AGENDA
CHASKA ECONOMIC DEVELOPMENT AUTHROTIY
VIRTUAL ON ZOOM
Monday, April 20, 2020
7:00 PM

1. Call to Order
2. Roll Call
3. Adopt Agenda
4. Approve Previous Meeting Minutes
    A. Approve the March 16, 2020 EDA Meeting Minutes
5. Discussion Items
    A. Adopt Resolution EDA 2020-4, TIF 19 - Chaska Heights Assignment of TIF Note
6. Other Business
7. Adjourn

- MINUTES -
CHASKA ECONOMIC DEVELOPMENT AUTHORITY
MARCH 16, 2020

DRAFT

1. Call to Order
President Windschitl called the meeting to order at 9:09 pm.

2. Roll Call
Roll call was taken. Present: Commissioners Hatfield, Hubbard, Grau, Huang, and President Windschitl.
Absent: None.

Also Present: Nate Kabat, Assistant Executive Director and Matt Podhradsky, Executive Director.

3. Agenda
Motion by Commissioner Grau, second by Commissioner Hubbard to adopt the agenda as presented.
Motion carried.

4. Minutes
Motion by Commissioner Hubbard, second by Commissioner Huang to approve the minutes of the February 24, 2020 EDA meeting.
Motion carried.

5. Discussion Items
5.A. Adopt Resolution EDA 2020-3, Establishing a Redevelopment Tax Increment District (TIF 23 - City Square West Redevelopment) and Approving a Tax Increment Financing Plan
Executive Director Podhradsky presented the item to the Commission.

Motion by Commissioner Huang, second by Commissioner Hatfield to approve EDA Resolution No. 2020-3 establishing a redevelopment tax increment financing district and approve a tax increment financing plan therefor (City Square West Redevelopment Project).
Motion carried.

6. Other Business
There was no other business.

7. Adjourn
Motion by Commissioner Hubbard, second by Commissioner Huang to adjourn the meeting at 9:13 pm.
Motion carried.

REQUEST FOR ACTION
CHASKA ECONOMIC DEVELOPMENT AUTHORITY
4/20/2020

Subject: **TIF 19 - Chaska Heights Assignment of TIF Note**

Prepared By: Nate Kabat, Assistant City Administrator

Background

On May 11, 2015, the Chaska EDA entered into a Development Agreement with Chaska Heights Senior Living, LLC to provide TIF assistance to the Chaska Heights Senior living housing development located at 3120 Chestnut St (Highway 41). The development creates income based affordable senior housing, which is how it qualifies for TIF assistance. In addition to providing affordable senior housing units to the community, the project also generates excess TIF which contributed to the City's housing trust fund.

To meet the income restrictions, per the Development Agreement, the developer agrees to 20% of the units in the development will be occupied by persons or families with incomes not greater than 50% of median income. The developer has been successful in meeting this requirement since entering into the agreement.

Update

Chaska Heights Senior Living, LLC, which owns the development, is currently restructuring and intends to transfer ownership of the property to Chaska Heights Senior Living Realty, LLC. With this transfer, the current owner desires to assign its interest in the TIF Documents to the new owner. This transaction is occurring to facilitate restructuring of financing for the developer. The Development Agreement does allow for this type of transaction under Section 7.4 and Section 8.1. Under these sections, the Chaska EDA does need to provide approval, however the approval shall not be unreasonably withheld, conditioned, or delayed.

City Staff and the City's Attorney have worked with the developer to draft the attached resolution and documents necessary to complete the requested assignment and assumption of the development agreement and associated TIF.

Recommendation

The developer has maintained good standing with the Chaska EDA per the requirements of the Development Agreement originally entered into in 2015. With that, the Development Agreement allows for the requested assignment and assumption of the development agreement and associated TIF to occur. For these reasons, Staff recommend the EDA adopt the resolution approving and authorizing the execution of assignment documents.

CITY COUNCIL ACTION REQUESTED

Motion to adopt Resolution No. EDA 2020-4 approving and authorizing the execution of assignment documents.

CHASKA ECONOMIC DEVELOPMENT AUTHORITY
CARVER COUNTY, MINNESOTA

RESOLUTION

DATE__________04/20/2020__________RESOLUTION NO.___EDA 2020-4 ____

MOTION BY COMMISSIONER_____________SECOND BY COMMISSIONER_____________

A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF ASSIGNMENT DOCUMENTS

WHEREAS, the Chaska Economic Development Authority (the "EDA"), previously entered into an Development Agreement, dated May 11, 2015 (the "Development Agreement"), with Chaska Heights Senior Living, LLC, a Minnesota limited liability company (the "Assignor"), related to the development of an 138 unit senior housing facility (the "Project") located on certain real property in the City of Chaska, Minnesota (the "City"); and

WHEREAS, pursuant to the Development Agreement, the EDA agreed to provide certain tax increment financing assistance to Assignor and in connection therewith delivered a Taxable Limited Revenue Tax Increment Note (Chaska Heights Senior Living, LLC Project) to Trident Development, LLC, a Minnesota limited liability company ("Trident") in the original principal amount of $2,874,667 (the "Note," together with the Development Agreement, the "TIF Documents"); and

WHEREAS, pursuant to an Assignment of Development Agreement and TIF Note, dated June 12, 2015 (the "US Bank Assignment Agreement"), between the EDA, the Assignor, and U.S. Bank National Association (the "Original Lender"), the Assignor granted the Original Lender a security interest in all of its rights under the TIF Documents; and

WHEREAS, the US Bank Assignment Agreement will be released by the Original Lender, together with any and all of the Lender's rights and interests arising thereunder or therein; and

WHEREAS, the Assignor has proposed to convey its interests in the TIF Documents to Chaska Heights Senior Living Realty, LLC, a Minnesota limited liability company, or any of its affiliates or related parties (the "Assignee"), and the Assignee has agreed to acquire and assume the rights, benefits and certain of the obligations and liabilities of the Assignor under and in the TIF Documents; and

WHEREAS, there has been presented to the Board of Commissioners (the "Board") a form of Assignment and Assumption Agreement (the "Assignment and Assumption Agreement") proposed to be entered into between the Assignor and the Assignee, pursuant to which the Assignor will transfer and assign to the Assignee all of the right, title, and interest, if any, of the Assignor in and to the TIF Documents, the Assignee will accept the assignment of all of the Assignor's right, title and interest arising under the TIF Documents with respect to the TIF Documents, and the

Assignee will accept certain of the Assignor's obligations and liabilities under the TIF Documents, as described therein; and

WHEREAS, there has also been presented to the Board a form of Assignment (the "Assignment") proposed to be entered into between Trident and the Assignor, pursuant to which Trident will assign to the Assignor all of the right, title and interest of Trident in the Note to the Assignor; and

WHEREAS, the Assignee proposes to enter into a Collateral Assignment with Orix Real Estate Capital, LLC, or any of its affiliates or related parties (the "Lender"), to assign the TIF Documents to the Lender as collateral for a loan from the Lender in the amount of $24,975,000 for the purpose of refinancing the Project;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Chaska Economic Development Authority that:

1. The Board hereby consents to the transfer of the Project to the Assignee.

2. The Assignment and Assumption Agreement, the Assignment and the Collateral Assignment including the consents attached thereto, together with any related documents necessary in connection therewith, including without limitation all documents or certifications referenced in or attached to such documents (collectively, the "Assignment Documents") and hereby authorizes the President and Executive Director to negotiate the final terms thereof and, in their discretion and at such time as they may deem appropriate, to execute the Assignment Documents on behalf of the EDA, and to carry out, on behalf of the EDA, the EDA's obligations thereunder when all conditions precedent thereto have been satisfied.

3. The approval hereby given to the Assignment Documents includes approval of such additional details therein as may be necessary and appropriate and such modifications thereof, deletions therefrom and additions thereto as may be necessary and appropriate and approved by legal counsel to the EDA and by the officers authorized herein to execute said documents prior to their execution; and said officers are hereby authorized to approve said changes on behalf of the EDA. The execution of any instrument by the appropriate officers of the EDA herein authorized shall be conclusive evidence of the approval of such document in accordance with the terms hereof. In the event of absence or disability of the officers, any of the documents authorized by this Resolution to be executed may be executed without further act or authorization of the Board by any duly designated acting official, or by such other officer or officers of the Board as, in the opinion of the City Attorney, may act in their behalf.

4. Upon execution and delivery of the Assignment Documents, the officers and employees of the EDA are hereby authorized and directed to take or cause to be taken such actions as may be necessary on behalf of the EDA to implement the Assignment Documents when all conditions precedent thereto have been satisfied.

Approved by the Board of Commissioners of the Chaska Economic Development Authority this 20th day of April, 2020.

President

ATTEST:

Executive Director

ASSIGNMENT

THIS ASSIGNMENT (this "Assignment") is made and entered into as of April ___, 2020 by and between Trident Development, LLC, a Minnesota limited liability company ("Trident") and Chaska Heights Senior Living, LLC, a Minnesota limited liability company ("Chaska").

WHEREAS, Trident is the record holder of that certain Taxable Limited Revenue Tax Increment Note, effective as of April 9, 2018, in the original principal amount of $2,874,667.00 executed by Chaska Economic Development Authority, a public body corporate and politic, payable to the order of Trident (the "Note");

WHEREAS, pursuant to the Development Agreement dated May 11, 2015 between the Authority and Chaska, Chaska is the rightful owner and holder of the Note;

WHEREAS, the Note was heretofore assigned by Trident to Chaska; and

WHEREAS, Trident and Chaska desire to more fully evidence such assignment.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Assignment. Trident hereby confirms and evidences that it has heretofore assigned and conveyed to Chaska all of Trident's right, title and interest in the Note and all rights and security interests relating thereto, and all extensions, renewals, modifications, substitutes and replacements of any of same, and Chaska hereby accepts such assignment.

2. Agreements, Representations and Warranties. Each party to this Agreement represents and warrants to the other that: (i) this Agreement constitutes the valid and legally binding obligations of such party, enforceable against such party in accordance with its or their respective terms, as the case may be; and (ii) the person executing this Agreement on its behalf is duly authorized to execute and deliver this Agreement and has the full authority to so bind it.

3. Miscellaneous. This Agreement and the documents referred to herein constitute the entire agreement and understanding of the parties with respect to the subject matter of this Agreement, and supersede any and all prior understandings and agreements, whether oral or written, between or among the parties hereto with respect to the specific subject matter hereof. The parties agree to execute such further documents and instruments and to take such further actions as may be reasonably necessary to carry out the purposes and intent of this Agreement.

4. Governing Law; Jurisdiction. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Minnesota.

5. Counterparts; Facsimile. This Agreement may be executed in several counterparts each of which shall be deemed to constitute an original and all of which together shall constitute one and the same instrument. Facsimile execution and delivery of this Agreement shall be valid and binding for all purposes.

6. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

7. Headings. The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of this Agreement or understanding of the parties hereto and shall not affect in any way the meaning or interpretation of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

TRIDENT DEVELOPMENT, LLC

By: ______________________________

Name: Roger Fink
Title: Secretary

CHASKA HEIGHTS SENIOR LIVING, LLC

By: ______________________________

Name: Samuel L. Kaplan
Title: Chief Manager

[Signature Page to Assignment Agreement]

COLLATERAL ASSIGNMENT

THIS Collateral Assignment ("***Collateral Assignment***") is made and entered into as of the 1st day of ________, 2020 by **CHASKA HEIGHTS SENIOR LIVING REALTY, LLC**, a Minnesota limited liability company ("***Assignor***"), to **ORIX REAL ESTATE CAPITAL, LLC**, Delaware limited liability company ("***Lender***").

RECITALS:

A. Lender has agreed to make a loan (the "***Loan***") in the approximate amount of $24,975,000.00 to Assignor for the purpose of refinancing that certain 138-unit assisted living and memory care facility (the "***Project***") located on the land described in Exhibit A attached hereto. The Loan is being insured by the U.S. Department of Housing and Urban Development ("***HUD***") pursuant to the National Housing Act.

B. In connection with the financing of the acquisition and development of the Project, Assignor's predecessor in title, Chaska Heights Senior Living, LLC ("***Initial Owner***") and the Chaska Economic Development Authority ("***Authority***"), entered into a Development Agreement dated May 11, 2015 ("***TIF Development Agreement***") under which the Authority agreed to assist Initial Owner with the financing and reimbursement of certain costs of the Project.

C. Upon completion of the Project in accordance with the TIF Development Agreement, the Authority reimbursed the Initial Owner in the amount of $2,874,667.00 for costs incurred and paid by the Initial Owner for certain site improvements to the Project, through the issuance of Authority's Taxable Limited Revenue Tax Increment Note (as defined in the TIF Development Agreement) (the "***TIF Note***") under which Tax Increments (as defined in the TIF Development Agreement) ("***Tax Increment Payments***") are being made to the payee thereof on a semiannual basis commencing on August 1, 2018 and continuing each August 1 and February 1 thereafter to and including February 1, 2044, all as set forth in the TIF Development Agreement. The amount of each Tax Increment Payment made by the Authority under the TIF Note shall be determined by a portion of the Tax Increment received by the Authority for the Project.

D. In connection with the Loan, the Initial Owner has conveyed the Project to Assignor and has assigned its rights in the TIF Development Agreement, TIF Note and Tax Increment Payments to Assignor.

E. Lender requires, as a condition to making the Loan, that Assignor assign its interest in the TIF Development Agreement, TIF Note and Tax Increment Payments to Lender as additional collateral for the Loan and has required that Assignor execute and deliver this Collateral Assignment to Lender.

NOW, THEREFORE, in consideration of the foregoing and notwithstanding anything to the contrary in the TIF Development Agreement, and in order to induce Lender to make the Loan, Assignor agrees as follows:

1. Assignment. Assignor hereby transfers and assigns to Lender and grants to Lender a security interest in all of its right, title and interest in and to the following, whether now existing or hereafter created, and all proceeds and products arising therefrom ("***Collateral***"):

(a) The TIF Note, together with all rights, title and interest of Assignor in and to the existing and future changes, extensions, revisions, modifications, guarantees of performance and/or warranties of any kind with respect thereto;

(b) The TIF Development Agreement, together with all rights, title and interest of Assignor in and to any existing and future changes, extensions, revisions, modifications, guarantees of performance, and/or warranties of any kind with respect thereto;

(c) The immediate and continuing right to receive and collect all of the Tax Increment Payments payable to Assignor by the Authority under the terms of the TIF Development Agreement and/or the TIF Note; and

(d) The right to receive, endorse and deposit for collection in the name of Assignor or Lender any checks or other evidences of payment, whether made payable to Assignor or Lender, together with the right to demand, collect, sue for, attach, levy, recover, receive, compromise, and adjust and make, execute, and deliver receipts and releases for all of the foregoing which may be or may hereafter become due, owing or payable by the Authority under the TIF Development Agreement and/or the TIF Note.

2. Representations and Warranties. Assignor represents and warrants to the Lender and agrees as follows:

(a) Assignor will not without the prior written consent of Lender modify, amend, supplement, terminate, surrender or change in any manner whatsoever the Collateral and will not release or discharge the obligations of any party thereto or modify or extend the time of performance thereunder or the scope of the work thereunder.

(b) The Collateral is free and clear of all liens, security interests, assignments and encumbrances other than the assignment and security interest created by this instrument.

(c) Assignor has the full right, power and authority to assign the Collateral free and clear of any and all liens, security interests and assignments.

(d) Assignor will keep the Collateral free from any lien, encumbrance, assignment or security interest whatsoever, other than this assignment and security interest.

(e) Assignor will from time to time and at the request of Lender execute such documents and pay the cost of filing and recording the same and do such other acts and things as Lender may request to establish and maintain a perfected security interest in the Collateral which is valid and superior to all liens, claims or security interests whatsoever.

(f) There have been no defaults on the part of the Assignor under any of the Collateral nor any default by any of the other parties to the Collateral.

(g) The TIF Note, the TIF Development Agreement and all other contracts constituting the Collateral are in full force and effect and are the valid and legally binding obligations of the parties thereto, enforceable in accordance with their terms.

(h) Each right to payment of the Tax Increment Payments in accordance with the terms of the TIF Development Agreement and the TIF Note is the valid, genuine, and legally enforceable obligation of the Authority, subject to no defense, set-off or counterclaim.

(i) The Loan, and assignment hereunder, has been consented to by the Authority as required under the TIF Development Agreement and has priority over any right, title or interest in the Project by the Authority except special assessments, real property taxes and government service liens. Notwithstanding the foregoing, nothing herein shall limit the Authority's rights and remedies under the TIF Development Agreement and the TIF Note with respect to the Assignor.

