

**Second Draft
July 12, 2019**

**CONTRACT
FOR
PRIVATE DEVELOPMENT
between
CITY OF SHAKOPEE, MINNESOTA,
KEB AMERICA, LLC,
and
KEB AMERICA, INC.**

Dated: July 16, 2019

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CONTRACT FOR PRIVATE DEVELOPMENT

THIS CONTRACT FOR PRIVATE DEVELOPMENT (the “Agreement”) is made as of July __, 2019, by and between the CITY OF SHAKOPEE, MINNESOTA, a Minnesota municipal corporation (the “City”), and KEB AMERICA, LLC, a Minnesota limited liability company, or any of its affiliates (the “Developer”). KEB AMERICA, INC., a Minnesota corporation (the “Tenant”), has executed this Agreement solely for the purposes of acknowledging its duties set forth in Section 10.10 hereof.

RECITALS

WHEREAS, pursuant to Minnesota Statutes, Sections 469.1812 through 469.1815 (the “Act”), the City is authorized to abate property taxes in order to increase or preserve tax base and provide employment opportunities; and

WHEREAS, pursuant to Minnesota Statutes, Sections 116J.993 to 116J.995, as amended (the “Business Subsidy Act”), the City is authorized to grant business subsidies to facilitate development in the City; and

WHEREAS, the Developer has proposed to equip and construct an expansion of its existing building consisting of approximately 68,900 additional square feet to be used for manufacturing, office, and warehouse space (the “Minimum Improvements”) on real property located in the City and described in Exhibit A (the “Development Property”); and

WHEREAS, pursuant to the Act, the City Council of the City has approved a resolution authorizing abatement of a portion of real property taxes on the Development Property; and

WHEREAS, in order to reimburse the Developer for certain costs related to the construction of the Minimum Improvements, the Developer has requested the following assistance: (i) tax abatement from the City for up to nine years in the maximum amount of \$289,263; and

WHEREAS, the City has determined that the financial assistance provided to the Developer as contemplated herein and the fulfillment generally of this Agreement are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which this Agreement has been undertaken; and

NOW, THEREFORE, in consideration of the mutual obligations contained in this Agreement, the parties agree as follows:

(The remainder of this page is intentionally left blank.)

ARTICLE I

Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context:

“Abatement Capacity” means the maximum amount of property taxes that may be abated in any year by a political subdivision under Section 469.1813, subdivision 8 of the Act, as amended. As of the date of this Agreement, the Abatement Capacity for the City is the greater of 10% of the net tax capacity of the City for the taxes payable year to which the abatement applies or \$200,000.

“Act” means Minnesota Statutes, Sections 469.1812 through 469.1815, as amended.

“Agreement” means this Contract for Private Development, as the same may be from time to time modified, amended, or supplemented.

“Available Abatement” means, on each Payment Date, the City Abatement generated in the preceding six (6) months with respect to the Development Property and remitted to the City by the County, or such lesser amount as shall cause the cumulative principal amount of the City Abatement paid to the Developer during the term of this Agreement to be no more than \$289,263.

“Business Day” means any day except a Saturday, Sunday, legal holiday, a day on which the City is closed for business, or a day on which banking institutions in the City are authorized by law or executive order to close.

“Business Subsidy Act” means Minnesota Statutes, Sections 116J.993 to 116J.995, as amended.

“Certificate of Completion” means the certification provided to the Developer, or the purchaser of any part, parcel or unit of the Development Property, pursuant to Section 4.4 of this Agreement.

“City” means the City of Shakopee, Minnesota.

“City Abatement” means one hundred percent (100%) of the real property taxes (i) generated in any tax-payable year by extending the City’s total tax rate for that year against the tax capacity increase resulting from the Minimum Improvements constructed on the Property, excluding the tax capacity of the land, and the existing building (in the amount of \$4,832,800, as established in tax payable year 2019) and excluding the portion of the tax capacity attributable to the areawide tax under Minnesota Statutes, Chapter 473F, all as of January 2 in the prior year, and (ii) remitted to the City by the County.

“City Abatement Resolution” means Resolution No. R2019-080, approved by the City Council of the City on July 16, 2019, regarding abatement of property taxes on the Development Property.

“Compliance Date” means, for purposes of the job and wage creation goals set forth in Section 3.7 hereof, the date which is two years after the date of issuance of the Certificate of Completion of the Minimum Improvements.

“Construction Plans” means the plans, specifications, drawings and related documents on the construction work to be performed by the Developer on the Development Property, including the Minimum Improvements and the related site improvements, which (a) shall be as detailed as the plans,

specifications, drawings and related documents which are submitted to the appropriate building officials of the City, and (b) shall include at least the following: (1) site plan; (2) foundation plan; (3) basement plans; (4) floor plan for each floor; (5) cross sections of each (length and width); (6) elevations (all sides); (7) landscape plan; and (8) such other plans or supplements to the foregoing plans as the City may reasonably request to allow it to ascertain the nature and quality of the proposed construction work.

