

**Fourth Draft
February 14, 2020**

**CONTRACT
FOR
PRIVATE DEVELOPMENT
between
CITY OF SHAKOPEE, MINNESOTA,
OPUS DEVELOPMENT COMPANY, L.L.C.,
and
CHERNE INDUSTRIES INCORPORATED**

Dated: _____, 2020

This document was drafted by:

KENNEDY & GRAVEN, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota 55402
Telephone: 337-9300

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| PREAMBLE | 1 |
| ARTICLE I <u>Definitions</u> | |
| Section 1.1. Definitions | 2 |
| ARTICLE II Representations and Warranties | |
| Section 2.1. Representations by the City | 5 |
| Section 2.2. Representations and Warranties by Opus | 5 |
| Section 2.3. Representations and Warranties by Cherne | 6 |
| ARTICLE III <u>Property Tax Abatement</u> | |
| Section 3.1. Status of Development Property | 7 |
| Section 3.2. Environmental Conditions | 7 |
| Section 3.3. Minimum Improvements | 7 |
| Section 3.4. Property Tax Abatement | 7 |
| Section 3.5. Payment of Administrative Costs | 8 |
| Section 3.6. Records | 8 |
| Section 3.7. Business Subsidy Agreement..... | 8 |
| Section 3.8. Restrictions on Use | 10 |
| Section 3.9. Additional Jobs | 10 |
| ARTICLE IV <u>Construction of Minimum Improvements</u> | |
| Section 4.1. Construction of Minimum Improvements | 11 |
| Section 4.2. Construction Plans | 11 |
| Section 4.3. Commencement and Completion of Construction..... | 11 |
| Section 4.4. Certificate of Completion | 11 |
| ARTICLE V <u>Insurance</u> | |
| Section 5.1. Insurance | 12 |
| Section 5.2. Subordination..... | 13 |
| ARTICLE VI <u>Taxes</u> | |
| Section 6.1. Right to Collect Delinquent Taxes..... | 14 |
| Section 6.2. Reduction of Taxes | 14 |

ARTICLE VII
Financing

| | | |
|--------------|-----------------|----|
| Section 7.1. | Financing | 15 |
|--------------|-----------------|----|

ARTICLE VIII
Prohibitions Against Assignment and Transfer; Indemnification

| | | |
|--------------|--|----|
| Section 8.1. | Representation as to Development..... | 16 |
| Section 8.2. | Prohibition Against Transfer by Opus of Property and Assignment of Agreement..... | 16 |
| Section 8.3. | Prohibition Against Transfer by Cherne of Leasehold Interest and Assignment of Agreement | 17 |

ARTICLE IX
Events of Default

| | | |
|--------------|--|----|
| Section 9.1. | Events of Default Defined | 19 |
| Section 9.2. | Remedies on Default..... | 19 |
| Section 9.3. | No Remedy Exclusive | 20 |
| Section 9.4. | No Additional Waiver Implied by One Waiver | 20 |
| Section 9.5. | Attorneys' Fees | 20 |

ARTICLE X
Additional Provisions

| | | |
|------------------|---|-----|
| Section 10.1. | Conflict of Interests; Representatives Not Individually Liable..... | 21 |
| Section 10.2. | Equal Employment Opportunity | 21 |
| Section 10.3. | Titles of Articles and Sections | 21 |
| Section 10.4. | Notices and Demands | 21 |
| Section 10.5. | Counterparts..... | 21 |
| Section 10.6. | Recording..... | 21 |
| Section 10.7. | Amendment..... | 21 |
| Section 10.8. | Termination..... | 22 |
| Section 10.9. | Choice of Law and Venue..... | 22 |
| Section 10.10 | Opus Obligations After Completion of Minimum Improvements | 22 |
| SIGNATURES | | S-1 |
| EXHIBIT A | Development Property | A-1 |
| EXHIBIT B | Certificate of Completion | B-1 |

CONTRACT FOR PRIVATE DEVELOPMENT

THIS CONTRACT FOR PRIVATE DEVELOPMENT (the “Agreement”) is made as of _____, 2020, between the CITY OF SHAKOPEE, MINNESOTA, a Minnesota municipal corporation (the “City”), OPUS DEVELOPMENT COMPANY, L.L.C., a Delaware limited liability company (“Opus”), and CHERNE INDUSTRIES INCORPORATED, an Ohio corporation (“Cherne”).

