

ECONOMIC DEVELOPMENT AUTHORITY FOR THE
CITY OF SHAKOPEE, MINNESOTA

RESOLUTION NO. E2020-014

RESOLUTION APPROVING A SECOND AMENDMENT TO
CONTRACT FOR PRIVATE REDEVELOPMENT WITH GAUGHAN
DEVELOPMENT LLC, A COLLATERAL ASSIGNMENT AND
SUBORDINATION OF DEVELOPMENT AGREEMENT, AND OTHER
DOCUMENTS IN CONNECTION THEREWITH

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

WHEREAS, the City previously established and the Authority administers the Minnesota River Valley Housing and Redevelopment Project No. 1 (the “Project”) located within the City, pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended, and caused to be created a Redevelopment Plan (the “Redevelopment Plan”) therefor; and

WHEREAS, the Board of Commissioners of the Authority (the “Board”) adopted a modification of the Redevelopment Plan and approved a tax increment financing plan, as amended, for Tax Increment Financing District No. 19, a redevelopment district; and

WHEREAS, the Authority and the City have identified the need to redevelop land located in the Project (the “Redevelopment Property”), which is owned by the Authority; and

WHEREAS, the Authority and Gaughan Development LLC, a Minnesota limited liability company (the “Redeveloper”), executed a Contract for Private Redevelopment, dated July 3, 2018 (the “Original Agreement”), pursuant to which the Redeveloper agreed to acquire the Redevelopment Property and develop approximately 125 market-rate luxury apartment units, including underground parking, and 3,500 square feet of commercial space (the “Minimum Improvements”); and

WHEREAS, the Authority and the Redeveloper executed a First Amendment to Contract for Private Redevelopment, dated December 18, 2019 (the “First Amendment to Agreement,” and together with the Original Agreement, the “Agreement”), pursuant to which the Redeveloper agreed to develop an additional 50 units of market-rate luxury apartments as part of the Minimum Improvements and to acquire from the Authority additional parcels as part of the Redevelopment Property on which the Minimum Improvements will be constructed; and

WHEREAS, the Redeveloper has discovered additional contamination on the Redevelopment Property and costs of cleaning up the contamination are expected to be \$925,625, and the City has applied or will apply for various grants to assist the Redeveloper in cleaning up the contamination; 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

WHEREAS, on July 21, 2020, the Board adopted a resolution approving the execution of a Second Amendment to Contract for Private Redevelopment, setting forth the amendments to the Agreement, but the Authority and the Redeveloper have since substantively revised the form of the amendment approved by the Board; and

WHEREAS, Old National Bank, a national banking association (“Old National Bank”), has agreed to make a construction loan to Shakopee Apartments, LLC, a Minnesota limited liability company (the “Land Owner”) in the amount of \$22,726,611 (the “Old National Bank Loan”) pursuant to a Loan Agreement (the “Old National Bank Loan Agreement”) between the Land Owner and Old National Bank; and

WHEREAS, the Old National Bank Loan is secured by a Real Estate Note in the principal amount of \$22,726,611 (the “Old National Bank Note”), and the Old National Bank Note is evidenced by a Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents (the “Old National Bank Mortgage”) by the Land Owner in favor of Old National Bank, which encumbers the Redevelopment Property; and

WHEREAS, as a condition to providing the Old National Bank Loan, Old National Bank requires that the Redeveloper assign its rights under the Agreement to Old National Bank to secure the Land Owner’s obligations under the Old National Bank Note, the Old National Bank Loan Agreement, and the Old National Bank Mortgage, and that the Authority subordinate certain of its rights under the Agreement to Old National Bank’s rights under the Old National Bank Mortgage; and

WHEREAS, Crown Bank, a Minnesota corporation (“Crown Bank”), has agreed to provide funding to the Redeveloper for the Minimum Improvements (the “Crown Bank Loan”) and is in the process of finalizing the principal amount and required documentation; and

WHEREAS, Crown Bank has indicated that, as a condition to making the Crown Bank Loan, it will request that the Authority and the Redeveloper execute a subordination agreement and/or a collateral assignment of the tax increment revenue note to be issued by the Authority to the Redeveloper under the terms of the Agreement; and

WHEREAS, there have been presented before the Board (i) an Second Amendment to Contract for Private Redevelopment (the “Second Amendment to Agreement”) proposed to be entered into between the Authority and the Redeveloper, which sets forth the current proposed amendments to the Agreement; and (ii) a Collateral Assignment and Subordination of Development Agreement (the “Collateral Assignment and Subordination”) proposed to be entered into between the Authority, the Redeveloper, the Land Owner, and Old National Bank, which sets forth the terms of the Redeveloper’s assignment of its rights under the Agreement, as amended by the Second Amendment to Agreement (together, the “Amended Agreement”), and the Authority’s subordination of certain of its rights under the Amended Agreement; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Economic Development Authority for the City of Shakopee, Minnesota that:

1. The Board approves the Second Amendment to Agreement and the Collateral Assignment and Subordination in substantially the forms on file in City Hall. The President and Executive Director are hereby authorized and directed to execute and deliver the Second Amendment to Agreement and the Collateral Assignment and Subordination. All of the provisions of Second Amendment to Agreement and the Collateral Assignment and Subordination, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Second Amendment to Agreement and the Collateral Assignment and Subordination shall be substantially in the forms on file with the Authority which is hereby approved, with such omissions and insertions as do not materially change the substance thereof, or as the President and the Executive Director, in their discretion, shall determine, and the execution thereof by the President and the Executive Director shall be conclusive evidence of such determination.

2. The Board hereby authorizes and directs the Executive Director and counsel to the Authority to negotiate the terms of a subordination agreement and/or a collateral assignment of tax increment revenue note on behalf of the Authority with respect to the Crown Bank Loan. Upon approval by the Executive Director and counsel to the Authority of such documentation, the President and the Executive Director are authorized and directed to execute such documentation, the execution of the documents to constitute conclusive evidence of the Authority's approval of and all modifications therein.

3. The President and Executive Director are hereby authorized to execute any other documents or certificates deemed necessary to carry out the intention of this resolution.

Sworn and Executed Under My Hand this 6th day of October, 2020.

President

Executive Director