

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE CITY OF DUBUQUE, IOWA  
AND  
SEIPPEL WAREHOUSE, LLC**

**THIS DEVELOPMENT AGREEMENT**, dated for reference purposes the \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between 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 Seippel Warehouse, LLC, an Iowa business corporation (Developer).

**WITNESSETH:**

**WHEREAS**, in furtherance of the objectives of the Urban Renewal Act, City has undertaken an Urban Renewal project (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, has been recorded among the land records in the office of the Recorder of Dubuque County, Iowa and is on file with the City of Dubuque City Clerk; and

**WHEREAS**, Developer intends to construct a not less than 190,000 square foot industrial warehouse facility to be leased to Simmons Pet Food, Inc. (the "Facility"); and

**WHEREAS**, Developer has requested that City sell to Developer 15.47 acres of which 9.93 acres are usable, as shown the Plat, Exhibit B and B-1, legally described as follows:

Lot 2 of Dubuque Industrial Center South First Addition, City of Dubuque, Iowa

with all easements, tenements, hereditaments, and appurtenances belonging thereto so that Developer may construct the Facility (hereinafter sometimes referred to as "the Property"), located in the Project Area, for the construction, use, and leasing of the Facility 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**, City believes that 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 premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

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

1.1 Purchase Price. The Purchase Price for the Property shall be the sum of \$1,489,500. (\$150,000.00 per acre x 9.93 usable acres) with a total acquisition of 15.47 acres, which shall be due and payable by Developer in immediately available funds in favor of City, on or before the 24<sup>th</sup> day of February, 2023, or on such other date as the parties may mutually agree in writing (the Closing Date), but in no event shall the Closing Date be later than the 15<sup>th</sup> day of March, 2023. Consummation of the closing shall be deemed an agreement of the parties to this Agreement that the conditions of closing shall have been satisfied or waived. City acknowledges receipt of the sum of \$5,000.00 from Developer as earnest money, to be credited to Developer at the Closing, or returned to Developer in the event the parties fail to close within thirty (30) days after the Closing Date less any expenses incurred by City in connection with this Agreement.

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 or after examination of the abstract of title, and to the conditions subsequent set forth in Section 6.3, below:

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

(2) Developer shall have until time of the Closing 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, be free and clear of all liens, security interests, and encumbrances other than the Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges, recorded as Instrument No. 2014-00001147, as amended by the Amendment to Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges, recorded as Instrument No. 2023-00000482, records of Dubuque County, Iowa.

(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 a manufacturing facility adjoin the Property, and Developer shall have the right to

connect to said utilities, subject to City's connection fees. Provided, however, in the event any utilities for the Facility are expanded in capacity or otherwise modified, there will be no connection fees related to connecting such modified utilities to the Facility. There will be no sanitary sewer connection fees associated with the project. Only water connection fees will be assessed for connections off of Partners Road. 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 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, 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.

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

(18) The representations and warranties contained in this Section 1.4 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, and shall survive the Closing.

1.5 Conditions to Closing. The closing of the transaction 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 H.

(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 and feasibility studies conducted 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 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 except those expenses customarily borne by the City in such reviews. 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.

(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 reasonably 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) Developer shall have delivered to City an executed copy of a lease between Developer and Simmons Pet Food, Inc.

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

(10) 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 and Developer shall be entitled to return of any earnest money paid.

1.6 Closing. The closing of the purchase and sale shall take place on the Closing Date. 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.

1.7 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 F) (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 6.3 below.

(2) Deliver to Developer the Abstract of Title to the Property.

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

1.8 Delivery of 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 Purchase Price to City pursuant to Section 1.1 hereof, but subject to Developer receiving an offsetting credit pursuant to Section 3.1 below.

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

- (1) City shall pay:
  - (a) The transfer fee and transfer taxes, 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) The cost of recording the satisfaction of any existing mortgage and any other document necessary to make title marketable.
  - (f) City's broker and/or real estate commissions and fees, if any.
  - (g) The cost of the abstract and title work.
- (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.

1.10 Real Estate Taxes. City shall pay all real estate taxes for the Property 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 is an industrial warehouse facility. Specifically, Developer agrees to the following:

A warehouse facility of not less than 190,000 square feet for an estimated cost of \$22,500,000.

(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.

2.2 Plans for Construction of Minimum Improvements. 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 Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges, recorded as Instrument No. 2014-00001147, as amended by the Amendment to Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges, recorded as Instrument No. 2023-00000482, 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 shall be commenced on or before the 1<sup>st</sup> day of April, 2023, and shall be substantially completed by the 31<sup>st</sup> day of December, 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, unusual shortages of materials or labor, unusually severe or prolonged bad weather, acts of God, fire or other casualty to the Minimum Improvements, litigation commenced by third parties which, by injunction or other similar judicial action or by the exercise of reasonable discretion directly results in delays, or acts of any federal, state or local government which directly result in extraordinary delays. The time for performance of such obligations shall be extended only for the period of such delay.

2.4 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 G, shall waive all rights of re-vestment of title to the Property as provided in Section 6.3.

**SECTION 3. CITY PARTICIPATION.**

3.1 Acquisition Grant to Developer. For and in consideration of Developer's obligations hereunder to construct the Minimum Improvements, City agrees to make an Acquisition Grant to Developer on the Closing Date, or such other date as the parties shall mutually agree upon in writing, in the amount of Seven Hundred Forty-Four Thousand Seven Hundred Fifty and no/100 Dollars (\$744,750.00) as follows:

Purchase Price	\$1,489,500.00
Acquisition Grant	\$744,750.00 (50% of Purchase Price)
Cash at Closing	\$744,750.00

The parties agree that the Acquisition Grant shall be payable in the form of a credit favoring Developer at time of Closing with the effect of directly offsetting the full Purchase Price obligation of Developer.

3.2 Economic Development Grants.

A. Grants Related to Facility.

(1) For and in consideration of Developer's obligations hereunder, and in furtherance of the goals and objectives of the Urban Renewal Plan for the Project Area and the Urban Renewal Law, City agrees, subject to Developer being and remaining in compliance with the terms of this Agreement, to make twenty (20) consecutive semi-annual payments (such payments being referred to collectively as the "Economic Development Grants") to Developer, as follows:

November 1, 2025	May 1, 2026
November 1, 2026	May 1, 2027
November 1, 2028	May 1, 2029
November 1, 2029	May 1, 2030
November 1, 2030	May 1, 2031
November 1, 2031	May 1, 2032
November 1, 2032	May 1, 2033
November 1, 2033	May 1, 2034
November 1, 2034	May 1, 2035
November 1, 2035	May 1, 2036

pursuant to Iowa Code Section 403.9 of the Urban Renewal Law, in amounts equal to the actual amount of tax increment revenues collected by City under Iowa Code Section 403.19 (without regard to any averaging that may otherwise be utilized under Iowa Code Section 403.19 and excluding any interest that may accrue thereon prior to payment to Developer) during the preceding six-month period in respect of the Property and Minimum Improvements constructed by Developer thereon (the collected tax increment revenue being referred to herein as the

“Developer Tax Increments”). City and Developer agree that for purposes of this Section 3.2(1), the assessed value of the Property as of January 1, 2023 is \$55,625. Developer recognizes and agrees that the Economic Development Grants shall be paid solely and only from the incremental taxes collected by City in respect of the Property and Minimum Improvements, which does not include property taxes collected for the payment of bonds and interest of each taxing district, and taxes for the regular and voter-approved physical plant and equipment levy, instructional support levy, and any other portion required to be excluded by Iowa law, and thus such incremental taxes will not include all amounts paid by Developer as regular property taxes.