RECITALS

WHEREAS, pursuant to Minnesota Statutes, Sections 469.1812 through 469.1815, as amended (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 City is authorized to grant business subsidies to facilitate development in the City; and

WHEREAS, Opus owns the real property located in the City and legally described in EXHIBIT A attached hereto (the “Development Property”); and

WHEREAS, Opus has proposed to construct an approximately 130,000 square foot building on the Development Property and lease it to Cherne for manufacturing, warehousing, and office space (the “Minimum Improvements”); and

WHEREAS, Cherne proposes to expand its operations in the City and intends to lease the Minimum Improvements from Opus and utilize the Minimum Improvements as a manufacturing facility with office, research and warehouse space; and

WHEREAS, Cherne intends to purchase equipment to utilize within the Minimum Improvements for manufacturing, advanced technical processes, and research and development (the “Equipment”); 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 Cherne for certain costs related to the Equipment, Cherne has requested a property tax abatement from the City for up to nine (9) years in the maximum amount of \$459,494; and

WHEREAS, the City has determined that the financial assistance provided to Cherne 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

WHEREAS, Opus agrees to construct the Minimum Improvements in accordance with the terms hereof; and

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

ARTICLE I

Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

“Abatement” means one hundred percent (100%) of the real property taxes 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 Development Property, excluding the tax capacity of the Development Property in tax payable year 2020 (expected to be \$1,000,000) 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.

“Abatement Resolution” means Resolution No. R2020-18, approved by the City Council of the City on February 18, 2020, regarding abatement of property taxes on the Development Property.

“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 ten percent (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.

“Authority” means the Economic Development Authority for the City of Shakopee, Minnesota.

“Available Abatement” means, on each Payment Date, the 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 Abatement paid to Cherne during the term of this Agreement to be no more than \$459,494.

“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 Opus, or the purchaser of any part, parcel or unit of the Development Property, pursuant to Section 4.4 hereof.

“Cherne” means Cherne Industries Incorporated, an Ohio corporation, or its successors and assigns.

“City” means the City of Shakopee, Minnesota.

“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 Opus on the Development Property, including the Minimum 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.

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

“Event of Default” means an action listed in Article IX hereof.

“Equipment” means equipment to be purchased by Cherne to utilize within the Minimum Improvements for manufacturing, advanced technical processes, and research and development.

“Holder” means the owner of a Mortgage.

“Lease” means the lease between Opus and Cherne whereby Cherne leases the Minimum Improvements.

“Lease Transfer” has the meaning set forth in Section 8.3(a) hereof.

“Minimum Improvements” means the approximately 130,000 square foot building to be constructed by Opus on the Development Property to be leased to Cherne pursuant to the Lease.

“Mortgage” means any mortgage made by Opus 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.

“Opus” means Opus Development Company, L.L.C., a Delaware limited liability company, or its permitted successors and assigns.

“Payment Date” means each February 1 and August 1, commencing August 1, 2022; provided that if any such Payment Date is not a Business Day, the Payment Date shall be the next succeeding Business Day.

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

“Purchase Agreement” means that certain Purchase and Development Agreement, dated November 30, 2018, between the Authority and Opus, pursuant to which Opus acquired the Development Property from the Authority.

“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.

“Termination Date” means the earlier of (a) the date Cherne has received \$459,494 in Abatement from the City, (b) February 1, 2031, and (c) the date of termination of this Agreement by the City due to an Event of Default.

“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 by Opus to obtain permits or governmental approvals necessary to enable construction of the Minimum Improvements by the dates such construction is required under Section 4.3 hereof, so long as the Construction Plans have been approved in accordance with Section 4.2 hereof.

