City, plans, drawings, specifications, and related documents with respect to the improvements to be constructed by Developer. All work with respect to the Minimum Improvements shall be in substantial conformity with the Construction Plans approved by City.

2.4 Timing of Improvements. If the Expansion Property Purchaser exercises its Expansion Election, Developer hereby agrees that construction of the Minimum

Improvements shall be commenced within thirty (30) days after the Expansion Election Date and shall be substantially completed within nine (9) months of date of commencement of construction. The time frames for the performance of these obligations shall be suspended due to unavoidable delays meaning delays, outside the control of the party claiming its occurrence in good faith, which are the direct result of strikes, other labor troubles, unusual shortages of materials or labor, unusually severe or prolonged bad weather, acts of God, fire or other casualty to the Minimum Improvements, litigation commenced by third parties which, by injunction or other similar judicial action or by the exercise of reasonable discretion directly results in delays, or acts of any federal, state or local government which directly result in extraordinary delays. The time for performance of such obligations shall be extended only for the period of such delay.

2.5 Certificate of Completion. Promptly following the request of Developer upon completion of the Minimum Improvements, City shall furnish Developer with an appropriate instrument so certifying in the form attached as Exhibit F. Such certification (the Certificate of Completion) shall be in recordable form and shall be a conclusive determination of the satisfaction and termination of the agreements and covenants in this Agreement.

### **SECTION 3. CITY PARTICIPATION.**

3.1 Acquisition Grant to Expansion Property Purchaser. For and in consideration of Expansion Property Purchaser's obligations in this Agreement, City agrees to make an Acquisition Grant to Expansion Property Purchaser on the Closing Date in the amount of Forty Thousand Two Hundred Dollars (\$40,200) [Sixty Thousand Dollars (\$60,000) per acre x 0.67 usable acres). The parties agree that the Acquisition Grant shall be payable in the form of a credit favoring Expansion Property Purchaser at time of Closing with the effect of directly offsetting the full Purchase Price obligation of Expansion Property Purchaser.

3.2 Economic Development Grants.

(1) If the Expansion Property Purchaser exercises its Expansion Election, for and in consideration of Developer's, Expansion Property Purchaser's, and Employer's obligations hereunder, and in furtherance of the goals and objectives of the Urban Renewal Plan for the Project Area and the Urban Renewal Law, City agrees, subject to Developer and Employer being and remaining in compliance with the terms of this Agreement, to make twenty (20) consecutive semi-annual payments (such payments being referred to collectively as the Economic Development Grants) to Employer, as follows: First semi-annual payment to be made on the first November 1 following the first certification to the County required by Sec. 3.2(2). For example, if the first certification is made prior to December 1, 2020, then the semi-annual payments shall be as follows:

November 1, 2021  
November 1, 2022

May 1, 2022  
May 1, 2023

November 1, 2023	May 1, 2024
November 1, 2024	May 1, 2025
November 1, 2025	May 1, 2026
November 1, 2026	May 1, 2027
November 1, 2027	May 1, 2028
November 1, 2028	May 1, 2029
November 1, 2029	May 1, 2030
November 1, 2030	May 1, 2031

pursuant to Iowa Code Section 403.9 of the Urban Renewal Law, in amounts equal to the actual amount of tax increment revenues collected by City under Iowa Code Section 403.19 (without regard to any averaging that may otherwise be utilized under Iowa Code Section 403.19 and excluding any interest that may accrue thereon prior to payment to Employer) during the preceding six-month period in respect of the Property and Minimum Improvements constructed by Developer (the Developer Tax Increments). For purposes of calculating the amount of the Economic Development Grants provided in this Section, the Developer Tax Increments shall be only those tax increment revenues collected by City in respect of the increase in the assessed value of the Developer's Property above the assessment of January 1, 2019 (\$3,906,310.00). Employer recognizes and agrees that the Economic Development Grants shall be paid solely and only from the incremental taxes collected by City in respect to the Developer's Property and Minimum Improvements, which does not include property taxes collected for the payment of bonds and interest of each taxing district, and taxes for the regular and voter-approved physical plant and equipment levy, instructional support levy, and any other portion required to be excluded by Iowa law, and thus such incremental taxes will not include all amounts paid by Developer as regular property taxes.

(2) To fund the Economic Development Grants, City shall certify to the County prior to the first December 1 following the certificate of completion, and each December 1 thereafter, its request for the available Developer Tax Increments resulting from the assessments imposed by the County as of January 1 of that year, to be collected by City as taxes are paid during the following fiscal year and which shall thereafter be disbursed to Employer, on November 1 and May 1 of that fiscal year. (Example: if City so certifies in December, 2020, the Economic Development Grants in respect thereof would be paid to the Employer on November 1, 2021, and May 1, 2022.)

(3) The Economic Development Grants shall be payable from and secured solely and only by the Developer Tax Increments paid to City that, upon receipt, shall be deposited and held in a special account created for such purpose and designated as the Unison TIF Account of City. City hereby covenants and agrees to maintain its TIF ordinance in force during the term hereof and to apply the incremental taxes collected in respect of the Minimum Improvements and allocated to the Unison TIF Account to pay the Economic Development Grants, as and to the extent set forth in Section 3.2 hereof. The Economic Development Grants shall

not be payable in any manner by other tax increments revenues, or by general taxation or from any other City funds. City makes no representation with respect to the amounts that may be paid to Employer as the Economic Development Grants in any one year and under no circumstances shall City in any manner be liable to Employer so long as City timely applies the Developer Tax Increments actually collected and held in the Unison TIF Account (regardless of the amounts thereof) to the payment of the Economic Development Grants to Employer as and to the extent described in this Section.

(4) City shall be free to use any and all tax increment revenues collected in respect of other properties within the Project Area and the remaining actual amount of the property taxes paid by Developer to City, or any available Developer Tax Increments resulting from the termination of the annual Economic Development Grants under Section 3.2 hereof, for any purpose for which such tax increment revenues may lawfully be used pursuant to the provisions of the Urban Renewal Law, and City shall have no obligations to Developer with respect to the use thereof.

(5) All of City's obligations under this Agreement, including but not limited to City's obligation to pay the Economic Development Grants to Employer, shall be subject to City having completed all hearings and other procedures required to amend the Urban Renewal Plan to describe the Urban Renewal Project being undertaken in accordance with this Agreement.

#### **SECTION 4. NON- APPROPRIATION / LIMITED SOURCE OF FUNDING.**

4.1 Non-Appropriation. Notwithstanding anything in this Agreement to the contrary, the obligation of City to pay any installment of the Economic Development Grants from the pledged tax increment revenues shall be an obligation limited to currently budgeted funds, and not a general obligation or other indebtedness of City or a pledge of its full faith and credit within the meaning of any constitutional or statutory debt limitation, and shall be subject in all respects to the right of non-appropriation by the City Council of City as provided in this Section. City may exercise its right of non-appropriation as to the amount of the installments to be paid during any fiscal year during the term of this Agreement without causing a termination of this Agreement. The right of non-appropriation shall be exercised only by resolution affirmatively declaring City's election to non-appropriate funds otherwise required to be paid in the next fiscal year under this Agreement.

