

**THIRD AMENDMENT TO
CONTRACT FOR PRIVATE REDEVELOPMENT**

THIS THIRD AMENDMENT TO CONTRACT FOR PRIVATE REDEVELOPMENT, made as of the _____ day of _____, 2020 (the “Third 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”), between the Authority and the Redeveloper, as amended by the First Amendment to Contract for Private Redevelopment, dated December 18, 2019 (the “First Amendment”), and as further amended by the Second Amendment to Contract for Private Redevelopment, dated July 21, 2020 (the “Second Amendment”). The Original Agreement, as amended by the First Amendment, the Second Amendment, and this Third Amendment is referred to herein as the “Agreement.”

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 170 market-rate luxury apartment units, including approximately 125 garage parking spaces and approximately 70 surface parking spaces (for a total of approximately 195 parking spaces on the Redevelopment Property, in addition to public street parking), and 3,000 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 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 the Agreement, and fulfillment generally of the 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, as amended by the First Amendment and the Second Amendment, in order to set forth the conditions of the Redeveloper’s construction of the Minimum Improvements; and

WHEREAS, the Authority has acquired certain parcels of the Redevelopment Property and has proposed to demolish the existing houses on such parcels, which is expected to cost \$131,200; and

WHEREAS, asbestos remediation will be required in connection with the demolition of the houses and the Authority has agreed to cause the remediation to occur with the proceeds of a grant from the Metropolitan Council; and

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. Addition of Section 3.11 to the Agreement. The following section shall be added to Article III of the Agreement.

Section 3.11. Demolition of Existing Houses. The Authority will cause the structures located at 303 1st Avenue West, 313 1st Avenue West, and 116 Atwood St. North to be demolished. The demolition is expected to cost \$131,200. The Redeveloper agrees to pay the Authority for the costs of the demolition on or before Closing.

Section 1.2. Addition of Section 3.12 to the Agreement. The following section shall be added to Article III of the Agreement.

Section 3.12. Met Council Grant. The Authority shall use the proceeds of the Met Council Grant to finance the costs of asbestos remediation in connection with the demolition of the structures located at 303 1st Avenue West, 313 1st Avenue West, and 116 Atwood St. North.

Section 1.3. Addition of Section 6.4 to the Agreement. The following section shall be added to Article VI of the Agreement.

Section 6.4. Minimum Assessment Agreement.

(a) On or before the date of Closing, the Redeveloper shall execute the Minimum Assessment Agreement pursuant to Minnesota Statutes, Section 469.177, subdivision 8, specifying an assessor's minimum market value for the Development Property with the Minimum Improvements constructed thereon.

(b) The Minimum Assessment Agreement shall be substantially in the form attached hereto as EXHIBIT G. Nothing in the Minimum Assessment Agreement shall limit the discretion of the assessor to assign a market value to the property in excess of such assessor's minimum market value nor prohibit the Redeveloper from seeking through the exercise of legal or administrative remedies a reduction in such market value for property tax purposes; provided, however, that the Redeveloper shall not seek a reduction of such market value below the assessor's minimum market value in any year so long as such Minimum Assessment Agreement shall remain in effect. The Minimum Assessment Agreement shall remain in effect for the period described therein.

Section 1.4. Amendment to Exhibit A of the Agreement. Exhibit A of the Original Agreement (Description of Redevelopment Property) is hereby deleted in its entirety and replaced with the attached EXHIBIT A.

Section 1.5. Addition of Exhibit G to the Agreement. The attached EXHIBIT G (Form of Minimum Assessment Agreement) is hereby added to the Agreement.

ARTICLE II

Miscellaneous

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

Section 2.2. Certain Defined Terms. Terms used in this Third Amendment and not defined herein shall have the meanings given in the Original Agreement, as amended by the First Amendment and the Second Amendment.

Section 2.3. Counterparts. This Third 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 Third 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 the First Amendment, the Second Amendment, and this Third 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 Third Amendment to Contract for Private Redevelopment to be duly executed in its name and behalf and the Redeveloper has caused this Third 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 _____, 2020, 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 _____, 2020, 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 _____, 2020, by
_____, the _____ of Gaughan Development LLC, a
Minnesota limited liability company, on behalf of the Redeveloper.

Notary Public

This document was drafted by:
KENNEDY & GRAVEN, CHARTERED (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota 55402

EXHIBIT A

DESCRIPTION OF REDEVELOPMENT PROPERTY

Lot 1, Block 1, River Bluff Addition, Scott County, Minnesota.