3. Covenants of Assignor. Assignor covenants and agrees that:

(a) Assignor shall perform each and every one of its duties and obligations under the Collateral and observe and comply with each and every term, covenant, condition, agreement, requirement, restriction and provision of the Collateral.

(b) Assignor shall give prompt notice to Lender and Authority of any claim of or notice of default, or of noncompliance, under any Collateral known or given to it together with a copy of any such notice or claim if in writing.

(c) Assignor will enforce the full and complete performance of each and every duty and obligation to be performed by the other parties to the Collateral at the sole cost and expense of Assignor.

(d) Assignor will appear in and defend any action arising out of or in any manner connected with the Collateral and the duties and obligations of Assignor thereunder.

(e) Assignor will not without the prior written consent of Lender modify, amend, supplement, terminate, surrender or change in any manner whatsoever the Collateral.

(f) Assignor will use best efforts to obtain the written consent of the Authority in a form substantially similar to the consent attached to this Collateral Assignment.

(g) Intentionally Omitted.

(h) Assignor has constructed the Project in accordance with the TIF Development Agreement and the Project included the construction of certain site improvements in the amount of at least $2,874,667.00 that met the requirements for reimbursement by the Authority.

(i) Assignor shall immediately provide Lender with the original of the TIF Note and an endorsement in blank of the TIF Note, each to be held by Lender as collateral for the Loan.

4. Purpose of Collateral Assignment. This Collateral Assignment is made for the purpose of securing the performance and observance by Assignor of all of the terms and conditions of the documents executed in connection with the Loan and in order to induce Lender to make the Loan to Assignor.

5. Scope of Collateral Assignment. This Collateral Assignment is a perfected, absolute and present assignment of the Collateral to secure the obligations of Assignor under the Loan. The rights assigned by this Collateral Assignment include, but are not limited to, all of Assignor's interest in the Collateral including all right, power, privilege and option to receive payments under the Collateral, modify or amend the Collateral, terminate any Collateral, or waive or release the performance or satisfaction of any duty or obligation under the Collateral. Lender has the immediate right to receive all payments under the Collateral (including the payment of all Tax Increment Payments made by the Authority under the TIF Development Agreement); provided, however, that unless and until an "Event of Default" has occurred, Assignor shall have the right, power and authority to collect the Tax Increment Payments. From and after the occurrence of an "Event of Default," at the direction of Lender, all such payments shall be made to, and in the name of Lender, unless Lender directs in writing that such payments be made to Assignor or another third party. All Tax Increment Payments paid to Lender shall belong to the Lender free and clear of any right of the Assignor to receive any payment of Tax Increment Payments. Except as set forth above in this Section 5, Assignor shall have no right to any Tax Increment Payments until the Loan is paid in full, unless earlier directed in writing by Lender. Once the Loan is paid in full, Lender shall no longer be entitled to any Tax Increment Payments and this Collateral Assignment shall be terminated. Assignor (i) consents to the payment of Tax Increment Payments by the Authority to the Lender as provided herein and (ii) agrees that, upon receipt by the Authority of written notice from the Lender to make Tax Increment Payments to or as directed by Lender, the Authority shall make the payments as so specified by Lender and all amounts so paid to the Lender shall reduce dollar-for-dollar the obligations of the Authority to the Assignor under the TIF Note.

6. Lender's Rights to Act on Behalf of Assignor. Assignor hereby irrevocably appoints Lender, its agents and assigns, as its agent and attorney-in-fact and irrevocably authorizes Lender to act on its behalf either in the name of Assignor or Lender in connection with the exercise of any of the rights of Assignor under the Collateral. Assignor agrees to reimburse Lender on demand for any payment or expense incurred by Lender, or its agents or attorneys, pursuant to the aforesaid authorization and Lender may charge its payments or expenses to the indebtedness under the Loan. Assignor hereby irrevocably instructs, directs,

authorizes and empowers all parties to the Collateral to recognize the claims of Lender, or its successors or assigns, and to act upon any instructions or directions of Lender without investigating the reason for any action taken by Lender. The foregoing irrevocable appointment and authorization are coupled with an interest that shall not be revoked for any reason, including the dissolution, liquidation, death, incompetency or insolvency of the Assignor. The sole signature of Lender shall be sufficient for the exercise of any rights under this Collateral Assignment and any party to the Collateral acting upon the directions of Lender shall be further discharged and released from any claim made by Assignor that such actions are contrary to the terms and conditions of the Collateral.

7. No Assumption By Lender. It is understood and agreed that Lender does not assume any of the obligations or duties of Assignor concerning the Collateral.

8. Authority's Rights. If the Assignor fails to satisfy the income restrictions set forth in the TIF Development Agreement, the Authority shall continue to have the ability to exercise the remedies set forth in Section 9.2 of the TIF Development Agreement against Assignor, including the ability to terminate the TIF Note.

9. Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" under this Collateral Assignment:

(a) Any failure by Assignor to fully and completely perform any of the duties or obligations of Assignor under this Collateral Assignment or any failure by Assignor to fully and completely observe, satisfy and comply with all terms, covenants and conditions of this Collateral Assignment.

(b) Any representation or warranty of Assignor contained in this Collateral Assignment shall be untrue or misleading in any material respect.

(c) Any default shall occur under any documents executed by Assignor in connection with the Loan.

(d) Any default shall occur by the Assignor or the Authority under the TIF Note, TIF Development Agreement or any other Collateral.