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

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 has agreed to grant an abatement of taxes on the Development Property to provide assistance to Cherne for purposes of financing the acquisition of the Equipment to be utilized within the Minimum Improvements.

(c) The City has agreed to provide Cherne with the abatement subsidy described herein because Cherne has agreed to locate its business within the City, which will result in an increase in the tax base and create employment opportunities within the City.

Section 2.2. Representations and Warranties by Opus.

(a) Opus represents and warrants that Opus is a limited liability company duly established and in good standing under the laws of the State of Delaware, is not in violation of any provisions of its articles of organization and operating agreement, 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) Subject to Unavoidable Delays, Opus will cause the Minimum Improvements to be constructed and will lease the Minimum Improvements to Cherne pursuant to the Lease.

(c) Subject to Unavoidable Delays, Opus will cause the Minimum Improvements to be constructed in accordance with the requirements of all applicable local, State, or federal energy-conservation laws or regulations.

(d) Subject to Unavoidable Delays, Opus 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.

(e) Opus represents and warrants that 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 Opus 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 Opus from performing its obligations under this Agreement.

(f) Opus 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 Opus or its business which may delay or require changes in construction of the Minimum Improvements through the date of the Certificate of Completion.

Section 2.3. Representations and Warranties by Cherne. Cherne makes the following representations and warranties as the basis for its covenants herein:

(a) Cherne is a corporation duly organized and in good standing under the laws of the State of Ohio, 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) Cherne will enter into the Lease, purchase the Equipment, and cause the Minimum Improvements and the Equipment to be operated and maintained in accordance with the terms of this Agreement, the Lease, 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) Cherne has received no notice or communication from any local, State or federal official that the activities of Cherne with respect to the lease of the Minimum Improvements and the acquisition and operation of the Equipment may be or will be in violation of any environmental law or regulation. Cherne 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 lease of the Minimum Improvements and the acquisition and operation of the Equipment.

(d) 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 Cherne 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 Cherne from performing its obligations under this Agreement.

(e) Cherne shall promptly advise the City in writing of all litigation or claims affecting any part of the Minimum Improvements, the Lease, or the Equipment, and all written complaints and charges made by any governmental authority materially affecting the Minimum Improvements, the Lease, the Equipment or materially affecting Cherne or its business which may delay or require changes in construction of the Minimum Improvements, the Lease, or the purchase of Equipment through the Compliance Date.

(f) Cherne is not in default (taking into account any application notice period or cure period) under any business subsidy agreement pursuant to Section 116J.994 of the Business Subsidy Act.

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

ARTICLE III

Property Tax Abatement

Section 3.1. Status of Development Property. As of the date of this Agreement, Opus owns the Development Property. Subject to Unavoidable Delays, Opus will cause the Minimum Improvements to be constructed and will enter into the Lease pursuant to which Cherne will lease the Minimum Improvements.

Section 3.2. Environmental Conditions.

(a) Opus and Cherne acknowledge that the City makes 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 Opus or Cherne may make use of such property, and that the assistance provided to Cherne 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 8.4 hereof, but subject to the Authority's obligations to Opus under the Purchase Agreement (if any), Opus 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 against the City caused by the presence, if any, of hazardous wastes or pollutants existing on or in the Development Property after the date Opus closed on its acquisition of the Development Property from the Authority pursuant to the Purchase Agreement, 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. Opus hereby covenants to construct the Minimum Improvements on the Development Property pursuant to the terms and conditions of this Agreement.

Section 3.4. Property Tax Abatement.

(a) Generally. In order to make the Equipment economically feasible, the City will grant the Abatement to Cherne commencing in 2022 and continuing through 2030. In no event shall the Abatement exceed a cumulative total of \$459,494 over the term of the Abatement. The Abatement will reimburse Cherne for a portion of the costs of the Equipment. Subject to the Abatement Capacity, the City shall pay Cherne the Available Abatement each February 1 and August 1 (each a "Payment Date"), commencing on August 1, 2022, and terminating on February 1, 2031.

