

RESOLUTION 14D-15

**RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH
IMPERIAL DEVELOPMENT COMPANY, LLC IN THE AMOUNT OF \$50,000**

RESOLVED, by the Duluth Economic Development Authority ("DEDA"), that DEDA does hereby make the following determinations and findings:

- A. That the sale of property to Imperial Development Company, LLC ("Developer") in St. Louis County, Minnesota, legally described as Lots 6 through 21, Block 41, NEW DULUTH FIRST DIVISION (the "Property") is in the best interests of the City of Duluth and its people and that the transaction furthers the general plan for economic development in the area.
- B. That after not less than ten (10) or more than twenty (20) days' published notice, the public hearing to hear public comment on the proposed sale was held in City Council Chambers, 3rd Floor City Hall, Duluth, Minnesota, at or shortly after 5:15 p.m. on April 23, 2014, regarding the proposed sale.
- C. That the sale of the Property to Developer conforms in all respects to the requirements of Minnesota Statutes 469.105.

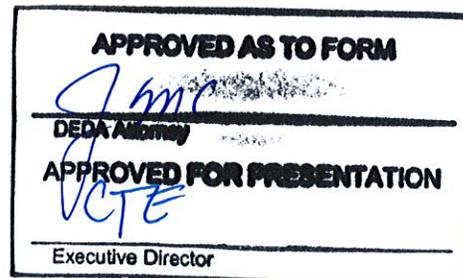
FURTHER RESOLVED, that the proper DEDA officials are hereby authorized to execute the Land Sale Agreement, substantially in the form of that attached hereto (DEDA Contract No. _____) with Developer for the sale by quit claim deed of the Property to Developer, for the sum of \$50,000 including all fees and any additional costs, said sum to be payable into Fund 0860.

FURTHER RESOLVED, that the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to Developer.

Approved by the Duluth Economic Development Authority this 23rd day of April, 2014.

ATTEST:

Executive Director



STATEMENT OF PURPOSE: The purpose of this resolution is to authorize a Land Sale Agreement with Developer for the sale of certain property located at 617 Commonwealth Avenue. Developer will construct a 9,100 square foot building which will be leased to Dolegencorp, LLC ("Dollar General") for a retail facility which will include the sale of food items to the city's west Duluth area.

The transaction will result in property which is presently tax exempt going back on the tax roles. It is anticipated that it will generate up to \$19,200 in total annual taxes.

LAND SALE AGREEMENT
IMPERIAL DEVELOPMENT COMPANY, LLC

THIS AGREEMENT is entered into this ____ day of _____, 2014, by and between THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority under Minnesota Statutes Chapter 469, hereinafter referred to as "DEDA," and IMPERIAL DEVELOPMENT COMPANY, LLC, a limited liability company created and existing under the laws of the State of Missouri, hereinafter referred to as "Imperial".

WHEREAS, Imperial is desirous of acquiring property located at 617 Commonwealth Avenue, Duluth, MN 55808 legally described below for the purpose of constructing a building to lease to Dolgencorp, LLC, a limited liability company created and existing under the laws of the State of Kentucky ("Dollar General") for Dollar General's use of the property as a retail facility; and

WHEREAS, DEDA is desirous of assisting and cooperating with Imperial in acquiring the property in order to provide such retail use within the City; and

WHEREAS, on October 22, 2012, the City of Duluth ("City"), which currently owns the property, adopted Ordinance No. 10184 pursuant to which it authorized the conveyance of the Property to DEDA; and

WHEREAS, on April 23, 2014, the DEDA adopted Resolution No. 14D-15, pursuant to which it authorized the acquisition of the property from the City; and

WHEREAS, DEDA finds that the conveyance of the property to Imperial for the purpose of constructing a building to lease Dollar General for use as a retail facility is in the best interests of the City and its people and that the transaction furthers DEDA's general plan for development.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Earnest Money

Pursuant to DEDA's fee schedule, Imperial has paid earnest money in the amount of \$1,000.