10. Remedies. Upon the occurrence of an Event of Default, and after ten (10) days notice to Assignor of Lender's intent, Lender may, without further demand or performance, or other demand, advertisement or notice of any kind (except such notice as may be required under the Uniform Commercial Code as enacted in the State of Minnesota (the "***Code***")) forthwith realize upon the Collateral and shall hold the Collateral free and clear of the interest of Assignor therein and shall be entitled to own, hold, dispose of and otherwise deal with the Collateral in its own right and name as its own property, in the name of Assignor or otherwise, exercise any right of Assignor to demand, collect, receive and receipt for, compromise, compound, settle and give acquittance for and prosecute and discontinue any suits or proceedings in respect of any or all of the Collateral; take any action which Lender may deem necessary or desirable in order to realize on the Collateral, including, without limitation, the power to perform or direct the performance by any other party to any contracts which are a part of the Collateral; to endorse in the name of Assignor any checks, drafts, or other documents which are Collateral or are

received in payment or on account of the Collateral; exercise any of the remedies available to a secured party under the Code; and/or proceed to protect and enforce this Collateral Assignment by suits or proceedings or otherwise or for the enforcement of any other legal remedy or equity available to Lender. Assignor expressly recognizes that the Collateral is of a nature not subject to a public or private sale and that the Collateral has no market value of its own and is expressly subject to restrictions on transfer or sale of an interest therein and that therefore no private or public sale is feasible. In the event that any notice is required to be given under the Code, such requirements for reasonable notice shall be satisfied by giving at least ten (10) days' notice to Assignor and Authority prior to the event or thing given rise to the requirement of notice. The foregoing remedies are cumulative and in addition to, and are not restrictive of or in lieu of, the rights or remedies provided for or allowed under any documents in connection with the Loan, or as provided for or allowed by law or in equity.

11. Self Help By Lender. Should Assignor fail to perform any of its duties and obligations under the Collateral, Lender may, without obligation to do so and without releasing Assignor from its obligation to perform such duties and obligations, perform any or all of such duties and obligations, and to the extent that Lender shall incur any costs or pay any monies in connection therewith, including without limitation any costs or expenses of counsel for Lender, such costs, expenses or payments shall be added to the indebtedness under the Loan and shall bear interest from the date advanced or incurred at the interest rate as stated under the documents in connection with the Loan.

12. Indemnity. Lender shall have no obligation to perform or satisfy any duty or obligation of Assignor under the Collateral. Assignor shall and does hereby indemnify, defend and hold Lender harmless from and against and in respect of any and all actions, causes of action, suits, claims, demands, judgments, proceedings and investigations (or any appeal thereof or relative thereto or other review thereof) of any kind or nature whatsoever, arising out of, by reason of, as a result of or in connection with the Collateral, and any and all liabilities, damages, losses, costs, expenses (including fees of counsel and expenses and disbursements of counsel), amounts of judgment, assessments, fines or penalties, and amounts paid in compromise or settlement, suffered, incurred or sustained by Lender as a result of, or reason of or in connection with any of the matters above. Assignor shall not be obligated to indemnify, defend and hold harmless the Lender with respect to any action, causes of action, suits, claims, demands, judgments, proceedings or investigations arising out of acts or omissions of gross negligence or willful misconduct by the Lender.

13. Uniform Commercial Code. To the extent that this Collateral Assignment may be governed by the provisions of the Code now or hereafter in effect, this agreement shall be deemed to be a security agreement within the meaning of the Code, shall be governed by the provisions thereof and shall constitute a grant to Lender of a security interest in the Collateral.

14. Choice of Law. Notwithstanding the place of execution, this instrument is made pursuant to and shall be construed and governed by the laws of the State of Minnesota without regard to the principles of conflicts of law.

15. Notices. Any notices and other communications permitted or required by the provisions of this Collateral Assignment shall be in writing and shall be deemed to have been

properly given or served by depositing the same with the United States Postal Service, or any official successor thereto, designated as Certified Mail, Return Receipt Requested, bearing adequate postage, or deposited with reputable overnight delivery service, and addressed as hereinafter provided. Each such notice shall be effective upon being deposited as aforesaid. The time period within which a response to any such notice must be given, however, shall commence to run from the date of receipt of the notice by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent. By giving to the other party hereto at least thirty (30) days' notice thereof, either party hereto shall have the right from time to time to change its address and shall have the right to specify as its address any other address within the United States of America,

Each notice to Lender shall be addressed as follows;

ORIX Real Estate Capital, LLC
1717 Main Street, Suite 900
Dallas, TX 75201
Attn: FHA Servicing

Each notice to Assignor shall be addressed as follows:

Chaska Heights Senior Living Realty, LLC
730 Second Avenue South, Suite 1450
Minneapolis, MN 55402
Attn: Samuel L. Kaplan

With a Copy to:

Kaplan, Strangis and Kaplan, P.A.
730 Second Avenue South, Suite 1450
Minneapolis, MN 55402
Attn: David Karan, Esq.

Each notice to Authority shall be addressed as follows:

Chaska Economic Development Authority
One City Hall Plaza
Chaska, MN 55318
Attn: Executive Director

16. Consent to Jurisdiction. Assignor submits and consents to personal jurisdiction of the Courts of the State of Minnesota and Courts of the United States of America sitting in such State for the enforcement of this instrument and waives any and all personal rights under the laws of any state or the United States of America to object to jurisdiction in the State of Minnesota. Litigation may be commenced in any state court of general jurisdiction for the State of Minnesota or any United States District Court located in that state, at the election of Lender. Nothing contained herein shall prevent Lender from bringing any action against any other party

or exercising any rights against any security given to Lender or against Assignor personally, or against any property of Assignor within any other state. Commencement of any such action or proceeding in any other state shall not constitute a waiver of consent to jurisdiction or of the submission made by Assignor to personal jurisdiction within the State of Minnesota.

