

COLLATERAL ASSIGNMENT AND SUBORDINATION OF DEVELOPMENT AGREEMENT

THIS COLLATERAL ASSIGNMENT AND SUBORDINATION OF DEVELOPMENT AGREEMENT (this “Assignment”) is made and entered into as of the ____ day of October, 2020, by and among 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”), SHAKOPEE APARTMENTS, LLC, a Minnesota limited liability company (the “Land Owner”), GAUGHAN DEVELOPMENT LLC, a Minnesota limited liability company (the “Redeveloper”), and OLD NATIONAL BANK, a national banking association (the “Lender”).

Recitals

WHEREAS, the Authority and the Redeveloper are parties to that certain Contract for Private Redevelopment dated as of July 3, 2018, as amended by that certain First Amendment to Contract for Private Redevelopment dated as of December 18, 2019, as further amended by that certain Second Amendment to Contract for Private Redevelopment dated as of October 6, 2020 (as may be further amended from time to time, the “Development Agreement”), pertaining to, among other things, the construction of a 170-unit market rate multifamily apartment complex with approximately 3,000 square feet of commercial space (the “Project”), all to be located on property legally described on Exhibit A attached hereto and hereby made a part hereof (the “Property”); and

WHEREAS, the Land Owner, the Redeveloper, and the Authority have entered into an Assignment and Assumption of Contract for Private Redevelopment dated October 6, 2020, whereby Redeveloper will assign all of its rights and interests in the Development Agreement to the Land Owner and the Land Owner will assume all rights and obligations of the Redeveloper under the Development Agreement; and

WHEREAS, the Land Owner and the Lender have entered into that certain Construction Loan Agreement of even date herewith (the “Loan Agreement”), pursuant to which the Lender has agreed to make a construction loan to the Land Owner in the original principal amount of \$22,726,611.00, evidenced by a Real Estate Note in the original principal amount of \$22,726,611.00 (the “Note”) and payable to the order of the Lender; and

WHEREAS, the Note is secured by that certain Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents of even date herewith (the "Mortgage"), executed by the Land Owner in favor of the Lender and encumbering the Property; and

WHEREAS, the Mortgage has been filed of record in the office of the Scott County concurrently herewith; and

WHEREAS, the Lender has required, as an express condition to entering into the Loan Agreement, that the Land Owner and Redeveloper assign their rights under the Development Agreement to the Lender to secure the obligations of the Land Owner under the Note, the Loan Agreement and the Mortgage, and that certain rights of the Authority under the Development Agreement be subordinated to the Mortgage.

NOW, THEREFORE, in consideration of the recitals set forth above and incorporated herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Land Owner hereby agrees as follows:

1. Capitalized terms used herein but not otherwise defined herein shall have the meaning set forth in the Loan Agreement.

2. The Redeveloper and the Land Owner hereby assigns to the Lender all of their right, title and interest in and to the Development Agreement, together with all documents and agreements attached as exhibits thereto, and all amendments, addenda and modifications thereof, whether made now or hereafter, to secure the obligations of the Land Owner under the Note, the Loan Agreement and the Mortgage.

3. The Redeveloper and the Land Owner hereby represent and warrant that there have been no prior assignments of its rights under the Development Agreement (other than to Lender and to Crown Bank), that the Development Agreement is a valid and enforceable agreement, that neither the Authority nor the Redeveloper nor the Land Owner are in default thereunder and that all covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date hereof. The Redeveloper and the Land Owner agree not to sell, assign, pledge, mortgage or otherwise transfer or encumber its interest in the Development Agreement as long as this Assignment is in effect. The Redeveloper and the Land Owner hereby irrevocably constitute and appoint the Lender as its attorney-in-fact to demand, receive and enforce the Redeveloper's and the Land Owner's rights under the Development Agreement for and on behalf of and in the name of the Redeveloper and the Land Owner, respectively, or, at the option of the Lender, in the name of the Lender, with the same force and effect as the Redeveloper and the Land Owner could do if this Assignment had not been made.

4. This Assignment shall constitute a perfected, absolute and present assignment, provided that the Lender shall have no right under this Assignment to enforce the provisions of the Development Agreement or exercise any rights or remedies under this Assignment until an Event of Default shall occur and be continuing.

5. Upon the occurrence of an Event of Default, without affecting any of the Lender's rights or remedies against the Redeveloper or the Land Owner under any other instrument or agreement, the Redeveloper and the Land Owner shall be deemed to have irrevocably appointed the Lender as the Land Owner's attorney-in-fact to exercise any or all of the Redeveloper's and the Land Owner's rights in, to and under this Assignment and to give appropriate receipts, releases and satisfactions on behalf of the Redeveloper and the Land Owner in connection with the performance by any party to the Development Agreement and to do any or all other acts in the Redeveloper's and/or the Land Owner's name or in the Lender's own name that the Redeveloper and/or the Land Owner could do under the Development Agreement with the same force and effect as if this Assignment had not been made. In addition, the Lender shall have the right to exercise and enforce any and all rights and remedies available after a default to a secured party under the Uniform Commercial Code as adopted in the State of Minnesota. If notice to the Redeveloper and the Land Owner of any intended disposition of collateral or of any intended action as required by law in any particular instance, such notice shall be deemed commercially reasonable if given in writing at least ten (10) days prior to the intended disposition or other action. The Redeveloper and the Land Owner hereby authorize the Lender to deliver a copy of this Assignment to any other party to the Development Agreement to verify the rights granted to the Lender hereunder. The Authority is authorized and directed by the Redeveloper and the Land Owner to tender performance of its obligations under the Development Agreement to the Lender upon presentation of a copy of this Assignment.

