

RESOLUTION 14D-37

**RESOLUTION AUTHORIZING AN INTERCREDITOR AGREEMENT AND
A FIRST AMENDMENT TO THE BUILDING IN DULUTH 2012 CONDITIONAL
GRANT AGREEMENT WITH TAJ PROPERTIES OF DULUTH, LLC
(A. W. KUETTEL & SONS, INC.)**

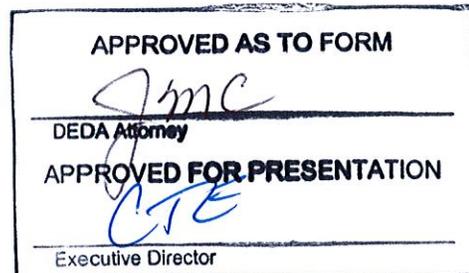
RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to enter into an Intercreditor Agreement, substantially in the form of that attached hereto (DEDA Contract No. _____) with National Bank of Commerce ("NBC") and Arrowhead Regional Development Commission ("ARDC") establishing the priority of their respective security interests.

FURTHER RESOLVED, by DEDA that the proper DEDA officials are hereby authorized to enter into a first amendment to the Building in Duluth 2012 Conditional Grant Agreement, substantially in the form of that attached hereto (DEDA Contract No. 12 865 664¹), with TAJ Properties of Duluth, LLC. authorizing the Executive Director to subordinate DEDA's security interests to those of other parties in the future when the Executive Director determines that DEDA's underlying interest is adequately protected.

Approved by the Duluth Economic Development Authority this 27th day of August, 2014.

ATTEST:

Executive Director



STATEMENT OF PURPOSE: The purpose of this resolution is to amend the Building in Duluth 2012 Conditional Grant Agreement with TAJ Properties to allow for the construction loan to be refinanced into a permanent mortgage on the building. DEDA will be subordinating to National Bank of Commerce and ARDC for the building mortgage, but will receive personal guarantees from the Corporate Officers.

**BUILDING IN DULUTH 2012
CONDITIONAL GRANT AGREEMENT
TAJ PROPERTIES OF DULUTH, LLC
FIRST AMENDMENT**

THIS FIRST AMENDMENT TO CONDITIONAL GRANT AGREEMENT entered into this _____ day of _____, 2014, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, whose address is 402 City Hall, 411 West First Street, Duluth, MN 55802 (hereinafter referred to as "DEDA") and TAJ PROPERTIES OF DULUTH, LLC, a Minnesota limited liability company, whose address is 1225 Port Terminal Drive, Duluth, MN 55802 (hereinafter referred to as "Developer").

WHEREAS, on June 28, 2012, DEDA and Developer entered into a Building in Duluth 2012 Conditional Grant Agreement (the "Agreement") pursuant to which DEDA provided assistance to Developer for costs related to the construction of its new building; and

WHEREAS, the parties desire to amend the Agreement to clarify that DEDA's Executive Director (the "Executive Director") is authorized to subordinate DEDA's Mortgage Lien and other collateral and security interests DEDA may have under the Agreement to liens and collateral of others.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

1. Notwithstanding any other provision in the Agreement to the contrary, the Executive Director is authorized to subordinate the Mortgage Lien, encumbrances, security interests, rights of repayment and any other collateral DEDA has or may have in the future under the Agreement to liens, encumbrances, security interests, rights to repayment and collateral of others when the Executive Director determines that DEDA's underlying interest is adequately protected.
2. Upon execution by the parties, Developer shall record this First Amendment in the office of the St. Louis County Recorder and shall pay all costs associated therewith. Upon Recording, Developer shall immediately submit to DEDA an executed original of this First Amendment showing the date and document numbers of record, or a duly certified copy of the filed original.
3. Except as provided in this First Amendment, the definitions, terms and conditions 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

TAJ PROPERTIES OF DULUTH, LLC

By _____
Its President

By _____
Its _____

By _____
Its Secretary

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Nancy Norr and Emily Larson, the President and Secretary, respectively, of the Duluth Economic Development Authority of Duluth, an economic development authority created and existing under Minnesota Statutes, 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 _____, the _____, of TAJ Properties of Duluth, LLC, a Minnesota limited liability company, on behalf of the company.

