

AGREEMENT FOR PRIVATE DEVELOPMENT

By and between

CITY OF WINDSOR HEIGHTS, IOWA

AND

KOESTER DEVELOPMENT LLC

_____, 2016

AGREEMENT
FOR
PRIVATE DEVELOPMENT

THIS AGREEMENT FOR PRIVATE DEVELOPMENT ("Agreement"), is made on or as of the ____ day of _____, 2016, by and between the CITY OF WINDSOR HEIGHTS, IOWA, a municipality (the "City"), established pursuant to the Code of Iowa and acting under the authorization of Chapters 15A and 403 of the Code of Iowa, 2015, as amended ("Urban Renewal Act"), and KOESTER DEVELOPMENT LLC, an Iowa limited liability company having offices for the transaction of business at 6500 University Ave., #308, Windsor Heights, IA, 50324 ("Developer").

WITNESSETH:

WHEREAS, in furtherance of the objectives of the Urban Renewal Act, the City has undertaken a program for the development of a mixed economic development and blighted area in the City and, in this connection, is engaged in carrying out urban renewal project activities in an area known as the Consolidated Windsor Heights Urban Renewal Area (the "Urban Renewal Area"), which is described in the Second Amended and Restated Urban Renewal Plan approved for such Urban Renewal Area by Resolution No. 16-0105 on January 12, 2016 (the "Urban Renewal Plan"); and

WHEREAS, Developer is, or will be, the owner of certain real property located in the foregoing Urban Renewal Area and as more particularly described in Exhibit A attached hereto and made a part hereof (which property as so described is hereinafter referred to as the "Development Property"); and

WHEREAS, Developer shall build Minimum Improvements on the Development Property, operate the Minimum Improvements, and hire and retain employees in the City until at least the Termination Date of this Agreement; and

WHEREAS, the City believes that the development of the Development Property pursuant to this Agreement and the fulfillment of this Agreement are in the vital and best interests of the City and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the foregoing project has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I. DEFINITIONS

Section 1.1. Definitions. In addition to other definitions set forth in this Agreement, all capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

Agreement means this Agreement and all exhibits and appendices hereto, as the same may be from time to time modified, amended or supplemented.

Annual Certification means the certifications that the Developer must complete and submit to the City each year as described in Section 6.8 of this Agreement and attached as Exhibit F.

Area or Urban Renewal Area shall mean the area known as the Consolidated Windsor Heights Urban Renewal Area (as amended).

Certificate of Completion means a certification in the form of the certificate attached hereto as Exhibit C and hereby made a part of this Agreement.

City means the City of Windsor Heights, Iowa, or any successor to its functions.

Code means the Code of Iowa, 2015, as amended.

Commencement Date means the date of this Agreement.

Construction Plans means the plans, specifications, drawings and related documents reflecting the construction work to be performed by the Developer on the Development Property; the Construction Plans shall be as detailed as the plans, specifications, drawings and related documents which are submitted to the building inspector of the City as required by applicable City codes and ordinances.

Developer means Koester Development LLC, an Iowa Limited Liability Company, and each assignee that assumes in writing all of the obligations of the Developer under this Agreement with the written consent of the City as provided in Section 7.1 of this Agreement.

Development Property means that portion of the Consolidated Windsor Heights Urban Renewal Area described in Exhibit A.

Economic Development Grants means the payments to be made by the City to Developer under Article VIII of this Agreement.

Event of Default means any of the events described in Section 11.1 of this Agreement that have continued beyond applicable notice and cure periods.

First Mortgage means any Mortgage granted to secure any loan made pursuant to either a mortgage commitment obtained by Developer from a commercial lender or other financial institution to fund any portion of the construction costs and initial operating capital requirements of the Minimum Improvements or all such Mortgages as appropriate.

Forgivable Loan means the forgivable loan to be made to Developer under Article X of this Agreement.

Koester Development LLC TIF Account means a separate account within the Windsor Heights Consolidated Urban Renewal Tax Increment Revenue Fund of the City in which Tax Increments received by the City with respect to the Minimum Improvements and the Development Property shall be deposited.

Minimum Improvements means the construction of an approximately 40,000 square foot building and related improvements, as more particularly described in Exhibits B and B-1 to this Agreement.

Mortgage means any mortgage or security agreement in which Developer has granted a mortgage or other security interest in the Development Property, or any portion or parcel thereof, or any improvements constructed thereon.

Ordinance means Ordinance Number 16-01 of the City, under which the taxes levied on the taxable property in the Urban Renewal Area shall be divided and a portion paid into the Windsor Heights Consolidated Urban Renewal Tax Increment Revenue Fund.

Project shall mean the construction and operation of the Minimum Improvements on the Development Property and the creation and maintenance of jobs, as described in this Agreement.

State means the State of Iowa.

Tax Increments means the property tax revenues on the Minimum Improvements divided and made available to the City for deposit in the Koester Development LLC TIF Account of the Windsor Heights Consolidated Urban Renewal Tax Increment Revenue Fund under the provisions of Section 403.19 of the Code, as amended, and the Ordinance.

Termination Date means the date of termination of this Agreement, as established in Section 12.8 of this Agreement.

Unavoidable Delays means delays resulting from acts or occurrences outside the reasonable control of the party claiming the delay including but not limited to storms, floods, fires, explosions or other casualty losses, unusual weather conditions, strikes, boycotts, lockouts or other labor disputes, delays in transportation or delivery of material or equipment, litigation commenced by third parties, or the acts of any federal, State or local governmental unit (other than the City, with respect to a City-claimed delay).

Urban Renewal Plan means the Urban Renewal Plan, as amended, approved with respect to the Consolidated Windsor Heights Urban Renewal Area, described in the preambles hereof.

Windsor Heights Consolidated Urban Renewal Tax Increment Revenue Fund means the special fund of the City created under the authority of Section 403.19(2) of the Code and the Ordinance, which fund will be created in order to pay the principal of and interest on loans, monies advanced to or indebtedness, whether funded, refunded, assumed or otherwise, including bonds or other obligations issued under the authority of Chapters 15A, 403 or 384 of the Code,

incurred by the City to finance or refinance in whole or in part projects undertaken pursuant to the Urban Renewal Plan for the Urban Renewal Area.

ARTICLE II. REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the City. The City makes the following representations and warranties:

a. The City is a municipal corporation and municipality organized under the provisions of the Constitution and the laws of the State and has the power to enter into this Agreement and carry out its obligations hereunder.

b. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a breach of, the terms, conditions or provisions of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the City is now a party or by which it is bound, nor do they constitute a default under any of the foregoing.

c. 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 the City, and not of any governing body member, officer, agent, servant or employee of the City in the individual capacity thereof.

Section 2.2. Representations and Warranties of Developer. Developer makes the following representations and warranties:

a. Koester Development LLC is an Iowa limited liability company, duly organized and validly existing under the laws of the State of Iowa, and it has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under the Agreement.

b. This Agreement has been duly and validly authorized, executed and delivered by Developer and, assuming due authorization, execution and delivery by the City, is in full force and effect and is a valid and legally binding instrument of Developer enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally.

c. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of, the terms, conditions or provisions of the governing documents of Developer or of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which Developer is now a party or by which it or its property is bound, nor do they constitute a default under any of the foregoing.

d. There are no actions, suits or proceedings pending or threatened against or affecting Developer in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business (present or prospective), financial position or results of operations of Developer or which in any manner raises any questions affecting the validity of the Agreement or Developer's ability to perform its obligations under this Agreement.

e. Developer has not received any notice from any local, State or federal official that the activities of Developer with respect to the Development Property may or will be in violation of any environmental law or regulation (other than those notices, if any, of which the City has previously been notified in writing). Developer is not currently aware of any State or federal claim filed or planned to be filed by any party relating to any violation of any local, State or federal environmental law, regulation or review procedure applicable to the Development Property, and Developer is not currently aware of any violation of any local, State or federal environmental law, regulation or review procedure which would give any person a valid claim under any State or federal environmental statute with respect thereto.

f. Developer shall cooperate with the City in resolution of any traffic, parking, trash removal or public safety problems which may arise in connection with the construction and operation of the Minimum Improvements.

g. Developer shall cause the Minimum Improvements to be constructed in accordance with the terms of this Agreement, the Urban Renewal Plan, and all local, State, and federal laws and regulations.

h. Developer shall obtain or cause to be obtained, in a timely manner, all required permits, licenses, and approvals, and shall 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.

i. The construction of the Minimum Improvements will require a total investment of not less than \$6.8 million.

j. Developer has firm commitments for construction or acquisition and permanent financing for the Project in an amount sufficient, together with equity commitments, to successfully complete the Minimum Improvements in accordance with the Construction Plans contemplated in this Agreement.

k. Developer expects that, barring Unavoidable Delays, the Minimum Improvements will be completed by June 1, 2017.

l. Developer will occupy the Minimum Improvements on the Development Property and maintain its business operations and add and retain employees at the Minimum Improvements until at least the Termination Date.

m. Developer would not undertake its obligations under this Agreement without the payment by the City of the Economic Development Grants and the Forgivable Loan being made to Developer pursuant to this Agreement.

