

REAL ESTATE DONATION AGREEMENT

This Real Estate Donation Agreement (the “**Agreement**”) is made as of the Effective Date (as defined herein), by and between the KB ACQUISITIONS LLC, an Indiana limited liability company (the “**Donor**”), and the BRISTOL REDEVELOPMENT COMMISSION (the “**Commission**”).

RECITALS

WHEREAS, Donor owns in fee simple certain unimproved real property located at 511 St. Joseph Street, Bristol, Indiana, more particularly described on Exhibit A and depicted on Exhibit B attached hereto and made a part hereof (the “**Property**”), together with all rights and title Donor has to all fixtures, easements, appurtenances, hereditaments, rights, powers, privileges, and other improvements thereon and/or appurtenant thereto (collectively, the “**Real Estate**”);

WHEREAS, Donor wishes to dispose of the Real Estate which would be beneficial to the Commission; and

WHEREAS, the Commission is a redevelopment commission and as such is created and empowered under Indiana Code 36-7-14 et seq; and

WHEREAS, the Commission is authorized to acquire real property as provided under Indiana Code § 36-7-14-12.2(a)(1) in accordance with the procedures outlined under Indiana Code § 36-7-14-19(e); and

WHEREAS, Donor desires to donate, transfer and convey the Real Estate, and the Commission desires to take, receive and accept the Real Estate, pursuant to the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual representations, benefits and covenants contained herein, Donor and the Commission covenant and agree as follows:

TERMS AND CONDITIONS

1. **Conveyance**. The Donor will convey the Real Estate to the Commission by a General Warranty Deed (“**Deed**”), on or before the Closing Date (as defined herein).

2. **Closing**. Subject to all other terms and conditions set forth in this Agreement, the transaction shall be closed, and the Deed and all other closing papers shall be executed and delivered (the “**Closing**”), on the date which is fifteen (15) days after: (a) the expiration of the Due Diligence Period, as the same may be extended as provided herein, or (b) the exact date of Closing to be specified by the Commission by notifying Donor at least seven (7) days prior to Closing (the “**Closing Date**”). Closing shall take place at the office of Near North Title Group (the “**Title Company**”), who is insuring this transaction, or at such other place as the parties may mutually agree upon in writing or via the mail/in escrow, and may be extended if both parties hereto agree in writing to such extension.

3. **Conditions of Performance.** The Commission shall have from the Effective Date of this Agreement until the earlier of (i) the date upon which the Commission gives Donor written notice of the Closing as provided for in Section 2 or (ii) a period of ninety (90) days from the Effective Date (the “**Due Diligence Period**”) to perform and complete its due diligence of the Real Estate. The Commission’s obligations under this Agreement shall be contingent upon the timely and complete satisfaction, in the Commission’s sole discretion, of the following conditions, unless such conditions are waived in writing by the Commission:

(a) **Approval.** Prior to the Closing Date, the Commission and the Bristol Town Council shall have given formal approval of the Commission’s acquisition of the Real Estate in accordance with the terms set forth herein, and the Commission shall have determined to its satisfaction that all conditions of Indiana Code § 36-7-14-19 have been satisfied.

(b) **Amendment of Economic Development Plan.** Prior to the Closing Date, the Commission’s governing body (and the Bristol Town Council and Elkhart County Plan Commission) shall have given formal approval of the Commission’s amendment of the Economic Development Plan for the Consolidated State Road 15 Economic Development Area to add the Real Estate to the Commission’s acquisition list, and the Commission shall have determined to its satisfaction that all conditions of Indiana Code §§ 36-7-14-15, 16, 17, 17.5 and 18 have been satisfied.