“County” means Scott County, Minnesota.

“Developer” means KEB America, LLC, a Delaware corporation, or its permitted successors and assigns.

“Development Property” means the real property described in Exhibit A of this Agreement.

“Event of Default” means an action by the Developer listed in Article IX of this Agreement.

“Holder” means the owner of a Mortgage.

“Lease” means the lease between Developer and Tenant whereby Tenant leases the Minimum Improvements.

“Minimum Improvements” means the construction and equipping of an approximately 68,900 square feet expansion of the Developer’s existing building, which will be used by the Tenant for manufacturing, office, and warehouse space on the Development Property.

“Mortgage” means any mortgage made by the Developer which is secured, in whole or in part, with the Development Property and which is a permitted encumbrance pursuant to the provisions of Article VIII of this Agreement.

“Payment Date” means each February 1 and August 1, commencing August 1, 2021; provided that if any such Payment Date is not a Business Day, the Payment Date shall be the next succeeding Business Day.

“Project” means the Development Property as improved with the Minimum Improvements.

“State” means the State of Minnesota.

“Tax Official” means any County assessor, County auditor, County or State board of equalization, the commissioner of revenue of the State, or any State or federal district court, the tax court of the State, or the State Supreme Court.

“Tenant” means KEB America, Inc., a Minnesota corporation, or its successors and assigns.

“Termination Date” means the earlier of (a) the date of the City’s last receipt of City Abatement; (b) the date the Note has been paid in full, defeased, or terminated in accordance with its terms; or (c) the date of termination of the Note and this Agreement by the City due to an Event of Default as set forth in Section 9.2 hereof.

“Transfer” has the meaning set forth in Section 8.2(a) hereof.

“Unavoidable Delays” means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of strikes, other labor troubles, prolonged adverse weather or acts of God, fire or other casualty to the Minimum Improvements, litigation commenced by

third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the City in exercising its rights under this Agreement) which directly result in delays. Unavoidable Delays shall not include delays in the Developer's obtaining of permits or governmental approvals necessary to enable construction of the Minimum Improvements by the dates such construction is required under Section 4.3 of this Agreement, so long as the Construction Plans have been approved in accordance with Section 4.2 hereof.

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ARTICLE II

Representations and Warranties

Section 2.1. Representations by the City. The City makes the following representations and warranties as the basis for its covenants herein:

(a) The City is a statutory city duly organized and existing under the laws of the State. Under the provisions of the Act, the City has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The City proposes to grant abatement of taxes on the Development Property and the Minimum Improvements thereon, to assist in financing the Minimum Improvements, which will increase the tax base and create employment opportunities within the City.

Section 2.2. Representations and Warranties by the Developer. The Developer makes the following representations and warranties as the basis for its covenants herein:

(a) The Developer is a limited liability company duly organized and in good standing under the laws of the State, is duly authorized to transact business within the State, and has the power to enter into this Agreement.

(b) The Developer will construct the Minimum Improvements and cause the Minimum Improvements to be operated and maintained in accordance with the terms of this Agreement and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations).

(c) The Developer has received no notice or communication from any local, State or federal official that the activities of the Developer with respect to the Minimum Improvements may be or will be in violation of any environmental law or regulation. The Developer is aware of no facts the existence of which would cause it to be in violation of or give any person a valid claim under any local, state or federal environmental law, regulation or review procedure with respect to the Minimum Improvements.

(d) The Developer will construct the Minimum Improvements in accordance with all local, State or federal energy-conservation laws or regulations.

(e) The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, State and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed.

(f) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any corporate restriction or any evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing, which default or breach might prevent the Developer from performing its obligations under this Agreement.

(g) The Developer shall promptly advise the City in writing of all litigation or claims affecting any part of the Minimum Improvements and all written complaints and charges made by any governmental authority materially affecting the Minimum Improvements or materially affecting the Developer or its business which may delay or require changes in construction of the Minimum Improvements through the date of the Certificate of Completion.

(h) The Developer is not in default under any business subsidy agreement pursuant to Section 116J.994 of the Business Subsidy Act.

Section 2.3. Representations, Warranties by the Tenant. The Tenant represents, warrants and covenants that:

(a) The Tenant is a corporation duly established and in good standing under the laws of the State, is not in violation of any provisions of its articles of incorporation and bylaws, is duly authorized to transact business within the State, has power to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action of its officers.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any corporate restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which the Tenant is now a party or by which it is bound, or constitutes a default under any of the foregoing, which default or breach might prevent the Tenant from performing its obligations under this Agreement.

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ARTICLE III

Property Tax Abatement

Section 3.1. Status of Development Property. As of the date of this Agreement, the Developer owns the Development Property. The Developer will enter into the Lease under which the Tenant will operate the Minimum Improvements.