In the event the City Council of City elects to not appropriate sufficient funds in the budget for any future fiscal year for the payment in full of the installments on the Economic Development Grants due and payable in that future fiscal year, then City shall have no further obligation to Employer for the payment of any installments due in that future fiscal year which cannot be paid with the funds then appropriated for that purpose.

4.2 The right of non-appropriation reserved to City in this Section is intended by the parties, and shall be construed at all times, so as to ensure that City's obligation to pay future installments on the Economic Development Grants shall not constitute a legal indebtedness of City within the meaning of any applicable constitutional or statutory debt limitation prior to the adoption of a budget which appropriates funds for the payment of that installment or amount. In the event that any of the provisions of this Agreement are determined by a court of competent jurisdiction to create, or result in the creation of, such a legal indebtedness of City, the enforcement of the said provision shall be suspended, and the Agreement shall at all times be construed and applied in such a manner as will preserve the foregoing intent of the parties, and no event of default shall be deemed to have occurred as a result thereof. If any provision of this Agreement or the application thereof to any circumstance is so suspended, the suspension shall not affect other provisions of this Agreement which can be given effect without the suspended provision, and to this end the provisions of this Agreement are severable.

## **SECTION 5. COVENANTS OF EMPLOYER.**

5.1 Job Creation. During the term of this Agreement, Employer shall comply with the following employment-related covenants:

(1) Employer shall retain Thirty-Five (35) fulltime equivalent (FTE) employees and create a minimum of Ten (10) additional fulltime equivalent (FTE) employees in Dubuque, Iowa prior to October 1, 2021, and shall maintain those jobs during the term of this Agreement. It is agreed by the parties that Employer has Thirty-Five (35) fulltime equivalent employees (FTE) in Dubuque County, Iowa, as of January 1, 2018. FTE employees shall be calculated by adding fulltime and part-time employees together using 2080 hours per year as a FTE employee.

(a) In the event that the certificate provided to City under Section 5.2 hereof on October 1, 2030 discloses that Employer does not as of that date have at least Forty-Five (45) FTE employees (2080 hours per year) as provided hereinabove, Expansion Property Purchaser shall pay to City, promptly upon written demand therefor, an amount equal to \$893.33 per job not created (\$40,200.00 divided by 45 FTE employees = \$893.33). However, if Expansion Property Purchaser does not exercise the Expansion Election set out in Sec. 2.2, the Expansion Property Purchaser shall only be required to repay to City promptly upon written demand therefor the entire acquisition grant in the sum of \$40,200.00.

(2) For the FTE positions that Employer fails to create and maintain for any year during the term of this Agreement, the semi-annual Economic Development Grants for such year under Section 3.2 shall be reduced by the percentage that the number of such positions bears to the total number of positions required to be created and maintained (45 FTE's) by this Section 5.1. (For example, if Employer has 42 FTE employees, the semi-annual Economic Development Grants to be paid for that year would be reduced to 93% (42/45 employees) of the Tax Increment

Revenues received by City). The reduction of the semi-annual Economic Development Grants shall be the City's sole remedy for the failure of Employer to meet the job creation requirements of this subsection 5.1(2).

(3) Section 5.1(1) and (2) shall survive the termination of this Agreement.

5.2 Certification. To assist City in monitoring the performance of Employer hereunder, as of October 1, 2021, and again as of October 1 of each year thereafter during the term of this Agreement, a duly authorized officer of Employer shall certify to City in a form acceptable to City (a) the number of FTE positions employed by Employer in Dubuque, Iowa, and (b) to the effect that such officer has re-examined the terms and provisions of this Agreement and that at the date of such certificate, and during the preceding twelve (12) months, Employer is not or was not in default in the fulfillment of any of the terms and conditions of this Agreement and that no Event of Default (or event which, with the lapse of time or the giving of notice, or both, would become an Event of Default) is occurring or has occurred as of the date of such certificate or during such period, or if the signer is aware of any such default, event or Event of Default, said officer shall disclose in such statement the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto. Such certificate shall be provided not later than October 15, 2021, and by October 15 of each year thereafter during the term of this Agreement.

5.3 Books and Records. During the term of this Agreement, Expansion Property Purchaser and Employer shall keep at all times and make available to City upon reasonable request proper books of record and account in which full, true and correct entries will be made of all dealings and transactions of or in relation to the business and affairs of Expansion Property Purchaser and Employer in accordance with generally accepted accounting principles consistently applied throughout the period involved, and Expansion Property Purchaser and Employer shall provide reasonable protection against loss or damage to such books of record and account.

5.4 Real Property Taxes. From and after the Closing Date, Developer and Expansion Property Purchaser shall pay or cause to be paid, when due, all real property taxes and assessments payable with respect to all and any parts of the Property unless Developer's or Expansion Property Purchaser's obligations have been assumed by another person pursuant to the provisions of this Agreement.

5.5 No Other Exemptions. During the term of this Agreement, Developer and Expansion Property Purchaser agree not to apply for any state or local property tax exemptions which are available with respect to the Property or the Minimum Improvements located thereon that may now be, or hereafter become, available under state law or city ordinance during the term of this Agreement, including those that arise under Iowa Code Chapters 404 and 427, as amended.

5.6 Insurance Requirements.

(1) Developer shall provide and maintain or cause to be maintained at all times during the process of constructing the Minimum Improvements and at its sole cost and expense builder's risk insurance, written on a Completed Value Form in an amount equal to one hundred percent (100%) of the building (including Minimum Improvements) replacement value when construction is completed, naming City as an additional insured and loss payee. Coverage shall include the "special perils" form and developer shall furnish City with proof of insurance in the form of a certificate of insurance.

(2) If Expansion Property Purchaser exercises its Expansion Election, upon completion of construction of the Minimum Improvements and up to the Termination Date, Developer shall maintain, or cause to be maintained, at its cost and expense all risk property insurance against loss and/or damage to the building (including the Minimum Improvements) under an insurance policy written with the "special perils" form and in an amount not less than the full insurable replacement value of the building (including the Minimum Improvements), naming City as loss payee. Developer shall furnish to City proof of insurance in the form of a certificate of insurance.

(3) The term "replacement value" shall mean the actual replacement cost of the building with Minimum Improvements (excluding foundation and excavation costs and costs of underground flues, pipes, drains and other uninsurable items) and equipment, and shall be reasonably determined from time to time at the request of City, but not more frequently than once every three (3) years.