2. Conveyance of Property

The proper DEDA officials are hereby authorized to convey to Imperial by quit claim deed, for the sum of \$50,000 and no/100th Dollars (\$50,000) to be deposited into Fund 860, the real property located in St. Louis County, Minnesota shown on Exhibit A and legally described as follows:

Lots 6 through 21, Block 41, NEW DULUTH FIRST DIVISION (the "Property").

The conveyance of the Property is subject to the following conditions:

- a. Imperial securing a signed lease agreement with Dollar General for the operation of a Dollar General retail facility on the Property;
- b. The approval of plans and specifications pursuant to Paragraph 4 below; and
- c. The City's conveyance of the Property to DEDA and DEDA's acceptance of the same to occur immediately prior to DEDA's conveyance of the Property to Imperial.

The conveyance shall occur on a date mutually agreed to by DEDA and Imperial, but in no event later than March 31, 2015. The conveyance of title to the Property shall be subject to covenants, conditions, restrictions, declarations, easements and encumbrances of record, if any; the reservation of minerals and mineral rights by the State of Minnesota; unpaid real estate taxes and assessments; restrictions related to the use or improvement of the Property without effective forfeiture provision; and any law, ordinance, or governing regulations including but not limited to building and zoning ordinances restricting, regulating or prohibiting the occupancy, use, enjoyment, improvement or subdivision of the property.

The deed conveying the Property from DEDA to Imperial shall also contain as a covenant running with the land the conditions of Minnesota Statutes, Sections 469.090 to 469.108, and shall provide that if said covenant is violated, DEDA may declare a breach of the covenant and seek a judicial decree from the District Court declaring a forfeiture and cancellation of the deed. DEDA will file appropriate release or satisfactions of such covenants upon completion of the building to be leased to Dollar General, issuance of a certificate of occupancy by the City's Construction Services and Inspections Division ("Certificate of Occupancy"), and execution of the Lease Agreement between Imperial and Dollar General.

DEDA will not furnish an abstract. The Property is sold AS-IS. DEDA makes no representations or warranties of any kind whatsoever regarding the Property, including but not limited to warranties or representations as to the quality of title or warranties and representation as to the physical condition of the Property or its suitability for any particular purpose or use. DEDA assumes no obligation to perform any acts or to pay for any expenses incurred in connection with possible title deficiencies except to deliver a properly executed quit claim deed in recordable form.

Imperial agrees that it is experienced in and knowledgeable about the development of real estate and has exclusively relied on its own consultants, advisors, counsel, employees, agents, principals and/or studies, investigations and/or inspections with respect to the Property, its condition, value and potential. The conveyance of the Property to Imperial shall constitute Imperial's acknowledgment that it has independently inspected and investigated the Property. Upon conveyance, Imperial shall assume the risk that adverse matters, including but not limited to adverse physical and environmental conditions and the suitability or unsuitability of the Property for Imperial's intended use may not have been revealed by Imperial's investigations.

If the conveyance of the Property does not occur on or before March 31, 2015, this Land Sale Agreement shall be null and void.

3. Use of the Property

The intended use for the Property is the construction of a building of approximately 9,100 square feet together with related utilities, parking, landscaping and other amenities, all according to the plans approved pursuant to Paragraph 4 below, and the leasing of the Property by Imperial to Dollar General for use as a standard Dollar General retail facility (the "Intended Use" or the "Project").

4. Approval of Plans and Specifications

Prior to the conveyance of the Property to Imperial, Imperial shall have presented to the Executive Director plans and specifications for the Project. Such plans shall be subject to the written approval of DEDA's Executive Director (the "Executive Director"). In the event of any proposed change in the Intended Use of the Property after the initial approval by the Executive Director, the plans and specifications for said proposed change in the Intended Use shall be likewise subject to the approval of the Executive Director.