17. Estoppel Certificate. The Assignor shall, within ten (10) days of receipt of a written request from Lender or Authority, furnish Lender and Authority with a letter certifying whether any Events of Default have occurred under the Collateral or this Collateral Assignment.

18. Voluntary Termination. In the event that Assignor or any Successor (as defined in the Consent, Certifications and Agreements of the Chaska Economic Development Authority dated as of even date herewith) is unwilling or unable to comply with the terms of, or its obligations under, the TIF Note and TIF Development Agreement, the Assignor or Successor may provide to the Authority a written notice of termination of the TIF Note and TIF Development Agreement. In accordance with the terms and conditions of this Collateral Assignment, Assignor shall not terminate or provide such notice of termination of the TIF Note and TIF Development Agreement to the Authority without the prior written consent of Lender or its Successor.

19. Successors and Assigns. This Collateral Assignment shall be binding upon the parties hereto and their respective successors and assigns, and shall inure to the benefit of the parties hereto and their respective permitted assigns. The Assignor will not assign its rights and/or obligations under this Collateral Assignment, except for a transfer approved by HUD or the Lender, provided, however, that the Authority's consent shall also be required in the event that such assignment is in conjunction with an assignment of the TIF Development Agreement that requires the Authority's consent. The Lender will not assign its rights and/or obligations under this Collateral Assignment without the consent of the Authority, unless such assignment is made in connection with an assignment of the Loan, in which event no such consent shall be required.

20. Waiver of Jury Trial. THE PARTIES TO THIS COLLATERAL ASSIGNMENT WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING TO WHICH ANY PARTY TO THIS COLLATERAL ASSIGNMENT IS INVOLVED DIRECTLY OR INDIRECTLY AND ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS COLLATERAL ASSIGNMENT OR THE RELATIONSHIP ESTABLISHED HEREUNDER, AND WHETHER ARISING OR ASSERTED BEFORE OR AFTER THE DATE OF THIS COLLATERAL ASSIGNMENT.

[*Signature Pages to Follow*]

IN WITNESS WHEREOF, Assignor has caused this Collateral Assignment to be executed as of the date first above written.

ASSIGNOR:

CHASKA HEIGHTS SENIOR LIVING REALTY, LLC,
a Minnesota limited liability company

By:____
Samuel L. Kaplan, Chief Executive Officer

STATE OF MINNESOTA

COUNTY OF HENNEPIN

This instrument was acknowledged before me this ____ day of ___________, 2020, by Samuel L. Kaplan, as Chief Executive Officer of Chaska Heights Senior Living Realty, LLC, a Minnesota limited liability company, on behalf of said company.

____
Notary Public

signature page to Collateral Assignment

IN WITNESS WHEREOF, Lender has caused this Collateral Assignment to be executed as of the date first above written.

LENDER:

ORIX REAL ESTATE CAPITAL, LLC,
a Delaware limited liability company

By:______________________________________
Quintin A. Harris, Managing Director

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

This instrument was acknowledged before me this ____ day of _________, 2020, by Quintin A. Harris, Managing Director of ORIX Real Estate Capital, LLC, a Delaware limited liability company, on behalf of said limited liability company.

____
Notary Public

signature page to Collateral Assignment

Exhibit A

Legal Description of Land of Project

Real Property in the City of Chaska, County of Carver, State of Minnesota, described as follows:

Parcel 1:

Lot 1, Block 1, Highland Shores of Chaska 2nd Addition, Carver County, Minnesota

Parcel 2:

Together with the rights and benefits described in Easement Agreement for Shared Improvements, dated January 23, 2008, filed of record January 29, 2008, as Document Number 477904.

Parcel 3:

Together with the rights and benefits described in Reciprocal Easement Agreement, dated July 19, 2005, filed of record July 20, 2005, as Document Number 418995. Amended by Amended and Restated Reciprocal Easement Agreement dated January 23, 2008, filed January 29, 2008 as Document Number 477902.

Abstract Property

CONSENT, CERTIFICATIONS AND AGREEMENTS

OF THE CHASKA ECONOMIC DEVELOPMENT AUTHORITY

THE CHASKA ECONOMIC DEVELOPMENT AUTHORITY ("***Authority***"), as a party to the Development Agreement ("***TIF Development Agreement***") dated May 11, 2015 with Chaska Heights Senior Living, LLC, a Minnesota limited liability company ("***Initial Owner***"), as assigned to Chaska Heights Senior Living Realty, LLC, a Minnesota limited liability company ("***Assignor***"), and as the issuer of the Taxable Limited Revenue Tax Increment Note (the "***TIF Note***") issued pursuant to the TIF Development Agreement, acknowledges receipt of a copy of the executed Collateral Assignment ("***Collateral Assignment***") to which this consent is attached assigning to ORIX Real Estate Capital, LLC, a Delaware limited liability company ("***Lender***") all of the Assignor's rights in the TIF Development Agreement, the TIF Note, Tax Increment Payments (as defined in the Collateral Assignment) and certain related rights.

This Consent, Certifications and Agreements of the Chaska Economic Development Authority (the "***Authority Consent***") is executed and delivered to the Lender and Assignor in connection with the execution and delivery of the Collateral Assignment. Capitalized words and terms that are used, but not defined, in this Authority Consent shall have the meanings ascribed thereto in the Collateral Assignment.