(b) Limitations. The pledge of Available Abatement is subject to all the terms and conditions of the Abatement Resolution. The Available Abatement is payable solely from and to the extent of the 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 Cherne is not entitled to rely on such estimates.

Cherne 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 Abatement in the amounts pledged under this Agreement will be within the Abatement Capacity. The City represents that it has previously granted five other abatements under the

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

Section 3.5. Payment of Administrative Costs. Cherne has deposited \$12,000 with the City. The City will use such deposit to pay its “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 Abatement Resolution, the Abatement financial analysis, and other documents and agreements in connection with the Abatement, and not previously paid by Cherne.

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 Cherne relating to the Minimum Improvements, the Lease, and the Equipment.

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 City and Cherne agree and represent to each other as follows:

(1) The business subsidy provided to Cherne under this Agreement consists of the Abatement described in Section 3.4 hereof.

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

(3) The goal for the subsidy is to secure the development of the Minimum Improvements, for Cherne to operate its business on the Development Property for at least five (5) years as described in clause (6) below, and to move 115 jobs to the City and to create twenty (20) new jobs at the wages levels described in Section 3.7(b) hereof.

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

(5) The subsidy is needed to induce Cherne 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) Cherne must continue to operate its business on the Development Property for at least five (5) years after the date of issuance of the Certificate of Completion.

(7) Cherne’s parent company is Oatey Holdings LLC, with an address of 20600 Emerald Parkway, Cleveland, Ohio 44135.

(8) In addition to the subsidy described in this Section, Cherne has received financial assistance from the following other “grantors” as defined in the Business Subsidy Act, in connection with the Equipment: None.

(b) Job and Wage Goals. Within two (2) years after the date of issuance of the Certificate of Completion of the Minimum Improvements (the “Compliance Date”), Cherne shall:

(i) retain two (2) full-time equivalent jobs within the City and cause one hundred fifteen (115) full-time equivalent jobs to be relocated within the City from Cherne’s current headquarters located in the City of Edina, Minnesota;

(ii) cause to be created at least twenty (20) new full-time equivalent jobs on the Development Property; and

(iii) cause the wages for all employees on the Development Property to be no less than an average of \$20.00 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 Cherne’s continuing obligations under Sections 3.7(a)(6) and 3.7(d) hereof. The City may, after a public hearing held by the City Council and approval by the City Council, 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 Cherne fails to meet the goals described in Section 3.7(a)(3) hereof, this Agreement will be deemed terminated, and Cherne shall repay to the City within thirty (30) days of receipt of a written demand from the City a “pro rata share” of the 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 the continued operation of Cherne’s business on the Development Property in accordance with Section 3.7(a)(6) hereof, 60 less the number of months of operation as a manufacturing facility with office, research and warehouse space (where any month in which the facility is in operation for at least fifteen (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 one hundred percent (100%).

Notwithstanding the foregoing, instead of terminating the payment of the Abatement, upon Cherne’s failure to meet the goals described in Section 3.7(a)(3) hereof, 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. In no event shall Cherne be required to repay to the City more than the actual amount of Abatement paid by the City to Cherne under this Agreement.

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) hereof, Cherne 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 (5) years from the date of the failure or until Cherne satisfies its repayment obligation under this Section, whichever occurs first.

(d) Reports. Cherne shall 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, 2021, and continuing until the later of (i) the date the goals stated in Section 3.7(a)(3) are met; (ii) thirty (30) days after expiration of the five (5) year period described in Section 3.7(a)(6) hereof; or (iii) if the goals are not met, the date the subsidy is repaid in accordance with Section 3.7(c) hereof. The report must comply with Section 116J.994, subdivision 7 of the Business Subsidy Act. The City will provide information to Cherne regarding the required forms. If Cherne fails to timely file any report required under this Section, the City will mail Cherne a warning within one week after the required filing date. If, after fourteen (14) days of the postmarked date of the warning, Cherne fails to provide a report, Cherne 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. Cherne agrees that it shall maintain the Equipment and the lease of the Minimum Improvements for the term of this Agreement; provided that after expiration of the five (5) year period described in Section 3.7(a)(6) hereof, the repayment remedy described in Section 3.7(d) hereof will not be imposed on Cherne for default under this Section. However, if Cherne fails to maintain the Equipment and the lease of the Minimum Improvements for the term of this Agreement, the City may decrease or discontinue payments of Abatement. Nothing in this Agreement restricts Opus in the exercise or pursuit of its rights and remedies against Cherne for Cherne's default in the performance of its obligations under the Lease subject to the terms of the Lease.

