RESOLUTION 14D-17

RESOLUTION AUTHORIZING A SECOND AMENDMENT TO LAND SALE AGREEMENT WITH HAINES PROPERTIES, LLP

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to execute a second amendment to the Land Sale Agreement, substantially in the form of that attached hereto (DEDA Contract No. 07 865 504²), with Haines Properties, LLP ("Developer") changing the required use and deleting certain development and restrictive covenant requirements.

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

ATTEST:

APPROVED AS TO FORM

JMC

DEDA Attorney

APPROVED FOR PRESENTATION

CTE

Executive Director

_____

Executive Director

STATEMENT OF PURPOSE: This resolution authorizes an amendment to the Land Sale Agreement related to property located at the Arrowhead and Haines Roads. The Developer owned property at this location and desired to purchase certain adjacent tax-forfeited property to package the properties for development for office, commercial and light industrial uses. DEDA agreed to assist the project by entering into a land sale agreement pursuant to which DEDA would acquire the tax-forfeited property from the State and convey it to the Developer. The Developer is now poised to sell the property for development. However, the Developer wishes to change the use stated in the Land Sale Agreement from office, commercial and light industrial uses to mixed-use commercial and housing. Additionally, many of the development standards set forth in the Land Sale Agreement are now UDC requirements and do not need to be set forth in the Agreement. Additionally, the restrictive covenant required by the Agreement related to the standards is now deemed unnecessary.

LAND SALE AGREEMENT
HAINES PROPERTIES, LLP
SECOND AMENDMENT

THIS SECOND AMENDMENT 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 HAINES PROPERTIES, LLP, a limited liability partnership created and existing under the laws of the State of Minnesota, hereinafter referred to as "Developer".

WHEREAS, DEDA entered into a land sale agreement dated March 22, 2007, with Developer ("Land Sale Agreement") pursuant to which DEDA agreed to assist Developer in acquiring tax-forfeited parcels for the purpose of combining it with land that Developer currently owns to create a site more marketable for office, commercial and light industrial uses; and

WHEREAS, DEDA and Developer entered into a first amendment to the land sale agreement dated November 26, 2007, ("First Amendment") pursuant to which the time was extended for obtaining the required rezoning and a timeframe was provided by which the Developer was required to pay DEDA for its costs of acquiring the property from the State of Minnesota (the "Land Sale Agreement and First Amendment hereinafter referred to as the "Agreement"); and

WHEREAS, the parties desire to further amend the Agreement to change the required use of the Developer-Owned Site and the Property, to delete certain development and restrictive covenant requirements as set forth below:

NOW, THEREFORE, in consideration of the mutual covenants herein after contained, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Paragraph 2, Use of the Developer-Owned Site and the Property, is deleted in its entirety and replaced with the following:

   Developer hereby agrees that the use of the Developer-Owned Site and the Property shall be limited to mixed-use commercial and housing uses developed in accordance with the City of Duluth Uniform Development Code.

2. Paragraph 3, Conveyance of Property; Plans and Specifications, is deleted in its entirety and replaced with the following:

   No less than 30 days prior to the commencement of construction of any phase of the Project, or such lesser time as approved in writing by the Executive Director, Developer shall have presented to the Executive Director plans and specifications for the phase of the Project. All such plans and specifications shall be in conformity with this Agreement and with all applicable laws, ordinance, rules and regulations. The Executive Director shall review such plans and specifications within 10 days of submission of same by Developer. If the Executive Director objects to such plans and specifications, and upon notification to Developer of said objection together with the reason or reasons therefor, Developer shall submit new, updated, or corrected plans and specifications meeting said objections within 20 days of said notice. The provisions of this Paragraph relating to review and resubmission of corrected plans and specifications hereinafter provided for with respect to the originally submitted plans and specifications shall continue to apply until said plans and specifications have been approved by the Executive Director. The Executive Director's review of Developer's plans and specifications shall not constitute a waiver of building code or zoning ordinance or other applicable codes or ordinances imposed in the future upon Developer by law. Developer expressly agrees to be solely responsible for all costs, including architectural fees connected with said plans, specifications and elevations and any revisions thereto.

3. Paragraph 4, Development Standards, is hereby deleted in its entirely and replaced with the following:

Developer shall plat the Property and construct the Project on the Developer-Owned Site and the Property in accordance with the following Development Standards:

a. Two accesses onto Arrowhead Road, one not closer than 500 feet to the Haines Road ROW line, the second on the tax-forfeited property east of the storm water pond. The existing church access may remain, but shall be removed if the church property becomes part of the larger development.

b. One access onto Haines Road not closer than 500 feet to the Arrowhead Road ROW line.

c. Establish landscaped margins, 75 feet wide east of the Haines Road ROW line and 75 feet wide north of the Arrowhead Road ROW line. The intent of standards in these areas is to create separation of parking and buildings from the public rights of way while maintaining visibility required for viable commercial and retail activity. The Landscape Plan for these areas must be approved in writing by the City's Director of Planning.

4. Paragraph 5, <u>One Year Deadline</u>, is hereby amended to delete the words "as a business park."

5. The second sentence of Paragraph 6, <u>Covenant Running With the Land</u>, relating to a Restrictive Covenant running with the land is hereby deleted in its entirely.

6. Paragraph 8, <u>Consent</u>, is hereby deleted in its entirety and replaced with the following:

   DEDA acknowledges that the purpose of the conveyance of the Property to Developer is to market the Property for mixed-use commercial and housing uses and therefore may involve the reconveyance of the Property to another entity. DEDA therefore now consents to transfers of title to any portion of the Property in a manner consistent with the plans and specifications set forth in Paragraph 3 and the Development Standards set forth in Paragraph 4 even if such transfers occur within one year of the date upon which the Property is conveyed by DEDA to Developer.

7. Simultaneously with the conveyance of the Property to Developer, Developer agrees to record the Land Sale Agreement, the First Amendment, the Second Amendment, and the deed conveying the Property in the office of the St. Louis County Recorder and to pay all costs associated therewith. Upon recordation, Developer shall immediately submit to DEDA and executed original of the Land Sale Agreement, the First Amendment, the Second Amendment, and the deed showing the document numbers of record, or duly certified copies of the filed originals.

8. Except as provided in this Second Amendment, all terms and provision of the Agreement shall remain in force and effect.

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

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

By _____
President

By _____
Secretary

HAINES PROPERTIES, LLP

By _____
Partner

STATE OF MINNESOTA)
) SS
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by Nancy Aronson Norr and Emily Larson, the President and Secretary respectively, of the Duluth Economic Development Authority, an economic development authority under Minnesota Statutes Chapter 469, on behalf of the authority.

_____
Notary Public

STATE OF MINNESOTA)
) SS
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by Frank Holappa, the partner of Haines Properties, LLP, a limited liability partnership created and existing under the laws of the State of Minnesota, on behalf of the partnership.

_____
Notary Public

This Instrument Drafted By:

Joan M. Christensen
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