

EXHIBIT
"A"

DRAFT 2/4/20

**FIRST AMENDMENT TO
ONSITE PUBLIC IMPROVEMENT AGREEMENT**

This First Amendment to Onsite Public Improvement Agreement (this "Amendment") is entered into this ____ day of _____, 2020 (the "Effective Date"), by and among the City of Round Rock, Texas, a Texas home rule municipal corporation (the "City"), the Round Rock Transportation and Economic Development Corporation, a "Type B corporation" created under the authority of Chapter 501, Texas Local Government Code (the "TEDCO") and KR Acquisitions, LLC, a Delaware limited liability company (the "Kalahari"). The City, the TEDCO and Kalahari are, collectively, the "Parties" to this Amendment.

RECITALS

WHEREAS, the Parties entered into that certain Onsite Public Improvement Agreement as of April 26, 2020 (the "Agreement"); and

WHEREAS, all capitalized terms used in this Amendment shall be defined as stated in the Agreement unless otherwise defined herein; and

WHEREAS, except as amended herein, all of the terms and provisions of the Agreement shall remain in effect and shall apply to this Amendment; and.

WHEREAS, the Parties wish to amend the Agreement, as set forth below.

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. New Section 5. Section 5 of the Agreement is hereby deleted and replaced by the following:

5. Contribution by TEDCO.

a. Interim Payments.

1. Application for Interim Payment. Kalahari may, from time to time, make an application (an "Application") for payment for work done with respect to the Onsite Public Improvements. Such application shall include a signed statement from Kalahari's general contractor estimating, by value, the percent of the work completed with respect to the Onsite Public Improvements (the "Estimate"). The Parties acknowledge and agree that Kalahari and its general contractor cannot provide the cost of such work completed because the Onsite Public Improvements are part of a larger project and the costs for the Onsite Public Improvements have not been segregated from the costs of that larger project.

2. Review of Application. Upon receipt of an Application, the City and/or TEDCO shall promptly review it and may make reasonable inquiries into the Estimate. Kalahari shall cooperate with such inquiries. If the City and/or TEDCO disagree with the Estimate, then the Parties shall meet to attempt to agree on the percent of the work completed with respect to the Onsite Public Improvements as of a recent date.

3. Payment. Promptly after the Parties agree on the percent of the work completed with respect to the Onsite Public Improvements, TEDCO shall pay Kalahari an amount equal to: (x) Fifteen Million Dollars (\$15,000,000) multiplied by the agreed upon percent of the work completed with respect to the Onsite Public Improvements minus (y) amounts previously paid under this subsection.

b. Final Payment. Upon Completion of the Onsite Public Improvements in accordance with the requirements set forth herein, TEDCO will thereafter become obligated to pay (i) Fifteen Million Dollars (\$15,000,000) (the “Onsite Improvement Contribution”) minus (ii) amounts previously paid pursuant to Section 5.a.3. This amount will be paid by TEDCO within thirty (30) days following such Completion.

2. Legal Representation of the Parties. This Amendment was negotiated by the Parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Amendment to be construed or interpreted against any Party shall not apply.

3. Representations and Warranties. The City represents and warrants to Kalahari that: (a) this Amendment is within its authority, (b) it is duly authorized and empowered to enter into this Amendment, (c) this Amendment is enforceable against the City; and (d) all obligations of the City are proprietary, unless otherwise ordered by a court of competent jurisdiction. Kalahari represents and warrants to the City that it has the requisite authority to enter into this Amendment and this Amendment is enforceable against it.

4. Interpretation. Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Amendment. Regardless of which party prepared the initial draft of this Amendment, this Amendment shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

5. Applicable Law. This Amendment is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.

6. Paragraph Headings. The paragraph headings contained in this Amendment are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

EXECUTED to be effective as of the Effective Date.

(SIGNATURES ON FOLLOWING PAGES)

CITY OF ROUND ROCK, TEXAS,
a home rule city and municipal
corporation

By:_____

Date:

APPROVED as to form:

Stephan L. Sheets, City Attorney

**ROUND ROCK TRANSPORTATION
AND ECONOMIC DEVELOPMENT
CORPORATION**

By: _____

Date:

APPROVED as to form:

Stephan L. Sheets, Corporation's Attorney

KR ACQUISITIONS, LLC
a Delaware limited liability company

By:

Todd Nelson, President

Date:
