

**RESOLUTION 14D-45**

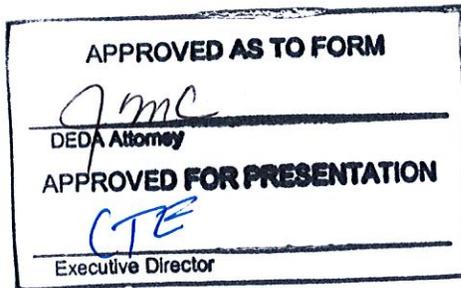
**RESOLUTION APPROVING AN AMENDED AND RESTATED  
LICENSE AGREEMENT WITH MINERS, INC.**

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to enter into an Amended and Restated License Agreement, substantially in the form of that attached hereto (Contract No. \_\_\_\_\_), with Miners, Inc. ("Miners").

Approved by the Duluth Economic Development Authority this 19<sup>th</sup> day of November, 2014.

ATTEST:

\_\_\_\_\_  
Executive Director



STATEMENT OF PURPOSE: Earlier this summer, Miners requested the use of DEDA property adjacent to property it owns for the storage of semi-trailers until the construction is completed on the expansion of their existing distribution center at 39<sup>th</sup> Ave West and West 2<sup>nd</sup> Street in West Duluth. Pursuant to authority granted to the Executive Director, Miners entered into a short-term three-month license agreement. Miners has requested an extension to the license agreement. Due to the extended duration, the License Agreement requires DEDA board approval. This resolution authorizes an Amended and Restated License Agreement extending the term of the Agreement through December 31, 2014.

## AMENDED AND RESTATED LICENSE AGREEMENT

THIS AMENDED AND RESTATED LICENSE AGREEMENT ("License Agreement") is by and between the Duluth Economic Development Authority ("DEDA") and Miners, Inc. ("Licensee").

WHEREAS, Licensee desires to use certain DEDA-owned property in the Oneida Industrial Park area for the purpose of storing semi-trailers; and

WHEREAS, DEDA desires to assist the Licensee by allowing use of DEDA property for such purposes.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. The License

Subject to the terms and conditions set forth herein, DEDA grants to Licensee a non-exclusive License in that portion of DEDA property legally described on Exhibit A and as shown bordered by red and labeled "Premises" on the attached Exhibit B (the "Premises").

2. Use of the Premises

The Premises shall be used solely for purposes of storage of semi-trailers and, upon the prior written approval of DEDA's Executive Director (the "Executive Director"), for the storage of personal property and for no other purpose. No fuel, or substances or contaminants as described in Paragraph 12, may be stored on the Premises nor oil changes or fueling be performed on the Premises.

3. Term

Notwithstanding the date of execution, the term of this License Agreement shall begin on July 28, 2014, and continue through December 31, 2014. Notwithstanding the above, this License Agreement may be terminated by either party upon fifteen (15) days' prior written notice.

4. Rent

No rent shall be charged for use of the Premises.

5. Permits and Approvals

Licensee shall be responsible for securing all necessary permits and approvals required by the City of Duluth (the City), St. Louis County, the State of Minnesota and all other regulatory agencies having jurisdictional authority over said use.

6. Site Safety

Licensee shall forbid access by the general public on the Premises.

7. No Warranty

DEDA makes no representation, either express or implied, as to merchantability or fitness for any particular uses or other representations or warranties with respect to the condition of the Premises. Licensee accepts the Premises in an "as is" condition.

8. Maintenance

Licensee agrees to exercise reasonable care in the maintenance of the Premises during the term of this License Agreement. Additionally, during the term of this License Agreement, Licensee shall mow the grass/weeds and maintain the DEDA property as directed by the Executive Director.

Except as provided herein, Licensee shall not make any alterations or improvements to the Premises without the prior written approval of the Executive Director. Licensee shall surrender the Premises at the termination of this License Agreement in the condition, including environmental condition or state, found prior to the commencement of this License Agreement, including environmental condition. Licensee agrees to pay upon demand any clean-up or damage done to the Premises during the term of this License Agreement as directed by the Executive Director.

