

ENCROACHMENT AGREEMENT

This Encroachment Agreement (“Agreement”) is made as of the _____ day of _____, 20____, by and between the City of Shakopee, a Minnesota municipal corporation (“City”) and KEB American, LLC, a Minnesota limited liability company (“Owners”).

RECITALS

- A. Owners are the owners of property located at 5100 Valley Industrial Boulevard South, City of Shakopee, County of Scott, State of Minnesota, legally described as follows:

Lot 2, Block 1 Valley Park 7th Addition, PID-271410020, according to the recorded plat thereof (the “Property”).
- B. The Property is subject to a drainage and utility easement in favor of the City, which was dedicated to the City in the plat of Valley Park 7th Addition; and
- C. Owners would like to construct and install a retaining wall (“Improvements”) that will encroach into the Easement (“Encroachment Area”); and
- D. The City has agreed that Owners may construct, repair and maintain the Improvements within the Encroachment Area on the condition that Owners execute this Agreement and will promptly remove said improvements at Owners expense upon the determination by and need of the City or other private utility company to work within the easement area.

AGREEMENT

NOW, THEREFORE, on the basis of the premises and the mutual covenants and agreements set forth in this Agreement, the parties agree as follows:

1. Owners may construct, repair and maintain the Improvements within the Encroachment Area as shown on Exhibit A.

2. The permission granted by the City in this Agreement is limited exclusively to the proposed Improvements within the Encroachment Area as outlined in Exhibit A.

3. This Agreement shall not prevent or impair the use of the Encroachment Area for the drainage and utility purposes by the City or any other entity entitled by law to so use the Encroachment Area.

4. In the event the City needs to maintain, operate, repair, access or remove the utility or make necessary drainage improvements located within the drainage and utility easement and the Improvements interfere with such maintenance, operation, repair, access or removal, the City shall provide notice to Owners pursuant to Paragraph 8 of this Agreement. The City's costs of removing the necessary portion of the Improvements in order for the City to exercise its easement rights shall be paid by Owners. Owners shall be responsible for the costs of restoring or reinstalling any of the Improvements that were removed. Any damages to the Improvements resulting from the City's activities shall be borne and assumed by Owners, provided, however, that the City shall be responsible for any damages caused by the negligence or willful misconduct of the City, its officials, employees, contractors and agents.

5. This Agreement shall run with the land and shall inure to the benefit of and be binding upon the parties to this Agreement and their respective successors and assigns.

6. Owners shall indemnify, hold harmless and defend the City, its officials, employees, contractors and agents, from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs or expenses (including reasonable attorneys' fees), arising from or in connection with or caused by any act, omission or negligence of Owners, their contractors, licensees, invitees, agents, servants or employees in connection with the construction, repair or maintenance of the Improvements.

7. Owners agree not to suffer or allow any liens, claims and processes to be placed against the City's rights to or interest in the Encroachment Area as a result of the use of the Encroachment Area, including, without limitation, any liens for labor or materials provided for the construction, repair or maintenance of the Improvements.

8. Required notices to the parties to this Agreement shall be in writing, and shall either be hand delivered or mailed to the following addresses:

a) As to the City: City of Shakopee
485 Gorman Street South
Shakopee, MN 55379
Attn: City Administrator

b) As to Owners: KEB America, LLC
5100 Valley Industrial Boulevard S
Shakopee, MN 55379

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

CITY OF SHAKOPEE

By:_____

Its: Mayor

By:_____

Its: City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ and _____ the Mayor and City Administrator, respectively, of the City of Shakopee, Minnesota, a municipal corporation, on behalf of the City.

Notary Public

OWNERS

By: _____
Andreas Delius / CEO

By: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this _____ day of _____,
20_____, by Andreas Delius.

