

**DEVELOPMENT AGREEMENT  
BY AND AMONG  
THE CITY OF DUBUQUE, IOWA,  
AND  
SETZER PROPERTIES DBQ, LLC**

This Agreement, dated for reference purposes the \_\_\_\_ day of \_\_\_\_\_, 2021, by and among the CITY OF DUBUQUE, IOWA, a municipality (City), established pursuant to the Iowa Code and acting under authorization of Iowa Code Chapter 403, as amended (Urban Renewal Act), and SETZER PROPERTIES DBQ, LLC, a Delaware limited liability company (Developer).

WITNESSETH:

WHEREAS, in furtherance of the objectives of the Urban Renewal Act, City has undertaken an Urban Renewal Project as described herein (the Project) to advance the community's ongoing economic development efforts; and

WHEREAS, the Project is located within the Dubuque Industrial Center Economic Development District (the Project Area); and

WHEREAS, 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, approved by the City Council of City on May 2, 1988, and as subsequently amended through and including the date hereof (the Urban Renewal Plan) attached hereto as Exhibit A; and

WHEREAS, a copy of the Urban Renewal Plan, as constituted on the date of this Agreement, is on file with the County Auditor and the City of Dubuque City Clerk; and

WHEREAS, Developer has requested that City sell to Developer 33.015 acres legally described as follows:

LOT 2 DUBUQUE INDUSTRIAL CENTER NORTH THIRD ADDITION in the City of Dubuque, Iowa (Parcel A)

And 1.25 acres, described herein as:

That part of LOT C DUBUQUE INDUSTRIAL CENTER NORTH THIRD ADDITION in the City of Dubuque, Iowa shown on Exhibit B-2 and described in Exhibit B-3 (Parcel B)

Parcel A and Parcel B being referred to collectively as the Property, with all easements, tenements, hereditaments, and appurtenances belonging thereto so that Developer may develop the Property, located in the Project Area, for the construction, use, and

occupancy of an industrial building (the Facility) as described herein in accordance with the uses specified in the Urban Renewal Plan and Developer agrees to comply with any amendments to the Urban Renewal Plan, in accordance with this Agreement; and

WHEREAS, Developer will undertake the construction of the Facility on the Property; and

WHEREAS, Developer and FedEx Ground Package System, Inc. (Tenant) have entered into an agreement for the construction of the Facility; and

WHEREAS, Tenant will lease the Facility from Developer (the Lease) and employ employees as provided herein; and

WHEREAS, Developer will make a capital investment in building improvements, to construct the Facility, all of the foregoing referred to herein as the Project; and

WHEREAS, City believes that the Project and the development of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of City and in accord with the public purposes and provisions of the applicable federal, state and local laws and the requirements under which the Project has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the others as follows:

## **SECTION 1. CONVEYANCE OF PROPERTY TO DEVELOPER.**

1.1 Purchase Price. The Property consists of two separately identified parcels, referred to herein and in Exhibit B-2 as Parcel A and Parcel B totaling 34.265 acres.

(1) The purchase price for Parcel A (the Parcel A Purchase Price) shall be One Hundred Fifty Thousand Dollars (\$150,000) per acre for 33.015 acres for a total Parcel A Purchase Price of Four Million Nine Hundred Fifty-Two Thousand Two Hundred Fifty Dollars (\$4,952,250).

(2) The purchase price for Parcel B (the Parcel B Purchase Price) shall be One Hundred Fifty Thousand Dollars (\$150,000) per acre for 1.25 acres for a total Parcel B Purchase Price of One Hundred Eighty-Seven Thousand Five Hundred Dollars (\$187,500). Developer shall have prepared and shall be prepared to record at Closing a plat of survey of Parcel B acceptable to City (the "Plat"), including the location and depiction of all applicable easements and other substantial improvements. Developer and City agree that upon approval of the Plat, this Agreement will be amended to include the legal description of Parcel B and the Parcel B Purchase Price. The actual Parcel B Purchase Price shall be adjusted based on the acreage of Parcel B as shown on the Plat and paid to City

within thirty (30) days of receipt of a statement therefore from City. City will deliver to Developer a correction Special Warranty Deed showing the legal description for Parcel B.

(3) The purchase price for the easement described in Section 2.1(3) shall be \$4,838.00 (the Easement Purchase Price)

(4) The total purchase price shall be the sum of the Parcel A Purchase Price and the Parcel B Purchase Price and the Easement Purchase Price (the Total Purchase Price) of Five Million One Hundred Forty-Four Thousand Five Hundred Eighty-Eight Dollars (\$5,144,588) which shall be due and payable by Developer in immediately available funds in favor of City, on or before October 29, 2021, 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 Property to Developer subject only to easements, restrictions, conditions, and covenants of record as of the date hereof to the extent not objected to by Developer as set forth in this Agreement, and to the conditions subsequent set forth in Section 3.3, below:

(1) Developer, at its sole cost and expense, has or will order an abstract of title to the Property continued through the date of this Agreement which shall show merchantable title in City in conformity with this Agreement and applicable state law.

(2) Developer shall have until time of the Closing (as defined herein) to render objections to title, including any easements or other encumbrances not satisfactory to Developer, in writing to City. Developer agrees, however, to review the Abstract promptly following Developer's receipt of Developer'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 Developer'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 Developer of intended action within ten (10) days of such action. If City shall fail to have such objections removed as of the Closing, or any extension thereof consented to by Developer, Developer may, at its sole discretion, either (a) terminate this Agreement without any liability on its part, and any sums previously paid to City by Developer (or paid into escrow for City's benefit) shall be returned to Developer 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. Developer, its counsel, accountants, agents, and other representatives, shall have full and continuing access to the Property and all parts thereof, upon reasonable notice to City. Developer and its agent and representatives shall also have the right to enter upon the Property at any time after the

execution and delivery hereof for any purpose whatsoever, including inspecting, surveying, engineering, test boring, and performing environmental tests, provided that Developer 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 Developer, 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 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 to enter into this Agreement and purchase the Property, City hereby represents and warrants to Developer that to the best of City's knowledge:

(1) There is no action, suit or proceeding pending, or to the best of City's knowledge, threatened against City which might result in any adverse change in the Property being conveyed or the possession, use or enjoyment thereof by Developer, including, but not limited to, any action in condemnation, eminent domain or public taking.

(2) 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 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 Property which will result in any charge or lien be levied or assessed against the Property.

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

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

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

(6) 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 Developer 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 Property of which it has actual notice. The Property is in material compliance with all applicable zoning, fire, building, and health statutes, ordinances, and regulations.

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

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

(9) 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 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 Property being conveyed may be subject.

(10) City has duly obtained all necessary approvals and consents for its execution, delivery and performance of this Agreement, and 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, in the form attached hereto as Exhibit C.

(11) All city utilities necessary for the development and use of the Property as an industrial facility adjoin the Property, and Developer and Tenant shall have the right to connect to said utilities, subject to payment of City's connection fees. There will be no sanitary sewer connection fees associated with the Project. Water connection fees will be assessed for connections to Chavenelle Road or Innovation Drive, except as provided in Section 2.1. All other associated fees, such as a tapping fee, will be required as determined by the size of the service line being installed.

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

(13) 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 Developer and hold Developer 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.

(14) City shall exercise its best efforts to assist Developer in the development process.

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

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

(17) The Property is presently zoned to accommodate Developer's intended improvements.

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

1.5 Representations and Warranties of Developer. Developer makes the following representations and warranties:

(1) Developer is duly organized and validly existing or authorized under the laws of the State of Delaware and has all requisite power and authority to own and operate its properties, to carry on its respective business as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under the Agreement.

(2) This Agreement has been duly authorized, executed and delivered by Developer, 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 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 shall issue legal opinions to the City, at time of closing, confirming the representations contained herein, in the form attached hereto as Exhibit D.

(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 or any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which Developer 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 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 or which affects the validity of the Agreement or Developer's ability to perform its obligations under this Agreement.

(5) Developer 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 will use good faith 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 has commitments for permanent financing for the Development Project and all of its 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.

1.6 Conditions to Closing. The closing of the transaction (the Closing) contemplated by this Agreement and all the obligations of Developer under this Agreement are subject to fulfillment, on or before the Closing Date, of the following conditions:

(1) The representations and warranties made by City in Section 1.4 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 in the form of Exhibit G.