(4) Developer shall notify City immediately in the case of damage exceeding \$50,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. Net proceeds of any such insurance (Net Proceeds), shall be paid directly to Developer as its interests may appear, and Developer shall forthwith repair, reconstruct and restore the Minimum Improvements to substantially the same or an improved condition or value as they existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction and restoration, Developer shall apply the Net Proceeds of any insurance relating to such damage received by Developer to the payment or reimbursement of the costs thereof, subject, however, to the terms of any mortgage encumbering title to the Property (as its interests may appear). Developer shall complete the repair, reconstruction and restoration of Minimum Improvements whether or not the Net Proceeds of insurance received by Developer for such purposes are sufficient.

5.7 Preservation of Property. During the term of this Agreement, Developer and Employer shall maintain, preserve and keep, or cause others to maintain, preserve and keep, the Minimum Improvements in good repair and working order, ordinary wear and tear excepted, and from time to time shall make all necessary repairs, replacements, renewals and additions.

5.8 Non-Discrimination. In carrying out the project, Employer shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age or disability.

5.9 Conflict of Interest. Developer, Expansion Property Purchaser, and Employer agree that no member, officer or employee of City, or its designees or agents, nor any consultant or member of the governing body of City, and no other public official of City who exercises or has exercised any functions or responsibilities with respect to the project during his or her tenure, or who is in a position to participate in a decision-making process or gain insider information with regard to the project, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the project, or in any activity, or benefit therefrom, which is part of this project at any time during or after such person's tenure. In connection with this obligation, Developer, Expansion Property Purchaser, and Employer shall have the right to rely upon the representations of any party with whom it does business and shall not be obligated to perform any further examination into such party's background.

5.10 Non-Transferability. If Expansion Property Purchaser exercises its Expansion Election, until such time as the Minimum Improvements are complete (as certified by City under Section 2.4), this Agreement may not be assigned by Developer nor may the Developer's Property be transferred by Developer to another party without the prior written consent of City, which shall not be unreasonably withheld. Thereafter, Developer, Expansion Property Purchaser, or Employer shall have the right to assign this Agreement and upon assumption of the Agreement by the assignee, Developer, Expansion Property Purchaser, shall no longer be responsible for its obligations under this Agreement. Notwithstanding the foregoing, City acknowledges that Developer may transfer Developer's Property to Expansion Property Purchaser or Employer, and City hereby consents to such transfer to the Expansion Property Purchaser or Employer. As it relates to City only, effective upon such transfer of the Developer's Property from Developer to Expansion Property Purchaser or Employer, Developer shall be released from its obligations to City hereunder and Expansion Property Purchaser or Employer hereby agrees that it shall thereafter be deemed to be Developer for all purposes of this Agreement and Expansion Property Purchaser or Employer hereby agrees to assume all obligations of Developer under this Agreement unless otherwise stated herein, and the assignment agreement shall so provide.

5.11 No change in Tax Classification. Developer and Expansion Property Purchaser agree that they will not take any action to change, or otherwise allow, the classification of the Property for property tax purposes to become other than commercial property and to be taxed as such under Iowa law.

5.12 Restrictions on Use. Developer and Expansion Property Purchaser agree for themselves, and their successors and assigns, and every successor in interest to the Expansion Property and Facility or any part thereof that they, and their respective successors and assigns, shall:



(1) Devote the Property to, and only to and in accordance with, the uses specified in the Urban Renewal Plan (and City represents and agrees that use of the Property as a manufacturing facility is in full compliance with the Urban Renewal Plan) (however, Developer and Expansion Property Purchaser shall not have any liability to City to the extent that a successor in interest shall breach this covenant and City shall seek enforcement of this covenant directly against the party in breach of same); and

(2) Not discriminate upon the basis of race, religion, color, sex, sexual orientation, gender identity, national origin, age or disability in the sale, lease, rental, use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof (however, neither Developer nor Expansion Property Purchaser shall not have any liability to City to the extent that a successor in interest shall breach this covenant and City shall seek enforcement of this covenant directly against the party in breach of same).

5.13 Release and Indemnification Covenants.

(1) Developer, Expansion Property Purchaser, and Employer release City and the governing body members, officers, agents, servants and employees thereof (hereinafter, for purposes of this Section, the Indemnified Parties) from and covenants and agrees that the Indemnified Parties shall not be liable for, and agrees to indemnify, defend and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements.

(2) Except for any gross negligence, willful misrepresentation or any willful or wanton misconduct or any unlawful act of the Indemnified Parties, Developer, Expansion Property Purchaser, and Employer agree to protect and defend the Indemnified Parties, now or forever, and further agrees to hold the Indemnified Parties harmless, from any claim, demand, suit, action or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from (1) any violation of any agreement or condition of this Agreement (except with respect to any suit, action, demand or other proceeding brought by Developer, Expansion Property Purchaser, and Employer against City based on an alleged breach of any representation, warranty or covenant of City under this Agreement and/or to enforce its rights under this Agreement); or (2) the acquisition, construction, installation, ownership, and operation of the Minimum Improvements or (3) the condition of the Property and any hazardous substance or environmental contamination located in or on the Property, caused and occurring after Developer or Expansion Property Purchaser take possession of the Property.

(3) The Indemnified Parties shall not be liable to Developer, Expansion Property Purchaser, or Employer for any damage or injury to the persons or property of Developer or Expansion Property Purchaser or their officers, agents,

servants or employees or any other person who may be on, in or about the Minimum Improvements due to any act of negligence of any person, other than any act of negligence on the part of any such Indemnified Party or its officers, agents, servants or employees.

(4) All covenants, stipulations, promises, agreements and obligations of City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of City, and not of any governing body member, officer, agent, servant or employee of City in their individual capacity thereof.

(5) The provisions of this Section shall survive the termination of this Agreement

5.14 Compliance with Laws. Developer, Expansion Property Purchaser, and Employer shall comply with all laws, rules and regulations relating to their businesses, other than laws, rules and regulations the failure to comply with or the sanctions and penalties resulting therefrom, would not have a material adverse effect on the business, property, operations, financial or otherwise, of Developer, Expansion Property Purchaser, or Employer.

## **SECTION 6. EVENTS OF DEFAULT AND REMEDIES.**

6.1 Events of Default Defined. The following shall be Events of Default under this Agreement and the term Event of Default shall mean, whenever it is used in this Agreement, any one or more of the following events:

(1) Failure by Developer, Expansion Property Purchaser or Employer to pay or cause to be paid, before delinquency, all real property taxes assessed with respect to the Minimum Improvements and the Expansion Property.

(2) If Expansion Property Purchaser exercises the Expansion Election, failure by Expansion Property Purchaser to cause the construction of the Minimum Improvements or other requirements of this Agreement to be commenced and completed pursuant to the terms, conditions and limitations of this Agreement.

(2) Transfer of any interest by Developer of the Minimum Improvements, except to Expansion Property Purchaser or Employer, in violation of the provisions of this Agreement prior to the issuance of the final Certificate of Completion.