(2) To fund the Economic Development Grants, City has certified to the County prior to December 1, 2024 and shall certify prior to December 1 of each year its request for the available Developer Tax Increments, resulting from the assessments imposed by the County as of January 1 of that year, to be collected by City as taxes are paid during the following fiscal year and which shall thereafter be disbursed to Developer on November 1 and May 1 of that fiscal year. (Example: If City so certifies by December 1, 2024, the Economic Development Grants in respect thereof would be paid to Developer on November 1, 2025, and May 1, 2026).

(3) The Economic Development Grants shall be payable from and secured solely and only by the Developer Tax Increments paid to City that, upon receipt, shall be deposited and held in a special account created for such purpose and designated as the Seippel Warehouse TIF Account of City. City hereby covenants and agrees to maintain its TIF ordinance in force during the Term and to apply the incremental taxes collected in respect of the Property and Minimum Improvements and allocated to the Seippel Warehouse TIF Account to pay the Economic Development Grants, as and to the extent set forth in Section 3.2(1) hereof. The Economic Development Grants shall not be payable in any manner by other tax increments revenues or by general taxation or from any other City funds. City makes no representation with respect to the amounts that may be paid to Developer as the Economic Development Grants in any one year and under no circumstances shall City in any manner be liable to Developer so long as City timely applies the Developer Tax Increments actually collected and held in the Seippel Warehouse TIF Account (regardless of the amounts thereof) to the payment of the Economic Development Grants to Developer as and to the extent described in this Section 3.2.

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

(5) All of City's obligations under this Agreement, including but not limited to City's obligation to pay the Economic Development Grants to Developer, shall be subject to City having completed all hearings and other procedures required to amend the Urban Renewal Plan to describe the Urban Renewal Project being undertaken in accordance with this Agreement and to amend the ordinance for the division of revenue under Iowa Code Ch. 403. In the event City fails to complete all hearings and other procedures required to take the actions required by this paragraph, Developer may terminate this Agreement without further obligation to City and shall be entitled to return of any earnest money paid.

3.3 Developer acknowledges that City and Simmons Pet Food, Inc. (Simmons) have entered into an Amended and Restated Development Agreement dated December 9, 2020 (the Simmons Agreement), as amended February 20, 2023, which requires Simmons to create and maintain during the Term of that Agreement 271 FTE employees and an additional ten (10) full time equivalent employees for a total of 281 FTE employees.

(1) For the 281 positions that Simmons fails to create, maintain and employ during the Term of that Agreement, as shown by the certificate provided to City under Section 6.2 of the Simmons Agreement, the semi-annual Economic Development Grants for such year under Section 3.2 above shall be the percentage that the number of such positions bears to the 281 positions required to be created and maintained by Section 6.1 of the Simmons Agreement. (For example, if the certification shows 272 FTE during any year of the Term beginning December 31, 2024, the semi-annual Economic Development Grants would be 93.4% (272/281) of the allowable Developer Tax Increments received by City which would be paid by City to Developer). To be counted toward the 281 FTE, the jobs must be paid not less than the amounts indicated in the chart in Section 6.1 of the Simmons Development Agreement.

(2) Notwithstanding Section 3.3(3), City retains the right to begin withholding semi-annual Economic Development Grant amounts beginning May 1, 2034 if the certificate provided to City under Section 6.2 of the Simmons Agreement on December 31, 2033 discloses that Simmons as of that date has failed to create and maintain 281 FTE employees. In the event that the certificate provided to City under Section 6.2 of the Simmons Agreement on December 31, 2035 discloses that Simmons does as of that date have at least 281 FTE employees (2080 hours per year) as provided hereinabove, City shall pay to Developer the amount of the Economic Development Grants withheld under this Section.

3.4 Site Preparation. City reserves the right to approve, consistent with City's rights, duties and obligations under applicable laws, ordinances, rules, and regulations, the design and specifications for any site preparation work.

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

#### 4.1 Non-Appropriation.

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

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

4.2 The right of non-appropriation reserved to City in this Section 4.2 is intended by the parties, and shall be construed at all times, so as to ensure that City's obligation to pay future installments on the Economic Development Grants shall not constitute a legal indebtedness of City within the meaning of any applicable constitutional or statutory debt limitation prior to the adoption of a budget which appropriates funds for the payment of that installment or amount. In the event that any of the provisions of this Agreement are determined by a court of competent jurisdiction to create, or result in the creation of, such a legal indebtedness of City, the enforcement of the said provision shall be suspended, and the Agreement shall at all times be construed and applied in such a manner as will preserve the foregoing intent of the parties, and no event of default shall be deemed to have occurred as a result thereof. If any provision of this Agreement or the application thereof to any circumstance is so suspended, the suspension shall not affect other provisions of this Agreement which can be given effect without the suspended provision, and to this end the provisions of this Agreement are severable. Provided, however, in the event City elects not to appropriate sufficient funds in the budget for any fiscal year for the payment in full of the installments on the Economic Development Grants due and payable in that year, then Developer may terminate this Agreement without any further obligation to City hereunder, provided, however that Developer shall reconvey Parcels A and B to City as provided in Section 6.4, but only if Developer has not constructed any of the Minimum Improvements on Parcel A or Parcel B.

## **SECTION 5. COVENANTS OF DEVELOPER.**

5.1 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.

5.2 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.

5.3 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.

5.4 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, 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. 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.

5.5 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.

5.6 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.

5.7 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.

5.8 Transferability. During the Term of this Agreement, this Agreement may not be assigned and the Property and any portion of the Property may not be sold or otherwise transferred by Developer without the prior written consent of City in City's sole discretion. City has no obligation to consent to any assignment or sale.

5.9 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) Devote the Property to, and only to and in accordance with, the uses specified in the Urban Renewal Plan (and City represents and agrees that use of the Property as an industrial facility is in full compliance with the Urban Renewal Plan and Developer agrees to comply with any amendments to the Urban Renewal Plan,) (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); and

(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).

#### 5.10 Release and Indemnification Covenants.

(1) Developer releases City and the governing body members, officers, agents, servants and employees thereof (hereinafter, for purposes of this Section 5.10, 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, unless such loss or damage to property or injury to or death of a person is caused by the Indemnified Parties' negligent acts or omissions.

(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) Developer's acts or omissions which constitute or purport to constitute a violation of any agreement or condition of this Agreement; or (2) Developer's acts or omissions connected with its 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 by Developer's acts or omissions 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 5.10 shall survive the termination of this Agreement.

5.11 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.

5.12 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, failure of Internet, 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.

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

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

(1) Failure by Developer 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.

6.2 Remedies on Default by Developer. Whenever any Event of Default referred to in Section 6.1 of this Agreement occurs and is continuing, City, as specified below, may take any one or more of the following actions after the giving of written notice by City to Developer 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.

6.3 Re-vesting 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 Closing and prior to receipt by Developer of the Certificate of Completion, an Event of Default under Section 6.1 (1) through (4) of this Agreement occurs and is not cured within the times specified in Section 6.2, 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 Developer's estate, it being the intent of this provision, together with other provisions of this Agreement, that the conveyance of the Property was made upon the condition that, in the event of default under Section 6.1 (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 of this Agreement in favor of City of the title and of all Developer's rights and interests in and to the Property, 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 this Section 6.3 of this Agreement), but only if the events stated in Section 6.1 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.