Section 3.9. Additional Jobs. In addition to the jobs and wages required under Section 3.7(b) hereof, Cherne has agreed to create an additional thirty (30) new full-time equivalent jobs in the City with the wages for such jobs to be no less than an average of \$20.00 per hour, exclusive of benefits, within five years of the date of the certificate of occupancy for the Minimum Improvements. After the expiration of the reporting requirement set forth in Section 3.7(d) hereof, Cherne must continue to submit to the City a report from Cherne's payroll application that shows the total number of employees and 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, Cherne must provide a 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 March 1 of each year during the term of this Agreement. If Cherne fails to meet and sustain the job and wage requirements set forth in this Section during the term of this Agreement, the City may continue its payments but reduce the amount of Abatement or terminate the payment of Abatement or pursue the remedies set forth in Section 9.2 hereof.

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

ARTICLE IV

Construction of Minimum Improvements

Section 4.1. Construction of Minimum Improvements. Subject to Unavoidable Delays and pursuant to the terms of the Lease, Opus agrees that it will cause the Minimum Improvements to be constructed on the Development Property in accordance, in all material respects, with the approved Construction Plans. Cherne agrees that, at all times during the term of this Agreement, it will 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. Opus shall work with the City's Planning & Development Department and Engineering Department to obtain all planning approvals necessary to construct the Minimum Improvements.

Section 4.3. Commencement and Completion of Construction. Subject to Unavoidable Delays, Opus shall cause construction of the Minimum Improvements to commence on or prior to May 31, 2020. Subject to Unavoidable Delays, Opus shall cause the construction of the Minimum Improvements to be substantially completed within eighteen months of commencing construction (as required by Section 13(B) of the Purchase Agreement) or an earlier date as required by the Lease. All work with respect to the Minimum Improvements to be constructed or provided by or on behalf of Opus on the Development Property shall be in conformity with the Construction Plans as submitted by Opus and approved by the City in all material respects.

Subject to Unavoidable Delays, Opus agrees for itself, its successors and assigns, and every successor in interest to the Development Property, or any part thereof, that Opus, and such successors and assigns, shall promptly begin and diligently cause the substantial 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. After the date of this Agreement and until construction of the Minimum Improvements has been substantially completed, Opus shall make reports, in such detail and at such times as may reasonably be requested by the City, as to the actual progress of Opus with respect to such construction.

Section 4.4. Certificate of Completion.

(a) Promptly after completion of the Minimum Improvements in accordance, in all material respects, with those provisions of this Agreement relating solely to the obligations of Opus to construct the Minimum Improvements, the City will furnish Opus with a Certificate of Completion as set forth in EXHIBIT B attached hereto within twenty (20) days after Opus's request for a Certificate of Completion. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of Opus 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 timely provide any certification in accordance with the provisions of this Section, the City shall, within the twenty (20) day period set forth above, provide Opus with a written statement, indicating in adequate detail in what respects Opus has failed to complete the Minimum Improvements in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the reasonable opinion of the City, for Opus to take or perform in order to obtain such certification.

ARTICLE V

Insurance

Section 5.1. Insurance. [WILL BE REVISED TO REFLECT INSURANCE AND DAMAGE/RESTORATION PROVISIONS FROM LEASE BETWEEN OPUS AND CHERNE]

(a) Opus 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.

(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 an additional insured on the policy.