EXHIBIT G

FORM OF MINIMUM ASSESSMENT AGREEMENT

THIS MINIMUM ASSESSMENT AGREEMENT, dated as of this ____ day of _____, 2020 (the “Minimum Assessment Agreement”), 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, its successors and assigns (the “Owner”).

WITNESSETH:

WHEREAS, the Authority and the Owner entered into a Contract for Private Redevelopment, dated July 3, 2018, as amended by the First Amendment to Contract for Private Redevelopment, dated December 18, 2019, as amended by the Second Amendment to Contract for Private Redevelopment, dated July 21, 2020, and as further amended by the Third Amendment to Contract for Private Redevelopment, dated _____, 2020 (as amended, the “Agreement”), concerning the property legally described on EXHIBIT A attached hereto (the “Redevelopment Property”); and

WHEREAS, pursuant to the Agreement, the Owner will develop on the Redevelopment Property approximately 170 market-rate luxury apartment units, including approximately 125 garage parking spaces and approximately 70 surface parking spaces (for a total of approximately 195 parking spaces on the Redevelopment Property, in addition to public street parking), and 3,000 square feet of commercial space (the “Minimum Improvements”); and

WHEREAS, the Authority and the Owner desire to establish a minimum market value for the Redevelopment Property and the Minimum Improvements to be constructed thereon, pursuant to Minnesota Statutes, Section 469.177, subdivision 8; and

WHEREAS, the Authority and the County Assessor for Scott County, Minnesota have reviewed the plans for the Minimum Improvements which the Owner has agreed to construct on the Redevelopment Property pursuant to the Agreement; and

NOW, THEREFORE, the parties to this Minimum Assessment Agreement, in consideration of the promises, covenants and agreements made herein and in the Agreement by each to the other, do hereby agree as follows:

1. The Minimum Market Value for the Redevelopment Property with the Minimum Improvements shall be \$25,950,000 (the “Minimum Market Value”). The parties agree that the Minimum Market Value shall be placed against the Redevelopment Property as of January 2, 2022, for taxes payable beginning in 2023, notwithstanding any failure to start or complete construction of such Minimum Improvements by that date.

2. The Minimum Market Value herein established shall be of no further force and effect and this Minimum Assessment Agreement shall terminate on the Maturity Date.

3. This Minimum Assessment Agreement shall be promptly recorded by the Owner with a copy of Minnesota Statutes, Section 469.177, subdivision 8 set forth in EXHIBIT B attached hereto. The Owner shall pay all costs of recording this Minimum Assessment Agreement.

4. Neither the preambles nor the provisions of this Minimum Assessment Agreement are intended to, nor shall they be construed as, modifying the terms of the Agreement. Unless the context indicates clearly to the contrary, the terms used in this Minimum Assessment Agreement shall have the same meaning as the terms used in the Agreement.

5. This Minimum Assessment Agreement shall inure to the benefit of and be binding upon the parties and their successors and assigns.

6. Each of the parties has authority to enter into this Minimum Assessment Agreement and to take all actions required of it and has taken all actions necessary to authorize the execution and delivery of this Minimum Assessment Agreement.

7. In the event any provision of this Minimum Assessment Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

8. The parties hereto agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements, amendments and modifications hereto, and such further instruments as may reasonably be required for correcting any inadequate, or incorrect, or amended description of the Redevelopment Property, or for carrying out the expressed intention of this Minimum Assessment Agreement.

9. Except as provided in Section 8 hereof, this Minimum Assessment Agreement may not be amended nor may any of its terms be modified except by a writing authorized and executed by all parties hereto.

10. This Minimum Assessment Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

11. This Minimum Assessment Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

12. Subject to the terms of the Agreement, the Owner shall have the normal remedies available under the law to contest the Assessor's assessed value of the Redevelopment Property in excess of the Minimum Market Value.

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

IN WITNESS WHEREOF, the Authority has caused this Minimum Assessment Agreement to be duly executed in its name and behalf and the Owner has caused this Minimum Assessment Agreement 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 _____, 2020, 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 _____, 2020, 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 _____, 2020, by
_____, the _____ of Gaughan Development LLC, a
Minnesota limited liability company, on behalf of the Owner.