6.4 Resale of Reacquired Property; Disposition of Proceeds. Upon the re-vesting in City of title to the Property as provided in Section 6.3 of this Agreement, City shall pay to Developer the Purchase Price which Developer paid to City for the Property, less any amount required to provide clear title to the Property, including but not limited to prorated taxes and any mortgages, liens, or other encumbrances.

6.5 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.

6.6 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.

6.7 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.

6.8 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 7. GENERAL TERMS AND PROVISIONS.**

7.1 Notices and Demands. Whenever this Agreement requires or permits any notice or written request by one party to another, it shall be deemed to have been properly given

if and when delivered in person or three (3) business days after having been deposited in any U.S. Postal Service and sent by registered or certified mail, postage prepaid, addressed as follows:

(1) If to Developer: Seippel Warehouse, LLC  
Attn: John or Mary Gronen  
900 Jackson St. #L1-2  
Dubuque, Iowa 52001

With copy to: Flint Drake  
Drake Law Firm, PC  
300 Main St., Suite 323  
Dubuque, Iowa 52001

(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 7.1.

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

7.3 Term; Termination Date. The Term of this Agreement and the rights and obligations of the parties hereunder shall commence upon execution by both parties and shall terminate at midnight on June 1, 2036 (the Termination Date).

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

7.5 Memorandum of Development Agreement. City shall promptly record a Memorandum of Development Agreement in the form attached hereto as Exhibit E 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**

**SEIPPEL WAREHOUSE, LLC**

By: \_\_\_\_\_  
Brad M. Cavanagh, Mayor

By: 

<i>Mary Gronen</i>	dotloop verified 02/02/23 1:25 PM CST APZZ-RWSM-KYLV-ZSNX
--------------------	---

  
Mary Mulgrew Gronen, President

**ATTEST:**

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

## LIST OF EXHIBITS

Exhibit A	Urban Renewal Plan
Exhibit B	Plat
Exhibit B-1	Easement Exhibit
Exhibit C	City Attorney Certificate
Exhibit D	Opinion of Counsel to Developer
Exhibit E	Memorandum of Development Agreement
Exhibit F	Deed
Exhibit G	Certificate of Completion
Exhibit H	City Certificate

## **EXHIBIT A**

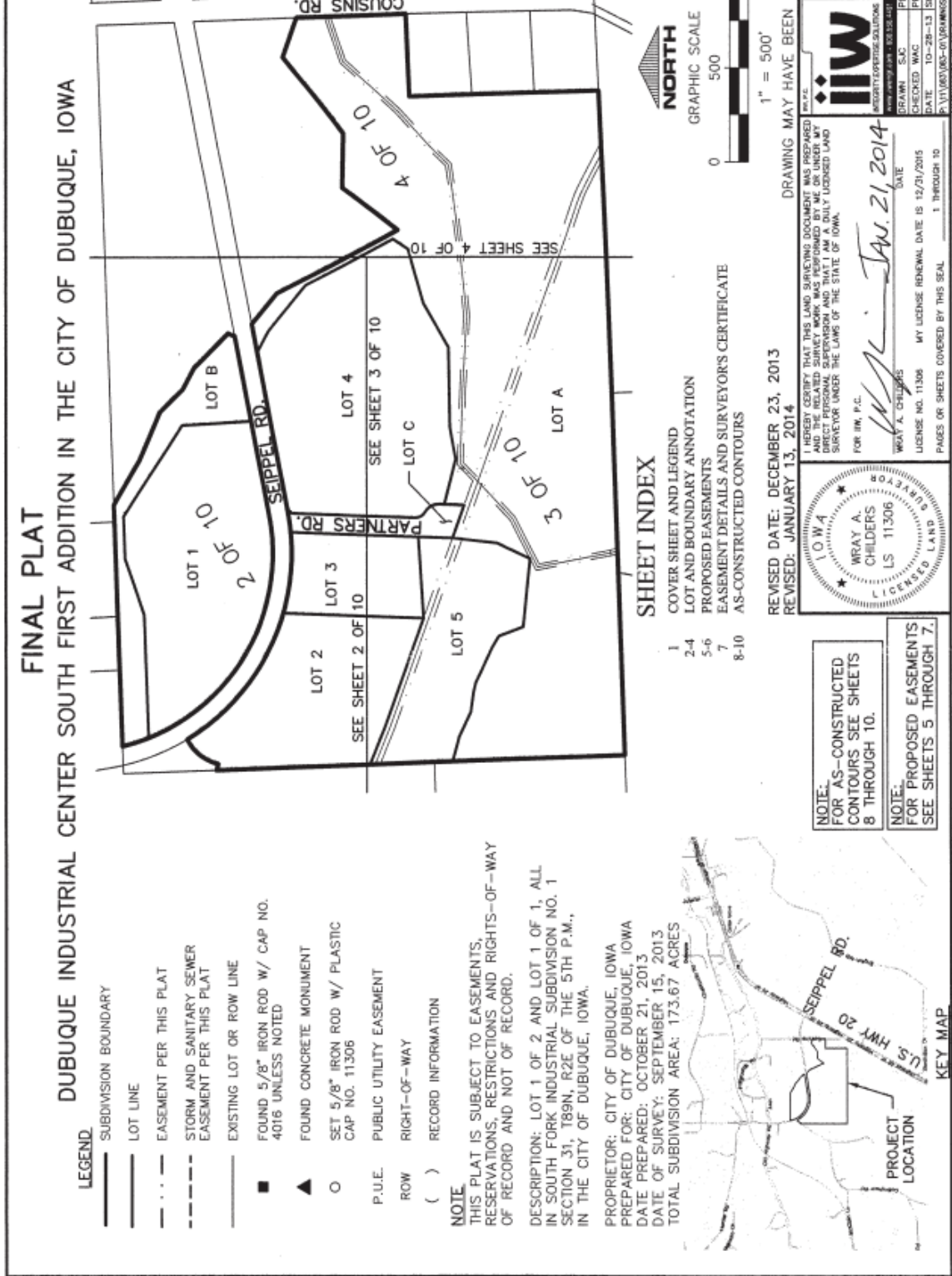
### **URBAN RENEWAL PLAN**

A copy of the Plan and amendments is on file in the Office of the City Clerk,  
City Hall, 50 West 13<sup>th</sup> Street, Dubuque, Iowa

**EXHIBIT B**

**PLAT**





PREPARED BY: IIV, P.C. 4155 PENNSYLVANIA AVE DUBUQUE, IOWA (563) 556-2464

**iiv**  
 ILLINOIS INDEPENDENT INVESTMENT ENGINEERS  
 1000 N. WASHINGTON ST. SUITE 200  
 CHICAGO, IL 60610  
 (773) 327-1000

FOR IIV, P.C.  
 WRAY A. CHILDERS  
 LICENSE NO. 11306  
 MY LICENSE RENEWAL DATE IS 12/31/2015  
 PAGES OR SHEETS COVERED BY THIS SEAL 1 THROUGH 10