9. Access

DEDA reserves the right to unlimited access at all times to the Premises for purposes of inspection and of ensuring that the provisions of this Agreement are complied with by Licensee. All on-duty law enforcement personnel, acting in their official capacity, shall be authorized to enter the Premises without regard to this paragraph.

10. Refuse and Garbage

Licensee assumes all sole responsibility for the disposal of refuse and garbage at the Premises and agrees to pay all costs related thereto.

11. Indemnification

DEDA and/or the City shall in no way be liable or responsible for any accident or damage that may occur in the use of the Premises during the term of this License Agreement. The Licensee agrees that it shall defend, indemnify and save harmless, DEDA and the City, and their officers, agents, servants and employees from and against any and all claims of any type including claims for contribution or indemnity, all demands, suits, judgments, costs and expenses, including reasonable attorneys' fees, asserted by any person or persons including

agents or employees of DEDA, the City, the Licensee, the Licensee's contractor, invitees, or any other person or entity whether or not they are there by invitation or with consent of Licensee by reason of the death of or injury to person or persons or the loss of or damage to property or any cause of action arising out of or in any way related to the use of the Premises. On ten (10) days' written notice from DEDA, the Licensee will appear and defend all lawsuits against DEDA or the City growing out of such injuries or damages.

12. Hazardous Waste

Notwithstanding any provision of this License Agreement, it is specifically agreed between the parties that Licensee shall be responsible in all aspects for the use of or generation of any petroleum based substance or product, or any volatile organic compound, or any substance classified as a pollutant or as a contaminant, or as waste, or as a "hazardous waste" by either the Environmental Protection Agency of the Government of the United States or the Minnesota Pollution Control Agency, or any laws or rules they administer. Licensee shall specifically be responsible for the disposition of all such substances and for the cleanup of any environmental condition deemed by those agencies or either of them to require environmental response or cleanup activities of any kind which need arises, directly or indirectly, out of or in any way related to Licensee's use of the Premises.; and Licensee specifically agrees that the obligations of Paragraph 11 Indemnification shall apply specifically to any costs or obligations of DEDA and/or the City arising out of any such disposition or cleanup.

13. Insurance

Licensee shall procure and continuously maintain insurance covering all risks of injury to or death of any person(s) or entity(ies) or damage to property arising in any way out of or as a result of Licensee's occupancy of or use of the Premises, carried in the name of Licensee. During the term of this License Agreement, Licensee shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form and Automobile Insurance in limits of not less than \$1,500,000 aggregate per occurrence for personal bodily injury and death, and limits of \$1,500,000 for property damage liability and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance whether on or off the Premises. If person limits are specified, they shall be for not less than \$1,500,000 per person and be for the same coverages. DEDA and the City shall be named as additional insureds thereon. All insurance shall be taken out and maintained in responsible insurance companies organized under the laws of the United States and licensed to do business in the State of Minnesota. Certificates

showing that Licensee is carrying such insurance in the specified amounts shall be furnished to DEDA prior to the execution of this Agreement. Insurance shall cover:

- a. Public liability, including premises and operations coverage;
- b. Independent contractors--protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned and hired vehicles, where applicable;
- e. Contractual liability covering the indemnity obligations set forth herein;
- f. Products--completed operations.

Additionally, Licensee shall maintain Workers' Compensation Coverage in statutory amounts with "all states" endorsement unless qualified as a self-insurer under Minnesota Law.

Licensee shall require its contractor to maintain the coverages set forth above and DEDA and the City shall be named as additional insureds thereon.

DEDA does not represent or guarantee that these types or limits of coverage are adequate to protect Licensee's interests and liabilities. If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify DEDA without fail not less than 30 days prior to any cancellation, non-renewal, or modification of the policy or coverages evidenced by such certificate and shall further provide that failure to give such notice to DEDA will render any such change or changes in said policy or coverages ineffective as against DEDA and the City. The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms - 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL-7002) - or equivalent, as approved by DEDA's Attorney.

