

ECONOMIC DEVELOPMENT AUTHORITY FOR THE
CITY OF SHAKOPEE, MINNESOTA

RESOLUTION NO. E2022-007

RESOLUTION APPROVING THE ASSIGNMENT AND ASSUMPTIONS OF LEASES
BETWEEN SHAKOPEE RIVER CITY CENTRE ASSOCIATES LLC AND THE
ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF SHAKOPEE

This Assignment and Assumption of Leases (this "**Assignment**"), the effective date of which is August 1, 2022 (the "**Effective Date**"), is made by and between Shakopee River City Centre Associates, LLC, a Minnesota limited liability company, having an office at 2550 University Avenue West, Suite 416-S, St. Paul, MN 55114 ("**Assignor**") and the Economic Development Authority of the City of Shakopee, Minnesota, a public body corporate and politic and a political subdivision of the State of Minnesota, having an office at 485 Gorman St., Shakopee, MN 55379 ("**Assignee**").

WHEREAS, Assignor is the tenant under that certain Retail Master Lease for River City Centre, Shakopee, Minnesota, dated October 1, 1997 (the "**Retail Master Lease**") between Assignor, as tenant, and Scott County Community Development Agency, as successor to Scott County Housing and Redevelopment Authority, as landlord, regarding all of the Retail Areas as defined in the Retail Master Lease;

WHEREAS, Assignor is the landlord (which term shall include licensor or grantor, if applicable) under all of the leases, licenses, and other occupancy agreements regarding the Retail Areas (collectively, the "**Leases**"), which Leases are more particularly set forth on Exhibit A attached hereto and made a part hereof; and

WHEREAS, Assignor desires to assign to Assignee, and Assignee desires to assume from Assignor, the Retail Master Lease and the Leases, subject, however, to the terms and conditions set forth in this Assignment;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment Fee. In consideration of this Assignment, Assignee shall pay an assignment fee to Assignor in the amount of Three hundred and one thousand six hundred eighty one dollars and twenty four cents (\$301,681.24).
2. Assignment of Retail Master Lease. Assignor hereby assigns to Assignee all of its right, title and interest, as tenant, in and to the Retail Master Lease.
3. Assignment of Leases. Assignor hereby assigns to Assignee all of its right, title and interest, as landlord, in and to the Leases.
4. Assignment of Security Deposits. Assignor hereby assigns to Assignee all of the security deposits as more particularly set forth on Exhibit A attached hereto, held by Assignor pursuant to the Leases.

5. Prorations.

(a) Prorations as of Effective Date. For the purpose of this Assignment, Assignor shall be deemed to be the tenant under the Retail Master Lease, and the landlord under the Leases, for the period of time prior to the Effective Date, and Assignee shall be deemed to be the tenant under the Retail Master Lease, and the landlord under the Leases, for the period of time commencing on, and including, the Effective Date.

(b) Prorations Related to Retail Master Lease.

- (i) Base Rent under the Retail Master Lease shall be prorated as of the Effective Date.
- (ii) Real estate taxes and special assessments payable by tenant under Section 4.1 of the Retail Master Lease shall be prorated as follows: Assignor shall pay real estate taxes and special assessments due and payable through the first half of 2022, inclusive, and Assignee shall pay real estate taxes and special assessments due and payable in the second half of 2022 and thereafter.
- (iii) Personal property taxes (if any) payable by tenant under the Retail Master Lease shall be prorated as of the Effective Date.
- (iv) Utility charges payable by tenant under the Retail Master Lease shall be prorated as of the Effective Date.
- (v) Assignor shall be responsible for the cost of maintenance performed by the landlord at the tenant's expense under the Retail Master Lease if such maintenance was performed prior to the Effective Date. Assignee shall be responsible for the cost of maintenance performed by the landlord at the tenant's expense under the Retail Master Lease if such maintenance is performed on or after the Effective Date.
- (vi) Assignor shall be responsible for the cost of maintenance performed by the tenant under the Retail Master Lease prior to the Effective Date. Assignee shall be responsible for the cost of maintenance performed by the tenant under the Retail Master Lease on or after the Effective Date.
- (vii) Assignor shall be responsible for the cost of the tenant's insurance under the Retail Master Lease for coverage prior to the Effective Date. Assignee shall be responsible for the cost of the tenant's insurance under the Retail Master Lease for coverage on and after the Effective Date.
- (viii) Assignor shall be responsible to pay a portion of the landlord's insurance costs under Section 5.4 of the Retail Master Lease for coverage prior to the Effective Date. Assignee shall be responsible to pay a portion of the landlord's insurance costs under Section 5.4 of the Retail Master Lease for coverage on and after on the Effective Date.

- (ix) All other costs and expenses of the tenant under the Retail Master Lease shall be prorated as of the Effective Date.

(c) Prorations Related to Leases.