(2) Title to the Property shall be in the condition warranted in Section 1.4.

(3) Developer, in its sole and absolute discretion, having completed and approved of any inspections done by Developer hereunder.

(4) Developer having obtained any and all necessary governmental approvals, including without limitations approval of zoning, subdivision, or platting which might be necessary or desirable in connection with the sale, transfer and development of the Development Property. Any conditions imposed as a part of the zoning, platting or subdivision must be satisfactory to Developer, in its sole opinion. City shall cooperate with Developer in attempting to obtain any such approvals and shall execute any documents necessary for this purpose, provided that City shall bear no expense in connection therewith. In connection therewith, the City agrees (a) to review all of Developer's plans and specifications for the Project and to either reject or approve the same in a prompt and timely fashion; (b) to issue a written notification to Developer, following City's approval of same, indicating that the City

has approved such plans and specifications, and that the same are in compliance with the Urban Renewal Plan and Developer agrees to comply with any amendments to the Urban Renewal Plan, this Agreement and any other applicable City or affiliated agency requirements, with the understanding that Developer and its lenders shall have the right to rely upon the same in proceeding with the project; (c) to identify in writing within ten (10) working days of submission of said plans and specifications, any and all permits, approvals and consents that are legally required for the acquisition of the Property by Developer, and the construction, use and occupancy of the project with the intent and understanding that Developer and its lenders and attorneys will rely upon same in establishing their agreement and time frames for construction, use and occupancy, lending on the project and issuing legal opinions in connection therewith; and (d) to cooperate fully with Developer to streamline and facilitate the obtaining of such permits, approvals and consents. Notwithstanding anything herein to the contrary, Developer may use a phased approach to obtaining building and related permits for the Project and the parties agree that certain of such permits will be obtained after Closing.

(5) City having completed all required notice to or prior approval, consent or permission of any federal, state, municipal or local governmental agency, body, board or official to the sale of the Property; and consummation of the Closing by City shall be deemed a representation and warranty that it has obtained the same.

(6) Developer and City shall be in material compliance with all the terms and provisions of this Agreement.

(7) Developer shall have furnished City with evidence, in a form satisfactory to City (such as a letter of commitment from a bank or other lending institution), that Developer has firm financial commitments in an amount sufficient, together with equity commitments, to complete the Minimum Improvements (as defined herein) in conformance with the Construction Plans (as defined herein), or City shall have received such other evidence of such party's financial ability as in the reasonable judgment of City is required.

(8) Attached hereto as Exhibit L is a letter of Intent/Terms pursuant to which Tenant confirms its intent to maintain its current level of employment of 135 full-time employees as of the date of this Agreement and create at least 10 FTE in the City of Dubuque, Iowa by not later than January 1, 2024.

(9) Receipt of an opinion of counsel to Developer in the form attached hereto as Exhibit D.

(10) Developer shall have prepared and be prepared to record at Closing a plat of survey of the Property acceptable to City (the "Plat"), including location and depiction of all applicable easements and other substantial improvements.



(11) Developer shall have the right to terminate this Agreement at any time prior to the consummation of the closing on the Closing Date if Developer determines in its sole discretion that conditions necessary for the successful completion of the Project contemplated herein have not been satisfied to the full satisfaction of such party in such party's sole and unfettered discretion. Upon the giving of notice of termination by such terminating party to the other parties to this Agreement, this Agreement shall be deemed null and void.

(12) Developer shall have provided City with a copy of the executed Lease with Tenant.

(13) Developer shall have provided City with a copy of the Traffic Study required by Sec. 2.6. City and Developer shall have entered into the agreement required by Section 2.6.

(14) Developer shall have provided to City a survey exhibit showing the location of the easement described in Section 2.1(3).

1.7 Closing. The Closing of the purchase and sale shall take place on the Closing Date which shall within fifteen (15) days of the date of final approval of this agreement by the City Council of the city of Dubuque and not later than the 29<sup>th</sup> day of November, 2021. Exclusive possession of the Property shall be delivered on the Closing Date, in its current condition and in compliance with this Agreement, including City's representations and warranties regarding the same. Consummation of the Closing shall be deemed an agreement of the parties to this Agreement that the conditions of closing have been satisfied or waived.

1.8 City's Obligations at Closing. At or prior to Closing Date, City shall:

(1) Deliver to Developer City's duly recordable Special Warranty Deed to the Property in the form attached hereto as Exhibit E (the Deed) conveying to Developer marketable fee simple title to the Property and all rights appurtenant thereto, subject only to easements, restrictions, conditions and covenants of record as of the date hereof and not objected to by Developer as set forth in this Agreement, and to the conditions subsequent set forth in Section 3.3 below.

(2) Deliver to Developer such other documents as may be required by this Agreement, all in a form satisfactory to Developer.

1.9 Delivery of Total Purchase Price; Obligations At Closing. At Closing, and subject to the terms, conditions, and provisions hereof and the performance by City of its obligations as set forth herein, Developer shall pay the Total Purchase Price to City pursuant to Section 1.1 hereof and the easement purchase price pursuant to Section 1.1(3).

1.10 Closing Costs. The following costs and expenses shall be paid in connection with the Closing:

- (1) City shall pay:
  - (a) The transfer fee, if any, imposed on the conveyance.
  - (b) A pro-rata portion of all taxes as provided in Section 1.10.
  - (c) All special assessments, if any, whether levied, pending, or assessed.
  - (d) City's attorney's fees, if any.
  - (e) City's broker and/or real estate commissions and fees, if any.
  - (f) The cost of recording the satisfaction of any existing mortgage and any other document necessary to make title marketable.
- (2) Developer shall pay the following costs in connection with the closing:
  - (a) The recording fee necessary to record the Deed.
  - (b) Developer's attorneys' fees.
  - (c) Developer's broker and/or real estate commissions and fees, if any.
  - (d) A pro-rata portion of all taxes as provided in Section 1.10.

1.11 Real Estate Taxes. City shall pay all real estate taxes for all fiscal years prior to the fiscal year in which Closing Date occurs. Real estate taxes for the fiscal year in which Closing Date occurs shall be prorated between City and Developer to Closing Date on the basis of a 365-day calendar year. Developer shall pay or cause to be paid all real estate taxes due in subsequent fiscal years. Any proration of real estate taxes on the Property shall be based upon such taxes for the year currently payable.

## **SECTION 2. DEVELOPMENT ACTIVITIES**

2.1 Required Minimum Improvements. City acknowledges that the Facility Developer is building on the Property is an industrial facility. Developer agrees to construct the building and to add certain internal systems thereto, including all interior improvements to the building; (the Minimum Improvements); all as more particularly depicted and described on the plans and specifications to be delivered to and approved by City as contemplated in this Agreement. Developer hereby agrees the Facility will be not less than Two Hundred Fifteen Thousand (215,000) square feet of floor space along with the

necessary site work, machinery, and equipment at an estimated cost of approximately Twenty-Two Million Five Hundred Thousand Dollars (\$22,500,000).

- (1) Developer shall construct at its sole expense the sanitary sewer as generally shown on Exhibit I. City shall grant an easement to Developer for the sanitary sewer.
- (2) Developer shall install at its sole expense a 16" water main as generally shown on Exhibit K and subject to final approval by City. Developer shall grant to City an easement for the water main.
- (3) Developer shall grant to City a right of way and public utility easement over the cul-de-sac area as shown on Exhibit J.

2.2 Plans for Construction of Minimum Improvements. Developer shall provide City with an approved Site Plan. The parties agree that this Development Agreement shall be amended to include such Site Plan. Plans and specifications with respect to the development of the Property and the construction of the Minimum Improvements thereon (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 the Amended and Restated Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges, recorded as Instrument No. 2014-00001147, 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 on the Property. All work with respect to the Minimum Improvements shall be in substantial conformity with the Construction Plans approved by City.

2.3 Timing of Improvements. Developer hereby agrees that construction of the Minimum Improvements on the Property shall be commenced on or before the later of November 30, 2021 or fifteen (15) days after the date of Closing, and shall be substantially completed by February 1, 2023. 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, shut down due to COVID-19, 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.