(c) **Condition of the Real Estate.** Within ten (10) days of the Effective Date, Donor shall deliver to the Commission copies of all existing surveys, title work, condition reports, environmental assessments (including any prior assessments performed by prospective purchasers of the Real Estate), and all other reports and information relevant to the Real Estate of which Donor has in its possession or control, has knowledge of, or which Donor’s good faith efforts can reasonably obtain. During the Due Diligence Period, the Commission, or its designated representatives, may conduct tests and inspections of the Real Estate, including, but not limited to, soil, surface, and sub-surface tests, utility, exterior and other assessments, and reviews of building and construction plans and warranties and maintenance records, at the Commission’s option and expense, to determine that the general state and/or condition of the Real Estate, and each and every part thereof, including the improvements, storm water drainage systems and facilities, and utility equipment and facilities, is acceptable to the Commission, in the Commission’s sole discretion. The parties hereby agree to cooperate with the other party with regard to any on-site investigation of the Real Estate, and Donor hereby grants the Commission the right to enter upon and access the Real Estate to perform any such investigations so long as the same is of no cost or expense to Donor. In the course of its investigation, the Commission may make inquiries to third parties, including, without limitation, lenders, tenants, contractors, and municipal, local, and other government officials and representatives, and Donor hereby consents to such inquiries. the Commission will restore the Real Estate to the condition that existed prior to such investigation, normal wear and tear excepted, in the event that the Commission does not close this transaction. the Commission agrees to indemnify and hold Donor harmless from any personal injury or property damage caused by the Commission or its designated representatives arising out of or related to the Commission’s entry upon the Real Estate.

(d) Title Insurance. The Commission may obtain an ALTA commitment (the “**Title Commitment**”) for an owner’s policy of title insurance (the “**Owner’s Title Policy**”), in which the Title Company shall agree to insure good, merchantable and marketable fee simple title to the Real Estate in the amount of the Assessed Value (as defined below) and in the name of the Commission, subject only to covenants, conditions, easements, encumbrances, and restrictions identified in the Title Commitment and approved or accepted by the Commission (“**Permitted Exceptions**”), upon execution and delivery of the Deed from Donor to the Commission. Any title endorsements needed to cure an Unpermitted Exception (as defined herein), if required, shall be paid by Donor. Upon the Commission’s request, legible copies of all recorded instruments affecting the Real Estate or recited as exceptions in the Title Commitment shall also be delivered to the Commission by Donor.

(e) Survey. The Commission may, at its sole cost and expense, order and deliver a current survey of the Real Estate (the “**Survey**”) satisfactory to the Commission, conforming to the Minimum Detail Standards for an American Land Title Survey, certified to the Commission, any lender to the Commission, and the Title Company, as of a current date by an Indiana registered land surveyor. The acreage and the description of the Real Estate prepared as part of the Survey may be substituted as the legal description on Exhibit A hereto and shall be fully incorporated herein as though an original part hereof.

(f) Exceptions to Title Commitment. Within thirty (30) days after receipt of the Title Commitment (“**Title Period**”), the Commission shall give Donor written notice (the “Title Notice”) of any objections to any exceptions or items contained in the Title Commitment and the standard exceptions set forth in Schedule B of the Commitment (the “Unpermitted Exceptions”). Any exceptions to title set forth in the Title Commitment and not objected to by the Commission as aforesaid shall be deemed “Permitted Exceptions” hereunder. If the Commission fails to deliver to Donor its Title Notice prior to the expiration of the Title Period, all matters, exceptions, and items disclosed by or set forth in the Survey and Title Commitment shall thereafter be deemed to be additional Permitted Exceptions. If, however, the Commission timely delivers its Title Notice to Donor, Donor shall have the right, but not the obligation, to attempt to cure such Unpermitted Exceptions within thirty (30) days from the receipt of the Title Notice. Donor shall be deemed to have cured such Unpermitted Exceptions if Donor causes the Title Company to remove, insure or endorse over such Unpermitted Exceptions. If, within the time frame set forth above or such longer period of time agreed to by the Commission, Donor does not cause the Unpermitted Exceptions to be removed from the Title Commitment or insured over, then a condition to the performance by the Commission of its obligations hereunder shall be deemed not to have been fulfilled, entitling the Commission, as its sole right on account thereof to elect either to (1) terminate this Agreement by giving Donor written notice thereof, or (2) accept the conveyance of the Real Estate subject to such Unpermitted Exceptions, in which case this Agreement shall remain in effect, and such Unpermitted Exceptions shall be deemed “**Permitted Exceptions**”.