(3) Failure by Developer, Expansion Property Purchaser, or Employer, or City to substantially observe or perform any other material covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

6.2. Remedies on Default by Developer. Whenever any Event of Default referred to in Section 6.1 of this Agreement occurs and is continuing, City, as specified below, may take

any one or more of the following actions after the giving of written notice by City to Developer and Expansion Property Purchaser (and the holder of any mortgage encumbering any interest in the Property of which City has been notified of in writing) of the Event of Default, but only if the Event of Default has not been cured within sixty (60) days following such notice, or if the Event of Default cannot be cured within sixty (60) days and Developer or Expansion Property Purchaser does not provide assurances to City that the Event of Default will be cured as soon as reasonably possible thereafter:

- (1) City may suspend its performance under this Agreement until it receives assurances from the defaulting party, deemed adequate by City, that the defaulting party will cure its default and continue its performance under this Agreement;
- (2) Until the Closing Date, City may cancel and rescind this Agreement;
- (3) City may withhold the Certificate of Completion; or
- (4) City may take any action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

6.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

6.4 No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

6.5 Agreement to Pay Attorneys' Fees and Expenses. If any action at law or in equity, including an action for declaratory relief or arbitration, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs of litigation from the other party. Such fees and costs of litigation may be set by the court in the trial of such action or by the arbitrator, as the case may be, or may be enforced in a separate action brought for that purpose. Such fees and costs of litigation shall be in addition to any other relief that may be awarded.

6.6 Remedies on Default by City. If City defaults in the performance of this Agreement, Developer, Expansion Property Purchaser, or Employer may take any action, including legal, equitable or administrative action that may appear necessary or desirable to collect any payments due under this Agreement, to recover expenses of Developer, Expansion

Property Purchaser, or Employer, or to enforce performance and observance of any obligation, agreement, or covenant of City under this Agreement. Developer, Expansion Property Purchaser, or Employer may suspend its performance under this Agreement until it receives assurances from City, deemed adequate by Developer, Expansion Property Purchaser, and Employer, that City will cure its default and continue its performance under this Agreement.

## **SECTION 7. GENERAL TERMS AND PROVISIONS.**

7.1 Notices and Demands. Whenever this Agreement requires or permits any notice or written request by one party to another, it shall be deemed to have been properly given if and when delivered in person or three (3) business days after having been deposited in any U.S. Postal Service and sent by registered or certified mail, postage prepaid, addressed as follows:

- If to Employer:** UNISON SOLUTIONS, INC.  
Jan M Scott, President  
5451 Chavenelle Rd  
Dubuque, IA 52002  
Phone: 563-585-0967
- With copy to:** Bill Maiers  
Reynolds and Kenline, LLP  
110 E 9th St  
Dubuque, IA 52001  
Phone: 563-556-8000
- If to Developer:** WALTER DEVELOPMENT, LLC  
Tim Hodge, Managing Member  
7465 Chavenelle Rd  
Dubuque, IA 52002  
Phone: (563) 583-9781
- With copy to:** Bill Maiers  
Reynolds and Kenline, LLP  
110 E 9th St  
Dubuque, IA 52001  
Phone: 563-556-8000
- If to Expansion Property Purchaser:** BAS DEVELOPMENT, LLC  
Dave Broihahn, President  
5451 Chavenelle Rd  
Dubuque, IA 52002

Phone: 563-585-0967

**With copy to:** Bill Maiers  
Reynolds and Kenline, LLP  
110 E 9th St  
Dubuque, IA 52001  
Phone: 563-556-8000

**If to City:** City Manager  
50 W. 13th Street  
Dubuque, Iowa 52001  
Phone: (563) 589-4110  
Fax: (563) 589-4149

**With copy to:** City Attorney  
City Hall  
50 W. 13<sup>th</sup> Street  
Dubuque IA 52001

Or at such other address with respect to either party as that party may, from time to time designate in writing and forward to the other as provided in this Section.

7.2 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of City, Developer, Expansion Property Purchaser, and Employer and their respective successors and assigns.

7.3 Termination Date. This Agreement and the rights and obligations of the parties hereunder shall terminate (a) two (2) years after the Closing Date, if the Expansion Property Purchaser does not exercise the Expansion Election; or (b) June 1<sup>st</sup> after the last required TIF payment, if the Expansion Property Purchaser exercises the Expansion Election.

7.4 Execution By Facsimile. The parties agree that this Agreement may be transmitted between them by facsimile machine or electronic transmission. The parties intend that the faxed or electronic transmission signatures constitute original signatures and that a faxed or electronically transmitted Agreement containing the signatures (original, faxed or electronically transmitted) of all the parties is binding on the parties.

7.5 Memorandum of Development Agreement. City shall promptly record a Memorandum of Development Agreement in the form attached hereto as Exhibit D in the office of the Recorder of Dubuque County, Iowa. Developer shall pay the costs for so recording.

IN WITNESS WHEREOF, City has caused this Agreement to be duly executed in its name and behalf by its Mayor and attested to by its City Clerk and Developer,

Expansion Property Purchaser, and Employer have caused this Agreement to be duly executed on or as of the first above written.

**CITY OF DUBUQUE, IOWA**

By \_\_\_\_\_  
Roy D. Buol, Mayor

Attest:

\_\_\_\_\_  
Kevin S. Firnstahl  
City Clerk

**UNISON SOLUTIONS, INC.  
EMPLOYER**

By \_\_\_\_\_  
Jan M Scott, President

**WALTER DEVELOPMENT, LLC  
DEVELOPER**

By \_\_\_\_\_  
Tim Hodge  
Managing Member

**BAS DEVELOPMENT, LLC  
EXPANSION PROPERTY PURCHASER**

By \_\_\_\_\_  
Dave Broihahn, President

(City Seal)

STATE OF IOWA                    )  
                                          )        SS  
COUNTY OF DUBUQUE            )

On this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, before me the undersigned, a Notary Public in and for the said County and State, personally appeared Roy D. Buol and Kevin S. Firnstahl, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Dubuque, Iowa, a municipal corporation executing the instrument to which this is attached; that the seal affixed hereto is the seal of said municipal corporation; that said instrument was signed and sealed on behalf of the City of Dubuque, Iowa, by authority of its City Council; and that said Mayor and City Clerk acknowledged the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public

STATE OF IOWA                    )  
                                          )        SS  
COUNTY OF DUBUQUE            )

On this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Jan M Scott, to me personally known, who, being by me duly sworn, did say that he is the President of Unison Solutions, Inc., the Iowa corporation executing the instrument to which this is attached and that as said President of Unison Solutions, Inc. acknowledges the execution of said instrument to be the voluntary act and deed of said company, by it and by him, an individual, voluntarily executed.