ARTICLE III. CONSTRUCTION OF MINIMUM IMPROVEMENTS

Section 3.1. Construction of Minimum Improvements. Developer agrees that it will cause the Minimum Improvements to be constructed on the Development Property in conformance with the Construction Plans submitted to the City in accordance with Section 3.2 below. Developer agrees that the scope and scale of the Minimum Improvements to be constructed shall not be significantly less than the scope and scale of the Minimum Improvements as detailed and outlined in the Construction Plans, and shall require a total investment of not less than \$6.8 million in construction costs.

Section 3.2. Construction Plans. Developer shall cause Construction Plans to be developed for the Minimum Improvements, which shall be subject to approval by the City as provided in this Section 3.2, and which approval shall not be unreasonably withheld, conditioned or delayed. The Construction Plans shall be in conformity with the Urban Renewal Plan, this Agreement, and all applicable State and local laws and regulations. The City shall 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 the terms and conditions of the Urban Renewal Plan; (iii) the Construction Plans conform to all applicable federal, State and local laws, ordinances, rules and regulations, and City permit requirements; (iv) the Construction Plans are adequate for purposes of this Agreement to provide for the construction of the Minimum Improvements; and (v) no Event of Default under the terms of this Agreement has occurred and is continuing beyond applicable notice and cure periods; provided, however, that any such approval of the Construction Plans pursuant to this Section 3.2 shall constitute approval for the purposes of this Agreement only and shall not be deemed to constitute approval or waiver by the City with respect to any building, fire, zoning or other ordinances or regulations of the City, and shall not be deemed to be sufficient plans to serve as the basis for the issuance of a building permit if the Construction Plans are not as detailed or complete as the plans otherwise required for the issuance of a building permit. The site plans submitted to the building official of the City for the Development Property and the surrounding areas where the Minimum Improvements are to be constructed shall be adequate to serve as the Construction Plans, if such site plans are approved by the building official.

Approval of the Construction Plans by the City shall not relieve any obligation to comply with the terms and provisions of this Agreement, or the provision of applicable federal, State and local laws, ordinances and regulations.

Approval of Construction Plans hereunder is solely for purposes of this Agreement, and shall not constitute approval for any other City purpose nor subject the City to any liability for the Minimum Improvements as constructed.

Section 3.3. Commencement and Completion of Construction. Subject to Unavoidable Delays, Developer shall cause construction of the Minimum Improvements to be undertaken and

completed: (i) by no later than June 1, 2017; or (ii) by such other date as the parties shall mutually agree upon in writing. Time lost as a result of Unavoidable Delays shall be added to extend this date by a number of days equal to the number of days lost as a result of Unavoidable Delays. All work with respect to the Minimum Improvements shall be in conformity with the Construction Plans approved by the building official or any amendments thereto as may be approved by the building official.

Developer agree that they shall permit designated representatives of the City, upon reasonable notice (which does not have to be written), to enter upon the Development Property during the construction of the Minimum Improvements to inspect such construction and the progress thereof, subject to Developer's rules and regulations for the construction site.

Section 3.4. Certificate of Completion. Within fifteen (15) business days after written request by Developer and after issuance of an occupancy permit for the Minimum Improvements, the City will furnish Developer with a Certificate of Completion in recordable form, in substantially the form set forth in Exhibit C attached hereto. Such Certificate of Completion shall be a conclusive determination of satisfactory termination of the covenants and conditions of this Agreement with respect to the obligations of Developer to cause construction of the Minimum Improvements.

The Certificate of Completion may be recorded in the Polk County Recorder's Office at Developer's sole expense. If the City shall refuse or fail to provide a Certificate of Completion in accordance with the provisions of this Section 3.4, the City shall, within such fifteen (15) business day period, instead provide a written statement indicating in what respects Developer has failed to complete the Minimum Improvements in accordance with the provisions of this Agreement, or is otherwise in default under the terms of this Agreement, and what measures or acts it will be necessary, in the opinion of the City, for Developer to take or perform in order to obtain such Certificate of Completion.

ARTICLE IV. RESERVED

ARTICLE V. RESERVED

ARTICLE VI. FURTHER COVENANTS OF DEVELOPER/DEVELOPER

Section 6.1. Maintenance of Development Property. Developer will maintain, preserve, and keep its properties owned within the City (whether owned in fee or a leasehold interest), including but not limited to the Minimum Improvements, in good repair and working order, ordinary wear and tear excepted, and from time to time will make all necessary repairs, replacements, renewals, and additions.

Section 6.2. Maintenance of Records. Developer will keep at all times proper books of record and account in which full, true, and correct entries will be made of all dealings and transactions of or in relation to the business and affairs of Developer relating to this Project, and Developer will provide reasonable protection against loss or damage to such books of record and account.

Section 6.3. Compliance with Laws. Developer, at such time as each party has possession and control of the Development Property, will comply with all state, federal and local laws, rules and regulations relating to the Minimum Improvements.

Section 6.4. Non-Discrimination. In the construction and operation of the Minimum Improvements, Developer shall not discriminate against any applicant, employee or tenant because of age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status. Developer shall ensure that applicants, employees, and tenants are considered and are treated without regard to their age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status.

Section 6.5 Available Information. Upon request, Developer shall promptly provide the City with copies of information reasonably requested by City that are related to this Agreement so that City can determine compliance with the Agreement.

Section 6.6 Employment. Developer agrees that the Minimum Improvements are expected to create usable office and retail space for tenants. Developer also understands that part of the consideration provided to the City by Developer in exchange for Developer's opportunity to receive Economic Development Grants under this Agreement is the opportunity for the creation and retention of jobs in the community. Developer agrees that beginning June 1, 2017, no fewer than twenty (20) part-time or full-time employees shall be employed at the Minimum Improvements, and that no fewer than twenty (20) part-time or full-time employees shall be retained at the Minimum Improvements until the Termination Date of this Agreement.

Section 6.7 Occupancy of Minimum Improvements. Developer shall lease the Minimum Improvements to retail and/or office tenants, including, at a minimum, the following:

- a. One anchor, approximately 5,000 square foot full-service sit-down restaurant, which may not be a fast-food style restaurant and may not include a drive-through window.
- b. One additional approximately 5,000 square foot full-service family sit-down restaurant.
- c. One additional approximately 5,000 square foot bike, pedestrian friendly restaurant.
- d. Approximately 25,000 additional square feet of storefront retail and/or office space.

Section 6.8 Annual Certification. To assist the City in monitoring the Agreement and performance of Developer hereunder, duly authorized officers of Developer, as applicable, shall provide Annual Certifications to the City.

Until such time as Developer is released from its obligations hereunder, Developer shall annually provide to the City: (i) the date of the first full assessment of the Minimum Improvements and the fully assessed value; (ii) certification that the Minimum Improvements contain at least three operating restaurants; and (iii) certification that no fewer than twenty (20) part-time or full-time employees are employed at the Minimum Improvements, and (iv) certification that such officer is familiar with the terms and provisions of this Agreement and that at the date of such certification, there is no Event of Default by Developer hereunder, or if the signer is aware of any such Event of Default, said officer shall disclose in such statement the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto.

