

**Third Draft
August 1, 2019**

**FIRST AMENDMENT TO
CONTRACT FOR PRIVATE REDEVELOPMENT**

THIS FIRST AMENDMENT TO CONTRACT FOR PRIVATE REDEVELOPMENT, made as of the ____ day of _____, 2019 (the “First Amendment”), is between the ECONOMIC DEVELOPMENT AUTHORITY FOR THE CITY OF SHAKOPEE, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), and GAUGHAN DEVELOPMENT LLC, a Minnesota limited liability company (the “Redeveloper”), and amends the Contract for Private Redevelopment, dated July 3, 2018 (the “Original Agreement,” and together with the First Amendment, the “Agreement”), between the Authority and the Redeveloper.

WITNESSETH:

WHEREAS, the Authority was created pursuant to Minnesota Statutes, Sections 469.090 through 469.1082, as amended (the “EDA Act”) and was authorized to transact business and exercise its powers by a resolution of the City Council of the City; and

WHEREAS, the City has undertaken a program to promote economic development and job opportunities and to promote the development and redevelopment of land which is underutilized within the City, and in this connection created the Minnesota River Valley Housing and Redevelopment Project No. 1 (the “Project”) in an area (the “Project Area”) located in the City, pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended (the “HRA Act”); and

WHEREAS, by resolution dated April 4, 1995, the City Council of the City transferred control, authority, and operation of the Project to the Authority, which currently administers the Project, exercising the powers of a housing and redevelopment authority under the HRA Act, in accordance with the EDA Act; and

WHEREAS, pursuant to the HRA Act, the Authority is authorized to acquire real property, or interests therein, and to undertake certain activities to facilitate the redevelopment of real property by private enterprise and promote the development of housing within the City; and

WHEREAS, the City and the Authority have established Tax Increment Financing District No. 19 (the “TIF District”), a redevelopment district, within the Project and have adopted a financing plan (the “TIF Plan”) for the TIF District in order to facilitate development of certain property in the Project and promote the development of housing within the City, all pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended; and

WHEREAS, the Redeveloper intends to acquire from the Authority certain property described in EXHIBIT A attached hereto (the “Redevelopment Property”) within the TIF District and proposes to develop approximately 175 market-rate luxury apartment units, including underground parking, and 3,500 square feet of commercial space (the “Minimum Improvements”); and

WHEREAS, at the time of execution and delivery of the Original Agreement, the Redeveloper intended to develop approximately 125 market-rate luxury apartment units as part of the Minimum Improvements; and

WHEREAS, in order to make the Minimum Improvements economically feasible for the Redeveloper to construct, the Authority is prepared to reimburse the Redeveloper for certain land acquisition costs, site improvement costs related to the Minimum Improvements, and other costs eligible to be reimbursed with tax increment; and

WHEREAS, the Authority believes that the development of the TIF District pursuant to this Agreement, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State of Minnesota and local laws and requirements under which the Project has been undertaken and is being assisted; and

WHEREAS, the Authority and the Redeveloper entered into the Original Agreement in order to set forth the conditions of the Redeveloper’s construction of the Minimum Improvements; and

WHEREAS, the Redeveloper intends to acquire additional property for inclusion in the Redevelopment Property and increase the number of units within the Minimum Improvements by 50 units.

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

ARTICLE I

Amendments

Section 1.1. Amendments to Section 1.1 of the Original Agreement. The following definitions are hereby amended as follows (deleted language is stricken, and new language is underlined):

“Available Tax Increment” means, on each Payment Date, the Tax Increment attributable to the Redevelopment Property located in the TIF District and paid to the Authority by the County in the six (6) months preceding the Payment Date after first deducting therefrom 10% of the Tax Increment to be used to reimburse the Authority for administrative expenses; provided, however, for as long as the Redevelopment Property Purchase Price has not been paid in full to the Authority, “Available Tax Increment” shall mean Tax Increment attributable to the Redevelopment Property located in the TIF District and paid to the Authority by the County in the six (6) months preceding the Payment Date after (i) first deducting 10% of the Tax Increment to be used to reimburse the Authority for administrative expenses; and (ii) second deducting an additional ~~20.5%~~ 22.3% of the Tax Increment to be used to reimburse the Authority for the Redevelopment Property Purchase Price. Available Tax Increment shall not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default under this Agreement.

“Interfund Loan” means the City’s loan of up to \$500,000 to the Authority for the purposes of purchasing two properties that make up Lot 5, Block 7, City of Shakopee, according to the recorded plat thereof, Scott County, Minnesota.

