

ASSIGNMENT AND ASSUMPTION OF CONTRACT FOR PRIVATE REDEVELOPMENT

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACT FOR PRIVATE REDEVELOPMENT, made as of _____, 2020 (the "Assignment"), is between GAUGHAN DEVELOPMENT LLC, a Minnesota limited liability company (the "Assignor"), SHAKOPEE APARTMENTS, LLC, a Minnesota limited liability company (the "Assignee"), and the ECONOMIC DEVELOPMENT AUTHORITY FOR THE CITY OF SHAKOPEE, MINNESOTA, a public body corporate and politic of the State of Minnesota (the "Authority").

RECITALS

The Assignor and the Authority are parties to that certain Contract for Private Redevelopment, dated July 3, 2018 (the "Original Agreement"), as amended by the First Amendment to Contract for Private Redevelopment, dated December 18, 2019 (the "First Amendment"), as amended by the Second Amendment to Contract for Private Redevelopment, dated July 21, 2020 (the "Second Amendment"), and as further amended by the Third Amendment to Contract for Private Development, dated September 1, 2020 (the "Third Amendment," and collectively with the Original Agreement, the First Amendment, and the Second Amendment, the "Agreement"), pursuant to which the Authority agreed to convey to the Assignor, as the Redeveloper thereunder, the land legally described in EXHIBIT A attached hereto (the "Redevelopment Property"), and the Assignor agreed 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, the Authority agreed to issue to the Redeveloper a tax increment revenue note in the maximum principal amount of \$3,750,700 to reimburse the Redeveloper for Public Redevelopment Costs; and

WHEREAS, pursuant to Section 8.2 of the Agreement, the Assignor is permitted to assign its rights and interests in the Agreement and its obligations under the Agreement to an affiliate thereof; and

WHEREAS, the Assignor desires to assign to the Assignee all of its rights and interests in the Agreement and its obligations under the Agreement, and the Assignee desires to assume such rights and interests of the Assignor in the Agreement and such obligations of the Assignor under the Agreement;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions. All capitalized terms not defined herein shall have the meanings given such terms in the Agreement.

2. Assignment and Assumption of Agreement. Section 8.2 of the Agreement allows the Assignor to assign its rights and duties under the Agreement to another entity if (a) the proposed transferee has the qualifications and financial responsibility, in the reasonable judgment of the Authority, necessary and adequate to fulfill the obligations undertaken in the Agreement by the Assignor; and (b) any proposed transferee expressly assumes all of the obligations of the Assignor under the Agreement and agrees to be subject to all the conditions and restrictions to which the Assignor is subject. The Assignor hereby assigns to the Assignee all of its rights and interests in and obligations under the Agreement. The Assignee hereby accepts such rights and interests and assumes such obligations, subject to the terms of this Assignment. The Authority acknowledges and consents to such assignment.

3. Covenants of the Assignee. The Assignee expressly assumes all of the obligations of the Assignor under the Agreement and agrees to be subject to all the conditions and restrictions to which the Assignor is subject to under the Agreement.

4. Release of Assignor. This Assignment shall be deemed to release and discharge the Assignor from any obligations of the “Redeveloper” under the Agreement, such obligations having been assumed by the Assignee.

5. Assignee Address. For purposes of notice under the Agreement, the Assignee’s address is set forth below:

Shakopee Apartments, LLC
[ADDRESS]
Attn: _____

6. Governing Law. It is agreed that this Assignment shall be governed by and construed and enforced in accordance with the laws of the State of Minnesota.

7. Entirety of Agreement. This Assignment shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Assignment shall not be binding upon either party except to the extent incorporated in this Assignment.

8. Modification. Any modification of this Assignment or additional obligation assumed by either party in connection with this Assignment shall be binding only if placed in writing and signed by each party or an authorized representative of each party.

9. Execution in Counterparts. This Assignment may be executed, acknowledged and delivered in any number of counterparts and each of such counterparts shall constitute an original but all of which together shall constitute one agreement.

10. Recording. The Authority may record this Assignment and any amendments thereto with the County Recorder or Registrar of Titles of the County, as applicable. The Assignee must pay all costs for recording.

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

IN WITNESS WHEREOF, the Assignor, the Assignee, and the Authority have caused this Assignment and Assumption of Contract for Private Redevelopment to be executed as of the date and year first written above.

ASSIGNOR:

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 Assignor.

Notary Public

This instrument drafted by:

Kennedy & Graven, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
612-337-9300

Execution page of the Assignee to the Assignment and Assumption of Contract for Private Redevelopment, dated as of the date and year first written above.

ASSIGNEE:

SHAKOPEE APARTMENTS, LLC

By _____
Its _____

STATE OF MINNESOTA)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____, 2020, by _____, the _____ of Shakopee Apartments, LLC, a Minnesota limited liability company, on behalf of the Assignee.

Notary Public

Execution page of the Authority to the Assignment and Assumption of Contract for Private Redevelopment, dated as of the date and year first written above.

AUTHORITY:

**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 _____, 2020, by Jay Whiting, the President of the Economic Development Authority for the City of Shakopee, Minnesota, a public body corporate and politic 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 _____, 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 of the State of Minnesota, on behalf of the Authority.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF REDEVELOPMENT PROPERTY

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

SH235-25 (JAE)
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