\_\_\_\_\_  
Notary Public

STATE OF IOWA                    )  
                                          )        SS  
COUNTY OF DUBUQUE            )

On this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Tim Hodge, to me personally known, who, being by me duly sworn, did say that he is the Managing Member of Walter



Development, LLC, the Iowa organization executing the instrument to which this is attached and that as said Managing Member of Walter Development, LLC acknowledges the execution of said instrument to be the voluntary act and deed of said company, by it and by him, an individual, voluntarily executed.

\_\_\_\_\_  
Notary Public

STATE OF IOWA                                                    )  
                                                                          )  
COUNTY OF DUBUQUE                                    )                                                    SS

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Dave Broihahn, to me personally known, who, being by me duly sworn, did say that he is the President of BAS Development, LLC, the Iowa corporation executing the instrument to which this is attached and that as said President of BAS Development, LLC acknowledges the execution of said instrument to be the voluntary act and deed of said company, by it and by him, an individual, voluntarily executed.

\_\_\_\_\_  
Notary Public

## **LIST OF EXHIBITS**

- EXHIBIT A – City Attorney Certificate
- EXHIBIT B – Opinion of Developer Counsel
- EXHIBIT C – City Certificate
- EXHIBIT D – Memorandum of Development Agreement
- EXHIBIT E – Urban Renewal Plan
- EXHIBIT F – Certificate of Completion
- EXHIBIT G – Opinion of Employer Counsel
- EXHIBIT H – Site Plan
- EXHIBIT I – Plat
- EXHIBIT J – Deed
- EXHIBIT K – Opinion of Expansion Property Purchaser Counsel

**EXHIBIT A**  
**CITY ATTORNEY'S CERTIFICATE**

**Barry A. Lindahl, Esq.**  
Senior Counsel  
Suite 330, Harbor View Place  
300 Main Street  
Dubuque, Iowa 52001-6944  
(563) 583-4113 office  
(563) 583-1040 fax  
[balesq@cityofdubuque.org](mailto:balesq@cityofdubuque.org)  
Office Hours: 8:00 AM – 5:00 PM, T-W-Th  
8:00 AM – 12:00 PM, F



(DATE)

**RE:**

Dear \_\_\_\_\_:

I have acted as counsel for the City of Dubuque, Iowa, in connection with the execution and delivery of a certain Development Agreement among Walter Development, LLC (Developer), BAS Development, LLC (Expansion Property Purchaser), Unison Solutions, Inc. (Employer), and the City of Dubuque, Iowa (City) dated for reference purposes the \_\_\_ day of \_\_\_\_\_, 20\_\_.

The City has duly obtained all necessary approvals and consents for its execution, delivery and performance of this Agreement and has full power and authority to execute, deliver and perform its obligations under this Agreement, and to the best of my knowledge, the representations of the City Manager in his letter dated the \_\_\_ day of \_\_\_\_\_, 20\_\_, are correct.

Very sincerely,

Barry A. Lindahl, Esq.  
Senior Counsel

BAL:tls

**EXHIBIT B**  
**OPINION OF DEVELOPER'S COUNSEL**

Mayor and City Councilmembers  
City Hall  
13<sup>th</sup> and Central Avenue  
Dubuque IA 52001

Re: Development Agreement Between the City of Dubuque, Iowa and  
\_\_\_\_\_

Dear Mayor and City Councilmembers:

We have acted as counsel for Walter Development, LLC, (Developer) in connection with the execution and delivery of a certain Development Agreement (Development Agreement) between Developer and the City of Dubuque, Iowa ("City") dated for reference purposes the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

We have examined the original certified copy, or copies otherwise identified to our satisfaction as being true copies, of the Development Agreement and such other documents and records as we have deemed relevant and necessary as a basis for the opinions set forth herein.

Based on the pertinent law, the foregoing examination and such other inquiries as we have deemed appropriate, we are of the opinion that:

1. Developer is a corporation organized and existing under the laws of the State of Iowa and has full power and authority to execute, deliver and perform in full Development Agreement. The Development Agreement has been duly and validly authorized, executed and delivered by Developer and, assuming due authorization, execution and delivery by City, is in full force and effect and is valid and legally binding instrument of Developer enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally.

2. The execution, delivery and performance by Developer of the Development Agreement and the carrying out of the terms thereof, will not result in violation of any provision of, or in default under, the articles of incorporation and bylaws of Developer, any indenture, mortgage, deed of trust, indebtedness, agreement, judgment, decree, order, statute, rule, regulation or restriction to which Developer is a party or by which Developer's property is bound or subject.

3. There are no actions, suits or proceedings pending or threatened against or affecting Developer in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business (present or prospective), financial position or results of operations of Developer or which in any manner raises any questions affecting the validity of the Agreement or the Developer's ability to perform Developer's obligations thereunder.

Very truly yours,

**EXHIBIT C  
CITY CERTIFICATE**





City Manager's Office  
50 West 13th Street  
Dubuque, Iowa 52001-4864  
(563) 589-4110 phone  
(563) 589-4149 fax  
ctymgr@cityofdubuque.org

(DATE)

Dear \_\_\_\_\_:

I am the City Manager of the City of Dubuque, Iowa and have acted in that capacity in connection with the execution and delivery of a certain Development Agreement between Walter Development, LLC (Developer), BAS Development, LLC (Expansion Property Purchaser), Unison Solutions, Inc. (Employer), and the City of Dubuque, Iowa (City) dated for reference purposes the \_\_\_ day of \_\_\_\_\_, 20\_\_.

On behalf of the City of Dubuque, I hereby represent and warrant to Developer that:

- (1) City has duly obtained all necessary approvals and consents for its execution, delivery and performance of this Agreement and that it has full power and authority to execute, deliver and perform its obligations under this Agreement. City's attorney shall issue a legal opinion to Developer at time of closing confirming the representation contained herein.
- (2) City shall exercise its best efforts to cooperate with Developer and Expansion Property Purchaser in the development process.
- (3) City shall exercise its best efforts to resolve any disputes arising during the development process in a reasonable and prompt fashion.
- (4) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of, the terms, conditions or provisions of the charter of City, any evidence of indebtedness, agreement or instrument of whatever nature to which City is now a party or by which it or its property is bound, or constitute a default under any of the foregoing.
- (5) There are no actions, suits or proceedings pending or threatened against or affecting City in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could

materially adversely affect the financial position or operations of City or which affects the validity of the Agreement or City's ability to perform its obligations under this Agreement.

(6) No ordinance or hearing is now or before any local governmental body that either contemplates or authorizes any public improvements or special tax levies, the cost of which may be assessed against the Expansion Property. To the best of City's knowledge, there are no plans or efforts by any government agency to widen, modify, or re-align any street or highway providing access to the Property and there are no pending or intended public improvements or special assessments affecting the Expansion Property which will result in any charge or lien be levied or assessed against the Expansion Property, except as follows:

(7) The representations and warranties contained in this article shall be correct in all respects on and as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of the Closing Date.