Such statement, proof and certificates required above shall be provided not later than October 15 of each year, commencing October 15, 2017 and ending on October 15, 2028, both dates inclusive. Developer shall provide supporting information for its Annual Certifications upon request of the City. See Exhibit F for the forms required for Developer's Annual Certifications.

If, after the Minimum Improvements are fully assessed, Developer fails in two successive annual certifications under Section 6.8 to certify and substantiate that some portion of the Minimum Improvements are occupied by at least three (3) restaurants, or if the Minimum Improvements are not occupied by commercial enterprise(s) employing individuals therein, then Developer shall not receive the next scheduled Economic Development Grant. If Developer is ineligible for two successive Grants under this provision, such an event shall be an Event of Default and the City shall, among other remedies, be relieved of all obligations (including any obligation to make any further Economic Development Grants) to Developer under this Agreement. Developer shall provide information as requested by the City to determine compliance with the foregoing occupancy obligations.

Section 6.9. Term of Operation. Developer will maintain its operations at the Minimum Improvements on the Development Property, including the employee and occupancy obligations in Sections 6.6 and 6.7, until at least the Termination Date of this Agreement.

Section 6.10 Developer Completion Guarantee. By signing this Agreement, Developer hereby guarantees to the City performance by Developer of all the terms and provisions of this Agreement pertaining to Developer's obligations with respect to the construction of the Minimum Improvements. Without limiting the generality of the foregoing, Developer guarantees that: (a) construction of the Minimum Improvements shall be completed generally within the time limits set forth herein; (b) the Minimum Improvements shall be constructed and completed in substantial accordance with the Construction Plans; (c) the Minimum Improvements shall be constructed and completed free and clear of any mechanic's liens, materialman's liens and equitable liens; and (d) all costs of constructing the Minimum Improvements shall be paid when due.

Section 6.11. Letter of Credit/Dedicated Certificate of Deposit. Prior to the execution of this Agreement, Developer shall provide and deliver to the City an irrevocable standby letter of credit or dedicated certificate of deposit titled in the name of the City, in form and substance satisfactory to the City ("Letter of Credit" or "Dedicated Certificate of Deposit"), in the amount

of \$250,000, which has been issued to cover the entire cost of repayment of the Forgivable Loan. Such Letter of Credit or Dedicated Certificate of Deposit should be issued by a bank acceptable to the City and provide immediate recourse for the City if there is a default in payment of the Promissory Note or this Agreement. The Letter of Credit or Dedicated Certificate of Deposit shall be released upon the cancellation of the Promissory Note.

Section 6.12. Insurance. Developer agrees during construction of the Minimum Improvements and thereafter until the Termination Date to maintain builder's risk, property damage, and liability insurance coverages with respect to the Minimum Improvements in such amounts as are customarily carried by like organizations engaged in activities of comparable size and liability exposure with insurance companies reasonably satisfactory to the City, together with such additional coverages as the City may reasonably request, and shall provide evidence of such coverages to the City upon request. Developer shall complete the repair, reconstruction, and restoration of the Minimum Improvements, whether or not the proceeds of insurance received by Developer for such purposes are sufficient.

ARTICLE VII. PROHIBITION AGAINST ASSIGNMENT AND TRANSFER

Section 7.1. Status of Developer; Transfer of Substantially All Assets; Assignment. As security for the obligations of Developer under this Agreement, Developer represents and agrees that, prior to the Termination Date, Developer will maintain existence as a company and will not wind up or otherwise dispose of all or substantially all of its assets or transfer, convey, or assign its interest in the Development Property, Minimum Improvements, or this Agreement to any other party unless: (i) the transferee partnership, corporation, limited liability company or individual assumes in writing all of the then-outstanding obligations of Developer under this Agreement; and (ii) the City consents thereto in writing in advance thereof.

7.2 Prohibition Against Use as Non-Taxable or Centrally Assessed Property. During the term of this Agreement, Developer, or its successors or assigns, agree that the Development Property cannot be transferred or sold to a non-profit entity or used for a purpose that would exempt the Development Property or Minimum Improvements from property tax liability. Nor can the Development Property or Minimum Improvements be used as centrally assessed property (including but not limited to, Iowa Code § 428.24 to 428.29 (Public Utility Plants and Related Personal Property); Chapter 433 (Telegraph and Telephone Company Property); Chapter 434 (Railway Property); Chapter 437 (Electric Transmission Lines); Chapter 437A (Property Used in the Production, Generation, Transmission or Delivery of Electricity or Natural Gas); and Chapter 438 (Pipeline Property)).

ARTICLE VIII. ECONOMIC DEVELOPMENT GRANTS

Section 8.1. Economic Development Grants.

a. Amount of Grants. For and in consideration of the obligations being assumed by Developer hereunder, and in furtherance of the goals and objectives of the Urban Renewal Plan for the Urban Renewal Area and the Urban Renewal Act, the City agrees, subject to Developer being and remaining in compliance with the terms of this Agreement, to make up to ten (10)

consecutive annual payments of Economic Development Grants to Developer up to an aggregate total amount not to exceed Two Million Dollars (\$2,000,000), under the following formula:

b. Schedule of Grants. Assuming completion by June 1, 2017, full assessment of the Minimum Improvements on January 1, 2018, and debt certification to the Auditor by the City prior to December 1, 2018, the Economic Development Grants shall commence on June 1, 2020, and end on June 1, 2029, pursuant to Section 403.19 of the Urban Renewal Act under the following formula:

June 1, 2020	70% of Tax Increments for Fiscal Year 19-20
June 1, 2021	70% of Tax Increments for Fiscal Year 20-21
June 1, 2022	70% of Tax Increments for Fiscal Year 21-22
June 1, 2023	70% of Tax Increments for Fiscal Year 22-23
June 1, 2024	70% of Tax Increments for Fiscal Year 23-24
June 1, 2025	70% of Tax Increments for Fiscal Year 24-25
June 1, 2026	70% of Tax Increments for Fiscal Year 25-26
June 1, 2027	70% of Tax Increments for Fiscal Year 26-27
June 1, 2028	70% of Tax Increments for Fiscal Year 27-28
June 1, 2029	70% of Tax Increments for Fiscal Year 28-29

The above schedule of the payments for Economic Development Grants is based on the first full assessment of the Minimum Improvements being January 1, 2018. If the completion of the Minimum Improvements is delayed so that the Minimum Improvements are not fully assessed as of January 1, 2018, then the first Economic Development Grant will not begin as scheduled, but will be delayed one year. However, in no event shall the schedule of Economic Development Grants be delayed more than one year, meaning that the latest potential date for Developer's first Economic Development Grant, if eligible, is June 1, 2021.

c. Calculation of Grants. Each annual payment shall be equal in amount to the above percentages of the Tax Increments collected by the City with respect to the Minimum Improvements on the Development Property (building and land) under the terms of the Ordinance and deposited into the Koester Development LLC TIF Account (without regard to any averaging that may otherwise be utilized under Section 403.19 and excluding any interest that may accrue thereon prior to payment to Developer) during the preceding twelve-month period in respect of the Development Property and the Minimum Improvements, but subject to limitation and adjustment as provided in this Article (such payments being referred to collectively as the "Economic Development Grants").

d. Limitation to Minimum Improvements. The Economic Development Grants are only for the Minimum Improvements described in this Agreement and not any expansions or improvements not included within the definition of the Minimum Improvements which, to be eligible for Economic Development Grants, would be the subject of an amendment or new agreement, at the sole discretion of the City Council.

Section 8.2. Conditions Precedent. Notwithstanding the provisions of Section 8.1 above, the obligation of the City to make an Economic Development Grant in any year shall be subject to and conditioned upon the following:

(a) compliance with the terms of this Agreement by Developer, including, but not limited to, the employment obligations in Section 6.6 of this Agreement, and payment of property taxes;

(b) timely filing by Developer of the Annual Certifications required under Section 6.8 hereof and the Council's approval thereof;

(c) continual lease and use of a portion of the Minimum Improvements by three operating restaurants;

(d) the construction of the Minimum Improvements must have cost at least \$6.8 million (and the Developer shall provide receipts or other reasonable evidence to the City to substantiate the expenditure of this amount, if requested);

(e) execution of the Promissory Note attached hereto as Exhibits G securing repayment of the Forgivable Loan, and the provision of the letter of credit or dedicated certificate of deposit as required by Section 6.11.