(iii) Workers' compensation insurance, with statutory coverage, provided that Opus 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, Cherne 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 and the Equipment 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 Cherne, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that Cherne may be self-insured with respect to all or any part of its liability for workers' compensation.

(c) All insurance required in this Article shall be taken out and maintained in responsible insurance companies selected by Opus or Cherne which are authorized under the laws of the State to

assume the risks covered thereby. Upon request, Cherne 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, Cherne 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 Cherne 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 and the Equipment.

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

Cherne shall complete the repair, reconstruction and restoration of the Minimum Improvements and the Equipment, whether or not the net proceeds of insurance received by Cherne 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 Cherne.

A failure to promptly repair, reconstruct and restore the Minimum Improvements and the Equipment as required by this Section 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 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 reconstruction of any Minimum Improvements under this Article V and receipt and application of any insurance proceeds shall, in all respects, be subordinate and subject to the rights of the landlord under the Lease and the rights of any Holder under a Mortgage securing construction or permanent financing for the Minimum Improvements.

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

ARTICLE VI

Taxes

Section 6.1. Right to Collect Delinquent Taxes. Opus acknowledges that the City is providing substantial aid and assistance in furtherance of the Minimum Improvements and the Equipment pursuant to this Agreement. Cherne and Opus understand that the 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, Opus 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. Opus acknowledges that this obligation creates a contractual right on behalf of the City to sue Opus 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 Tax Official. In any such suit, the City shall be entitled to recover its costs, expenses and reasonable attorney fees.

Section 6.2. Reduction of Taxes. Prior to the expiration or earlier termination of this Agreement, neither Opus nor Cherne will (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 respective interests in the Development Property and Minimum Improvements to any entity that is exempt from payment of real property taxes under State law.

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

ARTICLE VII

Financing

Section 7.1. Financing. Cherne warrants and represents to the City that it has or will have available funds sufficient to purchase the Equipment and enter into the Lease. Opus warrants and represents to the City that it has or will have available funds sufficient to construct the Minimum Improvements.

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

ARTICLE VIII

Prohibitions Against Assignment and Transfer; Indemnification

Section 8.1. Representation as to Development. The construction of the Minimum Improvements of the Development Property by Opus and its other undertakings pursuant to this 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 Transfer by Opus 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 Opus 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, Opus 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 (other than the Lease), or any trust or power, or transfer in any other mode or form of or with respect to the Agreement or its 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 Opus (collectively, a "Property Transfer"), without the prior written approval of the City unless Opus remains liable and bound by this Agreement in which event the City's approval is not required. Any such Property Transfer shall be subject to the provisions of this Agreement. Notwithstanding anything to the contrary in this Section, Opus may assign its rights under this Agreement to the Holder of a Mortgage or any affiliate of Cherne.

(b) In the event Opus, upon a Property 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 Opus 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 Opus 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 Opus 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 Opus 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 shall be in a form reasonably satisfactory to the City.

In the event the foregoing conditions are satisfied then Opus 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. Prohibition Against Transfer by Cherne of Leasehold Interest 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 Cherne or any successor in interest to the Lease (which may include an affiliate of Cherne), or any part thereof, to perform its obligations with respect to entering the Lease, and any other purpose authorized by this Agreement, Cherne 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 and the Minimum Improvements, 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 Cherne (collectively, a "Lease Transfer"), without the prior written approval of the City unless Cherne remains liable and bound by this Agreement in which event the City's approval is not required. Any such Lease Transfer shall be subject to the provisions of this Agreement. Notwithstanding anything to the contrary in this Section, Cherne may assign its rights under this Agreement to the Holder of a Mortgage, provided the Mortgage is approved by the City.

(b) In the event Cherne, upon a Lease Transfer of the Lease, or any portion thereof, seeks to be released from its obligations under this Agreement as to the portions of the Lease that are 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 Cherne as to the portion of its leasehold interest in 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 Cherne under this Agreement as to the portion of its leasehold interest in the Development Property to be transferred and agreed to be subject to all the conditions and restrictions to which Cherne is subject as to such portion; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to the Lease, 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 under this Agreement; 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, leasehold rights 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 or 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 Cherne, or any other party bound in any way by this Agreement or otherwise with respect to the party's obligations under this Agreement.