(g) Environmental Assessment. The Commission may conduct, at the Commission’s sole cost and expense, any environmental assessments and/or investigations of the Real Estate, including, but not limited to, a Phase I and Phase II Environmental Site

Assessments (hereinafter collectively referred to as the “**Environmental Assessments**”), to determine that there is no evidence of any contamination of the Real Estate by any hazardous or special wastes, substances, materials, constituents, pollutants or contaminants (as defined by federal, state or local laws, statutes, ordinances, rules or regulations) and that there are no conditions existing on the Real Estate (as of the date of such assessment and/or investigation) that are unacceptable to the Commission or which may give rise to any future civil, criminal or administrative environmental proceedings or investigations with respect to the Real Estate or the Commission’s intended use of the Real Estate or that require remediation or other curative actions. If it is determined that any environmental remediation and/or clean-up of the Real Estate is necessary and/or the Commission disapproves of any matters indicated or disclosed in the Environmental Assessment, (a) Donor and the Commission may enter into a separate agreement which addresses the remediation of the Real Estate and the costs therefor, or (b) the Commission may terminate this Agreement prior to the expiration of the Due Diligence Period. Any environmental investigations of the Real Estate conducted or caused to be conducted by the Commission and all reports therefore or related thereto shall remain the possession of the Commission at all times and may only be relied upon by the Commission.

(h) Litigation and Representations. As of Closing, no action or proceeding before a court or other governmental agency or officer shall be pending and/or threatened that would impair, in a material manner, the value of the Real Estate or Donor’s or the Commission’s ability to undertake and/or complete the transaction contemplated by this Agreement or the Commission’s intended use of the Real Estate. As of Closing, Donor’s representations, warranties, and covenants set forth hereinafter in Section 8 shall be true and accurate.

4. Closing Costs.

(a) In addition to the other costs set forth herein, at Closing, Donor shall be obligated to pay the following: (i) all costs of obtaining and recording releases of existing Encumbrances and Unpermitted Exceptions (as defined herein); (ii) one-half (1/2) of any closing fees; (iii) any reimbursements to the Commission contemplated by this Agreement or otherwise; and (iv) all prorations and/or credits to which the Commission is entitled hereunder.

(b) At Closing, the Commission shall be obligated to pay the following: (i) all expenses incident to the Commission’s financing with respect to the Real Estate, if any; (ii) the cost of title work (including, without limitation, the title search/examination, Title Commitment (as defined in Section 3(d) herein), Owner’s Title Policy, and any endorsements thereto required by the Title Company); (iii) the Survey; (iv) the cost of all recording and filing fees in connection with the acquisition of the Real Estate (i.e., the Deed); (v) one-half (1/2) of any closing fees; (vi) the cost of any endorsements to the Owner’s Title Policy requested by the Commission or any lender of the Commission; (vii) all Environmental Assessments related costs; and (viii) all prorations and/or credits to which Donor is entitled hereunder. Except as otherwise set forth herein, the Commission and Donor shall each be responsible for all of their own respective costs and expenses, including attorneys’ fees, incurred in connection with this transaction.

5. **Nonperformance.** In the event that one or more of the conditions set forth in Section 3 above are not timely and/or completely satisfied within the time frames set forth therein, in the Commission's sole discretion, or waived by the Commission, and the Commission notifies Donor of such prior to the expiration of the Due Diligence Period, the Commission may terminate this Agreement and all of its obligations hereunder by written notice to Donor, in which event the Commission and Donor shall no longer have any obligation hereunder to the other party, except for those obligations that expressly survive the termination of this Agreement.

6. **Taxes.** Donor will be responsible for paying all real estate taxes and assessments relating to the Real Estate assessed for all calendar years prior to Closing and shall pay, or cause to be paid, that portion of such taxes assessed for and becoming a lien during the calendar year of the Closing as shall be allocable to it for the period through and including the date of the Closing, if any. The Commission will be responsible for any and all real estate taxes payable on the Real Estate from and after the Closing Date, if any. The Commission represents and warrants that this gift is a separate and distinct transaction, and that it has made no promises of consideration to Donor in connection herewith and no other gifts by Donor are a condition to completion of this gift. Based solely on the assessed value provided by the Elkhart County Assessor's Office, the Commission recognizes that value of the Real Estate is shown as \$6,400.00 (the "**Assessed Value**"), but the Commission has no independent knowledge regarding the value of the Real Estate and makes no representation or warranty as to the availability or amount of any income tax deduction available as a result of this donation.