(f) Execution by Developer and all lienholders having an interest in the Development Property of the Minimum Assessment Agreement attached as Exhibit H; and

In the event that an Event of Default occurs or any certification filed by Developer under Section 6.8 (or other information) discloses the existence of an Event of Default that was not cured or cannot reasonably be cured, the City shall have the remedies set forth in Section 11.2.

Each Annual Certification filed by Developer under Section 6.8 hereof shall be considered separately in determining whether the City shall make any of the Economic Development Grant payments available to Developer under this Section. Under no circumstances shall the failure by Developer to qualify Developer for an Economic Development Grant in any year serve to extend the term of this Agreement beyond the Termination Date or the years during which Economic Development Grants may be awarded to Developer or the total amount thereof, it being the intent of parties hereto to provide Developer with an opportunity to receive Economic Development Grants only if Developer fully comply with the provisions hereof and the Developer becomes entitled thereto, up to the maximum aggregate amount set forth in Section 8.3.

After the Minimum Improvements are first fully assessed and if in compliance with this Agreement, if the Developer's and Developer's Annual Certification is timely filed and contains the information required under Section 6.8 and the Council approves of the same, the City shall certify to the County prior to December 1 of that year its request for the available Tax Increments resulting from the assessments imposed by the County as of January 1 of that year, to be collected by the County and paid to the City as taxes are paid during the following fiscal year

and which shall thereafter be disbursed to Developer on the following June 1. (Example: assuming completion by June 1, 2017 and first full assessment on January 1, 2018, if Developer certifies in October 2018 and the City certifies to the County by December 1, 2018, the first Economic Development Grant would be paid to Developer on June 1, 2020 (for 70% of the Tax Increment for fiscal year 2019-2020)). Compliance with the terms and conditions of this Agreement is a condition precedent to receiving an Economic Development Grant.

Section 8.3. Maximum Amount of Grants. The aggregate amount of the Economic Development Grants that may be paid to Developer under this Agreement shall be equal to the sum of the total amount of the applicable percentages of Tax Increments collected in respect of the assessments imposed on the Minimum Improvements (building and land) over the specified five year period, but in no event shall exceed Two Million Dollars (\$2,000,000) over the five year period. However, the City makes no representation or guarantee that Developer will receive \$2,000,000 of Economic Development Grants – said payments being calculated by and subject to all of the terms and conditions of this Agreement

Section 8.4. Source of Grant Funds Limited.

a. The Economic Development Grants shall be payable from and secured solely and only by amounts deposited and held in the Koester Development LLC TIF Account of the Windsor Heights Consolidated Urban Renewal Tax Increment Revenue Fund of the City. The City hereby covenants and agrees to maintain the Ordinance in force during the term hereof and to apply the appropriate percentage of Tax Increments collected in respect of the Development Property and Minimum Improvements and allocated to the Koester Development LLC TIF Account to pay the Economic Development Grants, as and to the extent set forth in this Article. The Economic Development Grants shall not be payable in any manner by other tax increment revenues or by general taxation or from any other City funds. Any commercial and industrial property tax replacement monies that may be received under chapter 441.21A shall not be included in the calculation to determine the amount of Economic Development Grants for which Developer is eligible, and any monies received back under chapter 426C relating to the Business Property Tax Credit shall not be included in the calculation to determine the amount of Economic Development Grants for which Developer is eligible.

b. Each Economic Development Grant is subject to annual appropriation by the City Council. The right of non-appropriation reserved to the City in this Section is intended by the parties, and shall be construed at all times, so as to ensure that the City's obligation to make future Economic Development Grants shall not constitute a legal indebtedness of the City within the meaning of any applicable constitutional or statutory debt limitation prior to the adoption of a budget which appropriates funds for the payment of that installment or amount. In the event that any of the provisions of this Agreement are determined by a court of competent jurisdiction to create, or result in the creation of, such a legal indebtedness of the City, the enforcement of the said provision shall be suspended, and the Agreement shall at all times be construed and applied in such a manner as will preserve the foregoing intent of the parties, and no Event of Default by the City shall be deemed to have occurred as a result thereof. If any provision of this Agreement or the application thereof to any circumstance is so suspended, the suspension shall not affect

other provisions of this Agreement which can be given effect without the suspended provision. To this end the provisions of this Agreement are severable.

c. Notwithstanding the provisions of Section 8.1 hereof, the City shall have no obligation to make an Economic Development Grant to Developer if at any time during the term hereof the City fails to appropriate funds for payment, or receives an opinion from its legal counsel to the effect that the use of Tax Increments resulting from the Minimum Improvements to fund an Economic Development Grant to Developer, as contemplated under said Section 8.1, is not authorized or otherwise an appropriate urban renewal activity permitted to be undertaken by the City under the Urban Renewal Act or other applicable provisions of the Code, as then constituted or under controlling decision of any Iowa Court having jurisdiction over the subject matter hereof. Upon receipt of any such legal opinion or non-appropriation, the City shall promptly forward notice of the same to Developer. If the non-appropriation or circumstances or legal constraints giving rise to the decision continue for a period during which two (2) annual Economic Development Grants would otherwise have been paid to Developer under the terms of Section 8.1, the City may terminate this Agreement, without penalty or other liability to the City, by written notice to Developer.

Section 8.5. Use of Other Tax Increments. The City shall be free to use any and all Tax Increments above and beyond the percentages to be given to Developer in this Agreement, or any available Tax Increments resulting from the suspension or termination of the Economic Development Grants, for any purpose for which the Tax Increments may lawfully be used pursuant to the provisions of the Urban Renewal Act (including an allocation of all or any portion thereof to the reduction of any eligible City costs), and the City shall have no obligations to Developer with respect to the use thereof.

Section 8.6. Real Property Taxes. Developer shall pay or cause to be paid, when due, all real property taxes and assessments payable with respect to all and any parts of the Development Property. Until such obligations have been assumed by any other person, all pursuant to the provisions of this Agreement, Developer shall be jointly responsible for all assessments and taxes.

Developer and their permitted successors agree that prior to the Termination Date:

a. They will not seek administrative review or judicial review of the applicability or constitutionality of any tax statute relating to the taxation of real property contained on the Development Property determined by any tax official to be applicable to the Development Property or Minimum Improvements, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; and

b. They will not seek any tax exemption deferral or abatement either presently or prospectively authorized under any State, federal or local law with respect to taxation of real property contained on the Development Property or the Minimum Improvements between the date of execution of this Agreement and the Termination Date.

c. The assessment category for the Development Property is commercial and Developer shall not take any action to request or effect a change in such category.

8.7 Minimum Assessment Agreement. As further consideration for this Agreement, Developer and the City shall execute an Assessment Agreement pursuant to the provisions of Iowa Code Section 403.6(19) specifying the Assessor's Minimum Actual Value for the Minimum Improvements on the Development Property for calculation of real property taxes in the form attached as Exhibit E ("Assessment Agreement" or "Minimum Assessment Agreement"). Specifically, Developer, the holder of any mortgage and all prior lienholders shall agree to a minimum actual value for the Minimum Improvements to be constructed on the Development Property of not less than \$7.5 million upon completion of the Minimum Improvements until the Assessment Agreement Termination Date (as defined below). Such minimum actual value at the time applicable is herein referred to as the "Assessor's Minimum Actual Value" (building value only). Nothing in the Assessment Agreement shall limit the discretion of the Assessor to assign an actual value to the property in excess of such Assessor's Minimum Actual Value nor prohibit Developer from seeking through the exercise of legal or administrative remedies a reduction in such actual value for property tax purposes; provided, however, that Developer shall not seek a reduction of such actual value below the Assessor's Minimum Actual Value in any year so long as the Assessment Agreement shall remain in effect. The Assessment Agreement shall remain in effect until June 30, 2029 (the "Assessment Agreement Termination Date"). The Assessment Agreement shall be certified by the Assessor for the County as provided in Iowa Code Section 403.6(19) and shall be filed for record in the office of the County Recorder, and such filing shall constitute notice to any subsequent encumbrancer or purchaser of the Development Property or part thereof, whether voluntary or involuntary. Such Assessment Agreement shall be binding and enforceable in its entirety against any such subsequent purchaser or encumbrancer, as well as all prior lienholders and the holder of first mortgage, each of which shall sign a consent to the Minimum Assessment Agreement.