Notary Public

This instrument was drafted by:
Joan M. Christensen
Attorney for DEDA
410 City Hall
Duluth, MN 55802
(218) 730-5490

INTERCREDITOR AGREEMENT

This INTERCREDITOR AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2014, by and among ARROWHEAD REGIONAL DEVELOPMENT COMMISSION, a quasi public organization established under the laws of the State of Minnesota (“ARDC”), the address of which is 221 West First Street, Duluth, Minnesota 55802, NATIONAL BANK OF COMMERCE (“NBC”), the address of which is 1314 East Superior Street, Duluth, Minnesota 55805 and DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, whose address is 402 City Hall, 411 West First Street, Duluth, Minnesota 55802 (“DEDA”). (ARDC, NBC and DEDA are collectively referred to herein as the “Lenders.”)

BACKGROUND

A. DEDA has previously provided tax increment assistance to TAJ PROPERTIES OF DULUTH, LLC (“Borrower”) in the amount of \$350,000.00 (the “DEDA Loan”) which is secured by the following (all of which are referred to in this Agreement collectively as the “DEDA Collateral”), and other security:

- (a) a mortgage lien from Borrower on real property located in St. Louis County, Minnesota and legally described as Lot 1, Block 5, SECOND REARRANGEMENT OF PART OF AIRPARK DIVISION (the “Mortgaged Property”) as set forth in the Building in Duluth 2012 Conditional Grant Agreement TAJ Properties of Duluth, LLC dated June 28, 2012, and recorded in the office of the St. Louis County Registrar of Titles on June 29, 2012 as Document No. 916508 (the “DEDA Mortgage”); and
- (b) An Agreement between Borrower and DEDA dated June 29, 2012 and recorded in the office of the St. Louis County Registrar of Titles on June 29, 2012 as Document No. 916509 (the “DEDA Agreement”); and
- (c) A Third Assignment of Leases and Rents by Borrower in favor of DEDA on the Mortgaged Property dated June 17, 2012 and recorded in the office of the St. Louis County Registrar of Titles on July 25, 2012 as Document No. 917493 (the “DEDA Assignment”); and

- (d) A security agreement executed by Borrower granting DEDA a security interest in an Edgmax Dual X Drive cutting machine and two 10-TON QXD Double girder cranes with 70'-0" span, as evidenced by a UCC-1 Financing Statement filed of record in the office of the Secretary of State of the State of Minnesota on July 2, 2012, with a filing number of 201228825444.

B. Pursuant to a Loan Agreement dated July 22, 2014, NBC has made two loans to Borrower and A.W. Kuettel & Sons, Inc. ("Kuettel"), as co-borrowers, in the amounts of \$1,288,000 (the "NBC Loan") and \$332,000 (the "SBA Loan"), respectively (collectively referred to herein as the "Bank Loans") which are secured by the following (all of which is referred to in this Agreement collectively as the "NBC Collateral"), among other security:

- (a) a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Financing Statement from Borrower on the Mortgaged Property in the amount of \$1,288,000, as security for the NBC Loan; and
- (b) a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Financing Statement from Borrower on the Mortgaged Property in the amount of \$332,000, as security for the SBA Loan; and
- (c) A security agreement executed by Borrower and Kuettel granting NBC a security interest in the business assets of Borrower and Kuettel as security for the NBC Loan, as evidenced by a UCC-1 Financing Statement filed of record in the office of the Secretary of State of the State of Minnesota on July 22, 2014, with a filing number of 201437355446; and
- (d) A security agreement executed by Borrower and Kuettel granting NBC a security interest in the business assets of Borrower and Kuettel as security for the SBA Loan, as evidenced by a UCC-1 Financing Statement filed of record in the office of the Secretary of State of the State of Minnesota on July 22, 2014, with a filing number of 201437355585.