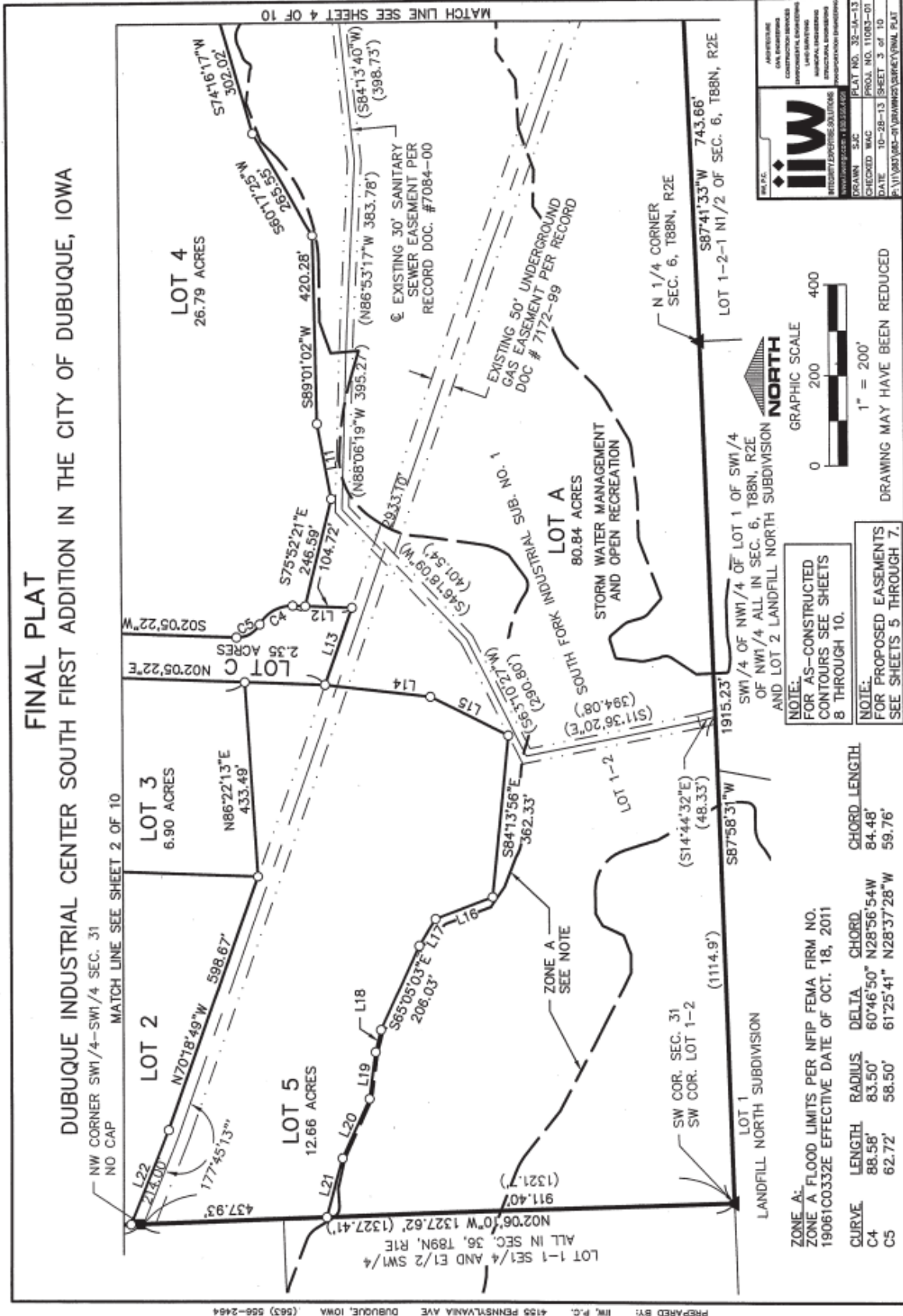
DATE: JAN. 21, 2014

PLAT NO. 32-1A-13  
 ROLL NO. 11083-01  
 SHEET 1 OF 10

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 DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.







**FINAL PLAT**  
**DUBUQUE INDUSTRIAL CENTER SOUTH FIRST ADDITION IN THE CITY OF DUBUQUE, IOWA**

NW CORNER SW1/4-SW1/4 SEC. 31  
 NO CAP  
 MATCH LINE SEE SHEET 2 OF 10

LOT 2  
 6.90 ACRES  
 N70°18'49"W 598.67'

LOT 3  
 6.90 ACRES  
 N86°22'13"E 433.48'

LOT 4  
 26.79 ACRES  
 S87°17'25"W 302.02'

LOT 5  
 12.66 ACRES  
 L21 L20 L19 L18 L17 L16 L15 L14 L13 L12 L11

LOT A  
 80.84 ACRES  
 STORM WATER MANAGEMENT AND OPEN RECREATION

EXISTING 50' UNDERGROUND GAS EASEMENT PER RECORD DOC # 7172-89

EXISTING 30' SANITARY SEWER EASEMENT PER RECORD DOC. #7084-00

LOT 1-1 SE1/4 AND E1/2 SW1/4 ALL IN SEC. 36, T89N, R1E  
 N02°06'0"W 1327.62' (1327.41')  
 911.40' (1321.7')  
 S65°05'03"E 206.03' L17

LOT 1-2  
 SW COR. SEC. 31  
 SW COR. LOT 1-2  
 (1114.9')

LOT 1  
 LANDFILL NORTH SUBDIVISION

LOT 2  
 LANDFILL NORTH SUBDIVISION

LOT 3  
 SW1/4 OF NW1/4 OF LOT 1 OF SW1/4 OF NW1/4 ALL IN SEC. 6, T88N, R2E AND LOT 2 LANDFILL NORTH SUBDIVISION

LOT 4  
 SW1/4 OF NW1/4 OF LOT 1 OF SW1/4 OF NW1/4 ALL IN SEC. 6, T88N, R2E AND LOT 2 LANDFILL NORTH SUBDIVISION

N 1/4 CORNER SEC. 6, T88N, R2E  
 S87°41'33"W 743.66'

LOT 1-2-1 N1/2 OF SEC. 6, T88N, R2E

PREPARED BY:	INW, P.C.
4155 PENNSYLVANIA AVE	DUBUQUE, IOWA
(563) 556-2464	

ADVERTISER:	CONTRACTOR:	DATE:
DESIGNER:	PROJ. NO.:	10-28-13
CHECKED BY:	PROJ. NO.:	10-28-13
DATE:	10-28-13	SHEET 3 OF 10

NOTE:  
 FOR AS-CONSTRUCTED CONTOURS SEE SHEETS 8 THROUGH 10.

NOTE:  
 FOR PROPOSED EASEMENTS SEE SHEETS 5 THROUGH 7.

