DOC# 1268497

CITY OF MANITOWOC TID NO. 23
DEVELOPMENT AGREEMENT WITH
SETZER PROPERTIES ZGBY, LLC

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NAME AND RETURN ADDRESS

City Clerk
City of Manitowoc
900 Quay Street
Manitowoc, WI 54220 llchg

052-836-303-010
Parcel Identification Number

This instrument was drafted by:
Adam Tegen
City of Manitowoc
Community Development Director

CITY OF MANITOWOC TID NO. 23 DEVELOPMENT AGREEMENT WITH SETZER PROPERTIES ZGBY, LLC

THIS AGREEMENT (hereinafter called the "Agreement") is made as of the 18th day of December, 2023, by and between The City of Manitowoc (hereinafter called the "CITY") and SETZER PROPERTIES ZGBY, LLC, or its assignee or designee (hereinafter called the "DEVELOPER"). The CITY and DEVELOPER may collectively be referred to as the "PARTIES."

WITNESSETH:

WHEREAS, DEVELOPER seeks to construct the Project on parcel 052-836-303-010, commonly known as 2434 South 39th Street in the City of Manitowoc, Manitowoc County, Wisconsin (the "Property"); and

WHEREAS, DEVELOPER will invest a total of approximately $45 million on the Property including building construction, equipment purchases, site preparation, and soft costs. Construction will be for a new, state-of-the-art, 218,000 square foot distribution facility (the "Project"). The purpose of the Project is to support the establishment of a FedEx distribution center within the City resulting in tax base and job creation; and

WHEREAS, the Property is located in Tax Increment Finance District No. 23 ("TID 23"), and planned public investments identified in the Project Plan for TID 23 include site development and development project contributions. The use of Tax Incremental Financing is necessary for the Project to take place as the Project resulted in the installation of public utilities above and beyond those required by the Project; and

WHEREAS, the CITY created TID 23 to promote industrial development and to accommodate growth of existing manufacturing businesses in the community along with new development, creating tax base and employment opportunities for the community; and

WHEREAS, the completed Project is anticipated to result in additional economic activity and increased property values throughout TID 23.

NOW, THEREFORE, in consideration of the promises and obligations set forth, it is mutually agreed between the PARTIES as follows:

I. PROPOSED PROJECT SCOPE AND CONSTRUCTION. DEVELOPER agrees to construct the Project including an approximately 218,000 square foot distribution facility to support FedEx's investment in the City in accordance with this Agreement. The total Project costs are anticipated to be approximately $45 million. The assessed value increase is estimated to be $21 million.

A. The DEVELOPER shall complete the Project (which shall be deemed achieved by the delivery of a final certificate of occupancy for main portion of the building included in the Project and constructed on the Property) by December 31, 2023 (the "Completion Date") in accordance with site and building plans as approved by the CITY.

B. The CITY will cooperate and use reasonable efforts with respect to any and all permits necessary for completion of the Project including without limitation approvals needed from all CITY departments (e.g., Fire, Police, Community Development, Industrial Development Corporation, Council and all other approving or permitting authorities).

C. The DEVELOPER shall comply with all applicable federal, state, and municipal codes throughout the Project, including submitting site plans and obtaining applicable permits.

D. In recognition of the provided incentive, the DEVELOPER shall be cognizant of the CITY'S preference for DEVELOPER to utilize local contractors in the Project.

E. The Preliminary Concept Plan for the Project (hereinafter "Concept Plan") is attached as Exhibit "B" and is incorporated by reference to this Agreement. By execution of this Agreement, the PARTIES expressly approve the Concept Plan. The CITY or the DEVELOPER may at any time propose modifications to the Concept Plan subject to the agreement of the CITY and the DEVELOPER. All site and building plans are subject to review and approval by the CITY for compliance with federal, state and municipal code requirements.

F. The time for performance of any term, covenant, or condition of this Agreement shall be extended by any period of unavoidable delays. In this Agreement, "unavoidable delays" means beyond the reasonable control of the party obligated to perform the applicable term, covenant, or condition under this Agreement and shall include, without limiting the generality of the foregoing, delays attributable to adverse environmental conditions (such as contaminated soil or groundwater), adverse weather conditions, acts of God, pandemic or epidemic, any other party in this Agreement, strikes, labor disputes, labor shortages, materials shortages, governmental restrictions, court injunctions, riot, civil commotion, acts of public enemy and casualty or delay in obtaining any necessary permit from any governmental agency.