6. The Authority hereby consents and agrees to the terms and conditions of this Assignment. The Authority further represents and warrants to the Lender that the Development Agreement is a valid agreement enforceable against the Authority in accordance with its terms. The Authority is not in default under the Development Agreement.

7. Neither the Redeveloper nor the Land Owner is in default hereunder and that all covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date thereof.

8. The Authority agrees to provide the Lender with copies of any notice of default given under the Development Agreement, and agrees that the Lender shall have the right, but not the obligation, to cure such default within the time period set forth in the Development Agreement.

9. The parties agree that no change or amendment that would materially and adversely affect the amount or timing of receipt of any tax increment financing shall be made to terms of the Development Agreement without the prior written consent of the Lender.

10. The Authority acknowledges and agrees that the Mortgagee shall have no obligation under the Development Agreement with respect to constructing or completing the Minimum Improvements, and any such obligation shall be subordinate to the Mortgage.

11. The Authority acknowledges that the rights of the Authority with respect to receipt and application of any proceeds of insurance at set forth in Article V of the Development Agreement shall, in all respects, be subject and subordinate to the rights of the Lender under the Mortgage.

12. The Authority acknowledges that the agreements by the Redeveloper and the Land Owner to pay real estate taxes as set forth in Section VI or to reimburse the Authority for tax increment financing under Section VI of the Development Agreement are not the personal obligations of, nor shall any such provision of Article VI impose any personal obligation upon, the Lender, except to the extent the Lender assumes the Redeveloper's and/or the Land Owner's obligations under the Development Agreement and seeks to enforce the Redeveloper's and/or the Land Owner's rights thereunder after an Event of Default as described in Section 5 hereof.

13. This Assignment can be waived, modified, amended, terminated or discharged only explicitly in a writing signed by the Lender. A waiver by the Lender shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Lender's rights or remedies hereunder. All rights and remedies of the Lender shall be cumulative and shall be exercised singularly or concurrently, at the Lender's option, and any exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other.

14. Other than what is described in Section 10 regarding proceeds of insurance, nothing herein shall limit the Authority's ability to exercise its rights and remedies under the Development Agreement.

15. Except as expressly provided by this Assignment, no provision of this Assignment shall be deemed or construed to alter, amend or modify, in any way, the rights and obligations of the Authority against the Redeveloper or the Land Owner as set forth and contained in the Development Agreement.

16. Any notice, request, demand or other communication hereunder shall be deemed duly given if delivered or postage prepaid, certified or registered, addressed to the party as set forth below:

If to the Authority:

Shakopee EDA
485 Gorman Street
Shakopee, Minnesota 55379
Attention: Executive Director

Borrower: Shakopee Apartments, LLC

Loan No. _____

Loan Date: October __, 2020

Document Title: Collateral Assignment and Subordination of Development Agreement

If to the Land Owner:

Shakopee Apartments, LLC
56 East Broadway, Suite 200
Forest Lake, Minnesota 55025
Attention: Patrick Gaughan

If to the Redeveloper:

Gaughan Development LLC
56 East Broadway, Suite 200
Forest Lake, Minnesota 55025
Attention: Patrick Gaughan

If to the Lender:

Old National Bank
10710 Town Square Drive NE
Blaine, Minnesota 55449
Attention: Jason Torke

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

IN WITNESS WHEREOF, the Authority, the Redeveloper and the Land Owner have caused this Assignment to be duly executed as of October __, 2020.

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**[SIGNATURE PAGE TO COLLATERAL ASSIGNMENT OF DEVELOPMENT
AGREEMENT]**

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

**[SIGNATURE PAGE TO COLLATERAL ASSIGNMENT OF DEVELOPMENT
AGREEMENT]**

SHAKOPEE APARTMENTS, LLC, a
Minnesota limited liability company

By: _____
Name: _____
Its: _____

STATE OF MINNESOTA)
)
COUNTY OF _____)

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

Notary Public

**[SIGNATURE PAGE TO COLLATERAL ASSIGNMENT OF DEVELOPMENT
AGREEMENT]**

GAUGHAN DEVELOPMENT LLC, a
Minnesota limited liability company

By: _____
Name: _____
Its: _____

STATE OF MINNESOTA)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of October, 2020, by
_____, the _____ of Gaughan Development LLC, a Minnesota
limited liability company, for and on behalf of the limited liability company.

Notary Public

**[SIGNATURE PAGE TO COLLATERAL ASSIGNMENT OF DEVELOPMENT
AGREEMENT]**

OLD NATIONAL BANK, a national
banking association

By: _____
Name: Jason Torke
Its: Commercial Real Estate Executive

STATE OF MINNESOTA)
) ss
COUNTY OF ANOKA)

The foregoing instrument was acknowledged before me this ____ day of October, 2020, by Jason Torke, a Commercial Real Estate Executive of Old National Bank, a national banking association, for and on behalf of the national banking association.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Winthrop & Weinstine, P.A. (TJK)
225 South Sixth Street, Suite 3500
Minneapolis, Minnesota 55402-4629

Borrower: Shakopee Apartments, LLC

Loan No. _____

Loan Date: October __, 2020

Document Title: Collateral Assignment and Subordination of Development Agreement

EXHIBIT A

(Legal Description)