2.4 Certificate of Completion. Promptly following the request of Developer upon completion of the Minimum Improvements, the City Manager shall furnish Developer with an appropriate instrument so certifying. 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 and in the Deed with

respect to the obligations of Developer to construct the Minimum Improvements. The Certificate of Completion, in the form attached hereto as Exhibit H, shall waive all rights of reversion of title to the Property as provided in Section 3.3, and the Certificate of Completion shall so state.

2.5 Developer's Lender's Cure Rights. The parties agree that, if Developer shall fail to complete the Minimum Improvements as required by this Agreement such that reversion of title may occur (or such that the City would have the option of exercising its reversion rights), then Developer's lender shall have the right, but not the obligation, to complete such Minimum Improvements.

2.6 Traffic Study. Developer shall at its sole cost and expense provide to City prior to Closing a traffic study in a form acceptable to City and shall pay 100% of needed improvements to Innovation Drive (including the intersection of Innovation Drive and Chavenelle Road) and 50% of the cost of any improvements on Seippel Road and Chavenelle Road that are identified in the study and then required by City. City and Developer shall have entered into an agreement for such improvements prior to Closing.

2.7 No Change in Use. Developer agrees to utilize the Property only as a logistics/warehouse/distribution center during the term of this Agreement. Developer agrees that no change in use shall be permitted during the term of this Agreement without the prior written consent of City in its sole discretion. Any change in use without the prior written consent of City shall constitute an event of default and result in a penalty of \$3,426,500 (\$100,000 per acre x 34.265 acres = \$3,426,500).

2.8 Books and Records. During the term of this Agreement, Developer shall keep at all times 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 Developer in accordance with generally accepted accounting principles consistently applied throughout the period involved, and Developer shall provide reasonable protection against loss or damage to such books of record and account.

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

2.10 No Other Exemptions. During the term of this Agreement, Developer agrees 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.

2.11 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, from time to time at the request of City, furnish City with proof of insurance in the form of a certificate of insurance for each insurance policy):

All risk builder's risk insurance naming City as loss payee, written on a Completed Value Form in an amount equal to one hundred percent (100%) of the replacement value when construction is completed.

(2) 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 (and from time to time at the request of City shall furnish proof of insurance in the form of a certificate of insurance) all risk property insurance against loss and/or damage to the Minimum Improvements under an insurance policy written in an amount not less than the full insurable replacement value of Minimum Improvements naming City as loss payee. The term "replacement value" shall mean the actual replacement cost of 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.

(3) Developer agrees to notify City immediately in the case of damage exceeding \$200,000.00 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. The net proceeds of any such insurance (the 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.

2.12 Preservation of Property. During the term of this Agreement, Developer shall maintain, preserve and keep, or cause others to maintain, preserve and keep, 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. Nothing in this Agreement, however, shall be deemed to alter any agreements between Developer or any other party including, without limitation, any agreements between the parties regarding the care and maintenance of the Property.

2.13 Non-Discrimination. In carrying out the project, Developer shall not discriminate against any employee or applicant for employment because of age, color, familial status, gender identity, marital status, mental/physical disability, national origin, race, religion/creed, sex, or sexual orientation.

2.14 Conflict of Interest. Developer agrees 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 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.

2.15 Non-Transferability. During the Term of this Agreement, this Agreement may not be assigned by Developer, nor may any portion of the Property be sold or otherwise transferred by Developer without the prior written consent of City, which consent shall not be unreasonably withheld.

2.16 Restrictions on Use. Developer agrees for itself, and its successors and assigns, and every successor in interest to the Property or any part thereof that they, and their respective successors and assigns, shall:

(1) City represents and agrees that use of the Property consistent with its current zoning is in full compliance with the Urban Renewal Plan and Developer agrees to comply with any amendments to the Urban Renewal Plan.

(2) Not discriminate upon the basis of age, color, familial status, gender identity, marital status, mental/physical disability, national origin, race, religion/creed, sex, or sexual orientation 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, Developer 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).

2.17 Release and Indemnification Covenants. Developer agrees to the following conditions of release and indemnification, except that each company only agrees to indemnify the Indemnified Parties (defined below), with respect to the negligence, misrepresentation, or misconduct of their own respective acts.

(1) Developer releases 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) Developer agrees 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 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 takes possession of the Property.

(3) The Indemnified Parties shall not be liable to Developer for any damage or injury to the persons or property of Developer or its 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.

2.18 Compliance with Laws. Developer shall comply with all federal, state, and local laws, rules and regulations relating to its businesses, other than laws, rules and regulations for which 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.

### **SECTION 3. EVENTS OF DEFAULT AND REMEDIES.**

3.1 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 to pay or cause to be paid, before delinquency, all real

property taxes assessed with respect to the Minimum Improvements and the Property.

(2) Failure by Developer to cause the construction of the Minimum Improvements to be commenced and completed pursuant to the terms, conditions and limitations of this Agreement.

(3) Transfer of any interest by Developer in any portion of the Property or the Minimum Improvements in violation of the provisions of this Agreement.

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

(5) Any change in the use of the Property without the prior written consent of City in its sole discretion.

3.2 Remedies on Default by Developer. Whenever any Event of Default referred to in Section 4.1 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 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 the Developer 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 Developer, deemed adequate by City, that the Developer 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.

3.3 Revesting of Title. The parties understand that Title may be revested in the City as specified below; except that no such right shall interfere or upset Tenant's occupancy of the Property during the term of its Lease as a result of an event of default on the part of Developer. City shall honor the remaining term of the Lease (including any extension terms exercised by Tenant under the Lease) and City agrees that it will execute a non-disturbance agreement to this effect upon written request from Tenant.



(1) Revesting Title in City Upon Happening of Event Subsequent to Conveyance to Developer and Prior to Issuance of Certificate of Completion. In the event that, subsequent to conveyance of the Property to Developer by City and prior to receipt by Developer of the Certificate of Completion, but subject to the terms of the mortgage granted by Developer to secure a loan obtained by Developer from a commercial lender or other financial institution to fund the acquisition of the Property or construction of Minimum Improvements (First Mortgage), an Event of Default under Section 4.1(1) through (4) of this Agreement occurs and is not cured within the times specified in Section 4.2, then City shall have the right to re-enter and take possession of the Property and any portion of the Minimum Improvements thereon and to terminate (and re-vest in City pursuant to the provisions of this Section 3.3 subject only to any superior rights in any holder of the First Mortgage) the estate conveyed by City to Developer, it being the intent of this provision, together with other provisions of this Agreement, that the conveyance of the Property to Developer shall be made upon the condition that (and the Deed shall contain a condition subsequent to the effect that), in the event of default under Section 4.1(1) through (4) on the part of Developer and failure on the part of Developer to cure such default within the period and in the manner stated herein, City may declare a termination in favor of City of the title and of all Developer's rights and interests in and to the Property conveyed to Developer, and that such title and all rights and interests of Developer, and any assigns or successors in interests of Developer, and any assigns or successors in interest to and in the Property, shall revert to City (subject to the provisions of Section 3.3 of this Agreement), but only if the events stated in Section 4.1 of this Agreement have not been cured within the time period provided above, or, if the events cannot be cured within such time periods, Developer does not provide assurance to City, reasonably satisfactory to City, that the events will be cured as soon as reasonably possible

3.4 Resale of Reacquired Property; Disposition of Proceeds. Upon the re-vesting in City of title to the Property as provided in Section 3.3 of this Agreement, City shall, pursuant to its responsibility under law, use its best efforts, subject to any rights or interests in such property or resale granted to any holder of a First Mortgage, to resell the Property or part thereof as soon and in such manner as City shall find feasible and consistent with the objectives of such law and of the Urban Renewal Plan to a qualified and responsible party or parties (as determined by City in its sole discretion) who will assume the obligation of making or completing Minimum Improvements or such other improvements in their stead as shall be satisfactory to City and in accordance with the uses specified for such the Property or part thereof in the Urban Renewal Plan. Subject to any rights or interests in such property or proceeds granted to any holder of a First Mortgage upon such resale of the Property the proceeds thereof shall be applied:

- (1) First, to pay and discharge the First Mortgage;
- (2) Second, to pay the principal and interest on mortgage(s) created on the

Development the Property, or any portion thereof, or any improvements thereon, previously acquiesced in by City pursuant to this Agreement. If more than one mortgage on the Property, or any portion thereof, or any improvements thereon, has been previously acquiesced in by City pursuant to this Agreement and insufficient proceeds of the resale exist to pay the principal of, and interest on, each such mortgage in full, then such proceeds of the resale as are available shall be used to pay the principal of and interest on each such mortgage in their order of priority, or by mutual agreement of all contending parties, including Developer, or by operation of law;

(3) Third, to reimburse City for all allocable costs and expenses incurred by City, including but not limited to salaries of personnel, in connection with the recapture, management and resale of the Property or part thereof (but less any income derived by City from the Property or part thereof in connection with such management); any payments made or necessary to be made to discharge any encumbrances or liens (except for mortgage(s) previously acquiesced in by the City) existing on the Property or part thereof at the time of reversion of title thereto in City or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, default or acts of Developer, its successors or transferees (except with respect to such mortgage(s)), any expenditures made or obligations incurred with respect to the making or completion of the Minimum Improvements or any part thereof on the Property or part thereof, and any amounts otherwise owing to City (including water and sewer charges) by Developer and its successors or transferees; and

(4) Fourth, to reimburse Developer up to the amount equal to (1) the sum of the Purchase Price paid to City for the Property and (2) the cash actually invested by such party in making any of the Minimum Improvements on the Property.