II. FINANCIAL ASSISTANCE

A. The CITY shall provide a Total Incentive not to exceed $537,746 (estimated at 2.5% of the assessed value created by the Completion Date). The CITY shall provide estimated Annual TIF Payments totaling $537,746 in the aggregate to be paid beginning in 2025 per subsection II(B).

B. The Annual TIF Payment shall begin in 2025 (based on 2024 real estate taxes) and continue for 5 years. CITY shall reimburse the DEVELOPER in 5 equal payments of $107,549.20, until the Total Incentive equals $537,746. The CITY may elect to

complete the Annual TIF Payment sooner than the 5-year period outlined if funding allows.

C. The CITY shall take no action to terminate or dissolve TID 23 until the Annual TIF Payment has been fully paid to the DEVELOPER. For the avoidance of doubt, the cumulative value of the Annual TIF Payment shall not result in an exceedance of the Total Incentive.

D. The Annual TIF Payment will be made each year by August 15 following the CITY receiving proof from DEVELOPER that the annual real estate tax bills for the Property have been paid in full, whether in one payment or in installments as permitted by state law and the Manitowoc Municipal Code.

III. DEVELOPER'S TRANSFER RESTRICTIONS AND OBLIGATIONS

A. DEVELOPER shall be prohibited from selling or transferring the Property to an entity which is exempt from real estate taxes without the CITY's written consent.

B. Until completion of the obligations under the Section I.A. above, there shall be no sale of the Property, nor any assignment of rights or obligations under this Agreement, without written CITY consent, which shall not be unreasonably withheld. This statement shall not prohibit mortgages, leases or easements, which leave DEVELOPER liable to CITY under this Agreement. DEVELOPER may assign their payments to a lending institution as collateral, and the Community Development Director for CITY is authorized to consent to such an arrangement upon approval of the Finance Director/Treasurer and City Attorney, which approval shall not be unreasonably withheld. In addition, notwithstanding any other provision herein, DEVELOPER may assign ownership of the Property to an affiliate entity.

IV. OTHER RIGHTS AND REMEDIES.

A. **Termination and Remedies**. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, such party shall, upon written notice from any other party, proceed promptly to ensure or remedy such default or breach, and, in any event, within 60 days after receipt of such notice unless such default or breach cannot, with reasonable diligence, be cured within such period in which case said defaulting party shall commence such cure within such period and diligently proceed to cure such default. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings to compel specific performance by the party in default or breach of its obligation.

Completion of the development in accordance with the terms and conditions of this Agreement is the essential and unique consideration for the obligations of the DEVELOPER and the CITY; accordingly, the CITY and the DEVELOPER shall, in the event of legal proceedings, seek remedies to compel the specific performance of

the defaulting party as the only adequate remedy and shall not seek damages in lieu of specific performance unless specific performance is legally unavailable, in which event the CITY and the DEVELOPER may seek damages as authorized. No other remedies for the PARTIES to this agreement exist outside of this Agreement.

B. **Municipal Officials Not to Take Interest in Agreement.** No official or employee of the CITY shall have any personal interest in this Agreement, nor shall any such person voluntarily acquire any ownership interest, direct or indirect, in the legal entities which are PARTIES to this Agreement nor in any tenant of the Property. No official or employee of the CITY shall be personally liable to the DEVELOPER or any successor in interest, in the event of any default or breach by the CITY, or for any amount which becomes due to the DEVELOPER or its successors under this Agreement.

C. **Developer Financing.** Notwithstanding Section III or any other provision contained herein, the DEVELOPER may transfer, assign or encumber the Property in order to secure financing for the Property and/or for construction of the Project and any refinancing thereof. Said lender may place liens and/or mortgages on the Property, including any renewals, extensions, replacements, modifications or refinancing. Lender's mortgages and/or loans may be transferred or assigned by lender in a secondary market without prior CITY approval. In any circumstance, Lender shall provide reasonable notice to the CITY of such actions. This Section shall survive any foreclosure proceeding.

D. **Applicable Law, Severability and Entire Agreement**. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin governing agreements made and fully performed in Wisconsin. All litigation surrounding this agreement shall occur in Manitowoc County Circuit Court or the Eastern District of Wisconsin. If any provision of this Agreement, or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then (unless in the judgment of the party or PARTIES thereby adversely affected such provision was a material part of the consideration for their entering into this Agreement, that without it they would not have entered into this Agreement) the remainder of this Agreement or the application of such provision, or portion thereof, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement sets forth the entire understanding between the CITY and the DEVELOPER with respect to its subject matter, there being no terms, conditions, warranties or representatives with respect to its subject matter other than that contained herein. This Agreement shall be binding upon and shall inure to the benefit of the PARTIES hereto, their respective successors and assigns.