#### 14. Independent Contractor

It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting the Licensee or any of its officers, agents, servants and employees as an officer, agent, servant, representative or employee of DEDA or the City for any purpose or in any manner whatsoever. The Licensee's officers, agents, servants, contractors and employees shall not be considered employees of DEDA or the City, and any and all claims which may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of said officers, agents, servants, contractors and employees while engaged in performing any work under this Agreement, and any and all claims whatsoever on behalf of said officers, agents, servants,

contractors and employees arising out of employment, including, without limitation, claims of discrimination, shall in no way be the responsibility of DEDA or the City. The Licensee's officers, agents, servants, contractors and employees shall not be entitled to any compensation or right or benefits of any kind whatsoever for leave or vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay.

15. Limitation of Liability

The liability of DEDA shall be governed by the provisions of the Minnesota Municipal Limitation of Liability Statute, Minnesota Statutes, Section 466 et. seq.

16. Assignment

Licensee shall not assign its interest under this License Agreement or any part hereof.

17. Notices

Any notice to be given by either party shall be deemed to be properly served if deposited with the United States Postal Service, or other acceptable mailing service, postage prepaid, addressed to DEDA as follows: Duluth Economic Development Authority, Attn: Executive Director, 411 West First Street, Room 402, Duluth, MN 55802; and to Licensee as follows: Miners Inc., Attn: Facilities Manager, Super One Foods, 5065 Miller Trunk Highway, Hermantown, MN 55811.

18. Compliance with Laws, Rules and Regulations

Licensee agrees to observe, comply and abide with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City and their respective agencies which are applicable to its activities under this License Agreement. Licensee shall procure at its own expense all licenses, permits or other rights required for the activity contemplated by this License Agreement.

19. Choice of Law/ Venue

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. All proceedings related to this Agreement shall be venued in the State of Minnesota.

20. Civil Rights Assurances

Licensee, for itself and its officers, agents, servants and employees as part of the consideration under this Agreement, does hereby covenant and agree to comply with all laws relating to unlawful discrimination.

21. Obey All Laws

Licensee shall conduct its affairs and carry on its business and operations in such a manner as to comply with any and all applicable laws of the City of Duluth, the County of St. Louis, State of Minnesota and the United States of America and duly observe and conform to all valid orders, regulations and requirements of any governmental authority related to the conduct of its business and the lease of the Premises.

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. Waiver

Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

24. Amendments

Any amendments to this License Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

25. Authority to Execute Agreement

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

26. Counterparts

This License Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute the binding and enforceable agreement of the parties hereto. This License Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party.

27. Entire Agreement

This License Agreement, including Exhibits A and B, constitutes the entire agreement between parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter.

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

DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY

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Nancy Norr  
Its President

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Emily Larson  
Its Secretary

MINERS, INC.

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Matt Miner  
Its \_\_\_\_\_

## EXHIBIT A

Lot 6, Block 6, Harrington's Addition to Duluth, together with that part of the northwesterly half of the vacated alley adjoining said Lot 6, lying between the southeasterly extensions of the northeasterly and southwesterly lines of said Lot 6; and  
Lot 7, Block 6, Harrington's Addition to Duluth, EXCEPT minerals; and

Lots 8, 9 and 10, Block 6, Harrington's Addition to Duluth, together with that part of the northwesterly half of the vacated alley adjoining said Lots 8, 9 and 10, lying between the southeasterly extensions of the northeasterly line of said Lot 10 and the southwesterly line of said Lot 8; and also Lot 1, Block 3, Sutphin's Addition to Duluth; and

Lot 11, Block 6, Harrington's Addition to Duluth; and

Lot 2, Block 3, Sutphin's Addition to Duluth; and

Lots 12 and 13, Block 6, Harrington's Addition to Duluth, together with that part of the northwesterly half of the vacated alley adjoining said Lots 12 and 13 lying between the easterly extension of the northerly line of said Lot 13 and the southeasterly extension of the southwesterly line of said Lot 12; and

Lots 6 through 12 inclusive, Block 7, Harrington's Addition to Duluth, together with that part of the southeasterly half of the vacated alley adjoining said Lots 6 through 12 lying between the northwesterly extensions of the northeasterly line of said Lot 12 and the southwesterly line of said Lot 6; and