ARTICLE IX. INDEMNIFICATION

Section 9.1. Release and Indemnification Covenants.

a. Developer releases the City and the governing body members, officers, agents, servants and employees thereof (hereinafter, for purposes of this Article, the "indemnified parties") from, covenants and agrees that the indemnified parties shall not be liable for, and agrees to indemnify, defend, and hold harmless the indemnified parties against, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements or Development Property.

b. Except for any willful misrepresentation or any willful or wanton misconduct or any unlawful act of the indemnified parties, Developer agrees to protect and defend the indemnified parties, now or forever, and further agree to hold the indemnified parties harmless, from any claim, demand, suit, action or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from: (i) any violation of any agreement or condition of this Agreement (except with respect to any suit, action, demand or other proceeding brought by Developer against the City to enforce its rights under this Agreement); (ii) the acquisition and

condition of the Development Property and the construction, installation, ownership, and operation of the Minimum Improvements; or (iii) any hazardous substance or environmental contamination located in or on the Development Property.

c. The indemnified parties shall not be liable for any damage or injury to the persons or property of Developer or its officers, agents, servants or employees or any other person who may be about the Minimum Improvements or Development Property due to any act of negligence of any person, other than any act of negligence on the part of any such indemnified party or its officers, agents, servants or employees.

d. The provisions of this Article IX shall survive the termination of this Agreement.

ARTICLE X. FORGIVABLE LOAN

Section 10.1. Forgivable Loan. For and in consideration of the obligations of Developer as set forth herein, and as a necessary means of achieving the goals and objectives of the Urban Renewal Plan, the City agrees (subject to the conditions set forth in this Article and this Agreement) to make a Forgivable Loan to Developer in the amount of \$250,000 (the "Forgivable Loan"). Such loan shall be made as soon as possible after all the Conditions Precedent in Section 10.2 have been completed.

Section 10.2. Conditions Precedent. Notwithstanding the provisions of Section 10.1 above, the City's obligation to grant Developer the Forgivable Loan under this Agreement shall be subject to satisfaction of the following conditions precedent:

(a) Developer shall not be in default under the terms and provisions of this Agreement; and

(b) Developer, the City, and the Assessor shall have entered into the Minimum Assessment Agreement; and

(c) Developer shall have executed a Promissory Note in the form attached as Exhibit G; and

(d) Developer shall have obtained and provided to the City a letter of credit or dedicated certificate of deposit titled in the name of the City securing repayment of the Forgivable Loan; and

(e) Physical construction (which does not include preliminary activities such as planning or designing, securing financing, or demolition), shall have commenced. (Meaning, at a minimum excavation for foundations or the vertical installation or erection of improvements).

Section 10.3 Forgiveness of the Forgivable Loan.

(a) The Forgivable Loan shall be forgiven at the rate of \$50,000 of the total amount of the Forgivable Loan initially granted to Developer, per year, for five years beginning on December 31, 2017 assuming:

(i) Developer is in compliance with all terms, conditions and obligations of this Agreement as of the date the loan forgiveness is to be granted, including but not limited to the employment and occupancy obligations in Sections 6.6 and 6.7; and

(ii) Developer have submitted Annual Certifications pursuant to Section 6.8 hereof including all requested information, and the Annual Certifications (or other information) does not indicate that any Event of Default has occurred or is occurring.

(iii) The Minimum Improvements were substantially completed by June 1, 2017. If the Minimum Improvements are not substantially completed by June 1, 2017, then loan forgiveness will not begin as scheduled.

(iv) The Minimum Assessment Agreement has been fully executed and the Minimum Improvements are assessed at or in excess of the amount required thereunder, and all taxes assessed against the Development Property and Minimum Improvements that are due and payable have been paid.

The City will, on an annual basis beginning in 2017, make a determination whether Developer is in compliance with the terms, conditions and obligations of this Agreement, and will notify Developer by each December 1 if the Developer does not qualify for that year's loan forgiveness.

Section 10.4. Forgivable Loan Default. If the loan is not forgiven and/or repaid by Developer pursuant to the terms of this Agreement, then an Event of Default has occurred, in which event the City has all the rights under this Agreement and under the terms of the Promissory Note.

Section 10.5. Promissory Note.

(a) The Developer will execute a Promissory Note in the form attached as Exhibit G to this Agreement as a condition precedent to the grant of the Forgivable Loan (See Section 10.2(c)). The Promissory Note will be reduced by \$50,000 of the initial balance of the Forgivable Loan by each December 31 for five (5) years. The City will provide notice to Developer by December 1 if Developer fails to qualify for that year's loan forgiveness as described in this Article.

(b) Should Developer fail to qualify for loan forgiveness in whole or in part during any year, the entire outstanding balance of the Forgivable Loan will become immediately due and payable within 30 days of the time the City shall send notice to

Developer of Developer's failure to qualify for loan forgiveness. All unpaid sums will accrue interest at the rate of 4% per annum accruing from the date payment is due.

Section 10.6. Cancellation of Promissory Note. The Promissory Note will be cancelled when no outstanding balance of the Promissory Note exists. No outstanding balance will exist upon occurrence of any of the following:

- (a) the entire Forgivable Loan has been forgiven; or
- (b) Developer has paid the City any portion of the Forgivable Loan that has not been forgiven.

ARTICLE XI. REMEDIES

Section 11.1. 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 during the Term of this Agreement:

- a. Failure by Developer to cause the construction of the Minimum Improvements to be completed and the operations to continue pursuant to the terms and conditions of this Agreement;
- b. Failure by Developer to comply with Sections 6.6, 6.7, 6.8, 6.9, or 6.10 of this Agreement, as applicable;
- c. Transfer of Developer's or Developer's interest in the Development Property, Minimum Improvements, or this Agreement in violation of the provisions of this Agreement;
- d. Failure by Developer to pay ad valorem taxes on the Development Property or Minimum Improvements;
- e. Failure by Developer to substantially observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement, including the Promissory Note;
- f. The holder of any Mortgage on the Development Property, or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable Mortgage documents;
- g. 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 of 1978, as amended, or under any similar federal or state law; or
 - ii. make an assignment for the 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; or if a petition or answer proposing the adjudication of Developer as bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of Developer or the Minimum Improvements, or part thereof, shall be appointed in any proceedings brought against Developer, and shall not be discharged within ninety (90) days after such appointment, or if Developer shall consent to or acquiesce in such appointment;

h. Any representation or warranty made by Developer in this Agreement or in any written statement or certificate furnished by Developer pursuant to this Agreement, shall prove to have been incorrect, incomplete or misleading in any material respect on or as of the date of the issuance or making thereof; or

Section 11.2. Remedies on Default. Whenever any Event of Default referred to in Section 11.1 of this Agreement occurs and is continuing, the City, as specified below, may take any one or more of the following actions after the giving of thirty (30) days' written notice by the City to Developer and the holder of the First Mortgage (but only to the extent the City has been informed in writing of the existence of a First Mortgage and been provided with the address of the holder thereof) 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 cannot reasonably be cured within thirty (30) days and Developer does not provide assurances reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible:

a. The City may suspend its performance under this Agreement until it receives assurances from Developer deemed adequate by the City, that Developer will cure the default and continue its performance under this Agreement;

b. The City may terminate this Agreement;

c. The City may withhold the Certificate of Completion;

d. The City may take any action, including legal, equitable or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of Developer under this Agreement; or

e. The City will have no obligation to make payment of Economic Development Grants to Developer subsequent to the Event of Default and shall be entitled to recover from Developer, and Developer shall repay to the City, an amount equal to the full amount of the Economic Development Grants previously made to Developer under Article VIII hereof, with interest thereon at the highest rate permitted by State law, and the City shall be entitled to

recover from Developer the total amount of the Forgivable Loan. The City may take any action, including any legal action it deems necessary, to recover such amounts from Developer.

f. The City shall be entitled to recover from the Developer the full amount of the Forgivable Loan pursuant to the Promissory Note and this Agreement or through the Letter of Credit or dedicated deposit.