Section 3.2. Environmental Conditions.

(a) The Developer acknowledges that the City make no representations or warranties as to the condition of the soils on the Development Property or the fitness of the Development Property for construction of the Minimum Improvements or any other purpose for which the Developer may make use of such property, and that the assistance provided to the Developer under this Agreement neither implies any responsibility by the City for any contamination of the Development Property nor imposes any obligation on such parties to participate in any cleanup of the Development Property.

(b) Without limiting its obligations under Section 8.3 of this Agreement, the Developer further agrees that it will indemnify, defend, and hold harmless the City and its governing body members, officers, and employees, from any claims or actions arising out of the presence, if any, of hazardous wastes or pollutants existing on or in the Development Property, unless and to the extent that such hazardous wastes or pollutants are present as a result of the actions or omissions of the indemnitees. Nothing in this section will be construed to limit or affect any limitations on liability of the City under State or federal law, including without limitation Minnesota Statutes, Sections 466.04 and 604.02.

Section 3.3. Minimum Improvements. The Developer hereby covenants to construct the Minimum Improvements on the Development Property pursuant to the terms and conditions of this Agreement.

Section 3.4. City Property Tax Abatement.

(a) Generally. In order to make the Project economically feasible, the City will grant the City Abatement to the Developer commencing 2021 and continuing through 2029. In no event shall the City Abatement exceed a cumulative total of \$289,263 over the term of the City Abatement. The City Abatement will reimburse the Developer for a portion of the costs of completing the Minimum Improvements. Subject to the Abatement Capacity, the City shall pay the Developer the Available Abatement each February 1 and August 1 (each a "Payment Date"), commencing August 1, 2021, and terminating on February 1, 2030.

(b) Limitations. The pledge of Available Abatement is subject to all the terms and conditions of the City Abatement Resolution. The Available Abatement is payable solely from and to the extent of the City Abatement, and nothing herein shall be construed to obligate the City to make payments from any other funds. The City makes no warranties or representations as to the amount of the Available Abatement. Any estimates of Available Abatement amounts prepared by the City's financial consultants are for the benefit of the City only, and the Developer is not entitled to rely on such estimates.

The Developer further acknowledges that the total property tax abatements payable by the City in any year may not exceed the Abatement Capacity all pursuant to Section 469.1813, subdivision 8 of the Act. The City does not warrant or represent that the City Abatement in the amounts pledged under this Agreement will be within the City's Abatement Capacity. The City represents that it has previously granted four other

abatements under the Act that are ongoing as of the date of this agreement and which shall be paid prior to the City Abatement hereunder. The City agrees that if the City grants any additional abatements under the Act during the term of this Agreement, the City's Abatement Capacity will be allocated first to the abatements granted prior to the date of this Agreement, next and to the City Abatement pledged pursuant to this Agreement, and then to any additional abatements.

Section 3.5. Payment of Administrative Costs. The Developer has deposited with the City \$12,000 to pay Administrative Costs of the City. The City will use such deposit to pay "Administrative Costs," which term means out-of-pocket costs incurred by the City, together with staff and consultant costs of the City, all attributable to or incurred in connection with the negotiation and preparation of this Agreement, the City Abatement resolution, the City Abatement financial analysis, and other documents and agreements in connection with the City Abatement, and not previously paid by the Developer. If the deposit is not sufficient to pay the City's remaining Administrative Costs, the Developer shall pay any remaining Administrative Costs of the City upon demand.

Section 3.6. Records. The City and its respective representatives shall have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and records of Developer relating to the Project. The Developer shall also use its best efforts to cause the contractor or contractors, all subcontractors and its agents and lenders to make their books and records relating to the Project available to City, upon reasonable notice, for inspection, examination and audit.

Section 3.7. Business Subsidy Agreement. The provisions of this Section constitute the "business subsidy agreement" in connection with the business subsidy provided by the City for the purposes of the Business Subsidy Act.

(a) General Terms. The parties agree and represent to each other as follows:

(1) The business subsidy provided to the Developer under this Agreement consists of the City Abatement. All such payments and grants represent forgivable loans that are repayable by the Developer in accordance with this Section.

(2) The public purposes of the subsidies are to provide employment opportunities, increase the tax base of the City and encourage economic development within the City.

(3) The goals for the subsidies are to secure development of the Minimum Improvements, to own and operate the Minimum Improvements for at least five years as described in clause (6) below, and to create the jobs (16 new jobs) and wage levels in accordance with Section 3.7(b) hereof.

(4) If the goals described in clause (3) are not met, the Developer must make the payments to the City described in Section 3.7(c).

(5) The subsidies are needed to induce the Developer to expand its operations in the City, thus enhancing job and tax base growth for the City. Absent the subsidy provided in this Agreement, the expansion would likely occur in another city.

(6) The Developer must continue operation of the Minimum Improvements for at least five years after the date of issuance of the Certificate of Completion.