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

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

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

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 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 Cherne 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 as bankrupt or insolvent;
 - (v) terminate the Lease; or
 - (vi) is no longer the tenant of the Minimum Improvements.

Section 9.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 hereof occurs, a party may each exercise any of the following rights under this Section after providing thirty (30) days’ written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days or, if the Event of Default is by its nature incurable within thirty (30) days, the defaulting party does not, within such thirty (30)-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 defaulting party 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 defaulting party under this Agreement, but in no event will any party be liable for any special or consequential damages to another party under this Agreement.

Section 9.3. No Remedy Exclusive. Unless otherwise specifically set forth in this Agreement, 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.

Section 9.4. No Additional Waiver Implied by One 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.

Section 9.5. Attorneys' 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 Cherne under this Agreement, the defaulting party 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, Opus, and Cherne, to their actual knowledge, represent and agree that no member, official, or employee of the City has any personal interest, direct or indirect, in the Agreement, nor has any such member, official, or employee participated in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the City shall be personally liable to Opus, Cherne, 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 Cherne or successor or on any obligations under the terms of the Agreement.

Section 10.2. Equal Employment Opportunity. Cherne agrees that during the term of this Agreement it will comply in all material respects 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 this 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 Cherne, is addressed to or delivered personally to Cherne Industries Incorporated at 5700 Lincoln Drive, Edina, Minnesota 55436-1695; Attention: David Biron, General Manager; with a copy to Oatey Holdings LLC at 20600 Emerald Parkway, Cleveland, Ohio 44135, Attention: Cindy Greiner, Director, Corporate Facilities and Andrew Johnson, General Counsel;

(b) in the case of Opus, is addressed to or delivered personally to Opus Development Company, L.L.C. at 10350 Bren Road West, Minnetonka, Minnesota 55343; Attention: Joe Mahoney; 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 County Recorder or Registrar of Titles of the County, as applicable. Cherne shall pay all costs for recording.

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

Section 10.8. Termination. Unless sooner terminated in accordance with its terms, 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. Opus Obligations After Completion of Minimum Improvements. Upon execution of the Lease between Opus (or an affiliate) and Cherne and Opus' receipt of a Certificate of Completion, Opus' obligations with respect to this Agreement shall be deemed completed and terminated, except for Opus' obligation to comply with Sections 6.1 and 6.2 hereof.

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

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

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 _____, 2020, 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 _____, 2020, by William H. Reynolds, the City Administrator of the City of Shakopee, Minnesota, on behalf of the City.

Notary Public

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

OPUS DEVELOPMENT COMPANY, L.L.C.

By: _____

Its: _____

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____, the _____ of Opus Development Company, L.L.C., a Delaware limited liability company, on behalf of Opus.

Notary Public

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

CHERNE INDUSTRIES INCORPORATED

By: _____

Its: _____

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____, the _____ of Cherne Industries Incorporated, an Ohio Corporation, on behalf of Cherne.

Notary Public

EXHIBIT A
DEVELOPMENT PROPERTY

[Insert legal description of Development Property – to be replatted]

EXHIBIT B

CERTIFICATE OF COMPLETION

The undersigned hereby certifies that Opus Development Company, L.L.C., a Delaware limited liability company ("Opus"), has fully complied with its obligations under Articles III and IV of that document titled "Contract for Private Development," dated _____, 2020 (the "Contract"), between the City of Shakopee, Minnesota (the "City"), Opus, and Cherne Industries Incorporated, an Ohio corporation, with respect to construction of the Minimum Improvements in accordance with the Construction Plans, and that Opus is released and forever discharged from its obligations under the Contract except for its obligations under Sections 6.1, 6.2, and 8.2 of the Contract.

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

SH155-478 (JAE)
633547v4