Notary Seal

This document was drafted by:

City of Shakopee
485 Gorman Street South
Shakopee, MN 55379

952-233-9300

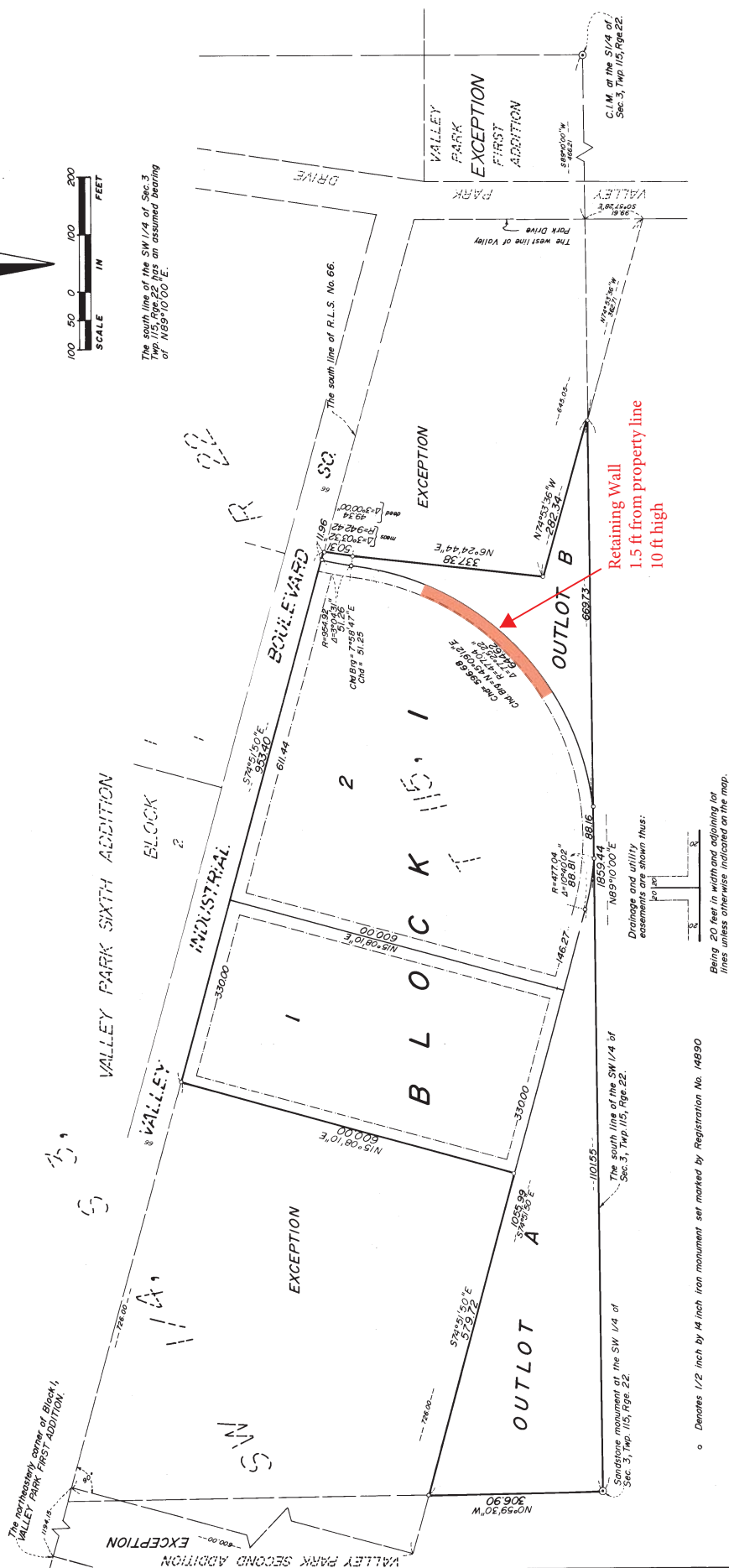
VALLEY PARK SEVENTH ADDITION

Exhibit A



A horizontal scale bar with two units. The top unit is labeled 'FEET' and ranges from 0 to 200 with major tick marks every 100 units. The bottom unit is labeled 'IN' and ranges from 0 to 100 with major tick marks every 50 units. The bar is divided into alternating black and white segments.

The south line of the SW 1/4 of Sec. 3
Twp. 115, Rge. 22 has an assumed bearing
of N89°10'00"E.



Denotes 1/2 inch by 14 inch iron monument set marked by Registration No. 14890

**PETERS, PRICE & SAMSON
LAND SURVEYORS, LTD.**

LAND SURVEYORS, LTD.
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