(7) The Developer's parent company is KEB Automation KG.

(8) In addition to the subsidies described in this Section 3.7(a), the Developer has also received financial assistance from the following other “grantors” as defined in the Business Subsidy Act, in connection with the Development Property or the Minimum Improvements: None.

(b) Job and Wage Goals. Within two years after the date of issuance of the Certificate of Completion of the Minimum Improvements (the “Compliance Date”), the Developer shall cause to be retained 98 full-time equivalent jobs on the Development Property and the Developer shall cause to be created at least 16 new full-time equivalent jobs on the Development Property and shall cause the wages for all employees on the Development Property to be no less than an average of \$25.00 per hour, exclusive of benefits. Notwithstanding anything to the contrary herein, if the wage and job goals described in this paragraph are met by the Compliance Date, those goals are deemed satisfied despite the Developer’s continuing obligations under Sections 3.7(a)(6) and 3.7(d). The City may, after public hearings held by the respective governing body and approval by both bodies, extend the Compliance Date by up to one year, provided that nothing in this section will be construed to limit the City’s legislative discretion regarding this matter.

(c) Remedies. If the Developer fails to meet the goals described in Section 3.7(a)(3), this Agreement will be deemed terminated, and the Developer shall repay to the City upon written demand from the City a “pro rata share” of the City Abatement. The term “pro rata share” means percentages calculated as follows:

(i) if the failure relates to the number of jobs, the jobs required less the jobs created, divided by the jobs required;

(ii) if the failure relates to wages, the number of jobs required less the number of jobs that meet the required wages, divided by the number of jobs required;

(iii) if the failure relates to maintenance of the corporate headquarters in accordance with Section 3.7(a)(6), 60 less the number of months of operation as a corporate headquarters (where any month in which the facility is in operation for at least 15 days constitutes a month of operation), commencing on the date of the certificate of completion and ending with the date the facility ceases operation as determined by the City, divided by 60; and

(iv) if more than one of clauses (i) through (iii) apply, the sum of the applicable percentages, not to exceed 100%.

Notwithstanding the foregoing, instead of terminating the payment of the City Abatement, upon the Developer’s failure to meet the goals described in Section 3.7(a)(3), the City may determine to continue its payments under this Agreement but reduce the amount of such assistance using the pro rata reduction formula set forth above.

Nothing in this Section shall be construed to limit the City’s remedies under Article IX hereof. In addition to the remedy described in this Section and any other remedy available to the City for failure to meet the goals stated in Section 3.7(a)(3), the Developer agrees and understands that it may not receive a business subsidy from the City or any other grantor (as defined in the Business Subsidy Act) for a period of five years from the date of the failure or until the Developer satisfies its repayment obligation under this Section, whichever occurs first.

(d) Reports. The Developer shall cause the Tenant to submit to the City a written report regarding business subsidy goals and results by no later than March 1 of each year, commencing March 1,

2020, and continuing until the later of (i) the date the goals stated in Section 3.7(a)(3) are met; (ii) 30 days after expiration of the five-year period described in Section 3.7(a)(6); or (iii) if the goals are not met, the date the subsidy is repaid in accordance with Section 3.7(c). The report must comply with Section 116J.994, subdivision 7 of the Business Subsidy Act. The City will provide information to the Developer regarding the required forms. If the Developer fails to timely file any report required under this Section, the City will mail the Developer a warning within one week after the required filing date. If, after 14 days of the postmarked date of the warning, the Developer fails to provide a report, the Developer must pay to the City a penalty of \$100 for each subsequent day until the report is filed. The maximum aggregate penalty payable under this Section is \$1,000. The City will file any reports required to be filed with the State under the Business Subsidy Act.

Section 3.8. Restrictions on Use. The Developer agrees that it shall operate the Minimum Improvements for the term of this Agreement; provided that after expiration of the five-year period described in Section 3.7(a)(6), the repayment remedy described in Section 3.7(d) will not be imposed on Developer for default under this Section. However, if the Developer fails to operate the Minimum Improvements for the term of this Agreement, the City may decrease or discontinue the future payment of City Abatement.

Section 3.9. Job and Wage Maintenance. Pursuant to Section 3.7(b), the Developer has agreed to create 18 new full-time equivalent jobs in the City on or before the Compliance Date. Within five years after the date the Developer occupies the Minimum Improvements, the Developer covenants that it shall cause the Tenant to create at least an additional 18 full-time equivalent jobs in the City with the wages for such jobs to be no less than an average of \$25.00 per hour, exclusive of benefits. After the expiration of the reporting requirement set forth in Section 3.7(d) under the Business Subsidy Agreement, the Developer must continue to cause the Tenant to submit to the City a report from the Developer's payroll application that shows the total number of employees, their base wage levels, along with benefits allocations, in order to determine whether the job and wage requirements required under this Agreement continue to be met. In addition, the Developer must report to the City, which lists each new job, by class or category, subject to this Agreement, along with the base pay or annual salary, exclusive of benefits. The reports must be filed no later than February 1 of each year during the term of this Agreement. If the Developer fails to meet and sustain the job and wage requirements set forth in this Section 3.9 during the term of this Agreement, the City may continue its respective payments but reduce the amount of City Abatement or terminate the payment of City Abatement or pursue the remedies set forth in Section 9.2 hereof.