“Minimum Improvements” means the construction of approximately ~~425~~ 175 market-rate apartment units, including at least ~~425~~ 175 underground parking units, and 3,500 square feet of commercial space on the Redevelopment Property.

“Redevelopment Property Purchase Price” means ~~\$725,000~~ \$1,078,600, plus the amount of the Interfund Loan, with a maximum amount of \$1,578,600.

“Tax Increment Plan” or “TIF Plan” means the Tax Increment Financing Plan for the TIF District, as approved July 3, 2018, as amended on May 21, 2019, and as it may be further amended from time to time.

Section 1.2 Amendments to Section 3.1 of the Original Agreement. Section 3.1 of the Original Agreement is hereby amended as follows (deleted language is stricken, and new language is underlined):

Section 3.1. Status of Redevelopment Property.

(a) The Authority owns that portion of the Redevelopment Property legally described as follows:

Lot 1, Block 7;
Lot 2, Block 7;
Lot 3, Block 7, except the East 10 feet thereof;
Lot 6, Block 7;
Lot 7, Block 7;
Lot 8, Block 7;
Lot 9, Block 7;
Lot 10, Block 7;

All in City of Shakopee, according to the recorded plat thereof, Scott County, Minnesota.

~~(b) The Authority shall acquire from the City that portion of the Redevelopment Property legally described as follows:~~

~~The northerly 30 feet of Lot 6, Block 7; and
The northerly 30 feet of Lot 7, Block 7;
All in City of Shakopee, according to the recorded plat thereof, Scott County, Minnesota.~~

~~(c) The Authority has executed a purchase agreement with a closing date of August 1, 2018 for that portion of the Redevelopment Property legally described as follows:~~

~~Lot 6, Block 7, excluding the northerly 30 feet thereof; and
Lot 7, Block 7, excluding the northerly 30 feet thereof;
All in City of Shakopee, according to the recorded plat thereof, Scott County, Minnesota.~~

~~(d) The Authority owns that portion of the Redevelopment Property legally described as follows (properties previously owned by the Shakopee Housing and Redevelopment Authority):~~

~~Lot 8, Block 7;
Lot 9, Block 7;
Lot 10, Block 7;
All in City of Shakopee, according to the recorded plat thereof, Scott County, Minnesota.~~

(e) The Authority shall acquire that portion of the Redevelopment Property legally described as follows, which shall be vacated by the City prior to conveyance (and subsequently the vacated alley will accrete to properties owned by the Authority and described above):

The vacated alley in Block 7, City of Shakopee, according to the recorded plat thereof, Scott County, Minnesota, lying between the northerly extension of the westerly line of Lot 1, Block 7, and the northerly extension of the westerly line of the easterly 10 feet of Lot 3, Block 7.

(f) The Authority has entered into a purchase agreement for and shall acquire the portion of the Redevelopment Property legally described as follows:

Lot 4, Block 7, and the East 10 feet of Lot 3, Block 7, City of Shakopee according to the plat thereof, Scott County, Minnesota

(g) The Authority has entered into purchase agreements for the following properties and the Authority will purchase such properties for the purpose of conveying the properties to the Redeveloper for the Minimum Improvements:

The south half of Lot 5, Block 7, City of Shakopee according to the plat thereof, Scott County, Minnesota;

The north half of Lot 5, Block 7, City of Shakopee according to the plat thereof, Scott County, Minnesota

(f) (h) The Authority intends to convey the Redevelopment Property that it owns to the Redeveloper pursuant to Section 3.2 hereof.

Section 1.3. Amendments to Section 3.2 of the Original Agreement. Section 3.2 of the Original Agreement is hereby amended as follows (deleted language is stricken, and new language is underlined):

Section 3.2. Conveyance of Redevelopment Property.

(a) The Authority will convey the Redevelopment Property that it owns to the Redeveloper via a quit claim deed. The conveyance of the Redevelopment Property to the Redeveloper is contingent on the Board of the Authority holding a public hearing and approving the sale of the Redevelopment Property. The Redevelopment Property will be conveyed “as-is” and “where-is.”

(b) Within 60 days following execution of this Agreement, the Redeveloper will obtain a commitment for title insurance for the Redevelopment Property from a title insurance company (the “Title Company”) acceptable to the Redeveloper. The Redeveloper shall pay for the cost of obtaining a policy of title insurance.