C. Pursuant to a Loan Agreement dated July 22, 2014, ARDC has made a loan to Borrower and Kuettel, as co-borrowers, in the amount of \$80,000 (the "ARDC Loan") which is secured by the following (all of which is referred to in this Agreement collectively as the "ARDC Collateral"), among other security:

- (a) a Mortgage and Assignment of Rents from Borrower on the Mortgaged Property; and
- (b) A security agreement executed by Kuettel granting ARDC a security interest in the equipment, furniture and fixtures now owned or hereafter acquired by Kuettel and the proceeds and products of such property, as evidenced by a UCC-1 Financing Statement filed of record in the office of the Secretary of State of the State of Minnesota on July 24, 2014, with a filing number of 201437378540.

D. The DEDA Collateral and the ARDC Collateral also secure the Bank Loans, and some of the DEDA Collateral also secures the ARDC Loan.

E. The DEDA Mortgage, the DEDA Agreement and the DEDA Assignment include provisions relating to the priority of DEDA's security interests in the DEDA Collateral relative to the priority of NBC's security interests in the NBC Collateral, however, Borrower and Kuettel's financing arrangements with NBC have changed since those agreements were signed so that those provisions are no longer reflective of Borrower and Kuettel's financing arrangements with NBC.

F. The parties to this Agreement wish to establish the priority of their respective security interests in the DEDA Collateral, the NBC Collateral and the ARDC Collateral in this Agreement, which is intended to supersede any provisions relating to the priority of NBC's and DEDA's security interests set forth in DEDA Mortgage, the DEDA Agreement and the DEDA Assignment or in any other previous agreement.

AGREEMENT

In order to establish the priority of the Lenders' security interests, the Lenders agree as follows:

1. Priorities.

a. NBC, ARDC and DEDA agree that NBC's security interests in the NBC Collateral have priority over the security interests of ARDC and DEDA. ARDC and DEDA subordinate their security interests in the NBC Collateral to the security interests of NBC in the NBC Collateral.

b. Any and all of ARDC's and DEDA's liens and security interests against any portion of the NBC Collateral, whether now existing or hereafter granted or arising, are and will be in each case subordinate to the rights, liens and interests held by NBC with respect to the NBC Collateral.

c. NBC, ARDC and DEDA agree that ARDC's security interests in the ARDC Collateral have priority over the security interests of DEDA. DEDA subordinates its security interests in the ARDC Collateral to the security interests of ARDC in the ARDC Collateral.

d. Any and all of DEDA's liens and security interests against any portion of the ARDC Collateral, whether now existing or hereafter granted or arising, are and will be in each case subordinate to the rights, liens and interests held by ARDC with respect to the ARDC Collateral.

e. NBC, ARDC and DEDA agree that the priorities set forth in this Agreement shall be binding upon them and to their successors and assigns, and shall control notwithstanding any inconsistencies between the priorities agreed to herein, and any priorities that result by operation of law as a result of the timing of filings of mortgages, financing statements or otherwise.

2. Assignment.

a. Neither NBC, ARDC nor DEDA may assign its interest in this Agreement or any instrument described herein without the consent of the other parties.

b. If any such agreement or instrument is assigned, the assigning party shall immediately give written notice to the other parties of such assignment. Unless such written notice is given, the other parties shall be entitled to assume conclusively that no assignment has occurred.

c. No assigning party shall, by reason of such assignment be released from any obligation hereunder. Each assignee of a party's interest shall be subject to the terms of this Agreement, and any prior action taken by its assignor pursuant to this Agreement.