E. **Amendments to Agreement**. This Agreement may not be changed orally, but only by agreement in writing and signed by the PARTIES hereto.

F. **Third Parties**. Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the PARTIES hereto and not for the benefit of any other persons, as third-party beneficiaries or otherwise, and

this Agreement shall not be deemed to have conferred any rights, expressed or implied, upon any other person.

G. **No Partnership Created**. This Agreement specifically does not create any partnership or joint venture between the PARTIES hereto, or render any party liable for any of the debts or obligations of any other party.

H. **Formalities and Authority**. The PARTIES hereto represent and warrant that they are validly existing and lawful entities with the power and authorization to execute and perform this Agreement. The headings set forth in this Agreement are for convenience and reference only, and in no way define or limit the scope of content of this Agreement or in any way affect its provisions.

I. **Notices and Demands**. A notice, demand or other communications under this Agreement shall be sufficiently given or delivered if it is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested or delivered personally:

To DEVELOPER:	SETZER PROPERTIES ZGBY, LLC Attn: Brett T. Setzer 354 Waller Avenue, Suite 150 Lexington, KY 40504
To CITY:	City of Manitowoc Attention: City Clerk 900 Quay Street Manitowoc, WI 54220

or to such other address, within the United States, with respect to a party as that party may from time to time designate in writing and forward to the other as provided in this Section. A copy of any notice, demand or other communication under this Agreement given by a party under this Agreement to any other party under this Section shall be given to each other party to this Agreement.

J. **Nonmerger and Survival**. Any provision in this Agreement which has not been fully performed prior to transfer of possession shall not be deemed to have terminated, but shall, unless expressly waived in writing, survive such transfer of possession and be in force and effect until performed.

[Signature pages follow.]

IN WITNESS WHEREOF, the PARTIES have executed this Agreement as of the year and date set forth above, and by so signing this Agreement, certify that they have been duly and properly authorized by their respective entities to make these commitments, and intend them to be binding upon their respective entities and to execute this Agreement on their behalf.

DEVELOPER:

SETZER PROPERTIES ZGBY, LLC

By: _____
Name: Brett T. Setzer
Its: Vice President

COMMONWEALTH OF KENTUCKY)
) ss.
FAYETTE COUNTY)

Personally came before me this 8th day of December, 2023, the above-named Brett T. Setzer to me known to be the person who executed the foregoing instrument as the Vice President of SETZER PROPERTIES ZGBY, LLC, for and on behalf of said company.

JOSHUA J. MARKHAM NOTARY ID KYNP62920 MY COMMISSION EXPIRES 1/9/2027 PUBLIC STATE AT LARGE, KY.

_____
Notary Public, State At Large, Kentucky

My Commission Expires: 1-9-2027

Notary ID No.: 62920

[Signature Pages to Setzer Properties ZGBY, LLC TID No. 23 Development Agreement]

JOSHUA J. MARKHAM
NOTARY
ID ICYNP62920
MY COMMISSION
EXPIRES
1/9/2027
STATE AT LARGE, KY
PUBLIC

CITY

CITY OF MANITOWOC

By: _____
Justin M. Nickels, Mayor

Attest: _____
Mackenzie Reed, City Clerk

STATE OF WISCONSIN)
) ss.
MANITOWOC COUNTY)

Personally came before me this 18 day of December, 2023, the above named, Justin M. Nickels, Mayor, and Mackenzie Reed, Clerk, to me known to be the persons and officers who executed the foregoing instrument and acknowledged that they executed the same as such officers by the CITY of Manitowoc's authority.