Sincerely,

Michael C. Van Milligen  
City Manager

MCVM:jh

**EXHIBIT D**  
**MEMORANDUM OF DEVELOPMENT AGREEMENT**

Prepared by: Barry A. Lindahl 300 Main Street Suite 330 Dubuque IA 52001 563 583-4113  
Return to: Barry A. Lindahl 300 Main Street Suite 330 Dubuque IA 52001 563 583-4113

## **MEMORANDUM OF DEVELOPMENT AGREEMENT**

A Development Agreement by and among the City of Dubuque, Iowa, an Iowa municipal corporation and Walter Development, LLC (Developer), BAS Development, LLC (Expansion Property Purchaser), and Unison Solutions, Inc. (Employer), was made regarding the following described premises:

**LOT 2-1 WALTER ADD; locally known as 5301 CHAVENELLE RD;**

**and**

**LOT 1 WALTER SECOND ADD; locally known as 5451 CHAVENELLE RD;**

**and**

**LOT 2-2 OF MCFADDEN FARM PLACE**

**All in the City of Dubuque**

The Development Agreement is dated for reference purposes the \_\_\_\_ day of \_\_\_\_\_, 2019, and contains covenants, conditions, and restrictions concerning the sale and use of said premises.

This Memorandum of Development Agreement is recorded for the purpose of constructive notice. In the event of any conflict between the provisions of this Memorandum and the Development Agreement itself, executed by the parties, the terms and provisions of the Development Agreement shall prevail. A complete counterpart of the Development Agreement, together with any amendments thereto, is in the possession of the City of Dubuque and may be examined at its offices as above provided.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF DUBUQUE, IOWA**

By \_\_\_\_\_  
Roy D. Buol, Mayor

Attest:

\_\_\_\_\_  
Kevin S. Firnstahl, City Clerk

STATE OF IOWA                    )  
                                          )     SS  
COUNTY OF DUBUQUE         )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a Notary Public in and for the State of Iowa, in and for said county, personally appeared Roy D. Buol and Kevin S. Firnstahl, to me personally known, who being by me duly sworn did say that they are the Mayor and City Clerk, respectively of the City of Dubuque, a Municipal Corporation, created and existing under the laws of the State of Iowa, and that the seal affixed to said instrument is the seal of said Municipal Corporation and that said instrument was signed and sealed on behalf of said Municipal corporation by authority and resolution of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipal Corporation by it voluntarily executed.

\_\_\_\_\_  
Notary Public, State of Iowa

**UNISON SOLUTIONS, INC.**

By \_\_\_\_\_  
Jan M Scott, President

STATE OF IOWA                    )  
                                          )    SS  
COUNTY OF DUBUQUE         )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Jan M. Scott, to me personally known, who, being by me duly sworn, did say that he is the President of Unison Solutions, Inc., the Iowa organization executing the instrument to which this is attached and that as said President of Unison Solutions, Inc. acknowledges the execution of said instrument to be the voluntary act and deed of said company, by it and by him, an individual, voluntarily executed.

\_\_\_\_\_  
Notary Public, State of Iowa

**BAS DEVELOPMENT, LLC  
EXPANSION PROPERTY PURCHASER**

By \_\_\_\_\_  
Dave Broihan, President

STATE OF IOWA                    )  
                                          )  
COUNTY OF DUBUQUE         )       SS

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Dave Broihan, to me personally known, who, being by me duly sworn, did say that he is the President of BAS Development, LLC, the Iowa corporation executing the instrument to which this is attached and that as said President of BAS Development, LLC acknowledges the execution of said instrument to be the voluntary act and deed of said company, by it and by him, an individual, voluntarily executed.

\_\_\_\_\_  
Notary Public

**WALTER DEVELOPMENT, LLC**

By \_\_\_\_\_  
Tim Hodge, President

STATE OF IOWA                    )  
                                          )  
COUNTY OF DUBUQUE         )       SS

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Tim Hodge, to me personally known, who, being by me duly sworn, did say that he is the President of Walter Development, LLC, the Iowa organization executing the instrument to which this is attached and that as said President of Walter Development, LLC acknowledges the execution of said instrument to be the voluntary act and deed of said company, by it and by him, an individual, voluntarily executed.

\_\_\_\_\_  
Notary Public, State of Iowa



**EXHIBIT E**  
**URBAN RENEWAL PLAN**

(on file in City Clerk's office, 50 W. 13<sup>th</sup> Street, Dubuque, IA 52001)

**EXHIBIT F  
CERTIFICATE OF COMPLETION**

## **CERTIFICATE OF COMPLETION**

WHEREAS, the City of Dubuque, Iowa, a municipal corporation (City)), has granted incentives to Walter Development, LLC (Developer), BAS Development, LLC (Expansion Property Purchaser), and Unison Solutions, Inc. (Employer), in accordance with a Development Agreement dated as of [Date] (Agreement), certain real property located within the Greater Downtown Urban Renewal District of the Grantor and as more particularly described as follows:

**LOT 2-1 WALTER ADD; locally known as 5301 CHAVENELLE RD;**

**and**

**LOT 1 WALTER SECOND ADD; locally known as 5451 CHAVENELLE RD;**

**and**

**LOT 2-2 OF MCFADDEN FARM PLACE**

**All in the City of Dubuque**

(Development Property); and

WHEREAS, said Agreement incorporated and contained certain covenants and conditions with respect to the rehabilitation of the Development Property, and obligated Developer to construct certain Minimum Improvements (as defined therein) in accordance with the Agreement; and

WHEREAS, said Agreement incorporated and contained certain covenants and conditions with respect to the purchase of 1.90 acres of land, of which 0.67 acres are usable, by Expansion Property Purchaser; and

WHEREAS, said Agreement incorporated and contained certain covenants and conditions obligating Employer to create and maintain fulltime equivalent employee positions; and

WHEREAS, Expansion Property Purchaser and Developer have to the present date performed said covenants and conditions insofar as they relate to the construction of the Minimum Improvements in a manner deemed sufficient by City to permit the execution and recording of this certification; and

NOW, THEREFORE, pursuant to Section 2.5 of the Agreement, this is to certify that all covenants and conditions of the Agreement with respect to the obligations of Developer, and its successors and assigns, to construct the Minimum Improvements on the Development Property have been completed and performed by Developer to the satisfaction of City and such covenants and conditions are hereby satisfied.

The County Recorder of Dubuque County is hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfaction of the covenants and conditions as set forth in said Agreement, and that the Agreement shall otherwise remain in full force and effect.

(SEAL)

**CITY OF DUBUQUE, IOWA**

By: \_\_\_\_\_  
Mike Van Milligen, City Manager

STATE OF IOWA            )  
                                  ) SS  
COUNTY OF DUBUQUE )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_ and acknowledged said execution of the instrument to be his/her voluntary act and deed.