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ARTICLE IV

Construction of Minimum Improvements

Section 4.1. Construction of Improvements. The Developer agrees that it will construct the Minimum Improvements on the Development Property in accordance with the approved Construction Plans and at all times during the term of this Agreement will cause the Tenant to operate, maintain, preserve and keep the Minimum Improvements with the appurtenances and every part and parcel thereof, in good repair and condition. The City shall have no obligation to operate or maintain the Minimum Improvements.

Section 4.2. Construction Plans.

(a) Before commencement of construction of the Minimum Improvements, the Developer shall submit to the City the Construction Plans. The Construction Plans shall provide for the construction of the Minimum Improvements and shall be in conformity with this Agreement, and all applicable State and local laws and regulations. The City will approve the Construction Plans in writing if: (i) the Construction Plans conform to the terms and conditions of this Agreement; (ii) the Construction Plans conform to all applicable federal, State and local laws, ordinances, rules and regulations; (iii) the Construction Plans are adequate to provide for construction of the Minimum Improvements; (iv) the Construction Plans do not provide for expenditures in excess of the funds available to the Developer from all sources for construction of the Minimum Improvements; and (v) no Event of Default has occurred.

Approval may be based upon a review by the City's Building Official of the Construction Plans. No approval by the City shall relieve the Developer of the obligation to comply with the terms of this Agreement, applicable federal, State and local laws, ordinances, rules and regulations, or to construct the Minimum Improvements in accordance therewith. No approval by the City shall constitute a waiver of an Event of Default. If approval of the Construction Plans is requested by the Developer in writing at the time of submission, such Construction Plans shall be deemed approved unless rejected in writing by the City, in whole or in part within 20 days after the date of their receipt by the City. Such rejections shall set forth in detail the reasons therefore, and shall be made within 20 days after the date of their receipt by the City. If the City rejects any Construction Plans in whole or in part, the Developer shall submit new or corrected Construction Plans within 20 days after its receipt of written notification to the Developer of the rejection. The provisions of this Section relating to approval, rejection and resubmission of corrected Construction Plans shall continue to apply until the Construction Plans have been approved by the City. The City's approval shall not be unreasonably withheld. Said approval shall constitute a conclusive determination that the Construction Plans (and the Minimum Improvements constructed in accordance with said plans) comply to the City's satisfaction with the provisions of this Agreement relating thereto.

(b) If the Developer desires to make any material change in the Construction Plans after their approval by the City, the Developer shall submit the proposed change to the City for its approval. For the purposes of this Section, the term "material" means any change that increases or decreases the total cost of the Minimum Improvements by \$500,000 or more. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2 with respect to such previously approved Construction Plans, the City shall approve the proposed change and notify the Developer in writing of its approval within 20 days after the date of their receipt by the City. Such change in the Construction Plans shall, in any event, be deemed approved by the City unless rejected, in whole or in part, by written notice by the City to the Developer, setting forth in detail the reasons therefor. Such rejection shall be made within 20 days after receipt of the notice of such change. The City's approval of any such change in the Construction Plans will not be unreasonably withheld.

(c) The approval of Construction Plans by the City under this Section 4.2 is for the purposes of this Agreement only. The Developer must also obtain any approvals necessitated by the City's planning and zoning requirements.

Section 4.3. Commencement and Completion of Construction. The Developer shall commence construction of the Minimum Improvements on or prior to September 30, 2019. Subject to Unavoidable Delays, the Developer shall complete the construction of the Minimum Improvements by December 31, 2020. All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Development Property shall be in conformity with the Construction Plans as submitted by the Developer and approved by the City.

The Developer agrees for itself, its successors and assigns, and every successor in interest to the Development Property, or any part thereof, that the Developer, and such successors and assigns, shall promptly begin and diligently cause the completion of the development of the Development Property through the construction of the Minimum Improvements thereon, and that such construction shall in any event be commenced and completed within the period specified in this Section 4.3. After the date of this Agreement and until construction of the Minimum Improvements has been completed, the Developer shall make reports, in such detail and at such times as may reasonably be requested by the City, as to the actual progress of the Developer with respect to such construction.

Section 4.4. Certificate of Completion.

(a) Promptly after completion of the Minimum Improvements in accordance with those provisions of the Agreement relating solely to the obligations of the Developer to construct the Minimum Improvements (including the dates for beginning and completion thereof), the City will furnish the Developer with a Certificate of Completion shown as Exhibit B. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any Holder of a Mortgage, or any insurer of a Mortgage, securing money loaned to finance the Minimum Improvements, or any part thereof.