3.5 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.

3.6 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.

3.7 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.

3.8 Remedies on Default by City. If City defaults in the performance of this Agreement, Developer 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, or to enforce performance and observance of any obligation, agreement, or covenant of City under this Agreement. Developer may suspend performance under this Agreement until it receives assurances from City, deemed adequate by Developer, that City will cure its default and continue its performance under this Agreement.

#### **SECTION 4. GENERAL TERMS AND PROVISIONS.**

4.1 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:

- (1) If to Developer:

SETZER PROPERTIES DBQ, LLC  
Attn: Robbie McAtee  
354 Waller Avenue, Suite 200  
Lexington, KY 40504  
Phone: (859) 514-7864  
Fax: (859) 281-6335

With copy to:

SETZER PROPERTIES DBQ, LLC  
Attn: Joshua J. Markham  
354 Waller Avenue, Suite 200  
Lexington, KY 40504  
Phone: (859) 514-7767  
Fax: (859) 281-6335

- (2) 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. 13th Street  
Dubuque, Iowa 52001

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

4.2 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of City and Developer and its successors and assigns.

4.3 Force Majeure. A party shall be excused from its obligations under this Agreement if and to the extent and during such time as the party is prevented, impeded, or hindered, unable to perform its obligations or is delayed in doing so due to events or conditions outside of the party's reasonable control and after the party has taken reasonable steps to avoid or mitigate such event or its consequences (each a "Force Majeure Event") including, without limitation in any way, as the result of any acts of God, war, fire, or other casualty, riot, civil unrest, extreme weather conditions, terrorism, strikes and/or labor disputes, pandemic, epidemic, quarantines, government stay-at-home orders, municipal and other government orders, or other matter beyond the control of such party. Upon the occurrence of a Force Majeure Event, the party incurring such Force Majeure Event will promptly give notice to the other party identifying the Force Majeure Event, explaining how it impacts performance and the estimated duration, identifying the relief requested, agreeing to limit damages to the other party and to immediately resume performance upon termination of the Force Majeure Event, and agreeing to supplement the notice as more information becomes available, and thereafter the parties shall meet and confer in good faith in order to identify a cure of the condition affecting its performance as expeditiously as possible. No obligation to make a payment required by this Agreement is excused by a Force Majeure Event. The nonperforming party shall not be entitled to any damages or additional payments of any kind for any such delay.

4.4 Termination Date. This Agreement and the rights and obligations of the parties hereunder shall terminate on January 1, 2032 (the Termination Date).

4.5 Execution By Facsimile. The parties agree that this Agreement may be transmitted among them by email or facsimile machine. The parties intend that the emailed or faxed signatures constitute original signatures and that an emailed or faxed Agreement containing the signatures (original, emailed or faxed) of all the parties is binding on the parties.

4.6 Memorandum of Development Agreement. City shall promptly record a Memorandum of Development Agreement in the form attached hereto as Exhibit F 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 has caused this Agreement to be duly executed.

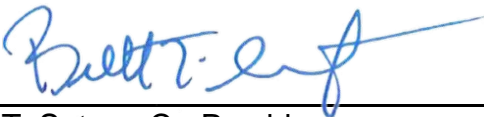
**CITY OF DUBUQUE, IOWA**

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

Attest:

\_\_\_\_\_  
Adrienne N. Breitfelder, City Clerk

**SETZER PROPERTIES DBQ, LLC**

By:   
Brett T. Setzer, Co-President

## **LIST OF EXHIBITS**

Exhibit A	Urban Renewal Plan
Exhibit B-1	Plat
Exhibit B-2	Site Exhibit
Exhibit B-3	Parcel B Legal Description
Exhibit C	City Attorney Certificate
Exhibit D	Opinion of Counsel to Developer
Exhibit E	Deed
Exhibit F	Memorandum of Development Agreement
Exhibit G	City Certificate
Exhibit H	Certificate of Completion
Exhibit I	Sanitary Easement Area
Exhibit J	Cul-de-sac Easement Area
Exhibit K	Water Main Easement Area
Exhibit L	Letter of Intent re Employees

**EXHIBIT A**

**URBAN RENEWAL PLAN**

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



**EXHIBIT B-1**

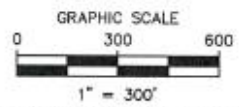
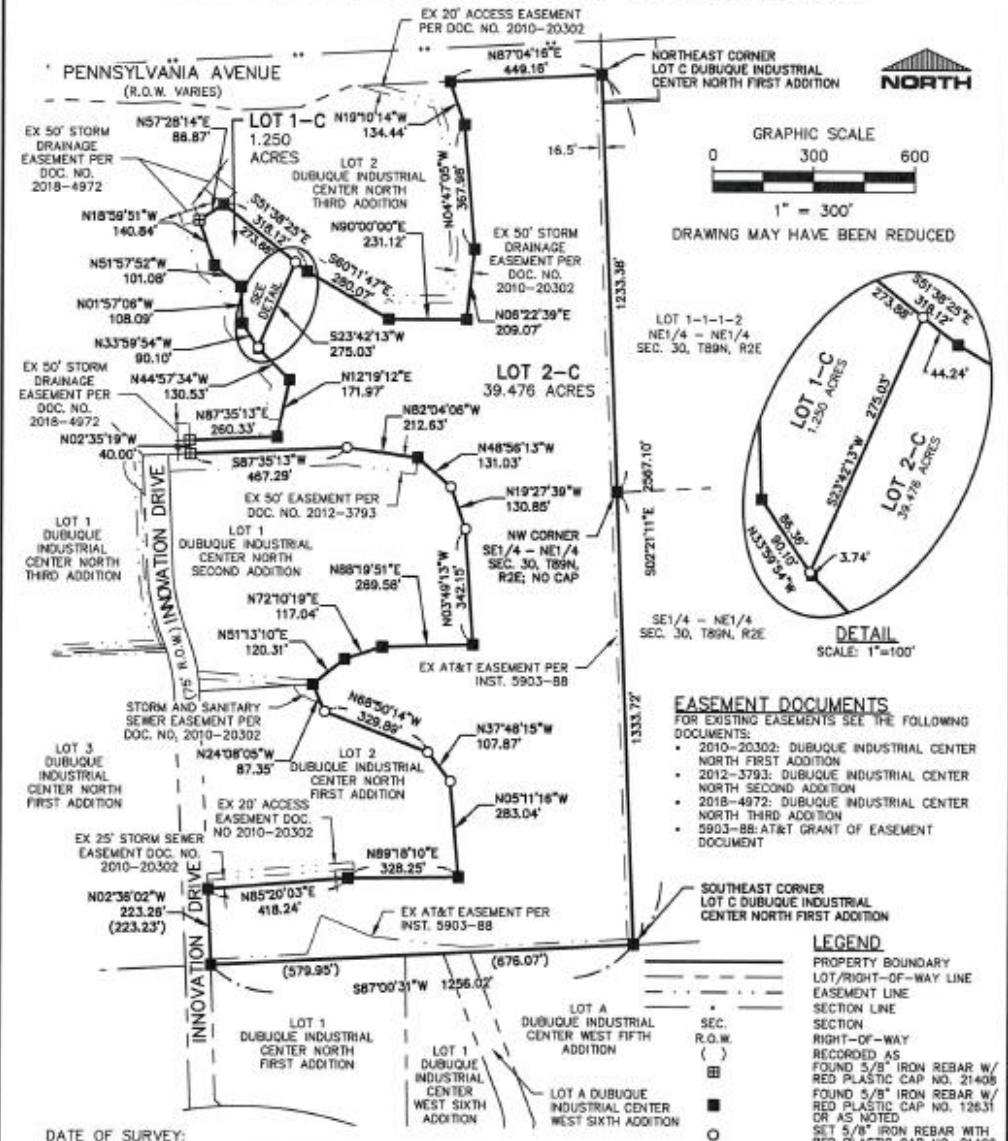
**PLAT**