\_\_\_\_\_  
Notary Public in and for  
Dubuque County, Iowa

**EXHIBIT G**  
**OPINION OF EMPLOYER'S COUNSEL**

Mayor and City Councilmembers  
City Hall  
13<sup>th</sup> and Central Avenue  
Dubuque IA 52001

Re: Development Agreement Between the City of Dubuque, Iowa and

---

Dear Mayor and City Councilmembers:

We have acted as counsel for Unison Solutions, Inc. (Employer) in connection with the execution and delivery of a certain Development Agreement (Development Agreement) by and among Walter Development, LLC (Developer), BAS Development, LLC (Expansion Property Purchaser), Unison Solutions, Inc. (Employer) and the City of Dubuque, Iowa ("City") dated for reference purposes the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

We have examined the original certified copy, or copies otherwise identified to our satisfaction as being true copies, of the Development Agreement and such other documents and records as we have deemed relevant and necessary as a basis for the opinions set forth herein.

Based on the pertinent law, the foregoing examination and such other inquiries as we have deemed appropriate, we are of the opinion that:

1. Employer is a corporation organized and existing under the laws of the State of Iowa and has full power and authority to execute, deliver and perform in full Development Agreement. The Development Agreement has been duly and validly authorized, executed and delivered by Employer and, assuming due authorization, execution and delivery by City, is in full force and effect and is valid and legally binding instrument of Employer enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally.

2. To our actual knowledge with no duty to inquire, the execution, delivery and performance by Employer of the Development Agreement and the carrying out of the terms thereof, will not result in violation of any provision of, or in default under, the articles of incorporation and bylaws of Employer, any indenture, mortgage, deed of trust, indebtedness, agreement, judgment, decree, order, statute, rule, regulation or restriction to which Employer is a party or by which Employer's property is bound or subject.

3. To our actual knowledge with no duty to inquire, there are no actions, suits or proceedings pending or threatened against or affecting Employer in any court or before any arbitrator or before or by any governmental body in which there is a reasonable

possibility of an adverse decision which could materially adversely affect the business (present or prospective), financial position or results of operations of Employer or which in any manner raises any questions affecting the validity of the Agreement or the Employer's ability to perform Employer's obligations thereunder.

This opinion is rendered for the sole benefit of the City of Dubuque and no other party may rely on this opinion.

This opinion is rendered and valid as of the date of this letter and we have no duty to update this opinion for any matters which come to our knowledge after the date of this letter.

Very truly yours,

**EXHIBIT H  
SITE PLAN**



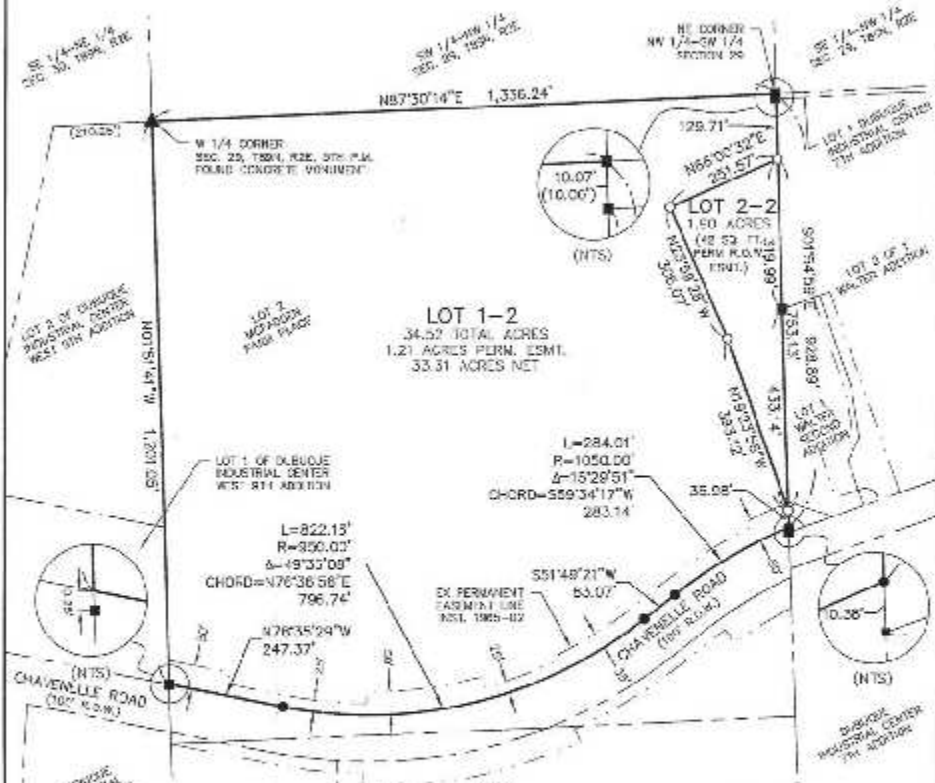


**EXHIBIT I  
PROPOSED PLAT**

Location:	LOT 2 OF MCFADDEN FARM PLACE CITY OF DUBUQUE, IOWA
Proprietor:	CITY OF DUBUQUE
Preparation:	EPIC CONSTRUCTION
Surveyor:	JOHN M. TRANMER
Survey Company:	IIW, P.C., 810 PRINCESTON AVE DUBUQUE, IOWA 52002-0023 PHONE: 262-3236-1944

100 RECORDS 100

### PLAT OF SURVEY LOT 1-2 AND LOT 2-2 OF MCFADDEN FARM PLACE IN THE CITY OF DUBUQUE, IOWA



NOTE: DETAILS ARE NOT TO SCALE (NTS)



DATE OF SURVEY:  
FEBRUARY 15, 2019  
TOTAL AREA SURVEYED:  
38.12 ACRES

LEGEND	
	PROPERTY BOUNDARY
	LOT/RIGHT-OF-WAY LINE
	EASEMENT LINE
	SECTION LINE
	SECTION
	RIGHT-OF-WAY
	RECORDED AS
	FOUND 5/8" IRON REBAR WITH RED PLASTIC CAP NO. 12631 UNLESS OTHERWISE NOTED
	SET 3/8" IRON REBAR WITH RED PLASTIC CAP NO. 12631 UNLESS OTHERWISE NOTED
	FOUND 5/8" IRON REBAR WITH RED PLASTIC CAP NO. 11409 UNLESS OTHERWISE NOTED

NOTE: THIS SURVEY IS SUBJECT TO EASEMENTS, RESERVATIONS, RESTRICTIONS AND RIGHTS-OF-WAY OF RECORD AND NOT OF RECORD.



I HEREBY CERTIFY THAT THE ABOVE SURVEYING DOCUMENT WAS PREPARED AND IS CORRECT ACCORDING TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THAT I AM A DULY LICENSED AND QUALIFIED SURVEYOR IN THE STATE OF IOWA.