(b) If the City shall refuse or fail to provide any certification in accordance with the provisions of this Section 4.4 of this Agreement, the City shall, within thirty (30) days after written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the reasonable opinion of the City, for the Developer to take or perform in order to obtain such certification.

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ARTICLE V

Insurance and Condemnation

Section 5.1. Insurance.

(a) The Developer will provide and maintain at all times during the process of constructing the Minimum Improvements an All Risk Broad Form Basis Insurance Policy and, from time to time during that period, at the request of the City, furnish the City with proof of payment of premiums on policies covering the following:

(i) Builder's risk insurance, written on the so-called "Builder's Risk -- Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called "all risk" form of policy. The interest of the City shall be protected in accordance with a clause in form and content satisfactory to the City.

(ii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's Protective Liability Policy with limits against bodily injury and property damage of not less than \$2,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used). The required comprehensive general liability insurance coverage may be satisfied by primary and/or umbrella or excess coverage. The City shall be listed as additional insureds on the policy.

(iii) Workers' compensation insurance, with statutory coverage, provided that the Developer may be self-insured with respect to all or any part of its liability for workers' compensation.

(b) Upon completion of construction of the Minimum Improvements and during the term of this Agreement, the Developer shall maintain, or cause to be maintained, at its cost and expense, and from time to time at the request of the City shall furnish proof of the payment of premiums on, insurance as follows:

(i) Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses.

(ii) Comprehensive general public liability insurance, including personal injury liability (with employee exclusion deleted), against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of \$2,000,000 and \$5,000,000 in the aggregate, and shall be endorsed to show the City as additional insureds. The required comprehensive general liability insurance coverage may be satisfied by primary and/or umbrella or excess coverage.

(iii) Such other insurance, including workers' compensation insurance respecting all employees of the Developer, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Developer may be self-insured with respect to all or any part of its liability for workers' compensation.

(c) All insurance required in Article V of this Agreement shall be taken out and maintained in responsible insurance companies selected by the Developer or the Tenant which are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Developer will deposit or cause to be deposited annually with the City policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. In lieu of separate policies, the Developer may maintain or cause to be maintained a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Developer shall deposit with the City a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

(d) The Developer will notify the City promptly in the case of damage exceeding \$1,000,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. In such event the Developer will promptly repair, reconstruct and restore the Minimum Improvements to substantially the same or an improved condition or value as it existed prior to the event causing such damage, or with modifications to the Minimum Improvements that are approved by the City in writing, and, to the extent necessary to accomplish such repair, reconstruction and restoration, the Developer will apply the net proceeds of any insurance relating to such damage received by the Developer to the payment or reimbursement of the costs thereof. A request to the City to approve modifications to the Minimum Improvements prior to repair, reconstruction or restoration of the Minimum Improvements shall not be unreasonably withheld. Any failure to request such certificate if not received by the Developer shall not constitute a waiver of the Developer's responsibilities under this Article V.

The Developer shall complete the repair, reconstruction and restoration of the Minimum Improvements, whether or not the net proceeds of insurance received by the Developer for such purposes are sufficient to pay for the same. Any net proceeds remaining after completion of such repairs, construction and restoration shall be the property of the Developer.

A failure to promptly repair, reconstruct and restore the Minimum Improvements as required by this Section 5.1(d) will be considered an Event of Default under this Agreement and the City may suspend payments of Abatement or other financial assistance described herein or exercise any other remedies provided in Section 9.2 hereof.

(e) All of the insurance provisions set forth in this Article V shall terminate upon the termination of this Agreement.

Section 5.2. Subordination. Notwithstanding anything to the contrary herein, the rights of the City with respect to the receipt and application of any insurance proceeds shall, in all respects, be subordinate and subject to the rights of any Holder under a Mortgage securing construction or permanent financing for the Minimum Improvements.

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ARTICLE VI

Taxes

Section 6.1. Right to Collect Delinquent Taxes. The Developer acknowledges that the City is providing substantial aid and assistance in furtherance of the Project pursuant to this Agreement. The Developer understands that the City Abatement pledged pursuant to this Agreement is derived from real estate taxes on the Development Property, which taxes must be promptly and timely paid. To that end, the Developer agrees for itself, its successors and assigns, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Development Property and the Minimum Improvements. The Developer acknowledges that this obligation creates a contractual right on behalf of the City to sue the Developer or its successors and assigns to collect delinquent real estate taxes and any penalty or interest thereon and to pay over the same as a tax payment to the County auditor. In any such suit, the City shall also be entitled to recover its costs, expenses and reasonable attorney fees.