Index Legend	
Location:	LOT C DUBUQUE INDUSTRIAL CENTER NORTH FIRST ADD. IN THE CITY OF DUBUQUE DUBUQUE COUNTY IOWA
Proprietor:	THE CITY OF DUBUQUE
Requester:	THE CITY OF DUBUQUE
Surveyor:	CRAIG L. GEISER
Surveyor Company:	ORIGIN DESIGN CO., 137 MAIN STREET DUBUQUE, IOWA 52001 PHONE: (563)556-2464

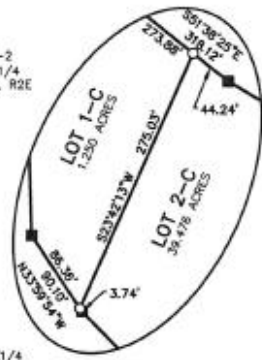
FOR RECORDER USE

## PLAT OF SURVEY

### LOT 1-C AND LOT 2-C DUBUQUE INDUSTRIAL CENTER NORTH FIRST ADDITION IN THE CITY OF DUBUQUE, IOWA



DRAWING MAY HAVE BEEN REDUCED



- EASEMENT DOCUMENTS**  
FOR EXISTING EASEMENTS SEE THE FOLLOWING DOCUMENTS:
- 2010-20302: DUBUQUE INDUSTRIAL CENTER NORTH FIRST ADDITION
  - 2012-3793: DUBUQUE INDUSTRIAL CENTER NORTH SECOND ADDITION
  - 2018-4972: DUBUQUE INDUSTRIAL CENTER NORTH THIRD ADDITION
  - 5903-88: AT&T GRANT OF EASEMENT DOCUMENT

**LEGEND**

- PROPERTY BOUNDARY
- - - LOT/RIGHT-OF-WAY LINE
- EASEMENT LINE
- SECTION LINE
- SECTION
- - - RIGHT-OF-WAY
- RECORDED AS FOUND 5/8" IRON REBAR W/ RED PLASTIC CAP NO. 21405
- RECORDED AS FOUND 5/8" IRON REBAR W/ RED PLASTIC CAP NO. 12631 OR AS NOTED
- SET 5/8" IRON REBAR WITH RED PLASTIC CAP NO. 21405

DATE OF SURVEY:  
OCTOBER 1, 2021  
TOTAL AREA SURVEYED  
40.726 ACRES:



I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A FULLY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

FOR ORIGIN DESIGN CO.  
CRAIG L. GEISER  
LICENSE NO. 21408 MY LICENSE RENEWAL DATE IS 12/31/2022  
PAGES OR SHEETS COVERED BY THIS SEAL SHEETS 1 & 2

PRELIMINARY

**origin**  
design®

800 556-4491 [origindesign.com](http://origindesign.com)

DRAWN	ENR/JMT	PLAT NO.	30-1A-21
CHECKED	CLG	PROJ. NO.	21110
DATE	10-1-21	SHEET	1 of 2
P:\21110\ORIGIN\21SURVEY\2110 PLAT			

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

**EXHIBIT B-2**  
**SITE EXHIBIT**



 000 555-4487 <a href="http://origineng.com">origineng.com</a>	<b>EXHIBITS BUILDABLE AREA</b> INNOVATION DRIVE DURHAM, NC		DRAWING INFORMATION PROJECT NO. 2110 SHEET NO. EX4
	Drawing Issue Information Project Mgr. CTA Issued For Bidding	Drawn By: ALM Checked For Construction	

**EXHIBIT B-3**

**PARCEL B LEGAL DESCRIPTION**

Part of Lot C in Dubuque Industrial Center North First Addition in the City of Dubuque, Iowa, being more particularly described as follows:

Commencing at the northwest corner of Lot 1 in Dubuque Industrial Center North Second Addition in the City of Dubuque, Iowa;

Thence North 87 degrees 35 minutes 13 seconds East along the north line of said Lot 1, 65.47 feet to the Point of Beginning;

Thence North 87 degrees 35 minutes 13 seconds East continuing along said north line of Lot 1, 467.29 feet;

Thence South 82 degrees 04 minutes 06 seconds East continuing along said north line of Lot 1, 212.63 feet;

Thence North 19 degrees 12 minutes 36 seconds East, 433.37 feet, to a point on the easterly line of Lot 2 in Dubuque Industrial Center North Third Addition in the City of Dubuque, Iowa;

Thence North 90 degrees 00 minutes 00 seconds West, 231.12 feet;

Thence North 60 degrees 11 minutes 47 seconds West, 280.07 feet;

Thence North 51 degrees 38 minutes 25 seconds West, 318.12 feet;

Thence South 57 degrees 28 minutes 14 seconds West, 86.87 feet;

Thence South 18 degrees 59 minutes 51 seconds East, 140.84 feet;

Thence South 51 degrees 57 minutes 52 seconds East, 101.08 feet;

Thence South 01 degree 57 minutes 06 seconds East, 108.09 feet;

Thence South 33 degrees 59 minutes 54 seconds East, 90.10 feet;

Thence South 44 degrees 57 minutes 34 seconds East, 130.53 feet;

Thence South 12 degrees 19 minutes 12 seconds West, 171.97 feet;

Thence South 87 degrees 35 minutes 13 seconds West, 260.33 feet;

Thence South 02 degrees 35 minutes 19 seconds East, 40.00 feet, to the Point of Beginning;

Said parcel contains 6.59 acres, more or less.

**EXHIBIT C**

**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)



(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 by and between SETZER PROPERTIES DBQ, LLC, (Developer), 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 D**

**OPINION OF DEVELOPER'S COUNSEL**

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

Re: Development Agreement By and Between the City of Dubuque, Iowa, and SETZER PROPERTIES DBQ, LLC,

Dear Mayor and City Councilmembers:

We have acted as counsel for SETZER PROPERTIES, LLC, (Developer) in connection with the execution and delivery of a certain Development Agreement (Development Agreement) by and between the City of Dubuque, Iowa, (City) and SETZER PROPERTIES DBQ, LLC 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 limited liability company organized and existing under the laws of the State of Delaware 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 E**

**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:

SETZER PROPERTIES DBQ, LLC  
354 Waller Ave Ste 200,  
Lexington, KY 40504  
Phone: 859-514-7767  
Fax: 859-281-6335

## **SPECIAL WARRANTY DEED**

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 Developer under the Development Agreement described below and the sum of Five Million One Hundred Forty-Four Thousand Five Hundred Eighty-Eight Dollars (\$5,144,588) 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 SETZER PROPERTIES DBQ, LLC, a Delaware limited liability company (Grantee), the following described parcel(s) situated in the County of Dubuque, State of Iowa, to wit (the Property):

LOT 2 DUBUQUE INDUSTRIAL CENTER NORTH THIRD ADDITION, in the City of Dubuque, Iowa; and

That part of Plat LOT C DUBUQUE INDUSTRIAL CENTER NORTH THIRD ADDITION shown on Exhibit B-2 and described in Exhibit B-3.

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 and payment in full of the Purchase Price for the Property 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 and pay the Purchase Price for the Property, it being the intention of the parties that upon the granting and filing of the Certificate of Completion that all restrictions, reversioning 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 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**

Attest:

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

By: \_\_\_\_\_  
Adrienne N. Breitfelder, City Clerk



**EXHIBIT F**

**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 between the **City of Dubuque, Iowa**, an Iowa municipal corporation, of Dubuque, Iowa, and SETZER PROPERTIES DBQ, LLC was made regarding the following described premises:

LOT 2 DUBUQUE INDUSTRIAL CENTER NORTH THIRD ADDITION, in the City of Dubuque, Iowa; and

That part of Plat LOT C DUBUQUE INDUSTRIAL CENTER NORTH THIRD ADDITION shown on Exhibit B-2 and described in Exhibit B-3.

