

FIRST AMENDMENT TO
CONTRACT FOR PRIVATE REDEVELOPMENT

THIS FIRST AMENDMENT TO CONTRACT FOR PRIVATE REDEVELOPMENT, made as of the ____ day of December, 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 DECO SHAKOPEE, LLC, a Minnesota limited liability company (the “Redeveloper”), and amends the Contract for Private Redevelopment, dated May 1, 2019 (the “Original Agreement,” and together with this First Amendment, the “Agreement”), between the Authority and the Redeveloper.

WITNESSETH:

WHEREAS, the Authority and Enclave Development, LLC, a North Dakota limited liability company, entered into the Original Agreement, which was assigned by Enclave to the Redeveloper pursuant to an Assignment and Assumption of Contract for Private Redevelopment, dated September 17, 2019; and

WHEREAS, pursuant to the Agreement, the Redeveloper agreed to acquire certain real property from the City of Shakopee (the “Redevelopment Property”) and develop approximately 89 market-rate apartment units, including underground parking, at grade enclosed parking, and approximately 4,500 square feet of commercial space (the “Minimum Improvements”); and

WHEREAS, in order to make the Minimum Improvements economically feasible for the Redeveloper to construct, the Authority agreed to grant the Redeveloper a Redevelopment Grant for certain Public Redevelopment Costs (as defined in the Original Agreement); and

WHEREAS, the Redeveloper’s costs for constructing the Minimum Improvements, remediation of contaminants on the Redevelopment Property, and certain site improvements exceeded the Redeveloper’s proposed budget by \$1,300,000, because the contamination on the Redevelopment Property needs more remediation than expected due to the asbestos levels and chemicals that had leaked from an adjoining dry-cleaning business; and

WHEREAS, the Authority and Redeveloper are entering into this First Amendment, which amends and supplements the Original Agreement, to provide additional financial assistance to the Redeveloper and increase the maximum principal amount of the Redevelopment Grant; and

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Authority and the Redeveloper, each party does hereby represent, 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 in Section 1.1 of the Original Agreement are hereby amended as follows (deleted language is stricken, and new language is underlined):

“Interfund Loan” means, collectively, the Authority’s interfund loan approved by the Board of the Authority by resolution adopted December 18, 2018 in the amount of ~~\$2,132,400~~ \$2,382,400, which will be utilized to provide the Redevelopment Grant to the Redeveloper and the City’s interfund loan approved by the City Council by resolution adopted September 19, 2017 in the amount of \$250,000, which was utilized by the City to pay the costs of demolishing the old City Hall and environmental remediation related to the Redevelopment Property.

“Redevelopment Grant” means the grant from the Authority to the Redeveloper in the amount of up to ~~\$2,132,400~~ \$2,382,400 made pursuant to Section 3.4 hereof.

Section 1.2. Amendments to Section 3.4 of the Original Agreement. Section 3.4 of the Original Agreement is hereby amended as follows (deleted language is stricken, and new language is underlined):

Section 3.4. Redevelopment Grant.

(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 provide the Redeveloper with the Redevelopment Grant in the maximum principal amount of ~~\$2,132,400~~ \$2,382,400.

(b) The following conditions must be met before the first disbursement of the Redevelopment Grant will be disbursed:

(i) the Redeveloper has submitted Construction Plans to the Authority and obtained approval for the Construction Plans by the Authority;

(ii) the Redeveloper has submitted and obtained Authority approval of financing in accordance with Section 7.1 hereof and has closed on the financing necessary to construct the Minimum Improvements;

(iii) the Redeveloper has executed and delivered to the Authority the Minimum Assessment Agreement substantially in the form attached hereto as EXHIBIT D; and

(iv) the Redeveloper has executed and delivered to the Authority the Guaranty described in Section 3.4(d).

(c) For each disbursement of the Redevelopment Grant, the Redeveloper shall submit to the Authority a written request for disbursement and evidence of the Redeveloper incurring Public Redevelopment Costs in the amount of the requested disbursement, including invoices or other similar evidence of expenditures. The Authority shall disburse the proceeds of the Redevelopment Grant no more often than once per month within ten (10) days of the receipt of a disbursement

request (including the requisite evidence of costs incurred) from the Redeveloper. The maximum amount of the disbursements shall be ~~\$2,132,400~~ \$2,382,400.

(d) The Authority has required, as a condition to providing the Redevelopment Grant to the Redeveloper, that the Redeveloper execute and deliver to the Authority a Guaranty in substantially the form set forth in EXHIBIT B hereto. Pursuant to the Guaranty, the Guarantor will guaranty that the Authority shall receive at least \$202,000 in Tax Increment each year of the TIF District, commencing in the year 2022. Commencing in the year 2022 and thereafter, if the Tax Increment derived from the TIF District each year is less than \$202,000, the Authority shall draw on the Guaranty in the amount of the difference between the Tax Increment received by the Authority during the year and \$202,000, all as more fully described in the Guaranty.

Section 1.3. Amendments to ARTICLE III of the Original Agreement. ARTICLE III of the Original Agreement is amended to include the following Section 3.9:

Section 3.9. City Contribution from Tree Fund. In consideration of the Redeveloper's additional costs related to contamination remediation of the Redevelopment Property, the City has agreed to provide the Redeveloper with up to \$50,000 from the City's Tree Fund to cover the Redeveloper's costs for trees to be planted near streets adjacent to the Minimum Improvements. Such funds will be paid to the Redeveloper based on actual invoices received by the Redeveloper.

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 remains 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

DECO SHAKOPEE, LLC

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

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

Notary Public