3. Rights on Default Presented. Notwithstanding anything in this Agreement to the contrary, DEDA and/or ARDC may, after the occurrence of a default on the DEDA Loan or the ARDC Loan, as the case may be, accelerate the ARDC Loan or the DEDA Loan, as the case may be, as permitted by the ARDC Loan or the DEDA Loan, as the case may be, and take any other action to enforce ARDC's or DEDA's rights and exercise their remedies under the ARDC Loan or the DEDA Loan, as the case may be, including their rights with respect to the ARDC Collateral and the DEDA Collateral, subject only to the provisions of Section 4 below.

4. Payments Received. If any distribution of any proceeds of the NBC Collateral is received by DEDA or ARDC from or on behalf of Borrower or Kuettel with respect to the NBC Collateral prior to the satisfaction and payment in full of the Bank Loans in cash, the recipient of the proceeds will receive and hold the same in trust as trustee for the benefit of NBC and will forthwith deliver such assets to NBC in precisely the form received for application on the Bank Loans, due or not due. If any distribution of any proceeds of the ARDC Collateral is received by DEDA from or on behalf of Borrower or Kuettel with respect to the ARDC Collateral after payment in full of the Bank Loan but prior to the satisfaction and payment in full of the ARDC Loan in cash, DEDA will receive and hold the same in trust as trustee for the benefit of ARDC and will forthwith deliver such assets to ARDC in precisely the form received for application on the ARDC Loan, due or not due.

5. Notice of Default. In the event of a default under any note or other agreement evidencing any loan to Borrower (and, as applicable, Kuettel) by any of the Lenders, the party with knowledge of such event of default shall give the other parties prompt notice of the default and copies of all default notices provided to Borrower (and, as applicable, Kuettel).

6. Waivers. No waiver of any of the Lenders' respective rights hereunder shall be deemed to be made or effective unless it is in writing, signed by the waiving party. Each waiver will be a waiver only with respect to the specific instance involved and will no way impair the rights of the waiving party or the obligations of the other party to the waiving party in any other respect at any other time.

7. Successors and Assigns. This Agreement is binding upon and will inure to the benefit of the parties' respective successors and assigns, subject to the provisions hereof.

8. Amendments; Integrated Agreement. This Agreement sets forth the entire understanding of the parties with respect to the matters set forth herein and may not be amended or modified except upon a writing signed by all parties.

9. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which will constitute but one and the same instrument.

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

The foregoing was acknowledged before me on _____, 2014, by
_____ the _____ of National Bank of
Commerce.

SIGNATURE OF PERSON TAKING ACKNOWLEDGEMENT

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

The foregoing was acknowledged before me on _____, 2014, by Nancy Norr
and Emily Larson, the President and Secretary, respectively, of DULUTH ECONOMIC
DEVELOPMENT AUTHORITY, an economic development authority created and existing
under Minnesota Statutes (1989) Chapter 469, on behalf of the Authority.

SIGNATURE OF PERSON TAKING ACKNOWLEDGEMENT

ACKNOWLEDGMENT

The foregoing Intercreditor Agreement is acknowledged and approved by TAJ PROPERTIES OF DULUTH, LLC and A.W. KUETTEL & SONS, INC., who agree to its terms and understand and agree that the relative priorities of the security interests held by Duluth Economic Development Authority, National Bank of Commerce and Arrowhead Regional Development Commission in their real and personal property are as set forth in this Intercreditor Agreement, notwithstanding any inconsistencies between the priorities agreed to herein, and any priorities that result by operation of law as a result of the timing of filings of mortgages, financing statements or otherwise, and regardless of the provisions of any other agreement.

TAJ PROPERTIES OF DULUTH, LLC

By _____
Its _____

A.W. KUETTEL & SONS, INC.

By _____
Its _____

THIS INSTRUMENT WAS DRAFTED BY:
Fryberger, Buchanan, Smith & Frederick, P.A.
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Duluth, MN 55802-1863
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