The Development Agreement is dated for reference purposes the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, 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 \_\_\_\_\_, 20\_\_.

#### **CITY OF DUBUQUE, IOWA**

By: \_\_\_\_\_  
Barry A. Lindahl, Esq., Senior Counsel

#### **STATE OF IOWA**

**DUBUQUE COUNTY** : **SS:**

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a Notary Public in and for the State of Iowa, in and for said county, personally appeared Barry A. Lindahl, to me personally known, who being by me duly sworn did say that he is Senior Counsel of the City of Dubuque, a Municipal Corporation, created and existing under the laws of the State of Iowa and that said instrument was signed on behalf of said Municipal corporation by authority and resolution of its City Council and said Senior Counsel acknowledged said instrument to be the free act and deed of said Municipal Corporation by it voluntarily executed.

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Notary Public, State of Iowa

**EXHIBIT G**  
**CITY CERTIFICATE**



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

(DATE)

Re: Development Agreement By and Between the City of Dubuque, Iowa, and SETZER PROPERTIES DBQ, LLC

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 by and between SETZER PROPERTIES DBQ, LLC (Developer) 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) There is no action, suit or proceeding pending, or to the best of City's knowledge, threatened against City which might result in any adverse change in the Property being conveyed or the possession, use or enjoyment thereof by Developer, including, but not limited to, any action in condemnation, eminent domain or public taking.
- (2) 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 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 Property which will result in any charge or lien be levied or assessed against the Property.
- (3) All leases, contracts, licenses, and permits between City and third parties in connection with the maintenance, use, and operation of the Property have been provided to Developer and City has provided true and correct copies of all such documents to Developer.
- (4) City has good and marketable fee simple title interest in the Property.
- (5) The Property has a permanent right of ingress or egress to a public roadway for the use and enjoyment of the Property.

(6) 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 Developer 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 Property of which it has actual notice. The Property is in material compliance with all applicable zoning, fire, building, and health statutes, ordinances, and regulations. The Property is currently zoned PUD and Developer's intended use of the Property as a corporate office/industrial facility is a permitted use in such zoning classification.

(7) Payment has been made for all labor or materials that have been furnished to the 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 Property.

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

(9) 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 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 Property being conveyed may be subject.

(10) 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 at time of closing confirming the representation contained herein, in the form attached hereto as Exhibit C.

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

(12) 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 Developer and hold Developer 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.

(13) City shall exercise its best efforts to assist with Developer in the development process.

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

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

(16) All city utilities necessary for the development and use of the Property as an industrial facility adjoin the Property and Developer shall have the right to connect to said utilities, subject to City's connection fees.

(17) 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 H**  
**CERTIFICATE OF COMPLETION**

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

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## CERTIFICATE OF COMPLETION

WHEREAS, the City of Dubuque, Iowa, a municipal corporation (the "Grantor"), by a Special Warranty Deed (the "Deed") recorded on [Date] as Instrument Number [Insert Number] in the office of the County Recorder of Dubuque County, State of Iowa, has conveyed to SETZER PROPERTIES DBQ, LLC (the "Grantee"), in accordance with a Development Agreement dated as of [Date], by and between the Grantor, and the Grantee (collectively, the "Agreement"), certain real property located within the Dubuque Industrial Center Economic Development District of the Grantor and as more particularly described as follows:

LOT 2 DUBUQUE INDUSTRIAL CENTER NORTH THIRD ADDITION, in the City of Dubuque, Iowa; and

That part of Plat LOT C DUBUQUE INDUSTRIAL CENTER NORTH THIRD ADDITION shown on Exhibit B-2 and as described in Exhibit B-3.

(the "Property"); and

WHEREAS, said Deed incorporated and contained certain covenants and conditions with respect to the development of the Property, and obligated the Grantee to construct certain Minimum Improvements and pay for the Property in accordance with the Agreement; and

WHEREAS, the Grantee has to the present date performed said covenants and conditions insofar as they relate to the construction of the Minimum Improvements and payment for the Property in a manner deemed sufficient by the Grantor to permit the execution and recording of this certification; and

NOW, THEREFORE, pursuant to Section 2.4 of the Agreement, this is to certify that all covenants and conditions of the Deed and the Agreement with respect to the obligations of the Grantee, and its successors and assigns, to construct the Minimum Improvements on the Property and pay for the same have been completed and performed by the Grantee to the satisfaction of the Grantor and such covenants and conditions are hereby terminated.

The 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 of said Deed and the Agreement which would have



resulted in a forfeiture by the Grantee and right of the Grantor to re-enter and take possession of the Property as set forth in said Deed and the Agreement if such covenants and conditions had not been satisfied, and that said Deed and the Agreement shall otherwise remain in full force and effect.

**CITY OF DUBUQUE, IOWA**

By: \_\_\_\_\_  
Michael C. Van Milligen, City Manager

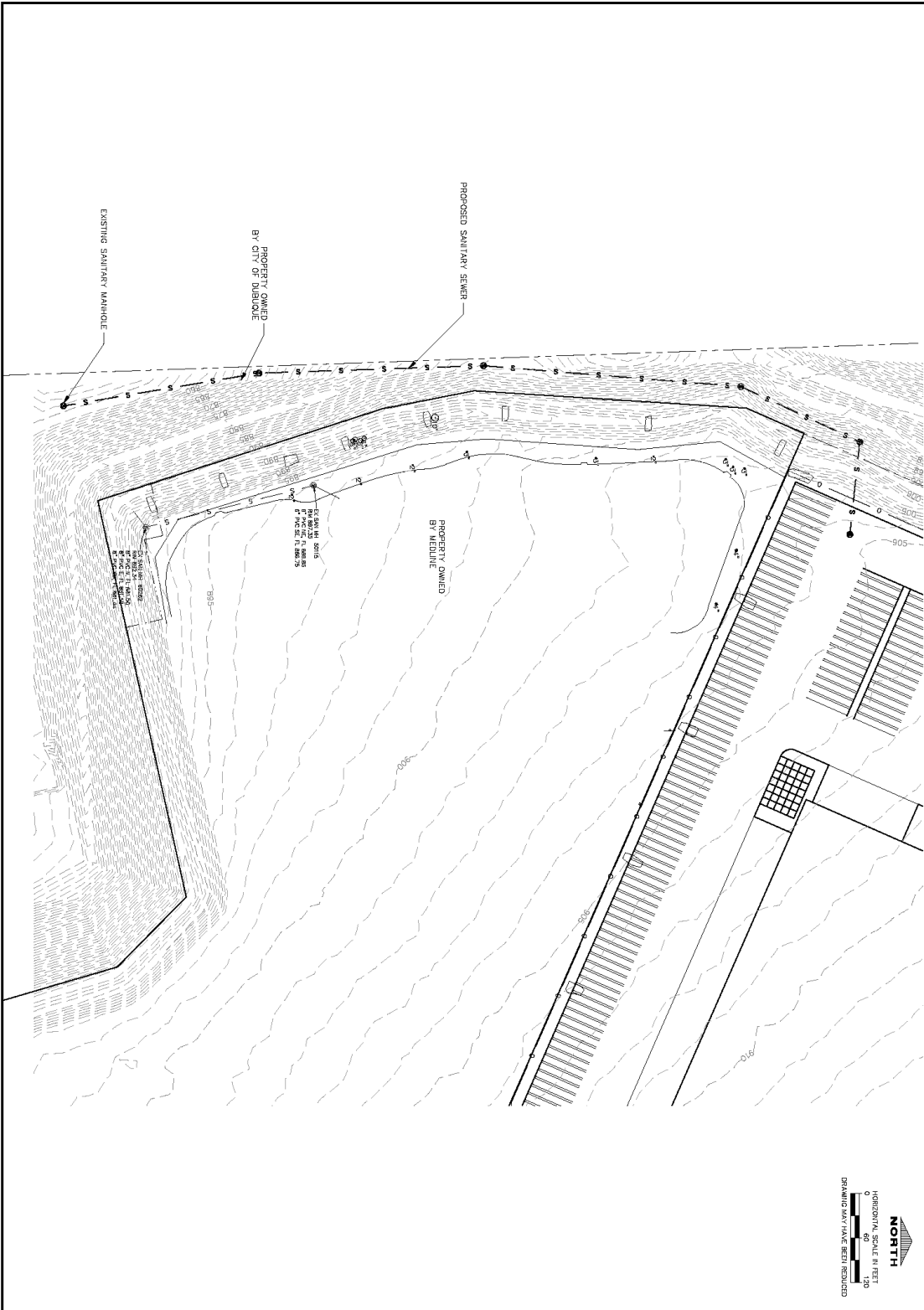
STATE OF IOWA                    )  
  )     SS  
COUNTY OF DUBUQUE         )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Michael C. Van Milligen, to me personally known, who, being by me duly sworn, did say that he is the City Manager of the City of Dubuque, Iowa, a municipal corporation, and that the instrument was signed on behalf of the corporation, and Michael C. Van Milligen acknowledged the execution of the instrument to be his voluntary act and deed.