5. Construction Requirements

In constructing the Project, Imperial shall:

- a. Establish a landscaped screening buffer on the northwest side of the Project site of a nature and to the width and height approved by the Executive Director in consultation with the City's Land Use Supervisor;
 - b. Design and construct a sidewalk on Commonwealth Avenue; and
 - c. Provide that lighting shall be in compliance with the City of Duluth Unified Development Code.
6. One-Year Deadline

Within one year from the date of conveyance of the Property to Imperial, Imperial shall have devoted the Property to its Intended Use by completing construction work on the Project as evidenced by the issuance of a Certificate of Occupancy, and the leasing of the Property to Dollar General for a standard Dollar General retail facility. Imperial shall provide evidence of the issuance of the Certificate of Occupancy and the Lease Agreement to the Executive Director. If Imperial fails to meet the one-year deadline as stated above, DEDA may cancel the sale and title to the Property shall revert to DEDA. Imperial shall not transfer title to the Property within one year of the date of purchase without consent of DEDA, except that if the above conditions have been met, DEDA hereby consents to the transfer of title within one year of the date of purchase. Notwithstanding the above, DEDA hereby consents to the lease of the Property to Dollar General for the purpose set forth herein.

7. Recordation

Immediately upon its execution, Imperial agrees to record this Land Sale Agreement in the office of the St. Louis County Recorder and to pay all costs associated therewith. Upon Recordation, Imperial shall immediately submit to DEDA an executed original of the Land Sale Agreement showing the date and document numbers of record, or certified copies of the filed original. Additionally, immediately upon the execution by DEDA of the quit claim deed conveying the Property to Imperial, Imperial agrees to record the quit claim deed in the office of the St, Louis County Recorder and to pay all costs associated therewith, including but not limited to filing fees and state deed tax. Upon Recordation, Imperial shall immediately submit to DEDA an executed original of the deed showing the date and document numbers of record, or a duly certified copy of the filed originals.

8. Early Access

Until such time as DEDA acquires the Property from the City, DEDA shall use its best efforts to cause the City, through its Chief Administrative Officer, the right to enter upon the Property at dates and time agreed to in writing by the Chief Administrative Officer for the purposes of performing survey work or environmental testing on the

Property. Imperial agrees for itself and to require its contractors to use their best efforts to not unnecessarily disrupt the Property. The costs of such survey and testing work shall be solely the responsibility of Imperial. Imperial shall not permit or allow any mechanics' or materialmen's liens to be filed or established against the Property or any part thereof. In the event that Imperial shall for any reason not purchase the Property from DEDA, Imperial shall be responsible for returning the Property to substantially the condition it was in prior to Overland's entering thereon or Imperial, at its option, agrees to pay the City or DEDA, whichever is the current owner at that time, for the costs of such restoration. Imperial hereby agrees to indemnify DEDA and the City and their officers, agents and employees from and against any and all losses, damages, liabilities, obligations, fines and penalties, including those relating to personal injury or death or property damage as well as those relating to the cost of defending against liens filed against the property, arising from or related to any such entry onto the Property. This indemnification provision shall survive the termination or other disposition of this Agreement.

9. Environmental Indemnification

Imperial hereby agrees that for itself, its successors and assigns, it will indemnify and save DEDA, the City and their officers, agents, servants and employees and any person who controls DEDA or the City within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including attorney's fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition existing on the Property, whether pre-existing or after created, which constitutes a violation of any federal, state or local environmental laws, rules or regulations with regard to pollutants or hazardous or dangerous substances or arising out of the presence on the Property of any element, compound, pollutant, contaminant or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to person(s) or damage to property. Imperial's indemnification shall include all the costs of clean up; remediation; costs incurred in proceedings before a court of law or an administrative agency including attorney's fees, expenses, and the fees and expenses of persons providing technical expertise addressing such problems, including expert witnesses; the cost of preparing and securing approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies and any other costs and expenses of any kind whatsoever arising out of conditions existing on the Property. Provided, however, that the indemnity provided by Imperial to DEDA and the City pursuant to this paragraph is intended to run only to the benefit of DEDA and the City and is not intended to, nor shall

it, inure to the benefit of any other third party; further provided, however, that if the Property is not conveyed to Imperial and Imperial can prove that the environmental condition which would otherwise give rise to environmental indemnification existed prior to the execution of this Agreement, then Imperial shall not be required to indemnify DEDA and the City as set forth in this Paragraph.