The Authority hereby consents, certifies and agrees to the following:

1. <u>Consent to Conveyance of Project and Assignment and Assumption of TIF Development Agreement</u>. The Authority hereby consents to (a) the conveyance of the Project by the Initial Owner to the Assignor, (b) the assignment of all of the Initial Owner's rights under the TIF Development Agreement, the TIF Note, the Tax Increment Payments and all related rights by the Initial Owner to the Assignor and (c) the Assignor's assumption of all of the Initial Owner's obligations under the TIF Development Agreement arising on or after such assignment. The Authority will register the TIF Note in the name of the Assignor upon receipt of the existing TIF Note from Initial Owner, and will register the name of the Assignor in the certification of registration.

2. <u>Collateral Assignment</u>. The Authority acknowledges that (a) the Lender is making the Loan to the Assignor and (b) the Loan will be secured in part by a mortgage recorded against the Project ("***Mortgage***") and the payment of the Tax Increment Payments under the TIF Development Agreement. The Authority hereby consents to the Loan. The Authority hereby consents to the Collateral Assignment provided that nothing therein shall limit the Authority's rights and remedies against the Assignor under the TIF Development Agreement. The Authority agrees that Assignor has provided Lender with the original of the TIF Note issued by the Authority. The Authority further agrees that payments of all Tax Increment Payments under the TIF Note shall continue to be made directly to, and in the name of, Assignor, all in accordance with the terms of the Collateral Assignment, until the Authority receives subsequent written notice to the contrary from the Lender.

3. <u>Future Transfers of Project</u>. The Authority agrees that the Authority's consent shall not be required with respect to any transfer of the Project in the event that (a) such transfer

is in connection with a foreclosure or deed-in-lieu of foreclosure of the Mortgage, (b) such transfer occurs at a time at which the Loan is in default or (c) the transferee elects to terminate the TIF Note and TIF Development Agreement (the Authority agrees that its consent to such termination shall not be required, even if a default then exists under the TIF Development Agreement). In the event of a transfer of the Project pursuant to clause (a) and/or clause (b) of this Section, the Authority's consent shall not be required with respect to any assignment of the TIF Note and TIF Development Agreement provided that the assignee assumes the obligations of the Assignor under the TIF Development Agreement that arise on or after the date of such assignment. However, in the event of such transfer of the Project, notice shall be provided to the Authority In the event that any such assignment is to Lender, HUD or any of their respective successors or assigns, the liability of such assignee under the TIF Development Agreement shall be limited to the interest of such assignee in the Project. In the event that the Project is transferred pursuant to clause (a) or clause (b) of this Section, if the assignee fails to satisfy the income restrictions set forth in the TIF Development Agreement, the Authority shall continue to have the ability to exercise the remedies set forth in Section 9.2 of the TIF Development Agreement, including the ability to terminate the TIF Note. Notwithstanding anything herein to the contrary, should the assignee of the Project be HUD or the Lender, the Authority's additional remedies under Section 9.2(b) and Section 9.2(c) of the TIF Development Agreement shall not apply against such assignee.

4. Future Amendments. The Authority agrees that the TIF Note and the TIF Development Agreement will not be amended without the prior written consent of the Lender and HUD.

5. Intentionally Omitted.

6. Events of Default.

(a) For so long as the Loan is outstanding or the Project is owned by Lender or HUD, the following shall not constitute an Event of Default under Section 9.1 the TIF Development Agreement:

1. The holder of any mortgage on the Project or a portion thereof commences foreclosure proceedings as a result of any default under the applicable mortgage documents; or

2. The Assignor, or any successor or assign:

a. files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the United States Bankruptcy Act of 1978, as amended, or under any similar federal or state law; or

b. makes an assignment for the benefit of its creditors; or

c. admits in writing its inability to pay its debts generally as they become due; or

d. be adjudicated a bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Assignor or any successor or assign as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of the Assignor or a successor or assign, or of the Project, or any part thereof, shall be appointed in any proceeding brought against the Assignor or any successor or assign, and shall not be discharged within ninety (90) days after such appointment, or if the Assignor or any successor or assign shall consent to or acquiesce in such appointment .

(b) If an Event of Default occurs under the TIF Development Agreement, Lender, HUD and any purchaser of the Project at a foreclosure sale or by deed-in-lieu of foreclosure (collectively, a "***Successor***") shall have a reasonable period of time after receipt of notice of such Event of Default (but in no event less than 30 days, nor more than 60 days) to cure such Event of Default prior to the Authority exercising any of its rights and remedies under the TIF Development Agreement (including, but not limited to, any right to terminate the TIF Development Agreement).

7. Authority to Provide Lender Copies of Notices. The Authority will send to Lender a copy of any notice of an Event of Default (as defined in the TIF Development Agreement) or any other notice given to the Assignor pursuant to the TIF Development Agreement simultaneously with the giving of such notice to Assignor. The Lender shall be entitled to the same notice provisions as the Assignor under the TIF Development Agreement.

8. Estoppel Certificate. The Authority hereby certifies that, as of the date hereof:

(a) Each of the TIF Development Agreement and the TIF Note is in full force and effect and has been duly executed and delivered by the Authority and is valid and binding on the Authority.

(b) To the actual knowledge of the Authority, neither the Authority nor the Assignor is in default under any of the terms and conditions of the TIF Development Agreement or the TIF Note.

(c) Construction of the Project has been completed pursuant to the terms, conditions and limitations of the TIF Agreement and the Project included the construction of site improvements of at least $2,874,667.00 that met the requirements for reimbursement by the Authority.

(d) The outstanding principal balance of the TIF Note is $_______________.

9. Miscellaneous.

(a) Lender, HUD and their respective successors and assigns may rely upon this Authority Consent.