(c) Within 60 days after the Redeveloper’s receipt of the title commitment, the Redeveloper may give the Authority written notice of any alleged defect(s) in the marketability of the Authority’s actual and/or record title to the Redevelopment Property, or any portion thereof

("Objections") and request that the Authority make the Authority's title marketable or conforming. The Redeveloper's failure to object to defects in the marketability of Authority's title to the Property, in writing, within the time period set forth above or at any time prior to Closing, shall be deemed a waiver of the Redeveloper's right to require the Authority to cure such defects. If the Redeveloper notifies the Authority of Objections within the time period set forth above, the Authority shall use good faith efforts to make the Authority's actual and record title to the Property marketable. The Authority shall have up to 45 days from the Authority's receipt of the Redeveloper's Objections to use good faith efforts to make the Authority's actual and record title to the Property marketable. In no event will the Authority be required to expend more than \$10,000 in its good faith efforts to make the Authority's actual and record title to the Property marketable. If the Authority makes the Authority's title marketable within the 45 day period, the Authority shall notify the Redeveloper, in writing, and the parties shall close pursuant to the terms of this Agreement. If the Authority is unable to make title marketable within the 45 day period, the Redeveloper may either: (i) terminate this Agreement by delivering written notice of termination to the Authority; (ii) notify the Authority that the Redeveloper waives Redeveloper's Objections; or (iii) delay Closing (as defined below) and cure the title issues at its own expense. If the Redeveloper waives the Redeveloper's Objections, the matters giving rise to such Objections shall be deemed a "Permitted Encumbrance" and the parties shall otherwise perform their obligations under this Agreement. The Authority shall have no obligation to take any action to clear defects in the title to the Property other than the good faith efforts described above.

(d) From the date of this Agreement until the Closing, the Redeveloper shall have the right, at its sole cost and expense, to examine and inspect the Redevelopment Property and to conduct feasibility studies with regard to the redevelopment, ownership, and operation of the Redevelopment Property, including, but not limited to, environmental reviews, soil condition testing, surveying, engineering studies, appraisals and any other physical inspections of the Redevelopment Property as determined by the Redeveloper; to review all other due diligence matters related to the Redevelopment Property; and to obtain financing for the redevelopment of the Redevelopment Property and construction of the Minimum Improvements on terms acceptable to the Redeveloper in its sole discretion. The Redeveloper may enter upon the Redevelopment Property to inspect the same, and may conduct tests and examinations with regard thereto. Without limitation, the Redeveloper is responsible for satisfying itself as to matters such as contamination, soils conditions and soil stability, and survey. The Redeveloper may cancel this Agreement for any reason by written notice to the Authority at any time prior to Closing, in which case the Redeveloper shall have no obligation to purchase the Redevelopment Property or to construct the Minimum Improvements. If the Redeveloper closes on the acquisition of the Redevelopment Property, the Redeveloper shall accept the Redevelopment Property "as is," "where is," and "with all faults." Except as provided in Section 3.2(a), the Authority shall have no obligation to cure any defect or other matter regarding contamination, soils conditions and soil stability, and survey, but agrees to cooperate, at no cost or expense to it, in any efforts by Redeveloper to achieve such a cure.

(e) The Redeveloper acknowledges that the Authority will be conveying the Redevelopment Property that it owns for a purchase price of ~~\$725,000~~ \$1,078,600 and the amount of the Interfund Loan (which shall not exceed \$500,000). The Authority will be reimbursed for a portion of the Redevelopment Property Purchase Price by the Redeveloper on the date of Closing (defined herein) in the amount of the Interfund Loan. The Authority will be reimbursed for the remaining portion of the Redevelopment Purchase Price (\$1,078,600) from a pro rata portion of the Tax Increment received by the Authority on each Payment Date (20.5% 22.3% of the Tax Increment received by the Authority on each Payment Date) until the Redevelopment Property Purchase Price is paid in full with interest at a rate per annum of 4.0%.

(f) The conveyance of the Redevelopment Property (the “Closing”) shall not take place until the Redeveloper has (i) obtained all necessary land use approvals from the City, including without limitation, obtaining all necessary approvals for the creation of the TIF District (including rezoning and a comprehensive plan amendment); ~~and~~ (ii) obtained a commitment of financing for the Minimum Improvements and all conditions for Closing have been met to such lender’s satisfaction; and (iii) paid the Authority for the full amount of the Interfund Loan, plus interest, the proceeds of which were used to purchase two properties that make up Lot 5, Block 7, City of Shakopee, according to the recorded plat thereof, Scott County, Minnesota.

(g) On the date the Redevelopment Property is conveyed to the Redeveloper (the “Closing”), the Authority will execute and deliver to the Redeveloper the following, in form and content reasonably acceptable to the Redeveloper:

(i) a quit claim deed conveying the Redevelopment Property to the Redeveloper;

(ii) a non-foreign affidavit, properly executed, containing such information as is required by Internal Revenue Code section 1445(b)(2) and its regulations;

(iii) a standard form Seller’s Affidavit;

(iv) a well certificate in the form required by law;

(v) any affidavit and disclosures required by law pertaining to private sewage treatment systems.