7. **Survival of Covenants.** Except for those terms, covenants and conditions which are fully performed prior to the date of Closing, the terms, covenants, conditions, representations, and warranties contained in this Agreement shall survive the delivery of the Deed.

8. **Representations and Warranties of Donor.** Donor covenants, represents, and warrants to the Commission that, both as of the Effective Date and as of the Closing Date:

(a) Donor has good, indefeasible, and marketable fee simple title to the Real Estate, subject to no Encumbrances other than the Permitted Exceptions;

(b) This Agreement has been duly executed and delivered by Donor, and constitutes the legal, valid, and binding obligation of Donor, enforceable in accordance with its terms, and this Agreement does not violate any other agreement, oral or written, which may exist with respect to the Real Estate;

(c) Donor has the full right, power, and authority to enter into this Agreement and to consummate the transaction contemplated herein;

(d) Donor has not received any written notice and is not otherwise aware of any existing and/or uncorrected violation of any fire, zoning, building, environmental, or health law, ordinance, order, or regulation or any other federal, state, or local law, ordinance, order, or regulation affecting the Real Estate;

(e) There is no action, suit, litigation, or proceeding of any nature pending or threatened against or affecting the Real Estate, or any portion thereof, by any third party,

in any court or before or by any federal, state, county, or municipal department, commission, board, bureau, agency, or other governmental instrumentality;

(f) No condemnation or other taking by eminent domain of the Real Estate or any portion thereof has been instituted, Donor has not received any notice of taking or condemnation or intent to take or condemn all or any portion of the Real Estate, and there are no pending or threatened condemnation or eminent domain proceedings (or proceedings in the nature or in lieu thereof) affecting or relating to the Real Estate or any portion thereof or its use;

(g) Donor has not engaged in any activity, nor has it taken or failed to take any action, which has resulted in the violation of any federal, state, or local or other law, statute, rule, regulation, ordinance, requirement, or common law duty or obligation that may be reasonably expected to cause a material adverse effect on the Real Estate;

(h) At Closing, there will be no unsatisfied loans or other Encumbrances with respect to or against the Real Estate or appearing on the Owner's Title Policy, except for Permitted Exceptions;

(i) No work has been performed or materials furnished by or on Donor's behalf or request on or with respect to the Real Estate which could give rise to a mechanic's or materialmen's lien against the Real Estate;

(j) There are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy or any other debtor relief laws contemplated by or pending or threatened against Donor or the Real Estate;

(k) No underground or above-ground storage tank(s) is or has ever been located on the Real Estate;

(l) Donor has not caused or permitted any Hazardous Material (as hereinafter defined) to be discharged, released, stored, used, generated, treated, remediated, and/or disposed of on, under, or at the Real Estate or any part thereof in violation of any Environmental Laws (as hereinafter defined), and Donor has no knowledge of any such violation of any Environmental Laws with respect to the Real Estate;

(m) No fact or condition exists which would result in the termination of any existing sewer or other utility facilities serving the Real Estate;

(n) Donor is not aware of any latent material defects in the electrical, water, storm drainage, or sanitary sewer systems of, at or serving the Real Estate;

(o) No assessments have been made against the Real Estate that are unpaid, whether or not they have become liens, and Donor has not received notification of any pending or threatened assessments with respect to the Real Estate for the cost of any improvements to the Real Estate or any portion thereof; and

(p) There are no leases, options to purchase or lease, or contracts to purchase, with respect to the Real Estate or any portion thereof, except as provided in this Agreement.

9. **Representations and Warranties of the Commission.** The Commission hereby represents and warrants to Donor as follows:

(a) This Agreement does not conflict with any provisions of the organizing documents of the Commission or any agreement or commitment to which the Commission is a party; and

(b) The execution, delivery and performance of this Agreement have been duly authorized by all necessary action on the part of the Commission, and no further action of the officers or members of the Commission is required to give effect to this Agreement or to permit the Commission to carry out the transactions contemplated hereby.