\_\_\_\_\_  
Notary Public in and for said State

**EXHIBIT I**

**SANITARY EASEMENT AREA**



**EX 5**  
Project No. 21110

Drawing Issue Information			
Rev	Description	Date	By
1	MAINTENANCE BUILDING	5-27-21	ALM

**EXHIBITS  
SANITARY EXTENSION**  
---  
INNOVATION DRIVE  
DUBUQUE, IA

Project Description

P:\21110\DRAWINGS\CI\21110 22-89 EXHIBIT BUILDABLE AREA.DWG 8/5/2021 1:38 PM ANNE WAREX

© COPYRIGHT 2021  
THESE DOCUMENTS HAVE BEEN  
PREPARED SPECIFICALLY FOR THE  
PROJECT AND SHOULD NOT BE REPRODUCED  
WITHOUT THE PERMISSION OF  
ORIGIN DESIGN. THIS DOCUMENT IS CONSIDERED  
VALID ONLY AS SHOWN ON THESE  
DRAWINGS.

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800.856.4497  
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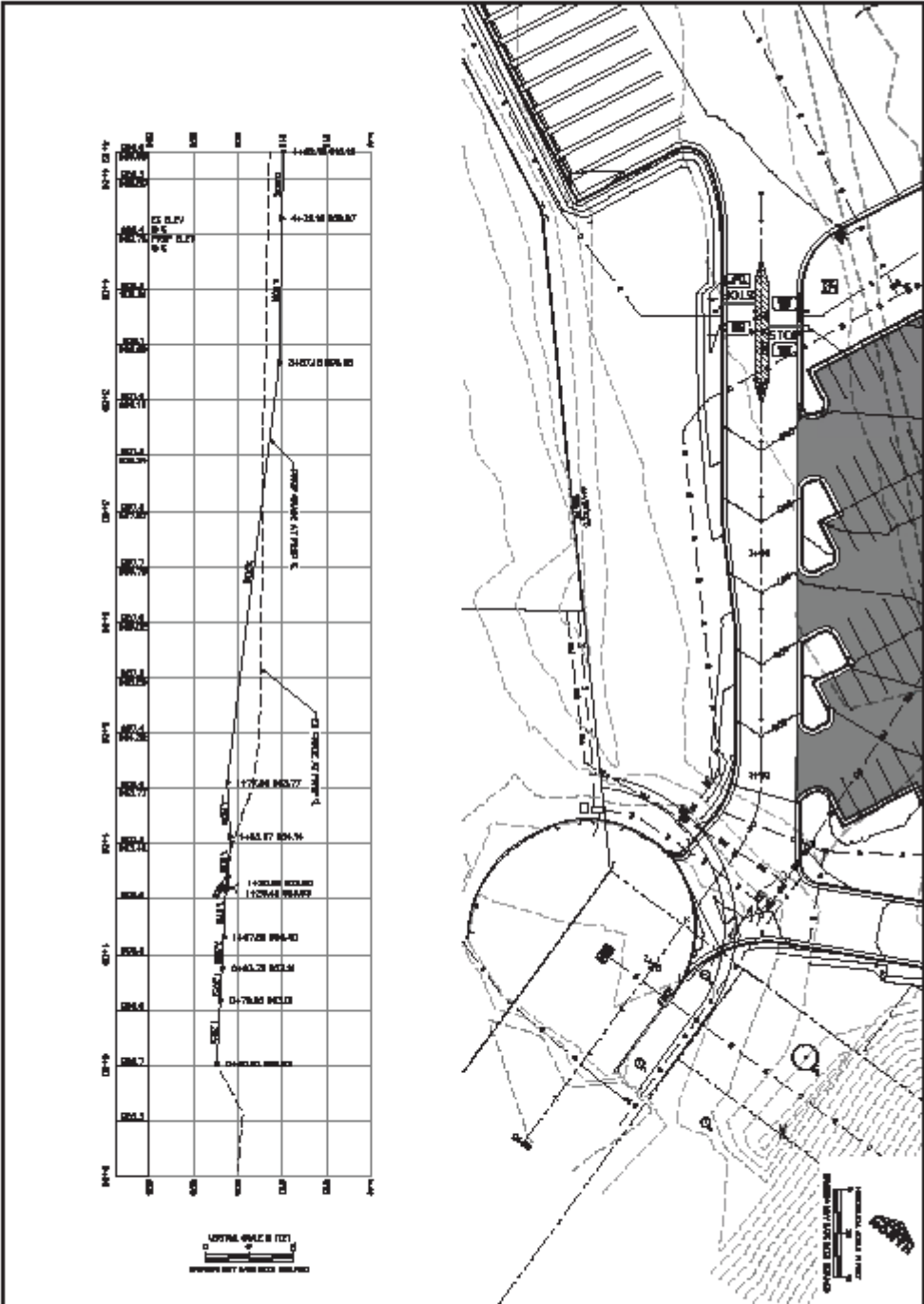
**NORTH**

HORIZONTAL SCALE IN FEET  
0 10 20 30  
GRAPHIC SCALE BAR

ORIGIN DESIGN HAS BEEN PROVIDED

**EXHIBIT J**

**CUL-DE-SAC EASEMENT AREA**



<b>C6.19</b> <small>DATE PLOTTED: 11/11/2011</small>	Project No: 07A Project Name:	Drawn By: ALM Checked By:	<b>PAVING AND DRAINAGE          PLAN AND PROFILE</b> <b>SOUTH ENTRANCE</b> FEDEX GROUND INNOVATION DRIVE DUBUQUE, IA <small>DATE PLOTTED: 11/11/2011</small>		
	MAINTENANCE BUILDING CITY REVIEW	5/27/21 8/17/21			ALM JDM
	Date:	Date:			Date:
	Description:	Date:			Date:

**EXHIBIT K**

**WATER MAIN EASEMENT AREA**



**EXHIBIT L**

**LETTER OF INTENT RE EMPLOYEES**





September 21, 2021

Brett T. Setzer  
Setzer Properties DUB, LLC  
354 Waller Ave, Suite 200  
Lexington, KY 40504

*RE: Dubuque, IA Relocation #520  
Letter of Terms for Proposed FedEx Ground Build-to-Suit Lease*

Dear Mr. Setzer:

FedEx Ground Package System, Inc. ("Tenant") has authorized Fischer & Company to present this outline of the terms and conditions under which Tenant would enter into lease negotiations with Setzer Properties DUB, LLC ("Landlord") for the above-referenced facility.

Except for the parties' agreement to negotiate in good faith, to use Tenant's standard lease form and to keep confidential all communications relating to this transaction, this Letter of Terms shall not be binding upon the parties, may be terminated or withdrawn by either party for any reason or for no reason, and does not contain all the essential terms and conditions of a lease. No contractual obligations of any kind are created by the parties' execution and delivery of this Letter of Terms or by any incidental negotiations or conversations. A binding agreement shall not exist between the parties until the senior management of Tenant and Landlord have approved this transaction and a definitive lease agreement has been fully approved and executed by all parties.

The key business terms are as follows and any final lease between the parties would incorporate the standard lease template customarily used by the parties, unless otherwise noted.