FOR ME, PLS:  
*John M. Tranmer* 2/15/19  
JOHN M. TRANMER  
LICENSE NO. 126021 MY LICENSE RENEWS: MAY 12, 2020  
PRINT OR GUMMED LABEL BY THE SURV. DEPT. 1 & 2

<b>iiw</b> IOWA INSTRUMENT & SURVEYING, P.C. 810 PRINCESTON AVE DUBUQUE, IOWA 52002-0023 PHONE: 262-3236-1944	
PROJECT NO.	PLAT NO. 2-1-19
DRAWN BY	FILED AND RECORDED
DATE	DATE
SCALE	SCALE
I, JOHN M. TRANMER, SURVEYOR, DO HEREBY CERTIFY THAT THIS PLAT IS CORRECT AND ACCURATE.	

**EXHIBIT J  
DEED**

**Prepared by: Barry A. Lindahl 300 Main Street, Suite 330, Dubuque IA 52001 563 583-4113**  
**Return to: Barry A. Lindahl 300 Main Street ,Suite 330, Dubuque IA 52001 563 583-4113**

Tax Statement to:

### **SPECIAL WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS: that the City of Dubuque, Iowa, a municipal corporation of the State of Iowa (Grantor), in consideration of the Grantee named below undertaking the obligations of the Expansion Property Purchaser under the Development Agreement described below and the sum of Eighty Thousand Four Hundred and no/100 Dollars (\$80,400) in hand paid, and other good and valuable consideration, and pursuant to the authority of Chapter 403, Code of Iowa, does hereby GRANT, SELL AND CONVEY unto BAS Development, LLC, an Iowa limited liability company (Grantee), the following described parcel(s) situated in the County of Dubuque, State of Iowa, to wit (the Property):

#### **LOT 2-2 OF MCFADDEN FARM PLACE in the City of Dubuque, Iowa**

This Deed is exempt from transfer tax pursuant to Iowa Code section 428A.2(6).

This Deed is given pursuant to the authority of Resolution No. \_\_\_\_\_ of the City Council of the City of Dubuque adopted the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the terms and conditions thereof, if any, having been fulfilled.

This Deed is being delivered in fulfillment of Grantor's obligations under and is subject to all the terms, provisions, covenants, conditions and restrictions contained in that certain Development Agreement executed by Grantor and Grantee herein, dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the Agreement), a memorandum of which was recorded on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, in the records of the Recorder of Dubuque County, Iowa, Instrument Number \_\_\_\_\_ - \_\_\_\_\_.

Promptly after completion of the improvements in accordance with the provisions of the Agreement, Grantor will furnish Grantee with a Certificate of Completion in the form set forth in the Agreement. Such certification by Grantor shall be, and the certification itself shall so state, a conclusive determination of satisfaction and termination of the agreements and covenants of the Agreement and of this Deed with respect to the obligation of Grantee, and its successors and assigns, to construct improvements and the dates for the beginning and completion thereof, it being the intention of the parties that upon the granting and filing of the Certificate of Completion that all restrictions, re-vesting of title, and reservations of title contained in this Deed be forever released and terminated and that any remaining obligations of Grantee pursuant to the Agreement shall be personal only.

All certifications provided for herein shall be in such form as will enable them to be recorded with the County Recorder of Dubuque, Iowa. If Grantor shall refuse or fail to provide any such certification in accordance with the provisions of the Agreement and this Deed, Grantor shall, within twenty days after written request by Grantee, provide Grantee with a written statement indicating in adequate detail in what respects Grantee has failed to complete the improvements in accordance with the provisions of the Agreement or is otherwise in default, and what measures or acts will be necessary, in the opinion of Grantor, for Grantee to take or perform in order to obtain such certification.

In the event that an Event of Default occurs under the Agreement and Grantee or \_\_\_\_\_ herein shall fail to cure such default within the period and in the manner stated in the Agreement, then Grantor shall have the right to re-enter and take possession of the Property and to terminate and re-vest in Grantor the estate conveyed by this Deed to Grantee, its assigns and successors in interest, in accordance with the terms of the Agreement.

None of the provisions of the Agreement shall be deemed merged in, affected or impaired by this Deed.

Grantor hereby covenants to warrant and defend the said premises against the lawful claims of all persons whomsoever claiming by, through and under it.

Dated this \_\_\_\_ of \_\_\_\_\_, 20\_\_ at Dubuque, Iowa.

**CITY OF DUBUQUE IOWA**

By: \_\_\_\_\_  
Roy D. Buol, Mayor

Attest:

By: \_\_\_\_\_  
Kevin S. Firnstahl, City Clerk

**EXHIBIT K**  
**OPINION OF EXPANSION PROPERTY PURCHASER COUNSEL**

Mayor and City Councilmembers  
City Hall  
13<sup>th</sup> and Central Avenue  
Dubuque IA 52001

Re: Development Agreement Between the City of Dubuque, Iowa and  
\_\_\_\_\_

Dear Mayor and City Councilmembers:

We have acted as counsel for BAS Development, LLC, (Expansion Property Purchaser) in connection with the execution and delivery of a certain Development Agreement (Development Agreement) by and among Walter Development, LLC (Developer), BAS Development, LLC (Expansion Property Purchaser), Unison Solutions, Inc. (Employer) and the City of Dubuque, Iowa ("City") dated for reference purposes the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

We have examined the original certified copy, or copies otherwise identified to our satisfaction as being true copies, of the Development Agreement and such other documents and records as we have deemed relevant and necessary as a basis for the opinions set forth herein.

Based on the pertinent law, the foregoing examination and such other inquiries as we have deemed appropriate, we are of the opinion that:

1. Expansion Property Purchaser is a corporation organized and existing under the laws of the State of Iowa and has full power and authority to execute, deliver and perform in full Development Agreement. The Development Agreement has been duly and validly authorized, executed and delivered by Developer and, assuming due authorization, execution and delivery by City, is in full force and effect and is valid and legally binding instrument of Expansion Property Purchaser enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally.

2. The execution, delivery and performance by Expansion Property Purchaser of the Development Agreement and the carrying out of the terms thereof, will not result in violation of any provision of, or in default under, the articles of incorporation and bylaws of Expansion Property Purchaser, any indenture, mortgage, deed of trust, indebtedness, agreement, judgment, decree, order, statute, rule, regulation or restriction to which Developer is a party or by which Developer's property is bound or subject.

3. There are no actions, suits or proceedings pending or threatened against or affecting Expansion Property Purchaser in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business (present or prospective), financial position or results of operations of Expansion Property Purchaser or which in any manner raises any questions affecting the validity of the Agreement or the Expansion



Property Purchaser's ability to perform Expansion Property Purchaser's obligations thereunder.

Very truly yours,