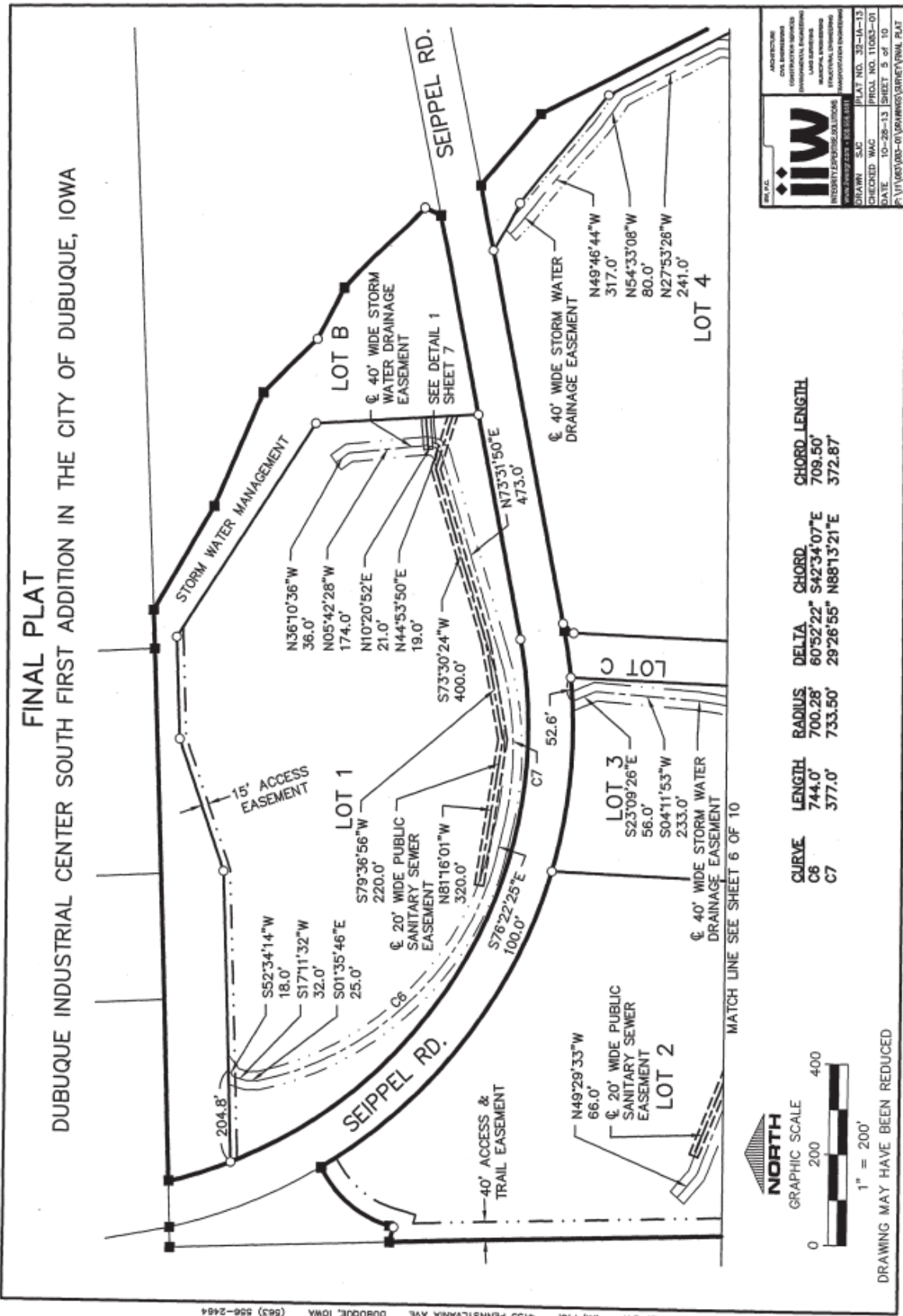
CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD LENGTH
C4	88.58'	83.50'	60°46'50"	N28°56'54"W	84.48'
C5	62.72'	58.50'	61°25'41"	N28°37'28"W	59.76'

ZONE A:  
 FLOOD LIMITS PER NFIP FEMA FIRM NO. 19081C0332E EFFECTIVE DATE OF OCT. 18, 2011

GRAPHIC SCALE  
 0 200 400  
 1" = 200'

DRAWING MAY HAVE BEEN REDUCED

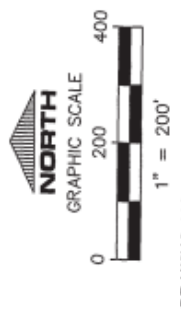




**FINAL PLAT**  
**DUBUQUE INDUSTRIAL CENTER SOUTH FIRST ADDITION IN THE CITY OF DUBUQUE, IOWA**

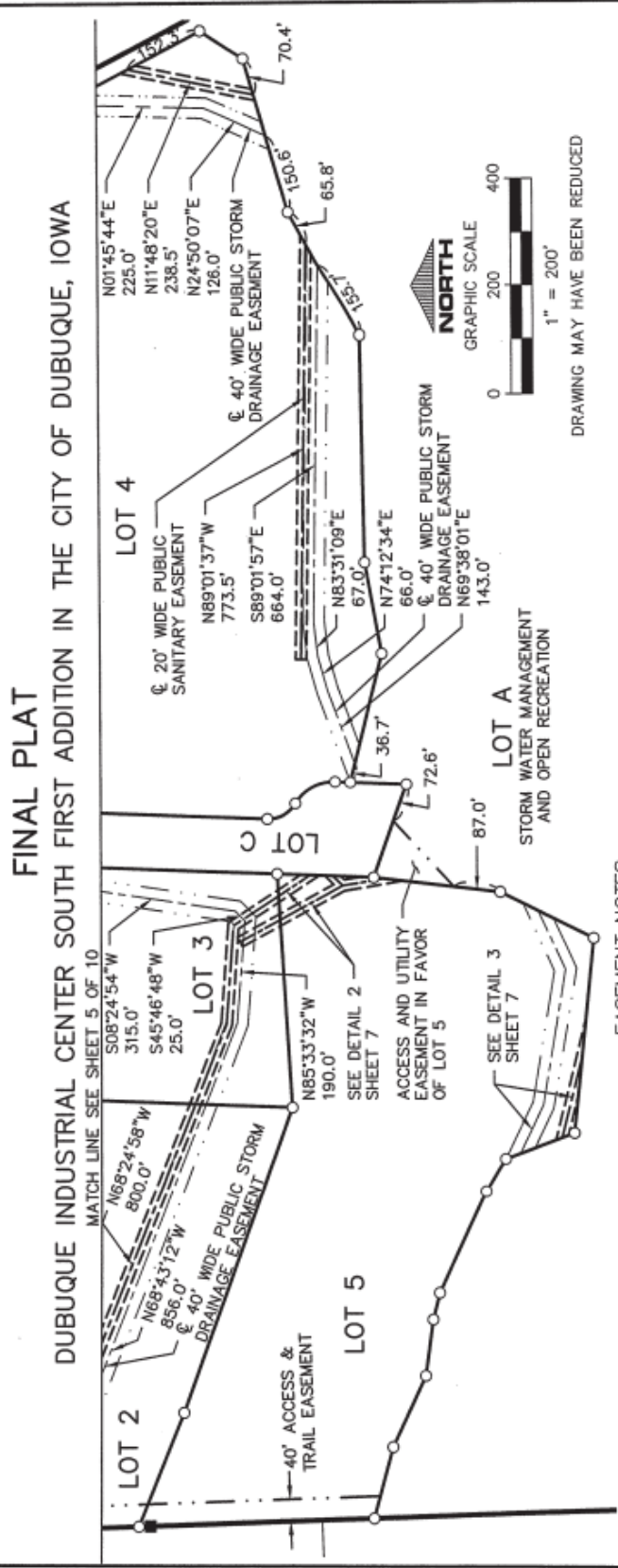
<b>iiw</b>	ARCHITECTURE	PLAT NO. 39-1A-13
	CIVIL ENGINEERING	PROJ. NO. 11063-01
	CONSTRUCTION SERVICES	SHEET 5 of 10
	LAND SURVEYING	DATE 10-28-13
MANUAL SURVEYING	DATE 10-28-13	SHEET 5 of 10
INSTRUMENTAL SURVEYING	DATE 10-28-13	SHEET 5 of 10
INSTRUMENTAL ENGINEERING	DATE 10-28-13	SHEET 5 of 10
DATE 10-28-13	DATE 10-28-13	DATE 10-28-13
DATE 10-28-13	DATE 10-28-13	DATE 10-28-13
DATE 10-28-13	DATE 10-28-13	DATE 10-28-13

CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD LENGTH
C6	744.0'	700.28'	60°52'22"	S42°34'07"E	709.50'
C7	377.0'	733.50'	29°26'55"	N88°13'21"E	372.87'



DRAWING MAY HAVE BEEN REDUCED

PREPARED BY: ILL, P.C. 4155 PENNSYLVANIA AVE DUBUQUE, IOWA (563) 596-2464



#### EASEMENT NOTES

- 1) AN ACCESS EASEMENT IS RESERVED ACROSS EACH LOT FOR INGRESS AND EGRESS PURPOSES IN FAVOR OF THE CITY OF DUBUQUE CITY SERVICES DEPARTMENTS FOR THE MAINTENANCE OF GROUND COVER ON THE SLOPES.
- 2) A 15-FOOT WIDE ACCESS EASEMENT IS RESERVED ACROSS LOT 1 FOR INGRESS AND EGRESS PURPOSES IN FAVOR OF THE CITY OF DUBUQUE CITY SERVICES DEPARTMENTS TO LOT B FOR THE CONSTRUCTION, MAINTENANCE AND REPAIR OF IMPROVEMENTS AND AMENITIES LOCATED WITHIN LOT B.
- 3) AN ACCESS EASEMENT IS RESERVED ACROSS THE ENTIRE LOT 1 FOR INGRESS AND EGRESS PURPOSES IN FAVOR OF THE CITY OF DUBUQUE CITY SERVICES DEPARTMENTS TO LOT B FOR THE CONSTRUCTION, MAINTENANCE AND REPAIR OF IMPROVEMENTS AND AMENITIES LOCATED WITHIN LOT B.
- 4) STORM WATER DRAINAGE EASEMENTS SHOWN ARE EASEMENTS IN FAVOR OF CITY OF DUBUQUE CITY SERVICES DEPARTMENTS FOR THE CONSTRUCTION, MAINTENANCE AND REPAIR OF DRAINAGE SWALES, INCLUDING THE RIGHT TO CONDUCT VEGETATION TRIMMING AND GRADING WITHIN THE EASEMENTS.
- 5) THE PUBLIC ACCESS AND TRAIL EASEMENT SHOWN ACROSS LOT 2 AND LOT 5 IS AN EASEMENT FOR INGRESS AND EGRESS PURPOSES TO LOT A IN FAVOR OF THE PUBLIC, INCLUDING THE RIGHT TO CONSTRUCT, MAINTAIN, AND REPAIR A TRAIL WITHIN THE EASEMENT.
- 6) PUBLIC STORM SEWER EASEMENTS SHOWN ARE FOR THE CONSTRUCTION, MAINTENANCE AND REPAIR OF CITY OF DUBUQUE-OWNED STORM WATER-RELATED FACILITIES.
- 7) PUBLIC SANITARY SEWER EASEMENTS SHOWN ARE FOR THE CONSTRUCTION, MAINTENANCE AND REPAIR OF CITY OF DUBUQUE-OWNED SANITARY SEWER RELATED FACILITIES.

<b>iiw</b> IOWA INSTITUTE OF SURVEYING PROFESSIONAL ENGINEERS & SURVEYORS	ARCHITECTURE	PLAT NO. 32-1A-13
	CIVIL ENGINEERING	PROJ. NO. 11083-01
	CONSTRUCTION SERVICES	CHECKED WAC
	LAND SURVEYING	DATE 10-28-13 SHEET 6 of 10
DRAWN BY: J. G. ...		DATE: 10-28-13
CHECKED BY: ...		DATE: 10-28-13
PROJECT: ...		DATE: 10-28-13
DRAWN BY: ...		DATE: 10-28-13

PREPARED BY: ILL. P.C. 4155 PENNSYLVANIA AVE DUBUQUE, IOWA (563) 556-2464

# FINAL PLAT

## DUBUQUE INDUSTRIAL CENTER SOUTH FIRST ADDITION IN THE CITY OF DUBUQUE, IOWA

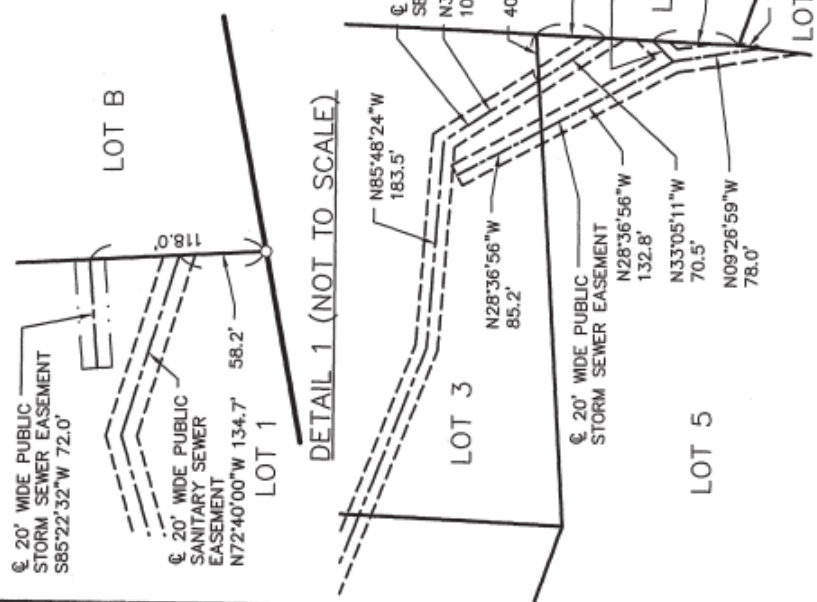
### SURVEYOR'S CERTIFICATE

I, Way A. Childers, a Duly Licensed Land Surveyor in the State of Iowa, do hereby certify that the following real estate was surveyed and platted by me or under my direct personal supervision, To Wit:

Lot 1 of 1 and Lot 1 of 2 in South Fork Industrial Subdivision No. 1 in Section 31, Township 89 North, Range 2 East of the 5th P.M. in the City of Dubuque, Iowa.

This survey was performed for the purpose of subdividing and plating said real estate henceforth to be known as **Dubuque Industrial Center South First Addition** in the City of Dubuque, Iowa.