Section 6.2. Reduction of Taxes. Prior to the termination of this Agreement, the Developer will not (a) cause a reduction in the real property taxes paid in respect of the Development Property through willful destruction of the Minimum Improvements or any part thereof; (b) fail to reconstruct the Minimum Improvements if damaged or destroyed, as required under Section 5.1(d) hereof; or (c) convey or transfer or allow conveyance or transfer of its leasehold interests in the Development Property to any entity that is exempt from payment of real property taxes under State law.

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ARTICLE VII

Financing

Section 7.1. Financing. The Developer warrants and represents to the City that it has or will have available funds sufficient to construct the Minimum Improvements in accordance with the Construction Plans.

Section 7.2. Modification; Subordination. If the Developer requires mortgage financing for the development of the Minimum Improvements, the City agrees to subordinate its rights under this Agreement to the Holder of any Mortgage securing construction or permanent financing. Any subordination agreement must be approved by the City Council of the City.

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ARTICLE VIII

Prohibitions Against Assignment and Transfer; Indemnification

Section 8.1. Representation as to Development. The Developer's purchase of the Development Property, and its other undertakings pursuant to the Agreement, are, and will be used, for the purpose of development of the Development Property and not for speculation in land holding.

Section 8.2. Prohibition Against Developer's Transfer of Property and Assignment of Agreement. Prior to the issuance of a Certificate of Completion for the Minimum Improvements:

(a) Except only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Development Property, or any part thereof, to perform its obligations with respect to making the Minimum Improvements under this Agreement, and any other purpose authorized by this Agreement, the Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to the Agreement or its leasehold interests in the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same, to any person or entity whether or not related in any way to the Developer (collectively, a "Transfer"), without the prior written approval of the City unless the Developer remains liable and bound by this Agreement in which event the City's approval is not required. Any such Transfer shall be subject to the provisions of this Agreement. The Developer entering into a Lease with the Tenant does not constitute a Transfer for purposes of this Agreement. Notwithstanding anything to the contrary in this Section, the Developer may assign its rights under this Agreement or the Notes to the Holder of a Mortgage, provided the Mortgage is approved by the City.

(b) In the event the Developer, upon Transfer of the Development Property or any portion thereof, seeks to be released from its obligations under this Agreement as to the portions of the Development Property that is transferred or assigned, the City shall be entitled to require, except as otherwise provided in the Agreement, as conditions to any such release that:

(i) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer as to the portion of the Development Property to be transferred.

(ii) Any proposed transferee, by instrument in writing satisfactory to the and in form recordable in the public land records of the County, shall, for itself and its successors and assigns, and expressly for the benefit of the City, has expressly assumed all of the obligations of the Developer under this Agreement as to the portion of the Development Property to be transferred and agreed to be subject to all the conditions and restrictions to which the Developer is subject as to such portion; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, and shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City) deprive the City of any rights or remedies or controls with respect to the Development Property or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Development Property or any part

thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies on controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the City would have had, had there been no such transfer or change. In the absence of specific written agreement by the City to the contrary, no such transfer or approval by the City shall be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto.

(iii) Any and all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Development Property governed by this Article VIII, shall be in a form reasonably satisfactory to the City.

In the event the foregoing conditions are satisfied then the Developer shall be released from its obligation under this Agreement, as to the portion of the Development Property that is transferred, assigned or otherwise conveyed. The restrictions under this Section terminate upon issuance of the Certificate of Completion.

Section 8.3. Release and Indemnification Covenants.

(a) The City and the governing body members, officers, agents, servants and employees thereof (the "Indemnified Parties") shall not be liable for and the Developer shall indemnify 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 Development Property or the Minimum Improvements.

(b) Except for any willful misrepresentation or any willful or wanton misconduct or negligence of the Indemnified Parties, and except for any breach by any of the Indemnified Parties of their obligations under this Agreement, the Developer agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, maintenance and operation of the Development Property or the Minimum Improvements.

(c) Except for any willful misrepresentation or any willful or wanton misconduct or negligence of the Indemnified Parties, the Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Development Property or Minimum Improvements.

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

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ARTICLE IX

Events of Default

Section 9.1. 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:

- (a) failure by the Developer to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed hereunder;
- (b) commencement by the Holder of any Mortgage on the Development Property or any improvements thereon, or any portion thereof, of foreclosure proceedings as a result of default under the applicable Mortgage documents; or
- (c) if the Developer shall:
 - (i) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or State law; or
 - (ii) make an assignment for benefit of its creditors; or
 - (iii) admit in writing its inability to pay its debts generally as they become due; or
 - (iv) be adjudicated a bankrupt or insolvent.
- (d) If the Tenant terminates the Lease and no successor tenant continues to operate the Minimum Improvements within eight months.