Section 1.4. Addition of Section 3.4 to the Original Agreement. The following section is added as Section 3.4 to the Original Agreement.

Section 3.4. Issuance of Pay-As-You-Go Note.

(a) In consideration of the Redeveloper constructing the Minimum Improvements and to finance the reimbursement of Public Redevelopment Costs incurred by the Redeveloper, the Authority will issue the Note in favor of the Redeveloper in the principal amount of ~~2,811,700~~\$3,750,700. The Authority and the Redeveloper agree that the consideration from the Redeveloper for the issuance of the Note will consist of the Redeveloper’s payment of the Public Redevelopment Costs incurred by the Redeveloper in at least the principal amount of the Note.

Before delivery of the Note, the Redeveloper shall have:

(i) delivered to the Authority written evidence in a form satisfactory to the Authority that the Redeveloper has paid Public Redevelopment Costs in at least the principal amount of ~~2,811,700~~\$3,750,700;

(ii) submitted Construction Plans to the Authority and obtained approval for the Construction Plans by the Authority;

(iii) submitted and obtained Authority approval of financing in accordance with Section 7.1 hereof; and

(iv) delivered to the Authority an investment letter in substantially the form set forth in EXHIBIT C attached hereto or another form reasonably satisfactory to the Authority.

(b) The Redeveloper understands and acknowledges that the Authority makes no representations or warranties regarding the amount of Available Tax Increment, or that revenues pledged to the Note will be sufficient to pay the principal of and interest on the Note. Any estimates of Tax Increment prepared by the Authority or its municipal advisors in connection with the TIF District or this Agreement are for the benefit of the Authority and are not intended as representations on which the Redeveloper may rely.

(c) The Authority acknowledges that the Redeveloper may assign the Note to a lender that provides the financing for the acquisition of the Redevelopment Property or the construction of the Minimum Improvements. The Authority consents to this type of assignment, conditioned upon receipt of an Investment Letter from the lender.

Section 1.5. Amendment to Exhibit A of the Original Agreement. Exhibit A of the Original Agreement (Legal Description of Redevelopment Property) is hereby deleted in its entirety and replaced with the attached EXHIBIT A.

ARTICLE II

Miscellaneous

Section 2.1. Effective Date. The amendments made to the Original Agreement, as set forth in this First Amendment, shall be effective as of the date and year first written above.

Section 2.2. Certain Defined Terms. Terms used in this First Amendment and not defined herein shall have the meanings given in the Original Agreement.

Section 2.3. Counterparts. This First Amendment may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 2.4. Recording. The Authority may record this First Amendment with the County Recorder or the Registrar of Titles of the County, as the case may be. The Redeveloper shall pay all costs for recording.

Section 2.5. Confirmation of Original Agreement. Except as specifically amended by this First Amendment, the Original Agreement is hereby ratified and confirmed and remain in full force and effect.

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

IN WITNESS WHEREOF, the Authority has caused this First Amendment to Contract for Private Redevelopment to be duly executed in its name and behalf and the Redeveloper has caused this First Amendment to Contract for Private Redevelopment to be duly executed in its name and behalf, all as of the date and year first written above.

**ECONOMIC DEVELOPMENT AUTHORITY FOR
THE CITY OF SHAKOPEE, MINNESOTA**

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Jay Whiting, the President of the Economic Development Authority for the City of Shakopee, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by William H. Reynolds, the Executive Director of the Economic Development Authority for the City of Shakopee, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

GAUGHAN DEVELOPMENT LLC

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____, 2019, by
_____, the _____ of Gaughan Development LLC, a
Minnesota limited liability company, on behalf of the Redeveloper.

Notary Public

EXHIBIT A

DESCRIPTION OF REDEVELOPMENT PROPERTY

Property owned by Authority

Lot 1, Block 7;
Lot 2, Block 7;
Lot 3, Block 7;
Lot 4, Block 7
Lot 5, Block 7,
Lot 6, Block 7;
Lot 7, Block 7;
Lot 8, Block 7;
Lot 9, Block 7; and
Lot 10, Block 7;

All in City of Shakopee, according to the recorded plat thereof, Scott County, Minnesota;

and

the vacated alley in Block 7, City of Shakopee, according to the recorded plat thereof, Scott County, Minnesota, lying between the northerly extension of the westerly line of Lot 1, Block 7, and the northerly extension of the westerly line of the easterly 10 feet of Lot 3, Block 7 (such property will accrete to adjacent parcels listed above)