10. **Obligations at the Closing.**

(a) Donor. At the Closing, Donor shall execute, or cause to be executed, and shall deliver to the Commission or the Title Company, as applicable, the following: (i) the Deed, to include the covenant restricting use of the Real Estate to only non-residential purposes; (ii) a Sales Disclosure Form; (iii) a Vendor's Affidavit reasonably acceptable to Title Company; (iv) a closing statement and other documents reasonably required by the Title Company to insure this donation; and (v) such other assignments, bills of sale, instruments of conveyance and other documents as reasonably may be required to consummate the donation contemplated hereby.

(b) The Commission. At the Closing, the Commission shall execute, or cause to be executed, and shall deliver to Donor the following: (i) a closing statement and other documents required by the Title Company to insure this donation; and (ii) such certificates and other documents as reasonably may be requested by Donor prior to the Closing to consummate the donation contemplated hereby or to report this donation to the IRS, including execution of the IRS Form 8283.

11. **Assignment.** The Commission may assign this Agreement, or any of its rights hereunder, to the Town of Bristol, Indiana or any department or agency thereof, or to any third party controlling, controlled by, or under common control with, the Commission, without Donor's prior consent; provided that any such assignment or designation by the Commission shall be subject to such assignee's assumption in writing of all of the Commission's obligations hereunder. The Commission shall not otherwise assign this Agreement or any of its rights hereunder without Donor's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

12. **Operation; Risk of Loss; Damage and Condemnation.** Between the Effective Date and Closing, Donor shall (a) operate the Real Estate in all material respects in the same manner in which Donor operated the Real Estate prior to the Effective Date, including, but not limited to, keeping the Real Estate fully insured, and (b) maintain the Real Estate in its present condition and deliver the Real Estate at Closing. Donor shall bear all risk of loss, destruction, and damage to all or any portion of the Real Estate and to persons or property upon the Real Estate

prior to Closing. If at any time after the Effective Date, (i) the Real Estate or any portion thereof shall be damaged or destroyed, (ii) the Real Estate shall be condemned, in whole or in part, or (iii) any notice of condemnation shall be given, then Donor shall promptly notify the Commission of the happening of such event and the Commission, at its sole option, may terminate this Agreement by written notice to Donor or proceed with Closing. In the event that the Commission elects to terminate this Agreement, the Commission and Donor shall no longer have any obligation hereunder to the other party, except for those obligations that expressly survive the termination of this Agreement. If the Commission elects to proceed with Closing, then the Commission may accept an assignment of the proceeds of any condemnation award granted to or any insurance policy held by Donor.

13. **Prior Liabilities**. The Commission expressly shall not assume any liabilities or responsibilities in any way arising from or in connection with the Real Estate prior to the Closing Date, including but not limited to any liabilities arising from Donor's ownership of the Real Estate and/or arising under any and all federal, state and local statutes, laws, regulations, ordinances, orders, policies or decrees and the like, whether now existing or subsequently enacted or amended, relating to public health or safety, pollution or protection of human health or the environment, including natural resources, including but not limited to the Clean Air Act, 42 U.S.C. § 7401 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Resource Conservation Recovery Act, 42 U.S.C. § 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11001 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq., and any similar and implementing federal, state and local laws, regulations and court and administrative orders, including all consent orders (collectively, the "Environmental Laws") which govern (a) the existence, clean-up, removal and/or remedy of contamination or threat of contamination on or about or emanating from the Real Estate, (b) the emission or discharge of Hazardous Materials (as defined herein) or contaminants including, but not limited to, polychlorinated biphenyls, gasoline, oil, diesel fuel or other petroleum products or constituents thereof into the environment, (c) the control of Hazardous Materials or contaminants, (d) the use, generation, transport, treatment, storage, disposal, removal, recycling, handling or recovery of Hazardous Materials, (e) the existence, clean-up, removal and/or remediation of any asbestos, or (f) the installation, existence, maintenance, monitoring, removal, or remediation arising from any underground storage tanks or above ground storage tanks (hereinafter collectively referred to as the "**Prior Liabilities**"). "**Hazardous Materials**" shall mean any substance, pollutant, contaminant, material, water, gas or particulate matter which is regulated by local, state or federal governmental authority including, but not limited to, any material or substance which is (i) defined as a hazardous waste, hazardous material, hazardous substance, extremely hazardous waste, or restricted hazardous water under any provision of an Environmental Law, (ii) petroleum and petroleum products, (iii) asbestos, (iv) polychlorinated biphenyl, (v) radioactive material, (vi) designated as a "hazardous substance" pursuant to Section 311 of the CWA, (vii) defined as a "hazardous waste" pursuant to Section 1004 of RCRA, or (viii) defined as a "hazardous substance" pursuant to Section 101 of CERCLA.