Section 11.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every 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.

Section 11.4. No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 11.5. Agreement to Pay Attorneys' Fees and Expenses.

a. Developer shall pay to the City an amount equal to the actual costs incurred by the City in connection with the drafting and execution of this Agreement, including, but not limited to publication fees for legal notices, actual costs associated with City Council meetings, and reasonable legal fees of the City, associated with the negotiation, drafting and authorization of this Agreement, up to an amount not in excess of \$5,000. Payment by Developer of such costs will be made by the Developer to the City within 30 days of the date on which the City presents a statement to the Developer demonstrating such costs, or if not previously paid, the costs shall be deducted from the first Economic Development Grant.

b. Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of Developer herein contained, and the City prevails in an action to enforce this Agreement, Developer agrees that it shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses as may be reasonably and appropriately incurred by the City in connection therewith.

ARTICLE XII. MISCELLANEOUS

Section 12.1. Conflict of Interest. Developer represents and warrants that, to its best knowledge and belief after due inquiry, no officer or employee of the City, or its designees or agents, nor any consultant or member of the governing body of the City, and no other public official of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision-making process or gain insider information with regard to the Project, has had or shall have any interest,

direct or indirect, in any contract or subcontract, or the proceeds thereof, for work or services to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

Section 12.2. Notices and Demands. A notice, demand or other communication under this Agreement by any 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 Developer, is addressed or delivered personally to Koester Development LLC at 6500 University Ave., #308, Windsor Heights, IA, 50324, Attn: Jonathan Koester;
- b. In the case of the City, is addressed to or delivered personally to the City at 1133 66th St, Windsor Heights, IA 50324,

or to such other designated individual or officer or to such other address as any party shall have furnished to the other in writing in accordance herewith.

Section 12.3. 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 12.4. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 12.5. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Iowa.

Section 12.6. Entire Agreement. This Agreement and the exhibits hereto reflect the entire agreement between the parties regarding the subject matter hereof, and supersedes and replaces all prior agreements, negotiations or discussions, whether oral or written. This Agreement may not be amended except by a subsequent writing signed by all parties hereto.

Section 12.7. Successors and Assigns. This Agreement is intended to and shall inure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

Section 12.8. Termination Date. This Agreement shall terminate and be of no further force or effect on and after December 31, 2029, unless terminated earlier under the provisions of this Agreement.

Section 12.9. Memorandum of Agreement. The parties agree to execute and record a Memorandum of Agreement for Private Development, in substantially the form attached as Exhibit D, to serve as notice to the public of the existence and provisions of this Agreement, and

the rights and interests held by the City by virtue hereof. The City shall pay for all costs of recording.

Section 12.10. No Third-Party Beneficiaries. No rights or privileges of either party hereto shall inure to the benefit of any landowner, contractor, subcontractor, material supplier, or any other person or entity, and no such contractor, landowner, subcontractor, material supplier, or any other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its Deputy City Clerk, and Developer has caused this Agreement to be duly executed in its name and behalf by its authorized representatives, all on or as of the day first above written.

(SEAL)

CITY OF WINDSOR HEIGHTS, IOWA

By: _____
Diana Willits, Mayor

ATTEST:

By: _____
Jessica Vogel, Deputy City Clerk

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of _____, 2016, before me a Notary Public in and for said State, personally appeared Diana Willits and Jessica Vogel, to me personally known, who being duly sworn, did say that they are the Mayor and Deputy City Clerk, respectively, of the City of Windsor Heights, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and Deputy City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Notary Public in and for the State of Iowa

KOESTER DEVELOPMENT LLC

By: _____
Jonathan Koester, Manager

ATTEST:

By: _____
_____, _____

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of _____, 2016, before me the undersigned, a Notary Public in and for said State, personally appeared Jonathan Koester and _____, to me personally known, who, being by me duly sworn, did say that they are the Manager and _____ of Koester Development LLC, and that said instrument was signed on behalf of said limited liability company; and that the said Jonathan Koester and _____ as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by them voluntarily executed.

Notary Public in and for the State of Iowa

EXHIBIT A
DEVELOPMENT PROPERTY

The Development Property is described as follows:

6600 University Avenue, Windsor Heights, Iowa

[insert legal description]

[insert parcel numbers]

EXHIBIT B

MINIMUM IMPROVEMENTS

Minimum Improvements shall mean the construction of an approximately 40,000square foot building on the Development Property after demolition of all existing structures. Specifically, the building constituting the Minimum Improvements shall be constructed to accommodate and contain an approximately 5,000 square foot anchor restaurant, two approximately 5,000 square foot secondary restaurants, and approximately 25,000 square feet of additional space for retail or office storefront tenants. Construction of the Minimum Improvements is expected to be completed in 2017. Construction costs for the Minimum Improvements are expected to be no less than approximately \$6.8 million. The Minimum Assessment Agreement sets the value of this property for assessment purposes at \$7.5 million (building value only – excludes value of land, equipment and machinery), but the Polk County Assessor will make the final determination as to the assessed value.

A final site plan further describing the Minimum Improvements is attached as Exhibit B-1.

EXHIBIT B-1



Windsor Heights City Center

Schematic Vision Plan

JUNE 3, 2016

Windsor Heights - 75th Anniversary and Celebrating Tomorrow!

Koester Development LLC
6500 University Ave., Suite
Windsor Heights, IA 50324

VdW, Inc.
1163 24th St., Suite 100
Des Moines, IA 50313

A 01

EXHIBIT C
CERTIFICATE OF COMPLETION

WHEREAS, the City of Windsor Heights, Iowa (the "City") and Koester Development LLC (the "Developer") did on or about the _____ day of _____, 2016, make, execute and deliver, each to the other, an Agreement for Private Development (the "Agreement"), wherein and whereby the Developer agreed, in accordance with the terms of the Agreement, to develop and maintain certain real property located within the City and as more particularly described as follows:

6600 University Avenue, Windsor Heights, Iowa

[insert legal description]

[insert parcel numbers]

(the "Development Property"); and

WHEREAS, the Agreement incorporated and contained certain covenants and restrictions with respect to the development of the Development Property, and obligated the Developer to construct certain Minimum Improvements (as defined therein) in accordance with the Agreement; and

WHEREAS, Developer has to the present date performed said covenants and conditions insofar as they relate to the construction of said Minimum Improvements in a manner deemed by the City to be in conformance with the Agreement to permit the execution and recording of this certification.

NOW, THEREFORE, this is to certify that all covenants and conditions of the Agreement with respect to the obligations of Developer and its successors and assigns, to construct the Minimum Improvements on the Development Property have been completed and performed by Developer and are hereby released absolutely and forever terminated insofar as they apply to the land described herein. The County Recorder of Polk County is hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfactory termination of the covenants and conditions of said Agreement with respect to the construction of the Minimum Improvements on the Development Property.

All other provisions of the Agreement shall otherwise remain in full force and effect until termination as provided therein.

(SEAL)

CITY OF WINDSOR HEIGHTS, IOWA

By: _____

Diana Willits, Mayor

ATTEST:

By: _____

Jessica Vogel, Deputy City Clerk

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of _____, 2016, before me a Notary Public in and for said State, personally appeared Diana Willits and Jessica Vogel, to me personally known, who being duly sworn, did say that they are the Mayor and Deputy City Clerk, respectively, of the City of Windsor Heights, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and Deputy City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Notary Public in and for the State of Iowa

EXHIBIT D

MEMORANDUM OF AGREEMENT FOR PRIVATE DEVELOPMENT

WHEREAS, the City of Windsor Heights, Iowa (the "City"), and Koester Development LLC, an Iowa limited liability company ("Developer"), did on or about the ____ day of _____, 2016, make, execute and deliver, each to the other, an Agreement for Private Development (the "Agreement"), wherein and whereby Developer agreed, in accordance with the terms of the Agreement and the Second Amended and Restated Urban Renewal Plan (the "Plan"), to develop and operate certain real property located within the City and within the Consolidated Windsor Heights Urban Renewal Area.