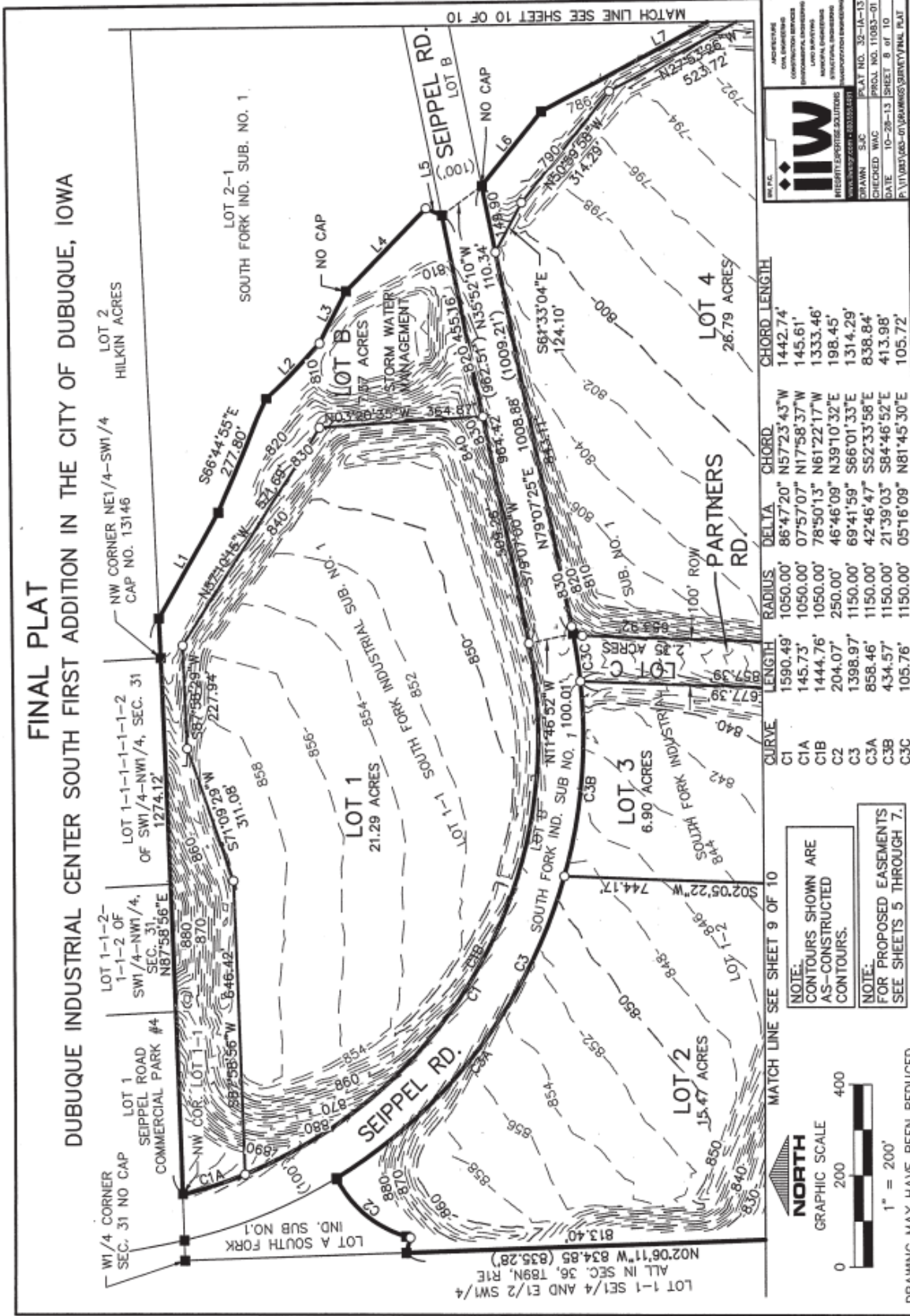
Said Addition contains 173.67 acres, more or less, and subject to easements, reservations, restrictions, and rights-of-way of record and not of record, the plat of which is attached hereto and made a part of this certificate.



**iiw**  
IOWA INSTITUTE OF PROFESSIONAL SURVEYORS

ARCHITECTURE	PLAT NO. 32-11-13
CIVIL ENGINEERING	PROJ. NO. 11063-01
CONSTRUCTION SERVICES	DATE 05-28-13
ENVIRONMENTAL ENGINEERING	SHEET 7 OF 10
LAND SURVEYING	PREPARED BY: WAY A. CHILDERS
MECHANICAL ENGINEERING	
STRUCTURAL ENGINEERING	
UTILITY ENGINEERING	

PREPARED BY: WAY A. CHILDERS, 515 PENNSYLVANIA AVE., DUBUQUE, IOWA (563) 558-2464



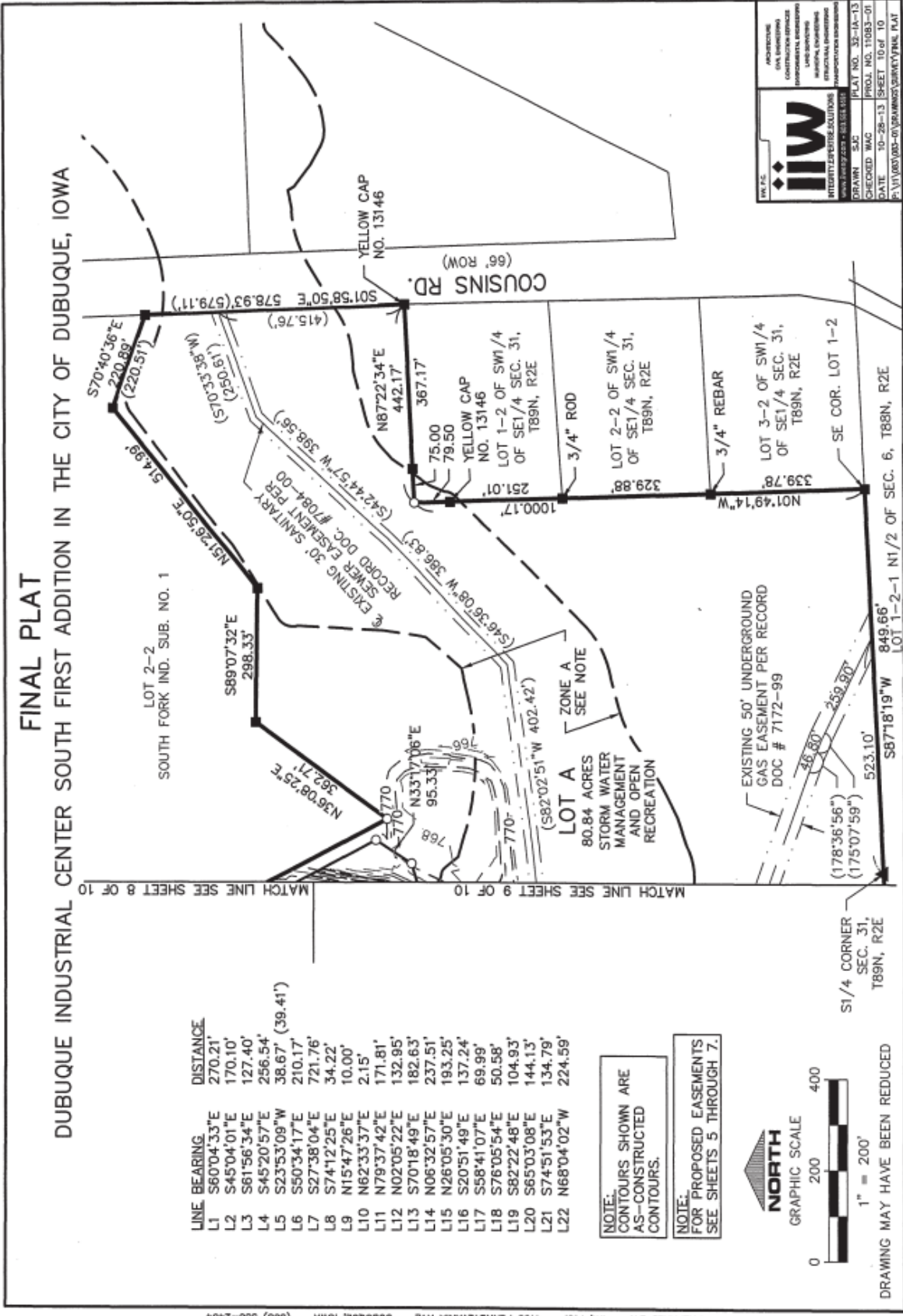
**iiw**  
 INTEGRITY EXPERTISE SOLUTIONS  
 ARCHITECTURE  
 CIVIL ENGINEERING  
 LAND SURVEYING  
 LAND DEVELOPMENT  
 SURVEILLANCE  
 ENVIRONMENTAL  
 PLANNING