14. **Authority**. Each of the persons executing this Agreement on behalf of the Commission and Donor represents and certifies that: (a) he or she is empowered and authorized

by all necessary action of the Commission and Donor, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and performance of this Agreement have been authorized by, and this Agreement is the legal, valid, and binding obligation of, the Commission and Donor, respectively.

15. **Notices.** All notices, requests, and other communications hereunder shall be in writing and shall be deemed to have been duly given if (a) delivered by hand and receipted for; (b) sent by certified United States Mail, return receipt requested, postage pre-paid; or (c) delivered by receipted overnight delivery service, as follows:

If to Donor: KB Acquisitions LLC
22243 Innovation Drive
Elkhart, IN 46514

If to the Commission: Bristol Redevelopment Commission
303 E. Vistula Street
Bristol, IN 46507
Attention: President

With a copy to: Krieg DeVault LLP
4101 Edison Lakes Parkway, Suite 100
Mishawaka, IN 46545
Attn: Alex C. Bowman, Esq.

or such substituted address or person as either party has given to the other in writing. All such notices, requests, and other communications shall be effective upon the earlier of actual receipt or (i) if delivered by hand, when delivered; (ii) if mailed in the manner provided herein, three (3) business days after deposit with the United States Postal Service; and (iii) if delivered by overnight express delivery service, on the next business day after deposit with such service.

16. **Remedies.** Donor agrees that money damages are not an adequate remedy for Donor's default or breach of this Agreement, and therefore the Commission shall have, in addition to any other remedies provided for herein, the remedy of specific performance to enforce the terms hereof. In the event of default hereunder by Donor or a breach of this Agreement by Donor at any time prior to Closing, then the following remedies shall be available to the Commission: (a) the Commission shall have the right to terminate this Agreement by giving written notice of such termination to Donor, and the Commission and Donor shall have no further obligation hereunder to the other party, except for those obligations that expressly survive the termination of this Agreement; (b) the Commission may elect to seek specific performance of this Agreement; and/or (c) the Commission may seek any other available remedy at law or in equity. The Commission's remedies are cumulative and are not mutually exclusive. Donor's sole and exclusive remedy for default or breach of this Agreement by the Commission, provided that such default or breach by the Commission shall have remained uncured for thirty (30) days after receiving written notice thereof from Donor, shall be the right to terminate this Agreement by giving written notice of such termination to the Commission.

17. **Brokers.** Donor and the Commission each represent and warrant to the other that they have dealt with no broker or other person with respect to this Agreement. The parties agree to indemnify and hold harmless one another against any loss, liability, damage, cost, expense or claim incurred by reason of any brokerage commission alleged to be payable because of any act, omission or statement of the indemnifying party. Such indemnity obligation shall be deemed to include the payment of reasonable attorney's fees and court costs incurred in defending any such claim.

18. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legatees, representatives, successors, and assigns. Nothing in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto, except as provided above, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

19. **Indemnification by Donor.** Donor shall indemnify, defend, and hold harmless the Commission and its affiliates, officers, directors, employees, shareholders, members, agents, attorneys, and representatives from and against any loss, damage, claim, cost or expense (including, without limitation, reasonable attorneys' fees), liens, or other obligations of any nature whatsoever (collectively, "**Losses**"), arising out of or based upon any breach by Donor of any of its representations, warranties, covenants or agreements set forth in this Agreement, or any Prior Liabilities.