(b) The Authority acknowledges and agrees that the Lender and HUD are not parties to the TIF Development Agreement and that, by accepting the Collateral Assignment, the Lender does not become a party to the TIF Development Agreement. The Authority further acknowledges and agrees that neither Lender nor HUD is assuming any obligations under the TIF Development Agreement and that neither Lender nor HUD shall have any obligations under the TIF Development Agreement.

(c) In the event of any conflict between the terms of the Collateral Assignment and/or this Authority Consent, on the one hand, and the terms of the TIF Development Agreement, on the other hand, the terms of the Collateral Assignment and/or this Authority Consent shall be controlling.

(d) This Authority Consent shall survive a foreclosure or deed-in-lieu of foreclosure of the Project. Except as set forth in the preceding sentence, this Authority Consent shall terminate upon payment in full of the Loan.

(e) In the event that Assignor or any Successor is unwilling or unable to comply with the terms of, or its obligations under, the TIF Note and TIF Development Agreement, the Authority agrees, upon receipt of the written notice of termination by Assignor or Successor, to terminate the TIF Note and TIF Development Agreement. In accordance with the terms and conditions of the Collateral Assignment, the Authority acknowledges that Assignor shall not terminate or provide notice of termination of the TIF Note and TIF Development Agreement without the prior written consent of Lender or its Successor.

[*Signature Page to Follow*]

IN WITNESS WHEREOF, Authority has executed this consent effective as of the date of the Collateral Assignment.

CHASKA ECONOMIC DEVELOPMENT AUTHORITY

By:_________________________________
Name:_______________________________
Title:Executive Director

By:_________________________________
Name:_______________________________
Title: President

STATE OF MINNESOTA)
)ss:
COUNTY OF CARVER)

This instrument was acknowledged before me this ____ day of ___________, 2020, by __________, as __________ of the Chaska Economic Development Authority.

____
Notary Public

STATE OF MINNESOTA)
)ss:
COUNTY OF CARVER)

This instrument was acknowledged before me this ____ day of ___________, 2020, by __________, as __________ of the Chaska Economic Development Authority.

____
Notary Public

ASSIGNMENT AND ASSUMPTION AGREEMENT

(TIF Documents)

This Assignment and Assumption Agreement (the "Assignment") is made and entered into on _____________, 2020 (the "Effective Date") among **Chaska Heights Senior Living, LLC**, a Minnesota limited liability company ("**Assignor**"), and **Chaska Heights Senior Living Realty, LLC**, a Minnesota limited liability company ("**Assignee").**

WHEREAS, Assignor entered into a Development Agreement dated May 11, 2015 (the "Development Agreement") with the Chaska Economic Development Authority, a public body corporate and politic (the "Authority") for the construction by Assignor of a 138-unit senior rental housing development in the City of Chaska, County of Carver, State of Minnesota.

WHEREAS, Pursuant to the Development Agreement, the Authority executed that certain Tax Increment Revenue Note in the original principal amount of $2,874,667 with the Assignor dated April 9, 2018, and provided Assignor is in compliance with the requirements of the Development Agreement, shall make payments thereunder to Assignor (the "Note", the Note and the Development Agreement together the "TIF Documents").

WHEREAS, Assignor desires to assign its interest in the TIF Documents to Assignee and, Assignee desires to accept such assignment pursuant to the Section 7.4 of the Development Agreement, the Authority hereby consents to this Assignment.

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

1. **ASSIGNMENT**. For good and valuable consideration, the receipt and sufficiency of which Assignor hereby acknowledges, Assignor does hereby sell, convey, transfer, assign and deliver to Assignee, and Assignee does hereby accept from Assignor, all of Assignor's rights, obligations, interests and liabilities in and to the TIF Documents.

2. **ASSUMPTION BY ASSIGNEE.** In consideration of the transfer from Assignor to Assignee, Assignee assumes all of Assignor's rights, obligations, interests and liabilities under the TIF Documents to the same extent as though it had originally been named as a party thereto and agrees to observe, perform and fulfill all the terms and conditions of the TIF Documents to the same extent as if it had been originally named as a party thereto.

3. **FURTHER ASSURANCES.** The parties hereto agree to execute, acknowledge and deliver, and to take such further action, as may be necessary or appropriate from time to time to effect the provisions hereof.

4. **COUNTERPARTS.** This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

The signature page to this document follows.

IN WITNESS WHEREOF, each of the parties, intending to be bound hereby as of the Effective Date, has caused this Assignment to be executed by its duly authorized representative on the respective dates entered below.

ASSIGNOR:

CHASKA HEIGHTS SENIOR LIVING, LLC, a Minnesota limited liability company

By:________________________________
Samuel L. Kaplan
Its: Chief Manager & President

ACCEPTANCE

Assignee hereby accepts the foregoing Assignment.

ASSIGNEE:

CHASKA HEIGHTS SENIOR LIVING REALTY, LLC, a Minnesota limited liability company

By:________________________________
Samuel L. Kaplan
Its: Chief Executive Officer

CONSENT

The Authority hereby consents to the foregoing Assignment.

IN WITNESS WHEREOF, Authority has executed this consent effective as of the date of the Assignment.

CHASKA ECONOMIC DEVELOPMENT AUTHORITY

By:__________________________________
Name:________________________________
Title: Executive Director

By:__________________________________
Name:________________________________
Title: President

STATE OF MINNESOTA)
)ss:
COUNTY OF CARVER)

This instrument was acknowledged before me this ____ day of ___________, 2020, by __________, as __________ of the Chaska Economic Development Authority.

____
Notary Public

STATE OF MINNESOTA)
)ss:
COUNTY OF CARVER)

This instrument was acknowledged before me this ____ day of ___________, 2020, by __________, as __________ of the Chaska Economic Development Authority.

____
Notary Public