Lots 13, 14 and 15, Block 7, Harrington's Addition to Duluth, EXCEPT minerals to Lot 15, Block 7, Harrington's Addition to Duluth; and

Lot 2, Block 4, including vacated portion of alley attaching hereto, Sutphin's Addition to Duluth, EXCEPT minerals; and

Lot 16, Block 7, Harrington's Addition to Duluth; and also Lot 3, Block 4, Sutphin's Addition to Duluth; and also that part of the southeasterly half of the vacated alley adjoining said Lot 3 lying between the northwesterly extensions of the northeasterly and southwesterly lines of said Lot 3; and also that part of the southwesterly half of vacated 38<sup>th</sup> Avenue West adjoining said Lot 16 and said Lot 3 (and the southeasterly half of the vacated alley adjoining said Lot 3), lying between the northeasterly extensions of the centerline of the vacated alley adjoining said Lot 3 and the southeasterly line of said Lot 16.

Except that part of Lot 16 and of vacated 38<sup>th</sup> Avenue West that lies southeasterly of the following described line: Beginning at a point on the southwesterly line of said Lot 16, distant 15 feet northwesterly of the most southerly corner thereof; thence run northeasterly to a point on the southeasterly line of Lot 8, Block 5, Sutphin's Addition to Duluth, distant 10 feet southwesterly of the most easterly corner thereof and there terminating; and

Those parts of Lots 3, 4, 5, 6 and 7, Block 3, and Lot 1, Block 4, including the vacated streets, avenues and alleys, all in Sutphin's Addition to Duluth lying within the following description:

All those parts of Blocks 1, 2, 3, 4, 5 and 6 including the vacated streets, avenues and alleys, all in Sutphin's Addition to Duluth described as follows:

Beginning at the most W'ly corner of Lot 10, Block 1, thence South 44 degrees 35 minutes 00 seconds East (assumed bearing), along the SW'ly line of said Lot 10, a distance of 76.04 feet to the centerline of the vacated alley; thence South 45 degrees 33 minutes 00 seconds West, along the centerline of the vacated alley, a distance of 75.00 feet to the NW'ly extension of the SW'ly line of said Lot 4, Block 2; thence South 44 degrees 35 minutes 00 seconds East, along the NW'ly extension of the SW'ly line of Lot 4, Block 2 and the SW'ly line of said Lot 4, a distance of 96.26 feet to the SW'ly line of Block 2; thence South 79 degrees 10 minute 00 seconds East, along said SW'ly line of Block 2 and the SE'ly extension of the SW'ly line of Block 2, a distance of 101.88 feet to the centerline of Superior Street (which is designated as Third Street in said plat); thence North 45 degrees 33 minutes 00 seconds East, along said centerline of Superior Street (which is designated as Third Street in said plat), a distance of 67.17 feet; thence South 44 degrees 35 minutes 00 seconds East, along the NW'ly extension of the SW'ly line of Lot 3, Block 3, and the SW'ly line of said Lot 3, a distance of 97.28 feet to the SW'ly line of said Block 3; thence South 79 degrees 10 minutes 00 seconds East, along said SW'ly line of Blocks 3 and 4, a distance of 132.13 feet to the intersection with the NE'ly line of Lot 1, Block 4; thence North 44 degrees 35 minutes 00 seconds West, along the NE'ly line of said Lot 1 and the NW'ly extension of said NE'ly line of Lot 1, a distance of 25.89 feet to the centerline of the alley between Blocks 3 and 4; thence North 45 degrees 33 minutes 00 seconds East, along said centerline of the alley, a distance of 43.00 feet; thence North 22 degrees 48 minutes 32 seconds West, a distance of 316.60 feet to the NW'ly line of vacated alley and said line also being the SE'ly right of way line of Burlington Northern, Inc. (formerly the Northern Pacific Railway); thence South 71 degrees 55 minutes 58 seconds West, along said NW'ly line of vacated alley and the NW'ly line of Block 1, a distance of 319.00 feet to the point of beginning, containing 2.01 acres of land, more or less.

All assuming vacated Superior Street (which is designated as Third Street in said plat) is running East and West.