20. **Entire Agreement.** This Agreement supersedes all other prior understandings, commitments, representations, negotiations, discussions and agreements, whether oral or written, express or implied, between the parties hereto relating to the matters contemplated hereby and constitutes the entire agreement between the parties hereto relating to the subject matter hereof.

21. **Amendment.** This Agreement may not be amended, modified, or supplemented, except by a written agreement executed by both the Commission and Donor.

22. **Headings.** The headings contained in this Agreement have been inserted and used solely for ease of reference and shall not be considered in the interpretation or construction of this Agreement.

23. **Severability.** In case any one or more of the provisions (or any portion thereof) contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision or provisions (or any portion thereof) had never been contained herein.

24. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, without regard to its conflict of law provisions, principles, or rules.

25. **Waiver.** The parties hereto may, by a writing signed by such waiving party, waive the performance by any other party of any of the provisions to be performed by such party under this Agreement. The failure of any party hereto at any time to insist upon the strict performance of any provision of this Agreement shall not be construed as a waiver or relinquishment of the right

to insist upon strict performance of such provision at a future time. The waiver by any party hereto of a breach of or noncompliance with any provision of this Agreement shall not operate or be construed as a continuing waiver or a waiver of any other or subsequent breach or noncompliance hereunder.

26. **Time.** Time for the performance of this Agreement and the obligations of the parties hereunder is of the essence. If the time period by which any right, option, or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which Closing must be held, occurs or expires on a Saturday, Sunday, or federal holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.

27. **Attorneys' Fees / Jurisdiction.** Except as set forth herein, each party shall bear its own costs and attorneys' fees in connection with the negotiation and execution of this Agreement. However, in the event litigation is needed to enforce this Agreement, the prevailing party, whether by lawsuit or settlement before or after any lawsuit is filed or any other means (including, but not limited to, mediation or arbitration), shall be entitled to recover its costs, expenses, and reasonable attorneys' fees incurred in the enforcement of this Agreement, including enforcing it as a defense and such suit or proceeding shall be brought in the state courts of Elkhart County, Indiana, and the parties shall submit to the exclusive jurisdiction of such courts and waive any and all jurisdictional, venue and inconvenient forum objections to such courts.

28. **Construction.** This Agreement is the product of negotiation by the parties hereto and shall be deemed to have been drafted by such parties. This Agreement shall be construed in accordance with the fair meaning of its provisions and its language shall not be strictly construed against, nor shall ambiguities be resolved against, either party.

29. **Review and Consultation.** Each of the parties hereto hereby acknowledges and agrees that each (a) has read this Agreement in its entirety prior to executing it, (b) understands the provisions and effects of this Agreement, and (c) has consulted with such attorneys, accountants, and financial and other advisors deemed appropriate in connection with its respective execution of this Agreement.

30. **Counterparts.** This Agreement may be executed in counterparts, including by electronic means, each of which when so executed and delivered shall be an original, and all of which together shall constitute one and the same instrument, notwithstanding that all the parties have not signed the original or the same counterpart.

31. **Exclusive Dealing.** After the execution of this Agreement and until the termination of this Agreement, if and as applicable, Donor shall not, directly or indirectly, through any representative or otherwise, solicit or entertain offers from, negotiate with, enter into a proposal, option, or purchase agreement with or in any manner encourage, discuss, accept, or consider any proposal, of any other party relating to the purchase of the Real Estate, in whole or in part.

32. **Effective Date.** The Effective Date of this Agreement shall be the last date signed by a party hereto as evidenced in the signature page to this Agreement.

(Signature Page Follows)

IN WITNESS WHEREOF; the parties hereto have executed this Real Estate Donation Agreement to be effective as of the Effective Date.

“DONOR”:

KB ACQUISITIONS LLC,
an Indiana limited liability company

By: _____

Its: _____

“THE COMMISSION”:

**BRISTOL REDEVELOPMENT
COMMISSION**

By: _____
President

ATTEST:

Secretary

EXHIBIT A

LEGAL DESCRIPTION

Lot numbered nine (9) in Hansford's addition to the Town of Bristol, Elkhart County, Indiana.

Tax Identification Number: 20-03-26-155-004.000-031

EXHIBIT B
DEPICTION OF REAL ESTATE