Section 9.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 of this Agreement occurs, the City may each exercise any of the following rights under this Section 9.2 after providing thirty days’ written notice to the Developer of the Event of Default, but only if the Event of Default has not been cured within said thirty days or, if the Event of Default is by its nature incurable within thirty days, the Developer does not, within such thirty-day period, provide assurances reasonably satisfactory to the party providing notice of default that the Event of Default will be cured and will be cured as soon as reasonably possible:

- (a) Suspend its performance under the Agreement until it receives reasonably satisfactory assurances that the Developer will cure its default and continue its performance under the Agreement.
- (b) Cancel and rescind or terminate its obligations under the Agreement.
- (c) Take whatever 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 of the Developer under this Agreement.

Section 9.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to any party 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. In order for the City to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article IX.

Section 9.4. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the 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.

Section 9.5. Attorney Fees. Whenever any Event of Default occurs and if the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer under this Agreement, the Developer agrees that it shall, within ten (10) days of written demand by the City, pay to the City the reasonable fees of such attorneys and such other expenses so incurred by the City.

(The remainder of this page is intentionally left blank.)

ARTICLE X

Additional Provisions

Section 10.1. Conflict of Interests; Representatives Not Individually Liable. The City and the Developer, to the best of its respective knowledge, represent and agree that no member, official, or employee of the City shall have any personal interest, direct or indirect, in the Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, 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 may become due to the Developer or successor or on any obligations under the terms of the Agreement.

Section 10.2. Equal Employment Opportunity. The Developer and the Tenant, for themselves and their successors and assigns, agrees that during the term of this Agreement it will comply with all applicable federal, state and local equal employment and non-discrimination laws and regulations.

Section 10.3. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 10.4. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(a) in the case of the Developer, is addressed to or delivered personally to the Developer at KEB America, LLC, 5100 Valley Industrial Boulevard South, Shakopee, Minnesota 55379; Attention: Jenny Davis, Controller; and

(b) in the case of the Tenant, is addressed to or delivered personally to the Developer at KEB America, Inc., 5100 Valley Industrial Boulevard South, Shakopee, Minnesota 55379; Attention: Jenny Davis, Controller; and

(c) in the case of the City, is addressed to or delivered personally to City Hall, 485 Gorman Street, Shakopee, Minnesota 55379; Attention: City Administrator.

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

Section 10.5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 10.6. Recording. The City may record this Agreement and any amendments thereto with the Scott County Recorder. The Developer shall pay all costs for recording.

Section 10.7. Amendment. This Agreement may be amended only by written agreement approved by the City, Tenant, and the Developer.

Section 10.8. Termination. This Agreement terminates on the Termination Date.

Section 10.9. Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the State or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

Section 10.10. Tenant's Obligations Under Agreement. The Tenant hereby represents that it intends to enter into the Lease with the Developer which will have a term of at least the term of the Note. The Tenant acknowledges that its representations and warranties set forth in Section 2.3 of this Agreement are true and correct as of the date hereof and that it agrees to comply with the requirements of Sections 3.7, 3.9, 4.1, 10.2, 10.8 and 10.10 of this Agreement. Notwithstanding anything to the contrary in this Agreement, the City and the Developer acknowledge and agree that the Tenant has no duties or responsibilities under this Agreement except as specifically described in this Section 10.12.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the City and the Developer have caused this Contract for Private Development to be duly executed by their duly authorized representatives as of the date first above written.

CITY OF SHAKOPEE, MINNESOTA

By: _____
Its: Mayor

By: _____
Its: City Administrator

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of July, 2019, by William Mars, the Mayor of the City of Shakopee, Minnesota, on behalf of the City.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of July, 2019, by William H. Reynolds, the City Administrator of the City of Shakopee, Minnesota, on behalf of the City.

Notary Public

Execution page of the Developer to the Contract for Private Development, dated as of the date and year first written above.

KEB AMERICA, LLC

By: _____

Its: _____

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019,
by _____, the _____ of KEB America, LLC, a
Delaware Corporation, on behalf of the Developer.

Notary Public

Execution page of the Tenant to the Contract for Private Development, dated as of the date and year first written above.

KEB AMERICA, LLC

By: _____

Its: _____

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019,
by _____, the _____ of KEB America, LLC, a
Delaware Corporation, on behalf of the Developer.

Notary Public

EXHIBIT A
DEVELOPMENT PROPERTY

Lot 2, Block 1, Valley Park Seventh Addition, Scott County, Minnesota.

EXHIBIT B

CERTIFICATE OF COMPLETION

The undersigned hereby certifies that KEB America, LLC, a Delaware corporation (the “Developer”), has fully complied with its obligations under Articles III and IV of that document titled “Contract for Private Development,” dated July __, 2019, between the City of Shakopee, Minnesota (the “City”), and the Developer, with respect to construction of the Minimum Improvements in accordance with the Construction Plans, and that the Developer is released and forever discharged from its obligations to construct the Minimum Improvements set forth in Articles III and IV of the Contract for Private Development.

Dated: _____, 20__.

CITY OF SHAKOPEE, MINNESOTA

By: _____

Its: _____

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__,
by _____, the _____ of the City of Shakopee, Minnesota, on
behalf of the City.

Notary Public