10. Taxes and Assessments

There are no property taxes due or special assessments assessed against the Property. Imperial shall pay all real estate taxes and installments of special assessments assessed against the Property from and after the date of conveyance of the Property to Imperial.

11. Default and Remedies

In the event that Imperial fails to perform or to comply with any of the terms, covenants and conditions of this Agreement, DEDA shall give written notice of such default, specifying the nature of the default and, as appropriate, the corrective measures required and allowing Imperial reasonable time to cure, said cure period not to exceed thirty (30) days. If the default is not corrected within such cure period, or is incapable of being cured, DEDA, may in addition to the remedies set forth in Paragraphs 2 and 6, at its option, exercise any one or more of the following rights and remedies. The remedies provided for under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be a waiver of any other remedy with regard to any occasion of default hereunder. Further, the waiver by DEDA of any default on the part of Imperial hereunder or the failure of DEDA to declare default on the part of Imperial of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of Imperial of the same or any other obligation of Imperial hereunder and, to be effective, any waiver of any default by Imperial hereunder shall be in writing by DEDA.

- a. DEDA may seek and be entitled to monetary damages, including consequential damages, from Imperial for any damages, including consequential damages incurred by DEDA as a result of Imperial's default.
- b. DEDA may seek and be entitled to receive reconveyance of the Property from Imperial, free and clear of all liens and encumbrances whatsoever.
- c. DEDA may seek and be entitled to injunctive and declaratory relief as is necessary to prevent Imperial's violation of the terms and conditions.
- d. DEDA may seek such other legal or equitable relief as a court of competent jurisdiction may be determined as available to DEDA.

12. Subordination/Assignment

The Executive Director may, in his sole discretion, decide to subordinate this Land Sale Agreement to liens of other parties. Said consent of the Executive Director will be deemed valid only when reduced to writing.

Imperial shall not assign any right or interest in this Agreement and shall not transfer any interests in the same without the prior written consent of the Executive Director.

13. Notices

Any notice, demand or other communication under this agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, to:

In the Case of DEDA: Duluth Economic Development Authority
402 City Hall
Duluth, Minnesota 55802
Attn: Executive Director

In the Case of Imperial: Imperial Development Company, LLC
194 Narrows Dr. Suite #1
Birmingham, AL 35242

With a copy to: Imperial Development Company, LLC
1598 Imperial Center, Ste. 2001
P.O. Box 885
West Plains, MO 65775

14. Representations by DEDA

DEDA represents and warrants that as of the date hereof:

- a. It is a lawfully constituted economic development authority under the laws of the State of Minnesota, it is not in material violation of any provisions of State law and it has full power and authority to enter into this Agreement and perform its obligations hereunder.
- b. There are no actions, suits or proceedings pending, or to the knowledge of DEDA, threatened against DEDA or any property of DEDA in any court or before any Federal, State, municipal or governmental agency which, if decided adversely to DEDA, would have a material adverse effect upon

DEDA or any business or property of DEDA and DEDA is not in default with respect to any order of any court or government agency.