DRAWN: SJC  
 CHECKED: WAC  
 DATE: 10-28-13  
 SHEET 8 OF 10  
 PLAT NO. 32-1A-13  
 PROJ. NO. 11003-01  
 P:\11003\03-ON\11003\GRAVITY\PLAT

PREPARED BY: IIV, P.C. 4155 PENNSYLVANIA AVE DUBUQUE, IOWA (563) 556-2454





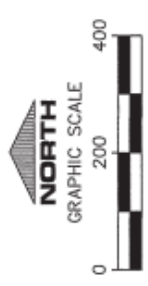


**FINAL PLAT**  
**DUBUQUE INDUSTRIAL CENTER SOUTH FIRST ADDITION IN THE CITY OF DUBUQUE, IOWA**

LINE BEARING	DISTANCE
L1 S60°04'33"E	270.21'
L2 S45°04'01"E	170.10'
L3 S61°56'34"E	127.40'
L4 S45°20'57"E	256.54'
L5 S23°53'09"W	38.67' (39.41')
L6 S50°34'17"E	210.17'
L7 S27°38'04"E	721.76'
L8 S74°12'25"E	34.22'
L9 N15°47'26"E	10.00'
L10 N62°33'37"E	2.15'
L11 N79°37'42"E	171.81'
L12 N02°05'22"E	132.95'
L13 S70°18'49"E	182.63'
L14 N06°32'57"E	237.51'
L15 N26°05'30"E	193.25'
L16 S20°51'49"E	137.24'
L17 S58°41'07"E	69.99'
L18 S76°05'54"E	50.58'
L19 S82°22'48"E	104.93'
L20 S65°03'08"E	144.13'
L21 S74°51'53"E	134.79'
L22 N68°04'02"W	224.59'

**NOTE:**  
 CONTOURS SHOWN ARE AS-CONSTRUCTED CONTOURS.

**NOTE:**  
 FOR PROPOSED EASEMENTS SEE SHEETS 5 THROUGH 7.



DRAWING MAY HAVE BEEN REDUCED

ARCHITECTURE  
 CIVIL ENGINEERING  
 CONSTRUCTION SERVICES  
 ENVIRONMENTAL ENGINEERING  
 SURVEYING  
 STRUCTURAL ENGINEERING  
 TRANSPORTATION ENGINEERING

REGISTERED PROFESSIONAL ENGINEERS  
 LICENSE NO. 22222-203 003 003

DRAWN: SLP	PLAT NO. 32-1A-13
CHECKED: MAC	PROJ. NO. 11083-01
DATE: 10-28-13	SHEET 10 of 10
P:\11\1083-01\11083-01\11083-01.dwg	

**EXHIBIT B-1**  
**EASEMENT EXHIBIT**



**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 between Seippel Warehouse, 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 Between the City of Dubuque, Iowa and                   Seippel  
Warehouse, LLC

Dear Mayor and City Councilmembers:

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

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

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

1. Developer is a corporation organized and existing under the laws of the State of \_\_\_\_\_ 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**  
**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 Seippel Warehouse, LLC, was made regarding the following described premises:

Lot 2 of Dubuque Industrial Center South First Addition, City of Dubuque, Iowa

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 of Development Agreement 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, Senior Counsel

**STATE OF IOWA**

**: ss:**

**DUBUQUE COUNTY**

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 the Senior Counsel of the City of Dubuque, a Municipal Corporation, created and existing under the laws of the State of Iowa, and that the seal affixed to said instrument is the seal of said Municipal Corporation and that said instrument was signed and sealed on behalf of said Municipal corporation by authority and resolution of its City Council and said 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 F**  
**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:

Seippel Warehouse, LLC  
Attn: John or Mary Gronen  
900 Jackson St. #L1-2  
Dubuque, Iowa 52001

### **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 Ten and no/100 Dollars (\$10.00) 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 Seippel Warehouse, LLC, an Iowa Business Corporation (Grantee), the following described parcel situated in the County of Dubuque, State of Iowa, to wit (the Property):

Lot 2 of Dubuque Industrial Center South First Addition, City of Dubuque, Iowa

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

This Deed is given pursuant to the authority of Resolution No. \_\_\_\_\_ of the City Council of the City of Dubuque adopted the 6th day of February, 2023, 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 February, 2023 (the Agreement), a memorandum of which was recorded on the \_\_\_\_ day of \_\_\_\_\_, 2023, 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, re-vesting of title, and reservations of title contained in this Deed be forever released and terminated and that any remaining obligations of Grantee pursuant to the Agreement shall be personal only.

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

In the event that an Event of Default occurs under the Agreement and Grantee 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 \_\_\_\_\_, 2023 at Dubuque, Iowa.

**CITY OF DUBUQUE IOWA**

Attest:

By: \_\_\_\_\_  
Brad M. Cavanagh, Mayor

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

STATE OF IOWA                    )  
  )     SS  
COUNTY OF DUBUQUE         )

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

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

**EXHIBIT G**

## 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 (City), and Seippel Warehouse, LLC (Developer) have entered into a Development Agreement (the Agreement) dated as of [Date], with respect to certain real property located within the Dubuque Industrial Center Economic Development District and as more particularly described as follows:

Lot 2 of Dubuque Industrial Center South First Addition, City of Dubuque, Iowa  
(the "Property"); and

WHEREAS, said Agreement contains certain covenants and conditions with respect to the development of the Property, and obligates Developer to construct certain Minimum Improvements in accordance with the Agreement; and

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

NOW, THEREFORE, pursuant to Section 2.4 of the Agreement, this is to certify that all covenants and conditions of the Agreement with respect to the obligations of Developer, and its successors and assigns, to construct the Minimum Improvements on the Property and pay for the same have been completed and performed by Developer to the satisfaction of City 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 Agreement which would have resulted in a forfeiture by Developer and right of City to re-enter and take possession of the Property as set forth in said Agreement if such covenants and conditions had not been satisfied, and that said Agreement shall otherwise remain in full force and effect.

**CITY OF DUBUQUE, IOWA**

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

STATE OF IOWA                    )  
  )  
COUNTY OF DUBUQUE         )       SS

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared 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 H**  
**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)

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 (this Agreement) between Seippel Warehouse, 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) 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.
- (2) City shall exercise its best efforts to resolve any disputes arising during the development process in a reasonable and prompt fashion.
- (3) The Property is presently zoned to accommodate Developer's intended improvements and the warehousing of goods.

Sincerely,

Michael C. Van Milligen  
City Manager

MCVM:jh