**Landlord:** Brett T. Setzer  
Setzer Properties DUB, LLC  
354 Waller Ave, Suite 200  
Lexington, KY 40504

**Tenant** FedEx Ground Package System, Inc., a Delaware Corporation  
1000 FedEx Drive  
Moon Township, Pennsylvania 15108

**Lease Form** Lease template to be used will be based on the BTS – Bundled RFP Projects Revision III

**Site Location/Access:** Parcel #1030126010 consisting of 33.11 acres and & 1.57 acres of Parcel #1030201004, Dubuque, IA 52002

**Premises:** Total sq. ft. 217,323 on approximately 34.68 acres, see break out below:

Building Component	Square Feet
Warehouse (Distribution Area)	205,904
General Office	11,419
<b>TOTAL BUILDING</b>	<b>217,323</b>
<b>ACREAGE (Land Area)</b>	<b>34.68</b>

**Drawings and Specifications:** FedEx Ground will provide plans and specifications to the Landlord/developer. All future pricing will be based on the plans and specifications provided.

**Expansion Option:** N/A Built to full phase.

**Property Insurance:** Landlord shall insure the Premises under a customary all-risk insurance policy in an amount not less than the full replacement cost of the Premises including coverage for natural disasters, but excluding coverage for terrorism and earthquake and/or flood, unless the Premises is in a designated earthquake zone or flood zone.

Tenant shall reimburse Landlord for annual property insurance premiums currently estimated to be \$.05/SF (\$15,850) based on a \$100,000 deductible. In the event of a claim, Tenant will be responsible for payment of the deductible. At any time during the Lease Term, Tenant shall have the right to elect to take over responsibility and cost for such property insurance.

**Primary Lease Term:** Target Commencement Date: 11/1/2022  
 Lease Expiration Date: 10/31/2032  
 [120 months following Rent Commencement Date].

**Conveyor Installation Date:** 8/1/22

- Extension Lease Terms:** Two options of five years each; 180 days' written notice. The rent shall increase by 5% for the first renewal option and 5% for the second renewal option.
- Rent Commencement:** The later of the Target Commencement Date or the date Certificate of Occupancy is issued
- Total Project Costs:** All final pricing will be based on the site-specific plans and specifications provided by FedEx Ground.
- Developer/Landlord shall propose the Total Project Costs using the "Developer BTS Response Forms" provided in the RFP Package.
- Developer/Landlord shall provide backup for the total project costs by obtaining three (3) competitive bids for the Construction Project Costs and itemize these costs using the "3-Contractor Base Bid Breakdown" provided in the RFP Package.
- Monthly Base Rent:** The initial monthly rent shall be based on the final agreed upon Total Project Cost (as defined above) multiplied by the initial CAP Rate of 6.40%.
- Years 1-10:        TPC x initial CAP Rate of 6.40%
- Security Deposit:** None
- Liquidated Damages:** Rent offset if no access by the Conveyor Installation Date: \$2,500;  
And by the Target Rent Commencement Date: \$2,500.
- Change Order Allowance:** **\$500,000 (NOT factored into the Monthly Rent detailed above).**
- Change Orders shall be requested and approved by Tenant only. The aggregate change order costs shall not exceed **\$500,000** unless approved by Landlord. The aggregate change order costs shall be multiplied by the capitalization rate of **6.40%**. Specifically, Monthly Base Rent shall increase **\$5.33 per month per \$1,000** of the allowance. The additional rent shall be added to the Monthly Base Rent detailed above and memorialized in a lease amendment.
- Environmental:** Phase I Environmental Site Assessment by Terracon Consultants dated \_\_\_\_\_, 2021. Landlord proposal includes all environmental remediation
- Milestone Schedule:** See Exhibit A

- Landscaping:** Landlord shall provide full lawn maintenance including but not limited to lawn mowing, fertilizing, weed control, trimming, and pruning to maintain in a professional appearance the facility's landscape for the period from completion of the landscape through one (1) year after the Certificate of Occupancy.
- Off-site Improvements:** The following off-site improvements are included in the rental rate above:  
  
{Pending further discussion with City of Dubuque, Iowa}
- Miscellaneous:** Landlord shall not use Tenant's name or logotype or issue any press release without Tenant's prior written consent in each instance.
- Job Creation:** Tenant intends to 1. maintain its current jobs and 2. plan to create at least 10 new jobs that are sustained into the future.
- Confidentiality:** *Tenant and Landlord acknowledge that the terms and conditions contained herein, and details of the ensuing negotiations will remain confidential between the parties. No proposals, document drafts, amendments or summaries of any kind will be distributed, copied or otherwise transmitted, orally or in writing to any entity or person, except employees and agents of Tenant and Landlord with a need to know, and applicable lenders for the project, who have the need for such copies and/or information in order to complete this transaction, and who have committed to the confidentiality of this transaction. The terms and provisions of this letter shall remain confidential between the parties, and Landlord shall not use Tenant's name or logotype and will not issue any press release or other information pertaining to this letter or the Tenant without Tenant's prior written consent.*
- Disclaimer:** This letter is a confirmation of interest only and is not intended to constitute a binding agreement, unless a written lease, in a form mutually acceptable to the parties, in their sole discretion, is prepared and signed by both parties. The parties hereby recognize that no special relationship has been created between the parties by virtue of this letter. The terms of this letter are subject to senior management review and approval and do not in any way constitute an agreement of the parties. In the event there is an inability by both parties to reach complete and mutual agreement on either business or legal issues, this letter agreement will be null and void and not binding on either party.

The above terms are generally acceptable to Tenant. If the terms outlined in this Letter of Terms are generally acceptable to Landlord, please indicate by signing below and returning a copy to the undersigned, no later than September 25, 2021.

*FedEx Ground Package Systems, Inc. reserves the right to reject any and all proposals, modify the project or cancel the project entirely without any obligation whatsoever to the proposing companies, their agents, representatives, lenders and/or employees. By responding to this request for a revised*

proposal, neither Fischer & Company nor FedEx Ground Package Systems, Inc. will be responsible for costs incurred by any proposing companies.

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Respectfully,

Andy Henry  
Senior Vice President, Fischer and Company

ACKNOWLEDGED AND ACCEPTED this \_\_\_\_ day of \_\_\_\_\_, 2021.

*Landlord: Setzer Properties DUB, LLC*

By: \_\_\_\_\_

Its: \_\_\_\_\_

## Exhibit A

## MILESTONE SCHEDULE

ITEM	BEGIN	COMPLETE
PREDEVELOPMENT*		
SITE AND BUILDING DESIGN		
ALL PERMITS NEEDED		
1) Mass Grading Permit		
2) Full Civil Permit		
3) Building Permit		
4)		
5)		
SITE PLAN APPROVAL AND MASS GRADING PERMIT		
Estimated Lease Execution Date		
LAND CLOSING		
DEVELOPMENT		
SITE CLEARING AND GRADING		
ORDER BUILDING		
EXCAVATE FOUNDATIONS		
POUR FOOTINGS AND FOUNDATIONS		
DELIVER BUILDING		
ERECT BUILDING		
ROOF CONSTRUCTION		
POUR, CURE & SEAL SLAB ON GRADE		
MEP IN WAREHOUSE		
FIRE PROTECTION IN WAREHOUSE		
INSTALL OVERHEAD DOORS & MAN DOORS		
STONE & GRADE YARD/PARKING AREAS		
INSTALL EXTERIOR CONCRETE		
INSTALL ASPHALT PAVING - BASE COURSE		
INSTALL ASPHALT PAVING - SURFACE COURSE		
PERMANENT POWER TO BUILDING (required prior to MH Install)		
16 LINE ITEMS NECESSARY FOR CONVEYOR INSTALLATION COMMENCEMENT		
TELECOMM REQUIREMENTS		
(i) Main Phone Cable Pulled to Board (6 months before Relo Date for Automated facilities; 2 months before Relo Date for Manual facilities)		
(ii) Telephone Board Installed with Dedicated Outlet		
(iii) Cages Installed		
(iv) Voice/Data conduits installed at all specified cages		
(v) Permanent power to be fully installed as part of the Material Handling Installation		
Commencement listed above. Power from a generator or temporary service is not an acceptable substitution for permanent power		
DRYWALL/FINISHES/TRIM/MEP'S IN OFFICE		
CERTIFICATE OF OCCUPANCY		
FINE GRADING/LANDSCAPING		
LANDLORD'S IMPROVEMENT WORK COMPLETE		
RENT COMMENCEMENT/TENANT POSSESSION DATE		