15. Imperial's Representations and Warranties

Overland represents and warrants for itself only that as of the date hereof:

- a. That Imperial is a lawfully constituted limited liability corporation under the laws of the State of Missouri, is not in material violation of any provisions of Minnesota or Missouri law and that it has full power and authority to enter into this Agreement and to perform its obligations hereunder.
- b. That Imperial is fully competent to acquire the Property and to construct the Project thereon under all laws, rulings, regulations and ordinances of any governmental authority having jurisdiction.
- c. That there are no actions, suits or proceedings pending or, to the knowledge of Imperial, threatened against Imperial or any property of Imperial in any court or before any Federal, State or municipal or other governmental agency which, if decided adversely to Imperial, would have a material adverse affect upon Imperial or the Property and Project, and that Imperial is not in default of any order of any court or governmental agency which, if decided adversely to Imperial, would have a material adverse effect upon the Property or the Project.
- d. That Imperial is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been incurred.
- e. That Imperial shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement delivered to any third party under this Agreement to be true, correct and complete in all material and respects.
- f. That if necessary, Imperial agrees to perform any survey work prior to construction at its cost and expense and all descriptions and exhibits hereto and definitions herein shall be subject to such revisions as are necessary after completion of any survey.

16. Real Estate Brokers

DEDA and Imperial each represent and warrant to the other that this Agreement is made and entered into as a result of direct negotiations between parties without the aid or assistance of any broker or other agent and each of the parties hereby represent and warrants to the other that they have entered into no agreement or made any undertaking of any kind whatsoever as a result of which any claim could properly be

brought against the other for any commission, finder's fee or other form of compensation of a similar character as a result of this transaction.

17. Construction

Both parties have contributed to the drafting of this Agreement. In the event of a dispute, this Agreement shall be construed without reference to any rule of construction based on the identity of the drafters of this Agreement.

18. Applicable Law

This Agreement, together with all of its paragraphs, terms and conditions, is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota. However, litigation in the federal courts involving the parties shall be in the appropriate federal court within the State of Minnesota.

19. No Third Party Rights

This Agreement is to be construed and understood solely as an Agreement between Imperial and the DEDA and, except as provided for in Paragraphs 8 and 9 with respect to the City, shall not be deemed to create any rights in any other person. No person shall have the right to make claim that she or he is a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between DEDA and Imperial, may be waived at any time by mutual agreement between DEDA and Imperial.

20. Independent Contractor

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting Imperial as an agent, representative or employee of DEDA for any purpose or in any manner whatsoever.

21. Authorization to Execute Agreement

Imperial represents to DEDA that the execution of this Agreement has been duly and fully authorized by its governing body or board, that the officers of Imperial who executed this Agreement on its behalf are fully authorized to do so, and that this Agreement when thus executed by said officers on its behalf will constitute and be the binding obligation and agreement of Imperial in accordance with the terms and conditions thereof.

22. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

23. Expiration

If this Agreement is not executed by Seller and Buyer on or before 5:00 P.M., CST/CDT time May 16, 2014, this Agreement shall be null and void and shall have no force and effect and neither Seller nor Buyer shall have any further obligations hereunder.

24. Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

25. Counterparts

This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

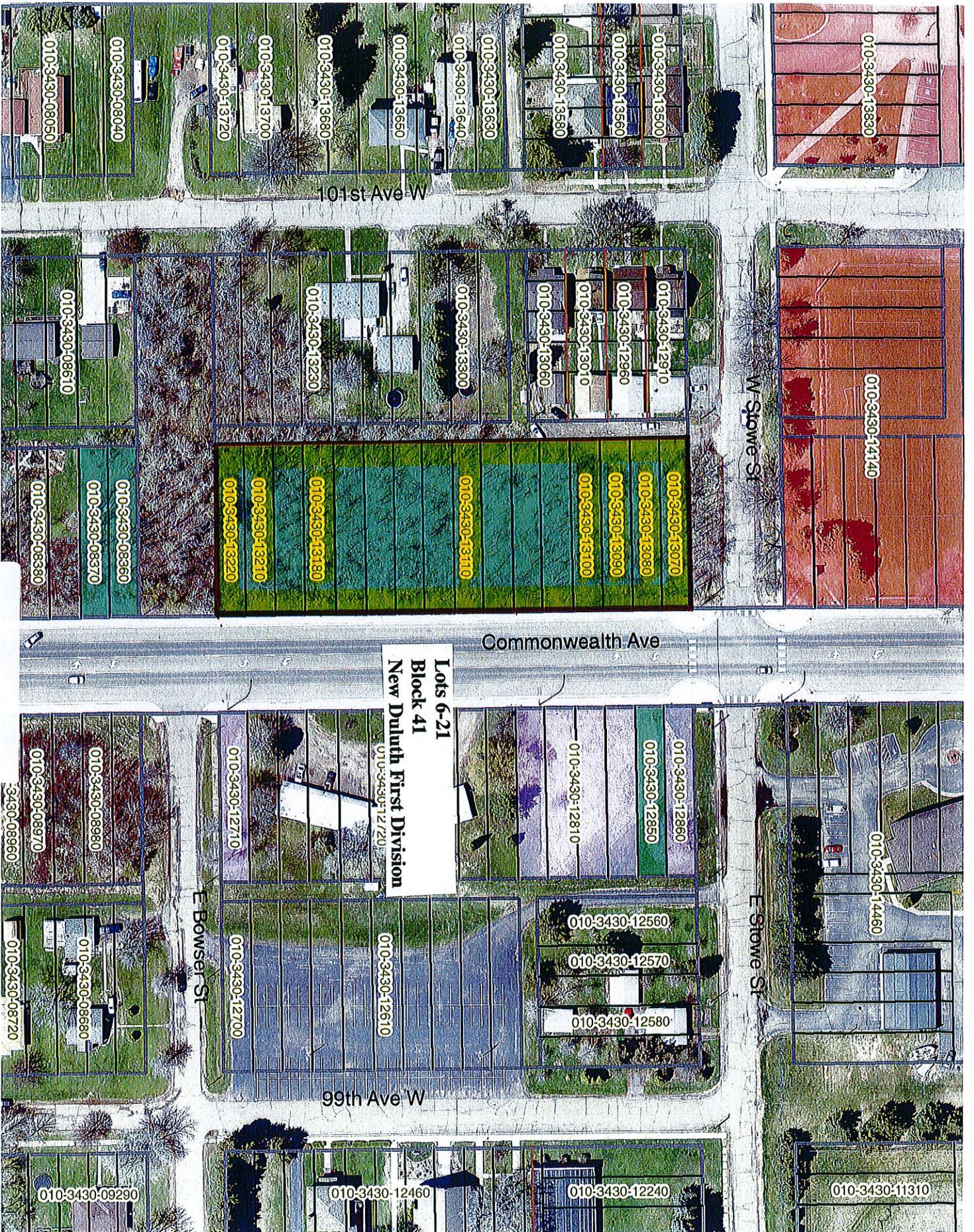
DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

IMPERIAL DEVELOPMENT
COMPANY, LLC

By _____
Its President

By _____
Its Member

By _____
Its Secretary



010-3430-13630

010-3430-14140

010-3430-14460

010-3430-11310

010-3430-13500

010-3430-13560

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010-3430-13090

010-3430-13100

010-3430-13110

010-3430-13180

010-3430-13210

010-3430-13220

010-3430-08360

010-3430-08370

010-3430-08380

Commonwealth Ave

**Lots 6-21
Block 41
New Duluth First Division**

010-3430-12860

010-3430-12850

010-3430-12810

010-3430-12720

010-3430-12710

010-3430-08980

010-3430-08970

010-3430-08960

E Stowe St

010-3430-12560

010-3430-12570

010-3430-12580

010-3430-12610

010-3430-12700

010-3430-08680

010-3430-08720

E Bowser St

99th Ave W

010-3430-12240

010-3430-12460

010-3430-09290