- (i) All base rents under net leases, gross rents under gross leases, monthly license fees, and similar payments under the Leases shall be prorated as of the Effective Date.
- (ii) All additional rents for maintenance, taxes, insurance, and other operating costs under the Leases shall be prorated as of the Effective Date.
- (iii) Any and all other income under the Leases shall be prorated as of the Effective Date.
- (iv) Assignor shall be responsible for the landlord's costs and expenses under the Leases relating to the period prior to the Effective Date.
- (v) Assignee shall be responsible for the landlord's costs and expenses under the Leases relating to the period commencing on the Effective Date.

6. Leasing Commissions. Assignor discloses that Suntide Realty Services Inc, d/b/a Suntide Commercial Realty, Inc., and Assignor are related parties. Assignor shall be responsible for payment of any and all leasing commissions related to the Leases, and Assignor shall pay any commission that may be due to Suntide Commercial Realty, Inc., in connection with this Assignment. Assignor and Assignee agree to indemnify and hold harmless one another from and against any and all claims or demands with respect to any brokerage fees or agents' commissions or other compensation asserted by any other person, firm, or company with whom that party has dealt in connection with this Agreement or the transaction contemplated hereby.

7. Tenant Estoppel Certificates. Prior to the Effective Date, Assignor shall use its best efforts to obtain and deliver to Assignee executed tenant estoppel certificates ("Estoppel Certificates") from each of the tenants of the Retail Area which confirm, among other things, the amount and date to which rents have been paid, the commencement date and rent commencement date, that there are no defaults under the Leases, and any rent abatements, tenant improvement allowances, or other amounts owed to the Tenants. The form and content of the Estoppel Certificates shall be subject to review and approval by Assignee.

8. Assumption of Obligations and Liabilities by Assignee. Assignee hereby assumes and agrees to perform any and all of the obligations to be performed by the tenant under the Retail Master Lease, and by the landlord under the Leases, accruing on and after the Effective Date.

9. Representations and Warranties by Assignor. Assignor represents and warrants that:

- (a) the Retail Master Lease is in full force and effect and has not been modified or amended in any respect;

(b) the Leases are in full force and effect and have not been modified or amended in any respect except as specifically provided on Exhibit A;

(c) true and complete copies of the Leases have been delivered to Assignee by Assignor, which copies constitute the full agreements of the respective tenants under the Leases;

(d) Assignor is currently the landlord under the Leases and has the full right and authority to assign the Leases to Assignee, and no other person has any interest in or claim to Assignor's interest in the Leases;

(e) Assignor knows of no subleases or subtenancies of any space in the Property, except as specifically provided on Exhibit A;

(f) Assignor knows of no default by Assignor as landlord under the Leases nor does Assignor have knowledge of any event which, with or without the giving of notice and passage of time, would constitute a default by Assignor under the Leases;

(g) Assignor knows of no default by any tenant under any of the Leases; nor does Assignor have knowledge of any event which, with or without the giving of notice and passage of time, would constitute a default by any tenant under its respective Lease;

(h) There are no tenant improvement allowances or other amounts owed to any tenant under the Leases; and

(i) there are no leasehold mortgages or other liens against the Retail Area or the property related to the Retail Master Lease or the Leases, or granted by or arising from the conduct of Assignor or the tenants.

10. Survival. All representations and warranties provided in this Assignment shall survive following the Effective Date hereunder.

11. Indemnification.

(a) Assignor hereby agrees to indemnify, defend, and hold Assignee harmless from and against any and all loss, cost, liability, damage or expense, including without limitation, reasonable attorneys' fees, originating or relating to the period prior to the date hereof, and arising out of or with respect to the failure of Assignor to have performed (i) any of the obligations of the tenant under the Retail Master Lease which accrued prior to the Effective Date, and (ii) any of the obligations of the landlord under the Leases which accrued prior to the Effective Date.

(b) Assignee hereby agrees to indemnify and to hold Assignor harmless from and against any and all loss, cost, liability, damage or expense, including, without limitation, reasonable attorneys' fees, originating or relating to the period following the date hereof and arising out of or with respect to the failure of Assignee to perform (i) any of the obligations of the tenant under the Retail Master Lease accruing on and after the Effective Date and (ii) any of the obligations of the landlord under the Leases accruing on and after the Effective Date.

12. Miscellaneous.

(a) This Assignment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original for all purposes, and all such counterparts shall together constitute but one and the same instrument.

(b) This Assignment shall be governed by and construed in accordance with the laws of the State of Minnesota, without regard to conflict of law rules.

(c) No modification, waiver, amendment, discharge or change of this Assignment shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

(d) Assignor shall promptly execute and deliver to Assignee any additional instrument or other document which Assignee reasonably requests to evidence or better effect the assignment contained herein.

(e) This Assignment and the obligations of the parties hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment effective as of the Effective Date.

ASSIGNOR:

Shakopee River City Centre Associates, LLC,
a Minnesota limited liability company

By: _____

Name:

Title:

Date:_____

ASSIGNEE:

Economic Development Authority of the City of
Shakopee, Minnesota

By: _____

Name: Jody Brennan

Title: President

Date: _____

By: _____

Name: William Reynolds

Title: Executive Director

Date: _____

EXHIBIT A
RENT ROLL