The Development Property is described as follows:

6600 University Avenue, Windsor Heights, Iowa

[insert legal description]

[insert parcel numbers]

(the "Development Property"); and

WHEREAS, the term of the Agreement commenced on the ____ day of _____, 2016 and terminates on December 31, 2029, unless otherwise terminated as set forth in the Agreement; and

WHEREAS, the City, Developer desire to record a Memorandum of the Agreement referring to the Development Property and their respective interests therein.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. That the recording of this Memorandum of Agreement for Private Development shall serve as notice to the public that the Agreement contains provisions restricting development and use of the Development Property and the improvements located and operated on such Development Property.
2. That all of the provisions of the Agreement and any subsequent amendments thereto, if any, even though not set forth herein, are by the filing of this Memorandum of Agreement for Private Development made a part hereof by reference, and that anyone making any claim against any of said Development Property in any manner whatsoever shall be fully advised as to all of the terms and conditions of the Agreement, and any amendments thereto, as if the same were fully set forth herein.
3. That a copy of the Agreement and any subsequent amendments thereto, if any, shall be maintained on file for public inspection during ordinary business hours in the office of the Deputy City Clerk, Windsor Heights, Iowa.

[Signatures Start on Next Page]

IN WITNESS WHEREOF, the City, Developer have executed this Memorandum of Agreement for Private Development on the _____ day of _____, 2016.

(SEAL)

CITY OF WINDSOR HEIGHTS, IOWA

By: _____
Diana Willits, Mayor

ATTEST:

By: _____
Jessica Vogel, Deputy City Clerk

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of _____, 2016, before me a Notary Public in and for said State, personally appeared Diana Willits and Jessica Vogel, to me personally known, who being duly sworn, did say that they are the Mayor and Deputy City Clerk, respectively, of the City of Windsor Heights, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and Deputy City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Notary Public in and for the State of Iowa

KOESTER DEVELOPMENT LLC

By _____
Jonathan Koester, Manager

By: _____
_____, _____

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of _____, 2016, before me the undersigned, a Notary Public in and for said State, personally appeared Jonathan Koester and _____, to me personally known, who, being by me duly sworn, did say that they are the Manager and _____ of Koester Development LLC, and that said instrument was signed on behalf of said limited liability company; and that the said Jonathan Koester and _____, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by them voluntarily executed.

Notary Public in and for the State of Iowa

EXHIBIT E

MINIMUM ASSESSMENT AGREEMENT

THIS MINIMUM ASSESSMENT AGREEMENT ("Minimum Assessment Agreement" or "Assessment Agreement"), is dated as of _____, 2016, by and between the City of Windsor Heights, Iowa (the "City"), a municipal corporation established pursuant to the Code of Iowa and acting under the authorization of Chapter 403 of the Code of Iowa, 2015, as amended, and Chapter 15A (the "Urban Renewal Act"), and Koester Development LLC, an Iowa limited liability company having an office for the transaction of business at 6500 University Ave., #308, Windsor Heights, IA, 50324 ("Developer").

WITNESSETH:

WHEREAS, the City and Developer have entered into an Agreement for Private Development dated as of _____, 2016 ("Development Agreement" or "Agreement") regarding certain real property located in the City, the legal description, which is legally described as follows:

6600 University Avenue, Windsor Heights, Iowa

[insert legal description]

[insert parcel numbers]

(the "Development Property"); and

WHEREAS, it is contemplated that Developer will undertake the construction of Minimum Improvements (as defined in the Development Agreement) by building a new 40,000 square foot building (the "Minimum Improvements") on the Development Property, as provided in the Development Agreement; and

WHEREAS, pursuant to Section 403.6(19) of the Code of Iowa, as amended, the City and Developer desire to establish a minimum actual value for the Minimum Improvements to be constructed on the Development Property by Developer pursuant to the Development Agreement; and

WHEREAS, the City and the Assessor for the County of Polk have reviewed the preliminary plans and specifications for the Minimum Improvements that are contemplated to be constructed.

NOW, THEREFORE, the parties to this Minimum Assessment Agreement, in consideration of the promises, covenants and agreements made by each other, do hereby agree as follows:

1. Upon substantial completion of construction of the above-referenced Minimum Improvements, but no later than January 1, 2018, the minimum actual taxable value which shall be fixed for assessment purposes for the Minimum Improvements to be constructed on the Development

Property (building value only – excluding value of land, machinery and equipment) shall be not less than Seven Million Five Hundred Thousand Dollars (\$7,500,000) (hereafter referred to as the "Minimum Actual Value").

The Minimum Actual Value shall continue to be effective until termination of this Minimum Assessment Agreement on June 30, 2029 (the "Assessment Agreement Termination Date"). This means that the Minimum Improvements shall have a Minimum Actual Value of at least \$7,500,000 until as of January 1, 2027, which shall govern the taxes collected for the entire fiscal year 2028-2029. The Minimum Actual Value shall be maintained during such period regardless of: (a) any failure to complete the Minimum Improvements; (b) destruction of all or any portion of the Minimum Improvements; (c) diminution in value of the Development Property or the Minimum Improvements; or (d) any other circumstance, whether known or unknown and whether now existing or hereafter occurring.

2. Developer shall pay or cause to be paid when due all real property taxes and assessments payable with respect to all and any parts of the Development Property and the Minimum Improvements pursuant to the provisions of this Minimum Assessment Agreement and the Development Agreement. Such tax payments shall be made without regard to any loss, complete or partial, to the Development Property or the Minimum Improvements, any interruption in, or discontinuance of, the use, occupancy, ownership or operation of the Development Property or the Minimum Improvements by Developer, or any other matter or thing which for any reason interferes with, prevents or renders burdensome the use or occupancy of the Development Property or the Minimum Improvements.

4. Developer agrees that its obligations to make the tax payments required hereby, to pay the other sums provided for herein, and to perform and observe its other agreements contained in this Minimum Assessment Agreement shall be absolute and unconditional obligations of Developer (not limited to the statutory remedies for unpaid taxes) and that Developer shall not be entitled to any abatement or diminution thereof, or set off therefrom, nor to any early termination of this Minimum Assessment Agreement for any reason whatsoever.

5. Developer agrees that, prior to the Termination Date, it will not:

a. seek administrative review or judicial review of the applicability or constitutionality of any Iowa tax statute relating to the taxation of property contained as a part of the Development Property or the Minimum Improvements determined by any tax official to be applicable to the Development Property or the Minimum Improvements, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; or

b. seek any tax deferral or abatement, either presently or prospectively authorized under Iowa Code Chapter 403 or 404, or any other local or State law, of the taxation of real property, including improvements and fixtures thereon, contained in the Development Property or the Minimum Improvements between the date of execution of this Agreement and the Termination Date; or

- c. request the Assessor to reduce the Minimum Actual Value; or
- d. appeal to the board of review of the City, County, State, the Property Assessment Appeal Board, or to the Director of Revenue of the State to reduce the Minimum Actual Value; or
- e. cause a reduction in the actual value or the Minimum Actual Value through any other proceedings.

6. This Minimum Assessment Agreement shall be promptly recorded by the City with the Recorder of Polk County, Iowa. Such filing shall constitute notice to any subsequent encumbrancer or the City of the Development Property (or part thereof), whether voluntary or involuntary, and this Minimum Assessment Agreement shall be binding and enforceable in its entirety against any such subsequent the City or encumbrancer, including the holder of any mortgage. The City shall pay all costs of recording.

7. Neither the preambles nor provisions of this Minimum Assessment Agreement are intended to, or shall be construed as, modifying the terms of the Development Agreement.

8. This Minimum Assessment Agreement shall not be assignable without the consent of the City and shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

9. Nothing herein shall be deemed to waive the rights of Developer under Iowa Code Section 403.6(19) to contest that portion of any actual value assignment made by the Assessor in excess of the Minimum Actual Value established herein. In no event, however, shall Developer seek to reduce the actual value to an amount below the Minimum Actual Value established herein during the term of this Agreement. This Minimum Assessment Agreement may be amended or modified and any of its terms, covenants, representations, warranties or conditions waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance.

10. If any term, condition or provision of this Minimum Assessment Agreement is for any reason held to be illegal, invalid or inoperable, such illegality, invalidity or inoperability shall not affect the remainder hereof, which shall at the time be construed and enforced as if such illegal or invalid or inoperable portion were not contained herein.

11. The Minimum Actual Value herein established shall be of no further force and effect and this Minimum Assessment Agreement shall terminate on the Termination Date set forth in Section 1 above.

12. Developer has provided a title opinion to City listing all lienholders of record as of the date of this Assessment Agreement and all such lienholders have signed consents to this Assessment Agreement, which consents are attached hereto and made a part hereof.

[Remainder of this page intentionally left blank. Signature pages to follow.]

CITY OF WINDSOR HEIGHTS, IOWA

By: _____
Diana Willits, Mayor

ATTEST:

By: _____
Jessical Vogel, Deputy City Clerk

(SEAL)

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of _____, 2016, before me a Notary Public in and for said State, personally appeared Diana Willits and Jessica Vogel, to me personally known, who being duly sworn, did say that they are the Mayor and Deputy City Clerk, respectively, of the Polk County, Iowa, a Municipality, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and Deputy City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Notary Public in and for the State of Iowa

KOESTER DEVELOPMENT LLC

By: _____
Jonathan Koester, Manager

ATTEST:

By: _____
_____, _____

STATE OF IOWA)
)
COUNTY OF POLK)

On this ____ day of _____, 2016, before me the undersigned, a Notary Public in and for said State, personally appeared Jonathan Koester and _____, to me personally known, who being duly sworn, did say that they are the Manager and _____ of Koester Development LLC, and that said instrument was signed on behalf of said limited liability company; and that the said Jonathan Koester and _____, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by them voluntarily executed.

Notary Public in and for the State of Iowa

LIENHOLDER'S CONSENT, IF ANY

In consideration of one dollar and other valuable consideration, the receipt of which is hereby acknowledged, and notwithstanding anything in any loan or security agreement to the contrary, the undersigned ratifies, approves, consents to and confirms the Minimum Assessment Agreement entered into between the parties, and agreeing to be bound by its terms, subordinates any previously acquired mortgage and interest in the Development Property and Minimum Improvements to the City of Windsor Heights, Iowa. This provision shall be binding on the parties and their respective successors and assigns.

_____ [NAME OF LIENHOLDER]

By: _____
Signature

Date

STATE OF IOWA)
) SS
COUNTY OF _____)

On this ____ day of _____, 2016, before me the undersigned, a Notary Public in and for said County, in said State, personally appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the _____ and _____, respectively, of _____ and that said instrument was signed on behalf of said company, and that the said _____, and _____ acknowledged the execution of said instrument to be the voluntary act and deed of said domestic company, by them voluntarily executed.

Notary Public in and for the State of Iowa

[Add additional pages for each Lienholder]

CERTIFICATION OF ASSESSOR

The undersigned, having reviewed the plans and specifications for the Minimum Improvements to be constructed, and being of the opinion that the minimum market value contained in the foregoing Minimum Assessment Agreement appears reasonable, hereby certifies as follows: The undersigned Assessor, being legally responsible for the assessment of the Minimum Improvements and the Development Property described in the foregoing Minimum Assessment Agreement, certifies that the actual value assigned to the Minimum Improvements upon completion, but in no event later than January 1, 2018 shall not be less than Seven Million, Five Hundred Thousand Dollars (\$7,500,000) (building value only – excluding value of land, equipment and machinery) all until the Termination Date of this Minimum Assessment Agreement.

Assessor for the County of Polk, Iowa

Date

STATE OF IOWA)
) SS
COUNTY OF POLK)

Subscribed and sworn to before me by _____, Assessor for the County of Polk, Iowa.

Notary Public in and for the State of Iowa

EXHIBIT F
DEVELOPER ANNUAL CERTIFICATION
(due by October 15th as required under terms of Development Agreement)

Developer certifies the following:

During the time period covered by this Certification, Developer is and was in compliance with Section 6.8 as follows:

- (i) the Minimum Improvements were first fully assessed on January 1, 20____, at a full assessment value of \$_____;
- (ii) the Minimum Improvements contain at least three operating restaurants pursuant to and in compliance with Section 6.7 of the Agreement;
- (iii) certification that no fewer than twenty (20) part-time or full-time employees are employed at the Minimum Improvements
- (iv) the undersigned officer of Developer is familiar with the terms and provisions of this Agreement and certifies that Developer is not in default in the fulfillment of any of the terms and conditions of this Agreement, or if the signer is aware of any such Event of Default, said officer has disclosed the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto.

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct to the best of my knowledge and belief.

Signed and certified this _____ day of _____, 20____.

KOESTER DEVELOPMENT LLC

By: _____
Jonathan Koester, Manager

EXHIBIT G
PROMISSORY NOTE

_____, 2016

FOR VALUE RECEIVED, KOESTER DEVELOPMENT LLC (the "Borrower") agrees and promises to pay to the order of the CITY OF WINDSOR HEIGHTS (the "Lender") the sum of \$250,000, which is the total amount of the Forgivable Loan as defined in that certain Agreement for Private Development dated _____, 2016 between the parties ("Development Agreement"). The following are the terms of this Promissory Note ("Note").

1. The entire principal balance hereof or the portion due and owing shall be payable to the Lender according to the terms of the Development Agreement, unless this Note is forgiven or cancelled pursuant to the terms of the Development Agreement. If Lender does not forgive or cancel this Note, or if Borrower has not repaid the amount of the principal or the portion due and owing, as defined by the Development Agreement, or if Borrower defaults under any term or condition of the Development Agreement, then Borrower will be in Default and subject to the consequences for Default in Paragraph 3 of this Note and the Development Agreement.

2. The Borrower may at any time prepay without penalty all or any part of the unpaid principal balance of this Note.

3. Any default under the Development Agreement shall be a Default hereunder and payment may be accelerated. Upon Default, the Lender may, at its option, exercise any and all rights and remedies available to it under this Promissory Note, or any applicable law, including, without limitation, the right to collect from the Borrower all sums due under this Note with interest accruing at an annual rate of 4% beginning 30 days following the City's demand for payment until paid in full. The Borrower hereby waives presentment, demand for payment, notice of nonpayment, notice of dishonor, protest, and all other notices or demands in connection with the delivery, acceptance, performance, or Default of this Note.

4. If this Note is placed in the hands of an attorney for collection after Default in the payment of principal or interest, or if all or any part of the indebtedness represented hereby is proved, established, or collected in any court or in any bankruptcy, receivership, debtor relief, probate, or other court proceeding, the Borrower shall pay all reasonable costs and expenses incurred by or on behalf of Lender in connection with the Lender's exercise of any or all of its rights and remedies under this Note, including, without limitation, court costs, and attorneys' fees.

5. No delay or failure of the Lender to exercise any power or right shall operate as a waiver thereof, and such rights and powers shall be deemed continuous; nor shall a partial exercise preclude full exercise of such rights and powers. No right or remedy of the Lender shall be deemed abridged or modified by any course of conduct, and no waiver thereof shall be predicated thereon.

6. The obligations of the Borrower under the terms of this Note shall be binding on the successors-in-interest, legal representatives, and assigns of the Borrower, and shall inure to the benefit of the Lender and the Lender's successors-in-interest, legal representatives, and assigns.

7. This Note is also subject to the terms and conditions of the Development Agreement.

IMPORTANT: READ BEFORE SIGNING: The terms of this Note and the Development Agreement should be read carefully because only those terms in writing are enforceable. No other terms or oral promises not contained may be legally enforced. You may change the terms of this Agreement only by another written agreement.

Dated as of _____, 2016.

KOESTER DEVELOPMENT LLC

By: _____
Jonathan Koester, Manager

ATTEST:

By _____
_____, _____

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of _____, 2016, before me the undersigned, a Notary Public in and for said State, personally appeared Jonathan Koester and _____, to me personally known, who, being by me duly sworn, did say that they are the Manager and _____, respectively, of Koester Development LLC, and that said instrument was signed on behalf of said limited liability company; and that the said Jonathan Koester and _____ as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by them voluntarily executed.

Notary Public in and for the State of Iowa

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