_____
Notary Public, State of Wisconsin
My Commission: 11-26-24

JENNIFER SWIKOWSKI NOTARY PUBLIC STATE OF WISCONSIN

Exhibit A
Legal Description of the Property

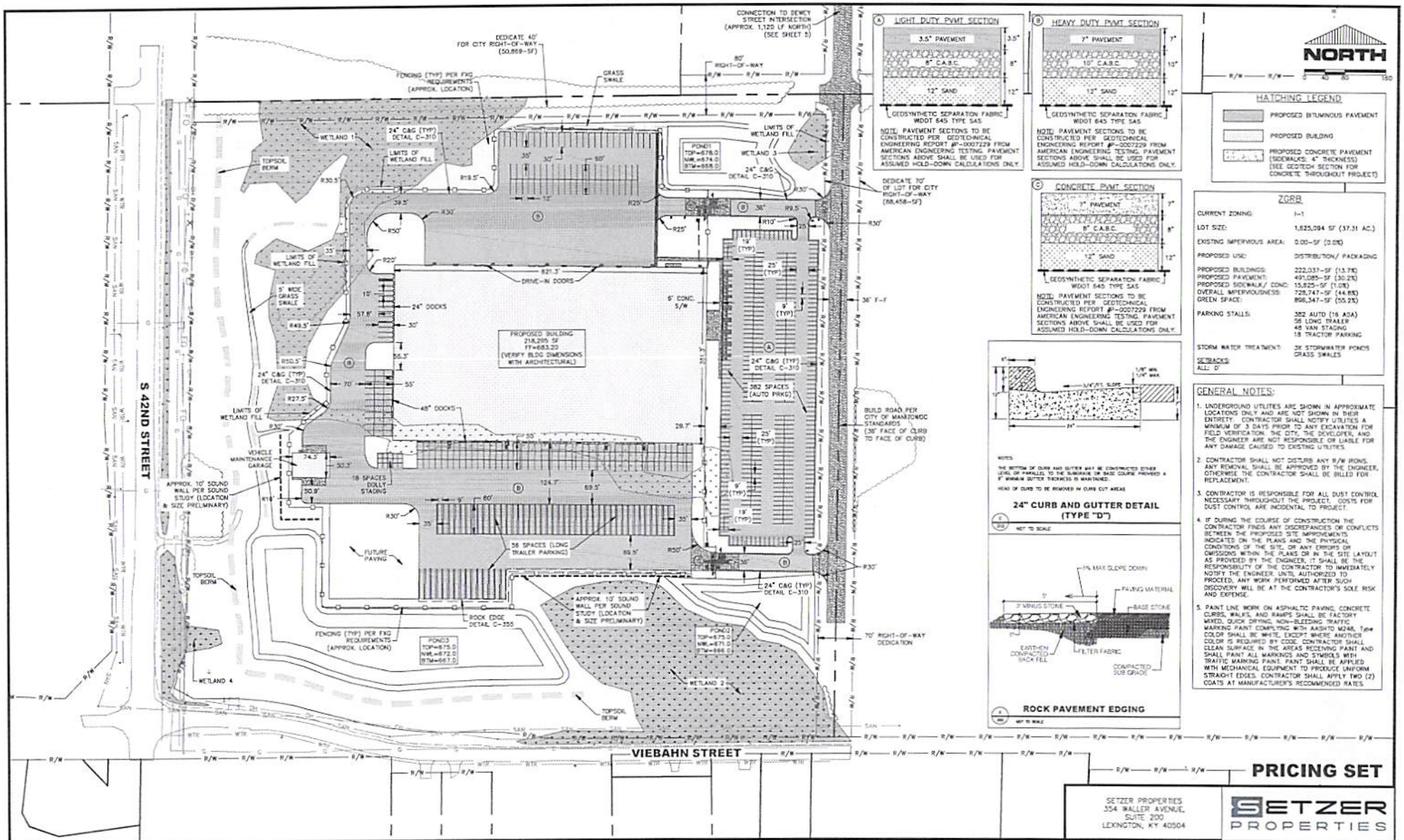
THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (SW ¼ OF THE SW ¼), SECTION THIRTY-SIX (36), TOWNSHIP NINETEEN (19) NORTH, RANGE TWENTY-THREE (23) EAST, IN THE CITY OF MANITOWOC, MANITOWOC COUNTY, WISCONSIN, EXCEPTING THEREFROM PARCEL CONVEYED TO MANITOWOC COUNTY BY A QUIT CLAIM DEED RECORDED IN VOLUME 619 RECORDS, PAGE 318 FOR HIGHWAY PURPOSES

FURTHER EXCEPTING THEREFROM THAT PORTION OF LAND CONVEYED IN QUIT CLAIM DEED RECORDED SEPTEMBER 28, 2022, IN VOLUME 3524, PAGE 673 AS DOCUMENT NO. 1256235.

Tax Parcel: 052-836-303-010

Exhibit B
Concept Plan

See attached.



NO.	DATE	REVISIONS	DRAFTED BY	DESIGN BY	CHECKED

PROJ. NO. 21059

AEC

ADVANCED ENGINEERING CONCEPTS
1360 INTERNATIONAL DR, SUITE #1
EAU CLAIRE, WI 54701
PH: 715-552-0330
info@aec.engineering
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PRELIMINARY SITE PLAN

ZGRB
SETZER PROPERTIES
S 42ND & VIEBAHN ST.
MANITOWOC, WI 54220

DWG NAME 21059 PG2 SITE PLAN
DATE 12/2021

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