Notary Public

This document was drafted by:
KENNEDY & GRAVEN, CHARTERED (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota 55402

CERTIFICATION BY ASSESSOR

The undersigned, having reviewed the plans and specifications for the improvements to be constructed and the market value assigned to the land upon which the improvements are to be constructed, and being of the opinion that the minimum market value contained in the foregoing Minimum Assessment Agreement appears reasonable, hereby certify as follows: The undersigned Assessor being legally responsible for the assessment of the described property, hereby certifies that the market value assigned to such land and improvements at the property, legally described on EXHIBIT A attached hereto, shall be not less than \$20,950,000 as of January 2, 2022, for taxes payable beginning in 2023, until termination of the Minimum Assessment Agreement.

County Assessor for Scott County, Minnesota

STATE OF MINNESOTA)
) ss.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by _____, the County Assessor of Scott County, Minnesota.

Notary Public

EXHIBIT A TO MINIMUM ASSESSMENT AGREEMENT
LEGAL DESCRIPTION OF REDEVELOPMENT PROPERTY

The Redevelopment Property is legally described as follows:

Lot 1, Block 1, River Bluff Addition, Scott County, Minnesota.

EXHIBIT B TO MINIMUM ASSESSMENT AGREEMENT

Section 469.177, subd. 8. Assessment Agreements. An authority may enter into a written assessment agreement with any person establishing a minimum market value of land, existing improvements, or improvements to be constructed in a district, if the property is owned or will be owned by the person. The minimum market value established by an assessment agreement may be fixed, or increase or decrease in later years from the initial minimum market value. If an agreement is fully executed before July 1 of an assessment year, the market value as provided under the agreement must be used by the county or local assessor as the taxable market value of the property for that assessment. Agreements executed on or after July 1 of an assessment year become effective for assessment purposes in the following assessment year. An assessment agreement terminates on the earliest of the date on which conditions in the assessment agreement for termination are satisfied, the Maturity Date specified in the agreement, or the date when tax increment is no longer paid to the authority under section 469.176, subdivision 1. The assessment agreement shall be presented to the county assessor, or city assessor having the powers of the county assessor, of the jurisdiction in which the tax increment financing district and the property that is the subject of the agreement is located. The assessor shall review the plans and specifications for the improvements to be constructed, review the market value previously assigned to the land upon which the improvements are to be constructed and, so long as the minimum market value contained in the assessment agreement appears, in the judgment of the assessor, to be a reasonable estimate, shall execute the following certification upon the agreement:

The undersigned assessor, being legally responsible for the assessment of the above described property, certifies that the market values assigned to the land and improvements are reasonable

The assessment agreement shall be filed for record and recorded in the office of the county recorder or the registrar of titles of each county where the real estate or any part thereof is situated. After the agreement becomes effective for assessment purposes, the assessor shall value the property under Section 273.11, except that the market value assigned shall not be less than the minimum market value established by the assessment agreement. The assessor may assign a market value to the property in excess of the minimum market value established by the assessment agreement. The owner of the property may seek, through the exercise of administrative and legal remedies, a reduction in market value for property tax purposes, but no city assessor, county assessor, county auditor, board of review, board of equalization, commissioner of revenue, or court of this state shall grant a reduction of the market value below the minimum market value established by the assessment agreement during the term of the agreement filed of record regardless of actual market values which may result from incomplete construction of improvements, destruction, or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording an assessment agreement constitutes notice of the agreement to anyone who acquires any interest in the land or improvements that is subject to the assessment agreement, and the agreement is binding upon them.

An assessment agreement may be modified or terminated by mutual consent of the current parties to the agreement. Modification or termination of an assessment agreement must be approved by the governing body of the municipality. If the estimated market value for the property for the most recently available assessment is less than the minimum market value established by the assessment agreement for that or any later year and if bond counsel does not conclude that termination of the agreement is necessary to preserve the tax exempt status of outstanding bonds or refunding bonds to be issued, the modification or termination of the assessment agreement also must be approved by the governing bodies of the county and the school district. A document modifying or terminating an agreement, including records of the municipality, county, and school district approval, must be filed for record. The assessor's review and certification is not required if the document terminates an agreement. A change to an agreement not fully

executed before July 1 of an assessment year is not effective for assessment purposes for that assessment year. If an assessment agreement has been modified or prematurely terminated, a person may seek a reduction in market value or tax through the exercise of any administrative or legal remedy. The remedy may not provide for reduction of the market value below the minimum provided under a modified assessment agreement that remains in effect. In no event may a reduction be sought for a year other than the current taxes payable year.